

HOUSE BILL No. 4839

June 13, 2013, Introduced by Reps. Leonard, Cotter, O'Brien, McMillin, Switalski, Irwin and Oakes and referred to the Committee on Criminal Justice.

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 section 3 (MCL 780.623), as amended by 1994 PA 294.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 (2) The department of state police shall retain a nonpublic
5 record of the order setting aside a conviction and of the record of
6 the arrest, fingerprints, conviction, and sentence of the applicant
7 in the case to which the order applies. Except as provided in
8 subsection (3), this nonpublic record shall be made available only

1 to a court of competent jurisdiction, an agency of the judicial
2 branch of state government, a law enforcement agency, a prosecuting
3 attorney, the attorney general, or the governor upon request and
4 only for the following purposes:

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

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

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

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

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

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

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

1 ~~Public Acts of 1976, being section 15.234 of the Michigan Compiled~~
2 ~~Laws.1976 PA 442, MCL 15.234.~~

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

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

14 (6) **AS USED IN THIS SECTION, "VICTIM" MEANS ANY INDIVIDUAL WHO**
15 **SUFFERS DIRECT OR THREATENED PHYSICAL, FINANCIAL, OR EMOTIONAL HARM**
16 **AS THE RESULT OF THE OFFENSE THAT WAS COMMITTED BY THE APPLICANT.**