

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-1078.01 Michael Dohr x4347

SENATE BILL 14-218

SENATE SPONSORSHIP

Ulibarri and Marble,

HOUSE SPONSORSHIP

Singer and Melton, Salazar

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIRING A CONVICTION RECORD FOR A MARIJUANA**
102 **OFFENSE THAT WOULD HAVE BEEN LEGAL UNDER SECTION 16 OF**
103 **ARTICLE XVIII OF THE STATE CONSTITUTION TO BE SEALED**
104 **WHEN A PERSON APPLIES FOR THE RECORD SEALING.**

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>.)

The bill allows anyone who was convicted of a marijuana offense that would not have been illegal had amendment 64 been in effect at that

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.

time to request sealing of the conviction record. The court shall seal the conviction record after the person applies and pays the filing fee.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 24-72-308.4 as
3 follows:

4 **24-72-308.4. Sealing of criminal conviction records for**
5 **marijuana convictions.** (1) (a) IF A PERSON WAS CONVICTED OF AN
6 OFFENSE UNDER SECTION 18-18-406, C.R.S., THAT WOULD NOT HAVE BEEN
7 AN OFFENSE HAD SECTION 16 OF ARTICLE XVIII OF THE COLORADO
8 CONSTITUTION BEEN IN EFFECT AT THE TIME OF THE OFFENSE, HE OR SHE
9 MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH THE
10 CONVICTION RECORD PERTAINING TO THE DEFENDANT'S CONVICTION IS
11 LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT FOR
12 BASIC IDENTIFYING INFORMATION.

13 (b) IF A PETITION IS FILED PURSUANT TO PARAGRAPH (a) OF THIS
14 SUBSECTION (1) FOR THE SEALING OF A RECORD OF MARIJUANA
15 CONVICTION, THE COURT SHALL ORDER THE RECORD SEALED AFTER:

16 (I) THE PETITION IS FILED; AND

17 (II) THE FILING FEE IS PAID.

18 (2) A PETITION TO SEAL A CONVICTION RECORD PURSUANT TO THIS
19 SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS
20 TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT
21 ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.
22 THE DEFENDANT SHALL SUBMIT WITH THE PETITION, AT THE TIME OF
23 FILING OR NO LATER THAN THE TENTH DAY AFTER THE PETITION IS FILED,
24 A VERIFIED COPY OF THE DEFENDANT'S CRIMINAL HISTORY, CURRENT
25 THROUGH AT LEAST THE TWENTIETH DAY PRIOR TO THE DATE OF THE

1 FILING OF THE PETITION. THE DEFENDANT IS RESPONSIBLE FOR OBTAINING
2 AND PAYING FOR THE VERIFIED COPY OF HIS OR HER CRIMINAL HISTORY.
3 WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION RECORDS
4 PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PROVIDE THE
5 COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE
6 CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE
7 BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL
8 CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU.
9 THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT
10 AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS
11 WERE SEALED.

12 (3) AN ORDER SEALING CONVICTION RECORDS DOES NOT DENY
13 ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW
14 ENFORCEMENT AGENCY, CRIMINAL JUSTICE AGENCY, PROSECUTING
15 ATTORNEY, OR PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A
16 CRIMINAL HISTORY RECORD CHECK ON AN INDIVIDUAL. AN ORDER SEALING
17 CONVICTION RECORDS DOES NOT VACATE A CONVICTION. A CONVICTION
18 SEALED PURSUANT TO THIS SECTION MAY BE USED BY A CRIMINAL JUSTICE
19 AGENCY, LAW ENFORCEMENT AGENCY, COURT, OR PROSECUTING
20 ATTORNEY FOR ANY LAWFUL PURPOSE RELATING TO THE INVESTIGATION
21 OR PROSECUTION OF ANY CASE, INCLUDING BUT NOT LIMITED TO ANY
22 SUBSEQUENT CASE THAT IS FILED AGAINST THE DEFENDANT, OR FOR ANY
23 OTHER LAWFUL PURPOSE WITHIN THE SCOPE OF HIS, HER, OR ITS DUTIES. IF
24 A DEFENDANT IS CONVICTED OF A NEW CRIMINAL OFFENSE AFTER AN
25 ORDER SEALING CONVICTION RECORDS IS ENTERED, THE COURT SHALL
26 ORDER THE CONVICTION RECORDS TO BE UNSEALED. A PARTY OR AGENCY
27 REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK IS

1 AUTHORIZED TO USE ANY SEALED CONVICTION FOR THE LAWFUL PURPOSE
2 FOR WHICH THE CRIMINAL HISTORY RECORD CHECK IS REQUIRED BY LAW.

3 (4) A DEFENDANT MAY PETITION THE COURT FOR THE SEALING OF
4 CONVICTION RECORDS PURSUANT TO THIS SECTION ONLY ONCE DURING
5 ANY TWELVE-MONTH PERIOD. THE COURT SHALL DISMISS A SECOND OR
6 SUBSEQUENT PETITION FILED WITHIN ANY TWELVE-MONTH PERIOD.

7 (5) A PETITION TO SEAL CONVICTION RECORDS PURSUANT TO THIS
8 SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS
9 TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT
10 ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.

11 (6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
12 SECTION, UPON THE ENTRY OF AN ORDER TO SEAL THE CONVICTION
13 RECORDS, THE DEFENDANT AND ALL CRIMINAL JUSTICE AGENCIES MAY
14 PROPERLY REPLY, UPON AN INQUIRY IN THE MATTER, THAT PUBLIC
15 CONVICTION RECORDS DO NOT EXIST WITH RESPECT TO THE DEFENDANT.

16 (7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
17 SECTION, INSPECTION OF THE RECORDS INCLUDED IN AN ORDER SEALING
18 CONVICTION RECORDS MAY THEREAFTER BE PERMITTED BY THE COURT
19 ONLY UPON PETITION BY THE DEFENDANT.

20 (8) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF
21 THIS SECTION, EMPLOYERS, STATE AND LOCAL GOVERNMENT AGENCIES,
22 OFFICIALS, LANDLORDS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION
23 OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO
24 DISCLOSE ANY INFORMATION CONTAINED IN SEALED CONVICTION
25 RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION
26 CONCERNING CONVICTION RECORDS THAT HAVE BEEN SEALED, INCLUDE
27 A REFERENCE TO OR INFORMATION CONCERNING THE SEALED CONVICTION

1 RECORDS AND MAY STATE THAT THE APPLICANT HAS NOT BEEN
2 CRIMINALLY CONVICTED.

3 (b) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (8) DO
4 NOT PRECLUDE THE BAR COMMITTEE OF THE COLORADO STATE BOARD OF
5 LAW EXAMINERS FROM MAKING FURTHER INQUIRIES INTO THE FACT OF A
6 CONVICTION THAT COMES TO THE ATTENTION OF THE BAR COMMITTEE
7 THROUGH OTHER MEANS. THE BAR COMMITTEE OF THE COLORADO STATE
8 BOARD OF LAW EXAMINERS HAS A RIGHT TO INQUIRE INTO THE MORAL AND
9 ETHICAL QUALIFICATIONS OF AN APPLICANT, AND THE APPLICANT DOES
10 NOT HAVE A RIGHT TO PRIVACY OR PRIVILEGE THAT JUSTIFIES HIS OR HER
11 REFUSAL TO ANSWER A QUESTION CONCERNING SEALED CONVICTION
12 RECORDS THAT HAVE COME TO THE ATTENTION OF THE BAR COMMITTEE
13 THROUGH OTHER MEANS.

14 (c) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF
15 THIS SUBSECTION (8), THE DEPARTMENT OF EDUCATION MAY REQUIRE A
16 LICENSED EDUCATOR OR AN APPLICANT FOR AN EDUCATOR'S LICENSE WHO
17 FILES A PETITION TO SEAL A CRIMINAL RECORD TO NOTIFY THE
18 DEPARTMENT OF EDUCATION OF THE PENDING PETITION TO SEAL. THE
19 DEPARTMENT HAS THE RIGHT TO INQUIRE INTO THE FACTS OF THE
20 CRIMINAL OFFENSE FOR WHICH THE PETITION TO SEAL IS PENDING. THE
21 EDUCATOR OR APPLICANT HAS NO RIGHT TO PRIVACY OR PRIVILEGE THAT
22 JUSTIFIES HIS OR HER REFUSAL TO ANSWER ANY QUESTIONS CONCERNING
23 THE ARREST AND CRIMINAL RECORDS INFORMATION CONTAINED IN THE
24 PENDING PETITION TO SEAL.

25 (d) ANY MEMBER OF THE PUBLIC MAY PETITION THE COURT TO
26 UNSEAL ANY FILE THAT HAS BEEN PREVIOUSLY SEALED UPON A SHOWING
27 THAT CIRCUMSTANCES HAVE COME INTO EXISTENCE SINCE THE ORIGINAL

1 SEALING, AND, AS A RESULT, THE PUBLIC INTEREST IN DISCLOSURE NOW
2 OUTWEIGHS THE DEFENDANT'S INTEREST IN PRIVACY.

3 (9) THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL POST
4 ON ITS WEB SITE A LIST OF ALL PETITIONS TO SEAL CONVICTION RECORDS
5 THAT ARE FILED WITH A DISTRICT COURT. A DISTRICT COURT MAY NOT
6 GRANT A PETITION TO SEAL CONVICTION RECORDS UNTIL AT LEAST THIRTY
7 DAYS AFTER THE POSTING. AFTER THE EXPIRATION OF THIRTY DAYS
8 FOLLOWING THE POSTING, THE PETITION TO SEAL CONVICTION RECORDS
9 AND INFORMATION PERTINENT THERETO SHALL BE REMOVED FROM THE
10 WEB SITE OF THE OFFICE OF THE STATE COURT ADMINISTRATOR.

11 (10) NOTHING IN THIS SECTION AUTHORIZES THE PHYSICAL
12 DESTRUCTION OF ANY CONVICTION RECORDS.

13 (11) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE
14 CONTRARY, IN REGARD TO ANY CONVICTION OF A DEFENDANT RESULTING
15 FROM A SINGLE CASE IN WHICH THE DEFENDANT IS CONVICTED OF MORE
16 THAN ONE OFFENSE, RECORDS OF THE CONVICTION MAY BE SEALED
17 PURSUANT TO THE PROVISIONS OF THIS SECTION ONLY IF THE RECORDS OF
18 EVERY CONVICTION OF THE DEFENDANT RESULTING FROM THAT CASE MAY
19 BE SEALED PURSUANT TO THE PROVISIONS OF THIS PART 3.

20 (12) **Rules of discovery - rules of evidence - witness testimony.**
21 COURT ORDERS SEALING RECORDS OF OFFICIAL ACTIONS PURSUANT TO
22 THIS SECTION DO NOT LIMIT THE OPERATIONS OF:

23 (a) THE COLORADO RULES OF CIVIL PROCEDURE RELATED TO
24 DISCOVERY OR THE COLORADO RULES OF EVIDENCE PROMULGATED BY
25 THE SUPREME COURT OF COLORADO OR ANY OTHER STATE OR FEDERAL
26 COURT; OR

27 (b) THE PROVISIONS OF SECTION 13-90-101, C.R.S., CONCERNING

1 WITNESS TESTIMONY.

2 **SECTION 2.** In Colorado Revised Statutes, **add** 24-72-609 as
3 follows:

4 **24-72-609. Sealing of criminal conviction records for**
5 **marijuana convictions.** (1) IF A PERSON WAS CONVICTED OF AN OFFENSE
6 UNDER SECTION 18-18-406, C.R.S., THAT WOULD NOT HAVE BEEN AN
7 OFFENSE HAD SECTION 16 OF ARTICLE XVIII OF THE COLORADO
8 CONSTITUTION BEEN IN EFFECT AT THE TIME OF THE OFFENSE, HE OR SHE
9 MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH THE
10 CONVICTION RECORD PERTAINING TO THE DEFENDANT'S CONVICTION IS
11 LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT FOR
12 BASIC IDENTIFYING INFORMATION.

13 (2) IF A PETITION IS FILED PURSUANT TO SUBSECTION (1) OF THIS
14 SECTION FOR THE SEALING OF A RECORD OF MARIJUANA CONVICTION, THE
15 COURT SHALL ORDER THE RECORD SEALED AFTER:

16 (a) THE PETITION IS FILED; AND

17 (b) THE FILING FEE IS PAID.

18 **SECTION 3. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2014 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor; except that

1 section 1 takes effect only if Senate Bill 14-206 does not become law, and
2 section 2 of this act takes effect only if Senate Bill 14-206 becomes law
3 and takes effect on the effective date of this act or of Senate Bill 14-206,
4 whichever is later.