

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-265
HOUSE BILL 641

AN ACT TO ESTABLISH A CERTIFICATE OF RELIEF THAT WILL ASSIST INDIVIDUALS CONVICTED OF LESS SERIOUS CRIMES IN DEALING WITH COLLATERAL SANCTIONS AND DISQUALIFICATIONS THAT RESULT FROM A CRIMINAL CONVICTION AND A PROCEDURE FOR ISSUING THAT CERTIFICATE.

The General Assembly of North Carolina enacts:

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

"Article 6.

"Certificate of Relief.

"§ 15A-173.1. Definitions.

The following definitions apply in this Article:

- (1) Collateral consequence. – A collateral sanction or a disqualification.
- (2) Collateral sanction. – A penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, post-release supervision, forfeiture, restitution, fine, assessment, or costs of prosecution.
- (3) District attorney. – The office of the district attorney that prosecuted the offense giving rise to the collateral consequence from which relief is sought.
- (4) Disqualification. – A penalty, disability, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding may impose on an individual on grounds relating to the individual's conviction of an offense.

"§ 15A-173.2. Certificate of Relief.

(a) An individual who is convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation, may petition the court where the individual was convicted for a Certificate of Relief relieving collateral consequences as permitted by this Article. Except as otherwise provided in this subsection, the petition shall be heard by the senior resident superior court judge if the convictions were in superior court, or the chief district court judge if the convictions were in district court. The senior resident superior court judge and chief district court judge in each district may delegate their authority to hold hearings and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that district.

(b) Except as otherwise provided in G.S. 15A-173.3, the court may issue a Certificate of Relief if, after reviewing the petition, the individual's criminal history, any information provided by a victim under G.S. 15A-173.6 or the district attorney, and any other relevant



evidence, it finds the individual has established by a preponderance of the evidence all of the following:

- (1) Twelve 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.
- (2) The individual is engaged in, or seeking to engage in, a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support.
- (3) The individual has complied with all requirements of the individual's sentence, including any terms of probation, that may include substance abuse treatment, anger management, and educational requirements.
- (4) The individual is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial.
- (5) A criminal charge is not pending against the individual.
- (6) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) The Certificate of Relief shall specify any restriction imposed and collateral sanction or disqualification from which relief has not been granted under G.S. 15A-173.4(a).

(d) A Certificate of Relief relieves all collateral sanctions, except those listed in G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law, and any others specifically excluded in the certificate. A Certificate of Relief does not automatically relieve a disqualification; however, an administrative agency, governmental official, or court in a civil proceeding may consider a Certificate of Relief favorably in determining whether a conviction should result in disqualification.

(e) A Certificate of Relief issued under this Article does not result in the expunction of any criminal history record information, nor does it constitute a pardon.

(f) A Certificate of Relief may be revoked pursuant to G.S. 15A-173.4(b) if the individual is subsequently convicted of a felony or misdemeanor other than a traffic violation or is found to have made any material misrepresentation in his or her petition.

(g) The denial of a petition for a Certificate of Relief shall state the reasons for the denial, and the petitioner may file a subsequent petition 12 months from the denial and shall demonstrate that the petitioner has remedied the defects in the previous petition and has complied with any conditions for reapplication set by the court pursuant to G.S. 15A-173.4(a) in order to have the petition granted.

"§ 15A-173.3. Collateral sanctions not subject to order of limited relief or Certificate of Relief.

A Certificate of Relief shall not be issued to relieve any of the following collateral sanctions:

- (1) Requirements imposed by, and any statutory requirements or prohibitions imposed as a result of registration pursuant to, Article 27A of Chapter 14 of the General Statutes.
- (2) Prohibitions on possession of firearms imposed by Articles 54A and 54B of Chapter 14 of the General Statutes.
- (3) A motor vehicle license suspension, revocation, limitation, or ineligibility imposed pursuant to Chapter 20 of the General Statutes.
- (4) Ineligibility for certification pursuant to Chapter 17C or 17E of the General Statutes.

- (5) Ineligibility for employment as any of the following if the ineligibility is a sanction imposed by a statute or session law of North Carolina.
- a. A corrections or probation officer.
 - b. A prosecutor or investigator in either the Department of Justice or in the office of a district attorney. For purposes of this subdivision, the term district attorney shall include any district attorney authorized pursuant to G.S. 7A-60.

"§ 15A-173.4. Issuance, modification, and revocation of Certificate of Relief.

(a) When a petition is filed under G.S. 15A-173.2, including a petition for enlargement of an existing Certificate of Relief, the court shall notify the district attorney at least three weeks before the hearing on the matter. The court may issue a Certificate of Relief subject to restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking a Certificate of Relief, the court may impose conditions for reapplication.

(b) The court may modify or revoke a Certificate of Relief it issued if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a felony or misdemeanor other than a traffic violation in this State, or of an offense in another jurisdiction that is deemed a felony or misdemeanor other than a traffic violation in this State, or material misrepresentation by the petitioner in the petition for Certificate of Relief. A motion for modification or revocation of a Certificate of Relief may be initiated by the court on its own motion, or upon motion of the district attorney. The individual for whom the Certificate of Relief has been issued, and the district attorney, shall be given notice of the motion at least three weeks before any hearing on the matter. A hearing on the motion shall be held if requested by either the individual for whom the Certificate of Relief has been issued, or the district attorney.

(c) The district attorney shall have the right to appear and be heard at any proceeding relating to the issuance, modification, or revocation of the Certificate of Relief.

(d) The court is authorized to call upon a probation officer for any additional investigation or verification of the individual's conduct it reasonably believes necessary to its decision to issue, modify, or revoke a Certificate of Relief. If there are material disputed issues of fact or law, the individual and the district attorney may submit evidence and be heard on those issues.

(e) The issuance, modification, and revocation of Certificates of Relief shall be a public record.

"§ 15A-173.5. Reliance on order or Certificate of Relief as evidence of due care.

In a judicial or administrative proceeding alleging negligence, a Certificate of Relief is a bar to any action alleging lack of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the Certificate of Relief was issued, if the person against whom the judicial or administrative proceeding is brought knew of the Certificate of Relief at the time of the alleged negligence.

"§ 15A-173.6. Victim's rights.

The victim of the underlying offense for which a Certificate of Relief is sought may appear and be heard, or may file a statement for consideration by the court, in a proceeding for issuance, modification, or revocation of the Certificate of Relief. Notification to the victim shall be made through the Victim Witness Coordinator in the office of the district attorney."

SECTION 2. This act becomes effective December 1, 2011.

In the General Assembly read three times and ratified this the 16th day of June, 2011.

s/ Walter H. Dalton

President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:54 p.m. this 23rd day of June, 2011