

HOUSE BILL No. 6697

November 19, 2008, Introduced by Reps. Jackson, Meadows, Warren, Meisner, Alma Smith, Condino, Young, Garfield and Gaffney and referred to the Committee on Judiciary.

A bill to amend 1965 PA 213, entitled

"An act to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to provide for the retention of certain nonpublic records and their use; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties,"

by amending sections 2 and 3 (MCL 780.622 and 780.623), as amended by 1994 PA 294.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Upon the entry of an order ~~pursuant to~~ **UNDER**
2 section 1, the applicant, for purposes of the law, shall be
3 considered not to have been previously convicted, except as
4 provided in this section and section 3.

5 (2) The applicant is not entitled to the remission of any

1 fine, costs, or other money paid as a consequence of a conviction
2 that is set aside.

3 (3) If the conviction set aside ~~pursuant to~~ **UNDER** this act is
4 for a listed offense as defined in section 2 of the sex offenders
5 registration act, **1994 PA 295, MCL 28.722**, the applicant is **NOT**
6 considered to have been convicted of that offense for purposes of
7 the sex offenders registration act, **1994 PA 295, MCL 28.721 TO**
8 **28.736**.

9 (4) This act does not affect the right of the applicant to
10 rely upon the conviction to bar subsequent proceedings for the same
11 offense.

12 (5) This act does not affect the right of a victim of a crime
13 to prosecute or defend a civil action for damages.

14 (6) This act does not create a right to commence an action for
15 damages for incarceration under the sentence that the applicant
16 served before the conviction is set aside ~~pursuant to~~ **UNDER** this
17 act.

18 Sec. 3. (1) Upon the entry of an order ~~pursuant to~~ **UNDER**
19 section 1, the court shall send a copy of the order to the
20 arresting agency and the department of state police.

21 (2) The department of state police shall retain a nonpublic
22 record of the order setting aside a conviction and of the record of
23 the arrest, fingerprints, conviction, and sentence of the applicant
24 in the case to which the order applies. Except as provided in
25 subsection (3), this nonpublic record shall be made available only
26 to a court of competent jurisdiction, an agency of the judicial
27 branch of state government, a law enforcement agency, a prosecuting

1 attorney, the attorney general, or the governor upon request and
2 only for the following purposes:

3 (a) Consideration in a licensing function conducted by an
4 agency of the judicial branch of state government.

5 (b) To show that a person who has filed an application to set
6 aside a conviction has previously had a conviction set aside
7 pursuant to this act.

8 (c) The court's consideration in determining the sentence to
9 be imposed upon conviction for a subsequent offense that is
10 punishable as a felony or by imprisonment for more than 1 year.

11 (d) Consideration by the governor if a person whose conviction
12 has been set aside applies for a pardon for another offense.

13 (e) Consideration by a law enforcement agency if a person
14 whose conviction has been set aside applies for employment with the
15 law enforcement agency.

16 ~~— (f) Consideration by a court, law enforcement agency,~~
17 ~~prosecuting attorney, or the attorney general in determining~~
18 ~~whether an individual required to be registered under the sex~~
19 ~~offenders registration act has violated that act, or for use in a~~
20 ~~prosecution for violating that act.~~

21 (3) A copy of the nonpublic record created under subsection
22 (2) shall be provided to the person whose conviction is set aside
23 under this act upon payment of a fee determined and charged by the
24 department of state police in the same manner as the fee prescribed
25 in section 4 of the freedom of information act, ~~Act No. 442 of the~~
26 ~~Public Acts of 1976, being section 15.234 of the Michigan Compiled~~
27 ~~Laws 1976 PA 442, MCL 15.234.~~

1 (4) The nonpublic record maintained under subsection (2) is
2 exempt from disclosure under the freedom of information act, ~~Act~~
3 ~~No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246~~
4 ~~of the Michigan Compiled Laws 1976 PA 442, MCL 15.231 TO 15.246.~~

5 (5) Except as provided in subsection (2), a person, other than
6 the applicant, who knows or should have known that a conviction was
7 set aside under this section and who divulges, uses, or publishes
8 information concerning a conviction set aside under this section is
9 guilty of a misdemeanor punishable by imprisonment for not more
10 than 90 days or a fine of not more than \$500.00, or both.

11 Enacting section 1. This amendatory act takes effect January
12 1, 2009.

13 Enacting section 2. This amendatory act does not take effect
14 unless Senate Bill No.____ or House Bill No. 6698(request no.
15 03677'07 a) of the 94th Legislature is enacted into law.