

1 **COMMITTEE SUBSTITUTE**

2 **FOR**

3 **H. B. 2796**

4  
5 (By Delegates Morgan, Swartzmiller, Givens,  
6 Staggers, Hartman and Butcher)

7  
8 (Originating in the House Committee on Government Organization)

9 [February 21, 2011]

10 A BILL to repeal §30-1-15 of the Code of West Virginia, 1931, as  
11 amended; to amend and reenact §30-1-2a, §30-1-5, §30-1-6,  
12 §30-1-8, §30-1-11 and §30-1-14 of said code; and to amend said  
13 code by adding thereto a new section, designated §30-1-20, all  
14 relating to professional licensing boards; repealing  
15 antiquated, ineffective provisions; revising requirements for  
16 specific subject matter at orientation sessions; clarifying  
17 who may call a board meeting; establishing quorums; reporting  
18 violations; requiring boards to maintain a business office  
19 open to the public; authorizing boards to propose fees  
20 notwithstanding specific fees established in code; notifying  
21 licensees of proposal of fees in legislative rules;  
22 authorizing boards to levy fines; hiring administrative law  
23 judges; clarifying law governing hearings and administrative  
24 hearings; requiring board members to adhere to ethical  
25 standards for appointed officials; permitting boards to  
26 establish a process for modifying or waiving continuing

1 education requirements or renewal fees for licensees in active  
2 duty military service; and requiring regulatory board reviews.

3 *Be it enacted by the Legislature of West Virginia:*

4 That §30-1-15 of the Code of West Virginia, 1931, as amended,  
5 be repealed; that §30-1-2a, §30-1-5, §30-1-6, §30-1-8, §30-1-11 and  
6 §30-1-14 of said code be amended and reenacted; and that said code  
7 be amended by adding thereto a new section, designated §30-1-20,  
8 all to read as follows:

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

11 **§30-1-2a. Required orientation session.**

12 (a) ~~After~~ Between April 1 and ~~not later than the first day of~~  
13 December 31 of each year, the Auditor shall provide at least one  
14 orientation session on relevant state law and rules governing state  
15 boards. ~~and commissions~~ All state agencies shall cooperate with  
16 and assist in providing the orientation session if the Auditor  
17 requests.

18 (b) ~~After the effective date of this section,~~ All chairs or  
19 chief financial officers of ~~state boards and commissions~~ newly  
20 created by the Legislature shall attend an orientation session  
21 designed by the Auditor to inform the ~~state boards and commissions~~  
22 of the duties and requirements imposed ~~on state boards and~~  
23 ~~commissions~~ by state law and rules ~~The chair or chief financial~~  
24 ~~officer of the newly created board or commission shall attend an~~

1 ~~orientation session~~ at the earliest possible date following the  
2 creation of the board. ~~or commission~~

3 ~~(c) The orientation session shall include a minimum of thirty~~  
4 ~~minutes of instructional time dedicated to the statutory duty of~~  
5 ~~boards to investigate and resolve complaints, including procedures~~  
6 ~~for investigations, administrative hearings and remedies, due~~  
7 ~~process protections, and the duty to provide public access to~~  
8 ~~records of the disposition of complaints, as set forth in section~~  
9 ~~five of this article.~~

10 ~~(d)~~ (c) Topics for the orientation session may include, but  
11 are not limited to, the statutory duty of boards to investigate and  
12 resolve complaints, including procedures for investigations,  
13 administrative hearings and remedies, and the duty to provide  
14 public access to records of the disposition of complaints; the  
15 official conduct of members, state budgeting and financial  
16 procedures, purchasing requirements, open meetings requirements,  
17 ethics, rule-making procedures, records management, annual reports  
18 and any other topics the Auditor determines ~~to be essential in the~~  
19 ~~fulfillment of the duties of the members of state boards and~~  
20 ~~commissions~~ are necessary.

21 ~~(e)~~ (d) The orientation session ~~shall be~~ is open to any member  
22 of new or existing boards ~~and commissions~~ and each board ~~or~~  
23 ~~commission~~ may approve expense reimbursement for the attendance of  
24 one or more of its members. ~~The chair or chief financial officer~~

1 ~~of each existing board or commission shall attend an orientation~~  
2 ~~session within two years following the effective date of this~~  
3 ~~section.~~

4 ~~(f)~~ (e) No later than December 31 of each year, the Auditor  
5 shall provide to the chairs of the Joint Standing Committee on  
6 Government ~~Operations~~ Organization a list of the names of board ~~or~~  
7 ~~commission~~ members attending orientation sessions, ~~together with~~  
8 the names of the boards ~~and commissions~~ represented and the  
9 orientation ~~session or~~ sessions offered by the Auditor during the  
10 previous year.

11 ~~(g)~~ (f) The Auditor may charge a registration fee for the  
12 orientation session to cover the cost of ~~providing the orientation~~  
13 ~~session.~~ The fee may be paid from funds available to a board. ~~or~~  
14 ~~commission~~

15 ~~(h)~~ (g) Notwithstanding the member's normal rate of  
16 compensation for serving on a board, a member attending ~~the~~ an  
17 orientation session may be reimbursed for necessary and actual  
18 expenses as long as the member attends the complete ~~orientation~~  
19 ~~session.~~

20 ~~(i)~~ (h) Ex officio members who are elected or appointed state  
21 officers or employees and members of boards ~~or commissions~~ that  
22 have purely advisory functions ~~with respect~~ to a department or  
23 agency of the state are exempt from the requirements of this  
24 section.

1     **§30-1-5. Meetings; quorum; investigatory powers; duties.**

2           (a) ~~Every~~ Each board ~~referred to in this chapter~~ shall hold at  
3 least one meeting each year, at such time and place as it may  
4 prescribe by rule, ~~for the examination of applicants who desire to~~  
5 ~~practice their respective professions or occupations in this state~~  
6 ~~and~~ to transact any ~~other~~ business which may legally come before  
7 it. The board may hold additional meetings as may be necessary  
8 ~~which shall be~~ called either by the chair ~~secretary~~ at the  
9 ~~direction of the president~~ or upon the written request of ~~any three~~  
10 a majority of the board members. A simple majority of ~~the members~~  
11 of the constituent membership serving on the board at a given time  
12 ~~constitutes~~ is a quorum for the transaction of ~~its~~ business.

13           (b) ~~The~~ Each board ~~is authorized to~~ may compel the attendance  
14 of witnesses, ~~to~~ issue subpoenas and subpoenas duces tecum, ~~to~~  
15 conduct investigations, ~~and~~ hire an investigator and ~~to~~ take  
16 testimony and other evidence concerning any matter within its  
17 jurisdiction. The ~~president~~ chair and secretary of the board ~~are~~  
18 ~~authorized to~~ may administer oaths for these purposes.

19           (c) ~~Every~~ Each board ~~referred to in this chapter~~ has a duty to  
20 shall investigate and resolve complaints which it receives and,  
21 ~~shall~~, within six months of the complaint being filed, send a  
22 status report to the party filing the complaint by certified mail  
23 with a signed return receipt. ~~and~~ Within one year of the status  
24 report's return receipt date, the board shall issue a final ruling

1 unless the party filing the complaint and the board agree, in  
2 writing, to extend the time for the final ruling.

3 (d) ~~Every~~ Each board shall maintain a business office open to  
4 the public and provide public access to ~~the record of~~ its public  
5 records, including the disposition of the complaints which it  
6 receives in accordance with the provisions of chapter twenty-nine-b  
7 of this code.

8 (e) ~~Every~~ Each board has a duty to report violations of  
9 individual practice acts contained in this chapter to the board by  
10 which the individual may be licensed ~~and shall do so~~ in a timely  
11 manner upon receiving notice of such violations. ~~Every~~ Each person  
12 licensed or registered by a board has a duty to report to the board  
13 which licenses or registers him or her a known or observed  
14 violation of the practice act or the board's rules by any other  
15 person licensed or registered by the same board ~~and shall do so~~ in  
16 a timely manner. ~~Law enforcement agencies or their personnel and~~  
17 ~~courts shall report in a timely manner within ten days to the~~  
18 ~~appropriate board any violations of individual practice acts by any~~  
19 ~~individual.~~ Any person who reports or provides information in good  
20 faith is not subject to civil damages.

21 ~~(e)~~ (f) Whenever a board referred to in this chapter obtains  
22 information that a person subject to its authority has engaged in,  
23 is engaging in or is about to engage in any act which constitutes  
24 or will constitute a violation of the provisions of this chapter

1 which are administered and enforced by that board, it may apply to  
2 the circuit court for an order enjoining the act Upon a showing  
3 that the person has engaged, is engaging or is about to engage in  
4 any such act, the court shall order an injunction, restraining  
5 order or other order as the court may deem appropriate.

6 **§30-1-6. Application for license or registration; examination fee;  
7 prohibiting discrimination.**

8 (a) ~~Every~~ Each applicant for ~~license or registration an~~  
9 authorization to practice under the provisions of this chapter  
10 shall apply ~~for the license or registration~~ in writing to the  
11 proper board and shall transmit with his or her application ~~an~~  
12 ~~examination fee which the board is authorized to charge for an~~  
13 ~~examination or investigation into the applicant's qualifications to~~  
14 practice the authorized fees.

15 (b) Each board ~~referred to in this chapter is authorized to~~  
16 may establish by rule a deadline for application for examination.  
17 ~~which shall be no less than ten nor more than ninety days prior to~~  
18 ~~the date of the examination~~

19 (c) ~~Boards~~ Notwithstanding specific fees established in the  
20 articles which govern the licensing boards in this chapter, each  
21 board may set fees by legislative rule ~~fees relating to the~~  
22 ~~licensing or registering of individuals, which shall be sufficient~~  
23 to enable the boards to effectively carry out ~~effectively~~ their  
24 responsibilities ~~of licensure or registration~~ of the authorization

1 to practice and discipline ~~of the~~ individuals subject to their  
2 authority. ~~Provided, That when any~~ When a board proposes to  
3 promulgate a rule regarding fees, ~~for licensing or registration,~~  
4 ~~that the~~ board shall notify its membership of the proposed rule by:

5 (1) Mailing a copy of the proposed rule to the membership its  
6 licensees at the time that the proposed rule is filed with the  
7 Secretary of State; ~~for publication in the state register in~~  
8 ~~accordance with section five, article three, chapter twenty-nine-a~~  
9 ~~of this code.~~ or

10 (2) Posting the proposed rule on its website and notifying its  
11 licensees of the website posting at least thirty days before the  
12 proposed rule is filed with the Secretary of State, by:

13 (A) Mailing a postcard to its licensees;

14 (B) Emailing a notice to its licensees who have an email  
15 address on file with the board; or

16 (C) Placing a notice in its newsletter.

17 (d) In addition to any other information required, the  
18 applicant's social security number ~~shall~~ must be recorded on the  
19 application and will be redacted from any copies provided to the  
20 public.

21 (e) No board may discriminate against any applicant because of  
22 political or religious opinion or affiliation, marital status,  
23 race, color, gender, creed, age, national origin, disability or  
24 other protected group status.



1 (f) ~~Any~~ A board may deny the application for ~~licensure or~~  
2 ~~registration~~ an authorization to practice of an applicant whose  
3 ~~license or registration~~ authorization to practice in any other  
4 state, territory, jurisdiction or foreign nation has been revoked  
5 by the licensing authority. ~~thereof~~ The application may be denied  
6 by a board without a hearing unless the applicant requests a  
7 hearing within thirty days of the denial. Any hearing must be  
8 conducted pursuant to the provisions of section eight of this  
9 article or provisions contained in the rules of the board.

10 **§30-1-8. Denial, suspension or revocation of a license or**  
11 **registration; probation; proceedings; effect of**  
12 **suspension or revocation; authority to hire hearing**  
13 **examiner; transcript; report; judicial review.**

14 (a) ~~Every~~ Each board ~~referred to in this chapter~~ may suspend  
15 or revoke the ~~license~~ authorization to practice of any person who  
16 has been convicted of a felony or who has been found to have  
17 engaged in conduct, practices or acts constituting professional  
18 negligence or a willful departure from accepted standards of  
19 professional conduct. Where any person has been convicted of a  
20 felony or has been found to have engaged in such conduct, practices  
21 or acts, ~~every~~ the board ~~referred to in this chapter~~ may enter into  
22 consent decrees, ~~to~~ reprimand, ~~to~~ enter into probation orders, ~~to~~  
23 levy fines ~~not to exceed one thousand dollars per day per violation~~  
24 or any of these, singly or in combination. Each board may also

1 assess administrative costs. ~~Any costs which are Assessed shall be~~  
2 costs are placed in the special account of the board and ~~any fines~~  
3 ~~which is~~ levied fines ~~shall be~~ are deposited in the state  
4 Treasury's General Revenue Fund.

5 (b) For purposes of this section, the word "felony" means a  
6 ~~felony or~~ crime punishable as a felony under the laws of this  
7 state, any other state or the United States.

8 (c) ~~Every~~ Each board ~~referred to in this chapter~~ may  
9 promulgate rules in accordance with the provisions of chapter  
10 twenty-nine-a of this code to delineate conduct, practices or acts  
11 which, in the judgment of the board, constitute professional  
12 negligence, a willful departure from accepted standards of  
13 professional conduct or which may render an individual unqualified  
14 or unfit for ~~licensure, registration or other~~ an authorization to  
15 practice.

16 (d) ~~Every~~ Each board ~~referred to in this chapter~~ may revoke  
17 ~~the license or registration~~ an authorization to practice of an  
18 individual ~~licensed or otherwise~~ lawfully practicing within this  
19 state whose ~~license or registration~~ authorization to practice in  
20 any other state, territory, jurisdiction or foreign nation has been  
21 revoked by the licensing authority. ~~thereof~~

22 (e) Notwithstanding any other provision of law to the  
23 contrary, no ~~certificate, license, registration or authority~~  
24 authorization to practice issued under the provisions of this

1 chapter may be suspended or revoked without a prior hearing before  
2 the board or court which issued the certificate, license,  
3 registration or authority, except:

4 (1) A board ~~is authorized to~~ may suspend or revoke a  
5 ~~certificate, license, registration or authority~~ an authorization to  
6 practice prior to a hearing if the person's continuation in  
7 practice constitutes an immediate danger to the public; or

8 (2) ~~After due diligence,~~ If a board, after reviewing all  
9 reasonably available relevant information, cannot locate a person  
10 ~~licensed~~ authorized to practice under the provisions of this  
11 chapter within sixty days of a complaint being filed against the  
12 ~~licensee~~ person, then the board may suspend the ~~license,~~  
13 ~~certificate, registration or authority~~ authorization to practice of  
14 the person without holding a hearing. ~~After due diligence,~~ If a  
15 board, ~~still~~ after reviewing all reasonably available relevant  
16 information, cannot locate the person ~~licensed~~ authorized to  
17 practice under the provisions of this chapter thirty days after the  
18 suspension of the person's ~~license, certificate, registration or~~  
19 ~~authority,~~ then authorization to practice, the board may revoke the  
20 ~~license, certificate, registration or authority~~ authorization to  
21 practice of the person without holding a hearing.

22 (f) In all proceedings before a board or court for the  
23 suspension or revocation of ~~any certificate, license, registration~~  
24 ~~or authority~~ the authorization to practice issued under the

1 provisions of this chapter, a statement of the charges against the  
2 holder of the ~~certificate, license, registration or authority~~  
3 authorization to practice and a notice of the time and place of  
4 hearing shall be served upon the person as a notice is served under  
5 section one, article two, chapter fifty-six of this code at least  
6 thirty days prior to the hearing. ~~and~~ He or she may appear with  
7 witnesses and be heard in person, by counsel, or both. The board  
8 may take oral or written proof, for or against the ~~accused~~ holder  
9 of the authorization to practice, as it may consider advisable. If  
10 upon hearing the board finds that the charges are true, it may  
11 suspend or revoke the ~~certificate, license, registration or~~  
12 ~~authority and suspension or revocation shall take from the person~~  
13 ~~all rights and privileges acquired thereby~~ authorization to  
14 practice.

15 (g) The board may conduct the hearing or elect to have a  
16 hearing examiner or an administrative law judge conduct the  
17 hearing. If the hearing is conducted by a hearing examiner or an  
18 administrative law judge:

19 (1) The hearing examiner or administrative law judge shall be  
20 licensed to practice law in this state and shall conform to the  
21 Code of Conduct for Administrative Law Judges as set forth by the  
22 Ethics Commission in legislative rule;

23 (2) At the conclusion of a hearing, the hearing examiner or  
24 administrative law judge shall prepare a proposed written order

1 containing recommended findings of fact and conclusions of law and  
2 may include recommended disciplinary sanctions if the board so  
3 directs;

4 (3) The board may accept, reject, modify or amend the  
5 recommendations of the hearing examiner or administrative law  
6 judge; and

7 (4) If the board rejects, modifies or amends the  
8 recommendations, the board shall state in the order a reasoned,  
9 articulate justification based on the record for the rejection,  
10 modification or amendment.

11 (h) Pursuant to the provisions of section one, article five,  
12 chapter twenty-nine-a of this code, informal disposition may ~~also~~  
13 be made by the board of any contested case by stipulation, agreed  
14 settlement, consent order or default. ~~Further,~~ The board may  
15 suspend its decision and place a licensee found by the board to be  
16 in violation of the applicable practice act or rules of the board  
17 on probation.

18 (h) (i) Any person denied ~~a license, certificate, registration~~  
19 ~~or authority~~ an authorization to practice who believes the denial  
20 was in violation of this article or the article under which the  
21 license, ~~certificate, registration or authority~~ licensee is  
22 authorized, ~~shall be~~ is entitled to a hearing on the action.  
23 ~~denying the license, certificate, registration or authority~~  
24 Hearings under this subsection are in accordance with the

1 provisions for hearings which are set forth in this section.

2 ~~(i)~~ (j) A stenographic report of each proceeding on the  
3 denial, suspension or revocation ~~of a certificate, license,~~  
4 ~~registration or authority~~ shall be made at the expense of the board  
5 and a transcript of the hearing retained in its files. The board  
6 shall make a written report of its findings which ~~shall constitute~~  
7 is part of the record.

8 ~~(j)~~ (k) All hearings and administrative proceedings under the  
9 provisions of this section are held in accordance with the  
10 provisions of article five, chapter twenty-nine-a of this code, and  
11 are subject to review by the Supreme Court of Appeals.

12 ~~(k)~~ (l) ~~On or before the first day of July, two thousand one,~~  
13 ~~every~~ Each board ~~referred to in this chapter~~ shall adopt procedural  
14 rules in accordance with the provisions of article three, chapter  
15 twenty-nine-a of this code ~~which shall~~ specifying a procedure for  
16 the investigation and resolution of all complaints against persons  
17 licensed under this chapter. ~~The proposed legislative rules~~  
18 ~~relating only to complaint procedures or contested case hearing~~  
19 ~~procedures required by the prior enactment of this subsection shall~~  
20 ~~be redesignated as procedural rules in accordance with the~~  
21 ~~provisions of article three, chapter twenty-nine-a of this code.~~  
22 ~~Each board shall file the procedural rules required by this~~  
23 ~~subsection by the thirty first day of January, two thousand one.~~  
24 ~~The public hearing or public comment period conducted for the~~

1 ~~proposed legislative rules shall serve as the public hearing or~~  
2 ~~public comment period required by section five, article three,~~  
3 ~~chapter twenty-nine-a of this code.~~

4 **§30-1-11. Compensation of members; expenses; adherence to ethical**  
5 **standards.**

6 (a) Each member of every board in this chapter is entitled to  
7 receive compensation for attending official meetings or engaging in  
8 official duties ~~not to exceed the amount~~ in the same amount as is  
9 paid to members of the Legislature for their interim duties as  
10 recommended by the Citizens Legislative Compensation Commission and  
11 authorized by law. A board member may not receive compensation for  
12 travel days that are not on the same day as the official meeting or  
13 for days when not engaged in official duties.

14 (b) The limitations contained in this section do not apply if  
15 ~~they~~ these conflict with provisions of this chapter relating to a  
16 particular board and enacted after January 1, 1995.

17 (c) A board may reimburse actual and necessary expenses  
18 incurred for each day or portion of a day engaged in the discharge  
19 of official duties in a manner consistent with guidelines of the  
20 Travel Management Office of the Department of Administration.

21 (d) No member of any board in this chapter may receive  
22 compensation as an employee of the board.

23 (e) Each member of every board in this chapter shall adhere to  
24 the ethical standards for appointed officials as set forth in

1 section five, article two, chapter six-b of this code.

2 **§30-1-14. Remission of certain fees** Modifying or waiving continuing  
3 education requirements or renewal fees for persons in  
4 active duty military service.

5 ~~Every board of examination or registration referred to in this~~  
6 ~~chapter is hereby authorized, under such rules and regulations as~~  
7 ~~may be adopted by each board, to remit all annual license or annual~~  
8 ~~registration fees required to be paid by any licensee or registrant~~  
9 ~~under its supervision during such time as such licensee or~~  
10 ~~registrant is serving with the Armed Forces of the United States of~~  
11 ~~America, and to retain the name of such licensee or registrant in~~  
12 ~~good standing on the roster of said board during said time.~~

13 Each board in this chapter may establish and implement  
14 processes for modifying or waiving continuing education  
15 requirements or renewal fees for the renewal of an authorization to  
16 practice for the period of time during which a person is engaged in  
17 active duty military service.

18 **§30-1-20. Regulatory board review.**

19 Each board is subject to a regulatory board review pursuant to  
20 the provisions of article ten, chapter four of this code.