

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4461

BY DELEGATES UPSON, HOUSEHOLDER, STATLER,

ESPINOSA AND BLAIR

[Introduced February 7, 2018; Referred
to the Committee on Government Organization then
the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter,
 2 designated §30A-1-1, §30A-1-2, §30A-2-1, §30A-2-2, §30A-2-3, §30A-2-4, §30A-2-5,
 3 §30A-2-6, and §30A-2-7, all relating to using records of criminal conviction to disqualify a
 4 person from receiving a license or other authorization to practice an occupation; defining
 5 the scope of the law and defining terms; requiring specificity in defining disqualifying
 6 offenses; establishing time limits; barring political subdivisions from creating restrictions
 7 for new license categories; providing a petition process to review the effect of a criminal
 8 record; and requiring state authorities to update legislative rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 30A. OCCUPATIONS.

**ARTICLE 1. GENERAL PROVISIONS RELATING TO ALL OCCUPATIONAL
LICENSING AUTHORITIES AND PROCEDURES.**

§30A-1-1. Scope of chapter.

1 Unless otherwise specified, the provisions of this chapter apply to every licensing authority
 2 regardless of the location or position of the authority within this code, within the organizational
 3 structure of state government, or the political subdivisions of this state. These provisions apply
 4 to the procedures of every licensing authority for the grant, denial, suspension, revocation, or
 5 limitation of any authorization to practice an occupation, trade, or profession in this state.

§30A-1-2. Definitions.

6 As used in this chapter, the following terms have the meanings specified below:
 7 “Licensing authority” means an agency, board, commission, or other office of the state, or
 8 of any political subdivision of the state, with the authority to impose occupational fees or licensing
 9 requirements on any occupation, profession, or trade;

10 “License or other authorization to practice” means any form of authorization, without
 11 regard to the name of the authorization, that is issued, granted, or entered by a licensing authority

12 to allow a person to work in a specific occupation, profession, or trade after meeting one or more
13 requirements imposed by law, but this phrase does not include a commercial driver license to
14 operate a commercial motor vehicle; and

15 “Occupational fee” means a fee or tax on professionals or businesses that is charged as
16 a condition of practicing an occupation within a specified jurisdiction.

17 In this chapter, the terms “occupation”, “profession”, and “trade” have the same meanings
18 as they have in common language usage.

ARTICLE 2. LIMITATIONS ON USE OF CRIMINAL RECORDS.

§30A-2-1. Definitions.

1 As used in this article, “criminal record” means any felony or misdemeanor conviction.

§30A-2-2. Use of criminal records as disqualification of authorization to practice.

1 All state and political subdivision licensing authorities shall clearly define the criminal
2 offenses or categories of criminal offenses for which a criminal record would disqualify an
3 applicant from receiving a license or other authorization to practice. Licensing authorities may
4 only list disqualifying criminal offenses that are specific and directly related to the duties and
5 responsibilities for the regulated occupation, profession, or trade. Notwithstanding any provision
6 of law to the contrary, a licensing authority may not use undefined, general categories of offenses
7 such as “crimes of moral turpitude” or “crimes reflecting insufficient character” to establish or refer
8 to criminal records that would disqualify an applicant from receiving, maintaining, or exercising a
9 license or other authorization to practice.

§30A-2-3. Duration of disqualification.

1 If an individual has a valid criminal conviction for a crime that would disqualify the individual
2 from receiving a license or other authorization to practice, the disqualification shall not last longer
3 than five years from the date of conviction: *Provided*, That the conviction is not for a violent or
4 sexual offense and the individual has not been convicted of any other crime during the five-year
5 disqualification period.

§30A-2-4. State licensing authorities; application to current and prospective licenses.

1 The provisions of this article apply to all state licensing authorities and to all state licensing
2 requirements for licensing and license classifications in effect as of the date of the enactment of
3 this section or established thereafter.

§30A-2-5. Political subdivisions prohibited from creating additional licensing classifications or restrictions.

1 No political subdivision of the state may create or establish any license or additional
2 occupational fee for any occupation, profession, or trade that is not in effect as of the date of
3 enactment of this section.

§30A-2-6. Petition for review of criminal record.

1 An individual with a criminal record may petition a licensing authority at any time for a
2 determination of whether the individual's criminal record will disqualify the individual from
3 obtaining a license or other authorization to practice. This petition shall include sufficient details
4 on the individual's criminal record to enable the licensing authority to identify the jurisdiction where
5 the conviction occurred and the date of the conviction. The licensing authority shall inform the
6 individual of his or her standing within 30 days of receiving the petition from the applicant. The
7 licensing authority may charge a fee to recoup its costs not to exceed \$25 for each petition.

§30A-2-7. Required modifications to rules; duty of political subdivisions.

1 (a) Every state licensing authority that has, or may hereafter have, statutory rule-making
2 authority shall propose rules or amendments to existing rules to comply with the provisions of this
3 article. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-
4 3-1 et seq. within the applicable time limit to be considered by the Legislature during its regular
5 session in the year 2019.

6 (b) Any licensing authority of any political subdivision which uses a criminal record as a
7 consideration for granting an authorization to practice an occupation, profession, or trade shall
8 revise or amend existing licensing requirements to conform to the requirements of this article by

9 December 31, 2018.

NOTE: The purpose of this bill is to limit the use of criminal records as a basis to disqualify a person from receiving a license or other authorization to practice an occupation. These limits apply to state agencies, offices, boards, commissions, and to political subdivisions that grant licenses, certifications, registrations, occupational permits, and other forms of legal authorization. Licensing authorities must be specific about the types of convictions that would disqualify a person from receiving or keeping a license to practice and state agencies must update their rules to follow the requirements of this act. This bill would also prevent political subdivisions from creating license requirements for an occupation if the political subdivision does not already have requirement for that occupation.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.