**South Carolina General Assembly**

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**H. 4814**

**STATUS INFORMATION**

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Sponsors: Reps. Hill, Magnuson, McKnight, Robinson and Cobb‑Hunter

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Introduced in the House on January 14, 2020

Currently residing in the House Committee on **Ways and Means**

Summary: Expungement

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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12/11/2019 House Referred to Committee on **Ways and Means**

1/14/2020 House Introduced and read first time ([House Journal‑page 115](file:///h:\hj\20200114.docx))

1/14/2020 House Referred to Committee on **Ways and Means** ([House Journal‑page 115](file:///h:\hj\20200114.docx))

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**VERSIONS OF THIS BILL**

[11/20/2019](file:///p:\pprever\2019-20\4814_20191120.docx)

**A** **BILL**

TO AMEND SECTION 12‑6‑5060, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO VOLUNTARY INCOME TAX CONTRIBUTIONS TO CERTAIN FUNDS, SO AS TO ADD THE “WORKFORCE RECORD EXPUNGEMENT AFFORDABILITY FUND” TO THE LIST; AND TO AMEND SECTION 17‑22‑940, AS AMENDED, RELATING TO THE PROCESS FOR AN EXPUNGEMENT OF A GENERAL SESSIONS CHARGE, SO AS TO REDUCE THE FEE AN APPLICANT IS REQUIRED TO PAY FROM TWO HUNDRED FIFTY DOLLARS TO ONE HUNDRED FIFTY DOLLARS AND TO REQUIRE THAT EACH SOLICITOR’S OFFICE ESTABLISH A “WORKFORCE RECORD EXPUNGEMENT AFFORDABILITY FUND” TO DEFRAY THE COSTS OF EXPUNGEMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be known and must be cited as the “Workforce Record Expungement Affordability Act”.

SECTION 2.A. Section 12‑6‑5060(A) of the 1976 Code is amended to read:

“(A) Each taxpayer required to file a state individual income tax return may contribute to the War Between the States Heritage Trust Fund established pursuant to Section 51‑18‑115, the Nongame Wildlife and Natural Areas Program Fund established pursuant to Section 50‑1‑280, the Children’s Trust Fund of South Carolina established pursuant to Section 63‑11‑910, the Eldercare Trust Fund of South Carolina established pursuant to Section 43‑21‑160, the First Steps to School Readiness Fund established pursuant to Section 63‑11‑1750, the South Carolina Military Family Relief Fund established pursuant to Article 3, Chapter 11, Title 25, the Donate Life South Carolina established pursuant to Section 44‑43‑1310, the Veterans’ Trust Fund of South Carolina established pursuant to Chapter 21, Title 25, the South Carolina Litter Control Enforcement Program (SCLCEP) and used by the Governor’s Task Force on Litter only for the SCLCEP Program, the South Carolina Law Enforcement Assistance Program (SCLEAP) and used as provided in Section 23‑3‑65, the South Carolina Department of Parks, Recreation and Tourism for use in the South Carolina State Park Service in the manner the General Assembly provides, the South Carolina Forestry Commission for use in the state forest system, the South Carolina Department of Natural Resources for use in its programs and operations, K‑12 public education for use in the manner the General Assembly provides by law, South Carolina Conservation Bank Trust Fund established pursuant to Section 48‑59‑60, the Financial Literacy Trust Fund established pursuant to Section 59‑29‑510, ~~or~~ the South Carolina Association of Habitat for Humanity Affiliates, or the Workforce Record Expungement Affordability Fund of a specified circuit solicitors office established pursuant to Section 17‑22‑940, by designating the contribution on the return. The contribution may be made by reducing the income tax refund or by remitting additional payment by the amount designated.”

B. Contributions made to the Workforce Record Expungement Affordability Fund may be designated on an income tax return for tax years beginning after 2019.

SECTION 3. Section 17‑22‑940 of the 1976 Code, as last amended by Act 254 of 2018, is further amended to read:

“Section 17‑22‑940. (A) In exchange for the expungement service that is provided by the solicitor’s office, the applicant is responsible for payment to the solicitor’s office of an administrative fee in the amount of ~~two~~ one hundred fifty dollars per individual order, which must be retained by that office to defray the costs associated with the expungement process except as provided in items (1) and (2). The solicitor’s office shall cover the administrative fee from its Workforce Record Expungement Affordability Fund if the funds are available. If the money available in the fund cannot cover the entire one hundred fifty dollars, the solicitor may use the money to cover a portion of the fee for an individual. The ~~two~~ one hundred fifty dollar fee is nonrefundable, regardless of whether the offense is later determined to be statutorily ineligible for expungement or the solicitor or his designee does not consent to the expungement.

(1) Any person who applies to the solicitor’s office for an expungement of general session charges pursuant to Section 17‑1‑40 is exempt from paying the administrative fee, unless the charge that is the subject of the expungement request was dismissed, discharged, or nolle prossed as part of the plea arrangement under which the defendant pled guilty and was sentenced to other charges.

(2) Each solicitor’s office shall establish an ~~account~~ Workforce Record Expungement Affordability Fund to collect income tax return donations given pursuant to Section 12‑6‑5060 and private donations for the purpose of assisting in defraying the administrative fee of an expungement ~~by up to fifty percent (50%)~~. These funds shall be available on a first come, first serve basis to applicants. This item does not require the solicitor to request or solicit funds for this account.

(B) The solicitor’s office shall implement policies and procedures consistent with this section to ensure that the expungement process is properly conducted. This includes, but is not limited to:

(1) assisting the applicant in completing the expungement order form;

(2) collecting from the applicant and distributing to the appropriate agencies separate certified checks or money orders for charges prescribed by this article;

(3) collecting funds from individuals choosing to contribute to the fund to defray the costs of administrative fees for expungements;

(4) coordinating with the South Carolina Law Enforcement Division (SLED) and, in the case of juvenile expungements, the Department of Juvenile Justice, to confirm that the criminal charge is statutorily appropriate for expungement;

(5) obtaining and verifying the presence of all necessary signatures;

(6) filing the completed expungement order with the clerk of court; and

(7) providing copies of the completed expungement order to all governmental agencies which must receive the order including, but not limited to, the:

(a) arresting law enforcement agency;

(b) detention facility or jail;

(c) solicitor’s office;

(d) magistrates or municipal court where the arrest warrant originated;

(e) magistrates or municipal court that was involved in any way in the criminal process of the charge sought to be expunged;

(f) Department of Juvenile Justice; and

(g) SLED.

(C) The solicitor or his designee also must provide a copy of the completed expungement order to the applicant or his retained counsel.

(D) In cases when charges are sought to be expunged pursuant to Section 17‑22‑150(a), 17‑22‑530(A), 17‑22‑330(A), 22‑5‑910, or 44‑53‑450(b), or 17‑22‑1010, the circuit pretrial intervention director, alcohol education program director, traffic education program director, South Carolina Youth Challenge Academy director, or summary court judge shall attest by signature on the application to the eligibility of the charge for expungement before either the solicitor or his designee and then the circuit court judge, or the family court judge in the case of a juvenile, signs the application for expungement.

(E) SLED shall verify and document that the criminal charges in all cases, except in cases when charges are sought to be expunged pursuant to Section 17‑1‑40, Section 17‑22‑150(a), Section 17‑22‑530(A), Section 17‑22‑330(A), or Section 44‑53‑450(b), are appropriate for expungement before the solicitor or his designee, and then a circuit court judge, or a family court judge in the case of a juvenile, signs the application for expungement. If the expungement is sought pursuant to Section 34‑11‑90(e), Section 22‑5‑910, Section 22‑5‑920, Section 63‑19‑2050, or Section 56‑5‑750(f), the conviction for any minor traffic‑related offense that is not related in any way to driving under the influence of alcohol or other drugs will not be considered as a bar to expungement.

(1) SLED shall receive a twenty‑five dollar certified check or money order from the solicitor or his designee on behalf of the applicant made payable to SLED for each verification request, except that no verification fee may be charged when an expungement is sought pursuant to Section 17‑1‑40, Section 17‑22‑530(A), Section 17‑22‑330(A), Section 17‑22‑150(a), or Section 44‑53‑450(b). SLED then shall forward the necessary documentation back to the solicitor’s office involved in the process.

(2) In the case of juvenile expungements, verification and documentation that the charge is statutorily appropriate for expungement must first be accomplished by the Department of Juvenile Justice and then SLED.

(3) Neither SLED, the Department of Juvenile Justice, nor any other official shall allow the applicant to take possession of the application for expungement during the expungement process.

(F) The applicant also is responsible to the clerk of court for the filing fee per individual order as required by Section 8‑21‑310(C)(4), which must be forwarded to the clerk of court by the solicitor or his designee and deposited in the county general fund. If the charge is determined to be statutorily ineligible for expungement, this prepaid clerk of court filing fee must be refunded to the applicant by the solicitor or his designee.

(G) Each expungement order may contain only one charge sought to be expunged, except in those circumstances when expungement is sought for multiple charges occurring out of a single incident and subject to expungement pursuant to Section 17‑1‑40 or 17‑22‑150(a). Only in those circumstances may more than one charge be included on a single application for expungement and, when applicable, only one ~~two~~ one hundred fifty‑dollar fee, one twenty‑five dollar SLED verification fee, and one thirty‑five dollar clerk of court filing fee may be charged.

(H) A filing fee may not be charged by the clerk’s office to an applicant seeking the expungement of a criminal record pursuant to Section 17‑1‑40, when the charge was discharged, dismissed, nolle prossed, or the applicant was acquitted.

(I) Nothing in this article precludes an applicant from retaining counsel to apply to the solicitor’s office on his behalf or precludes retained counsel from initiating an action in circuit court seeking a judicial determination of eligibility when the solicitor, in his discretion, does not consent to the expungement. In either event, retained counsel is responsible to the solicitor or his designee, when applicable, for the ~~two~~ one hundred fifty‑dollar fee, the twenty‑five dollar SLED verification fee, and the thirty‑five dollar clerk of court filing fee which must be paid by retained counsel’s client.

(J) The solicitor or his designee has the discretion to waive the ~~two~~ one hundred fifty‑dollar fee only in those cases when it is determined that a person has been falsely accused of a crime as a result of identity theft.

(K) Each solicitor’s office shall maintain a record of all fees collected related to the expungement of criminal records, which must be made available to the Chairmen of the House and Senate Judiciary Committees. Those records shall remain confidential otherwise.”

SECTION 4. This act takes effect upon approval by the Governor.

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