



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 427

131st General Assembly
(As Introduced)

Reps. Antani, Manning, Becker, Sweeney, Fedor, Sheehy

BILL SUMMARY

- Requires the Attorney General (AG) to select a private entity as a qualified third party for the purpose of receiving notices of court orders sealing or expunging criminal case records under procedures provided in continuing law.
- Prescribes the qualifications of such qualified third party, including among others, specific expertise in the operation of the Fair Credit Reporting Act, experience in interacting with consumer reporting agencies, and experience in processing and sending notices of sealed or expunged records to identified data repositories.
- Requires the AG and the selected qualified third party to enter into a contract specifying the third party's duties and the amount of the fee to be paid by an applicant for the sealing or expungement of records who wishes to have the court send the third party notice of its record sealing or expunging order.
- Specifies that the AG has oversight of the functions and activities of the qualified third party.
- Requires the qualified third party who receives notice of a court order sealing or expunging the records to send notice of such order to identified data repositories and to websites and publications that the third party knows utilize, display, publish, or disseminate any information from those records.
- Requires an identified data repository that receives such notice to remove from its database, and the websites and publications to remove from the website or publication, all of the records that are subject to the court order sealing or expunging the records and all references to, and information from, those records.

- Upon an application to have the records of the applicant's criminal case sealed or expunged, requires the clerk of court to notify the applicant in writing that the court will send notice of its order sealing or expunging the records to the qualified third party.
- Requires the applicant to notify the clerk if the applicant wishes to opt out of the benefits of the court sending such notice to the qualified third party and to have data repositories, websites, and publications remove those records from their database, website, or publication.
- If the applicant does not opt out as described in the preceding dot point, requires the applicant to pay the fee provided in the contract between the AG and the qualified third party, and requires the clerk of court to remit the fee to the qualified third party upon issuance of the court order sealing or expunging the records.
- If the application is denied by the court or the applicant opts out before the issuance of a court order, requires the clerk to remit the fee back to the applicant.

CONTENT AND OPERATION

Qualified third party to receive court notices of sealed or expunged records

Appointment and qualifications

The bill requires the Attorney General (AG) to select a private entity as a "qualified third party" in order to receive notices of court orders of sealed or expunged records as described below in "**Procedure under the bill.**" Such entity must have the following qualifications (see "**Definitions**" of terms in quotation marks):¹

- Specific knowledge and expertise regarding the operation of the "Fair Credit Reporting Act" (FCRA);
- Prior experience in interacting and cooperating with "consumer reporting agencies" regarding their obligations for accuracy under section 1681e(b) of the FCRA (requirement of maximum possible accuracy of the information concerning the individual about whom the consumer report relates) and reinvestigations of disputed information under section 1681i of the FCRA (procedures in case of disputed accuracy of any information in a consumer's file) to ensure the accomplishment of the goal of updating

¹ R.C. 109.38(B).

their records, files, or databases containing references to, or information on, "convictions of crime."

- Relationships with data aggregators, public record vendors, and other companies that collect and compile data or information in conviction records to ensure their cooperation in maintaining the legitimacy, accuracy, completeness, and security of that data or information.
- At least two years' experience in processing and sending notices of sealed or expunged conviction records to "identified data repositories."
- Not an identified data repository or an entity that is owned or controlled by an identified data repository.
- Meet all security clearances and requirements imposed by the AG to ensure that the entity does not misuse any information received from the courts under the bill and that other persons do not have unauthorized access to that information.

Term of service

The selected qualified third party must serve as such for a minimum of three years. The AG may either select another qualified third party at the end of any three-year period or retain the existing qualified third party for another three-year period.²

Attorney General's functions

Upon the selection or retention of a qualified third party, the AG and the party must enter into a contract that includes all of the following:³

(1) The qualified third party's duties under the bill;

(2) The amount of the fee to be paid by an applicant for a court order to seal or expunge records who wishes to have the court send notice of the order to the qualified third party and to have the procedures described below in "**Receipt of notice of court order**" apply to the records;

(3) Any other provisions as determined by the AG in its rules.

² R.C. 109.38(C)(1).

³ R.C. 109.38(C)(2).



The AG must determine the proportion of the fee described in (2) above that the qualified third party retains for its services and each proportion of the fee that the party must remit to the clerk of the court that sent the notice of the court order sealing or expunging the records, the AG, and the state treasury.⁴

The AG has oversight of the functions and activities of the qualified third party described below, and must promulgate rules to implement the bill.⁵

Receipt of notice of court order

Upon receiving a notice of a court order sealing or expunging the records subject to the order (see "**Procedure under the bill**," below), the qualified third party must send a notice of that order to identified data repositories and to websites and publications that the qualified third party knows utilize, display, publish, or disseminate any information from those records.⁶

Immediately upon receipt of such notice, an identified data repository must remove from its database, and the websites and publications must remove from the website or publication, all of the records that are subject to the court order sealing or expunging the records and all references to, and information from, those records.⁷

Definitions

The bill defines the following terms:⁸

"**Consumer reporting agency**" has the same meaning as in section 1681a(f) of the Fair Credit Reporting Act, that is, any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"**Conviction of crime**" means a conviction of, or a plea of guilty to, an offense.

"**Fair Credit Reporting Act**" means 15 U.S.C. 1681 et seq., as amended.

⁴ R.C. 109.38(C)(3).

⁵ R.C. 109.38(D) and (E).

⁶ R.C. 109.381(A).

⁷ R.C. 109.381(B).

⁸ R.C. 109.38(A).



"Identified data repository" means either of the following:

- A person or entity that is a consumer reporting agency and is known to a qualified third party as having a database that includes publicly available records of convictions of crime and from which consumer reports are prepared pursuant to the FCRA;
- Any person or entity, other than a consumer reporting agency, that is known to a qualified third party as having a database that includes publicly available records of convictions of crime and registers with a qualified third party for the purpose of receiving notices of court orders of sealed or expunged records and agreeing to remove those records and any references to and information from those records from the person's or entity's database.

"Qualified third party" means a private entity that is selected by the AG as described above.

Sealing or expunging criminal records

Continuing law permits any of the following to apply to have the records of the applicable case sealed:

- An "eligible offender" generally may apply to the sentencing court if convicted in Ohio or to the court of common pleas if convicted in another state or a federal court for the sealing of the record of the case that pertains to the conviction. "Eligible offender" generally means anyone who has been convicted of an offense in Ohio or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions, or not more than one felony conviction and one misdemeanor conviction in Ohio or any other jurisdiction.⁹
- Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture for the offense charged may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case that pertains to the charge.¹⁰

⁹ R.C. 2953.31(A), which is not in the bill, and R.C. 2953.32(A)(1).

¹⁰ R.C. 2953.32(A)(2).



- Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal the person's official records in the case.¹¹
- Any person, against whom a no bill is entered by a grand jury, may apply to the court for an order to seal the person's official records in the case.¹²

The following may apply for the expungement of the record of the case under continuing law:

- Any person who is or was convicted of, or pleaded guilty to, certain specified violations under the offense of improperly handling firearms in a motor vehicle as they existed prior to September 30, 2011, and is specifically authorized by law to file an application may apply to the sentencing court for the expungement of the record of conviction.¹³
- Any person who is or was convicted of any of the following offenses may apply to the sentencing court for the expungement of the record of conviction if the person's participation in the offense was a result of the person having been a victim of human trafficking: soliciting, solicitation after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or engaging in prostitution after a positive HIV test.¹⁴

Continuing law provides the procedures, including a hearing, for the applicable court to make specified determinations regarding the circumstances of the applicant and issue an order based on its determinations.¹⁵

Procedure under the bill

Under the bill, at the time each of the above applicants files an application to have the records of the case sealed or expunged, the following apply:¹⁶

¹¹ R.C. 2953.52(A)(1), which is not in the bill.

¹² R.C. 2953.53(A)(2), which is not in the bill.

¹³ R.C. 2953.37(B).

¹⁴ R.C. 2953.38(B).

¹⁵ R.C. 2953.32, 2953.37, 2953.38, 2953.52 (not in the bill), and 2953.53.

¹⁶ R.C. 2953.32(C)(4), 2953.37(D)(4), 2953.38(I), and 2953.53(A)(2)(a).



- The clerk of court must notify the applicant in writing that the court will send notice of its order granting the application to the qualified third party and inform the applicant of the procedures described above in "**Receipt of notice of court order.**"
- The applicant must then notify the clerk if the applicant wishes to opt out of receiving the benefits of having the court send notice of its order to the qualified third party and having those procedures apply to the records that are subject to the order.
- If the applicant does not opt out as described above, the applicant must pay to the clerk the fee provided in the contract between the AG and the qualified third party.

Upon the issuance of an order under continuing law granting the application to seal or expunge the applicable records, and unless the applicant opts out, the clerk must remit the fee paid by the applicant to the qualified third party, and the court must send notice of its order to the qualified third party. If the applicant's application is denied for any reason or if the applicant informs the clerk in writing, before the issuance of the court order, that the applicant wishes to opt out, the clerk must remit the fee paid by the applicant that is intended for the qualified third party back to the applicant.¹⁷

HISTORY

ACTION	DATE
Introduced	01-13-16

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¹⁷ R.C. 2953.32(C)(5), 2953.37(D)(5), 2953.38(J), and 2953.53(A)(2)(b) and (c).

