WEST VIRGINIA CODE: §30-1-24

§30-1-24. Use of criminal records as disqualification from authorization to practice.

(a) Definitions. — For the purposes of this section:

(1) "Board" means the board, authority, or other agency authorized by the provisions of this chapter to issue licenses, certifications, registrations, or other authorizations to engage in a particular profession or occupation.

(2) "License" or "licensure" means the official authorization to engage in a profession or occupation issued by a board, pursuant to the requirements of this chapter.

(3) "Unreversed", as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

(b) Notwithstanding any provision of this chapter to the contrary, except for the professions and occupations regulated by §30-2-1 et seq., §30-3-1 et seq., §30-3E-1 et seq., §30-14-1 et seq., §30-18-1 et seq., and §30-29-1 et seq. of this code, and where not in conflict with an existing compact or model act:

(1) Boards subject to the requirements of this section may not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession or occupation requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the board 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.

(2) Because the term "moral turpitude" is vague and subject to inconsistent applications, boards subject to the requirements of this section may not rely upon the description of a crime for which an applicant has been convicted as one of "moral turpitude" as a basis for denying licensure: Provided, That if the prior conviction for the underlying crime bears a rational nexus to the profession or occupation requiring licensure, the board may consider the conviction according to the requirements of subdivision (1) of this subsection.

(3) Notwithstanding any other provision of this chapter to the contrary, if an applicant is

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disqualified from licensure because of a prior criminal conviction, a board shall permit the applicant to apply for initial licensure 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 individual board.

(4) An individual with a criminal record who has not previously applied for licensure may petition the appropriate board 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 board to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The board shall provide the determination within 60 days of receiving the petition from the applicant. The board may charge a fee to recoup its costs for each petition.

(5) The requirements of this section do not apply to the criteria that boards may consider when making determinations regarding relicensure or discipline of licensees.

(c) Every board subject to the provisions of this section 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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