

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 collateral mandatory sanction or a
14 discretionary disqualification.

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

21

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) “Person” means an individual, corporation, business trust, estate,
17 trust, partnership, limited liability company, association, joint venture, public
18 corporation, government or governmental subdivision, agency, instrumentality,
19 or any other legal or commercial entity.

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

4 § 8003. LIMITATION ON SCOPE

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

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

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

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

10 (b) This chapter shall not affect:

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

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

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

15 § 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF

16 LAWS REGARDING COLLATERAL CONSEQUENCES

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

18 (A) identify or cause to be identified any provision in this State’s

19 Constitution, statutes, and administrative rules which imposes a mandatory

20 sanction or authorizes the imposition of a discretionary disqualification and

21 any provision of law that may afford relief from a collateral consequence;

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

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

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

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

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

16 (2) An error or omission in this collection or any reference work cited in
17 this collection is not a reason for invalidating a plea, conviction, or sentence or
18 for not imposing a mandatory sanction or authorizing a discretionary
19 disqualification.

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

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

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

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

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

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

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

1 § 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL
2 PROCEEDING

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

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

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

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

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

14 (D) having the government take your property;

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

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

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

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

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

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

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

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

12 (A) that collateral consequences may apply because of the
13 conviction;

14 (B) the Internet address of the collection of laws published under this
15 chapter;

16 (C) that there may be ways to obtain relief from collateral
17 consequences;

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

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

3 § 8006. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING
4 AND UPON RELEASE

5 (a) Prior to the completion of a sentence, an individual in the custody of the
6 Commissioner of Corrections ~~An individual convicted of an offense shall be~~
7 given written notice, as provided in subsections (b) and (c) of this section, of
8 the following:

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

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

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

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

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

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

1 ~~completed. The Court shall provide the notice in subsection (a) of this section~~
2 ~~as a part of sentencing.~~

3 (c) ~~For persons serving probationary sentences, the notice shall be provided~~
4 ~~no more than 30 days and at least 10 days before expiration of the term of~~
5 ~~probation. If probation is for an indeterminate period, notice shall be provided~~
6 ~~at the time the Court orders discharge from probation. If an individual is~~
7 ~~sentenced to imprisonment or home confinement, the Department of~~
8 ~~Corrections shall provide the notice in subsection (a) of this section not more~~
9 ~~than 30 days and at least 10 days before discharge or release to community~~
10 ~~supervision.~~

11 § 8007. AUTHORIZATION REQUIRED FOR MANDATORY SANCTION;

12 AMBIGUITY

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

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

1 § 8008. DECISION TO DISQUALIFY

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

13 § 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE

14 UNITED STATES; RELIEVED OR PARDONED CONVICTION

15 (a) For purposes of authorizing or imposing a collateral consequence in this
16 State, a conviction of an offense in a court of another state or the United States
17 is deemed a conviction of the offense in this state with the same elements. If
18 there is no offense in this State with the same elements, the conviction is
19 deemed a conviction of the most serious offense in this State which is
20 established by the elements of the offense. A misdemeanor in the jurisdiction
21 of conviction may not be deemed a felony in this State, and an offense lesser

1 than a misdemeanor in the jurisdiction of conviction may not be deemed a
2 conviction of a felony or misdemeanor in this State.

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

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

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

18 (e) A conviction that has been relieved by expungement, sealing,
19 annulment, set-aside, or vacation by a court of competent jurisdiction of
20 another state or the United States on grounds of rehabilitation or good
21 behavior, or for which civil rights are restored pursuant to statute, has the same

1 effect for purposes of authorizing or imposing collateral consequences in this
2 State as it has in the jurisdiction of conviction. However, such relief or
3 restoration of civil rights does not relieve collateral consequences applicable
4 under the law of this State for which relief could not be granted under section
5 8012 of this title or for which relief was expressly withheld by the court order
6 or by the law of the jurisdiction that relieved the conviction. An individual
7 convicted in another jurisdiction may seek relief under section 8010 or 8011 of
8 this title from any collateral consequence for which relief was not granted in
9 the issuing jurisdiction, other than those listed in section 8012 of this title, and
10 the Court shall consider that the conviction was relieved or civil rights restored
11 in deciding whether to issue an order of limited relief or certificate of
12 restoration of rights.

13 (f) A charge or prosecution in any jurisdiction which has been finally
14 terminated without a conviction and imposition of sentence based on
15 successful participation in a deferred adjudication or diversion program may
16 not serve as the basis for authorizing or imposing a collateral consequence in
17 this State. This subsection does not affect the validity of any restriction or
18 condition imposed by law as part of participation in the deferred adjudication
19 or diversion program, before or after the termination of the charge or
20 prosecution.

1 § 8010. ORDER OF LIMITED RELIEF

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

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

13 (1) granting the petition will materially assist the individual in obtaining
14 or maintaining employment, education, housing, public benefits, or
15 occupational licensing;

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

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

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

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

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

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

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 § 8011. CERTIFICATE OF RESTORATION OF RIGHTS

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

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

19 (1) the individual is engaged in or seeking to engage in a lawful
20 occupation or activity, including employment, training, education, or

1 rehabilitative programs, or the individual otherwise has a lawful source of
2 support;

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

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

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

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

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

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.

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, and
10 any DUI-related motor vehicle license suspension, revocation, limitation or
11 ineligibility, including occupational, temporary, and restricted licensing
12 provisions;

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

16 § 8013. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER
17 OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION
18 OF RIGHTS

19 (a) When a petition is filed under section 8010 or 8011 of this title,
20 including a petition for enlargement of an existing order of limited relief or
21 certificate of restoration of rights, the Court shall notify the office that

1 prosecuted the offense giving rise to the collateral consequence from which
2 relief is sought and, if the conviction was not obtained in a court of this State,
3 the Attorney General. The Court may issue an order or certificate subject to
4 restriction or condition.

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

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

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

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

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

1 submit evidence and be heard on those issues.

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

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

7 (e) The Court may adopt rules for application, determination, modification,
8 and revocation of orders of limited relief and certificates of restoration of
9 rights.

10 (f) If the Court grants in part or denies a petition under section 8010 or
11 8011 of this title, the Court may order that the person not petition for relief
12 under either section for a period not to exceed five years.

13 § 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF
14 DUE CARE

15 In a judicial or administrative proceeding alleging negligence or other fault,
16 an order of limited relief or a certificate of restoration of rights may be
17 introduced as evidence of a person's due care in hiring, retaining, licensing,
18 leasing to, admitting to a school or program, or otherwise transacting business
19 or engaging in activity with the individual to whom the order was issued, if the
20 person knew of the order or certificate at the time of the alleged negligence or
21 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.