

Department of Finance and Administration

Legislative Impact Statement

Bill: SB932

Bill Subtitle: CONCERNING ELIGIBILITY TO FILE A UNIFORM PETITION TO EXPUNGE A MISDEMEANOR OFFENSE OR VIOLATION; AND TO DECLARE AN EMERGENCY.

Basic Change :

Senator Burnett

The proposed bill adds a new code section to provide that an eligible person may file a uniform petition to expunge his or her record of a misdemeanor or violation sixty (60) days after:

1. Completion of sentence for the misdemeanor or violation including full payment of restitution; and
2. Full payment of court cost

There is no limit to the number of times a person may file a uniform petition to expunge the record except that the person may not file:

1. To expunge a criminal offense, which has had the sealing of the record opposed by another person in court, before one (1) year from the date of the order denying the previous uniform petition.
2. To expunge any other misdemeanor or violation before ninety (90) days from the date of an order denying a uniform petition to expunge the misdemeanor or violation;
3. A new uniform petition under this section if an appeal of a previous denial of a uniform petition for the same misdemeanor or violation occurred before the effective date of this act.

A person is eligible to file a uniform petition to expunge a misdemeanor or violation even if it occurred before the effective date of this act.

This bill conflicts with federal and state law prohibiting expungement of commercial driver's license (CDL) holders' records. Also, there are several driving offenses, such as driving while intoxicated, that carry different penalties based on enhancement and a look back period. Expungement of the violation would have an impact on these statutes. In addition, the bill does not provide for payment to the state for suspended driver's license reinstatement fees prior to expungement. The bill only provides for court costs and restitution payments and completion of a sentence.

Revenue Impact :

If a driver's license has been suspended for a misdemeanor or violation, passage of this bill may allow expungement of misdemeanors or violations without payment of the reinstatement fees. While there is no way to project the number of suspended driver's license holders who would avail themselves of this statute and avoid payment of the reinstatement fees, the state collected \$10,859,425 in reinstatement fees from 100,863 taxpayers for the calendar year ending December 31, 2012. There may be a significant decrease in reinstatement fee collections if this bill were passed.

Taxpayer Impact :

Taxpayers who can pay restitution and court fees may have their misdemeanor and violations on their driving records expunged after serving their sentence. They may also have their driver's license reinstated without paying the reinstatement fee.

Resources Required :

Required programming changes are estimated to cost \$84,000. It is estimated an additional three (3) employees would be needed to modify the driving records and provide phone support to taxpayers who request their driving record and expungement information. The estimated salaries, including fringe benefits and cost of furniture and equipment for the employees, are estimated to be \$112,500.

Department of Finance and Administration

Legislative Impact Statement

Bill: SB932

Bill Subtitle: CONCERNING ELIGIBILITY TO FILE A UNIFORM PETITION TO EXPUNGE A MISDEMEANOR OFFENSE OR VIOLATION; AND TO DECLARE AN EMERGENCY.

Time Required :

DFA would need until January 1, 2014 to implement this bill.

Procedural Changes :

Procedures would need to be developed for modifying the record.

Other Comments :

DFA suggests an amendment to extend the implementation date to January 1, 2014. Also, DFA does not have budgeted the additional programming cost or three (3) additional employees required to implement this bill.

Legal Analysis :

SB932 would allow a person with a conviction for any misdemeanor or violation to file a "Petition to Expunge" to have the conviction expunged. Under the bill, a person may petition to have a misdemeanor or violation conviction expunged sixty (60) days following the completion of his or her sentence and full payment of court costs and restitution. The bill provides that a person may be eligible to have a conviction sealed even if the conviction occurred prior to the effective date of the bill.

Of primary importance to DFA is that this expungement statute, if applied by an Arkansas court to a commercial driver's license holder that has been convicted of a traffic violation, will conflict with federal and Arkansas law. 49 C.F.R. § 384.226 provides as follows: The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a [commercial learner's permit] or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the [Commercial Driver's License Information System] driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State. See also Ark. Code Ann. § 27-23-128.

Strict compliance with the federal regulation is mandatory. Arkansas may risk the loss of federal highway funds if the U.S. Department of Transportation or other federal agency determines Arkansas has enacted a statute that circumvents the federal regulation that prohibits a CLP or CDL holder from obtaining an expungement for a traffic violation conviction. SB932 should be amended to clarify that if a person is a holder of a commercial learner's permit or a CDL, the person cannot avail themselves of the provisions of the newly-created statute, § 16-90-907.

Another concern of this bill is that it is unclear whether this bill intends to repeal other provisions of Arkansas law that otherwise prohibit or restrict the sealing of certain misdemeanor offenses. More specifically, § 5-65-108 prohibits an Arkansas court from utilizing the expungement provisions of Act 346 of 1975, codified at § 16-93-301, et seq, for a person charged with DWI. Also, the Community Punishment Act, § 16-93-1201, et seq, prohibits the sealing of a misdemeanor conviction of DWI. See § 16-93-1202(10)(A)(iv). In addition, § 16-90-904 restricts the eligibility of a person to petition for sealing of a conviction for the offense of DWI until at least five (5) years have passed since the person's completion of his or her sentence. If this bill intends to create statutory procedures permitting a misdemeanor DWI offense to be expunged, the bill should be amended to clarify or repeal other Arkansas Code sections that prohibit or restrict a person's eligibility to have a DWI offense expunged or sealed.

Department of Finance and Administration

Legislative Impact Statement

Bill: SB932

Bill Subtitle: CONCERNING ELIGIBILITY TO FILE A UNIFORM PETITION TO EXPUNGE A MISDEMEANOR OFFENSE OR VIOLATION; AND TO DECLARE AN EMERGENCY.

A general concern of SB932 is that the bill uses the terminology "Petition to Expunge" to refer to the procedures to have an offense removed from a person's criminal record. The Arkansas statutes that refer to the procedures for sealing a criminal conviction generally use the terminology of "Petition to Seal." See, e.g., §§ 16-90-904 and -905. For purposes of clarity and uniformity, the terminology of the bill should be amended to use "Petition to Seal" as is used elsewhere in the Arkansas Code.

This bill does not have an effective date; however, the bill does contain an emergency clause making the bill effective on: (1) date of the governor's approval; (2) the expiration of time during which the governor may veto the bill; or (3) if the bill is vetoed, the date the last house overrides the veto.