

WEST VIRGINIA LEGISLATURE
2019 FIRST EXTRAORDINARY SESSION

ENROLLED

House Bill 118

BY DELEGATES HANSHAW (MR. SPEAKER) AND MILEY

(BY REQUEST OF THE EXECUTIVE)

[Passed June 17, 2019; in effect from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §30-1-24; relating generally to criteria for initial licensure to engage in certain
3 professions and occupations; regulating and making consistent the consideration of prior
4 criminal convictions in initial licensure determinations by certain boards and licensing
5 authorities; requiring a rational nexus between prior criminal convictions considered by
6 certain boards and licensing authorities and the profession or occupation for which the
7 initial licensure is sought; providing criteria for certain boards and licensing authorities to
8 consider when determining whether a criminal conviction has a rational nexus to a
9 profession or occupation; defining terms; eliminating offenses generally described as ones
10 of moral turpitude from grounds for denial of an initial license to engage in certain
11 professions and occupations absent there being a rational nexus between the underlying
12 offense and the profession or occupation for which licensure is sought; requiring certain
13 boards and licensing authorities to allow a previously disqualified applicant to apply for
14 licensure after a certain period of time, with exceptions; requiring certain boards and
15 licensing authorities to allow a potential applicant to petition the board or authority for a
16 determination as to whether his or her criminal record precludes licensure and requiring
17 the board or agency to provide the applicant with such determination within a certain
18 period of time; and requiring certain boards and licensing authorities to promulgate rules.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF
EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.**

§30-1-24. Use of criminal records as disqualification from authorization to practice.

1 (a) *Definitions.* — For the purposes of this section:

2 (1) “Board” means the board, authority, or other agency authorized by the provisions of
3 this chapter to issue licenses, certifications, registrations, or other authorizations to engage in a
4 particular profession or occupation.

5 (2) "License" or "licensure" means the official authorization to engage in a profession or
6 occupation issued by a board, pursuant to the requirements of this chapter.

7 (3) "Unreversed", as that term refers to a criminal conviction, means that a conviction has
8 not been set aside, vacated, pardoned, or expunged.

9 (b) Notwithstanding any provision of this chapter to the contrary, except for the professions
10 and occupations regulated by §30-2-1 *et seq.*, §30-3-1 *et seq.*, §30-3E-1 *et seq.*, §30-14-1 *et*
11 *seq.*, §30-18-1 *et seq.*, and §30-29-1 *et seq.* of this code, and where not in conflict with an existing
12 compact or model act:

13 (1) Boards subject to the requirements of this section may not disqualify an applicant from
14 initial licensure to engage in a profession or occupation because of a prior criminal conviction that
15 remains unreversed unless that conviction is for a crime that bears a rational nexus to the
16 profession or occupation requiring licensure. In determining whether a criminal conviction bears
17 a rational nexus to a profession or occupation, the board shall consider at a minimum:

18 (A) The nature and seriousness of the crime for which the individual was convicted;

19 (B) The passage of time since the commission of the crime;

20 (C) The relationship of the crime to the ability, capacity, and fitness required to perform
21 the duties and discharge the responsibilities of the profession or occupation; and

22 (D) Any evidence of rehabilitation or treatment undertaken by the individual.

23 (2) Because the term "moral turpitude" is vague and subject to inconsistent applications,
24 boards subject to the requirements of this section may not rely upon the description of a crime for
25 which an applicant has been convicted as one of "moral turpitude" as a basis for denying
26 licensure: *Provided*, That if the prior conviction for the underlying crime bears a rational nexus to
27 the profession or occupation requiring licensure, the board may consider the conviction according
28 to the requirements of subdivision (1) of this subsection.

29 (3) Notwithstanding any other provision of this chapter to the contrary, if an applicant is
30 disqualified from licensure because of a prior criminal conviction, a board shall permit the
31 applicant to apply for initial licensure if:

32 (A) A period of five years has elapsed from the date of conviction or the date of release
33 from incarceration, whichever is later;

34 (B) The individual has not been convicted of any other crime during the period of time
35 following the disqualifying offense; and

36 (C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
37 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
38 of disqualification from licensure, to be determined by the individual board.

39 (4) An individual with a criminal record who has not previously applied for licensure may
40 petition the appropriate board at any time for a determination of whether the individual's criminal
41 record will disqualify the individual from obtaining a license. This petition shall include sufficient
42 details about the individual's criminal record to enable the board to identify the jurisdiction where
43 the conviction occurred, the date of the conviction, and the specific nature of the conviction. The
44 board shall provide the determination within 60 days of receiving the petition from the applicant.
45 The board may charge a fee to recoup its costs for each petition.

46 (5) The requirements of this section do not apply to the criteria that boards may consider
47 when making determinations regarding relicensure or discipline of licensees.

48 (c) Every board subject to the provisions of this section shall propose rules or amendments
49 to existing rules for legislative approval to comply with the provisions of this section. These rules
50 or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this
51 code within the applicable time limit to be considered by the Legislature during its regular session
52 in the year 2020.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2019.

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Governor