

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 493

By Senators Chapman, Rucker, Barrett, and Woelfel

[Originating in the Committee on the Judiciary;

reported February 14, 2024]

1 A BILL to amend and reenact §17A-6-6 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §19-2C-5b of said code; to amend and reenact §19-23-8 of said code; to
3 amend and reenact §21-1-6 of said code; to amend and reenact §21-5-5c of said code; to
4 amend and reenact §21-14-6 of said code; to amend and reenact §21-16-7 of said code; to
5 amend and reenact §29-3B-4 of said code; to amend and reenact §29-3C-4 of said code;
6 to amend and reenact §29-3D-6 of said code; to amend and reenact §30-1-24 of said code;
7 to amend and reenact §30-5-9 and §30-5-11a of said code; to amend and reenact §30-6-8
8 and §30-6-17 of said code; to amend and reenact §30-20-8a of said code; to amend and
9 reenact §30-32-10a of said code; to amend and reenact §30-36-10 of said code; to amend
10 and reenact §31-17A-5 of said code; to amend and reenact §32A-2-8 of said code; and to
11 amend and reenact §33-13C-3 and §33-13C-4 of said code, all relating generally to the
12 use of criminal records as disqualification from initial licensure or other authorization to
13 practice a profession or occupation; prohibiting licensing authorities from disqualifying an
14 applicant from initial licensure because of a prior criminal conviction that remains
15 unreversed unless that conviction is for a crime that directly and specifically relates to the
16 activity requiring licensure such that granting the applicant licensure would pose a direct
17 and substantial risk to the public because the applicant has not been rehabilitated;
18 providing factors for a licensing authority to determine whether a criminal conviction
19 directly and specifically relates to a profession or occupation; clarifying that a licensing
20 authority may not disqualify an applicant from initial licensure because of a prior criminal
21 conviction if certain criteria are met; prohibiting consideration of good moral character or
22 crimes of moral turpitude as a basis for disqualifying applicant for initial licensure;
23 authorizing an individual with a criminal record who has not previously held a license from
24 the licensing authority to petition the authority for a determination of whether the
25 individual's criminal record will disqualify the individual from obtaining a license; clarifying
26 that these requirements do not apply to discipline of licensees or reinstatement of a license

27 following discipline; prohibiting a licensing authority from considering, or from requiring, an
28 individual to disclose an arrest not followed by conviction in an application for initial
29 licensure or determination of qualification for license; and requiring licensing authorities to
30 update licensure forms, relevant public-facing documents, and website.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION,
CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.**

**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 appeal
4 is made in accordance with the provisions of rules proposed for legislative approval in accordance
5 with the provisions of §29A-3-1 *et seq.* of this code. The commissioner shall make and enter an
6 order denying or refusing a license, if the commissioner finds that the applicant (individually, if an
7 individual, or the partners, if a co-partnership, or the officers and directors, if a corporation):

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

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

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

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

14 (5) Has been convicted of a felony: *Provided*, That the commissioner shall apply ~~§17A-6-~~
15 ~~6(c) and §17A-6-6(d) of this code in determining~~ subsections (c) and (d) of this section to

16 determine whether an applicant's prior criminal convictions ~~bear a rational nexus~~ directly and
17 specifically relate 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~~ subsections (c) and (d) of this section to determine whether an applicant's
28 prior criminal convictions ~~bear a rational nexus~~ directly and specifically relate to the license being
29 sought;

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

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

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

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

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

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

40 (15) Has failed to reimburse, when ordered, any claim against the Dealer Recovery Fund
41 as prescribed in §17A-6-2a of this code; or

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

44 Otherwise, the commissioner shall issue to the applicant the appropriate license certificate
45 which entitles the licensee to engage in the business of new motor vehicle dealer, used motor
46 vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer,
47 used parts dealer, or wrecker or dismantler, as the case may be.

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

50 (c) The commissioner may not disqualify an applicant from initial licensure because of a
51 prior criminal conviction that remains unreversed unless that conviction is for a crime that ~~bears a~~
52 ~~rational nexus~~ directly and specifically relates to the duties and responsibilities of the activity
53 requiring licensure such that granting the applicant licensure would pose a direct and substantial
54 risk to the public because the applicant has not been rehabilitated. In determining whether a
55 criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a profession or
56 occupation, the commissioner shall consider, at a minimum:

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

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

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

61 (4) Any evidence of rehabilitation or treatment undertaken by the individual, including the
62 following, if applicable:

63 (i) The age of the individual when he or she committed the offense;

64 (ii) The completion of the criminal sentence;

65 (iii) A certificate of rehabilitation or good conduct;

66 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
67 treatment;

68 (v) Testimonials and recommendations, which may include a progress report from the
69 individual's probation or parole officer;

70 (vi) Education and training;

71 (vii) Employment history relevant to the license being sought;

72 (viii) Whether the individual will be bonded in the occupation; and

73 (ix) Other evidence of rehabilitation the individual submits to the commissioner.

74 (d) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
75 ~~disqualified from licensure because of a prior criminal conviction, the commissioner shall permit~~
76 ~~the applicant to apply for initial licensure if:~~ the commissioner may not disqualify an applicant from
77 initial licensure because of a prior criminal conviction if:

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

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

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

85 (e) An individual with a criminal record who has not previously ~~applied for licensure~~ held a
86 license under this section may petition the commissioner at any time for a determination of
87 whether the individual's criminal record will disqualify the individual from obtaining a license. This
88 petition shall include sufficient details about the individual's criminal record to enable the
89 commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction,
90 and the specific nature of the conviction. The commissioner shall provide the determination within
91 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup
92 costs for each petition.

93 (f) Notwithstanding any other provision of this chapter to the contrary, an individual may not

94 be required to disclose, nor may the commissioner consider, an arrest not followed by a conviction
95 in an application for initial licensure or a determination under subsection (e) of this section.

96 (g) The commissioner shall update his or her licensure forms, other relevant public-facing
97 documents, and website to explain the requirements of this section, including, but not limited to,
98 the availability of the process set forth in subsection (e) of this section.

CHAPTER 19. AGRICULTURE.

ARTICLE 2C. AUCTIONEERS.

1 §19-2C-5b. Background checks required.

1 (a) A person applying for a license pursuant to §19-2C-5, §19-2C-6, or §19-2C-6c of this
2 code may be required to submit to a state and national criminal history record check. The criminal
3 history record check shall be based on fingerprints submitted to the West Virginia State Police or
4 its assigned agent for forwarding to the Federal Bureau of Investigation.

5 (b) The applicant shall meet all requirements necessary to accomplish the state and
6 national criminal history record check, including:

7 (1) Submitting fingerprints for the purposes set forth in this subsection; and

8 (2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of
9 Investigation to use all records submitted and produced for the purpose of screening the applicant
10 for a license.

11 (c) The results of the state and national criminal history record check may not be released
12 to or by a private entity except:

13 (1) To the individual who is the subject of the criminal history record check;

14 (2) With the written authorization of the individual who is the subject of the criminal history
15 record check; or

16 (3) Pursuant to a court order.

17 (d) The criminal history record check and related records are not public records for the
18 purposes of chapter 29B of this code.

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

21 (f) The commissioner may not disqualify an applicant for initial licensure, certification, or
22 registration because of a prior criminal conviction that has not been reversed unless that
23 conviction is for a crime that ~~bears a rational nexus~~ directly and specifically relates to the duties
24 and responsibilities of the occupation requiring licensure such that granting the applicant licensure
25 would pose a direct and substantial risk to the public because the applicant has not been
26 rehabilitated. In determining whether a criminal conviction directly and specifically relates to a
27 profession or occupation, the commissioner shall consider, at a minimum:

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

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

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

32 (4) Any evidence of rehabilitation or treatment undertaken by the individual, including the
33 following, if applicable:

34 (i) The age of the individual when he or she committed the offense;

35 (ii) The completion of the criminal sentence;

36 (iii) A certificate of rehabilitation or good conduct;

37 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
38 treatment;

39 (v) Testimonials and recommendations, which may include a progress report from the
40 individual's probation or parole officer;

41 (vi) Education and training;

42 (vii) Employment history relevant to the license being sought;

43 (viii) Whether the individual will be bonded in the occupation; and

44 (ix) Other evidence of rehabilitation the individual submits to the commissioner.

45 ~~(g) The commissioner may not use crimes involving moral turpitude in making licensure,~~
46 ~~certification or registration determinations. Because the terms “moral turpitude” and “good moral~~
47 ~~character” are vague and subject to inconsistent applications, the commissioner may not rely upon~~
48 ~~the description of a crime for which an applicant has been convicted as one of “moral turpitude” or~~
49 ~~the applicant lacking “good moral character” as a basis for denying licensure.~~

50 ~~(h) If an applicant is disqualified for licensure, certification or registration because of a~~
51 ~~criminal conviction that has not been reversed, the commissioner shall afford the applicant the~~
52 ~~opportunity to reapply for licensure, certification or registration after the expiration of five years~~
53 ~~from the date of conviction or date of release from the penalty that was imposed, whichever is~~
54 ~~later, if the individual has not been convicted of any other crime during that period of time:~~
55 ~~*Provided*, That convictions for violent or sexual offenses or offenses shall subject an individual to a~~
56 ~~longer period of disqualification, to be determined by the individual board or licensing authority.~~
57 Notwithstanding any other provision of this code to the contrary, the commissioner may not
58 disqualify an applicant from licensure because of a prior criminal conviction if:

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

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

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

66 (i) An individual with a criminal record who has not previously applied for licensure held a
67 license, certification, or registration under this section may petition the commissioner at any time
68 for a determination of whether the individual's criminal record will disqualify the individual from

69 obtaining a license or other authorization. This petition shall include sufficient details about the
70 individual's criminal record to enable the commissioner to identify the jurisdiction where the
71 conviction occurred, the date of the conviction, and the specific nature of the conviction. The
72 commissioner shall inform the individual of his or her standing within 60 days of receiving the
73 petition from the applicant. The licensing authority may charge a fee to recoup its costs for each
74 petition.

75 (j) Nothing in this section alters the standards and procedures the commissioner uses for
76 evaluating licensure, certification, or registration renewals.

77 (k) The commissioner shall propose rules or amendments to existing rules for legislative
78 approval to comply with the provisions of this section pursuant to the provisions of §29A-3-1 *et*
79 *seq.* of this code. ~~within the applicable time limit to be considered by the Legislature during its~~
80 ~~regular session in the year 2020.~~

81 (l) The provisions of this section enacted during the 2019 Regular Session of the
82 Legislature shall not apply to current licensees who maintain active licensure, but shall apply to
83 individuals currently holding an apprentice auctioneer license who are applying for an auctioneer
84 license, or to any current license holder whose license lapses and who is required to reapply.

85 (m) Notwithstanding any other provision of this chapter to the contrary, an individual may
86 not be required to disclose, nor may a board consider, an arrest not followed by a conviction in an
87 application for initial licensure or a determination under subsection (i) of this section.

88 (m) The commissioner shall update his or her licensure forms, other relevant public-facing
89 documents, and website to explain the requirements of this section, including, but not limited to,
90 the availability of the process set forth in subsection (i) of this section.

ARTICLE 23. HORSE AND DOG RACING.

**§19-23-8. Consideration of application for license or permit; issuance or denial; contents of
license or permit; grounds for denial of application; determination of racing dates;
license or permit not transferable or assignable; limitation on license; validity of**

permit.

1 (a) The Racing Commission shall promptly consider any application for a license or permit,
2 as the case may be. Based upon such application and all other information before it, the Racing
3 Commission shall make and enter an order either approving or denying the application. The
4 application may be denied for any reason specified in subsection (b) of this section. If an
5 application for a license is approved, the Racing Commission shall issue a license to conduct a
6 horse or dog race meeting and shall designate on the face of the license the kind or type of horse
7 or dog racing for which the ~~same~~ license is issued, the racing association to which the ~~same~~
8 license is issued, the dates upon which the horse or dog race meeting is to be held or conducted
9 (which may be any weekdays, or weeknights, including Sundays), the location of the horse or dog
10 racetrack, place, or enclosure where the horse or dog race meeting is to be held or conducted, and
11 other information as the Racing Commission ~~shall consider~~ considers proper. If an application for a
12 permit is approved, the Racing Commission shall issue a permit and shall designate on the face of
13 the permit such information as the Racing Commission considers proper.

14 (b) The Racing Commission may deny the application and refuse to issue the license or
15 permit, as the case may be, which denial and refusal is final and conclusive, unless a hearing is
16 demanded in accordance with the provisions of §19-23-16 of this code, if the Racing Commission
17 finds that the applicant individually, if an individual, or the partners or members, if a partnership,
18 firm, or association, or the owners and directors, if a corporation:

19 (1) Has knowingly made false statement of a material fact in the application or has
20 knowingly failed to disclose any information called for in the application;

21 (2) Is or has been guilty of any corrupt or fraudulent act, practice, or conduct in connection
22 with a horse or dog race meeting in this or any other state;

23 (3) Has been convicted, within 10 years prior to the date of the application, of an offense
24 which under the law of this state, of any other state, or of the United States of America ~~shall~~
25 ~~constitute~~ constitutes a felony: *Provided*, That the Racing Commission shall apply §19-23-8(g)

26 and §19-23-8(h) of this code in determining whether an applicant's prior criminal convictions bear
27 a ~~rational nexus~~ directly and specifically relate to the license or permit being sought pursuant to
28 subsection (g) of this section;

29 (4) Has failed to comply with the provisions of this article or any reasonable rules of the
30 Racing Commission;

31 (5) Has had a license to hold or conduct a horse or dog race meeting or a permit to
32 participate ~~therein~~ in the meeting denied for just cause, suspended, or revoked in any other state;

33 (6) Has defaulted in the payment of any obligation or debt due to this state under the
34 provisions of this article;

35 (7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do
36 business within this state;

37 (8) In the case of an application for a license, has failed to furnish bond or other adequate
38 security, if the same is required by the Racing Commission under the provisions of §19-23-7 of this
39 code;

40 (9) In the case of an application for a permit, is unqualified to perform the duties required for
41 the permit sought; or

42 (10) In the case of an application for a permit, is, for just cause, determined to be
43 undesirable to perform the duties required of the applicant.

44 (c) In issuing licenses and fixing dates for horse or dog race meetings at the various horse
45 racetracks and dog racetracks in this state, the Racing Commission shall consider the horse
46 racing circuits and dog racing circuits with which the horse racetracks and dog racetracks in this
47 state are associated or contiguous to and shall also consider dates which are calculated to
48 increase the tax revenues accruing from horse racing and dog racing.

49 (d) A license issued under the provisions of this article is neither transferable nor
50 assignable to any other racing association and may not permit the holding or conducting of a horse
51 or dog race meeting at any horse or dog racetrack, place, or enclosure not specified thereon.

52 However, if the specified horse or dog racetrack, place, or enclosure becomes unsuitable for the
53 horse or dog race meeting because of flood, fire, or other catastrophe, or cannot be used for any
54 reason, the Racing Commission may, upon application, authorize the horse or dog race meeting,
55 or any remaining portion thereof, to be conducted at any other racetrack, place, or enclosure
56 available for that purpose, provided that the owner of the racetrack, place, or enclosure willingly
57 consents to the use.

58 (e) No type of horse racing or dog racing shall be conducted by a licensee at any race
59 meeting other than that type for which a license was issued.

60 (f) Each permit issued under the provisions of this section shall be for a period of one year,
61 unless approved otherwise by the commission. Effective January 1, 2012, each permit shall be
62 renewed according to the following schedule: Permits issued to persons whose date of birth is
63 January 1 through and including April 30 shall be renewed no later than April 30 of each year;
64 permits issued to persons whose date of birth is May 1 through and including August 31 shall be
65 renewed no later than August 31 of each year; and permits issued to persons whose date of birth is
66 September 1 through and including December 31 shall be renewed no later than December 31 of
67 each year. Each permit shall be valid at all horse or dog race meetings during the period for which
68 it was issued unless it be sooner suspended or revoked in accordance with the provisions of this
69 article. A permit issued under the provisions of this article is neither transferable nor assignable to
70 any other person.

71 (g) The Racing Commission may not disqualify an applicant from an initial license or permit
72 because of a prior criminal conviction that remains unreversed, unless that conviction is for a crime
73 that ~~bears a rational nexus~~ directly and specifically relates to the duties and responsibilities of the
74 activity requiring a license or permit such that granting the applicant licensure would pose a direct
75 and substantial risk to the public because the applicant has not been rehabilitated. In determining
76 whether a criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a profession
77 or occupation, the Racing Commission shall consider at a minimum:

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

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

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

82 (4) Any evidence of rehabilitation or treatment undertaken by the individual, including the
83 following, if applicable:

84 (i) The age of the individual when he or she committed the offense;

85 (ii) The completion of the criminal sentence;

86 (iii) A certificate of rehabilitation or good conduct;

87 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
88 treatment;

89 (v) Testimonials and recommendations, which may include a progress report from the
90 individual's probation or parole officer;

91 (vi) Education and training;

92 (vii) Employment history relevant to the license being sought;

93 (viii) Whether the applicant will be bonded in the occupation; and

94 (ix) Other evidence of rehabilitation the applicant submits to the commissioner.

95 (h) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
96 ~~disqualified from a license or permit because of a prior criminal conviction, the commissioner shall~~
97 ~~permit the applicant to apply for an initial license or permit if:~~ the commissioner may not disqualify
98 an applicant from initial licensure because of a prior criminal conviction if:

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

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

103 (3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a

104 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
105 of disqualification from licensure, to be determined by the commissioner.

106 (i) An individual with a criminal record who has not previously ~~applied for~~ held a license or
107 permit under this section may petition the Racing Commission at any time for a determination of
108 whether the individual's criminal record will disqualify the individual from obtaining a license or
109 permit. This petition shall include sufficient details about the individual's criminal record to enable
110 the Racing Commission to identify the jurisdiction where the conviction occurred, the date of the
111 conviction, and the specific nature of the conviction. The Racing Commission shall provide the
112 determination within 60 days of receiving the petition from the applicant. The Racing Commission
113 may charge a fee to recoup its costs for each petition.

114 (j) The Racing Commission may propose rules for legislative approval in accordance with
115 the provisions of §29A-3-1 *et seq.* of this code which establish the criteria for the approval or denial
116 of a license or permit.

117 (k) Notwithstanding any other provision of this chapter to the contrary, an individual may
118 not be required to disclose, nor may the Racing Commission consider, an arrest not followed by a
119 conviction in an application for initial licensure or a determination under subsection (i) of this
120 section.

121 (l) The Racing Commission shall update its licensure forms, other relevant public-facing
122 documents, and website to explain the requirements of this section, including, but not limited to,
123 the availability of the process set forth in subsection (i) of this section.

CHAPTER 21. LABOR

ARTICLE 1. DIVISION OF LABOR.

§21-1-6. Use of criminal records as disqualification from authorization to engage in licensed profession or occupation.

1 (a) The commissioner may not disqualify an applicant from initial licensure, as required in

2 this chapter, because of a prior criminal conviction that remains unreversed unless that conviction
3 is for a crime that ~~bears a rational nexus~~ directly and specifically relates to the duties and
4 responsibilities of the activity requiring licensure such that granting the applicant licensure would
5 pose a direct and substantial risk to the public because the applicant has not been rehabilitated. In
6 ~~determining whether a criminal conviction bears a rational nexus a profession or occupation~~
7 making its determination, the commissioner shall consider, at a minimum:

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

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

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

12 (4) Any evidence of rehabilitation or treatment undertaken by the individual, including the
13 following, if applicable:

14 (i) The age of the individual when he or she committed the offense;

15 (ii) The completion of the criminal sentence;

16 (iii) A certificate of rehabilitation or good conduct;

17 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
18 treatment;

19 (v) Testimonials and recommendations, which may include a progress report from the
20 individual's probation or parole officer;

21 (vi) Education and training;

22 (vii) Employment history relevant to the license being sought;

23 (viii) Whether the individual will be bonded in the occupation; and

24 (ix) Other evidence of rehabilitation the individual submits to the commissioner.

25 (b) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
26 ~~disqualified from licensure because of a prior criminal conviction, the commissioner shall permit~~
27 ~~the applicant to apply for initial licensure if:~~ the commissioner may not disqualify an applicant from

28 initial licensure because of a prior criminal conviction if:

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

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

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

36 (c) An individual with a criminal record who has not previously ~~applied for licensure~~ held a
37 license under this section may petition the commissioner at any time for a determination of
38 whether the individual's criminal record will disqualify the individual from obtaining a license. This
39 petition shall include sufficient details about the individual's criminal record to enable the
40 commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction,
41 and the specific nature of the conviction. The commissioner shall provide the determination within
42 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup
43 its costs for each petition.

44 (d) Notwithstanding any other provision of this chapter to the contrary, an individual may
45 not be required to disclose, nor may the commission consider, an arrest not followed by a
46 conviction in an application for initial licensure or a determination under subsection (c) of this
47 section.

48 (e) The commissioner shall update his or her licensure forms, other relevant public-facing
49 documents, and website to explain the requirements of this section, including, but not limited to,
50 the availability of the process set forth in subsection (c) of this section.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

**§21-5-5c. License required for psychophysiological detection of deception examiners;
qualifications; promulgation of rules governing administration of**

psychophysiological detection of deception examinations.

1 (a) No person, firm, or corporation shall administer a psychophysiological detection of
2 deception examination, lie detector, or other similar examination utilizing mechanical or electronic
3 measures of physiological reactions to evaluate truthfulness without holding a current valid license
4 to do so as issued by the Commissioner of Labor. No examination shall be administered by a
5 licensed corporation except by an officer or employee thereof who is also licensed.

6 (b) A person is qualified to receive a license as an examiner if he or she:

7 (1) Is at least 21 years of age;

8 (2) Is a citizen of the United States;

9 (3) Has not been convicted of a felony: *Provided*, That the commissioner shall apply §21-1-
10 6 of this code to determine if whether the prior criminal conviction ~~bears a rational nexus~~ directly
11 and specifically relates to the license being sought;

12 (4) Has not been released or discharged with other than honorable conditions from any of
13 the armed services of the United States or that of any other nation;

14 (5) Has passed an examination conducted by the Commissioner of Labor or under his or
15 her supervision to determine his or her competency to obtain a license to practice as an examiner;

16 (6) Has satisfactorily completed not less than six months of internship training; and

17 (7) Has met any other qualifications of education or training established by the
18 Commissioner of Labor in his or her sole discretion which qualifications are to be at least as
19 stringent as those recommended by the American Polygraph Association.

20 (c) The Commissioner of Labor may designate and administer any test he or she considers
21 appropriate to those persons applying for a license to administer psychophysiological detection of
22 deception, lie detector, or similar examination. The test shall be designed to ensure that the
23 applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and
24 has been trained in accordance with association rules. The test must also include a rigorous
25 examination of the applicant's knowledge of and familiarity with all aspects of operating

26 psychophysiological detection of deception equipment and administering psychophysiological
27 detection of deception examinations.

28 (d) The license to administer psychophysiological detection of deception, lie detector, or
29 similar examinations to any person shall be issued for a period of one year. It may be reissued from
30 year to year. The licenses to be issued are:

31 (1) "Class I license" which authorizes an individual to administer psychophysiological
32 detection of deception examinations for all purposes which are permissible under the provisions of
33 this article and other applicable laws and rules.

34 (2) "Class II license" which authorizes an individual who is a full-time employee of a law-
35 enforcement agency to administer psychophysiological detection of deception examinations to its
36 employees or prospective employees only.

37 (e) The Commissioner of Labor shall charge an annual fee to be established by legislative
38 rule. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and
39 deposited in an appropriated special revenue account hereby created in the State Treasury to be
40 known as the Psychophysiological Examiners Fund and expended for the implementation and
41 enforcement of this section. Through June 30, 2019, amounts collected which are found from time
42 to time to exceed funds needed for the purposes set forth in this section may be utilized by the
43 commissioner as needed to meet the division's funding obligations: *Provided*, That beginning July
44 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the
45 division's funding obligations. In addition to any other information required, an application for a
46 license shall include the applicant's Social Security number.

47 (f) The Commissioner of Labor shall propose rules for legislative approval in accordance
48 with §29A-3-1 *et seq.* of this code governing the administration of psychophysiological detection of
49 deception, lie detector, or similar examination to any person: *Provided*, That all applicable rules in
50 effect on the effective date of §21-5-5a, §21-5-5b, §21-5-5c, and §21-5-5d of this code will remain
51 in effect until amended, withdrawn, revoked, repealed, or replaced. The legislative rules shall

52 include:

53 (1) The type and amount of training or schooling necessary for a person before which he or
54 she may be licensed to administer or interpret a psychophysiological detection of deception, lie
55 detector, or similar examination;

56 (2) Testing requirements, including the designation of the test to be administered to
57 persons applying for licensure;

58 (3) Standards of accuracy which shall be met by machines or other devices to be used in
59 psychophysiological detection of deception, lie detector, or similar examination;

60 (4) The conditions under which a psychophysiological detection of deception, lie detector,
61 or similar examination may be administered;

62 (5) Fees for licenses, renewals of licenses, and other services provided by the
63 commissioner;

64 (6) Any other qualifications or requirements, including continuing education, established by
65 the commissioner for the issuance or renewal of licenses; and

66 (7) Any other purpose to carry out the requirements of §21-5-5a, §21-5-5b, §21-5-5c, and
67 §21-5-5d of this code.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-6. Denial, suspension, and revocation of license.

1 (a) The Commissioner of Labor may deny a license to any applicant who fails to comply
2 with the rules established by the Commissioner of Labor, or who lacks the necessary
3 qualifications: *Provided*, That the commissioner shall apply §21-1-6 of this code to determine if
4 whether the prior criminal conviction bears a rational nexus directly and specifically relates to the
5 license being sought.

6 (b) The Commissioner of Labor may, upon complaint or upon his or her own inquiry, and
7 after notice to the licensee, suspend or revoke a licensee's license if:

8 (1) The license was granted upon an application or documents supporting the application

9 which materially misstated the terms of the applicant's qualifications or experience;

10 (2) The licensee subscribed or vouched for a material misstatement in his or her
11 application for licensure;

12 (3) The licensee incompetently or unsafely performs plumbing work; or

13 (4) The licensee violated any statute of this state, any legislative rule or any ordinance of
14 any municipality or county of this state which protects the consumer or public against unfair,
15 unsafe, unlawful, or improper business practices.

ARTICLE 16. REGULATION OF HEATING, VENTILATING, AND COOLING WORK.

§21-16-7. Denial, suspension, and revocation of license.

1 (a) The Commissioner of Labor may deny a license to any applicant who fails to comply
2 with the provisions of this article or the rules established by the Commissioner of Labor, or who
3 lacks the necessary qualifications: *Provided*, That the commissioner shall apply §21-1-6 of this
4 code to determine if whether the prior criminal conviction ~~bears a rational nexus~~ directly and
5 specifically relates to the license being sought.

6 (b) The Commissioner of Labor may, upon complaint or upon his or her own inquiry, and
7 after notice to the licensee, suspend, or revoke a licensee's license if:

8 (1) The license was granted upon an application or documents supporting the application
9 which materially misstated the terms of the applicant's qualifications or experience;

10 (2) The licensee subscribed or vouched for a material misstatement in his or her
11 application for licensure;

12 (3) The licensee incompetently or unsafely performs heating, ventilating, and cooling work;
13 or

14 (4) The licensee violated any statute of this state, any legislative rule, or any ordinance of
15 any municipality or county of this state which protects the consumer or public against unfair,
16 unsafe, unlawful, or improper business practices.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal; reciprocity.

1 (a) The following classes of license may be issued by the State Fire Marshal: master
2 electrician license, journeyman electrician license, and temporary electrician license. Additional
3 classes of specialty electrician license may be issued by the State Fire Marshal.

4 (b) The State Fire Marshal shall issue the appropriate class of license upon a finding that
5 the applicant possesses the qualifications for the class of license to be issued. When considering
6 whether an applicant possess the qualifications for the class of license, the State Fire Marshal
7 shall consider whether an applicant's prior criminal convictions ~~bear a rational nexus on~~ directly
8 and specifically relate to the license being sought.

9 (1) The State Fire Marshal may not disqualify an applicant from initial licensure because of
10 a prior criminal conviction that remains unreversed unless that conviction is for a crime that ~~bears~~
11 ~~a rational nexus~~ directly and specifically relates to the duties and responsibilities of the activity
12 requiring licensure such that granting the applicant licensure would pose a direct and substantial
13 risk to the public because the applicant has not been rehabilitated. In determining whether a
14 criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a profession or
15 occupation, the State Fire Marshal shall consider, at a minimum:

16 (A) The nature and seriousness of the crime for which the individual was convicted;

17 (B) The passage of time since the commission of the crime;

18 (C) The relationship of the crime to the ability, capacity, and fitness required to perform the
19 duties and discharge the responsibilities of the profession or occupation; and

20 (D) Any evidence of rehabilitation or treatment undertaken by the individual, including the
21 following, if applicable:

22 (i) The age of the individual when he or she committed the offense;

23 (ii) The completion of the criminal sentence;

24 (iii) A certificate of rehabilitation or good conduct;

25 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
26 treatment;

27 (v) Testimonials and recommendations, which may include a progress report from the
28 individual's probation or parole officer;

29 (vi) Education and training;

30 (vii) Employment history relevant to the license being sought;

31 (viii) Whether the individual will be bonded in the occupation; and

32 (ix) Other evidence of rehabilitation the applicant submits to the State Fire Marshal.

33 (2) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
34 ~~disqualified from licensure because of a prior criminal conviction, the State Fire Marshal shall~~
35 ~~permit the applicant to apply for initial licensure if:~~ the State Fire Marshal may not disqualify an
36 applicant from initial licensure because of a prior criminal conviction if:

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

39 (B) The individual has not been convicted of any other crime during the period of time
40 following the disqualifying offense; and

41 (C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
42 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
43 of disqualification from licensure, to be determined by the State Fire Marshal.

44 (3) An individual with a criminal record who has not previously ~~applied for licensure~~ held a

45 license under this section may petition the State Fire Marshal at any time for a determination of
46 whether the individual's criminal record will disqualify the individual from obtaining a license. This
47 petition shall include sufficient details about the individual's criminal record to enable the State Fire
48 Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and
49 the specific nature of the conviction.

50 (c) The State Fire Marshal shall propose rules for legislative approval regarding
51 qualifications for testing, issuance of licenses, and renewal in accordance with the provisions of
52 §29A-3-1 *et seq.* of this code.

53 (d) To the extent that other jurisdictions provide for the licensing of electricians, the State
54 Fire Marshal shall grant the same or equivalent classification of license without written
55 examination upon satisfactory proof furnished to the State Fire Marshal that the qualifications of
56 the applicant demonstrate that the person can perform work safely and competently and is in good
57 standing with all other jurisdictions where he or she is licensed, and upon payment of the required
58 fee.

59 (e) In addition to any other information required, the applicant's social security number
60 shall be recorded on any application for a license submitted pursuant to the provisions of this
61 section.

62 (f) Notwithstanding any other provision of this chapter to the contrary, an individual may not
63 be required to disclose, nor may the State Fire Marshal consider, an arrest not followed by a
64 conviction in an application for initial licensure or a determination under subdivision (3), subsection
65 (b) of this section.

66 (g) The State Fire Marshal shall update his or her licensure forms, other relevant public-
67 facing documents, and website to explain the requirements of this section, including, but not
68 limited to, the availability of the process set forth in subdivision (b)(3) of this section.

ARTICLE 3C. CERTIFICATION OF ELECTRICAL INSPECTORS.

§29-3C-4. Certification program; duties of the State Fire Marshal; rulemaking.

1 (a) The State Fire Marshal shall propose rules for legislative approval in accordance with
2 the provisions of §29A-3-1 *et seq.* of this code to establish a program for the certification of
3 electrical inspectors. Proposed rules shall provide: Standards and procedures for certification,
4 including applications, examinations, fees, qualifications, procedures for investigating complaints,
5 revoking or suspending certifications, and for renewing licenses. The State Fire Marshal ~~is also~~
6 ~~authorized to~~ may propose emergency rules to implement the provisions of this article: *Provided,*
7 That the emergency rules specify an initial certification fee of \$50.

8 (b) The State Fire Marshal shall certify an electrical inspector upon a finding that the
9 applicant possesses the requisite qualifications.

10 (c) When considering whether an applicant possess the qualifications for certification as an
11 electrical inspector, the State Fire Marshal shall consider whether an applicant's prior criminal
12 convictions ~~bear a rational nexus on~~ directly and specifically relates to the certification being
13 sought.

14 (1) The State Fire Marshal may not disqualify an applicant from initial certification because
15 of a prior criminal conviction that remains unreversed unless that conviction is for a crime that
16 ~~bears a rational nexus~~ directly and specifically relates to the duties and responsibilities of the
17 activity requiring certification such that granting the applicant licensure would pose a direct and
18 substantial risk to the public because the applicant has not been rehabilitated. In determining
19 whether a criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a profession
20 or occupation, the State Fire Marshal shall consider, at a minimum:

21 (A) The nature and seriousness of the crime for which the individual was convicted;

22 (B) The passage of time since the commission of the crime;

23 (C) The relationship of the crime to the ability, capacity, and fitness required to perform the
24 duties and discharge the responsibilities of the profession or occupation; and

25 (D) Any evidence of rehabilitation or treatment undertaken by the individual, including the
26 following, if applicable:

27 (i) The age of the individual when he or she committed the offense;

28 (ii) The completion of the criminal sentence;

29 (iii) A certificate of rehabilitation or good conduct;

30 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
31 treatment;

32 (v) Testimonials and recommendations, which may include a progress report from the
33 individual's probation or parole officer;

34 (vi) Education and training;

35 (vii) Employment history relevant to the license being sought;

36 (viii) Whether the individual will be bonded in the occupation; and

37 (ix) Other evidence of rehabilitation the individual submits to the commissioner.

38 (2) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
39 ~~disqualified from certification because of a prior criminal conviction, the State Fire Marshal shall~~
40 ~~permit the applicant to apply for initial certification if:~~ the State Fire Marshal may not disqualify an
41 applicant from initial licensure because of a prior criminal conviction if:

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

44 (B) The individual has not been convicted of any other crime during the period of time
45 following the disqualifying offense; and

46 (C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
47 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
48 of disqualification from certification, to be determined by the State Fire Marshal.

49 (3) An individual with a criminal record who has not previously ~~applied for~~ held a

50 certification under this section may petition the State Fire Marshal at any time for a determination
51 of whether the individual's criminal record will disqualify the individual from obtaining a
52 certification. This petition shall include sufficient details about the individual's criminal record to
53 enable the State Fire Marshal to identify the jurisdiction where the conviction occurred, the date of
54 the conviction, and the specific nature of the conviction.

55 (d) Notwithstanding any other provision of this chapter to the contrary, an individual may
56 not be required to disclose, nor may the State Fire Marshal consider, an arrest not followed by a
57 conviction in an application for initial licensure or a determination under subdivision (3), subsection
58 (c) of this section.

59 (e) The State Fire Marshal shall update his or her licensure forms, other relevant public-
60 facing documents, and website to explain the requirements of this section, including, but not
61 limited to, the availability of the process set forth in subdivision (3), subsection (c) of this section.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-6. Denial, suspension and revocation of license.

1 (a) The State Fire Marshal may deny a license to any applicant who fails to comply with the
2 rules established by the State Fire Marshal, or who lacks the necessary qualifications. When
3 considering whether an applicant possesses the qualifications for a license, the State Fire Marshal
4 shall consider whether an applicant's prior criminal convictions ~~bear a rational nexus on~~ directly
5 and specifically relates to the license being sought.

6 (1) The State Fire Marshal may not disqualify an applicant from initial licensure because of
7 a prior criminal conviction that remains unreversed unless that conviction is for a crime that ~~bears~~
8 ~~a rational nexus~~ directly and specifically relates to the duties and responsibilities of the activity
9 requiring licensure such that granting the applicant licensure would pose a direct and substantial
10 risk to the public because the applicant has not been rehabilitated. In determining whether a

11 criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a profession or
12 occupation, the State Fire Marshal shall consider, at a minimum:

13 (A) The nature and seriousness of the crime for which the individual was convicted;

14 (B) The passage of time since the commission of the crime;

15 (C) The relationship of the crime to the ability, capacity, and fitness required to perform the
16 duties and discharge the responsibilities of the profession or occupation; and

17 (D) Any evidence of rehabilitation or treatment undertaken by the individual, including the
18 following, if applicable:

19 (i) The age of the individual when he or she committed the offense;

20 (ii) The completion of the criminal sentence;

21 (iii) A certificate of rehabilitation or good conduct;

22 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
23 treatment;

24 (v) Testimonials and recommendations, which may include a progress report from the
25 individual's probation or parole officer;

26 (vi) Education and training;

27 (vii) Employment history relevant to the license being sought;

28 (viii) Whether the individual will be bonded in the occupation; and

29 (ix) Other evidence of rehabilitation the individual submits to the State Fire Marshal.

30 (2) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
31 ~~disqualified from licensure because of a prior criminal conviction, the State Fire Marshal shall~~
32 ~~permit the applicant to apply for initial licensure if:~~ the State Fire Marshal may not disqualify an
33 applicant from initial licensure because of a prior criminal conviction if:

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

36 (B) The individual has not been convicted of any other crime during the period of time

37 following the disqualifying offense; and

38 (C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
39 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
40 of disqualification from licensure, to be determined by the State Fire Marshal.

41 (3) An individual with a criminal record who has not previously ~~applied for licensure~~ held a
42 license under this section may petition the State Fire Marshal at any time for a determination of
43 whether the individual's criminal record will disqualify the individual from obtaining a license. This
44 petition shall include sufficient details about the individual's criminal record to enable the State Fire
45 Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and
46 the specific nature of the conviction.

47 (b) The State Fire Marshal may, upon complaint or upon his or her own inquiry, and after
48 notice to the licensee, suspend or revoke a licensee's license if:

49 (1) The license was granted upon an application or documents supporting the application
50 which materially misstated the terms of the applicant's qualifications or experience;

51 (2) The licensee subscribed or vouched for a material misstatement in his or her
52 application for licensure; or

53 (3) The licensee incompetently or unsafely performs fire protection work or damper work.

54 (c) Notwithstanding any other provision of this chapter to the contrary, an individual may
55 not be required to disclose, nor may the State Fire Marshal consider, an arrest not followed by a
56 conviction in an application for initial licensure or a determination under subdivision (3), subsection
57 (a) of this section.

58 (d) The State Fire Marshal shall update its licensure forms, other relevant public-facing
59 documents, and website to explain the requirements of this section, including, but not limited to,
60 the availability of the process set forth in subdivision (3), subsection (a) of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

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

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

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

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

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

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

9 (b) Notwithstanding any provision of this chapter to the contrary, except for the professions
10 and occupations regulated by §30-2-1 *et seq.*, §30-3-1 *et seq.*, §30-3E-1 *et seq.*, §30-14-1 *et seq.*,
11 §30-18-1 *et seq.*, and §30-29-1 *et seq.* of this code, and where not in conflict with an existing
12 compact or model act:

13 (1) Boards subject to the requirements of this section may not disqualify an applicant from
14 initial licensure to engage in a profession or occupation because of a prior criminal conviction that
15 remains unreversed unless that conviction is for a crime that ~~bears a rational nexus~~ directly and
16 specifically relates to the duties and responsibilities of the profession or occupation requiring
17 licensure such that granting the applicant licensure would pose a direct and substantial risk to the
18 public because the applicant has not been rehabilitated. In determining whether a criminal
19 conviction ~~bears a rational nexus~~ directly and specifically relates to a profession or occupation, the
20 board shall consider, at a minimum:

21 (A) The nature and seriousness of the crime for which the individual was convicted;

22 (B) The passage of time since the commission of the crime;

23 (C) The relationship of the crime to the ability, capacity, and fitness required to perform the
24 duties and discharge the responsibilities of the profession or occupation; and

25 (D) Any evidence of rehabilitation or treatment undertaken by the individual, including the
26 following, if applicable:

27 (i) The nature and seriousness of the crime for which the individual was convicted;

28 (ii) The passage of time since the commission of the crime;

29 (iii) The relationship of the crime to the ability, capacity, and fitness required to perform the
30 duties and discharge the responsibilities of the profession or occupation; and

31 (iv) Any evidence of rehabilitation or treatment undertaken by the individual, including the
32 following, if applicable:

33 (I) The age of the individual when he or she committed the offense;

34 (II) The completion of the criminal sentence;

35 (III) A certificate of rehabilitation or good conduct;

36 (IV) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
37 treatment;

38 (V) Testimonials and recommendations, which may include a progress report from the
39 individual's probation or parole officer;

40 (VI) Education and training;

41 (VII) Employment history relevant to the license being sought;

42 (VIII) Whether the individual will be bonded in the occupation; and

43 (IX) Other evidence of rehabilitation the individual submits to the board.

44 (2) Because the ~~term~~ terms "moral turpitude" and "good moral character" ~~is~~ are vague and
45 subject to inconsistent applications, boards subject to the requirements of this section may not rely
46 upon the description of a crime for which an applicant has been convicted as one of "moral
47 turpitude" or the applicant lacking "good moral character" as a basis for denying licensure.

48 ~~Provided, That if the prior conviction for the underlying crime bears a rational nexus to the~~

49 ~~profession or occupation requiring licensure, the board may consider the conviction according to~~
50 ~~the requirements of subdivision (1) of this subsection.~~

51 (3) Notwithstanding any other provision of this chapter to the contrary, ~~if an applicant is~~
52 ~~disqualified from licensure because of a prior criminal conviction, a board shall permit the applicant~~
53 ~~to apply for initial licensure if:~~ a board may not disqualify an applicant from initial licensure because
54 of a prior criminal conviction if:

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

57 (B) The individual has not been convicted of any other crime during the period of time
58 following the disqualifying offense; and

59 (C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
60 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
61 of disqualification from licensure, to be determined by the individual board.

62 (4) An individual with a criminal record who has not previously ~~applied for licensure~~ held a
63 license under this section may petition the appropriate board at any time for a determination of
64 whether the individual's criminal record will disqualify the individual from obtaining a license. This
65 petition shall include sufficient details about the individual's criminal record to enable the board to
66 identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific
67 nature of the conviction. The board shall provide the determination within 60 days of receiving the
68 petition from the applicant. The board may charge a fee to recoup its costs for each petition.

69 (5) The requirements of this section do not apply to the criteria that boards may consider
70 when making determinations regarding ~~relicensure or discipline of licensees~~ or reinstatement of a
71 license following discipline.

72 (c) Every board subject to the provisions of this section shall propose rules or amendments
73 to existing rules for legislative approval to comply with the provisions of this section. These rules or
74 amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code.

75 ~~within the applicable time limit to be considered by the Legislature during its regular session in the~~
76 ~~year 2020.~~

77 (d) Notwithstanding any other provision of this chapter to the contrary, an individual may
78 not be required to disclose, nor may a board consider, an arrest not followed by a conviction in an
79 application for initial licensure or a determination under subdivision (b)(4) of this section.

80 (e) Every board subject to the provisions of this section shall update its licensure forms,
81 other relevant public-facing documents, and website to explain the requirements of this section,
82 including, but not limited to, the availability of the process set forth in subdivision (b)(4) of this
83 section.

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS
AND PHARMACIES.**

§30-5-9. Qualifications for licensure as pharmacist;

1 (a) To be eligible for a license to practice pharmacist care under the provisions of this
2 article, the applicant shall:

3 (1) Submit a written application to the board;

4 (2) Be 18 years of age or older;

5 (3) Pay all applicable fees;

6 (4) Graduate from an accredited school of pharmacy;

7 (5) Complete at least 1,500 hours of internship in a pharmacy under the instruction and
8 supervision of a pharmacist;

9 (6) Pass an examination or examinations approved by the board;

10 (7) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code:

11 *Provided*, That an applicant in an active recovery process, which may, in the discretion of the
12 board, be evidenced by participation in a 12-step program or other similar group or process, may
13 be considered;

14 (8) ~~Present to the board satisfactory evidence that he or she is a person of good moral~~
15 ~~character, has not~~ Not have been convicted of a felony involving the sale or distribution of
16 controlled substances;

17 (9) Not have been convicted in any jurisdiction of any other felony or crime which ~~bears a~~
18 ~~rational nexus~~ directly and specifically relates to the individual's ability to practice pharmacist care
19 pursuant to §30-1-24 of this code: *Provided*, That an applicant with a felony conviction other than
20 the felony conviction specified in subdivision eight of this section may apply to the board for
21 licensure no sooner than five years after the date of the conviction. The board shall evaluate each
22 applicant on a case by case basis; and

23 (10) Have fulfilled any other requirement specified by the board in rule.

24 (b) An applicant from another jurisdiction shall comply with all the requirements of this
25 article.

§30-5-11a. Pharmacy technician trainee qualifications.

1 (a) To be eligible for registration as a pharmacy technician trainee to assist in the practice
2 of pharmacist care, the applicant shall:

3 (1) Submit a written application to the board;

4 (2) Pay the applicable fees;

5 (3) (A) Have graduated from a high school or obtained a Certificate of General Educational
6 Development (GED), or

7 (B) Be currently enrolled in a high school competency based pharmacy technician
8 education and training program;

9 (4) (A) Be currently enrolled in a competency-based pharmacy technician education and
10 training program of a learning institution or training center approved by the board; or

11 (B) Be an employee of a pharmacy in an on-the-job competency-based pharmacy
12 technician training program.

13 (5) Not be an alcohol or drug abuser as these terms are defined in §27-1A-11of this code:

14 *Provided*, That an applicant in an active recovery process, which may, in the discretion of the
15 board, be evidenced by participation in a 12-step program or other similar group or process, may
16 be considered;

17 (6) Not have been convicted of a felony in any jurisdiction within 10 years preceding the
18 date of application for registration, which conviction remains unreversed;

19 (7) Not have been convicted of a misdemeanor or felony in any jurisdiction which ~~bears a~~
20 rational nexus directly and specifically relates to the practice of pharmacist care, which conviction
21 remains unreversed pursuant to §30-1-24 of this code; and

22 (8) Have requested and submitted to the board the results of a fingerprint-based state and
23 a national electronic criminal history records check.

24 (b) The rules, authorized duties, and unauthorized prohibitions as set out in §30-5-12 of
25 this code for pharmacy technicians apply to pharmacy technician trainees.

26 (c) The board shall promulgate an emergency rule and legislative rule pursuant ~~article two,~~
27 ~~chapter twenty-nine a to~~ §29A-3-1 et seq. of this code to authorize the requirements of this section
28 to permit pharmacy technician trainees.

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-8. Embalmer license requirements.

1 The board shall issue a license to practice embalming to an applicant who:

2 (a) Is free of a felony conviction ~~bearing a rational nexus~~ which directly and specifically
3 relates to the profession pursuant to §30-1-24 of this code;

4 (b) Is 18 years of age or over;

5 (c) Is a citizen of the United States or is eligible for employment in the United States;

6 (d) Has a high school diploma or its equivalent;

7 (e) Has completed one of the following education requirements, as evidenced by a
8 transcript submitted to the board for evaluation:

9 (1)(A) Has an associate degree from an accredited college or university; or

10 (B) Has successfully completed at least 60 semester hours or 90 quarter hours of
11 academic work in an accredited college or university toward a baccalaureate degree with a
12 declared major field of study; and

13 (2) (A) Has graduated from a school of mortuary science, accredited by the American
14 Board of Funeral Service Education, Inc., which requires as a prerequisite to graduation the
15 completion of a course of study of not less than 12 months; or

16 (B) Has a bachelor degree in mortuary science from an accredited college or university;

17 (f) Has completed a one-year apprenticeship, under the supervision of a licensed
18 embalmer and funeral director actively and lawfully engaged in the practice of embalming and
19 funeral directing in this state, which apprenticeship consisted of:

20 (1) Diligent attention to the work in the course of regular and steady employment and not
21 as a side issue to another employment; and

22 (2) The apprentice taking an active part in:

23 (A) The operation of embalming not less than 35 dead human bodies; and

24 (B) Conducting not less than 35 funeral services;

25 (g) Passes, with an average score of not less than 75 percent, the following examinations:

26 (1) The International Conference of Funeral Service Examining Boards examination at a
27 testing site provided by the national conference, which passage is a condition precedent to taking
28 the state law examination;

29 (2) The West Virginia Laws, Rules, and Regulations Examination, administered by the
30 International Conference of Funeral Service Examining Boards; and

31 (3) Any other examination required by the board; and

32 (h) Has paid all the appropriate fees.

33 A license to practice embalming issued by the board prior to July 1, 2012, shall for all
34 purposes be considered a license issued under this section: *Provided*, That a person holding a
35 license issued prior to July 1, 2012, must renew the license pursuant to the provisions of this

36 article.

§30-6-17. Apprenticeship.

1 (a) After July 1, 2022, the board shall issue a registration to be an apprentice funeral
2 service licensee to an applicant who meets the following requirements:

3 (1) Is free of a felony conviction ~~bearing a rational nexus~~ that directly and specifically
4 relates to the profession pursuant to §30-1-24 of this code;

5 (2) Is 18 years of age or over;

6 (3) Is a citizen of the United States or be eligible for employment in the United States;

7 (4) Has a high school diploma or its equivalent;

8 (5) The required 60 semester hours or 90 quarter hours of college or university credits and
9 mortuary school can be completed prior to, during, or after the apprenticeship; and

10 (6) Has paid the appropriate fees.

11 (b) Any person that commences an apprenticeship prior to January 1, 2003, may continue
12 to serve such apprenticeship and is not subject to the requirements set forth in this section, but is
13 subject to board approval.

14 (c) The board may set the requirements for an apprenticeship, including the manner in
15 which it shall be served and the length of time, which shall not be more than one year for a funeral
16 service licensee and shall not be more than two years for a funeral director.

17 (d) No licensed funeral director or licensed embalmer shall be permitted to register or have
18 registered more than five apprentices under his or her license at the same time.

ARTICLE 20. PHYSICAL THERAPISTS.

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

1 (a) The West Virginia Board of Physical Therapy is authorized to require state and national
2 criminal history record checks for the purpose of issuing licenses. The West Virginia Board of
3 Physical Therapy shall require an applicant, including physical therapists and physical therapy

3 assistants, as a condition of eligibility for initial license to submit to a state and national criminal
4 history record check as set forth in this section.

5 (b) The applicant shall meet all requirements necessary to accomplish the state and
6 national criminal history record check, including:

7 (1) Submitting fingerprints for the purposes set forth in this subsection; and

8 (2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of
9 Investigation to use all records submitted and produced for the purpose of screening the applicant
10 for a license.

11 (c) The results of the state and national criminal history record check may not be released
12 to or by a private entity except:

13 (1) To the individual who is the subject of the criminal history record check;

14 (2) With the written authorization of the individual who is the subject of the criminal history
15 record check; or

16 (3) Pursuant to a court order.

17 (d) The criminal history record check and related records are not public records for the
18 purposes of §29B-1-1 *et seq.* of this code.

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

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

23 (g) The board may not disqualify an applicant for initial licensure because of a prior criminal
24 conviction that has not been reversed unless that conviction is for a crime that bears a rational
25 nexus directly and specifically relates to the occupation requiring licensure pursuant to §30-1-24 of
26 this code.

27 ~~(h) The board may not use crimes involving moral turpitude in making licensure~~
28 ~~determinations.~~

29 ~~(i) If an applicant is disqualified for licensure because of a criminal conviction that has not~~
30 ~~been reversed, the board shall afford the applicant the opportunity to reapply for licensure after the~~
31 ~~expiration of five years from the date of conviction or date of release from the penalty that was~~
32 ~~imposed, whichever is later, if the individual has not been convicted of any other crime during that~~
33 ~~period of time: *Provided*, That convictions for violent or sexual offenses or offenses shall subject~~
34 ~~an individual to a longer period of disqualification, to be determined by the board.~~

35 ~~(j) An individual with a criminal record who has not previously applied for licensure,~~
36 ~~certification, or registration may petition the board at any time for a determination of whether the~~
37 ~~individual's criminal record will disqualify the individual from obtaining a license or other~~
38 ~~authorization to practice. This petition shall include sufficient details about the individual's criminal~~
39 ~~record to enable the board to identify the jurisdiction where the conviction occurred, the date of the~~
40 ~~conviction, and the specific nature of the conviction. The board shall inform the individual of his or~~
41 ~~her standing within 60 days of receiving the petition from the applicant. The board may charge a~~
42 ~~fee established by rule to recoup its costs for each petition.~~

43 ~~(k) The board shall propose rules or amendments to existing rules for legislative approval~~
44 ~~to comply with the provisions of this section. These rules or amendments to rules shall be~~
45 ~~proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code. within the applicable time~~
46 ~~limit to be considered by the Legislature during its regular session in the year 2020.~~

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-10a. Application for licensure; qualification for licensure; examination.

1 (a) Each person desiring to obtain a license from the board to engage in the practice of
2 dealing in or fitting of hearing aids shall make application to the board. The application shall be
3 made in such manner and form as prescribed by the board and shall be accompanied by the
4 prescribed fee. The application shall state under oath that the applicant:

5 (1) Is a resident of this state;

6 (2) Is free of a felony conviction ~~bearing a rational nexus~~ that directly and specifically
7 relates to the profession pursuant to §30-1-24 of this code;

8 (3) Is 18 years of age or older;

9 (4) Has an education equivalent to a four-year course in an accredited high school; and

10 (5) Is free of chronic infectious or contagious diseases.

11 (b) The board, after first determining that the applicant is qualified and eligible to take the
12 examination, shall notify the applicant that he or she has fulfilled all of the qualifications and
13 eligibility requirements as required and shall advise him or her of the date, time, and place for him
14 or her to appear to be examined as required by the provisions of this article and the regulations
15 promulgated by the board pursuant to this article. The board may promulgate rules relating to the
16 frequency of examinations and other such related topics pursuant to §29A-3-1 of this code.

17 (c) Before obtaining a license to engage in the practice of dealing in or fitting of hearing-
18 aids, an applicant must meet the following requirements:

19 (1) The applicant must pass the International Licensing Examination for Hearing
20 Healthcare Professionals, prepared by the International Hearing Society, or an equivalent
21 examination selected by the board.

22 (2) The applicant must pass a practical examination, which shall be a nationally recognized
23 test selected by the board, or a test designed by the board to test the applicant's proficiency in the
24 following techniques as they pertain to the fitting of hearing aids:

25 (A) Pure tone audiometry, including air conduction testing;

26 (B) Live voice or recorded voice speech audiometry, including speech reception threshold
27 testing and speech discrimination testing; and

28 (C) Masking when indicated and effective masking.

29 (3) The applicant must pass an examination, which shall be developed by the board, to test
30 an applicant's competency in the following subjects:

31 (A) Ability to counsel the person or family who will receive the hearing aid relative to the

32 care and use of the instrument;

33 (B) Knowledge regarding the medical and rehabilitative facilities for hearing-handicapped
34 children and adults in the area being served;

35 (C) Knowledge and understanding of the grounds for revocation, suspension, or probation
36 of a license as outlined in this article or in rule; and

37 (D) Knowledge and understanding of criminal offenses relating to the profession.

38 (d) The board may promulgate rules to implement the requirements of this section,
39 including emergency rules promulgated pursuant to the provisions of §29A-3-1 of this code.

40 (e) The provisions of this section will take effect upon the sunset or termination of the
41 Board of Hearing Aid Dealers and Fitters, which in no event will be later than July 1, 2023.

ARTICLE 36. ACUPUNCTURISTS.

§30-36-10. Qualifications of applicants for licensure; and qualifications for certificate holders.

1 (a) To qualify for a license, an applicant shall:

2 (1) Be free of a felony conviction ~~bearing a rational nexus~~ that directly and specifically
3 relates to the profession pursuant to §30-1-24 of this code;

4 (2) Be at least 18 years of age;

5 (3) Demonstrate competence in performing acupuncture by meeting one of the following
6 standards for education, training, or demonstrated experience:

7 (A) Graduation from a course of training of at least 1,800 hours, including 300 clinical
8 hours, that is:

9 (i) Approved by the national accreditation commission for schools and colleges of
10 acupuncture and oriental medicine; or

11 (ii) Found by the board to be equivalent to a course approved by the national accreditation
12 commission for schools and colleges of acupuncture and oriental medicine;

13 (B) Achievement of a passing score on an examination that is:

- 14 (i) Given by the national commission for the certification of acupuncturists; or
- 15 (ii) Determined by the board to be equivalent to the examination given by the national
16 commission for the certification of acupuncturists;
- 17 (C) Successful completion of an apprenticeship consisting of at least 2,700 hours within a
18 five-year period under the direction of an individual properly approved by that jurisdiction to
19 perform acupuncture; or
- 20 (D) Performance of the practice of acupuncture in accordance with the law of another
21 jurisdiction or jurisdictions for a period of at least three years within the five years immediately prior
22 to application that consisted of at least 500 patient visits per year; and
- 23 (4) Achievement of any other qualifications that the board establishes in rules.
- 24 (b) Notwithstanding any other provisions of this code to the contrary, to qualify for a
25 certificate as an auricular detoxification specialist, an applicant shall:
- 26 (1) Be at least 18 years old;
- 27 (2) Be authorized in this state to engage in any of the following:
- 28 (A) Physician assistant, pursuant to §30-3E-1 *et seq.* of this code;
- 29 (B) Dentist, pursuant to §30-4-1 *et seq.* of this code;
- 30 (C) Registered professional nurse, pursuant to §30-7-1 *et seq.* of this code;
- 31 (D) Practical nurse, pursuant to §30-7A-1 *et seq.* of this code;
- 32 (E) Psychologist, pursuant to §30-21-1 *et seq.* of this code;
- 33 (F) Occupational therapist, pursuant to §30-28-1 *et seq.* of this code;
- 34 (G) Social worker, pursuant to §30-30-1 *et seq.* of this code;
- 35 (H) Professional counselor, pursuant to §30-31-1 *et seq.* of this code;
- 36 (I) Emergency medical services provider, pursuant to §16-4C-1 *et seq.* of this code;
- 37 (J) Corrections medical providers, pursuant to §15A-1-1 *et seq.* of this code; or
- 38 (K) Any other profession the board determines is eligible to engage in the practice of
39 auricular acudetox.

40 (3) Provide evidence of successful completion of a board-approved auricular acudetox
41 program;

42 (4) Submit a completed application as prescribed by the board; and

43 (5) Submit the appropriate fees as provided for by legislative rule.

44 (c) A certificate may be issued to a retired or inactive professional as described in §30-36-
45 10(b) of this code: *Provided*, That the professional meets the qualifications for a certificate holder
46 and the last three years of professional activity were performed in good standing: *Provided*,
47 *however*, That a person who holds a certificate or its equivalent in another jurisdiction as an
48 auricular detoxification specialist may be approved by the board to practice auricular acudetox
49 during a public health emergency or state of emergency for a duration to be provided for in
50 legislative rules of the board.

CHAPTER 31. CORPORATIONS.

§31-17A-5. Issuance of license.

1 (a) The commissioner may not issue a mortgage loan originator license unless the
2 commissioner makes at a minimum the following findings:

3 (1) The applicant has never had a mortgage loan originator license revoked in any
4 governmental jurisdiction, except that a subsequent formal vacation of the revocation may not be
5 considered a revocation.

6 (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony
7 in a domestic, foreign, or military court: *Provided*, That any pardon of a conviction may not be a
8 conviction for purposes of this subsection: *Provided, however*, That the commissioner shall apply
9 §31-17A-5(b) and §31-17A-5(c) of this code in determining whether an applicant's prior criminal
10 convictions ~~bear a rational nexus~~ directly and specifically relate to the license being sought
11 pursuant to subsections (b) and (c) of this section;

12 ~~(A) During the five-year period preceding the date of the application for licensing and~~
13 ~~registration; or~~

14 ~~(B) At any time preceding the date of application if the crime bears a rational nexus to the~~
15 ~~license being sought.~~

16 (3) The applicant has demonstrated financial responsibility, character, and general fitness
17 such as to command the confidence of the community and to warrant a determination that the
18 mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this
19 article.

20 For purposes of this subsection, a person has shown that he or she is not financially
21 responsible when he or she has shown a disregard in the management of his or her own financial
22 condition. The commissioner shall not use a credit score as the sole basis for license denial. A
23 determination that an individual has not shown financial responsibility may include, but not be
24 limited to:

25 (A) Current outstanding judgments, except judgments solely as a result of medical
26 expenses;

27 (B) Current outstanding tax liens or other government liens and filings;

28 (C) Foreclosures within the past three years; and

29 (D) A pattern of seriously delinquent accounts within the past three years.

30 (4) The applicant has completed the pre-licensing education requirement described in
31 §31-17A-6 of this code.

32 (5) The applicant has passed a written test that meets the test requirement described in
33 §31-17A-7 of this code.

34 (6) The applicant has met the surety bond requirement as required pursuant to §31-17A-
35 13 of this code.

36 (b) The commissioner may not disqualify an applicant from initial licensure because of a
37 prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a

38 ~~rational nexus~~ directly and specifically relates to the duties and responsibilities of the activity
39 requiring licensure such that granting the applicant licensure would pose a direct and substantial
40 risk to the public because the applicant has not been rehabilitated. In determining whether a
41 criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a profession or
42 occupation, the commissioner shall consider at a minimum:

- 43 (1) The nature and seriousness of the crime for which the individual was convicted;
44 (2) The passage of time since the commission of the crime;
45 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the
46 duties and discharge the responsibilities of the profession or occupation; and

47 (4) Any evidence of rehabilitation or treatment undertaken by the individual, including the
48 following, if applicable:

- 49 (i) The age of the individual when he or she committed the offense;
50 (ii) The completion of the criminal sentence;
51 (iii) A certificate of rehabilitation or good conduct;
52 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
53 treatment;
54 (v) Testimonials and recommendations, which may include a progress report from the
55 individual's probation or parole officer;
56 (vi) Education and training;
57 (vii) Employment history relevant to the license being sought;
58 (viii) Whether the individual will be bonded in the occupation; and
59 (ix) Other evidence of rehabilitation the individual submits to the commissioner.

60 (c) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
61 ~~disqualified from licensure because of a prior criminal conviction, the commissioner shall permit~~
62 ~~the applicant to apply for initial licensure if:~~ the commissioner may not disqualify an applicant from
63 initial licensure because of a prior criminal conviction if:

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

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

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

71 (d) An individual with a criminal record who has not previously ~~applied for licensure~~ held a
72 license under this section may petition the commissioner at any time for a determination of
73 whether the individual's criminal record will disqualify the individual from obtaining a license. This
74 petition shall include sufficient details about the individual's criminal record to enable the
75 commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction,
76 and the specific nature of the conviction. The commissioner shall provide the determination within
77 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup
78 its costs for each petition.

79 (e) Notwithstanding any other provision of this chapter to the contrary, an individual may
80 not be required to disclose, nor may the commissioner consider, an arrest not followed by a
81 conviction in an application for initial licensure or a determination under subsection (d) of this
82 section.

83 (f) The commissioner shall update his or her licensure forms, other relevant public-facing
84 documents, and website to explain the requirements of this section, including, but not limited to,
85 the availability of the process set forth in subsection (d) of this section.

**CHAPTER 32A. LAND SALES; FALSE ADVERTISING; ISSUANCE AND
SALE OF CHECKS, DRAFTS, MONEY ORDERS, ETC.**

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION

SERVICES, TRANSPORTATION, AND CURRENCY EXCHANGE.

§32A-2-8. Qualifications for license or renewal of license.

1 (a) The commissioner may issue a license to an applicant only upon first determining that
2 the financial condition, business experience, and character and general fitness of an applicant are
3 such that the issuance of the license is in the public interest: *Provided*, That the commissioner
4 shall apply subsections (f) and (g) of this section in determining whether an applicant's prior
5 criminal convictions ~~bear a rational nexus~~ directly and specifically relate to the license being
6 sought.

7 (b) An applicant for a license shall agree in writing to comply with the currency reporting
8 and record-keeping requirements of 31 U.S.C. §5313, as well as those set forth in 31 C.F.R.
9 Chapter X and any other relevant federal law.

10 (c) A person is not eligible for a license or shall surrender an existing license if, during the
11 previous five years:

12 (1) The person or a principal of the person, of a business:

13 (A) Has been convicted of a felony or a crime involving fraud or deceit under the laws of this
14 state, any other state, or the United States;

15 (B) Has been convicted of a crime under the laws of another country that involves fraud or
16 deceit or would be a felony if committed in the United States; or

17 (C) Has been convicted under a state or federal law relating to currency exchange or
18 transmission or any state or federal monetary instrument reporting requirement; or

19 (2) The person, a principal of the person, or the spouse of the person or a principal of the
20 person has been convicted of an offense under a state or federal law relating to drug trafficking,
21 money laundering, or a reporting requirement of the Bank Secrecy Act, 12 U.S.C. §1951 *et seq.*,
22 as amended.

23 (d) The commissioner will review the application to determine whether the applicant:

24 (1) Has recklessly failed to file or evaded the obligation to file a currency transaction report

25 as required by 31 U.S.C. §5313 during the previous three years;

26 (2) Has recklessly accepted currency for exchange, transport, or transmission during the
27 previous three years in which a portion of the currency was derived from an illegal transaction or
28 activity;

29 (3) Will conduct its authorized business within the bounds of state and federal law,
30 including, but not limited to, §31D-15-1501 of this code;

31 (4) Warrants the trust of the community;

32 (5) Has and will maintain at all times a minimum tangible net worth of the greater of
33 \$100,000 or three percent of total assets for the first \$100 million, two percent of additional assets
34 for \$100 million to \$1 billion, and 0.5 percent of additional assets for over \$1 billion, computed
35 according to United States generally accepted accounting principles as shown by the most recent
36 audited financial statement filed with and satisfactory to the commissioner, except that an
37 applicant for a license or renewal of a license may not be required by this article to maintain a
38 tangible net worth of more than \$1 million, computed according to generally accepted accounting
39 principles; and

40 (6) Does not owe delinquent taxes, fines, or fees to any local or state taxing authority or
41 governmental agency, department, or other political subdivision of this state.

42 (e) A person is not eligible for a license, and a person who holds a license shall surrender
43 the license to the commissioner, if the person or a principal of the person has at any time been
44 convicted of:

45 (1) A felony involving the laundering of money that is the product of or proceeds from
46 criminal activity under §61-1-1 *et seq.* of this code, or a similar provision of the laws of another
47 state or the United States; or

48 (2) A felony violation of 31 U.S.C. §5313 or 5324, or a rule adopted under those sections.

49 (f) 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 a

51 ~~rational nexus~~ directly and specifically relates to the duties and responsibilities of the activity
52 requiring licensure such that granting the applicant licensure would pose a direct and substantial
53 risk to the public because the applicant has not been rehabilitated. In determining whether a
54 criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a profession or
55 occupation, the commissioner shall consider at a minimum:

- 56 (1) The nature and seriousness of the crime for which the individual was convicted;
57 (2) The passage of time since the commission of the crime;
58 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the
59 duties and discharge the responsibilities of the profession or occupation; and
60 (4) Any evidence of rehabilitation or treatment undertaken by the individual, including the
61 following, if applicable:

- 62 (i) The age of the individual when he or she committed the offense;
63 (ii) The completion of the criminal sentence;
64 (iii) A certificate of rehabilitation or good conduct;
65 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
66 treatment;
67 (v) Testimonials and recommendations, which may include a progress report from the
68 individual's probation or parole officer;
69 (vi) Education and training;
70 (vii) Employment history relevant to the license being sought;
71 (viii) Whether the individual will be bonded in the occupation; and
72 (ix) Other evidence of rehabilitation the individual submits to the commissioner.

73 (g) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
74 ~~disqualified from licensure because of a prior criminal conviction, the commissioner shall permit~~
75 ~~the applicant to apply for initial licensure if:~~ the commissioner may not disqualify an applicant from
76 initial licensure because of a prior criminal conviction if:

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

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

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

84 (h) An individual with a criminal record who has not previously ~~applied for licensure~~ held a
85 license under this section may petition the commissioner at any time for a determination of
86 whether the individual's criminal record will disqualify the individual from obtaining a license. This
87 petition shall include sufficient details about the individual's criminal record to enable the
88 commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction,
89 and the specific nature of the conviction. The commissioner shall provide the determination within
90 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup
91 its costs for each petition.

92 (i) Before approving an application for a license of an applicant who has less than one
93 year's experience in the proposed business governed by this article as a regulated entity in
94 another state, or whose license has been suspended or revoked by another state, the
95 commissioner may, in his or her discretion, conduct an on-site investigation of an applicant at the
96 sole expense of the applicant and may require the applicant to pay a nonrefundable payment of
97 the anticipated expenses for conducting the investigation. Failure to make the payment or
98 cooperate with the investigation is grounds for denying the application.

99 (j) Notwithstanding any other provision of this chapter to the contrary, an individual may not
100 be required to disclose, nor may a board consider, an arrest not followed by a conviction in an
101 application for initial licensure or a determination under subsection (h) of this section.

102 (k) The commissioner shall update his or her licensure forms, other relevant public-facing
103 documents, and website to explain the requirements of this section, including, but not limited to,
104 the availability of the process set forth in subsection (h) of this section.

CHAPTER 33. INSURANCE.

ARTICLE 13C. VIATICAL SETTLEMENTS ACT.

§33-13C-3. License and bond requirements.

1 (a)(1) A person may not operate as a viatical settlement provider or viatical settlement
2 broker without first obtaining a license from the commissioner.

3 (2)(A) An insurance producer who is authorized to sell life insurance in this state pursuant
4 to a resident or nonresident license issued in accordance with the provisions of §33-12-1 *et seq.* of
5 this code may operate as a viatical settlement broker without obtaining a license pursuant to this
6 section if the viatical settlement activities of the producer are incidental to the producer's insurance
7 business activities.

8 (B) The insurer that issued the policy being viaticated is not responsible for any act or
9 omission of a viatical settlement broker or viatical settlement provider arising out of or in
10 connection with the viatical settlement transaction, unless the insurer receives compensation for
11 the placement of a viatical settlement contract from the viatical settlement provider or viatical
12 settlement broker in connection with the viatical settlement contract.

13 (3) A person licensed as an attorney, certified public accountant, or financial planner
14 accredited by a nationally recognized accreditation agency who is retained to represent the viator,
15 whose compensation is not paid directly or indirectly by the viatical settlement provider, may
16 negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as
17 a viatical settlement broker.

18 (b) Application for a viatical settlement provider or viatical settlement broker license and for
19 renewals of the licenses shall be made in the manner prescribed by the commissioner and shall be

20 accompanied by fees established in legislative rules, including emergency rules, promulgated by
21 the commissioner.

22 (1) The commissioner may not disqualify an applicant from initial licensure because of a
23 prior criminal conviction that remains unreversed unless that conviction is for a crime that ~~bears a~~
24 ~~rational nexus~~ directly and specifically relates to the duties and responsibilities of the activity
25 requiring licensure such that granting the applicant licensure would pose a direct and substantial
26 risk to the public because the applicant has not been rehabilitated. In determining whether a
27 criminal conviction ~~bears a rational nexus~~ directly and specifically relates to a profession or
28 occupation, the commissioner shall consider, at a minimum:

29 (A) The nature and seriousness of the crime for which the individual was convicted;

30 (B) The passage of time since the commission of the crime;

31 (C) The relationship of the crime to the ability, capacity, and fitness required to perform the
32 duties and discharge the responsibilities of the profession or occupation; and

33 (D) Any evidence of rehabilitation or treatment undertaken by the individual, including the
34 following, if applicable:

35 (i) The age of the individual when he or she committed the offense;

36 (ii) The completion of the criminal sentence;

37 (iii) A certificate of rehabilitation or good conduct;

38 (iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol
39 treatment;

40 (v) Testimonials and recommendations, which may include a progress report from the
41 individual's probation or parole officer;

42 (vi) Education and training;

43 (vii) Employment history relevant to the license being sought;

44 (viii) Whether the individual will be bonded in the occupation; and

45 (ix) Other evidence of rehabilitation the individual submits to the commissioner.

46 (2) Notwithstanding any other provision of this code to the contrary, ~~if an applicant is~~
47 ~~disqualified from licensure because of a prior criminal conviction, unless that conviction is a felony~~
48 ~~pursuant to §33-13C-14 of this code, the commissioner shall permit the applicant to apply for initial~~
49 ~~licensure if:~~ the commissioner may not disqualify an applicant from initial licensure because of a
50 prior criminal conviction, except for a felony pursuant to §33-13C-14 of this code, if:

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

53 (B) The individual has not been convicted of any other crime during the period of time
54 following the disqualifying offense; and

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

58 (3) An individual with a criminal record who has not previously ~~applied for licensure~~ held a
59 license under this section may petition the commissioner at any time for a determination of
60 whether the individual's criminal record will disqualify the individual from obtaining a license. This
61 petition shall include sufficient details about the individual's criminal record to enable the
62 commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction,
63 and the specific nature of the conviction. The commissioner shall provide the determination within
64 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup
65 its costs for each petition.

66 (c) The commissioner has the authority, at any time, to require the applicant to fully
67 disclose the identity of all stockholders, partners, officers, members, and employees and the
68 commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in
69 the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or
70 member of the entity who may materially influence the applicant's conduct meets the standards of
71 this article.

72 (d) The commissioner shall make an investigation of each applicant and issue a license if
73 the commissioner finds that the applicant:

74 (1) If a viatical settlement provider, has provided a detailed plan of operation;

75 (2) Is competent and trustworthy and acts in good faith in the capacity of a licensee;

76 (3) Has a good business reputation and is qualified by experience, training, or education as
77 a viatical settlement provider or broker;

78 (4) Has demonstrated evidence of financial responsibility, in a format prescribed by the
79 commissioner, by possessing a minimum equity of not less than \$250,000 in cash or cash
80 equivalents reflected in the applicant's audited financial statements or through a surety bond
81 executed and issued by an insurer authorized to issue surety bonds in this state in the amount of
82 \$250,000: *Provided*, That the commissioner may permit an applicant for a broker's license to
83 demonstrate evidence of financial responsibility through a policy of insurance covering legal
84 liability resulting from erroneous acts or failure to act in their capacity as a viatical settlement
85 broker and inuring to the benefit of any aggrieved party as the result of any single occurrence in the
86 sum of not less than \$100,000 and \$300,000 in the aggregate for all occurrences within one year.
87 Any surety bond issued pursuant to this subdivision shall be in the favor of this state and shall
88 specifically authorize recovery by the commissioner on behalf of any person in this state who
89 sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction
90 of unfair practices by the viatical settlement provider or viatical settlement broker. The
91 commissioner shall accept, as evidence of financial responsibility, proof that financial instruments
92 in accordance with the requirements in this paragraph have been filed with a state in which the
93 applicant is licensed as a viatical settlement provider or viatical settlement broker. The
94 commissioner may ask for evidence of financial responsibility at any time he or she considers it
95 necessary.

96 (5) If a legal entity has provided a certificate of good standing from the state of its domicile;
97 and

98 (6) Has provided an antifraud plan that meets the requirements of §33-13C-14(g) of this
99 code.

100 (e) The commissioner may not issue a license to a nonresident applicant unless the
101 applicant files with the commissioner either a written designation of an agent for service of process
102 or the applicant's written irrevocable consent that any action against the applicant may be
103 commenced against the applicant by service of process on the commissioner.

104 (f) A viatical settlement provider or viatical settlement broker shall provide to the
105 commissioner new or revised information about officers, 10 percent or more stockholders,
106 partners, directors, members, or designated employees within 30 days of the change.

107 (g) An individual licensed as a viatical settlement broker shall complete on a biennial basis
108 15 hours of training related to viatical settlements and viatical settlement transactions as required
109 by the commissioner. A life insurance producer operating as a viatical settlement broker pursuant
110 to subdivision (2), subsection (a) of this section is not subject to the requirements of this
111 subsection. Any person failing to meet the requirements of this subsection is subject to the
112 penalties imposed by the commissioner.

113 (h) Notwithstanding any other provision of this chapter to the contrary, an individual may
114 not be required to disclose, nor may a board consider, an arrest not followed by a conviction in an
115 application for initial licensure or a determination under subsection (e) of this section.

116 (i) The commissioner shall update his or her licensure forms, other relevant public-facing
117 documents, and website to explain the requirements of this section, including, but not limited to,
118 the availability of the process set forth in subsection (e) of this section.

§33-13C-4. License revocation and denial.

1 (a) The commissioner may refuse to issue, suspend, revoke, place on probation, or refuse
2 to renew the license of a viatical settlement provider or viatical settlement broker if the
3 commissioner finds that:

4 (1) There was any material misrepresentation in the application for the license;

5 (2) The licensee or any officer, partner, member, or key management personnel has been
6 convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is
7 otherwise shown to be untrustworthy or incompetent;

8 (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to
9 viators;

10 (4) The licensee or any officer, partner, member, or key management personnel has been
11 found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor
12 involving fraud, regardless of whether a judgment of conviction has been entered by the court:
13 *Provided*, That the commissioner shall apply §33-13C-3(b) of this code and any relevant
14 legislative rules in determining whether an applicant's prior criminal convictions ~~bear a rational~~
15 ~~nexus to~~ directly and specifically relate to the license being sought;

16 (5) The viatical settlement provider has entered into any viatical settlement contract that
17 has not been approved pursuant to this article;

18 (6) The viatical settlement provider has failed to honor contractual obligations set out in a
19 viatical settlement contract;

20 (7) The licensee no longer meets the requirements for initial licensure;

21 (8) The viatical settlement provider has assigned, transferred or pledged a viaticated policy
22 to a person other than a viatical settlement provider licensed in this state, viatical settlement
23 purchaser, an accredited investor, or qualified institutional buyer as defined respectively in Rule
24 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended,
25 financing entity, special purpose entity, or related provider trust; or

26 (9) The licensee or any officer, partner, member, or key management personnel has
27 violated any provision of this article.

28 (b) The commissioner may suspend, revoke, or refuse to renew the license of a viatical
29 settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to
30 this article if the commissioner finds that the viatical settlement broker or life insurance producer

31 has violated the provisions of this article or has otherwise engaged in bad faith conduct with one or
32 more viators.

33 (c) If the commissioner denies a license application or suspends, revokes, or refuses to
34 renew the license of a viatical settlement provider, viatical settlement broker, or life insurance
35 producer operating as a viatical settlement broker, the commissioner shall conduct a hearing in
36 accordance with §33-2-13 of this code.