

**Summary of Provisions of S.B. 337 Relevant to Collateral Consequences  
by Margaret Love**

**I. Certificate of qualification for employment**

S.B. 337, signed into law on June 26, 2012, creates a mechanism by which an individual who has been convicted of or pleaded guilty to an offense, who for a specified period of time has been released from incarceration and all supervision imposed after release or has received a final release from all other sanctions imposed, and who is subject to a "collateral sanction"<sup>1</sup> may obtain from the court of common pleas of the county in which the individual resides a "certificate of qualification for employment" (CQE) that will provide relief from certain bars on employment or occupational licensing. See Ohio Rev. Code Ann. § 2953.25.<sup>2</sup>

- **Effect:** A CQE has the effect of lifting most collateral sanctions imposed under Ohio law. *Id.* § 2953.25(B)(1)-(2). See also *id.* § 2953.25(D):

[A CQE] lifts the automatic bar of a collateral sanction, and a decision-maker may 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.

- **Sanctions excepted:** Certain collateral consequences are not affected, such as restrictions on employment as a prosecutor or law enforcement officer, restrictions on driver's licenses and on licensing in the health care field, and loss of licenses resulting from failure to pay child support. *Id.* § 2953.25(C)(5). Nor does a CQE relieve restrictions contained in Ohio Rev. Code Ann. § 2961.01(A)(1) regarding service on a jury, and § 2961.02(B) regarding public office or employment, including as a volunteer, if the volunteer activity involves substantial management or control over the property of a state agency, political subdivision, or private entity. . *Id.* § 2953.25(E).
- **Limitation on employer liability:** In a judicial or administrative proceeding alleging negligence or other fault, a certificate of qualification for employment issued under the mechanism 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 was issued if the person knew of the certificate at the time of the alleged negligence or other fault. In any proceeding on a claim against an employer for negligent hiring, a certificate of qualification for employment issued under the mechanism provides immunity for the employer as to the claim if the employer knew of the certificate at the time of the alleged negligence. § 2953.25(G).

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<sup>1</sup> A collateral sanction is defined as "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." Ohio Rev. Code Ann. § 2953.25(A)(1).

<sup>2</sup> The new bill has no effect on the mechanism, enacted in 2011, authorizing "certificates of achievement and employability."

- **Procedure:**

- *Eligibility waiting period:* If the offense was a felony, the petition may be filed one year after sentencing, or one year after release from prison if later, or after six months for a misdemeanor. *Id.* § 2953.25(B)(4). If the offender is subject to a period of post-incarceration supervision, the eligibility waiting period runs from the conclusion of that period of supervision. *Id.*
- Petitions for a CQE shall be filed with a court, unless the person has served a term in a state correctional institution or spent time in a department-funded program for any offense, in which case the petition is initially filed with the designee of the deputy director of the division of parole and community services, who then forwards it to court. *Id.* § 2953.25(B)(1)-(2), (5). The required contents of a petition are specified, and include a statement of the reasons the certificate is sought and references.
- Upon receiving a petition, the court shall review the petition, the individual's criminal history, all filings submitted by the prosecutor or the victim, and all other relevant evidence. *Id.* § 2953.25(C).
- The court in which a petition is filed or forwarded is required to determine all other Ohio courts in which the individual was found guilty of an offense other than the offense from which relief is sought and notify those courts of the filing, notify the prosecuting attorney of the county in which the individual resides that the individual has filed the petition, and review the petition, the individual's criminal history, all filings submitted by the prosecutor or the victim, and all other relevant evidence.
- The court that receives or is forwarded a petition under the bill must decide whether to issue the certificate within 60 days after the court receives or is forwarded the completed petition and all information requested by the court. This time limit may be extended upon request of the individual who filed the application.
- A court that denies a petition may place conditions on the individual regarding the filing of any subsequent petition for a certificate. An individual may appeal a denial decision of a court of common pleas to the court of appeals only if the individual alleges that the denial was an abuse of discretion by the court of common pleas.
- The certificate is "presumptively revoked" if the individual is convicted of or pleads guilty to a felony offense committed after issuance of the certificate. *Id.* § 2953.25(H).

- **Standard:** The standard for issuing a certificate is whether the individual has established by a preponderance of the evidence that (a) granting the petition will materially assist in obtaining employment or occupational licensing, (b) the individual has a substantial need for the relief in order to live a law-abiding life, and (c) granting the petition would not pose an unreasonable risk to the safety of the public or any individual. Ohio Rev. Code § 2953.25(C)(3).

- **Report to Legislature:** Requires DRC: (1) to conduct a study to determine the manner for transferring the bill's mechanism for the issuance of a CQE to an electronic database established and maintained by DRC, specifies certain provisions that must be included in the database to which the mechanism is to be transferred, and requires DRC by one year after the bill's effective date to submit to the General Assembly and the Governor a report containing the results of the study and recommendations for transferring the mechanism;<sup>3</sup> and (2) in

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<sup>3</sup> The DRC database "shall include granted certificates and revoked certificates and shall be designed to track the number of certificates granted and revoked, the industries, occupations, and professions with respect to which the certificates have been most

conjunction with the Ohio Judicial Conference, to conduct a study to determine whether the application process for certificates of qualification for employment created by the bill is feasible based upon DRC's caseload capacity and the courts of common pleas and, not later than one year after the bill's effective date of this section, to submit to the General Assembly a report that contains the results of the study and any recommendations for improvement of the application process. Ohio Rev. Code § 2953.25(K).

## **II. Sealing of criminal records - Ohio Rev. Code Ann. §§ 2953.31 et seq.**

- *Expansion of Eligibility:* Before the passage of S.B. 337, the only conviction records eligible for sealing under Ohio law were certain minor non-violent convictions where the court determined that the applicant had no other criminal record and no charges pending.<sup>4</sup> The “first offender” requirement was jurisdictional, and included both felonies and misdemeanors. *State v. Coleman*, 691 N.E.2d 369 (Ohio Ct. App. 1997). A new law passed by the legislature and signed by the governor on June 26, 2012, replaces the term “first offender” with “eligible offender” throughout the chapter, and authorizes sealing for anyone with a single felony conviction, two misdemeanor convictions if the convictions are not of the same offense, and one felony conviction and one misdemeanor conviction from Ohio or any other jurisdiction. S.B. 337 (amending Ohio Rev. Code Ann. §§ 2953.31(A)(1) (defining eligible offender) and 2953.32(A)(1) (permitting eligible offenders to petition for the sealing of a conviction record)).
- *Procedures Unchanged:* Existing law, unchanged by the bill, provides for a hearing upon the filing of an application to have a conviction sealed, and the prosecutor for the case must be notified of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing that specifies the reasons for believing a denial of the application is justified. The court must direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.
- *Child support provisions -* Additional provisions of S.B. 337 require the probation officer or county department of probation that the court directs to make the required inquiries concerning an applicant for the sealing of a criminal record to contact the child support enforcement agency enforcing the applicant's obligations under a child support order to inquire about the offender's compliance with the child support order if the applicant was convicted of or pleaded guilty to a violation of nonsupport of dependents. It also provides an exception to the current prohibition against sealing the records of an offender's conviction in cases in which the victim of the offense was under 18 years.

## **III. Ex-offender Reentry Coalition**

Adds a member to the Ex-offender Reentry Coalition who must be an ex-offender appointed by the Director of Rehabilitation and Correction.

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applicable, the types of employers that have accepted the certificates, and the recidivism rates of individuals who have been issued the certificates.” § 2953.25(K).

<sup>4</sup> The term “first offender” was previously defined in Ohio Rev. Code Ann. § 2953.31(A) as: [A]nyone who has been convicted of an offense in this state or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction.”

#### IV. Juvenile records

##### A. Sealing - Ohio Rev. Code. § 2151.356

- *Sexual battery and gross sexual imposition* - Removes sexual battery and gross sexual imposition from the list of offenses for which juvenile records may not be sealed.
- *Application process* – Reduces the eligibility waiting period for applying for sealing of juvenile records from two years to six months after any of certain specified events occurs, including the date the court enters an order after a hearing or a petition upon the classification of a child as a juvenile offender registrant under the Sex Offender Registration and Notification Law that contains a determination that the child is no longer a juvenile offender registrant. Prohibits the court from charging a fee for the filing of an application for the sealing of juvenile records.
- *Determination procedures* - Adds an additional factor to the factors that the court must consider in determining whether the person has been rehabilitated to a satisfactory degree for the purposes of sealing juvenile records: the granting of a new tier classification or declassification from the Juvenile Offender Registry under the Sex Offender Registration and Notification Law, except for public registry-qualified juvenile offender registrants.

##### B. Confidentiality of juvenile records – criminal records checks – (Ohio Rev. Code § 109.572 and 109.578)

- Limits disclosure of records of individual under 18 convicted in adult court and transferred back to juvenile court *unless* conviction for aggravated murder or murder violation or the adjudication or conviction was for a sexually oriented offense, as defined in Ohio Rev. Code § 2950.01, the juvenile court was required to classify the child a juvenile offender registrant for that offense under §§ 2152.82, 2152.83, or 2152.86, and that classification has not been removed.

#### V. Limits on Licensing Exclusions

- Prohibits **Ohio Optical Dispensers Board**, the **Registrar of Motor Vehicles** (with regard to motor vehicle salvage dealers, motor vehicle auctions, and salvage motor vehicle pools), the **Construction Industry Licensing Board**, the **Hearing Aid Dealers and Fitters Licensing Board**, and the **Director of Public Safety** (with regard to private investigators and security guards) from precluding individuals from obtaining or renewing licenses, certifications, or permits the entity issues due to any past criminal history of the individual unless the individual has committed a crime of moral turpitude or a disqualifying offense.<sup>5</sup> Provides a new definition of “crime of moral turpitude” to include only a number of specified serious crimes of violence.<sup>6</sup>

Specifies that: (1) if an individual applying for a license, certification, or permit has been convicted of or pleaded guilty to a misdemeanor that is not a crime of moral turpitude or a

<sup>5</sup> Ohio Rev. Code §§ 3772.07, 4501.02, 4725.44, 4725.48, 4725.52, 4725.53, 4738.04, 4738.07, 4740.06, 4740.10, 4747.05, 4747.10, 4747.12, 4749.03, 4749.04, 4749.06, and 5502.011.

<sup>6</sup> Ohio Rev. Code § 4776.10(A).

“disqualifying offense” (defined below) less than one year prior to making the application, any licensing entity listed in the preceding paragraph may use its discretion in granting or denying the individual a license, certification, or permit, (2) if an individual applying for a license, certification, or permit has been convicted of or pleaded guilty to a felony that is not a crime of moral turpitude or a disqualifying offense less than three years prior to making the application, any licensing entity listed in the preceding dot point may use its discretion in granting or denying the individual a license or registration, or renewing the license. A “disqualifying offense” is defined to mean an offense that is a felony and that has a “direct nexus” to an individual's proposed or current field of licensure, certification, or employment. "Direct nexus" means that the nature of the offense for which the individual was convicted or to which the individual pleaded guilty has a direct bearing on the fitness or ability of the individual to perform one or more of the duties or responsibilities necessarily related to a particular occupation, profession, or trade.<sup>7</sup> The provisions described in clauses (1) and (2) do not apply with respect to any offense unless the licensing entity, prior to the bill's effective date, was required or authorized to deny the application based on that offense.

- **Casino Control Commission** - Must provide a written statement to each applicant denied a license under this chapter describing the reason or reasons for which the applicant was denied the license. Requires an annual report to the legislature specifying number of applications denied in the preceding calendar year for each type of such license, and the reasons for those denials.
- **Background checks for trainees for certain professions or occupations** – requires a long list of licensing agencies to obtain criminal records checks for applicants for trainee positions: the Accountancy Board, the Board of Embalmers and Funeral Directors; the State Board of Optometry; the Ohio Optical Dispensers Board; the State Board of Pharmacy; the State Medical Board; the State Board of Psychology; the State Chiropractic Board; the Ohio Construction Industry Licensing Board; the State Veterinary Medical Licensing Board; the Occupational Therapy Section, Physical Therapy Section, and Athletic Trainers Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board; the Counselor, Social Worker, and Marriage and Family Therapist Board; the Ohio Board of Dietetics; the Ohio Respiratory Care Board; the State Board of Orthotics, Prosthetics, and Pedorthics; the Casino Control Commission; the Registrar of Motor Vehicles regarding certain motor vehicle salvage licenses; Hearing Aid Dealers and Fitters Licensing Board; or Director of Public Safety regarding private investigators and security guard providers.
  - These requirements requiring a criminal records check of applicants for trainee licenses do not apply with respect to any person who is participating in an apprenticeship or training program operated by or under contract with DRC.
  - None of these agencies may issue a trainee license to an applicant if the agency determines that the applicant would not be eligible for issuance of a license, certificate, or other authority to engage in the profession or occupation, or operate certain equipment or machinery, or enter certain premises.

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<sup>7</sup> Id. at § 4776.10(B), (C).

- An agency that uses criminal records in determining whether an applicant should be granted a trainee license under that chapter and that division must make the results available to the applicant who is the subject of the criminal records check.
- **Child support determinations** -- Prohibits a court or child support enforcement agency (CSEA) from determining that an incarcerated or institutionalized parent is voluntarily unemployed or underemployed for the purposes of imputing income when calculating child support. Revises the law with respect to determinations of imputed income, with respect to a parent who has a prior felony conviction and a parent who is receiving means-tested public benefits, including benefits under the Ohio Works First Program, Disability Financial Assistance Program, Supplemental Security Income, or veterans' benefits. Permits a court or CSEA to disregard a parent's additional income from overtime or additional employment in limited circumstances such as when the income was generated primarily to support a new or additional family member. Requires a court or CSEA to collect information about preexisting child support orders for other children of the same parents when calculating a child support order to ensure that the total of all orders for the children of both parents does not exceed the amount that would have been ordered in a single order.