

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

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:

- ▶ 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

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

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



26 **77-40-108**, as last amended by Laws of Utah 2013, Chapters 20 and 41

27

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

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

30 **58-1-106. Division -- Duties, functions, and responsibilities.**

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

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

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

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

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

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

44 (f) giving public notice of board meetings;

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

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

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

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

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

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

56 (2) The division may not include home telephone numbers or home addresses of

57 licensees on the lists prepared under Subsection (1)(l), except as otherwise provided by rules of
58 the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
59 Act.

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

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

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

67 (4) The division shall insure that information expunged in accordance with Title 77,
68 Chapter 40, Utah Expungement Act, is removed from any state-controlled database available to
69 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 Section 3. Section 77-40-107 is amended to read:

89 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
90 **Standard of proof -- Exception.**

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

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

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

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

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

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

112 (i) the reasons probation was terminated; and

113 (ii) certification that the petitioner has completed all requirements of sentencing and
114 probation or parole.

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

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

119 receipt.

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

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

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

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

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

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

135 (b) the statutory requirements have been met;

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

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

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

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

143 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**
144 **Administrative proceedings -- Bureau requirements.**

145 (1) (a) A person who receives an order of expungement under this chapter or Section
146 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected
147 criminal justice agencies and officials including the court, arresting agency, booking agency,
148 prosecuting agency, Department of Corrections, and the bureau.

149 (b) A person who receives an order of expungement under Section 77-27-5.1, shall pay

150 a processing fee to the bureau, established in accordance with the process in Section [63J-1-504](#),
151 before the bureau's record may be expunged.

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

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

158 (4) ~~[An agency]~~ Within 30 days of receiving an expungement order an agency shall
159 expunge or redact the petitioner's identifying information contained in records in its possession
160 or under its control, including administrative findings, relating to the incident for which
161 expungement is ordered. The agency may retain the original information internally in its files,
162 however the information may not be made available to the public or any other agency except as
163 allowed under Sections [77-40-109](#) and [77-40-110](#).

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

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

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

172 (7) An order of expungement may not:

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

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

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