

# AN ACT

To amend sections 9.78, 2907.22, and 2953.25 of the Revised Code to amend the penalties for promoting prostitution, to set a uniform fee for a certificate of qualification for employment, to require licensing agencies to provide additional information on the use of certificates of qualification for employment and certificates of achievement and employability, and to create a rebuttable presumption for issuance of a certificate of qualification for employment under certain circumstances.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 9.78, 2907.22, and 2953.25 of the Revised Code be amended to read as follows:

Sec. 9.78. (A) As used in this section:

(1) "License" means an authorization evidenced by a license, certificate, registration, permit, card, or other authority that is issued or conferred by a licensing authority to an individual by which the individual has or claims the privilege to engage in a profession, occupation, or occupational activity over which the licensing authority has jurisdiction.

(2) "Licensing authority" means both of the following:

(a) A board, commission, or other entity that issues licenses under Title XLVII or any other provision of the Revised Code to practice an occupation or profession;

(b) A political subdivision that issues a license or that charges a fee for an individual to practice an occupation or profession in that political subdivision.

(B) An individual who has been convicted of any criminal offense may request, at any time, that a licensing authority determine whether the individual's criminal conviction disqualifies the individual from obtaining a license issued or conferred by the licensing authority. An individual making such a request shall include details of the individual's criminal conviction and any payment required by the licensing authority. A licensing authority may charge a fee of not more than twenty-five dollars for each request made under this section, to reimburse the costs it incurs in making the determination.

Not later than thirty days after receiving a request under this section, the licensing authority shall inform the individual whether, based on the criminal record information submitted, the individual is disqualified from receiving or holding the license about which the individual inquired. A licensing authority is not bound by a determination made under this section, if, on further investigation, the licensing authority determines that the individual's criminal convictions differ from the information presented in the determination request.

(C) A licensing authority shall make all of the following available to the public on the

licensing authority's internet web site-a:

(1) A list of all criminal offenses of which conviction of that offense shall disqualify an individual from obtaining a license issued or conferred by the licensing authority;

(2) That a disqualification referenced in division (C)(1) of this section may be overcome if the individual applying for the license or, as applicable, the individual's employee, holds a certificate of qualification for employment issued under section 2953.25 of the Revised Code or a certificate of achievement and employability issued under section 2961.22 of the Revised Code;

(3) A reference to the certificate of qualification for employment web site maintained by the department of rehabilitation and correction.

(D) A licensing authority shall include on any form, policy, manual, or other material that lists criminal offenses, the conviction of which would disqualify an individual from obtaining a license issued or conferred by that licensing authority, a statement that a disqualification may be overcome by the individual applying for the license or, as applicable, by the individual's employee, holding a certificate of qualification for employment issued under section 2953.25 of the Revised Code or a certificate of achievement and employability issued under section 2961.22 of the Revised Code, including a reference to the certificate of qualification for employment web site maintained by the department of rehabilitation and correction.

(E) Any predetermination form, nonconviction statement form, or other form used by a licensing authority to determine whether a conviction or adjudication record disqualifies an applicant from obtaining a particular license shall include a section requesting the applicant to provide information if they are a recipient of a certificate of qualification for employment under section 2953.25 of the Revised Code or a certificate of achievement and employability under section 2961.22 of the Revised Code.

Sec. 2907.22. (A) No person shall knowingly:

(1) Establish, maintain, operate, manage, supervise, control, or have an interest in a brothel or any other enterprise a purpose of which is to facilitate engagement in sexual activity for hire;

(2) Supervise, manage, or control the activities of a prostitute in engaging in sexual activity for hire;

(3) Transport another, or cause another to be transported, in order to facilitate the other person's engaging in sexual activity for hire;

(4) For the purpose of violating or facilitating a violation of this section, induce or procure another to engage in sexual activity for hire.

(B) Whoever violates this section is guilty of promoting prostitution. Except, and the court shall sentence the offender as follows:

(1) Except as otherwise provided in this division (B)(2) or (3) of this section, promoting prostitution is a felony of the fourth degree. If any

(2) Except as provided in division (B)(3) of this section, promoting prostitution is a felony of the third degree if any of the following apply:

(a) A prostitute in the brothel involved in the offense, or the prostitute whose activities are supervised, managed, or controlled by the offender, or the person transported, induced, or procured by the offender to engage in sexual activity for hire, is a minor, whether or not the offender knows the age of the minor, then promoting prostitution is a felony of the third degree. If,

(b) The offender previously has been convicted of or pleaded guilty to a violation of this section or a substantially similar violation of a law of another state or the United States.

(c) The offender also is convicted of or pleads guilty to a violation of section 2925.03 of the Revised Code.

(3) If the offender previously has been convicted of or pleaded guilty to two or more violations of this section or two or more substantially similar violations of a law of another state or the United States, promoting prostitution is a felony of the second degree.

(4) If the offender in any case also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

(5) If the offender in any case also is convicted of or pleads guilty to a firearm specification of the type described in section 2941.141, 2941.144, or 2941.145 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(1)(a) of section 2929.14 of the Revised Code.

Sec. 2953.25. (A) As used in this section:

(1) "Collateral sanction" means a penalty, disability, or disadvantage that is related to employment or occupational licensing, however denominated, as a result of the individual's conviction of or plea of guilty to an offense and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment imposed.

"Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(2) "Decision-maker" includes, but is not limited to, the state acting through a department, agency, board, commission, or instrumentality established by the law of this state for the exercise of any function of government, a political subdivision, an educational institution, or a government contractor or subcontractor made subject to this section by contract, law, or ordinance.

(3) "Department-funded program" means a residential or nonresidential program that is not a term in a state correctional institution, that is funded in whole or part by the department of rehabilitation and correction, and that is imposed as a sanction for an offense, as part of a sanction that is imposed for an offense, or as a term or condition of any sanction that is imposed for an offense.

(4) "Designee" means the person designated by the deputy director of the division of parole and community services to perform the duties designated in division (B) of this section.

(5) "Division of parole and community services" means the division of parole and community services of the department of rehabilitation and correction.

(6) "Offense" means any felony or misdemeanor under the laws of this state.

(7) "Political subdivision" has the same meaning as in section 2969.21 of the Revised Code.

(8) "Discretionary civil impact," "licensing agency," and "mandatory civil impact" have the same meanings as in section 2961.21 of the Revised Code.

(B)(1) An individual who is subject to one or more collateral sanctions as a result of being

convicted of or pleading guilty to an offense and who either has served a term in a state correctional institution for any offense or has spent time in a department-funded program for any offense may file a petition with the designee of the deputy director of the division of parole and community services for a certificate of qualification for employment.

(2) An individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who is not in a category described in division (B)(1) of this section may file for a certificate of qualification for employment by doing either of the following:

(a) In the case of an individual who resides in this state, filing a petition with the court of common pleas of the county in which the person resides or with the designee of the deputy director of the division of parole and community services;

(b) In the case of an individual who resides outside of this state, filing a petition with the court of common pleas of any county in which any conviction or plea of guilty from which the individual seeks relief was entered or with the designee of the deputy director of the division of parole and community services.

(3) A petition under division (B)(1) or (2) of this section shall be made on a copy of the form prescribed by the division of parole and community services under division (J) of this section ~~and~~ shall contain all of the information described in division (F) of this section, and, except as provided in division (B)(6) of this section, shall be accompanied by an application fee of fifty dollars.

(4)(a) Except as provided in division (B)(4)(b) of this section, an individual may file a petition under division (B)(1) or (2) of this section at any time after the expiration of whichever of the following is applicable:

(i) If the offense that resulted in the collateral sanction from which the individual seeks relief is a felony, at any time after the expiration of one year from the date of release of the individual from any period of incarceration in a state or local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of one year from the date of the individual's final release from all other sanctions imposed for that offense.

(ii) If the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at any time after the expiration of six months from the date of release of the individual from any period of incarceration in a local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of six months from the date of the final release of the individual from all sanctions imposed for that offense including any period of supervision.

(b) The department of rehabilitation and correction may establish criteria by rule adopted under Chapter 119. of the Revised Code that, if satisfied by an individual, would allow the individual to file a petition before the expiration of six months or one year from the date of final release, whichever is applicable under division (B)(4)(a) of this section.

(5)(a) A designee that receives a petition for a certificate of qualification for employment from an individual under division (B)(1) or (2) of this section shall review the petition to determine whether it is complete. If the petition is complete, the designee shall forward the petition, the

application fee, and any other information the designee possesses that relates to the petition, to the court of common pleas of the county in which the individual resides if the individual submitting the petition resides in this state or, if the individual resides outside of this state, to the court of common pleas of the county in which the conviction or plea of guilty from which the individual seeks relief was entered.

(b) A court of common pleas that receives a petition for a certificate of qualification for employment from an individual under division (B)(2) of this section, or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section, shall attempt to determine all other courts in this state in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief. The court that receives or is forwarded the petition shall notify all other courts in this state that it determines under this division were courts in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief that the individual has filed the petition and that the court may send comments regarding the possible issuance of the certificate.

A court of common pleas that receives a petition for a certificate of qualification for employment under division (B)(2) of this section shall notify the county's prosecuting attorney that the individual has filed the petition.

A court of common pleas that receives a petition for a certificate of qualification for employment under division (B)(2) of this section, or that is forwarded a petition for qualification under division (B)(5)(a) of this section may direct the clerk of court to process and record all notices required in or under this section. Except as provided in division (B)(6) of this section, the court shall pay thirty dollars of the application fee into the state treasury and twenty dollars of the application fee into the county general revenue fund.

(6) Upon receiving a petition for a certificate of qualification for employment filed by an individual under division (B)(1) or (2) of this section, a court of common pleas or the designee of the deputy director of the division of parole and community services who receives the petition may waive all or part of the fifty-dollar filing fee for an applicant who is indigent. If an application fee is partially waived, the first twenty dollars of the fee that is collected shall be paid into the county general revenue fund. Any partial fee collected in excess of twenty dollars shall be paid into the state treasury.

(C)(1) Upon receiving a petition for a certificate of qualification for employment filed by an individual under division (B)(2) of this section or being forwarded a petition for such a certificate under division (B)(5)(a) of this section, the court shall review the individual's petition, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the division of parole and community services, the applicant's military service record, if applicable, and whether the applicant has an emotional, mental, or physical condition that is traceable to the applicant's military service in the armed forces of the United States and that was a contributing factor in the commission of the offense or offenses, and all other relevant evidence. The court may order any report, investigation, or disclosure by the individual that the court believes is necessary for the court to reach a decision on whether to approve the individual's petition for a certificate of qualification for employment.

(2) Upon receiving a petition for a certificate of qualification for employment filed by an

individual under division (B)(2) of this section or being forwarded a petition for such a certificate under division (B)(5)(a) of this section, except as otherwise provided in this division, the court shall decide whether to issue the certificate within sixty days after the court receives or is forwarded the completed petition and all information requested for the court to make that decision. Upon request of the individual who filed the petition, the court may extend the sixty-day period specified in this division.

(3) ~~Subject~~ Except as provided in division (C)(5) of this section and subject to division (C)(5)(7) of this section, a court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section may issue a certificate of qualification for employment, at the court's discretion, if the court finds that the individual has established all of the following by a preponderance of the evidence:

(a) Granting the petition will materially assist the individual in obtaining employment or occupational licensing.

(b) The individual has a substantial need for the relief requested in order to live a law-abiding life.

(c) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

(4) The submission of an incomplete petition by an individual shall not be grounds for the designee or court to deny the petition.

(5) Subject to division (C)(6) of this section, an individual is rebuttably presumed to be eligible for a certificate of qualification for employment if the court that receives the individual's petition under division (B)(2) of this section or that is forwarded a petition under division (B)(5)(a) of this section finds all of the following:

(a) The application was filed after the expiration of the applicable waiting period prescribed in division (B)(4) of this section;

(b) If the offense that resulted in the collateral sanction from which the individual seeks relief is a felony, at least three years have elapsed since the date of release of the individual from any period of incarceration in a state or local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at least three years have elapsed since the date of the individual's final release from all other sanctions imposed for that offense;

(c) If the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at least one year has elapsed since the date of release of the individual from any period of incarceration in a local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at least one year has elapsed since the date of the final release of the individual from all sanctions imposed for that offense including any period of supervision.

(6) An application that meets all of the requirements for the presumption under division (C)(5) of this section shall be denied only if the court that receives the petition finds that the evidence reviewed under division (C)(1) of this section rebuts the presumption of eligibility for issuance by establishing, by clear and convincing evidence, that the applicant has not been rehabilitated.

(7) A certificate of qualification for employment shall not create relief from any of the following collateral sanctions:

(a) Requirements imposed by Chapter 2950. of the Revised Code and rules adopted under sections 2950.13 and 2950.132 of the Revised Code;

(b) A driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation pursuant to section 4510.037, 4510.07, 4511.19, or 4511.191 of the Revised Code if the relief sought is available pursuant to section 4510.021 or division (B) of section 4510.13 of the Revised Code;

(c) Restrictions on employment as a prosecutor or law enforcement officer;

(d) The denial, ineligibility, or automatic suspension of a license that is imposed upon an individual applying for or holding a license as a health care professional under Title XLVII of the Revised Code if the individual is convicted of, pleads guilty to, is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state under section 2951.041 of the Revised Code, or is subject to treatment or intervention in lieu of conviction for a violation of section 2903.01, 2903.02, 2903.03, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2909.02, 2911.01, 2911.11, or 2919.123 of the Revised Code;

(e) The immediate suspension of a license, certificate, or evidence of registration that is imposed upon an individual holding a license as a health care professional under Title XLVII of the Revised Code pursuant to division (C) of section 3719.121 of the Revised Code;

(f) The denial or ineligibility for employment in a pain clinic under division (B)(4) of section 4729.552 of the Revised Code;

(g) The mandatory suspension of a license that is imposed on an individual applying for or holding a license as a health care professional under Title XLVII of the Revised Code pursuant to section 3123.43 of the Revised Code.

~~(6)-(8)~~ If a court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section denies the petition, the court shall provide written notice to the individual of the court's denial. The court may place conditions on the individual regarding the individual's filing of any subsequent petition for a certificate of qualification for employment. The written notice must notify the individual of any conditions placed on the individual's filing of a subsequent petition for a certificate of qualification for employment.

If a court of common pleas that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section denies the petition, the individual may appeal the decision to the court of appeals only if the individual alleges that the denial was an abuse of discretion on the part of the court of common pleas.

(D)(1) A certificate of qualification for employment issued to an individual lifts the automatic bar of a collateral sanction, and a decision-maker shall consider on a case-by-case basis whether to grant or deny the issuance or restoration of an occupational license or an employment opportunity, notwithstanding the individual's possession of the certificate, without, however, reconsidering or rejecting any finding made by a designee or court under division (C)(3) of this section.

(2) The certificate constitutes a rebuttable presumption that the person's criminal convictions

are insufficient evidence that the person is unfit for the license, employment opportunity, or certification in question. Notwithstanding the presumption established under this division, the agency may deny the license or certification for the person if it determines that the person is unfit for issuance of the license.

(3) If an employer that has hired a person who has been issued a certificate of qualification for employment applies to a licensing agency for a license or certification and the person has a conviction or guilty plea that otherwise would bar the person's employment with the employer or licensure for the employer because of a mandatory civil impact, the agency shall give the person individualized consideration, notwithstanding the mandatory civil impact, the mandatory civil impact shall be considered for all purposes to be a discretionary civil impact, and the certificate constitutes a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for the employment, or that the employer is unfit for the license or certification, in question.

(E) A certificate of qualification for employment does not grant the individual to whom the certificate was issued relief from the mandatory civil impacts identified in division (A)(1) of section 2961.01 or division (B) of section 2961.02 of the Revised Code.

(F) A petition for a certificate of qualification for employment filed by an individual under division (B)(1) or (2) of this section shall include all of the following:

- (1) The individual's name, date of birth, and social security number;
- (2) All aliases of the individual and all social security numbers associated with those aliases;
- (3) The individual's residence address, including the city, county, and state of residence and zip code;
- (4) The length of time that the individual has resided in the individual's current state of residence, expressed in years and months of residence;
- (5) A general statement as to why the individual has filed the petition and how the certificate of qualification for employment would assist the individual;
- (6) A summary of the individual's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilty for each of those offenses;
- (7) A summary of the individual's employment history, specifying the name of, and dates of employment with, each employer;
- (8) Verifiable references and endorsements;
- (9) The name of one or more immediate family members of the individual, or other persons with whom the individual has a close relationship, who support the individual's reentry plan;
- (10) A summary of the reason the individual believes the certificate of qualification for employment should be granted;
- (11) Any other information required by rule by the department of rehabilitation and correction.

(G)(1) In a judicial or administrative proceeding alleging negligence or other fault, a certificate of qualification for employment issued to an individual under this section may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate of qualification for employment was issued if the person knew of the certificate

at the time of the alleged negligence or other fault.

(2) In any proceeding on a claim against an employer for negligent hiring, a certificate of qualification for employment issued to an individual under this section shall provide immunity for the employer as to the claim if the employer knew of the certificate at the time of the alleged negligence.

(3) If an employer hires an individual who has been issued a certificate of qualification for employment under this section, if the individual, after being hired, subsequently demonstrates dangerousness or is convicted of or pleads guilty to a felony, and if the employer retains the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea, the employer may be held liable in a civil action that is based on or relates to the retention of the individual as an employee only if it is proved by a preponderance of the evidence that the person having hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous or had been convicted of or pleaded guilty to the felony and was willful in retaining the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea of which the person has actual knowledge.

(H) A certificate of qualification for employment issued under this section shall be revoked if the individual to whom the certificate of qualification for employment was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate of qualification for employment. The department of rehabilitation and correction shall periodically review the certificates listed in the database described in division (K) of this section to identify those that are subject to revocation under this division. Upon identifying a certificate of qualification for employment that is subject to revocation, the department shall note in the database that the certificate has been revoked, the reason for revocation, and the effective date of revocation, which shall be the date of the conviction or plea of guilty subsequent to the issuance of the certificate.

(I) A designee's forwarding, or failure to forward, a petition for a certificate of qualification for employment to a court or a court's issuance, or failure to issue, a petition for a certificate of qualification for employment to an individual under division (B) of this section does not give rise to a claim for damages against the department of rehabilitation and correction or court.

(J) The division of parole and community services shall adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section and shall prescribe the form for the petition to be used under division (B)(1) or (2) of this section. The form for the petition shall include places for all of the information specified in division (F) of this section.

(K) The department of rehabilitation and correction shall maintain a database that identifies granted certificates and revoked certificates and tracks the number of certificates granted and revoked, the industries, occupations, and professions with respect to which the certificates have been most applicable, and the types of employers that have accepted the certificates. The department shall annually create a report that summarizes the information maintained in the database and shall make the report available to the public on its internet web site.

SECTION 2. That existing sections 9.78, 2907.22, and 2953.25 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. S. B. No. 5

133rd G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_