

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3007

BY DELEGATES NELSON, HARSHBARGER, CADLE,

ATKINSON, COOPER, PACK AND PORTERFIELD

[Passed March 5, 2019; in effect ninety days from
passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §19-1-3b, relating to authorizing the Commissioner of Agriculture to require
3 background checks as a condition of employment; providing legislative findings;
4 describing background check procedure; making background check results confidential;
5 providing exceptions; designating background checks and related documents not to be
6 considered public records under chapter 29B of said code; prohibiting disqualification of
7 applicant for criminal conviction not bearing rational nexus to employment category;
8 barring consideration of crimes of moral turpitude in hiring; allowing reapplication after
9 disqualification from employment; establishing procedure for individual obtaining
10 preapplication determination if criminal record will disqualify individual from employment;
11 and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3b. Background checks as condition of employment.

1 (a) The commissioner may, as a condition of employment, require an applicant for a
2 position to submit to a state and national criminal history record check. This requirement is found
3 not to be against public policy.

4 (b) The criminal history record check shall be based on fingerprints submitted to the West
5 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.
6 The applicant shall meet all requirements necessary to accomplish the state and national criminal
7 history record check, including:

- 8 (1) Submitting fingerprints for the purposes set forth in this subsection; and
9 (2) Authorizing the board, the West Virginia State Police and the Federal Bureau of
10 Investigation to use all records submitted and produced for the purpose of screening the applicant
11 for employment.

12 (c) The results of the state and national criminal history record check may not be released
13 to or by a private entity except:

14 (1) To the individual who is the subject of the criminal history record check;

15 (2) With the written authorization of the individual who is the subject of the criminal history
16 record check; or

17 (3) Pursuant to a court order.

18 (d) The criminal history record check and related records are not public records for the
19 purposes of chapter 29B of this code.

20 (e) The commissioner may not disqualify an applicant for employment because of a prior
21 criminal conviction that has not been reversed unless that conviction is for a crime that bears a
22 rational nexus to the employment category.

23 (f) The commissioner may not use crimes involving moral turpitude in making employment
24 determinations.

25 (g) If an applicant is disqualified for employment because of a criminal conviction that has
26 not been reversed, the commissioner shall afford the applicant the opportunity to reapply for
27 employment after the expiration of five years from the date of conviction or date of release from
28 the penalty that was imposed, whichever is later, if the individual has not been convicted of any
29 other crime during that period of time: *Provided*, That convictions for violent or sexual offenses or
30 offenses shall subject an individual to a longer period of disqualification, to be determined by the
31 commissioner by rule.

32 (h) An individual with a criminal record who has not previously applied for employment
33 may petition the commissioner at any time for a determination of whether the individual's criminal
34 record will disqualify the individual from obtaining employment. This petition shall include sufficient
35 details about the individual's criminal record to enable the commissioner to identify the jurisdiction
36 where the conviction occurred, the date of the conviction and the specific nature of the conviction.

37 The commissioner shall inform the individual of his or her standing within 60 days of receiving the
38 petition from the applicant.

39 (i) The commissioner shall propose rules or amendments to existing rules for legislative
40 approval to comply with the provisions of this section. These rules or amendments to rules shall
41 be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time
42 limit to be considered by the Legislature during its regular session 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 ninety days 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