

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 979

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the use of records arising out of
7 criminal charges; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 12 is amended by adding a new chapter to read:

10 CHAPTER 63. RECORDS ARISING OUT OF
11 CRIMINAL CHARGES.

12 Sec. 12.63.010. PETITION TO SEAL RECORDS. (a) A person who has
13 been issued a summons or arrested on a felony or misdemeanor charge
14 under the laws of the state or a municipality of the state may petition
15 the superior court for an order sealing the records concerned with the
16 charge under secs. 10 - 150 of this chapter if

- 17 (1) the charge has been dismissed by the prosecutor;
- 18 (2) the person arrested has been acquitted of the offense for
19 which the arrest was made; or
- 20 (3) prosecution of the charge is barred under Rule 45 of the
21 Alaska Rules of Criminal Procedure.

22 (b) The petition shall advise the court of the state or municipal
23 agencies which the petitioner believes may be maintaining records con-
24 cerned with the charge.

25 Sec. 12.63.020. NOTICE OF THE PETITION. The clerk of the superior
26 court shall notify the prosecutor responsible for the charge that a
27 petition to seal records has been filed and that the agencies listed in
28 the petition may be maintaining records.

29 Sec. 12.63.030. RESPONSE OF THE PROSECUTOR. Within 30 days of the

1 receipt of notice of a petition filed under sec. 10 of this chapter, the
2 prosecutor shall advise the court which agencies have maintained records
3 subject to sealing under secs. 10 - 150 of this chapter. The prosecutor
4 shall attach to the response the original and all known copies of the
5 records subject to sealing.

6 Sec. 12.63.040. DETERMINATION BY THE COURT. Upon the receipt by
7 the court of the response of the prosecutor, the court shall determine
8 whether the petitioner qualifies under sec. 10 of this chapter for an
9 order sealing the records concerned with the charge. The court may hold
10 a hearing, if necessary, to assemble evidence necessary to the deter-
11 mination.

12 Sec. 12.63.050. SEALING OF THE RECORD. (a) Upon a determination
13 by the court that the petitioner qualifies under sec. 10 of this chapter
14 for an order sealing the records concerned with the charge, the clerk
15 shall seal the records. Unless otherwise provided in the order sealing
16 the records, an order sealing records prohibits the clerk from dissemi-
17 nating information in the record sealed for any purpose except in re-
18 sponse to motion to reopen the record under sec. 100 of this chapter.

19 (b) The court may retain a record of the sealed order but its
20 existence shall not be disclosed to any person or agency if the order
21 identifies the petitioner.

22 (c) If the court determines that a petitioner does not qualify
23 under sec. 10 of this chapter for an order sealing records, it shall
24 dismiss the petition and return the records to the prosecutor. An order
25 denying a petition to seal records is appealable to the supreme court.

26 Sec. 12.63.060. RIGHTS OF THE PETITIONER. (a) A petitioner who
27 receives the benefit of a determination by the court to seal a record
28 may respond to questions about the charge including questions under
29 oath, by stating that he has no record regarding the specific charge.

1 (b) A statement authorized under (a) of this section may not be
2 the basis of a complaint, information, or indictment for perjury, for a
3 civil action against the petitioner, for a discharge from employment
4 held by the petitioner, for denial of licenses to the petitioner from a
5 state agency, or for other prohibited adverse action.

6 Sec. 12.63.070. CONSUMER REPORTING AGENCIES. A consumer reporting
7 agency as defined in 15 U.S.C. 1681 may maintain and disseminate arrest
8 record information unless the record has been sealed under sec. 50 of
9 this chapter. A consumer reporting agency which has actual knowledge of
10 the sealing of a record or which has been advised by the petitioner that
11 the record of charges has been sealed may not maintain or disseminate
12 arrest information and is liable to the petitioner for damages resulting
13 from the dissemination of the information.

14 Sec. 12.63.080. CREDITORS. A creditor may not discriminate
15 against an applicant for credit based upon arrest record information
16 which has been sealed under sec. 50 of this chapter.

17 Sec. 12.63.090. INDIVIDUAL'S RIGHT OF ACCESS. An individual may
18 review the arrest record information maintained on the individual.
19 After a review of the information, an individual who believes that the
20 information is incorrect or incomplete in any respect may notify the
21 agency maintaining the information and request a correction of the
22 information. On the agency's correction of the record, it shall, if
23 requested by a petitioner, promptly notify all recipients of the in-
24 correct or incomplete information and of the correction made.

25 Sec. 12.63.100. REOPENING SEALED RECORDS. (a) A prosecutor may
26 petition the court for access to and use of the sealed records of
27 identified individuals. If the court is satisfied that the sealed
28 records provide information which is unavailable from other sources and
29 that the use of the information would serve a compelling law enforcement

1 need, the court may unseal the records for a limited time and for the
2 specific investigatory purpose.

3 (b) The court shall give the subject of the record notice of the
4 request to unseal the records and an opportunity to be heard in opposi-
5 tion to the request.

6 Sec. 12.63.110. AGENCIES OF OTHER STATES AND THE FEDERAL GOVERN-
7 MENT. A state department or agency advised that arrest record infor-
8 mation has been sealed by order of the court shall advise any agencies
9 of other states and the federal government believed to be maintaining
10 information on the sealed arrest record of the court's order, and
11 request that it be honored.

12 Sec. 12.63.120. ADDITIONAL REMEDIES OF A PETITIONER. A petitioner
13 has a civil action against the departments or agencies of the state
14 government, against a municipality of the state, or against officers or
15 employees of the state or a municipality for maintenance or dissemina-
16 tion of arrest record information sealed under sec. 50 of this chapter.
17 The petitioner may apply for a mandatory injunction sealing the records,
18 is entitled to liquidated damages of \$100 from a public officer or
19 employee knowingly maintaining or disseminating sealed arrest record
20 information, to actual damages from the department, agency, or munici-
21 pality, and to costs and attorney fees set under Rule 82, Alaska Rules
22 of Civil Procedure.

23 Sec. 12.63.150. DEFINITIONS. As used in secs. 10 - 150 of this
24 chapter,

25 (1) "arrest record" means information collected and main-
26 tained by a department, agency, or municipality of the state which
27 consists of pleadings and other documents filed in a court record and
28 copies of the pleadings and other documents filed or prepared for filing
29 with the court; it also includes all reports, memoranda, and other

1 papers or documents assembled by the department, agency, or municipality
2 of the state in the course of its investigation of the petitioner pre-
3 paratory to the filing of criminal charges; it does not include infor-
4 mation maintained by the department, agency, or municipality of the
5 state to the extent that the information does not reflect the involve-
6 ment of the petitioner in the criminal justice system as to the sealed
7 charge.

8 (2) "prosecutor" means the attorney general of the state and
9 any attorney in the Department of Law; it includes the attorney for
10 municipalities in the state and any assistant municipal attorney; it
11 also includes other officers or employees of the state or a municipality
12 of the state to the extent that they file or prepare for filing charges
13 against an individual under the criminal laws of the state or a munici-
14 pality of the state.

15 * Sec. 2. AS 18.80.220(a)(1) and (2) are amended to read:

16 (1) an employer to refuse employment to a person, or to bar
17 him from employment, or to discriminate against him in compensation or
18 in a term, condition, or privilege of employment because of his race,
19 religion, color or national origin, or because of his age, physical
20 handicap, sex, marital status, changes in marital status, pregnancy or
21 parenthood when the reasonable demands of the position do not require
22 distinction on the basis of age, physical handicap, sex, marital status,
23 changes in marital status, pregnancy or parenthood or because of an
24 arrest record which has been sealed by a court order under AS 12.63.050;

25 (2) a labor organization, because of a person's sex, marital
26 status, changes in marital status, pregnancy, parenthood, age, race,
27 religion, color, [OR] national origin, or arrest record which has been
28 sealed under AS 12.63.050, to exclude or to expel him from its member-
29 ship, or to discriminate in any way against one of its members or an

1 employer or an employee;

2 * Sec. 3. AS 18.80.255 is amended by adding a new paragraph to read:

3 (3) to maintain or disseminate arrest record information
4 sealed by a court order under AS 12.63.050.

5 * Sec. 4. This Act takes effect July 1, 1978.
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