

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

2

HOUSE BILL 618
Committee Substitute Favorable 6/27/13

Short Title: Amend Firearm Restoration Law.

(Public)

Sponsors:

Referred to:

April 10, 2013

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.

e. An offense under G.S. 90-95.

(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



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

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

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

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

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

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

- 1 (5) The petitioner is or has been dishonorably discharged from the Armed
2 Forces of the United States.
- 3 (6) The petitioner is or has been adjudicated guilty of or received a prayer for
4 judgment continued or suspended sentence for one or more crimes of
5 violence constituting a misdemeanor, including a misdemeanor under Article
6 8 of Chapter 14 of the General Statutes, or a misdemeanor under
7 G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6,
8 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283,
9 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, former 14-288.12,
10 former 14-288.13, former 14-288.14, 14-288.20A, 14-318.2, 14-415.21(b),
11 or 14-415.26(d), or a substantially similar out-of-state or federal offense.
- 12 (7) The petitioner has had entry of a prayer for judgment continued for a violent
13 felony, in addition to ~~the any~~ nonviolent felony conviction.
- 14 (8) The petitioner is free on bond or personal recognizance pending trial, appeal,
15 or sentencing for a crime which would prohibit the person from having his
16 or her firearms rights restored under this section.
- 17 (9) An emergency order, ex parte order, or protective order has been issued
18 pursuant to Chapter 50B of the General Statutes or a similar out-of-state or
19 federal order has been issued against the petitioner and the court order issued
20 is still in effect.
- 21 (10) A civil no-contact order has been issued pursuant to Chapter 50C of the
22 General Statutes or a similar out-of-state or federal order has been issued
23 against the petitioner and the court order issued is still in effect.
- 24 (f) Notice of Hearing and Hearing Procedure. – The clerk of court shall provide notice
25 of the hearing to the district attorney in the district in which the petition is filed at least four
26 weeks before the hearing on the matter. The petitioner may present evidence in support of the
27 petition, and the district attorney may present evidence in opposition to the requested
28 restoration of firearms rights or may otherwise demonstrate the reasons why the petition should
29 be denied. The burden is on the petitioner to establish by a preponderance of the evidence that
30 the petitioner is qualified to receive the restoration under subsection (d) of this section and that
31 the petitioner is not disqualified under subsection (e) of this section.
- 32 (g) Right to Petition Again Upon Denial of Petition. – If the court denies the petition,
33 the person may again petition the court for restoration of his or her firearms rights in
34 accordance with this section one year from the date of the denial of the original petition.
35 However, if the sole basis for the denial of the petition are the grounds set out under
36 G.S. 14-415.4(e)(9) or (10), then the person does not have to wait for one year from the date of
37 denial of the original petition but may petition again upon the expiration of the order.
- 38 (h) Certified Copies of Order Granting Petition to Sheriff, Department of Justice, and
39 National Instant Background Check System Index. – If the court grants the petition to restore
40 the petitioner's firearms rights, the clerk of court shall forward within 10 days of the entry of
41 the order a certified copy of the order to the sheriff of the county in which the petitioner
42 resides, the North Carolina Department of Justice, and the denied person's file of the national
43 instant criminal background check system index.
- 44 (i) Restoration is Not an Expunction or Pardon. – A restoration of firearms rights under
45 this section does not result in the expunction of any criminal history record information nor
46 does it constitute a pardon.
- 47 (j) Automatic Revocation Upon Conviction of a Subsequent Felony. – If a person's
48 firearms rights are restored under this section and the person is convicted of a ~~second or~~
49 subsequent felony, then the person's firearms rights are automatically revoked and shall not be
50 restored under this ~~section~~ section, except as provided in subsection (j1) of this section.

1 (j1) A person whose firearms rights have been restored under this section and who
2 commits a subsequent nonviolent felony may petition the court pursuant to this section to
3 remove the person's disenfranchisement under G.S. 14-415.1 for the subsequent nonviolent felony
4 conviction and again restore the person's firearms rights. No petition to remove a person's
5 disenfranchisement under G.S. 14-415.1 for a subsequent nonviolent felony shall be filed or
6 considered by the court until the person's citizenship rights have been restored for the
7 subsequent nonviolent felony conviction for a period of at least 10 years.

8 (k) Fee. – A person who files a petition for restoration of firearms rights under this
9 section shall pay the clerk of court a fee of ~~two hundred dollars (\$200.00)~~ two hundred fifty
10 dollars (\$250.00) at the time the petition is filed. Fees collected under this subsection shall be
11 deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.

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

16 **SECTION 2.** This act becomes effective October 1, 2013.