

DEPARTMENT OF PUBLIC SAFETY FEE

CONSOLIDATION

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Blake D. Chard

AN ACT RELATING TO PUBLIC SAFETY; CREATING AND INCREASING VARIOUS FEES COLLECTED BY THE BUREAU OF CRIMINAL IDENTIFICATION TO REFLECT THE COST OF PROVIDING THE CORRESPONDING SERVICES; CREATING A CONSOLIDATED LIST OF ALL FEES COLLECTED BY THE BUREAU OF CRIMINAL IDENTIFICATION; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53-5-707, as last amended by Chapter 115, Laws of Utah 1996

53-10-108, as renumbered and amended by Chapter 263, Laws of Utah 1998

76-10-526, as last amended by Chapters 187 and 263, Laws of Utah 1998

77-18-11, as last amended by Chapter 170, Laws of Utah 1998

77-18-15, as last amended by Chapter 286, Laws of Utah 1995

ENACTS:

53-10-202.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53-5-707** is amended to read:

53-5-707. Permit -- Fees -- Disposition.

(1) Each applicant for a permit shall pay a fee of ~~his~~ ~~[\$35]~~ ~~[\$50]~~ an at the time of filing application.

(2) The renewal fee for the permit is ~~[\$5]~~ ~~[\$25]~~ ~~[\$15]~~ \$10 .

(3) The replacement fee for the permit is \$15 .

28 (4) The late fee for the renewal permit is \$7.50.

29 ~~[(3)]~~ (5) All fees shall promptly be deposited in the state treasury and credited to the
30 General Fund.

31 ~~[(4)]~~ (6) The division may collect any fees charged by an outside agency for additional
32 services required by statute as a prerequisite for issuance of a permit. The division shall promptly
33 forward any fees collected to the appropriate agency.

34 Section 2. Section **53-10-108** is amended to read:

35 **53-10-108. Restrictions on access, use, and contents of division records -- Limited use**
36 **of records for employment purposes -- Challenging accuracy of records -- Usage fees --**
37 **Missing children records.**

38 (1) Dissemination of information from a criminal history record or warrant of arrest
39 information from division files is limited to:

40 (a) criminal justice agencies for purposes of administration of criminal justice and for
41 employment screening by criminal justice agencies;

42 (b) noncriminal justice agencies or individuals for any purpose authorized by statute,
43 executive order, court rule, court order, or local ordinance;

44 (c) agencies or individuals for the purpose of obtaining required clearances connected with
45 foreign travel or obtaining citizenship;

46 (d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
47 agency to provide services required for the administration of criminal justice;

48 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
49 purposes for which given, and ensure the security and confidentiality of the data;

50 (e) agencies or individuals for the purpose of a preplacement adoptive study, in accordance
51 with the requirements of Section 78-30-3.5;

52 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose of
53 research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
54 agency; and

55 (ii) private security agencies through guidelines established by the commissioner for
56 employment background checks for their own employees and prospective employees;

57 (g) a qualifying entity for employment background checks for their own employees and
58 persons who have applied for employment with the qualifying entity; and

59 (h) other agencies and individuals as the commissioner authorizes and finds necessary for
 60 protection of life and property and for offender identification, apprehension, and prosecution
 61 pursuant to an agreement.

62 (2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access to
 63 data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity
 64 of individuals to whom the information relates, and ensure the confidentiality and security of the
 65 data.

66 (3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must
 67 obtain a signed waiver from the person whose information is requested.

68 (b) The waiver must notify the signee:

69 (i) that a criminal history background check will be conducted;

70 (ii) who will see the information; and

71 (iii) how the information will be used.

72 (c) Information received by a qualifying entity under Subsection (1)(g), may only be:

73 (i) available to persons involved in the hiring or background investigation of the employee;

74 and

75 (ii) used for the purpose of assisting in making an employment or promotion decision.

76 (d) A person who disseminates or uses information obtained from the division under
 77 Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to
 78 any penalties provided under this section, is subject to civil liability.

79 (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide the
 80 employee or employment applicant an opportunity to:

81 (i) review the information received as provided under Subsection (8); and

82 (ii) respond to any information received.

83 (f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 84 division may make rules to implement this Subsection (3).

85 (g) (i) The ~~[division shall establish fees, as provided under Section 63-38-3.2, for~~
 86 ~~providing information to a qualifying entity under Subsection (1)(g)]~~ applicant fingerprint card fee
 87 under Subsection (1)(g) is \$15 [F] [\$5] \$.

88 (ii) The name check fee under Subsection (1)(g) is \$10.

89 (iii) These fees remain in effect until changed by the division through the process under

90 Section 63-38-3.2.

91 ~~[(ii)]~~ (iv) Funds generated under ~~[Subsection]~~ Subsections (3)(g)(i), (3)(g)(ii), and (8)(b)
 92 ~~[may]~~ shall be ~~[used]~~ deposited in the General Fund as a dedicated credit by the department ~~[as a~~
 93 ~~dedicated credit]~~ to cover the costs incurred in providing the information.

94 (h) The division or its employees are not liable for defamation, invasion of privacy,
 95 negligence, or any other claim in connection with the contents of information disseminated under
 96 Subsection (1)(g).

97 (4) Any criminal history record information obtained from division files may be used only
 98 for the purposes for which it was provided and may not be further disseminated.

99 (5) If an individual has no prior criminal convictions, criminal history record information
 100 contained in the division's computerized criminal history files may not include arrest or disposition
 101 data concerning an individual who has been acquitted, his charges dismissed, or when no
 102 complaint against him has been filed.

103 (6) (a) This section does not preclude the use of the division's central computing facilities
 104 for the storage and retrieval of criminal history record information.

105 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
 106 unauthorized agencies or individuals.

107 (7) Direct access through remote computer terminals to criminal history record information
 108 in the division's files is limited to those agencies authorized by the commissioner under
 109 procedures designed to prevent unauthorized access to this information.

110 (8) (a) The commissioner shall establish~~[-(i)]~~ procedures to allow an individual right of
 111 access to review his criminal history record information~~[-and]~~.

112 ~~[(ii)-a]~~ (b) A processing fee [under Section 63-38-3.2] for the [services] right of access
 113 service under Subsection (8)(a) is \hat{h} [-\$15][\$7.50-] \$10 \hat{h} . This fee remains in effect until changed
 113a by the
 114 commissioner through the process under Section 63-38-3.2.

115 ~~[(b)]~~ (c) (i) The commissioner shall establish procedures for an individual to challenge the
 116 completeness and accuracy of criminal history record information contained in the division's
 117 computerized criminal history files regarding that individual.

118 (ii) These procedures shall include provisions for amending any information found to be
 119 inaccurate or incomplete.

120 (9) The private security agencies as provided in Subsection (1)(f)(ii):

121 (a) shall be charged for access; and

122 (b) shall be registered with the division according to rules made by the division under Title
123 63, Chapter 46a, Utah Administrative Rulemaking Act.

124 (10) Before providing information requested under this section, the division shall give
125 priority to criminal justice agencies needs.

126 (11) (a) Misuse of access to criminal history record information is a class B misdemeanor.

127 (b) The commissioner shall be informed of the misuse.

128 Section 3. Section **53-10-202.5** is enacted to read:

129 **53-10-202.5. Bureau services -- Fees.**

130 The bureau shall collect fees for the following services:

131 (1) applicant fingerprint card as determined by Section 53-10-108;

132 (2) bail enforcement licensing as determined by Section 53-11-115;

133 (3) concealed firearm permit as determined by Section 53-5-707;

134 (4) expungement certificate of eligibility as determined by Section 77-18-11;

135 (5) firearm purchase background check as determined by Section 76-10-526;

136 (6) name check as determined by Section 53-10-108;

137 (7) private investigator licensing as determined by Section 53-9-111; and

138 (8) right of access as determined by Section 53-10-108.

139 Section 4. Section **76-10-526** is amended to read:

140 **76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**

141 **Exemption for concealed firearm permit holders.**

142 (1) A criminal background check required by this section shall only apply to the purchase
143 of a handgun until federal law requires the background check to extend to other firearms.

144 (2) At the time that federal law extends the criminal background check requirement to
145 other firearms, the division shall make rules to extend the background checks required under this
146 section to the other firearms.

147 (3) For purposes of this section, "valid permit to carry a concealed firearm" does not
148 include a temporary permit issued pursuant to Section 53-5-705.

149 (4) To establish personal identification and residence in this state for purposes of this part,
150 a dealer shall require any person receiving a firearm to present:

151 (a) one photo identification on a form issued by a governmental agency of the state; and

152 (b) one other documentation of residence which must show an address identical to that
153 shown on the photo identification form.

154 (5) A criminal history background check is required for the sale of a firearm by a licensed
155 firearm dealer in the state.

156 (6) Any person, except a dealer, purchasing a firearm from a dealer shall consent in writing
157 to a criminal background check, on a form provided by the division. The form shall also contain
158 the following information:

159 (a) the dealer identification number;

160 (b) the name and address of the person receiving the firearm;

161 (c) the date of birth, height, weight, eye color, and hair color of the person receiving the
162 firearm; and

163 (d) the Social Security number or any other identification number of the person receiving
164 the firearm.

165 (7) (a) The dealer shall send the form required by Subsection (6) to the division
166 immediately upon its completion.

167 (b) No dealer shall sell or transfer any firearm to any person until the dealer has provided
168 the division with the information in Subsection (6) and has received approval from the division
169 under Subsection (8).

170 (8) The dealer shall make a request for criminal history background information by
171 telephone or other electronic means to the division and shall receive approval or denial of the
172 inquiry by telephone or other electronic means.

173 (9) When the dealer **h [f] calls for [f]** **OR** **h requests** a criminal history background check,
173a the division
174 shall:

175 (a) review the criminal history files to determine if the person is prohibited from
176 purchasing, possessing, or transferring a firearm by state or federal law;

177 (b) inform the dealer that:

178 (i) the criminal record indicates the person is so prohibited; or

179 (ii) the person is approved for purchasing, possessing, or transferring a firearm;

180 (c) provide the dealer with a unique transaction number for that inquiry; and

181 (d) provide a response to the requesting dealer **h [f] during the call for a criminal**
181a **background,**

182 **or by return call [f] , OR OTHER ELECTRONIC MEANS,** **h** without delay, except in case of electronic
182a failure or other circumstances beyond

183 the control of the division, the division shall advise the dealer of the reason for such delay and give
184 the dealer an estimate of the length of such delay.

185 (10) The division shall not maintain any records of the criminal history background check
186 longer than 20 days from the date of the dealer's request if the division determines that the person
187 receiving the gun is not prohibited from purchasing, possessing, or transferring the firearm under
188 state or federal law. However, the division shall maintain a log of requests containing the dealer's
189 federal firearms number, the transaction number, and the transaction date for a period of 12
190 months.

191 (11) If the criminal history background check discloses information indicating that the
192 person ~~[receiving]~~ attempting to purchase the firearm is ~~h [f]~~ **prohibited from purchasing,**
192a **possessing,**
193 **or transferring a firearm [f] ~~[wanted by law enforcement]~~ h** , the division shall inform the [chief]
193a law
194 enforcement ~~[officer]~~ agency in the jurisdiction ~~h [f]~~ **where the person resides [f] ~~[of the attempted~~**
195 **purchase] h** .

196 (12) If a person is denied the right to purchase a firearm under this section, the person may
197 review his criminal history information and may challenge or amend the information as provided
198 in Section 53-10-108.

199 (13) The division shall make rules as provided in Title 63, Chapter 46a, Utah
200 Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records
201 provided by the division pursuant to this part are in conformance with the requirements of the
202 Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

203 (14) (a) ~~h [f]~~ **All dealers shall collect a [f] h** ~~fee established by the division in accordance~~
203a ~~with~~
204 ~~Section 63-38-3.2 for every] h [The] h~~ criminal history background check ~~[done pursuant to this~~
204a ~~part.~~
205 ~~Until changed by the division through this process, the] fee [shall be \$7.50] h WHICH h is h [\$15]~~
205a **\$7.50 h** . This fee
206 remains in effect until changed by the division through the process under Section 63-38-3.2.

207 (b) The dealer shall forward at one time all fees collected for criminal history background
208 checks performed during the month to the division by the last day of the month following the sale
209 of a firearm. The division ~~[may retain]~~ shall deposit the fees in the General Fund as dedicated
210 credits to cover the cost of administering and conducting the criminal history background check
211 program.

212 (15) A person with a concealed firearm permit issued pursuant to Title 53, Chapter 5, Part
213 7, Concealed Weapon Act, shall be exempt from the background check and corresponding fee

214 required in this section for the purchase of a firearm if:

215 (a) the person presents his concealed firearm permit to the dealer prior to purchase of the
216 firearm; and

217 (b) the dealer verifies with the division that the person's concealed firearm permit is valid.

218 Section 5. Section **77-18-11** is amended to read:

219 **77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Fee --**
220 **Notice -- Written evaluation -- Objections -- Hearing.**

221 (1) A person convicted of a crime may petition the convicting court for an expungement
222 of the record of conviction.

223 (2) (a) The court shall require receipt of a certificate of eligibility issued by the division
224 under Section 77-18-12.

225 (b) The fee for each certificate of eligibility is \$25. This fee remains in effect until
226 changed by the division through the process under Section 63-38-3.2.

227 (c) Funds generated under Subsection (2)(b) shall be deposited in the General Fund as a
228 dedicated credit by the department to cover the costs incurred in providing the information.

229 (3) The petition and certificate of eligibility shall be filed with the court and served upon
230 the prosecuting attorney and the Department of Corrections.

231 (4) A victim shall receive notice of a petition for expungement if, prior to the entry of an
232 expungement order, the victim or, in the case of a minor or a person who is incapacitated or
233 deceased, the victim's next of kin or authorized representative, submits a written and signed
234 request for notice to the office of the Department of Corrections in the judicial district in which
235 the crime occurred or judgment was entered.

236 (5) The Department of Corrections shall serve notice of the expungement request by
237 first-class mail to the victim at the most recent address of record on file with the department. The
238 notice shall include a copy of the petition, certificate of eligibility, and statutes and rules applicable
239 to the petition.

240 (6) The court in its discretion may request a written evaluation by Adult Parole and
241 Probation of the Department of Corrections.

242 (a) The evaluation shall include a recommendation concerning the petition for
243 expungement.

244 (b) If expungement is recommended, the evaluation shall include certification that the

245 petitioner has completed all requirements of sentencing and probation or parole and state any
246 rationale that would support or refute consideration for expungement.

247 (c) The conclusions and recommendations contained in the evaluation shall be provided
248 to the petitioner and the prosecuting attorney.

249 (7) If the prosecuting attorney or a victim submits a written objection to the court
250 concerning the petition within 30 days after service of the notice, or if the petitioner objects to the
251 conclusions and recommendations in the evaluation within 15 days after receipt of the conclusions
252 and recommendations, the court shall set a date for a hearing and notify the prosecuting attorney
253 for the jurisdiction, the petitioner, and the victim of the date set for the hearing.

254 (8) Any person who has relevant information about the petitioner may testify at the
255 hearing.

256 (9) The prosecuting attorney may respond to the court with a recommendation or objection
257 within 30 days.

258 (10) If an objection is not received under Subsection (7), the expungement may be granted
259 without a hearing.

260 (11) A court may not expunge a conviction of a:

- 261 (a) capital felony;
- 262 (b) first degree felony;
- 263 (c) second degree forcible felony; or
- 264 (d) any sexual act against a minor.

265 Section 6. Section **77-18-15** is amended to read:

266 **77-18-15. Retention of expunged records -- Agencies.**

267 (1) The division shall keep, index, and maintain all expunged records of arrests and
268 convictions.

269 ~~[(2) The division may charge a petitioner a reasonable fee for processing an expungement~~
270 ~~order under Section 63-38-3.]~~

271 ~~[(3)]~~ (2) Employees of the division may not divulge any information contained in its index
272 to any person or agency without a court order, except to the following:

- 273 (a) the Board of Pardons and Parole;
- 274 (b) the Peace Officer Standards and Training;
- 275 (c) federal authorities, unless prohibited by federal law;

276 (d) the Division of Occupational and Professional Licensing; and

277 (e) the State Office of Education.

278 [~~4~~] (3) The division may also use the information in its index for the purpose of
279 establishing good character for issuance of a concealed firearm permit as provided in Section
280 53-5-704.

281 [~~5~~] (4) A person whose records are released under Subsection [~~3~~] (2) shall be given a
282 reasonable opportunity by the recipient agency to challenge and explain any information in the
283 records and to challenge the relevancy of that information before a final determination is made by
284 the agency.

285 [~~6~~] (5) A court may permit inspection or release of an expunged record only upon
286 petition by the person who is the subject of the record and only to the persons named in the
287 petition.

288 [~~7~~] (6) (a) For judicial sentencing, a court may order any records sealed under this section
289 to be opened and admitted into evidence.

290 (b) The records are confidential and are available for inspection only by the court, parties,
291 counsel for the parties, and any other person who is authorized by the court to inspect them.

292 (c) At the end of the action or proceeding, the court shall order the records sealed again.

293 [~~8~~] (7) Records released under this section are classified as protected under [~~Subsection~~]
294 Section 63-2-304[~~8~~] and are accessible only as provided under Title 63, Chapter 2, Part 2, Access
295 to Records.

296 Section 7. **Effective date.**

297 This act takes effect on July 1, 1999.

Legislative Review Note
as of 1-13-99 9:44 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel