~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

May 10, 2018

**H. 3209**

Introduced by Reps. Pope, Robinson‑Simpson, Crosby, Whipper, Brown, M. Rivers, King, Magnuson, Norrell, Martin, B. Newton, Long, Govan, Henegan, Dillard and Gilliard

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Read the first time April 11, 2017.

**A** **BILL**

TO AMEND SECTION 17‑22‑910, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO APPLICATIONS FOR THE EXPUNGEMENT OF CRIMINAL RECORDS FOR CERTAIN OFFENSES, SO AS TO PROVIDE FOR ELIGIBILITY FOR EXPUNGEMENT OF OFFENSES SUBSEQUENTLY REPEALED WHEN THE ELEMENTS OF THE OFFENSE ARE CONSISTENT WITH AN EXISTING SIMILAR OFFENSE WHICH IS SUBJECT TO EXPUNGEMENT, AND CLARIFY THAT EXPUNGEMENT PROVISIONS APPLY RETROACTIVELY TO THE OFFENSES DELINEATED.

Amend Title To Conform

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

SECTION 1. Section 17‑22‑910 of the 1976 Code, as last amended by Act 22 of 2015, is amended to read:

“Section 17‑22‑910. (A) Applications for expungement of all criminal records must be administered by the solicitor’s office in each circuit in the State as authorized pursuant to:

(1) Section 34‑11‑90(e), first offense misdemeanor fraudulent check;

(2) Section 44‑53‑450(b), conditional discharge;

(3) Section 22‑5‑910, first offense conviction in magistrates court;

(4) Section 22‑5‑920, youthful offender act;

(5) Section 22‑5‑930, first offense simple possession or possession with intent to distribute drug convictions;

(6) Section 56‑5‑750(f), first offense failure to stop when signaled by a law enforcement vehicle;

~~(6)~~(7) Section 17‑22‑150(a), pretrial intervention;

~~(7)~~(8) Section 17‑1‑40, criminal records destruction, except as provided in Section 17‑22‑950;

~~(8)~~(9) Section 63‑19‑2050, juvenile expungements;

~~(9)~~(10) Section 17‑22‑530(A), alcohol education program;

~~(10)~~(11) Section 17‑22‑330(A), traffic education program; and

~~(11)~~(12) any other statutory authorization.

(B) A person’s eligibility for expungement of an offense contained in this section, or authorized by any other provision of law, must be based on the offense that the person pled guilty to or was convicted of committing and not on an offense for which the person may have been charged. In addition, if an offense for which a person was convicted is subsequently repealed and the elements of the offense are consistent with an existing similar offense which is currently eligible for expungement, a person’s eligibility for expungement of an offense must be based on the existing similar offense.

(C) The provisions of this section apply retroactively to allow expungement as provided by law for each offense delineated in subsection (A) by persons convicted prior to the enactment of this section or the addition of a specific item contained in subsection (A).”

SECTION 2. Section 22‑5‑910 of the 1976 Code, as last amended by Act 132 of 2016, is amended to read:

“Section 22‑5‑910. (A) Following a ~~first offense~~ conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant. However, this section does not apply to an offense involving the operation of a motor vehicle.

(B) Following a ~~first offense~~ conviction for domestic violence in the third degree pursuant to Section 16‑25‑20(D), or Section 16‑25‑20(B)(1) as it existed before June 4, 2015, the defendant after five years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant.

(C) If the defendant has had no other conviction, including out‑of‑state convictions, during the three‑year period as provided in subsection (A), or during the five‑year period as provided in subsection (B), the circuit court may issue an order expunging the records including any associated bench warrant. ~~No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.~~

(D) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34‑11‑95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

(E) As used in this section, ‘conviction’ includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail. For the purpose of this section, any number of offenses for crimes carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, for which the individual received sentences at a single sentencing proceeding that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.

(F) No person may have the person’s record expunged under this section if the person has pending criminal charges of any kind unless the charges have been pending for more than five years; however, this five year time period is tolled for any time the defendant has been under a bench warrant for failure to appear. No person may have the person’s records expunged under this section more than once. A person may have the person’s record expunged even though the conviction occurred before the effective date of this section.”

SECTION 3. Section 22‑5‑920 of the 1976 Code, as last amended by Act 132 of 2016, is amended to read:

“Section 22‑5‑920. (A) As used in this section, ‘conviction’ includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail. For the purpose of this section, any number of offenses for which the individual received a youthful offender sentence at a single sentencing proceeding for offenses that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.

(B)(1) Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the defendant, who has not been convicted of any offense, including an out‑of‑state offense, while serving the youthful offender sentence, including probation and parole, and for a period of ~~after~~ five years from the date of completion of the defendant’s sentence, including probation and parole, may apply, or cause someone acting on the defendant’s behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction.

(2) However, this section does not apply to:

(a) an offense involving the operation of a motor vehicle;

(b) an offense classified as a violent crime in Section 16‑1‑60; or

(c) an offense contained in Chapter 25, Title 16, except as otherwise provided in Section 16‑25‑30; or

(d) an offense for which the individual is required to register in accordance with the South Carolina Sex Offender Registry Act.

(3) If the defendant has had no other conviction, to include out-of-state convictions, during the service of the youthful offender sentence, including probation and parole, and during the five‑year period following completion of the defendant’s sentence, including probation and parole, for a first offense conviction as a youthful offender for which the defendant was sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the circuit court may issue an order expunging the records. No person may have the person’s records expunged under this section more than once. A person may have the person’s record expunged even though the conviction occurred before the effective date of this section. A person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have the person’s record expunged pursuant to the provisions of this section; however, a person who was convicted prior to June 2, 2010, and was a youthful offender as that term is defined in Section 24-19-10(d) is eligible to have his record expunged pursuant to the provisions of this section.

(C) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of its expungement to ensure that no person takes advantage of the rights permitted by this section more than once. This nonpublic record is not subject to release under Section 34‑11‑95, the Freedom of Information Act, or another provision of law, except to those authorized law enforcement or court officials who need this information in order to prevent the rights afforded by this section from being taken advantage of more than once.”

SECTION 4. Article 11, Chapter 5, Title 22 of the 1976 Code is amended by adding:

“Section 22‑5‑930. (A) Following a first offense conviction for either simple possession of a controlled substance under Article 3, Chapter 53, Title 44 or unlawful possession of a prescription drug under Section 40‑43‑86(EE), including those charges for which the person would now be eligible for a conditional discharge pursuant to Section 44‑53‑450, the defendant after three years from the date of the completion of the sentence, including probation and parole, for this conviction, and including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant.

(B) Following a first offense conviction for possession with intent to distribute a controlled substance under Article 3, Chapter 53, Title 44, the defendant after twenty years from the date of the completion of any sentence, including probation and parole, for a drug conviction or any felony conviction may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant.

(C) If the defendant had no other convictions, to include out-of-state convictions, during the three‑year period as provided in subsection (A) or no other drug conviction or felony conviction during the twenty-year period as provided in subsection (B), the circuit court may issue an order expunging the records including any associated bench warrant.

(D) No person may have the person’s record expunged under this section if the person has pending criminal charges of any kind unless the charges have been pending for more than five years; however, this five year time period is tolled for any time the defendant has been under a bench warrant for failure to appear. No person may have the person’s records expunged under this section more than once. No person may have the person’s records expunged pursuant to this section if the person has had a conditional discharge within the five years prior to the date of arrest for the charge sought to be expunged if the charge sought to be expunged is simple possession of marijuana, or within the ten years prior to the date of arrest for the charge sought to be expunged if the charge sought to be expunged is for the simple possession of any other controlled substance or the unlawful possession of a prescription drug under Section 40‑43‑86(EE). A person may have the person’s record expunged even though the conviction occurred before the effective date of this section; however, the expungement will not affect a subsequent enhanced conviction or sentence that occurred before the effective date of this section.

(E) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34‑11‑95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

(F) As used in this section, ‘conviction’ includes a guilty plea, a nolo contendere, or the forfeiting of bail. For the purpose of this section, any number of offenses for which the individual received sentences at a single sentencing proceeding for offenses that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.”

SECTION 5. Section 63‑19‑2050(C)(2) of the 1976 Code is amended to read:

“(2) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a nonviolent crime, as defined in Section 16‑1‑70, the court may grant the expungement order. For the purpose of this section, any number of offenses for which the individual received youthful offender sentences at a single sentencing proceeding for offenses that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.”

SECTION 6. Section 17‑22‑940 of the 1976 Code, as last amended by Act 276 of 2014, is 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 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 ~~subsection (B)~~ items (1) and (2). The two 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 to collect 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)~~ ~~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.~~

~~(C)~~(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;

~~(3)~~(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;

~~(4)~~(5) obtaining and verifying the presence of all necessary signatures;

~~(5)~~(6) filing the completed expungement order with the clerk of court; and

~~(6)~~(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.

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

~~(E)~~(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), the circuit pretrial intervention director, alcohol education program director, traffic education program 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.

~~(F)~~(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 ~~which is punishable only by a fine or loss of points~~ 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.

~~(G)~~(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(21), 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.

~~(H)~~(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 hundred fifty‑dollar fee, one twenty‑five dollar SLED verification fee, and one thirty‑five dollar clerk of court filing fee may be charged.

~~(I)~~(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.

~~(J)~~(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 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.

~~(K)~~(J) The solicitor or his designee has the discretion to waive the two 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.

~~(L)~~(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 7. Article 9, Chapter 22, Title 17 of the 1976 Code is amended by adding:

“Section 17‑22‑960. Any employer that employs a worker who has had an expungement shall not, at any time, be subject to any administrative or legal claim or cause of action related to the worker’s expunged offense. Except for criminal justice agencies, employers shall not use expunged information adversely against an employee. No information related to an expungement shall be used or introduced as evidence in any administrative or legal proceeding involving negligent hiring, negligent retention, or similar claims.”

SECTION 8. This act takes effect six months after approval by the Governor.

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