First Regular Session Sixty-eighth General Assembly STATE OF COLORADO

REREVISED

This Version Includes All Amendments Adopted in the Second House HOUSE BILL 11-1203

LLS NO. 11-0629.01 Michael Dohr

HOUSE SPONSORSHIP

Lee, Ferrandino, Levy, Tyler

Nicholson,

SENATE SPONSORSHIP

House Committees Judiciary Senate Committees Judiciary

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.

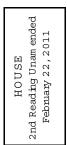
Bill Summary

(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 Reading Unam ended M arch 21, 2011

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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: (11) "PRIVATE CUSTODIAN" MEANS A PRIVATE ENTITY THAT HAS 6 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.

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SECTION 3. 24-72-308.5 (2) (c), Colorado Revised Statutes, is 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

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