~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 7, 2019

**H. 3601**

Introduced by Reps. Rose, McCoy and Caskey

S. Printed 5/7/19--S.

Read the first time March 5, 2019.

**A** **BILL**

TO AMEND SECTION 16‑17‑530, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PUBLIC DISORDERLY CONDUCT, SO AS TO ALLOW AND PROVIDE PROCEDURES FOR CONDITIONAL DISCHARGE FOR FIRST TIME OFFENDERS.

Amend Title To Conform

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

SECTION 1. Section 16‑17‑530 of the 1976 Code is amended to read:

“Section 16‑17‑530. (A) ~~Any~~ A person who ~~shall (a) be~~ is: (1) found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise ~~conducting~~ conducts himself in a disorderly or boisterous manner~~,~~; ~~(b)~~(2) ~~use~~ uses obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church; or ~~(c)~~(3) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, ~~discharge~~ discharges any gun, pistol, or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, ~~shall be deemed~~ is guilty of a misdemeanor and, upon conviction, ~~shall~~ must be fined not more than one hundred dollars or be imprisoned for not more than thirty days. However, conditional discharge may be granted by the court in accordance with the provisions of this section upon approval by the circuit solicitor.

(B) When a person who has not previously been convicted of an offense pursuant to this section or any similar offense under any state or federal statute relating to drunk or disorderly conduct pleads guilty to or is found guilty of a 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, including the requirement that the person cooperate in a treatment and rehabilitation program of a state‑supported facility, if available. 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 pursuant to this section is 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. 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. 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. 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.

(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 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. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. Section 1-3-210 of the 1976 Code is amended to read:

“Section 1-3-210. (A)(1) ~~During the recess of the Senate, vacancy which occurs in an~~ If an office filled by an appointment of the Governor with the advice and consent of the Senate becomes vacant during the interim period between regular legislative sessions, then the office may be filled by an interim appointment of the Governor only if the Governor acts to fill the office during the same interim period during which the office became vacant. The Governor must report the interim appointment to the Senate and must forward a formal appointment at its next ensuing regular session. If the Senate votes to reject an interim appointee’s formal appointment during the next ensuing regular session then the office is immediately vacant and may not be filled by another interim appointment.

(2) If the Senate does not advise and consent ~~thereto~~ to the formal appointment prior to ~~sine die adjournment~~ the second Thursday in May following the interim period during which the interim appointment was made ~~of the next ensuing regular session~~, the office shall be vacant and the interim appointment shall not serve in hold over status notwithstanding any other provision of law to the contrary. The Governor may not make a subsequent interim appointment for the same vacancy. ~~A subsequent interim appointment of a different person to a vacancy created by a failure of the Senate to grant confirmation to the original interim appointment shall expire on the second Tuesday in January following the date of such subsequent interim appointment and the office shall be vacant.~~

(B) The Governor’s authority to make an interim appointment pursuant to subsection (A) terminates when the General Assembly convenes the regular legislative session following the interim period between regular legislative sessions during which the office became vacant.”

SECTION 4. Article 5, Chapter 3 of Title 1 of the 1976 Code is amended by adding:

“Section 1-3-211. (A) If a vacancy exists in the head of an agency that requires appointment by the Governor with the advice and consent of the Senate, the Governor may designate an employee of the agency as the acting head of the agency if the person designated was employed by the agency for at least twelve consecutive months prior to the date upon which the vacancy occurred. A person designated as an acting agency head pursuant to this subsection may serve as the acting agency head no longer than the second Thursday in May following date upon which the vacancy occurred.

(B)(1) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may not be designated by the Governor as the acting head of the agency to which the person was nominated.

(2) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who also had been previously designated as the acting head of the agency who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may no longer exercise any authority or duties of that agency.”

SECTION 5. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑