

## HB0366S01 compared with HB0366

~~text~~ shows text that was in HB0366 but was deleted in HB0366S01.

text shows text that was not in HB0366 but was inserted into HB0366S01.

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Representative Eric K. Hutchings proposes the following substitute bill:

### EXPUNGEMENT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

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

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#### LONG TITLE

##### General Description:

This bill amends provisions related to the issuance of an expungement order.

##### Highlighted Provisions:

This bill:

- ▶ includes ~~administrative and civil findings and records of state agencies in the definition of an expungement~~; the Department of Insurance in the list of agencies allowed to access expunged files;
- ▶ prohibits agencies authorized to access expunged records in certain circumstances from revealing or releasing any information related to the expunged record; and
- ▶ provides for the Board of Pardons and Parole to issue an order of expungement when granting a pardon.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**77-27-5.1**, as enacted by Laws of Utah 2013, Chapter 41

**77-40-102**, as last amended by Laws of Utah 2013, Chapter 41

**77-40-105**, as last amended by Laws of Utah 2013, Chapter 41

**77-40-109**, as last amended by Laws of Utah 2013, Chapter 41

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

Section 1. Section **77-27-5.1** is amended to read:

**77-27-5.1. Board authority to order expungement.**

(1) Upon granting a pardon [~~for one or more convictions~~], the board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.

(2) An expungement order, issued by the board, has the same legal effect and authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah Expungement Act.

(3) The board shall provide clear written directions to the recipient along with a list of agencies known to be affected by the expungement order.

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.

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

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(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 ~~[which]~~ 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 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 petitioner's record ~~[of arrest, investigation, detention, or conviction]~~ held by an agency~~[-]~~ when the record includes ~~†~~

~~\_\_\_\_\_ (a) † a criminal investigation, detention, arrest, or conviction †; or~~

~~\_\_\_\_\_ (b) an administrative or civil adjudication or finding related to a conviction the petitioner is seeking to expunge †.~~

(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) "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;

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- (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;
- (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 **77-40-105** is amended to read:

### **77-40-105. Eligibility for expungement of conviction -- Requirements.**

- (1) A person convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.
- (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:
  - (a) the conviction for which expungement is sought is:
    - (i) a capital felony;
    - (ii) a first degree felony;
    - (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);
    - (iv) felony automobile homicide;
    - (v) a felony violation of Subsection 41-6a-501(2); or
    - (vi) a registerable sex offense as defined in Subsection 77-41-102(16);
  - (b) a criminal proceeding is pending against the petitioner; or
  - (c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.
- (3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

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(a) all fines and interest ordered by the court have been paid in full;

(b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, excluding infractions and any traffic offenses, each of which is contained in a separate criminal episode.

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is

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contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection (4) if any non drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode.

(7) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to ~~[a certificate of eligibility]~~ an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

Section 4. Section 77-40-109 is amended to read:

### **77-40-109. Retention and release of expunged records -- Agencies.**

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

(2) (a) Employees of the bureau may not divulge any information contained in its index to any person or agency without a court order unless specifically authorized by statute.

(b) The following organizations may receive information contained in expunged records from the bureau upon specific request:

~~[(a)]~~ (i) the Board of Pardons and Parole;

~~[(b)]~~ (ii) Peace Officer Standards and Training;

~~[(c)]~~ (iii) federal authorities, unless prohibited by federal law;

~~[(d)]~~ ~~[(iv)]~~ the Division of Occupational and Professional Licensing; and ]

(iv) the Department of Commerce;

(v) the Department of Insurance; and

~~[(e)]~~ ~~[(v)]~~ (vi) the State Office of Education.

(c) A person or agency authorized by this Subsection (2) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court order or specific request, including distribution on a public website.

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(3) The bureau may also use the information in its index as provided in Section 53-5-704.

(4) If, after obtaining an expungement, the petitioner is charged with a felony, the state may petition the court to open the expunged records upon a showing of good cause.

(5) (a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 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 expunged again.

(d) Any person authorized by this Subsection (5) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court.

(6) Records released under this chapter are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records.

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**Legislative Review Note**

~~as of 2-17-14 1:50 PM~~

~~Office of Legislative Research and General Counsel~~