**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4649**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Rutherford

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Introduced in the House on January 24, 2012

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

Summary: Expedited expungement verification by SLED

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/24/2012 House Introduced and read first time ([House Journal‑page 15](file:///h:\hj%20archive\2012\01-24-12.docx))

1/24/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 15](file:///h:\hj%20archive\2012\01-24-12.docx))

**VERSIONS OF THIS BILL**

[1/24/2012](file:///p:\pprever\2011-12\4649_20120124.docx)

**A** **BILL**

TO AMEND SECTION 17‑22‑940, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXPUNGEMENT FEES AND REQUIREMENTS AND DUTIES OF THE SOLICITOR AND SLED REGARDING THE EXPUNGEMENT PROCESS, SO AS TO PROVIDE FOR AN EXPEDITED EXPUNGEMENT VERIFICATION BY SLED WITH THE PAYMENT OF AN ADDITIONAL FEE.

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

SECTION 1. Section 17‑22‑940 of the 1976 Code, as added by Act 36 of 2009, is amended to read:

“Section 17‑22‑940. (A) 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 two hundred fifty dollars per individual order, which must be retained by that office and used to defray the costs associated with the expungement process, except as provided in subsection (B). 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. In addition to the administrative fee required by this subsection, the applicant may pay an additional fee of fifty dollars in order to receive an expedited verification from SLED that the charge is statutorily appropriate for expungement. If the applicant pays this additional fee, the solicitor shall remit forty dollars of the payment by certified check or money order to SLED, and the solicitor’s office shall retain ten dollars. This payment is in addition to the twenty‑five dollar payment required in subsection (F)(1) and is also nonrefundable.

(B) ~~Any~~ A 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) 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) coordinating with ~~the South Carolina Law Enforcement Divisions (~~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) obtaining and verifying the presence of all necessary signatures;

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

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

(E) In cases when charges are sought to be expunged pursuant to Section 17‑22‑150(a), 17‑22‑530(a), 22‑5‑910, or 44‑53‑450(b), the circuit pretrial intervention director, alcohol 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) 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, 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, or Section 56‑5‑750(f), the conviction for any traffic‑related offense which is punishable only by a fine or loss of points 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, 17‑22‑150(a), or 44‑53‑450(b). SLED then shall forward the necessary documentation back to the solicitor’s office involved in the process. In addition, upon receipt of the forty‑dollar fee for an expedited verification, SLED shall verify that the charge is statutorily appropriate for expungement and forward the necessary documentation back to the solicitor’s office no later than thirty days from the date the check or money order was received.

(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) 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) 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) 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) 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) 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) 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 2. This act takes effect upon approval by the Governor.

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