

1 SB153
2 209569-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 02-FEB-21

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8 SYNOPSIS: Under current law, a person convicted of a
9 criminal offense may only apply for an expungement
10 in very limited circumstances.

11 This bill would expand the expungement of
12 criminal records to include convictions of certain
13 misdemeanor offenses, traffic violations, municipal
14 ordinances, and felony offenses.

15 This bill would also make nonsubstantive,
16 technical revisions to update the existing code
17 language to current style.

18 Amendment 621 of the Constitution of Alabama
19 of 1901, as amended by Amendment 890, now appearing
20 as Section 111.05 of the Official ReCompilation of
21 the Constitution of Alabama of 1901, as amended,
22 prohibits a general law whose purpose or effect
23 would be to require a new or increased expenditure
24 of local funds from becoming effective with regard
25 to a local governmental entity without enactment by
26 a 2/3 vote unless: it comes within one of a number
27 of specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of the amendment.
7 However, the bill does not require approval of a
8 local governmental entity or enactment by a 2/3
9 vote to become effective because it comes within
10 one of the specified exceptions contained in the
11 amendment.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to expungement; to amend Sections 15-27-1,
18 15-27-2, 15-27-4, 15-27-5, 15-27-7, 15-27-8, 15-27-9,
19 15-27-10, and 15-27-19, Code of Alabama 1975, to expand the
20 expungement of criminal records to include convictions of
21 certain misdemeanor offenses, traffic violations, municipal
22 ordinances, and felony offenses; to increase the filing fee
23 for petitions for expungement; to make nonsubstantive,
24 technical revisions to update the existing code language to
25 current style; and in connection therewith would have as its
26 purpose or effect the requirement of a new or increased
27 expenditure of local funds within the meaning of Amendment 621

1 of the Constitution of Alabama of 1901, as amended by
2 Amendment 890, now appearing as Section 111.05 of the Official
3 Recompilation of the Constitution of Alabama of 1901, as
4 amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. This act shall be known and may be cited
7 as the Record Expungement Designed to Enhance Employment and
8 Eliminate Recidivism (REDEEMER) Act.

9 Section 2. Sections 15-27-1, 15-27-2, 15-27-4,
10 15-27-5, 15-27-7, 15-27-8, 15-27-9, 15-27-10, and 15-27-19,
11 Code of Alabama 1975, are amended to read as follows:

12 "§15-27-1.

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

19 "(1) When the charge ~~is~~ has been dismissed with
20 prejudice and more than 90 days have passed.

21 "(2) When the charge has been no billed by a grand
22 jury and more than 90 days have passed.

23 "(3) When the person has been found not guilty of
24 the charge and more than 90 days have passed.

25 "(4) When the charge has been nolle prossed without
26 conditions, more than 90 days have passed, and the charge or
27 charges have not been refiled.

1 "(5) When the indictment has been quashed and the
2 statute of limitations for refiling the charge or charges has
3 expired or the prosecuting agency confirms that the charge or
4 charges will not be refiled.

5 "(6)a. When the charge was dismissed after
6 successful completion of a drug court program, mental health
7 court program, diversion program, veteran's court, or any
8 court-approved deferred prosecution program.

9 "b. Expungement may be a court-ordered condition of
10 a program listed in paragraph a.

11 "c. A petition for expungement may be filed three
12 years from the date of successful completion of a program
13 listed in paragraph a.

14 ~~"(4)~~ (7) When the charge was dismissed without
15 prejudice more than two years ago, has not been refiled, and
16 the person has not been convicted of any other felony or
17 misdemeanor crime, any violation, or any traffic violation,
18 excluding minor traffic violations, during the previous two
19 years.

20 ~~"(5)~~ (8) When the person proves by a preponderance
21 of the evidence that the person is a victim of human
22 trafficking, that the person committed the misdemeanor
23 ~~criminal~~ offense, violation, traffic violation, or municipal
24 ordinance violation during the period the person was being
25 trafficked, and that the person would not have committed the
26 offense or violation but for being trafficked. Evidence that a
27 person is a victim of human trafficking may include, but is

1 not limited to, evidence that the person's trafficker was
2 convicted of trafficking the person under Section 13A-6-152 or
3 Section 13A-6-153.

4 "(b) Subsection (a) notwithstanding, a person who
5 has been convicted of a misdemeanor offense, a violation, a
6 traffic violation, or a municipal ordinance violation may file
7 a petition in the criminal division of the circuit court in
8 the county in which the charges were filed to expunge records
9 relating to the charge and the conviction if all of the
10 following occur:

11 "(1) All probation or parole requirements have been
12 completed, including payment of all fines, costs, restitution,
13 and other court-ordered amounts, and are evidenced by the
14 applicable court or agency.

15 "(2) Three years have passed from the date of
16 conviction.

17 "(3) The person was not operating a commercial
18 vehicle at the time and convicted of any of the offenses
19 enumerated in 49 C.F.R. §383.51.

20 "(4) The conviction is not a violent offense, as
21 provided in Section 12-25-32.

22 "(5) The conviction is not a sex offense, as
23 provided in Section 15-20A-5.

24 "(6) The conviction is not an offense involving
25 moral turpitude, as provided in Section 17-3-30.1.

26 "(7) The conviction is not a serious traffic
27 offense, as provided in Article 9 of Chapter 5A of Title 32.

1 "(c) Records related to offenses and convictions may
2 be disclosed to a criminal justice agency, a district
3 attorney, or a prosecuting authority for criminal
4 investigation purposes as provided in Section 15-27-7 or to
5 any entities or services providing information to banking,
6 insurance, and other financial institutions as required for
7 various requirements as provided in state and federal law.

8 "~~(b)~~ (d) The circuit court shall have exclusive
9 jurisdiction of a petition filed under ~~subsection~~ subsections
10 (a) and (b).

11 "§15-27-2.

12 "(a) A person who has been charged with ~~a~~ any felony
13 ~~offense, except a violent offense as defined in Section~~
14 ~~12-25-32,~~ may file a petition in the criminal division of the
15 circuit court in the county in which the charges were filed,
16 to expunge records relating to the charge in any of the
17 following circumstances:

18 "(1) When the charge is dismissed with prejudice and
19 more than 90 days have passed.

20 "(2) When the charge has been no billed by a grand
21 jury and more than 90 days have passed.

22 "(3) When the person has been found not guilty of
23 the charge and more than 90 days have passed.

24 "(4) When the charge has been nolle prossed without
25 conditions, and more than 90 days have passed, and the charge
26 or charges have not been refiled.

1 "(5) When the indictment has been quashed and the
2 statute of limitations for refiling the charge or charges has
3 expired or the prosecuting agency confirms that the charge or
4 charges will not be refiled.

5 "~~(3)~~ (6)a. ~~The~~ When the charge was dismissed after
6 successful completion of a drug court program, mental health
7 court program, diversion program, veteran's court, or any
8 court-approved deferred prosecution program after one year
9 from successful completion of the program.

10 "b. Expungement may be a court-ordered condition of
11 a program listed in paragraph a.

12 "~~(4)~~ (7) ~~The~~ When the charge was dismissed without
13 prejudice more than five years ago, has not been refiled, and
14 the person has not been convicted of any other felony or
15 misdemeanor crime, any violation, or any traffic violation,
16 excluding minor traffic violations, during the previous five
17 years.

18 "~~(5) Ninety days have passed from the date of~~
19 ~~dismissal with prejudice, no bill, acquittal, or nolle~~
20 ~~prosequi and the charge has not been refiled.~~

21 "~~(6)~~ (8) When the person proves by a preponderance
22 of the evidence that the person is a victim of human
23 trafficking, that the person committed the felony offense
24 during the period the person was being trafficked, and that
25 the person would not have committed the felony offense but for
26 being trafficked. Evidence that a person is a victim of human
27 trafficking may include, but is not limited to, evidence that

1 the person's trafficker was convicted of trafficking the
2 person under Section 13A-6-152 or Section 13A-6-153.

3 "(b) Subsection (a) notwithstanding, ~~convictions for~~
4 a person who has been convicted of any of the following
5 ~~offenses, which are defined as a violent offense under~~
6 ~~subdivision (15) of~~ violent offenses, as defined in Section
7 12-25-32, may be expunged upon a showing that the person
8 committed the felony offense during the period the person was
9 trafficked, and that the person would not have committed the
10 felony offense but for being trafficked:

11 "(1) Promoting prostitution in the first degree
12 pursuant to Section 13A-12-111.

13 "(2) Domestic violence in the third degree pursuant
14 to subsection (d) of Section 13A-6-132.

15 "(3) Production of obscene matter involving a person
16 under the age of 17 years pursuant to Section 13A-12-197.

17 "~~(c) (1) A person who has been charged with any~~
18 ~~felony offense, including a violent offense as defined in~~
19 ~~Section 12-25-32, may file a petition in the criminal division~~
20 ~~of the circuit court in the county in which the charges were~~
21 ~~filed to expunge records relating to the charge if the person~~
22 ~~has been found not guilty of the charge.~~

23 "~~(2) Records related to violent offenses as defined~~
24 ~~in Section 12-25-32 may be disclosed to a law enforcement~~
25 ~~agency for criminal investigation purposes as provided in~~
26 ~~Section 15-27-7.~~

1 "(c) (1) A person who has been convicted of a felony
2 offense may file a petition in the criminal division of the
3 circuit court in the county in which the charges were filed to
4 expunge records relating to the charge and the conviction if
5 all of the following occur:

6 "a. The person has been granted a certificate of
7 pardon with restoration of civil and political rights for the
8 conviction from the Board of Pardons and Paroles.

9 "b. All civil and political rights that were
10 forfeited as a result of the conviction have been restored.

11 "c. One hundred eighty days have passed from the
12 date of the issuance of the certification of pardon.

13 "d. Except as provided in subsection (b), the
14 conviction is not a violent offense, as provided in Section
15 12-25-32.

16 "e. The conviction is not a sex offense, as provided
17 in Section 15-20A-5.

18 "f. The conviction is not an offense involving moral
19 turpitude, as provided in Section 17-3-30.1.

20 "g. The conviction is not a serious traffic offense,
21 as provided in Article 9 of Chapter 5A of Title 32.

22 "(2) Records related to offenses and convictions may
23 be disclosed to a criminal justice agency, a district
24 attorney, or a prosecuting authority for criminal
25 investigation purposes as provided in Section 15-27-7 or to
26 any entities or services providing information to banking,

1 insurance, and other financial institutions as required for
2 various requirements as provided in state and federal law.

3 "(d) The circuit court shall have exclusive
4 jurisdiction of a petition filed under ~~subsection (a) or~~
5 ~~subsection (b)~~ subsection (a), (b), or (c).

6 "§15-27-4.

7 "(a) In addition to any cost of court or docket fee
8 for filing the petition in circuit court, an administrative
9 filing fee of ~~three~~ five hundred dollars ~~(\$300)~~ (\$500) shall
10 be paid at the time the petition is filed and is a condition
11 precedent to any ruling of the court pursuant to this chapter.
12 The administrative filing fee shall not be waived by the court
13 and shall be distributed as follows:

14 "(1) Seventy-five dollars (\$75) to the State
15 Judicial Administrative Fund.

16 "(2) Twenty-five dollars (\$25) to the Alabama
17 Department of Forensic Sciences.

18 "(3) Fifty dollars (\$50) to the district attorney's
19 office.

20 "(4) Fifty dollars (\$50) to the clerk's office of
21 the circuit court having jurisdiction over the matter, for the
22 use and benefit of the circuit court clerk.

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

24 "(6) Fifty dollars (\$50) to the general fund of the
25 county where the arresting law enforcement agency is located
26 if the arrest was made by the sheriff's office to be used for
27 law enforcement purposes, or, if the arrest was made by

1 another law enforcement agency, to the municipality or other
2 entity or state agency funding the law enforcement activity.

3 "(7) One hundred dollars (\$100) to the State General
4 Fund.

5 "(8) One hundred dollars (\$100) to the Education
6 Trust Fund.

7 "(b) Notwithstanding subsection (a), a person
8 seeking relief under this chapter may apply for indigent
9 status by completing an Affidavit of Substantial Hardship and
10 Order which shall be submitted with the petition. If the court
11 finds the petitioner is indigent, the court may set forth a
12 payment plan for the petitioner to satisfy the filing fee over
13 a period of time, which shall be paid in full, prior to any
14 order granting an expungement.

15 "(c) If a petitioner seeks expungement of an arrest
16 or conviction record and the court in the original case made a
17 clear and unequivocal judicial finding on the record that the
18 arrest had no foundation of probable cause, the court, in the
19 expungement proceeding, shall waive all docket fees and court
20 costs, except for the filling fee in subsection (a).

21 "§15-27-5.

22 "(a) If the prosecuting authority or victim files an
23 objection to the granting of a petition under this chapter,
24 the court having jurisdiction over the matter shall set a date
25 for a hearing no sooner than 14 days from the filing of the
26 objection. The court shall notify the prosecuting authority
27 and the petitioner of the hearing date. In ~~the discretion of~~

1 ~~the court~~ making its determination, the court shall consider
2 all of the following factors:

3 "(1) Nature and seriousness of the offense
4 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) Other conditions which may have contributed to
12 the offense.

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

15 "(8) Whether the offense was dismissed or nolle
16 prossed as part of a negotiated plea agreement and the
17 petitioner ~~plead~~ pleaded guilty to another related or lesser
18 offense.

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

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

1 "(b) A hearing under subsection (a) shall be
2 conducted in a manner prescribed by the trial judge and shall
3 include oral argument and review of relevant documentation in
4 support of, or in objection to, the granting of the petition.
5 The Alabama Rules of Evidence shall apply to the hearing.
6 Leave of the court shall be obtained for the taking of witness
7 testimony relating to any disputed fact.

8 "~~(c) There is no right to the expungement of any~~
9 ~~criminal record, and any request for expungement of a criminal~~
10 ~~record may be denied at the sole discretion of the court.~~ The
11 court shall grant the petition if it is reasonably satisfied
12 from the evidence that the petitioner has complied with and
13 satisfied the requirements of this chapter. ~~The court shall~~
14 ~~have discretion over the number of cases that may be expunged~~
15 ~~pursuant to this chapter after the first case is expunged.~~ The
16 ruling of the court shall be subject to certiorari review and
17 ~~shall~~ may not be reversed absent a showing of an abuse of
18 discretion.

19 "(d) If no objection to a petition is filed by the
20 prosecuting authority or victim, the court having jurisdiction
21 over the matter ~~may~~ shall rule on the merits of the petition
22 without setting the matter for hearing. In such cases, the
23 court shall grant the petition if it is reasonably satisfied
24 from the evidence that the petitioner has complied with and
25 satisfied the requirements of this chapter. ~~The court shall~~
26 ~~have discretion over the number of cases that may be expunged~~
27 ~~pursuant to this chapter after the first case is expunged.~~

1 "§15-27-7.

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

18 "(b) Records expunged under this chapter may not be
19 transmitted to the Federal Bureau of Investigation national
20 criminal records repository. Any record subject to be expunged
21 under this chapter and transmitted to the Federal Bureau of
22 Investigation prior to the expungement of such record shall be
23 requested for withdrawal within the national system by the
24 Alabama ~~Criminal Justice Information Center~~ State Law
25 Enforcement Agency.

26 "§15-27-8.

1 "Once the records are expunged pursuant to this
2 chapter, the records shall be forwarded to the Alabama
3 ~~Criminal Justice Information Center~~ State Law Enforcement
4 Agency in a manner prescribed by the Alabama ~~Criminal~~ Justice
5 Information ~~Center~~ Commission for purposes of archiving, and
6 the records shall be stored in a manner prescribed by the
7 Alabama ~~Criminal~~ Justice Information ~~Center~~ Commission. The
8 records shall be retained by the Alabama ~~Criminal Justice~~
9 ~~Information Center~~ State Law Enforcement Agency indefinitely.

10 "§15-27-9.

11 "For purposes of this chapter, the ~~term record~~
12 ~~includes, but is not limited to, all of the~~ following terms
13 shall have the following meanings:

14 "(1) RECORD. The term shall include, but is not
15 limited to, all of the following:

16 "~~(1)~~ a. Arrest and conviction records.

17 "~~(2)~~ b. Booking or arrest photographs of the
18 petitioner.

19 "~~(3)~~ c. Index references such as the State Judicial
20 Information System or any other governmental index references
21 for public records search.

22 "d. Records relating to administrative suspension
23 pursuant to Article 14 of Chapter 5A of Title 32, including
24 driver license suspension records.

25 "~~(4)~~ e. Other data, whether in documentary or
26 electronic form, relating to the arrest ~~or,~~ charge, or
27 conviction.

1 "(2) CRIMINAL JUSTICE AGENCIES. As defined in
2 Section 41-9-590.

3 "§15-27-10.

4 "Nothing in this chapter shall prohibit a criminal
5 justice agency, a law enforcement agency or official, district
6 attorney or a prosecuting authority, the Alabama Department of
7 Forensic Sciences, or the Department of Human Resources from
8 maintaining an investigative file, report, case file, or log
9 which may include any evidence, biological evidence,
10 photographs, exhibits, or information in documentary or
11 electronic form.

12 "§15-27-19.

13 "The Alabama ~~Criminal~~ Justice Information ~~Center~~
14 Commission shall adopt rules for the submission of data from
15 criminal justice agencies necessary to complete the criminal
16 history record within the state criminal history repository.
17 Data within the repository shall include all records allowed
18 by federal regulation of state repositories."

19 Section 3. Although this bill would have as its
20 purpose or effect the requirement of a new or increased
21 expenditure of local funds, the bill is excluded from further
22 requirements and application under Amendment 621, as amended
23 by Amendment 890, now appearing as Section 111.05 of the
24 Official Recompilation of the Constitution of Alabama of 1901,
25 as amended, because the bill defines a new crime or amends the
26 definition of an existing crime.

1 Section 4. 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.