# WEST VIRGINIA CODE: §16-9H-5

**§16-9H-5. License application; information required; application to be accompanied by fees; bond.**

(a) No vape or smoke shop license or license renewal may be granted unless the commissioner has determined that the applicant satisfies all of the following qualifications:

(1) The applicant is a United States citizen and a person of good character, honesty, and integrity;

(2) The applicant is a person whose background, criminal record, if any, reputation, habits, and associations, do not threaten to:

(A) Compromise the public interest of the citizens of the state; or

(B) Weaken the effective regulation and control of tobacco derived products or vapor products;

(3) The applicant has not been convicted of perjury, false swearing, or any crime punishable by imprisonment in excess of one year under the applicable law of this state or in any other state or foreign country;

(4) The applicant has disclosed to the commissioner the identity of each person who has control of the applicant and those persons satisfy all qualifications required by this section and any applicable qualifications required by the commissioner. For purposes of this subdivision, a "person who has control of the applicant" means:

(A) Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation;

(B) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or who the commissioner determines to have the ability to control the applicant; and

(C) Key personnel of an applicant, including any executive, employee, or agent, having the power to exercise significant influence over decisions concerning any part of the applicant’s business operation;

(5) The applicant has provided a set of fingerprints and has completed and signed the statement provided for in §16-9H-5(e) of this code;

WV Legislature

(6) A listed manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure; and

(7) The applicant has furnished all information, including financial data and documents, certifications, consents, waivers, individual history forms, and other materials requested by the commissioner for purposes of determining qualifications for a license.

(b) Except as otherwise set forth in this article, the commissioner 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 to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, 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.

(c) Except as otherwise set forth in this article, 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:

(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.

(d) An individual with a criminal record who has not previously applied for licensure 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.

(e) The commissioner may not request a background check of an applicant under this section

WV Legislature

unless the applicant first provides a set of fingerprints and completes and signs a statement that:

(1) Contains the name, address, and date of birth appearing on a valid identification document of the applicant;

(2) Declares that the applicant has not been convicted of a crime or, if the applicant has been convicted of a crime, contains a description of the crime and the particulars of the conviction. For the purposes of this section, an applicant has not been convicted of a crime if he or she was convicted of a non-moving motor vehicle violation or a speeding violation that does not arise in connection with a motor vehicle collision;

(3) Notifies the applicant that the commissioner will request a background check; and

(4) Notifies the applicant of the applicant's rights under §16-9H-5(i) of this code.

(f) The State Police shall establish and maintain an adequate system for background investigations that:

(1) Ensures that timely background investigations are conducted on applicants for a license to operate a vape or smoke shop, current licensees, and other persons required to be investigated by the commissioner in accordance with the provisions of this article or by legislative rules promulgated pursuant to this article;

(2) Provides for review and oversight of applicants, current licensees, and other persons on an ongoing basis;

(3) Provides that upon receipt of a background check report lacking disposition data, further research will be conducted in whatever state and local record-keeping systems are available in order to obtain complete data;

(4) Provides for prompt notification to the commissioner of the results of background investigations before the issuance or renewal of any license; and

(5) Clearly defines a standard whereby a person's prior activities, criminal record, if any, or reputation, habits, and associations are such as to pose a threat to the public interest or to the effective regulation of vape or smoke shops, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of vape or smoke shop operations, thereby rendering that person ineligible for licensing.

(g) The license required by this section may not be transferred from one person to another or from one premises to another. A new license is required when a vape or smoke shop has a change in ownership.

(h) The license required by this section shall be in addition to, and not in lieu of, any other requirements set forth in federal, state, or local laws.

WV Legislature

(i) Each applicant who is the subject of a background check is entitled to a copy of his or her background investigation report, and has the right to challenge the accuracy and completeness of any information contained in the report and to obtain a prompt determination as to the validity of the challenge before a final determination is made by the commissioner that would deny issuance of a license or renewal of a license.

(j) The commissioner may propose rules for legislative approval in accordance with the provision of §29A-3-1 *et seq*. of this code as may be necessary to carry out the purposes of this article.

WV Legislature