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ABOUT THE AUTHOR



[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.

In North Carolina, Civil Relief for Applicants with Criminal Records Is Now Within Reach

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On June 25, 2018, North Carolina Governor Roy Cooper signed House Bill 774 into law, providing judges with discretion for reducing civil barriers to employment, housing, and other essential opportunities impacting individuals with criminal records. HB 774, which passed the North Carolina General Assembly with unanimous votes in both the House and Senate, goes into effect on December 1, 2018, and applies to petitions for relief filed on or after that date.

Numerous studies have established the barriers to employment and resulting increase in recidivism that are triggered by an applicant's criminal record. First recognized in 2011, a certificate of relief is currently available for individuals with one incident of up to two convictions of a Class G, H, or I felony or misdemeanor. The new law would expand certificate of relief eligibility to individuals with up to three incidents of low-level Class H and I felony convictions and an unlimited number of misdemeanor convictions.

The new law provides that the court which imposed the original conviction may grant a certificate of relief if all of the following criteria are met by the petitioner:

- 12 months have passed since the petitioner completed his or her sentence
- Petitioner is engaged in, or is seeking to engage in, a lawful occupation
- Petitioner has complied with all requirements of his or her sentence
- A criminal charge is not pending against the petitioner
- Issuing the certificate would not pose a risk to the safety or welfare of the public or of any individual

A certificate of relief is automatically revoked if the petitioner is subsequently convicted of a felony or misdemeanor other than a traffic violation and may be revoked in the event the court finds that the petitioner made a material misrepresentation in the petition. If a certificate of relief is revoked, the petitioner is required to notify his or her employer and anyone else who relied on the certificate of relief within 10 days of the revocation.

It is important to note that a certificate of relief is not equivalent to an expunction or

pardon of criminal liability, which serves to obscure or change an individual's criminal record. Rather, it addresses a broad range of civil penalties and disqualifications imposed because of the criminal conviction. The new law also provides a critical shield to employers, landlords, and other decision-makers from the risk of certain types of negligence liability for hiring, renting to or retaining the petitioner. In order to take advantage of this legal protection, employers and other decision-makers must document that they relied on the certificate of relief in their decision to hire, rent to, or retain the individual seeking an employment or housing opportunity.

The expected result of this new legislation is a mutually beneficial scenario where employers and other decision makers are more likely to hire, rent to, and otherwise grant opportunities to certificate holders who will, in turn, have a better shot at becoming gainfully employed and productive citizens. Based on reported statistics, 92% of individuals with criminal convictions are potentially eligible for relief under this new law. North Carolina's new law recognizes the national trend toward providing employment and housing assistance to individuals with criminal records.

If you have questions regarding this legislation or other legal issues, please feel free to contact Connie Carrigan at ccarrigan@smithdebnamlaw.com.

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