

S.B. 5
As Passed by the Senate

Topic: Certificate of Qualification for Employment - rebuttable presumption

_____ moved to amend as follows:

In line 1 of the title, delete "section" and insert 1
"sections"; after "2907.22" insert "and 2953.25" 2

In line 2 of the title, after "prostitution" insert "and to 3
create a rebuttable presumption for issuance of a certificate of 4
qualification for employment under certain circumstances" 5

In line 3, delete "section" and insert "sections"; after 6
"2907.22" insert "and 2953.25" 7

After line 60, insert: 8

"**Sec. 2953.25.** (A) As used in this section: 9

(1) "Collateral sanction" means a penalty, disability, or 10
disadvantage that is related to employment or occupational 11
licensing, however denominated, as a result of the individual's 12
conviction of or plea of guilty to an offense and that applies by 13
operation of law in this state whether or not the penalty, 14
disability, or disadvantage is included in the sentence or 15
judgment imposed. 16

"Collateral sanction" does not include imprisonment, 17
probation, parole, supervised release, forfeiture, restitution, 18
fine, assessment, or costs of prosecution. 19

(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.

(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 78
from which the individual seeks relief is a felony, at any time 79
after the expiration of one year from the date of release of the 80
individual from any period of incarceration in a state or local 81
correctional facility that was imposed for that offense and all 82
periods of supervision imposed after release from the period of 83
incarceration or, if the individual was not incarcerated for that 84
offense, at any time after the expiration of one year from the 85
date of the individual's final release from all other sanctions 86
imposed for that offense. 87

(ii) If the offense that resulted in the collateral sanction 88
from which the individual seeks relief is a misdemeanor, at any 89
time after the expiration of six months from the date of release 90
of the individual from any period of incarceration in a local 91
correctional facility that was imposed for that offense and all 92
periods of supervision imposed after release from the period of 93
incarceration or, if the individual was not incarcerated for that 94
offense, at any time after the expiration of six months from the 95
date of the final release of the individual from all sanctions 96
imposed for that offense including any period of supervision. 97

(b) The department of rehabilitation and correction may 98
establish criteria by rule adopted under Chapter 119. of the 99
Revised Code that, if satisfied by an individual, would allow the 100
individual to file a petition before the expiration of six months 101
or one year from the date of final release, whichever is 102
applicable under division (B)(4)(a) of this section. 103

(5)(a) A designee that receives a petition for a certificate 104
of qualification for employment from an individual under division 105
(B)(1) or (2) of this section shall review the petition to 106
determine whether it is complete. If the petition is complete, the 107

designee shall forward the petition, 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. 138

(C)(1) Upon receiving a petition for a certificate of 139
 qualification for employment filed by an individual under division 140
 (B)(2) of this section or being forwarded a petition for such a 141
 certificate under division (B)(5)(a) of this section, the court 142
 shall review the individual's petition, the individual's criminal 143
 history, all filings submitted by the prosecutor or by the victim 144
 in accordance with rules adopted by the division of parole and 145
 community services, the applicant's military service record, if 146
 applicable, and whether the applicant has an emotional, mental, or 147
 physical condition that is traceable to the applicant's military 148
 service in the armed forces of the United States and that was a 149
 contributing factor in the commission of the offense or offenses, 150
 and all other relevant evidence. The court may order any report, 151
 investigation, or disclosure by the individual that the court 152
 believes is necessary for the court to reach a decision on whether 153
 to approve the individual's petition for a certificate of 154
 qualification for employment. 155

(2) Upon receiving a petition for a certificate of 156
 qualification for employment filed by an individual under division 157
 (B)(2) of this section or being forwarded a petition for such a 158
 certificate under division (B)(5)(a) of this section, except as 159
 otherwise provided in this division, the court shall decide 160
 whether to issue the certificate within sixty days after the court 161
 receives or is forwarded the completed petition and all 162
 information requested for the court to make that decision. Upon 163
 request of the individual who filed the petition, the court may 164
 extend the sixty-day period specified in this division. 165

(3) ~~Subject~~ Except as provided in division (C)(5) of this 166
section and subject to division (C)~~(5)~~ (7) of this section, a 167

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 197
supervision imposed after release from the period of incarceration 198
or, if the individual was not incarcerated for that offense, at at 199
least three years have elapsed since the date of the individual's 200
final release from all other sanctions imposed for that offense; 201

(c) If the offense that resulted in the collateral sanction 202
from which the individual seeks relief is a misdemeanor, at least 203
one year has elapsed since the date of release of the individual 204
from any period of incarceration in a local correctional facility 205
that was imposed for that offense and all periods of supervision 206
imposed after release from the period of incarceration or, if the 207
individual was not incarcerated for that offense, at least one 208
year has elapsed since the date of the final release of the 209
individual from all sanctions imposed for that offense including 210
any period of supervision. 211

(6) An application that meets all of the requirements for the 212
presumption under division (C)(5) of this section shall be denied 213
only if the court that receives the petition finds that the 214
evidence reviewed under division (C)(1) of this section rebuts the 215
presumption of eligibility for issuance by establishing, by clear 216
and convincing evidence, that the applicant has not been 217
rehabilitated. 218

(7) A certificate of qualification for employment shall not 219
create relief from any of the following collateral sanctions: 220

(a) Requirements imposed by Chapter 2950. of the Revised Code 221
and rules adopted under sections 2950.13 and 2950.132 of the 222
Revised Code; 223

(b) A driver's license, commercial driver's license, or 224
probationary license suspension, cancellation, or revocation 225
pursuant to section 4510.037, 4510.07, 4511.19, or 4511.191 of the 226

Revised Code if the relief sought is available pursuant to section	227
4510.021 or division (B) of section 4510.13 of the Revised Code;	228
(c) Restrictions on employment as a prosecutor or law	229
enforcement officer;	230
(d) The denial, ineligibility, or automatic suspension of a	231
license that is imposed upon an individual applying for or holding	232
a license as a health care professional under Title XLVII of the	233
Revised Code if the individual is convicted of, pleads guilty to,	234
is subject to a judicial finding of eligibility for intervention	235
in lieu of conviction in this state under section 2951.041 of the	236
Revised Code, or is subject to treatment or intervention in lieu	237
of conviction for a violation of section 2903.01, 2903.02,	238
2903.03, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2909.02,	239
2911.01, 2911.11, or 2919.123 of the Revised Code;	240
(e) The immediate suspension of a license, certificate, or	241
evidence of registration that is imposed upon an individual	242
holding a license as a health care professional under Title XLVII	243
of the Revised Code pursuant to division (C) of section 3719.121	244
of the Revised Code;	245
(f) The denial or ineligibility for employment in a pain	246
clinic under division (B)(4) of section 4729.552 of the Revised	247
Code;	248
(g) The mandatory suspension of a license that is imposed on	249
an individual applying for or holding a license as a health care	250
professional under Title XLVII of the Revised Code pursuant to	251
section 3123.43 of the Revised Code.	252
(6) (8) If a court that receives an individual's petition for	253
a certificate of qualification for employment under division	254
(B)(2) of this section or that is forwarded a petition for such a	255

certificate under division (B)(5)(a) of this section denies the 256
petition, the court shall provide written notice to the individual 257
of the court's denial. The court may place conditions on the 258
individual regarding the individual's filing of any subsequent 259
petition for a certificate of qualification for employment. The 260
written notice must notify the individual of any conditions placed 261
on the individual's filing of a subsequent petition for a 262
certificate of qualification for employment. 263

If a court of common pleas that receives an individual's 264
petition for a certificate of qualification for employment under 265
division (B)(2) of this section or that is forwarded a petition 266
for such a certificate under division (B)(5)(a) of this section 267
denies the petition, the individual may appeal the decision to the 268
court of appeals only if the individual alleges that the denial 269
was an abuse of discretion on the part of the court of common 270
pleas. 271

(D)(1) A certificate of qualification for employment issued 272
to an individual lifts the automatic bar of a collateral sanction, 273
and a decision-maker shall consider on a case-by-case basis 274
whether to grant or deny the issuance or restoration of an 275
occupational license or an employment opportunity, notwithstanding 276
the individual's possession of the certificate, without, however, 277
reconsidering or rejecting any finding made by a designee or court 278
under division (C)(3) of this section. 279

(2) The certificate constitutes a rebuttable presumption that 280
the person's criminal convictions are insufficient evidence that 281
the person is unfit for the license, employment opportunity, or 282
certification in question. Notwithstanding the presumption 283
established under this division, the agency may deny the license 284
or certification for the person if it determines that the person 285
is unfit for issuance of the license. 286

(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;	316
(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;	317 318 319
(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;	320 321 322 323
(7) A summary of the individual's employment history, specifying the name of, and dates of employment with, each employer;	324 325 326
(8) Verifiable references and endorsements;	327
(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;	328 329 330
(10) A summary of the reason the individual believes the certificate of qualification for employment should be granted;	331 332
(11) Any other information required by rule by the department of rehabilitation and correction.	333 334
(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.	335 336 337 338 339 340 341 342 343

(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."

In line 61, delete "section" and insert "sections"; after
 "2907.22" insert "and 2953.25"

In line 62, delete "is" and insert "are"

The motion was _____ agreed to.