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H.B. 50*
135th General Assembly

Bill Analysis

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Version: As Reported by Senate Community Revitalization

Primary Sponsors: Reps. Humphrey and Seitz

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SUMMARY

Certificate of qualification for housing (CQH)

Obtaining a CQH

Petition

- Allows an individual who is subject to collateral sanctions for housing as a result of being convicted of or pleading guilty to an offense and who is not in a category described in the preceding dot point to file a petition for a CQH.

Timing

- For a felony, allows an individual to file a petition for a CQH at any time after the expiration of one year from the individual's release from incarceration or, if the individual was not incarcerated, at any time after the expiration of one year from the individual's final release and all other sanctions imposed.
- For a misdemeanor, allows an individual to file a petition for a CQH at any time after the expiration of six months from the individual's release from incarceration and all periods of supervision, or if the individual was not incarcerated, at any time after the expiration of six months from the individual's final release and all other sanctions imposed.

Application fee

- Requires that a petition for a CQH be accompanied by a \$50 filing fee, unless it is waived or partially waived by the court of common pleas.

* This analysis was prepared before the report of the Senate Community Revitalization Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

Notices

- Requires that a court that receives a petition for a CQH provide notice to other courts in which the individual was convicted or pleaded guilty to an offense and to the county's prosecuting attorney.

Review of evidence

- Requires the court to review the petition for CQH and all other evidence.

Issuance of CQH

- Allows the court to issue a CQH if the court finds all of the following by a preponderance of the evidence:
 - Granting the petition will materially assist the individual in obtaining housing;
 - The individual has a substantial need for the requested relief in order to live a law abiding life;
 - Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

Rebuttable presumption

- The bill provides that an individual is rebuttably presumed to be eligible for a CQH if certain requirements are met.

Denial of petition

- Requires that a petition that meets the requirements for the rebuttable presumption only be denied if the court rebuts the presumption and finds that the applicant has not been rehabilitated.
- Requires that if the court denies a petition for a CQH, the court must provide written notice to the individual of the court's denial.

Appeal of CQH

- Specifies that if the court denies a petition for a CQH, the individual may appeal the decision to the court of appeals only if the individual alleges that the denial was an abuse of discretion.

Revocation of CQH

- Requires that a CQH be revoked if the individual to whom the CQH was issued is convicted of or pleads guilty to a felony or a misdemeanor offense of violence committed subsequent to the issuance of the CQH.

Automatic bar to collateral sanctions

- Provides that the issuance of a CQH lifts the automatic bar of a collateral sanction and the decision-maker must consider on a case-by-case basis whether to provide or deny housing.

Sex Offender Registration and Notification Law

- Specifies that a CQH does not create relief from requirements imposed by and rules adopted under the Sex Offender Registration and Notification Law.

Tort action

- Provides that in a tort action, a CQH issued to an individual may be introduced as evidence of a decision-maker's due care in leasing to the individual to whom the CQH was issued if the decision-maker knew of the certificate at the time of the alleged negligence.
- Specifies that in a tort action against a decision-maker for negligent leasing, a CQH issued to an individual provides immunity to the decision-maker as to the claim if the decision-maker knew of the certificate at the time of the alleged negligence.
- Provides that if a lessee subsequently demonstrates dangerousness or is convicted of a felony or a misdemeanor offense of violence, and the decision-maker retains the individual as a lessee, the decision-maker may be held liable in a tort action based on the retention of the individual.

Liability for DRC or court

- Provides that a court's issuance, or failure to issue, or the Department of Rehabilitation and Correction's (DRC) or the Adult Parole Authority's (APA) issuance, or failure to issue a CQH, to an individual does not give rise to claim of damages against DRC or the court.

PCS Division rules

- Requires the PCS Division to adopt rules for the implementation and administration of the bill.

Private right of action

- Specifies that its provisions do not create or provide a private right of action.

Legal aid society funds

- Prohibits financial assistance received by legal aid societies from being used for the provision of legal services in any criminal case or proceeding or in the provision of legal assistance in any fee generating case.

Tenant education, training, and readiness program

- Provides that if DRC or the adult parole authority issues a certificate of achievement and employability to a prisoner under the application for certificate of achievement and employability statute, the department or authority is required to also issue a CQH to the prisoner if the prisoner satisfactorily completes a tenant education, training, and readiness program approved by rule by DRC.
- Provides that a CQH issued under the tenant education, training, and readiness program statute has the same effect as a CQH issued under the CQH statute.

Home Construction Service Suppliers Act

- Makes contracts that are over \$25,000 for repairs, improvements, remodels, or renovations of existing structures subject to the Home Construction Service Suppliers Act.

Residential development land exemption procedure

- Modifies the application procedure for the residential development property tax exemption by requiring property owners to apply for the exemption with the county auditor, rather than the Tax Commissioner.
- Prohibits a school district from receiving notice of an application for such an exemption and prohibits a school district or other third party from challenging such an exemption.

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DETAILED ANALYSIS

Certificate of qualification for housing (CQH)

Obtaining a CQH

Petition

The bill provides a mechanism by which an individual may file a petition for a CQH.

This mechanism allows an individual who is subject to one or more collateral sanctions for housing as a result of being convicted of or pleading guilty to an offense and who has not already received a CQH may file for a CQH by doing either of the following:¹

- In the case of an individual who resides in Ohio, filing a petition with the court of common pleas of the county in which the person resides;
- In the case of an individual who resides outside of Ohio, filing a petition with the court of common pleas of any county in which any conviction or plea of guilty from which the individual seeks relief was entered.

The bill requires that a petition for a CQH be made on a copy of a form prescribed by the PCS Division and include all of the following:²

- The individual's name, date of birth, and Social Security number;
- All aliases of the individual and all Social Security numbers associated with those aliases;
- The individual's current residential address, including the length of the time that the individual has resided in the current residence, expressed in years and months, and the city, county, state, and zip code of each residence;
- A history of the individual's residential address or addresses for the past ten years, including the length of time that the individual has resided at the address, expressed in years and months, and the city, county, state, and zip code of the residence;
- A general statement as to why the individual has filed the petition and how the CQH would assist the individual;
- A summary of the individual's criminal history, except for information contained in any record that has been sealed, with respect to each offense that is a disqualification from housing, including years of each conviction or plea of guilty for each of those offenses;
- A summary of the individual's employment history, specifying the name of, and dates of employment with, each employer;
- Verifiable references and endorsements;

¹ R.C. 2953.26(B)(1).

² R.C. 2953.26(B)(2), (E), and (I).

- The name of one or more immediate family members of the individual, or other person's with whom the individual has a close relationship, who support the individual's reentry plan;
- A summary of the reason the individual believes the CQH should be granted;
- Any other information required by rule by the Department of Rehabilitation and Correction (DRC).

The bill specifies that the submission of an incomplete petition by an individual must not be grounds for the court to deny the petition.³

Timing for filing

The bill generally allows an individual to file a petition at any time after the expiration of whichever of the following is applicable:⁴

- If the offense that resulted in the collateral sanction for housing 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 or, if the individual was not incarcerated for the 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;
- If the offense resulted in the collateral sanction for housing 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.

Application fee

The bill generally requires that a petition for a CQH must be accompanied by an application fee of \$50. The court must pay \$30 of the application fee into the state treasury and \$20 of the application fee into the county general revenue fund. However, a court of common pleas or the designee of the Deputy Director of the PCS Division who receives the petition may waive all or part of the \$50 application fee for an applicant who is indigent. If the application fee is partially waived, the first \$20 of the fee that is collected must be paid into the county general revenue fund. Any partial fee collected in excess of \$20 must be paid into the state treasury.⁵

³ R.C. 2953.26(C)(4).

⁴ R.C. 2953.26(B)(3).

⁵ R.C. 2953.26(B)(2), (4), and (5).

Notices

The bill requires a court of common pleas that receives a petition for a CQH attempt to determine all other courts in Ohio in which the individual was convicted or pleaded guilty to an offense other than the offense from which the individual is seeking relief. The court must notify all other courts in Ohio that it determines 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 CQH.

The bill requires a court of common pleas that receives a petition for a CQH from an individual to notify to the county's prosecuting attorney that the individual has filed the petition.

The bill allows a court of common pleas that receives a petition for a CQH from an individual to direct the clerk of court to process and record all of the required notices.⁶

Review of evidence

The bill requires that, upon receiving a petition for a CQH, the court review the following:⁷

- The individual's petition;
- The individual's criminal history, except for information contained in any record that has been sealed;
- All filings submitted by the prosecutor or by the victim in accordance with rules adopted by the PCS Division;
- The applicant's military service record, if applicable;
- Whether the applicant has an emotional, mental, or physical condition that is traceable to the applicant's military service in the U.S. armed forces and that was a contributing factor in the commission of the offense or offenses;
- All other evidence.

Issuance of CQH

The bill generally provides that a court that receives a petition for a CQH may issue a CQH, at the court's discretion, if the court finds that the individual has established all of the following by the preponderance of the evidence:⁸

- Granting the petition will materially assist the individual in obtaining housing;

⁶ R.C. 2953.26(B)(4).

⁷ R.C. 2953.26(C)(1).

⁸ R.C. 2953.26(C)(3).

- The individual has a substantial need for the relief requested in order to live a law abiding life;
- Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

The bill requires that, upon receiving a petition for a CQH, the court decide whether to issue the CQH within 60 days after the court receives a completed petition and all information required for the court to make that decision. Upon request of the individual who filed the petition for a CQH, the court may extend the 60-day period.⁹

Rebuttable presumption

The bill provides that an individual is rebuttably presumed to be eligible for a CQH if the court finds all of the following:¹⁰

- The application was filed after the expiration of the applicable waiting period;
- If the offense resulted in the collateral sanction for housing from which the individual seeks relief is a felony, at least three years have elapsed since the date of the 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 least three years have elapsed since the date of the individual's final release from all other sanctions imposed for that offense;
- If the offense that resulted in the collateral sanction for housing from which the individual seeks relief is a misdemeanor, at least one year has elapsed since the date of the release of the individual from a 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 least one year has lapsed since the date of the final release of the individual from all sanctions imposed for the offense including any period of supervision.

Denial of petition

The bill requires that a petition for a CQH that meets the requirements for the rebuttable presumption only be denied if the court finds that the evidence rebuts the presumption of eligibility for issuance by establishing, by a preponderance of the evidence, that the applicant has not been rehabilitated.¹¹

The bill requires that if a court denies a petition for a CQH, the court must 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 CQH. The written

⁹ R.C. 2953.26(C)(2).

¹⁰ R.C. 2953.26(C)(5).

¹¹ R.C. 2953.26(C)(6).

notice must notify the individual of any conditions placed on the individual's filing of a subsequent petition for a CQH.¹²

Appeal of CQH

The bill specifies that if a court denies a petition for a CQH, 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.¹³

Revocation of CQH

The bill requires that a CQH be revoked if the individual to whom the CQH was issued is convicted of or pleads guilty to a felony or a misdemeanor offense of violence committed subsequent to the issuance of the CQH.¹⁴

Automatic bar to collateral sanctions

The bill provides that a CQH issued to an individual lifts the automatic bar of a collateral sanction for housing and a "decision-maker" must consider on a case-by-case basis whether to provide or deny housing, notwithstanding the individual's possession of the certificate, without, however, reconsidering or rejecting any finding made by a court.¹⁵

The bill specifies that the CQH constitutes a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for the housing in question. Notwithstanding this presumption, the decision-maker may deny the housing to the person if the decision-maker determines the person is unfit for the housing.¹⁶

Sex Offender Registration and Notification Law

The bill specifies that a CQH does not create relief from requirements imposed by and rules adopted under the Sex Offender Registration and Notification Law.¹⁷

Tort action

The bill provides that in a "tort action," a CQH issued to an individual may be introduced as evidence of a decision-maker's due care in leasing to the individual to whom the CQH was issued if the decision-maker knew of the certificate at the time of the alleged negligence or other fault.¹⁸

¹² R.C. 2953.26(C)(7).

¹³ R.C. 2953.26(C)(7).

¹⁴ R.C. 2953.26(G).

¹⁵ R.C. 2953.26(D)(1).

¹⁶ R.C. 2953.26(D)(2).

¹⁷ R.C. 2953.26(D)(3) and Chapter 2950, R.C. 2950.13, and 2950.132, not in the bill.

¹⁸ R.C. 2953.26(F)(1).

The bill specifies that in a tort action against a decision-maker for negligent leasing, a CQH issued to an individual provides immunity for the decision-maker as to the claim if the decision-maker knew of the certificate at the time of the alleged negligence.¹⁹

If a decision-maker leases to an individual who has been issued a CQH, if the individual, after being leased to, subsequently demonstrates dangerousness or is convicted of or pleads guilty to a felony or a misdemeanor offense of violence, and if the decision-maker retains the individual as a lessee after the demonstration of dangerousness or the conviction or guilty plea, the decision-maker may be held liable in a tort action that is based on the retention of the individual as a lessee only if it is proved by a preponderance of the evidence that both of the following apply:²⁰

- The decision-maker had actual knowledge that the lessee was dangerous or had been convicted of or pleaded guilty to a felony or a misdemeanor offense of violence.
- The decision-maker was willful in retaining the individual as a lessee after the demonstration of dangerousness or the conviction or guilty plea of which the decision-maker has actual knowledge.

Liability for DRC

The bill provides that a court's issuance, or failure to issue under DRC's or the Adult Parole Authority's (APA) issuance, or failure to issue, a petition for a CQH to an individual does not give rise to a claim for damages against DRC or court.²¹

PCS Division rules

The bill requires the PCS Division to adopt rules for the implementation and administration of the bill.²²

Private right of action

The bill specifies that its provisions do not create or provide a private right of action.²³

Tenant education, training, and readiness program

The bill provides that if DRC or the APA issues a certificate of achievement and employability to a prisoner under the application for certificate of achievement and employability statute, DRC or APA is required to also issue a CQH to the prisoner if the prisoner satisfactorily completes a tenant education, training, and readiness program approved by rule by the DRC. The bill also provides that a CQH issued under the tenant education, training, and

¹⁹ R.C. 2953.26(F)(2).

²⁰ R.C. 2953.26(F)(3).

²¹ R.C. 2953.26(H).

²² R.C. 2953.26(I).

²³ R.C. 2953.26(J).

readiness program statute, has the same effect as a CQH issued under the CQH statute.²⁴ The bill also requires DRC to adopt rules that define tenant education, training, and readiness programs that a prisoner may complete to satisfy the criteria described under the tenant education, training, and readiness program statute.²⁵

Definitions

The bill defines the following:

- “Collateral sanction for housing” means a penalty, disability, or disadvantage that is related to housing as a result of the individual’s conviction of or plea of guilty to an offense and that applies by operation of law in Ohio whether or not the penalty, disability, or disadvantage is included in the sentence of judgment imposed. “Collateral sanction for housing” does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.²⁶
- “Decision-maker” means a housing provider in Ohio of “residential premises,” including a “landlord” and a “metropolitan housing authority;”²⁷
- “Division of Parole and Community Services” means the PCS Division of the DRC;²⁸
- “Offense” means any felony or misdemeanor under the laws of Ohio.²⁹
- “Tort action” means a civil action for injury, death, or loss to person or property.³⁰

Legal aid society funds

The bill prohibits financial assistance received by a legal aid society from the Legal Aid Fund from being used for the provision of legal services in any criminal case or proceeding or in the provision of legal assistance in any fee generating case. Under current law, the provision referred to the provision of legal services in relation to any criminal case or proceeding or in relation to the provision of legal assistance in any fee generating case.³¹

Home Construction Service Suppliers Act

Under continuing law, a home construction project in Ohio may be subject one of two different sets of consumer protection laws, the Home Construction Service Suppliers Act

²⁴ R.C. 2961.25(A).

²⁵ R.C. 2961.25(B).

²⁶ R.C. 2953.26(A)(1).

²⁷ R.C. 2953.26(A)(2) and 1923.01, not in the bill; Chapter 3735, not in the bill.

²⁸ R.C. 2953.26(A)(5).

²⁹ R.C. 2953.26(A)(6).

³⁰ R.C. 2953.26(A)(7).

³¹ R.C. 120.54(B).

(HCSSA)³² or the Consumer Sales Practices Act (CSPA).³³ The laws are mutually exclusive, as the CSPA excludes services covered by the HCSSA. The HCSSA prohibits certain deceptive acts in connection with work relating to home construction services that cost more than \$25,000. The CSPA is a more general consumer protection law that prohibits a supplier from committing a deceptive or unconscionable act. There is no monetary threshold for acts to be covered under the CSPA. Both of the consumer protection laws allow a consumer to sue, recover damages, and collect attorneys' fees, however the civil penalties a consumer may receive are different under the HCSSA and the CSPA. The HCSSA allows the home owner to potentially collect a civil penalty of up to \$5,000.³⁴ Whereas the CSPA allows a consumer to receive up to three times their economic damages as a penalty.³⁵

The bill amends the definition of "home construction service" for purposes of the HCSSA. Under current law, "home construction service" means the construction of a residential building. The bill specifies that "home construction service" includes repairs, improvements, remodels, or renovations of existing structures.³⁶ Therefore, under the bill repairs, improvements, remodels, or renovations of existing structures that exceed \$25,000 are covered by the HCSSA and are exempt from the CSPA.

Residential development land exemption procedure

The bill modifies the application procedure for a recently enacted property tax exemption for residential development property.

The most recent biennial budget bill, H.B. 33 of the 135th General Assembly, authorized the exemption for land that has been subdivided for residential development. The provision essentially exempts any growth in the value of such property, by exempting the amount by which the property's value exceeds its most recent sales price. The exemption is available for up to eight years, or until the land is sold or construction begins on a residential building.

Property tax exemption procedure

Under continuing law, with only a few exceptions, property owners who qualify for a property tax exemption must apply annually to the Tax Commissioner. The Commissioner evaluates applications and decides whether to approve exemptions. During that process, school districts can request to receive notice of exemption applications and participate in the hearing on the application. In addition, if an application is approved, political subdivisions and other individuals can challenge the exemption.

³² R.C. Chapter 4722.

³³ R.C. 1345.01 to 1345.13, not in the bill.

³⁴ R.C. 4722.08, not in the bill.

³⁵ R.C. 1345.09, not in the bill.

³⁶ R.C. 4722.01.

The bill modifies this process for residential development property. Under the bill, owners of such property would apply directly to the county auditor for the exemption, instead of the Tax Commissioner. School districts would not receive notice of the exemption application and could not participate in any hearing on the application. Additionally, subdivisions or other individuals could not file a challenge to an approved exemption.³⁷

Application

The bill's changes apply to exemption applications filed for tax years beginning on or after the bill's 90-day effective date.³⁸

HISTORY

Action	Date
Introduced	02-15-23
Reported, H. Criminal Justice	03-22-23
Passed House (81-8)	05-24-23
Reported, S. Community Revitalization	---

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³⁷ R.C. 5709.56 and 5715.27.

³⁸ Section 3.