

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 865
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10526-ML-125

Short Title: Remove Wait for COR & Revise Mug Shot Law. (Public)

Sponsors: Representatives John, Clemmons, and R. Smith (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE TWELVE-MONTH WAITING PERIOD BEFORE A PERSON MAY PETITION THE COURT FOR A CERTIFICATE OF RELIEF IF CERTAIN REQUIREMENTS ARE MET, TO PROHIBIT A PRIVATE ENTITY FROM CHARGING A PERSON A FEE TO DELETE CRIMINAL HISTORY RECORD INFORMATION, AND TO MAKE IT AN UNFAIR AND DECEPTIVE TRADE PRACTICE FOR A PRIVATE ENTITY TO FAIL TO DELETE CRIMINAL HISTORY RECORD INFORMATION WITHIN A CERTAIN PERIOD OF TIME AFTER RECEIVING NOTICE TO DELETE THE INFORMATION.

The General Assembly of North Carolina enacts:

PART I. CERTIFICATE OF RELIEF/PROVIDE EXCEPTION TO 12-MONTH WAITING PERIOD

SECTION 1.(a) G.S. 15A-173.2(b)(1) reads as rewritten:

"(1) ~~Twelve~~ Except as otherwise provided in this subdivision, 12 months have passed since the individual has completed his or her sentence. For purposes of this subdivision, an individual has not completed his or her sentence until the individual has served all of the active time, if any, imposed for each offense and has also completed any period of probation, post-release supervision, and parole related to the offense that is required by State law or court order. The 12-month period set forth in this subdivision does not apply to an individual who provides proof satisfactory to the court that the individual (i) has been of good behavior during completion of the individual's sentence or (ii) completed a program to further the individual's education or vocation skills or a program to address the individual's substance abuse or mental health disorder."

SECTION 1.(b) This section becomes effective December 1, 2019, and applies to petitions filed on or after that date.

PART II. USE OF MUG SHOTS/REVISE LAW

SECTION 2.(a) G.S. 15A-152 reads as rewritten:

§ 15A-152. Civil liability for dissemination of certain criminal history information.

(a) Duty to Delete Record. – A private entity that holds itself out as being in the business of compiling and disseminating criminal history record information for compensation shall destroy and shall not disseminate any information in the possession of the entity with respect to which the entity has received a notice to delete the record in question. The private entity shall delete the record within the specified time and pursuant to the terms of the licensing agreement



1 with the State agency. If the license does not specify a time for deletion, or if no license agreement
2 exists between the private entity and state agency, the private entity shall delete the record within
3 10 business days of receiving notice to delete the record in question. Deletion of a record under
4 this subsection shall be without charge to the person who is the subject of the record. For purposes
5 of this section, the term "criminal history record information" includes any photograph taken of
6 a person pursuant to the person's arrest.

7 (b) Dissemination of Information. – Unless the entity is regulated by the federal Fair
8 Credit Reporting, Act 15 U.S.C. § 1681, et seq. or the Gramm-Leach-Bliley Act 15 U.S.C. §§
9 6801-6809, a private entity described by subsection (a) of this section that is licensed to access a
10 State agency's criminal history record database may disseminate that information only if, within
11 the 90-day period preceding the date of dissemination, the entity originally obtained the
12 information or received the information as an updated record information to its database. The
13 private entity must notify the State agency from which it receives the information of any other
14 entity to which it subsequently provides a bulk extract of the information.

15 (c) ~~Civil Liability.~~ Liability; Unfair and Deceptive Trade Practice. – A private entity
16 subject to the provisions of this section that disseminates information in violation of this section
17 is liable for any damages that are sustained as a result of the violation by the person who is the
18 subject of that information. A person who prevails in an action brought under this section is also
19 entitled to recover court costs and reasonable attorneys' fees. Additionally, disseminating
20 information in violation of this section shall constitute an unfair and deceptive trade practice in
21 violation of G.S. 75-1.1. This subsection does not apply to an entity regulated by and subject to
22 the civil liability remedies of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., or
23 the Gramm Leach-Bliley Act, 15 U.S.C. 6801-6809, et seq.

24 (d) Certificate of Verification. – Prior to filing an action under this section, a person who
25 is the subject of a record that has been expunged may apply to the Administrative Office of the
26 Courts for a certificate verifying that the person is the subject of a record that has been expunged
27 and that notice of the expunction was made in accordance with G.S. 15A-150. The application
28 must include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person
29 who was the subject of the record in question and identifying the specific case expunged. A
30 notary or official taking an acknowledgment, oath, or affirmation of an applicant's affidavit under
31 this subsection may not disclose the nature or content of the application, except as required in a
32 court action related to the application. Unless made part of the record of a subsequent court
33 proceeding, a certificate of verification and an application for the certificate are not public records
34 under G.S. 132-1. The Administrative Office of the Courts may establish procedures pertaining
35 to the application for and issuance of certificates of verification.

36 (e) Notice of Record Removal. – Prior to filing an action under this section, a person who
37 is the subject of a record that has been expunged may request a notice of record removal of the
38 expunction and subsequent notification to private entities as required by G.S. 15A-150(d) from
39 an agency required under G.S. 15A-150 to expunge that person's record who maintains a
40 licensing agreement to provide record information to a private entity. The application must
41 include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person who
42 was the subject of the record in question and identifying the specific case expunged. A notary or
43 official taking an acknowledgment, oath, or affirmation of an applicant's affidavit under this
44 subsection may not disclose the nature or content of the application, except as required in a court
45 action related to the application. Unless made part of the record of a subsequent court proceeding,
46 a notice of record removal and an application for the notice are not public records under
47 G.S. 132-1. State and local agencies may establish procedures pertaining to the application for
48 and issuance of notices of record removal."

49 **SECTION 2.(b)** This section becomes effective December 1, 2019, and applies to
50 notices to delete received on or after that date.
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1 **PART III. EFFECTIVE DATE**

2 **SECTION 3.** Except as otherwise provided, this act becomes effective December 1,
3 2019.