

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 91
Judiciary II Committee Substitute Adopted 3/4/13
PROPOSED HOUSE COMMITTEE SUBSTITUTE S91-PCS35308-SA-11

Short Title: Prohibit Expunction Inquiry.

(Public)

Sponsors:

Referred to:

February 18, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE LAW PERTAINING TO ADMINISTRATIVE ACTION THAT
3 MAY BE TAKEN BY AN OCCUPATIONAL LICENSING BOARD AS A RESULT OF
4 EXPUNGED CHARGES OR CONVICTIONS UNDER G.S. 15A-145.4 AND
5 G.S. 15A-145.5; AND TO PROHIBIT AN EMPLOYER, EDUCATIONAL
6 INSTITUTION, OR STATE OR LOCAL GOVERNMENT AGENCY FROM
7 REQUESTING THAT AN APPLICANT PROVIDE INFORMATION REGARDING AN
8 ARREST, CRIMINAL CHARGE, OR CRIMINAL CONVICTION OF THE APPLICANT
9 THAT HAS BEEN EXPUNGED.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 15A-145.4(h) reads as rewritten:

12 "(h) Any other applicable State or local government agency shall expunge from its
13 records entries made as a result of the conviction ordered expunged under this section. The
14 agency shall also ~~reverse-vacate~~ any administrative actions taken against a person whose record
15 is expunged under this section as a result of the charges or convictions expunged. A person
16 whose administrative action has been vacated by an occupational licensing board pursuant to an
17 expunction under this section may then reapply for licensure and must satisfy the board's then
18 current education and preliminary licensing requirements in order to obtain licensure. This
19 subsection shall not apply to the Department of Justice for DNA records and samples stored in
20 the State DNA Database and the State DNA Databank."

21 **SECTION 2.** G.S. 15A-145.5(f) reads as rewritten:

22 "(f) Any other applicable State or local government agency shall expunge from its
23 records entries made as a result of the conviction ordered expunged under this section upon
24 receipt from the petitioner of an order entered pursuant to this section. The agency shall also
25 ~~reverse-vacate~~ any administrative actions taken against a person whose record is expunged
26 under this section as a result of the charges or convictions expunged. A person whose
27 administrative action has been vacated by an occupational licensing board pursuant to an
28 expunction under this section may then reapply for licensure and must satisfy the board's then
29 current education and preliminary licensing requirements in order to obtain licensure. This
30 subsection shall not apply to the Department of Justice for DNA records and samples stored in
31 the State DNA Database and the State DNA Databank or to fingerprint records."

32 **SECTION 3.** Article 5 of Chapter 15A of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 15A-153. Effect of expunction; prohibited practices by employers, educational**
35 **institutions, agencies of State and local governments.**



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1 (a) Purpose. – The purpose of this section is to clear the public record of any entry of
2 any arrest, criminal charge, or criminal conviction that has been expunged so that (i) the person
3 who is entitled to and obtains the expunction may omit reference to the charges or convictions
4 to potential employers and others and (ii) a records check for prior arrests and convictions will
5 not disclose the expunged entries. Nothing in this section shall be construed to prohibit an
6 employer from asking a job applicant about criminal charges or convictions that have not been
7 expunged and are part of the public record.

8 (b) No person as to whom an order of expunction has been entered pursuant to this
9 Article shall be held thereafter under any provision of any laws to be guilty of perjury or
10 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
11 any expunged arrest, apprehension, charge, indictment, information, trial, or conviction in
12 response to any inquiry made of him or her for any purpose other than as provided in
13 subsection (e) of this section.

14 (c) Prohibit Employer or Educational Institution From Requiring Disclosure of
15 Expunged Arrest, Criminal Charge, or Conviction. – An employer or educational institution
16 shall not, in any application, interview, or otherwise, require an applicant for employment or
17 admission to disclose information concerning any arrest, criminal charge, or criminal
18 conviction of the applicant that has been expunged. An applicant need not, in answer to any
19 question concerning any arrest or criminal charge that has not resulted in a conviction, include
20 a reference to or information concerning arrests, charges, or convictions that have been
21 expunged. This subsection does not apply to State or local law enforcement agencies authorized
22 pursuant to G.S. 15A-151 to obtain confidential information for employment purposes.

23 (d) Prohibit State or Local Government Agencies, Officials, and Employees From
24 Requiring Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – Agencies,
25 officials, and employees of the State and local governments shall not, in any application,
26 interview, or otherwise, require an applicant for a license, permit, registration, or governmental
27 service to disclose information concerning any arrest, criminal charge, or criminal conviction of
28 the applicant that has been expunged. An applicant need not, in answer to any question
29 concerning any arrest or criminal charge that has not resulted in a conviction, include a
30 reference to or information concerning charges or convictions that have been expunged. Such
31 application shall not be denied solely because of the applicant's refusal or failure to disclose
32 information concerning any arrest, criminal charge, or criminal conviction of the applicant that
33 has been expunged.

34 (e) The provisions of subsection (d) of this section do not apply to any applicant or
35 licensee seeking or holding any certification issued by the North Carolina Criminal Justice
36 Education and Training Standards Commission pursuant to Chapter 17C of the General Statutes
37 or the North Carolina Sheriffs Education and Training Standards Commission pursuant to
38 Chapter 17E of the General Statutes.

39 (1) Convictions expunged pursuant to G.S. 15A-145.4. – Persons pursuing
40 certification under the provisions of Chapter 17C or 17E of the General
41 Statutes shall disclose any and all felony convictions to the certifying
42 Commission regardless of whether or not the felony convictions were
43 expunged pursuant to the provisions of G.S. 15A-145.4.

44 (2) Convictions expunged pursuant to G.S. 15A-145.5. – Persons pursuing
45 certification under the provisions of Chapter 17C or 17E of the General
46 Statutes shall disclose any and all convictions to the certifying Commission
47 regardless of whether or not the convictions were expunged pursuant to the
48 provisions of G.S. 15A-145.5.

49 (f) Penalty for Violation. – Upon investigation by the Commissioner of Labor or the
50 Commissioner's authorized representative, any employer found to be in violation of subsection
51 (c) of this section shall be issued a written warning for a first violation and shall be subject to a

1 civil penalty of up to five hundred dollars (\$500.00) for each additional violation occurring
2 after receipt of the written warning. In determining the amount of any penalty ordered under
3 authority of this section, the Commissioner shall give due consideration to the appropriateness
4 of the penalty with respect to the size of the business of the person being charged, the gravity of
5 the violation, the good faith of the person, and the record of previous violations. The
6 determination of the amount of the penalty by the Commissioner shall be final, unless within 15
7 days after receipt of notice thereof by certified mail with return receipt, by signature
8 confirmation as provided by the U.S. Postal Service, by a designated delivery service
9 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the
10 person charged with the violation takes exception to the determination in which event the final
11 determination of the penalty shall be made in an administrative proceeding and in a judicial
12 proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure
13 Act. The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for
14 carrying out the provisions of this subsection.

15 Nothing in this section shall be construed to create a private cause of action against any
16 employer or its agents or employees, any educational institutions or their agents or employees,
17 or any State or local government agencies, officials, or employees."

18 **SECTION 4.** Sections 1 and 2 of this act are effective when this act becomes law.
19 The remainder of this act becomes effective December 1, 2013. G.S. 15A-153(f), as enacted by
20 Section 3 of this act, applies only to violations of G.S. 15A-153 that occur on or after
21 December 1, 2013.