**A** **BILL**

TO AMEND SECTION 22‑5‑910, 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 EVEN WHEN A PERSON HAS HAD A PRIOR OFFENSE EXPUNGED PURSUANT TO SECTION 34‑11‑90; AND TO AMEND SECTION 34‑11‑90, RELATING TO JURISDICTION OF OFFENSES AND PENALTIES CONCERNING BANK DEPOSITS, SO AS TO PROVIDE FOR ELIGIBILITY FOR EXPUNGEMENT EVEN WHEN A PERSON HAS HAD A PRIOR OFFENSE EXPUNGED PURSUANT TO SECTION 22‑5‑910.

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

SECTION 1. Article 11, Chapter 5, Title 22 of the 1976 Code 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), 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 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 except that a person who has a prior expungement pursuant to Section 34‑11‑90(e) may still have an expungement under this section. 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.”

SECTION 2. Chapter 11, Title 34 of the 1976 Code is amended to read:

“Section 34‑11‑90. A person who violates the provisions of this chapter, upon conviction, must be punished as follows:

If the amount of the instrument is one thousand dollars or less, it must be tried exclusively in a magistrates court. A municipal governing body, by ordinance, may adopt by reference the provisions of this chapter as an offense under its municipal ordinances and by so doing authorizes its municipal court to try violations of this chapter. If the amount of the instrument is over one thousand dollars, it must be tried in the court of general sessions or any other court having concurrent jurisdiction. Notwithstanding the provisions of this paragraph, a person who violates the provisions of this chapter, upon conviction for a third or subsequent conviction, may be tried in either a magistrates court or in the court of general sessions.

(a) Convictions in a magistrates court are punishable as follows:

(1) for a first conviction, if the amount of the instrument is five hundred dollars or less, by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than thirty days;

(2) for a first conviction, if the amount of the instrument is more than five hundred dollars but not greater than one thousand dollars, by a fine of not less than three hundred nor more than five hundred dollars or by imprisonment for not more than thirty days, or both;

(3) for a second or subsequent conviction, if the amount of the instrument is five hundred dollars or less, by a fine of two hundred dollars or by imprisonment for not more than thirty days;

(4) for a second or subsequent conviction, if the amount of the instrument is more than five hundred dollars but not greater than one thousand dollars, by a fine of not more than five hundred dollars or by imprisonment for not more than thirty days, or both.

(b) Convictions in the court of general sessions or any other court having concurrent jurisdiction are punishable as follows: for a first conviction by a fine of not less than three hundred dollars nor more than one thousand dollars or by imprisonment for not more than two years, or both; and for a second or subsequent conviction by a fine of not less than five hundred dollars nor more than two thousand dollars and imprisonment for not less than thirty days nor more than ten years.

(c) After a first offense conviction for drawing and uttering a fraudulent check or other instrument in violation of Section 34‑11‑60 within its jurisdiction, the court shall, at the time of sentence, suspend the imposition or execution of a sentence upon a showing of satisfactory proof of restitution and payment by the defendant of all reasonable court costs accruing not to exceed forty‑one dollars. For a second or subsequent conviction for a violation of Section 34‑11‑60, the suspension of the imposition or execution of the sentence is discretionary with the court.

(d) After a conviction or plea for drawing and uttering a fraudulent check or other instrument in violation of Section 34‑11‑60 and the defendant is charged or fined, he shall pay in addition to the fine all reasonable court costs accruing, not to exceed forty‑one dollars, and the service charge provided in Section 34‑11‑70.

(e) After a conviction under this section on a first offense, the defendant may, after one year from the date of the conviction, apply, or cause someone acting on his behalf to apply, to the court for an order expunging the records of the arrest and conviction. This provision does not apply to any crime classified as a felony. If the defendant has had no other conviction during the one‑year period following the conviction under this section, the court shall issue an order expunging the records. No person has any rights under this section more than one time except that a person who has a prior expungement pursuant to Section 22‑5‑910 may still have an expungement under this section. After the expungement under this section, 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 subsection more than once. This nonpublic record is not subject to release under 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 this information in order to prevent the rights afforded by this subsection from being taken advantage of more than once.

As used in this section the term “conviction” shall include the entering of a guilty plea, the entering of a plea of nolo contendere, or the forfeiting of bail. A conviction is classified as a felony if the instrument drawn or uttered in violation of this chapter exceeds the amount of five thousand dollars.

Each instrument drawn or uttered in violation of this chapter constitutes a separate offense.”

SECTION 3. This act takes effect upon approval by the Governor.

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