**A** **BILL**

TO AMEND SECTION 17‑1‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DESTRUCTION OF RECORDS WHEN A PERSON IS CHARGED WITH A CRIMINAL OFFENSE, BUT THE CHARGE IS DISCHARGED, PROCEEDINGS ARE DISMISSED, OR THE PERSON IS FOUND NOT GUILTY, SO AS TO ALLOW A COURT TO ORDER CERTAIN LEGAL COSTS TO BE PAID BY A PERSON WHO BRINGS FRIVOLOUS CHARGES AGAINST ANOTHER PERSON AND TO PROVIDE EXCEPTIONS.

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

SECTION 1. Section 17‑1‑40 of the 1976 Code, as last amended by Act 82 of 2007, is further amended to read:

“Section 17‑1‑40. (A) ~~A~~If a person ~~who after being~~is charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found ~~to be innocent~~not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency.

(B) A municipal, county, or state agency may not collect a fee for the destruction of records pursuant to the provisions of this section.

(C) If a judge dismisses the charge against a person or the person is found not guilty of the charge and the judge makes a finding that the charge is frivolous, the judge, in his discretion, may order court costs and other costs incurred by the person including, but not limited to, attorney’s fees, public defender fees, and expungement fees to be paid by the person who brought the frivolous charge forward. The provisions of this subsection do not apply to law enforcement officers or officers of the court.”

SECTION 2. This act takes effect upon approval by the Governor.

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