

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH80150-LH-84B* (02/10)

Short Title: Certification of Restoration of Rights Act.

(Public)

Sponsors: Representatives Guice and Floyd (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A CERTIFICATE OF RESTORATION OF RIGHTS THAT WILL
3 ASSIST INDIVIDUALS CONVICTED OF LESS SERIOUS CRIMES IN DEALING
4 WITH COLLATERAL SANCTIONS AND DISQUALIFICATIONS THAT RESULT
5 FROM A CRIMINAL CONVICTION AND A PROCEDURE FOR ISSUING THAT
6 CERTIFICATE.

7 The General Assembly of North Carolina enacts:

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

10 "Article 6.

11 "Certification of Restoration of Rights.

12 "**§ 15A-173.1. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Collateral consequence. – A collateral sanction or a disqualification.
15 (2) Collateral sanction. – A penalty, disability, or disadvantage, however
16 denominated, imposed on an individual as a result of the individual's
17 conviction of an offense which applies by operation of law whether or not
18 the penalty, disability, or disadvantage is included in the judgment or
19 sentence. The term does not include imprisonment, probation, parole,
20 post-release supervision, forfeiture, restitution, fine, assessment, or costs of
21 prosecution.
22 (3) Disqualification. – A penalty, disability, or disadvantage, however
23 denominated, that an administrative agency, governmental official, or court
24 in a civil proceeding may impose on an individual on grounds relating to the
25 individual's conviction of an offense.

26 "**§ 15A-173.2. Certificate of Restoration of Rights.**

27 (a) An individual with no other record of a criminal conviction who is convicted of no
28 more than two charges in one session of court and the convictions are no higher than a Class G
29 felony may petition the court where the individual was convicted for a Certificate of
30 Restoration of Rights relieving collateral sanctions as permitted by this Article. The Chief
31 Judge in each district may delegate the authority to issue, modify, or revoke Certificates of
32 Restoration of Rights to judges, clerks, or magistrates in that district.

33 (b) Except as otherwise provided in G.S. 15A-173.3, the court may issue a Certificate
34 of Restoration of Rights if, after reviewing the petition, the individual's criminal history, any
35 filing by a victim under G.S. 15A-173.6 or the appropriate district attorney's office, and any



1 other relevant evidence, it finds the individual has established by a preponderance of the
2 evidence all of the following:

- 3 (1) Twelve months have passed since the individual has completed his or her
4 sentence. For purposes of this subdivision, an individual has not completed
5 his or her sentence until the individual has served all of the active time, if
6 any, imposed for each offense, and has also completed any period of
7 probation, post-release supervision, and parole related to the offense that is
8 required by State law or court order.
- 9 (2) The individual is engaged in, or seeking to engage in, a lawful occupation or
10 activity, including employment, training, education, or rehabilitative
11 programs, or the individual otherwise has a lawful source of support.
- 12 (3) The individual has complied with all requirements of the individual's
13 sentence, including any terms of probation, that may include substance abuse
14 treatment, anger management, and educational requirements.
- 15 (4) The individual is not in violation of the terms of any criminal sentence, or
16 that any failure to comply is justified, excused, involuntary, or insubstantial.
- 17 (5) A criminal charge is not pending against the individual.
- 18 (6) Granting the petition would not pose an unreasonable risk to the safety or
19 welfare of the public or any individual.

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

22 (d) A Certificate of Restoration of Rights relieves all collateral sanctions, except those
23 listed in G.S. 15A- 173.3, those sanctions imposed by federal law, and any others specifically
24 excluded in the certificate.

25 (e) A Certificate of Restoration of Rights may be revoked if the individual is
26 subsequently convicted of a misdemeanor or felony, or is found to have made any material
27 misrepresentation in his or her petition.

28 (f) The denial of a petition for a Certificate of Restoration of Rights shall state the
29 reasons for the denial and the petitioner may file a subsequent petition 12 months from the
30 denial and shall demonstrate that the petitioner has remedied the defects in the previous
31 petition in order to have the petition granted.

32 **"§ 15A-173.3. Collateral sanctions not subject to order of limited relief or Certificate of**
33 **Restoration of Rights.**

34 A Certificate of Restoration of Rights shall not be issued to relieve any of the following
35 collateral sanctions:

- 36 (1) Requirements imposed by Article 27A of Chapter 14 of the General Statutes.
- 37 (2) A motor vehicle license suspension, revocation, limitation, or ineligibility
38 imposed pursuant to Chapter 20 of the General Statutes.
- 39 (3) Ineligibility for employment as any of the following if the ineligibility is a
40 sanction imposed by a statute or session law of North Carolina.
 - 41 a. A criminal justice officer, justice officer, or law enforcement officer.
 - 42 b. A corrections or probation officer.
 - 43 c. A prosecutor or investigator in either the Department of Justice or in
44 the office of a district attorney.

45 **"§ 15A-173.4. Issuance, modification, and revocation of Certificate of Restoration of**
46 **Rights.**

47 (a) When a petition is filed under G.S. 15A-173.2, including a petition for enlargement
48 of an existing Certificate of Restoration of Rights, the court shall notify the office of the district
49 attorney that prosecuted the offense giving rise to the collateral consequence from which relief
50 is sought. The court may issue a Certificate of Restoration of Rights subject to restriction,

1 condition, or additional requirement. When issuing, denying, modifying, or revoking a
2 Certificate of Restoration of Rights, the court may impose conditions for reapplication.

3 (b) The court may restrict or revoke a Certificate of Restoration of Rights it issued if it
4 finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction
5 of a misdemeanor or felony in this State or of an offense in another jurisdiction that is deemed a
6 misdemeanor or felony in this State. The procedure for issuing an order of restriction or
7 revocation shall be as set out in subdivisions (1), (2), and (3) of this subsection:

8 (1) On motion of the court or the office of the district attorney that obtained the
9 conviction.

10 (2) After notice to the individual and the office of the district attorney.

11 (3) After a hearing if requested by the individual or the office of the district
12 attorney.

13 (c) The court shall order any test, report, investigation, or disclosure by the individual it
14 reasonably believes necessary to its decision to issue, modify, or revoke a Certificate of
15 Restoration of Rights. If there are material disputed issues of fact or law, the individual and the
16 office of the district attorney may submit evidence and be heard on those issues.

17 (d) The issuance, modification, and revocation of Certificates of Restoration of Rights
18 shall be a public record.

19 **"§ 15A-173.5. Reliance on order or Certificate of Restoration of Rights as evidence of due**
20 **care.**

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

26 **"§ 15A-173.6. Victim's rights.**

27 The victim of the underlying offense for which a Certificate of Restoration of Rights is
28 sought may participate in a proceeding for issuance, modification, or revocation of the
29 Certificate of Restoration of Rights. Notification to the victim shall be made through the Victim
30 Witness Coordinator in the office of original prosecution."

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