

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE PRINCIPAL CLERK

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HOUSE DRH70237-LH-163 (03/18)

Short Title: Amend Firearm Restoration Law.

(Public)

Sponsors: Representative Speciale.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FIREARM RESTORATION LAW BY SHORTENING THE TIME PERIOD A PERSON MUST WAIT TO PETITION FOR RESTORATION OF FIREARM RIGHTS AND BY PROVIDING THAT A PERSON WHO HAS MORE THAN ONE NONVIOLENT FELONY MAY PETITION FOR RESTORATION OF FIREARM RIGHTS AFTER WAITING AN ADDITIONAL PERIOD OF TIME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.4 reads as rewritten:

"§ 14-415.4. Restoration of firearms rights.

(a) Definitions. – The following definitions apply in this section:

(1) Firearms rights. – The legal right in this State of a person to purchase, own, possess, or have in the person's custody, care, or control any firearm or any weapon of mass death and destruction as those terms are defined in G.S. 14-415.1 and G.S. 14-288.8(c). The term does not include any weapon defined in G.S. 14-409(a).

(2) Nonviolent felony. – The term nonviolent felony does not include any felony that is a Class A, Class B1, or Class B2 felony. Also, the term nonviolent felony does not include any Class C through Class I felony that is one of the following:

- a. An offense that includes assault as an essential element of the offense.
- b. An offense that includes the possession or use of a firearm or other deadly weapon as an essential or nonessential element of the offense, or the offender was in possession of a firearm or other deadly weapon at the time of the commission of the offense.
- c. An offense for which the offender was armed with or used a firearm or other deadly weapon.
- d. An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes.

(b) Purpose. – It is the purpose of this section to establish a procedure that allows a North Carolina resident who was convicted of a ~~single~~ nonviolent felony and whose citizenship rights have been restored pursuant to Chapter 13 of the General Statutes to petition the court to remove the petitioner's disenfranchisement under G.S. 14-415.1 and to restore the person's firearms rights in this State. If the ~~single~~ nonviolent felony conviction was an out-of-state conviction or a federal conviction, then the North Carolina resident shall show proof of the restoration of his or her civil rights and the right to possess a firearm in the jurisdiction where the conviction



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1 occurred. Restoration of a person's firearms rights under this section means that the person may
2 purchase, own, possess, or have in the person's custody, care, or control any firearm or any
3 weapon of mass death and destruction as those terms are defined in G.S. 14-415.1 and
4 G.S. 14-288.8(c) without being in violation of G.S. 14-415.1, if otherwise qualified.

5 (c) Petition for Restoration of Firearms Rights. – A person who was convicted of a
6 nonviolent felony in North Carolina but whose civil rights have been restored pursuant to
7 Chapter 13 of the General Statutes for a period of at least ~~20~~10 years may petition the district
8 court in the district where the person resides to restore the person's firearms rights pursuant to
9 this section. A person who was convicted of a nonviolent felony in a jurisdiction other than
10 North Carolina may petition the district court in the district where the person resides to restore
11 the person's firearms rights pursuant to this section only if the person's civil rights, including
12 the right to possess a firearm, have been restored, pursuant to the law of the jurisdiction where
13 the conviction occurred, for a period of at least ~~20~~10 years. The court may restore a petitioner's
14 firearms rights after a hearing in court if the court determines that the petitioner meets the
15 criteria set out in this section and is not otherwise disqualified to have that right restored.

16 (d) Criteria. – The court may grant a petition to restore a person's firearms rights under
17 this section if the petitioner satisfies all of the following criteria and is not otherwise
18 disqualified to have that right restored:

- 19 (1) The petitioner is a resident of North Carolina and has been a resident of the
20 State for one year or longer immediately preceding the filing of the petition.
- 21 (2) ~~The petitioner has only one felony conviction and that conviction is for a~~
22 ~~nonviolent felony. For purposes of this subdivision, multiple felony~~
23 ~~convictions arising out of the same event and consolidated for sentencing~~
24 ~~shall count as one felony only.~~The petitioner has no convictions for any
25 violent felonies.
- 26 (3) The petitioner's rights of citizenship have been restored pursuant to Chapter
27 13 of the General Statutes or, if the conviction was in a jurisdiction other
28 than North Carolina, have been restored, pursuant to the laws of the
29 jurisdiction where the conviction occurred, for a period of at least ~~20~~10 years
30 before the date of the filing of the petition.
- 31 (4) The petitioner has not been convicted under the laws of the United States,
32 the laws of this State, or the laws of any other state of any misdemeanor as
33 described in subdivision (6) of subsection (e) of this section since the
34 conviction of the nonviolent felony.
- 35 (5) The petitioner submits his or her fingerprints to the sheriff of the county in
36 which the petitioner resides for a criminal background check pursuant to
37 G.S. 114-19.28.
- 38 (6) The petitioner is not disqualified under subsection (e) of this section.

39 (e) Disqualifiers Requiring Denial of Petition. – The court shall deny the petition to
40 restore the firearms rights of any petitioner if the court finds any of the following:

- 41 (1) The petitioner is ineligible to purchase, own, possess, or have in the person's
42 custody, care, or control a firearm under the provisions of any law in North
43 Carolina other than G.S. 14-415.1.
- 44 (2) The petitioner is under indictment for a felony or a finding of probable cause
45 exists against the petitioner for a felony.
- 46 (3) The petitioner is a fugitive from justice.
- 47 (4) The petitioner is an unlawful user of, or addicted to, marijuana, alcohol, or
48 any depressant, stimulant, or narcotic drug, or any other controlled substance
49 as defined in 21 U.S.C. § 802.
- 50 (5) The petitioner is or has been dishonorably discharged from the Armed
51 Forces of the United States.

- 1 (6) The petitioner is or has been adjudicated guilty of or received a prayer for
2 judgment continued or suspended sentence for one or more crimes of
3 violence constituting a misdemeanor, including a misdemeanor under Article
4 8 of Chapter 14 of the General Statutes, or a misdemeanor under
5 G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6,
6 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283,
7 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, former 14-288.12,
8 former 14-288.13, former 14-288.14, 14-288.20A, 14-318.2, 14-415.21(b),
9 or 14-415.26(d), or a substantially similar out-of-state or federal offense.
- 10 (7) The petitioner has had entry of a prayer for judgment continued for a felony,
11 in addition to ~~the~~ any nonviolent felony conviction.
- 12 (8) The petitioner is free on bond or personal recognizance pending trial, appeal,
13 or sentencing for a crime which would prohibit the person from having his
14 or her firearms rights restored under this section.
- 15 (9) An emergency order, ex parte order, or protective order has been issued
16 pursuant to Chapter 50B of the General Statutes or a similar out-of-state or
17 federal order has been issued against the petitioner and the court order issued
18 is still in effect.
- 19 (10) A civil no-contact order has been issued pursuant to Chapter 50C of the
20 General Statutes or a similar out-of-state or federal order has been issued
21 against the petitioner and the court order issued is still in effect.

22 (f) Notice of Hearing and Hearing Procedure. – The clerk of court shall provide notice
23 of the hearing to the district attorney in the district in which the petition is filed at least four
24 weeks before the hearing on the matter. The petitioner may present evidence in support of the
25 petition, and the district attorney may present evidence in opposition to the requested
26 restoration of firearms rights or may otherwise demonstrate the reasons why the petition should
27 be denied. The burden is on the petitioner to establish by a preponderance of the evidence that
28 the petitioner is qualified to receive the restoration under subsection (d) of this section and that
29 the petitioner is not disqualified under subsection (e) of this section.

30 (g) Right to Petition Again Upon Denial of Petition. – If the court denies the petition,
31 the person may again petition the court for restoration of his or her firearms rights in
32 accordance with this section one year from the date of the denial of the original petition.
33 However, if the sole basis for the denial of the petition are the grounds set out under
34 G.S. 14-415.4(e)(9) or (10), then the person does not have to wait for one year from the date of
35 denial of the original petition but may petition again upon the expiration of the order.

36 (h) Certified Copies of Order Granting Petition to Sheriff, Department of Justice, and
37 National Instant Background Check System Index. – If the court grants the petition to restore
38 the petitioner's firearms rights, the clerk of court shall forward within 10 days of the entry of
39 the order a certified copy of the order to the sheriff of the county in which the petitioner
40 resides, the North Carolina Department of Justice, and the denied person's file of the national
41 instant criminal background check system index.

42 (i) Restoration is Not an Expunction or Pardon. – A restoration of firearms rights under
43 this section does not result in the expunction of any criminal history record information nor
44 does it constitute a pardon.

45 (j) Automatic Revocation Upon Conviction of a Subsequent Felony. – If a person's
46 firearms rights are restored under this section and the person is convicted of a ~~second or~~
47 subsequent felony, then the person's firearms rights are automatically revoked and shall not be
48 restored under this ~~section~~ section, except as provided in subsection (j1) of this section.

49 (j1) A person whose firearms rights have been restored under this section and who
50 commits a subsequent nonviolent felony may petition the court pursuant to this section to
51 remove the person's disenfranchisement under G.S. 14-415.1 for the subsequent nonviolent felony

1 conviction and again restore the person's firearms rights. No petition to remove a person's
2 disentitlement under G.S. 14-415.1 for a subsequent nonviolent felony shall be filed or
3 considered by the court until the person's citizenship rights have been restored for the
4 subsequent nonviolent felony conviction for a period of at least 10 years. A person may petition
5 to have his or her firearms rights restored only for a single nonviolent felony conviction in a
6 10-year period. For purposes of this subsection, multiple nonviolent felony convictions arising
7 out of the same event and consolidated for sentencing shall count as one nonviolent felony
8 only.

9 (k) Fee. – A person who files a petition for restoration of firearms rights under this
10 section shall pay the clerk of court a fee of two hundred dollars (\$200.00) at the time the
11 petition is filed. Fees collected under this subsection shall be deposited in the General Fund.
12 This subsection does not apply to petitions filed by an indigent.

13 (l) Criminal Offense to Submit False Information. – A person who knowingly and
14 willfully submits false information under this section is guilty of a Class 1 misdemeanor. In
15 addition, a person who is convicted of an offense under this subsection is permanently
16 prohibited from petitioning to restore his or her firearms rights under this section."

17 **SECTION 2.** This act becomes effective December 1, 2013.