

1 **H. B. 2533**

2  
3 (By Delegates Morgan, Stephens, Diserio, Hartman, Ferns,  
4 Jones, Paxton and Smith, P.)

5  
6 [Introduced February 19, 2013; referred to the  
7 Committee on Government Organization then the Judiciary.]

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9  
10 A BILL to repeal §30-35-2a of the Code of West Virginia, 1931, as  
11 amended; to amend and reenact §30-35-1, §30-35-2, §30-35-3,  
12 §30-35-4, §30-35-5, §30-35-6, §30-35-7, §30-35-8, §30-35-9,  
13 §30-35-10, §30-35-11, §30-35-12, §30-35-13 and §30-35-14 of  
14 said code; and to amend said code by adding thereto four new  
15 sections, designated §30-35-15, §30-35-16, §30-35-17 and  
16 §30-35-18, all relating to the practice of dietetics;  
17 providing that it is unlawful to practice dietetics without a  
18 license; defining terms; providing board member  
19 qualifications; describing conditions and terms of board  
20 appointments; describing powers and duties of the board;  
21 defining board rule-making authority; continuing the board of  
22 Licensed Dieticians Fund in the State Treasury; establishing  
23 conditions for licensure; defining the scope of practice of  
24 dieticians; authorizing the issuance of temporary permits;  
25 requiring license renewal; requiring display of a license;

1 providing the board may enjoin licensees; authorizing the  
 2 board to investigate complaints; providing for due process for  
 3 licensees; describing procedures for hearings and rights of  
 4 appeal; authorizing criminal proceedings and prescribing  
 5 criminal penalties for violations.

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

7 That §30-35-2a of the Code of West Virginia, 1931, as amended,  
 8 be repealed; that §30-35-1, §30-35-2, §30-35-3, §30-35-4, §30-35-5,  
 9 §30-35-6, §30-35-7, §30-35-8, §30-35-9, §30-35-10, §30-35-11,  
 10 §30-35-12, §30-35-13 and §30-35-14 of said code be amended and  
 11 reenacted; and that said code be amended by adding thereto four new  
 12 sections, designated §30-35-15, §30-35-16, §30-35-17 and §30-35-18,  
 13 all to read as follows:

14 **ARTICLE 35. BOARD OF DIETITIANS.**

15 **§30-35-1. Unlawful acts.**

16 (a) It is unlawful for any person to practice or offer to  
 17 practice dietetics in this state without a license or permit issued  
 18 under the provisions of this article, or advertise or use any title  
 19 or description tending to convey the impression that the person is  
 20 a dietician, unless the person has been licensed or permitted under  
 21 the provisions of this article, and the license or permit has not  
 22 expired, been suspended or revoked.

23 (b) No business entity, except through a licensee, may render  
 24 any service or engage in any activity which if rendered or engaged

1 in by an individual, would constitute the practice regulated under  
2 the provisions of this article.

3 **§30-35-2. General provisions.**

4 The practice regulated under the provisions of this article  
5 and the board of Licensed Dietitians are subject to the provisions  
6 of article one of this chapter, the provisions of this article and  
7 any rules promulgated hereunder.

8 **§30-35-3. Definitions.**

9 As used in this article, the following terms mean the  
10 following:

11 (a) "Board" means the West Virginia Board of Licensed  
12 Dietitians;

13 (b) "Commission on Dietetic Registration" means the Commission  
14 on Dietetic Registration that is a member of the national  
15 commission for health certifying agencies;

16 (c) "Dietetics" means the integration and application of the  
17 principles derived from the sciences of nutrition, biochemistry,  
18 food, physiology and management and from the behavioral and social  
19 sciences to achieve and maintain a person's health throughout the  
20 person's life;

21 (d) "Licensed dietitian" means a person licensed to practice  
22 dietetics under this article;

23 (e) "Licensee" means a person licensed to practice dietetics  
24 under this article;

1       (f) "Medical nutrition therapy" or "nutrition therapy" means  
2 nutritional diagnostic assessment and nutrition therapy services  
3 for the purpose of disease management;

4       (g) "Permittee" means a person permitted to temporarily  
5 practice dietetics under this article;

6       (h) "Practice of nutrition" means:

7       (1) Assessing the nutrition needs of individuals and groups,  
8 and determining resources and constraints in the practice setting;

9       (2) Establishing priorities, goals, and objectives that meet  
10 nutrition needs that are consistent with available resources and  
11 constraints;

12       (3) Providing nutrition counseling in health and disease;

13       (4) Developing, implementing, managing and evaluating  
14 nutrition care systems; and

15       (5) Developing, evaluating, altering and maintaining  
16 appropriate standards of quality in food and nutrition care  
17 services;

18       (i) "Registered dietitian" means a person registered by the  
19 Commission on Dietetic Registration, the accrediting body of the  
20 American Dietetic Association; and

21       (j) "Temporary permit" means an authorization issued by the  
22 board to a person to temporarily practice dietetics under this  
23 article.

24 **§30-35-4. Board of Licensed Dietitians.**

1       (a) The Board of Licensed Dietitians is continued. The  
2 members of the board in office on July 1, 2013, shall, unless  
3 sooner removed, continue to serve until their respective terms  
4 expire and until their successors have been appointed and  
5 qualified.

6       (b) The board shall consist of the following five members who  
7 are appointed by the Governor for terms of five years with the  
8 advice and consent of the Senate:

9       (1) Four members, who are a registered or licensed dietitian;  
10 and

11       (2) One citizen member.

12       (c) Each licensed member of the board, at the time of his or  
13 her appointment, must have held a license in this state for at  
14 least three years.

15       (d) Each member of the board must be a resident of this state  
16 during the appointment term.

17       (e) 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       (f) 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 (g) The Governor may remove any member from the board for  
3 neglect of duty, incompetency or official misconduct.

4 (h) 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, if he or she is convicted of a  
7 felony under the laws of any jurisdiction, or if he or she becomes  
8 a nonresident of this state.

9 (i) The board shall elect annually one of its members as  
10 chairperson who serves at the will of the board.

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

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

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

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

23 **§30-35-5. Powers and duties of the board.**

24 (a) The board has all the powers and duties set forth in this

1 article, by rule, in article one of this chapter and elsewhere in  
2 law.

3 (b) The board shall:

4 (1) Hold meetings;

5 (2) Establish requirements for licenses and permits;

6 (3) Establish procedures for submitting, approving and  
7 rejecting applications for licenses and permits;

8 (4) Determine the qualifications of an applicant for licenses  
9 and permits;

10 (5) Maintain records of the examinations the board or a third  
11 party administers, including the number of persons taking the  
12 examinations and the pass and fail rate;

13 (6) Hire, discharge, establish the job requirements and fix  
14 the compensation of the executive director;

15 (7) Maintain an office, and hire, discharge, establish the job  
16 requirements and fix the compensation of employees, investigators  
17 and contracted employees necessary to enforce the provisions of  
18 this article;

19 (8) Investigate alleged violations of the provisions of this  
20 article, legislative rules, orders and final decisions of the  
21 board;

22 (9) Conduct disciplinary hearings of persons regulated by the  
23 board;

24 (10) Determine disciplinary action and issue orders;

1       (11) Institute appropriate legal action for the enforcement of  
2 the provisions of this article;

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

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

7       (14) Establish the continuing education requirements for  
8 licensees;

9       (15) Issue, renew, combine, deny, suspend, revoke or reinstate  
10 licenses and permits;

11       (16) Establish a fee schedule;

12       (17) Propose rules for legislative approval in accordance with  
13 the provisions of article three, chapter twenty-nine-a of this code  
14 to implement the provisions of this article; and

15       (18) Take all other actions necessary and proper to effectuate  
16 the purposes of this article.

17       (c) The board may:

18       (1) Contract with third parties to administer the examinations  
19 required under the provisions of this article;

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

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

24 **§30-35-6. Rule-making.**

1       (a) The board shall propose rules for legislative approval, in  
2 accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code, to implement the provisions of this  
4 article, including:

5       (1) Additional standards and requirements for licenses and  
6 permits;

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

9       (3) Educational and experience requirements;

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

11       (5) Procedures for the issuance and renewal of licenses and  
12 permits;

13       (6) A fee schedule;

14       (7) Continuing education requirements for licensees;

15       (8) The procedures for denying, suspending, revoking,  
16 reinstating or limiting the practice of licensees and permittees;

17       (9) Requirements for inactive or revoked licenses and permits;

18 and

19       (10) Any other rules necessary to effectuate the provisions of  
20 this article.

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

24 **§30-35-7. Fees; special revenue account; administrative fines.**

1       (a) All fees in effect, shall remain in effect until they are  
2 amended or repealed by legislative rule or statute.

3       (b) All fees and other moneys, except administrative fines,  
4 received by the board shall be deposited in a separate Special  
5 Revenue Fund in the State Treasury designated the "Board of  
6 Licensed Dietitians Fund", which is continued. The fund is used by  
7 the board for the administration of this article. Except as may be  
8 provided in article one of this chapter, the board retains the  
9 amount in the Special Revenue Account from year to year. No  
10 compensation or expense incurred under this article is a charge  
11 against the General Revenue Fund.

12       (c) Any amount received as fines, imposed pursuant to this  
13 article, shall be deposited into the General Revenue Fund of the  
14 State Treasury.

15 **§30-35-8. License to practice as a dietitian.**

16       To be eligible for a license to practice as an dietitian, the  
17 applicant must:

18       (a) Submit an application to the board;

19       (b) Be at least eighteen years of age;

20       (c) Be of good moral character;

21       (d) Have completed a major course of study in human nutrition,  
22 dietetics, food systems management or the equivalent thereof, as  
23 determined by the board;

24       (e) Have a baccalaureate or post-baccalaureate degree;

1       (f) Have completed a planned continuous professional  
2 experience component in dietetic practice of not less than nine  
3 hundred hours under the supervision of a registered or licensed  
4 dietitian.

5       (g) Have completed a written and/or oral examination. Each  
6 demonstrating competence in the discipline of dietetics and  
7 nutrition;

8       (h) Not have been convicted of a felony in any jurisdiction  
9 within five years preceding the date of application for license  
10 which conviction remains unreversed;

11       (i) 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 dietetics, which conviction remains  
14 unreversed; and

15       (j) Meet any other requirements established by the board.

16 **§30-35-9. Scope of practice.**

17       A licensed dietitians may:

18       (a) Perform medical nutrition therapy;

19       (b) Perform a nutritional assessment to determine nutritional  
20 needs and to recommend appropriate nutritional intake, including  
21 enteral and parenteral nutrition;

22       (c) Perform nutritional counseling or education as components  
23 of preventive, curative and restorative health care;

24       (d) Develop, administer, evaluate and consult regarding

1 nutritional care standards.

2 **§30-35-10. Temporary permit.**

3 (a) The board may issue a temporary permit to practice  
4 dietetics to a person who has not met the experience requirements  
5 set forth in section eight of this chapter upon the filing of an  
6 application, payment of a fee, and submission of evidence of  
7 successful completion of the education requirements of this  
8 article.

9 (b) A temporary permit expires one year from the date of  
10 issuance.

11 (c) Renewals may be issued three times upon request by the  
12 applicant and submission of a satisfactory explanation for the  
13 applicant's failure to become licensed.

14 **§30-35-11. Exemptions from this article.**

15 The following exemptions apply to this article:

16 (a) A dietitian registered by the Commission on Dietetic  
17 Registration may use the title of registered dietitian;

18 (b) Nothing in this article affects a person employed as a  
19 cook at any public or private educational institution in this  
20 state;

21 (c) Nothing in this article affects a person who furnishes  
22 nutrition information on food, food materials or dietary  
23 supplements or who engages in explanation to customers about food,  
24 food materials or dietary supplements in connection with the

1 marketing and distribution of those products;

2 (d) Nothing in this article prohibits or otherwise limits the  
3 practice of a profession by a person who is licensed, certified or  
4 registered under the laws of this state and who is performing  
5 services within their authorized scope of practice; and

6 (e) A person using the title 'nutritionist', who practices  
7 nutrition.

8 **§30-35-12. Renewal of license.**

9 (a) A person regulated by this article shall annually or  
10 biannually, renew his or her authorization by completing a form  
11 prescribed by the board and submitting any other information  
12 required by the board.

13 (b) The board shall charge a fee for each renewal of an  
14 authorization and shall charge a late fee for any renewal not paid  
15 by the due date.

16 (c) The board shall require as a condition of renewal that  
17 each licensee complete continuing education.

18 (d) The board may deny an application for renewal for any  
19 reason which would justify the denial of an original application.

20 **§30-35-13. Display of license.**

21 (a) The board shall prescribe the form for a license and  
22 permit, and may issue a duplicate license or permit upon payment of  
23 a fee.

24 (b) Any person regulated by the article shall conspicuously

1 display his or her license or permit at his or her principal  
2 business location.

3 **§30-35-14. Actions to enjoin violations.**

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

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

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

19 **§30-35-15. Complaints; investigations; due process procedure;**  
20 **grounds for disciplinary action.**

21 (a) The board may upon its own motion based on credible  
22 information, and shall upon the written complaint of any person,  
23 cause an investigation to be made to determine whether grounds  
24 exist for disciplinary action under this article or the legislative

1 rules promulgated pursuant to this article.

2 (b) Upon initiation or receipt of the complaint, the board  
3 shall provide a copy of the complaint to the licensee or permittee.

4 (c) After reviewing any information obtained through an  
5 investigation, the board shall determine if probable cause exists  
6 that the licensee or permittee has violated subsection (g) of this  
7 section or rules promulgated pursuant to this article.

8 (d) Upon a finding that probable cause exists that the  
9 licensee or permittee has violated subsection (g) of this section  
10 or rules promulgated pursuant to this article, the board may enter  
11 into a consent decree or hold a hearing for the suspension or  
12 revocation of the license or permit or the imposition of sanctions  
13 against the licensee or permittee. Any hearing shall be held in  
14 accordance with the provisions of this article.

15 (e) Any member of the board or the administrator of the board  
16 may issue subpoenas and subpoenas duces tecum to obtain testimony  
17 and documents to aid in the investigation of allegations against  
18 any person regulated by the article.

19 (f) Any member of the board or its administrator may sign a  
20 consent decree or other legal document on behalf of the board.

21 (g) The board may, after notice and opportunity for hearing,  
22 deny or refuse to renew, suspend, restrict or revoke the license or  
23 permit of, or impose probationary conditions upon or take  
24 disciplinary action against, any licensee or permittee for any of

1 the following reasons once a violation has been proven by a  
2 preponderance of the evidence:

3 (1) Obtaining a license or permit by fraud, misrepresentation  
4 or concealment of material facts;

5 (2) Being convicted of a felony or other crime involving moral  
6 turpitude;

7 (3) Being guilty of unprofessional conduct which placed the  
8 public at risk, as defined by legislative rule of the board;

9 (4) Intentional violation of a lawful order or legislative  
10 rule of the board;

11 (5) Having had a license or other authorization revoked or  
12 suspended, other disciplinary action taken, or an application for  
13 licensure or other authorization revoked or suspended by the proper  
14 authorities of another jurisdiction;

15 (6) Aiding or abetting unlicensed practice; or

16 (7) Engaging in an act while acting in a professional capacity  
17 which has endangered or is likely to endanger the health, welfare  
18 or safety of the public.

19 (h) For the purposes of subsection (g) of this section,  
20 effective July 1, 2013, disciplinary action may include:

21 (1) Reprimand;

22 (2) Probation;

23 (3) Restrictions;

24 (4) Administrative fine, not to exceed \$1,000 per day per

1 violation;

2 (5) Mandatory attendance at continuing education seminars or  
3 other training;

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

5 (7) Requiring the licensee or permittee to report to the board  
6 for periodic interviews for a specified period of time.

7 (i) In addition to any other sanction imposed, the board may  
8 require a licensee or permittee to pay the costs of the proceeding.

9 **§30-35-16. Procedures for hearing; right of appeal.**

10 (a) Hearings are governed by the provisions of section eight,  
11 article one of this chapter.

12 (b) The board may conduct the hearing or elect to have an  
13 administrative law judge conduct the hearing.

14 (c) If the hearing is conducted by an administrative law  
15 judge, at the conclusion of a hearing he or she shall prepare a  
16 proposed written order containing findings of fact and conclusions  
17 of law. The proposed order may contain proposed disciplinary  
18 actions if the board so directs. The board may accept, reject or  
19 modify the decision of the administrative law judge.

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

23 (e) If, after a hearing, the board determines the licensee or  
24 permittee has violated provisions of this article or the board's

1 rules, a formal written decision shall be prepared which contains  
2 findings of fact, conclusions of law and a specific description of  
3 the disciplinary actions imposed.

4 **§30-35-17. Judicial review.**

5 Any licensee or permittee adversely affected by a decision of  
6 the board entered after a hearing may obtain judicial review of the  
7 decision in accordance with section four, article five, chapter  
8 twenty-nine-a of this code, and may appeal any ruling resulting  
9 from judicial review in accordance with article six, chapter  
10 twenty-nine-a of this code.

11 **§30-35-18. Criminal proceedings; penalties.**

12 (a) When, as a result of an investigation under this article  
13 or otherwise, the board has reason to believe that a licensee or  
14 permittee has committed a criminal offense under this article, the  
15 board may bring its information to the attention of an appropriate  
16 law-enforcement official.

17 (b) A person violating section one of this article is guilty  
18 of a misdemeanor and, upon conviction thereof, shall be fined not  
19 less than \$100 nor more than \$1,000 or confined in jail not more  
20 than six months, or both fined and confined.

NOTE: The purpose of this bill is to provide that it is unlawful to practice dietetics without a license, provide for board member qualifications and describe the powers and duties of the board; define board rule-making authority; establishing conditions for licensure and issuance of temporary permits; requiring license

renewal; requiring display of a license; providing the board may enjoin licensees; authorizing the board to investigate complaints; providing for due process for licensees; describing procedures for hearings and rights of appeal; authorizing criminal proceedings; and prescribing misdemeanor penalties for violations.

§30-35-1 through §30-35-14 has been completely rewritten; therefore, it has been completely underscored.

§30-35-15 through §30-35-18 is new; therefore, it has been completely underscored.