



SENATE BILL No. 400

February 16, 1993, Introduced by Senators POLLACK, DINGELL, DILLINGHAM, KOIVISTO, HART, CONROY, FAUST, STABENOW and referred to the Committee on Judiciary.

A bill to amend section 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. 11 of the Public Acts of 1988, being section 780.623 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3 of Act No. 213 of the Public Acts of
2 1965, as amended by Act No. 11 of the Public Acts of 1988, being
3 section 780.623 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 3. (1) Upon ~~the entry of~~ ENTERING an order pursuant
6 to section 1(9), the court shall send a copy of the order to the
7 arresting agency and the department of state police.

1 (2) The department of state police shall retain a nonpublic
2 record of the order setting aside a conviction and of the record
3 of the arrest, fingerprints, conviction, and sentence of the
4 applicant in the case to which the order applies. Except as pro-
5 vided in subsection (3), this nonpublic record shall be made
6 available only to a court of competent jurisdiction, an agency of
7 the judicial branch of state government, a law enforcement
8 agency, a prosecuting attorney, the attorney general, or the gov-
9 ernor upon request and only for the following purposes:

10 (a) For consideration in a licensing function conducted by
11 an agency of the judicial branch of state government.

12 (b) To show that a person ~~—~~ who has filed an application
13 to set aside a conviction ~~—~~ has previously had a conviction set
14 aside pursuant to this act.

15 (c) For the court's consideration in determining the sen-
16 tence to be imposed upon conviction for a subsequent offense
17 ~~which~~ THAT is punishable as a felony or by imprisonment for
18 more than 1 year.

19 (d) For consideration by the governor ~~—~~ if a person whose
20 conviction has been set aside applies for a pardon for another
21 offense.

22 (e) For consideration by a law enforcement agency ~~—~~ if a
23 person whose conviction has been set aside applies for employment
24 with the law enforcement agency.

25 (F) FOR CONSIDERATION BY A COURT, LAW ENFORCEMENT AGENCY,
26 PROSECUTING ATTORNEY, OR THE ATTORNEY GENERAL IN DETERMINING
27 WHETHER AN INDIVIDUAL REQUIRED TO REGISTER UNDER THE SEX

1 OFFENDERS REGISTRATION ACT HAS VIOLATED THAT ACT, OR FOR USE IN A
2 PROSECUTION FOR VIOLATING THAT ACT.

3 (3) A copy of the nonpublic record created under subsection
4 (2) shall be provided to the person whose conviction is set aside
5 under this act ~~—~~ upon payment of a fee determined and charged
6 by the department of state police in the same manner as the fee
7 prescribed in section 4 of the freedom of information act, Act
8 No. 442 of the Public Acts of 1976, being section 15.234 of the
9 Michigan Compiled Laws.

10 (4) The nonpublic record maintained under subsection (2)
11 ~~shall be~~ IS exempt from disclosure under the freedom of infor-
12 mation act, Act No. 442 of the Public Acts of 1976, being sec-
13 tions 15.231 to 15.246 of the Michigan Compiled Laws.

14 (5) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (2), A person ~~—~~
15 other than the applicant ~~—~~ who knows or should have known that
16 a conviction was set aside under this section ~~—~~ AND who
17 divulges, uses, or publishes information concerning a conviction
18 set aside under this section ~~— except as provided in subsection~~
19 ~~(2),~~ is guilty of a misdemeanor PUNISHABLE BY IMPRISONMENT FOR
20 NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN \$100.00, OR
21 BOTH.

22 Section 2. This amendatory act shall not take effect unless
23 Senate Bill No. 397

24 of the 87th Legislature is enacted into law.