

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 726
Committee Substitute Favorable 5/13/09

Short Title: Clarify Expunctions.

(Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON'S RECORD MAY BE EXPUNGED FOR A FIRST MISDEMEANOR OFFENSE COMMITTED WHEN THE PERSON WAS LESS THAN EIGHTEEN YEARS OLD EVEN THOUGH THE PERSON IS EIGHTEEN YEARS OLD OR OLDER AT THE TIME OF CONVICTION; TO PROVIDE THAT A PERSON'S RECORD MAY BE EXPUNGED FOR A FIRST MISDEMEANOR POSSESSION OF ALCOHOL OFFENSE COMMITTED WHEN THE PERSON WAS LESS THAN TWENTY-ONE YEARS OLD EVEN THOUGH THE PERSON IS TWENTY-ONE YEARS OR OLDER AT THE TIME OF THE CONVICTION; TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS; AND TO PROVIDE THAT ANY PERSON OR ENTITY REQUIRED TO OBTAIN A CRIMINAL RECORD CHECK WOULD NOT BE DEEMED TO HAVE KNOWLEDGE OF OFFENSES EXPUNGED UNDER THE STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145 reads as rewritten:

"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of ~~conviction~~ commission of misdemeanor; expunction of certain other misdemeanors.

(a) Whenever any person who ~~has (i) not yet attained the age of 18 years (i) committed a misdemeanor when the person was less than 18 years old and who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years committed a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1) when the person was less than 21 years old and who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), ~~he~~ the person may file a petition in the court where ~~he~~ she was convicted for expunction of the misdemeanor from his or her criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:~~

(1) An affidavit by the petitioner that ~~he~~ the petitioner has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or



- 1 misdemeanor other than a traffic violation, under the laws of the United
2 States or the laws of this State or any other state.
- 3 (2) Verified affidavits of two persons who are not related to the petitioner or to
4 each other by blood or marriage, that they know the character and reputation
5 of the petitioner in the community in which ~~he~~ the petitioner lives and that
6 his or her character and reputation are good.
- 7 (3) A statement that the petition is a motion in the cause in the case wherein the
8 petitioner was convicted.
- 9 (4) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,
10 and sheriff of the county in which the petitioner was convicted and, if
11 different, the county of which the petitioner is a resident, showing that the
12 petitioner has not been convicted of a felony or misdemeanor other than a
13 traffic violation under the laws of this State at any time prior to the
14 conviction for the misdemeanor in question or during the two year period
15 following that conviction.~~
- 16 (4a) An application on a form approved by the Administrative Office of the
17 Courts requesting and authorizing a State and national criminal record check
18 by the Department of Justice using any information required by the
19 Administrative Office of the Courts to identify the individual and a search of
20 the confidential record of expunctions maintained by the Administrative
21 Office of the Courts. The application shall be forwarded to the Department
22 of Justice and to the Administrative Office of the Courts, which shall
23 conduct the searches and report their findings to the court.
- 24 (5) An affidavit by the petitioner that no restitution orders or civil judgments
25 representing amounts ordered for restitution entered against him or her are
26 outstanding.

27 The petition shall be served upon the district attorney of the court wherein the case was
28 tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file
29 any objection thereto and shall be duly notified as to the date of the hearing of the petition.

30 The judge to whom the petition is presented is authorized to call upon a probation officer
31 for any additional investigation or verification of the petitioner's conduct during the two-year
32 period that he deems desirable.

33 (b) If the court, after hearing, finds that the petitioner had remained of good behavior
34 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two
35 years from the date of conviction of the misdemeanor in question, the petitioner has no
36 outstanding restitution orders or civil judgments representing amounts ordered for restitution
37 entered against ~~him~~ him or her, and (i) petitioner was not 18 years old at the time of the
38 ~~conviction~~ commission of the misdemeanor in question, or (ii) petitioner was not 21 years old
39 at the time of the ~~conviction~~ commission of the offense of possession of alcohol pursuant to
40 G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law,
41 to the status he or she occupied before such arrest or indictment or information. No person as to
42 whom such order has been entered shall be held thereafter under any provision of any laws to
43 be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite
44 or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry
45 made of him or her for any purpose.

46 (c) The court shall also order that the said misdemeanor conviction, or a civil
47 revocation of a drivers license as the result of a criminal charge, be expunged from the records
48 of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles,
49 bearing record of the same to expunge their records of the conviction or a civil revocation of a
50 drivers license as the result of a criminal charge. This subsection does not apply to civil or
51 criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2.

1 The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
2 arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor
3 Vehicles for the expunction of a civil revocation provided the underlying criminal charge is
4 also expunged. The civil revocation of a drivers license shall not be expunged prior to a final
5 disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff,
6 chief or head of such other arresting agency shall then transmit the copy of the order with a
7 form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the
8 State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

9 (c1) Any other applicable State or local government agency shall expunge from its
10 records entries made as a result of the charge or conviction ordered expunged under this
11 section.

12 (d) The clerk of superior court in each county in North Carolina shall, as soon as
13 practicable after each term of court in ~~his~~ the clerk's county, file with the Administrative Office
14 of the Courts, the names of those persons granted a discharge under the provisions of this
15 section, and the Administrative Office of the Courts shall maintain a confidential file
16 containing the names of persons granted conditional discharges. The information contained in
17 such file shall be disclosed only to judges of the General Court of Justice of North Carolina for
18 the purpose of ascertaining whether any person charged with an offense has been previously
19 granted a discharge.

20 (e) A person who files a petition for expunction of a criminal record under this section
21 must pay the clerk of superior court a fee of one hundred twenty-five dollars (\$125.00) at the
22 time the petition is filed. Fees collected under this subsection shall be deposited in the General
23 Fund. This subsection does not apply to petitions filed by an indigent.

24 (f) Notwithstanding any other provision of law, no person or entity required under State
25 or federal law to obtain a criminal record check prior to employment shall be deemed to have
26 knowledge of any offense expunged pursuant to this section."

27 **SECTION 2.** This act becomes effective December 1, 2009, and applies to
28 petitions for expunctions filed on or after that date.