

EXPUNGEMENT CHANGES

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stewart E. Barlow

Senate Sponsor: Jani Iwamoto

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

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

ENACTS:

34-52-301, Utah Code Annotated 1953

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.