

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2486

BY DELEGATE SHOTT, FOSTER, KESSINGER AND PUSHKIN

[Introduced January 17, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §30-1-22, relating to using records of criminal conviction to disqualify a person
3 from receiving a license for a profession or occupation; requiring criminal offenses that
4 can be used as a basis for disqualifying a person from receiving a license to bear a rational
5 nexus to duties and responsibilities of the profession or occupation; limiting time of
6 disqualification for criminal offense; providing exceptions; providing petition process for
7 individual with a criminal record to obtain determination of effect of a criminal record on
8 ability to obtain a license; and requiring boards and licensing authorities to update
9 legislative rules.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF
EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.**

§30-1-22. Use of criminal records as disqualification of authorization to practice.

1 (a) Boards or licensing authorities referred to in this chapter may not disqualify an applicant
2 for licensure because of a prior criminal conviction that has not been reversed unless that
3 conviction is for a crime that bears a rational nexus to the occupation requiring licensure.

4 (b) Boards or licensing authorities referred to in this chapter may not use criteria such as
5 moral character, moral turpitude or other related undefined standards of conduct in making
6 licensure determinations.

7 (c) If an applicant is disqualified for licensure because of a criminal conviction, the board
8 or licensing authority shall afford the applicant the opportunity to submit competent evidence of
9 sufficient rehabilitation and present fitness to perform the duties of the occupation.

10 (d) If an applicant is disqualified for licensure because of a criminal conviction that has not
11 been reversed, the board or licensing authority shall afford the applicant the opportunity to reapply
12 for licensure a maximum of five years from the date of conviction or date of release from the

13 penalty that was imposed, whichever is later, if the individual has not been convicted of any other
14 crime during that period of time: *Provided*, That convictions for violent or sexual offenses or
15 offenses that bear a rational nexus to the occupation shall subject an individual to a longer period
16 of disqualification, to be determined by the individual board or licensing authority.

17 (e) An individual with a criminal record may petition a board at any time for a determination
18 of whether the individual's criminal record will disqualify the individual from obtaining a license or
19 other authorization to practice. This petition shall include sufficient details on the individual's
20 criminal record to enable the licensing authority to identify the jurisdiction where the conviction
21 occurred, the date of the conviction and the specific nature of the conviction. The licensing
22 authority shall inform the individual of his or her standing within 60 days of receiving the petition
23 from the applicant. The licensing authority may charge a fee to recoup its costs not to exceed \$25
24 for each petition.

25 (f) Nothing in this article alters the standards and procedures each licensing authority uses
26 for evaluating licensure renewals.

27 (g) Every board shall propose rules or amendments to existing rules for legislative
28 approval to comply with the provisions of this article. These rules or amendments to rules shall
29 be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time
30 limit to be considered by the Legislature during its regular session in the year 2020.

NOTE: The purpose of this bill is to remove barriers to employment for individuals with criminal records who seek licensure or certification in an occupation governed by this article, with certain exceptions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.