

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 263

By Senator Chapman

[Reported March 11, 2025, from the Committee on
the Workforce]

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

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.

(a) The commissioner may not disqualify an applicant from initial licensure, as required in this chapter, except under §21-5-5c of this code, because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that ~~bears a rational nexus~~ directly and specifically relates to the duties and responsibilities of the activity requiring licensure such that granting the applicant licensure would pose a direct and substantial risk to the public because the applicant has not been rehabilitated. ~~In determining whether a criminal conviction bears a rational nexus a profession or occupation making its determination,~~ the commissioner shall consider, at a minimum:

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

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

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

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

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

(B) The completion of the criminal sentence;

(C) A certificate of rehabilitation or good conduct;

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

(E) Testimonials and recommendations, which may include a progress report from the

individual's probation or parole officer;

(F) Education and training;

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

(a) No person, firm, or corporation shall administer a psychophysiological detection of deception examination, lie detector, or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without holding a current valid license to do so as issued by the Commissioner of Labor. No examination shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he or she:

(1) Is at least 21 years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of a felony: *Provided*, That the commissioner shall apply §21-1-6 of this code to determine if the prior criminal may not disqualify an applicant from initial licensure because of a prior felony conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to practicing as an examiner. In determining whether a felony conviction bears a rational nexus to the license being sought, the commissioner shall consider at a minimum:

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

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

(C) The relationship of the crime to the ability, capacity, and fitness required to perform the

duties and discharge the responsibilities of an examiner; and

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

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the Commissioner of Labor or under his or her supervision to determine his or her competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the Commissioner of Labor in his or her sole discretion which qualifications are to be at least as stringent as those recommended by the American Polygraph Association: Provided, That in no case shall a Class I license applicant be required to hold a baccalaureate degree, and in no case shall a Class II license applicant be required to hold an associate degree.

(c) The Commissioner of Labor may designate and administer any test he or she considers appropriate to those persons applying for a license to administer psychophysiological detection of deception, lie detector, or similar examination. The test shall be designed to ensure that the applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant's knowledge of and familiarity with all aspects of operating psychophysiological detection of deception equipment and administering psychophysiological detection of deception examinations.

(d) The license to administer psychophysiological detection of deception, lie detector, or similar examinations to any person shall be issued for a period of one year. It may be reissued from year to year. The licenses to be issued are:

(1) "Class I license" which authorizes an individual to administer psychophysiological detection of deception examinations for all purposes which are permissible under the provisions of this article and other applicable laws and rules.

44 (2) "Class II license" which authorizes an individual who is a full-time employee of a law-
45 enforcement agency to administer psychophysiological detection of deception examinations to its
46 employees or prospective employees only.

47 (e) The Commissioner of Labor shall charge an annual fee to be established by legislative
48 rule. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and
49 deposited in an appropriated special revenue account hereby created in the State Treasury to be
50 known as the Psychophysiological Examiners Fund and expended for the implementation and
51 enforcement of this section. Through June 30, 2019, amounts collected which are found from time
52 to time to exceed funds needed for the purposes set forth in this section may be utilized by the
53 commissioner as needed to meet the division's funding obligations: *Provided*, That beginning July
54 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the
55 division's funding obligations. In addition to any other information required, an application for a
56 license shall include the applicant's Social Security number.

57 (f) The Commissioner of Labor shall propose rules for legislative approval in accordance
58 with §29A-3-1 *et seq.* of this code governing the administration of psychophysiological detection of
59 deception, lie detector, or similar examination to any person: *Provided*, That all applicable rules in
60 effect on the effective date of §21-5-5a, §21-5-5b, §21-5-5c, and §21-5-5d of this code will remain
61 in effect until amended, withdrawn, revoked, repealed, or replaced. The legislative rules shall
62 include:

63 (1) The type and amount of training or schooling necessary for a person before which he or
64 she may be licensed to administer or interpret a psychophysiological detection of deception, lie
65 detector, or similar examination;

66 (2) Testing requirements, including the designation of the test to be administered to
67 persons applying for licensure;

68 (3) Standards of accuracy which shall be met by machines or other devices to be used in
69 psychophysiological detection of deception, lie detector, or similar examination;

(4) The conditions under which a psychophysiological detection of deception, lie detector, or similar examination may be administered;

(5) Fees for licenses, renewals of licenses, and other services provided by the commissioner;

(6) Any other qualifications or requirements, including continuing education, established by the commissioner for the issuance or renewal of licenses; and

(7) Any other purpose to carry out the requirements of §21-5-5a, §21-5-5b, §21-5-5c, and §21-5-5d of this code.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

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

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

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

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

(2) The licensee subscribed or vouched for a material misstatement in his or her application for licensure;

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

(4) The licensee violated any statute of this state, any legislative rule, or any ordinance of any municipality or county of this state which protects the consumer or public against unfair, 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 misstated the terms of the applicant's qualifications or experience;

10 (2) The licensee subscribed or vouched for a material misstatement 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 possesses 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 of
10 a prior criminal conviction that remains unreversed unless that conviction is for a crime that ~~bears~~
11 ~~a rational nexus~~ directly and specifically relates to the duties and responsibilities of the activity
12 requiring licensure such that granting the applicant licensure would pose a direct and substantial
13 risk to the public because the applicant has not been rehabilitated. In determining whether a
14 criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a profession or
15 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 the
19 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;

(vi) Education and training;

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

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

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

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

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

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

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

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

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

(d) To the extent that other jurisdictions provide for the licensing of electricians, the State 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 good
57 standing with all other jurisdictions where he or she is licensed, and upon payment of the required
58 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 not
63 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 §29-3B-4(b)(3) of this
65 code.

66 (g) The State Fire Marshal shall update his or her licensure forms, other relevant public-
67 facing documents, and website to explain the requirements of this section, including, but not
68 limited to, the availability of the process set forth in §29-3B-4(b)(3) of this code.

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 possesses the qualifications for certification as

an electrical inspector, the State Fire Marshal shall consider whether an applicant's prior criminal convictions ~~bear a rational nexus on~~ directly and specifically relate to the certification being sought.

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

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

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

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

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

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

(ii) The completion of the criminal sentence;

(iii) A certificate of rehabilitation or good conduct;

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

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

(vi) Education and training;

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

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

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

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

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

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

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

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

(d) Notwithstanding any other provision of this chapter to the contrary, an individual may not be required to disclose, nor may the State Fire Marshal consider, an arrest not followed by a conviction in an application for initial licensure or a determination under §29-3C-4(c)(3) of this code.

(e) The State Fire Marshal shall update his or her licensure forms, other relevant public-facing documents, and website to explain the requirements of this section, including, but not limited to, the availability of the process set forth in §29-3C-4(c)(3) of this code.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

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

(a) The State Fire Marshal may deny a license to any applicant who fails to comply with the rules established by the State Fire Marshal, or who lacks the necessary qualifications. When considering whether an applicant possesses the qualifications for a license, the State Fire Marshal shall consider whether an applicant's prior criminal convictions ~~bear a rational nexus on~~ directly and specifically relate to the license being sought.

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

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

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

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

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

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

(ii) The completion of the criminal sentence;

(iii) A certificate of rehabilitation or good conduct;

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

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

(vi) Education and training;

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

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

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

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

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

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

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

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

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

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

(2) The licensee subscribed or vouched for a material misstatement 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 §29-3D-6(a)(3) of this
57 code.

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 §29-3D-6(a)(3) of this code.