

H. B. 2103

(By Delegates Howell, Hamrick, Householder, Statler,
Walters, Arvon, Blair, Kessinger, Border, Zatezalo and Weld)

[Introduced January 20, 2015; referred to the
Committee on Government Organization then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §30-1-5 and §30-1-6 of the Code of West Virginia, 1931, as amended, all relating generally to boards of examination and registration; providing for public access websites for complaints against certain licensees, and requiring certain boards of examination or registration to conduct nationwide criminal background checks on all applicants for license or registration and renewal.

Be it enacted by the Legislature of West Virginia:

That §30-1-5 and §30-1-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

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

(a) Every board referred to in this chapter shall hold at least one meeting each year, at such time and place as it may prescribe by rule, for the examination of applicants who desire to practice their respective professions or occupations in this state and to transact any other business which may

1 legally come before it. The board may hold additional meetings as may be necessary, which shall
2 be called by the secretary at the direction of the president or upon the written request of any three
3 members. A majority of the members of the board constitutes a quorum for the transaction of its
4 business.

5 (b) The board ~~is authorized to~~ may compel the attendance of witnesses, to issue subpoenas,
6 to conduct investigations and hire an investigator and to take testimony and other evidence
7 concerning any matter within its jurisdiction. The president and secretary of the board ~~are authorized~~
8 to may administer oaths for these purposes.

9 (c) Every board referred to in this chapter ~~has a duty to~~ shall investigate and resolve
10 complaints which it receives and shall, within six months of the complaint being filed, send a status
11 report to the party filing the complaint by certified mail with a signed return receipt and within one
12 year of the status report's return receipt date issue a final ruling, unless the party filing the complaint
13 and the board agree in writing to extend the time for the final ruling.

14 (d) Every board shall provide public access on a website to the record of the disposition of
15 the complaints which it receives in accordance with the provisions of chapter twenty-nine-b of this
16 code. If a board cannot afford to provide this public access on a website, the Attorney General shall
17 provide a link to this information on the consumer protection division website, together with a link
18 to the website of all other boards subject to this chapter. Every board ~~has a duty to~~ shall report
19 violations of individual practice acts contained in this chapter to the board by which the individual
20 may be licensed and shall do so in a timely manner upon receiving notice of such violations. Every
21 person licensed or registered by a board ~~has a duty to~~ shall report to the board which licenses or
22 registers him or her a known or observed violation of the practice act or the board's rules by any

1 other person licensed or registered by the same board and shall do so in a timely manner. Law-
2 enforcement agencies or their personnel and courts shall report in a timely manner to the appropriate
3 board any violations of individual practice acts by any individual.

4 (e) Whenever a board referred to in this chapter obtains information that a person subject to
5 its authority has engaged in, is engaging in or is about to engage in any act which constitutes or will
6 constitute a violation of the provisions of this chapter which are administered and enforced by that
7 board, it may apply to the circuit court for an order enjoining the act. Upon a showing that the
8 person has engaged, is engaging or is about to engage in any such act, the court shall order an
9 injunction, restraining order or other order as the court may deem appropriate.

10 **§30-1-6. Application for license or registration; examination fee; establishment of application**
11 **deadline and fees by legislative rule; prohibiting discrimination.**

12 (a) An applicant for an authorization to practice under the provisions of this chapter shall
13 apply in writing to the proper board and submit the applicable fees.

14 (b) Each board may establish, by legislative rule, a deadline for an application for an
15 examination.

16 (c) Notwithstanding the specific fees set forth in this chapter, each board may set fees by
17 legislative rule that are sufficient to enable the board to effectively carry out its duties and
18 responsibilities. At least thirty days prior to proposing a rule on fees, the board shall notify its
19 membership of the proposed rule by:

20 (1) Mailing a copy of the proposed rule to its membership; or

21 (2) Posting the proposed rule on its website and notifying its membership of the website
22 posting by:

1 (A) Mailing a postcard;

2 (B) Emailing a notice; or

3 (C) Placing a notice in its newsletter.

4 (d) In addition to any other information required by the board, an applicant's social security
5 number shall be recorded on an application: *Provided*, That the board shall redact the social security
6 number on any copies provided to the public.

7 (e) A board may not discriminate against an applicant because of political or religious
8 opinion or affiliation, marital status, race, color, gender, creed, age, national origin, disability or
9 other protected group status.

10 (f) A board licensing persons for the practice of medicine and surgery and podiatry, physician
11 assistants, dentistry, pharmacy, nursing, osteopathic physicians and surgeons, registered professional
12 nurses, psychiatry, psychology or certified public accounts shall conduct a nationwide criminal
13 background search consisting of the National Instant Criminal Background Check System and any
14 other federal criminal background check. The fees charged by a board for the criminal background
15 check may not exceed the actual cost of the criminal background check.

16 ~~(f)~~ (g) A board may deny an applicant an authorization to practice in this state if an
17 applicant's authorization to practice in another jurisdiction has been revoked. The denial may be
18 made by the board without a hearing unless the applicant requests a hearing within thirty days of the
19 denial. A hearing must be conducted pursuant to the provisions of this article or the provisions
20 contained in the rules of the board.

NOTE: The purpose of this bill is to require boards of examination or registration to maintain a list of disciplinary actions on a public access website. It also provides that if a board

cannot afford this, then the Attorney General shall have a link to this information on the Consumer Protection Division website, as well as a link to such lists of other boards.

The bill also requires certain boards of examination or registration to conduct a nationwide criminal background check on all applicants for license or registration and renewal. Fees charged for the criminal background check may not exceed the actual costs of the criminal background check.

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