



**Am. Sub. H.B. 104**  
127th General Assembly  
(As Passed by the General Assembly)

**Reps. Core, Setzer, Seitz, Hughes, Dodd, Flowers, Combs, Adams, White, Webster, R. McGregor, Bupp, Collier, J. McGregor, Stebelton, Blessing, Dyer, Batchelder, Bacon, Coley, Domenick, J. Hagan, Huffman, Latta, Mandel, Patton, Uecker, Wagoner**

**Sens. Seitz, Cates**

**Effective date: \***

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**ACT SUMMARY**

- Requires a criminal records check of an applicant for an initial license for a registered accounting firm, certified or registered public accountant, dentist, dental hygienist, dental hygienist teacher, funeral director, embalmer, operator of a funeral home, embalming facility, and crematory facility, optometrist, dispensing optician, ocularist, pharmacist, physician assistant, physician, massage therapist, cosmetic therapist, telemedicine practitioner, podiatrist, wholesale distributor of dangerous drugs, animal shelter that uses drugs for euthanasia of animals, terminal distributor of dangerous drugs, psychologist, school psychologist, chiropractor, construction industry contractor, veterinarian, occupational therapist, occupational therapist assistant, physical therapist, physical therapist assistant, athletic trainer, counselor, professional clinical counselor, professional counselor, social worker, independent social worker, social worker assistant, marriage and family therapist, dietician, anesthesiologist assistant, respiratory care professional, acupuncturist, orthotist, prosthetist, and pedorthosist.
- Requires a criminal records check of an applicant for restoration of a suspended license for a physician assistant, physician, massage therapist,

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\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

cosmetic therapist, podiatrist, anesthesiologist assistant, and acupuncturist.

- Modifies the requirements for reinstatement of the license of a physician assistant, physician, massage therapist, cosmetic therapist, podiatrist, anesthesiologist assistant, or acupuncturist whose license has been suspended for failure to renew the license or to pay the biennial registration fee.
- Regarding the criminal records checks for license issuance or reinstatement, establishes a procedure for an applicant to request the Bureau of Criminal Identification and Investigation to conduct a check using existing forms and procedures used for criminal records checks required under preexisting law, requires the Superintendent of the Bureau to conduct the requested checks and report the results to the applicable licensing agency, requires agencies that grant licenses for the specified occupations to adopt rules establishing administrative and procedural requirements for the checks, and provides that the results of checks of applicants for initial licenses in the specified occupations are not public records.
- Permits the Treasurer of State to require any individual who applies for employment with, or is employed by, the Treasurer of State's office to undergo a criminal records check and to request the Bureau of Criminal Identification and Investigation to conduct a criminal records check of any such individual.

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## CONTENT AND OPERATION

### Background

Preexisting law, unchanged by the act, contains numerous provisions that require criminal records checks by the Bureau of Criminal Identification and Investigation (BCII) of the Attorney General's Office of persons who are under final consideration for certain types of employment or certain positions or licenses (e.g., a position in which the person will have contact with children, older adults, or individuals with mental retardation or a developmental disability, etc.). These provisions are summarized in **COMMENT 1**. Preexisting law, unchanged by the act, also contains a series of provisions that authorize certain potential employers, potential licensors, or other persons to request criminal records checks by BCII of persons who are under final consideration for certain types of employment or certain positions or licenses or who are in other specified circumstances. These provisions are summarized in **COMMENT 2**.

Further, preexisting R.C. 109.57(E), not in the act, requires the Attorney General (the AG) to adopt rules under the Administrative Procedure Act setting forth the procedure by which any person may receive or release information BCII gathers pursuant to R.C. 109.57(A) and provides that a reasonable fee may be charged for that service. Preexisting section 109:5-1-01 of the Ohio Administrative Code, adopted by the AG, specifies that any person may obtain information concerning the criminal record of any other person maintained at BCII by submitting the following: (1) the complete name, current address, and other "identifying characteristics" (defined as date of birth, Social Security number, height, weight, sex, race, and nationality) of the individual whose records are sought, (2) a complete set of fingerprints of the individual whose records are sought, (3) the signed consent of the individual whose records are sought, and (4) a \$15 fee payable to BCII (law enforcement officers are exempt from this fee).

**Requirement of criminal records checks for certain occupational licenses**

**Occupational licenses for which criminal records checks will be required**

The act requires criminal records checks of applicants for initial licenses in certain occupations. As used in the act (R.C. 4776.01(A), (B), (C), and (D)):

(1) "License" means any of the following: (a) an authorization evidenced by a license, certificate, registration, permit, card, or other authority that is issued or conferred by a "licensing agency" described in clause (a) of paragraph (3), below to a "licensee" or to an "applicant for an initial license" by which the licensee or applicant has or claims the privilege to engage in a profession, occupation, or occupational activity, or to have control of and operate certain specific equipment, machinery, or premises, over which the licensing agency has jurisdiction, or (b) an authorization evidenced by a license or certificate that is issued by a licensing agency described in clause (b) of paragraph (3), below, pursuant to R.C. 4715.12, 4715.16, 4715.21, or 4715.27 (i.e., a license for a dentist, dental hygienist, or dental hygienist teacher issued by the State Dental Board, but not any other professional license or certification issued by the Board under R.C. Chapter 4715.) to a licensee or to an applicant for an initial license by which the licensee or applicant has or claims the privilege to engage in a profession, occupation, or occupational activity over which the licensing agency has jurisdiction.

(2) An "applicant for an initial license" includes persons seeking a license for the first time or who have a license from another state and are seeking a license in Ohio by reciprocity, endorsement, or similar manner.

(3) A "licensing agency" means any of the following: (a) the board authorized by any of the Revised Code chapters specified in the act (see the second succeeding paragraph for a list of those boards) to issue a license to engage in a specific profession, occupation, or occupational activity, or to have charge of and operate certain specified equipment, machinery, or premises, other than the State Dental Board, or (b) the State Dental Board, relative to its authority to issue a license pursuant to R.C. 4715.12, 4715.16, 4715.21, or 4715.27 (i.e., a license for a dentist, dental hygienist, or dental hygienist teacher, but not any other professional license or certification issued by the Board under R.C. Chapter 4715.).

(4) "Licensee" means a person to whom a licensing agency issues a license.

The licensing agencies and licensees affected by the act are the following: Accountancy Board (registered accounting firms, certified and registered public

accountants), State Dental Board (dentists, dental hygienists, and dental hygienist teachers, but not other professionals licensed or certified by the Board under R.C. Chapter 4715.), Board of Embalmers and Funeral Directors (funeral directors, embalmers, and operators of funeral homes, embalming facilities, and crematory facilities), State Board of Optometry (optometrists), Ohio Optical Dispensers Board (dispensing opticians and ocularists), State Board of Pharmacy (pharmacists, wholesale distributors of dangerous drugs, animal shelters that use drugs for euthanasia of animals, and terminal distributors of dangerous drugs), State Medical Board (physician assistants, physicians, massage therapists, cosmetic therapists, telemedicine practitioners, podiatrists, anesthesiologist assistants, and acupuncturists), State Board of Psychology (psychologists and school psychologists), State Chiropractic Board (chiropractors), Ohio Construction Industry Licensing Board (heating, ventilating, and air conditioning contractors, refrigeration contractors, electrical contractors, plumbing contractors, and hydronics contractors), State Veterinary Medical Licensing Board (veterinarians), Occupational Therapy Section, Physical Therapy Section, and Athletic Trainers Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board (occupational therapists, occupational therapist assistants, physical therapists, physical therapist assistants, and athletic trainers), Counselor, Social Worker, and Marriage and Family Therapist Board (counselors, professional clinical counselors, professional counselors, social workers, independent social workers, social worker assistants, and marriage and family therapists), Ohio Board of Dietetics (dietitians), Ohio Respiratory Care Board (respiratory care professionals), and State Board of Orthotics, Prosthetics, and Pedorthics (orthotists, prosthetists, and pedorthotists). The specified licensing agencies may not grant an application for an initial license in any of the specified occupations unless the applicant requests a criminal records check as required by the act and the agency, in its discretion, decides that the results of the check do not make the applicant ineligible for the license. The required criminal records check is in addition to any other eligibility requirement for the license. (R.C. 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4731.081, 4731.171, 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4755.70, 4757.101, 4759.061, 4760.032, 4761.051, 4762.031, 4776.01(C), 4776.02(A), and 4779.091.)

The act also requires criminal records checks for the restoration by the State Medical Board of licenses that have been suspended for failure to pay the biennial registration fee (see "**Reinstatement of licenses issued by the State Medical Board**," below). "Applicant for a restored license" includes persons seeking restoration of a certificate under R.C. 4730.14, 4731.281, 4760.06, or 4762.06. The affected professions are physician assistant, physician, massage therapist, cosmetic therapist, podiatrist, anesthesiologist assistant, and acupuncturist. (R.C.

4730.14(G)(2), 4730.28(B)(1), 4731.15(B), 4731.222, 4731.281(D), 4760.06(D), 4762.06(D), 4776.02(A), and 4776.01(E).)

**Procedure for obtaining criminal records checks and reporting results**

The act requires an "applicant for an initial license" or an "applicant for a restored license" in the specified occupations to submit a request to BCII for a criminal records check of the applicant. The request must be accompanied by the form prescribed by the Superintendent of BCII under preexisting law for conducting a records check, fingerprint impressions obtained on a standard impression sheet prescribed by the Superintendent under preexisting law, and fee prescribed by the Superintendent for criminal records checks under preexisting law (see **COMMENT 1** for preexisting procedures). The applicant must provide BCII with the applicant's name and address and the licensing agency's name and address and request that the Superintendent of BCII obtain from the FBI any information it has pertaining to the applicant. Upon receiving the applicant's request, fingerprints, and fee, the Superintendent must conduct a criminal records check of the applicant in accordance with the preexisting procedures for employment-related record checks (see **COMMENT 1** for preexisting procedures) to determine whether any information exists that indicates that the applicant has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state. The Superintendent must report the results of the criminal records check and any information received from the FBI to the licensing agency. A determination whether any information exists that indicates that a person previously has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state regarding a criminal records check requested under these provisions of the act that is made by the Superintendent is valid for the person who is the subject of the check for one year from the date on which the Superintendent makes the determination. (R.C. 109.572(A)(13), (B), (C), and (D) and 4776.02.)

The act requires each "licensing agency" to adopt rules under R.C. Chapter 119. establishing administrative and procedural requirements for criminal records checks conducted under the act (R.C. 4776.03, 4717.04(A)(12), 4725.09(D), 4725.44(B), 4740.04(G)(3), 4755.06(K), 4755.61(A)(1), 4757.10(D), 4759.05(A)(12), 4761.03(A)(11), and 4779.08(A)(13)).

The results of criminal records checks made pursuant to the act and reports containing those results, including any information provided by the FBI, are not public records for purposes of the state's Public Records Law. The Superintendent of the BCII must make the results available to the licensing agency for use in determining under the agency's authorizing statutes whether the applicant should be granted a license under those statutes, and the licensing agency must make the results available to the applicant or the applicant's representative. Otherwise, the

results and report may not be made available to any other person or for any other purpose. (R.C. 4776.04.)

### **Technical change regarding ocularists**

In preexisting provisions that require the Ohio Optical Dispensers Board to process applications for licensure as licensed dispensing opticians and to adopt, amend, or rescind rules for the licensure of dispensing opticians, the act adds references to ocularists (R.C. 4725.44(A) and (B)). Under preexisting law, unchanged by the act, the Board licenses ocularists and has administrative authority over them, but the provisions modified by the act formerly neglected to mention ocularists.

### **Reinstatement or restoration of licenses issued by the State Medical Board**

#### **Physician assistants**

Under preexisting law, unchanged by the act, the certificate of a physician assistant that is not renewed on or before its expiration date is automatically suspended on its expiration date. If the certificate has been suspended for two years or less, it may be "reinstated" and if it has been suspended for more than two years, it may be "restored." Formerly, the criteria for "reinstatement" were the applicant's submission of the biennial renewal fee, any applicable monetary penalty (\$50), and certification by the applicant that the applicant has completed the number of hours of continuing education necessary to have a certificate reinstated, as specified in the rules of the State Medical Board. Formerly, the the criteria for "restoration" were the applicant's submission of a restoration application, the biennial renewal fee, and any applicable monetary penalty (\$100) and a determination by the Board that the applicant is fit to resume practice. The act eliminates the certification criterion for "reinstatement" and adds a criterion that requires the submission of a renewal application in addition to the renewal fee and applicable monetary penalty. For "restoration," the act adds criteria that require a criminal records check and require that the Board decide that the results of the check do not make the applicant ineligible for the certificate. (R.C. 4730.14(G)(2) and 4730.28(B)(1).)

#### **Massage therapists and cosmetic therapists**

Under preexisting law, unchanged by the act, a certificate to practice a limited branch of medicine (massage therapy, cosmetic therapy, naprapathy, and mechanotherapy)<sup>1</sup> is automatically suspended if the biennial registration fee is not

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<sup>1</sup> Before March 2, 1992, the State Medical Board licensed naprapaths and mechanotherapists. Naprapathy involves manipulation of the tissues. Mechanotherapy

paid by September 1 of the year it is due. Formerly, the State Medical Board was required to reinstate the certificate on an applicant's payment of the biennial registration fee and the applicable monetary penalty (\$25 for a suspension of two years or less and \$50 for one of more than two years) and, if the license had been suspended for more than two years, on the Board's determination of the applicant's fitness to resume practice. Additionally, an applicant for reinstatement of a certificate to practice cosmetic therapy also was required to submit certification of completion of the requisite continuing education. For reinstatement of a certificate that has been suspended for two years or less, the act adds the requirement of a renewal application. Regarding a certificate that has been suspended for more than two years, the act replaces references to the term "reinstatement" with references to the term "restoration" and specifies that the certificate may be restored upon submission of a restoration application, the biennial registration fee, and the applicable monetary penalty (\$50), submission to a criminal records check, and a determination by the Board that the results of the criminal records check do not make the applicant ineligible to hold a certificate. (R.C. 4731.15(B) and 4731.222.)

### **Physicians and podiatrists**

Under preexisting law, unchanged by the act, failure of a physician or podiatrist to register for renewal of a certificate automatically results in suspension of the certificate. If the certificate has been suspended for two years or less, it may be reinstated and if it has been suspended for more than two years, it may be restored. Formerly, the criteria for "reinstatement" were the applicant's submission of the biennial renewal fee, the applicable monetary penalty (\$50), and certification that the applicant has completed the requisite continuing medical education. Formerly, the criteria for "restoration" were submission of a restoration application, the biennial registration fee, and the applicable monetary penalty (\$100), and a determination by the Board that the applicant is fit to resume practice. For reinstatement of a certificate that has been suspended for two years or less, the act eliminates the certification criterion and adds a criterion that requires the submission of a renewal application. For restoration of a certificate that has been suspended for more than two years, the act adds criteria that require a criminal records check and require a determination by the Board that the results of the criminal records check do not make the applicant ineligible to hold a certificate. (R.C. 4731.222 and 4731.281(D).)

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involves manipulation and other treatment of the musculoskeletal system. Naprapaths and mechanotherapists may continue to practice if they keep their licenses current. (R.C. 4731.15 and 4731.151.)



### *Anesthesiologist assistants and acupuncturists*

Under preexisting law, unchanged by the act, the certificate of registration of an anesthesiologist assistant or acupuncturist that is not renewed on or before its expiration date is automatically suspended on its expiration date. Formerly, the State Medical Board was required to reinstate a certificate on an applicant's submission of the biennial renewal fee and the applicable monetary penalty (\$25 for a suspension of two years or less and \$50 for one of more than two years). For reinstatement of a certificate that has been suspended for two years or less, the act adds the requirement of a renewal application. Regarding a certificate that has been suspended for more than two years, the act replaces the term "reinstatement" with the term "restoration" and specifies that the certificate may be restored upon submission of a restoration application, the biennial registration fee, and the applicable monetary penalty (\$50), submission to a criminal records check, and a determination by the Board that the results of the criminal records check do not make the applicant ineligible to hold a certificate. (R.C. 4760.06(D) and 4762.06(D).)

### *Authority for Treasurer of State to require criminal records checks for prospective and current employees*

#### *In general*

The act enacts provisions that authorize the Treasurer of State to require an individual who applies for employment with, or is employed by, the Treasurer's office to undergo a criminal records check conducted by BCII's Superintendent in accordance with R.C. 109.572 (see "*Conduct of criminal records check under R.C. 109.572 upon request of Treasurer of State*," below). If, pursuant to this provision, the Treasurer requires an individual to undergo a criminal records check, the Treasurer must request the Superintendent to conduct a criminal records check with respect to the individual in accordance with R.C. 109.572. In the request, the Treasurer may request that the Superintendent obtain in the criminal records check information from the FBI about the individual who is the subject of the check. The Treasurer also may request that the Superintendent request criminal history records of the individual from other states or the federal government pursuant to the National Crime Prevention and Privacy Compact set forth in R.C. 109.571 as part of the criminal records check.

The act requires the Treasurer of State to provide to each individual required as described in the preceding paragraph to undergo a criminal records check a copy of the form prescribed by BCII's Superintendent under preexisting law for conducting a records check and a standard impression sheet to obtain fingerprint impressions prescribed by the Superintendent under preexisting law, obtain the completed form and impression sheet from the individual, and forward

the completed form and impression sheet to the Superintendent at the time the criminal records check is requested. Any individual subject to a criminal records check who receives a copy of the form and a copy of an impression sheet and who is requested to complete the form and provide a set of fingerprint impressions must complete the form or provide all the information necessary to complete it and must provide the impression sheet with the impressions of the individual's fingerprints.

The act authorizes the Treasurer of State to deny employment to or terminate the employment of an individual who is the subject of a criminal records check conducted under the provisions described above if either of the following applies: (1) the individual fails to complete the form prescribed by BCII's Superintendent for conducting a records check or fails to provide a set of the individual's fingerprint impressions on the standard impression sheet prescribed by the Superintendent for conducting a records check, or (2) the individual has been convicted of or pleaded guilty to any offense involving or relating to fraud, deceit, or theft.

The act specifies that, in determining whether to take any employment action, up to and including termination, with respect to an individual who is a current employee for the reason listed in clause (2) of the preceding paragraph, the Treasurer must afford the current employee a due process review. In the review, the Treasurer must consider all of the following factors: (1) the current employee's age at the time of the offense, (2) the nature and seriousness of the offense, (3) the circumstances under which the offense was committed, (4) the degree to which the current employee participated in the offense, (5) the time elapsed since the current employee was fully discharged from imprisonment, probation, or any other sanction or penalty imposed for the offense, (6) the likelihood that the circumstances leading to the offense will recur, (7) whether the current employee is a repeat offender, (8) the current employee's employment record with the Treasurer, (9) the current employee's efforts at rehabilitation and the results of those efforts, (10) whether at the time of the review, any criminal proceedings are pending against the current employee, (11) whether the current employee has been convicted of or pleaded guilty to any felony or misdemeanor offense set forth in the Revised Code that is not listed in clause (2) of the preceding paragraph and that bears a direct and substantial relationship to the duties and responsibilities of the position the current employee holds in the office of the Treasurer, and (12) any other extenuating circumstances relating to the current employee or the offense. If the Treasurer of State conducts a review under this provision, the Treasurer must prepare a written report of the review and provide a copy of the written report to the current employee who is the subject of the review.

The act requires the Treasurer of State to pay to BCII the fee prescribed pursuant to R.C. 109.572(C)(3) for each criminal records check conducted upon a request made by the Treasurer pursuant to the act's provisions described above. The Treasurer may charge the individual subject to the criminal records check a fee for the costs the Treasurer incurs in obtaining the check. A fee charged under this provision cannot exceed the amount of fees the Treasurer pays for the criminal records check. If a fee is charged under this provision, the Treasurer must notify the individual who is the subject of the criminal records check of the fee and that the individual is required to pay the fee.

The act specifies that the report of any criminal records check conducted by BCII upon a request made by the Treasurer of State pursuant to the act's provisions described above is not a public record for the purposes of the state's Public Records Law and cannot be made available to any person other than: (1) the individual who is the subject of the check or the individual's representative, (2) the Treasurer or the Treasurer's representative, and (3) any court, hearing officer, or other necessary individual involved in a case dealing with the denial or termination of employment.

The act states that nothing in its provisions described above regarding the authorization for the Treasurer of State to require criminal records checks for prospective and current employees precludes, or may be construed as precluding, any of the following: (1) any public official other than the Treasurer from conducting or having conducted a criminal records check of any individual, in any manner authorized under law, (2) the Treasurer from conducting or having conducted a criminal records check other than in accordance with those provisions, in any manner otherwise authorized under law. As used in this provision (by reference to preexisting R.C. 2921.01, which is not in the act), "public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers. (R.C. 113.041.)

**Conduct of criminal records check under R.C. 109.572 upon request of Treasurer of State**

The act provides that, upon receipt of a request from the Treasurer of State under the act's provisions described above in "***In general***," accompanied by a completed form and a set of fingerprint impressions, BCII's Superintendent is required to conduct a criminal records check to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state. The Superintendent must send the results of the check to the Treasurer of State.

Not later than 30 days after the Superintendent receives a request for a criminal records check from the Treasurer of State pursuant to the act's provisions described above in "*In general*," the completed form, and the fingerprint impressions, the Superintendent must send the Treasurer any information, other than information the dissemination of which is prohibited by federal law, the Superintendent determines exist with respect to the person who is the subject of the request that indicates that the person previously has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state.

The act specifies that the Superintendent must conduct any criminal records check requested by the Treasurer of State pursuant to the act's provisions described above in "*In general*" as follows (this procedure is the same procedure that applies under preexisting law regarding employment-related checks; see **COMMENT 1**): (1) the Superintendent must review or cause to be reviewed any relevant information gathered and compiled by BCII under R.C. 109.57(A) that relates to the person who is the subject of the request, including any relevant information contained in records that have been sealed under R.C. 2953.32, (2) if the request the Superintendent received asks for information from the FBI, the Superintendent must request from the FBI any information it has with respect to the person who is the subject of the request and must review or cause to be reviewed any information received from the FBI, and (3) the Superintendent or the Superintendent's designee may request criminal history records from other states or the federal government pursuant to the National Crime Prevention and Privacy Compact set forth in R.C. 109.571.

The act specifies that a determination that indicates that a person previously has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state regarding a criminal records check requested by the Treasurer of State pursuant to the act's provisions described above in "*In general*" is valid for the person who is the subject of the check for a period of one year from the date upon which the Superintendent makes the determination. During the period in which the determination in regard to a person is valid, if another request under R.C. 109.572 is made for a criminal records check for that person, the Superintendent must provide the information that is the basis for the Superintendent's initial determination at a lower fee than the fee prescribed for the initial criminal records check. (R.C. 109.572(A)(13) and (14), (B), (C), and (D).)

***Sealed criminal conviction records--inspection by BCII under an R.C. 109.572 criminal records check***

***Formerly***

Preexisting law, unchanged by the act, provides a mechanism pursuant to which a "first offender" (a defined term) may, under specified circumstances,

apply for and obtain a court order that requires the sealing of all official records pertaining to the offender's case. Inspection of the sealed records included in the court order may be made only by limited categories of persons or for limited purposes. The person or governmental agency, office, or department that maintains records that are sealed under such a court order may maintain a manual or computerized index to the sealed records, which index may be made available to a person who is authorized to inspect the sealed records. (R.C. 2953.31 to 2953.36.)

The provisions of law that set forth the criminal conviction record-sealing mechanism contain a general list of the limited categories of persons who may inspect sealed records included in the court order and the limited purposes for which sealed records may be inspected. Formerly, the general list did not include BCII for the purpose of conducting a criminal records check pursuant to R.C. 109.572. (R.C. 2953.32(D).) However, as described in **COMMENT 1**, the provisions of preexisting law governing BCII's conduct of criminal records checks under R.C. 109.572 specify that, in conducting the records checks, BCII's Superintendent may review relevant information contained in records that have been sealed under the provisions of existing law that set forth the criminal conviction record-sealing mechanism (R.C. 109.572(B)).

### **Operation of the act**

The act revises the general list contained in the law that sets forth the criminal conviction record-sealing mechanism that identifies the limited categories of persons who may inspect sealed records included in the court order and the limited purposes for which sealed records may be inspected to include in the general list a reference to BCII and authorized employees of BCII for the purpose of conducting a criminal records check pursuant to R.C. 109.572(B). (R.C. 2953.32(D)(10).) This revision does not change the substance of preexisting law but merely reflects in the criminal conviction record-sealing law the preexisting authority contained in R.C. 109.572, as described in **COMMENT 1**.

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## **COMMENT**

1. **Mandatory criminal records checks for certain employment, positions, or licenses**. Preexisting law, unchanged by the act, contains numerous provisions regarding mandatory criminal records checks of persons who are under final consideration for certain types of employment or certain positions or licenses. Among those who are subject to mandatory records checks are persons under consideration for certain positions with a children's out-of-home care entity (R.C. 2151.86), head start agency (R.C. 3301.32), preschool program (R.C. 3301.541), board of education of a school district (R.C. 3319.39), governing board of an

educational service center (R.C. 3319.39), chartered nonpublic school (R.C. 3319.39), home health agency (R.C. 3701.881), child day-care center (R.C. 5104.012), type A family day-care home (R.C. 5104.012), certified type B family day-care home (R.C. 5104.012), public children services agency (R.C. 5153.111), the Department of Mental Retardation and Developmental Disabilities (R.C. 5123.081), or a county board of mental retardation and developmental disabilities (R.C. 5126.28); persons who are a prospective adoptive parent or prospective foster caregiver (R.C. 2151.86); persons who are an owner, licensee, or administrator of a child day-care center or type A family day-care home or an authorized provider of a certified type B family day-care home (R.C. 5104.013); persons under consideration for certain positions with a hospice care program (R.C. 3712.09), adult day-care program (R.C. 3721.121), adult care facility (R.C. 3722.151), certain types of nursing homes, residential care facilities, homes for the aging, and related types of homes (R.C. 3721.121), or home health agency (R.C. 3701.881); persons who apply for a private investigator license, security guard provider license, or combination private investigator and security guard provider license (R.C. 4749.06); persons who apply for a specified type of education-related certificate, license, or permit, including certain teachers, administrators, educational assistants, etc. (R.C. 3319.291); and persons who apply for a certificate of registration as a mortgage broker (R.C. 1322.03), a license as a loan officer (R.C. 1322.031), or an initial state-certified general real estate appraiser certificate, state-certified residential real estate appraiser certificate, state-licensed residential real estate appraiser license, or state-registered real estate appraiser assistant registration (R.C. 4763.05).

Generally, the provisions described in the preceding paragraph require the potential employing or licensing entity or person to request the check and specify that the entities and persons that make such a request cannot employ or permit a person to serve or be licensed in any of the specified capacities if the person has been convicted of or pleaded guilty to any of a list of "designated offenses" (the list of designated offenses varies, depending upon the position or capacity in question). Upon receipt of a request from any of the specified entities or persons, a completed form prescribed for that purpose, a set of fingerprint impressions from the subject person, and a "reasonable fee" prescribed by BCII's Superintendent, the Superintendent conducts a check of the criminal records BCII maintains under R.C. 109.57(A) to determine whether the subject person has been convicted of any of the designated offenses (R.C. 109.57(A) provides for the furnishing of information by various officials from the criminal justice system to BCII regarding persons who are within the system for the commission of certain specified offenses and for BCII's maintenance of information regarding the persons). In conducting the check, the Superintendent may review relevant information contained in records sealed under the state's Criminal Conviction Record Sealing Law. When requested, the Superintendent contacts the FBI for information that

the FBI has with respect to the subject person and reviews the information so provided (in certain cases, the request for an FBI check is mandatory). The Superintendent may request criminal history records from other states or the federal government pursuant to the National Crime Prevention and Privacy Compact set forth in R.C. 109.571. Within 30 days after receiving the request, the form, the impressions, and the fee, the Superintendent sends the entity or person that made the request a list of all of the designated offenses, and any information, other than information the dissemination of which is prohibited by federal law, that he or she determines exists with respect to the subject person and that indicates that the subject person previously has been convicted of or pleaded guilty to any of the designated offenses. A determination whether any information exists that indicates that a subject person previously has been convicted of or pleaded guilty to any of the designated offenses that is made under a criminal records check described in this paragraph is valid for the subject person for a period of one year from the date on which the Superintendent makes the determination.

BCII's Superintendent is required to prescribe a form to obtain the information necessary to conduct a criminal records check under the above-described provisions, prescribe standard impression sheets to obtain the fingerprint impressions of a person who is the subject of a criminal records check under those provisions, and to prescribe and charge a reasonable fee for providing criminal records checks under those provisions. The person making a criminal records check request under those provisions must pay the fee so prescribed. (R.C. 109.572.)

**2. Discretionary criminal records checks for certain employment, positions, or licenses.** Preexisting law, unchanged by the act, contains a series of provisions regarding discretionary criminal records checks of persons who are under final consideration for certain types of employment or certain positions or licenses or who are in other specified circumstances. Among the discretionary check provisions are provisions that authorize the Department of Commerce to request a check for a person whose identity is required to be disclosed by an applicant for the issuance or transfer of a permit, license, or certification issued or transferred by the Department (R.C. 121.08); authorize the board of education of any school district, the director of Mental Retardation and Developmental Disabilities, any county board of mental retardation and developmental disabilities or entity under contract with any such county board, the chief administrator of any chartered nonpublic school, home health agency, day-care center or home, or head start agency, or the executive director of a public children services agency to request a check of any person who has applied for employment in any position (R.C. 109.57(F)(2), (F)(3), and (I)); the checks would be in addition to any mandatory check required as described under **COMMENT 1**); authorize the chief administrator of a home health agency, hospice care program, home licensed

under R.C. Chapter 3721., adult day-care program, or adult care facility to request a check of any individual who has applied for employment in a position that does not involve providing direct care to an older adult (R.C. 109.57(G) and (I)); and authorize a recipient of a classroom reading improvement grant to request a check on any individual who applies to participate in providing directly to children any program or service funded in whole or in part by the grant (R.C. 109.57(F)(5) and 3301.88).

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-13-07
Reported, H. Judiciary	05-29-07
Passed House (69-29)	06-13-07
Reported, S. Judiciary - Criminal Justice	11-15-07
Passed Senate (30-2)	12-11-07
House concurred in Senate amendments (89-3)	12-12-07

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