

TABLED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 746

AMENDMENT NO. A4
(to be filled in by
Principal Clerk)

H746-ASA-54 [v.2]

Page 1 of 8

Amends Title [NO]
Second Edition

Date _____, 2017

Representative Morey

1 moves to amend the bill on page 24, lines 7-8
2 by inserting the following between those lines:

3 **"PART IX. PROHIBIT PURCHASE OR POSSESSION OF HANDGUN FOR CERTAIN**
4 **MISDEMEANORS**

5
6 **SECTION 9.1.** G.S. 14-404(c) reads as rewritten:

7 "(c) A permit may not be issued to the following persons:

- 8 ...
- 9 (8) One who is subject to a court order ~~that~~ pursuant to Chapter 50B of the
10 General Statutes, or that meets both of the following conditions:
11 a. Was issued after a hearing of which the person received actual
12 notice, and at which the person had an opportunity to
13 ~~participate;~~ participate.
14 b. Restrains the person from harassing, stalking, or threatening an
15 intimate partner of the person or child of the intimate partner of the
16 person, or engaging in other conduct that would place an intimate
17 partner in reasonable fear of bodily injury to the partner or ~~child;~~
18 ~~and~~ child.
19 c. ~~Includes a finding that the person represents a credible threat to the~~
20 ~~physical safety of the intimate partner or child; or by its terms~~
21 ~~explicitly prohibits the use, attempted use, or threatened use of~~
22 ~~physical force against the intimate partner or child that would~~
23 ~~reasonably be expected to cause bodily injury.~~
24 (9) One who has been convicted of a Class A1 misdemeanor in this State or any
25 offense in another state or sovereign, or under federal law, that is
26 substantially similar to an offense that is a Class A1 misdemeanor in this
27 State.
28 (10) One who has been convicted of two or more misdemeanors that meet one of
29 the following criteria:
30 a. Is in violation of Article 5 of Chapter 90 of the General Statutes.
31 b. Has as an element of the offense, the use or possession of alcohol or
32 a controlled substance."



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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 746

TABLED

AMENDMENT NO. A4
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H746-ASA-54 [v.2]

Page 2 of 8

- 1 **SECTION 9.2.** G.S. 14-415.12(b) reads as rewritten:
2 "(b) The sheriff shall deny a permit to an applicant who:
3 ...
4 (8) Except as provided in subdivision (8a), (8b), ~~or (8c)~~(8c), or (8d) of this
5 section, is or has been adjudicated guilty of or received a prayer for
6 judgment continued or suspended sentence for one or more crimes of
7 violence constituting a misdemeanor, including but not limited to, a violation
8 of a misdemeanor under Article 8 of Chapter 14 of the General Statutes
9 except for a violation of G.S. 14-33(a), or a violation of a misdemeanor
10 under G.S. 14-226.1, 4-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6,
11 14-277, 14-277.1, 14-277.2, 14-283 except for a violation involving
12 fireworks exempted under G.S. 14-414, 14-288.2, 14-288.4(a)(1), 14-288.6,
13 14-288.9, former 14-288.12, former 14-288.13, former 14-288.14,
14 14-415.21(b), or 14-415.26(d) within three years prior to the date on which
15 the application is submitted.
16 (8a) Is or has been adjudicated guilty of or received a prayer for judgment
17 continued or suspended sentence for one or more crimes of violence
18 constituting a Class A1 misdemeanor or a misdemeanor under ~~G.S.~~
19 ~~14-33(e)(1), 14-33(e)(2), 14-33(e)(3), 14-33(d), 14-277.3A, 14-318.2,~~
20 ~~14-134.3, 50B-4.1, or former G.S. 14-277.3.~~G.S. 14-134.3.
21 (8b) Is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g) as a
22 result of a conviction of a misdemeanor crime of domestic violence.
23 (8c) Has been adjudicated guilty of or received a prayer for judgment continued
24 or suspended sentence for one or more crimes involving an assault or a
25 threat to assault a law enforcement officer, probation or parole officer,
26 person employed at a State or local detention facility, firefighter, emergency
27 medical technician, medical responder, or emergency department personnel.
28 (8d) Has been convicted of two or more misdemeanors that meet one of the
29 following criteria:
30 a. Is in violation of Article 5 of Chapter 90 of the General Statutes.
31 b. Has as an element of the offense, the use or possession of alcohol or
32 a controlled substance.
33 (8e) Is currently subject to a court order pursuant to Chapter 50B of the General
34 Statutes, or that meets both of the following conditions:
35 a. Was issued after a hearing of which the person received actual
36 notice, and at which the person had an opportunity to participate.
37 b. Restrains the person from harassing, stalking, or threatening an
38 intimate partner of the person or child of the intimate partner of the
39 person, or engaging in other conduct that would place an intimate
40 partner in reasonable fear of bodily injury to the partner or child.
41 "
42 **SECTION 9.3.** Article 54A of the General Statutes reads as rewritten:
43 "Article 54A.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 746

TABLED

AMENDMENT NO. A4
(to be filled in by
Principal Clerk)

H746-ASA-54 [v.2]

Page 3 of 8

The ~~Felony~~-Firearms Act.

§ 14-415.1. Possession of firearms, etc., by ~~felon~~ felons and certain misdemeanants prohibited.

(a) It shall be unlawful for any person who has been convicted of a ~~felony~~ felony, or a prohibiting misdemeanor, to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior felony convictions which cause disenfranchisement under this section shall only include:

- (1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and
- (2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.
- (3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

(b1) For purposes of this section, the term "prohibiting misdemeanor" means one of the following:

- (1) A Class A1 misdemeanor in this State or any offense in another state or sovereign, or under federal law, that is substantially similar to an offense that is a Class A1 misdemeanor in this State.
- (2) Conviction of of two or more misdemeanors that meet one of the following criteria:
 - a. Is in violation of Article 5 of Chapter 90 of the General Statutes.
 - b. Has as an element of the offense, the use or possession of alcohol or a controlled substance.

(b2) When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. ~~The~~ For purposes of felony convictions, the term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is authorized, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 746

TABLED

AMENDMENT NO. A4
(to be filled in by
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H746-ASA-54 [v.2]

Page 4 of 8

1 therefor, and the date that the defendant was convicted or plead guilty to such offense, the
2 identity of the court in which the conviction or plea of guilty took place and the verdict and
3 judgment rendered therein.

4 (d) This section does not apply to a person who, pursuant to the law of the jurisdiction
5 in which the conviction occurred, has been pardoned or has had his or her firearms rights
6 restored if such restoration of rights could also be granted under North Carolina law.

7 (e) This section does not apply and there is no disentitlement under this section if the
8 felony conviction is a violation under the laws of North Carolina, another state, or the United
9 States that pertains to antitrust violations, unfair trade practices, or restraints of trade.

10 **§ 14-415.1A. Possession of firearms by persons subject to domestic violence protective**
11 **order prohibited.**

12 (a) It shall be unlawful for any person to purchase, own, possess, or have in his custody,
13 care, or control any firearm or any weapon of mass death and destruction as defined in G.S.
14 14-288.8(c) if the person is currently subject to a court order pursuant to Chapter 50B of the
15 General Statutes, or an order that that meets both of the following conditions:

- 16 (1) Was issued after a hearing of which the person received actual notice, and at
17 which the person had an opportunity to participate.
18 (2) Restrains the person from harassing, stalking, or threatening an intimate
19 partner of the person or child of the intimate partner of the person, or
20 engaging in other conduct that would place an intimate partner in reasonable
21 fear of bodily injury to the partner or child.

22 For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which
23 will or is designed to or may readily be converted to expel a projectile by the action of an
24 explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section
25 does not apply to an antique firearm, as defined in G.S. 14-409.11.

26 Every person violating the provisions of this section shall be punished as a Class G felon.

27 (b) Any person subject to this section shall be automatically relieved of the prohibitions of
28 this section upon the expiration or removal of the order.

29 **§ 14-415.2: Repealed by Session Laws 1975, c. 870, s. 3.**

30 **§ 14-415.3. Possession of a firearm or weapon of mass destruction by persons acquitted of**
31 **certain crimes by reason of insanity or persons determined to be incapable to**
32 **proceed prohibited.**

33 (a) It is unlawful for the following persons to purchase, own, possess, or have in the
34 person's custody, care, or control, any firearm or any weapon of mass death and destruction as
35 defined by G.S. 14-288.8(c):

- 36 (1) A person who has been acquitted by reason of insanity of any crime set out
37 in G.S. 14-415.1(b) or (b1), or any violation of G.S. 14-33(b)(1),
38 14-33(b)(8), or 14-34.
39 (2) A person who has been determined to lack capacity to proceed as provided
40 in G.S. 15A-1002 for any crime set out in G.S. 14-415.1(b) or any violation
41 of G.S. 14-33(b)(1), 14-33(b)(8), or 14-34.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 746

TABLED

AMENDMENT NO. A4
(to be filled in by
Principal Clerk)

H746-ASA-54 [v.2]

Page 5 of 8

1 (b) A violation of this section is a Class H felony. Any firearm or weapon of mass death
2 and destruction lawfully seized for a violation of this section shall be forfeited to the State and
3 disposed of as provided in G.S. 15-11.1.

4 (c) The provisions of this section shall not apply to a person whose rights have been
5 restored pursuant to G.S. 14-409.42

6 **§ 14-415.4. Restoration of firearms rights.**

7 (a) Definitions. – The following definitions apply in this section:

8 (1) Firearms rights. – The legal right in this State of a person to purchase, own,
9 possess, or have in the person's custody, care, or control any firearm or any
10 weapon of mass death and destruction as those terms are defined in G.S.
11 14-415.1 and G.S. 14-288.8(c).

12 (2) Nonviolent felony. – The term nonviolent felony does not include any felony
13 that is a Class A, Class B1, or Class B2 felony. Also, the term nonviolent
14 felony does not include any Class C through Class I felony that is one of the
15 following:

- 16 a. An offense that includes assault as an essential element of the
17 offense.
18 b. An offense that includes the possession or use of a firearm or other
19 deadly weapon as an essential or nonessential element of the offense,
20 or the offender was in possession of a firearm or other deadly
21 weapon at the time of the commission of the offense.
22 c. An offense for which the offender was armed with or used a firearm
23 or other deadly weapon.
24 d. An offense for which the offender must register under Article 27A of
25 Chapter 14 of the General Statutes.

26 (b) Purpose. – It is the purpose of this section to establish a procedure that allows a
27 North Carolina resident who was convicted of a single nonviolent ~~felony~~ felony, or any
28 prohibiting misdemeanor, and whose citizenship rights have been restored pursuant to Chapter
29 13 of the General Statutes to petition the court to remove the petitioner's disqualification under
30 G.S. 14-415.1 and to restore the person's firearms rights in this State. If the single nonviolent
31 ~~felony~~ or prohibiting misdemeanor conviction was an out-of-state conviction or a federal
32 conviction, then the North Carolina resident shall show proof of the restoration of his or her
33 civil rights and the right to possess a firearm in the jurisdiction where the conviction occurred.
34 Restoration of a person's firearms rights under this section means that the person may purchase,
35 own, possess, or have in the person's custody, care, or control any firearm or any weapon of
36 mass death and destruction as those terms are defined in G.S. 14-415.1 and G.S. 14-288.8(c)
37 without being in violation of G.S. 14-415.1, if otherwise qualified.

38 (c) Petition for Restoration of Firearms Rights. – A person who was convicted of a
39 nonviolent felony or prohibiting misdemeanor in North Carolina but whose civil rights have
40 been restored pursuant to Chapter 13 of the General Statutes for a period of at least 20 years
41 may petition the district court in the district where the person resides to restore the person's
42 firearms rights pursuant to this section. A person who was convicted of a nonviolent felony or
43 prohibiting misdemeanor in a jurisdiction other than North Carolina may petition the district

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 746

TABLED

AMENDMENT NO. A4
(to be filled in by
Principal Clerk)

H746-ASA-54 [v.2]

Page 6 of 8

1 court in the district where the person resides to restore the person's firearms rights pursuant to
2 this section only if the person's civil rights, including the right to possess a firearm, have been
3 restored, pursuant to the law of the jurisdiction where the conviction occurred, for a period of at
4 least 20 years. The court may restore a petitioner's firearms rights after a hearing in court if the
5 court determines that the petitioner meets the criteria set out in this section and is not otherwise
6 disqualified to have that right restored.

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

- 10 (1) The petitioner is a resident of North Carolina and has been a resident of the
11 State for one year or longer immediately preceding the filing of the petition.
- 12 (2) The petitioner has only one felony conviction and that conviction is for a
13 nonviolent ~~felony~~felony, or the petitioner has only prohibiting
14 misdemeanors. For purposes of this subdivision, multiple felony convictions
15 arising out of the same event and consolidated for sentencing shall count as
16 one felony only.
- 17 (3) The petitioner's rights of citizenship have been restored pursuant to Chapter
18 13 of the General Statutes or, if the conviction was in a jurisdiction other
19 than North Carolina, have been restored, pursuant to the laws of the
20 jurisdiction where the conviction occurred, for a period of at least 20 years
21 before the date of the filing of the petition.
- 22 (4) The petitioner has not been convicted under the laws of the United States,
23 the laws of this State, or the laws of any other state of any misdemeanor as
24 described in subdivision (6) of subsection (e) of this section since the
25 conviction of the nonviolent felony.
- 26 (5) The petitioner submits his or her fingerprints to the sheriff of the county in
27 which the petitioner resides for a criminal background check pursuant to
28 G.S. 143B-959.
- 29 (6) The petitioner is not disqualified under subsection (e) of this section.

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

- 32 (1) The petitioner is ineligible to purchase, own, possess, or have in the person's
33 custody, care, or control a firearm under the provisions of any law in North
34 Carolina other than G.S. 14-415.1.
- 35 (2) The petitioner is under indictment for a felony or a finding of probable cause
36 exists against the petitioner for a felony.
- 37 (3) The petitioner is a fugitive from justice.
- 38 (4) The petitioner is an unlawful user of, or addicted to, marijuana, alcohol, or
39 any depressant, stimulant, or narcotic drug, or any other controlled substance
40 as defined in 21 U.S.C. § 802.
- 41 (5) The petitioner is or has been dishonorably discharged from the Armed
42 Forces of the United States.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 746

TABLED

AMENDMENT NO. A4
(to be filled in by
Principal Clerk)

H746-ASA-54 [v.2]

Page 7 of 8

- 1 (6) The petitioner is or has been adjudicated guilty of or received a prayer for
2 judgment continued or suspended sentence for one or more crimes of
3 violence constituting a misdemeanor, including a misdemeanor under Article
4 8 of Chapter 14 of the General Statutes, or a misdemeanor under G.S.
5 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6,
6 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283,
7 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, former 14-288.12,
8 former 14-288.13, former 14-288.14, 14-288.20A, 14-318.2, 14-415.21(b),
9 or 14-415.26(d), or a substantially similar out-of-state or federal offense.
- 10 (7) The petitioner has had entry of a prayer for judgment continued for a felony,
11 in addition to the nonviolent felony conviction.
- 12 (8) The petitioner is free on bond or personal recognizance pending trial, appeal,
13 or sentencing for a crime which would prohibit the person from having his
14 or her firearms rights restored under this section.
- 15 (9) An emergency order, ex parte order, or protective order has been issued
16 pursuant to Chapter 50B of the General Statutes or a similar out-of-state or
17 federal order has been issued against the petitioner and the court order issued
18 is still in effect.
- 19 (10) A civil no-contact order has been issued pursuant to Chapter 50C of the
20 General Statutes or a similar out-of-state or federal order has been issued
21 against the petitioner and the court order issued is still in effect.
- 22 (f) Notice of Hearing and Hearing Procedure. – The clerk of court shall provide notice
23 of the hearing to the district attorney in the district in which the petition is filed at least four
24 weeks before the hearing on the matter. The petitioner may present evidence in support of the
25 petition, and the district attorney may present evidence in opposition to the requested
26 restoration of firearms rights or may otherwise demonstrate the reasons why the petition should
27 be denied. The burden is on the petitioner to establish by a preponderance of the evidence that
28 the petitioner is qualified to receive the restoration under subsection (d) of this section and that
29 the petitioner is not disqualified under subsection (e) of this section.
- 30 (g) Right to Petition Again Upon Denial of Petition. – If the court denies the petition,
31 the person may again petition the court for restoration of his or her firearms rights in
32 accordance with this section one year from the date of the denial of the original petition.
33 However, if the sole basis for the denial of the petition are the grounds set out under G.S.
34 14-415.4(e)(9) or (10), then the person does not have to wait for one year from the date of
35 denial of the original petition but may petition again upon the expiration of the order.
- 36 (h) Certified Copies of Order Granting Petition to Sheriff, Department of Justice, and
37 National Instant Background Check System Index. – If the court grants the petition to restore
38 the petitioner's firearms rights, the clerk of court shall forward within 10 days of the entry of
39 the order a certified copy of the order to the sheriff of the county in which the petitioner
40 resides, the North Carolina Department of Justice, and the denied person's file of the national
41 instant criminal background check system index.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 746

TABLED

AMENDMENT NO. A4
(to be filled in by
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H746-ASA-54 [v.2]

Page 8 of 8

1 (i) Restoration is Not an Expunction or Pardon. – A restoration of firearms rights under
2 this section does not result in the expunction of any criminal history record information nor
3 does it constitute a pardon.

4 (j) Automatic Revocation Upon Conviction of a Subsequent Felony. – If a person's
5 firearms rights are restored under this section and the person is convicted of a second or
6 subsequent felony, then the person's firearms rights are automatically revoked and shall not be
7 restored under this section.

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) at the time the
10 petition is filed. Fees collected under this subsection shall be deposited in the General Fund.
11 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
17 And on page 24, lines 8-11

18 By rewriting those lines to read:

19 "**PART X. EFFECTIVE DATE**

20 **SECTION 10.** This section becomes effective July 1, 2017. Unless provided
21 otherwise, the remainder of this act becomes effective December 1, 2017, and applies to
22 offenses committed on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____