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H.B. 263
133rd General Assembly

Bill Analysis

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Primary Sponsor: Rep. Koehler

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SUMMARY

Limitations on initial license refusal

- Requires, within 180 days after the bill's effective date, a state licensing authority to adopt a list of specific criminal offenses for which a conviction, judicial finding of guilt, or plea of guilty may disqualify an individual from obtaining a license.
- Allows a state licensing authority to consider a listed offense when deciding whether an individual is disqualified from receiving an initial license, provided the state licensing authority considers the offense in light of specific factors supported by clear and convincing evidence.
- Prohibits a state licensing authority from considering a listed disqualifying offense when the offense occurred outside of time periods specified in the bill.
- Prohibits a state licensing authority from refusing to issue an initial license to an individual based solely on being charged with or convicted of a criminal offense or a nonspecific qualification such as "moral turpitude" or lack of "moral character."
- Requires a state licensing authority that refuses to issue an initial license because of a specific disqualifying offense to notify the applicant of the reason for the refusal, the applicant's right to an administrative hearing, the earliest date the applicant may reapply, and the individual's ability to offer evidence of rehabilitation upon reapplication.
- Places the burden of proving the relationship between a disqualifying offense and the licensed occupation on the state licensing authority in any proceeding reviewing the authority's denial of an initial license based on a disqualifying offense.
- Allows a state licensing authority authorized by law to limit or otherwise place restrictions on a license to limit or restrict a license to comply with a community control sanction, post-release control sanction, or a court established intervention plan.

Criminal offense licensing database

- Requires, with respect to current law allowing an individual to request a determination from a licensing authority whether a conviction disqualifies the individual from licensure, that each state licensing authority annually provide the Director of Administrative Services with specified information about each license the authority issues.

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DETAILED ANALYSIS

Limitations on initial license refusal

The bill enacts the “Fresh Start Act of 2019.” Except as described below, the bill prohibits any state licensing authority from refusing to issue to an individual an initial license or other authorization allowing the individual to engage in any profession, occupation, or occupational activity regulated by the licensing authority based on any of the following:

- Solely or in part on a conviction of, judicial finding of guilt of, or plea of guilty to an offense;
- A criminal charge that does not result in a conviction, judicial finding of guilt, or plea of guilty;
- A nonspecific qualification such as “moral turpitude” or lack of “moral character”;
- A disqualifying offense included on the authority’s list of specific offenses adopted under the bill, if consideration of that offense occurs after the time periods allowed under the bill.¹

The bill applies to initial licensure only. It does not affect any law related to renewing a license.

¹ R.C. 9.79(A) and (C); Section 5.

Specific disqualifying offenses

The bill requires, within 180 days after its effective date, every state licensing authority to establish a list of specific criminal offenses for which a conviction, judicial finding of guilt, or plea of guilty may disqualify an individual from obtaining a license. The state licensing authority must make the list available to the public on its website in accordance with the continuing law requirement that a state or local licensing authority establish a list of all criminal offenses of which conviction of that offense disqualifies an individual from obtaining a license. In adopting the bill's list, the state licensing authority must do both of the following:

- Identify each disqualifying offense either by name or by the Ohio Revised Code section number that creates the offense;
- Include in the list only criminal offenses that are directly related to the duties and responsibilities of the licensed occupation.

A state licensing authority may include in the list an existing or former municipal ordinance or an Ohio, other state's, or federal law that is substantially equivalent to any offense included in the list.²

If an individual has been convicted of, found guilty pursuant to a judicial finding of, or pleaded guilty to a disqualifying offense included in the list adopted by the state licensing authority, the state licensing authority may consider the conviction, plea, or finding when deciding whether the individual is disqualified from receiving an initial license. However, the state licensing authority must consider the offense using all of the following factors under a clear and convincing evidentiary standard:

- The nature and seriousness of the offense;
- The passage of time since the individual committed the offense;
- The relationship of the offense to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation;
- Any evidence of mitigating rehabilitation or treatment undertaken by the individual, including whether the individual has been issued a certificate of qualification for employment or a certificate of achievement and employability under continuing law;
- Whether the denial of a license is reasonably necessary to ensure public safety.

The state licensing authority may consider a listed disqualifying offense only if the conviction, judicial finding of guilt, or guilty plea occurred during one of the following time periods, as applicable:

- For a disqualifying offense that is not an offense of violence or a sexually oriented offense (see, "**Definitions**," below), five years from the date of conviction, judicial

² R.C. 9.79(B), by reference to R.C. 9.78 and with conforming changes throughout the bill.

finding of guilt, plea of guilty, or release from incarceration, whichever is later, provided the individual was not convicted of, found guilty pursuant to a judicial finding of, and did not enter a plea of guilty to any other offense during the applicable five-year period;

- For a disqualifying offense that is an offense of violence or a sexually oriented offense, any time.³

If a state licensing authority refuses to issue an initial license to an individual because of a specific disqualifying offense, the licensing authority must notify the individual in writing of all of the following:

- The grounds and reasons for the refusal, including an explanation of the state licensing authority's application of the factors described above to the evidence used to reach its decision;
- The individual's right under the Administrative Procedure Act⁴ to a hearing regarding the state licensing authority's decision;
- The earliest date the individual may reapply for a license;
- Notice that evidence of rehabilitation may be considered on reapplication.

In any administrative hearing or lawsuit reviewing a state licensing authority's refusal to issue an initial license due to a specific disqualifying offense, the state licensing authority bears the burden of proving that the individual's conviction, judicial finding of guilt, or guilty plea directly relates to the individual's ability to engage in the licensed occupation.⁵

Past discipline

The bill does not prohibit a licensing authority from considering either of the following when deciding whether to issue a license to an individual:

- Past disciplinary action taken by the licensing authority against the individual;
- Past disciplinary action taken against the individual by an authority in another state that issues a license that is substantially similar to the license for which the individual applies under the bill.⁶

Limited license

Under the bill, a licensing authority authorized by law to limit or otherwise place restrictions on a license may limit or restrict a license issued in accordance with the bill to

³ R.C. 9.79(D).

⁴ R.C. Chapter 119.

⁵ R.C. 9.79(E) and (F).

⁶ R.C. 9.79(J).

comply with a community control sanction (e.g., probation), post-release control sanction (e.g., parole), or a court established intervention plan.⁷

Exempt occupations

The bill's limitations on a state licensing authority's ability to refuse to issue an initial license do not apply to any of the following positions:

- Any position for which appointment requires a peace officer basic training certificate issued by the Ohio Attorney General under continuing law;
- Any position for which an individual may satisfy the requirements for appointment or election to the position by obtaining a peace officer basic training certificate;
- Any position for which federal law requires disqualification from licensure or employment based on a conviction of, judicial finding of guilt of, or plea of guilty to an offense.⁸

Administrative rules

Each state licensing authority must adopt any rules that it determines are necessary to implement the bill's limitations on the authority's ability to refuse to issue an initial license.⁹

Affected occupations

Notwithstanding any other provision of the Revised Code, and with the exception of any position described under "**Exempt occupations**," above, the bill's limitations on a state licensing authority's ability to deny an initial license applies to every profession or occupation for which a license issued or conferred by the licensing authority is required. The bill's limitations explicitly apply to all of the following professions and occupations that require a state-issued license:

Occupations and professions expressly affected by the bill's requirements			
Acupuncturist or oriental medicine practitioner	Agent employed by a career school to solicit students	Agricultural commodity handler	Anesthesiologist assistant
Architect	Asbestos hazard abatement contractor	Athlete agent	Athletic trainer

⁷ R.C. 9.79(A) and (G), by reference to R.C. 2929.01, 2967.01, and 2951.041, not in the bill.

⁸ R.C. 9.79(I), by reference to R.C. 109.77, not in the bill.

⁹ R.C. 9.79(H).

Occupations and professions expressly affected by the bill's requirements			
Auction firm, auctioneer, apprentice auctioneer, or special auctioneer	Barber or barber school student	Bingo supplies distributor	Bingo supplies manufacturer
Blind operator of a suitable vending facility	Boutique services provider	Career school owner/operator	Casino operator, management company, holding company, key employee, casino gaming employee, or gaming-related vendor
Certificate of authority to establish and operate a health insuring corporation	Certified behavior analyst	Charitable organization fund-raising counsel	Check cashing business operator
Chemical dependency professional	Chiropractor	Commercial fisher	Community-based long-term care services provider
Concentrated animal feeding facility installer or operator	Consumer installment loan lender	Contractor – heating, ventilating, and air conditioner; refrigeration; electrical; plumbing; or hydronics	Controlling person, director, or executive officer of a foreign bank
Cosmetologist, esthetician, hair designer, manicurist, natural hair stylist, or instructor of any branch of cosmetology	Crematory operator	Dentist	Dental hygienist

Occupations and professions expressly affected by the bill's requirements

Department of Developmental Disabilities personnel who administer medications	Deputy mine inspector of underground mines, deputy mine inspector of surface mines, electrical inspector of mines, superintendent or assistant superintendent of rescue stations, or mine chemist	Dialysis technician or dialysis technician intern	Dietitian
Dispensing optician or dispensing optician apprentice	Driver training school operator	Driver training instructor	Educational assistant – educational aide permit or educational paraprofessional license
Educator license	Electrical safety inspector	Embalmer or funeral director	Executive agency lobbyist
Fireworks exhibitor	Fireworks manufacturer	Fireworks wholesaler	First responder, emergency medical technician (EMT), or paramedic; continuing education provider for first responders, EMTs, or paramedics; or firefighter
Foreign real estate dealer or salesperson	Gas storage well inspector	General x-ray machine operator, radiographer, radiation therapy technologist, or nuclear medicine technologist	Genetic counselor
Hearing aid dealer, fitter, or trainee	High volume dog breeder or dog retailer	Home inspector	Home medical equipment provider

Occupations and professions expressly affected by the bill's requirements			
Independent social worker, social worker, or social work assistant	Instructional assistant providing special education services to a child with autism	Insurance agent or managing general agent	Landscape architect
Legislative agent (lobbyist)	Livestock dealer or broker	Livestock weigher	Loan originator
Lottery sales agent	Manufactured home installer	Manufactured housing dealer, broker, or salesperson	Marriage and family therapist
Medical marijuana cultivator, processor, or laboratory tester	Medical marijuana retail dispensary	Medication aide or community health worker	Mine foreperson of gaseous mines, mine foreperson of nongaseous mines, mine foreperson of surface mines, foreperson of gaseous mines, foreperson of nongaseous mines, foreperson of surface maintenance facilities of underground or surface mines, or foreperson of surface mines, fire boss, mine electrician, surface mine blaster, or shot firer
Money transmitter	Mortgage broker	Mortgage loan originator	Motor vehicle dealer or salesperson, vehicle leasing dealer, distributor, construction equipment auction, or auction owner
Motor vehicle salvage dealer, auctioneer, or pool	Notary public	Nursing home administrator or health services executive license	Occupational therapist or occupational therapy assistant

Occupations and professions expressly affected by the bill's requirements			
Operator of a vehicle for pupil transportation	Optometrist	Owner or operator of a solid waste facility, infectious waste treatment facility, or hazardous waste facility	Orthotist, prosthetist, or pedorthist
Pawnbroker	Pesticide applicator or dealer	Pharmacist, pharmacy intern, or pharmacy technician	Physical therapist or physical therapist assistant
Physician, osteopathic physician, podiatrist, massage therapist, or cosmetic therapist	Physician assistant	Pilot or engineer for a boat carrying passengers for hire	Precious metals dealer
Premium insurance company	Private investigator or security guard	Professional clinical counselor or professional counselor	Professional engineer or surveyor
Professional solicitor or member, officer, employee, or agent of a professional solicitor	Provider of supported living services	Psychologist or school psychologist	Public accountant or certified public accountant
Public insurance adjuster	Radiologist assistant	Real estate appraiser or real estate appraiser assistant	Real estate broker or salesperson
Referee, judge, matchmaker, timekeeper, promoter, manager, trainer, contestant, or second of a boxing match or other unarmed combat sport	Registered nurse, advanced practice registered nurse, or licensed practical nurse	Respiratory care professional	Retirement system lobbyist
Sanitarian	School bus or motor van driver	Second mortgage lender	Securities dealer or salesperson, investment adviser, investment adviser representative, Bureau of Workers' Compensation Chief

Occupations and professions expressly affected by the bill's requirements			
Short-term lender	Small loan lender	Special regional heavy hauling permit	Investment Officer, or state retirement system investment officers Speech-language pathologist or audiologist
Steam engineer, high pressure boiler operator, or low pressure boiler operator	Surety bail bond agent	Telephone solicitor	Traveling full time salaried noncommission employee of an attorney authorized to solicit powers of attorney or applications for contracts of indemnity and who is primarily engaged in underwriting or loss prevention engineering and claim services
Unclaimed funds finder	Veterinarian or veterinary technician	Viatical settlement provider or broker	Wholesale fish handler
Wildlife shelter permit			

Changes to criminal records checks

Under continuing law, the Superintendent of the Bureau of Criminal Identification and Investigation conducts criminal records checks to determine whether an applicant for a state-issued license has a criminal record. The scope of a criminal records check conducted by the Superintendent varies depending on the license sought by the applicant.¹⁰ The table below summarizes the current scope of the records check for certain licensed occupations and identifies the changes to the scope made by the bill:

Changes to scope of criminal records check for certain licenses		
Occupation	Current criminal records check	Criminal records check under the bill
Community based long-term care services provider	Requires check for any offense on a list of offenses in the law governing background checks performed by the Superintendent (<i>R.C. 109.572(A)(3)</i>).	Requires check for any criminal offense under any existing or former Ohio law, law of any other state, or law of the United States (<i>R.C. 109.572(A)(10)</i>).

¹⁰ R.C. 109.572.

Changes to scope of criminal records check for certain licenses		
Occupation	Current criminal records check	Criminal records check under the bill
Home inspector	Requires check for any crime of moral turpitude, felony, or any equivalent offense (R.C. 109.572(A)(16)).	Requires check for any criminal offense (R.C. 109.572(A)(16)).
Notary public	Requires check for specific theft and fraud offenses and any crime of moral turpitude (R.C. 109.572(A)(17)).	Requires check for any criminal offense (R.C. 109.572(A)(17)).
Private investigator or security guard	Requires check for any felony (R.C. 109.572(A)(7)).	Requires check for any criminal offense (R.C. 109.572(A)(7)).
Short-term lender, second mortgage lender, real estate appraiser, or real estate appraiser assistant	Requires check for any offense specified in the law governing background checks performed by the Superintendent (R.C. 109.572(A)(8)).	Requires check for any criminal offense (R.C. 109.572(A)(8)).
Supported living services provider	Requires check for any offense on a list of offenses in the law governing background checks performed by the Superintendent (R.C. 109.572(A)(3)).	Requires check for any criminal offense under any existing or former Ohio law, law of any other state, or law of the United States (R.C. 109.572(A)(10)).
Teacher	Requires check for any offense on a list of offenses specified in the law governing educators' licenses (R.C. 109.572(A)(1)).	Requires check for any offense on a list of offenses specified in the law governing educators' licenses and for any offense specified on the list adopted by the licensing authority under the bill (R.C. 109.572(A)(1)).

Definitions

The following table defines “offense of violence” as used in continuing law:¹¹

¹¹ R.C. 2901.01.

Offenses of violence	
Name of offense	Citation
Aggravated murder	R.C. 2903.01
Murder	R.C. 2903.02
Voluntary manslaughter	R.C. 2903.03
Involuntary manslaughter	R.C. 2903.04
Felonious assault	R.C. 2903.11
Aggravated assault	R.C. 2903.12
Assault	R.C. 2903.13
Permitting child abuse	R.C. 2903.15
Aggravated menacing	R.C. 2903.21
Menacing by stalking	R.C. 2903.211
Menacing	R.C. 2903.22
Kidnapping	R.C. 2905.01
Abduction	R.C. 2905.02
Extortion	R.C. 2905.11
Trafficking in persons	R.C. 2905.32
Rape	R.C. 2907.02
Sexual battery	R.C. 2907.03
Gross sexual imposition	R.C. 2907.05
Aggravated arson	R.C. 2909.02
Arson	R.C. 2909.03
Terrorism	R.C. 2909.24
Aggravated robbery	R.C. 2911.01

Offenses of violence	
Name of offense	Citation
Robbery	R.C. 2911.02
Aggravated burglary	R.C. 2911.11
Inciting to violence	R.C. 2917.01
Aggravated riot	R.C. 2917.02
Riot	R.C. 2917.03
Inducing panic	R.C. 2917.31
Domestic violence	R.C. 2919.25
Intimidation	R.C. 2921.03
Intimidation of an attorney, victim, or witness in a criminal case	R.C. 2921.04
Escape	R.C. 2921.34
Improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function	R.C. 2923.161
Patient abuse	R.C. 2903.34(A)(1)
Burglary	R.C. 2911.12(A)
Endangering children via abuse	R.C. 2919.22(B)(1) to (4)
Felonious sexual penetration (former offense)	Former R.C. 2907.12
A violation of an existing or former municipal ordinance or state or federal law, substantially equivalent to any offense listed above	R.C. 2901.01(A)(9)(b)
An offense, other than a traffic offense, under an existing or former municipal ordinance or state or federal law, committed purposefully, knowingly, and involving physical harm to persons or a risk of serious physical harm to persons	R.C. 2901.01(A)(9)(c)
A conspiracy or attempt to commit, or complicity in committing, any offense listed above	R.C. 2923.01, 2923.02, and 2923.03

The table below lists the criminal offenses that constitute a “sexually oriented offense” as that term is defined under continuing law.¹² For some offenses, at least one additional sexually oriented element is required for the underlying offense to constitute a sexually oriented offense (e.g., some underlying offenses must be committed with a “sexual motivation”). The table identifies each of those offenses by the name of the underlying offense and describes the additional sexually oriented element or elements. The offense of trafficking in persons, under certain circumstances, is considered a sexually oriented offense, and those circumstances are described after the table.

Sexually oriented offenses	
Name of offense	Citation
Rape	R.C. 2907.02
Sexual battery	R.C. 2907.03
Gross sexual imposition	R.C. 2907.05
Sexual imposition	R.C. 2907.06
Importuning	R.C. 2907.07
Voyeurism	R.C. 2907.08
Compelling prostitution	R.C. 2907.21
Promoting prostitution	R.C. 2907.22
Soliciting	R.C. 2907.24(A)(3)
Pandering obscenity	R.C. 2907.32
Pandering obscenity involving a minor or impaired person	R.C. 2907.321
Pandering sexually oriented matter involving a minor or impaired person	R.C. 2907.322
Illegal use of a minor or impaired person in a nudity-oriented material or performance	R.C. 2907.323
Unlawful sexual conduct with a minor when the offender is less than 4 years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to rape, sexual	R.C. 2907.04 and 2950.01

¹² R.C. 2950.01(A).

Sexually oriented offenses	
Name of offense	Citation
battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration	
Unlawful sexual conduct with a minor when the offender is at least 4 years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than 4 years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration	R.C. 2907.04 and 2950.01
Aggravated murder when committed with a sexual motivation	R.C. 2903.01 and 2950.01
Murder when committed with a sexual motivation	R.C. 2903.02 and 2950.01
Felonious assault when committed with a sexual motivation	R.C. 2903.11 and 2950.01
Involuntary manslaughter when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation	R.C. 2903.04(A) and 2950.01
Menacing by stalking with a sexual motivation	R.C. 2903.211(A)(3) and 2950.01
Kidnapping when committed with a sexual motivation or when the victim is under 18 years old and the offender is not the victim's parent, or to engage in sexual activity with the victim against the victim's will	R.C. 2905.01(A)(1)-(5) and (B) and 2950.01
Voluntary manslaughter when committed with a sexual motivation	R.C. 2903.03(B) and 2950.01
Abduction when committed with a sexual motivation	R.C. 2905.02(B)
Unlawful restraint when committed with a sexual motivation	R.C. 2905.03(B)
Criminal child enticement when committed with a sexual motivation	R.C. 2905.05(B)

Sexually oriented offenses	
Name of offense	Citation
Endangering children by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child under 18 years of age or a mentally or physically handicapped child under 21 years of age to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, sexually oriented matter, or nudity-oriented matter	R.C. 2919.22(B)(5)
Public indecency under circumstances in which the person's conduct is likely to be viewed by and affront another person who is in the person's physical proximity, who is a minor, and who is not the offender's spouse, by exposing the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity and if the sentencing court classifies the offender as a tier I sex offender/child-victim offender subject to registration under the Sex Offender Registration and Notification Law	R.C. 2907.09(B)(4) and (D) and 2950.01
A violation of any former Ohio law, any existing or former municipal ordinance or another state's or federal law, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed above	R.C. 2950.01(A)(13)
Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed above	R.C. 2923.01, 2923.02, and 2923.03

Trafficking in persons constitutes a "sexually oriented offense" when the offender knowingly or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, any of the following:

1. Another person knowing that the person would be compelled to engage in sexual activity for hire, or engage in a performance or be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented;
2. Another person who is less than 16 years of age or is a person whom the offender knows or has reasonable cause to believe is a person with a developmental disability for the purpose of engaging in sexual activity, in a performance, or to be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented;
3. Another person who is 16 or 17 years of age for the purpose of engaging in sexual activity, in a performance, or to be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented, and certain

circumstances of sexual battery apply with respect to the offender and the other person.¹³

Criminal offense licensing database

Under current law, an individual who has been convicted of a criminal offense may request that a state or local licensing authority determine whether the conviction disqualifies the individual from obtaining a license issued or conferred by the authority. The bill requires that each state licensing authority annually provide the Director of Administrative Services with the following information for each license the authority is authorized to issue:

- The number of license applications received in the previous year, including the number of applications that resulted in a license being granted and the number that resulted in a license being denied;
- A list of criminal offenses reported by applicants who were granted a license and a list of criminal offenses reported by applicants who were denied a license;
- A list of all the individuals who have been convicted of a criminal offense and have requested a determination from the licensing authority, including a list of the offenses reported by the individuals and the results of the licensing authority's determination;
- Any other information the Director may require.

The Director must compile the information reported by each state licensing authority and annually publish it in a searchable format on a website created and maintained by the Director. The Director may adopt rules that the Director determines to be necessary to implement these requirements.¹⁴

HISTORY

Action	Date
Introduced	05-28-19
Reported, H. Commerce and Labor	02-06-20

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¹³ R.C. 2905.32(A), 2907.03(A), and 2950.01.

¹⁴ R.C. 9.78.