

**Representative Stewart E. Barlow** proposes the following substitute bill:

**EXPUNGEMENT CHANGES**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stewart E. Barlow**

Senate Sponsor: Jani Iwamoto

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**LONG TITLE**

**General Description:**

This bill amends the labor code regarding an applicant's expunged criminal history.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits public employer inquiry into an applicant's expunged criminal history, except in certain circumstances;
- ▶ permits an applicant to answer a question related to an expunged criminal record as though the action underlying the expunged criminal record never occurred, 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



26 **34-52-201**, as enacted by Laws of Utah 2017, Chapter 242

27 ENACTS:

28 **34-52-301**, Utah Code Annotated 1953

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

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

32 **34-52-102. Definitions.**

33 As used in this chapter:

34 (1) "Applicant" means an individual who provides information to a public or private  
35 employer for the purpose of obtaining employment.

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

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

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

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

43 [~~3~~] (4) "Public employer" means an employer that is:

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

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

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

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

51 **34-52-201. Public employer requirements.**

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

54 (2) A public employer excludes an applicant from an initial interview if the public  
55 employer:

56 (a) requires an applicant to disclose, on an employment application, a criminal

57 conviction;

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

59 or

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

61 conditional offer of employment, a criminal conviction.

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

64 (b) An applicant seeking employment from a public employer may answer a question  
65 related to an expunged criminal record as though the action underlying the expunged criminal  
66 record never occurred.

67 [~~(3)~~] (4) Subject to Subsections (1) [~~and (2)~~] through (3), nothing in this section  
68 prevents [~~an~~] a public employer from:

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

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

72 [~~(4)~~] (5) Subsections (1) [~~and (2)~~] through (3) do not apply:

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

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

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

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

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

79 (f) to the Department of Alcoholic Beverage Control created in Section 32B-2-203;

80 (g) to the State Tax Commission; and

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

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

84 **Part 3. Applicants for Private Employment**

85 **34-52-301. Permitted applicant response regarding expunged criminal history.**

86 An applicant seeking employment from a private employer may answer a question  
87 related to an expunged criminal record as though the action underlying the expunged criminal

88 record never occurred.