**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4248**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Rose and Robbins

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Introduced in the House on April 4, 2023

Introduced in the Senate on April 10, 2024

Last Amended on April 9, 2024

Currently residing in the Senate Committee on **Judiciary**

Summary: Conditional discharge

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 4/4/2023 House Introduced and read first time (House Journal‑page 9)

 4/4/2023 House Referred to Committee on **Judiciary** (House Journal‑page 9)

 3/20/2024 House Member(s) request name added as sponsor: Robbins

 3/20/2024 House Committee report: Favorable with amendment **Judiciary** (House Journal‑page 11)

 3/26/2024 House Debate adjourned until Tues., 4-9-24 (House Journal‑page 31)

 4/9/2024 House Requests for debate-Rep(s). W. Newton, Hiott, Pope, Felder, Carter, Nutt, Guest, Brittain, Schuessler, BL Cox, Thayer, Whitmire, Sandifer, Gilliam, Hager (House Journal‑page 40)

 4/9/2024 House Amended (House Journal‑page 76)

 4/9/2024 House Read second time (House Journal‑page 76)

 4/9/2024 House Roll call Yeas-80 Nays-23 (House Journal‑page 78)

 4/10/2024 House Read third time and sent to Senate (House Journal‑page 19)

 4/10/2024 Senate Introduced and read first time (Senate Journal‑page 3)

 4/10/2024 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 3)

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=4248&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[04/04/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4248_20230404.docx)

[03/20/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4248_20240320.docx)

[04/09/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4248_20240409.docx)

Amended

April 09, 2024

H. 4248

Introduced by Reps. Rose and Robbins

S. Printed 04/09/24--H.

Read the first time April 04, 2023

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statement of estimated fiscal impact

Explanation of Fiscal Impact

State Expenditure

This amended bill expands conditional discharge, which is currently permitted under Section 44-53-450 and Section 16-17-530, to cover two new offenses pertaining to the sale of beer, wine, or alcoholic liquors to underage persons under Section 61-4-50 and Section 61-6-4080. The court may only order the conditional discharge for a first offense; however, a person granted a conditional discharge under the provisions of the bill is not precluded from pursuing pre-trial diversion options provided by law. A nonpublic record must be forwarded to SLED to be stored and used solely by the court in determining whether a person has committed a subsequent offense.

A person granted a conditional discharge must complete a DAODAS approved merchant education program. The person may also petition the court for an expungement of his records related to this offense and must pay a fee of $350 if the offense has been heard in general sessions court or a fee of $150 if the offense has been heard in a municipal or magistrate court.

Fees collected must be remitted by the local jurisdiction to STO who will then transmit the funds to CPC for per capita apportionment to the 16 judicial circuits. The funds may only be used for drug treatment court programs and must not supplant existing funds used for this purpose. The bill also authorizes the State Auditor to conduct examinations of the financial records of local jurisdictions.

**Judicial.** This bill will have no expenditure impact for Judicial as it anticipates being able to manage any increased caseload due to this bill with existing staff and within existing appropriations.

**Department of Alcohol and Other Drug Abuse Services.** RFA anticipates this bill will have no expenditure impact for DAODAS as completing a DAODAS approved merchant education program is currently required for individuals who violate the provisions of Section 61-4-50 or Section 61-6-4080.

**Office of the State Treasurer.** STO would collect the conditional discharge fee and transmit it to the CPC. The agency has indicated that this bill will require additional work in treasury management, as the new fee will need to be added to their systems. However, STO anticipates that this work can be managed with existing staff and resources. Therefore, this bill will have no expenditure impact for STO.

**Commission on Prosecution Coordination.** This bill requires CPC to distribute the funds collected to the 16 judicial circuits on a per capita basis equal to the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. We anticipate CPC can manage this distribution with existing staff and within existing appropriations. We will update this fiscal impact if information to the contrary is provided.

**Office of the State Auditor.** SAO is responsible for investigating if funds are not being transmitted in a timely manner if requested to do so by STO. SAO expects to manage the responsibilities of this bill with existing staff and resources in their State Audit. Therefore, there will be no expenditure impact to the agency. SAO noted that although they currently do not expect any expenditure impact, if the agency is overloaded with work and does need to make use of an outside accounting firm, it would cost approximately $25,000. This would be approximately the same cost as 0.25 FTE for an audit manager within the agency.

**State Law Enforcement Division.** This bill requires the court to forward a nonpublic record of the offense for which the person is receiving a conditional discharge to SLED. SLED must retain this record to be solely used by the court to determine whether a person commits a subsequent offense under the section. We anticipate SLED can manage this responsibility with existing staff and within existing appropriations. We will update this fiscal impact statement if SLED provides information to the contrary.

Local Revenue

This bill expands the number of offenses that are eligible for conditional discharge to include first offenses under Section 61-4-50 and Section 61-6-4080. A person must pay a fee of $350 or $150, depending upon which court he is in before the dismissal of the case. The revenue from these fees will be distributed by CPC on a pro rata basis to the judicial circuits for drug treatment court programs. For information, CPC reports that the total amount of fees collected for conditional discharges under Section 44-53-450 and Section 16-17-530 in FY 2022-23 was approximately $506,000. CPC anticipates the revenue generated due to this bill will be less than the amount generated by the currently allowed conditional discharges. However, as the number of conditional discharges that will be granted due to this bill is unknown, the potential increase in local revenue to be used for drug treatment court programs is undetermined.

Introduced on April 4, 2023

State Expenditure

This bill expands conditional discharge, which is currently permitted under Sections 44-53-450 and Section 16-17-530, to cover two new offenses pertaining to the sale of beer, wine, or alcoholic liquors to underage persons under Section 61-4-50 and Section 61-6-4080. The court may only order the conditional discharge for a first offense. A nonpublic record must be forwarded to SLED to be stored and used solely by the court in determining whether a person has committed a subsequent offense.

A person granted a conditional discharge may petition the court for an expungement of his records related to this offense and must pay a fee of $350 if the offense has been heard in general sessions court or a fee of $150 if the offense has been heard in a municipal or magistrate court. Fees collected must be remitted by the local jurisdiction to STO who will then transmit the funds to CPC for per capita apportionment to the 16 judicial circuits. The funds may only be used for drug treatment court programs and must not supplant existing funds used for this purpose. The bill also authorizes the State Auditor to conduct examinations of the financial records of local jurisdictions.

**Judicial.** This bill will have no expenditure impact for Judicial as it anticipates being able to manage any increased caseload due to this bill with existing staff and within existing appropriations.

**Office of the State Treasurer.** STO would collect the conditional discharge fee and transmit it to the CPC. The agency has indicated that this bill will require additional work in treasury management, as the new fee will need to be added to their systems. However, STO anticipates that this work can be managed with existing staff and resources. Therefore, this bill will have no expenditure impact for STO.

**Commission on Prosecution Coordination.** This bill requires CPC to distribute the funds collected to the 16 judicial circuits on a per capita basis equal to the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. We anticipate CPC can manage this distribution with existing staff and within existing appropriations. We will update this fiscal impact if information to the contrary is provided.

**Office of the State Auditor.** SAO is responsible for investigating if funds are not being transmitted in a timely manner if requested to do so by STO. SAO expects to manage the responsibilities of this bill with existing staff and resources in their State Audit. Therefore, there will be no expenditure impact to the agency. SAO noted that although they currently do not expect any expenditure impact, if the agency is overloaded with work and does need to make use of an outside accounting firm, it would cost approximately $25,000. This would be approximately the same cost as 0.25 FTE for an audit manager within the agency.

**State Law Enforcement Division.** This bill requires the court to forward a nonpublic record of the offense for which the person is receiving a conditional discharge to SLED. SLED must retain this record to be solely used by the court to determine whether a person commits a subsequent offense under the section. We anticipate SLED can manage this responsibility with existing staff and within existing appropriations. We will update this fiscal impact statement if SLED provides information to the contrary.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 61‑4‑50, RELATING TO THE SALE OF BEER, ALE, PORTER, OR WINE TO UNDERAGED PERSONS, SO AS TO PROVIDE FOR A CONDITIONAL DISCHARGE; AND BY AMENDING SECTION 61‑6‑4080, RELATING TO THE SALE OF ALCOHOLIC LIQUORS TO AN UNDERAGED PERSON, SO AS TO PROVIDE FOR A CONDITIONAL DISCHARGE.

 Amend Title To Conform

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

SECTION 1. Section 61‑4‑50 of the S.C. Code is amended by adding:

 (D)(1) Whenever any person who has not previously been convicted of any offense under this section, pleads guilty to or is found guilty of a sale in violation of this section, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires provided that one such condition must be that he complete the merchant education program described in subsection (C). Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section must be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions. However, a nonpublic record must be forwarded to and retained by the South Carolina Law Enforcement Division solely for the purpose of use by the courts in determining whether or not a person has committed a subsequent offense under this section. Discharge and dismissal under this section may occur only once with respect to any person.

 (2) Upon the dismissal of the person and discharge of the proceedings against him pursuant to item (1), the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained as provided in item (1), all recordation relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after the hearing, that the person was dismissed and the proceedings against him discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person as to whom the order has been entered may be held pursuant to another provision of law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest, or indictment or information, or trial in response to an inquiry made of him for any purpose. A conditional discharge granted pursuant to this section does not preclude a person from availing themselves of subsequent pre-trial diversion options provided by law.

 (3) Before a person may be discharged and the proceedings dismissed pursuant to this subsection, the person must pay a fee of three hundred fifty dollars if the person is in a general sessions court and one hundred fifty dollars if the person is in a summary court. No portion of the fee may be waived, reduced, or suspended, except in cases of indigency. If the court determines that a person is indigent, the court may partially or totally waive, reduce, or suspend the fee. The revenue collected pursuant to this item must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt. The State Treasurer shall transmit these funds to the Prosecution Coordination Commission which shall then apportion these funds among the sixteen judicial circuits on a per capita basis equal to the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. The funds must be used for drug treatment court programs only. The amounts generated by this subsection are in addition to any amounts presently being provided for drug treatment court programs and may not be used to supplant funding already allocated for these services. The State Treasurer may request the State Auditor to examine the financial records of a jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer pursuant to this subsection. The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination.

SECTION 2. Section 61‑6‑4080 of the S.C. Code is amended by adding:

 (D)(1) Whenever any person who has not previously been convicted of any offense under this section, pleads guilty to or is found guilty of a sale in violation of this section, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires provided that one such condition must be that he complete the merchant education program described in subsection (C). Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section must be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions. However, a nonpublic record must be forwarded to and retained by the South Carolina Law Enforcement Division solely for the purpose of use by the courts in determining whether or not a person has committed a subsequent offense under this section. Discharge and dismissal under this section may occur only once with respect to any person.

 (2) Upon the dismissal of the person and discharge of the proceedings against him pursuant to item (1), the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained as provided in item (1), all recordation relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after the hearing, that the person was dismissed and the proceedings against him discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person as to whom the order has been entered may be held pursuant to another provision of law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest, or indictment or information, or trial in response to an inquiry made of him for any purpose. A conditional discharge granted pursuant to this section does not preclude a person from availing themselves of subsequent pre-trial diversion options provided by law.

 (3) Before a person may be discharged and the proceedings dismissed pursuant to this subsection, the person must pay a fee of three hundred fifty dollars if the person is in a general sessions court and one hundred fifty dollars if the person is in a summary court. No portion of the fee may be waived, reduced, or suspended, except in cases of indigency. If the court determines that a person is indigent, the court may partially or totally waive, reduce, or suspend the fee. The revenue collected pursuant to this item must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt. The State Treasurer shall transmit these funds to the Prosecution Coordination Commission which shall then apportion these funds among the sixteen judicial circuits on a per capita basis equal to the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. The funds must be used for drug treatment court programs only. The amounts generated by this subsection are in addition to any amounts presently being provided for drug treatment court programs and may not be used to supplant funding already allocated for these services. The State Treasurer may request the State Auditor to examine the financial records of a jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer pursuant to this subsection. The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination.

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

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