

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]

HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NOS. 588, 603 & 942

98TH GENERAL ASSEMBLY

2016

4320H.06T

AN ACT

To repeal sections 488.650 and 610.140, RSMo, and to enact in lieu thereof two new sections relating to petitions for the expungement of records, with a delayed effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 488.650 and 610.140, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 488.650 and 610.140, to read as follows:

488.650. There shall be assessed as costs a surcharge in the amount of [one] **two** hundred **fifty** dollars on all petitions for expungement filed under the provisions of section 610.140. **The judge may waive the surcharge if the petitioner is found by the judge to be indigent and unable to pay the costs.** Such surcharge shall be collected and disbursed by the clerk of the court as provided by sections 488.010 to 488.020. Moneys collected from this surcharge shall be payable to the general revenue fund.

610.140. 1. Notwithstanding any other provision of law and subject to the provisions of this section, any person may apply to any court in which such person was **charged or** found guilty of any [of the] offenses [specified in subsection 2 of this section], **violations, or infractions** for an order to expunge [recordations] **records** of such arrest, plea, trial, or conviction. **Subject to the limitations of subsection 12 of this section,** a person may apply to have one or more offenses, **violations, or infractions** expunged **if such offense, violation, or infraction occurred within the state of Missouri and was prosecuted under the jurisdiction of a Missouri municipal, associate**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

10 **circuit, or circuit court**, so long as such person lists all the offenses,
11 **violations, and infractions** he or she is seeking to have expunged in the
12 [same] petition and so long as all such offenses, **violations, and infractions**
13 are [eligible] **not excluded** under subsection 2 of this section. If the offenses,
14 **violations, or infractions were charged as counts in the same**
15 **indictment or information or were committed as part of the same**
16 **course of criminal conduct, the person may include all the related**
17 **offenses, violations, and infractions in the petition, regardless of the**
18 **limits of subsection 12 of this section, and the petition shall only count**
19 **as a petition for expungement of the highest level violation or offense**
20 **contained in the petition for the purpose of determining future**
21 **eligibility for expungement.**

22 2. [The following offenses are eligible to be expunged when such offenses
23 occurred within the state of Missouri and were prosecuted under the jurisdiction
24 of a Missouri municipal associate or circuit court:

25 (1) Any felony or misdemeanor offense of passing a bad check under
26 570.120, fraudulently stopping payment of an instrument under 570.125, or
27 fraudulent use of a credit device or debit device under section 570.130;

28 (2) Any misdemeanor offense of sections 569.065, 569.067, 569.090,
29 subdivision (1) of subsection 1 of section 569.120, sections 569.140, 569.145,
30 572.020, 574.020, or 574.075; or

31 (3) Any class B or C misdemeanor offense of section 574.010.] The
32 **following offenses, violations, and infractions shall not be eligible for**
33 **expungement under this section:**

34 (1) Any class A felony offense;

35 (2) Any dangerous felony as that term is defined in section
36 **556.061;**

37 (3) Any offense that requires registration as a sex offender;

38 (4) Any felony offense where death is an element of the offense;

39 (5) Any felony offense of assault; misdemeanor or felony offense
40 of domestic assault; or felony offense of kidnapping;

41 (6) Any offense listed, or previously listed, in chapter 566 or
42 section 105.454, 105.478, 115.631, 130.028, 188.030, 188.080, 191.677,
43 194.425, 217.360, 217.385, 334.245, 375.991, 389.653, 455.085, 455.538,
44 557.035, 565.084, 565.085, 565.086, 565.095, 565.120, 565.130, 565.156,
45 565.200, 565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032,
46 568.045, 568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035,
47 569.040, 569.050, 569.055, 569.060, 569.065, 569.067, 569.072, 569.100,
48 569.160, 570.025, 570.030, 570.090, 570.100, 570.130, 570.180, 570.223,

49 **570.224, 570.310, 571.020, 571.030, 571.060, 571.063, 571.070, 571.072,**
50 **571.150, 574.070, 574.105, 574.115, 574.120, 574.130, 575.040, 575.095,**
51 **575.153, 575.155, 575.157, 575.159, 575.195, 575.200, 575.210, 575.220,**
52 **575.230, 575.240, 575.350, 575.353, 577.078, 577.703, 577.706, 578.008,**
53 **578.305, 578.310, or 632.520;**

54 (7) Any offense eligible for expungement under section **577.054**
55 **or 610.130;**

56 (8) Any intoxication-related traffic or boating offense as defined
57 in section **577.001**, or any offense of operating an aircraft with an
58 excessive blood alcohol content or while in an intoxicated condition;

59 (9) Any ordinance violation that is the substantial equivalent of
60 any offense that is not eligible for expungement under this section; and

61 (10) Any violations of any state law or county or municipal
62 ordinance regulating the operation of motor vehicles when committed
63 by an individual who has been issued a commercial driver's license or
64 is required to possess a commercial driver's license issued by this state
65 **or any other state.**

66 3. The petition shall name as defendants all law enforcement agencies,
67 courts, prosecuting or circuit attorneys, **municipal prosecuting attorneys**,
68 central state repositories of criminal records, or others who the petitioner has
69 reason to believe may possess the records subject to expungement for each of the
70 offenses, **violations, and infractions** listed in the petition. The court's order
71 of expungement shall not affect any person or entity not named as a defendant
72 in the action.

73 4. The petition shall [be dismissed if it does not] include the following
74 information:

75 (1) The petitioner's:
76 (a) Full name;
77 (b) Sex;
78 (c) Race;
79 (d) Driver's license number, if applicable; and
80 (e) Current address;

81 (2) Each offense [charged against the petitioner], **violation, or**
82 **infraction** for which the petitioner is requesting expungement;

83 (3) The **approximate** date the petitioner was [arrested] **charged** for
84 each offense, **violation, or infraction; and**

85 (4) The name of the county where the petitioner was [arrested] **charged**
86 for each offense, **violation, or infraction** and if any of the offenses, **violations,**

87 **or infractions** occurred in a municipality, the name of the municipality for each
88 offense, **violation, or infraction; and**

89 (5) [The name of the agency that arrested the petitioner for each offense;
90 (6)] The case number and name of the court for each offense[; and

91 (7) Petitioner's fingerprints on a standard fingerprint card at the time of
92 filing a petition for expungement which will be forwarded to the central
93 repository for the sole purpose of positively identifying the petitioner].

94 **5. The clerk of the court shall give notice of the filing of the
95 petition to the office of the prosecuting attorney, circuit attorney, or
96 municipal prosecuting attorney that prosecuted the offenses, violations,
97 or infractions listed in the petition. If the prosecuting attorney, circuit
98 attorney, or municipal prosecuting attorney objects to the petition for
99 expungement, he or she shall do so in writing within thirty days after
100 receipt of service. Unless otherwise agreed upon by the parties, the
101 court shall hold a hearing within sixty days after any written objection
102 is filed, giving reasonable notice of the hearing to the petitioner. If no
103 objection has been filed within thirty days after receipt of service, the
104 court may set a hearing on the matter [no sooner than thirty days from the filing
105 of the petition] and shall give reasonable notice of the hearing to each entity
106 named in the petition. At [the] **any** hearing, the court may accept evidence and
107 hear testimony on, and may consider, the following criteria for each of the
108 offenses, **violations, or infractions** listed in the petition for expungement:**

109 (1) It has been at least [twenty] **seven** years if the offense is a felony, or
110 at least [ten] **three** years if the offense is a misdemeanor, municipal offense, or
111 infraction, [since the person making the application completed:

112 (a) Any sentence of imprisonment; or

113 (b) Any period of probation or parole] **from the date the petitioner
114 completed any authorized disposition imposed under section 557.011 for
115 each offense, violation, or infraction listed in the petition;**

116 (2) The person has not been found guilty of [a] **any other** misdemeanor
117 or felony, not including violations of the traffic regulations provided under
118 chapters 304 and 307, during the time period specified for the underlying offense,
119 **violation, or infraction** in subdivision (1) of this subsection;

120 (3) The person has [paid any amount of restitution ordered by the court]
121 **satisfied all obligations relating to any such disposition, including the
122 payment of any fines or restitution;**

123 (4) The [circumstances and behavior of the petitioner warrant the
124 expungement] **person does not have charges pending; [and]**

125 **(5) The petitioner's habits and conduct demonstrate that the**
126 **petitioner is not a threat to the public safety of the state; and**

127 **(6) The expungement is consistent with the public welfare and the**
128 **interests of justice warrant the expungement.**

129 A pleading by the petitioner that such petitioner meets the
130 requirements of subdivisions (5) and (6) of this subsection shall create
131 a rebuttable presumption that the expungement is warranted so long
132 as the criteria contained in subdivisions (1) to (4) of this subsection are
133 otherwise satisfied. The burden shall shift to the prosecuting attorney,
134 circuit attorney, or municipal prosecuting attorney to rebut the
135 presumption. A victim of an offense, violation, or infraction listed in
136 the petition shall have an opportunity to be heard at any hearing held
137 under this section, and the court may make a determination based
138 solely on such victim's testimony.

139 **6. A petition to expunge records related to an arrest for an**
140 **eligible offense, violation, or infraction may be made in accordance**
141 **with the provisions of this section to a court of competent jurisdiction**
142 **in the county where the petitioner was arrested no earlier than three**
143 **years from the date of arrest; provided that, during such time, the**
144 **petitioner has not been charged and the petitioner has not been found**
145 **guilty of any misdemeanor or felony offense.**

146 **7. If the court determines [at the conclusion of the hearing] that such**
147 **person meets all the criteria set forth in subsection 5 of this section for each of**
148 **the offenses, violations, or infractions listed in the petition for expungement,**
149 **the court [may] shall enter an order of expungement. In all cases under this**
150 **section, the court shall issue an order of expungement or dismissal**
151 **within six months of the filing of the petition.** A copy of the order of
152 **expungement shall be provided to [each entity named in the petition] the**
153 **petitioner and each entity possessing records subject to the order,** and,
154 upon receipt of the order, each entity shall [destroy] close any record in its
155 possession relating to any offense, violation, or infraction listed in the
156 petition, **in the manner established by section 610.120.** [If destruction of
157 the record is not feasible because of the permanent nature of the record books,
158 such record entries shall be blacked out. Entries of a record ordered expunged
159 shall be removed from all electronic files maintained with the state of Missouri,
160 except for the files of the court.] The records and files maintained in any
161 administrative or court proceeding in a municipal, associate, or circuit court for
162 any offense, **infraction, or violation** ordered expunged under this section shall

163 be confidential and only available to the parties or by order of the court for good
164 cause shown. The central repository shall request the Federal Bureau of
165 Investigation to expunge the records from its files.

166 [7.] 8. The order shall not limit any of the petitioner's rights that were
167 restricted as a collateral consequence of such person's criminal record, and such
168 rights shall be restored upon issuance of the order of expungement. Except as
169 otherwise provided under this section, the effect of such order shall be to restore
170 such person to the status he or she occupied prior to such arrests, pleas, trials,
171 or convictions as if such events had never taken place. No person as to whom
172 such order has been entered shall be held thereafter under any provision of law
173 to be guilty of perjury or otherwise giving a false statement by reason of his or
174 her failure to recite or acknowledge such arrests, pleas, trials, convictions, or
175 expungement in response to an inquiry made of him or her and no such inquiry
176 shall be made for information relating to an expungement, except the petitioner
177 shall disclose the expunged offense, **violation, or infraction** to any court when
178 asked or upon being charged with any subsequent offense, **violation, or**
179 **infraction**. The expunged offense, **violation, or infraction** may be considered
180 a prior offense in determining a sentence to be imposed for any subsequent
181 offense that the person is found guilty of committing.

182 [8.] 9. Notwithstanding the provisions of subsection [7] 8 of this section
183 to the contrary, a person granted an expungement shall disclose any expunged
184 offense, **violation, or infraction** when the disclosure of such information is
185 necessary to complete any application for:

186 (1) A license, certificate, or permit issued by this state to practice such
187 individual's profession;

188 (2) Any license issued under chapter 313 **or permit issued under**
189 **chapter 571; [or]**

190 (3) Paid or unpaid employment with an entity licensed under chapter 313,
191 any state-operated lottery, or any emergency services provider, including any law
192 enforcement agency;

193 (4) **Employment with any federally insured bank or savings**
194 **institution or credit union or an affiliate of such institution or credit**
195 **union for the purposes of compliance with 12 U.S.C. Section 1829 and**
196 **12 U.S.C. Section 1785;**

197 (5) **Employment with any entity engaged in the business of**
198 **insurance or any insurer for the purpose of complying with 18 U.S.C.**
199 **Section 1033, 18 U.S.C. Section 1034, or other similar law which**
200 **requires an employer engaged in the business of insurance to exclude**

201 applicants with certain criminal convictions from employment; or
202 (6) Employment with any employer that is required to exclude
203 applicants with certain criminal convictions from employment due to
204 federal or state law, including corresponding rules and regulations.
205 An employer shall notify an applicant of the requirements under
206 subdivisions (4) to (6) of this subsection. Notwithstanding any provision of
207 law to the contrary, an expunged offense, **violation, or infraction** shall not be
208 grounds for automatic disqualification of an applicant, but may be a factor for
209 denying employment, or a professional license, certificate, or permit; **except**
210 **that, an offense, violation, or infraction expunged under the provisions**
211 **of this section may be grounds for automatic disqualification if the**
212 **application is for employment under subdivisions (4) to (6) of this**
213 **subsection.**

214 [9.] 10. A person who has been granted an expungement of
215 records pertaining to a misdemeanor or felony offense, an ordinance
216 violation, or an infraction may answer "no" to an employer's inquiry
217 into whether the person has ever been convicted of a crime if, after the
218 granting of the expungement, the person has no public record of a
219 misdemeanor or felony offense, an ordinance violation, or an
220 infraction. The person, however, shall answer such an inquiry
221 affirmatively and disclose his or her criminal convictions, including
222 any offense or violation expunged under this section or similar law, if
223 the employer is required to exclude applicants with certain criminal
224 convictions from employment due to federal or state law, including
225 corresponding rules and regulations.

226 11. If the court determines that [such person] the petitioner has not
227 met the criteria for any of the offenses, **violations, or infractions** listed in the
228 petition for expungement **or the petitioner has knowingly provided false**
information in the petition, the court shall enter an order dismissing the
229 petition. Any person whose petition for expungement has been dismissed by the
230 court for failure to meet the criteria set forth in subsection 5 of this section may
231 not refile another petition until a year has passed since the date of filing for the
232 previous petition.

234 [10.] 12. A person may be granted more than one expungement under
235 this section provided that [no person shall be granted more than one order of
236 expungement from the same court. Nothing contained in this section shall
237 prevent the court from maintaining records to ensure that an individual has only
238 one petition for expungement granted by such court under this section] **during**

239 his or her lifetime, the total number of offenses, violations, or
240 infractions for which orders of expungement are granted to the person
241 shall not exceed the following limits:

242 (1) Not more than two misdemeanor offenses or ordinance
243 violations that have an authorized term of imprisonment; and

244 (2) Not more than one felony offense.

245 A person may be granted expungement under this section for any
246 number of infractions. Nothing in this section shall prevent the court
247 from maintaining records to ensure that an individual has not exceeded
248 the limitations of this subsection. Nothing in this section shall be
249 construed to limit or impair in any way the subsequent use of any
250 record expunged under this section of any arrests or findings of guilt
251 by a law enforcement agency, criminal justice agency, prosecuting
252 attorney, circuit attorney, or municipal prosecuting attorney, including
253 its use as a prior offense, violation, or infraction.

254 13. The court shall make available a form for pro se petitioners
255 seeking expungement, which shall include the following statement: "I
256 declare under penalty of perjury that the statements made herein are
257 true and correct to the best of my knowledge, information, and belief."

258 14. Nothing in this section shall be construed to limit or restrict
259 the availability of expungement to any person under any other law.

Section B. Section A of this act shall become effective on January 1, 2018.

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