

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 \$35 at the time of filing [his] an application.

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

(3) The replacement fee for the permit is \$10.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The waiver must notify the signee:

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

(ii) who will see the information; and

(iii) how the information will be used.

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

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

and

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

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

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

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

(ii) respond to any information received.

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

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

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

(iii) These fees remain in effect until changed by the division through the process under Section 63-38-3.2.

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

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

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

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

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

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

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

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

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

~~[(b)]~~ (c) (i) The commissioner shall establish procedures for an individual to challenge the

completeness and accuracy of criminal history record information contained in the division's computerized criminal history files regarding that individual.

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

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

(a) shall be charged for access; and

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

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

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

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

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

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

The bureau shall collect fees for the following services:

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

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

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

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

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

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

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

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

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

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

Exemption for concealed firearm permit holders.

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

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

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

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

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

(b) one other documentation of residence which must show an address identical to that shown

on the photo identification form.

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

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

(a) the dealer identification number;

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

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

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

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

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

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

telephone or other electronic means.

(9) When the dealer calls for or requests a criminal history background check, the division shall:

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

(b) inform the dealer that:

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

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

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

(d) provide a response to the requesting dealer during the call for a criminal background, or by return call, or other electronic means, without delay, except in case of electronic failure or other circumstances beyond the control of the division, the division shall advise the dealer of the reason for such delay and give the dealer an estimate of the length of such delay.

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

(11) If the criminal history background check discloses information indicating that the person [receiving] attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the division shall inform the [chief] law enforcement [officer] agency in the jurisdiction where the person resides.

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

(13) The division shall make rules as provided in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the division pursuant to this part are in conformance with the requirements of the Brady Handgun

Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

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

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

(15) A person with a concealed firearm permit issued pursuant to Title 53, Chapter 5, Part 7, Concealed Weapon Act, shall be exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If expungement is recommended, the evaluation shall include certification that the petitioner has completed all requirements of sentencing and probation or parole and state any rationale that would support or refute consideration for expungement.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the Board of Pardons and Parole;
- (b) the Peace Officer Standards and Training;
- (c) federal authorities, unless prohibited by federal law;
- (d) the Division of Occupational and Professional Licensing; and
- (e) the State Office of Education.

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

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

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

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

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

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

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

Section 7. **Effective date.**

This act takes effect on July 1, 1999.