

February 19, 2009

S 262. EXPUNCTIONS/PURGE ONLINE DATABASES. Filed 2/19/09. *TO CLARIFY THAT AN ORDER TO EXPUNGE AN INDIVIDUAL'S RECORD SHALL BE FORWARDED BY THE CLERK OF COURT TO ALL APPLICABLE STATE AND LOCAL GOVERNMENT AGENCIES, TO REQUIRE A STATE GOVERNMENT AGENCY TO FORWARD EXPUNCTION ORDERS RECEIVED BY THE AGENCY TO ANY PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION THAT IS LICENSED BY THE AGENCY TO ACCESS THE AGENCY'S CRIMINAL HISTORY RECORD DATABASE, TO PROVIDE THAT A PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION HAS A DUTY TO UPDATE THOSE HISTORIES BEFORE DISSEMINATING THEM AND IS SUBJECT TO BOTH CIVIL LIABILITY AND TO A CIVIL PENALTY FOR FAILURE TO CARRY OUT ITS DUTY.*

Enacts a new GS 15A-150 to require that a state agency, which receives a certified copy of an order to expunge a record under GS-14-50.30, GS 15A-145, GS 15A-146, GS 15A-147, GS 15A-149, GS 90-96, or GS 90-113.14, expunge its own records and also forward a copy of the certified order to any private entity with which it has a licensing agreement for either bulk extracts of data from the agency's criminal record database or for online real-time access to the agency's criminal record database. Requires that the agency charge that private entity a fee to recover costs incurred for providing the expunction information. Enacts a new GS 15A-150.1 to prohibit a state agency from releasing any criminal history record information to a private entity that purchases that information if the agency is aware that the entity has been found by a court to have committed three or more violations of proposed GS 15A-150.3 by compiling or disseminating information after receiving an expunction order, until the first anniversary of the date of the most recent violation. Enacts a new GS 15A-150.2 to require that a private entity that compiles and disseminates criminal history record information for compensation destroy and cease dissemination of any information in its possession once the entity has received notice of an expunction order. Requires that the private entity licensed to access a state agency's criminal history record database, unless regulated by specified federal laws, (1) receive original information or updated record information within 90-days preceding dissemination and (2) notify the state agency if the entity sells any compilation of information to another similar entity. Creates liability for a private entity that violates this statute and authorizes court costs and attorneys' fees for a prevailing party in an action brought pursuant to this section. Enacts a new GS 15A-150.3 to create civil penalties for a private entity that compiles and disseminates criminal history information after receiving notice of an order of expunction. Provides that a district court may issue a warning for the first violation and assess a maximum civil penalty of \$1,000 for each subsequent violation. Allows the attorney general or appropriate district attorney to sue to collect a civil penalty. Provides that a civil penalty is deposited in the Civil Penalty and Forfeiture Fund.

Amends GS-14-50.30(b) (Street Gang Suppression Act), GS 15A-145(c) (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor and certain other misdemeanors), GS 15A-146(b) (Expunction of records when charges are dismissed or there are findings of not guilty), GS 15A-147 (Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft), GS 15A-149(b) (Expunction of records when pardon of innocence is granted), GS 90-96 (Controlled Substances Act), and GS 90-113.14 (Toxic Vapors Act), to require, when a court orders that a conviction as a result of a criminal charge be expunged from the record, that (1) the clerk forward a certified copy of the order, when applicable, to the Department of Correction, the Division of Motor Vehicles, and any other appropriate state and local government agencies, in addition to law enforcement agencies, and (2) the court direct those agencies to expunge their records of that conviction. Also makes technical changes.

Effective October 1, 2009.

Intro. by Berger of Franklin.

GS 14, 15A, 90

March 30, 2009

S 262. EXPUNCTIONS/PURGE ONLINE DATABASES. Filed 2/19/2009. Senate committee substitute makes the following changes to 1st edition. (1) Amends title to reflect change in bill's

provisions substituting requirement that state agency forward notice of expunction orders (was, forward expunction order itself). (2) Adds language to GS 14-50.30(b) clarifying that court should specifically order that conviction be expunged from court records. (3) Throughout the bill, makes technical change eliminating references to DMV as law enforcement agency. (4) Adds provision throughout the bill putting the burden on petitioner to identify government agencies other than law enforcement agencies, DMV, and Department of Correction that have a record of conviction. (5) Amends GS 15A-145(d) to allow court to check AOC file to determine whether plaintiff in a civil action alleging a violation of the act was in fact previously granted a discharge. Makes conforming change to GS 15A-146(c), 90-96(e), and 90-113.14(e). (6) Deletes provision requiring state agency to notify private entities with which it has a licensing agreement for online real-time access to the agency's criminal record database. Also deletes provision requiring agency to charge private entities a fee to recover costs incurred for providing the expunction information. (7) Deletes provision prohibiting state agency from continuing to release information to private entity after entity has been found to have committed three or more violations of non-disclosure law.

May 13, 2009

S 262. EXPUNCTIONS/PURGE ONLINE DATABASES. Filed 2/19/09. House committee substitute makes the following changes to 2nd edition.

Amends proposed GS 15A-150 regarding notification requirements in the expunction of an individual's record.

Notification to AOC. Requires the clerk of superior court in each county in the state to file with the Administrative Office of the Courts (AOC), as soon as practical after each term of court, the names of persons (1) granted a discharge or expunction under Article 5 of GS Chapter 15A, (2) granted an expunction under GS 14-50.29 or GS 14.50.30, (3) granted a conditional discharge or an expunction under GS 90-96 or GS 90-113.14, and (4) whose judgments of convictions have been canceled and expunged under GS 90-96 or GS 90-113.14.

Notification to Other State and Local Agencies. Directs the clerk of superior court to send a certified copy of the identified persons' expunction orders to all of the following agencies: (1) any arresting agency, (2) the Division of Motor Vehicles and the Department of Correction when applicable, and (3) any state or local agency that is identified by the petition as having a record of the offense that has been expunged.

Notification to SBI and FBI. Directs an arresting agency that receives a certified copy of an expunction order to forward a copy of the order with the form supplied by the State Bureau of Investigation (SBI) to the SBI. Directs the SBI to forward the order to the Federal Bureau of Investigation (FBI).

Notification to Private Entities. Requires a state agency that receives a certified copy of an expunction order to notify any private entity with which the state agency has a licensing agreement for bulk extracts of data from the agency criminal record database to delete the record in question from its database.

Makes conforming changes to GS Chapter 14, Chapter 15A, and Chapter 90 regarding the notification requirements set out in proposed GS 15A-150.

Deletes proposed GS 15A-150.1 (regarding the duty of a private entity to expunge records and civil liability for violating that duty) but reorganizes those provisions in new GS 15A-152. Adds that a person who has a record expunged may apply to the AOC for a certificate verifying that the person is the subject of a record that has been expunged and that notice of the expunction has been made in accordance with proposed GS 15A-150. Provides criteria for application for the certificate of verification and provides that the AOC may establish procedures for the application and issuing the certificates of verification. Deletes proposed GS 15A-150.2 pertaining to civil penalties for private entities that compile and disseminate criminal history information for compensation.

Enacts GS 15A-151 to direct the AOC to maintain a confidential file of the people for whom the AOC received notice under proposed GS 15A-150. Provides for a limited disclosure of this information to the General Court of Justice of North Carolina or a judge of the court, and the person who has received the discharge or expunction. Makes conforming changes to GS Chapter 90 regarding the AOC's duty of confidentiality.

Makes additional conforming changes to repeal GS 90-96(c) and GS 90-113.14(c), setting out standards for notification and confidentiality.

Makes technical and organizational changes. Makes conforming changes to the title.

July 9, 2009

S 262. EXPUNCTIONS/PURGE ONLINE DATABASES. Filed 2/19/09. House committee substitute makes the following changes to 3rd edition. Amends GS 15A-150 to provide that when a state agency notifies a private entity with which it has a licensing agreement for bulk extracts of data from the agency criminal record database to delete a record pursuant to an expunction or discharge order, the private entity must notify any other entity to which it subsequently provides in a bulk extract data from the agency criminal database to delete the record from its database.

Amends GS 15A-152 to: (1) provide that the civil liability provisions do not apply to an entity regulated by and subject to the civil liability remedies of the federal Fair Credit Reporting Act or the Gramm Leach-Bliley Act and (2) make conforming changes.

Amends GS 15A-146(b) to reinstate provision that specifies that the costs of expunging the records, required under GS 15A-150, may not be taxed against the petitioner.

Deletes the repeal of GS 90-113.14(c). Modifies GS 90-113.14(c) to (1) eliminate the requirement that the clerk of superior court in each county file with the Administrative Office of the Courts (AOC) the names of those persons granted a conditional discharge under the provisions of Article 5A of GS Chapter 90 and (2) eliminate the requirement that the AOC maintain a confidential file containing the names of persons granted conditional discharges. Makes technical changes.

Changes effective date of the act to October 1, 2010 (was, October 1, 2009).

August 6, 2009

S 262. EXPUNCTIONS/PURGE ONLINE DATABASES. Filed 2/19/09. House committee substitute makes changes to 4th edition to be digested in tomorrow's *Daily Bulletin*.

August 7, 2009

S 262. EXPUNCTIONS/PURGE ONLINE DATABASES. Filed 2/19/09. House committee substitute makes the following changes to 4th edition. Amends proposed GS 15A-152(c) to clarify that civil liability under this section applies to a private entity *that is subject to the provisions of the statute*. Makes a technical change to the title.

September 1, 2009

SL 2009-510 (S 262). EXPUNCTIONS/PURGE ONLINE DATABASES. AN ACT TO CLARIFY THAT AN ORDER TO EXPUNGE AN INDIVIDUAL'S RECORD SHALL BE FORWARDED BY THE CLERK OF COURT TO ALL APPLICABLE STATE AND LOCAL GOVERNMENT AGENCIES, TO REQUIRE A STATE GOVERNMENT AGENCY TO FORWARD NOTICE OF EXPUNCTION ORDERS RECEIVED BY THE AGENCY TO ANY PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION THAT IS LICENSED BY THE AGENCY TO ACCESS THE AGENCY'S CRIMINAL HISTORY RECORD DATABASE, AND TO PROVIDE THAT A PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION HAS A DUTY TO UPDATE THOSE HISTORIES BEFORE DISSEMINATING THEM AND IS SUBJECT TO CIVIL LIABILITY. Summarized in *Daily Bulletin* 2/19/09, 3/30/09, 5/13/09, 7/9/09, and 8/7/09. Enacted August 26, 2009. Effective October 1, 2010.