

EXPUNGEMENT AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Mark B. Madsen

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

General Description:

This bill makes specific changes regarding the expungement of information in state agency files and creates a statement of legislative intent with regard to expungement.

Highlighted Provisions:

This bill:

- ▶ requires that the Division of Occupational and Professional Licensing remove information regarding expunged convictions from public databases;
- ▶ creates a statement of legislative intent for expungement; and
- ▶ provides a stated purpose for expungement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-106, as last amended by Laws of Utah 2008, Chapter 382

77-40-101, as enacted by Laws of Utah 2010, Chapter 283

77-40-108, as last amended by Laws of Utah 2013, Chapters 20 and 41



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

Section 1. Section **58-1-106** is amended to read:

58-1-106. Division -- Duties, functions, and responsibilities.

(1) The duties, functions, and responsibilities of the division include the following:

(a) prescribing, adopting, and enforcing rules to administer this title;

(b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;

(c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or by the director's designee;

(d) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;

(e) seeking injunctions and temporary restraining orders to restrain unauthorized activity;

(f) giving public notice of board meetings;

(g) keeping records of board meetings, proceedings, and actions and making those records available for public inspection upon request;

(h) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license;

(i) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;

(j) preparing and submitting to the executive director a budget of the expenses for the division;

(k) establishing the time and place for the administration of examinations; and

(l) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.

(2) The division may not include home telephone numbers or home addresses of licensees on the lists prepared under Subsection (1)(l), except as otherwise provided by rules of

59 the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
60 Act.

61 (3) (a) The division may provide the home address or home telephone number of a
62 licensee on a list prepared under Subsection (1) upon the request of an individual who provides
63 proper identification and the reason for the request, in writing, to the division.

64 (b) A request under Subsection (3)(a) is limited to providing information on only one
65 licensee per request.

66 (c) The division shall provide, by rule, what constitutes proper identification under
67 Subsection (3)(a).

68 (4) The division shall insure that information expunged in accordance with Title 77,
69 Chapter 40, Utah Expungement Act, is removed from any database available to the public.

70 Section 2. Section **77-40-101** is amended to read:

71 **77-40-101. Title -- Purpose -- Legislative intent.**

72 (1) This chapter is known as the "Utah Expungement Act."

73 (2) The Legislature recognizes that an individual who has committed a criminal act and
74 paid his or her debt to society should, under certain circumstances, be able to move forward
75 and rebuild their life without being hindered by the past.

76 (3) The Legislature, therefore, finds and declares the following:

77 (a) The inability to obtain an expungement can prevent certain individuals from
78 obtaining gainful employment; however the need for employment should be balanced
79 appropriately against the desire for public safety.

80 (b) It is the intent of the Legislature that allowing for the expungement of certain
81 criminal offenses will provide an opportunity to:

82 (i) break the cycle of criminal recidivism;

83 (ii) increase public safety;

84 (iii) assist the growing population of offenders reentering the community to establish a
85 self-sustaining life through opportunities in employment; and

86 (iv) restore certain civil liberties to offenders to allow them to fully participate in
87 society.

88 (c) This chapter provides for the expungement of certain arrest and conviction records
89 under limited circumstances. Obtaining an expungement of these records allows for the

90 removal of a record from public access but does not result in the destruction of the record. An
91 expunged record remains available for use in accordance with Sections [77-40-109](#) and
92 [77-40-110](#).

93 (d) This chapter further requires that state agencies remove or redact certain identifying
94 information from their public records and maintain that information only for internal record
95 keeping purposes to preserve the integrity of the agency's files.

96 Section 3. Section **77-40-108** is amended to read:

97 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**

98 **Administrative proceedings -- Bureau requirements.**

99 (1) (a) A person who receives an order of expungement under this chapter or Section
100 [77-27-5.1](#) shall be responsible for delivering a copy of the order of expungement to all affected
101 criminal justice agencies and officials including the court, arresting agency, booking agency,
102 prosecuting agency, Department of Corrections, and the bureau.

103 (b) A person who receives an order of expungement under Section [77-27-5.1](#), shall pay
104 a processing fee to the bureau, established in accordance with the process in Section [63J-1-504](#),
105 before the bureau's record may be expunged.

106 (2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to
107 respond differently, a person who has received an expungement of an arrest or conviction
108 under this chapter or Section [77-27-5.1](#), may respond to any inquiry as though the arrest or
109 conviction did not occur.

110 (3) The bureau shall forward a copy of the expungement order to the Federal Bureau of
111 Investigation.

112 (4) An agency receiving an expungement order shall expunge or redact the petitioner's
113 identifying information contained in records in its possession or under its control relating to the
114 incident for which expungement is ordered. The agency may retain the expunged or redacted
115 information internally in its files, however the information may not be made available to the
116 public or any other agency except as allowed under Sections [77-40-109](#) and [77-40-110](#).

117 (5) Unless ordered by a court to do so, or in accordance with Subsection [77-40-109](#)(2),
118 a government agency or official may not divulge information or records which have been
119 expunged regarding the petitioner contained in a record of arrest, investigation, detention, or
120 conviction after receiving an expungement order.

121 (6) (a) An order of expungement may not restrict an agency's use or dissemination of
122 records in its ordinary course of business until the agency has received a copy of the order.

123 (b) Any action taken by an agency after issuance of the order but prior to the agency's
124 receipt of a copy of the order may not be invalidated by the order.

125 (7) An order of expungement may not:

126 (a) terminate or invalidate any pending administrative proceedings or actions of which
127 the petitioner had notice according to the records of the administrative body prior to issuance of
128 the expungement order;

129 (b) affect the enforcement of any order or findings issued by an administrative body
130 pursuant to its lawful authority prior to issuance of the expungement order; or

131 (c) remove any evidence relating to the petitioner including records of arrest, which the
132 administrative body has used or may use in these proceedings.

Legislative Review Note

as of 12-19-14 4:46 PM

Office of Legislative Research and General Counsel