

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Senate Bill 529

BY SENATOR MAYNARD

[Passed April 8, 2021; in effect 90 days from passage

(July 7, 2021)]

1 AN ACT to amend and reenact §17A-6-6 of the Code of West Virginia, 1931, as amended, relating
2 to refusal or issuance of a license certificate; and correcting an erroneous code citation.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS;
SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.**

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

1 (a) Upon the review of the application and all other information before him or her, the
2 commissioner may make and enter an order denying an application for a license certificate and
3 refuse the license certificate sought. A denial and refusal are final and conclusive unless an
4 appeal is made in accordance with the provisions of rules proposed for legislative approval in
5 accordance with the provisions of §29A-3-1 *et seq.* of this code. The commissioner shall make
6 and enter an order denying or refusing a license, if the commissioner finds that the applicant
7 (individually, if an individual, or the partners, if a co-partnership, or the officers and directors, if a
8 corporation):

9 (1) Has failed to furnish the required bond unless otherwise exempt under the provisions
10 of §17A-6-2a of this code;

11 (2) Has failed to furnish the required certificate of insurance;

12 (3) Has knowingly made false statement of a material fact in his or her application;

13 (4) Has habitually defaulted on financial obligations in this state or any other state or
14 jurisdiction;

15 (5) Has been convicted of a felony: *Provided*, That the commissioner shall apply §17A-6-
16 6(c) and §17A-6-6(d) of this code in determining whether an applicant's prior criminal convictions
17 bear a rational nexus to the license being sought;

18 (6) So far as can be ascertained, has not complied with, and will not comply with, the
19 registration and title laws of this state or any other state or jurisdiction;

20 (7) Does not or will not have or maintain at each place of business, subject to the
21 qualification contained in §17A-6-1(a)(17) of this code with respect to a new motor vehicle dealer
22 (an established place of business as defined for the business in question) in that section;

23 (8) Has been convicted of any fraudulent act in connection with the business of new motor
24 vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle
25 dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler in this state or any other
26 state or jurisdiction: *Provided*, That the commissioner shall apply §17A-6-6(c) and §17A-6-6(d) of
27 this code in determining whether an applicant's prior criminal convictions bear a rational nexus to
28 the license being sought;

29 (9) Has done any act or has failed or refused to perform any duty for which the license
30 certificate sought could be suspended or revoked were it then issued and outstanding;

31 (10) Is not age 18 years or older;

32 (11) Is delinquent in the payment of any taxes owed to the United States, the State of
33 West Virginia, or any political subdivision of the state;

34 (12) Has been denied a license in another state or has been the subject of license
35 revocation or suspension in another state;

36 (13) Has committed any action in another state which, if it had been committed in this
37 state, would be grounds for denial and refusal of the application for a license certificate;

38 (14) Has failed to pay any civil penalty assessed by this state or any other state;

39 (15) Has failed to reimburse, when ordered, any claim against the dealer recovery fund as
40 prescribed in §17A-6-2a of this code; or

41 (16) Has failed to comply with the provisions of §17A-6E-1 *et seq.* of this code pertaining
42 to the employment of licensed salespersons.

43 Otherwise, the commissioner shall issue to the applicant the appropriate license certificate
44 which entitles the licensee to engage in the business of new motor vehicle dealer, used motor

45 vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer,
46 used parts dealer, or wrecker or dismantler, as the case may be.

47 (b) A license certificate issued in accordance with the provisions of this article is not
48 transferable.

49 (c) The commissioner may not disqualify an applicant from initial licensure because of a
50 prior criminal conviction that remains unreversed unless that conviction is for a crime that bears
51 a rational nexus to the activity requiring licensure. In determining whether a criminal conviction
52 bears a rational nexus to a profession or occupation, the commissioner shall consider at a
53 minimum:

54 (1) The nature and seriousness of the crime for which the individual was convicted;

55 (2) The passage of time since the commission of the crime;

56 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the
57 duties and discharge the responsibilities of the profession or occupation; and

58 (4) Any evidence of rehabilitation or treatment undertaken by the individual.

59 (d) Notwithstanding any other provision of this code to the contrary, if an applicant is
60 disqualified from licensure because of a prior criminal conviction, the commissioner shall permit
61 the applicant to apply for initial licensure if:

62 (1) A period of five years has elapsed from the date of conviction or the date of release
63 from incarceration, whichever is later;

64 (2) The individual has not been convicted of any other crime during the period of time
65 following the disqualifying offense; and

66 (3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
67 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
68 of disqualification from licensure, to be determined by the commissioner.

69 (e) An individual with a criminal record who has not previously applied for licensure may
70 petition the commissioner at any time for a determination of whether the individual's criminal

71 record will disqualify the individual from obtaining a license. This petition shall include sufficient
72 details about the individual's criminal record to enable the commissioner to identify the jurisdiction
73 where the conviction occurred, the date of the conviction, and the specific nature of the conviction.
74 The commissioner shall provide the determination within 60 days of receiving the petition from
75 the applicant. The commissioner may charge a fee to recoup costs for each petition.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2021.

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Governor