

1 HB81
2 115488-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 01/06/2010

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8 SYNOPSIS: Existing law does not authorize the
9 criminal record related to a charge to be sealed or
10 expunged if the person is found not guilty of a
11 crime or if the charges are dismissed or for a
12 conviction record to be sealed or expunged.

13 This bill would authorize a person charged
14 or convicted of certain felony or misdemeanor
15 criminal offenses, a violation, or a traffic
16 violation to petition the court in which the
17 charges were filed or in which the conviction
18 occurred to have his or her records expunged,
19 including, but not limited to, arrest records,
20 fingerprints, photographs, or index references in
21 documentary or electronic form, relating to the
22 arrest or charge, or both, and conviction in
23 certain instances.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a
2 new or increased expenditure of local funds from
3 becoming effective with regard to a local
4 governmental entity without enactment by a 2/3 vote
5 unless: it comes within one of a number of
6 specified exceptions; it is approved by the
7 affected entity; or the Legislature appropriates
8 funds, or provides a local source of revenue, to
9 the entity for the purpose.

10 The purpose or effect of this bill would be
11 to require a new or increased expenditure of local
12 funds within the meaning of the amendment. If this
13 bill is not enacted by a 2/3 vote, it will not
14 become effective with regard to a local entity
15 unless approved by the local entity or until, and
16 only as long as, the Legislature appropriates funds
17 or provides for a local source of revenue.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To authorize a person to petition a court to have
24 the record of certain felony or misdemeanor offenses, a
25 violation, or traffic violations expunged in certain
26 instances; and in connection therewith would have as its
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds within the meaning of Amendment 621
2 of the Constitution of Alabama of 1901, now appearing as
3 Section 111.05 of the Official ReCompilation of the
4 Constitution of Alabama of 1901, as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. (a) A person who has been charged with a
7 misdemeanor criminal offense, a violation, or a traffic
8 violation may file a petition in the court in the county or
9 municipality in which the charges were filed, or the court
10 that dismissed the charges, to expunge all records relating to
11 the charge in any of the following circumstances:

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

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

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

17 (b) A person who has been charged with a felony
18 offense and the charge was dismissed without prejudice, has
19 not been refiled, and the person has not been convicted of any
20 other felony or misdemeanor crime, any violation, or any
21 traffic violation, excluding minor traffic violations, during
22 the previous two years, may file a petition in the court in
23 the county or municipality in which the charges were filed, or
24 the court that dismissed the charges, to expunge all records
25 relating to the charge.

26 Section 2. A person who has been convicted of a
27 violation, a misdemeanor criminal offense, or a traffic

1 violation may file a petition in the court in the county or
2 municipality in which the charges were filed or the conviction
3 entered to expunge all records relating to the conviction when
4 all of the following circumstances exist:

5 (1) All probation or parole requirements have been
6 completed.

7 (2) Three years have passed from the date of
8 conviction. If the conviction is for domestic violence in the
9 third degree, five years must have passed from the date of
10 conviction.

11 (3) The person has no conviction for a violent
12 felony offense. For purposes of this act, a violent felony
13 offense shall be defined as capital murder, murder,
14 manslaughter, rape in the first degree, sodomy in the first
15 degree, attempted murder, assault in the first degree, assault
16 in the second degree, robbery in the first degree, or robbery
17 in the second degree.

18 (4) The person has no conviction for a sexual
19 offense involving a minor.

20 (5) The person is not a convicted sex offender.

21 (6) The person was not operating a commercial motor
22 vehicle which required the person to possess a commercial
23 driver's license at the time of the violation which led to the
24 conviction.

25 (7) The person does not hold a valid commercial
26 driver's license.

1 (8) The person was not convicted on any of the
2 offenses enumerated in 49 C.F.R. Section 383.51.

3 Section 3. A person who has been charged with a
4 felony offense may file a petition in the court in the county
5 or municipality in which the charges were filed, or the court
6 that dismissed the charges, to expunge all records relating to
7 the charge in any of the following circumstances:

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

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

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

13 (4) The charge was dismissed after successful
14 completion of a drug court program, mental health court
15 program, diversion program, or any court-approved deferred
16 prosecution program.

17 (5) The charge was dismissed without prejudice, has
18 not been refiled, and the person has not been convicted of any
19 other felony or misdemeanor crime, any violation, or any
20 traffic violation, excluding minor traffic violations, during
21 the previous five years.

22 Section 4. A person who has been convicted of a
23 Class C felony offense may file a petition in the court in the
24 county or municipality in which the charges were filed or the
25 conviction entered to expunge all records relating to the
26 conviction when all of the following circumstances exist:

1 (1) All probation or parole requirements have been
2 completed.

3 (2) Seven years have passed from the date of
4 conviction.

5 (3) The person has no conviction for the following
6 offenses: Capital murder, murder, manslaughter, rape in the
7 first degree, sodomy in the first degree, attempted murder,
8 assault in the first degree, assault in the second degree,
9 robbery in the first degree, robbery in the second degree,
10 kidnapping in the first degree, kidnapping in the second
11 degree, sexual torture, sexual abuse in the first degree,
12 enticing a child to enter a vehicle, house, etc. for immoral
13 purposes, aggravated stalking, soliciting a child by computer,
14 transmitting obscene material to a child by computer, domestic
15 violence first degree, domestic violence second degree, child
16 abuse, aggravated child abuse, adult abuse, adult neglect,
17 adult exploitation, chemical endangerment of a child by
18 exposure to an environment in which controlled substances are
19 produced or distributed, crime of terrorism, soliciting or
20 providing support for an act of terrorism, dissemination or
21 public display of obscene matter to persons under 17 years of
22 age, possession and possession with intent to disseminate
23 obscene matter to persons under 17 years of age, parent or
24 guardian permitting children to engage in production of
25 obscene matter, production of obscene matter of persons under
26 17 years of age, unlawful distribution of controlled
27 substances, unlawful manufacture of a controlled substance

1 first degree, unlawful manufacture of a controlled substance
2 second degree, trafficking in controlled substance, or
3 conducting a trafficking enterprise.

4 (4) The person has no conviction for a sexual or
5 violent offense involving a minor.

6 (5) The person is not a convicted sex offender.

7 (6) The person was not operating a commercial motor
8 vehicle which required the person to possess a commercial
9 driver's license at the time of the violation which led to the
10 conviction.

11 (7) The person was not convicted of any of the
12 offenses enumerated in 49 C.F.R. Section 383.51.

13 Section 5. (a) A petition filed under this act shall
14 include a sworn statement made by the person seeking
15 expungement under the penalty of perjury stating that the
16 person has satisfied the requirements set out in Section 1, 2,
17 3, or 4.

18 (b) A petitioner shall serve the prosecuting
19 authority a copy of the petition and the sworn affidavit. The
20 prosecuting authority shall notify the victim of the petition
21 and the victim's right to object. The prosecuting authority
22 shall have a period of 45 days to file a written objection to
23 the granting of the petition or the prosecuting authority will
24 be deemed to have consented to the granting of the petition.
25 The prosecuting authority shall serve the petitioner or the
26 petitioner's counsel a copy of the written objection.

1 Section 6. (a) An administrative assessment fee of
2 six hundred dollars (\$600) shall be paid at the time the
3 petition is filed. The administrative fee shall be distributed
4 as follows:

5 (1) Three hundred dollars (\$300) to the Fair Trial
6 Tax Fund.

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

10 (3) One hundred dollars (\$100) to the clerk's office
11 of the circuit, district, or municipal court for the court
12 having jurisdiction over the matter, for the use and benefit
13 of the circuit, district, or municipal court clerk.

14 (4) Twenty-five dollars (\$25) to the Alabama Crime
15 Victim's Compensation Commission.

16 (5) One hundred dollars (\$100) to the Alabama
17 Department of Public Safety.

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

24 Section 7. (a) If the prosecuting authority or
25 victim files an objection to the granting of a petition under
26 Section 5, the court having jurisdiction over the matter shall
27 set a date for a hearing. The court shall notify the

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

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

6 (2) Circumstances under which the offense occurred.

7 (3) Date of the offense.

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

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

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

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

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

22 (b) A hearing under subsection (a) shall be
23 conducted in a manner prescribed by the trial judge and shall
24 include oral argument and review of relevant documentation in
25 support of, or in objection to, the granting of the petition.
26 The Alabama Rules of Evidence shall apply to the hearing.

1 Leave of the court shall be obtained for the taking of witness
2 testimony relating to any disputed fact.

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

11 (d) If no objection to a petition is filed by the
12 prosecuting authority or victim, the court having jurisdiction
13 over the matter may rule on the merits of the petition without
14 setting the matter for hearing. In such cases, the court shall
15 grant the petition if it is reasonably satisfied from the
16 evidence that the petitioner has complied with and satisfied
17 the requirements of Section 1, 2, 3, or 4. The court shall
18 have discretion over the number of cases that may be expunged
19 pursuant to this act after the first case is expunged.

20 Section 8. (a) Upon the granting of a petition
21 pursuant to Section 1 or 3, the court shall order the
22 destruction of all records in the custody of the court and any
23 records in the custody of any other agency or official,
24 including law enforcement records. On the effective date of
25 this act and for 18 months thereafter, every agency with
26 records relating to the arrest, charge, or other matters
27 arising out of the arrest or charge that is ordered to destroy

1 the records shall certify to the court within 180 days of the
2 entry of the expungement order that the required expungement
3 action has been completed.

4 After the first 18 months of the effective date of
5 this act, every agency with records relating to the arrest
6 charge, or other matters arising out of the arrest or charge
7 that is ordered to destroy the records shall certify to the
8 court within 60 days of the entry of the expungement order
9 that the required expungement action has been completed.

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

18 Section 9. (a) Upon the granting of a petition
19 pursuant to Section 2 or 4, the court shall order that all
20 records in the custody of the court and any records in the
21 custody of any other agency or official, including law
22 enforcement records, be sealed and removed from public
23 disclosure. On the effective date of this act and for 18
24 months thereafter, every agency with records relating to the
25 arrest, charge, or other matters arising out of the arrest or
26 charge that is ordered to seal records shall certify to the

1 court within 180 days of the entry of the expungement order
2 that the required expungement action has been completed.

3 After the first 18 months of the effective date of
4 this act, every agency with records relating to the arrest,
5 charge, or other matters arising out of the arrest or charge
6 that is ordered to seal records shall certify to the court
7 within 60 days of the entry of the expungement order that the
8 required expungement action has been completed.

9 (b) After the sealing of the records pursuant to
10 subsection (a), the proceedings regarding the charge shall be
11 deemed never to have occurred. The court and other agencies
12 shall reply to any inquiry that no record exists on the
13 matter. The petitioner whose record was sealed shall not have
14 to disclose the fact of the record or any matter relating
15 thereto on an application for employment, credit, or other
16 type of application.

17 (c) Inspection of the expunged records may be
18 permitted by the court only upon an application by the person
19 who is the subject of the records and only to those persons
20 directed to receive the information in the application except
21 for those circumstances provided for in this section. The
22 prosecuting authority may inspect the expunged records for any
23 legitimate law enforcement or prosecutorial purpose, without
24 requirement of notice or judicial process. A defendant may
25 move the court having jurisdiction over that defendant's case
26 to allow inspection by the defendant of the records of a
27 witness against the defendant to determine if that witness has

1 had any records expunged or to require the prosecuting
2 authority to provide all expunged records of its witnesses to
3 the defendant. Information contained in the expunged records
4 cannot be used by the prosecuting authority or the defendant
5 in future proceedings without approval of the court having
6 jurisdiction over the matter and only after the court has
7 sufficiently notified the person who is the subject of the
8 records and conducted a hearing on the matter prior to the
9 hearing or trial in which the records are sought to be used.
10 The admission of those records in any proceeding shall be
11 subject to the Alabama Rules of Evidence.

12 Section 10. For purposes of this act, the term
13 "record" includes, but is not limited to, all of the
14 following:

- 15 (1) Arrest records.
- 16 (2) Booking or arrest photographs of the petitioner.
- 17 (3) Index references such as SJICS or any other
18 governmental index references for public records search.
- 19 (4) Other data, whether in documentary or electronic
20 form, relating to the arrest, charge, or other matters arising
21 out of the arrest or charge or relating to the conviction or
22 other matters arising out of the conviction.

23 Section 11. Nothing in this act shall prohibit a law
24 enforcement agency or official or a prosecuting authority or
25 the Alabama Department of Forensic Sciences from maintaining
26 an investigative file, which may include evidence, biological

1 evidence photographs, exhibits, or information in documentary
2 or electronic form.

3 Section 12. No order of expungement shall be granted
4 unless all court ordered restitution is paid in full,
5 including interest, to any victim, or the Alabama Crime
6 Victim's Compensation Commission, as well as court costs,
7 fines, or statutory fees ordered by the sentencing court to
8 have been paid, absent a finding of indigency by the court.

9 Section 13. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.