_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING LAWS RELATED TO THE MISDEMEANOR CLARIFICATION EXPUNGEMENT ACT; PROVIDING A DEFINITION FOR "SEAL"; PROVIDING THE EFFECT OF EXPUNGED RECORDS; PROVIDING DIRECTION TO EMPLOYERS, HOUSING AUTHORITIES, AND OCCUPATIONAL AND LICENSING BODIES REGARDING APPLICANTS WITH EXPUNGED RECORDS; AMENDING SECTIONS 23-5-176, 37-1-203, 46-18-1103, AND 50-20-401, MCA; AND PROVIDING AN APPLICABILITY DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-5-176, MCA, is amended to read:

"**23-5-176. Qualifications for licensure.** (1) A person who the department determines is qualified to receive a license under the provisions of this chapter may, based on information available to, required by, or supplied to the department under department rules, be issued a state gambling license.

(2) Except as provided in subsection (4), the department shall issue a license unless the department can demonstrate that the applicant:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state;

(ii) poses a threat to the effective regulation and control of gambling; or

(iii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling;

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense; or

(c) is receiving a substantial amount of financing for the proposed operation from an unsuitable source. A lender or other source of money or credit that the department finds to meet the provisions of

subsection (2)(a) may be considered an unsuitable source.

(3) The provisions of ~~37-1-203~~ 37-1-203(1) and 37-1-205 do not apply to licensing determinations made under this section.

(4) The department may deny a license or permit to an applicant who has falsified a license or permit application. If the falsification is determined after the license or permit has been issued, the department may revoke the license or permit."

Section 2. Section 37-1-203, MCA, is amended to read:

"**37-1-203. Conviction not ~~a~~ sole basis for denial -- effect of expunged record.** ~~Criminal convictions shall not~~ (1) A criminal conviction may not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. ~~No~~ A licensing authority ~~shall~~ may not refuse to license a person solely on the basis of a previous criminal conviction; ~~provided,~~ however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

(2) As provided in [section 4], a licensing board or program that inquires about an applicant's criminal history shall advise the applicant of the applicant's right not to disclose an expunged record. An applicant who does not disclose an expunged record as provided in [section 4] may not be adversely considered based on that nondisclosure."

Section 3. Section 46-18-1103, MCA, is amended to read:

"**46-18-1103. Definitions.** As used in this part, the following definitions apply:

(1) "Expunge" or "expungement" means to permanently destroy, delete, or erase a record of an offense from the criminal history record information system maintained by the department of justice in a manner that is appropriate for the record's physical or electronic form.

(2) (a) "Record" means any:

(i) identifiable description, notation, or photograph of an arrest and detention;

(ii) complaint, indictment, or information or any disposition arising from a complaint, indictment, or information;

(iii) sentence;

(iv) correctional status;

(v) release; or

(vi) court document or filing.

(b) The term does not include a fingerprint record or data that may be maintained for investigative purposes.

(3) "Seal" means to prohibit the disclosure of the existence or contents of a record."

NEW SECTION. **Section 4. Effect of expunged record.** (1) An expunged record may not disqualify a person in any examination, appointment, or application for public service of this state or of any political subdivision of this state.

(2) (a) An application used to screen applicants for employment, housing, or an occupational or professional license may inquire about an applicant's criminal history record only with respect to arrests or convictions that have not been expunged. An employing state entity that inquires about an applicant's criminal history shall advise the applicant of the applicant's right not to disclose an expunged record pursuant to this part.

(b) The free exercise of the right described in subsection (2)(a) may not be adversely considered in the determination of the completed application.

Section 5. Section 50-20-401, MCA, is amended to read:

"**50-20-401. Offense of partial-birth abortion -- exception -- definitions -- penalties.** (1) Except as provided in this section, a person commits an offense if the person purposely, knowingly, or negligently causes a partial-birth abortion.

(2) Subsection (1) does not apply to:

(a) a partial-birth abortion caused to save the life of a woman because the woman's life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising

from the pregnancy itself, if no other medical procedure would save the life of the woman; or

(b) the woman upon whom a partial-birth abortion is performed.

(3) As used in this section, the following definitions apply:

(a) "Knowingly" has the meaning provided in 45-2-101.

(b) "Negligently" has the meaning provided in 45-2-101.

(c) (i) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

(ii) A procedure that constitutes a partial-birth abortion is one in which the following steps occur:

(A) the living fetus is removed intact from the uterus until only the head remains in the uterus;

(B) all or a part of the intracranial contents of the fetus are evacuated;

(C) the head of the fetus is compressed; and

(D) following fetal demise, the fetus is removed from the birth canal.

(d) "Purposely" has the meaning provided in 45-2-101.

(4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall be punished by:

(a) a fine of not more than $50,000;

(b) imprisonment in a correctional facility for a term of not less than 5 years and not more than 10 years; or

(c) both fine and imprisonment as provided in subsections (4)(a) and (4)(b); and

(d) permanent revocation of the license of the physician performing the partial-birth abortion. The provisions of ~~37-1-203~~ 37-1-203(1) and 37-1-205 do not apply to a physician whose license is revoked pursuant to this section."

NEW SECTION. **Section 6. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 46, chapter 18, part 11, and the provisions of Title 46, chapter 18, part 11, apply to [section 4].

NEW SECTION. **Section 7. Applicability.** [This act] applies to expungement orders granted on and

after [the effective date of this act].

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