

Senator Todd Weiler proposes the following substitute bill:

**EXPUNGEMENT AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: Mark B. Madsen

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**LONG TITLE**

**General Description:**

This bill makes specific changes regarding the expungement of information in state agency files and creates a statement of legislative intent with regard to expungement.

**Highlighted Provisions:**

This bill:

- ▶ creates a new definition of "expunge";
- ▶ requires that the state agencies remove information regarding expunged convictions from public databases;
- ▶ creates a statement of legislative intent for expungement; and
- ▶ provides a stated purpose for expungement.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-40-101**, as enacted by Laws of Utah 2010, Chapter 283

**77-40-102**, as last amended by Laws of Utah 2014, Chapter 199



26 **77-40-108**, as last amended by Laws of Utah 2013, Chapters 20 and 41



27  
28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **77-40-101** is amended to read:

30 **77-40-101. Title -- Purpose -- Legislative intent.**

31 (1) This chapter is known as the "Utah Expungement Act."

32 (2) The Legislature recognizes that an individual who has committed a criminal act and  
33 paid his or her debt to society should, under certain circumstances, be able to move forward  
34 and rebuild their life without being hindered by the past.

35 (3) The Legislature, therefore, finds and declares the following:

36 (a) The inability to obtain an expungement can prevent certain individuals from  
37 obtaining gainful employment; however the need for employment should be balanced  
38 appropriately against the desire for public safety.

39 (b) It is the intent of the Legislature that allowing for the expungement of certain  
40 criminal offenses will provide an opportunity to:

41 (i) break the cycle of criminal recidivism;

42 (ii) increase public safety;

43 (iii) assist the growing population of offenders reentering the community to establish a  
44 self-sustaining life through opportunities in employment; and

45 (iv) restore certain civil liberties to offenders to allow them to fully participate in  
46 society.

47 (c) This chapter provides for the expungement of certain arrest and conviction records  
48 under limited circumstances. Obtaining an expungement of these records allows for the  
49 complete removal of a record from all law enforcement agency databases.

50 Section 2. Section **77-40-102** is amended to read:

51 **77-40-102. Definitions.**

52 As used in this chapter:

53 (1) "Administrative finding" means a decision upon a question of fact reached by an  
54 administrative agency following an administrative hearing or other procedure satisfying the  
55 requirements of due process.

56 (2) "Agency" means a state, county, or local government entity that generates or

57 maintains records relating to an investigation, arrest, detention, or conviction for an offense for  
58 which expungement may be ordered.

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

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

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

66 (6) "Department" means the Department of Public Safety established in Section  
67 53-1-103.

68 (7) "Drug possession offense" means an offense under:

69 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i),  
70 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection  
71 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a  
72 controlled substance illegally in the person's body and negligently causing serious bodily injury  
73 or death of another;

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

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

76 (d) any local ordinance which is substantially similar to any of the offenses described  
77 in this Subsection (7).

78 (8) "Expunge" means to ~~[seal or otherwise restrict access to the]~~ completely remove  
79 from a law enforcement agency's records the petitioner's record ~~[held by an agency]~~ when the  
80 record includes reference to a criminal investigation, detention, arrest, or conviction.

81 (9) "Jurisdiction" means a state, district, province, political subdivision, territory, or  
82 possession of the United States or any foreign country.

83 (10) "Petitioner" means a person seeking expungement under this chapter.

84 (11) "Seal" means to restrict access to a petitioner's record held by a law enforcement  
85 agency when the record includes a criminal investigation, detention, arrest, or conviction.

86 ~~[(H)]~~ (12) "Traffic offense" means all offenses in the following parts and all local  
87 ordinances that are substantially similar to the offenses:

- 88 (a) Title 41, Chapter 6a, Part 3, Traffic-Control Devices;
- 89 (b) Title 41, Chapter 6a, Part 6, Speed Restrictions;
- 90 (c) Title 41, Chapter 6a, Part 7, Driving on Right Side of Highway and Passing;
- 91 (d) Title 41, Chapter 6a, Part 8, Turning and Signaling for Turns;
- 92 (e) Title 41, Chapter 6a, Part 9, Right-of-Way;
- 93 (f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;
- 94 (g) Title 41, Chapter 6a, Part 11, Bicycles, Regulation of Operation;
- 95 (h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and
- 96 Safety Zones;
- 97 (i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;
- 98 (j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;
- 99 (k) Title 41, Chapter 6a, Part 15, Special Vehicles;
- 100 (l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;
- 101 (m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and
- 102 (n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.

103 Section 3. Section **77-40-108** is amended to read:

104 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**

105 **Administrative proceedings -- Bureau requirements.**

106 (1) (a) A person who receives an order of expungement under this chapter or Section  
107 [77-27-5.1](#) shall be responsible for delivering a copy of the order of expungement to all affected  
108 criminal justice agencies and officials including the court, arresting agency, booking agency,  
109 prosecuting agency, Department of Corrections, and the bureau.

110 (b) A person who receives an order of expungement under Section [77-27-5.1](#), shall pay  
111 a processing fee to the bureau, established in accordance with the process in Section [63J-1-504](#),  
112 before the bureau's record may be expunged.

113 (2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to  
114 respond differently, a person who has received an expungement of an arrest or conviction  
115 under this chapter or Section [77-27-5.1](#), may respond to any inquiry as though the arrest or  
116 conviction did not occur.

117 (3) The bureau shall forward a copy of the expungement order to the Federal Bureau of  
118 Investigation.

119 (4) An agency receiving an expungement order shall expunge the petitioner's  
120 identifying information contained in records in its possession or under its control relating to the  
121 incident for which expungement is ordered. The agency may retain the expunged or redacted  
122 information internally in its files, however the information may not be made available to the  
123 public or any other agency.

124 (5) The agency shall insure that information expunged in accordance with this chapter  
125 is removed from any state-controlled database available to the public.

126 ~~[(5)]~~ (6) Unless ordered by a court to do so, or in accordance with Subsection  
127 77-40-109(2), a government agency or official may not divulge information or records which  
128 have been expunged regarding the petitioner contained in a record of arrest, investigation,  
129 detention, or conviction after receiving an expungement order.

130 ~~[(6)]~~ (7) (a) An order of expungement may not restrict an agency's use or dissemination  
131 of records in its ordinary course of business until the agency has received a copy of the order.

132 (b) Any action taken by an agency after issuance of the order but prior to the agency's  
133 receipt of a copy of the order may not be invalidated by the order.

134 ~~[(7)]~~ (8) An order of expungement may not:

135 (a) terminate or invalidate any pending administrative proceedings or actions of which  
136 the petitioner had notice according to the records of the administrative body prior to issuance of  
137 the expungement order;

138 (b) affect the enforcement of any order or findings issued by an administrative body  
139 pursuant to its lawful authority prior to issuance of the expungement order; or

140 (c) remove any evidence relating to the petitioner including records of arrest, which the  
141 administrative body has used or may use in these proceedings.