

FIRST REGULAR SESSION

SENATE BILL NO. 540

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

2648S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 610.140, RSMo, and to enact in lieu thereof one new section relating to expungement of records.

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

Section A. Section 610.140, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 610.140,
3 to read as follows:

610.140. 1. Notwithstanding any other provision of
2 law and subject to the provisions of this section, any
3 person may apply to any court in which such person was
4 charged or found guilty of any offenses, violations, or
5 infractions for an order to expunge records of such arrest,
6 plea, trial, or conviction. Subject to the limitations of
7 subsection 12 of this section, a person may apply to have
8 one or more offenses, violations, or infractions expunged if
9 such offense, violation, or infraction occurred within the
10 state of Missouri and was prosecuted under the jurisdiction
11 of a Missouri municipal, associate circuit, or circuit
12 court, so long as such person lists all the offenses,
13 violations, and infractions he or she is seeking to have
14 expunged in the petition and so long as all such offenses,
15 violations, and infractions are not excluded under
16 subsection 2 of this section. If the offenses, violations,
17 or infractions were charged as counts in the same indictment
18 or information or were committed as part of the same course

19 of criminal conduct, the person may include all the related
20 offenses, violations, and infractions in the petition,
21 regardless of the limits of subsection 12 of this section,
22 and the petition shall only count as a petition for
23 expungement of the highest level violation or offense
24 contained in the petition for the purpose of determining
25 future eligibility for expungement.

26 2. The following offenses, violations, and infractions
27 shall not be eligible for expungement under this section:

28 (1) Any class A felony offense;

29 (2) Any dangerous felony as that term is defined in
30 section 556.061;

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

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

35 (5) Any felony offense of assault; misdemeanor or
36 felony offense of domestic assault; or felony offense of
37 kidnapping;

38 (6) Any offense listed, or previously listed, in
39 chapter 566 or section 105.454, 105.478, 115.631, 130.028,
40 188.030, 188.080, 191.677, 194.425, 217.360, 217.385,
41 334.245, 375.991, 389.653, 455.085, 455.538, 557.035,
42 565.084, 565.085, 565.086, 565.095, 565.120, 565.130,
43 565.156, 565.200, 565.214, 566.093, 566.111, 566.115,
44 568.020, 568.030, 568.032, 568.045, 568.060, 568.065,
45 568.080, 568.090, 568.175, 569.030, 569.035, 569.040,
46 569.050, 569.055, 569.060, 569.065, 569.067, 569.072,
47 569.160, 570.025, 570.090, 570.180, 570.223, 570.224,
48 570.310, 571.020, 571.060, 571.063, 571.070, 571.072,
49 571.150, 574.070, 574.105, 574.115, 574.120, 574.130,
50 575.040, 575.095, 575.153, 575.155, 575.157, 575.159,

51 575.195, 575.200, 575.210, 575.220, 575.230, 575.240,
52 575.350, 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
55 577.054 or 610.130;

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

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

63 (10) Any violation of any state law or county or
64 municipal ordinance regulating the operation of motor
65 vehicles when committed by an individual who has been issued
66 a commercial driver's license or is required to possess a
67 commercial driver's license issued by this state or any
68 other state; and

69 (11) Any offense of section 571.030, except any
70 offense under subdivision (1) of subsection 1 of section
71 571.030 where the person was convicted or found guilty prior
72 to January 1, 2017.

73 3. The petition shall name as defendants all law
74 enforcement agencies, courts, prosecuting or circuit
75 attorneys, municipal prosecuting attorneys, central state
76 repositories of criminal records, or others who the
77 petitioner has reason to believe may possess the records
78 subject to expungement for each of the offenses, violations,
79 and infractions listed in the petition. The court's order
80 of expungement shall not affect any person or entity not
81 named as a defendant in the action.

82 4. The petition shall include the following
83 information:

84 (1) The petitioner's:

85 (a) Full name;

86 (b) Sex;

87 (c) Race;

88 (d) Driver's license number, if applicable; and

89 (e) Current address;

90 (2) Each offense, violation, or infraction for which
91 the petitioner is requesting expungement;

92 (3) The approximate date the petitioner was charged
93 for each offense, violation, or infraction; and

94 (4) The name of the county where the petitioner was
95 charged for each offense, violation, or infraction and if
96 any of the offenses, violations, or infractions occurred in
97 a municipality, the name of the municipality for each
98 offense, violation, or infraction; and

99 (5) The case number and name of the court for each
100 offense.

101 5. The clerk of the court shall give notice of the
102 filing of the petition to the office of the prosecuting
103 attorney, circuit attorney, or municipal prosecuting
104 attorney that prosecuted the offenses, violations, or
105 infractions listed in the petition. If the prosecuting
106 attorney, circuit attorney, or municipal prosecuting
107 attorney objects to the petition for expungement, he or she
108 shall do so in writing within thirty days after receipt of
109 service. Unless otherwise agreed upon by the parties, the
110 court shall hold a hearing within sixty days after any
111 written objection is filed, giving reasonable notice of the
112 hearing to the petitioner. If no objection has been filed
113 within thirty days after receipt of service, the court may

set a hearing on the matter and shall give reasonable notice of the hearing to each entity named in the petition. At any hearing, the court may accept evidence and hear testimony on, and may consider, the following criteria for each of the offenses, violations, or infractions listed in the petition for expungement:

(1) At the time the petition is filed, it has been at least seven years if the offense is a felony, or at least three years if the offense is a misdemeanor, municipal offense, or infraction, from the date the petitioner completed any authorized disposition imposed under section 557.011 for each offense, violation, or infraction listed in the petition;

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

(3) The person has satisfied all obligations relating to any such disposition, including the payment of any fines or restitution;

(4) The person does not have charges pending;

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

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

A pleading by the petitioner that such petitioner meets the requirements of subdivisions (5) and (6) of this subsection shall create a rebuttable presumption that the expungement

145 is warranted so long as the criteria contained in
146 subdivisions (1) to (4) of this subsection are otherwise
147 satisfied. The burden shall shift to the prosecuting
148 attorney, circuit attorney, or municipal prosecuting
149 attorney to rebut the presumption. A victim of an offense,
150 violation, or infraction listed in the petition shall have
151 an opportunity to be heard at any hearing held under this
152 section, and the court may make a determination based solely
153 on such victim's testimony.

154 6. A petition to expunge records related to an arrest
155 for an eligible offense, violation, or infraction may be
156 made in accordance with the provisions of this section to a
157 court of competent jurisdiction in the county where the
158 petitioner was arrested no earlier than three years from the
159 date of arrest; provided that, during such time, the
160 petitioner has not been charged and the petitioner has not
161 been found guilty of any misdemeanor or felony offense.

162 7. If the court determines that such person meets all
163 the criteria set forth in subsection 5 of this section for
164 each of the offenses, violations, or infractions listed in
165 the petition for expungement, the court shall enter an order
166 of expungement. In all cases under this section, the court
167 shall issue an order of expungement or dismissal within six
168 months of the filing of the petition. A copy of the order
169 of expungement shall be provided to the petitioner and each
170 entity possessing records subject to the order, and, upon
171 receipt of the order, each entity shall close any record in
172 its possession relating to any offense, violation, or
173 infraction listed in the petition, in the manner established
174 by section 610.120. The records and files maintained in any
175 administrative or court proceeding in a municipal,
176 associate, or circuit court for any offense, infraction, or

violation ordered expunged under this section shall be confidential and only available to the parties or by order of the court for good cause shown. The central repository shall request the Federal Bureau of Investigation to expunge the records from its files.

8. The order shall not limit any of the petitioner's rights that were restricted as a collateral consequence of such person's criminal record, and such rights shall be restored upon issuance of the order of expungement. **For purposes of 18 U.S.C. 921(a)(3)(B)(ii), an order or expungement granted pursuant to this section shall be considered a complete removal of all effects of the expunged conviction.** Except as otherwise provided under this section, the effect of such order shall be to restore such person to the status he or she occupied prior to such arrests, pleas, trials, or convictions as if such events had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrests, pleas, trials, convictions, or expungement in response to an inquiry made of him or her and no such inquiry shall be made for information relating to an expungement, except the petitioner shall disclose the expunged offense, violation, or infraction to any court when asked or upon being charged with any subsequent offense, violation, or infraction. The expunged offense, violation, or infraction may be considered a prior offense in determining a sentence to be imposed for any subsequent offense that the person is found guilty of committing.

9. Notwithstanding the provisions of subsection 8 of this section to the contrary, a person granted an

expungement shall disclose any expunged offense, violation, or infraction when the disclosure of such information is necessary to complete any application for:

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

(2) Any license issued under chapter 313 or permit issued under chapter 571;

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

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

(5) Employment with any entity engaged in the business of insurance or any insurer for the purpose of complying with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or other similar law which requires an employer engaged in the business of insurance to exclude applicants with certain criminal convictions from employment; or

(6) Employment with any employer that is required to exclude applicants with certain criminal convictions from employment due to federal or state law, including corresponding rules and regulations.

An employer shall notify an applicant of the requirements under subdivisions (4) to (6) of this subsection.

Notwithstanding any provision of law to the contrary, an expunged offense, violation, or infraction shall not be grounds for automatic disqualification of an applicant, but may be a factor for denying employment, or a professional

license, certificate, or permit; except that, an offense, violation, or infraction expunged under the provisions of this section may be grounds for automatic disqualification if the application is for employment under subdivisions (4) to (6) of this subsection.

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

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

12. A person may be granted more than one expungement under this section provided that during his or her lifetime, the total number of offenses, violations, or infractions for

272 which orders of expungement are granted to the person shall
273 not exceed the following limits:

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

277 (2) Not more than one felony offense.

278 A person may be granted expungement under this section for
279 any number of infractions. Nothing in this section shall
280 prevent the court from maintaining records to ensure that an
281 individual has not exceeded the limitations of this
282 subsection. Nothing in this section shall be construed to
283 limit or impair in any way the subsequent use of any record
284 expunged under this section of any arrests or findings of
285 guilt by a law enforcement agency, criminal justice agency,
286 prosecuting attorney, circuit attorney, or municipal
287 prosecuting attorney, including its use as a prior offense,
288 violation, or infraction.

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

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

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