

HB50 INTRODUCED



1 HB50
2 WXL199E-1
3 By Representative Givan
4 RFD: Judiciary
5 First Read: 06-Feb-24
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SYNOPSIS:

Under existing law, an individual charged or convicted of certain felony or misdemeanor criminal offenses, violations, traffic violations, and municipal ordinances may petition the court in which the charges were filed or the convictions occurred to have his or her records expunged, including, but not limited to, arrest records, palmprints, fingerprints, and index references in the documentary or electronic form.

This bill provides that certain criminal convictions are automatically sealed only after an individual has satisfied his or her sentence and a required period of time has passed within which the individual has not been convicted of any additional criminal offenses.

This bill provides exceptions to when an individual's sealed criminal conviction may be disclosed, to whom, and under what circumstances.

This bill also requires the Administrative Office of Courts to develop, support, house, and maintain a system that automatically seals eligible conviction records.

A BILL



HB50 INTRODUCED

29 TO BE ENTITLED

30 AN ACT

31
32 Relating to criminal justice; to automatically seal
33 certain criminal convictions only after an individual has
34 satisfied his or her sentence and a required period of time
35 has passed within which the individual has not been convicted
36 of any additional criminal offenses; to provide for
37 exceptions; and to require the Administrative Office of Courts
38 to develop, support, house, and maintain a system that
39 automatically seals eligible conviction records.

40 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

41 Section 1. For the purpose of this act, the following
42 terms have the following meanings:

43 (1) CRIMINAL JUSTICE AGENCY. As defined in Section
44 41-9-590, Code of Alabama 1975.

45 (2) RECORD. All of the following:

46 a. Palmprints and fingerprints, including all
47 duplicates, reproductions, and copies thereof.

48 b. Booking and arrest photographs, including all
49 duplicates, reproductions, and copies thereof.

50 c. Arrest and conviction records, including all
51 duplicates, reproductions, and copies thereof.

52 d. Index references such as the State Judicial
53 Information System or other governmental index references for
54 public records searches.

55 Section 2. (a) Notwithstanding Chapter 27 of Title 15,
56 Code of Alabama 1975, pertaining to expungement, convictions



HB50 INTRODUCED

57 for certain felony offenses, misdemeanor offenses, violations,
58 traffic violations, and municipal ordinance violations shall
59 be sealed as follows:

60 (1) For a felony conviction, after a minimum of eight
61 years has passed from the date the individual was last
62 released from incarceration for the sentence of the conviction
63 eligible for sealing or from the imposition of sentence if no
64 sentence of incarceration was ordered. If the individual is
65 subsequently convicted of a crime, excluding minor traffic
66 offenses, before a prior conviction is sealed pursuant to this
67 section, the calculation of time for the prior conviction
68 shall start on the same date as the time calculation starts
69 for subsequent convictions.

70 (2) For misdemeanor, violation, traffic violation, or
71 municipal ordinance convictions after a minimum of three years
72 has passed from the date the individual was last released from
73 incarceration for the sentence of the conviction eligible for
74 sealing or from the imposition of sentence if no sentence of
75 incarceration was ordered. If the individual is subsequently
76 convicted of a crime, excluding minor traffic offenses, before
77 a prior conviction is sealed pursuant to this section, the
78 calculation of time for the prior conviction shall start on
79 the same date as the time calculation starts for subsequent
80 convictions.

81 (3) For a driving under the influence conviction,
82 pursuant to Section 32-5A-191, Code of Alabama 1975, after a
83 minimum of three years has passed from the imposition of
84 sentence.



HB50 INTRODUCED

85 (b) An individual is not eligible to have his or her
86 convictions sealed in any of the following circumstances:

87 (1) The individual was convicted of a Class A felony
88 offense.

89 (2) The individual has a subsequent criminal charge
90 pending in this state.

91 (3) The individual is currently under post-release
92 supervision with the Board of Pardons and Paroles or the court
93 system.

94 (4) The individual was convicted of a sex offense, as
95 provided in Section 15-20A-5, Code of Alabama 1975.

96 (c) Except as provided by state or federal law
97 regarding the scope, access, use, disclosure, and retention of
98 criminal history information, records of convictions sealed
99 pursuant to this act shall not be accessed by or made
100 available to any individual or public or private entity,
101 except for all of the following:

102 (1) The individual or his or her attorney.

103 (2) Any court, defense attorney, prosecutor, or
104 criminal justice agency when acting within the scope of their
105 law enforcement duties.

106 (3) The court, defense attorney, or prosecutor if the
107 individual becomes a witness in a criminal proceeding.

108 (4) The court and parties if the individual becomes a
109 witness or party in a civil proceeding.

110 (5) When any individual is a defendant in a criminal
111 proceeding and the sealed conviction records of a third party
112 are integral to the individual's defense. The sealed



HB50 INTRODUCED

113 conviction records may be used upon the granting of an ex
114 parte motion in the criminal court where the action is
115 pending. The applicant must demonstrate to the satisfaction of
116 the court that the records will be used for the purpose of
117 this subdivision.

118 (6) An individual or entity that is authorized or
119 required by a local, state, or federal law or regulation to
120 request and receive a fingerprint-based check of criminal
121 history information for employment purposes.

122 (7) Any prospective employer of a law enforcement
123 officer or a corrections officer, in relation to an
124 application for employment, provided that every individual who
125 is an applicant shall be furnished with a copy of all records
126 obtained under this subdivision and afforded an opportunity to
127 make an explanation thereto.

128 (8) Any federal, state, or local officer or agency
129 responsible for the issuance of licenses to possess a firearm,
130 rifle, or shotgun, or responsible for conducting background
131 checks before transfer or sale of a firearm or explosive, when
132 the officer or agency is acting in its employment. This
133 includes the Criminal Justice Information Services Division of
134 the Federal Bureau of Investigation for the purposes of
135 responding to queries to the national instant background check
136 system regarding attempts to purchase or otherwise take
137 possession of firearms, rifles, or shotguns, as defined in 18
138 U.S.C. §921(A) (3).

139 (9) For the purpose of collection of restitution,
140 court costs, fines, or fees imposed. The sealed conviction



HB50 INTRODUCED

141 records may be used upon the granting of an ex parte motion in
142 the criminal court where the action is pending. The applicant
143 must demonstrate to the satisfaction of the court that the
144 records will be used for the purpose of this subdivision.

145 (10) Entities that are required by federal law, or by
146 rules and regulations adopted by a self-regulatory
147 organization created under federal law, to consider sealed
148 conviction records. The entities must certify to the
149 Administrative Office of Courts that they are required by
150 federal law, or by rules and regulations, to inquire about or
151 consider sealed conviction records pursuant to this act for
152 the purpose of employment, licensing, or clearance. To the
153 extent permitted by federal law, a sealed conviction record
154 pursuant to this act may not be considered a conviction that
155 would prohibit the employment, licensing, or clearance of the
156 individual.

157 (d) If, after the applicable period of time for the
158 sealing of a conviction record has been satisfied, the
159 conviction remains ineligible for sealing pursuant to
160 subdivision (b)(2) or (b)(3), the Administrative Office of
161 Courts shall subsequently check for eligibility no less than
162 quarterly. Once all conditions for the sealing of conviction
163 records have been satisfied, the conviction records shall be
164 sealed.

165 (e) Where the sealing of conviction records required by
166 this act has not taken place because the supporting court
167 records cannot be located or have been destroyed, an
168 individual or his or her attorney may submit a sworn statement



HB50 INTRODUCED

169 under the penalty of perjury stating this fact and the
170 conviction shall be sealed as set forth in this section within
171 30 days after the receipt of the form by the Administrative
172 Office of Courts.

173 (f) The Department of Corrections and the Board of
174 Pardons and Paroles, in coordination with criminal justice
175 agencies, shall provide the Administrative Office of Courts
176 with the data necessary to determine appropriate records to be
177 sealed pursuant to this section, including, but not limited
178 to, both of the following:

179 (1) The date or dates of release from state
180 incarceration of individuals who have a sentence of
181 incarceration for a criminal conviction.

182 (2) The date or dates of parole, probation, or
183 post-release supervision and corresponding date or dates of
184 discharge, as applicable.

185 Section 3. (a) Upon the sealing of a conviction record
186 pursuant to this act, the Administrative Office of Courts
187 shall immediately notify the court of conviction, the heads of
188 all appropriate police and sheriff departments, prosecutors'
189 offices, and the Alabama State Law Enforcement Agency that the
190 conviction is sealed. Upon receipt of the notification,
191 records of or relating to the conviction shall be immediately
192 sealed by any entity having possession of the items by
193 conspicuously indicating on the face of the record or at the
194 beginning of the digitized file that the record has been
195 designated as sealed.

196 (b) Entities subject to the requirements of this



HB50 INTRODUCED

197 section shall not use or access sealed conviction records
198 unless otherwise authorized pursuant to this act or any
199 applicable state or federal law.

200 Section 4. Nothing in this act requires the sealing or
201 destruction of DNA information maintained in the state DNA
202 database, as defined in Section 36-18-21, Code of Alabama
203 1975, of an individual whose conviction record is sealed under
204 this act.

205 Section 5. An individual may not be required or
206 permitted to waive eligibility for sealing pursuant to this
207 act as part of a plea of guilty, sentence, or any agreement
208 related to a conviction for a violation of the laws of this
209 state. Any such waiver is void and unenforceable.

210 Section 6. (a) On or before October 1, 2027, the
211 Administrative Office of Courts shall develop, support, house,
212 and maintain a system that automatically seals eligible
213 conviction records.

214 (b) The Administrative Office of Courts, on or before
215 December 1, 2027, shall seal all conviction records that were
216 eligible for sealing before October 1, 2027.

217 Section 7. A conviction that is sealed pursuant to this
218 act may be considered a conviction for the purpose of
219 enhancing a sentence under the Habitual Felony Offender Act,
220 pursuant to Section 13A-5-9, Code of Alabama 1975.

221 Section 8. Nothing in this act shall be construed to
222 permit the sealing of a conviction record before the
223 expiration or termination of a sentence of incarceration,
224 parole, probation, or post-release for the conviction.



HB50 INTRODUCED

225 Section 9. Nothing in this act shall be construed to
226 require or authorize the discharge of the requirement to pay
227 any restitution, court costs, fines, or fees imposed for a
228 conviction sealed under this act.

229 Section 10. (a) Any individual who has had a conviction
230 sealed pursuant to act may bring a cause of action for damages
231 against a party who, without consent of the individual,
232 discloses a sealed conviction where:

233 (1) The respondent owed the individual a duty of care.

234 (2) The respondent knowingly and willfully breached the
235 duty.

236 (3) The disclosure caused injury to the individual.

237 (4) The respondent's breach of that duty was a
238 substantial factor in the events that caused the injury
239 suffered by the individual.

240 (b) This section is in addition to, but shall not
241 supersede, any other rights or remedies available by law.

242 (c) For purposes of this section, a party owes a duty
243 of care to an individual who has had a conviction sealed
244 pursuant to this act when the party is under an obligation to
245 seal information, records, documents, or papers related to a
246 conviction pursuant to this act.

247 Section 11. This act shall become effective on October
248 1, 2024.