

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1638**

**As Engrossed: 4/6/2013**

**Bill Subtitle: TO ESTABLISH THE COMPREHENSIVE CRIMINAL RECORD SEALING ACT OF 2013; AND TO AMEND, CONSOLIDATE, CLARIFY, AND SIMPLIFY THE PROCESS FOR SEALING A PERSON'S CRIMINAL RECORD UNDER CERTAIN CIRCUMSTANCES.**

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### **Basic Change :**

Sponsor: Representative Williams

HB1638 as Engrossed 4/6/13 creates the Comprehensive Criminal Record Sealing Act of 2013. This bill will repeal or amend various sections of the Arkansas Code that address the sealing of a criminal conviction and adopt a uniform procedure. However, the provisions for the sealing of a record that will not be covered by the bill include: (1) criminal cases adjudicated under the Arkansas Drug Court Act, (2) extended juvenile jurisdiction case records unless the records are considered adult criminal records; (3) juvenile records and (4) A traffic offense, other than a parking violation, vehicle weight violation, or vehicle defect violation committed in any type of motor vehicle, if the person was a holder of a commercial learner's permit or commercial driver license at the time the offense was committed. The amendment also added as a prerequisite to sealing of the record for traffic offenses that a person must have completed all driver license reinstatement requirements.

### **Revenue Impact :**

None

### **Taxpayer Impact :**

None

### **Resources Required :**

Unless the bill is amended to become effective January 1, 2014, significant computer programming costs will be incurred. Those costs can be avoided by moving the effective date to January 1, 2014.

### **Time Required :**

Effective date should be moved to January 1, 2014.

### **Procedural Changes :**

Procedures will need to be developed and employees trained to comply with this bill.

### **Other Comments :**

The bill has an emergency clause that requires the bill to become effective on:

1. The date of its approval by the Governor
2. If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or
3. If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

Significant programming costs will result if the bill is not amended to an effective date of January 1, 2014.

### **Legal Analysis :**

HB1638 creates the Comprehensive Criminal Record Sealing Act of 2013. This bill will repeal or amend various sections of the Arkansas Code that address the sealing of a criminal conviction and adopt a uniform procedure. DFA requested that this bill be amended to comply with federal law that prohibits a holder of a commercial learner's permit (CLP) or commercial driver license (CDL) from utilizing sealing procedures to "mask" or conceal a traffic offense conviction from appearing on the

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person's driver record. In response to DFA's request for an amendment, this bill was amended to prevent a CLP or CDL holder from utilizing this bill to have a conviction for felony, misdemeanor, or violation that is a traffic offense from being sealed. The amendment made by the bill resolves DFA's concerns on this issue.

The second amendment requested by DFA addresses DFA's concerns regarding when a person will have "completed his or her sentence," and therefore, be eligible to file a "Petition to Seal" a criminal conviction. Under the previous version of the bill, the bill did not require that a person complete his or her driver's license reinstatement requirements prior to filing a Petition to Seal. In response to DFA's request for an amendment on this issue, the bill now provides that a person must have completed his or her driver's license reinstatement requirements in order to have completed his or her sentence. Please note, however, the current version of the bill utilizes inconsistent language on this issue. More specifically, on page 11, lines 21-28, the bill states that "completion of a person's sentence" includes (1) payment of driver's license reinstatement fees; and (2) completion of all other driver's license reinstatement requirements. In contrast, on page 13, lines 24-26, the bill only addresses the payment of driver's license reinstatement fees when addressing eligibility to file a Petition to Seal. The bill should be amended to make these two sections of the bill uniform.

The final concern of DFA of this bill is that the bill now has an emergency clause making the bill effective upon (1) the governor's approval; (2) if the governor does not sign or veto the bill, the expiration of the time that the governor may veto the bill; or (3) the date the last house overrides the governor's veto. Due to increased programming costs, DFA requested that the bill become effective on January 1, 2014. DFA will provide an amendment to the bill's sponsor.

Finally, this bill appears to have an inconsistency that does not directly affect DFA, but nonetheless requires comment. More specifically, on page 11, lines 13-15, the bill states that a person has completed his or sentence after he or she has "Served any time in [...] a Department of Correction facility in full". In contrast, page 15, lines 34-35, the bill provides that a person is ineligible to have a felony conviction sealed if the person was convicted of "A felony for which a person served any portion of his or sentence as an inmate in the Department of Correction." Also, on page 17, lines 18-22, the bill states, "A person is not prohibited from filing a petition under this subchapter if: (1) He or she was sentenced to the Department of Correction for an offense the conviction for which he or she is now attempting to have sealed". The above inconsistent language may cause confusion for convicted persons seeking to have their records sealed, as well as for prosecutors and judges that are trying to determine whether or not a person is eligible to have a felony offense sealed.