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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Powell

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### SUMMARY

- Requires a licensing authority to issue a license or government certification under certain circumstances to an applicant who holds an out-of-state occupational license.
- Requires a licensing authority to issue a license or government certification under certain circumstances to an applicant who has a government certification, a private certification, or satisfactory work experience in a state that does not issue a license or government certification for the respective occupation.
- Requires an applicant to submit to a criminal records check to receive a license or government certification under the bill if a licensing authority requires an applicant under the law governing the applicable profession, occupation, or occupational activity to do so.
- Allows a licensing authority to require an applicant to pass an examination on Ohio's laws and rules governing the applicable profession, occupation, or occupational activity if a licensing authority requires an applicant to pass the examination under the applicable law.
- Requires, if a licensing authority requires an applicant under the law governing the applicable profession, occupation, or occupational activity to satisfy a financial responsibility requirement to receive a license or government certification, an applicant to satisfy the requirement to receive a license or government certification under the bill.
- Prohibits a licensing authority from issuing or denying a license or government certification under the bill to the applicant while the applicant is the subject of certain pending complaints, allegations, or investigations.
- Requires a licensing authority to provide an applicant with a written decision to issue or reject a license or government certification under the bill within 60 days after receiving a complete application.

- Specifies that an applicant who is issued a license or government certification under the bill is subject to the laws regulating the practice of the applicable occupation or profession in Ohio and is subject to the licensing authority's jurisdiction.
- Requires that a license or government certification issued under the bill be considered a license or government certification issued under the laws regulating the practice of the applicable occupation or profession in Ohio.
- Specifies that provisions of law applicable to a license or government certification issued to an applicant who does not obtain a license or government certification under the bill apply in the same manner to licenses and government certifications issued under the bill.
- Prohibits a political subdivision from prohibiting an individual who holds a license or government certification issued by a state agency under the bill from engaging in the respective profession, occupation, or occupational activity in the political subdivision's jurisdiction.
- Exempts certain licenses and activities from the bill.
- Requires each licensing authority to adopt rules as necessary to implement the bill.

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## DETAILED ANALYSIS

### Occupational license reciprocity

Beginning 90 days after its effective date, the bill requires a licensing authority to issue a license or government certification under certain circumstances to an applicant who holds an out-of-state occupational license or who has a government certification, a private certification, or satisfactory work experience in a state that does not issue the respective license. The three circumstances under which a licensing authority must issue a license or government certification are described under **“Issuance to out-of-state license or government certification holders,”** **“Issuance to private certification holders,”** and **“Issuance to individuals with satisfactory work experience,”** below.<sup>1</sup>

Beginning on the bill's effective date, each licensing authority must adopt rules as necessary to implement the bill.<sup>2</sup>

### Definitions

For purposes of the bill:

1. “Licensing authority” means a state agency or political subdivision that issues licenses or government certifications.

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<sup>1</sup> R.C. Chapter 4796, with conforming changes throughout the bill and Section 9.

<sup>2</sup> R.C. 4796.18 and Section 9.

2. “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.
3. “Government certification” means authorization from a licensing authority, one of the uniformed services, or another state’s government to an individual who meets qualifications related to a profession, occupation, or occupational activity to which both of the following apply:
  - a. Only an individual holding the authorization may use a specific title or titles when advertising or holding the individual’s self out to engage in the profession, occupation, or occupational activity.
  - b. An individual is not required to have the authorization to engage in the profession, occupation, or occupational activity in the respective jurisdiction.
4. “Out-of-state occupational license” means a license, certificate, registration, permit, card, or other authority that is issued or conferred by one of the uniformed services or the government of another state to an individual by which the individual has or claims the privilege to engage in a profession, occupation, or occupational activity over which that service or state has jurisdiction.
5. “Private certification” means authorization from a private organization to an individual who meets qualifications determined by the organization related to the performance of a profession, occupation, or occupational activity and by which the individual may hold the individual’s self out as certified by the organization.
6. “Uniformed services” means the U.S. armed forces; the Commissioned Corps of the National Oceanic and Atmospheric Administration; the Commissioned Corps of the Public Health Service; or any reserve components of those forces; and such other service as may be designated by Congress.<sup>3</sup>

## **Issuance to out-of-state license or government certification holders**

Except as otherwise provided below, the bill requires a licensing authority to issue a license or government certification to an applicant if the licensing authority determines that all of the following apply:

1. The applicant holds either of the following:
  - a. An out-of-state occupational license that authorizes the applicant to engage in the same profession, occupation, or occupational activity, and at the same practice level, as the license or government certification for which the applicant is applying in Ohio.

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<sup>3</sup> R.C. 4796.01.

- b. A government certification in the same profession, occupation, or occupational activity as the license or government certification for which the applicant is applying in Ohio from one of the uniformed services or a state that does not issue an out-of-state occupational license for the respective profession, occupation, or occupational activity.
2. The applicant has held the out-of-state occupational license or government certification for at least one year and is in good standing in all jurisdictions in which the applicant holds an out-of-state occupational license or government certification to practice the same profession, occupation, or occupational activity for which the applicant is applying in Ohio.
3. The applicant was required to satisfy minimum education, training, or experience requirements or pass an examination to receive the out-of-state occupational license or government certification.
4. The applicant has not surrendered or had revoked a license, out-of-state occupational license, or government certification because of negligence or intentional misconduct related to the applicant's work in the same profession, occupation, or occupational activity for which the applicant is applying in Ohio.
5. The applicant pays to the licensing authority a fee equal to one of the following:
  - a. The renewal fee required for license or government certification holders under the applicable law;
  - b. The initial licensure fee, if the license or government certification for which the applicant is applying in Ohio does not have a renewal fee.
6. The applicant is not disqualified from obtaining the license or government certification because of a conviction, judicial finding of guilt, or plea of guilty to a disqualifying criminal offense specified on the list the licensing authority makes available pursuant to continuing law and in accordance with the continuing law procedures for a state licensing authority to follow when considering a conviction, judicial finding of guilt, or plea of guilty of an offense.<sup>4</sup>

For purposes of any law requiring a licensing authority to issue a license or government certification under the bill, an applicant who holds a license or government certification issued by the uniformed services is treated as though the applicant holds a license or certification issued by another state.<sup>5</sup> However, it does not appear that the uniformed services issue licenses or government certifications as those terms are defined in the bill.

Continuing law requires a licensing authority, under certain circumstances, to issue a temporary license or certificate to a member of the military or the member's spouse when the

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<sup>4</sup> R.C. 4796.03.

<sup>5</sup> R.C. 4796.02.

member or spouse is licensed in another jurisdiction. Continuing law also permits a licensing authority, under the same circumstances, to issue a regular license or certificate in lieu of a temporary license or certificate to the member or the member's spouse.

The bill specifies that it does not apply to a temporary or permanent license or certificate issued to a member of the military or the member's spouse under continuing law. The bill also prohibits a licensing authority from requiring a member or spouse who meets continuing law requirements to apply for a license or certificate under the bill. The member or spouse may, however, elect to apply for a license or certificate under the bill.<sup>6</sup>

### **Issuance to private certification holders**

Except as provided below, the bill requires a licensing authority to issue a license or government certification to an applicant if the licensing authority determines that all of the following apply:

1. The applicant holds a private certification and has at least two years of work experience in the same profession, occupation, or occupational activity, and at the same practice level, as the license or government certification for which the applicant is applying in Ohio in a state that does not issue an out-of-state occupational license or government certification for the respective profession, occupation, or occupational activity.
2. The applicant is in good standing with the private organization that issued the private certification.
3. The applicant meets the requirements specified under (4) through (6) of "**Issuance to out-of-state license or government certification holders,**" above.<sup>7</sup>

### **Issuance to individuals with satisfactory work experience**

Except as provided below, the bill requires a licensing authority to issue a license or government certification to an applicant if the licensing authority determines that both of the following apply:

1. The applicant has at least three years of work experience in the same profession, occupation, or occupational activity, and at the same practice level, as the license or government certification for which the applicant is applying in Ohio in a state that does not issue an out-of-state occupational license or government certification for the respective profession, occupation, or occupational activity.
2. The applicant meets the requirements under (4) through (6) of "**Issuance to out-of-state license or government certification holders,**" above.<sup>8</sup>

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<sup>6</sup> R.C. 4743.04 and 4743.041.

<sup>7</sup> R.C. 4796.04.

<sup>8</sup> R.C. 4796.05.

## **Criminal records check**

If a licensing authority requires an applicant under the law governing the applicable profession, occupation, or occupational activity to submit to a criminal records check to receive a license or government certification, an applicant must submit to the criminal records check to receive a license or government certification under the bill.<sup>9</sup>

## **Examination on Ohio's laws and rules**

If a licensing authority requires an applicant to pass an examination on Ohio's laws and rules governing the applicable profession, occupation, or occupational activity to receive a license or government certification under the applicable law, a licensing authority may require an applicant to pass the examination to receive a license or government certification under the bill.<sup>10</sup>

## **Financial responsibility requirement**

If a licensing authority requires an applicant under the law governing the applicable profession, occupation, or occupational activity to satisfy a financial responsibility requirement to receive a license or government certification, an applicant must satisfy the requirement to receive a license or government certification under the bill.<sup>11</sup> An example of this type of requirement is the requirement that an applicant for an auctioneer license must provide proof of financial responsibility in the form of either an irrevocable letter of credit, cash bond, or a surety bond in the amount of \$25,000 to receive an initial license.<sup>12</sup>

## **Decision to issue or deny a license or government certification**

If an applicant is the subject of a complaint, allegation, or investigation that relates to unprofessional conduct or an alleged crime pending before a court, administrative agency, or entity that regulates a license, out-of-state occupational license, or government certification, the bill prohibits a licensing authority from issuing or denying a license or government certification to the applicant until the complaint, allegation, or investigation is resolved.

A licensing authority must provide an applicant with a written decision to issue or reject a license or government certification within 60 days after receiving a complete application. An application is not considered complete until any required examination or criminal records check is complete.<sup>13</sup>

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<sup>9</sup> R.C. 4796.08(B).

<sup>10</sup> R.C. 4796.08(A).

<sup>11</sup> R.C. 4796.08(C).

<sup>12</sup> R.C. 4707.11, not in the bill.

<sup>13</sup> R.C. 4796.10.

## Law regulating the practice of the occupation or profession

An applicant who is issued a license or government certification under the bill is subject to the laws regulating the practice of the applicable occupation or profession in Ohio and is subject to the licensing authority's jurisdiction. Additionally, the bill specifies that a license or government certification issued under the bill is considered a license or government certification issued under the laws regulating the practice of the applicable occupation or profession in Ohio. Provisions of law applicable to a license or government certification issued to an applicant who does not obtain a license or government certification under the bill apply in the same manner to licenses and government certifications issued under the bill.<sup>14</sup>

### Exempt licenses

The bill does not apply to any of the following licenses:<sup>15</sup>

1. Medical marijuana cultivator and retail dispensary licenses, which are subject to a limit on the number of licenses allowed at any one time.<sup>16</sup>
2. Licenses issued pursuant to rules of the Supreme Court of Ohio governing admission to the practice of law.<sup>17</sup>
3. Commercial fishing licenses.<sup>18</sup>
4. Licenses issued under the Commercial Driver's Licensing Law.<sup>19</sup>
5. A permit issued to a nonlicensed individual to teach in schools under limited circumstances.<sup>20</sup>

The bill does not apply to licenses that authorize a person to engage in a profession, occupation, or occupational activity as a volunteer.<sup>21</sup>

### Political subdivision recognition

Consistent with *Struthers v. Sokol*, the bill prohibits a political subdivision from prohibiting an individual who holds a license or government certification issued by a state agency under the bill from engaging in the respective profession, occupation, or occupational activity in the political subdivision's jurisdiction. Under the Home Rule amendment to the Ohio Constitution, a municipal ordinance adopted under a municipality's police powers cannot

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<sup>14</sup> R.C. 4796.12.

<sup>15</sup> R.C. 4796.15.

<sup>16</sup> R.C. 3796.09 and 3796.10, not in the bill.

<sup>17</sup> Ohio Constitution, Article IV, Section 5.

<sup>18</sup> R.C. 1533.342, not in the bill.

<sup>19</sup> R.C. Chapter 4506.

<sup>20</sup> R.C. 3319.301.

<sup>21</sup> Multiple sections throughout the bill, examples include R.C. 4715.42, 4723.26, and 4731.295.

conflict with a “general law.” Under *Sokol*, the test for conflict is whether the ordinance prohibits what the state law permits or vice versa. Because state law under the bill requires issuance of a reciprocal license that allows an individual to practice in Ohio, a municipal ordinance that would prohibit what state law allows seemingly would be in direct conflict with the state’s “general law” for home rule purposes.<sup>22</sup>

### Temporary training licenses

Under continuing law, some state licensing authorities issue temporary training licenses that allow an individual who is working to obtain full licensure or gain supervised practice hours to engage in a profession, occupation, or occupational activity. The bill applies to these temporary training licenses.<sup>23</sup>

### Limited time and limited basis licenses

Under continuing law, some state licensing authorities currently issue licenses that allow an out-of-state professional to engage in a profession, occupation, or occupational activity for a limited time or on a limited basis. Other laws exempt certain individuals from obtaining a license under the applicable law if the individual meets specified requirements and practices for a limited time. The bill’s reciprocity provisions do not apply to these limited time and limited basis licenses, and a licensing authority cannot require an exempt individual to obtain a license under the reciprocity provisions. However, the bill limits these licenses and exemptions to individuals who are not Ohio residents, thus requiring an Ohio resident to obtain a full license or a license under the bill.<sup>24</sup>

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## HISTORY

Action	Date
Introduced	03-10-21

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H0203-I-134/ar

<sup>22</sup> R.C. 4796.20 and Ohio Const., art. XVIII, sec. 3, and *Struthers v. Sokol*, 108 Ohio St. 263 (1923).

<sup>23</sup> Multiple sections throughout the bill, examples include R.C. 4723.76, 4729.11, 4731.291, and 4731.573.

<sup>24</sup> Multiple sections throughout the bill, examples include R.C. 1565.06, 3723.03, 4717.10, 4713.37, 4715.09, 4725.26, and 4755.65.