

As Reported by the House Small Business Committee

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H. B. No. 268

Representatives Humphrey, Click

**Cosponsors: Representatives Williams, McNally, Newman, Brennan, Fischer,
Rader, Russo, White, E., Sigrist**

To amend section 2953.25 of the Revised Code to 1
modify when a person may file a petition for a 2
certificate of qualification for employment. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2953.25 of the Revised Code be 4
amended to read as follows: 5

Sec. 2953.25. (A) As used in this section: 6

(1) "Collateral sanction" means a penalty, disability, or 7
disadvantage that is related to employment or occupational 8
licensing, however denominated, as a result of the individual's 9
conviction of or plea of guilty to an offense and that applies 10
by operation of law in this state whether or not the penalty, 11
disability, or disadvantage is included in the sentence or 12
judgment imposed. 13

"Collateral sanction" does not include imprisonment, 14
probation, parole, supervised release, forfeiture, restitution, 15
fine, assessment, or costs of prosecution. 16

(2) "Decision-maker" includes, but is not limited to, the 17
state acting through a department, agency, board, commission, or 18

instrumentality established by the law of this state for the 19
exercise of any function of government, a political subdivision, 20
an educational institution, or a government contractor or 21
subcontractor made subject to this section by contract, law, or 22
ordinance. 23

(3) "Department-funded program" means a residential or 24
nonresidential program that is not a term in a state 25
correctional institution, that is funded in whole or part by the 26
department of rehabilitation and correction, and that is imposed 27
as a sanction for an offense, as part of a sanction that is 28
imposed for an offense, or as a term or condition of any 29
sanction that is imposed for an offense. 30

(4) "Designee" means the person designated by the deputy 31
director of the division of parole and community services to 32
perform the duties designated in division (B) of this section. 33

(5) "Division of parole and community services" means the 34
division of parole and community services of the department of 35
rehabilitation and correction. 36

(6) "Offense" means any felony or misdemeanor under the 37
laws of this state. 38

(7) "Political subdivision" has the same meaning as in 39
section 2969.21 of the Revised Code. 40

(8) "Discretionary civil impact," "licensing agency," and 41
"mandatory civil impact" have the same meanings as in section 42
2961.21 of the Revised Code. 43

(B) (1) An individual who is subject to one or more 44
collateral sanctions as a result of being convicted of or 45
pleading guilty to an offense and who either has served a term 46
in a state correctional institution for any offense or has spent 47

time in a department-funded program for any offense may file a 48
petition with the designee of the deputy director of the 49
division of parole and community services for a certificate of 50
qualification for employment. 51

(2) An individual who is subject to one or more collateral 52
sanctions as a result of being convicted of or pleading guilty 53
to an offense and who is not in a category described in division 54
(B) (1) of this section may file for a certificate of 55
qualification for employment by doing either of the following: 56

(a) In the case of an individual who resides in this 57
state, filing a petition with the court of common pleas of the 58
county in which the person resides or with the designee of the 59
deputy director of the division of parole and community 60
services; 61

(b) In the case of an individual who resides outside of 62
this state, filing a petition with the court of common pleas of 63
any county in which any conviction or plea of guilty from which 64
the individual seeks relief was entered or with the designee of 65
the deputy director of the division of parole and community 66
services. 67

(3) A petition under division (B) (1) or (2) of this 68
section shall be made on a copy of the form prescribed by the 69
division of parole and community services under division (J) of 70
this section, shall contain all of the information described in 71
division (F) of this section, and, except as provided in 72
division (B) (6) of this section, shall be accompanied by an 73
application fee of fifty dollars and may be accompanied by a 74
local court fee of not more than fifty dollars. 75

(4) (a) Except as provided in division (B) (4) (b) of this 76

section, an individual may file a petition under division (B) (1) 77
or (2) of this section at any time after the expiration of 78
whichever of the following is applicable: 79

(i) If the offense that resulted in the collateral 80
sanction from which the individual seeks relief is a felony, at 81
any time after the expiration of one year from the date of 82
release of the individual from any period of incarceration in a 83
state or local correctional facility that was imposed for that 84
offense ~~and all periods of supervision imposed after release~~ 85
~~from the period of incarceration or~~, if the individual was not 86
incarcerated for that offense, at any time after the expiration 87
of one year from the date of the individual's final release from 88
all other sanctions imposed for that offense. 89

(ii) If the offense that resulted in the collateral 90
sanction from which the individual seeks relief is a 91
misdemeanor, at any time after the expiration of six months from 92
the date of release of the individual from any period of 93
incarceration in a local correctional facility that was imposed 94
for that offense and all periods of supervision imposed after 95
release from the period of incarceration or, if the individual 96
was not incarcerated for that offense, at any time after the 97
expiration of six months from the date of the final release of 98
the individual from all sanctions imposed for that offense 99
including any period of supervision. 100

(b) The department of rehabilitation and correction may 101
establish criteria by rule adopted under Chapter 119. of the 102
Revised Code that, if satisfied by an individual, would allow 103
the individual to file a petition before the expiration of six 104
months or one year from the date of final release, whichever is 105
applicable under division (B) (4) (a) of this section. 106

(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 application fee of fifty dollars described in division (B) (3) of this section, for an applicant who presents a poverty affidavit showing that the applicant is indigent. If an applicant pays an application fee, the first twenty dollars or two-fifths of the fee, whichever is greater, that is collected shall be paid into the county general revenue fund. If an applicant pays an application fee, the amount collected in excess of the amount to be paid into the county general revenue fund 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, except for information contained in any record that has been sealed under section 2953.32 of the

Revised Code, all filings submitted by the prosecutor or by the 169
victim in accordance with rules adopted by the division of 170
parole and community services, the applicant's military service 171
record, if applicable, and whether the applicant has an 172
emotional, mental, or physical condition that is traceable to 173
the applicant's military service in the armed forces of the 174
United States and that was a contributing factor in the 175
commission of the offense or offenses, and all other relevant 176
evidence. The court may order any report, investigation, or 177
disclosure by the individual that the court believes is 178
necessary for the court to reach a decision on whether to 179
approve the individual's petition for a certificate of 180
qualification for employment, except that the court shall not 181
require an individual to disclose information about any record 182
sealed under section 2953.32 of the Revised Code. 183

(2) Upon receiving a petition for a certificate of 184
qualification for employment filed by an individual under 185
division (B) (2) of this section or being forwarded a petition 186
for such a certificate under division (B) (5) (a) of this section, 187
except as otherwise provided in this division, the court shall 188
decide whether to issue the certificate within sixty days after 189
the court receives or is forwarded the completed petition and 190
all information requested for the court to make that decision. 191
Upon request of the individual who filed the petition, the court 192
may extend the sixty-day period specified in this division. 193

(3) Except as provided in division (C) (5) of this section 194
and subject to division (C) (7) of this section, a court that 195
receives an individual's petition for a certificate of 196
qualification for employment under division (B) (2) of this 197
section or that is forwarded a petition for such a certificate 198
under division (B) (5) (a) of this section may issue a certificate 199

of qualification for employment, at the court's discretion, if 200
the court finds that the individual has established all of the 201
following by a preponderance of the evidence: 202

(a) Granting the petition will materially assist the 203
individual in obtaining employment or occupational licensing. 204

(b) The individual has a substantial need for the relief 205
requested in order to live a law-abiding life. 206

(c) Granting the petition would not pose an unreasonable 207
risk to the safety of the public or any individual. 208

(4) The submission of an incomplete petition by an 209
individual shall not be grounds for the designee or court to 210
deny the petition. 211

(5) Subject to division (C) (6) of this section, an 212
individual is rebuttably presumed to be eligible for a 213
certificate of qualification for employment if the court that 214
receives the individual's petition under division (B) (2) of this 215
section or that is forwarded a petition under division (B) (5) (a) 216
of this section finds all of the following: 217

(a) The application was filed after the expiration of the 218
applicable waiting period prescribed in division (B) (4) of this 219
section; 220

(b) If the offense that resulted in the collateral 221
sanction from which the individual seeks relief is a felony, at 222
least three years have elapsed since the date of release of the 223
individual from any period of incarceration in a state or local 224
correctional facility that was imposed for that offense and all 225
periods of supervision imposed after release from the period of 226
incarceration or, if the individual was not incarcerated for 227
that offense, at least three years have elapsed since the date 228

of the individual's final release from all other sanctions 229
imposed for that offense; 230

(c) If the offense that resulted in the collateral 231
sanction from which the individual seeks relief is a 232
misdemeanor, at least one year has elapsed since the date of 233
release of the individual from any period of incarceration in a 234
local correctional facility that was imposed for that offense 235
and all periods of supervision imposed after release from the 236
period of incarceration or, if the individual was not 237
incarcerated for that offense, at least one year has elapsed 238
since the date of the final release of the individual from all 239
sanctions imposed for that offense including any period of 240
supervision. 241

(6) An application that meets all of the requirements for 242
the presumption under division (C)(5) of this section shall be 243
denied only if the court that receives the petition finds that 244
the evidence reviewed under division (C)(1) of this section 245
rebutts the presumption of eligibility for issuance by 246
establishing, by clear and convincing evidence, that the 247
applicant has not been rehabilitated. 248

(7) A certificate of qualification for employment shall 249
not create relief from any of the following collateral 250
sanctions: 251

(a) Requirements imposed by Chapter 2950. of the Revised 252
Code and rules adopted under sections 2950.13 and 2950.132 of 253
the Revised Code; 254

(b) A driver's license, commercial driver's license, or 255
probationary license suspension, cancellation, or revocation 256
pursuant to section 4510.037, 4510.07, 4511.19, or 4511.191 of 257

the Revised Code if the relief sought is available pursuant to 258
section 4510.021 or division (B) of section 4510.13 of the 259
Revised Code; 260

(c) Restrictions on employment as a prosecutor or law 261
enforcement officer; 262

(d) The denial, ineligibility, or automatic suspension of 263
a license that is imposed upon an individual applying for or 264
holding a license as a health care professional under Title 265
XLVII of the Revised Code if the individual is convicted of, 266
pleads guilty to, is subject to a judicial finding of 267
eligibility for intervention in lieu of conviction in this state 268
under section 2951.041 of the Revised Code, or is subject to 269
treatment or intervention in lieu of conviction for a violation 270
of section 2903.01, 2903.02, 2903.03, 2903.11, 2905.01, 2907.02, 271
2907.03, 2907.05, 2909.02, 2911.01, 2911.11, 2919.123, or 272
2919.124 of the Revised Code; 273

(e) The immediate suspension of a license, certificate, or 274
evidence of registration that is imposed upon an individual 275
holding a license as a health care professional under Title 276
XLVII of the Revised Code pursuant to division (C) of section 277
3719.121 of the Revised Code; 278

(f) The denial or ineligibility for employment in a pain 279
clinic under division (B) (4) of section 4729.552 of the Revised 280
Code; 281

(g) The mandatory suspension of a license that is imposed 282
on an individual applying for or holding a license as a health 283
care professional under Title XLVII of the Revised Code pursuant 284
to section 3123.43 of the Revised Code. 285

(8) If a court that receives an individual's petition for 286

a certificate of qualification for employment under division (B) 287
(2) of this section or that is forwarded a petition for such a 288
certificate under division (B) (5) (a) of this section denies the 289
petition, the court shall provide written notice to the 290
individual of the court's denial. The court may place conditions 291
on the individual regarding the individual's filing of any 292
subsequent petition for a certificate of qualification for 293
employment. The written notice must notify the individual of any 294
conditions placed on the individual's filing of a subsequent 295
petition for a certificate of qualification for employment. 296

If a court of common pleas that receives an individual's 297
petition for a certificate of qualification for employment under 298
division (B) (2) of this section or that is forwarded a petition 299
for such a certificate under division (B) (5) (a) of this section 300
denies the petition, the individual may appeal the decision to 301
the court of appeals only if the individual alleges that the 302
denial was an abuse of discretion on the part of the court of 303
common pleas. 304

(D) (1) A certificate of qualification for employment 305
issued to an individual lifts the automatic bar of a collateral 306
sanction, and a decision-maker shall consider on a case-by-case 307
basis whether to grant or deny the issuance or restoration of an 308
occupational license or an employment opportunity, 309
notwithstanding the individual's possession of the certificate, 310
without, however, reconsidering or rejecting any finding made by 311
a designee or court under division (C) (3) of this section. 312

(2) The certificate constitutes a rebuttable presumption 313
that the person's criminal convictions are insufficient evidence 314
that the person is unfit for the license, employment 315
opportunity, or certification in question. Notwithstanding the 316

presumption established under this division, the agency may deny 317
the license or certification for the person if it determines 318
that the person is unfit for issuance of the license. 319

(3) If an employer that has hired a person who has been 320
issued a certificate of qualification for employment applies to 321
a licensing agency for a license or certification and the person 322
has a conviction or guilty plea that otherwise would bar the 323
person's employment with the employer or licensure for the 324
employer because of a mandatory civil impact, the agency shall 325
give the person individualized consideration, notwithstanding 326
the mandatory civil impact, the mandatory civil impact shall be 327
considered for all purposes to be a discretionary civil impact, 328
and the certificate constitutes a rebuttable presumption that 329
the person's criminal convictions are insufficient evidence that 330
the person is unfit for the employment, or that the employer is 331
unfit for the license or certification, in question. 332

(E) A certificate of qualification for employment does not 333
grant the individual to whom the certificate was issued relief 334
from the mandatory civil impacts identified in division (A) (1) 335
of section 2961.01 or division (B) of section 2961.02 of the 336
Revised Code. 337

(F) A petition for a certificate of qualification for 338
employment filed by an individual under division (B) (1) or (2) 339
of this section shall include all of the following: 340

(1) The individual's name, date of birth, and social 341
security number; 342

(2) All aliases of the individual and all social security 343
numbers associated with those aliases; 344

(3) The individual's residence address, including the 345

city, county, and state of residence and zip code; 346

(4) The length of time that the individual has resided in 347
the individual's current state of residence, expressed in years 348
and months of residence; 349

(5) A general statement as to why the individual has filed 350
the petition and how the certificate of qualification for 351
employment would assist the individual; 352

(6) A summary of the individual's criminal history, except 353
for information contained in any record that has been sealed or 354
expunged under section 2953.32 or 2953.39 of the Revised Code, 355
with respect to each offense that is a disqualification from 356
employment or licensing in an occupation or profession, 357
including the years of each conviction or plea of guilty for 358
each of those offenses; 359

(7) A summary of the individual's employment history, 360
specifying the name of, and dates of employment with, each 361
employer; 362

(8) Verifiable references and endorsements; 363

(9) The name of one or more immediate family members of 364
the individual, or other persons with whom the individual has a 365
close relationship, who support the individual's reentry plan; 366

(10) A summary of the reason the individual believes the 367
certificate of qualification for employment should be granted; 368

(11) Any other information required by rule by the 369
department of rehabilitation and correction. 370

(G) (1) In a judicial or administrative proceeding alleging 371
negligence or other fault, a certificate of qualification for 372
employment issued to an individual under this section may be 373

introduced as evidence of a person's due care in hiring, 374
retaining, licensing, leasing to, admitting to a school or 375
program, or otherwise transacting business or engaging in 376
activity with the individual to whom the certificate of 377
qualification for employment was issued if the person knew of 378
the certificate at the time of the alleged negligence or other 379
fault. 380

(2) In any proceeding on a claim against an employer for 381
negligent hiring, a certificate of qualification for employment 382
issued to an individual under this section shall provide 383
immunity for the employer as to the claim if the employer knew 384
of the certificate at the time of the alleged negligence. 385

(3) If an employer hires an individual who has been issued 386
a certificate of qualification for employment under this 387
section, if the individual, after being hired, subsequently 388
demonstrates dangerousness or is convicted of or pleads guilty 389
to a felony, and if the employer retains the individual as an 390
employee after the demonstration of dangerousness or the 391
conviction or guilty plea, the employer may be held liable in a 392
civil action that is based on or relates to the retention of the 393
individual as an employee only if it is proved by a 394
preponderance of the evidence that the person having hiring and 395
firing responsibility for the employer had actual knowledge that 396
the employee was dangerous or had been convicted of or pleaded 397
guilty to the felony and was willful in retaining the individual 398
as an employee after the demonstration of dangerousness or the 399
conviction or guilty plea of which the person has actual 400
knowledge. 401

(H) A certificate of qualification for employment issued 402
under this section shall be revoked if the individual to whom 403

the certificate of qualification for employment was issued is 404
convicted of or pleads guilty to a felony offense committed 405
subsequent to the issuance of the certificate of qualification 406
for employment. The department of rehabilitation and correction 407
shall periodically review the certificates listed in the 408
database described in division (K) of this section to identify 409
those that are subject to revocation under this division. Upon 410
identifying a certificate of qualification for employment that 411
is subject to revocation, the department shall note in the 412
database that the certificate has been revoked, the reason for 413
revocation, and the effective date of revocation, which shall be 414
the date of the conviction or plea of guilty subsequent to the 415
issuance of the certificate. 416

(I) A designee's forwarding, or failure to forward, a 417
petition for a certificate of qualification for employment to a 418
court or a court's issuance, or failure to issue, a petition for 419
a certificate of qualification for employment to an individual 420
under division (B) of this section does not give rise to a claim 421
for damages against the department of rehabilitation and 422
correction or court. 423

(J) The division of parole and community services shall 424
adopt rules in accordance with Chapter 119. of the Revised Code 425
for the implementation and administration of this section and 426
shall prescribe the form for the petition to be used under 427
division (B)(1) or (2) of this section. The form for the 428
petition shall include places for all of the information 429
specified in division (F) of this section. 430

(K) The department of rehabilitation and correction shall 431
maintain a database that identifies granted certificates and 432
revoked certificates and tracks the number of certificates 433

granted and revoked, the industries, occupations, and 434
professions with respect to which the certificates have been 435
most applicable, and the types of employers that have accepted 436
the certificates. The department shall annually create a report 437
that summarizes the information maintained in the database and 438
shall make the report available to the public on its internet 439
web site. 440

Section 2. That existing section 2953.25 of the Revised 441
Code is hereby repealed. 442