

1 SB108
2 160982-2
3 By Senator Bedford
4 RFD: Judiciary
5 First Read: 14-JAN-14
6 PFD: 01/13/2014

1 SB108

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4 ENROLLED, An Act,

5 To authorize a person to petition a court to have
6 the record of certain felony or misdemeanor offenses,
7 violations, traffic violations, or municipal ordinance
8 violations expunged in certain instances; and in connection
9 therewith would have as its purpose or effect the requirement
10 of a new or increased expenditure of local funds within the
11 meaning of Amendment 621 of the Constitution of Alabama of
12 1901, now appearing as Section 111.05 of the Official
13 Recompilation of the Constitution of Alabama of 1901, as
14 amended.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. (a) A person who has been charged with a
17 misdemeanor criminal offense, a violation, a traffic
18 violation, or a municipal ordinance violation may file a
19 petition in the criminal division of the circuit court in the
20 county in which the charges were filed, to expunge records
21 relating to the charge in any of the following circumstances:

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

23 (2) When the charge has been no billed by a grand

24 jury.

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

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

8 (b) The circuit court shall have exclusive
9 jurisdiction of a petition filed under subsection (a).

10 Section 2. (a) A person who has been charged with a
11 felony offense, except a violent offense as defined in Section
12 12-25-32(14), Code of Alabama 1975, may file a petition in the
13 criminal division of the circuit court in the county in which
14 the charges were filed, to expunge records relating to the
15 charge in any of the 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)a. The charge was dismissed after successful
22 completion of a drug court program, mental health court
23 program, diversion program, veteran's court, or any
24 court-approved deferred prosecution program after one year
25 from successful completion of the program.

1 b. Expungement may be a court-ordered condition of a
2 program listed in paragraph a.

3 (5) The charge was dismissed without prejudice more
4 than five years ago, has not been refiled, and the person has
5 not been convicted of any other felony or misdemeanor crime,
6 any violation, or any traffic violation, excluding minor
7 traffic violations, during the previous five years.

8 (6) Ninety days have passed from the date of
9 dismissal with prejudice, no-bill, acquittal, or nolle
10 prosequi and the charge has not been refiled.

11 (b) The circuit court shall have exclusive
12 jurisdiction of a petition filed under subsection (a).

13 Section 3. (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 this act and
17 whether he or she has previously applied for an expungement in
18 any jurisdiction and whether an expungement has been
19 previously granted.

20 (b) The petitioner shall include a certified record
21 of arrest, disposition, or the case action summary from the
22 appropriate agency for the court record the petitioner seeks
23 to have expunged as well as a certified official criminal
24 record obtained from the Alabama Criminal Justice Information
25 Center. In addition to setting forth grounds for the court to

1 consider, the petitioner shall specify what criminal charges
2 from the record are to be considered, further specify the
3 agency or department that made the arrest and any agency or
4 department where the petitioner was booked or was incarcerated
5 or detained pursuant to the arrest or charge sought to be
6 expunged.

7 (c) A petitioner shall serve the district attorney,
8 the law enforcement agency, and clerk of court of the
9 jurisdiction for which the records are sought to be expunged,
10 a copy of the petition, and the sworn affidavit. The district
11 attorney shall review the petition and may make reasonable
12 efforts to notify the victim if the petition has been filed
13 seeking an expungement under circumstances enumerated in
14 paragraph a. of subdivision (4) of Section 2 involving a
15 victim that is not a governmental entity. The district
16 attorney and the victim shall have a period of 45 days to file
17 a written objection to the granting of the petition or the
18 district attorney shall be deemed to have waived the right to
19 object. The district attorney shall serve the petitioner or
20 the petitioner's counsel a copy of the written objection.

21 Section 4. (a) In addition to any cost of court or
22 docket fee for filing the petition in circuit court, an
23 administrative filing fee of three hundred dollars (\$300)
24 shall be paid at the time the petition is filed and is a
25 condition precedent to any ruling of the court pursuant to

1 this act. The administrative filing fee shall not be waived by
2 the court and shall be distributed as follows:

3 (1) Seventy-five dollars (\$75) to the State Judicial
4 Administrative Fund.

5 (2) Twenty-five dollars (\$25) to the Alabama
6 Department of Forensic Sciences.

7 (3) Fifty dollars (\$50) to the district attorney's
8 office.

9 (4) Fifty dollars (\$50) to the clerk's office of the
10 circuit court having jurisdiction over the matter, for the use
11 and benefit of the circuit court clerk.

12 (5) Fifty dollars (\$50) to the Public Safety Fund.

13 (6) Fifty dollars (\$50) to the general fund of the
14 county where the arresting law enforcement agency is located
15 if the arrest was made by the sheriff's office to be used for
16 law enforcement purposes, or, if the arrest was made by
17 another law enforcement agency, to the municipality or other
18 entity or state agency funding the law enforcement activity.

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

1 period of time, which shall be paid in full, prior to any
2 order granting an expungement.

3 (c) If a petitioner seeks expungement of an arrest
4 record and the court in the original case made a clear and
5 unequivocal judicial finding on the record that the arrest had
6 no foundation of probable cause, the court, in the expungement
7 proceeding, shall waive all docket fees and court costs,
8 except for the filing fee in subsection (a).

9 Section 5. (a) If the prosecuting authority or
10 victim files an objection to the granting of a petition under
11 this act, the court having jurisdiction over the matter shall
12 set a date for a hearing no sooner than 14 days from the
13 filing of the objection. The court shall notify the
14 prosecuting authority and the petitioner of the hearing date.
15 In the discretion of the court, the court shall consider the
16 following factors:

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

18 (2) Circumstances under which the offense occurred.

19 (3) Date of the offense.

20 (4) Age of the person when the offense was
21 committed.

22 (5) Whether the offense was an isolated or repeated
23 incident.

24 (6) Other conditions which may have contributed to
25 the offense.

1 (7) An available probation or parole record, report,
2 or recommendation.

3 (8) Whether the offense was dismissed or nolle
4 prossed as part of a negotiated plea agreement and the
5 petitioner plead guilty to another related or lesser offense.

6 (9) Evidence of rehabilitation, including good
7 conduct in prison or jail, in the community, counseling or
8 psychiatric treatment received, acquisition of additional
9 academic or vocational schooling, successful business or
10 employment history, and the recommendation of his or her
11 supervisors or other persons in the community.

12 (10) Any other matter the court deems relevant,
13 which may include, but is not limited to, a prior expungement
14 of the petitioner's records.

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

22 (c) There is no right to the expungement of any
23 criminal record, and any request for expungement of a criminal
24 record may be denied at the sole discretion of the court. The
25 court shall grant the petition if it is reasonably satisfied

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

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

17 Section 6. (a) Except as provided in Section 10,
18 upon the granting of a petition pursuant to this act, the
19 court, pursuant to Section 9, shall order the expungement of
20 all 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, except privileged presentence or
23 postsentence investigation reports produced by the Alabama
24 Board of Pardons and Paroles and its officers, records,
25 documents, databases, and files of the district attorney and

1 the Office of Prosecution Services. On the effective date of
2 this act and for 18 months thereafter, every agency with
3 records relating to the arrest, charge, or other matters
4 arising out of the arrest or charge that is ordered to expunge
5 the records shall certify to the court within 180 days of the
6 entry of the expungement order that the required expungement
7 action has been completed.

8 (b) After the expungement of records pursuant to
9 subsection (a), the proceedings regarding the charge shall be
10 deemed never to have occurred. Except as provided in this act,
11 the court and other agencies shall reply to any inquiry that
12 no record exists on the matter. The petitioner whose record
13 was expunged shall not have to disclose the fact of the record
14 or any matter relating thereto on an application for
15 employment, credit, or other type of application. However, 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. In these circumstances, the government
21 regulatory or licensing agency, utility and its agents and
22 affiliates, or the bank or other financial institution shall
23 have the right to inspect the expunged records after filing
24 notice with the court.

1 Section 7. (a) Upon receipt of the order of
2 expungement, a criminal justice agency in possession of
3 records subject to the order shall immediately forward the
4 records to the Alabama Criminal Justice Information Center.
5 The center shall digitally archive the records in a manner
6 prescribed by the Alabama Criminal Justice Information Center
7 Commission and designate the records as protected
8 notwithstanding any other provisions of this act. Such records
9 may not be used for any non-criminal justice purpose and may
10 only be made available to criminal justice agencies upon
11 acknowledgement of an investigation or other criminal matter
12 involving the person related to the expungement. Any expunged
13 records that were added to a federal database shall be
14 requested to be removed and not made available within any
15 interstate criminal database.

16 (b) Records expunged under this act may not be
17 transmitted to the Federal Bureau of Investigation national
18 criminal records repository. Any record subject to be expunged
19 under this act and transmitted to the Federal Bureau of
20 Investigation prior to the expungement of such record shall be
21 requested for withdrawal within the national system by the
22 Alabama Criminal Justice Information Center.

23 Section 8. Once the records are expunged pursuant to
24 this act, the records shall be forwarded to the Alabama
25 Criminal Justice Information Center in a manner prescribed by

1 the Alabama Criminal Justice Information Center Commission for
2 purposes of archiving, and the records shall be stored in a
3 manner prescribed by the Alabama Criminal Justice Information
4 Center Commission. The records shall be retained by the
5 Alabama Criminal Justice Information Center indefinitely.

6 Section 9. For purposes of this act, the term record
7 includes, but is not limited to, all of the following:

8 (1) Arrest records.

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

10 (3) Index references such as the State Judicial
11 Information System or any other governmental index references
12 for public records search.

13 (4) Other data, whether in documentary or electronic
14 form, relating to the arrest or charge.

15 Section 10. Nothing in this act shall prohibit a law
16 enforcement agency or official, district attorney or a
17 prosecuting authority, the Alabama Department of Forensic
18 Sciences, or the Department of Human Resources from
19 maintaining an investigative file, report, case file, or log
20 which may include any evidence, biological evidence,
21 photographs, exhibits, or information in documentary or
22 electronic form.

23 Section 11. An order of expungement, pursuant to
24 this act may include, but is not limited to, the petitioner's
25 true name, all aliases, current physical address, date of

1 birth, Social Security number, or any other vital identifier
2 sufficient to notify the record keeper of the records to be
3 expunged.

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

11 Section 13. Upon request, the Administrative Office
12 of Courts shall provide an annual report to the Legislature
13 specifying the number of applicants requesting expungement,
14 the number of expungements granted, a list of the offenses
15 expunged, and a list of the offenses not expunged. The report
16 shall not include any case specific identifying information.

17 Section 14. Nothing in this act shall be applicable
18 to the Alabama Securities Commission, its statutes, rules,
19 regulations, policies, information repository, or records, nor
20 shall any expungement information, record, document, whether
21 printed, electronic, or otherwise, or file which is expunged
22 under this act be considered nondisclosable or nonreportable
23 to or by the Alabama Securities Commission. Any requirement
24 for licensing or registration which includes information that
25 has been otherwise expunged under this act shall remain

1 reportable as required by the Alabama Securities Commission,
2 applicable federal law, or adopted rules and regulations or as
3 required by any securities-related self-regulatory
4 organization rules, policies, or procedures.

5 Section 15. An expungement order shall not entitle
6 an individual to ship, transport, possess, or receive a
7 firearm. Any person whose record of conviction is expunged
8 pursuant to this act may have his or her right to ship,
9 transport, possess, or receive a firearm restored by a
10 Certificate of Pardon with Restoration of Civil and Political
11 Rights from the Alabama Board of Pardons and Paroles.

12 Section 16. (a) Notwithstanding any other provision
13 of this act, an individual who knows an expungement order was
14 granted pursuant to this act and who intentionally and
15 maliciously divulges, makes known, reveals, gives access to,
16 makes public, uses, or otherwise discloses the contents of an
17 expunged file without a court order, or pursuant to a
18 provision of this act, shall be guilty of a Class B
19 misdemeanor.

20 (b) In addition to any other immunity or other civil
21 protection or legal remedy available that an individual or
22 entity may rightfully claim, an agency, department, custodian
23 of records, corporation, business entity, or individual that
24 makes public or disseminates a record that has been judicially
25 expunged pursuant to this act shall be immune from civil

1 liability absent unreasonable, wanton, willful, or intentional
2 conduct.

3 (c) In addition to any other immunity or other civil
4 protection or legal remedy available that an individual or
5 entity may rightfully claim, an agency, department, custodian
6 of records, corporation, business entity, or individual that
7 employs, hires, contracts with, or holds any business or
8 contractual relationship with an individual and is unaware of
9 the existence of a criminal record due to an expungement
10 pursuant to this act shall be immune from civil liability for
11 damages caused by the person, absent unreasonable, wanton,
12 willful, or intentional conduct.

13 Section 17. Upon determination by the court that a
14 petition for expungement was filed under false pretenses and
15 was granted, the order of expungement shall be reversed and
16 the criminal history record shall be restored to reflect the
17 original charges.

18 Section 18. Notwithstanding any other provision of
19 this act, an applicant for a position in law enforcement or
20 corrections or a law enforcement or correctional officer shall
21 disclose and produce any expunged record pursuant to this act
22 or any other state law to the Alabama Peace Officers'
23 Standards and Training Commission, and the commission shall
24 have access to any expunged records sealed or archived
25 pursuant to this act for purposes of certification and

1 regulation of persons as correctional and law enforcement
2 officers.

3 Section 19. The Alabama Criminal Justice Information
4 Center Commission shall adopt rules for the submission of data
5 from criminal justice agencies necessary to complete the
6 criminal history record within the state criminal history
7 repository. Data within the repository shall include all
8 records allowed by federal regulation of state repositories.

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

17 Section 21. This act shall become effective 90 days
18 following its passage and approval by the Governor, or its
19 otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB108

Senate 23-JAN-14

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 01-APR-14

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

Patrick Harris
Secretary

House of Representatives

Passed: 20-MAR-14, as amended

House of Representatives

Passed: 01-APR-2014, as amended by Conference Committee Report.

By: Senator Bedford