WEST VIRGINIA LEGISLATURE

2019 FIRST EXTRAORDINARY SESSION

Enrolled

Senate Bill 1006

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed May 20, 2019; in effect from passage]
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(BY REQUEST OF THE EXECUTIVE)

[Passed May 20, 2019; in effect from passage]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-20-8a, relating to authorizing the West Virginia Board of Physical Therapy to conduct criminal background checks on applicants seeking their initial license; requiring applicants seeking initial license to submit to national and state criminal record background check as condition of eligibility for license; mandating such applicants to submit fingerprints and authorize board, West Virginia State Police, and Federal Bureau of Investigation to use records submitted to screen applicants; prohibiting release of background check results, with certain exceptions; establishing that background check records are not public records for purposes of chapter 29B of this code; obligating such applicants to complete background check as soon as possible after application for license; requiring applicants to pay costs of fingerprinting and background check; prohibiting board from disqualifying applicants from licensure because of prior conviction unless conviction was for crime bearing rational nexus to the occupation for which licensure is sought; barring board from using crimes of moral turpitude to make licensure decisions; allowing applicants disqualified for licensure because of criminal conviction to reapply after five years after later date of conviction or date of release from penalty imposed for conviction and providing exception for violent or sexual offenses; establishing procedure for individuals with criminal records to petition board for determination whether such criminal record will disqualify individual from obtaining licensure; and requiring rulemaking by a certain deadline.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-8a. West Virginia Board of Physical Therapy criminal history record checks.

(a) The West Virginia Board of Physical Therapy is authorized to require state and national criminal history record checks for the purpose of issuing licenses. The West Virginia Board of Physical Therapy shall require an applicant, including physical therapists and physical therapy
assistants, as a condition of eligibility for initial license to submit to a state and national criminal history record check as set forth in this section.

(b) 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 a license.

(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 §29B-1-1 et seq. of this code.

(e) The applicant shall ensure that the criminal history record check is completed as soon as possible after the date of the original application for registration.

(f) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(g) The board may not disqualify an applicant for initial licensure 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 occupation requiring licensure.

(h) The board may not use crimes involving moral turpitude in making licensure determinations.
(i) If an applicant is disqualified for licensure because of a criminal conviction that has not been reversed, the board shall afford the applicant the opportunity to reapply for licensure 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 disqualification, to be determined by the board.

(j) An individual with a criminal record who has not previously applied for licensure, certification, or registration may petition the board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or other authorization to practice. 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 inform the individual of his or her standing within 60 days of receiving the petition from the applicant. The board may charge a fee established by rule to recoup its costs for each petition.

(k) The board 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.
In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved ... this the ... Day of ... 2019.

Governor
PRESENTED TO THE GOVERNOR

May 24, 2019

Time 4:07 P.M.