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Final Analysis

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Effective date: Most provisions effective October 9, 2021; requirement that licensing authorities list disqualifying offenses is effective April 12, 2021, with a deadline of October 9, 2021

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SUMMARY

Limitations on initial license refusal

- Requires each state licensing authority to adopt by October 9, 2021, a list of specific criminal offenses for which a conviction, judicial finding of guilt, or plea of guilty may disqualify an individual from obtaining an initial license to engage in a profession, occupation, or occupational activity.
- Allows a state licensing authority to consider a listed disqualifying offense in deciding whether to issue an individual a license, and requires the licensing authority to consider the offense in light of specific factors supported by a preponderance of the evidence and only during specified time periods.
- Prohibits a state licensing authority from refusing to issue a license to an individual based solely on being charged with or convicted of a criminal offense or based on a nonspecific qualification such as “moral turpitude” or lack of “moral character.”
- Requires a state licensing authority that refuses to issue a 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 applicant’s ability to offer evidence of rehabilitation on 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 do so to comply with a community control sanction, post-release control sanction, or court-established intervention plan.

Criminal offense licensing database

- Requires, with respect to an individual’s continuing law ability 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 regulates.

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DETAILED ANALYSIS

Limitations on initial license refusal

The act enacts the “Fresh Start Act.” Except as described below, it 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 the authority must adopt under the act, if consideration of that offense occurs after the time periods allowed under the act.¹

The act applies to initial licensure only. It does not affect any law related to renewing a license. However, a licensing authority cannot refuse to renew an individual's license based on a conviction of, judicial finding of guilt of, or plea of guilty to an offense if the licensing authority issued the individual the license after considering the conviction, judicial finding of guilt, or plea of guilty under the act.²

Specific disqualifying offenses

List of offenses

The act requires every state licensing authority to establish by October 9, 2021, 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 list, the state licensing authority must both:

- Identify each disqualifying offense either by name or by the Revised Code section number that creates the offense; and
- 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 state or federal law that is substantially equivalent to any listed offense.³

Consideration of offenses

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 state licensing authority's list, the licensing authority may, in deciding whether the individual is disqualified from receiving a license, consider the offense only during the following time periods:

- For a disqualifying offense that does not involve a breach of fiduciary duty (a duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person) and is not an offense of violence or a sexually oriented offense as defined under continuing law, whichever of the following is later, provided the individual was

¹ R.C. 9.79(A) and (C); Section 5.

² R.C. 9.79(K).

³ R.C. 9.79(B), by reference to R.C. 9.78 and with conforming changes throughout the act.

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 period:

- Five years from the date of conviction, judicial finding of guilt, or plea of guilty;
 - Five years from the date of the release from incarceration;
 - The period of a community control sanction, parole, or post-release control sanction or that period plus the number of years necessary to equal five years if the sanction or parole was for a period of less than five years.
- For a disqualifying offense that is a breach of fiduciary duty and is not an offense of violence or a sexually oriented offense, whichever of the following 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 period:
 - Ten years from the date of conviction, judicial finding of guilt, or plea of guilty;
 - Ten years from the date of the release from incarceration;
 - The period of a community control sanction, parole, or post-release control sanction or that period plus the number of years necessary to equal ten years if the sanction or parole was for a period of less than ten years.
 - For a disqualifying offense that is an offense of violence or a sexually oriented offense, any time.

When considering an offense, a licensing authority must consider the following factors under a preponderance of the evidence 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; and
- Whether the denial of a license is reasonably necessary to ensure public safety.⁴

Refusal

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

⁴ R.C. 9.79(A), (C), and (D), by reference to R.C. 2953.25 and 2961.22, not in the act.

- The grounds and reasons for the refusal, including an explanation of the 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 Act⁵ to a hearing regarding the decision;
- The earliest date the individual may reapply for a license; and
- 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 licensing authority has the burden of proving that the individual's conviction, judicial finding of guilt, or guilty plea directly relates to the licensed occupation.⁶

Past discipline

The act 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 substantially similar license.⁷

Limited license

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 act to comply with a community control sanction, post-release control sanction, or a court-established intervention plan.⁸

Exempt occupations

The act's limitations on a state licensing authority's ability to refuse to issue an initial license do not apply to:

- 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;

⁵ R.C. Chapter 119.

⁶ R.C. 9.79(E) and (F).

⁷ R.C. 9.79(J).

⁸ R.C. 9.79(A) and (G), by reference to R.C. 2929.01, 2967.01, and 2951.041, not in the act.

- 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;
- Community-based long-term care services certificates or community-based long-term care services contracts or grants;
- Certifications of a provider to provide community-based long-term care services;
- Certificates of authority to a health insuring corporation;
- Licenses to operate a home or residential care facility; or
- Certificates of authority to make contracts of indemnity.⁹

Administrative rules

Each state licensing authority must adopt any rules that it determines are necessary to implement the act's limitations on the authority's ability to refuse to issue an initial license.¹⁰

Affected occupations

Notwithstanding any other provision of the Revised Code, and with the exception of any position described under "**Exempt occupations**," above, the act's limitations on a state licensing authority's ability to deny a license applies to every profession or occupation for which a license issued or conferred by the licensing authority is required. The act'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 act'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
Auction firm, auctioneer, apprentice auctioneer, or special auctioneer	Barber or barber school student	Bingo supplies distributor	Bingo supplies manufacturer

⁹ R.C. 9.79(I), by reference to R.C. 109.77, 173.381, 173.391, 1751.05, 3721.07, and 3931.10, not in the act.

¹⁰ R.C. 9.79(H).

Occupations and professions expressly affected by the act's requirements			
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
Certified behavior analyst	Charitable organization fund-raising counsel	Check cashing business operator	Chemical dependency professional
Chiropractor	Commercial fisher	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	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

Occupations and professions expressly affected by the act's requirements			
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	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

Occupations and professions expressly affected by the act's requirements			
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	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

Occupations and professions expressly affected by the act's requirements			
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 Investment Officer, or state retirement system investment officers	Short-term lender	Small loan lender
Special regional heavy hauling permit	Speech-language pathologist or audiologist	Steam engineer, high pressure boiler operator, or low pressure boiler operator	Surety bail bond agent
Telephone solicitor	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 varies depending on the license sought.¹¹ The table below summarizes the former scope of the records check for certain licensed occupations and the scope under the act:

¹¹ R.C. 109.572.

Changes to scope of criminal records check for certain licenses		
Occupation	Criminal records check under former law	Criminal records check under the act
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 state or federal law (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 act (R.C. 109.572(A)(1)).

Criminal offense licensing database

Under continuing 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 from the authority. The act 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, 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;
- The number of licenses issued and the number of licenses denied to individuals who were convicted of, found guilty pursuant to a judicial finding of, or pleaded guilty to a disqualifying offense for each disqualifying offense; and
- Any other information the Director may require.

Each licensing authority must submit the annual report to the Director by June 30 of each year. The first annual report must include information from January 1, 2016, to December 31, 2020, if available.

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.¹²

HISTORY

Action	Date
Introduced	05-28-19
Reported, H. Commerce and Labor	02-06-20
Passed House (90-1)	06-09-20
Reported, S. Transportation, Commerce and Workforce	12-17-20
Passed Senate (29-2)	12-17-20
House concurred in Senate amendments (86-0)	12-22-20

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¹² R.C. 9.78.