

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 493

By Senators Chapman, Rucker, Barrett, and Woelfel

[Introduced January 18, 2024; referred
to the Committee on the Workforce; and then to the
Committee on the Judiciary]

1 A BILL to amend and reenact §21-1-6 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §30-1-24 of said code, all relating generally to the use of criminal
 3 records as disqualification from authorization to practice a profession or occupation by a
 4 board, authority, or other agency authorized to issue licenses, certifications, registrations,
 5 or other authorizations to engage in a particular profession or occupation.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR

ARTICLE 1. DIVISION OF LABOR.

§21-1-6. Use of criminal records as disqualification from authorization to engage in licensed profession or occupation.

1 (a) The commissioner may not disqualify an applicant from initial licensure, as required in
 2 this chapter, because of a prior criminal conviction that remains unreversed unless that conviction
 3 is for a crime that ~~bears a rational nexus~~ directly and specifically relates to the activity requiring
 4 licensure. In determining whether a criminal conviction ~~bears a rational nexus~~ directly and
 5 specifically relates to a profession or occupation, the commissioner shall consider at a minimum:

- 6 (1) The nature and seriousness of the crime for which the individual was convicted;
- 7 (2) The passage of time since the commission of the crime;
- 8 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the
 9 duties and discharge the responsibilities of the profession or occupation; and
- 10 (4) Any evidence of rehabilitation or treatment undertaken by the individual including if
 11 applicable:
 - 12 (i) The age of the individual when the individual committed the offense;
 - 13 (ii) The completion of the criminal sentence;
 - 14 (iii) A certificate of rehabilitation or good conduct;
 - 15 (iv) Completion of, or active participation in, rehabilitative drug or alcohol treatment;

16 (v) Testimonials and recommendations, which may include a progress report from (he
17 individual's probation or parole officer;

18 (vi) Education and training;

19 (vii) Employment history and aspirations;

20 (viii) The individual's current family responsibilities;

21 (ix) Whether the individual will be bonded in the occupation: and

22 (x) Other evidence of rehabilitation the individual submits to the licensing authority.

23 (b) Notwithstanding any other provision of this code to the contrary, if an applicant is
24 disqualified from licensure because of a prior criminal conviction, the commissioner shall permit
25 the applicant to apply for initial licensure if:

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

28 (2) The individual has not been convicted of any other crime during the period of time
29 following the disqualifying offense; and

30 (3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
31 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
32 of disqualification from licensure, to be determined by the commissioner.

33 (c) An individual with a criminal record who has not previously applied for licensure may
34 petition the commissioner at any time for a determination of whether the individual's criminal
35 record will disqualify the individual from obtaining a license. This petition shall include sufficient
36 details about the individual's criminal record to enable the commissioner to identify the jurisdiction
37 where the conviction occurred, the date of the conviction, and the specific nature of the conviction.
38 The commissioner shall provide the determination within 60 days of receiving the petition from the
39 applicant. The commissioner may charge a fee to recoup its costs for each petition.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

**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 (4) "Board" means the board, authority, or other agency authorized by the provisions of this
3 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~~ law to the contrary, except for the
10 professions and occupations regulated by §30-2-1 *et seq.*, §30-3-1 *et seq.*, §30-3E-1 *et seq.*,
11 §30-14-1 *et seq.*, §30-18-1 *et seq.*, and §30-29-1 *et seq.* of this code, and where not in conflict with
12 an existing 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~~ directly and
16 specifically relates to the duties and responsibilities of the to the profession or occupation requiring
17 licensure and granting the applicant licensure would pose a direct and substantial risk to public
18 because the applicant has not been rehabilitated. In determining whether a criminal conviction
19 ~~bears a rational nexus~~ directly relates to the duties and responsibilities of a profession or
20 occupation and whether an individual has not been rehabilitated, the board shall consider at a
21 minimum:

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

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

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

26 (D) Any evidence of rehabilitation or treatment undertaken by the individual, including if
27 applicable:

28 (i) The age of the individual when the individual committed the offense;

29 (ii) The completion of the criminal sentence;

30 (iii) A certificate of rehabilitation or good conduct;

31 (iv) Completion of, or active participation in, rehabilitative drug or alcohol treatment;

32 (v) Testimonials and recommendations, which may include a progress report from (he
33 individual's probation or parole officer;

34 (vi) Education and training;

35 (vii) Employment history and aspirations;

36 (viii) The individual's current family responsibilities;

37 (ix) Whether the individual will be bonded in the occupation: and

38 (x) Other evidence of rehabilitation the individual submits to the licensing authority.

39 (2) Because the term "moral turpitude" and "good moral character" is are vague and
40 subject to inconsistent applications, boards subject to the requirements of this section may not rely
41 upon the description of a crime for which an applicant has been convicted as one of "moral
42 turpitude" or the applicant lacking "good moral character" as a basis for denying licensure:
43 ~~Provided, That if the prior conviction for the underlying crime bears a rational nexus to the~~
44 ~~profession or occupation requiring licensure, the board may consider the conviction according to~~
45 ~~the requirements of subdivision (1) of this subsection.~~

46 (3) ~~Notwithstanding any other provision of this chapter law to the contrary, if an applicant is~~
47 ~~disqualified from licensure because of a prior criminal conviction, a board shall permit the applicant~~
48 may not disqualify an applicant to apply for initial licensure if:

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

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

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

56 (4) Notwithstanding any other provision of law to the contrary, an individual may not be
57 required to disclose, nor may a board consider, an arrest not followed by a conviction or a
58 nonviolent misdemeanor in an application or determination for licensure.

59 ~~(4)~~ (5) An individual with a criminal record ~~who has not previously applied for licensure~~ may
60 petition the appropriate board at any time for a determination of whether the individual's criminal
61 record will disqualify the individual from obtaining a license. This petition shall include sufficient
62 details about the individual's criminal record to enable the board to identify the jurisdiction where
63 the conviction occurred, the date of the conviction, and the specific nature of the conviction. The
64 board shall provide the determination within 60 days of receiving the petition from the applicant.
65 The board may charge a fee to recoup its costs for each petition. The individual may appeal the
66 final written decision within 60 days after the date of the decision in accordance with the State
67 Administrative Procedures Act.

68 ~~(5)~~ (6) The requirements of this section do not apply to the criteria that boards may
69 consider when making determinations regarding ~~relicensure~~ or discipline of licensees and
70 reinstating licenses following discipline.

71 (c) Every board subject to the provisions of this section ~~shall~~ propose rules or amendments
72 to existing rules for legislative approval if necessary to comply with the provisions of this section.
73 These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et*

74 *seq.* of this code within the applicable time limit to be considered by the Legislature during its
75 regular session in the year 2020.

76 (d) Every board subject to the provisions of this article, including the Commissioner of
77 Labor, shall update their forms and all other public-facing documents, explain on the board's
78 website the law in this section and the availability of the process in subdivision (b)(5)of this section,
79 and eliminate language that conflicts with or contradicts this section.

NOTE: The purpose of this bill is to amend §21-1-6 and §30-1-24 relating generally to the use of criminal records as disqualification, from authorization to practice a profession or occupation, by a board, authority, or other agency authorized to issue licenses, certifications, registrations, or other authorizations to engage in a particular profession or 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.