

**H. B. 2370**

(By Delegates Morgan, Manypenny, Martin,  
and Swartzmiller)

[Introduced January 12, 2011; referred to the  
Committee on Government Organization.]

A BILL to amend and reenact §16-1-7 of the Code of West Virginia,  
1931, as amended; to amend and reenact §30-3-5 of said code;  
to amend and reenact §30-16-4 of said code; and to amend and  
reenact §30-17-4 of said code, all relating to removing the  
Commissioner of the Bureau for Public Health from professional  
licensure boards.

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

That §16-1-7 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted; that §30-3-5 of said code be amended and  
reenacted; that §30-16-4 of said code be amended and reenacted; and  
that §30-17-4 of said code be amended and reenacted, all to read as  
follows:

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

**§16-1-7. Duties and powers of the commissioner; service on  
advisory councils; boards and commissions; authority**

1                   **to designate a representative to serve in his or her**  
2                   **place on certain boards and commissions.**

3           ~~(a) The commissioner shall serve on the following business,~~  
4 ~~profession or occupation licensing boards:~~

5           ~~(1) The West Virginia Board of Barbers and Cosmetologists;~~

6           ~~(2) The West Virginia board of chiropractic examiners;~~

7           ~~(3) The West Virginia board of hearing aid dealers;~~

8           ~~(4) The West Virginia Board of Medicine;~~

9           ~~(5) The West Virginia nursing home administrators licensing~~  
10 ~~board;~~

11           ~~(6) The West Virginia radiologic technology board of~~  
12 ~~examiners;~~

13           ~~(7) The West Virginia board of registration for sanitarians;~~  
14 ~~and~~

15           ~~(8) Any other licensing board or commission as directed by the~~  
16 ~~secretary.~~

17           ~~(b)~~ (a) The commissioner ~~shall serve~~ serves on the following  
18 advisory councils, boards and commissions:

19           (1) The Advisory Committee on Cancer (Cancer Registry);

20           (2) The Advisory Committee on Hemophilia;

21           (3) The Air Quality Board;

22           (4) The Appalachian States Low-level Radioactive Waste  
23 Commission;

24           (5) The Attorney General of West Virginia Public Health

- 1 Trust;
- 2       (6) The Breast and Cervical Cancer Screening Program Advisory  
3 Coalition;
- 4       (7) The Child Fatality Review Team;
- 5       (8) The Clinical Laboratories Quality Assurance Act Advisory  
6 Board;
- 7       (9) The Childhood Immunization Advisory Committee;
- 8       (10) The Early Intervention Coordinating Council;
- 9       (11) The Interagency Council on Osteoporosis;
- 10       (12) The Jail and Prison Standards Commission;
- 11       (13) The Medical Service Fund Advisory Council;
- 12       (14) The Nursing Home Licensing Advisory Council;
- 13       (15) The Sewage Advisory Board;
- 14       (16) The State Emergency Response Commission;
- 15       (17) The State Groundwater Coordinating Committee;
- 16       (18) The Sudden Infant Death Syndrome Advisory Council;
- 17       (19) The Water Development Authority;
- 18       (20) The West Virginia Commission for the Deaf and Hard of  
19 Hearing;
- 20       (21) The West Virginia Infrastructure and Jobs Development  
21 Council;
- 22       (22) The West Virginia Solid Waste Management Board; and
- 23       (23) Any other advisory council, board or commission as  
24 assigned by the secretary except for business, profession or

1 occupation licensing boards.

2       ~~(c)~~ (b) Notwithstanding any other provision of this code to  
 3 the contrary, the commissioner may, at his or her discretion,  
 4 designate, in writing, a representative to serve in his or her  
 5 stead at the meetings and in the duties of all boards and  
 6 commissions on which the commissioner is designated as an ex  
 7 officio member. The appropriately designated representative or  
 8 proxy ~~may act~~ acts with the full power and authority of the  
 9 commissioner in voting, acting upon matters concerning the public  
 10 health and welfare and ~~any~~ other business that is properly the duty  
 11 of any board or commission. ~~with~~ The representative ~~serving~~ serves  
 12 as proxy ~~for~~ at the commissioner's ~~at his or her~~ will and pleasure.  
 13 ~~Provided, That~~ The provisions of this section do not apply to the  
 14 ~~medical licensing board,~~ West Virginia Board of Medicine, the Air  
 15 Quality Board or ~~any~~ other board, commission or body on which the  
 16 commissioner is designated by this code as chairman ex officio,  
 17 secretary ex officio or ~~any~~ a board, commission or body on which  
 18 the commissioner is designated by this code as being that person  
 19 whose signature must appear on licenses, minutes or other documents  
 20 necessary to carry out the intents and purposes of the board,  
 21 commission or body.

22                   **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

23 **ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

1 **§30-3-5. West Virginia Board of Medicine powers and duties**  
 2 **continued; appointment and terms of members;**  
 3 **vacancies; removal.**

4 The West Virginia Board of Medicine has assumed, carried on  
 5 and succeeded to all the duties, rights, powers, obligations and  
 6 liabilities ~~heretofore~~ belonging to or exercised by the Medical  
 7 Licensing Board of West Virginia. All ~~the~~ rules, orders, rulings,  
 8 licenses, certificates, permits and other acts and undertakings of  
 9 the Medical Licensing Board of West Virginia ~~as heretofore~~  
 10 ~~constituted have continued~~ continue as those of the West Virginia  
 11 Board of Medicine until ~~they expired~~ these expire or ~~were~~ are  
 12 amended, altered or revoked. The board remains the sole authority  
 13 for the issuance of licenses to practice medicine and surgery, ~~and~~  
 14 to practice podiatry and to practice as physician assistants. ~~in~~  
 15 ~~this state under the supervision of physicians licensed under this~~  
 16 ~~article.~~ The board ~~shall continue to be~~ is a regulatory and  
 17 disciplinary body for the practice of medicine and surgery, ~~and~~ the  
 18 practice of podiatry and for physician assistants in this state.

19 The board ~~shall consist~~ consists of fifteen members. ~~One~~  
 20 ~~member shall be the state health officer ex officio, with the right~~  
 21 ~~to vote as a member of the board.~~ The ~~other fourteen~~ members shall  
 22 ~~be~~ are appointed by the Governor, with the advice and consent of  
 23 the Senate. Eight of the members shall be appointed from among  
 24 individuals holding the degree of doctor of medicine, ~~and two shall~~

1 ~~hold~~ two from among those holding the degree of doctor of podiatric  
 2 medicine and one member ~~shall be an individual who is~~ licensed by  
 3 the board as a physician assistant. Each of these members must be  
 4 duly licensed to practice his or her profession in this state on  
 5 the date of appointment and must have been licensed and actively  
 6 practicing that profession for at least five years immediately  
 7 preceding the date of appointment. ~~Three~~ Four lay members shall be  
 8 appointed to represent health care consumers. Neither the lay  
 9 members nor any person of the lay members' immediate families ~~shall~~  
 10 may be a provider of or be employed by a provider of health care  
 11 services. ~~The state health officer's term shall continue for the~~  
 12 ~~period that he or she holds office as state health officer.~~ Each  
 13 ~~other~~ member of the board ~~shall be appointed to serve~~ serves a term  
 14 of five years. ~~Provided, That~~ The members of the Board of Medicine  
 15 holding appointments on the effective date of this section shall  
 16 continue to serve as members of the Board of Medicine until the  
 17 expiration of their term unless sooner removed. Each term ~~shall~~  
 18 ~~begin~~ begins on October 1 of the applicable year. ~~and~~ A member may  
 19 not be appointed to more than two consecutive full terms on the  
 20 board.

21 A person is not eligible for membership on the board who is a  
 22 member of ~~any~~ a political party executive committee or ~~with the~~  
 23 ~~exception of the state health officer,~~ who holds ~~any~~ a public  
 24 office or public employment under the federal government, ~~or under~~

1 the government of this state or ~~any~~ this state's political  
 2 ~~subdivision thereof.~~ subdivisions.

3 In making appointments to the board, the Governor shall, so  
 4 far as practicable, select the members from different geographical  
 5 sections of the state. When a vacancy on the board occurs and less  
 6 than one year remains in the unexpired term, the appointee ~~shall be~~  
 7 is eligible to serve the remainder of the unexpired term and two  
 8 consecutive full terms on the board.

9 ~~No member may be removed from office by~~ The Governor may not  
 10 remove a member from office except for official misconduct,  
 11 incompetence, neglect of duty or gross immorality ~~Provided,~~ except  
 12 that the expiration, surrender or revocation of the professional  
 13 license ~~by the board~~ of a member of the board ~~shall~~ causes the  
 14 membership to immediately and automatically terminate.

15 **ARTICLE 16. CHIROPRACTORS.**

16 **§30-16-4. West Virginia Board of Chiropractic; establishment and**  
 17 **composition.**

18 (a) The ~~board known as the~~ "West Virginia Board of  
 19 Chiropractic" is continued. It is composed of ~~the director of~~  
 20 ~~health, ex officio,~~ three licensed chiropractors and ~~one person~~ two  
 21 persons to represent the interest of the public. All ~~shall be~~ are  
 22 appointed by the Governor, ~~by and~~ with the advice and consent of  
 23 the Senate, from a list of three names recommended by the West  
 24 Virginia Chiropractic Society, Incorporated. Each chiropractic

1 member of the board shall have been a resident of and engaged in  
2 the active practice of chiropractic in the state for a period of at  
3 least five years preceding his or her appointment.

4       (b) ~~On July 1, 1998, there shall be appointed, as provided in~~  
5 ~~this section, one chiropractic member for a three year term.~~ As  
6 existing chiropractic board members' terms expire, newly appointed  
7 chiropractic board members ~~shall be~~ are appointed by the Governor  
8 for a term of office of three years. No member may serve more than  
9 two full consecutive three-year terms. When a vacancy in the  
10 membership of the board occurs for ~~any~~ a cause other than the  
11 expiration of a term, the Governor shall appoint a new member from  
12 a list of three names recommended by West Virginia Chiropractic  
13 Society, Incorporated, ~~a successor as a member of the board to fill~~  
14 the unexpired portion of the term of office. ~~of the member whose~~  
15 ~~office has been vacated.~~

16       (c) The Governor may remove any member of the board in case of  
17 incompetency, neglect of duty, gross immorality or malfeasance in  
18 office.

19       (d) The board shall conduct ~~a~~ an annual training program ~~to be~~  
20 ~~held annually~~ to familiarize new board members with their duties.

21       (e) Each member of the board ~~shall receive~~ is entitled to  
22 receive compensation in an amount not to exceed the same  
23 ~~compensation as is~~ the amount paid to members of the Legislature  
24 for ~~their~~ interim duties as recommended by the Citizens Legislative



1 Compensation Commission and authorized by law for each day or  
 2 substantial portion thereof that he or she is engaged in the work  
 3 of the board or of its committees. ~~and shall be~~ Members are  
 4 entitled to be reimbursed for ~~all~~ actual and necessary expenses  
 5 incurred in carrying out his or her duties.

6 **ARTICLE 17. SANITARIANS.**

7 **§30-17-4. State Board of Sanitarians.**

8 (a) The Board of Registration for Sanitarians is continued and  
 9 ~~commencing July 1, 2010, shall be~~ known as the state Board of  
 10 Sanitarians. ~~Any member~~ Members of the board ~~except one registered~~  
 11 ~~sanitarian,~~ in office on July 1, 2010, except for one registered  
 12 sanitarian, ~~may~~ continue to serve until his or her successor ~~has~~  
 13 have been appointed and qualified.

14 (b) Prior to July 1, 2010, the Governor, ~~by and~~ with the  
 15 advice and consent of the Senate, shall appoint one certified  
 16 sanitarian to replace one registered sanitarian.

17 (c) Commencing July 1, 2010, the board ~~shall consist~~ consists  
 18 of the following seven voting members with staggered terms: ~~and one~~  
 19 ~~nonvoting member:~~

20 ~~(1) The Commissioner of the Bureau of Public Health, or his or~~  
 21 ~~her designee, who is a nonvoting member;~~

22 ~~(2) (1) Four members who are registered sanitarians; who are~~  
 23 ~~voting members;~~

24 ~~(3) (2) One member who has a certificate~~ is certified as a

1 sanitarian at the time of the appointment: ~~who is a voting member:~~  
 2 *Provided*, That if the member becomes a registered sanitarian during  
 3 his or her appointment term, ~~then~~ the person may not be reappointed  
 4 as the certified sanitarian member but may be reappointed as a  
 5 registered sanitarian member; and

6 ~~(4)~~ (3) Two citizen members who are not licensed, certified  
 7 or permitted under ~~the provisions of~~ this article and who do not  
 8 perform any services related to the practice of the professions  
 9 regulated under ~~the provisions of~~ this article. ~~who are voting~~  
 10 ~~members.~~

11 (d) Each ~~voting~~ member ~~must~~ shall be appointed by the  
 12 Governor, ~~by and~~ with the advice and consent of the Senate, and  
 13 ~~must~~ is required to be a resident of this state during the  
 14 appointment term.

15 (e) The term of each ~~voting~~ board member is five years.

16 (f) No ~~voting~~ member may serve more than two consecutive full  
 17 terms. ~~and any voting~~ A member having served two full terms may not  
 18 be appointed for one year after completion of his or her second  
 19 full term. A ~~voting~~ member ~~shall continue~~ continues to serve until  
 20 his or her successor has been appointed and qualified.

21 (g) Each licensed or certified member ~~shall~~ is required to  
 22 have been engaged in the practice of environmental health science  
 23 or public health sanitation for at least five years immediately  
 24 preceding the appointment.

1 (h) Each licensed or certified member shall maintain an active  
2 license or certificate ~~with the board~~ during his or her term.

3 (i) The Governor may remove ~~any voting~~ a member from the board  
4 for neglect of duty, incompetency or official misconduct.

5 (j) A licensed or certified member of the board immediately  
6 and automatically forfeits membership to the board if his or her  
7 license or certificate to practice is suspended or revoked.

8 (k) A ~~voting~~ member of the board immediately and automatically  
9 forfeits membership to the board if he or she is convicted of a  
10 felony under the laws of any jurisdiction or becomes a nonresident  
11 of this state.

12 (l) The board shall designate one of its members as  
13 chairperson who serves at the will of the board.

14 (m) Each ~~voting~~ member of the board is entitled to receive  
15 compensation and expense reimbursement in accordance with section  
16 eleven, article one of this chapter.

17 (n) A majority of the members of the board ~~shall constitute~~  
18 is a quorum.

19 (o) The board shall hold at least two ~~annual~~ meetings per  
20 year. ~~Other meetings may be held~~ At the call of the chairperson or  
21 upon the written request of two members, other meetings may be held  
22 at such time and place ~~as~~ designated in the call or request.

23 (p) Prior to commencing his or her duties as a ~~voting~~ member  
24 of the board, each ~~voting~~ member shall take and subscribe to the

1 oath required by section five, article four of the Constitution of  
2 this state.

NOTE: The purpose of this bill is to remove the Commissioner for the Bureau for Public Health from professional licensure boards.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.