



Ohio Revised Code

Section 2953.25 Certificate of qualification for employment for persons subject to collateral sanctions.

Effective: September 19, 2014

Legislation: Senate Bill 143 - 130th General Assembly

(A) As used in this section:

(1) "Collateral sanction" means 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.

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

(2) "Decision-maker" includes, but is not limited to, the state acting through a department, agency, board, commission, or instrumentality established by the law of this state for the exercise of any function of government, a political subdivision, an educational institution, or a government contractor or subcontractor made subject to this section by contract, law, or ordinance.

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

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

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

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



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

(B)(1) After the provisions of this division become operative as described in division (J) of this section, an individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who either has served a term in a state correctional institution for any offense or has spent time in a department-funded program for any offense may file a petition with the designee of the deputy director of the division of parole and community services for a certificate of qualification for employment.

(2) After the provisions of this division become operative as described in division (J) of this section, an individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who is not in a category described in division (B)(1) of this section may file a petition with the court of common pleas of the county in which the person resides or with the designee of the deputy director of the division of parole and community services for a certificate of qualification for employment.

(3) A petition under division (B)(1) or (2) of this section shall be made on a copy of the form prescribed by the division of parole and community services under division (J) of this section and shall contain all of the information described in division (F) of this section.

(4) An individual may file a petition under division (B)(1) or (2) of this section at any time after the expiration of whichever of the following is applicable:

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

(b) If the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at any time after the expiration of six months from the date of release of the



individual from any period of incarceration in a local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of six months from the date of the final release of the individual from all sanctions imposed for that offense including any period of supervision.

(5)(a) A designee that receives a petition for a certification 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, 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.

(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 prosecuting attorney of the county in which the individual resides 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.

(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, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the division of parole and community services, and all other relevant evidence. The court may order any report, investigation, or disclosure by the individual that the court believes is necessary for the court to reach a decision on whether to approve the individual's petition for a certificate of qualification for employment.

(2) 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, except as otherwise provided in this division, the court shall decide whether to issue the certificate within sixty days after the court receives or is forwarded the completed petition and all information requested for the court to make that decision. Upon request of the individual who filed the petition, the court may extend the sixty-day period specified in this division.

(3) Subject to division (C)(5) of this section, a court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section may issue a certificate of qualification for employment, at the court's discretion, if the court finds that the individual has established all of the following by a preponderance of the evidence:

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

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

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

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

(5) A court that receives an individual's petition for a certificate of qualification for employment



under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section shall not issue a certificate of qualification for employment that grants the individual relief from any of the following collateral sanctions:

- (a) Requirements imposed by Chapter 2950. of the Revised Code and rules adopted under sections 2950.13 and 2950.132 of the Revised Code;
- (b) A driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation pursuant to section 4510.037, 4510.07, 4511.19, or 4511.191 of the Revised Code if the relief sought is available pursuant to section 4510.021 or division (B) of section 4510.13 of the Revised Code;
- (c) Restrictions on employment as a prosecutor or law enforcement officer;
- (d) The denial, ineligibility, or automatic suspension of a license that is imposed upon an individual applying for or holding a license as a health care professional under Title XLVII of the Revised Code if the individual is convicted of, pleads guilty to, is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state under section 2951.041 of the Revised Code, or is subject to treatment or intervention in lieu of conviction for a violation of section 2903.01, 2903.02, 2903.03, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2909.02, 2911.01, 2911.11, or 2919.123 of the Revised Code;
- (e) The immediate suspension of a license, certificate, or evidence of registration that is imposed upon an individual holding a license as a health care professional under Title XLVII of the Revised Code pursuant to division (C) of section 3719.121 of the Revised Code;
- (f) The denial or ineligibility for employment in a pain clinic under division (B)(4) of section 4729.552 of the Revised Code;
- (g) The mandatory suspension of a license that is imposed on an individual applying for or holding a license as a health care professional under Title XLVII of the Revised Code pursuant to section 3123.43 of the Revised Code.



(6) If a court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section denies the petition, the court shall provide written notice to the individual of the court's denial. The court may place conditions on the individual regarding the individual's filing of any subsequent petition for a certificate of qualification for employment. The written notice must notify the individual of any conditions placed on the individual's filing of a subsequent petition for a certificate of qualification for employment.

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

(D) A certificate of qualification for employment issued to an individual lifts the automatic bar of a collateral sanction, and a decision-maker shall 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, without, however, reconsidering or rejecting any finding made by a designee or court under division (C)(3) of this section.

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

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

- (1) The individual's name, date of birth, and social security number;
- (2) All aliases of the individual and all social security numbers associated with those aliases;
- (3) The individual's residence address, including the city, county, and state of residence and zip code;



(4) The length of time that the individual has been a resident of this state, expressed in years and months of residence;

(5) The name or type of each collateral sanction from which the individual is requesting a certificate of qualification for employment;

(6) A summary of the individual's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilty for each of those offenses;

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

(8) Verifiable references and endorsements;

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

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

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

(G)(1) In a judicial or administrative proceeding alleging negligence or other fault, a certificate of qualification for employment issued to an individual under this section may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate of qualification for employment was issued if the person knew of the certificate at the time of the alleged negligence or other fault.

(2) In any proceeding on a claim against an employer for negligent hiring, a certificate of qualification for employment issued to an individual under this section shall provide immunity for



the employer as to the claim if the employer knew of the certificate at the time of the alleged negligence.

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

(H) A certificate of qualification for employment issued under this section shall be presumptively revoked if the individual to whom the certificate of qualification for employment was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate of qualification for employment.

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

(J) Not later than ninety days after September 28, 2012, the division of parole and community services shall adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section and shall prescribe the form for the petition to be used under division (B)(1) or (2) of this section. The form for the petition shall include places for all of the information specified in division (F) of this section. Upon the adoption of the rules, the provisions of divisions (A) to (I) of this section become operative.

(K) The department of rehabilitation and correction shall conduct a study to determine the manner for transferring the mechanism for the issuance of a certificate of qualification for employment



created by this section to an electronic database established and maintained by the department. The database to which the mechanism is to be transferred 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 applicable, the types of employers that have accepted the certificates, and the recidivism rates of individuals who have been issued the certificates. Not later than the date that is one year after September 28, 2012, the department of rehabilitation and correction shall submit to the general assembly and the governor a report that contains the results of the study and recommendations for transferring the mechanism for the issuance of certificate of qualification for employment created by this section to an electronic database established and maintained by the department.

(L) The department of rehabilitation and correction, in conjunction with the Ohio judicial conference, shall conduct a study to determine whether the application process for certificates of qualification for employment created by this section is feasible based upon the caseload capacity of the department and the courts of common pleas. Not later than the date that is one year after September 28, 2012, the department shall submit to the general assembly a report that contains the results of the study and any recommendations for improvement of the application process.