

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0629.01 Michael Dohr

HOUSE BILL 11-1203

HOUSE SPONSORSHIP

Lee, Ferrandino, Levy, Tyler

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING A REQUIREMENT THAT PRIVATE CUSTODIANS OF
102 CRIMINAL RECORDS REMOVE RECORDS FROM THEIR DATABASES
103 WHEN A COURT ORDERS THE CRIMINAL RECORDS SEALED.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Under current law, if a court orders a criminal record sealed, each custodian of the record must seal the record. The bill expands the concept of custodian to include a private entity that has custody of the information and provides that information to others as a part of its business. When a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

court orders a record sealed, a private custodian that receives a copy of the order for sealing shall remove each record it has that is subject to the sealing order.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 24-72-302, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **24-72-302. Definitions.** As used in this part 3, unless the context
5 otherwise requires:

6 (11) "PRIVATE CUSTODIAN" MEANS A PRIVATE ENTITY THAT HAS
7 CUSTODY OF THE CRIMINAL JUSTICE RECORDS IN QUESTION AND IS IN THE
8 BUSINESS OF PROVIDING THE INFORMATION TO OTHERS.

9 **SECTION 2.** 24-72-308 (1) (c), Colorado Revised Statutes, is
10 amended to read:

11 **24-72-308. Sealing of arrest and criminal records other than**
12 **convictions.** (1) (c) After the hearing described in subparagraph (II) of
13 paragraph (b) of this subsection (1) is conducted and if the court finds that
14 the harm to the privacy of the petitioner or dangers of unwarranted
15 adverse consequences to the petitioner outweigh the public interest in
16 retaining the records, the court may order such records, except basic
17 identification information, to be sealed. Any order entered pursuant to
18 this paragraph (c) shall be directed to every custodian who may have
19 custody of any part of the arrest and criminal records information which
20 is the subject of the order. Whenever a court enters an order sealing
21 criminal records pursuant to this paragraph (c), the petitioner shall
22 provide the Colorado bureau of investigation and every custodian of such
23 records with a copy of such order. THE PETITIONER SHALL PROVIDE A
24 PRIVATE CUSTODIAN WITH A COPY OF THE ORDER AND SEND THE PRIVATE

1 CUSTODIAN AN ELECTRONIC NOTIFICATION OF THE ORDER. EACH PRIVATE
2 CUSTODIAN THAT RECEIVES A COPY OF THE ORDER FROM THE PETITIONER
3 SHALL REMOVE THE RECORDS THAT ARE SUBJECT TO AN ORDER FROM ITS
4 DATABASE. Thereafter, the petitioner may request and the court may
5 grant an order sealing the civil case in which the records were sealed.

6 **SECTION 3.** 24-72-308.5 (2) (c), Colorado Revised Statutes, is
7 amended to read:

8 **24-72-308.5. Sealing of criminal conviction records**
9 **information for offenses involving controlled substances. (2) Sealing**
10 **of conviction records.** (c) After the hearing described in subparagraph
11 (II) of paragraph (b) of this subsection (2) is conducted and if the court
12 finds that the harm to the privacy of the defendant or the dangers of
13 unwarranted, adverse consequences to the defendant outweigh the public
14 interest in retaining the conviction records, the court may order the
15 conviction records, except basic identification information, to be sealed.
16 In making this determination, the court shall, at a minimum, consider the
17 severity of the offense that is the basis of the conviction records sought
18 to be sealed, the criminal history of the defendant, and the need for the
19 government agency to retain the records. An order entered pursuant to
20 this paragraph (c) shall be directed to each custodian who may have
21 custody of any part of the conviction records that are the subject of the
22 order. Whenever a court enters an order sealing conviction records
23 pursuant to this paragraph (c), the defendant shall provide the Colorado
24 bureau of investigation and each custodian of the conviction records with
25 a copy of the order. ~~and~~ THE PETITIONER SHALL PROVIDE A PRIVATE
26 CUSTODIAN WITH A COPY OF THE ORDER AND SEND THE PRIVATE
27 CUSTODIAN AN ELECTRONIC NOTIFICATION OF THE ORDER. EACH PRIVATE

1 CUSTODIAN THAT RECEIVES A COPY OF THE ORDER FROM THE PETITIONER
2 SHALL REMOVE THE RECORDS THAT ARE SUBJECT TO AN ORDER FROM ITS
3 DATABASE. THE DEFENDANT shall pay to the bureau any costs related to
4 the sealing of his or her criminal conviction records in the custody of the
5 bureau. Thereafter, the defendant may request and the court may grant an
6 order sealing the civil case in which the conviction records were sealed.

7 **SECTION 4. Act subject to petition - effective date.** This act
8 shall take effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly (August
10 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within such period, then the act, item, section, or part shall not take effect
14 unless approved by the people at the general election to be held in
15 November 2012 and shall take effect on the date of the official
16 declaration of the vote thereon by the governor.