

## HB0040S03 compared with HB0040S01

~~deleted text~~ shows text that was in HB0040S01 but was deleted in HB0040S03.

inserted text shows text that was not in HB0040S01 but was inserted into HB0040S03.

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Senator Mark B. Madsen proposes the following substitute bill:

### EXPUNGEMENT AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: Mark B. Madsen

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#### LONG TITLE

##### 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:

- ▶ creates a new definition of "expunge":
- ▶ requires that an administrative agency 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

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### 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~~

77-40-102, as last amended by Laws of Utah 2014, Chapter 199

77-40-107, as last amended by Laws of Utah 2014, Chapter 263

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}~~77-40-101 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;~~

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~~—— (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 the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

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

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

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

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

~~—— Section 2. Section ~~77-40-101~~ is amended to read:~~

~~‡ **77-40-101. Title -- Purpose -- Legislative intent.**~~

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

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

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

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

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

(i) break the cycle of criminal recidivism;

(ii) increase public safety;

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

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

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

Section 2. Section 77-40-102 is amended to read:

### **77-40-102. Definitions.**

As used in this chapter:

~~[(1) "Administrative finding" means a decision upon a question of fact reached by an administrative agency following an administrative hearing or other procedure satisfying the requirements of due process.]~~

(1) "Administrative record" means a record, other than a criminal record, that is related to an investigation, arrest, detention, or conviction for which an expungement has been ordered.

(2) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.

(3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.

(4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

(5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(6) "Department" means the Department of Public Safety established in Section

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53-1-103.

(7) "Drug possession offense" means an offense under:

(a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana, any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another;

(b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

(c) Section 58-37b-6, possession or use of an imitation controlled substance; or

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (7).

(8) "Expunge" means to ~~seal or otherwise restrict access to the~~ completely remove from a law enforcement agency's records the petitioner's record ~~held by an agency~~ when the record includes reference to a criminal investigation, detention, arrest, or conviction.

(9) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

(10) "Petitioner" means a person seeking expungement under this chapter.

(11) "Seal" means to restrict public access to a petitioner's administrative record or the relevant portion of the petitioner's administrative record held by a state agency.

~~(11)~~ (12) "Traffic offense" means all offenses in the following parts and all local ordinances that are substantially similar to the offenses:

(a) Title 41, Chapter 6a, Part 3, Traffic-Control Devices;

(b) Title 41, Chapter 6a, Part 6, Speed Restrictions;

(c) Title 41, Chapter 6a, Part 7, Driving on Right Side of Highway and Passing;

(d) Title 41, Chapter 6a, Part 8, Turning and Signaling for Turns;

(e) Title 41, Chapter 6a, Part 9, Right-of-Way;

(f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;

(g) Title 41, Chapter 6a, Part 11, Bicycles, Regulation of Operation;

(h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and Safety Zones;

(i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;

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- (j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;
- (k) Title 41, Chapter 6a, Part 15, Special Vehicles;
- (l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;
- (m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and
- (n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.

Section 3. Section 77-40-107 is amended to read:

**77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing -- Standard of proof -- Exception.**

(1) The petitioner shall file a petition for expungement and the certificate of eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency and any state agencies, if applicable, that ~~issued~~ maintain administrative ~~findings~~ records relating to the incident for which expungement is sought. If the certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. If the original certificate is filed with the petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

(2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

(b) The notice shall include a copy of the petition, certificate of eligibility, statutes and rules applicable to the petition, state that the victim has a right to object to the expungement, and provide instructions for registering an objection with the court.

(3) The prosecuting attorney [~~and~~], the victim, and any state agencies that ~~issued~~ maintain administrative ~~findings~~ records relating to the incident for which expungement is sought, if applicable, may respond to the petition by filing a recommendation or objection with the court within 30 days after receipt of the petition.

(4) (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

(b) If requested, the response prepared by Adult Probation and Parole shall include:

- (i) the reasons probation was terminated; and
- (ii) certification that the petitioner has completed all requirements of sentencing and

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probation or parole.

(c) A copy of the response shall be provided to the petitioner and the prosecuting attorney.

(5) The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by Adult Probation and Parole within 15 days after receipt.

(6) (a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner ~~[and]~~, the prosecuting attorney, and any state agencies that ~~{issued}~~ maintain administrative ~~{findings}~~ records relating to the incident for which expungement is sought of the date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the hearing.

(b) The petitioner, the prosecuting attorney, the victim, any state agencies that ~~{issued}~~ maintain administrative ~~{findings}~~ records relating to the incident for which expungement is sought, and any other person who has relevant information about the petitioner may testify at the hearing.

(c) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

(7) If no objection is received within 60 days from the date the petition for expungement was filed with the court, the expungement may be granted without a hearing.

(8) The court shall issue an order of expungement if it finds by clear and convincing evidence that:

(a) the petition and certificate of eligibility are sufficient;

(b) the statutory requirements have been met;

(c) if the petitioner seeks expungement of drug possession offenses allowed under Subsection 77-40-105(5), the petitioner is not illegally using controlled substances and is successfully managing any substance addiction; and

(d) it is not contrary to the interests of the public to grant the expungement.

(9) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

Section 4. Section **77-40-108** is amended to read:

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

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### Administrative proceedings -- Bureau requirements -- Agency action.

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

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

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

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

(4) ~~[An agency]~~ Within 30 days of receiving an expungement order an agency shall expunge ~~for redact~~ all qualifying criminal records and seal the petitioner's ~~identifying information contained in~~ administrative records in its possession or under its control, ~~including administrative findings,~~ relating to the incident or conviction for which expungement is ordered. ~~{ }~~

(a) If the investigation, arrest, detention, or conviction resulted from an agency's investigation or referral to law enforcement, all administrative records which pertain to the act or series of acts which were investigated by the agency and led to the referral shall be sealed.

(b) If the investigation, arrest, detention, or conviction was not based upon the agency's investigation or referral and the agency suspends or revokes a petitioner's credential, all administrative records of the action and resulting administrative action shall be sealed. The public record may reflect that the credential is invalid.

(c) If the agency was not involved in the investigation, prosecution, or conviction, and the petitioner maintained a credential for the duration of the process, all administrative records shall be sealed.

(5) (a) Sealed administrative records maintained by an agency to preserve the integrity of the agency's files may be referenced and considered if the petitioner seeks, at a subsequent

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time, to reinstate a credential suspended or revoked by the agency in the same field as the credential the petitioner held at the time of the investigation, arrest, detention, or conviction.

(b) The agency may retain the ~~original information~~ administrative record internally in its files, however the information may not be made available to the public ~~or any other agency except as allowed under Sections 77-40-109 and 77-40-110.~~

~~(5)~~

(6) The agency shall insure that any information or record subject to the provisions of this section is removed from any state-controlled database available to the public.

~~(5)~~ (7) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2), a government agency or official may not divulge information or records which have been expunged or sealed regarding the petitioner contained in a record of arrest, investigation, detention, ~~{}~~ or ~~{}~~ conviction ~~, or administrative findings~~ after receiving an expungement order.

~~(6)~~ (8) (a) An order of expungement may not restrict an agency's use or dissemination of records in its ordinary course of business until the agency has received a copy of the order.

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

~~(7)~~ (9) An order of expungement may not:

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

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

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