

# SB0163S01 compared with SB0163

~~{deleted text}~~ shows text that was in SB0163 but was deleted in SB0163S01.

inserted text shows text that was not in SB0163 but was inserted into SB0163S01.

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Senator Jerry W Stevenson proposes the following substitute bill:

## EXPUNGEMENT FEE WAIVER AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: {}Jerry W{} Stevenson**

House Sponsor: {}\_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill addresses the waiver of fees for expungement.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Bureau of Criminal Identification to issue a certificate of eligibility, or a special certificate, for expungement without requiring the payment of an issuance fee ~~{in certain circumstances}~~ when the individual is receiving services for the expungement from a nonprofit organization or a public benefit corporation that provides services to low-income individuals seeking expungement;
- ▶ allows an individual to bring a petition for expungement without paying a fee for the petition when the individual is receiving services for the expungement from a

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nonprofit organization or a public benefit corporation that provides services to low-income individuals seeking expungement; and

- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**77-40a-304**, as last amended by Laws of Utah 2023, Chapter 265

**78A-2-302**, as last amended by Laws of Utah 2023, Chapter 184

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

Section 1. Section **77-40a-304** is amended to read:

**77-40a-304. Certificate of eligibility process -- Issuance of certificate -- Fees.**

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

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

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

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

(i) the bureau shall issue a certificate of eligibility that is valid for a period of 180 days from the day on which the certificate is issued;

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

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

(e) If, after reasonable research, a disposition for an arrest on the criminal history file is

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unobtainable, the bureau may issue a special certificate giving determination of eligibility to the court, except that the bureau may not issue the special certificate if:

(i) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense;

(ii) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense; or

(iii) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense.

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

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

(c) If the bureau determines that the issuance of a certificate of eligibility or special certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a certificate of eligibility or special certificate unless Subsection (2)(d) applies.

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

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

(ii) ~~is not required to pay the fee for a petition for expungement as described in Subsection~~ indicates on the application for the certificate of eligibility that the petitioner is receiving services for the expungement from a nonprofit corporation or a public benefit corporation, as those terms are defined in Section 78A-2-302~~-(2)(b)~~, that provides services to low-income individuals seeking expungement.

(e) Funds generated under this Subsection (2) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.

(3) The bureau shall include on the certificate of eligibility all information that is

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needed for the court to issue a valid expungement order.

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

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

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

Section 2. Section **78A-2-302** is amended to read:

**78A-2-302. Waiver of court fees, costs, and security -- Indigent litigants --**

### **Affidavit.**

(1) As used in Sections 78A-2-302 through 78A-2-309:

(a) "Convicted" means:

(i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental condition, no contest; and

(ii) a conviction of any crime or offense.

(b) "Indigent" means an individual who is financially unable to pay fees and costs or give security.

~~{ (c) "Public benefit corporation" means:~~

~~— (i) a benefit corporation as defined in Section 16-10b-103; or~~

~~— (ii) a business corporation that is incorporated as a public benefit corporation in another state.~~

~~‡ (d) "Nonprofit organization" means an organization that:~~

~~(i) qualifies as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;~~

~~and~~

~~(ii) has a charitable purpose.~~

~~[(c)] (d) "Prisoner" means an individual who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.~~

(2) "Public benefit corporation" means:

(a) a benefit corporation as defined in Section 16-10b-103; or

(b) a business corporation that is incorporated as a public benefit corporation in another state.

[(2)] (3) An individual may institute, prosecute, defend, or appeal any cause in a court in this state without prepayment of fees and costs or security if:

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(a) the individual submits an affidavit demonstrating that the individual is indigent[-];  
or

(b) the cause is a petition for expungement and the individual is receiving services for the expungement from a nonprofit organization, or a public benefit corporation, that provides services to low-income individuals seeking expungement.

~~[(3)]~~ (4) A court shall find an individual indigent if the individual's affidavit under Subsection ~~[(2)]~~ (2)(a) demonstrates:

(a) the individual has an income level at or below 150% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services;

(b) the individual receives benefits from a means-tested government program, including Temporary Assistance to Needy Families, Supplemental Security Income, the Supplemental Nutrition Assistance Program, or Medicaid;

(c) the individual receives legal services from a nonprofit provider or a pro bono attorney through the Utah State Bar; or

(d) the individual has insufficient income or other means to pay the necessary fees and costs or security without depriving the individual, or the individual's family, of food, shelter, clothing, or other necessities.

~~[(4)]~~ (5) An affidavit demonstrating that an individual is indigent under Subsection ~~(3)(d)~~ shall contain complete information on the individual's:

(a) identity and residence;

(b) amount of income, including any government financial support, alimony, or child support;

(c) assets owned, including real and personal property;

(d) business interests;

(e) accounts receivable;

(f) securities, checking and savings account balances;

(g) debts; and

(h) monthly expenses.

~~[(5)]~~ (6) If the individual under Subsection ~~(3)~~ is a prisoner, the prisoner shall disclose the amount of money held in the prisoner's trust account at the time the affidavit under

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Subsection (2) is executed in accordance with Section 78A-2-305.

~~[(6)]~~ (7) An affidavit of indigency under this section shall state the following:

I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

(8) For a petition for expungement, the signed petition shall indicate whether the individual is receiving services for the expungement from a nonprofit corporation, or a public benefit corporation, that provides services to low-income individuals seeking expungement.

Section 3. **Effective date.**

This bill takes effect on May 1, 2024.