

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 493

BY SENATORS CHAPMAN, RUCKER, BARRETT, AND

WOELFEL

[Originating in the Committee on Rules;

reported February 21, 2024]

1 A BILL to amend and reenact §21-1-6 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §21-14-6 of said code; to amend and reenact §21-16-7 of said code; to amend
3 and reenact §29-3B-4 of said code; to amend and reenact §29-3C-4 of said code; and to
4 amend and reenact §29-3D-6 of said code, all relating generally to the use of criminal
5 records as disqualification from initial licensure or other authorization to practice certain
6 professions or occupations regulated by the Division of Labor or the State Fire Marshal;
7 prohibiting licensing authorities from disqualifying an applicant from initial licensure
8 because of a prior criminal conviction that remains unreversed unless that conviction is
9 for a crime that directly and specifically relates to the activity requiring licensure such that
10 granting the applicant licensure would pose a direct and substantial risk to the public
11 because the applicant has not been rehabilitated; providing factors for a licensing authority
12 to determine whether a criminal conviction directly and specifically relates to a profession
13 or occupation; providing evidence of rehabilitation or treatment undertaken by the
14 individual to be considered by a licensing authority in determining whether a criminal
15 conviction directly and specifically relates to a profession or occupation; clarifying that a
16 licensing authority may not disqualify an applicant from initial licensure because of a prior
17 criminal conviction if certain criteria are met; authorizing an individual who has not
18 previously held a license from the licensing authority to petition the authority for a
19 determination of whether the individual's criminal record will disqualify the individual from
20 obtaining a license; prohibiting a licensing authority from considering or from requiring an
21 individual to disclose an arrest not followed by conviction in an application for initial
22 licensure or determination regarding criminal record; and requiring licensing authorities to
23 update licensure forms, relevant public-facing documents, and website.

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, except for §21-5-5c of this code, because of a prior criminal conviction that remains
3 unreversed unless that conviction is for a crime that ~~bears a rational nexus~~ directly and specifically
4 relates to the duties and responsibilities of the activity requiring licensure such that granting the
5 applicant licensure would pose a direct and substantial risk to the public because the applicant
6 has not been rehabilitated. In determining whether a criminal conviction ~~bears a rational nexus~~
7 directly and specifically relates to a profession or occupation, the commissioner shall consider, at
8 a minimum:

9 (1) The nature and seriousness of the crime for which the individual was convicted;

10 (2) The passage of time since the commission of the crime;

11 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the
12 duties and discharge the responsibilities of the profession or occupation; and

13 (4) Any evidence of rehabilitation or treatment undertaken by the individual, including the
14 following, if applicable:

15 (A) The age of the individual when he or she committed the offense;

16 (B) The completion of the criminal sentence;

17 (C) A certificate of rehabilitation or good conduct;

18 (D) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
19 treatment;

20 (E) Testimonials and recommendations, which may include a progress report from the
21 individual's probation or parole officer;

22 (F) Education and training;

23 (G) Employment history relevant to the license being sought;

24 (H) Whether the individual will be bonded in the occupation; and

25 (I) Other evidence of rehabilitation the individual submits to the commissioner.

26 (b) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
27 ~~disqualified from licensure because of a prior criminal conviction, the commissioner shall permit~~
28 ~~the applicant to apply for initial licensure if:~~ the commissioner may not disqualify an applicant from
29 initial licensure because of a prior criminal conviction if:

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

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

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

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

45 (d) Notwithstanding any other provision of this chapter to the contrary, an individual may
46 not be required to disclose, nor may the commission consider, an arrest not followed by a

47 conviction in an application for initial licensure or a determination under subsection (c) of this
48 section.

49 (e) The commissioner shall update his licensure forms, other relevant public-facing
50 documents, and website to explain the requirements of this section, including, but not limited to,
51 the availability of the process set forth in subsection (c) of this section.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-6. Denial, suspension, and revocation of license.

1 (a) The Commissioner of Labor may deny a license to any applicant who fails to comply
2 with the rules established by the Commissioner of Labor, or who lacks the necessary
3 qualifications: *Provided*, That the commissioner shall apply §21-1-6 of this code to determine if
4 whether the prior criminal conviction bears a rational nexus directly and specifically relates to the
5 license being sought.

6 (b) The Commissioner of Labor may, upon complaint or upon his or her own inquiry, and
7 after notice to the licensee, suspend or revoke a licensee's license if:

8 (1) The license was granted upon an application or documents supporting the application
9 which materially mis-stated the terms of the applicant's qualifications or experience;

10 (2) The licensee subscribed or vouched for a material mis-statement in his or her
11 application for licensure;

12 (3) The licensee incompetently or unsafely performs plumbing work; or

13 (4) The licensee violated any statute of this state, any legislative rule or any ordinance of
14 any municipality or county of this state which protects the consumer or public against unfair,
15 unsafe, unlawful, or improper business practices.

ARTICLE 16. REGULATION OF HEATING, VENTILATING, AND COOLING WORK.

§21-16-7. Denial, suspension, and revocation of license.

1 (a) The Commissioner of Labor may deny a license to any applicant who fails to comply
2 with the provisions of this article or the rules established by the Commissioner of Labor, or who

3 lacks the necessary qualifications: *Provided*, That the commissioner shall apply §21-1-6 of this
4 code to determine if whether the prior criminal conviction ~~bears a rational nexus~~ directly and
5 specifically relates to the license being sought.

6 (b) The Commissioner of Labor may, upon complaint or upon his or her own inquiry, and
7 after notice to the licensee, suspend, or revoke a licensee's license if:

8 (1) The license was granted upon an application or documents supporting the application
9 which materially mis-stated the terms of the applicant's qualifications or experience;

10 (2) The licensee subscribed or vouched for a material mis-statement in his or her
11 application for licensure;

12 (3) The licensee incompetently or unsafely performs heating, ventilating, and cooling work;
13 or

14 (4) The licensee violated any statute of this state, any legislative rule, or any ordinance of
15 any municipality or county of this state which protects the consumer or public against unfair,
16 unsafe, unlawful, or improper business practices.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

**§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner;
qualifications required for license; nontransferability and nonassignability of
licenses; expiration of license; renewal; reciprocity.**

1 (a) The following classes of license may be issued by the State Fire Marshal: master
2 electrician license, journeyman electrician license, and temporary electrician license. Additional
3 classes of specialty electrician license may be issued by the State Fire Marshal.

4 (b) The State Fire Marshal shall issue the appropriate class of license upon a finding that
5 the applicant possesses the qualifications for the class of license to be issued. When considering
6 whether an applicant possess the qualifications for the class of license, the State Fire Marshal

7 shall consider whether an applicant's prior criminal convictions ~~bear a rational nexus on~~ directly
8 and specifically relate to the license being sought.

9 (1) The State Fire Marshal may not disqualify an applicant from initial licensure because
10 of a prior criminal conviction that remains unreversed unless that conviction is for a crime that
11 ~~bears a rational nexus~~ directly and specifically relates to the duties and responsibilities of the
12 activity requiring licensure such that granting the applicant licensure would pose a direct and
13 substantial risk to the public because the applicant has not been rehabilitated. In determining
14 whether a criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a
15 profession or occupation, the State Fire Marshal shall consider, at a minimum:

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

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

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

20 (D) Any evidence of rehabilitation or treatment undertaken by the individual, including the
21 following, if applicable:

22 (i) The age of the individual when he or she committed the offense;

23 (ii) The completion of the criminal sentence;

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

25 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
26 treatment;

27 (v) Testimonials and recommendations, which may include a progress report from the
28 individual's probation or parole officer;

29 (vi) Education and training;

30 (vii) Employment history relevant to the license being sought;

31 (viii) Whether the individual will be bonded in the occupation; and

32 (ix) Other evidence of rehabilitation the applicant submits to the State Fire Marshal.

33 (2) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
34 ~~disqualified from licensure because of a prior criminal conviction, the State Fire Marshal shall~~
35 ~~permit the applicant to apply for initial licensure if:~~ the State Fire Marshal may not disqualify an
36 applicant from initial licensure because of a prior criminal conviction if:

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

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

41 (C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
42 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
43 of disqualification from licensure, to be determined by the State Fire Marshal.

44 (3) An individual with a criminal record who has not previously ~~applied for licensure~~ held
45 a license under this section may petition the State Fire Marshal at any time for a determination of
46 whether the individual's criminal record will disqualify the individual from obtaining a license. This
47 petition shall include sufficient details about the individual's criminal record to enable the State
48 Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction,
49 and the specific nature of the conviction.

50 (c) The State Fire Marshal shall propose rules for legislative approval regarding
51 qualifications for testing, issuance of licenses, and renewal in accordance with the provisions of
52 §29A-3-1 *et seq.* of this code.

53 (d) To the extent that other jurisdictions provide for the licensing of electricians, the State
54 Fire Marshal shall grant the same or equivalent classification of license without written
55 examination upon satisfactory proof furnished to the State Fire Marshal that the qualifications of
56 the applicant demonstrate that the person can perform work safely and competently and is in
57 good standing with all other jurisdictions where he or she is licensed, and upon payment of the
58 required fee.

59 (e) In addition to any other information required, the applicant's social security number
60 shall be recorded on any application for a license submitted pursuant to the provisions of this
61 section.

62 (f) Notwithstanding any other provision of this chapter to the contrary, an individual may
63 not be required to disclose, nor may the State Fire Marshal consider, an arrest not followed by a
64 conviction in an application for initial licensure or a determination under subdivision (b)(3) of this
65 section.

66 (g) The State Fire Marshal shall update its licensure forms, other relevant public-facing
67 documents, and website to explain the requirements of this section, including, but not limited to,
68 the availability of the process set forth in subdivision (b)(3) of this section.

ARTICLE 3C. CERTIFICATION OF ELECTRICAL INSPECTORS.

§29-3C-4. Certification program; duties of the State Fire Marshal; rulemaking.

1 (a) The State Fire Marshal shall propose rules for legislative approval in accordance with
2 the provisions of §29A-3-1 *et seq.* of this code to establish a program for the certification of
3 electrical inspectors. Proposed rules shall provide: Standards and procedures for certification,
4 including applications, examinations, fees, qualifications, procedures for investigating complaints,
5 revoking or suspending certifications, and for renewing licenses. The State Fire Marshal ~~is also~~
6 ~~authorized to~~ may propose emergency rules to implement the provisions of this article: *Provided,*
7 That the emergency rules specify an initial certification fee of \$50.

8 (b) The State Fire Marshal shall certify an electrical inspector upon a finding that the
9 applicant possesses the requisite qualifications.

10 (c) When considering whether an applicant possess the qualifications for certification as
11 an electrical inspector, the State Fire Marshal shall consider whether an applicant's prior criminal
12 convictions ~~bear a rational nexus on~~ directly and specifically relates to the certification being
13 sought.

14 (1) The State Fire Marshal may not disqualify an applicant from initial certification because
15 of a prior criminal conviction that remains unreversed unless that conviction is for a crime that
16 ~~bears a rational nexus~~ directly and specifically relates to the duties and responsibilities of the
17 activity requiring certification such that granting the applicant licensure would pose a direct and
18 substantial risk to the public because the applicant has not been rehabilitated. In determining
19 whether a criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a
20 profession or occupation, the State Fire Marshal shall consider, at a minimum:

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

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

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

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

27 (i) The age of the individual when he or she committed the offense;

28 (ii) The completion of the criminal sentence;

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

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

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

34 (vi) Education and training;

35 (vii) Employment history relevant to the license being sought;

36 (viii) Whether the individual will be bonded in the occupation; and

37 (ix) Other evidence of rehabilitation the individual submits to the commissioner.

38 (2) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
39 ~~disqualified from certification because of a prior criminal conviction, the State Fire Marshal shall~~

40 ~~permit the applicant to apply for initial certification if:~~ the State Fire Marshal may not disqualify an
41 applicant from initial licensure because of a prior criminal conviction if:

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

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

46 (C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
47 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
48 of disqualification from certification, to be determined by the State Fire Marshal.

49 (3) An individual with a criminal record who has not previously ~~applied for~~ held a
50 certification under this section may petition the State Fire Marshal at any time for a determination
51 of whether the individual's criminal record will disqualify the individual from obtaining a
52 certification. This petition shall include sufficient details about the individual's criminal record to
53 enable the State Fire Marshal to identify the jurisdiction where the conviction occurred, the date
54 of the conviction, and the specific nature of the conviction.

55 (d) Notwithstanding any other provision of this chapter to the contrary, an individual may
56 not be required to disclose, nor may the State Fire Marshal consider, an arrest not followed by a
57 conviction in an application for initial licensure or a determination under subdivision (c)(3) of this
58 section.

59 (e) The State Fire Marshal shall update its licensure forms, other relevant public-facing
60 documents, and website to explain the requirements of this section, including, but not limited to,
61 the availability of the process set forth in subdivision (c)(3) of this section.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-6. Denial, suspension, and revocation of license.

1 (a) The State Fire Marshal may deny a license to any applicant who fails to comply with
2 the rules established by the State Fire Marshal, or who lacks the necessary qualifications. When

3 considering whether an applicant possesses the qualifications for a license, the State Fire Marshal
4 shall consider whether an applicant's prior criminal convictions ~~bear a rational nexus on~~ directly
5 and specifically relate to the license being sought.

6 (1) The State Fire Marshal may not disqualify an applicant from initial licensure because
7 of a prior criminal conviction that remains unreversed unless that conviction is for a crime that
8 ~~bears a rational nexus~~ directly and specifically relates to the duties and responsibilities of the
9 activity requiring licensure such that granting the applicant licensure would pose a direct and
10 substantial risk to the public because the applicant has not been rehabilitated. In determining
11 whether a criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a
12 profession or occupation, the State Fire Marshal shall consider, at a minimum:

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

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

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

17 (D) Any evidence of rehabilitation or treatment undertaken by the individual, including the
18 following, if applicable:

19 (i) The age of the individual when he or she committed the offense;

20 (ii) The completion of the criminal sentence;

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

22 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
23 treatment;

24 (v) Testimonials and recommendations, which may include a progress report from the
25 individual's probation or parole officer;

26 (vi) Education and training;

27 (vii) Employment history relevant to the license being sought;

28 (viii) Whether the individual will be bonded in the occupation; and

29 (ix) Other evidence of rehabilitation the individual submits to the State Fire Marshal.

30 (2) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
31 ~~disqualified from licensure because of a prior criminal conviction, the State Fire Marshal shall~~
32 ~~permit the applicant to apply for initial licensure if:~~ the State Fire Marshal may not disqualify an
33 applicant from initial licensure because of a prior criminal conviction if:

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

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

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

41 (3) An individual with a criminal record who has not previously ~~applied for licensure~~ held
42 a license under this section may petition the State Fire Marshal at any time for a determination of
43 whether the individual's criminal record will disqualify the individual from obtaining a license. This
44 petition shall include sufficient details about the individual's criminal record to enable the State
45 Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction,
46 and the specific nature of the conviction.

47 (b) The State Fire Marshal may, upon complaint or upon his or her own inquiry, and after
48 notice to the licensee, suspend or revoke a licensee's license if:

49 (1) The license was granted upon an application or documents supporting the application
50 which materially mis-stated the terms of the applicant's qualifications or experience;

51 (2) The licensee subscribed or vouched for a material mis-statement in his or her
52 application for licensure; or

53 (3) The licensee incompetently or unsafely performs fire protection work or damper work.

54 (c) Notwithstanding any other provision of this chapter to the contrary, an individual may
55 not be required to disclose, nor may the State Fire Marshal consider, an arrest not followed by a
56 conviction in an application for initial licensure or a determination under subdivision (a)(3) of this
57 section.

58 (d) The State Fire Marshal shall update its licensure forms, other relevant public-facing
59 documents, and website to explain the requirements of this section, including, but not limited to,
60 the availability of the process set forth in subdivision (a)(3) of this section.