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H.413

Representative Wizowaty of Burlington moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. chapter 231 is added to read:

CHAPTER 231. UNIFORM COLLATERAL

CONSEQUENCES OF CONVICTION

§ 8001. SHORT TITLE

This act may be cited as the Uniform Collateral Consequences of Conviction Act.

§ 8002. DEFINITIONS

As used in this chapter:

(1) “Collateral consequence” means a mandatory sanction or a discretionary disqualification.

(2) “Mandatory sanction” means a penalty, disability, or disadvantage imposed on an individual as a result of the individual’s conviction of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

1 (3) “Conviction” includes an adjudication for delinquency for purposes
2 of this chapter only, unless otherwise specified. “Convicted” has a
3 corresponding meaning.

4 (4) “Court” means the Criminal Division of the Superior Court.

5 (5) “Decision-maker” means the state acting through a department,
6 agency, officer, or instrumentality, including a political subdivision,
7 educational institution, board, or commission, or its employees or a
8 government contractor, including a subcontractor, made subject to this chapter
9 by contract, by law other than this chapter, or by ordinance.

10 (6) “Discretionary disqualification” means a penalty, disability, or
11 disadvantage that an administrative agency, governmental official, or court in a
12 civil proceeding is authorized, but not required, to impose on an individual on
13 grounds relating to the individual’s conviction of an offense.

14 (7) “Offense” means a felony, misdemeanor, or delinquent act under the
15 laws of this State, another state, or the United States.

16 (8) “State” means a state of the United States, the District of Columbia,
17 Puerto Rico, the United States Virgin Islands, or any territory or insular
18 possession subject to the jurisdiction of the United States.

19 § 8003. LIMITATION ON SCOPE

20 (a) This chapter does not provide a basis for:

21 (1) invalidating a plea, conviction, or sentence;

1 (2) a cause of action for money damages; or

2 (3) a claim for relief from or defense to the application of a collateral
3 consequence based on a failure to comply with this chapter.

4 (b) This chapter shall not affect:

5 (1) the duty an individual’s attorney owes to the individual;

6 (2) a claim or right of a victim of an offense; or

7 (3) a right or remedy under law other than this chapter available to an
8 individual convicted of an offense.

9 § 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF

10 LAWS REGARDING COLLATERAL CONSEQUENCES

11 (a)(1) The Attorney General shall:

12 (A) identify or cause to be identified any provision in this State’s
13 Constitution, statutes, and administrative rules which imposes a mandatory
14 sanction or authorizes the imposition of a discretionary disqualification and
15 any provision of law that may afford relief from a collateral consequence;

16 (B) prepare a collection of citations to and the text or short
17 descriptions of the provisions identified under subdivision (a)(1)(A) of this
18 section not later than October 1, 2013; and

19 (C) update the collection provided under subdivision (B) of this
20 subdivision (1) annually by July 1.

1 (2) In complying with subdivision (a)(1) of this section, the Attorney
2 General may rely on the study of this State’s mandatory sanctions,
3 discretionary disqualifications, and relief provisions prepared by the National
4 Institute of Justice described in Section 510 of the Court Security Improvement
5 Act of 2007, Pub. L. No. 110 -177, § 510, 121 Stat. 2534 (2008).

6 (b) The Attorney General shall include or cause to be included the
7 following statements in a prominent manner at the beginning of the collection
8 required by subsection (a) of this section:

9 (1) This collection has not been enacted into law and does not have the
10 force of law.

11 (2) An error or omission in this collection or any reference work cited in
12 this collection is not a reason for invalidating a plea, conviction, or sentence or
13 for not imposing a mandatory sanction or authorizing a discretionary
14 disqualification.

15 (3) The laws of other jurisdictions that impose additional mandatory
16 sanctions and authorize additional discretionary disqualifications are not
17 included in this collection.

18 (4) This collection does not include any law or other provision regarding
19 the imposition of or relief from a mandatory sanction or a discretionary
20 disqualification enacted or adopted after [insert date the collection was
21 prepared or last updated].

1 (c) The Attorney General shall publish or cause to be published the
2 collection prepared and updated as required by subsection (a) of this section.

3 (d) The Attorney General shall publish or cause to be published as part of
4 the collection the title and Internet address, if available, of the most recent
5 collection of:

6 (1) the collateral consequences imposed by federal law; and

7 (2) any provision of federal law that may afford relief from a collateral
8 consequence.

9 (e) An agency that adopts a rule pursuant to 3 V.S.A. §§ 836–844 which
10 implicates collateral consequences to a conviction shall forward a copy of the
11 rule to the Attorney General.

12 § 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL
13 PROCEEDING

14 (a) When an individual receives formal notice that the individual is charged
15 with an offense, the Court shall cause information substantially similar to the
16 following to be communicated to the individual:

17 (1) If you plead guilty or are convicted of an offense, you may suffer
18 additional legal consequences beyond jail or prison, home confinement,
19 probation, and fines. These consequences may include:

20 (A) being unable to get or keep some licenses, permits, or jobs;

1 (B) being unable to get or keep benefits such as public housing or
2 education;

3 (C) receiving a harsher sentence if you are convicted of another
4 offense in the future;

5 (D) having the government take your property;

6 (E) being unable to possess a firearm; and

7 (F) exercising your right to vote if you move to another state.

8 (2) If you are not a United States citizen, a guilty plea or conviction may
9 also result in your deportation, removal, exclusion from admission to the
10 United States, or denial of citizenship.

11 (3) The law may provide ways to obtain some relief from these
12 consequences.

13 (4) Further information about the consequences of conviction is
14 available on the Internet at [insert Internet address of the collection of laws
15 published under this chapter].

16 (b) Before the Court accepts a plea of guilty or nolo contendere from an
17 individual, the Court shall:

18 (1) confirm that the individual received the notice required by
19 subsection (a) of this section and had an opportunity to discuss the notice with
20 counsel, if represented, and understands that there may be collateral
21 consequences to a conviction; and

1 (2) provide written notice, as part of a written plea agreement or through
2 another form, of the following:

3 (A) that collateral consequences may apply because of the
4 conviction;

5 (B) the Internet address of the collection of laws published under this
6 chapter;

7 (C) that there may be ways to obtain relief from collateral
8 consequences;

9 (D) contact information for government or nonprofit agencies,
10 groups, or organizations, if any, offering assistance to individuals seeking
11 relief from collateral consequences; and

12 (E) that conviction of a crime in this State does not prohibit an
13 individual from voting in this State.

14 § 8006. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING
15 AND UPON RELEASE

16 (a) Prior to the completion of a sentence, an individual in the custody of the
17 Commissioner of Corrections shall be given written notice of the following:

18 (1) that collateral consequences may apply because of the conviction;

19 (2) the Internet address of the collection of laws published under this
20 chapter;

21 (3) that there may be ways to obtain relief from collateral consequences;

1 (4) contact information for government or nonprofit agencies, groups, or
2 organizations, if any, offering assistance to individuals seeking relief from
3 collateral consequences; and

4 (5) that conviction of a crime in this State does not prohibit an
5 individual from voting in this State.

6 (b) For persons sentenced to imprisonment, home confinement, or
7 preapproved furlough, the notice shall be provided not more than 30 days and
8 at least 10 days before completion of the sentence. If the sentence is for a term
9 of less than 30 days then notice shall be provided when the sentence is
10 completed.

11 (c) For persons serving probationary sentences, the notice shall be provided
12 no more than 30 days and at least 10 days before expiration of the term of
13 probation. If probation is for an indeterminate period, notice shall be provided
14 at the time the Court orders discharge from probation.

15 § 8007. AUTHORIZATION REQUIRED FOR MANDATORY SANCTION;

16 AMBIGUITY

17 (a) A mandatory sanction may be imposed only by statute or ordinance or
18 by a rule adopted in the manner provided in 3 V.S.A. §§ 836–844. A law or
19 rule shall impose unambiguously a collateral consequence in order for a court
20 to impose a collateral consequence.

1 (b) A law creating a collateral consequence that is ambiguous as to whether
2 it imposes an automatic mandatory sanction or whether it authorizes a
3 decision-maker to disqualify a person based upon his or her conviction shall be
4 construed as authorizing a discretionary disqualification.

5 § 8008. DECISION TO DISQUALIFY

6 In deciding whether to impose a discretionary disqualification, a
7 decision-maker shall undertake an individualized assessment to determine
8 whether the benefit or opportunity at issue should be denied the individual. In
9 making that decision, the decision-maker may consider, if substantially related
10 to the benefit or opportunity at issue, the particular facts and circumstances
11 involved in the offense and the essential elements of the offense. A conviction
12 itself may not be considered except as having established the elements of the
13 offense. The decision-maker shall also consider other relevant information,
14 including the effect on third parties of granting the benefit or opportunity and
15 whether the individual has been granted relief such as an order of limited relief
16 or a certificate of restoration of rights.

17 § 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE

18 UNITED STATES; RELIEVED OR PARDONED CONVICTION

19 (a) For purposes of authorizing or imposing a collateral consequence in this
20 State, a conviction of an offense in a court of another state or the United States
21 is deemed a conviction of the offense in this state with the same elements. If

1 there is no offense in this State with the same elements, the conviction is
2 deemed a conviction of the most serious offense in this State which is
3 established by the elements of the offense. A misdemeanor in the jurisdiction
4 of conviction may not be deemed a felony in this State, and an offense lesser
5 than a misdemeanor in the jurisdiction of conviction may not be deemed a
6 conviction of a felony or misdemeanor in this State.

7 (b) For purposes of authorizing or imposing a collateral consequence in this
8 State, a juvenile adjudication in another state or the United States may not be
9 deemed a conviction of a felony, misdemeanor, or offense lesser than a
10 misdemeanor in this State, but may be deemed a juvenile adjudication for the
11 delinquent act in this State with the same elements. If there is no delinquent
12 act in this State with the same elements, the juvenile adjudication is deemed an
13 adjudication of the most serious delinquent act in this State which is
14 established by the elements of the offense.

15 (c) A conviction that is reversed, overturned, or otherwise vacated by a
16 court of competent jurisdiction of this State, another state, or the United States
17 on grounds other than rehabilitation or good behavior may not serve as the
18 basis for authorizing or imposing a collateral consequence in this State.

19 (d) A pardon issued by another state or the United States has the same
20 effect for purposes of authorizing, imposing, and relieving a collateral
21 consequence in this State as it has in the issuing jurisdiction.

1 (e) A conviction that has been relieved by expungement, sealing,
2 annulment, set-aside, or vacation by a court of competent jurisdiction of
3 another state or the United States on grounds of rehabilitation or good
4 behavior, or for which civil rights are restored pursuant to statute, has the same
5 effect for purposes of authorizing or imposing collateral consequences in this
6 State as it has in the jurisdiction of conviction. However, such relief or
7 restoration of civil rights does not relieve collateral consequences applicable
8 under the law of this State for which relief could not be granted under section
9 8012 of this title or for which relief was expressly withheld by the court order
10 or by the law of the jurisdiction that relieved the conviction. An individual
11 convicted in another jurisdiction may seek relief under section 8010 or 8011 of
12 this title from any collateral consequence for which relief was not granted in
13 the issuing jurisdiction, other than those listed in section 8012 of this title, and
14 the Court shall consider that the conviction was relieved or civil rights restored
15 in deciding whether to issue an order of limited relief or certificate of
16 restoration of rights.

17 (f) A charge or prosecution in any jurisdiction which has been finally
18 terminated without a conviction and imposition of sentence based on
19 successful participation in a deferred adjudication or diversion program may
20 not serve as the basis for authorizing or imposing a collateral consequence in
21 this State. This subsection does not affect the validity of any restriction or

1 condition imposed by law as part of participation in the deferred adjudication
2 or diversion program, before or after the termination of the charge or
3 prosecution.

4 § 8010. ORDER OF LIMITED RELIEF

5 (a) An individual convicted of an offense may petition for an order of
6 limited relief from one or more mandatory sanctions related to employment,
7 education, housing, public benefits, or occupational licensing. After notice, the
8 petition may be presented to the sentencing court at or before sentencing or to
9 the Superior Court at any time after sentencing.

10 (b) Except as otherwise provided in section 8012 of this title, the Court
11 may issue an order of limited relief relieving one or more of the mandatory
12 sanctions described in this chapter if, after reviewing the petition, the
13 individual's criminal history record, any filing by a victim under section 8014
14 of this title, and any other relevant evidence, it finds the individual has
15 established by a preponderance of the evidence that:

16 (1) granting the petition will materially assist the individual in obtaining
17 or maintaining employment, education, housing, public benefits, or
18 occupational licensing;

19 (2) the individual has substantial need for the relief requested in order to
20 live a law-abiding life; and

1 (3) granting the petition would not pose an unreasonable risk to the
2 safety or welfare of the public or any individual.

3 (c) The order of limited relief shall specify:

4 (1) the mandatory sanction from which relief is granted; and

5 (2) any restriction imposed pursuant to section 8008 of this title.

6 (d) An order of limited relief relieves a mandatory sanction to the extent
7 provided in the order.

8 (e) If a mandatory sanction has been relieved pursuant to this section, a
9 decision-maker may consider the conduct underlying a conviction as provided
10 in section 8008 of this title.

11 § 8011. CERTIFICATE OF RESTORATION OF RIGHTS

12 (a) An individual convicted of an offense may petition the Court for a
13 certificate of restoration of rights relieving mandatory sanctions not sooner
14 than five years after the individual's most recent conviction of a felony or
15 misdemeanor in any jurisdiction, or not sooner than five years after the
16 individual's release from confinement pursuant to a criminal sentence in any
17 jurisdiction, whichever is later.

18 (b) Except as otherwise provided in section 8012 of this title, the Court
19 may issue a certificate of restoration of rights if, after reviewing the petition,
20 the individual's criminal history, any filing by a victim under section 8015 of

1 this title or a prosecuting attorney, and any other relevant evidence, it finds the
2 individual has established by a preponderance of the evidence that:

3 (1) the individual is engaged in or seeking to engage in a lawful
4 occupation or activity, including employment, training, education, or
5 rehabilitative programs, or the individual otherwise has a lawful source of
6 support;

7 (2) the individual is not in violation of the terms of any criminal
8 sentence or that any failure to comply is justified, excused, involuntary, or
9 insubstantial;

10 (3) a criminal charge is not pending against the individual; and

11 (4) granting the petition would not pose an unreasonable risk to the
12 safety or welfare of the public or to any individual.

13 (c) A certificate of restoration of rights must specify any restriction
14 imposed and mandatory sanction from which relief has not been granted under
15 section 8013 of this title.

16 (d) A certificate of restoration of rights relieves all mandatory sanctions,
17 except those listed in section 8012 of this title and any others specifically
18 excluded in the certificate.

19 (e) If a mandatory sanction has been relieved pursuant to this section, a
20 decision-maker may consider the conduct underlying a conviction as provided
21 in section 8008 of this title.

1 § 8012. MANDATORY SANCTIONS NOT SUBJECT TO ORDER OF
2 LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF
3 RIGHTS

4 An order of limited relief or certificate of restoration of rights may not be
5 issued to relieve the following mandatory sanctions:

6 (1) requirements imposed by chapter 167, chapter 3 of this title (sex
7 offender registration; law enforcement notification);

8 (2) a motor vehicle license suspension, revocation, limitation, or
9 ineligibility pursuant to Title 23 for which restoration or relief is available.

10 (3) ineligibility for employment by law enforcement agencies, including
11 the Office of the Attorney General, State’s Attorney, police departments,
12 sheriff’s departments, State Police, or the Department of Corrections.

13 § 8013. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER
14 OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION
15 OF RIGHTS

16 (a) When a petition is filed under section 8010 or 8011 of this title,
17 including a petition for enlargement of an existing order of limited relief or
18 certificate of restoration of rights, the Court shall notify the office that
19 prosecuted the offense giving rise to the collateral consequence from which
20 relief is sought and, if the conviction was not obtained in a court of this State,
21 the Attorney General. The Court may issue an order or certificate subject to

1 restriction or condition.

2 (b) The Court may restrict an order of limited relief or certificate of
3 restoration of rights if it finds just cause by a preponderance of the evidence.
4 Just cause includes subsequent conviction of a related felony in this State or of
5 an offense in another jurisdiction that is deemed a felony in this State. An
6 order of restriction may be issued:

7 (1) on motion of the Court, the prosecuting attorney who obtained the
8 conviction, or a government agency designated by that prosecutor;

9 (2) after notice to the individual and any prosecutor that has appeared in
10 the matter; and

11 (3) after a hearing if requested by the individual or the prosecutor that
12 made the motion or any prosecutor that has appeared in the matter.

13 (c) The Court shall order any test, report, investigation, or disclosure by the
14 individual it reasonably believes necessary to its decision to issue or modify an
15 order of limited relief or certificate of restoration of rights. If there are
16 material disputed issues of fact or law, the individual and any prosecutor
17 notified under subsection (a) of this section or another prosecutorial agency
18 designated by a prosecutor notified under subsection (a) of this section may
19 submit evidence and be heard on those issues.

20 (d) The Court shall maintain a public record of the issuance and
21 modification of orders of limited relief and certificates of restoration of rights.

1 A criminal history record as defined in 20 V.S.A. § 2056a and a criminal
2 conviction record as defined in 20 V.S.A. § 2056c shall include issuance and
3 modification of orders and certificates.

4 (e) The Court may adopt rules for application, determination, modification,
5 and revocation of orders of limited relief and certificates of restoration of
6 rights.

7 (f) If the Court grants in part or denies a petition under section 8010 or
8 8011 of this title, the Court may order that the person not petition for relief for
9 that particular offense under either section for a period not to exceed five
10 years.

11 § 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF
12 DUE CARE

13 In a judicial or administrative proceeding alleging negligence or other fault,
14 an order of limited relief or a certificate of restoration of rights may be
15 introduced as evidence of a person's due care in hiring, retaining, licensing,
16 leasing to, admitting to a school or program, or otherwise transacting business
17 or engaging in activity with the individual to whom the order was issued, if the
18 person knew of the order or certificate at the time of the alleged negligence or
19 other fault.

1 § 8015. VICTIM’S RIGHTS

2 A victim of an offense may participate in a proceeding for issuance of an
3 order of limited relief or a certificate of restoration of rights in the same
4 manner as at a sentencing proceeding pursuant to section 5321 of this title to
5 the extent permitted by rules adopted by the court.

6 § 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

7 In applying and construing this uniform act, consideration must be given to
8 the need to promote uniformity of the law with respect to its subject matter
9 among states that enact it.

10 § 8017. SAVINGS AND TRANSITIONAL PROVISIONS

11 (a) This chapter applies to collateral consequences whenever enacted or
12 imposed, unless the law creating the collateral consequence expressly states
13 that this chapter does not apply.

14 (b) This chapter does not invalidate the imposition of a mandatory sanction
15 on an individual before July 1, 2013, but a mandatory sanction validly imposed
16 before July 1, 2013 may be the subject of relief under this chapter.

17 Sec. 2. EFFECTIVE DATE

18 This act shall take effect on July 1, 2014.