

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 588, 603 & 942
98TH GENERAL ASSEMBLY

4320H.06C

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Sections 488.650 and 610.140, RSMo, are repealed and two new sections
2 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] **five** hundred
2 dollars on all petitions for expungement filed under the provisions of section 610.140. **The**
3 **judge may waive the surcharge when the petitioner is found by the judge to be indigent**
4 **and unable to pay the costs.** Such surcharge shall be collected and disbursed by the clerk of
5 the court as provided by sections 488.010 to 488.020. Moneys collected from this surcharge
6 shall be payable to the general revenue fund.

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 **charged as counts in the same indictment or information or were committed as part of the**
13 **same course of criminal conduct, the person may include all the related offenses, violations,**
14 **and infractions in the petition, regardless of the limits of subsection 10 of this section, and**
15 **the petition shall only count as a petition for expungement of the highest level violation or**
16 **offense contained in the petition for the purpose of determining future eligibility for**
17 **expungement.**

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

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

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

26 (3) Any class B or C misdemeanor offense of section 574.010.] **The following offenses,**
27 **violations, and infractions 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 section 556.061;**

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

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

32 **(5) Any felony offense of assault, misdemeanor, or felony offense of domestic**
33 **assault, or felony offense of kidnapping;**

34 **(6) Any offense listed, or previously listed, in chapter 566 or section 105.454,**
35 **105.478, 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, 217.360, 217.385, 334.245,**
36 **375.991, 389.653, 455.538, 557.035, 565.084, 565.085, 565.086, 565.095, 565.120, 565.130,**
37 **565.156, 565.200, 565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032, 568.045,**
38 **568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035, 569.040, 569.050, 569.055,**
39 **569.060, 569.065, 569.067, 569.072, 569.160, 570.025, 571.020, 571.030, 571.060, 571.063,**
40 **571.070, 571.072, 571.150, 574.070, 574.115, 574.120, 574.130, 575.095, 575.153, 575.155,**
41 **575.157, 575.159, 575.195, 575.200, 575.210, 575.220, 575.230, 575.240, 575.350, 575.353,**
42 **577.078, 577.703, 577.706, 578.008, 578.305, 578.310, or 632.520;**

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

44 **(8) Any ordinance violation that is the substantial equivalent of any offense that is**
45 **not eligible for expungement under this section; and**

46 **(9) Any violations of any state law or county or municipal ordinance regulating the**
47 **operation of motor vehicles when committed by an individual who has been issued a**

48 **commercial driver's license or is required to possess a commercial driver's license issued**
49 **by this state or any other state.**

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

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

57 (1) The petitioner's:

58 (a) Full name;

59 (b) Sex;

60 (c) Race;

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

62 (e) Current address;

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

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

67 (4) The name of the county where the petitioner was [arrested] **charged** for each offense,
68 **violation, or infraction** and if any of the offenses, **violations, or infractions** occurred in a
69 municipality, the name of the municipality for each offense[;] , **violation, or infraction.**

70 [(5) The name of the agency that arrested the petitioner for each offense;

71 (6) The case number and name of the court for each offense; and

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

75 5. **The clerk of the court shall give notice of the filing of the petition to the office of**
76 **the prosecuting attorney, circuit attorney, or municipal prosecuting attorney that**
77 **prosecuted the offenses, violations, or infractions listed in the petition. If the prosecuting**
78 **attorney, circuit attorney, or municipal prosecuting attorney objects to the petition for**
79 **expungement, he or she shall do so in writing within thirty days after receipt of service.**
80 **Unless otherwise agreed upon by the parties, the court shall hold a hearing within sixty**
81 **days after any written objection is filed, giving reasonable notice of the hearing to the**
82 **petitioner. If no objection has been filed within thirty days after receipt of service, the court**
83 **may set a hearing on the matter [no sooner than thirty days from the filing of the petition] and**

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

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

90 (a) Any sentence of imprisonment; or

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

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

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

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

103 (5) The expungement is consistent with the public welfare **and the interests of justice**
104 **warrant the expungement.**

105

106 **If the petitioner meets all the other criteria set forth in this subsection for each of the**
107 **offenses, violations, or infractions listed in the petition for expungement, there shall be a**
108 **presumption that the expungement is consistent with the public welfare and that the**
109 **interests of justice warrant the expungement. A victim of an offense, violation, or**
110 **infraction listed in the petition shall have an opportunity to be heard at any hearing held**
111 **under this section.**

112 6. If the court determines [at the conclusion of the hearing] that such person meets all
113 the criteria set forth in subsection 5 of this section for each of the offenses, **violations, or**
114 **infractions** listed in the petition for expungement, the court [may] **shall** enter an order of
115 expungement. **In all cases under this section, the court shall issue an order of expungement**
116 **or dismissal within six months of the filing of the petition.** A copy of the order of
117 **expungement** shall be provided to [each entity named in the petition] **the petitioner and each**
118 **entity possessing records subject to the order**, and, upon receipt of the order, each entity shall
119 [destroy] **close** any record in its possession relating to any offense, **violation, or infraction** listed

120 in the petition, **in the manner established by section 610.120.** [If destruction of the record is
121 not feasible because of the permanent nature of the record books, such record entries shall be
122 blacked out. Entries of a record ordered expunged shall be removed from all electronic files
123 maintained with the state of Missouri, except for the files of the court.] The records and files
124 maintained in any administrative or court proceeding in a municipal, associate, or circuit court
125 for any offense, **infraction, or violation** ordered expunged under this section shall be
126 confidential and only available to the parties or by order of the court for good cause shown. The
127 central repository shall request the Federal Bureau of Investigation to expunge the records from
128 its files.

129 7. The order shall not limit any of the petitioner's rights that were restricted as a collateral
130 consequence of such person's criminal record, and such rights shall be restored upon issuance
131 of the order of expungement. Except as otherwise provided under this section, the effect of such
132 order shall be to restore such person to the status he or she occupied prior to such arrests, pleas,
133 trials, or convictions as if such events had never taken place. No person as to whom such order
134 has been entered shall be held thereafter under any provision of law to be guilty of perjury or
135 otherwise giving a false statement by reason of his or her failure to recite or acknowledge such
136 arrests, pleas, trials, convictions, or expungement in response to an inquiry made of him or her
137 and no such inquiry shall be made for information relating to an expungement, except the
138 petitioner shall disclose the expunged offense, **violation, or infraction** to any court when asked
139 or upon being charged with any subsequent offense, **violation, or infraction.** The expunged
140 offense may be considered a prior offense in determining a sentence to be imposed for any
141 subsequent offense that the person is found guilty of committing.

142 8. Notwithstanding the provisions of subsection 7 of this section to the contrary, a person
143 granted an expungement shall disclose any expunged offense, **violation, or infraction** when the
144 disclosure of such information is necessary to complete any application for:

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

147 (2) Any license issued under chapter 313; [or]

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

151 (4) **Employment with any federally insured bank or savings institution or credit**
152 **union or an affiliate of such institution or credit union for the purposes of compliance with**
153 **12 U.S.C. Section 1829 and 12 U.S.C. Section 1785.**

154

155 Notwithstanding any provision of law to the contrary, an expunged offense, **violation, or**
156 **infraction** shall not be grounds for automatic disqualification of an applicant, but may be a
157 factor for denying employment, or a professional license, certificate, or permit.

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

164 10. A person may be granted more than one expungement under this section provided
165 that [no person shall be granted more than one order of expungement from the same court.
166 Nothing contained in this section shall prevent the court from maintaining records to ensure that
167 an individual has only one petition for expungement granted by such court under this section]
168 **during his or her lifetime, the total number of offenses, violations, or infractions for which**
169 **orders of expungement are granted to the person shall not exceed the following limits:**

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

172 (2) **Not more than one felony offense.**

173

174 **A person may be granted expungement under this section for any number of infractions.**
175 **Nothing in this section shall prevent the court from maintaining records to ensure that an**
176 **individual has not exceeded the limitations of this subsection. Nothing in this section shall**
177 **be construed to limit or impair in any way the subsequent use of any record expunged**
178 **under this section of any arrests or findings of guilt by a law enforcement agency, criminal**
179 **justice agency, prosecuting attorney, circuit attorney, or municipal prosecuting attorney,**
180 **including its use as a prior offense, violation, or infraction.**

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

185 12. A petition to expunge records related to an arrest for an eligible offense,
186 violation, or infraction may be made in accordance with the provisions of this section to the
187 court where the petitioner was charged no earlier than three years from the date each
188 charge in the petition was filed, provided that, during such time, the prosecution of each
189 charge has not been pursued and the petitioner has not been found guilty of any
190 misdemeanor or felony offense.

191 **13. Nothing in this section shall be construed to limit or restrict the availability of**
192 **expungement to any person under any other law.**

193 **14. A petition to expunge records related to a finding of guilt for an eligible offense**
194 **listed, or previously listed, in section 569.100, subsection 2, 3, or 4 of section 570.030,**
195 **section 570.090, 570.100, 570.130, 570.180, 570.223, 570.224, 570.310, 574.105, or 575.040**
196 **may be made to the court where the petitioner was found guilty no earlier than ten years**
197 **from the date the petitioner completed any authorized disposition imposed under section**
198 **557.011 for each offense listed in the petition, provided that during such time the petitioner**
199 **has not been found guilty of any other misdemeanor or felony offense. A person is not**
200 **eligible to have his or her records expunged unless all obligations related to any such**
201 **disposition have been satisfied, including the payment of any fines or restitution, and the**
202 **person does not have any charges pending.**

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

212 **16. Nothing in this section shall be construed to limit or impair in any way the**
213 **subsequent use of any expunged record of any arrests or findings of guilt by a law**
214 **enforcement agency, criminal justice agency, or prosecuting or circuit attorney, including**
215 **its use as a prior offense.**

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

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