

1                   **EXPUNGEMENT OF ADMINISTRATIVE DISCIPLINARY**

2                                   **ACTION**

3   2014 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Brian M. Greene**

6                                   Senate Sponsor: \_\_\_\_\_

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8 **LONG TITLE**

9 **General Description:**

10           This bill provides for the expungement of agency records related to a licensee under  
11 certain circumstances.

12 **Highlighted Provisions:**

13           This bill:

14           ▶ defines terms;

15           ▶ provides that a licensee may apply for expungement of records related to  
16 disciplinary action previously taken by an agency against the individual under  
17 certain circumstances, including that the individual:

18                   • currently holds an unrestricted license;

19                   • has had no disciplinary action against the license for at least three years; and

20                   • has fully complied with agency requirements regarding previous disciplinary  
21 action;

22           ▶ describes the application and fee requirements for seeking the expungement of  
23 agency records related to action taken by the agency; and

24           ▶ provides that records expunged under this legislation may still be used internally by  
25 the agency, shared with law enforcement, the courts, and as directed by court order.

26 **Money Appropriated in this Bill:**

27           None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 ENACTS:

32 **63G-4-701**, Utah Code Annotated 1953

33 **63G-4-702**, Utah Code Annotated 1953

34 **63G-4-703**, Utah Code Annotated 1953

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

37 Section 1. Section **63G-4-701** is enacted to read:

38 **Part 7. Expungement of Administrative Disciplinary Action**

39 **63G-4-701. Title -- Relationship to Utah Expungement Act.**

40 (1) This part is known as the "Expungement of Administrative Disciplinary Action."

41 (2) The provisions of this part do not affect or supercede the expungement of a record  
42 under Title 77, Chapter 40, Utah Expungement Act.

43 Section 2. Section **63G-4-702** is enacted to read:

44 **63G-4-702. Definitions.**

45 As used in this part:

46 (1) (a) "Disciplinary action" means, subject to the limitations described in Section  
47 63G-4-102, state agency action against the interest of an individual ~~H→ [that determines]~~

47a relating to ~~←H~~ a legal  
48 right, duty, privilege, immunity, or other legal interest of an individual, including agency action  
49 to deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license.

50 (b) "Disciplinary action" does not include an investigation, detention, or conviction by  
51 law enforcement or a court.

52 (2) "Eligible petitioner" means a licensee who was previously the subject of  
53 disciplinary action by an agency but who:

54 (a) currently holds an unrestricted license for the same occupation or profession to  
55 which the disciplinary action pertains;

56 (b) has not been the subject of disciplinary action during the preceding three years; and

57 (c) has fully complied with agency requirements regarding previous disciplinary action.

58 (3) ~~H→~~ (a) ~~←H~~ "Expunge" means to ~~H→~~ ~~[seal or otherwise]~~ ~~←H~~ prevent public access to  
58a agency records

59 regarding the agency's disciplinary action against an eligible petitioner ~~to~~ **, including preventing**  
 59a **public access via an electronic database** ~~to~~ .

59b ~~to~~ **(b) "Expunge" does not preclude the release of agency records in response to a records**  
 59c **request made in accordance with Title 63G, Chapter 2, "Government Records Access and**  
 59d **Management Act."** ~~to~~

60 (4) "Qualifying record" means a record of an agency regarding disciplinary action that  
 61 was a final agency action at least three years before an eligible petitioner applies to the agency  
 62 for expungement of the record under this part.

63 Section 3. Section **63G-4-703** is enacted to read:

64 **63G-4-703. Expungement of disciplinary action.**

65 (1) Except as provided in Subsection (2), within 30 days after the day on which an  
 66 agency receives an application for expungement from an eligible petitioner, the agency shall  
 67 expunge the qualifying record of the eligible petitioner if:

68 (a) the petitioner applies to the agency for expungement in a form established by  
 69 agency rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;  
 70 and

71 (b) the petitioner pays an application fee determined by the agency under Section  
 72 [63J-1-504](#).

73 (2) Within 30 days after the day on which an agency receives an application for  
 74 expungement, the agency head, or the agency head's designee, may deny the application if:

75 (a) the petitioner filing the application is not an eligible petitioner;

76 (b) the record identified for expungement is not a qualifying record;

77 (c) the petitioner provides false information on the application;

78 (d) the record for which expungement is sought relates to criminal conduct that  
 79 resulted in a conviction that has not been expunged in accordance with Title 77, Chapter 40,  
 80 Utah Expungement Act; or

81 (e) the agency head, or the agency head's designee, determines that expungement  
 82 would endanger the health or safety of the public.

83 (3) If the agency head, or the agency head's designee, denies an application for  
 84 expungement under Subsection (2), the agency shall provide a written explanation of the denial  
 85 to the petitioner.

86 (4) If the agency does not provide a written explanation of a denial or otherwise  
 87 respond to a petitioner within 30 days after the day on which the agency receives an application  
 88 for expungement, the agency shall expunge the qualifying record of an eligible petitioner.

89 (5) An eligible petitioner whose application for expungement is denied as described in

90 Subsection (2) may seek judicial review of the decision in accordance with Section [63G-4-401](#).  
91 (6) Notwithstanding the provisions of this part, a record expunged under this part may  
92 be:  
93 (a) used internally by the agency;  
94 (b) shared by the agency with law enforcement or a court; and  
95 (c) distributed by the agency as directed by court order.  
96 (7) Within three years after the expungement of a record under this part, the agency  
97 head, or the agency head's designee, may rescind the expungement of an expunged record if:  
98 (a) an additional and final record of disciplinary action is entered against the eligible  
99 petitioner; or  
100 (b) the agency determines that material information provided in the petitioner's  
101 application for expungement was false.

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**Legislative Review Note**  
**as of 2-10-14 4:56 PM**

**Office of Legislative Research and General Counsel**