

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4353

BY DELEGATES HOWELL, PORTERFIELD, J. JEFFRIES,

HOTT, KUMP, CADLE, SYPOLT AND HAMRICK

[Passed February 19, 2020; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §17A-6-6 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §19-23-8 of said code; to amend said code by adding thereto a new
3 section, designated §21-1-6; to amend and reenact §21-2-9 of said code; to amend and
4 reenact §21-5-5c of said code; to amend and reenact §21-14-6 of said code; to amend
5 and reenact §21-16-7 of said code; to amend and reenact §29-22-8 of said code; to amend
6 and reenact §29-22A-7 of said code; to amend and reenact §29-22B-502 of said code; to
7 amend and reenact §29-22C-15 and §29-22C-16 of said code; to amend and reenact §29-
8 22D-10 of said code; to amend and reenact §29-25-13 of said code; to amend and reenact
9 §31-17A-5 of said code; to amend and reenact §32A-2-8 of said code; and to amend and
10 reenact §33-13C-3 and §33-13C-4 of said code; all relating to the use of post-criminal
11 conduct in professional and occupational initial licensure decision making; creating a
12 rational nexus requirement between prior criminal conduct and initial licensure decision
13 making; providing criteria for commissioners or commissions as licensing authorities to
14 determine whether a criminal conviction bears a rational nexus to an occupation; removing
15 offenses described as one of moral turpitude as a basis for license denial unless the
16 underlying crime bears a rational nexus to the occupation or profession requiring
17 licensure; limiting licensure disqualification; and authorizing persons to petition licensure
18 commissioners or commissions as to whether a person's criminal records precludes
19 licensure.

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

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

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

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

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

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

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

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

23 (8) Has been convicted of any fraudulent act in connection with the business of new motor
24 vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle
25 dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler in this state or any other
26 state or jurisdiction: *Provided*, That the commissioner shall apply §17A-6-6(c) and §17A-6-6(d) of

27 this code in determining whether an applicant's prior criminal convictions bear a rational nexus to
28 the license being sought;

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

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

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

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

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

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

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

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

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

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

49 (c) The commissioner may not disqualify an applicant from initial licensure because of a
50 prior criminal conviction that remains unreversed unless that conviction is for a crime that bears
51 a rational nexus to the activity requiring licensure. In determining whether a criminal conviction

bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

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

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

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

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

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

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

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

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

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

CHAPTER 19. AGRICULTURE.

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.

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

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

(1) Has knowingly made false statement of a material fact in the application or has 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 a felony: *Provided*, That the Racing Commission shall apply §19-23-8(g) and §19-23-
26 8(h) of this code in determining whether an applicant's prior criminal convictions bear a rational
27 nexus to the license or permit being sought;

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

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

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

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

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

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

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

43 (c) In issuing licenses and fixing dates for horse or dog race meetings at the various horse
44 racetracks and dog racetracks in this state, the Racing Commission shall consider the horse
45 racing circuits and dog racing circuits with which the horse racetracks and dog racetracks in this

state are associated or contiguous to and shall also consider dates which are calculated to increase the tax revenues accruing from horse racing and dog racing.

(d) A license issued under the provisions of this article is neither transferable nor assignable to any other racing association and may not permit the holding or conducting of a horse or dog race meeting at any horse or dog racetrack, place, or enclosure not specified thereon. However, if the specified horse or dog racetrack, place, or enclosure becomes unsuitable for the horse or dog race meeting because of flood, fire, or other catastrophe, or cannot be used for any reason, the Racing Commission may, upon application, authorize the horse or dog race meeting, or any remaining portion thereof, to be conducted at any other racetrack, place, or enclosure available for that purpose, provided that the owner of the racetrack, place, or enclosure willingly consents to the use.

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

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

(g) The Racing Commission may not disqualify an applicant from an initial license or permit because of a prior criminal conviction that remains unreversed unless that conviction is for a crime

that bears a rational nexus to the activity requiring a license or permit. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the Racing Commission shall consider at a minimum:

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

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

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

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

(h) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from a license or permit because of a prior criminal conviction, the commissioner shall permit the applicant to apply for an initial license or permit if:

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

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

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

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

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

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 to the activity requiring licensure. In determining whether
4 a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall
5 consider at a minimum:

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

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

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

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

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

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

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

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

21 (c) An individual with a criminal record who has not previously applied for licensure may
22 petition the commissioner at any time for a determination of whether the individual's criminal
23 record will disqualify the individual from obtaining a license. This petition shall include sufficient
24 details about the individual's criminal record to enable the commissioner to identify the jurisdiction
25 where the conviction occurred, the date of the conviction, and the specific nature of the conviction.
26 The commissioner shall provide the determination within 60 days of receiving the petition from
27 the applicant. The commissioner may charge a fee to recoup its costs for each petition.

ARTICLE 2. EMPLOYMENT AGENCIES.

§21-2-9. Refusal to issue license.

1 The State Tax Commissioner shall refuse to issue a license if, upon investigation, he or
2 she finds that the applicant is unfit to engage in the business or has had a license previously
3 revoked, or that the business is to be conducted on or immediately adjoining what is considered
4 by him or her to be unsuitable premises, or that any other good reason exists within the meaning
5 of the law: *Provided*, That the commissioner shall apply §21-1-6 of this code when determining to
6 refuse a license.

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

to do so as issued by the Commissioner of Labor. No examination shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

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

(1) Is at least 21 years of age;

(2) Is a citizen of the United States;

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

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

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

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

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

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

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

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

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

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

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

53 (1) The type and amount of training or schooling necessary for a person before which he
54 or she may be licensed to administer or interpret a psychophysiological detection of deception,
55 lie 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
65 by 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 the prior criminal conviction bears a rational nexus to the license being sought.

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

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

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

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

12 (4) The licensee violated any statute of this state, any legislative rule or any ordinance of
13 any municipality or county of this state which protects the consumer or public against unfair,
14 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 the prior criminal conviction bears a rational nexus to the license being
5 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 22. STATE LOTTERY ACT.

§29-22-8. Lottery director; powers and duties; deputy directors; hiring of staff; civil service coverage; submission of proposed appropriations.

(a) The director shall have the authority to:

(1) Appoint, with the approval of the commission, a deputy director for each of the divisions established in this article. The deputy directors appointed shall serve at the will and pleasure of the director at an annual salary established by the commission. Deputy directors shall not be eligible for civil service coverage as provided in §29-6-4 of this code;

(2) The director shall hire, pursuant to the approval of the commission, such professional, clerical, technical, and administrative personnel as may be necessary to carry out the provisions of this article. Each person employed by the commission shall execute an authorization to allow an investigation of that person's background: *Provided*, That the director and the commission shall apply §29-22-8(d) and §29-22-8(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the occupation being sought.

(3) Designate the number and types of locations at which tickets may be sold.

(b) Effective July 1, 1986, all employees of the commission, except as otherwise provided herein, shall be in the classified service under the provisions of §29-6-1 *et seq.* of this code.

(c) The director shall, pursuant to the approval of the commission, prepare and submit the annual proposed appropriations for the commission to the Governor.

(d) The director and the Lottery Commission may not disqualify an applicant from initial employment because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity required for employment. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the director and the Lottery Commission shall consider at a minimum:

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

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

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

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

(e) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from employment because of a prior criminal conviction, the director and the Lottery Commission shall permit the applicant to apply for initial employment if:

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

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

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

(f) An individual with a criminal record who has not previously applied for employment may petition the Lottery Commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining employment. This petition shall include sufficient details about the individual's criminal record to enable the Lottery Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Lottery Commission shall provide the determination within 60 days of receiving the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for each petition.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.

1 (a) No video lottery license or permit may be granted unless the commission has
2 determined that the applicant satisfies all of the following qualifications:

3 (1) An applicant for a video lottery license must hold a valid racing license granted by the
4 West Virginia Racing Commission under provisions of §19-23-1 *et seq.* of this code.

5 (2) An applicant must be a person of good character and integrity.

6 (3) An applicant must be a person whose background, including criminal record,
7 reputation, and associations, does not pose a threat to the security and integrity of the lottery or
8 to the public interest of the state. All new applicants for licenses and permits issued by the
9 commission shall furnish fingerprints for a national criminal records check by the Criminal
10 Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation.
11 The fingerprints shall be furnished by all persons required to be named in the application and
12 shall be accompanied by a signed authorization for the release of information by the Criminal
13 Investigation Bureau and the Federal Bureau of Investigation. The commission may require any
14 applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal
15 records check by the Criminal Identification Bureau of the West Virginia State Police and the
16 Federal Bureau of Investigation: *Provided*, That the Lottery Commission shall apply §29-22A-7(g)
17 and §29-22A-7(h) of this code in determining whether an applicant's prior criminal convictions
18 bear a rational nexus to the license or permit being sought.

19 (4) An applicant must be a person who demonstrates the business ability and experience
20 necessary to establish, operate, and maintain the business for which a video lottery license or
21 permit application is made.

(5) An applicant must be a person who has secured adequate financing for the business for which a video lottery license or permit application is made. The commission shall determine whether financing is from a source which meets the qualifications of this section and is adequate to support the successful performance of the duties and responsibilities of the licensed racetrack or permit holder. An applicant for a video lottery license shall disclose all financing or refinancing arrangements for the purchase, lease, or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the commission. A licensed racetrack shall request commission approval of any change in financing or lease arrangements at least 30 days before the effective date of the change.

(6) A racetrack applying for a video lottery license or a license renewal must present to the commission evidence of the existence of an agreement, regarding the proceeds from video lottery terminals, between the applicant and the representative of a majority of the horse owners and trainers, the representative of a majority of the pari-mutuel clerks and the representative of a majority of the breeders or the representative of a majority of the kennel owners for the applicable racetrack who hold permits required by §19-23-2 of this code.

(7) A racetrack applying for a video lottery license or a license renewal must file with the commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease, or other assignment to the racetrack of video lottery terminals, the electronic computer components of the terminals, the random number generator of the terminals, or the cabinet in which it is housed. Once filed with the commission, the agreement is a public document subject to the provisions of §29B-1-1 *et seq.* of this code.

(b) No video lottery license or permit may be granted to an applicant until the commission determines that each person who has control of the applicant meets all applicable qualifications of subsection (a) of this section. The following persons are considered to have control of an applicant:

47 (1) Each person associated with a corporate applicant, including any corporate holding
48 company, parent company, or subsidiary company of the applicant, but not including a bank or
49 other licensed lending institution which holds a mortgage or other lien acquired in the ordinary
50 course of business, who has the ability to control the activities of the corporate applicant or elect
51 a majority of the board of directors of that corporation.

52 (2) Each person associated with a noncorporate applicant who directly or indirectly holds
53 any beneficial or proprietary interest in the applicant or whom the commission determines to have
54 the ability to control the applicant.

55 (3) Key personnel of an applicant, including any executive, employee or agent, having the
56 power to exercise significant influence over decisions concerning any part of the applicant's
57 business operation.

58 (c) Applicants must furnish all information, including financial data and documents,
59 certifications, consents, waivers, individual history forms, and other materials requested by the
60 commission for purposes of determining qualifications for a license or permit. No video lottery
61 license or permit may be granted to an applicant who fails to provide information and
62 documentation requested by the commission. The burden of proving qualification for any video
63 lottery license or permit is on the applicant.

64 (d) Each applicant bears all risks of adverse public notice, embarrassment, criticism,
65 damages, or financial loss which may result from any disclosure or publication of any material or
66 information obtained by the commission pursuant to action on an application. The applicant shall,
67 as a part of its application, expressly waive any and all claims against the commission, the State
68 of West Virginia and the employees of either for damages as a result of any background
69 investigation, disclosure, or publication relating to an application for a video lottery license or
70 permit.

71 (e) All application, registration, and disclosure forms and other documents submitted to
72 the commission by or on behalf of the applicant for purposes of determining qualification for a

video lottery license or permit shall be sworn to or affirmed before an officer qualified to administer oaths.

(f) An applicant who knowingly fails to reveal any fact material to qualification or who knowingly submits false or misleading material information is ineligible for a video lottery license or permit.

(g) The Lottery Commission may not disqualify an applicant from an initial license or permit because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring a license or permit. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the Lottery Commission shall consider at a minimum:

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

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

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

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

(h) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from a license or permit because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for an initial license or permit if:

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

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

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from a license or permit, to be determined by the Lottery Commission.

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

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-502. General qualifications for all types of limited video lottery licenses.

(a) No limited video lottery license or license renewal may be granted unless the Lottery Commission has determined that the applicant satisfies all of the following qualifications:

(1) The applicant is a person of good character, honesty, and integrity;

(2) The applicant is a person whose background, criminal record, if any, reputation, habits, and associations, do not threaten to (A) compromise the public interest of the citizens of the state, (B) weaken the effective regulation and control of video gaming, (C) breach the security and integrity of the lottery, or (D) introduce corrupt, unfair, or illegal practices, methods, and activities into the operation of video gaming or the business or financial transactions incidental to the operation of video gaming;

(3) The applicant has not been convicted of any violation of §29-22B-101 *et seq.*, §19-23-1 *et seq.*, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-25-1 *et seq.* of this code, or any felony related to theft, bribery, or gambling in this or in any other state or foreign country: *Provided*, That the Lottery Commission shall apply §29-22B-502(b) and §29-22B-502(c) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought.

(4) The applicant has disclosed to the Lottery Commission the identity of each person who has control of the applicant, as control is described in §29-22B-507 of this code, and those

persons satisfy all qualifications required by this section and any applicable qualifications required by §29-22B-503 through §29-22B-506 of this code;

(5) The applicant has provided a set of fingerprints and has completed and signed the statement provided for in §29-22B-602 of this code;

(6) The applicant has furnished all information, including financial data and documents, certifications, consents, waivers, individual history forms, and other materials requested by the Lottery Commission for purposes of determining qualifications for a license.

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

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

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

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

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

(c) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for initial licensure if:

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

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

41 (3) 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 Lottery Commission.

44 (d) An individual with a criminal record who has not previously applied for licensure may
45 petition the Lottery Commission at any time for a determination of whether the individual's criminal
46 record will disqualify the individual from obtaining a license. This petition shall include sufficient
47 details about the individual's criminal record to enable the Lottery Commission to identify the
48 jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of
49 the conviction. The Lottery Commission shall provide the determination within 60 days of receiving
50 the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for
51 each petition.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-15. License or registration prohibitions.

1 (a) The commission may not grant any license or registration pursuant to the provisions
2 of this article if evidence satisfactory to the commission exists that the applicant:

3 (1) Has knowingly made a false statement of a material fact to the commission;

4 (2) Has been suspended from operating a gambling game, gaming device, or gaming
5 operation, or had a license or registration revoked by any governmental authority of a state of the
6 United States having responsibility for the regulation of gambling or gaming activities; or

7 (3) Has been convicted of a crime, a gambling-related offense, a theft or fraud offense, or
8 has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of
9 respect for law and order: *Provided*, That the Lottery Commission shall apply §29-22C-15(d) and
10 §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear
11 a rational nexus to the license being sought.

(b) In the case of an applicant for a license to supply a racetrack with West Virginia Lottery table games, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

(1) If the applicant or licensee has not demonstrated to the satisfaction of the commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation which sells more than five percent of a licensee's voting stock, or more than five percent of the voting stock of a corporation which controls the licensee, or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article.

(c) In the case of an applicant for a racetrack table games license, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

(1) If the applicant or licensee knowingly employs an individual in a job classification which includes West Virginia Lottery table games management duties who has been convicted of a gambling-related offense, or a theft, or fraud offense under the laws of this state, another state, the United States or a territory of the United States or knowingly employs any individual in a job classification which includes West Virginia Lottery table games management duties who has had a license relating to the operation of a gaming activity revoked by this state or any other state: *Provided*, That the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the licensed profession.

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation, which sells more than five percent of a licensee's voting stock, or more than five percent of the voting stock of a corporation which controls the licensee or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article, unless the sale has been approved in advance by the commission.

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

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

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

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

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

(e) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for initial licensure if:

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

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

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

65 (f) An individual with a criminal record who has not previously applied for licensure may
66 petition the Lottery Commission at any time for a determination of whether the individual's criminal
67 record will disqualify the individual from obtaining a license. This petition shall include sufficient
68 details about the individual's criminal record to enable the Lottery Commission to identify the
69 jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of
70 the conviction. The Lottery Commission shall provide the determination within 60 days of receiving
71 the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for
72 each petition.

§29-22C-16. License or registration denial, revocation, suspension, and reprimand.

1 (a) Notwithstanding any provision of §29-22C-13(b) of this code to the contrary, the
2 commission may deny a license or registration to any applicant, reprimand any licensee or
3 registrant, or suspend or revoke a license or registration if the applicant, licensee, registrant, or
4 any person having control of the applicant, licensee, or registrant:

5 (1) Fraudulently or deceptively obtains or attempts to obtain a license or registration for
6 the applicant, licensee, registrant, or another person;

7 (2) Fraudulently or deceptively uses a license or registration;

8 (3) Is or has been convicted of a felony under the laws of this state, another state, the
9 United States, or a territory of the United States: *Provided*, That in the event an applicant is
10 seeking initial licensure, the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e)
11 of this code in determining whether an applicant's prior criminal convictions bear a rational nexus
12 to the licensed profession; or

13 4) Is or has been convicted of a misdemeanor under the laws of this state, another state,

the United States or a territory of the United States for gambling or a gambling related activity:

Provided, That in the event an applicant is seeking initial licensure, the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the licensed profession.

(b) Instead of or in addition to reprimanding a licensee or registrant or suspending or revoking a license or registration, the commission may impose a civil penalty under §29-22C-31 of this code.

ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.

§29-22D-10. License prohibitions.

(a) The commission may not grant any license, pursuant to the provisions of this article, if evidence satisfactory to the commission exists that the applicant:

(1) Has knowingly made a false statement of a material fact to the commission;

(2) Has been suspended from operating a gambling game, gaming device, or gaming operation, or had a license revoked by any governmental authority responsible for regulation of gaming activities;

(3) Has been convicted of a gambling-related offense, a theft, or fraud offense, or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order: *Provided*, That the Lottery Commission shall apply §29-22D-10(c) and §29-22D-10(d) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought; or

(4) Is a company or individual who has been directly employed by any illegal or offshore book that serviced the United States, or otherwise accepted black market wagers from individuals located in the United States.

(b) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

17 (1) If the applicant or licensee has not demonstrated to the satisfaction of the commission
18 financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;

19 (2) If the applicant or licensee is not the true owner of the business or is not the sole owner
20 and has not disclosed the existence or identity of other persons who have an ownership interest
21 in the business; or

22 (3) If the applicant or licensee is a corporation which sells more than five percent of a
23 licensee's voting stock, or more than five percent of the voting stock of a corporation which
24 controls the licensee, or sells a licensee's assets, other than those bought and sold in the ordinary
25 course of business, or any interest in the assets, to any person not already determined by the
26 commission to have met the qualifications of a licensee under this article.

27 (c) The Lottery Commission may not disqualify an applicant from initial licensure because
28 of a prior criminal conviction that remains unreversed unless that conviction is for a crime that
29 bears a rational nexus to the activity requiring licensure. In determining whether a criminal
30 conviction bears a rational nexus to a profession or occupation, the Lottery Commission shall
31 consider at a minimum:

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

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

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

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

37 (d) Notwithstanding any other provision of this code to the contrary, if an applicant is
38 disqualified from licensure because of a prior criminal conviction, the Lottery Commission shall
39 permit the applicant to apply for initial licensure if:

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

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

44 (3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
45 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
46 of disqualification from licensure, to be determined by the Lottery Commission.

47 (e) An individual with a criminal record who has not previously applied for licensure may
48 petition the Lottery Commission at any time for a determination of whether the individual's criminal
49 record will disqualify the individual from obtaining a license. This petition shall include sufficient
50 details about the individual's criminal record to enable the Lottery Commission to identify the
51 jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of
52 the conviction. The Lottery Commission shall provide the determination within 60 days of receiving
53 the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for
54 each petition.

55 (f) In the case of an applicant for a sports wagering license, the commission may deny a
56 license to any applicant, reprimand any licensee, or suspend or revoke a license if an applicant
57 has not met the requirements of this section or any other provision of this article.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-13. False statements on applications; other license or registration requirements and prohibitions.

1 (a) Any person who knowingly makes a false statement on an application is guilty of a
2 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in
3 jail for not more than six months except that in the case of a person other than a natural person,
4 the amount of the fine imposed may not be more than \$25,000.

5 (b) The commission may not grant a license or registration pursuant to the provisions of
6 this article if there is substantial evidence that the applicant:

7 (1) Has knowingly made a false statement of a material fact to the commission;

8 (2) Has been suspended from operating a gambling game, gaming device, or gambling
9 operation in another jurisdiction by a board or other governmental authority of that jurisdiction
10 having responsibility for the regulation of gambling or gaming activities;

11 (3) Has been convicted of a felony, a gambling offense, a theft or fraud offense or has
12 otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect
13 for law and order: *Provided*, That the Lottery Commission shall apply §29-25-13(d) and §29-25-
14 13(e) of this code in determining whether an applicant's prior criminal convictions bear a rational
15 nexus to the license being sought;

16 (4) Has failed to meet any monetary obligation in connection with a gaming facility or any
17 other form of gaming; or

18 (5) In the case of an applicant for a license to operate a gaming facility or to supply a
19 gaming facility:

20 (A) Has not demonstrated financial responsibility sufficient to meet adequately the
21 requirements of the enterprise proposed;

22 (B) Is not the true owner of the enterprise or is not the sole owner and has not disclosed
23 the existence or identity of other persons who have an ownership interest in such enterprise; or

24 (C) Is a corporation and five percent or more of the stock of the corporation is subject to a
25 contract or option to purchase at any time during the period for which the license is issued unless
26 the contract or option was disclosed to and approved by the commission.

27 (c) In addition to any other grounds specified in this article, and subject to the hearing
28 provisions of §29-25-17 of this code, in the case of a license to operate a gaming facility the
29 commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke
30 a license if the applicant or licensee or any controlling person of the applicant or licensee
31 knowingly employs an individual in a senior management position who has been convicted of a
32 felony, bearing a rational nexus to the license, under the laws of this state, another state, a territory
33 of the United States, or the United States or employs any individual in a senior management

position who has had a license relating to the operation of a gaming facility revoked by this state or any other state: *Provided*, That the Lottery Commission shall apply §29-25-13(d) and §29-25-13(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought.

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

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

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

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

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

(e) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for initial licensure if:

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

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

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

(f) An individual with a criminal record who has not previously applied for licensure may petition the Lottery Commission at any time for a determination of whether the individual's criminal

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

(g) Character references may be required of persons licensed, but the character reference may not be obtained from persons in the same or similar occupations or professions in other states.

CHAPTER 31. CORPORATIONS.

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-5. Issuance of license.

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

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

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

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

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

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

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

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

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

(C) Foreclosures within the past three years; and

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

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

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

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

(b) The commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction

bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

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

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

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

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

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

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

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

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

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

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
3 are such that the issuance of the license is in the public interest: *Provided*, That the commissioner
4 shall apply §32A-2-8(f) and §32A-2-8(g) of this code in determining whether an applicant's prior
5 criminal convictions bear a rational nexus to the license being sought.

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

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

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

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

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

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

18 (2) The person, a principal of the person, or the spouse of the person or a principal of the
19 person has been convicted of an offense under a state or federal law relating to drug trafficking,

money laundering, or a reporting requirement of the Bank Secrecy Act, 12 U.S.C. §1951 *et seq.*,
as amended.

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

(1) Has recklessly failed to file or evaded the obligation to file a currency transaction report
as required by 31 U.S.C. §5313 during the previous three years;

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

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

(4) Warrants the trust of the community;

(5) Has and will maintain a minimum tangible net worth of \$50,000 computed according
to generally accepted accounting principles as shown by the most recent audited financial
statement filed with and satisfactory to the commissioner, and in addition has and will maintain a
minimum tangible net worth of \$25,000, computed according to generally accepted accounting
principles for each office or delegate location other than its principal office at which its licensed
business is transacted, except that an applicant for a license or renewal of a license may not be
required by this article to maintain a tangible net worth of more than \$1 million, computed
according to generally accepted accounting principles; and

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

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

44 (1) A felony involving the laundering of money that is the product of or proceeds from
45 criminal activity under chapter 61 of this code, or a similar provision of the laws of another state
46 or the United States; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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.*
5 of this code may operate as a viatical settlement broker without obtaining a license pursuant to
6 this section if the viatical settlement activities of the producer are incidental to the producer's
7 insurance 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

the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

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

(b) Application for a viatical settlement provider or viatical settlement broker license and for renewals of the licenses shall be made in the manner prescribed by the commissioner and shall be accompanied by fees established in legislative rules, including emergency rules, promulgated by the commissioner.

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

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

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

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

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

(2) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, unless that conviction is a felony pursuant to §33-13C-14 of this code, the commissioner shall permit the applicant to apply for initial licensure if:

(A) A period of five years has elapsed from the date of conviction or the date of release

from incarceration, whichever is later;

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

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

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

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

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

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

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

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

(4) Has demonstrated evidence of financial responsibility, in a format prescribed by the

63 commissioner, by possessing a minimum equity of not less than \$250,000 in cash or cash
64 equivalents reflected in the applicant's audited financial statements or through a surety bond
65 executed and issued by an insurer authorized to issue surety bonds in this state in the amount of
66 \$250,000: *Provided*, That the commissioner may permit an applicant for a broker's license to
67 demonstrate evidence of financial responsibility through a policy of insurance covering legal
68 liability resulting from erroneous acts or failure to act in their capacity as a viatical settlement
69 broker and inuring to the benefit of any aggrieved party as the result of any single occurrence in
70 the sum of not less than \$100,000 and \$300,000 in the aggregate for all occurrences within one
71 year. Any surety bond issued pursuant to this subdivision shall be in the favor of this state and
72 shall specifically authorize recovery by the commissioner on behalf of any person in this state
73 who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or
74 conviction of unfair practices by the viatical settlement provider or viatical settlement broker. The
75 commissioner shall accept, as evidence of financial responsibility, proof that financial instruments
76 in accordance with the requirements in this paragraph have been filed with a state in which the
77 applicant is licensed as a viatical settlement provider or viatical settlement broker. The
78 commissioner may ask for evidence of financial responsibility at any time he or she considers it
79 necessary.

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

81 and

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

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

88 (f) A viatical settlement provider or viatical settlement broker shall provide to the

commissioner new or revised information about officers, 10 percent or more stockholders, partners, directors, members, or designated employees within 30 days of the change.

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

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

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

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

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

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

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

(5) The viatical settlement provider has entered into any viatical settlement contract that 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
30 to 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
32 or 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.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

.....
Governor