

1 HB441
2 209964-1
3 By Representative Gray
4 RFD: Judiciary
5 First Read: 23-FEB-21

SYNOPSIS: Under current law, a person charged with a misdemeanor may only apply for an expungement in very limited circumstances.

This bill would expand the expungement of criminal records to persons convicted of certain non-violent misdemeanors.

This bill would allow a person to refuse to divulge a misdemeanor conviction that has been expunged.

This bill would allow limited access of conviction records in certain circumstances.

This bill would provide for criminal penalties for the unlawful sharing of expungement information and provide for exceptions to expungement.

Amendment 621 of the Constitution of Alabama of 1901, as amended by Amendment 890, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, prohibits a general law whose purpose or effect would be to

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

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

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 Relating to expungement; to amend Section 15-27-1,
23 Code of Alabama 1975; to expand the expungement of criminal
24 records; to allow a person to refuse to divulge an
25 expungement; to provide for limited access to conviction
26 records after expungement; and to provide for certain
27 penalties; to provide exceptions; and in connection therewith

1 would have as its purpose or effect the requirement of a new
2 or increased expenditure of local funds within the meaning of
3 Amendment 621 of the Constitution of Alabama of 1901, as
4 amended by Amendment 890, now appearing as Section 111.05 of
5 the Official Recompilation of the Constitution of Alabama of
6 1901.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 15-27-1, Code of Alabama 1975, is
9 amended to read as follows:

10 "§15-27-1.

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

17 "(1) When the charge is dismissed with prejudice.

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

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

22 "(4) When the charge was dismissed without prejudice
23 more than two years ago, has not been refiled, and the person
24 has not been convicted of any other felony or misdemeanor
25 crime, any violation, or any traffic violation, excluding
26 minor traffic violations, during the previous two years.

1 "(5) When the person proves by a preponderance of
2 the evidence that the person is a victim of human trafficking,
3 that the person committed the misdemeanor criminal offense,
4 violation, traffic violation, or municipal ordinance violation
5 during the period the person was being trafficked, and that
6 the person would not have committed the offense or violation
7 but for being trafficked. Evidence that a person is a victim
8 of human trafficking may include, but is not limited to,
9 evidence that the person's trafficker was convicted of
10 trafficking the person under Section 13A-6-152 or Section
11 13A-6-153.

12 "(b) A person who has been convicted of a
13 non-violent misdemeanor offense may file a petition in the
14 criminal division of the circuit court in the county in which
15 the charges were filed to expunge records relating to the
16 conviction in either of the following circumstances:

17 "(1) At least 10 years have passed from the earlier
18 of the date of conviction or the date of release, and the
19 person has not subsequently been arrested or convicted of any
20 criminal offense during that period.

21 "(2) At least three years have passed from the date
22 of conviction and the person meets all of the following
23 additional criteria:

24 "a. The person has completed all probation or parole
25 requirements, including the full payment of all fines, costs,
26 restitution, or other court-ordered amounts.

1 "b. The person has no prior conviction for a violent
2 felony offense, as defined in Section 12-25-32.

3 "c. The person is not a convicted sex offender.

4 "d. The person was not operating a commercial
5 vehicle that required the person to possess a commercial
6 driver's license at the time of the violation that led to the
7 conviction.

8 "e. The person was not convicted of any of the
9 offenses enumerated in 49 C.F.R. § 383.51.

10 ~~(b)~~ (c) The circuit court shall have exclusive
11 jurisdiction of a petition filed under subsection (a)."

12 Section 2. Section 15-22-6.1 is added to the Code of
13 Alabama 1975, to read as follows:

14 §15-22-6.1.

15 (a) An order granting expungement under subsection
16 (b), shall restore the person concerned to the status the
17 person occupied before the conviction of the non-violent
18 misdemeanor that was the subject of the expungement.

19 (b) A person whose petition is granted under Section
20 15-27-1, Code of Alabama, 1975, may not be required to divulge
21 information pertaining to the non-violent offense with regard
22 to which expungement is sought.

23 (c) (1) Except as provided in subdivision (2), any
24 person who chooses not to divulge the expungement information
25 in response to an inquiry may not be guilty of perjury under
26 any state law or guilty of making a false statement by reason

1 of failure of the person to recite or acknowledge the
2 conviction.

3 (2) Subdivision (1) does not apply to any criminal
4 proceeding, quasi-criminal proceeding, or any other court
5 proceeding including, but not limited to, municipal courts,
6 district courts, and circuit courts that require testimony
7 under oath, depositions, or any affidavits used in a court
8 proceeding.

9 (d) The fact that the person has been convicted of
10 the non-violent offense may not operate as a disqualification
11 of the person to pursue or engage in any lawful activity,
12 occupation, profession, or to obtain a license as defined in
13 Section 41-9A-1, Code of Alabama 1975.

14 (e) Except as provided under this section, upon the
15 grant of a petition of expungement under Section 15-27-1, Code
16 of Alabama 1975, the following shall be expunged:

17 (1) Any official record relating to the arrest and
18 conviction for the misdemeanor offense for which expungement
19 was sought.

20 (2) Any reference in any official record to the
21 arrest or conviction of the petitioner for the misdemeanor
22 offense for which expungement was sought.

23 (f) The records or references expunged under this
24 section shall be restored by operation of law as public
25 records and may be used in all court proceedings if the person
26 is convicted of any criminal offense after the date of
27 expungement.

1 Section 3. (a) With regard to any records expunged
2 pursuant to Section 15-27-1, Code of Alabama 1975, the
3 Attorney General shall retain an unaltered non-public copy of
4 the following:

5 (1) Any record that is expunged.

6 (2) Any record containing a reference that is
7 expunged.

8 (b) The Attorney General shall maintain a non-public
9 index of the records, each record containing only the name of,
10 and alphanumeric identifiers that relate to the individual who
11 is the subject of the record with the word "expunged" clearly
12 denoted on the document, and the name of the person, agency,
13 office, or department that has custody of the expunged record.

14 (c) The record shall not name the offense committed.

15 (d) The index shall be made available only to any of
16 the following:

17 (1) A federal or state court.

18 (2) A federal, state, or local law enforcement
19 agency.

20 (3) A state or local agency responsible for
21 conducting criminal investigation or prosecution of the person
22 who is the subject of the expunged records.

23 (4) Any state or local agency with responsibility
24 for the issuance of licenses to possess firearms, in the case
25 of the person applying for a license.

1 (e) On application by the person to whom a record
2 described under subsection (a) pertains, that record may be
3 made available to the person.

4 (f) Any person who intentionally makes or attempts
5 to make a disclosure of any record or reference that is
6 expunged under this section, other than a disclosure
7 authorized under subsection (c), shall be guilty of a Class B
8 misdemeanor.

9 Section 4. 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, as amended
13 by Amendment 890, now appearing as Section 111.05 of the
14 Official Recompilation of the Constitution of Alabama of 1901,
15 as amended, because the bill defines a new crime or amends the
16 definition of an existing crime.

17 Section 5. This act shall become effective on the
18 first day of the third month following its passage and
19 approval by the Governor, or its otherwise becoming law.