

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3050**

4 (By Delegates Morgan, Stephens and Martin)

5
6 (Originating in the Committee on Finance)

7 [February 23, 2011]

8
9
10 A BILL to repeal §30-35-2a of the Code of West Virginia, 1931, as
11 amended; to amend and reenact §30-35-1, §30-35-2, §30-35-3,
12 §30-35-4, §30-35-5, §30-35-6, §30-35-7, §30-35-8, §30-35-9,
13 §30-35-10, §30-35-11, §30-35-12, §30-35-13 and §30-35-14 of
14 said code; and to amend said code by adding thereto four new
15 sections, designated §30-35-15, §30-35-16, §30-35-17 and §30-
16 35-18, all relating to the practice of dietetics; providing
17 that it is unlawful to practice dietetics without a license;
18 defining terms; providing board member qualifications;
19 describing conditions and terms of board appointments;
20 describing powers and duties of the board; defining board
21 rulemaking authority; continuing the Board of Licensed
22 Dieticians Fund in the State Treasury; establishing conditions
23 for licensure; defining the scope of practice of dieticians;
24 authorizing the issuance of temporary permits; requiring
25 license renewal; requiring display of a license; providing the
26 board may enjoin licensees; authorizing the board to

1 investigate complaints; providing for due process for
2 licensees; describing procedures for hearings and rights of
3 appeal; authorizing criminal proceedings; and describing
4 penalties for violations of the act.

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

6 That §30-35-2a of the Code of West Virginia, 1931, as amended,
7 be repealed; that §30-35-1, §30-35-2, §30-35-3, §30-35-4, §30-35-5,
8 §30-35-6, §30-35-7, §30-35-8, §30-35-9, §30-35-10, §30-35-11, §30-
9 35-12, §30-35-13 and §30-35-14 of said code be amended and
10 reenacted; and that said code be amended by adding thereto four new
11 sections, designated §30-35-15, §30-35-16, §30-35-17 and §30-35-18,
12 all to read as follows:

13 **ARTICLE 35. BOARD OF DIETITIANS.**

14 **§30-35-1. Unlawful acts.**

15 (a) It is unlawful for any person to practice or offer to
16 practice dietetics in this state without a license or permit issued
17 under the provisions of this article, or advertise or use any title
18 or description tending to convey the impression that the person is
19 a dietitian, unless the person has been licensed or permitted under
20 the provisions of this article, and the license or permit has not
21 expired, been suspended or revoked.

22 (b) No business entity, except through a licensee, may render
23 any service or engage in any activity which if rendered or engaged
24 in by an individual, would constitute the practice regulated under
25 the provisions of this article.

1 **§30-35-2. General provisions.**

2 The practice regulated under the provisions of this article
3 and the Board of Licensed Dietitians are subject to the provisions
4 of article one of this chapter, the provisions of this article, and
5 any rules promulgated hereunder.

6 **§30-35-3. Definitions.**

7 As used in this article, the following terms mean the
8 following:

9 (a) "Board" means the West Virginia Board of Licensed
10 Dietitians;

11 (b) "Commission on Dietetic Registration" means the Commission
12 on Dietetic Registration that is a member of the national
13 commission for health certifying agencies;

14 (c) "Dietetics" means the integration and application of the
15 principles derived from the sciences of nutrition, biochemistry,
16 food, physiology, and management and from the behavioral and social
17 sciences to achieve and maintain a person's health throughout the
18 person's life.

19 (c) "Licensed dietitian" means a person licensed to practice
20 dietetics under this article;

21 (d) "Licensee" means a person licensed to practice dietetics
22 under this article;

23 (e) "Medical nutrition therapy" or "nutrition therapy" means
24 nutritional diagnostic assessment and nutrition therapy services
25 for the purpose of disease management;

26 (f) "Permittee" means a person permitted to temporarily

1 practice dietetics under this article;

2 (g) "Registered dietitian" means a person registered by the
3 Commission on Dietetic Registration, the accrediting body of the
4 American Dietetic Association; and

5 (h) "Temporary permit" means an authorization issued by the
6 board to a person to temporarily practice dietetics under this
7 article.

8 **§30-35-4. Board of Licensed Dietitians.**

9 (a) The Board of Licensed Dieticians is continued. The
10 members of the board in office on July 1, 2011, shall, unless
11 sooner removed, continue to serve until their respective terms
12 expire and until their successors have been appointed and
13 qualified.

14 (b) The board shall consist of the following five members who
15 are appointed by the Governor with the advice and consent of the
16 Senate:

17 (1) Four members, who are a registered or licensed dietitian;
18 and

19 (2) One citizen member.

20 (d) Each licensed member of the board, at the time of his or
21 her appointment, must have held a license in this state for at
22 least three years;

23 (e) Each member of the board must be a resident of this state
24 during the appointment term.

25 (f) A member may not serve more than two consecutive full
26 terms. A member having served two consecutive full terms may not

1 be appointed for one year after completion of his or her second
2 full term. A member may continue to serve until a successor has
3 been appointed and has qualified.

4 (g) A vacancy on the board shall be filled by appointment by
5 the Governor for the unexpired term of the member whose office
6 shall be vacant and the appointment shall be made within sixty days
7 of the vacancy.

8 (h) The Governor may remove any member from the board for
9 neglect of duty, incompetency or official misconduct.

10 (i) Any member of the board immediately and automatically
11 forfeits his or her membership if his or her license to practice is
12 suspended or revoked by the board, is convicted of a felony under
13 the laws of any jurisdiction, or becomes a nonresident of this
14 state.

15 (j) The board shall elect annually one of its members as
16 chairperson who serves at the will of the board.

17 (k) Each member of the board is entitled to compensation and
18 expense reimbursement in accordance with article one of this
19 chapter.

20 (l) A simple majority of the membership serving on the board
21 at a given time is a quorum for the transaction of business.

22 (m) The board shall hold at least two meetings annually.
23 Other meetings may be held at the call of the chairperson or upon
24 the written request of two members, at the time and place as
25 designated in the call or request.

26 (n) Prior to commencing his or her duties as a member of the

1 board, each member shall take and subscribe to the oath required by
2 section five, article four of the Constitution of this state.

3 **§30-35-5. Powers and duties of the board.**

4 (a) The board has all the powers and duties set forth in this
5 article, by rule, in article one of this chapter and elsewhere in
6 law.

7 (b) The board shall:

8 (1) Hold meetings;

9 (2) Establish requirements for licenses and permits;

10 (3) Establish procedures for submitting, approving and
11 rejecting applications for licenses and permits;

12 (4) Determine the qualifications of an applicant for licenses
13 and permits;

14 (5) Maintain records of the examinations the board or a third
15 party administers, including the number of persons taking the
16 examinations and the pass and fail rate;

17 (6) Hire, discharge, establish the job requirements and fix
18 the compensation of the executive director;

19 (7) Maintain an office, and hire, discharge, establish the job
20 requirements and fix the compensation of employees, investigators
21 and contracted employees necessary to enforce the provisions of
22 this article;

23 (8) Investigate alleged violations of the provisions of this
24 article, legislative rules, orders and final decisions of the
25 board;

26 (9) Conduct disciplinary hearings of persons regulated by the

1 board;

2 (10) Determine disciplinary action and issue orders;

3 (11) Institute appropriate legal action for the enforcement of
4 the provisions of this article;

5 (12) Maintain an accurate registry of names and addresses of
6 all persons regulated by the board;

7 (13) Keep accurate and complete records of its proceedings,
8 and certify the same as may be necessary and appropriate;

9 (14) Establish the continuing education requirements for
10 licensees;

11 (15) Issue, renew, combine, deny, suspend, revoke or reinstate
12 licenses and permits;

13 (16) Establish a fee schedule;

14 (17) Propose rules in accordance with the provisions of
15 article three, chapter twenty-nine-a of this code to implement the
16 provisions of this article; and

17 (18) Take all other actions necessary and proper to effectuate
18 the purposes of this article.

19 (c) The board may:

20 (1) Contract with third parties to administer the examinations
21 required under the provisions of this article;

22 (2) Sue and be sued in its official name as an agency of this
23 state; and,

24 (3) Confer with the Attorney General or his or her assistant
25 in connection with legal matters and questions.

26 **§30-35-6. Rule-making.**

1 (a) The board shall propose rules for legislative approval, in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code, to implement the provisions of this
4 article, including:

5 (1) Additional standards and requirements for licenses and
6 permits;

7 (2) Requirements for third parties to prepare and/or
8 administer examinations and reexaminations;

9 (3) Educational and experience requirements;

10 (4) Standards for approval of courses and curriculum;

11 (5) Procedures for the issuance and renewal of licenses and
12 permits;

13 (6) A fee schedule;

14 (7) Continuing education requirements for licensees;

15 (8) The procedures for denying, suspending, revoking,
16 reinstating or limiting the practice of licensees and permittees;

17 (9) Requirements for inactive or revoked licenses and permits;
18 and

19 (10) Any other rules necessary to effectuate the provisions of
20 this article.

21 (b) All of the board's rules in effect on January 1, 2011,
22 shall remain in effect until they are amended or repealed, and
23 references to provisions of former enactments of this article are
24 interpreted to mean provisions of this article.

25 **§30-35-7. Fees; special revenue account; administrative fines.**

26 (a) All fees in effect, shall remain in effect until they are

1 amended or repealed by legislative rule or statute.

2 (b) All fees and other moneys, except administrative fines,
3 received by the board shall be deposited in a separate special
4 revenue fund in the State Treasury designated the "Board of
5 Licensed Dietitians Fund", which is continued. The fund is used by
6 the board for the administration of this article. Except as may be
7 provided in article one of this chapter, the board retains the
8 amount in the special revenue account from year to year. No
9 compensation or expense incurred under this article is a charge
10 against the General Revenue Fund.

11 (c) Any amount received as fines, imposed pursuant to this
12 article, shall be deposited into the General Revenue Fund of the
13 State Treasury.

14 **§30-35-8. License to practice as a dietitian.**

15 To be eligible for a license to practice as an dietitian, the
16 applicant must:

17 (1) Submit an application to the board;

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

19 (3) Be of good moral character;

20 (4) Have completed a major course of study in human nutrition,
21 dietetics, food systems management or the equivalent thereof, as
22 determined by the board;

23 (5) Have a baccalaureate or post-baccalaureate degree;

24 (6) Have completed a planned continuous professional
25 experience component in dietetic practice of not less than 900
26 hours under the supervision of a registered or licensed dietitian.

1 (7) Have completed a written and/or oral examination. Each
2 demonstrating competence in the discipline of dietetics and
3 nutrition;

4 (8) Not have been convicted of a felony in any jurisdiction
5 within five years preceding the date of application for license
6 which conviction remains unreversed;

7 (9) Not have been convicted of a misdemeanor or felony in any
8 jurisdiction if the offense for which he or she was convicted
9 related to the practice of dietetics, which conviction remains
10 unreversed; and

11 (10) Meet any other requirements established by the board.

12 **§30-35-9. Scope of practice.**

13 A licensed dietitians may:

14 (1) Perform medical nutrition therapy;

15 (2) Perform a nutritional assessment to determine nutritional
16 needs and to recommend appropriate nutritional intake, including
17 enteral and parenteral nutrition;

18 (3) Perform nutritional counseling or education as components
19 of preventive curative and restorative health care;

20 (4) Develop, administer, evaluate and consult regarding
21 nutritional care standards.

22 **§30-35-10. Temporary permit.**

23 (a) The board may issue a temporary permit to practice
24 dietetics to a person who has not met the experience requirements
25 set forth in section eight upon the filing of an application,
26 payment of a fee, and submission of evidence of successful

1 completion of the education requirements of this article.

2 (b) A temporary permit expires one year from the date of
3 issuance.

4 (c) Renewals may be issued three times upon request by the
5 applicant and submission of a satisfactory explanation for the
6 applicant's failure to become licensed.

7 **§30-35-11. Exemptions from this article.**

8 The following exemptions apply to this article:

9 (1) A dietitian registered by the Commission on Dietetic
10 Registration may use the title of registered dietitian;

11 (2) Nothing in this article may be construed to affect a
12 person employed as a cook at any public or private educational
13 institution in this state;

14 (3) Nothing in this article may be construed to affect a
15 person who furnishes nutrition information on food, food materials
16 or dietary supplements or who engages in explanation to customers
17 about food, food materials or dietary supplements in connection
18 with the marketing and distribution of those products;

19 (4) Nothing in this article may be construed to prohibit or
20 otherwise limit the practice of a profession by a person who is
21 licensed, certified or registered under the laws of this state and
22 who is performing services within their authorized scope of
23 practice.

24 **§30-35-12. Renewal of license.**

25 (a) A persons regulated by this article shall annually or
26 biannually, renew his or her authorization by completing a form

1 prescribed by the board and submitting any other information
2 required by the board.

3 (b) The board shall charge a fee for each renewal of an
4 authorization and shall charge a late fee for any renewal not paid
5 by the due date.

6 (c) The board shall require as a condition of renewal that
7 each licensee complete continuing education.

8 (d) The board may deny an application for renewal for any
9 reason which would justify the denial of an original application.

10 **§30-35-13. Display of license.**

11 (a) The board shall prescribe the form for a license and
12 permit, and may issue a duplicate license or permit upon payment of
13 a fee.

14 (b) Any person regulated by the article shall conspicuously
15 display his or her license or permit at his or her principal
16 business location.

17 **§30-35-14. Actions to enjoin violations.**

18 (a) If the board obtains information that any person has
19 engaged in, is engaging in or is about to engage in any act which
20 constitutes or will constitute a violation of the provisions of
21 this article, the rules promulgated pursuant to this article, or a
22 final order or decision of the board, it may issue a notice to the
23 person to cease and desist in engaging in the act and/or apply to
24 the circuit court in the county of the alleged violation for an
25 order enjoining the act.

26 (b) The circuit courts of this state may issue a temporary

1 injunction pending a decision on the merits, and may issue a
2 permanent injunction based on its findings in the case.

3 (c) The judgment of the circuit court on an application
4 permitted by the provisions of this section is final unless
5 reversed, vacated or modified on appeal to the West Virginia
6 Supreme Court of Appeals.

7 **§30-35-15. Complaints; investigations; due process procedure;**
8 **grounds for disciplinary action.**

9 (a) The board may upon its own motion based on credible
10 information, and shall upon the written complaint of any person,
11 cause an investigation to be made to determine whether grounds
12 exist for disciplinary action under this article or the legislative
13 rules promulgated pursuant to this article.

14 (b) Upon initiation or receipt of the complaint, the board
15 shall provide a copy of the complaint to the licensee or permittee.

16 (c) After reviewing any information obtained through an
17 investigation, the board shall determine if probable cause exists
18 that the licensee or permittee has violated subsection (g) of this
19 section or rules promulgated pursuant to this article.

20 (d) Upon a finding that probable cause exists that the
21 licensee or permittee has violated subsection (g) of this section
22 or rules promulgated pursuant to this article, the board may enter
23 into a consent decree or hold a hearing for the suspension or
24 revocation of the license or permit or the imposition of sanctions
25 against the licensee or permittee. Any hearing shall be held in
26 accordance with the provisions of this article.

1 (e) Any member of the board or the administrator of the board
2 may issue subpoenas and subpoenas duces tecum to obtain testimony
3 and documents to aid in the investigation of allegations against
4 any person regulated by the article.

5 (f) Any member of the board or its administrator may sign a
6 consent decree or other legal document on behalf of the board.

7 (g) The board may, after notice and opportunity for hearing,
8 deny or refuse to renew, suspend, restrict or revoke the license or
9 permit of, or impose probationary conditions upon or take
10 disciplinary action against, any licensee or permittee for any of
11 the following reasons once a violation has been proven by a
12 preponderance of the evidence:

13 (1) Obtaining a license or permit by fraud, misrepresentation
14 or concealment of material facts;

15 (2) Being convicted of a felony or other crime involving moral
16 turpitude;

17 (3) Being guilty of unprofessional conduct which placed the
18 public at risk, as defined by legislative rule of the board;

19 (4) Intentional violation of a lawful order or legislative
20 rule of the board;

21 (5) Having had a license or other authorization revoked or
22 suspended, other disciplinary action taken, or an application for
23 licensure or other authorization revoked or suspended by the proper
24 authorities of another jurisdiction;

25 (6) Aiding or abetting unlicensed practice; or

26 (7) Engaging in an act while acting in a professional capacity

1 which has endangered or is likely to endanger the health, welfare
2 or safety of the public.

3 (h) For the purposes of subsection (g) of this section,
4 effective July 1, 2011, disciplinary action may include:

5 (1) Reprimand;

6 (2) Probation;

7 (3) Restrictions;

8 (4) Administrative fine, not to exceed \$1,000 per day per
9 violation;

10 (5) Mandatory attendance at continuing education seminars or
11 other training;

12 (6) Practicing under supervision or other restriction; or

13 (7) Requiring the licensee or permittee to report to the board
14 for periodic interviews for a specified period of time.

15 (i) In addition to any other sanction imposed, the board may
16 require a licensee or permittee to pay the costs of the proceeding.

17 **§30-35-16. Procedures for hearing; right of appeal.**

18 (a) Hearings are governed by the provisions of section eight,
19 article one of this chapter.

20 (b) The board may conduct the hearing or elect to have an
21 administrative law judge conduct the hearing.

22 (c) If the hearing is conducted by an administrative law
23 judge, at the conclusion of a hearing he or she shall prepare a
24 proposed written order containing findings of fact and conclusions
25 of law. The proposed order may contain proposed disciplinary
26 actions if the board so directs. The board may accept, reject or

1 modify the decision of the administrative law judge.

2 (d) Any member or the administrator of the board has the
3 authority to administer oaths, examine any person under oath and
4 issue subpoenas and subpoenas duces tecum.

5 (e) If, after a hearing, the board determines the licensee or
6 permittee has violated provisions of this article or the board's
7 rules, a formal written decision shall be prepared which contains
8 findings of fact, conclusions of law and a specific description of
9 the disciplinary actions imposed.

10 **§30-35-17. Judicial review.**

11 Any licensee or permittee adversely affected by a decision of
12 the board entered after a hearing may obtain judicial review of the
13 decision in accordance with section four, article five, chapter
14 twenty-nine-a of this code, and may appeal any ruling resulting
15 from judicial review in accordance with article six, chapter
16 twenty-nine-a of this code.

17 **§30-35-18. Criminal proceedings; penalties.**

18 (a) When, as a result of an investigation under this article
19 or otherwise, the board has reason to believe that a licensee or
20 permittee has committed a criminal offense under this article, the
21 board may bring its information to the attention of an appropriate
22 law-enforcement official.

23 (b) A person violating section one of this article is guilty
24 of a misdemeanor and, upon conviction thereof, shall be fined not
25 less than \$100 nor more than \$1,000 or confined in jail not more
26 than six months, or both fined and confined.

