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Final Analysis

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SUMMARY

- Increases the penalties for the offense of promoting prostitution under certain circumstances.
- Sets the fee for an application for a Certificate of Qualification for Employment (CQE) at \$50.
- Creates a rebuttable presumption of eligibility for a CQE under certain circumstances.
- Requires each licensing authority to include information related to CQEs and Certificates of Achievement and Employability on its website and on certain materials and forms.

DETAILED ANALYSIS

Promoting prostitution – general penalties

The act increases the penalty for the offense of promoting prostitution if the offender has previous promoting prostitution convictions or is also convicted of drug trafficking. If the offender has a previous conviction for promoting prostitution in violation of state or federal law, or is also convicted of trafficking in drugs, promoting prostitution is a third degree felony.¹ If the offender has two or more prior convictions for promoting prostitution in violation of state or federal law, promoting prostitution is a second degree felony.² Under continuing law, unchanged by the act, promoting prostitution is a fourth degree felony if no aggravating circumstance is established.³

¹ R.C. 2907.22(B)(2)(b) and (c).

² R.C. 2907.22(B)(3).

³ R.C. 2907.22(B)(1).

Promoting prostitution – specification penalties

Firearms specifications

The act also expressly restates the fact that mandatory prison terms required under continuing law for persons convicted of a felony and a firearm specification apply with respect to a person convicted of promoting prostitution and one of those specifications. This provision does not change the law, but, rather, expressly restates it in the promoting prostitution statute.⁴ The following are the types of firearm specifications referred to in the act, and the mandatory prison term required under the Felony Sentencing Law:

1. A specification charging that the offender had a firearm on or about the offender's person or under the offender's control while committing a felony, with a mandatory prison term of one year;⁵
2. A specification charging that the offender had an automatic firearm or a firearm equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the felony, with a mandatory prison term of six years;⁶
3. A specification charging that the offender had a firearm on or about the offender's person or under the offender's control while committing the felony and displayed, brandished, or indicated possession of the firearm or used it to facilitate the offense, with a mandatory prison term of three years.⁷

Promoting prostitution – elements of the offense

The offense of promoting prostitution, unchanged by the act, prohibits a person from knowingly: (1) establishing, maintaining, operating, managing, supervising, controlling, or having an interest in a brothel or any other enterprise a purpose of which is to facilitate engagement in sexual activity for hire, (2) supervising, managing, or controlling the activities of a prostitute in engaging in sexual activity for hire, (3) transporting another, or causing another to be transported, in order to facilitate the other person's engaging in sexual activity for hire, or (4) for the purpose of violating or facilitating a violation of any of the portions of the prohibition described in (1), (2), or (3), inducing or procuring another to engage in sexual activity for hire.⁸

⁴ R.C. 2907.22(B)(5).

⁵ R.C. 2929.14(B)(1)(a)(iii) and R.C. 2941.141, not in the act.

⁶ R.C. 2929.14(B)(1)(a)(i) and R.C. 2941.144, not in the act.

⁷ R.C. 2929.14(B)(1)(a)(ii) and R.C. 2941.145, not in the act.

⁸ R.C. 2907.22(A).

Certificates of Qualification for Employment

Fees

The act sets the fee required for an application for a Certificate of Qualification for Employment (CQE) at \$50. Upon receiving a petition for a CQE, a court of common pleas or the designee of the Deputy Director of the Division of Parole and Community Services who receives the petition may waive all or part of the \$50 fee for an applicant who is indigent. Of the \$50 application fee, \$20 must be paid into the county general revenue fund and the remaining \$30 must be paid into the state treasury. If the fee is partially waived for an applicant who is indigent, the partial fee must be first applied to the balance due to the county general revenue fund, and any partial amount remaining after the first \$20 must be paid to the state treasury.⁹

Rebuttable presumption

The act also creates a rebuttable presumption that an individual is eligible for a CQE if the court that receives the petition for a CQE finds all of the following:¹⁰

- That the application was filed after the expiration of the applicable waiting period;
- If the offense that resulted in the collateral sanction from which the individual seeks relief is a felony, at least three years have passed since the individual's release from incarceration and supervision for the offense or, if the individual was not incarcerated for that offense, at least three years have passed since the individual's final release from all other sanctions imposed for the offense;
- If the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at least one year has passed since the individual's release from incarceration and supervision for the offense, or, if the individual was not incarcerated for the offense, at least one year has passed since the individual's final release from all sanctions imposed for that offense including any period of supervision.

An application that meets the requirements for the rebuttable presumption is to be denied only if the court finds that the evidence reviewed by the court rebuts the presumption of eligibility by establishing, by clear and convincing evidence, that the applicant has not been rehabilitated.¹¹

Websites and forms

The act requires each "licensing authority" to include the following information on its website:¹²

⁹ R.C. 2953.25(B)(3), (5), and (6).

¹⁰ R.C. 2953.25(C)(5).

¹¹ R.C. 2953.25(C)(6).

¹² R.C. 9.78(C)(2) and (3).

- That a disqualification for licensure based on a criminal conviction may be overcome if the individual applying for the license or, as applicable, the individual's employee, holds a CQE or a Certificate of Achievement and Employability (CAE);
- A reference to the CQE website maintained by the Department of Rehabilitation and Correction (DRC).

Additionally, a licensing authority must include on any form, policy, manual, or other material that lists criminal offenses, the conviction of which would disqualify an applicant from licensure, a statement that the disqualification may be overcome if the individual applying for the license, or as applicable, the individual's employee, holds a CQE or a CAE, including a reference to the CQE website maintained by DRC.¹³

Finally, the act requires that any predetermination form, nonconviction statement form, or other form used by a licensing authority to determine whether a conviction or adjudication disqualifies an applicant from licensure must include a section requesting the applicant to provide information if they are a recipient of a CQE or CAE.¹⁴

Under continuing law, unchanged by the act, a "licensing authority" is a board, commission, or other entity that issues licenses under R.C. Title 47 or any other provision of the Revised Code to practice an occupation or profession, or a political subdivision that issues a license or charges a fee for an individual to practice an occupation or profession in that political subdivision.¹⁵

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Judiciary	03-06-19
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Reported, H. Criminal Justice	10-11-19
Passed House (90-0)	10-23-19
Senate concurred in House amendments (33-0)	11-06-19

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¹³ R.C. 9.78(D).

¹⁴ R.C. 9.78(E).

¹⁵ R.C. 9.78(A)(2).