

HB0337S02 compared with HB0337

~~{deleted text}~~ shows text that was in HB0337 but was deleted in HB0337S02.

inserted text shows text that was not in HB0337 but was inserted into HB0337S02.

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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 ~~{certain fees related to expungement}~~the fee for a certificate of ~~{a criminal record}~~eligibility if a court finds that the individual filing the petition for expungement is indigent; and
- ▶ makes technical and conforming changes.

HB0337S02 compared with HB0337

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

~~{ **77-40a-306**, as enacted by Laws of Utah 2022, Chapter 250~~

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

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

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

[Subsection ~~77-40a-304(5)~~, regarding the suspension of issuance fees for certificates of eligibility, is repealed on July 1, 2023.]

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

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

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78A-2-301(4) and 78A-2-301.5(12), regarding the suspension of filing fees for petitions for expungement, are repealed on ~~[July 1, 2023]~~ May 3, 2023.

(2) Section 78B-3-421, regarding medical malpractice arbitration agreements, is repealed July 1, 2029.

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transfer of a criminal action involving a domestic violence offense from the justice court to the district court, is repealed on July 1, 2024.

HB0337S02 compared with HB0337

(4) Section 78B-4-518, regarding the limitation on employer liability for an employee convicted of an offense, is repealed on July 1, 2025.

(5) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, is repealed July 1, 2026.

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

(7) Section 78B-22-805, regarding the Interdisciplinary Parental Representation Pilot Program, is repealed December 31, 2024.

Section ~~2~~3. Section **77-40a-101** is amended to read:

77-40a-101. Definitions.

As used in this chapter:

(1) "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.

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

(3) "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 is the subject of a petition for expungement is eligible for expungement.

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

(i) where each conviction within the case is:

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

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

(C) an infraction conviction;

(ii) that involves an individual:

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

HB0337S02 compared with HB0337

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

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

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

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

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

(b) "Clean slate eligible case" includes a case:

(i) that is dismissed as a result of a successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b) if:

(A) except as provided in Subsection (4)(c), each charge within the case is a misdemeanor for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;

(B) the individual involved meets the requirements of Subsection (4)(a)(ii); and

(C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed; or

(ii) where charges are dismissed without prejudice if each conviction, or charge that was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or (b)(i).

(c) "Clean slate eligible case" does not include a case:

(i) where the individual is found not guilty by reason of insanity;

(ii) where the case establishes a criminal accounts receivable, as defined in Section 77-32b-102, that:

(A) has been entered as a civil accounts receivable or a civil judgment of restitution, as those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt Collection under Section 77-18-114; or

(B) has not been satisfied according to court records; or

(iii) that resulted in one or more pleas held in abeyance or convictions for the following offenses:

(A) any of the offenses listed in Subsection 77-40a-303(1)(a);

(B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against

HB0337S02 compared with HB0337

the Individual;

(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;

(D) sexual battery in violation of Section 76-9-702.1;

(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;

(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(G) damage to or interruption of a communication device in violation of Section 76-6-108;

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

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

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

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

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

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

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

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

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

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

(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

HB0337S02 compared with HB0337

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

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

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

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

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

(b) "Minor regulatory offense" includes an offense under Section 76-9-701 or 76-10-105.

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

(i) any drug possession offense;

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

(iii) an offense under Sections 73-18-13 through 73-18-13.6;

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

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

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

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

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

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

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

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

HB0337S02 compared with HB0337

(b) "Traffic offense" does not mean:

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

(ii) an offense under Sections 73-18-13 through 73-18-13.6; or

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

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

Section ~~{3}~~4. Section 77-40a-301 is amended to read:

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

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

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

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

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

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

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

Section ~~{4}~~5. Section 77-40a-304 is amended to read:

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

(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

HB0337S02 compared with HB0337

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 unobtainable, the bureau may issue a special certificate giving determination of eligibility to the court if:

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

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

(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) [~~Hf~~] Except as provided in Subsection (2)(d), if the bureau determines that the issuance of a certificate of eligibility or special certificate is appropriate, the petitioner [~~will be charged~~] shall pay 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 special certificate without requiring 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

HB0337S02 compared with HB0337

Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion[.]; or

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

(e) Funds generated under this Subsection (2) shall be deposited [in] into 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 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.

(5) ~~(a)~~ If the bureau issues a certificate of eligibility or a special certificate without requiring payment of the issuance fee under Subsection (2)(d)(ii), the bureau shall charge the petitioner the issuance fee upon the bureau's receipt of an order deciding a petition for expungement unless:

~~(i) the order indicates that the fee to file the petition for expungement is waived because the petitioner is indigent; or~~

~~(ii) the court ~~where the petition for expungement is filed~~ communicates to the bureau that the fee to file the petition for expungement ~~is~~ was waived because the petitioner is indigent.~~

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

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

~~(6) (7)~~ If, ~~pursuant to~~ under Subsection (2)(d)(ii), the bureau issues a certificate of

HB0337S02 compared with HB0337

eligibility or special certificate without requiring payment of the issuance fee, the bureau may not charge the petitioner an issuance fee on the grounds that the validity of the certificate described in Subsection (1)(d)(i) has expired.

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

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

~~{ Section 5. Section 77-40a-306 is amended to read:~~

~~77-40a-306. **Order of expungement.**~~

~~(1) If a petition is filed in accordance with Section 77-40a-305, the court shall issue an order of expungement if the court finds, by clear and convincing evidence, that:~~

~~(a) except as provided in Subsection 77-40a-305(3) or (4), the petition and certificate of eligibility are sufficient;~~

~~(b) the statutory requirements have been met;~~

~~(c) if the petitioner seeks expungement after a case is dismissed without prejudice or without condition, the prosecuting attorney provided written consent and has not filed and does not intend to refile related charges;~~

~~(d) if the petitioner seeks expungement without a certificate of eligibility for expungement under Subsection 77-40a-305(4) for a record of conviction related to cannabis possession:~~

~~(i) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and~~

~~(ii) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (1)(d)(i);~~

~~(e) if an objection is received, the petition for expungement is for a charge dismissed in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used for enhancement, there is good cause for the court to grant the expungement; and~~

~~(f) the interests of the public would not be harmed by granting the expungement.~~

~~(2) (a) If the court denies a petition described in Subsection (1)(c) because the prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of~~

HB0337S02 compared with HB0337

eligibility if charges are not refiled within 180 days after the day on which the court denies the petition.

~~—— (b) A prosecuting attorney who opposes an expungement of a case dismissed without prejudice, or without condition, shall have a good faith basis for the intention to refile the case.~~

~~—— (c) A court shall consider the number of times that good faith basis of intention to refile by the prosecuting attorney is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (1)(c).~~

~~—— (3) If the court grants a petition described in Subsection (1)(c), the court shall make the court's findings in a written order.~~

~~—— (4) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be, or should not have been, issued under Section 77-40a-302 or 77-40a-303.~~

~~—— (5) If the petitioner requests the court to waive the fee to file a petition for expungement because the petitioner is indigent, an order issued under this section shall indicate whether the request is granted or denied.~~

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