

1 SB108
2 156781-3
3 By Senator Bedford
4 RFD: Judiciary
5 First Read: 14-JAN-14
6 PFD: 01/13/2014

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To authorize a person to petition a court to have
12 the record of certain felony or misdemeanor offenses, a
13 violation, or traffic violations expunged in certain
14 instances; and in connection therewith would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds within the meaning of Amendment 621
17 of the Constitution of Alabama of 1901, now appearing as
18 Section 111.05 of the Official ReCompilation of the
19 Constitution of Alabama of 1901, as amended.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. (a) A person who has been charged with a
22 misdemeanor criminal offense, a violation, or a traffic
23 violation may file a petition in the circuit court in the
24 county in which the charges were filed or which the conviction
25 was entered, to expunge all records relating to the charge in
26 any of the following circumstances:

- 27 (1) When the charge is dismissed with prejudice.

1 (2) When the charge has been no billed by a grand
2 jury.

3 (3) When the person has been found not guilty of the
4 charge.

5 (4) When the charge was dismissed without prejudice,
6 has not been refiled, and the person has not been convicted of
7 any other felony or misdemeanor crime, any violation, or any
8 traffic violation, excluding minor traffic violations, during
9 the previous two years.

10 Section 2. A person who has been charged with a
11 felony offense, except a felony offense pursuant to Section
12 12-25-32(14), Code of Alabama 1975, may file a petition in the
13 circuit court in the county in which the charges were filed,
14 to expunge all records relating to the charge in any of the
15 following circumstances:

16 (1) When the charge is dismissed with prejudice.

17 (2) When the charge has been no billed by a grand
18 jury.

19 (3) When the person has been found not guilty of the
20 charge.

21 (4) The charge was dismissed after successful
22 completion of a drug court program, mental health court
23 program, diversion program, or any court-approved deferred
24 prosecution program.

25 (5) The charge was dismissed without prejudice, has
26 not been refiled, and the person has not been convicted of any
27 other felony or misdemeanor crime, any violation, or any

1 traffic violation, excluding minor traffic violations, during
2 the previous five years.

3 Section 3. (a) A petition filed under this act shall
4 include a sworn statement made by the person seeking
5 expungement under the penalty of perjury stating that the
6 person has satisfied the requirements set out in Section 1 or
7 2.

8 (b) A petitioner shall serve the prosecuting
9 authority a copy of the petition and the sworn affidavit. The
10 prosecuting authority shall make every reasonable effort to
11 notify the victim of the petition and the victim's right to
12 object only when the petition has been filed seeking an
13 expungement for a conviction. The prosecuting authority or
14 victim shall have a period of 45 days to file a written
15 objection to the granting of the petition or the prosecuting
16 authority will be deemed to have waived the right to object.
17 The prosecuting authority shall serve the petitioner or the
18 petitioner's counsel a copy of the written objection.

19 Section 4. (a) An administrative assessment fee of
20 six hundred dollars (\$600) shall be paid at the time the
21 petition is filed. The administrative fee shall be distributed
22 as follows:

23 (1) One hundred fifty dollars (\$150) to the Fair
24 Trial Tax Fund.

25 (2) One hundred fifty dollars (\$150) to the State
26 General Fund.

1 (3) Seventy-five dollars (\$75) to the district
2 attorney's office or municipal attorney's office that is the
3 prosecuting authority in the case to be expunged.

4 (4) One hundred dollars (\$100) to the clerk's office
5 of the circuit, district, or municipal court for the court
6 having jurisdiction over the matter, for the use and benefit
7 of the circuit, district, or municipal court clerk.

8 (5) Twenty-five dollars (\$25) to the Alabama Crime
9 Victim's Compensation Commission.

10 (6) One hundred dollars (\$100) to the general fund
11 of the county where the arresting law enforcement agency is
12 located if the arrest was made by the sheriff's office to be
13 used for law enforcement purposes, or, if the arrest was made
14 by another law enforcement agency, to the municipality or
15 other entity or state agency funding the law enforcement
16 activity.

17 (b) A person seeking relief under this act may apply
18 for indigent status by completing an Affidavit of Substantial
19 Hardship and Order which shall be submitted with the petition.
20 If the court finds the petitioner is indigent, the court may
21 set forth a payment plan for the petitioner to satisfy the
22 filing fee over a period of time.

23 Section 5. (a) If the prosecuting authority or
24 victim files an objection to the granting of a petition under
25 this act, the court having jurisdiction over the matter shall
26 set a date for a hearing. The court shall notify the
27 prosecuting authority and the petitioner of the hearing date.

1 The prosecuting authority shall produce the petitioner's
2 criminal history at the hearing. In the discretion of the
3 court, the court may consider the following factors:

4 (1) Nature and seriousness of the offense committed.

5 (2) Circumstances under which the offense occurred.

6 (3) Date of the offense.

7 (4) Age of the person when the offense was
8 committed.

9 (5) Whether the offense was an isolated or repeated
10 incident.

11 (6) Social conditions which may have contributed to
12 the offense.

13 (7) An available probation or parole record, report,
14 or recommendation.

15 (8) Evidence of rehabilitation, including good
16 conduct in prison or jail, in the community, counseling or
17 psychiatric treatment received, acquisition of additional
18 academic or vocational schooling, successful business or
19 employment history, and the recommendation of his or her
20 supervisors or other persons in the community.

21 (b) A hearing under subsection (a) shall be
22 conducted in a manner prescribed by the trial judge and shall
23 include oral argument and review of relevant documentation in
24 support of, or in objection to, the granting of the petition.
25 The Alabama Rules of Evidence shall apply to the hearing.
26 Leave of the court shall be obtained for the taking of witness
27 testimony relating to any disputed fact.

1 (c) The court shall grant the petition if it is
2 reasonably satisfied from the evidence that the petitioner has
3 complied with and satisfied the requirements of Section 1 or
4 2. The court shall have discretion over the number of cases
5 that may be expunged pursuant to this act after the first case
6 is expunged. The ruling of the court shall be subject to
7 certiorari review and shall not be reversed absent a showing
8 of an abuse of discretion.

9 (d) If no objection to a petition is filed by the
10 prosecuting authority or victim, the court having jurisdiction
11 over the matter may rule on the merits of the petition without
12 setting the matter for hearing. In such cases, the court shall
13 grant the petition if it is reasonably satisfied from the
14 evidence that the petitioner has complied with and satisfied
15 the requirements of Section 1 or 2. The court shall have
16 discretion over the number of cases that may be expunged
17 pursuant to this act after the first case is expunged.

18 Section 6. (a) Upon the granting of a petition
19 pursuant to Section 1 or 3, the court shall order the sealing
20 of all records in the custody of the court and any records in
21 the custody of any other agency or official, including law
22 enforcement records. On the effective date of this act and for
23 18 months thereafter, every agency with records relating to
24 the arrest, charge, or other matters arising out of the arrest
25 or charge that is ordered to seal the records shall certify to
26 the court within 180 days of the entry of the expungement
27 order that the required expungement action has been completed.

1 (b) Eighteen months after the effective date of this
2 act, every agency with records relating to the arrest, charge,
3 or other matters arising out of the arrest or charge that is
4 ordered to seal the records shall certify to the court within
5 60 days of the entry of the expungement order that the
6 required expungement action has been completed.

7 (c) After the expungement of records pursuant to
8 subsection (a), the proceedings regarding the charge shall be
9 deemed never to have occurred. Except as provided in the next
10 sentence, the court and other agencies shall reply to any
11 inquiry that no record exists on the matter. The petitioner
12 whose record was expunged shall not have to disclose the fact
13 of the record or any matter relating thereto on an application
14 for employment, credit, or other type of application.

15 Notwithstanding the preceding sentence, the
16 petitioner whose record was expunged shall have the duty to
17 disclose the fact of the record and any matter relating
18 thereto to any government regulatory or licensing agency, any
19 utility and its agents and affiliates, or any bank or other
20 financial institution where otherwise required by the
21 regulatory or licensing agency, utility and its agents and
22 affiliates, or bank or other financial institution. In these
23 circumstances, the government regulatory or licensing agency,
24 utility and its agents and affiliates, or the bank or other
25 financial institution shall have the right to inspect the
26 expunged records after filing notice with the court or other
27 agency.

1 Section 7. Once the records are sealed pursuant to
2 this act, the records shall be forwarded to the Alabama
3 Criminal Justice Information Center in a manner prescribed by
4 the Alabama Criminal Justice Information Center for purposes
5 of archiving, and the records shall be stored in a manner
6 prescribed by the Alabama Criminal Justice Information Center.
7 The records shall be retained by the Alabama Criminal Justice
8 Information Center indefinitely and may not be released to any
9 party absent an order from a circuit court judge.

10 Section 8. For purposes of this act, the term record
11 includes, but is not limited to, all of the following:

12 (1) Arrest records.

13 (2) Booking or arrest photographs of the petitioner.

14 (3) Index references such as SJICS or any other
15 governmental index references for public records search.

16 (4) Other data, whether in documentary or electronic
17 form, relating to the arrest, charge, or other matters arising
18 out of the arrest or charge or relating to the conviction or
19 other matters arising out of the conviction.

20 Section 9. Nothing in this act shall prohibit a law
21 enforcement agency or official or a prosecuting authority or
22 the Alabama Department of Forensic Sciences or the Department
23 of Human Resources from maintaining an investigative file or
24 log which may include evidence, biological evidence,
25 photographs, exhibits, or information in documentary or
26 electronic form.

1 Section 10. No order of expungement shall be granted
2 unless all court ordered restitution is paid in full,
3 including interest, to any victim, or the Alabama Crime
4 Victim's Compensation Commission, as well as court costs,
5 fines, or statutory fees ordered by the sentencing court to
6 have been paid, absent a finding of indigency by the court.

7 Section 11. Each circuit shall send an annual report
8 to the Legislature specifying the number of applicants
9 requesting expungement, the number of expungements granted, a
10 list of the offenses expunged, and a list of the offenses not
11 expunged. The report shall not include any case specific
12 identifying information.

13 Section 12. Although this bill would have as its
14 purpose or effect the requirement of a new or increased
15 expenditure of local funds, the bill is excluded from further
16 requirements and application under Amendment 621, now
17 appearing as Section 111.05 of the Official Recompilation of
18 the Constitution of Alabama of 1901, as amended, because the
19 bill defines a new crime or amends the definition of an
20 existing crime.

21 Section 13. This act shall become effective on the
22 first day of the twelfth month following its passage and
23 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 14-JAN-14

Read for the second time and placed on the calen-
dar 2 amendments..... 15-JAN-14

Read for the third time and passed as amended 23-JAN-14

Patrick Harris
Secretary