



2019 SENATE BILL 34

February 15, 2019 - Introduced by Senators DARLING, L. TAYLOR, CARPENTER, COWLES, FEYEN, OLSEN, STROEBEL and WANGGAARD, cosponsored by Representatives HUTTON, SNYDER, FIELDS, BALLWEG, BOWEN, BROOKS, GOYKE, HORLACHER, KRUG, KURTZ, MURSAU, MYERS, RAMTHUN, SORTWELL, THIESFELDT and TITTL. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to create* 20.625 (1) (h), 758.20 (3), 895.492 and 973.25 of the statutes;
2 **relating to:** creating a procedure for granting certificates of qualification for
3 employment for persons convicted of a crime and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, a person who has been convicted of a crime may be ineligible for, or at a disadvantage related to, certain types of employment, occupational licensing, or occupational certification. This bill creates the Council on Offender Employment, which may issue a certificate of qualification for employment (CQE) that grants relief to the person from ineligibility for or disadvantage related to employment, occupational licensing, or occupational certification.

Under the bill, a person who has been convicted of a nonviolent crime and released from confinement may apply to the council for a CQE after he or she has served a term of incarceration of at least 24 consecutive months or after he or she has served a term of incarceration of at least 12 consecutive months and a term of extended supervision of at least 12 consecutive months. Under the bill, the Department of Corrections must supply the council with information gathered during the person's period of incarceration and supervision that the council may use to determine whether to grant a CQE.

Under the bill, the council must grant a person's application for a CQE if the council finds that the person is not likely to pose a risk to public safety, that the CQE will substantially assist the person in obtaining employment or occupational licensing or certification, and that the person is less likely to commit an additional

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criminal offense if he or she obtains a CQE. The council may not issue a CQE that provides relief from ineligibility for certain occupations, licenses, or certifications that are related to certain offenses, that are designed to protect public health and safety, or that have a close connection to the crime for which the person was convicted. Under the bill, generally, if a person who received a CQE is convicted of a felony or of a Class A or Class B misdemeanor or has his or her probation or extended supervision revoked for committing a criminal offense, the CQE is permanently revoked.

The bill also provides limited immunity from civil liability for employers who hire a person who is issued a CQE. Under the bill, the employer is immune from liability for the acts or omissions of the employee unless the employer acted maliciously, with gross negligence, or with intent to cause harm when he or she hired the employee.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.625 (1) (h) of the statutes is created to read:

2 20.625 (1) (h) *Certificates of qualification for employment.* All moneys received
3 under s. 973.25 (4) (a) for general program operations of the circuit courts.

4 **SECTION 2.** 758.20 (3) of the statutes is created to read:

5 758.20 (3) The director of state courts shall ensure the Wisconsin Circuit Court
6 Access Internet site provides the department of corrections access to the information
7 required to complete the report under s. 973.25 (7).

8 **SECTION 3.** 895.492 of the statutes is created to read:

9 **895.492 Civil liability exemption; certificate of qualification for**
10 **employment. (1)** In this section:

11 (a) “Employee” has the meaning given in s. 101.01 (3) and also includes a former
12 employee.

13 (b) “Employer” has the meaning given in s. 101.01 (4).

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1 (2) An employer who hires an employee who has been issued a certificate of
2 qualification for employment under s. 973.25 is immune from liability for the acts or
3 omissions of the employee unless the employer, when he or she hired the employee,
4 acted maliciously, with gross negligence, or with intent to cause harm.

5 **SECTION 4.** 973.25 of the statutes is created to read:

6 **973.25 Certificates of qualification for employment. (1) DEFINITIONS.** In
7 this section:

8 (a) “Certificate of qualification for employment” means a certificate issued by
9 the council on offender employment that provides an offender with relief from a
10 collateral sanction, except that it does not provide relief from s. 48.685 (5m), 50.065
11 (4m), or 111.335 (3) (a), (b), (c), or (e) or (4) (h) or (i).

12 (b) “Collateral sanction” means a penalty, ineligibility, disability, or
13 disadvantage that is related to employment or to occupational licensing or
14 certification and that is a result of the offender’s criminal record. “Collateral
15 sanction” does not include confinement in a jail or prison; probation, parole, or
16 extended supervision; suspension or revocation of motor vehicle operating
17 privileges; imposition of a forfeiture, fine, or assessment; costs of prosecution; or an
18 order to pay restitution.

19 (c) “Offender” means a person who has been convicted of a crime other than a
20 violent crime, as defined in s. 165.84 (7).

21 **(2) COUNCIL ON OFFENDER EMPLOYMENT.** The director of state courts shall provide
22 forms for use in filing an application for a certificate of qualification for employment
23 and shall convene a council on offender employment that shall review applications
24 for certificates of qualification for employment. The council shall consist of the
25 following 3 members: the attorney general, or his or her designee; the state public

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1 defender, or his or her designee; and the chairperson of the parole commission, or his
2 or her designee. The council shall have the powers, duties, and responsibilities set
3 forth in this section.

4 **(3) ELIGIBILITY.** An offender who has been released from confinement may
5 apply for a certificate of qualification for employment under this section if any of the
6 following applies:

7 (a) He or she has served at least 24 consecutive months of a term of confinement
8 in prison in the Wisconsin state prisons.

9 (b) He or she has served at least 12 consecutive months of a term of confinement
10 in prison in the Wisconsin state prisons and at least 12 consecutive months of a term
11 of extended supervision under s. 302.113.

12 **(4) PROCEDURE.** (a) An offender may file an application for a certificate of
13 qualification for employment to the council on offender employment on a form to be
14 provided by the director of state courts along with an application fee of \$20 that shall
15 be deposited in the appropriation under s. 20.625 (1) (h). The council may waive the
16 fee if the offender submits an affidavit along with the application in which he or she
17 swears or affirms that he or she is unable to pay the application fee.

18 (b) After receiving an application under par. (a), the council on offender
19 employment shall request from the department of corrections and the department
20 shall provide to the council all of the following information about the offender:

- 21 1. His or her highest level of education.
- 22 2. Any treatment he or she has completed.
- 23 3. Any performance evaluations for his or her work.
- 24 4. Any risk and needs assessment reports.

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1 5. Any other reports of information gathered during the normal course of
2 business, as requested by the council.

3 (c) Within 60 days after receiving the information requested under par. (b), the
4 council on offender employment shall issue an order granting or denying the
5 offender's request for a certificate of qualification for employment.

6 **(5) GRANTING OF CERTIFICATE; EXCEPTIONS.** The council on offender employment
7 shall grant an offender's application for a certificate of qualification for employment
8 if the council finds that the offender is not likely to pose a risk to public safety, that
9 the certificate will substantially assist the offender in obtaining employment or
10 occupational licensing or certification, and that the offender is less likely to commit
11 an additional criminal offense if he or she obtains a certificate of qualification for
12 employment.

13 **(6) REVOCATION OF CERTIFICATE OF QUALIFICATION FOR EMPLOYMENT.** (a) If an
14 offender is convicted of a felony or of a Class A or Class B misdemeanor after he or
15 she is issued a certificate of qualification for employment, or if his or her probation,
16 parole, or extended supervision is revoked for the commission of a crime, the court
17 shall permanently revoke a certificate of qualification for employment issued under
18 sub. (5).

19 (b) The court may not revoke an offender's certificate of qualification for
20 employment as a sanction for the offender's commission of an act or offense that is
21 a violation of a condition of the offender's probation, parole, or extended supervision
22 that is not a crime, or if the offender's probation, parole, or extended supervision is
23 revoked as a result of the offender's commission of a noncriminal act.

24 **(7) DATA COLLECTION; REPORT TO LEGISLATURE.** The department of corrections
25 shall prepare an annual report that includes, for each year, the number of

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1 applications that are received under this section, the number of certificates of
2 qualification for employment that are issued, and the number of certificates of
3 qualification for employment that are revoked and the reasons for revocation. The
4 department shall submit the report to the chief clerk of each house of the legislature
5 for distribution to the legislature under s. 13.172 (2).

6

(END)