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SENATE BILL NO. 341

Offered January 13, 2016

Prefiled January 11, 2016

A *BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 23.2, consisting of sections numbered 19.2-392.5 through 19.2-392.11, relating to criminal convictions; certificate of relief.*

 Patron—Lucas

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 23.2, consisting of sections numbered 19.2-392.5 through 19.2-392.11, as follows:

CHAPTER 23.2.**CERTIFICATE OF RELIEF.****§ 19.2-392.5. Definitions.**

As used in this chapter, unless the context requires otherwise:

"Collateral consequence" means a collateral sanction or a disqualification.

"Collateral sanction" means a penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense, that applies by operation of law, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, post-release supervision, forfeiture, restitution, fine, assessment, or costs of prosecution.

"Disqualification" means 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.

§ 19.2-392.6. Certificate of relief.

A. An individual who is convicted of no more than two felonies arising out of the same act or occurrence or two misdemeanors, or one felony and one misdemeanor, and who has no other convictions for a felony or misdemeanor may petition a court where the individual was convicted for a certificate of relief relieving collateral consequences as permitted by this chapter. If an individual was convicted in two different courts and is applying for relief from two misdemeanors, the individual may petition either court if the maximum statutory punishment for each misdemeanor was the same, otherwise he shall petition the court where he was convicted of the misdemeanor with the highest maximum statutory punishment. If the individual was convicted of one felony and one misdemeanor, he shall petition the court in which he was convicted of a felony. An individual may not apply for a certificate of relief if the crime for which he was convicted is an offense for which registration is required by § 9.1-902, a violent felony as defined in subsection C of § 17.1-805, or any substantially similar offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof.

The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the petition for a certificate of relief. The law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition attached. The CCRE shall forward under seal to the court a copy of the petitioner's criminal history and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon the entry of an order for a certificate of relief or an order denying the petition, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

B. A copy of the petition, including a petition for modification of an existing certificate of relief, shall be served on the attorney for the Commonwealth of the county or city in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition or he may give written notice to the court that he does not object to the petition within 21 days after it is served on him. The court shall hold a hearing unless the attorney for the Commonwealth gives such written notice to the court that he does not object to the petition.

C. Except as otherwise provided in § 19.2-392.7, the court may issue a certificate of relief if, after reviewing the petition, the petitioner's criminal history, any information provided by a victim under

INTRODUCED

SB341

§ 19.2-392.11 and the attorney for the Commonwealth, and any other relevant evidence, it finds the petitioner has established by a preponderance of the evidence all of the following:

1. Twelve months have passed since the petitioner has completed all criminal sentences. For purposes of this subdivision, an individual has not completed his sentence until the individual has completed all terms of sentencing and probation related to the offense.

2. The petitioner is engaged in, or seeking to engage in employment, training or education, a rehabilitative program, or similar lawful program or activity or the petitioner otherwise has a lawful source of support.

3. There is no felony or misdemeanor charge pending against the petitioner.

4. Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

D. The certificate of relief shall specify any restriction imposed and collateral sanction or disqualification from which relief has not been granted.

E. A certificate of relief relieves all collateral sanctions, except those listed in § 19.2-392.7, those sanctions imposed by the Constitution of Virginia 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.

F. A certificate of relief issued under this chapter does not result in the expungement of any criminal history record information, nor does it constitute a pardon.

G. A certificate of relief may be revoked pursuant to subsection B of § 19.2-392.8 if the individual is subsequently convicted of a felony or misdemeanor or is found to have made any material misrepresentation in his petition.

H. The denial of a petition for a certificate of relief shall state the reasons for the denial, and the petitioner may not appeal the denial nor any conditions or limitations of the certificate of relief but 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 subsection A of § 19.2-392.8.

§ 19.2-392.7. 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. Prohibitions on purchase, possession, or transport of firearms imposed by other provisions of the Virginia Code or other state or federal law.

2. A driver's license suspension, revocation, limitation, or ineligibility imposed by court order, administrative rule, or statute.

3. Ineligibility for employment as a law-enforcement officer, a corrections or probation officer.

§ 19.2-392.8. Issuance, modification, and revocation of certificate of relief.

A. 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 infraction, 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 attorney for the Commonwealth. The individual for whom the certificate of relief has been issued, and the attorney for the Commonwealth, shall be given notice of the motion at least 21 days 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 attorney for the Commonwealth.

C. The attorney for the Commonwealth 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 attorney for the Commonwealth may submit evidence and be heard on those issues.

E. The issuance, modification, and revocation of a certificate of relief shall be a public record.

§ 19.2-392.9. Convictions from other jurisdictions.

An individual convicted in a jurisdiction other than the Commonwealth may file a petition for a certificate of relief in accordance with the provisions of this chapter, except that the petition shall be filed in the county or city in which the individual resides.

§ 19.2-392.10. Reliance on order or certificate of relief as evidence of due care.

In a judicial or administrative proceeding alleging negligence or other fault, a certificate of relief may be introduced as evidence of a person's 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 order was issued, if the person knew of the order or certificate at the time of the alleged negligence or other fault.

§ 19.2-392.11. 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 by the attorney for the Commonwealth if the victim has provided current contact information.

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SB341