**South Carolina General Assembly**

125th Session, 2023-2024

**S. 129**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Hembree

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Introduced in the Senate on January 10, 2023

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

Summary: Conditional Discharge for Open Container Offenses

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

11/30/2022 Senate Prefiled

11/30/2022 Senate Referred to Committee on **Judiciary**

1/10/2023 Senate Introduced and read first time ([Senate Journal‑page 73](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 73](h:\sj\20230110.docx))

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**VERSIONS OF THIS BILL**

[12/01/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/129_20221201.docx)

A bill

to amend the South Carolina Code of Laws by adding Section 61‑6‑4725 relating to the alcoholic beverage control act, so as to permit conditional discharge of first‑time offenders under section 61‑6‑4720 and to permit county and municipal prosecutors to conditionally discharge first‑time offenders of county or municipal open container offenses, and to permit expungement of such offenses.

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

SECTION 1. Article 13, Chapter 6, Title 61, of the 1976 Code is amended by adding:

Section 61‑6‑4725. (A) A person charged with an offense under Section 61‑6-4720, or with transporting or possessing on his person any beer, wine, or alcoholic beverage in an open container or consuming any beer, wine, or alcoholic beverage upon a public way or in a public area under a municipal or county ordinance, may be granted conditional discharge pursuant to the provisions of this section upon approval by the appropriate state, county, or municipal prosecutor.

(B)(1) When a person who has not previously been convicted of an offense listed in subsection (A) above pleads guilty to or is in violation of such offenses, the court, without entering a judgment of guilty and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as the court requires, including the requirement that the person cooperate in a treatment and rehabilitation program of a state‑supported facility, if available.

(2) Upon violation of a term or condition, the court may enter a judgment of guilty and proceed as otherwise provided.

(3) Upon fulfillment of the terms and conditions, the court must discharge the person and dismiss the proceedings against him. Discharge and dismissal pursuant to this section is without the court’s 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. 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 pursuant to this section.

(4) Discharge and dismissal pursuant to this section may occur only once with respect to any person.

(C) Upon the dismissal of the person and discharge of the proceedings against him pursuant to subsection (B), 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 subsection (B), all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after a 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. A person to whom the order has been entered must not be held to be guilty of perjury or otherwise giving a false statement pursuant to another provision of law 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.

(D) Before a person may be discharged and the proceedings dismissed pursuant to this section, the person must pay a fee to the summary court of one hundred fifty dollars. 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 subsection 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 that 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. This act takes effect upon approval by the Governor.

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