

COMMITTEE SUBSTITUTE

FOR

H. B. 2796

(BY DELEGATES MORGAN, SWARTZMILLER, GIVENS,
STAGGERS, HARTMAN AND BUTCHER)

(Originating in the Committee on Government Organization)
[February 21, 2011]

A BILL to repeal §30-1-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-1-2a, §30-1-5, §30-1-6, §30-1-8, §30-1-11 and §30-1-14 of said code; and to amend said code by adding thereto a new section, designated §30-1-20, all relating to professional licensing boards; repealing antiquated, ineffective provisions; revising requirements for specific subject matter at orientation sessions;

clarifying who may call a board meeting; establishing quorums; reporting violations; requiring boards to maintain a business office open to the public; authorizing boards to propose fees notwithstanding specific fees established in code; notifying licensees of proposal of fees in legislative rules; authorizing boards to levy fines; hiring administrative law judges; clarifying law governing hearings and administrative hearings; requiring board members to adhere to ethical standards for appointed officials; permitting boards to establish a process for modifying or waiving continuing education requirements or renewal fees for licensees in active duty military service; and requiring regulatory board reviews.

Be it enacted by the Legislature of West Virginia:

That §30-1-15 of the Code of West Virginia, 1931, as amended, be repealed; that §30-1-2a, §30-1-5, §30-1-6, §30-1-8, §30-1-11 and §30-1-14 of said code be amended and reenacted; and that said code be amended by adding thereto a new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

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

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

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

7 (b) ~~After the effective date of this section,~~ All chairs or chief
8 financial officers of ~~state boards and commissions~~ newly created
9 by the Legislature shall attend an orientation session designed by
10 the Auditor to inform the ~~state boards and commissions~~ of the
11 duties and requirements imposed ~~on state boards and~~
12 ~~commissions~~ by state law and rules ~~The chair or chief financial~~
13 ~~officer of the newly created board or commission shall attend an~~
14 ~~orientation session~~ at the earliest possible date following the
15 creation of the board. ~~or commission~~

16 ~~(c) The orientation session shall include a minimum of~~
17 ~~thirty minutes of instructional time dedicated to the statutory~~
18 ~~duty of boards to investigate and resolve complaints,~~
19 ~~including procedures for investigations, administrative~~
20 ~~hearings and remedies, due process protections, and the duty~~
21 ~~to provide public access to records of the disposition of~~
22 ~~complaints, as set forth in section five of this article.~~

23 ~~(d)~~ (c) Topics for the orientation session may include, but
24 are not limited to, the statutory duty of boards to investigate
25 and resolve complaints, including procedures for
26 investigations, administrative hearings and remedies, and the
27 duty to provide public access to records of the disposition of
28 complaints; the official conduct of members, state budgeting
29 and financial procedures, purchasing requirements, open
30 meetings requirements, ethics, rule-making procedures,
31 records management, annual reports and any other topics the
32 Auditor determines ~~to be essential in the fulfillment of the~~
33 ~~duties of the members of state boards and commissions~~ are
34 necessary.

35 ~~(e)~~ (d) The orientation session ~~shall be~~ is open to any
36 member of new or existing boards ~~and commissions~~ and each
37 board ~~or commission~~ may approve expense reimbursement
38 for the attendance of one or more of its members. ~~The chair~~
39 ~~or chief financial officer of each existing board or~~
40 ~~commission shall attend an orientation session within two~~
41 ~~years following the effective date of this section.~~

42 ~~(f)~~ (e) No later than December 31 of each year, the
43 Auditor shall provide to the chairs of the Joint Standing
44 Committee on Government ~~Operations~~ Organization a list of
45 the names of board ~~or commission~~ members attending
46 orientation sessions, ~~together with~~ the names of the boards
47 ~~and commissions~~ represented and the orientation ~~session or~~
48 sessions offered by the Auditor during the previous year.

49 ~~(g)~~ (f) The Auditor may charge a registration fee for the
50 orientation session to cover the cost of ~~providing~~ the
51 ~~orientation~~ session. The fee may be paid from funds
52 available to a board. ~~or commission~~

53 ~~(h)~~ (g) Notwithstanding the member's normal rate of
54 compensation for serving on a board, a member attending ~~the~~
55 an orientation session may be reimbursed for necessary and
56 actual expenses as long as the member attends the complete
57 ~~orientation~~ session.

58 ~~(i)~~ (h) Ex officio members who are elected or appointed
59 state officers or employees and members of boards ~~or~~
60 ~~commissions~~ that have purely advisory functions ~~with respect~~
61 to a department or agency of the state are exempt from the
62 requirements of this section.

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

1 ~~(a) Every Each board referred to in this chapter shall hold~~
2 at least one meeting each year, at such time and place as it
3 may prescribe by rule, ~~for the examination of applicants who~~
4 ~~desire to practice their respective professions or occupations~~
5 ~~in this state and to transact any other business which may~~
6 legally come before it. The board may hold additional
7 meetings as may be necessary ~~which shall be called~~ either by
8 the chair ~~secretary at the direction of the president or upon~~

9 the written request of ~~any three~~ a majority of the board
10 members. A simple majority of ~~the members of the~~
11 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
14 attendance of witnesses, ~~to~~ issue subpoenas and subpoenas
15 duces tecum, ~~to~~ conduct investigations, ~~and~~ hire an
16 investigator and ~~to~~ take testimony and other evidence
17 concerning any matter within its jurisdiction. The ~~president~~
18 chair and secretary of the board ~~are authorized to~~ may
19 administer oaths for these purposes.

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

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

33 (e) ~~Every~~ Each board has a duty to report violations of
34 individual practice acts contained in this chapter to the board
35 by which the individual may be licensed ~~and shall do so~~ in a
36 timely manner upon receiving notice of such violations.
37 ~~Every~~ Each person licensed or registered by a board has a
38 duty to report to the board which licenses or registers him or
39 her a known or observed violation of the practice act or the
40 board's rules by any other person licensed or registered by
41 the same board ~~and shall do so~~ in a timely manner.
42 ~~Law-enforcement agencies or their personnel and courts shall~~
43 ~~report in a timely manner within ten days to the appropriate~~
44 ~~board any violations of individual practice acts by any~~
45 ~~individual.~~ Any person who reports or provides information
46 in good faith is not subject to civil damages.

47 ~~(e)~~ (f) Whenever a board referred to in this chapter
48 obtains information that a person subject to its authority has
49 engaged in, is engaging in or is about to engage in any act
50 which constitutes or will constitute a violation of the
51 provisions of this chapter which are administered and
52 enforced by that board, it may apply to the circuit court for
53 an order enjoining the act Upon a showing that the person
54 has engaged, is engaging or is about to engage in any such
55 act, the court shall order an injunction, restraining order or
56 other order as the court may deem appropriate.

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

1 (a) ~~Every~~ Each applicant for ~~license or registration~~ an
2 authorization to practice under the provisions of this chapter
3 shall apply ~~for the license or registration~~ in writing to the
4 proper board and shall transmit with his or her application ~~an~~
5 ~~examination fee which the board is authorized to charge for~~
6 ~~an examination or investigation into the applicant's~~
7 ~~qualifications to practice~~ the authorized fees.

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

12 (c) ~~Boards~~ Notwithstanding specific fees established in
13 the articles which govern the licensing boards in this chapter,
14 each board may set fees by legislative rule ~~fees relating to the~~
15 ~~licensing or registering of individuals, which shall be~~
16 sufficient to enable the boards to effectively carry out
17 ~~effectively~~ their responsibilities ~~of licensure or registration of~~
18 the authorization to practice and discipline of the individuals
19 subject to their authority. ~~Provided, That when any~~ When a
20 board proposes to promulgate a rule regarding fees, ~~for~~
21 ~~licensing or registration,~~ that the board shall notify its
22 membership of the proposed rule by:

23 (1) Mailing a copy of the proposed rule to ~~the~~
24 ~~membership~~ its licensees at the time that the proposed rule is
25 filed with the Secretary of State; ~~for publication in the state~~

26 ~~register in accordance with section five, article three, chapter~~
27 ~~twenty-nine-a of this code. or~~

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

31 (A) Mailing a postcard to its licensees;

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

34 (C) Placing a notice in its newsletter.

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

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

43 (f) ~~Any~~ A board may deny the application for ~~licensure~~
44 ~~or registration~~ an authorization to practice of an applicant

45 whose ~~license or registration~~ authorization to practice in any
46 other state, territory, jurisdiction or foreign nation has been
47 revoked by the licensing authority. ~~thereof~~ The application
48 may be denied by a board without a hearing unless the
49 applicant requests a hearing within thirty days of the denial.
50 Any hearing must be conducted pursuant to the provisions of
51 section eight of this article or provisions contained in the
52 rules of the board.

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

1 (a) ~~Every~~ Each board ~~referred to in this chapter~~ may
2 suspend or revoke the ~~license~~ authorization to practice of any
3 person who has been convicted of a felony or who has been
4 found to have engaged in conduct, practices or acts
5 constituting professional negligence or a willful departure
6 from accepted standards of professional conduct. Where any
7 person has been convicted of a felony or has been found to
8 have engaged in such conduct, practices or acts, ~~every~~ the

9 board ~~referred to in this chapter~~ may enter into consent
10 decrees, ~~to~~ reprimand, ~~to~~ enter into probation orders, ~~to~~ levy
11 fines ~~not to exceed one thousand dollars per day per violation~~
12 or any of these, singly or in combination. Each board may
13 also assess administrative costs. ~~Any costs which are~~
14 Assessed ~~shall be~~ costs are placed in the special account of
15 the board and ~~any fines which is levied~~ fines shall be are
16 deposited in the state Treasury's General Revenue Fund.

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

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

28 (d) ~~Every~~ Each board referred to in this chapter may
29 ~~revoke the license or registration~~ an authorization to practice
30 of an individual ~~licensed or otherwise~~ lawfully practicing
31 within this state whose ~~license or registration~~ authorization
32 to practice in any other state, territory, jurisdiction or foreign
33 nation has been revoked by the licensing authority. ~~thereof~~

34 (e) Notwithstanding any other provision of law to the
35 contrary, no ~~certificate, license, registration or authority~~
36 authorization to practice issued under the provisions of this
37 chapter may be suspended or revoked without a prior hearing
38 before the board or court which issued the certificate, license,
39 registration or authority, except:

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

44 (2) ~~After due diligence,~~ If a board, after reviewing all
45 reasonably available relevant information, cannot locate a
46 person ~~licensed~~ authorized to practice under the provisions of

47 this chapter within sixty days of a complaint being filed
48 against the ~~licensee person~~, ~~then~~ the board may suspend the
49 ~~license, certificate, registration or authority~~ authorization to
50 practice of the person without holding a hearing. ~~After due~~
51 ~~diligence~~; If a board, ~~still~~ after reviewing all reasonably
52 available relevant information, cannot locate the person
53 ~~licensed~~ authorized to practice under the provisions of this
54 chapter thirty days after the suspension of the person's
55 ~~license, certificate, registration or authority~~, ~~then~~
56 authorization to practice, the board may revoke the ~~license~~;
57 ~~certificate, registration or authority~~ authorization to practice
58 of the person without holding a hearing.

59 (f) In all proceedings before a board or court for the
60 suspension or revocation of any ~~certificate, license,~~
61 ~~registration or authority~~ the authorization to practice issued
62 under the provisions of this chapter, a statement of the
63 charges against the holder of the ~~certificate, license,~~
64 ~~registration or authority~~ authorization to practice and a notice
65 of the time and place of hearing shall be served upon the

66 person as a notice is served under section one, article two,
67 chapter fifty-six of this code at least thirty days prior to the
68 hearing. ~~and~~ He or she may appear with witnesses and be
69 heard in person, by counsel, or both. The board may take
70 oral or written proof, for or against the ~~accused~~ holder of the
71 authorization to practice, as it may consider advisable. If
72 upon hearing the board finds that the charges are true, it may
73 suspend or revoke the ~~certificate, license, registration or~~
74 ~~authority and suspension or revocation shall take from the~~
75 ~~person all rights and privileges acquired thereby~~
76 authorization to practice.

77 (g) The board may conduct the hearing or elect to have a
78 hearing examiner or an administrative law judge conduct the
79 hearing. If the hearing is conducted by a hearing examiner
80 or an administrative law judge:

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

85 (2) At the conclusion of a hearing, the hearing examiner
86 or administrative law judge shall prepare a proposed written
87 order containing recommended findings of fact and
88 conclusions of law and may include recommended
89 disciplinary sanctions if the board so directs;

90 (3) The board may accept, reject, modify or amend the
91 recommendations of the hearing examiner or administrative
92 law judge; and

93 (4) If the board rejects, modifies or amends the
94 recommendations, the board shall state in the order a
95 reasoned, articulate justification based on the record for the
96 rejection, modification or amendment.

97 (h) Pursuant to the provisions of section one, article five,
98 chapter twenty-nine-a of this code, informal disposition may
99 also be made by the board of any contested case by
100 stipulation, agreed settlement, consent order or default.
101 Further, The board may suspend its decision and place a
102 licensee found by the board to be in violation of the
103 applicable practice act or rules of the board on probation.

104 ~~(h)~~ (i) Any person denied a ~~license, certificate,~~
105 ~~registration or authority~~ an authorization to practice who
106 believes the denial was in violation of this article or the
107 article under which the ~~license, certificate, registration or~~
108 ~~authority~~ licensee is authorized, ~~shall be~~ is entitled to a
109 hearing on the action. ~~denying the license, certificate,~~
110 ~~registration or authority~~ Hearings under this subsection are
111 in accordance with the provisions for hearings which are set
112 forth in this section.

113 ~~(i)~~ (j) A stenographic report of each proceeding on the
114 denial, suspension or revocation ~~of a certificate, license,~~
115 ~~registration or authority~~ shall be made at the expense of the
116 board and a transcript of the hearing retained in its files. The
117 board shall make a written report of its findings which ~~shall~~
118 ~~constitute~~ is part of the record.

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

123 (k) (l) ~~On or before the first day of July, two thousand~~
124 ~~one, every~~ Each board referred to in this chapter shall adopt
125 ~~procedural~~ rules in accordance with the provisions of article
126 three, chapter twenty-nine-a of this code ~~which shall~~
127 specifying a procedure for the investigation and resolution of
128 all complaints against persons licensed under this chapter.
129 ~~The proposed legislative rules relating only to complaint~~
130 ~~procedures or contested case hearing procedures required by~~
131 ~~the prior enactment of this subsection shall be redesignated~~
132 ~~as procedural rules in accordance with the provisions of~~
133 ~~article three, chapter twenty-nine-a of this code. Each board~~
134 ~~shall file the procedural rules required by this subsection by~~
135 ~~the thirty-first day of January, two thousand one. The public~~
136 ~~hearing or public comment period conducted for the~~
137 ~~proposed legislative rules shall serve as the public hearing or~~
138 ~~public comment period required by section five, article three,~~
139 ~~chapter twenty-nine-a of this code.~~

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

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

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

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

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

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

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

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

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

§30-1-20. Regulatory board review.

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