

1 SB276  
2 149510-1  
3 By Senator Holley  
4 RFD: Judiciary  
5 First Read: 28-FEB-13

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

13 This bill would authorize a person charged  
14 with certain misdemeanor and felony offenses to  
15 petition the court in the county or municipality in  
16 which the charges were filed to have all records  
17 relating to the charge expunged in certain  
18 instances.

19 This bill would require the person seeking  
20 expunction to obtain a certificate of eligibility  
21 from the Department of Public Safety.

22 This bill would provide procedural  
23 requirements for a person filing a petition to have  
24 records expunged and for law enforcement agencies  
25 required to expunge records and would provide for  
26 criminal penalties for certain violations.

1                   Amendment 621 of the Constitution of Alabama  
2                   of 1901, now appearing as Section 111.05 of the  
3                   Official ReCompilation of the Constitution of  
4                   Alabama of 1901, as amended, prohibits a general  
5                   law whose purpose or effect would be to require a  
6                   new or increased expenditure of local funds from  
7                   becoming effective with regard to a local  
8                   governmental entity without enactment by a 2/3 vote  
9                   unless: it comes within one of a number of  
10                  specified exceptions; it is approved by the  
11                  affected entity; or the Legislature appropriates  
12                  funds, or provides a local source of revenue, to  
13                  the entity for the purpose.

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

22  
23                               A BILL

24                               TO BE ENTITLED

25                               AN ACT  
26

1           To authorize a person to petition a court to have  
2 all records relating to the charge of certain felonies and  
3 misdemeanors to be expunged in certain instances; to require a  
4 person to obtain a certificate of eligibility from the  
5 Department of Public Safety; to provide procedural  
6 requirements; to provide penalties for violations; and in  
7 connection therewith would have as its purpose or effect the  
8 requirement of a new or increased expenditure of local funds  
9 within the meaning of Amendment 621 of the Constitution of  
10 Alabama of 1901, now appearing as Section 111.05 of the  
11 Official Recompilation of the Constitution of Alabama of 1901,  
12 as amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14           Section 1. (a) Except as provided in subsection (b),  
15 a court of competent jurisdiction may order a law enforcement  
16 agency in this state to expunge the criminal history record of  
17 a minor or an adult who complies with the requirements of this  
18 act. The court shall not order a law enforcement agency to  
19 expunge a criminal history record until the person seeking to  
20 expunge a criminal history record has applied for and received  
21 a certificate of eligibility for expunction pursuant to  
22 Section 2.

23           (b) A criminal history record that relates to a  
24 violation of any of the following offenses may not be  
25 expunged:

26           (1) A violent felony offense. For purposes of this  
27 act, a violent felony means capital murder, murder,

1 manslaughter, rape in the first degree, sodomy in the first  
2 degree, attempted murder, assault in the first degree, assault  
3 in the second degree, robbery in the first degree, or robbery  
4 in the second degree.

5 (2) Any sex offense involving a minor.

6 (3) Any offense specified as a predicate offense for  
7 registration as a sexual predator or sexual offender.

8 (4) Aggravated child abuse.

9 (5) Terrorism.

10 (6) Soliciting or providing support for terrorism.

11 (7) Any offense involving domestic violence.

12 (8) Chemical endangerment - exposing child to an  
13 environment where controlled substances are produced or  
14 distributed.

15 (9) Unlawful distribution of a controlled substance.

16 (10) Unlawful manufacture of a controlled substance.

17 (11) Trafficking in a controlled substance.

18 (c) The court may only order expunction of a  
19 criminal history record pertaining to one arrest or one  
20 incident of alleged criminal activity, except as provided in  
21 this section. The court, at its sole discretion, may order the  
22 expunction of a criminal history record pertaining to more  
23 than one arrest if the additional arrests directly relate to  
24 the original arrest. If the court intends to order the  
25 expunction of records pertaining to additional arrests, the  
26 intent must be specified in the order. A law enforcement  
27 agency may not expunge any record pertaining to such

1 additional arrests if the order to expunge does not articulate  
2 the intention of the court to expunge a record pertaining to  
3 more than one arrest. This section does not prevent the court  
4 from ordering the expunction of only a portion of a criminal  
5 history record pertaining to one arrest or one incident of  
6 alleged criminal activity.

7 (d) This section does not confer any right to the  
8 expunction of any criminal history record, and any request for  
9 expunction of a criminal history record may be denied at the  
10 sole discretion of the court.

11 Section 2. Prior to petitioning the court to expunge  
12 a criminal history record, a person seeking to expunge a  
13 criminal history record shall apply to the Department of  
14 Public Safety for a certificate of eligibility for expunction.  
15 The department, by rule, shall establish procedures pertaining  
16 to the application for and issuance of certificates of  
17 eligibility for expunction. A certificate of eligibility for  
18 expunction is valid for 12 months after the date stamped on  
19 the certificate when issued by the department. After that  
20 time, the petitioner must reapply to the department for a new  
21 certificate of eligibility. Eligibility for a renewed  
22 certification of eligibility must be based on the status of  
23 the applicant and the law in effect at the time of the renewal  
24 application. The department shall issue a certificate of  
25 eligibility for expunction to a person who is the subject of a  
26 criminal history record if that person satisfies all of the  
27 following:

1           (1) Has obtained, and submitted to the department, a  
2 written, certified statement from the appropriate district  
3 attorney or prosecutor which indicates all of the following:

4           a. That an indictment, information, or other  
5 charging document was not filed or issued in the case.

6           b. That an indictment, information, or other  
7 charging document, if filed or issued in the case, was  
8 dismissed or nolle prosequi by the district attorney or  
9 prosecutor, or was dismissed by a court of competent  
10 jurisdiction, and that none of the charges related to the  
11 arrest or alleged criminal activity to which the petition to  
12 expunge pertains resulted in a trial, without regard to  
13 whether the outcome of the trial was other than an  
14 adjudication of guilt.

15           c. That the criminal history record does not relate  
16 to a violation of any of the offenses enumerated in subsection  
17 (b) of Section 1.

18           (2) Has submitted to the department a certified copy  
19 of the disposition of the charge to which the petition to  
20 expunge pertains.

21           (3) Has never, prior to the date on which the  
22 application for a certificate of eligibility is filed, been  
23 adjudicated guilty of a criminal offense or comparable  
24 ordinance violation, or been adjudicated delinquent for  
25 committing any felony or a misdemeanor specified in subsection  
26 (b) of Section 1.

1           (4) Has not been adjudicated guilty of, or  
2 adjudicated delinquent for committing, any of the acts  
3 stemming from the arrest or alleged criminal activity to which  
4 the petition to expunge pertains.

5           (5) Has never secured a prior expunction of a  
6 criminal history record under this section.

7           (6) Is no longer under court supervision applicable  
8 to the disposition of the arrest or alleged criminal activity  
9 to which the petition to expunge pertains.

10           Section 3. (a) Upon obtaining a certificate of  
11 eligibility from the Department of Public Safety under Section  
12 2, the person may petition the court in the county or  
13 municipality in which the charges were filed to expunge a  
14 criminal history record.

15           (b) The petition shall be accompanied by both of the  
16 following:

17           (1) A valid certificate of eligibility for  
18 expunction issued by the department pursuant to Section 2.

19           (2) The petitioner's sworn statement attesting that  
20 the petitioner:

21           a. Has never, prior to the date on which the  
22 petition is filed, been adjudicated guilty of a criminal  
23 offense or comparable ordinance violation, or been adjudicated  
24 delinquent for committing any felony or a misdemeanor  
25 specified in subsection (b) of Section 1.

26           b. Has not been adjudicated guilty of, or  
27 adjudicated delinquent for committing, any of the acts



1       stemming from the arrest or alleged criminal activity to which  
2       the petition pertains.

3               c. Has never secured a prior sealing or expunction  
4       of a criminal history record under this section.

5               d. Is eligible for such an expunction to the best of  
6       his or her knowledge or belief and does not have any other  
7       petition to expunge or any petition to seal pending before any  
8       court.

9               (c) Any person who knowingly provides false  
10       information on the sworn statement to the court commits a  
11       Class C felony.

12              Section 4. (a) In judicial proceedings under this  
13       act, a copy of the completed petition to expunge shall be  
14       served upon the appropriate district attorney or prosecutor  
15       and upon the arresting agency; however, it is not necessary to  
16       make any agency other than the state a party. The appropriate  
17       district attorney or other prosecutor and the arresting agency  
18       may respond to the court regarding the completed petition to  
19       expunge.

20              (b) If relief is granted by the court, the clerk of  
21       the court shall certify copies of the order to the appropriate  
22       district attorney or other prosecutor, the arresting agency,  
23       and the Department of Public Safety. The arresting agency is  
24       responsible for forwarding the order to any other agency to  
25       which the arresting agency disseminated the criminal history  
26       record information to which the order pertains. The Department  
27       of Public Safety shall forward the order to expunge to the

1 Federal Bureau of Investigation. The clerk of the court shall  
2 certify a copy of the order to any other agency which the  
3 records of the court reflect has received the criminal history  
4 record from the court.

5 (c) The department or any other law enforcement  
6 agency is not required to act on an order to expunge entered  
7 by a court when the order does not comply with the  
8 requirements of this act. Upon receipt of such an order, the  
9 department must notify the issuing court, the appropriate  
10 district attorney or other prosecutor, the petitioner or the  
11 petitioner's attorney, and the arresting agency of the reason  
12 for noncompliance. The appropriate district attorney or other  
13 prosecutor shall take action within 60 days to correct the  
14 record and petition the court to void the order. No cause of  
15 action, including contempt of court, shall arise against any  
16 law enforcement agency for failure to comply with an order to  
17 expunge when the petitioner for such order failed to obtain  
18 the certificate of eligibility as required by this act or the  
19 order does not otherwise comply with the requirements of this  
20 act.

21 Section 5. (a) Any criminal history record of a  
22 minor or an adult which is ordered expunged by a court of  
23 competent jurisdiction pursuant to this act must be physically  
24 destroyed or obliterated by any law enforcement agency having  
25 custody of such record, except that any criminal history  
26 record in the custody of the Department of Public Safety must  
27 be retained in all cases. A criminal history record ordered

1 expunged that is retained by the department is confidential  
2 and exempt from public disclosure and not available to any  
3 person or entity except upon order of a court of competent  
4 jurisdiction. A law enforcement agency may retain a notation  
5 indicating compliance with an order to expunge.

6 (b) The person who is the subject of a criminal  
7 history record that is expunged under this act may lawfully  
8 deny or fail to acknowledge the arrests covered by the  
9 expunged record, except when the subject of the record is any  
10 of the following:

11 (1) A candidate for employment with a law  
12 enforcement agency.

13 (2) Is a defendant in a criminal prosecution.

14 (3) Is a candidate for admission to the Alabama  
15 State Bar.

16 (4) Is seeking to be employed or licensed by the  
17 Department of Education, any district school board, or any  
18 other educational institution.

19 (5) Is seeking authorization from a seaport in this  
20 state for employment within or access to one or more of the  
21 seaports in this state.

22 (c) Subject to the exceptions in subsection (b), a  
23 person who has been granted an expunction under this section  
24 may not be held under any provision of law of this state to  
25 commit perjury or to be otherwise liable for giving a false  
26 statement by reason of the person's failure to recite or  
27 acknowledge an expunged criminal history record.

1           (d) Information relating to the existence of an  
2 expunged criminal history record which is provided in  
3 accordance with subsection (b) is confidential and exempt from  
4 public disclosure, except that the department shall disclose  
5 the existence of a criminal history record ordered expunged to  
6 the entities set forth subsection (b) for their respective  
7 licensing, access authorization, and employment purposes, and  
8 to law enforcement agencies for their respective law  
9 enforcement purposes. It is unlawful for any employee of an  
10 entity set forth in subsection (b) to disclose information  
11 relating to the existence of an expunged criminal history  
12 record of a person seeking employment, access authorization,  
13 or licensure with such entity or contractor, except to the  
14 person to whom the criminal history record relates or to  
15 persons having direct responsibility for employment, access  
16 authorization, or licensure decisions. Any person who violates  
17 this subsection commits a Class A misdemeanor.

18           Section 6. Although this bill would have as its  
19 purpose or effect the requirement of a new or increased  
20 expenditure of local funds, the bill is excluded from further  
21 requirements and application under Amendment 621, now  
22 appearing as Section 111.05 of the Official Recompilation of  
23 the Constitution of Alabama of 1901, as amended, because the  
24 bill defines a new crime or amends the definition of an  
25 existing crime.

1                   Section 7. This act shall become effective on the  
2   first day of the third month following its passage and  
3   approval by the Governor, or its otherwise becoming law.