



Ohio Revised Code

Section 9.79 Limitations on initial license refusal.

Effective: April 12, 2021

Legislation: House Bill 263 - 133rd General Assembly

(A) As used in this section:

(1) "License" means an authorization evidenced by a license, certificate, registration, permit, card, or other authority that is issued or conferred by a licensing authority to an individual by which the individual has or claims the privilege to engage in a profession, occupation, or occupational activity over which the licensing authority has jurisdiction.

(2) "Licensing authority" means a state agency that issues licenses under Title XLVII or any other provision of the Revised Code to practice an occupation or profession.

(3) "Offense of violence" has the same meaning as in section 2901.01 of the Revised Code.

(4) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(5) "State agency" has the same meaning as in section 1.60 of the Revised Code.

(6) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(7) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(8) "Fiduciary duty" means a duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person.

(B)(1) Notwithstanding any provision of the Revised Code to the contrary, for each type of license issued or conferred by a licensing authority, the licensing authority shall establish within one hundred eighty days after the effective date of this section 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. The licensing authority shall make the list available to the public on the



licensing authority's web site pursuant to division (C) of section 9.78 of the Revised Code. The licensing authority, in adopting the list, shall do both of the following:

- (a) Identify each disqualifying offense by name or by the Revised Code section number that creates the offense;
 - (b) Include in the list only criminal offenses that are directly related to the duties and responsibilities of the licensed occupation.
- (2) The licensing authority may include in the list an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any section or offense included in the list adopted under division (B)(1) of this section.

(C)(1) Except as provided in division (C)(2) or (D) of this section, a licensing authority shall not refuse to issue an initial license to an individual based on any of the following:

- (a) Solely or in part on a conviction of, judicial finding of guilt of, or plea of guilty to an offense;
- (b) A criminal charge that does not result in a conviction, judicial finding of guilt, or plea of guilty;
- (c) A nonspecific qualification such as "moral turpitude" or lack of "moral character";
- (d) A disqualifying offense included on the list adopted under division (B) of this section, if consideration of that offense occurs after the time periods permitted in division (D) of this section.

(2) If the individual was convicted of, found guilty pursuant to a judicial finding of, or pleaded guilty to a disqualifying offense included in the list adopted under division (B) of this section for the license for which the individual applied, the licensing authority may take the conviction, judicial finding of guilt, or plea of guilty into consideration in accordance with division (D) of this section.

(D)(1) A licensing authority that may, under this section, consider a conviction of, judicial finding of guilt of, or plea of guilty to an offense in determining whether to refuse to issue an initial license to an individual shall consider all of the following factors and shall use a preponderance of the evidence



standard in evaluating those factors to determine whether the conviction, judicial finding of guilt, or plea of guilty disqualifies the individual from receiving the license:

(a) The nature and seriousness of the offense for which the individual was convicted, found guilty pursuant to a judicial finding, or pleaded guilty;

(b) The passage of time since the individual committed the offense;

(c) The relationship of the offense to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation;

(d) Any evidence of mitigating rehabilitation or treatment undertaken by the individual, including whether the individual has been issued a certificate of qualification for employment under section 2953.25 of the Revised Code or a certificate of achievement and employability under section 2961.22 of the Revised Code;

(e) Whether the denial of a license is reasonably necessary to ensure public safety.

(2) A licensing authority may take a disqualifying offense into account only during the following time periods:

(a) For a conviction of, judicial finding of guilt of, or plea of guilty to a disqualifying offense that does not involve a breach of fiduciary duty and that 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 :

(i) Five years from the date of conviction, judicial finding of guilt, or plea of guilty;

(ii) Five years from the date of the release from incarceration;

(iii) The time period specified in division (D)(3) of this section.



(b) For a conviction of, judicial finding of guilt of, or plea of guilty to a disqualifying offense that involves a breach of fiduciary duty and that 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:

(i) Ten years from the date of conviction, judicial finding of guilt, or plea of guilty;

(ii) Ten years from the date of the release from incarceration;

(iii) The time period specified in division (D)(4) of this section.

(c) For a conviction of, judicial finding of guilt of, or plea of guilty to a disqualifying offense that is an offense of violence or a sexually oriented offense, any time.

(3) If an individual is subject to a community control sanction, parole, or post-release control sanction based on a conviction of, judicial finding of guilt of, or plea of guilty to a disqualifying offense that is not an offense of violence or a sexually oriented offense, a licensing authority may take the offense into account during the following time periods:

(a) If the community control sanction, parole, or post-release control sanction was for a term of less than five years, the period of the community control sanction, parole, or post-release control sanction plus the number of years after the date of final discharge of the community control sanction, parole, or post-release control sanction necessary to equal five years;

(b) If the community control sanction, parole, or post-release control sanction was for a term of five years or more, the period of the community control sanction, parole, or post-release control sanction.

(4) If an individual is subject to a community control sanction, parole, or post-release control sanction based on a conviction of, judicial finding of guilt of, or plea of guilty to a disqualifying offense that involved a breach of fiduciary duty and that is not an offense of violence or a sexually oriented offense, a licensing authority may take the offense into account during the following time periods:



(a) If the community control sanction, parole, or post-release control sanction was for a term of less than ten years, for the period of the community control sanction, parole, or post-release control sanction plus the number of years after the date of final discharge of the community control sanction, parole, or post-release control sanction necessary to equal ten years;

(b) If the community control sanction, parole, or post-release control sanction was for a term of ten years or more, the period of the community control sanction, parole, or post-release control sanction.

(E) If a licensing authority refuses to issue an initial license to an individual pursuant to division (D) of this section, the licensing authority shall notify the individual in writing of all of the following:

(1) The grounds and reasons for the refusal, including an explanation of the licensing authority's application of the factors under division (D) of this section to the evidence the licensing authority used to reach the decision;

(2) The individual's right to a hearing regarding the licensing authority's decision under section 119.06 of the Revised Code;

(3) The earliest date the individual may reapply for a license;

(4) Notice that evidence of rehabilitation may be considered on reapplication.

(F) In an administrative hearing or civil action reviewing a licensing authority's refusal to issue an initial license under this section, the licensing authority has the burden of proof on the question of whether the individual's conviction of, judicial finding of guilt of, or plea of guilty to an offense directly relates to the licensed occupation.

(G) A licensing authority that is authorized by law to limit or otherwise place restrictions on a license may do so to comply with the terms and conditions of a community control sanction, post-release control sanction, or an intervention plan established in accordance with section 2951.041 of the Revised Code.



(H) Each licensing authority shall adopt any rules that it determines are necessary to implement this section.

(I) This section does not apply to any of the following:

(1) Any position for which appointment requires compliance with section 109.77 of the Revised Code or in which an individual may satisfy the requirements for appointment or election by complying with that section;

(2) 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 ;

(3) Community-based long-term care services certificates and community-based long-term care services contracts or grants issued under section 173.381 of the Revised Code;

(4) Certifications of a provider to provide community-based long-term care services under section 173.391 of the Revised Code;

(5) Certificates of authority to a health insuring corporation issued under section 1751.05 of the Revised Code;

(6) Licenses to operate a home or residential care facility issued under section 3721.07 of the Revised Code;

(7) Certificates of authority to make contracts of indemnity issued under section 3931.10 of the Revised Code.

(J) Nothing in this section prohibits a licensing authority from considering either of the following when making a determination whether to issue a license to an individual:

(1) Past disciplinary action taken by the licensing authority against the individual;

(2) 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.

(K) Notwithstanding any provision of the Revised Code to the contrary, if a licensing authority issues a license to an individual after considering a conviction of, judicial finding of guilt of, or plea of guilty to an offense under division (D) of this section, the licensing authority shall not refuse to renew the individual's license based on that conviction, judicial finding of guilt, or plea of guilty.