

H. B. 2010

(By Delegates Miley, Barker, Moore, Ferro and Ellem)
[Introduced January 12, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §62-16-1, §62-16-2,
§62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7, §62-16-8,
§62-16-9, §62-16-10, §62-16-11, §62-16-12, §62-16-13, §62-16-
14, §62-16-15 and §62-16-16, all relating to the enactment of
the Uniform Collateral Consequences of Conviction Act;
limitations on the scope of the act; identification,
collection and publication of collateral consequences by the
Attorney General; pretrial notice of collateral consequences;
notice of collateral consequences at sentencing and upon
release; authorization to impose a collateral sanction or
disqualification; effect of out-of-state convictions; effect
of pardoned or vacated convictions; petitions for relief from
collateral consequences; certificates of restoration of
rights; exemptions from orders or certificates; issuance of

1 orders or certificates; reliance on order or certificate as
2 evidence of due care; victim's rights; and uniformity of
3 application and construction of article.

4 *Be it enacted by the Legislature of West Virginia:*

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new article, designated §62-16-1, §62-16-2,
7 §62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7, §62-16-8, §62-16-
8 9, §62-16-10, §62-16-11, §62-16-12, §62-16-13, §62-16-14, §62-16-15
9 and §62-16-16, all to read as follows:

10 **ARTICLE 16. UNIFORM COLLATERAL CONSEQUENCES ACT.**

11 **§62-16-1. Short title.**

12 This article may be cited as the "Uniform Collateral
13 Consequences of Conviction Act".

14 **§62-16-2. Definitions.**

15 In this article:

16 (1) "Collateral consequence" means a collateral sanction or a
17 disqualification.

18 (2) "Collateral sanction" means a penalty, disability, or
19 disadvantage, however denominated, imposed on an individual as a
20 result of the individual's conviction for an offense that applies
21 by operation of law whether or not it is included in the judgment
22 or sentence. The term does not include imprisonment, probation,
23 parole, supervised release, forfeiture, restitution, fine,

1 assessment, or costs of prosecution.

2 (3) "Decision-maker" means the state acting directly or
3 through its departments, agencies, officers, or instrumentalities,
4 including municipalities, political subdivisions, educational
5 institutions, boards, or commissions, or their employees, and
6 government contractors, including subcontractors, made subject to
7 this article by contract, by law other than this article.

8 (4) "Disqualification" means a penalty, disability, or
9 disadvantage, however denominated, that an administrative agency,
10 governmental official, or a court in a civil proceeding is
11 authorized, but not required, to impose on an individual on grounds
12 relating to the individual's conviction for an offense.

13 (5) "Offense" means a felony or misdemeanor under the law of
14 this state, another state, or the United States. The term includes
15 a juvenile adjudication.

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

21 **§62-16-3. Limitation on scope.**

22 (a) This article does not provide a basis for:

23 (1) Invalidating a plea, conviction, or sentence;

24 (2) A cause of action for money damages; or

1 (3) A claim for relief from or defense to the application of
2 a collateral consequence based on a failure to comply with sections
3 four, five and six.

4 (b) This article does 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 available to an individual convicted of
8 an offense under law other than this article.

9 **§62-16-4. Identification, collection, and publication of laws**
10 **regarding collateral consequences.**

11 (a) The Attorney General:

12 (1) Shall identify or cause to be identified any provision in
13 this state's Constitution, statutes and administrative rules that
14 imposes a collateral sanction or authorizes the imposition of a
15 disqualification, and any provision of law that may afford relief
16 from a collateral consequence;

17 (2) Within one hundred eighty days after the effective date of
18 this article, shall collect or cause to be collected citations to,
19 and the text or short descriptions of, the provisions identified
20 under subdivision (1) of this section;

21 (3) Shall update or cause to be updated the collection within
22 ninety after each regular session of the Legislature; and

23 (4) In complying with subdivisions (1) and (2), may rely on
24 the study of this state's collateral sanctions, disqualifications

1 and relief provisions prepared by the National Institute of Justice
2 described in Section 510 of the Court Security Improvements Act of
3 2007, Pub. L. 110-177.

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

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

9 (2) An error or omission in this collection is not a reason
10 for invalidating a plea, conviction or sentence or for not imposing
11 a collateral sanction or disqualification.

12 (3) The laws of the United States, other jurisdictions and
13 counties or municipalities that impose additional collateral
14 sanctions and disqualifications are not listed in this collection.

15 (4) This collection does not include any law or other
16 provision regarding the imposition of or relief from a collateral
17 sanction or a disqualification enacted or adopted after the
18 collection was prepared or last updated.

19 (c) The Attorney General shall publish or cause to be
20 published the collection created and updated as required under
21 subsection (a) of this section. The collection must be available
22 to the public on the Internet without charge within ninety days
23 after it is created or updated.

24 **§62-16-5. Notice of collateral consequences in pretrial**

1 **proceeding.**

2 (a) At or before arraignment for an offense with which the
3 individual is charged, the court shall communicate to the
4 individual information substantially similar to the following:

5 NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

6 If you are convicted of an offense you may suffer additional
7 legal consequences beyond imprisonment, probation, parole,
8 supervised release and fines. These consequences may include:

9 ● Being unable to get or keep some licenses, permits or jobs;

10 ● Being unable to get or keep benefits such as public housing
11 or education;

12 ● Receiving a harsher sentence if you are convicted of another
13 offense in the future;

14 ● Having the government take your property; and

15 ● Being unable to vote or possess a firearm.

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

19 The law may provide ways to obtain some relief from these
20 consequences. Further information about the consequences of
21 conviction is available on the Internet at [the website created by
22 the Attorney General].

23 **§62-16-6. Notice of collateral consequences at sentencing and upon**
24 **release.**

1 (a) An individual convicted of an offense must be given notice
2 as provided in subsection (b) of this section:

3 (1) That collateral consequences may apply because of the
4 conviction;

5 (2) Of the Internet web address of the collection of laws
6 published under section four (c) of this article;

7 (3) That there may be ways to obtain relief from collateral
8 consequences;

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

12 (5) Of when an individual convicted of a crime may vote under
13 this state's law.

14 (b) The court shall provide the information in subsection (a)
15 of this section at sentencing. In addition, if an individual is
16 sentenced to imprisonment or other incarceration, the officer or
17 agency releasing the individual shall provide the information in
18 subsection (a) of this section not more than thirty days and, if
19 practicable, at least ten days before release.

20 **§62-16-7. Authorization required for collateral sanction;**
21 **disqualification; ambiguity.**

22 (a) A collateral sanction may be imposed only by statute or
23 ordinance, or by a rule authorized by law and adopted in accordance
24 with article three, chapter twenty-nine-a of this code.

1 (b) In deciding whether to impose a disqualification on an
2 individual, a decision-maker shall undertake an individual
3 assessment to determine whether the benefit or opportunity at issue
4 should be granted. In making that decision, a decision-maker may
5 not consider the fact of a conviction, but may consider the
6 particular facts and circumstances involved in the offense if they
7 are substantially related to the benefit or opportunity at issue.
8 The decision-maker shall also consider other relevant information,
9 including whether the individual has been granted relief such as an
10 order of limited relief or a certificate of restoration of rights.

11 (c) A law creating a collateral consequence that is ambiguous
12 as to whether it imposes a collateral sanction or authorizes a
13 disqualification must be construed as authorizing a
14 disqualification.

15 **§62-16-8. Effect of conviction by another state or the United**
16 **States; vacated or pardoned conviction.**

17 (a) For purposes of authorizing or imposing collateral
18 consequences in this state, a conviction for an offense in a court
19 of another state or the United States is considered a conviction of
20 the offense in this state with the same elements. If there is no
21 offense in this state with the same elements, the conviction is
22 considered a conviction of the most serious offense in this state
23 which is established by the elements of the offense. A misdemeanor
24 in the jurisdiction of conviction may not be considered a felony in

1 this state and an offense below a misdemeanor in the jurisdiction
2 of conviction may not be considered a conviction of a crime in this
3 state.

4 (b) For purposes of authorizing or imposing collateral
5 consequences in this state, a juvenile adjudication in another
6 state or the United States may not be considered a felony,
7 misdemeanor or offense below a misdemeanor in this state, but may
8 be considered a juvenile adjudication for the juvenile violation in
9 this state with the same elements in the underlying offense. If
10 there is no juvenile violation in this state with the same
11 underlying elements, the juvenile adjudication is considered an
12 adjudication of the most serious juvenile violation in this state
13 which is established by the underlying elements of the juvenile
14 adjudication.

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

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

24 (e) A conviction that has been expunged, sealed, annulled, set

1 aside or otherwise vacated by a court of competent jurisdiction of
2 another state or the United States on grounds of rehabilitation or
3 good behavior, or for which civil rights were restored pursuant to
4 statute, has the same effect for purposes of authorizing, imposing
5 and relieving collateral consequences in this state as it has in
6 the jurisdiction of conviction, except that vacation or restoration
7 of civil rights does not relieve collateral consequences applicable
8 under the law of this state for which relief could not be granted
9 under section eleven of this article, or for which relief was
10 expressly withheld by the court order or by the law of the
11 jurisdiction that vacated the conviction. An individual convicted
12 in another jurisdiction may seek relief under sections nine or ten
13 of this article from any collateral consequence for which relief
14 was not granted in the issuing jurisdiction, other than those
15 listed in section eleven of this article, and the court shall
16 consider that the conviction was vacated or civil rights restored
17 in deciding whether to issue an order of limited relief or
18 certificate of restoration of rights.

19 (f) A charge or prosecution in any jurisdiction that has been
20 finally terminated without a judgment of conviction and imposition
21 of sentence based on participation in a deferred prosecution or
22 diversion program may not serve as the basis for authorizing or
23 imposing a collateral consequence in this state. This subsection
24 does not affect the validity of any restrictions or conditions

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

4 **§62-16-9. Order of limited relief.**

5 (a) An individual convicted of an offense may petition for an
6 order of limited relief from one or more collateral sanctions
7 related to employment, education, housing, public benefits or
8 occupational licensing. The petition may be presented to the:

9 (1) Sentencing court at or before sentencing; or

10 (2) Court at any time after sentencing.

11 (b) Except as otherwise provided in section eleven of this
12 article, the court may issue an order of limited relief relieving
13 one or more of the collateral sanctions described in subsection (a)
14 of this section if, after reviewing the record, including the
15 individual's criminal history, any filing by a prosecutor or victim
16 under section fourteen of this article and any other relevant
17 evidence, it finds the individual has established by a
18 preponderance of the evidence that:

19 (1) Granting the petition will materially assist the
20 individual in obtaining or maintaining employment, education,
21 housing, public benefits or occupational licensing;

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

24 (3) Granting the petition would not pose an unreasonable risk

1 to the safety or welfare of the public or any individual.

2 (c) A decision-maker may consider the conduct underlying a
3 conviction in the same manner as provided in section seven (b) of
4 this article.

5 (d) The order of limited relief must specify:

6 (1) The particular collateral sanction from which relief is
7 granted; and

8 (2) Any restrictions imposed pursuant to section twelve (a) of
9 this article.

10 (e) Issuance of an order of limited relief relieves a
11 collateral sanction to the extent provided in the order.

12 **§62-16-10. Certificate of restoration of rights.**

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

20 (b) Except as otherwise provided in section eleven of this
21 article, the court may issue a certificate of restoration of rights
22 if after reviewing the record, including the individual's criminal
23 history, any filing by a prosecutor or victim under section
24 fourteen of this article and any other relevant evidence, it finds

1 the individual has established by a preponderance of the evidence
2 that:

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

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

10 (3) No criminal charges are pending against the individual;
11 and

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

14 (c) A certificate of restoration of rights must specify any
15 restrictions imposed and collateral sanctions from which relief has
16 not been granted under section twelve (a) of this article.

17 (d) Issuance of a certificate of restoration of rights
18 relieves all collateral sanctions, except those listed in section
19 eleven and any others specifically excluded in the certificate.

20 A decision-maker may consider the conduct underlying the conviction
21 in the same manner as provided in section seven (b) of this
22 article.

23 **§62-16-11. Collateral sanctions not subject to order of limited**
24 **relief or certificate of restoration of rights.**

1 An order of limited relief or certificate of restoration of
2 rights may not be issued to relieve the following collateral
3 sanctions:

4 (1) Requirements imposed by article twelve, chapter fifteen of
5 this code;

6 (2) A motor vehicle license suspension, revocation, limitation
7 or ineligibility pursuant to article five-a, chapter seventeen-c of
8 this code or a motor vehicle license suspension, revocation,
9 limitation or ineligibility pursuant to article three, chapter
10 seventeen-b of this code for which restoration or relief is
11 available pursuant to article two, chapter seventeen-b of this
12 code; or

13 (3) Ineligibility for employment pursuant to any laws
14 restricting employment of convicted individuals by law enforcement
15 agencies including the Attorney General, prosecutor's office,
16 police department, sheriff's department, the State Police, the
17 Division of Corrections or the Regional Jail and Correctional
18 Facility Authority.

19 **§62-16-12. Issuance, modification, and revocation of order of**
20 **limited relief and certificate of restoration of**
21 **rights.**

22 (a) When a petition is filed under sections nine or ten of
23 this article, including a petition for enlargement of an existing
24 order of limited relief or certificate of restoration of rights,

1 the court shall notify the office that prosecuted the offense
2 giving rise to the collateral consequence from which relief is
3 sought and, if the conviction was not obtained in a court of this
4 state, the court shall notify the Attorney General. The court may
5 issue an order or certificate subject to restriction, condition or
6 additional requirement. When issuing, denying, modifying or
7 revoking an order or certificate, the court may impose conditions
8 for reapplication.

9 (b) The court may restrict or revoke an order of limited
10 relief or certificate of restoration of rights it previously issued
11 or an order issued by a court in this state if it finds just cause
12 by a preponderance of the evidence. Just cause includes subsequent
13 conviction of the holder for a felony in this state or for an
14 offense in another jurisdiction that is considered a felony in this
15 state under section eight (a) of this article. An order of
16 restriction or revocation may be issued:

17 (1) On motion of the Attorney General or the office of the
18 prosecutor that obtained the conviction or a government agency
19 designated by that prosecutorial office;

20 (2) After notice to the individual to whom the order or
21 certificate was issued and any other prosecutor that has appeared
22 in the matter; and

23 (3) After a hearing pursuant to rules adopted by the West
24 Virginia Supreme Court of Appeals if requested by the individual or

1 the prosecutor who made the motion or any prosecutor that has
2 appeared in the matter.

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

12 (d) The court shall maintain a public record of the issuance,
13 modification and revocation of orders of limited relief and
14 certificates of restoration of rights.

15 **§62-16-13. Reliance on order or certificate as evidence of due**
16 **care.**

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

1 **§62-16-14. Victim's rights.**

2 A victim of an offense may participate in proceedings for
3 issuance, modification and revocation of orders of limited relief
4 and certificates of restoration of rights in the same manner as at
5 a sentencing proceeding pursuant to section two, article eleven-a,
6 chapter sixty-one of this code.

7 **§62-16-15. Uniformity of application and construction.**

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

11 **§62-16-16. Savings and transitional provisions.**

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

15 (b) This article does not invalidate the imposition of a
16 collateral sanction on an individual before the effective date of
17 this article, but a collateral sanction validly imposed before the
18 effective date of this article may be the subject of relief under
19 this article.

NOTE: This bill was recommended for introduction and passage by the Joint Standing Committee on the Judiciary. The bill is modeled on the Uniform Collateral Consequences of Conviction Act approved July 15, 2009, by the Uniform Law Commission (ULC). The proposed legislation attempts to provide a more comprehensive mechanism to avoid or mitigate the impact of collateral consequences.

This article is new; therefore, it has been completely underscored.

This bill was recommended for introduction and passage during the 2010 Regular Session of the Legislature by the Joint Standing Committee on the Judiciary.