WEST VIRGINIA CODE: §21-1-6

§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 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 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, the commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction if:

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(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 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. If a criminal background check is reviewed, the disposition of any arrest or charge must be included.

(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.

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