

1 H.413

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

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

6 CHAPTER 231. UNIFORM COLLATERAL

7 CONSEQUENCES OF CONVICTION

8 § 8001. SHORT TITLE

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

11 § 8002. DEFINITIONS

12 As used in this chapter:

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

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

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

19 (4) “Decision-maker” means the state acting through a department,  
20 agency, officer, or instrumentality, including a political subdivision,  
21 educational institution, board, or commission, or its employees or a

1 government contractor, including a subcontractor, made subject to this chapter  
2 by contract, by law other than this chapter, or by ordinance. **Decision-maker**  
3 **does not mean the State’s Attorney.**

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

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

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 or adopt 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, 2014; 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 or adopt the study summary of this State’s mandatory  
3           sanctions, discretionary disqualifications, and relief provisions prepared by the  
4           National Institute of Justice described in Section 510 of the Court Security  
5           Improvement 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 as it exists and as it may be supplemented.

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 **provide either oral or written notice** ~~cause~~  
16       ~~information~~ substantially similar to the following to be communicated to the  
17       individual:

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

21             (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 serve in the military or on a jury;

7           (F) being unable to possess a firearm; and

8           (G) exercising your right to vote if you move to another state.

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

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

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

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

19           (1) confirm that the individual received the notice required by  
20           subsection (a) of this section and had an opportunity to discuss the notice with

1 counsel, if represented, and understands that there may be collateral  
2 consequences to a conviction; and

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

5 (A) that collateral consequences may apply because of the  
6 conviction;

7 (B) the Internet address of the collection of laws published under this  
8 chapter;

9 (C) that there may be ways to obtain relief from collateral  
10 consequences;

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

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

16 § 8006. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING

17 AND UPON RELEASE

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

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

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

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

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

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

9           (b) For persons sentenced to imprisonment, home confinement, or  
10 preapproved furlough incarceration, the notice shall be provided not more than  
11 30 days and at least 10 days before completion of the sentence. If the sentence  
12 is for a term of less than 30 days then notice shall be provided when the  
13 sentence is completed.

14           (c) For persons serving probationary sentences receiving a sentence  
15 involving community supervision, such as probation, furlough, home  
16 confinement, conditional reentry or parole, the notice shall be provided by the  
17 Department of Corrections in keeping with its mission of ensuring  
18 rehabilitation and public safety. , the notice shall be provided no more than 30  
19 days and at least 10 days before expiration of the term of probation. If  
20 probation is for an indeterminate period, notice shall be provided at the time  
21 the Court orders discharge from probation.



1     § 8007. AUTHORIZATION REQUIRED FOR MANDATORY SANCTION;

2             AMBIGUITY

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

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

11     § 8008. DECISION TO DISQUALIFY

12            In deciding whether to impose a discretionary disqualification, a  
13            decision-maker shall undertake an individualized assessment to determine  
14            whether the benefit or opportunity at issue should be denied the individual. In  
15            making that decision, the decision-maker may consider, if substantially related  
16            to the benefit or opportunity at issue, the particular facts and circumstances  
17            involved in the offense and the essential elements of the offense. A conviction  
18            itself may not be considered except as having established the elements of the  
19            offense. The decision-maker shall also consider other relevant information,  
20            including the effect on third parties of granting the benefit or opportunity and

1 whether the individual has been granted relief such as an order of limited relief  
2 or a certificate of restoration of rights.

3 § 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE  
4 UNITED STATES; RELIEVED OR PARDONED CONVICTION

5 (a) For purposes of authorizing or imposing a collateral consequence in this  
6 State, a conviction of an offense in a court of another state or the United States  
7 is deemed a conviction of the offense in this state with the same elements. If  
8 there is no offense in this State with the same elements, the conviction is  
9 deemed a conviction of the most serious offense in this State which is  
10 established by the elements of the offense. A misdemeanor in the jurisdiction  
11 of conviction may not be deemed a felony in this State, and an offense lesser  
12 than a misdemeanor in the jurisdiction of conviction may not be deemed a  
13 conviction of a felony or misdemeanor in this State.

14 (b) For purposes of authorizing or imposing a collateral consequence in this  
15 State, a juvenile adjudication in another state or the United States may not be  
16 deemed a conviction of a felony, misdemeanor, or offense lesser than a  
17 misdemeanor in this State, but may be deemed a juvenile adjudication for the  
18 delinquent act in this State with the same elements. If there is no delinquent  
19 act in this State with the same elements, the juvenile adjudication is deemed an  
20 adjudication of the most serious delinquent act in this State which is  
21 established by the elements of the offense.

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

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

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

1 in deciding whether to issue an order of limited relief or certificate of  
2 restoration of rights.

3 (f) A charge or prosecution in any jurisdiction which has been finally  
4 terminated without a conviction and imposition of sentence based on  
5 successful participation in a deferred adjudication or diversion program may  
6 not serve as the basis for authorizing or imposing a collateral consequence in  
7 this State. This subsection does not affect the validity of any restriction or  
8 condition imposed by law as part of participation in the deferred adjudication  
9 or diversion program, before or after the termination of the charge or  
10 prosecution.

11 § 8010. ORDER OF LIMITED RELIEF

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

17 (b) Except as otherwise provided in section 8012 of this title, the Court  
18 may issue an order of limited relief relieving one or more of the mandatory  
19 sanctions described in this chapter if, after reviewing the petition, the  
20 individual's criminal history record, any filing by a victim under section 8014

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

3 (1) granting the petition will materially assist the individual in obtaining  
4 or maintaining employment, education, housing, public benefits, or  
5 occupational licensing;

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

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

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

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

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

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

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

18 § 8011. CERTIFICATE OF RESTORATION OF RIGHTS

19 (a) An individual convicted of an offense may petition the Court for a  
20 certificate of restoration of rights relieving mandatory sanctions not sooner  
21 than five years after the individual's most recent conviction of a felony or

1 misdemeanor in any jurisdiction, or not sooner than five years after the  
2 individual's release from confinement pursuant to a criminal sentence in any  
3 jurisdiction, whichever is later.

4 (b) Except as otherwise provided in section 8012 of this title, the Court  
5 may issue a certificate of restoration of rights if, after reviewing the petition,  
6 the individual's criminal history, any filing by a victim under section 8015 of  
7 this title or a prosecuting attorney, and any other relevant evidence, it finds the  
8 individual has established by a preponderance of the evidence that:

9 (1) the individual is engaged in or seeking to engage in a lawful  
10 occupation or activity, including employment, training, education, or  
11 rehabilitative programs, or the individual otherwise has a lawful source of  
12 support;

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

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

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

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

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

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

7       § 8012. MANDATORY SANCTIONS NOT SUBJECT TO ORDER OF  
8               LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF  
9               RIGHTS

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

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

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

16               (3) ineligibility for employment by law enforcement agencies, including  
17       the Office of the Attorney General, State's Attorney, police departments,  
18       sheriff's departments, State Police, or the Department of Corrections.

1     § 8013. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER  
2             OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION  
3             OF RIGHTS

4             (a) When a petition is filed under section 8010 or 8011 of this title,  
5             including a petition for enlargement of an existing order of limited relief or  
6             certificate of restoration of rights, the Court shall notify the office that  
7             prosecuted the offense giving rise to the collateral consequence from which  
8             relief is sought and, if the conviction was not obtained in a court of this State,  
9             the Attorney General. The Court may issue an order or certificate subject to  
10            restriction or condition.

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

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

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

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



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

8       (d) The Court shall maintain a public record of the issuance and  
9       modification of orders of limited relief and certificates of restoration of rights.  
10       A criminal history record as defined in 20 V.S.A. § 2056a and a criminal  
11       conviction record as defined in 20 V.S.A. § 2056c shall include issuance and  
12       modification of orders and certificates.

13       (e) The Court may adopt rules for application, determination, modification,  
14       and revocation of orders of limited relief and certificates of restoration of  
15       rights.

16       (f) If the Court grants in part or denies a petition under section 8010 or  
17       8011 of this title, the Court may order that the person not petition for relief for  
18       that particular offense under either section for a period not to exceed five  
19       years.

1     § 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF  
2             DUE CARE

3             In a judicial or administrative proceeding alleging negligence or other fault,  
4             an order of limited relief or a certificate of restoration of rights may be  
5             introduced as evidence of a person’s due care in hiring, retaining, licensing,  
6             leasing to, admitting to a school or program, or otherwise transacting business  
7             or engaging in activity with the individual to whom the order was issued, if the  
8             person knew of the order or certificate at the time of the alleged negligence or  
9             other fault.

10     § 8015. VICTIM’S RIGHTS

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

15     § 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

1     § 8017. SAVINGS AND TRANSITIONAL PROVISIONS

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

5           (b) This chapter does not invalidate the imposition of a mandatory sanction  
6     on an individual before July 1, 2014, but a mandatory sanction validly imposed  
7     before July 1, 2014 may be the subject of relief under this chapter.

8     Sec. 2. EFFECTIVE DATE

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