

SENATE BILL 1603

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 39 and Title 40, relative to restoration of the rights of citizenship.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Restoration of Citizenship Rights Act".

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 29, Part 1, is amended by deleting §§ 40-29-101 through 40-29-105, substituting instead Sections 3 and 4 of this act, and renumbering the existing § 40-29-106 accordingly.

SECTION 3.

§ 40-29-101.

(a) Notwithstanding any other provision of law to the contrary, a person who at any time has been deprived of any rights or privileges of citizenship by virtue of any judgment of any court, whether state or federal, may seek a restoration of the complete and full rights and of citizenship including, but not limited to the right to sit on a jury, the right to vote, the right to seek and hold public office, and the right to purchase and possess firearms, pursuant to the procedures set forth herein.

(b) For restoration of the right of suffrage, the provisions of part 2 of this chapter may alternatively apply.

(c) A person who has been deprived of any rights or privileges of citizenship pursuant to a conviction under which the maximum possible sentence of incarceration is less than one (1) year shall have full rights and privileges of citizenship automatically restored effective upon the service or expiration of the maximum sentence imposed.

(d) A person who has been deprived of any rights or privileges of citizenship pursuant to any conviction, including, but not limited to, any conviction under which the maximum possible sentence of incarceration is one (1) year or more may seek restoration by filing a petition for restoration in the circuit court of the county where the petitioner resides or where the conviction occurred.

(1) The petition may be filed at any time after any of the following events occur:

(A) Receiving a pardon;

(B) Being granted final release from incarceration or supervision by the board of probation and parole, the county correction authority, or any other applicable correctional or supervisory authority; or

(C) Service or expiration of the maximum sentence imposed by the court; provided, however, that a person convicted of a crime of violence as defined in § 39-17-1301 or a felony drug offense as defined in § 39-17-1301 shall not be eligible to file such petition until ten (10) years after expiration of the maximum sentence imposed by the court and release from confinement and all probation or parole supervision.

(2) The petition shall set forth the basis for eligibility for restoration and shall be supported by certified records, statements and other documents or information as may be appropriate to demonstrate that the petition is eligible for relief under this chapter. There is a presumption that a petition shall be granted and that the full citizenship rights of the petitioner shall be restored. This presumption may only be overcome upon proof by clear and convincing evidence that the petitioner is not entitled to relief under this chapter or other applicable provisions of law. The presumption shall not apply to a person convicted of a

crime of violence as defined in Section 39-17-1301 or a felony drug offense as defined in Section 39-17-1301 and in such instances the petitioner shall bear the burden of demonstrating that they have satisfied all conditions of the judgment against them and that they have been rehabilitated such they should be restored to the full rights of citizenship.

(3)

(A) Prior to acting on any petition filed pursuant to this subsection (d), the court shall notify the district attorney general in whose county the petitioner resides and the district attorney general of the county in which the conviction occurred that a petition for restoration of citizenship has been filed by the petitioner. The notice shall state that a petition for restoration has been filed and that the petition shall be granted by the court unless a specific objection to restoration is filed within thirty (30) days of the date of the notice.

(B) If the petitioner was rendered deprived of citizenship rights or privileges by judgment of a federal court, the circuit court shall give the notice required in subdivision (d)(3)(A) to the United States attorney and the district attorney general in whose district the petitioner is currently residing. Each such official shall have the same right to object to the petition as is provided in subdivision (d)(3)(A).

(4) If no objection is filed with the court and served on the petitioner by those persons receiving notice under subsection (3), the petition shall be granted by the court and an order issued. If an objection is filed, the objecting party shall have the burden of demonstrating by clear and convincing evidence that the petitioner should not have his or her full rights of citizenship restored.

(5) The petition shall be granted or denied in its entirety. The court shall not have the authority to impose restrictions or conditions on the restoration of citizenship, including but not limited to the constitutionally protected right to purchase, own or possess firearms.

(6) All costs for a proceeding under this section shall be paid by the petitioner unless the court orders otherwise. The court shall order that the costs of the proceeding shall be paid by any governmental agency that opposes a petition under this chapter without factual and legal grounds for doing so and, under such circumstances, the court shall award to the petitioner reasonable costs and attorney's fees.

SECTION 4.

§ 40-29-102. Any restoration of the rights and privileges of citizenship that was granted prior to July 1, 2009, shall remain in effect and shall have the same legal effect as a restoration obtained pursuant to this part. This section shall not operate to deprive any person of any right or privilege of citizenship that was restored to such person pursuant to the law in effect prior to July 1, 2009.

SECTION 5. Tennessee Code Annotated, Section 39-17-1301, is amended by deleting subsection (2) and by substituting instead the following:

(2) "crime of violence" includes a felony conviction under the laws of Tennessee or any other jurisdiction for only the following offenses or the attempt to commit the following offenses: any degree of murder, voluntary manslaughter, rape of a child, aggravated rape of a child, aggravated rape, rape, aggravated sexual battery, aggravated robbery, especially aggravated robbery, carjacking, aggravated burglary, especially aggravated burglary, aggravated assault, aggravated kidnapping, especially aggravated kidnapping, aggravated arson, and aggravated child abuse.

SECTION 6. Tennessee Code Annotated, Section 39-17-1301, is further amended by adding the following as a new subsection thereto:

() "felony drug offense" includes a conviction under the laws of Tennessee or any other jurisdiction for a felony offense, a conspiracy to commit a felony offense, or an attempt to commit any felony offense which includes as a statutory element any controlled substance, provided that a conviction for a felony drug offense involving a Schedule VI controlled substance shall not apply to this part following ten (10) calendar years from the lawful expiration of the person's sentence, probation, parole, or other form of release.

SECTION 7. Tennessee Code Annotated, Section 39-17-1307, is amended by deleting the section in its entirety and substituting the following:

§ 39-17-1307.

(a)

(1) A person commits an offense who carries with the intent to go armed a firearm, a knife with a blade length exceeding four inches (4"), or a club.

(2) An offense under subdivision (a)(1) is a Class C misdemeanor, except it is a Class A misdemeanor if the person's carrying of a handgun occurred at a place open to the public where one (1) or more persons were present.

(b)

(1) A person commits an offense who possesses a handgun and:

(A) Has been convicted of a crime of violence as defined in this part; or

(B) Has been convicted of a felony drug offense as defined in this part.

(2) An offense under subdivision (b)(1) is a Class E felony; provided, however, that it shall not be an offense under subsection (b)(1) if the person's full rights of citizenship have been restored under applicable state or federal law.

(c)

(1) A person commits an offense who possesses any deadly weapon with the intent to employ it in the commission of or escape from an offense.

(2) An offense under subdivision (c)(1) is a Class E felony.

SECTION 8. Tennessee Code Annotated, Section 39-17-1351, is amended by deleting subdivision (j)(3) in its entirety and substituting the following:

(3) The applicant, who having been deprived of any rights or privileges of citizenship by the judgment of any state or federal court, has had his or her rights and privileges of citizenship restored pursuant to procedures set forth within title 40, chapter 29, or other federal or state law; provided, however, the provisions of this subdivision shall not apply to who has been convicted of a crime of violence as defined in this part or a felony drug offense as defined in this part.

SECTION 9. This act shall take effect July 1, 2009, the public welfare requiring it.