

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE DRS35063-LHf-32 (1/14)

Short Title: Expunctions/Purge Online Databases.

(Public)

Sponsors: Senator Berger of Franklin.

Referred to:

A BILL TO BE ENTITLED

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 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.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-50.30(b) reads as rewritten:

"(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the ~~said~~ conviction be expunged from the records of the court, and direct the Department of Correction, all law enforcement ~~ageneies~~-agencies, including the Division of Motor Vehicles, and any other State or local government agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting ~~agency-agency~~; and when applicable, to the Division of Motor Vehicles, the Department of Correction, and any other State or local agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation."



1 **SECTION 2.** G.S. 15A-145(c) reads as rewritten:

2 "(c) The court shall also order that the ~~said~~—misdemeanor conviction, or a civil
3 revocation of a drivers license as the result of a criminal charge, be expunged from the records
4 of the court, and direct the Department of Correction, all law-enforcement agencies, including
5 the Division of Motor Vehicles, and any other State or local government agencies bearing
6 record of the same to expunge their records of the conviction or a civil revocation of a drivers
7 license as the result of a criminal charge. This subsection does not apply to civil or criminal
8 charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk
9 shall forward a certified copy of the order to the sheriff, chief of police, or other arresting
10 ~~agency—agency; and when applicable, to the Department of Correction, and any other State or~~
11 local agency. The clerk shall forward a certified copy of the order to the Division of Motor
12 Vehicles for the expunction of a civil revocation provided the underlying criminal charge is
13 also expunged. The civil revocation of a drivers license shall not be expunged prior to a final
14 disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff,
15 chief or head of such other arresting agency shall then transmit the copy of the order with a
16 form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the
17 State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation."

18 **SECTION 3.** G.S. 15A-146(b) reads as rewritten:

19 "(b) The court may also order that the said entries, including civil revocations of drivers
20 licenses as a result of the underlying charge, shall be expunged from the records of the court,
21 and direct the Department of Correction, all law-enforcement agencies, including the Division
22 of Motor Vehicles, and any other State or local government agencies bearing record of the
23 same to expunge their records of the entries, including civil revocations of drivers licenses as a
24 result of the underlying charge being expunged. This subsection does not apply to civil or
25 criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2.
26 The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
27 arresting ~~agency—agency; and when applicable, to the Department of Correction and any other~~
28 State or local agency. The clerk shall forward a certified copy of the order to the Division of
29 Motor Vehicles for the expunction of a civil revocation provided the underlying criminal
30 charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to
31 a final disposition of any pending civil or criminal charge based upon the civil revocation. The
32 sheriff, chief or head of such other arresting agency shall then transmit the copy of the order
33 with the form supplied by the State Bureau of Investigation to the State Bureau of
34 Investigation, and the State Bureau of Investigation shall forward the order to the Federal
35 Bureau of Investigation. The costs of expunging these records shall not be taxed against the
36 petitioner."

37 **SECTION 4.** G.S. 15A-147 reads as rewritten:

38 "**§ 15A-147. Expunction of records when charges are dismissed or there are findings of**
39 **not guilty as a result of identity theft.**

40 (a) If any person is named in a charge for an infraction or a crime, either a
41 misdemeanor or a felony, as a result of another person using the identifying information of the
42 named person and the charge against the named person is dismissed, a finding of not guilty is
43 entered, or the conviction is set aside, the named person may apply by petition or written
44 motion to the court where the charge was last pending on a form approved by the
45 Administrative Office of the Courts supplied by the clerk of court for an order to expunge from
46 all official records any entries relating to the person's apprehension, charge, or trial. The court,
47 after notice to the district attorney, shall hold a hearing on the motion or petition and, upon
48 finding that the person's identity was used without permission and the charges were dismissed
49 or the person was found not guilty, the court shall order the expunction.

50 (b) No person as to whom such an order has been entered under this section shall be
51 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of

1 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
2 of the person's failure to recite or acknowledge any expunged entries concerning apprehension,
3 charge, or trial.

4 (c) The court shall also order that the said entries shall be expunged from the records of
5 the court and direct the Department of Correction, all law enforcement agencies, the Division
6 of Motor Vehicles, or any other State or local government agencies bearing record of the same
7 to expunge their records of the entries. The clerk shall forward a certified copy of the order to
8 the sheriff, chief of police, or other charging agency; and, when applicable, to the Department
9 of Correction, Division of Motor Vehicles~~Vehicles~~, and any other State or local agency. The
10 sheriff, chief, or head of such other charging agency shall then transmit the copy of the order
11 with the form supplied by the State Bureau of Investigation to the State Bureau of
12 Investigation, and the State Bureau of Investigation shall forward the order to the Federal
13 Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its
14 records as required by this section. The costs of expunging these records shall not be taxed
15 against the petitioner.

16 (d) The Division of Motor Vehicles shall expunge from its records entries made as a
17 result of the charge or conviction ordered expunged under this section. The Division of Motor
18 Vehicles shall also reverse any administrative actions taken against a person whose record is
19 expunged under this section as a result of the charges or convictions expunged, including the
20 assessment of drivers license points and drivers license suspension or revocation.
21 Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall
22 provide to the person whose motor vehicle record is expunged under this section a certified
23 corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or
24 revoked as a result of a charge or conviction expunged under this section.

25 (e) Any other applicable State or local government ~~agency~~agency, including the
26 Department of Correction, shall expunge from its records entries made as a result of the charge
27 or conviction ordered expunged under this section. The agency shall also reverse any
28 administrative actions taken against a person whose record is expunged under this section as a
29 result of the charges or convictions expunged. Notwithstanding any other provision of law, the
30 normal fee for any reinstatement of a license or privilege resulting under this section shall be
31 waived.

32 (f) Any insurance company that charged any additional premium based on insurance
33 points assessed against a policyholder as a result of a charge or conviction that was expunged
34 under this section shall refund those additional premiums to the policyholder upon notification
35 of the expungement."

36 **SECTION 5.** G.S. 15A-149(b) reads as rewritten:

37 "(b) The order of expunction shall include an instruction that any entries relating to the
38 person's apprehension, charge, or trial shall be expunged from the records of the court and
39 direct the Department of Correction, all law enforcement agencies, the Division of Motor
40 Vehicles, or any other State or local government agencies bearing record of the same to
41 expunge their records of the entries. The clerk shall forward a certified copy of the order to the
42 sheriff, chief of police, or other charging agency; and, when applicable, to the Department of
43 Correction, Division of Motor Vehicles~~Vehicles~~, and any other State or local agency. The
44 sheriff, chief, or head of such other charging agency shall then transmit the copy of the order
45 with the form supplied by the State Bureau of Investigation to the State Bureau of
46 Investigation, and the State Bureau of Investigation shall forward the order to the Federal
47 Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its
48 records as required by this section. The costs of expunging these records shall not be taxed
49 against the petitioner."

50 **SECTION 6.** G.S. 90-96(b) reads as rewritten:

1 "(b) Upon the dismissal of such person, and discharge of the proceedings against him
2 under subsection (a) of this section, such person, if he were not over 21 years of age at the time
3 of the offense, may apply to the court for an order to expunge from all official records (other
4 than the confidential file to be retained by the Administrative Office of the Courts under
5 subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of
6 guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the
7 application the following:

- 8 (1) An affidavit by the applicant that he has been of good behavior during the
9 period of probation since the decision to defer further proceedings on the
10 offense in question and has not been convicted of any felony, or
11 misdemeanor, other than a traffic violation, under the laws of the United
12 States or the laws of this State or any other state;
- 13 (2) Verified affidavits by two persons who are not related to the applicant or to
14 each other by blood or marriage, that they know the character and reputation
15 of the petitioner in the community in which he lives, and that his character
16 and reputation are good;
- 17 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
18 and sheriff of the county in which the petitioner was convicted, and, if
19 different, the county of which the petitioner is a resident, showing that the
20 applicant has not been convicted of a felony or misdemeanor other than a
21 traffic violation under the laws of this State at any time prior to the
22 conviction for the offense in question or during the period of probation
23 following the decision to defer further proceedings on the offense in
24 question.

25 The judge to whom the petition is presented is authorized to call upon a probation officer
26 for any additional investigation or verification of the petitioner's conduct during the
27 probationary period deemed desirable.

28 If the court determines, after hearing, that such person was dismissed and the proceedings
29 against him discharged and that he was not over 21 years of age at the time of the offense, it
30 shall enter such order. The effect of such order shall be to restore such person in the
31 contemplation of the law to the status he occupied before such arrest or indictment or
32 information. No person as to whom such order was entered shall be held thereafter under any
33 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
34 his failures to recite or acknowledge such arrest, or indictment or information, or trial in
35 response to any inquiry made of him for any purpose.

36 The court shall also order that said conviction and the records relating thereto be expunged
37 from the records of the court, and direct the Department of Correction, all law-enforcement
38 agencies—agencies, including the Division of Motor Vehicles, and any other State or local
39 government agencies bearing records of the same to expunge their records of the conviction.
40 The clerk shall forward a certified copy of the order to the sheriff, chief of police or other
41 arresting agency, as ~~appropriate~~, appropriate; and when applicable, to the Department of
42 Correction, Division of Motor Vehicles, and any other State or local government agency. ~~and~~
43 ~~the~~ The sheriff, chief of police or other arresting agency, as appropriate, shall forward such
44 order to the State Bureau of Investigation with a form supplied by the State Bureau of
45 Investigation. The State Bureau of Investigation shall forward the court order in like manner to
46 the Federal Bureau of Investigation."

47 **SECTION 7.** G.S. 90-96(e) reads as rewritten:

48 "(e) Whenever any person who has not previously been convicted of an offense under
49 this Article or under any statute of the United States or any state relating to controlled
50 substances included in any schedule of this Article or to that paraphernalia included in Article
51 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this

1 Article by possessing a controlled substance included within Schedules II through VI of this
2 Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony
3 under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon
4 application of the person not sooner than 12 months after conviction, order cancellation of the
5 judgment of conviction and expunction of the records of his arrest, indictment, or information,
6 trial and conviction. A conviction in which the judgment of conviction has been canceled and
7 the records expunged pursuant to this section shall not be thereafter deemed a conviction for
8 purposes of this section or for purposes of disqualifications or liabilities imposed by law upon
9 conviction of a crime including the additional penalties imposed for second or subsequent
10 convictions of this Article. Cancellation and expunction under this section may occur only once
11 with respect to any person. Disposition of a case under this section at the district court division
12 of the General Court of Justice shall be final for the purpose of appeal.

13 The granting of an application filed under this section shall cause the issue of an order to
14 expunge from all official records (other than the confidential file to be retained by the
15 Administrative Office of the Courts under subsection (c)) all recordation relating to the
16 petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction,
17 cancellation of the judgment, and expunction of records pursuant to this section.

18 The judge to whom the petition is presented is authorized to call upon a probation officer
19 for additional investigation or verification of the petitioner's conduct since conviction. If the
20 court determines that the petitioner was convicted of (i) a misdemeanor under this Article for
21 possessing a controlled substance included within Schedules II through VI of this Article, or for
22 possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under
23 G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years
24 of age at the time of the offense, that he has been of good behavior since his conviction, that he
25 has successfully completed a drug education program approved for this purpose by the
26 Department of Health and Human Services, and that he has not been convicted of a felony or
27 misdemeanor other than a traffic violation under the laws of this State at any time prior to or
28 since the conviction for the offense in question, it shall enter an order of expunction of the
29 petitioner's court record. The effect of such order shall be to restore the petitioner in the
30 contemplation of the law to the status he occupied before arrest or indictment or information or
31 conviction. No person as to whom such order was entered shall be held thereafter under any
32 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
33 his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or
34 trial in response to any inquiry made of him for any purpose. The judge may waive the
35 condition that the petitioner attend the drug education school if the judge makes a specific
36 finding that there was no drug education school within a reasonable distance of the defendant's
37 residence or that there were specific extenuating circumstances which made it likely that the
38 petitioner would not benefit from the program of instruction.

39 The court shall also order that the Department of Correction, the Division of Motor
40 Vehicles, all law-enforcement agencies—agencies, and any other State or local government
41 agency bearing records of the conviction and records relating thereto to expunge their records
42 of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of
43 police, or other arresting agency, as ~~appropriate, and the~~appropriate; and when applicable, to
44 the Department of Correction, Division of Motor Vehicles, and any other State or local
45 government agency. The arresting agency shall forward the order to the State Bureau of
46 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of
47 Investigation shall forward the court order in like manner to the Federal Bureau of
48 Investigation.

49 The clerk of superior court in each county in North Carolina shall, as soon as practicable
50 after each term of court in his county, file with the Administrative Office of the Courts the
51 names of those persons whose judgments of convictions have been canceled and expunged

1 under the provisions of this Article, and the Administrative Office of the Courts shall maintain
2 a confidential file containing the names of persons whose judgments of convictions have been
3 canceled and expunged. The information contained in the file shall be disclosed only to judges
4 of the General Court of Justice of North Carolina for the purpose of ascertaining whether any
5 person charged with an offense under this Article has been previously granted cancellation and
6 expunction of a judgment of conviction pursuant to the terms of this Article."

7 **SECTION 8.** G.S. 90-113.14(b) reads as rewritten:

8 "(b) Upon the dismissal of such person, and discharge of the proceedings against him
9 under subsection (a) of this section, such person, if he were not over 21 years of age at the time
10 of the offense, may apply to the court for an order to expunge from all official records (other
11 than the confidential file to be retained by the Administrative Office of the Courts under
12 subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of
13 guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the
14 application the following:

- 15 (1) An affidavit by the applicant that he has been of good behavior during the
16 period of probation since the decision to defer further proceedings on the
17 misdemeanor in question and has not been convicted of any felony, or
18 misdemeanor, other than a traffic violation, under the laws of the United
19 States or the laws of this State or any other state;
- 20 (2) Verified affidavits by two persons who are not related to the applicant or to
21 each other by blood or marriage, that they know the character and reputation
22 of the petitioner in the community in which he lives, and that his character
23 and reputation are good;
- 24 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
25 and sheriff of the county in which the petitioner was convicted, and, if
26 different, the county of which the petitioner is a resident, showing that the
27 applicant has not been convicted of a felony or misdemeanor other than a
28 traffic violation under the laws of this State at any time prior to the
29 conviction for the misdemeanor in question or during the period of probation
30 following the decision to defer further proceedings on the misdemeanor in
31 question.

32 The judge to whom the petition is presented is authorized to call upon a probation officer
33 for any additional investigation or verification of the petitioner's conduct during the
34 probationary period deemed desirable.

35 If the court determines, after hearing, that such person was dismissed and the proceedings
36 against him discharged and that he was not over 21 years of age at the time of the offense, it
37 shall enter such order. The effect of such order shall be to restore such person in the
38 contemplation of the law to the status he occupied before such arrest or indictment or
39 information. No person as to whom such order was entered shall be held thereafter under any
40 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
41 his failures to recite or acknowledge such arrest, or indictment or information, or trial in
42 response to any inquiry made of him for any purpose.

43 The court shall also order that said conviction and the records relating thereto be expunged
44 from the records of the court, and direct the Department of Correction, all law-enforcement
45 agencies—agencies, including the Division of Motor Vehicles, and any other State or local
46 government agencies bearing records of the same to expunge their records of the conviction.
47 The clerk shall forward a certified copy of the order to the sheriff, chief of police or other
48 arresting agency, as ~~appropriate, and the appropriate;~~ and when applicable, to the Department
49 of Correction, Division of Motor Vehicles, and any other State or local agency. The sheriff,
50 chief of police or other arresting agency, as appropriate, shall forward such order to the State
51 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State

1 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
2 Investigation."

3 **SECTION 9.** G.S. 90-113.14(e) reads as rewritten:

4 "(e) Whenever any person who has not previously been convicted of an offense under
5 this Article or under any statute of the United States or any state relating to controlled
6 substances included in any schedule of this Article or to that paraphernalia included in Article
7 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article
8 by possessing a controlled substance included within Schedules II through VI of this Article,
9 the court may, upon application of the person not sooner than 12 months after conviction, order
10 cancellation of the judgment of conviction and expunction of the records of his arrest,
11 indictment, or information, trial and conviction. A conviction in which the judgment of
12 conviction has been cancelled and the records expunged pursuant to this section shall not be
13 thereafter deemed a conviction for purposes of this section or for purposes of disqualifications
14 or liabilities imposed by law upon conviction of a crime including the additional penalties
15 imposed for second or subsequent convictions of this Article. Cancellation and expunction
16 under this section may occur only once with respect to any person. Disposition of a case under
17 this section at the district court division of the General Court of Justice shall be final for the
18 purpose of appeal.

19 The granting of an application filed under this section shall cause the issue of an order to
20 expunge from all official records (other than the confidential file to be retained by the
21 Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest,
22 indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the
23 judgment, and expunction of records pursuant to this section.

24 The judge to whom the petition is presented is authorized to call upon a probation officer
25 for additional investigation or verification of the petitioner's conduct since conviction. If the
26 court determines that the petitioner was convicted of a misdemeanor under this Article for
27 possessing a controlled substance included within Schedules II through VI of this Article, or for
28 possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of
29 age at the time of the offense, that he has been of good behavior since his conviction, that he
30 has successfully completed a drug education program approved for this purpose by the
31 Department of Health and Human Services, and that he has not been convicted of a felony or
32 misdemeanor other than a traffic violation under the laws of this State at any time prior to or
33 since the conviction for the misdemeanor in question, it shall enter an order of expunction of
34 the petitioner's court record. The effect of such order shall be to restore the petitioner in the
35 contemplation of the law to the status he occupied before such arrest or indictment or
36 information or conviction. No person as to whom such order was entered shall be held
37 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false
38 statement by reason of his failures to recite or acknowledge such arrest, or indictment or
39 information, or conviction, or trial in response to any inquiry made of him for any purpose. The
40 judge may waive the condition that the petitioner attend the drug education school if the judge
41 makes a specific finding that there was no drug education school within a reasonable distance
42 of the defendant's residence or that there were specific extenuating circumstances which made
43 it likely that the petitioner would not benefit from the program of instruction.

44 The court shall also order that the Department of Correction, all law-enforcement agencies
45 agencies, including the Department of Motor Vehicles, and any other State or local government
46 agencies bearing records of the conviction and records relating thereto to expunge their records
47 of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of
48 police, or other arresting agency, as ~~appropriate, and the appropriate;~~ and when applicable, to
49 the Department of Correction, Division of Motor Vehicles, and any other State or local agency.
50 The arresting agency shall forward the order to the State Bureau of Investigation with a form

1 supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward
2 the court order in like manner to the Federal Bureau of Investigation.

3 The clerk of superior court in each county in North Carolina shall, as soon as practicable
4 after each term of court in his county, file with the Administrative Office of the Courts the
5 names of those persons whose judgments of convictions have been cancelled and expunged
6 under the provisions of this Article, and the Administrative Office of the Courts shall maintain
7 a confidential file containing the names of persons whose judgments of convictions have been
8 cancelled and expunged. The information contained in the file shall be disclosed only to judges
9 of the General Court of Justice of North Carolina for the purpose of ascertaining whether any
10 person charged with an offense under this Article has been previously granted cancellation and
11 expunction of a judgment of conviction pursuant to the terms of this Article."

12 **SECTION 10.** Article 5 of Chapter 15A of the General Statutes is amended by
13 adding the following new sections to read:

14 **"§ 15A-150. State agency to notify licensed private entities of expunctions.**

15 When a State agency receives a certified copy of an order to expunge a record under
16 G.S. 14-50.30, 15A-145, 15A-146, 15A-147, 15A-149, 90-96, or 90-113.14, the State agency,
17 in addition to expunging its own records pursuant to the expunction order, shall also forward a
18 copy of the certified order to any private entity with which it has a licensing agreement for
19 either bulk extracts of data from the agency's criminal record database or for online real-time
20 access to the agency's criminal record database. The State agency shall charge a private entity
21 with which it has a licensing agreement a fee in an amount sufficient to recover costs incurred
22 by the State agency for providing the expunction information to the private entity.

23 **"§ 15A-150.1. Prohibition against dissemination to certain private entities.**

24 If a State agency receives information indicating that a private entity that purchases
25 criminal history record information from the State agency has been found by a court to have
26 committed three or more violations of G.S. 15A-150.3 by compiling or disseminating
27 information with respect to which an order of expunction has been issued, the State agency
28 shall not release any criminal history record information to that entity until the first anniversary
29 of the date of the most recent violation.

30 **"§ 15A-150.2. Duty of private entity to expunge records upon notice of expunction and to**
31 **update criminal history record information; civil liability.**

32 (a) A private entity that compiles and disseminates for compensation criminal history
33 record information shall destroy and shall not disseminate any information in the possession of
34 the entity with respect to which the entity has received notice that an order of expunction has
35 been issued.

36 (b) Unless the entity is regulated by the federal Fair Credit Reporting Act (15 U.S.C. §
37 1681, et seq.) or the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801 to 6809), a private entity
38 described by subsection (a) of this section that is licensed to access a State agency's criminal
39 history record database:

40 (1) May disseminate that information only if, within the 90-day period
41 preceding the date of dissemination, the entity: (i) originally obtains that
42 information; or (ii) receives that information as updated record information
43 to its database; and

44 (2) Shall notify the State agency if the entity sells any compilation of the
45 information to another similar entity.

46 (c) A private entity that disseminates information in violation of this section is liable for
47 any damages that are sustained as a result of the violation by the person who is the subject of
48 that information. A person who prevails in an action brought under this section is also entitled
49 to recover court costs and reasonable attorneys' fees.

50 **"§ 15A-150.3. Civil penalty: dissemination of certain criminal history information.**

1 (a) A private entity that compiles and disseminates for compensation criminal history
2 record information shall not compile or disseminate information with respect to which the
3 entity has received notice that an order of expunction has been issued under G.S. 14-50.30,
4 15A-145, 15A-146, 15A-147, 15A-149, 90-96, or 90-113.14.

5 (b) A district court may issue a warning to a private entity for a first violation of
6 subsection (a) of this section. After receiving a warning for the first violation, the private entity
7 is liable to the State for a civil penalty not to exceed one thousand dollars (\$1,000) for each
8 subsequent violation.

9 (c) The attorney general or appropriate district attorney may sue to collect a civil
10 penalty under this section.

11 (d) A civil penalty collected under this section shall be deposited in the Civil Penalty
12 and Forfeiture Fund established under G.S. 115C-457.1."

13 **SECTION 11.** This act becomes effective October 1, 2009.