

HB0040S02 compared with HB0040

~~{deleted text}~~ shows text that was in HB0040 but was deleted in HB0040S02.

inserted text shows text that was not in HB0040 but was inserted into HB0040S02.

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Senator Todd Weiler 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

~~{Committee Note:~~

~~— The Judiciary Interim Committee recommended this bill.~~

~~{~~**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 the ~~{Division of Occupational and Professional Licensing}~~ state agencies remove information regarding expunged convictions from public databases;
- ▶ creates a statement of legislative intent for expungement; and

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- ▶ 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~~

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

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

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;~~

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

~~— (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 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~~

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appropriately against the desire for public safety.

(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 provides for the expungement of certain arrest and conviction records under limited circumstances. Obtaining an expungement of these records allows for the complete removal of a record from ~~{public access but does not result in the destruction of the record. An expunged record remains available for use in accordance with Sections 77-40-109 and 77-40-110.~~

~~—— (d) 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.~~ all law enforcement agency databases.

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 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

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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~~ 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 access to a petitioner's record held by a law enforcement agency when the record includes a criminal investigation, detention, arrest, or conviction.

~~[(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;

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(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 **77-40-108** is amended to read:

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

Administrative proceedings -- Bureau requirements.

(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 receiving an expungement order shall expunge ~~for redact~~ the petitioner's identifying information contained in records in its possession or under its control relating to the incident for which expungement is ordered. The agency may retain the expunged or redacted information 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.

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~~(5)}~~

(5) The agency shall insure that information expunged in accordance with this chapter is removed from any state-controlled database available to the public.

~~(5)}~~ (6) 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 regarding the petitioner contained in a record of arrest, investigation, detention, or conviction after receiving an expungement order.

~~(6)}~~ (7) (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)}~~ (8) 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.

†

Legislative Review Note

~~as of 12-19-14 4:46 PM~~

~~Office of Legislative Research and General Counsel}~~