

EXPUNGEMENT CHANGES

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stewart E. Barlow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the labor code regarding employer inquiries into expunged criminal history.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits employer inquiry into an applicant's expunged criminal history, except in certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-52-102, as enacted by Laws of Utah 2017, Chapter 242

34-52-201, as enacted by Laws of Utah 2017, Chapter 242

ENACTS:

34-52-301, Utah Code Annotated 1953



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

29 Section 1. Section **34-52-102** is amended to read:

30 **34-52-102. Definitions.**

31 As used in this chapter:

32 (1) "Applicant" means an individual who provides information to a public employer for
33 the purpose of obtaining employment.

34 (2) (a) "Criminal conviction" means a verdict or finding of guilt after a criminal trial or
35 a plea of guilty or nolo contendere to a criminal charge.

36 (b) "Criminal conviction" does not include an expunged criminal conviction.

37 (3) (a) "Private employer" means a person who has one or more employees employed
38 in the same business, or in or about the same establishment, under any contract of hire, express
39 or implied, oral or written.

40 (b) "Private employer" does not include a public employer.

41 [~~3~~] (4) "Public employer" means an employer that is:

42 (a) the state or any administrative subunit of the state, including a department, division,
43 board, council, committee, institution, office, bureau, or other similar administrative unit of
44 state government;

45 (b) a state institution of higher education; or

46 (c) a municipal corporation, county, municipality, school district, local district, special
47 service district, or other political subdivision of the state.

48 Section 2. Section **34-52-201** is amended to read:

49 **34-52-201. Public employer requirements.**

50 (1) A public employer may not exclude an applicant from an initial interview because
51 of a past criminal conviction.

52 (2) A public employer excludes an applicant from an initial interview if the public
53 employer:

54 (a) requires an applicant to disclose, on an employment application, a criminal
55 conviction;

56 (b) requires an applicant to disclose, before an initial interview, a criminal conviction;

57 or

58 (c) if no interview is conducted, requires an applicant to disclose, before making a

59 conditional offer of employment, a criminal conviction.

60 (3) (a) A public employer may not make any inquiry related to an applicant's expunged
61 criminal history.

62 (b) An applicant may answer a question related to an expunged criminal record as
63 though the action underlying the expunged criminal record never occurred.

64 [~~3~~] (4) Subject to Subsections (1) [~~and (2)~~] through (3), nothing in this section
65 prevents [~~an~~] a public employer from:

66 (a) asking an applicant for information about an applicant's criminal conviction history
67 during an initial interview or after an initial interview; or

68 (b) considering an applicant's conviction history when making a hiring decision.

69 [~~4~~] (5) Subsections (1) [~~and (2)~~] through (3) do not apply:

70 (a) if federal, state, or local law, including corresponding administrative rules, requires
71 the consideration of an applicant's criminal conviction history;

72 (b) to a public employer that is a law enforcement agency;

73 (c) to a public employer that is part of the criminal or juvenile justice system;

74 (d) to a public employer seeking a nonemployee volunteer;

75 (e) to a public employer that works with children or vulnerable adults;

76 (f) to the Department of Alcoholic Beverage Control created in Section [32B-2-203](#);

77 (g) to the State Tax Commission; and

78 (h) to a public employer whose primary purpose is performing financial or fiduciary
79 functions.

80 Section 3. Section **34-52-301** is enacted to read:

81 **Part 3. Restrictions on Private Employers**

82 **34-52-301. Private employer requirements.**

83 (1) A private employer may not make any inquiry related to an applicant's expunged
84 criminal history.

85 (2) An applicant may answer a question related to an expunged criminal record as
86 though the action underlying the expunged criminal record never occurred.