

1 **H. B. 2796**

2
3 (By Delegates Morgan, Swartzmiller, Givens,
4 Staggers, Hartman and Butcher)

5
6 [Introduced January 24, 2011; referred to the
7 Committee on Government Organization.]

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9
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, §30-
12 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; clarifying the issuance of notices to cease and
19 desist; requiring boards to maintain a business office open to
20 the public; authorizing boards to propose fees notwithstanding
21 specific fees established in code; notifying licensees of
22 proposal of fees in legislative rules; authorizing boards to
23 levy fines; hiring administrative law judges; clarifying law
24 governing hearings and administrative hearings; requiring
25 board members to adhere to ethical standards for appointed

1 officials; permitting boards to establish a process for
 2 modifying or waiving continuing education requirements or
 3 renewal fees for licensees in active duty military service;
 4 and requiring regulatory board reviews.

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

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 7 be repealed; that §30-1-2a, §30-1-5, §30-1-6, §30-1-8, §30-1-11 and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

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

13 **§30-1-2a. Required orientation session.**

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

20 (b) ~~After the effective date of this section,~~ All chairs or
 21 chief financial officers of ~~state boards and commissions~~ newly
 22 created by the Legislature shall attend an orientation session
 23 designed by the Auditor to inform the ~~state boards and commissions~~

1 of the duties and requirements imposed ~~on state boards and~~
2 ~~commissions~~ by state law and rules ~~The chair or chief financial~~
3 ~~officer of the newly created board or commission shall attend an~~
4 ~~orientation session~~ at the earliest possible date following the
5 creation of the board. ~~or commission~~

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

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

24 ~~(e)~~ (d) The orientation session ~~shall be~~ is open to any member

1 of new or existing boards ~~and commissions~~ and each board ~~or~~
2 ~~commission~~ may approve expense reimbursement for the attendance of
3 one or more of its members. ~~The chair or chief financial officer~~
4 ~~of each existing board or commission shall attend an orientation~~
5 ~~session within two years following the effective date of this~~
6 ~~section.~~

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

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

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

23 ~~(i)~~ (h) Ex officio members who are elected or appointed state
24 officers or employees and members of boards ~~or commissions~~ that

1 have purely advisory functions ~~with respect~~ to a department or
2 agency of the state are exempt from the requirements of this
3 section.

4 **§30-1-5. Meetings; quorum; investigatory powers; duties.**

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

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

22 (c) ~~Every~~ Each board ~~referred to in this chapter~~ has a duty to
23 shall investigate and resolve complaints which it receives and,
24 ~~shall,~~ within six months of the complaint being filed, send a

1 status report to the party filing the complaint by certified mail
2 with a signed return receipt. ~~and~~ Within one year of the status
3 report's return receipt date, the board shall issue a final ruling
4 unless the party filing the complaint and the board agree, in
5 writing, to extend the time for the final ruling.

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

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

24 ~~(e)~~ (f) Notwithstanding any other provisions of this chapter,

1 ~~whenever~~ if a board ~~referred to in this chapter~~ obtains information
2 that a person ~~subject to its authority~~ has engaged in, is engaging
3 in or is about to engage in any act which constitutes or will
4 constitute a violation of the provisions of this chapter which are
5 administered and enforced by that board, it may apply to the
6 circuit court for an order enjoining the act or issue a notice to
7 the person to cease and desist in engaging in the act: Provided,
8 That the notice may be enforced only by an order of the circuit
9 court. Upon a showing that the person has engaged, is engaging or
10 is about to engage in ~~any~~ such act, the court shall order an
11 injunction, restraining order or other order as the court ~~may deem~~
12 considers appropriate.

13 **§30-1-6. Application for license or registration; examination fee;**
14 **prohibiting discrimination.**

15 (a) ~~Every~~ Each applicant for ~~license or registration~~ an
16 authorization to practice under the provisions of this chapter
17 shall apply ~~for the license or registration~~ in writing to the
18 proper board and shall transmit with his or her application ~~an~~
19 ~~examination fee which the board is authorized to charge for an~~
20 ~~examination or investigation into the applicant's qualifications to~~
21 ~~practice~~ the authorized fees.

22 (b) Each board ~~referred to in this chapter~~ is authorized to
23 may establish by rule a deadline for application for examination.
24 ~~which shall be no less than ten nor more than ninety days prior to~~

1 ~~the date of the examination~~

2 (c) ~~Boards~~ Notwithstanding specific fees established in the
 3 articles which govern the licensing boards in this chapter, each
 4 board may set fees by legislative rule ~~fees relating to the~~
 5 ~~licensing or registering of individuals, which shall be sufficient~~
 6 to enable the boards to effectively carry out ~~effectively~~ their
 7 responsibilities ~~of licensure or registration of the authorization~~
 8 to practice and discipline of the individuals subject to their
 9 authority. ~~Provided, That when any~~ When a board proposes to
 10 promulgate a rule regarding fees, ~~for licensing or registration,~~
 11 ~~that the~~ board shall notify its membership of the proposed rule by:

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

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

20 (A) Mailing a postcard to its licensees;

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

23 (C) Placing a notice in its newsletter.

24 (d) In addition to any other information required, the

1 applicant's social security number ~~shall~~ must be recorded on the
 2 application and will be redacted from any copies provided to the
 3 public.

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

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

17 **§30-1-8. Denial, suspension or revocation of a license or**
 18 **registration; probation; proceedings; effect of**
 19 **suspension or revocation; authority to hire hearing**
 20 **examiner; transcript; report; judicial review.**

21 (a) ~~Every~~ Each board ~~referred to in this chapter~~ may suspend
 22 or revoke the ~~license~~ authorization to practice of any person who
 23 has been convicted of a felony or who has been found to have

1 engaged in conduct, practices or acts constituting professional
2 negligence or a willful departure from accepted standards of
3 professional conduct. Where any person has been convicted of a
4 felony or has been found to have engaged in such conduct, practices
5 or acts, ~~every the~~ board ~~referred to in this chapter~~ may enter into
6 consent decrees, ~~to~~ reprimand, ~~to~~ enter into probation orders, ~~to~~
7 levy fines ~~not to exceed one thousand dollars per day per violation~~
8 or any of these, singly or in combination. Each board may also
9 assess administrative costs. ~~Any costs which are Assessed shall be~~
10 costs are placed in the special account of the board and ~~any fines~~
11 ~~which is~~ levied fines shall be are deposited in the state
12 Treasury's General Revenue Fund.

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

16 (c) ~~Every~~ Each board ~~referred to in this chapter~~ may
17 promulgate rules in accordance with the provisions of chapter
18 twenty-nine-a of this code to delineate conduct, practices or acts
19 which, in the judgment of the board, constitute professional
20 negligence, a willful departure from accepted standards of
21 professional conduct or which may render an individual unqualified
22 or unfit for ~~licensure, registration or other~~ an authorization to
23 practice.

24 (d) ~~Every~~ Each board ~~referred to in this chapter~~ may revoke

1 ~~the license or registration~~ an authorization to practice of an
2 individual ~~licensed or otherwise~~ lawfully practicing within this
3 state whose ~~license or registration~~ authorization to practice in
4 any other state, territory, jurisdiction or foreign nation has been
5 revoked by the licensing authority. ~~thereof~~

6 (e) Notwithstanding any other provision of law to the
7 contrary, no ~~certificate, license, registration or authority~~
8 authorization to practice issued under the provisions of this
9 chapter may be suspended or revoked without a prior hearing before
10 the board or court which issued the certificate, license,
11 registration or authority, except:

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

16 (2) ~~After due diligence,~~ If a board, after reviewing all
17 reasonably available relevant information, cannot locate a person
18 ~~licensed~~ authorized to practice under the provisions of this
19 chapter within sixty days of a complaint being filed against the
20 ~~licensee~~ person, ~~then~~ the board may suspend the ~~license,~~
21 ~~certificate, registration or authority~~ authorization to practice of
22 the person without holding a hearing. ~~After due diligence,~~ If a
23 board, ~~still~~ after reviewing all reasonably available relevant
24 information, cannot locate the person ~~licensed~~ authorized to

1 practice under the provisions of this chapter thirty days after the
2 suspension of the person's ~~license, certificate, registration or~~
3 ~~authority, then~~ authorization to practice, the board may revoke the
4 ~~license, certificate, registration or authority~~ authorization to
5 practice of the person without holding a hearing.

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

23 (g) The board may conduct the hearing or elect to have a
24 hearing examiner or an administrative law judge conduct the

1 hearing. If the hearing is conducted by a hearing examiner or an
2 administrative law judge:

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

7 (2) At the conclusion of a hearing, the hearing examiner or
8 administrative law judge shall prepare a proposed written order
9 containing recommended findings of fact and conclusions of law and
10 may include recommended disciplinary sanctions if the board so
11 directs;

12 (3) The board may accept, reject, modify or amend the
13 recommendations of the hearing examiner or administrative law
14 judge; and

15 (4) If the board rejects, modifies or amends the
16 recommendations, the board shall state in the order a reasoned,
17 articulate justification based on the record for the rejection,
18 modification or amendment.

19 (h) Pursuant to the provisions of section one, article five,
20 chapter twenty-nine-a of this code, informal disposition may also
21 be made by the board of any contested case by stipulation, agreed
22 settlement, consent order or default. ~~Further,~~ The board may
23 suspend its decision and place a licensee found by the board to be
24 in violation of the applicable practice act or rules of the board

1 on probation.

2 ~~(h)~~ (i) Any person denied ~~a license, certificate, registration~~
3 ~~or authority~~ an authorization to practice who believes the denial
4 was in violation of this article or the article under which the
5 ~~license, certificate, registration or authority~~ licensee is
6 authorized, ~~shall be~~ is entitled to a hearing on the action.
7 ~~denying the license, certificate, registration or authority~~
8 Hearings under this subsection are in accordance with the
9 provisions for hearings which are set forth in this section.

10 ~~(i)~~ (j) A stenographic report of each proceeding on the
11 denial, suspension or revocation ~~of a certificate, license,~~
12 ~~registration or authority~~ shall be made at the expense of the board
13 and a transcript of the hearing retained in its files. The board
14 shall make a written report of its findings which ~~shall constitute~~
15 is part of the record.

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

20 ~~(k)~~ (l) ~~On or before the first day of July, two thousand one,~~
21 ~~every~~ Each board ~~referred to in this chapter~~ shall adopt procedural
22 rules in accordance with the provisions of article three, chapter
23 twenty-nine-a of this code ~~which shall~~ specifying a procedure for
24 the investigation and resolution of all complaints against persons

1 licensed under this chapter. ~~The proposed legislative rules~~
2 ~~relating only to complaint procedures or contested case hearing~~
3 ~~procedures required by the prior enactment of this subsection shall~~
4 ~~be redesignated as procedural rules in accordance with the~~
5 ~~provisions of article three, chapter twenty-nine a of this code.~~
6 ~~Each board shall file the procedural rules required by this~~
7 ~~subsection by the thirty first day of January, two thousand one.~~
8 ~~The public hearing or public comment period conducted for the~~
9 ~~proposed legislative rules shall serve as the public hearing or~~
10 ~~public comment period required by section five, article three,~~
11 ~~chapter twenty-nine a of this code.~~

12 **§30-1-11. Compensation of members; expenses; adherence to ethical**
13 **standards.**

14 (a) Each member of every board in this chapter is entitled to
15 receive compensation for attending official meetings or engaging in
16 official duties ~~not to exceed the amount~~ in the same amount as is
17 paid to members of the Legislature for their interim duties as
18 recommended by the Citizens Legislative Compensation Commission and
19 authorized by law. A board member may not receive compensation for
20 travel days that are not on the same day as the official meeting or
21 for days when not engaged in official duties.

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

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

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

7 (e) Each member of every board in this chapter shall adhere to
8 the ethical standards for appointed officials as set forth in
9 section five, article two, chapter six-b of this code.

10 **§30-1-14. Remission of certain fees Modifying or waiving continuing**
11 **education requirements or renewal fees for persons in**
12 **active duty military service.**

13 ~~Every board of examination or registration referred to in this~~
14 ~~chapter is hereby authorized, under such rules and regulations as~~
15 ~~may be adopted by each board, to remit all annual license or annual~~
16 ~~registration fees required to be paid by any licensee or registrant~~
17 ~~under its supervision during such time as such licensee or~~
18 ~~registrant is serving with the Armed Forces of the United States of~~
19 ~~America, and to retain the name of such licensee or registrant in~~
20 ~~good standing on the roster of said board during said time.~~

21 Each board in this chapter may establish and implement
22 processes for modifying or waiving continuing education
23 requirements or renewal fees for the renewal of an authorization to
24 practice for the period of time during which a person is engaged in

1 active duty military service.

2 **§30-1-20. Regulatory board review.**

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

NOTE: The purpose of this bill is to repeal antiquated provisions of statutes governing licensing boards; to revise orientation session requirements; to establish criteria for a quorum; to clarify who may call a board meeting; to clarify the issuance of cease and desist notices; to require boards to maintain business hours open to the public; to authorize boards to propose fees and provide notice of proposed fees to licensees, to levy fines and to hire administrative law judges or hearing examiners; to clarify law governing hearings and the reporting of violations; to require boards to adhere to ethical standards for appointed officials; to permit boards to establish a process for waiving or modifying continuing education requirements or renewal fees for licensees in active military service; and to require regulatory board reviews.

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