

Senate Bill No. 560

(By Senators Foster, Edgell and Wells)

[Introduced February 10, 2012; referred to the Committee on
Health and Human Resources; and then to the Committee on
Government Organization.]

**FISCAL
NOTE**

10
11 A BILL to repeal §30-21-7a, §30-21-7b, §30-21-7c, §30-21-7d,
12 §30-21-7e, §30-21-8a and §30-21-10a of the Code of West
13 Virginia, 1931, as amended; to amend and reenact §30-21-1,
14 §30-21-2, §30-21-3, §30-21-4, §30-21-5, §30-21-6, §30-21-7,
15 §30-21-8, §30-21-9, §30-21-10, §30-21-11, §30-21-12,
16 §30-21-13, §30-21-14 and §30-21-17 of said code; and to amend
17 said code by adding thereto twelve new sections, designated
18 §30-21-16, §30-21-18, §30-21-19, §30-21-20, §30-21-21,
19 §30-21-22, §30-21-23, §30-21-24, §30-21-25, §30-21-26,
20 §30-21-27 and §30-21-28, all relating to the practice of
21 psychology; prohibiting the practice of psychology without a
22 license; providing other applicable sections; defining terms;
23 continuing and renaming board; providing for board
24 composition, appointments, qualifications, terms of office,

1 filling of vacancies and holding meetings; providing for
2 compensation and reimbursement for board members; setting
3 forth the powers and duties of the board; clarifying
4 rule-making authority; continuing a special revenue account;
5 establishing license and certification requirements; setting
6 forth scopes of practices; providing for licensure for persons
7 licensed in another state; establishing renewal requirements;
8 establishing delinquent, expired and inactive license
9 requirements; providing temporary permit requirements;
10 requiring license to be displayed; providing for privileged
11 communications and exceptions; providing the board may issue
12 notices to cease and desist; providing that circuit courts may
13 issue injunctions; setting forth grounds for disciplinary
14 actions; allowing for specific disciplinary actions; providing
15 procedures for the investigation of complaints; providing for
16 judicial review and appeals of decisions; setting forth
17 hearing and notice requirements; providing for civil causes of
18 action; and providing for criminal penalties.

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

20 That §30-21-7a, §30-21-7b, §30-21-7c, §30-21-7d, §30-21-7e,
21 §30-21-8a and §30-21-10a of the Code of West Virginia, 1931, as
22 amended, be repealed; that §30-21-1, §30-21-2, §30-21-3, §30-21-4,
23 §30-21-5, §30-21-6, §30-21-7, §30-21-8, §30-21-9, §30-21-10,
24 §30-21-11, §30-21-12, §30-21-13, §30-21-14 and §30-21-17 of said

1 code be amended and reenacted; and that said code be amended by
2 adding thereto twelve new sections, designated §30-21-16,
3 §30-21-18, §30-21-19, §30-21-20, §30-21-21, §30-21-22, §30-21-23,
4 §30-21-24, §30-21-25, §30-21-26, §30-21-27 and §30-21-28, all to
5 read as follows:

6 **ARTICLE 21. PSYCHOLOGISTS.**

7 **§30-21-1. Unlawful acts.**

8 (a) It is unlawful for a person to practice or offer to
9 practice psychology in this state without a license or permit
10 issued under this article, or to advertise or use any title or
11 description tending to convey the impression that the person is a
12 psychologist or psychological practitioner or certified
13 psychological associate unless the person is licensed or permitted
14 under this article, and the license or permit has not expired, been
15 suspended or revoked.

16 (b) It is unlawful for a certified psychological associate to
17 represent himself or herself as a licensed psychologist or as a
18 licensed psychological practitioner. A certified psychological
19 associate may not employ or supervise certified psychologists,
20 licensed psychological practitioners, or certified psychological
21 associates.

22 (c) No business entity, except through a licensee or
23 certificate holder, may render any service or engage in any
24 activity that if rendered or engaged in by an individual, would

1 constitute the practices licensed or certified under this article.

2 (d) Nothing in this article shall be construed as permitting
3 the administering or prescribing of drugs or as infringing upon the
4 practice of medicine and surgery.

5 **§30-21-2. General provisions.**

6 The practice of psychology licensed and certified under this
7 article and the West Virginia Board of Psychology are subject to
8 this article, article one of this chapter and any rules promulgated
9 hereunder.

10 **§30-21-3. Definitions.**

11 As used in this article:

12 (1) "Accredited institute of higher learning" means colleges
13 or universities that are accredited by one of the six nationally
14 recognized regional accrediting agencies, i.e., North Central
15 Association of Colleges and Schools, Western Association of Schools
16 and Colleges, Southern Association of Colleges and Schools, New
17 England Association of Schools and Colleges, Northwest Association
18 of Schools and Colleges, Middle States Association of Schools and
19 Colleges, or their successor associations.

20 (2) "Applicant" means a person making application for a
21 license or certificate under this article.

22 (3) "ASPPB" means the Association of State and Provincial
23 Psychology Boards.

24 (4) "Board" means the West Virginia Board of Psychology.

1 (5) "Business entity" means any firm, partnership,
2 association, company, corporation, limited partnership, limited
3 liability company or other entity providing psychological services.

4 (6) "Certified psychological associate" means a person
5 certified to practice psychology under the supervision of a
6 licensed psychologist.

7 (7) "Client" or "patient" means a direct recipient of
8 psychological services within the context of a professional
9 relationship including a child, adolescent, adult couple, family
10 group, organization, community or other populations or other
11 entities receiving psychological services.

12 (8) "EPPP" means the Examination for the Professional Practice
13 of Psychology.

14 (9) "Licensed psychologist" means a person licensed to practice
15 psychology under this article.

16 (10) "Licensed psychological practitioner" means a person
17 licensed to practice psychology under this article.

18 (11) "Licensee" means a person holding a license issued under
19 this article.

20 (12) "Permit" or "temporary permit" means a temporary permit
21 issued under this article.

22 (13) "Permittee" means any person holding a temporary permit
23 issued pursuant to this article.

24 (14) "Practice of psychology" means the observation,

1 description, analysis, evaluation, interpretation, prediction, and
2 modification of human behavior by the application of psychological
3 principles, methods, and procedures, on a client or patient,
4 regardless of whether payment is received for services rendered,
5 and as further described in section eight of this article.

6 (15) "Practice of school psychology" means the rendering or
7 offering to render to an individual or to the public, regardless of
8 whether payment is received for services rendered, school
9 psychological services whether rendered to individuals, families,
10 groups, systems or organizations.

11 (16) "Psychology" means: The science involving the principles,
12 methods and procedures of understanding, predicting and influencing
13 behavior; the principles pertaining to learning, perception,
14 motivation, thinking, emotions and interpersonal relationships; the
15 methods and procedures of interviewing and counseling; the methods
16 and procedures of psychotherapy, meaning the use of learning,
17 conditioning methods and emotional reactions, in a professional
18 relationship, to assist a person or persons to modify feelings,
19 attitudes and behavior, which are intellectually, socially,
20 physically or emotionally maladjustive or ineffectual; the
21 constructing, administering and interpreting of tests of
22 intelligence, special abilities, aptitudes, interests, attitudes,
23 personality characteristics, emotions and motivation; the
24 psychological evaluation, prevention and improvements of problems

1 of individuals and groups; and the resolution of interpersonal and
2 social conflicts.

3 (17) "School board" means a county school board, the West
4 Virginia Department of Education, or a Regional Educational Service
5 Agency.

6 (18) "School board employee" means a person who provides
7 services for the school board and is reimbursed via a salary and
8 benefits and who has met the educational requirements under the
9 state law and regulations of the West Virginia Board of Education
10 to be certified or otherwise empowered by the State Superintendent
11 of Schools to provide school psychological services for school
12 boards.

13 (19) "School board contractee" means a person who provides
14 services for one or more school boards and is reimbursed on a per
15 evaluation, per unit of service or some other contract basis.

16 **§30-21-4. Board of Psychology.**

17 (a) The Board of Examiners of Psychologists is continued. On
18 July 1, 2012, the West Virginia Board of Examiners of Psychologists
19 is renamed the West Virginia Board of Psychology. The members of
20 the board in office on July 1, 2012, are removed, but are eligible
21 to be reappointed to the board for one additional term.

22 (b) Effective July 1, 2012, the board shall consist of the
23 following seven members, who are appointed to staggered terms by
24 the Governor with the advice and consent of the Senate:

1 (1) Four doctorate psychologists;

2 (2) Two masters psychologists or licensed psychological
3 practitioners;

4 (3) One citizen, who may not be associated with the practice
5 of psychology.

6 (c) Board members shall reflect diversity within the
7 profession.

8 (d) Licensed board members shall have a valid license to
9 practice in West Virginia of at least five years duration at the
10 time of his or her appointment.

11 (e) The term shall be for five years.

12 (f) Members of the board must be a U.S. citizen and a resident
13 of this state for at least five years immediately preceding, his or
14 her appointment.

15 (g) Members may not have a history of suspended, revoked, or
16 sanctioned license or reprimand by this or any other board.

17 (h) A member may not serve more than two consecutive full
18 terms. A member having served two consecutive full terms may not
19 be appointed for one year after completion of his or her second
20 full term. A member may continue to serve until a successor has
21 been appointed and has qualified.

22 (i) A vacancy on the board shall be filled by appointment by
23 the Governor for the unexpired term of the member whose office
24 shall be vacant and the appointment shall be made within sixty days

1 of the vacancy.

2 (j) The Governor may remove any member from the board for
3 neglect of duty, incompetency or official misconduct.

4 (k) Any member of the board immediately and automatically
5 forfeits his or her membership if his or her license to practice is
6 suspended or revoked by the board, is convicted of a felony under
7 the laws of any jurisdiction, or becomes a nonresident of this
8 state.

9 (l) The board annually shall elect from its membership a
10 president and secretary who shall serve at the will and pleasure of
11 the board.

12 (m) Each member of the board is entitled to compensation and
13 expense reimbursement in accordance with article one of this
14 chapter.

15 (n) A simple majority of the membership serving on the board
16 at a given time is a quorum for the transaction of business.

17 (o) The board shall hold at least two meetings annually. Other
18 meetings may be held at the call of the president or upon the
19 written request of four members, at the time and place as
20 designated in the call or request.

21 (p) Prior to commencing his or her duties as a member of the
22 board, each member shall take and subscribe to the oath required by
23 section five, article four of the Constitution of this state.

24 (q) The members of the board when acting in good faith and

1 without malice shall enjoy immunity from individual civil liability
2 while acting within the scope of their duties as board members.

3 **§30-21-5. 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, certifications and
10 permits;

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

13 (4) Determine the qualifications of an applicant for licenses,
14 certifications and permits;

15 (5) Examine applicants and determine their eligibility for a
16 license, certifications or permit to engage in the practice of
17 psychology;

18 (6) Prepare, conduct and grade, or adopt, written and oral
19 examinations of applicants for a license and determine the
20 satisfactory pass points;

21 (7) Maintain records of the examinations the board or a third
22 party administers, including the number of persons taking the
23 examinations and the pass and fail rate;

24 (8) Maintain an office, and hire, discharge, establish the job

1 requirements and fix the compensation of full-time, part-time or
2 contracted professional, clerical or other personnel, which may
3 include an executive director, investigators and contracted
4 employees, necessary to enforce this article;

5 (9) Investigate alleged violations of this article,
6 legislative rules, orders and final decisions of the board;

7 (10) Conduct disciplinary hearings of persons regulated by the
8 board;

9 (11) Determine and take disciplinary action and issue orders;

10 (12) Institute appropriate legal action for the enforcement of
11 this article;

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

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

16 (15) Establish the continuing education requirements for all
17 persons regulated by the board;

18 (16) Issue, renew, combine, deny, suspend, place on probation,
19 revoke or reinstate licenses and permits;

20 (17) Establish a fee schedule;

21 (18) Propose rules in accordance with article three, chapter
22 twenty-nine-a of this code to implement this article; and

23 (19) Take all other actions necessary and proper to implement
24 this article.

1 (c) The board may:

2 (1) Contract with third parties to administer the examinations
3 required under this article;

4 (2) Sue and be sued in its official name as an agency of this
5 state; and

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

8 **§30-21-6. Rulemaking.**

9 (a) The board shall propose rules for legislative approval, in
10 accordance with article three, chapter twenty-nine-a of this code,
11 to implement this article, including:

12 (1) Standards and requirements for licenses, certifications
13 and permits;

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

16 (3) Educational and experience requirements;

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

18 (5) Procedures for the issuance and renewal of licenses,
19 certifications and permits;

20 (6) Supervision requirements;

21 (7) A fee schedule;

22 (8) Continuing education requirements;

23 (9) Regulation of telepractice and telepractice supervision;

24 (10) Regulation and supervision of psychometricians;

1 (11) The procedures for denying, suspending, revoking,
2 reinstating or limiting the practice of licensees, certifications
3 and permittees;

4 (12) Requirements for inactive or revoked licenses,
5 certifications and permits; and

6 (13) Any other rules necessary to implement this article.

7 (b) All of the board's rules in effect and not in conflict
8 with these provisions, shall remain in effect until they are
9 amended or rescinded.

10 **§30-21-7. Fees; special revenue account; administrative fines.**

11 (a) All fees and other moneys, except administrative fines,
12 received by the board shall be deposited in a separate special
13 revenue fund in the State Treasury designated, The Board of
14 Examiners of Psychologists Fund, which is continued and renamed
15 "The Board of Psychology Fund." The fund shall be used by the board
16 for the administration of this article. Except as may be provided
17 in article one of this chapter, the board retains the amount in the
18 special revenue account from year to year. No compensation or
19 expense incurred under this article is a charge against the General
20 Revenue Fund.

21 (b) Any amounts received as fines pursuant to this article
22 shall be deposited into the General Revenue Fund of the State
23 Treasury.

24 **§30-21-8. License to practice psychology.**

1 (a) To be eligible for a license to practice psychology as a
2 licensed psychologist, the applicant must:

3 (1) Submit an application to the board;

4 (2) Be at least twenty-one years of age;

5 (3) Be of good moral character;

6 (4) Pay the appropriate fee;

7 (5) Obtain a doctoral degree in psychology or its equivalent,
8 as determined by the board, from an accredited institution of
9 higher learning,;

10 (6) Complete two years of supervised work experience, as
11 prescribed by legislative rule;

12 (7) Have passed the national EPPP examination at the doctoral
13 level;

14 (8) Have passed the examinations prescribed by the board;

15 (9) Not be an alcohol or drug abuser, as these terms are
16 defined in section eleven, article one-a, chapter twenty-seven of
17 this code: *Provided*, That an applicant in an active recovery
18 process, which may, in the discretion of the board, be evidenced by
19 participation in an acknowledged substance abuse treatment and/or
20 recovery program may be considered;

21 (10) Not have been convicted of a felony or crime involving
22 moral turpitude in this or any jurisdiction;

23 (11) Not have been convicted of a misdemeanor or felony in any
24 jurisdiction if the offense for which he or she was convicted

1 related to the practice of psychology, which conviction remains
2 unreversed; and

3 (12) Meet other requirements established by legislative rule
4 by the board.

5 (b) A person who is licensed as a psychologist in West
6 Virginia at the time of the effective date of this section shall be
7 determined to have met all requirements for licensure under this
8 article and shall be eligible for renewal of licensure as a
9 licensed psychologist in accordance with this article.

10 (c) A person who is licensed to practice psychology in another
11 jurisdiction for five years, who has not been disciplined, nor has
12 a complaint filed against them, shall be approved for licensure.

13 **§30-21-9. License to practice psychology.**

14 (a) To be eligible for a license to practice psychology as a
15 licensed psychologist, the applicant must:

16 (1) Submit an application to the board;

17 (2) Be at least twenty-one years of age;

18 (3) Be of good moral character;

19 (4) Pay the appropriate fee;

20 (5) Obtain a master's degree in psychology from an accredited
21 institution of higher learning, before July 1, 2015;

22 (6) Complete five years of supervised work experience, by July
23 1, 2020, as prescribed by legislative rule;

24 (7) Have passed the national EPPP examination at the ASPPB

1 level for independent practice;

2 (8) Have passed the examinations prescribed by the board;

3 (9) Not be an alcohol or drug abuser, as these terms are
4 defined in section eleven, article one-a, chapter twenty-seven of
5 this code: *Provided*, That an applicant in an active recovery
6 process, which may, in the discretion of the board, be evidenced by
7 participation in an acknowledged substance abuse treatment and/or
8 recovery program may be considered;

9 (10) Not have been convicted of a felony or crime involving
10 moral turpitude in this or any jurisdiction;

11 (11) Not have been convicted of a misdemeanor or felony in any
12 jurisdiction if the offense for which he or she was convicted
13 related to the practice of psychology, which conviction remains
14 unreversed; and

15 (12) Meet other requirements established by legislative rule
16 by the board.

17 (b) A person who is licensed as a psychologist in West
18 Virginia at the time of the effective date of this section shall be
19 determined to have met all requirements for licensure under this
20 article and shall be eligible for renewal of licensure as a
21 licensed psychologist in accordance with this article.

22 (c) This section expires July, 2015; *Provided*, That a person
23 who is licensed as a psychologist in West Virginia under this
24 section shall be determined to have met all requirements for

1 licensure under this article and shall remain eligible for renewal
2 of licensure as a licensed psychologist in accordance with this
3 article.

4 **§30-21-10. Scope of practice for a licensed psychologist.**

5 A licensed psychologist may:

6 (1) Prevent, eliminate, evaluate, assess or predict
7 symptomatic, maladaptive, or undesired behavior;

8 (2) Evaluate and assess or facilitate the enhancement of
9 individual, group or organizational effectiveness, including
10 personal effectiveness, adaptive behavior, interpersonal
11 relationships, work and life adjustment, health, and individual,
12 group or organizational performance;

13 (3) Assist in legal decision-making;

14 (4) Perform psychological test evaluation or assessment of
15 personal characteristics, such as intelligence, personality,
16 cognitive, physical, or emotional abilities; skills; interests;
17 aptitudes; and neuropsychological functioning;

18 (5) Perform psychoanalysis, counseling psychotherapy,
19 hypnosis, biofeedback, cognitive therapy, family therapy, cognitive
20 behavior therapy, behavior analysis and behavior therapy;

21 (6) Diagnosis, treat, and manage of mental and emotional
22 disorder or disability, substance use disorders, disorders of habit
23 or conduct, as well as of the psychological aspects of physical
24 illness, accident, injury, or disability;

1 (7) Perform psychoeducational evaluation, therapy, and
2 remediation;

3 (8) Consult with other psychologists, physicians, other
4 healthcare professionals, client or patients regarding all
5 available treatment options, including medication, with respect to
6 provision of care for a specific client or patient;

7 (9) Provide of direct services to individuals or groups for
8 the purpose of enhancing individual and thereby organizational
9 effectiveness, using psychological principles, methods or
10 procedures to assess and evaluate individuals on personal
11 characteristics for individual development or behavior change or
12 for making decisions about the individual, such as selection; and

13 (10) Supervise any person or activity identified in
14 subdivisions one through nine of this section.

15 **§30-21-11. License to practice as an Licensed Psychological**
16 **Practitioner.**

17 (a) Effective January 1, 2015, to be eligible for a license to
18 practice psychology as a psychological practitioner, the applicant
19 must:

20 (1) Submit an application to the board;

21 (2) Be at least twenty-one years of age;

22 (3) Be of good moral character;

23 (4) Pay the appropriate fee;

24 (5) Obtain a master's degree in psychology from an accredited

1 institution of higher learning;

2 (6) Complete three years of supervised work experience, as
3 prescribed by legislative rule;

4 (7) Have passed the national EPPP examination at the ASPPB
5 level for independent practice;

6 (8) Have passed the examinations prescribed by the board;

7 (9) Not be an alcohol or drug abuser, as these terms are
8 defined in section eleven, article one-a, chapter twenty-seven of
9 this code: *Provided*, That an applicant in an active recovery
10 process, which may, in the discretion of the board, be evidenced by
11 participation in an acknowledged substance abuse treatment and/or
12 recovery program may be considered;

13 (10) Not have been convicted of a felony or crime involving
14 moral turpitude in this or any jurisdiction;

15 (11) Not have been convicted of a misdemeanor or felony in any
16 jurisdiction if the offense for which he or she was convicted
17 related to the practice of psychology, which conviction remains
18 unreversed; and

19 (12) Meet other requirements established by legislative rule
20 by the board.

21 **§30-21-12. Scope of practice for licensed psychological**
22 **practitioner.**

23 (a) A licensed psychological practitioner may practice
24 independently. A licensed psychological practitioner's scope of

1 practice for independent practice shall be determined upon
2 examination for licensure. The board's basic requirements for
3 acceptable education and supervised work experience having been
4 met, the individual shall identify and prove evidence in his areas
5 of competence.

6 (b) A licensed psychological practitioner may petition the
7 board to seek additional scope of practice enhancements.
8 Specialized work in psychology is limited to the practice of those
9 with formal training in these fields, and any licensed
10 psychological practitioner intending to include specialized work in
11 their scope of practice must demonstrate to the board that their
12 education, training and supervised experience has adequately
13 prepared them for this specialized work. In no instance will the
14 board approve inclusion in the scope of practice of LPPs any area
15 of professional practice that is generally recognized to require
16 specialized doctoral or post doctoral training.

17 (c) An amendment to the Medicaid state plan shall be proposed
18 before January 1, 2015 to include the title "licensed psychological
19 practitioner" as an accepted provider.

20 **§30-21-13. Certification to practice as a certified psychological**
21 **associate.**

22 An applicant for licensure shall obtain a certification to
23 practice as a certified psychological associate to obtain the
24 required experience for licensure under this article. To be

1 eligible for a certification to practice as a certified
2 psychological associate the applicant must:

3 (1) Submit an application to the board;

4 (2) Be at least twenty-one years of age;

5 (3) Be of good moral character;

6 (4) Pay the appropriate fee;

7 (5) Obtain at least a masters or doctorate degree in
8 psychology from an accredited institution of higher learning;

9 (6) Not be an alcohol or drug abuser, as these terms are
10 defined in section eleven, article one-a, chapter twenty-seven of
11 this code: *Provided*, That an applicant in an active recovery
12 process, which may, in the discretion of the board, be evidenced by
13 participation in an acknowledged substance abuse treatment and/or
14 recovery program may be considered;

15 (7) Not have been convicted of a felony or crime involving
16 moral turpitude in this or any jurisdiction;

17 (8) Not have been convicted of a misdemeanor or felony in any
18 jurisdiction if the offense for which he or she was convicted
19 related to the practice of psychology, which conviction remains
20 unreversed; and

21 (9) Pass the national EPPP examination at the level
22 established by ASPPB for supervised practice and meet other
23 requirements established by legislative rule by the board.

24 **§30-21-14. Scope of Practice for a Certified psychological**

1 **associate.**

2 (a) A certified psychological associate may perform certain
3 functions within the practice of psychology under the supervision
4 of a licensed psychologist under conditions established by the
5 board.

6 (b) A certified psychological associate's scope of practice
7 shall be determined upon examination for licensure. The board's
8 basic requirements for acceptable education and supervised work
9 experience having been met, the individual shall identify and
10 provide evidence of his or her areas of competence under the
11 supervision of a licensed psychologist.

12 **§30-21-16. Exemptions.**

13 The following persons are exempt from licensure and
14 certification:

15 (1) The activities, services, and use of title on the part of
16 a person in the employ of the federal government;

17 (2) A person teaching psychology, conducting psychological
18 research, providing consultation services to organizations or
19 institutions, or providing expert testimony: *Provided*, That such
20 activities do not involve the delivery or supervision of direct
21 psychological services to individuals or groups;

22 (3) A person authorized under any other provision of chapter
23 thirty from rendering services consistent with the laws regulating
24 his or her professional practice and the ethics of their

1 profession.

2 (4) A student, intern, or resident in psychology, pursuing a
3 course of study approved by the department of psychology of an
4 educational institution rated acceptable by the board for
5 qualifying training and experience, provided such activities are
6 recognized by transcript as a part of his or her supervised course
7 of study;

8 (5) The recognized educational activities of teachers in
9 accredited public and private schools, the authorized duties of
10 guidance counselors who are certified by the State Board of
11 Education, or the activities of persons using psychological
12 techniques in business and industrial organizations for employment
13 placement, promotion, or job adjustment of their own officers and
14 employees;

15 (6) Clergy carrying out his or her responsibilities while
16 functioning in a ministerial capacity within a recognized religious
17 organization serving the spiritual needs of its constituency, if he
18 or she does not hold himself or herself out as a psychologist; and

19 (7) A licensed psychologist who has no regular place of
20 practice in this state and who engages in the practice of
21 psychology in this state for a period of not more than ten days in
22 any calendar year.

23 (8) A person practicing school psychology as school board
24 employee or school board contract employee.

1 **§30-21-17. Renewal of license and certification.**

2 (a) A license to practice psychology shall be valid for a
3 period of two years from the date issued and may be renewed for a
4 period of two years without examination upon application for
5 renewal on a form prescribed by the board and payment to the board
6 of renewal fees to be set by the board by legislative rule.

7 (b) A certification to practice psychology shall be valid for
8 a period of three years from the date issued and may be renewed for
9 a period of three years without examination upon application for
10 renewal on a form prescribed by the board and payment to the board
11 of a renewal fees to be set by the board by legislative rule.

12 (c) The board shall charge a fee for each renewal of a license
13 and certification and may charge a late fee for any renewal not
14 paid by the due date.

15 (d) The board shall require as a condition of renewal that
16 each licensee or certificate holder complete continuing education.

17 (e) The board may deny an application for renewal for any
18 reason which would justify the denial of an original application
19 for a license or certification.

20 **§30-21-18. Delinquent and expired license requirements.**

21 (a) If a license is not renewed when due, then the board shall
22 automatically place the licensee on delinquent status. A licensee
23 on delinquent status may not practice in this state.

24 (b) The fee for a person on delinquent status shall increase

1 at a rate, determined by the board, for each month or fraction
2 thereof that the renewal fee is not paid, up to a maximum of
3 thirty-six months.

4 (c) Within thirty-six months of being placed on delinquent
5 status, if a licensee wants to return to active practice, he or she
6 must complete all the continuing education requirements and pay all
7 the applicable fees as set by rule.

8 (d) After thirty-six months of being placed on delinquent
9 status, a license is automatically placed on expired status and
10 cannot be renewed. A person whose license has expired must reapply
11 for a new license.

12 **§30-21-19. Inactive license requirements.**

13 (a) A licensee who does not want to continue an active
14 practice shall submit an application and any applicable fee to the
15 board to be granted inactive status.

16 (b) Once granted inactive status, a person is not subject to
17 the payment of any fee and may not practice in this state.

18 (c) When the person wants to return to practice, the person
19 shall submit an application for renewal along with all applicable
20 fees as set by rule.

21 (d) When inactive status has been of more than 5 years
22 duration, during which time the individual has not been practicing
23 as a licensed psychologist in any board recognized jurisdiction, an
24 oral examination shall be required prior to reactivation of the

1 license.

2 **§30-21-20. Temporary permit to practice psychology.**

3 (a) Upon proper application, the board may issue until
4 examination at the next available board meeting a temporary permit
5 to engage in the practice of psychology in this state to an
6 applicant of good moral character who meets this article and who
7 holds a valid license to practice psychology in another
8 jurisdiction, if the applicant demonstrates that he or she:

9 (1) Holds a license or other authorization to practice
10 psychology in another state which requirements are substantially
11 equivalent to those required in this state. The board may enter
12 into agreements for reciprocal licensing with other jurisdictions
13 having substantially similar requirements for licensure;

14 (2) Does not have charges pending against his or her license
15 or other authorization to practice, and has never had a license or
16 other authorization to practice revoked or otherwise sanctioned;

17 (3) Has not previously failed an examination for professional
18 licensure in this state;

19 (4) Has paid the applicable fee;

20 (5) Has passed the EPPP or other examination prescribed by the
21 board; and

22 (6) Has fulfilled any other requirement specified by the
23 board.

24 (b) The board shall interview and examine an applicant for

1 licensing under this section. If the permittee fails to pass the
2 examination, the temporary permit expires immediately.

3 (c) An applicant under this section may only be issued one
4 temporary permit. Upon the expiration of a temporary permit, a
5 person may not practice psychology until he or she is licensed
6 under this article. In no event may a permittee practice on a
7 temporary permit beyond a period of 180 consecutive days.

8 (d) This section does not apply to a licensed psychologist.

9 **§30-21-21. Display of license.**

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

13 (b) Any person regulated by the article shall conspicuously
14 display his or her license, certification or permit at his or her
15 principal place of practice.

16 **§30-21-22. Privileged communications.**

17 (a) A licensee may not disclose any information provided by a
18 client or from persons consulting the licensee in a professional
19 capacity, except that which may be voluntarily disclosed under the
20 following circumstances:

21 (1) In the course of formally reporting, conferring or
22 consulting with administrative superiors, colleagues or consultants
23 who share professional responsibility, in which instance all
24 recipients of such information are similarly bound to regard the

1 communication as privileged;

2 (2) With the written consent of the person who provided the
3 information;

4 (3) In case of death or disability, with the written consent
5 of a personal representative, other person authorized to sue, or
6 the beneficiary of an insurance policy on the person's life, health
7 or physical condition;

8 (4) When a communication reveals the intended commission of a
9 crime or harmful act and such disclosure is judged necessary by the
10 psychologist to protect any person from a clear, imminent risk of
11 serious mental or physical harm or injury, or to forestall a
12 serious threat to the public safety; or

13 (5) When the person waives the privilege by bringing any
14 public charges against the licensee.

15 (b) When the person is a minor and the information acquired by
16 the licensee indicates the minor was the victim of or witness to a
17 crime, the licensee may be required to testify in any judicial
18 proceedings in which the commission of that crime is the subject of
19 inquiry and when the court determines that the interests of the
20 minor in having the information held privileged are outweighed by
21 the requirements of justice.

22 (c) Any person having access to records or anyone who
23 participates in providing services or who, in providing any human
24 services, is supervised by a licensee, is similarly bound to regard

1 all information and communications as privileged in accord with the
2 section.

3 (d) Nothing shall be construed to prohibit a licensee from
4 testifying in court hearings concerning matters of adoption, child
5 abuse, child neglect or other matters pertaining to children,
6 elderly, and physically and mentally impaired adults, except as
7 prohibited under the applicable state and federal laws.

8 **§30-21-23. Actions to enjoin violations.**

9 (a) If the board obtains information that a person has engaged
10 in, is engaging in or is about to engage in any act which
11 constitutes or will constitute a violation of this article, the
12 rules promulgated pursuant to this article, or a final order or
13 decision of the board, it may issue a notice to the person to cease
14 and desist in engaging in the act and/or apply to the circuit court
15 in the county of the alleged violation for an order enjoining the
16 act.

17 (b) The circuit courts of this state may issue a temporary
18 injunction pending a decision on the merits, and may issue a
19 permanent injunction based on its findings in the case.

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

23 **§30-21-24. Complaints; investigations; due process procedure;**
24 **grounds for disciplinary action.**

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

6 (b) Upon initiation or receipt of the complaint, the board
7 shall provide a copy of the complaint to the licensee, certificate
8 holder or permittee.

9 (c) After reviewing any information obtained through an
10 investigation, the board shall determine if probable cause exists
11 that the licensee, certificate holder or permittee has violated
12 subsection (g) of this section or rules promulgated pursuant to
13 this article.

14 (d) Upon a finding that probable cause exists that the
15 licensee, certificate holder or permittee has violated subsection
16 (g) of this section or rules promulgated pursuant to this article,
17 the board may enter into a consent decree or hold a hearing for the
18 suspension or revocation of the license, certificate holder or
19 permit or the imposition of sanctions against the licensee,
20 certificate holder or permittee. Any hearing shall be held in
21 accordance with this article.

22 (e) The board president or its administrator may issue
23 subpoenas and subpoenas duces tecum to obtain testimony and
24 documents to aid in the investigation of allegations against any

1 person regulated by the article.

2 (f) The board president or its administrator may sign a
3 consent decree or other legal document on behalf of the board.

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

10 (1) Obtaining a license, certification or permit by fraud,
11 misrepresentation or concealment of material facts;

12 (2) Being convicted of a felony or other crime involving moral
13 turpitude in this or any jurisdiction;

14 (3) Committing unprofessional conduct which placed the public
15 at risk;

16 (4) Intentional violation of a lawful order or legislative
17 rule of the board;

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

22 (6) Exceeding their scope of practice of psychology;

23 (7) Engaging in false and deceptive advertising;

24 (8) Aiding or abetting unlicensed practice; or

1 (9) Engaging in an act while acting in a professional capacity
2 which has endangered or is likely to endanger the health, welfare
3 or safety of the public.

4 (h) For the purposes of subsection (g) of this section,
5 effective July 1, 2012, disciplinary action may include:

6 (1) Reprimand;

7 (2) Probation;

8 (3) Restrictions;

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

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

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

14 (7) Requiring the licensee, certificate holder or permittee to
15 report to the board for periodic interviews for a specified period
16 of time; or

17 (8) Other corrective action deemed necessary and appropriate
18 by the board;

19 (i) In addition to any other sanction imposed, the board may
20 require a licensee, certificate holder or permittee to pay the
21 costs of the proceedings.

22 (j) The board may temporarily suspend a license, certification
23 or permit without a hearing while instituting proceedings for a
24 hearing under this section if the board possesses evidence that the

1 psychologist's continuation in practice may constitute an immediate
2 danger to the public.

3 (k) A licensee or certificate holder may surrender his or her
4 license or certification or permit when such person is charged with
5 unethical conduct and upon receipt of that charge the licensee or
6 certificate holder decides to surrender the license or
7 certification. The surrender and acceptance by the board shall
8 constitute acknowledgment by the licensee or certificate holder of
9 guilt as charged and is considered a public and reportable
10 disciplinary action. Such surrender shall not rescind the
11 jurisdiction of the board to proceed to formal adjudication of the
12 matter.

13 (l) The board shall also suspend or revoke any license,
14 certification or temporary permit if it finds the existence of any
15 grounds that would justify the denial of an application for such
16 license, certification or temporary permit if application were then
17 being made for it.

18 **§30-21-25. Procedures for hearing.**

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

21 (b) The board may conduct the hearing or elect to have an
22 administrative law judge who is a licensed attorney in the State of
23 West Virginia conduct the hearing.

24 (c) If the hearing is conducted by an administrative law

1 judge, at the conclusion of a hearing he or she shall prepare a
2 proposed written order containing findings of fact and conclusions
3 of law. The proposed order may contain proposed disciplinary
4 actions if the board so directs. The board may accept, reject or
5 modify the decision of the administrative law judge.

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

9 (e) If, after a hearing, the board determines the licensee,
10 certificate holder or permittee has violated this article or the
11 board's rules, a formal written decision shall be prepared which
12 contains findings of fact, conclusions of law and a specific
13 description of the disciplinary actions imposed.

14 **§30-21-26. Judicial review; right of appeal.**

15 A licensee, certificate holder or permittee adversely affected
16 by a decision of the board entered after a hearing may obtain
17 judicial review of the decision in accordance with section four,
18 article five, chapter twenty-nine-a of this code, and may appeal
19 any ruling resulting from judicial review in accordance with
20 article six, chapter twenty-nine-a of this code.

21 **§30-21-27. Penalties.**

22 (a) When, as a result of an investigation under this article
23 or otherwise, the board has reason to believe that a licensee,
24 certificate holder or permittee has committed a criminal offense

1 under this article, the board shall bring its information to the
2 attention of an appropriate law-enforcement official.

3 (b) A person violating this article is guilty of a misdemeanor
4 and, upon conviction thereof, shall be fined not less than \$100 nor
5 more than \$5,000 or confined in jail not more than six months, or
6 both fined and confined.

7 **§30-21-28. Single act to justify penalty.**

8 In any action brought or in any proceeding initiated under
9 this article, evidence of the commission of a single act prohibited
10 by this article is sufficient to justify a penalty, injunction,
11 restraining order or conviction without evidence of a general
course of conduct.

NOTE: The purpose of this bill is to rewrite the article concerning the practice of psychology. The bill prohibits the practice of psychology without a license. The bill provides other applicable sections. The bill defines terms. The bill continues and renames board. The bill provides for board composition, appointments, qualifications, terms of office, filling of vacancies and holding meetings. The bill provides for compensation and reimbursement for board members. The bill sets forth the powers and duties of the board. The bill clarifies rule-making authority. The bill continues a special revenue account. The bill establishes license and certification requirements. The bill sets forth scopes of practices. The bill provides for licensure for persons licensed in another state. The bill establishes renewal requirements. The bill establishes delinquent, expired and inactive license requirements. The bill provides temporary permit requirements. The bill requires license to be displayed. The bill provides for privileged communications and exceptions. The bill provides the board may issue notices to cease and desist. The bill provides that circuit courts may issue injunctions. The bill sets forth grounds for disciplinary actions. The bill allows for specific disciplinary actions. The bill provides procedures for the investigation of complaints. The bill provides for judicial review and appeals of decisions. The bill sets forth hearing and notice requirements. The

bill provides for civil causes of action. The bill and provides for criminal penalties.

§30-21-1, §30-21-2, §30-21-3, §30-21-4, §30-21-5, §30-21-6, §30-21-7, §30-21-8, §30-21-9, §30-21-10, §30-21-11, §30-21-12, §30-21-13, §30-21-14 and §30-21-17 have been completely rewritten; therefore, strike-throughs and underscoring have been omitted.

§30-21-16, §30-21-18, §30-21-19, §30-21-20, §30-21-21, §30-21-22, §30-21-23, §30-21-24, §30-21-25, §30-21-26, §30-21-2 and §30-21-28 are new; therefore, strike-throughs and underscoring have been omitted.