

Representative Karianne Lisonbee proposes the following substitute bill:

EXPUNGEMENT FEE WAIVERS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the waiver of fees for expungement of a criminal record.

Highlighted Provisions:

This bill:

- ▶ defines the term "indigent" for purposes of a petition for expungement;
- ▶ repeals the suspension of the fee for a certificate of eligibility to qualify for expungement;
- ▶ modifies the date of the suspension of the fee to file a petition for expungement;
- ▶ requires the Bureau of Criminal Identification to waive the fee for a certificate of eligibility if a court finds that the individual filing the petition for expungement is indigent; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **63I-1-277**, as last amended by Laws of Utah 2022, Chapter 384 and last amended by
27 Coordination Clause, Laws of Utah 2022, Chapter 384

28 **63I-1-278**, as last amended by Laws of Utah 2022, Chapters 188, 318, 384, and 423

29 **77-40a-101**, as last amended by Laws of Utah 2022, Chapters 116, 430 and renumbered
30 and amended by Laws of Utah 2022, Chapter 250

31 **77-40a-301**, as enacted by Laws of Utah 2022, Chapter 250

32 **77-40a-304**, as last amended by Laws of Utah 2022, Chapter 384 and renumbered and
33 amended by Laws of Utah 2022, Chapter 250 and last amended by Coordination

34 Clause, Laws of Utah 2022, Chapter 384

35

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

37 Section 1. Section **63I-1-277** is amended to read:

38 **63I-1-277. Repeal dates: Title 77.**

39 [~~Subsection **77-40a-304**(5), regarding the suspension of issuance fees for certificates of~~
40 ~~eligibility, is repealed on July 1, 2023.~~]

41 Section 2. Section **63I-1-278** is amended to read:

42 **63I-1-278. Repeal dates: Title 78A and Title 78B.**

43 (1) Subsections **78A-2-301**(4) and **78A-2-301.5**(12), regarding the suspension of filing
44 fees for petitions for expungement, are repealed on [~~July 1, 2023~~] May 3, 2023.

45 (2) Section **78B-3-421**, regarding medical malpractice arbitration agreements, is
46 repealed July 1, 2029.

47 (3) Subsection **78A-7-106**(6), regarding the transfer of a criminal action involving a
48 domestic violence offense from the justice court to the district court, is repealed on July 1,
49 2024.

50 (4) Section **78B-4-518**, regarding the limitation on employer liability for an employee
51 convicted of an offense, is repealed on July 1, 2025.

52 (5) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, is repealed July 1,
53 2026.

54 (6) Title 78B, Chapter 12, Part 4, Advisory Committee, which creates the Child
55 Support Guidelines Advisory Committee, is repealed July 1, 2026.

56 (7) Section **78B-22-805**, regarding the Interdisciplinary Parental Representation Pilot

57 Program, is repealed December 31, 2024.

58 Section 3. Section 77-40a-101 is amended to read:

59 **77-40a-101. Definitions.**

60 As used in this chapter:

61 (1) "Agency" means a state, county, or local government entity that generates or
62 maintains records relating to an investigation, arrest, detention, or conviction for an offense for
63 which expungement may be ordered.

64 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public
65 Safety established in Section 53-10-201.

66 (3) "Certificate of eligibility" means a document issued by the bureau stating that the
67 criminal record and all records of arrest, investigation, and detention associated with a case that
68 is the subject of a petition for expungement is eligible for expungement.

69 (4) (a) Except as provided in Subsection (4)(c), "clean slate eligible case" means a
70 case:

71 (i) where each conviction within the case is:

72 (A) a misdemeanor conviction for possession of a controlled substance in violation of
73 Subsection 58-37-8(2)(a)(i);

74 (B) a class B or class C misdemeanor conviction; or

75 (C) an infraction conviction;

76 (ii) that involves an individual:

77 (A) whose total number of convictions in Utah state courts, not including infractions,
78 traffic offenses, or minor regulatory offenses, does not exceed the limits described in
79 Subsections 77-40a-303(5) and (6) without taking into consideration the exception in
80 Subsection 77-40a-303(8); and

81 (B) against whom no criminal proceedings are pending in the state; and

82 (iii) for which the following time periods have elapsed from the day on which the case
83 is adjudicated:

84 (A) at least five years for a class C misdemeanor or an infraction;

85 (B) at least six years for a class B misdemeanor; and

86 (C) at least seven years for a class A conviction for possession of a controlled
87 substance in violation of Subsection 58-37-8(2)(a)(i).

- 88 (b) "Clean slate eligible case" includes a case:
89 (i) that is dismissed as a result of a successful completion of a plea in abeyance
90 agreement governed by Subsection 77-2a-3(2)(b) if:
91 (A) except as provided in Subsection (4)(c), each charge within the case is a
92 misdemeanor for possession of a controlled substance in violation of Subsection
93 58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;
94 (B) the individual involved meets the requirements of Subsection (4)(a)(ii); and
95 (C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed
96 from the day on which the case is dismissed; or
97 (ii) where charges are dismissed without prejudice if each conviction, or charge that
98 was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or
99 (b)(i).
100 (c) "Clean slate eligible case" does not include a case:
101 (i) where the individual is found not guilty by reason of insanity;
102 (ii) where the case establishes a criminal accounts receivable, as defined in Section
103 77-32b-102, that:
104 (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as
105 those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt
106 Collection under Section 77-18-114; or
107 (B) has not been satisfied according to court records; or
108 (iii) that resulted in one or more pleas held in abeyance or convictions for the following
109 offenses:
110 (A) any of the offenses listed in Subsection 77-40a-303(1)(a);
111 (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
112 the Individual;
113 (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
114 (D) sexual battery in violation of Section 76-9-702.1;
115 (E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
116 (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
117 and Reckless Driving;
118 (G) damage to or interruption of a communication device in violation of Section

119 76-6-108;

120 (H) a domestic violence offense as defined in Section 77-36-1; or

121 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor
122 other than a class A misdemeanor conviction for possession of a controlled substance in
123 violation of Subsection 58-37-8(2)(a)(i).

124 (5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty
125 after trial, a plea of guilty, or a plea of nolo contendere.

126 (6) "Criminal protective order" means the same as that term is defined in Section
127 78B-7-102.

128 (7) "Criminal stalking injunction" means the same as that term is defined in Section
129 78B-7-102.

130 (8) "Department" means the Department of Public Safety established in Section
131 53-1-103.

132 (9) "Drug possession offense" means an offense under:

133 (a) Subsection 58-37-8(2), except:

134 (i) any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of
135 marijuana;

136 (ii) any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional
137 facility; or

138 (iii) driving with a controlled substance illegally in the person's body and negligently
139 causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah
140 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

141 (b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

142 (c) Section 58-37b-6, possession or use of an imitation controlled substance; or

143 (d) any local ordinance which is substantially similar to any of the offenses described
144 in this Subsection (9).

145 (10) "Expunge" means to seal or otherwise restrict access to the individual's record
146 held by an agency when the record includes a criminal investigation, detention, arrest, or
147 conviction.

148 (11) "Indigent" means a court found a petitioner financially unable to pay the fee to file
149 a petition for expungement under Section 78A-2-302.

150 ~~[(11)]~~ (12) "Jurisdiction" means a state, district, province, political subdivision,
151 territory, or possession of the United States or any foreign country.

152 ~~[(12)]~~ (13) (a) Except as provided in Subsection ~~[(12)(c)]~~ (13)(c), "minor regulatory
153 offense" means a class B or C misdemeanor or a local ordinance.

154 (b) "Minor regulatory offense" includes an offense under Section [76-9-701](#) or
155 [76-10-105](#).

156 (c) "Minor regulatory offense" does not include:

157 (i) any drug possession offense;

158 (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
159 Reckless Driving;

160 (iii) an offense under Sections [73-18-13](#) through [73-18-13.6](#);

161 (iv) except as provided in Subsection ~~[(12)(b)]~~ (13)(b), an offense under Title 76, Utah
162 Criminal Code; or

163 (v) any local ordinance that is substantially similar to an offense listed in Subsections
164 ~~[(12)(c)(i)]~~ (13)(c)(i) through (iv).

165 ~~[(13)]~~ (14) "Petitioner" means an individual applying for expungement under this
166 chapter.

167 ~~[(14)]~~ (15) (a) "Traffic offense" means:

168 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,
169 Chapter 6a, Traffic Code;

170 (ii) an offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;

171 (iii) an offense under Title 73, Chapter 18, State Boating Act; and

172 (iv) all local ordinances that are substantially similar to an offense listed in Subsections
173 ~~[(14)(a)(i)]~~ (15)(a)(i) through (iii).

174 (b) "Traffic offense" does not mean:

175 (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
176 Reckless Driving;

177 (ii) an offense under Sections [73-18-13](#) through [73-18-13.6](#); or

178 (iii) any local ordinance that is substantially similar to an offense listed in Subsection
179 ~~[(14)(b)(i)]~~ (15)(b)(i) or (ii).

180 ~~[(15)]~~ (16) "Traffic offense case" means that each offense in the case is a traffic

181 offense.

182 Section 4. Section **77-40a-301** is amended to read:

183 **77-40a-301. Application for certificate of eligibility for expungement -- Penalty**
184 **for false or misleading information on application.**

185 (1) If an individual seeks to expunge the individual's criminal record in regard to an
186 arrest, investigation, detention, or conviction, the individual shall:

187 (a) except as provided in Subsection **77-40a-305**(3) or (4), apply to the bureau for a
188 certificate of eligibility for expungement of the criminal record and pay the application fee as
189 described in Section **77-40a-304**;

190 (b) if the individual is qualified to receive a certificate of eligibility, except as provided
191 in Subsection **77-40a-304**(2)(d) or (5), pay the issuance fee for the certificate of eligibility as
192 described in Section **77-40a-304**; and

193 (c) file a petition for expungement in accordance with Section **77-40a-305**.

194 (2) (a) An individual who intentionally or knowingly provides any false or misleading
195 information to the bureau when applying for a certificate of eligibility is guilty of a class B
196 misdemeanor and subject to prosecution under Section **76-8-504.6**.

197 (b) Regardless of whether the individual is prosecuted, the bureau may deny a
198 certificate of eligibility to anyone who knowingly provides false information on an application.

199 Section 5. Section **77-40a-304** is amended to read:

200 **77-40a-304. Certificate of eligibility process -- Issuance of certificate -- Fees --**
201 **Waiver of issuance fee.**

202 (1) (a) When a petitioner applies for a certificate of eligibility as described in
203 Subsection **77-40a-301**(1), the bureau shall perform a check of records of governmental
204 agencies, including national criminal data bases, to determine whether the petitioner is eligible
205 to receive a certificate of eligibility under this chapter.

206 (b) For purposes of determining eligibility under this chapter, the bureau may review
207 records of arrest, investigation, detention, and conviction that have been previously expunged,
208 regardless of the jurisdiction in which the expungement occurred.

209 (c) Once the eligibility process is complete, the bureau shall notify the petitioner.

210 (d) If the petitioner meets all of the criteria under Section **77-40a-302** or **77-40a-303**:

211 (i) the bureau shall issue a certificate of eligibility that is valid for a period of 180 days

212 from the day on which the certificate is issued;

213 (ii) the bureau shall provide a petitioner with an identification number for the
214 certificate of eligibility; and

215 (iii) the petitioner shall pay the issuance fee established by the department as described
216 in Subsection (2).

217 (e) If, after reasonable research, a disposition for an arrest on the criminal history file is
218 unobtainable, the bureau may issue a special certificate giving determination of eligibility to
219 the court if:

220 (i) there are no criminal proceedings or pleas in abeyance pending against the
221 petitioner; and

222 (ii) the petitioner is not currently on probation or parole.

223 (2) (a) The bureau shall charge application and issuance fees for a certificate of
224 eligibility or special certificate in accordance with the process in Section 63J-1-504.

225 (b) The application fee shall be paid at the time the petitioner submits an application
226 for a certificate of eligibility to the bureau.

227 (c) ~~[H]~~ Except as provided in Subsection (2)(d), if the bureau determines that the
228 issuance of a certificate of eligibility or special certificate is appropriate, the petitioner ~~[will be~~
229 ~~charged]~~ shall pay an additional fee for the issuance of a certificate of eligibility or special
230 certificate ~~[unless Subsection (2)(d) applies].~~

231 (d) ~~[An issuance fee may not be assessed against a petitioner who]~~ The bureau shall
232 issue a certificate of eligibility or special certificate without requiring payment of the issuance
233 fee if the petitioner:

234 (i) qualifies for a certificate of eligibility under Section 77-40a-302 unless the charges
235 were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in
236 Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and
237 Diversion[-]; or

238 (ii) indicates on the application for a certificate of eligibility that the petitioner
239 reasonably believes, as of the date of the application, that the fee to file a petition for
240 expungement is likely to be waived by a court because the petitioner is indigent.

241 (e) Funds generated under this Subsection (2) shall be deposited ~~[in]~~ into the General
242 Fund as a dedicated credit by the department to cover the costs incurred in determining

243 eligibility.

244 (3) The bureau shall include on the certificate of eligibility all information that is
245 needed for the court to issue a valid expungement order.

246 (4) The bureau shall provide clear written instructions to the petitioner that explain:

247 (a) the process for a petition for expungement; and

248 (b) what is required of the petitioner to complete the process for a petition for
249 expungement.

250 (5) If the bureau issues a certificate of eligibility or a special certificate without
251 requiring payment of the issuance fee under Subsection (2)(d)(ii), the bureau shall charge the
252 petitioner the issuance fee upon the bureau's receipt of an order deciding a petition for
253 expungement unless the court communicates to the bureau that the fee to file the petition for
254 expungement was waived because the petitioner is indigent.

255 (6) (a) If the petitioner qualifies for a waiver of the issuance fee under Subsection (5)
256 and the order grants the petition for expungement, the bureau shall process the order in
257 accordance with Section 77-40a-401 as if the petitioner paid the issuance fee.

258 (b) If the petitioner does not qualify for a waiver of the issuance fee under Subsection
259 (5) and the order grants the petition for expungement, the bureau may not process the order in
260 accordance with Section 77-40a-401 until the petitioner pays the issuance fee.

261 (7) If, under Subsection (2)(d)(ii), the bureau issues a certificate of eligibility or special
262 certificate without requiring payment of the issuance fee, the bureau may not charge the
263 petitioner an issuance fee on the grounds that the validity of the certificate described in
264 Subsection (1)(d)(i) has expired.

265 ~~[(5) (a) The requirement for a petitioner to pay an issuance fee for a certificate of~~
266 ~~eligibility or a special certificate of eligibility under Subsection (2) is suspended from May 4,~~
267 ~~2022, to June 30, 2023.]~~

268 ~~[(b) The bureau may not charge a fee for the issuance of a certificate of eligibility or a~~
269 ~~special certificate of eligibility during the time period described in Subsection (5)(a).]~~