

EXPUNGEMENT OF ADMINISTRATIVE DISCIPLINARY

ACTION

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a licensee may apply for expungement of records related to disciplinary action previously taken by an agency against the individual under certain circumstances, including that the individual:
 - currently holds an unrestricted license;
 - has had no disciplinary action against the license for at least three years; and
 - has fully complied with agency requirements regarding previous disciplinary action;
- ▶ describes the application and fee requirements for seeking the expungement of agency records related to action taken by the agency; and
- ▶ provides that records expunged under this legislation may still be used internally by the agency, shared with law enforcement, the courts, and as directed by court order.

Money Appropriated in this Bill:

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 that determines 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) "Expunge" means to seal or otherwise prevent public access to agency records

59 regarding the agency's disciplinary action against an eligible petitioner.

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.

Legislative Review Note

as of 2-10-14 4:56 PM

Office of Legislative Research and General Counsel