~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 12, 2010

**S. 912**

Introduced by Senator Land

S. Printed 5/12/10--H.

Read the first time April 15, 2010.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 912) to amend Section 17‑22‑950 of the 1976 Code, as added by Act 36 of 2009, relating to procedures for expungement of criminal charges which have been brought, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 17‑1‑40 of the 1976 Code is amended to read:

“Section 17‑1‑40. (A) A person who has a report or complaint filed against him with law enforcement but no charges are brought within three years of the report being filed, except in the case of a crime of violence as defined in Section 16‑23‑10(3), and with the consent of the appropriate solicitor’s office or who, after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found 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. Provided, however, that local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and, where necessary, to defend such facilities during litigation proceedings except when an action, complaint, or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. Such information only may be disclosed by judicial order, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.

(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) This section does not apply to a person who is charged with a violation of Title 50, Title 56, an enactment pursuant to the authority of counties and municipalities as provided by Titles 4 and 5, or any other state criminal offense, if the person is not fingerprinted for the violation.

(D) the State Law Enforcement Division is authorized to promulgate regulations that allow for the electronic transmission of information pursuant to this section. ”

SECTION 2. Section 17‑22‑940(B), as added by Act 36 of 2009, is amended to read:

“(B) Any person who applies to the solicitor’s office for an expungement of general sessions 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 a plea arrangement under which the defendant pled guilty and was sentenced on other charges. Additionally, any person who has successfully completed a juvenile drug court program who applies to the solicitor’s office for an expungement of a family court adjudication is exempt from paying the administrative fee.”

SECTION 3. Article 11, Chapter 21, Title 24 of the 1976 Code is amended by adding:

“Section 24‑21‑1010. A person who has received a pardon for any crime, except criminal sexual conduct, lewd act upon a minor, criminal domestic violence of a high and aggravated nature, a second or subsequent offense of criminal domestic violence, or a crime of violence as defined in Section 16‑23‑10(3), may apply, or cause someone acting on his behalf to apply, to the appropriate solicitor’s office with jurisdiction over the original offense for an order expunging the records of his arrest and conviction. Along with his application, the person must file a certified copy of his certificate of pardon with the appropriate solicitor’s office. In exchange for an 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 three hundred dollars per individual order, which must be retained by that office and used to defray costs associated with the expungemnet process. The three hundred 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. The applicant must also pay any other applicable fees as provided in Article 9, Chapter 22, Title 17.”

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

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The State Law Enforcement Division and the Judicial Department indicate that this bill would have no impact on the General Fund of the State or on federal and/or other funds.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 17‑22‑950 OF THE 1976 CODE, AS ADDED BY ACT 36 OF 2009, RELATING TO PROCEDURES FOR EXPUNGEMENT OF CRIMINAL CHARGES WHICH HAVE BEEN BROUGHT IN SUMMARY COURT, TO REMOVE THE REQUIREMENT THAT THE COMPLETED EXPUNGEMENT ORDER BE FILED WITH THE CLERK OF COURT.

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

SECTION 1. Section 17-1-40 of the 1976 Code is amended to read:

“Section 17-1-40. (A) A person who, after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found 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. Provided, however, that local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and, where necessary, to defend such facilities during litigation proceedings except when an action, complaint, or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. Such information only may be disclosed by judicial order, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.

(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) This section does not apply to a person who is charged with a violation of Title 50, Title 56, an enactment pursuant to the authority of counties and municipalities as provided by Titles 4 and 5, or any other state criminal offense, if the person is not fingerprinted for the violation.

(D) the State Law Enforcement Division is authorized to promulgate regulations that allow for the electronic transmission of information pursuant to this section. ”

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

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