

South Carolina Law Amended to Allow Expungement of Certain Criminal Records

By Andreas N. Satterfield

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Andreas N. Satterfield

Principal

(864) 232-7000

Andy.Satterfield@jacksonlewis.com

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An amendment to South Carolina law allows individuals to have certain criminal records expunged following a successful court petition. This means that, among other things, a prospective employee would not be required to disclose on an employment application criminal record information that has been expunged. The new law, Act No. 254, becomes effective December 27, 2018.

Responding to Tight Labor Market

South Carolina is facing its tightest labor market since the 1990s. With the backing of several prominent business groups, lawmakers hope to tap into the potential of those who have been convicted of juvenile offenses, first offenses, and relatively minor drug offenses to help alleviate labor shortage by amending and expanding the current law on expungement of criminal records (Section 17-22-910 of the Code of Laws of South Carolina).

Supporters of the legislature's efforts saw the amendment as an opportunity to expand the applicant pool to fit the state's current labor needs. "South Carolina must grow its workforce if our state is to experience continued economic growth and prosperity," Greenville Chamber President and CEO Carlos Phillips said. Ted Pitts, CEO of the South Carolina Chamber of Commerce, stated, "We've got workforce issues, and we want to work with South Carolinians in making sure they become productive taxpaying citizens."

A former criminal conviction can stop a potential employment relationship in its tracks. Individuals convicted of felonies, regardless of the nature of the offense, may be discouraged from applying for jobs on the assumption that a prospective employer will not hire them because of their criminal past.

Legislative Answer

The amendment did not pass without controversy. The bill originally was vetoed by Governor Henry McMaster in May. Governor McMaster believed the legislation would have the practical effect of erasing large categories of criminal records. Both houses of the South Carolina General Assembly overrode the Governor's veto and passed the legislation on June 27, 2018.

Highlights

The amendment allows persons to erase multiple convictions arising out of the same sentencing hearing if the convictions are "closely connected." It also allows ex-offenders to expunge first-offense simple drug possession and possession of drugs with intent to distribute convictions regardless of which drug was involved.

Further, the new law allows eligible persons with multiple convictions to select for expungement from those eligible for expungement the offense they believe will be most challenging in their job hunt. Under the amendment, only a first minor offense may be

expunged from a person's record.

The amendment applies retroactively to offenses committed prior to the law's passage, but it requires a person's record to be clean for at least three-to-five years, depending on the crime, before the person may apply for expungement.

The amendment also attaches expungement to any pardon. Currently, a pardoned conviction remains on one's criminal record.

Implications for Employers

The new law provides an employer immunity from civil action for hiring a worker with an expunged criminal record. The employer will not be subject to negligent hiring claims based on the worker's expunged convictions. Once the criminal history is expunged, employers will not be able to find evidence of the individual's criminal history with a commercial background check.

The law also makes clear that employers may not use knowledge of any criminal history that has been expunged from a candidate's record adversely against the applicant. Thus, employers should not ask candidates to disclose any expunged convictions on a job application or in a job interview.

If you have questions regarding the new law or need assistance to review application materials and procedures to ensure compliance, please contact the Jackson Lewis attorney with whom you regularly work.

Summer Clerk Amanda Hoefler, in our Greenville, South Carolina, office, contributed significantly to this article.

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