

COMMITTEE SUBSTITUTE

FOR

## **H. B. 4111**

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(BY DELEGATES MORGAN, STEPHENS, HATFIELD,  
HARTMAN AND SWARTZMILLER)

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(Originating in the Committee on the Judiciary)  
[February 10, 2012]

A BILL to repeal §30-4-25 of the Code of West Virginia, 1931, as amended; to repeal §30-4B-6 of said code; to repeal §30-5-23 of said code; to repeal §30-6-28 of said code; to repeal §30-7-14 of said code; to repeal §30-7C-13 of said code; to repeal §30-7D-10 of said code; to repeal §30-9-27 of said code; to repeal §30-21-14 of said code; to repeal §30-22-26; to repeal §30-23-27 of said code; to repeal §30-26-19 of said code; to repeal §30-30-25 of said code; to repeal §30-32-20 of said code; to repeal §30-35-13 of said code; to amend and reenact

§30-13-9 of said code; to amend and reenact §30-16-11 of said code; to amend and reenact §30-37-8 of said code; and to amend and reenact §30-40-24 of said code, all relating to the authority by state boards of examination and registration to apply for an injunctions.

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

That §30-4-25 of the Code of West Virginia, 1931, as amended, be repealed; that §30-4B-6 of said code be repealed; that §30-5-23 of said code be repealed; that §30-6-28 of said code be repealed; that §30-7-14 of said code be repealed; that §30-7C-13 of said code be repealed; that §30-7D-10 of said code be repealed; that §30-9-27 of said code be repealed; that §30-21-14 of said code be repealed; that §30-22-26 of said code be repealed; that §30-23-27 of said code be repealed; that §30-26-19 of said code be repealed; that §30-30-25 of said code be repealed; that §30-32-20 of said code be repealed; that §30-35-13 of said code be repealed; that §30-13-9 of said code be amended and reenacted; that §30-16-11 of said code be amended and reenacted; that §30-37-8 of said code be amended and

reenacted; and that §30-40-24 of said code be amended and reenacted, all to read as follows:

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS**

**ARTICLE 13. ENGINEERS.**

**§30-13-9. Board powers.**

1 (a) The board may adopt and amend bylaws not  
2 inconsistent with the constitution and laws of this state. The  
3 board may promulgate and shall adopt "rules of professional  
4 responsibility for professional engineers". These rules are  
5 binding to any person registered with the board under the  
6 provisions of this article. These rules are also applicable to  
7 firms holding a certificate of authorization as provided in  
8 section seventeen of this article.

9 (b) The board may subpoena witnesses and compel their  
10 attendance and it may also subpoena books, papers, documents  
11 or other pertinent data in any disciplinary matters or in any case  
12 involving an allegation of a violation of the provisions of this  
13 article. The board may apply to the circuit court of Kanawha  
14 county to enforce compliance with any subpoena it issues.

15       (c) ~~The board may seek an injunction in circuit court to~~  
16 ~~enforce the provisions of this article or to restrain a person or~~  
17 ~~entity from violating a provision of this article. In pursuing~~  
18 ~~injunctive relief under this section, the board shall not be~~  
19 ~~required to prove that an adequate remedy at law does not~~  
20 ~~exist or that substantial or irreparable damage would result~~  
21 ~~from the continued violation. The members of the board may~~  
22 ~~not be personally liable for any decisions made in good faith~~  
23 ~~in pursuing injunctive relief.~~

24       ~~(d)~~ The board may require all applicants for registration  
25 to take and successfully pass an examination of their fitness  
26 and qualifications to become registered.

27       ~~(e)~~(d) The board may require that a registered  
28 professional engineer demonstrate continuing professional  
29 competency in engineering as a condition of renewal or  
30 reregistration.

31       ~~(f)~~(e) Board members are exempt from civil liability for  
32 any decision made or any act done in good faith in the  
33 performance of any duty or the exercise of any power granted  
34 under this article.

**ARTICLE 16. CHIROPRACTORS.**

**§30-16-11. Disciplinary actions.**

1 (a) The board may take disciplinary action against any  
2 licensee or certificate holder holding a license or certificate  
3 issued under this article after giving reasonable notice and an  
4 opportunity to be heard pursuant to the provisions of section  
5 one, article five, chapter twenty-nine-a of this code, when it  
6 finds that any person has engaged in conduct in violation of  
7 the rules adopted by the board, including, but not limited to,  
8 the following:

9 (1) Fraud or misrepresentation in applying for or  
10 procuring a chiropractic license or in connection with  
11 applying for or procuring periodic renewal of a chiropractic  
12 license;

13 (2) Cheating on or attempting to subvert the chiropractic  
14 licensing examination or examinations;

15 (3) Being found guilty of a crime in any jurisdiction,  
16 which offense is a felony, involves moral turpitude or directly  
17 relates to the practice of chiropractic. Any plea of nolo

18 contendere is a conviction for the purposes of this  
19 subdivision;

20 (4) Conduct likely to deceive, defraud or harm the public;

21 (5) Making a false or misleading statement regarding his  
22 or her skill or the efficiency or value of the chiropractic  
23 treatment;

24 (6) Representing to a patient that an incurable condition,  
25 sickness, disease or injury can be cured;

26 (7) Willfully or negligently violating the confidentiality  
27 between chiropractic physician and patient except as required  
28 by law;

29 (8) Negligence in the practice of chiropractic as  
30 determined by the board;

31 (9) Being found mentally incompetent or insane by any  
32 court of competent jurisdiction;

33 (10) Being physically or mentally unable to engage safely  
34 in the practice of chiropractic;

35 (11) Practice or other behavior that demonstrates an  
36 incapacity or incompetence to practice chiropractic;

37 (12) Use of any false, fraudulent or deceptive statement

38 in any document connected with the practice of chiropractic;

39 (13) Practicing chiropractic under a false or assumed name;

40 (14) Aiding or abetting the practice of chiropractic by an

41 unlicensed, incompetent or impaired person;

42 (15) Allowing another person or organization to use his

43 or her license to practice chiropractic;

44 (16) Commission of any act of sexual abuse, sexual

45 misconduct or sexual exploitation related to the licensee's

46 practice of chiropractic;

47 (17) Being addicted or habituated to a drug or intoxicant;

48 (18) Obtaining any fee by fraud, deceit or

49 misrepresentation;

50 (19) Employing abusive billing practices;

51 (20) Directly or indirectly giving or receiving any fee,

52 commission, rebate or other compensation for professional

53 services not actually rendered: Provided, That this prohibition

54 does not preclude the legal functioning of lawful professional

55 partnerships, corporations or associations;

56 (21) Disciplinary action of another state or jurisdiction  
57 against a license or other authorization to practice  
58 chiropractic based upon acts or conduct by the licensee  
59 similar to acts or conduct that constitute grounds for action as  
60 defined in this section, a certified copy of the record of the  
61 action taken by the other state or jurisdiction being  
62 conclusive evidence thereof;

63 (22) Failure to report to the board within thirty days of  
64 any adverse action, disciplinary action, sanctions or  
65 punishment taken against him or her by another state  
66 licensing board or licensing jurisdiction, United States or  
67 foreign, by a peer review body, health care institution,  
68 professional or chiropractic society or association,  
69 governmental agency, law-enforcement agency or court for  
70 acts or conduct similar to acts or conduct that constitute  
71 grounds for action as defined in this section;

72 (23) Failure to report to the board within thirty days of  
73 the surrender of a license or other authorization to practice  
74 chiropractic in another state or jurisdiction or surrender of



75 membership on any chiropractic staff or in any chiropractic  
76 or professional association or society while under  
77 disciplinary investigation by any of those authorities or  
78 bodies for acts or conduct similar to acts or conduct that  
79 constitute grounds for action as defined in this section;

80 (24) Any adverse judgment, award or settlement against  
81 the licensee resulting from a chiropractic liability claim  
82 related to acts or conduct similar to acts or conduct that  
83 constitute grounds for action as defined in this section;

84 (25) Failure to report to the board within thirty days any  
85 adverse judgment, settlement or award arising from a  
86 chiropractic liability claim related to acts or conduct similar  
87 to acts or conduct that constitute grounds for action as  
88 defined in this section;

89 (26) Failure to transfer or release pertinent and necessary  
90 chiropractic records to another physician in a timely fashion  
91 when legally requested to do so by the subject patient or by  
92 a legally designated representative of the subject patient;

93 (27) Improper management of chiropractic patient records;

94 (28) Failure to furnish the board, its investigators or  
95 representatives, information legally requested by the board;

96 (29) Failure to cooperate with a lawful investigation  
97 conducted by the board; or

98 (30) Violation of any provision of this article or the rules  
99 of the board or of an action, stipulation or agreement with the  
100 board.

101 (b) Upon a finding of a violation by a chiropractor of one  
102 or more of the grounds for discipline contained in subsection  
103 (a) of this section, the board may impose one or more of the  
104 following penalties:

105 (1) Revocation of the chiropractic license;

106 (2) Suspension of the chiropractic license;

107 (3) Probation;

108 (4) Stipulations, limitations, restrictions and conditions  
109 relating to practice;

110 (5) Reprimand;

111 (6) Monetary redress to another party;

112 (7) A period of free public or charity service;

113 (8) Satisfactory completion of an educational, training or  
114 treatment program, or a combination of programs;

115 (9) Imposition of an administrative penalty, not to exceed  
116 one thousand dollars per day per violation; or

117 (10) Payment of administrative costs for the disciplinary  
118 action, including, but not limited to, attorney fees,  
119 investigation expenses, hearing examiner fees, witness fees  
120 and cost of monitoring compliance with the board's orders.

121 (c) The board may issue a confidential letter of concern  
122 to a licensee when, though evidence does not warrant formal  
123 proceedings, the board has noted indications of possible  
124 misconduct of a licensee that could lead to serious  
125 consequences and formal action. In the letter of concern, the  
126 board is also authorized at its discretion to request clarifying  
127 information from the licensee.

128 (d) The board may require professional competency,  
129 physical, mental or chemical dependency examinations of  
130 any applicant or licensee including withdrawal and laboratory  
131 examination of bodily fluids.

132 (e) In every disciplinary case considered by the board  
133 pursuant to this article, whether initiated by the board or upon  
134 complaint or information from any person or organization,  
135 the board shall make a preliminary determination whether  
136 probable cause exists to substantiate charges due to any  
137 reasons set forth in this section. If probable cause is not  
138 found in the complaint, all proceedings relating to the  
139 complaint and the response of the licensee or his or her  
140 representative shall be held confidential and may not be made  
141 available to the public or to any other state or federal agency  
142 or court. If probable cause is found to exist, all proceedings  
143 on the charges shall be open to the public, who are entitled to  
144 all reports, records and non-deliberative materials introduced  
145 at the hearing, including the record of any final action taken:  
146 *Provided*, That any medical records pertaining to the person  
147 who has not waived his or her right to the confidentiality of  
148 the records are not open to the public. For purposes of the  
149 hearing, the board has the power to subpoena witnesses,  
150 documents or any other tangible evidence. The board may, in

151 its discretion, meet in an informal conference with the  
152 accused licensee who seeks or agrees to the conference.  
153 Disciplinary action taken against a licensee as a result of the  
154 informal conference and agreed to in writing by the board  
155 and the accused licensee is binding and a matter of public  
156 record. The holding of an informal conference does not  
157 preclude an open formal hearing if the board determines it is  
158 necessary.

159 ~~(f) If the board determines that the evidence in its~~  
160 ~~possession indicates that a chiropractor's continuation in~~  
161 ~~practice or unrestricted practice constitutes an immediate~~  
162 ~~threat to the public health and safety or when a licensee is~~  
163 ~~convicted of a felony, whether or not related to the practice~~  
164 ~~of chiropractic, the board may seek an injunction in the~~  
165 ~~circuit court of proper jurisdiction for immediate relief~~  
166 ~~implementing any of the board's authority provided in this~~  
167 ~~article.~~

168 (g) All disciplinary actions taken by the board shall be  
169 reported to the federation of licensing boards, appropriate

170 federal agencies and any other state boards with which the  
171 disciplined licensee may also be registered or licensed and all  
172 the actions, including related findings of fact and conclusions  
173 of law, are matters of public record. Voluntary surrender of  
174 and voluntary limitations on a chiropractic license of any  
175 person are also matters of public record and shall also be  
176 reported to the appropriate agencies.

**ARTICLE 37. MASSAGE THERAPISTS.**

**§30-37-8. Enforcement.**

1 (a) ~~The board has the power and authority to enter into~~  
2 ~~any court of this state having proper jurisdiction to seek an~~  
3 ~~injunction against any person, corporation or association not~~  
4 ~~in compliance with the provisions of this article, and is~~  
5 ~~further empowered to enter into any court to enforce the~~  
6 ~~provisions of this article to ensure compliance with such~~  
7 ~~provisions.~~

8 (b) The board may suspend, revoke, or impose  
9 probationary conditions upon a license or impose disciplinary  
10 sanctions upon a licensee pursuant to rules adopted in

11 accordance with this article concerning board requirements  
12 for licensure. The following are grounds for revocation,  
13 suspension, annulment or the imposition of other disciplinary  
14 sanctions when a person, corporation or association is:

15 (1) Guilty of fraud in practice of massage, or fraud or  
16 deceit in the licensee's application for licensure;

17 (2) Engaged in practice under a false or assumed name,  
18 or impersonating another practitioner of a like or different  
19 name;

20 (3) Addicted to the habitual use of drugs, alcohol or  
21 stimulants to an extent as to incapacitate that person's  
22 performance of professional duties;

23 (4) Guilty of fraudulent, false, misleading or deceptive  
24 advertising, or for prescribing medicines or drugs, or  
25 practicing or offering to practice any licensed profession  
26 without legal authority. The licensee may not diagnose, or  
27 imply or advertise in any way a service for a condition that  
28 would require diagnosis;

29 (5) Practicing or offering to practice beyond the scope of  
30 licensure of massage therapy without legal authority;

31 (6) Grossly negligent in the practice of massage or guilty  
32 of employing, allowing or permitting an unlicensed person to  
33 perform massage in the licensee's work site;

34 (7) Practicing massage or bodywork with a license from  
35 another state or jurisdiction that has been canceled, revoked,  
36 suspended or otherwise restricted;

37 (8) Incapacitated by a physical or mental disability which is  
38 determined by a physician to render further practice by the  
39 licensee inconsistent with competency and ethics requirements;

40 (9) Convicted of sexual misconduct, assignation or the  
41 solicitation or attempt thereof;

42 (10) Engaging in any act of sexual abuse, sexual  
43 misconduct or sexual exploitation related to the licensee's  
44 practice of massage therapy;

45 (11) Obtaining any fee by fraud, deceit or  
46 misrepresentation; or



47 (12) In violation of any of the provisions of this article or  
48 any substantive rule adopted under the authority of this article.

**ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE  
ACT**

**§30-40-24. ~~Injunctions~~; Criminal proceedings.**

1 (a) ~~Whenever the commission or other interested person~~  
2 ~~believes that any person has engaged, is engaging or is about~~  
3 ~~to engage in any act that constitutes a violation of this article,~~  
4 ~~the commission or other interested person may make~~  
5 ~~application to any court of competent jurisdiction for an order~~  
6 ~~enjoining the acts or services. Upon a showing that the~~  
7 ~~person has engaged in or is about to engage in any act which~~  
8 ~~violates this article, an injunction, restraining order or another~~  
9 ~~appropriate order may be granted by the court without bond.~~

10 (b) Whenever the commission, its executive director or  
11 its authorized representative has reason to believe that any  
12 person has knowingly violated a provision of this article, the  
13 commission or its authorized representative may bring its  
14 information to the prosecuting attorney in the county where

15 the violation has occurred who shall cause appropriate  
16 criminal proceedings to be brought.

17 ~~(c)~~ (b) Whenever any other interested person has reason to  
18 believe that any person has knowingly violated a provision of  
19 this article, such person may bring its information to the  
20 attention of the appropriate law-enforcement officer who may  
21 cause an investigation to be made in order for appropriate  
22 criminal proceedings to be brought.