

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 588

Short Title: Expunge White-Collar Crim. Convictions. (Public)

Sponsors: Senators Weinstein; Albertson, Allran, Apodaca, Garwood, Goodall,
Jenkins, and Kinnaird.

Referred to: Judiciary II.

March 16, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR
3 CERTAIN WHITE-COLLAR CRIMINAL OFFENSES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended
6 by adding a new section to read:

7 **"§ 15A-149. Expunction of records for conviction of certain white-collar criminal**
8 **offenses if there are no subsequent criminal convictions for at least 10**
9 **years.**

10 (a) For purposes of this section, the term "white-collar criminal offense" means a
11 violation of any of the following:

- 12 (1) Article 5 of Chapter 14 of the General Statutes. (Counterfeiting and
13 Issuing Monetary Substitutes.)
- 14 (2) Article 16 of Chapter 14 of the General Statutes. (Larceny)
- 15 (3) Article 18 of Chapter 14 of the General Statutes. (Embezzlement)
- 16 (4) Article 19 of Chapter 14 of the General Statutes. (False Pretenses and
17 Cheats.)
- 18 (5) Article 19A of Chapter 14 of the General Statutes. (Obtaining Property
19 by False or Fraudulent Use of Credit Device or Other Means.)
- 20 (6) Article 19B of Chapter 14 of the General Statutes. (Financial
21 Transaction Card Crime Act.)
- 22 (7) Article 19C of Chapter 14 of the General Statutes. (Financial Identity
23 Fraud.)
- 24 (8) Article 20 of Chapter 14 of the General Statutes. (Frauds.)
- 25 (9) Article 21 of Chapter 14 of the General Statutes. (Forgery.)
- 26 (10) Article 56 of Chapter 14 of the General Statutes. (Debt Adjusting.)
- 27 (11) Article 58 of Chapter 14 of the General Statutes. (Records, Tapes, and
28 Other Recorded Devices.)

1 (12) Article 60 of Chapter 14 of the General Statutes. (Computer-Related
2 Crime.)

3 (13) Chapter 66 of the General Statutes. (Commerce and Business.)

4 (14) G.S. 105-236. (Certain Tax Penalties.)

5 (b) Whenever a person who has not previously been convicted of any felony or
6 misdemeanor other than a traffic violation under the laws of the United States, the laws
7 of this State, or any other state, pleads guilty to or is guilty of a white-collar criminal
8 offense, the person may file a petition in the court where he or she was convicted for
9 expunction of the white-collar criminal offense from the person's criminal record. The
10 petition cannot be filed earlier than 10 years after the date of the conviction, any period
11 of probation, any period of post-release supervision, or the completion of the person's
12 sentence, whichever occurs later. The petition shall contain, but not be limited to, the
13 following:

14 (1) An affidavit by the petitioner that he or she has been of good behavior
15 for the 10-year period since the date of conviction of the white collar
16 criminal offense in question or other later and appropriate time period
17 as defined by this subsection and has not been convicted of any felony
18 or misdemeanor other than a traffic violation under the laws of the
19 United States or the laws of this State or any other state.

20 (2) Verified affidavits of two persons who are not related to the petitioner
21 or to each other by blood or marriage that they know the character and
22 reputation of the petitioner in the community in which the petitioner
23 lives and that the person's character and reputation are good.

24 (3) A statement that the petition is a motion in the cause in the case
25 wherein the petitioner was convicted.

26 (4) Affidavits of the clerk of superior court, chief of police, where
27 appropriate, and sheriff of the county in which the petitioner was
28 convicted and, if different, the county of which the petitioner is a
29 resident, showing that the petitioner has not been convicted of a felony
30 or misdemeanor other than a traffic violation under the laws of this
31 State at anytime prior to the conviction for the white-collar criminal
32 offense in question or during the appropriate 10-year period as defined
33 by this subsection following that conviction.

34 (5) An affidavit by the petitioner that no restitution orders or civil
35 judgments representing amounts ordered for restitution entered against
36 the petitioner are outstanding.

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

41 The judge to whom the petition is presented may call upon a probation officer for
42 any additional investigation or verification of the petitioner's conduct during the 10-year
43 period that the judge deems desirable.

1 (c) If the court, after hearing, finds that the petitioner had remained of good
2 behavior and been free of conviction of any felony or misdemeanor, other than a traffic
3 violation, for 10 years from the date of conviction of the white-collar criminal offense in
4 question or other appropriate time period as defined by subsection (b) of this section and
5 the petitioner has no outstanding restitution orders or civil judgments representing
6 amounts ordered for restitution entered against the petitioner, then the court shall order
7 that the petitioner be restored, in the contemplation of the law, to the status the
8 petitioner occupied before the arrest or indictment or information for the white-collar
9 criminal offense. No person as to whom such order has been entered shall be held
10 thereafter under any provision of any laws to be guilty of perjury or otherwise giving a
11 false statement by reason of his or her failure to recite or acknowledge such arrest,
12 indictment, information, trial, or response to any inquiry made of the person for any
13 purpose.

14 (d) The court shall also order that the conviction for the white-collar criminal
15 offense be expunged from the records of the court and direct all law enforcement
16 agencies bearing record of the same to expunge their records of the conviction. The
17 clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
18 arresting agency. The sheriff, chief, or head of any other arresting agency shall then
19 transmit the copy of the order with a form supplied by the State Bureau of Investigation
20 to the State Bureau of Investigation, and the State Bureau of Investigation shall forward
21 the order to the Federal Bureau of Investigation.

22 (e) Any person entitled to an expunction under this section may also apply to the
23 court for an order expunging DNA records when the person's DNA record or profile has
24 been included in the State DNA Database, and the person's DNA sample is stored in the
25 State DNA Databank. A copy of the application for expunction of the DNA record or
26 DNA sample shall be served on the district attorney for the judicial district in which the
27 charges of the white-collar criminal offense were brought not less than 20 days prior to
28 the date of the hearing on the application. If the application for expunction is granted, a
29 certified copy of the court order issued under subsection (c) of this section shall be
30 attached to an order of expunction. The order of expunction shall include the name and
31 address of the defendant and the defendant's attorney and shall direct the SBI to send a
32 letter documenting expunction as required by subsection (f) of this section.

33 (f) Upon receiving an order of expunction entered pursuant to subsection (c) of
34 this section, the SBI shall purge the DNA record and all other identifying information
35 from the State DNA Database and the DNA sample stored in the State DNA Databank
36 covered by the order, except that the order shall not apply to other offenses committed
37 by the individual that qualify for inclusion in the State DNA Database and the State
38 DNA Databank. A letter documenting expunction of the DNA record and destruction of
39 the DNA sample shall be sent by the SBI to the defendant and the defendant's attorney
40 at the address specified by the court in the order of expunction.

41 (g) The clerk of superior court in each county in North Carolina shall, as soon as
42 practicable after each term of court in his or her county, file with the Administrative
43 Office of the Courts the name of those persons granted expunctions under the provisions
44 of this section, and the Administrative Office of the Courts shall maintain a confidential

1 file containing the name of persons granted expunctions. The information contained in
2 the file shall be disclosed only to judges of the General Court of Justice of North
3 Carolina for the purpose of ascertaining whether any person charged with an offense has
4 been previously granted an expunction.

5 (h) A person who files a petition for expunction of a criminal record under this
6 section must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the
7 time the petition is filed. Fees collected under this subsection shall be deposited in the
8 General Fund. This subsection does not apply to petitions filed by an indigent."

9 **SECTION 2.** This act becomes effective December 1, 2005.