WEST VIRGINIA CODE: §19-1-3b

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

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

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

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for employment.

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

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

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

(3) Pursuant to a court order.

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

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

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

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

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disqualification, to be determined by the commissioner by rule.

(h) An individual with a criminal record who has not previously applied for employment may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining employment. 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 inform the individual of his or her standing within 60 days of receiving the petition from the applicant.

(i) The commissioner shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

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