

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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
Appropriations

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 (3) (c) OR (5) (a) (I), C.R.S., THAT
7 WOULD NOT HAVE BEEN AN OFFENSE HAD SECTION 16 OF ARTICLE XVIII
8 OF THE COLORADO CONSTITUTION BEEN IN EFFECT AT THE TIME OF THE
9 OFFENSE, HE OR SHE MAY PETITION THE DISTRICT COURT OF THE DISTRICT
10 IN WHICH THE CONVICTION RECORD PERTAINING TO THE DEFENDANT'S
11 CONVICTION IS LOCATED FOR THE SEALING OF THE CONVICTION RECORDS,
12 EXCEPT FOR BASIC IDENTIFYING INFORMATION.

13 (b) THE DEFENDANT SHALL PAY THE FILING FEE AND PROVIDE
14 NOTICE OF THE PETITION TO THE DISTRICT ATTORNEY. THE DISTRICT
15 ATTORNEY SHALL DETERMINE WHETHER TO OBJECT TO THE PETITION
16 AFTER CONSIDERING THE FACTORS IN SECTION 24-72-308.5 (2) (c). IF THE
17 DISTRICT ATTORNEY DOES NOT OBJECT, THE COURT SHALL ORDER THAT
18 THE RECORD BE SEALED. IF THE DISTRICT ATTORNEY OBJECTS TO THE
19 PETITION, THE COURT SHALL SET THE MATTER FOR HEARING. THE COURT
20 SHALL DECIDE THE PETITION AFTER CONSIDERING THE FACTORS IN SECTION
21 24-72-308.5 (2) (c).

22 (2) A PETITION TO SEAL A CONVICTION RECORD PURSUANT TO THIS
23 SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS
24 TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT
25 ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.

1 THE DEFENDANT SHALL SUBMIT WITH THE PETITION, AT THE TIME OF
2 FILING OR NO LATER THAN THE TENTH DAY AFTER THE PETITION IS FILED,
3 A VERIFIED COPY OF THE DEFENDANT'S CRIMINAL HISTORY, CURRENT
4 THROUGH AT LEAST THE TWENTIETH DAY PRIOR TO THE DATE OF THE
5 FILING OF THE PETITION. THE DEFENDANT IS RESPONSIBLE FOR OBTAINING
6 AND PAYING FOR THE VERIFIED COPY OF HIS OR HER CRIMINAL HISTORY.
7 WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION RECORDS
8 PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PROVIDE THE
9 COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE
10 CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE
11 BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL
12 CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU.
13 THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT
14 AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS
15 WERE SEALED.

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

1 A DEFENDANT IS CONVICTED OF A NEW CRIMINAL OFFENSE AFTER AN
2 ORDER SEALING CONVICTION RECORDS IS ENTERED, THE COURT SHALL
3 ORDER THE CONVICTION RECORDS TO BE UNSEALED. A PARTY OR AGENCY
4 REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK IS
5 AUTHORIZED TO USE ANY SEALED CONVICTION FOR THE LAWFUL PURPOSE
6 FOR WHICH THE CRIMINAL HISTORY RECORD CHECK IS REQUIRED BY LAW.

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

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

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

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

24 (8) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF
25 THIS SECTION, EMPLOYERS, STATE AND LOCAL GOVERNMENT AGENCIES,
26 OFFICIALS, LANDLORDS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION
27 OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO

1 DISCLOSE ANY INFORMATION CONTAINED IN SEALED CONVICTION
2 RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION
3 CONCERNING CONVICTION RECORDS THAT HAVE BEEN SEALED, INCLUDE
4 A REFERENCE TO OR INFORMATION CONCERNING THE SEALED CONVICTION
5 RECORDS AND MAY STATE THAT THE APPLICANT HAS NOT BEEN
6 CRIMINALLY CONVICTED.

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

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

1 PENDING PETITION TO SEAL.

2 (d) ANY MEMBER OF THE PUBLIC MAY PETITION THE COURT TO
3 UNSEAL ANY FILE THAT HAS BEEN PREVIOUSLY SEALED UPON A SHOWING
4 THAT CIRCUMSTANCES HAVE COME INTO EXISTENCE SINCE THE ORIGINAL
5 SEALING, AND, AS A RESULT, THE PUBLIC INTEREST IN DISCLOSURE NOW
6 OUTWEIGHS THE DEFENDANT'S INTEREST IN PRIVACY.

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

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

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

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

1 (a) THE COLORADO RULES OF CIVIL PROCEDURE RELATED TO
2 DISCOVERY OR THE COLORADO RULES OF EVIDENCE PROMULGATED BY
3 THE SUPREME COURT OF COLORADO OR ANY OTHER STATE OR FEDERAL
4 COURT; OR

5 (b) THE PROVISIONS OF SECTION 13-90-101, C.R.S., CONCERNING
6 WITNESS TESTIMONY.

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

9 **24-72-609. Sealing of criminal conviction records for**
10 **marijuana convictions.** (1) IF A PERSON WAS CONVICTED OF AN OFFENSE
11 UNDER SECTION 18-18-406(3)(c) OR (5)(a)(I), C.R.S., THAT WOULD NOT
12 HAVE BEEN AN OFFENSE HAD SECTION 16 OF ARTICLE XVIII OF THE
13 COLORADO CONSTITUTION BEEN IN EFFECT AT THE TIME OF THE OFFENSE,
14 HE OR SHE MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH
15 THE CONVICTION RECORD PERTAINING TO THE DEFENDANT'S CONVICTION
16 IS LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT FOR
17 BASIC IDENTIFYING INFORMATION.

18 (2) THE DEFENDANT SHALL PAY THE FILING FEE AND PROVIDE
19 NOTICE OF THE PETITION TO THE DISTRICT ATTORNEY. THE DISTRICT
20 ATTORNEY SHALL DETERMINE WHETHER TO OBJECT TO THE PETITION
21 AFTER CONSIDERING THE FACTORS IN SECTION 24-72-308.5 (2) (c). IF THE
22 DISTRICT ATTORNEY DOES NOT OBJECT, THE COURT SHALL ORDER THAT
23 THE RECORD BE SEALED. IF THE DISTRICT ATTORNEY OBJECTS TO THE
24 PETITION, THE COURT SHALL SET THE MATTER FOR HEARING. THE COURT
25 SHALL DECIDE THE PETITION AFTER CONSIDERING THE FACTORS IN SECTION
26 24-72-308.5 (2) (c).

27 **SECTION 3. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly (August
3 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a
4 referendum petition is filed pursuant to section 1 (3) of article V of the
5 state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part will not take effect
7 unless approved by the people at the general election to be held in
8 November 2014 and, in such case, will take effect on the date of the
9 official declaration of the vote thereon by the governor; except that
10 section 1 takes effect only if Senate Bill 14-206 does not become law, and
11 section 2 of this act takes effect only if Senate Bill 14-206 becomes law
12 and takes effect on the effective date of this act or of Senate Bill 14-206,
13 whichever is later.