

Act No. 294  
Public Acts of 1994  
Approved by the Governor  
July 13, 1994  
Filed with the Secretary of State  
July 14, 1994

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1994**

**Introduced by Senators Pollack Dingell Dillingham Koivisto, Hart Conroy Faust Stabenow and Hoffman**

# **ENROLLED SENATE BILL No. 400**

AN ACT to amend sections 2 and 3 of Act No. 213 of the Public Acts of 1965 entitled as amended 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 as amended by Act No. 342 of the Public Acts of 1993 being sections 780 622 and 780 623 of the Michigan Compiled Laws

*The People of the State of Michigan enact*

Section 1 Sections 2 and 3 of Act No. 213 of the Public Acts of 1965 as amended by Act No. 342 of the Public Acts of 1993 being sections 780 622 and 780 623 of the Michigan Compiled Laws are amended to read as follows

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

(2) The applicant is not entitled to the remission of any fine costs or other money paid as a consequence of a conviction that is set aside

(3) If the conviction set aside pursuant to this act is for a listed offense as defined in section 2 of the sex offenders registration act the applicant is considered to have been convicted of that offense for purposes of the sex offenders registration act

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

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

(6) This act does not create a right to commence an action for damages for incarceration under the sentence that the applicant served before the conviction is set aside pursuant to this act

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

(2) The department of state police shall retain a nonpublic record of the order setting aside a conviction and of the record of the arrest fingerprints conviction and sentence of the applicant in the case to which the order applies Except as provided in subsection (3) this nonpublic record shall be made available only to a court of competent jurisdiction an agency of the judicial branch of state government a law enforcement agency a prosecuting attorney the attorney general or the governor upon request and only for the following purposes

- (a) Consideration in a licensing function conducted by an agency of the judicial branch of state government
  - (b) To show that a person who has filed an application to set aside a conviction has previously had a conviction set aside pursuant to this act
  - (c) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year
  - (d) Consideration by the governor if a person whose conviction has been set aside applies for a pardon for another offense
  - (e) Consideration by a law enforcement agency if a person whose conviction has been set aside applies for employment with the law enforcement agency
  - (f) Consideration by a court law enforcement agency prosecuting attorney or the attorney general in determining whether an individual required to be registered under the sex offenders registration act has violated that act or for use in a prosecution for violating that act
- (3) A copy of the nonpublic record created under subsection (2) shall be provided to the person whose conviction is set aside under this act upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act Act No 442 of the Public Acts of 1976 being section 15 234 of the Michigan Compiled Laws
- (4) The nonpublic record maintained under subsection (2) is exempt from disclosure under the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws
- (5) Except as provided in subsection (2) a person other than the applicant who knows or should have known that a conviction was set aside under this section and who divulges uses or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500 00 or both

Section 2 This amendatory act shall take effect October 1 1995

Section 3 This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law

- (a) Senate Bill No 193
- (b) Senate Bill No 194
- (c) Senate Bill No 397
- (d) House Bill No 4601

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor