

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

D

SENATE BILL 91  
Judiciary II Committee Substitute Adopted 3/4/13  
House Committee Substitute Favorable 4/3/13  
Fourth Edition Engrossed 4/11/13  
Proposed Conference Committee Substitute S91-PCCS15259-SA-1

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; TO PROHIBIT AN EMPLOYER OR EDUCATIONAL INSTITUTION  
6 FROM REQUESTING THAT AN APPLICANT PROVIDE INFORMATION  
7 REGARDING AN ARREST, CRIMINAL CHARGE, OR CRIMINAL CONVICTION OF  
8 THE APPLICANT THAT HAS BEEN EXPUNGED; AND TO REQUIRE A STATE OR  
9 LOCAL GOVERNMENT AGENCY TO ADVISE AN APPLICANT THAT THE  
10 APPLICANT IS NOT REQUIRED TO DISCLOSE INFORMATION REGARDING AN  
11 ARREST, CRIMINAL CHARGE, OR CRIMINAL CONVICTION OF THE APPLICANT  
12 THAT HAS BEEN EXPUNGED PRIOR TO REQUESTING DISCLOSURE.

13 The General Assembly of North Carolina enacts:

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

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

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

25 "(f) Any other applicable State or local government agency shall expunge from its  
26 records entries made as a result of the conviction ordered expunged under this section upon  
27 receipt from the petitioner of an order entered pursuant to this section. The agency shall also  
28 ~~reverse-vacate~~ any administrative actions taken against a person whose record is expunged  
29 under this section as a result of the charges or convictions expunged. A person whose  
30 administrative action has been vacated by an occupational licensing board pursuant to an



\* S 9 1 - P C C S 1 5 2 5 9 - S S A - 1 \*

1 expunction under this section may then reapply for licensure and must satisfy the board's then  
2 current education and preliminary licensing requirements in order to obtain licensure. This  
3 subsection shall not apply to the Department of Justice for DNA records and samples stored in  
4 the State DNA Database and the State DNA Databank or to fingerprint records."

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

7 **"§ 15A-153. Effect of expunction; prohibited practices by employers, educational**  
8 **institutions, agencies of State and local governments.**

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

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

22 (c) Employer or Educational Institution Inquiry Regarding Disclosure of Expunged  
23 Arrest, Criminal Charge, or Conviction. – An employer or educational institution shall not, in  
24 any application, interview, or otherwise, require an applicant for employment or admission to  
25 disclose information concerning any arrest, criminal charge, or criminal conviction of the  
26 applicant that has been expunged and shall not knowingly and willingly inquire about any  
27 arrest, charge, or conviction that they know to have been expunged. An applicant need not, in  
28 answer to any question concerning any arrest or criminal charge that has not resulted in a  
29 conviction, include a reference to or information concerning arrests, charges, or convictions  
30 that have been expunged. This subsection does not apply to State or local law enforcement  
31 agencies authorized pursuant to G.S. 15A-151 to obtain confidential information for  
32 employment purposes.

33 (d) State or Local Government Agency, Official, and Employee Inquiry Regarding  
34 Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – Agencies, officials, and  
35 employees of the State and local governments who request disclosure of information  
36 concerning any arrest, criminal charge, or criminal conviction of the applicant shall first advise  
37 the applicant that State law allows the applicant to not refer to any arrest, charge, or conviction  
38 that has been expunged. An applicant need not, in answer to any question concerning any arrest  
39 or criminal charge that has not resulted in a conviction, include a reference to or information  
40 concerning charges or convictions that have been expunged. Such application shall not be  
41 denied solely because of the applicant's refusal or failure to disclose information concerning  
42 any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

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

48 (1) Convictions expunged pursuant to G.S. 15A-145.4. – Persons pursuing  
49 certification under the provisions of Chapter 17C or 17E of the General  
50 Statutes shall disclose any and all felony convictions to the certifying

1 Commission regardless of whether or not the felony convictions were  
2 expunged pursuant to the provisions of G.S. 15A-145.4.

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

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

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

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