

Senate Bill No. 557

(By Senators D. Hall and Takubo)

[Introduced February 23, 2015; referred to the Committee on Health and Human Resources.]

A BILL to amend and reenact §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6 and §30-20A-7 of the Code of West Virginia, 1931, as amended; and to amend said article by adding thereto nine new sections, designated §30-20A-8, §30-20A-9, §30-20A-10, §30-20A-11, §30-20A-12, §30-20A-13, §30-20A-14, §30-20A-15 and §30-20A-16, all relating to licensing practice of athletic training; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6 and §30-20A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said article be amended by adding thereto nine new sections, designated §30-20A-8, §30-20A-9, §30-20A-10, §30-20A-11, §30-20A-12, §30-20A-13, §30-20A-14, §30-20A-15 and §30-20A-16 , all to read as follows:

ARTICLE 20A. ATHLETIC TRAINERS.

§30-20A-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice athletic training in this state
2 without a license or permit issued under the provisions of this article, or advertise or use any title or
3 description tending to convey the impression that they are an athletic trainer unless the person has
4 been duly licensed or permitted under the provisions of this article, and the license or permit has not
5 expired, been suspended or revoked.

6 (b) A business entity may not render any service or engage in any activity which, if rendered
7 or engaged in by an individual, would constitute the practice of athletic training, except through a
8 licensee or permittee.

9 (c) A person may not advertise or represent himself or herself as an "athletic trainer,"
10 "licensed athletic trainer," "certified athletic trainer," "athletic trainer certified," ".T.," "L.A.T.,"
11 "C.A.T.," and/or "ATC" or any words, abbreviations, titles or insignia that indicates, implies or
12 represents that he or she is an athletic trainer, unless he or she is licensed by the board.

13 **§30-20A-2. Applicable law.**

14 The practices licensed under the provisions of this article and the Board of Physical Therapy
15 are subject to article one of this chapter, the provisions of this article, and any rules promulgated
16 hereunder.

17 **§30-20A-3. Definitions.**

18 As used in this article:

19 "Applicant" means any person making application for an original or renewal license to act
20 as an athletic trainer under the provisions of this article.

21 "Board" means the West Virginia Board of Physical Therapy established under article twenty
22 of this chapter.

1 "BOC" means National Athletic Trainers' Association Board of Certification.

2 "CAATE" means the Commission on Accreditation of Athletic Training Education.

3 "License" means an athletic trainer license or license to act as an athletic trainer issued by
4 the board under the provisions of this article.

5 "Licensee" means a person licensed as an athletic trainer under the provisions of this article.

6 "Athletic trainer" is an individual engaged in the practice of athletic training who holds a
7 license under the provisions of this article.

8 "Athletic training" and "the practice of Athletic Training" means the care and services
9 provided by a licensed athletic trainer as described under the provisions of this article.

10 "The practice of athletic training" does not include the practice of physical therapy, the
11 practice of occupational therapy, the practice of medicine, the practice of osteopathic medicine and
12 surgery, the practice of chiropractic, or reconditioning of systemic, neurological or other conditions
13 or diseases that are not within the professional preparation and education of a licensed athletic
14 trainer.

15 "General Supervision" means referral by prescription to treat conditions for an athlete from
16 a licensed doctor of medicine, doctor of osteopathy, except that the physical presence of the
17 supervising physician or podiatrist is not required if the supervising doctor of medicine, doctor of
18 osteopathy or podiatrist is readily available for consultation by direct communication, radio,
19 telephone, facsimile, telecommunication or other electronic means.

20 "Direct Supervision" means the licensed health care professional must be physically present
21 and be able to intervene on behalf of the athletic training student and patient.

22 "Licensed Health Care Professional" means an individual who holds a current license to

1 practice the discipline in the state and whose discipline provides direct patient care in a field that has
2 direct relevancy to the practice and discipline of athletic training.

3 "Athletic Injury" means any injury sustained by an athlete that occurs during or as a result
4 of the individual's participation in sports, games, recreation or exercise.

5 "Athlete" is a person who participates in sporting events conducted by an educational,
6 professional, amateur or recreational athletic organization.

7 **§30-20A-4. License to practice athletic training.**

8 (a) To be eligible for a license to engage in the practice of athletic training, the applicant
9 must:

10 (1) Be at least eighteen years of age;

11 (2) Submit an application in the form prescribed by the board;

12 (3) Submit a current certification, and be in good standing, with the National Athletic
13 Trainers' Association Board of Certification (BOC) prior to July 1, 2015;

14 (4) If subsequent to July 1, 2015, submit a current certification, and be in good standing, with
15 the BOC and have as minimum passing score on the BOC exam as determined by legislative rule
16 of the Board of Physical Therapy and is a graduate of an accredited institution as approved by the
17 Commission on Accreditation of Athletic Training Education (CAATE) (or successor organization);

18 (5) Pay the required fee.

19 (6) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article
20 one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery process,
21 which may, in the discretion of the board, be evidenced by participation in a twelve-step program
22 or other similar group or process, may be considered;

1 (7) Not have been convicted of a felony in any jurisdiction within ten years preceding the
2 date of application for license which conviction remains unreversed;

3 (8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for
4 which he or she was convicted related to the practice of athletic training, which conviction remains
5 unreversed; and

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

7 (b) An athletic trainer shall use the letters "LAT" immediately following his or her name and
8 "ATC" credential to designate licensure under this article.

9 **§30-20A-5. Scope of practice of an athletic trainer.**

10 (a) The practice of athletic training is defined as the application of principles, methods and
11 procedures for managing athletic injuries, which shall include the preconditioning, conditioning and
12 reconditioning of an athlete who has suffered an athletic injury through the use of appropriate
13 preventative and supportive devices, under the general supervision of a physician when working
14 events conducted by an educational, amateur or professional athletic organization. Direct
15 supervision is required when athletic training is practiced in all other settings. Athletic training also
16 includes recognizing illness and referring to the appropriate medical professional and
17 implementation of treatment pursuant to physician`s orders. Athletic training includes instruction
18 to coaches, athletes, parents, medical personnel and communities in the area of care and prevention
19 of athletic injuries.

20 (b) The scope of work described herein shall not be construed as authorizing the
21 reconditioning of neurologic injuries, conditions or disease.

22 **§30-20A-6. License to practice athletic training from another jurisdiction.**

1 (a) The board may issue a license to practice athletic training to an applicant who holds a
2 valid license or other authorization to practice athletic training from another state, if the applicant:

3 (1) Holds a license or other authorization to practice athletic training in another state which
4 was granted after completion of educational requirements substantially equivalent to those required
5 in this state;

6 (2) Does not have charges pending against his or her license or other authorization to
7 practice, and has never had a license or other authorization to practice revoked;

8 (3) Has paid the applicable fee;

9 (4) Is a citizen of the United States or is eligible for employment in the United States; and

10 (5) Has fulfilled any other requirement specified by the board.

11 (b) The board may issue a license to practice athletic training to an applicant who has been
12 educated outside of the United States; however, the applicant must still sit for the BOC exam
13 through the mutual recognition agreement and possess the ATC credential in order to practice as a
14 licensed athletic trainer in West Virginia.

15 **§30-20A-7. Temporary permits.**

16 (a) Upon completion of the application and payment of the nonrefundable fees, the board may
17 issue a temporary permit, for a period not to exceed ninety days, to an applicant to practice as an
18 athletic trainer in this state, if the applicant has completed the educational requirements set out in
19 this article.

20 (b) A temporary permit may be revoked by a majority vote of the board.

21 (c) An applicant may be issued only one temporary permit, and upon the expiration of the
22 temporary permit, may not practice as an athletic trainer until he or she is fully licensed under the

1 provisions of this article.

2 **§30-20A-8. Renewal requirements.**

3 (a) All persons regulated by this article shall annually or biannually before January 1, renew
4 his or her license by completing a form prescribed by the board and submitting any other information
5 required by the board.

6 (b) The board shall charge a fee for each renewal of a license and shall charge a late fee for
7 any renewal not paid by the due date.

8 (c) The board shall require as a condition of renewal that each licensee complete continuing
9 education pursuant to BOC requirements.

10 (d) A licensee may apply to renew his or her license by submitting an application for renewal
11 in the form prescribed by the board and paying the renewal fee. The renewal application must be
12 signed by the applicant.

13 (e) The board may deny an application for renewal for any reason which would justify the
14 denial of an original application for a license.

15 (f) A renewal of license issued by the board is valid for two years from the date it is issued.

16 **§30-20A-9. Delinquent and expired license requirements.**

17 (a) If a license is not renewed when due, then the board shall automatically place the licensee
18 on delinquent status.

19 (b) The fee for a person on delinquent status shall increase at a rate, determined by the board,
20 for each month or fraction thereof that the renewal fee is not paid, up to a maximum of thirty-six
21 months.

22 (c) Within thirty-six months of being placed on delinquent status, if a licensee wants to return

1 to active practice, he or she must complete all the continuing education requirements and pay all the
2 applicable fees as set by rule.

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

6 **§30-20A-10. Inactive license requirements.**

7 (a) A licensee who does not want to continue an active practice shall notify the board in
8 writing and be granted inactive status.

9 (b) A person granted inactive status is not subject to the payment of any fee and may not
10 practice athletic training in this state.

11 (c) When the person wants to return to the practice of athletic training the person shall submit
12 an application for renewal along with all applicable fees as set by rule.

13 **§30-20A-11. Exemptions from licensure.**

14 (a) The following persons are exempt from licensing requirements under the provisions of
15 this article:

16 (1) A person who practices athletic training pursuant to a course of study at an institution of
17 higher learning and enrolled in a CAATE accredited athletic training program including, but not
18 limited to, activities conducted at the institution of higher learning and activities conducted outside
19 the institution if under the supervision of a licensed health care professional.

20 (2) A secondary school student under the supervision of a licensed athletic trainer.

21 (3) An athletic trainer who is licensed in another jurisdiction of the United States or
22 credentialed to practice athletic training in another country if that person is teaching, demonstrating

1 or providing athletic training services in connection with teaching or participating in an educational
2 seminar of no more than sixty calendar days in a calendar year;

3 (4) An athletic trainer who is licensed in another state if that person is consulting;

4 (5) An athletic trainer who is licensed in another jurisdiction, if that person by contract or
5 employment is providing athletic training to individuals affiliated with or employed by established
6 athletic teams, athletic organizations or performing arts companies temporarily practicing, competing
7 or performing in the state for no more than sixty calendar days in a calendar year;

8 (6) An athletic trainer who is licensed in another jurisdiction who enters this state to provide
9 athletic training during a declared local, state or national disaster or emergency. This exemption
10 applies for no longer than sixty calendar days in a calendar year following the declaration of the
11 emergency. The athletic trainer shall notify the board of his or her intent to practice;

12 (7) An athletic trainer licensed in another jurisdiction who is forced to leave his or her
13 residence or place of employment due to a declared local, state or national disaster or emergency and
14 due to the displacement seeks to practice as an athletic trainer. This exemption applies for no longer
15 than sixty calendar days in a calendar year following the declaration of the emergency. The athletic
16 trainer shall notify the board of their intent to practice; and

17 (8) Nothing contained in this article prohibits a person from practicing within his or her scope
18 of practice as authorized by law.

19 **§30-20A-12. Display of license.**

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

22 (b) Any person regulated by the article shall conspicuously display his or her license or

1 permit at his or her principal business location.

2 **§30-20A-13. Complaints; investigations; due process procedure; grounds for disciplinary**
3 **action.**

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

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

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

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

18 (e) Any member of the board or the executive secretary of the board may issue subpoenas and
19 subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations
20 against any person regulated by the article.

21 (f) Any member of the board or its executive secretary may sign a consent decree or other
22 legal document on behalf of the board.

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

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

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

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

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

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

14 (6) Aiding or abetting unlicensed practice; or

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

17 (h) For the purposes of subsection (g) of this section, effective July 1, 2015, disciplinary
18 action may include:

19 (1) Reprimand;

20 (2) Probation;

21 (3) Restrictions;

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

- 1 (5) Mandatory attendance at continuing education seminars or other training;
- 2 (6) Practicing under supervision or other restriction; or
- 3 (7) Requiring the licensee or permittee to report to the board for periodic interviews for a
- 4 specified period of time.

5 (i) In addition to any other sanction imposed, the board may require a licensee or permittee

6 to pay the costs of the proceeding.

7 **§30-20A-14. Procedures for hearing; right of appeal.**

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

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

10 the hearing.

11 (c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing

12 he or she shall prepare a proposed written order containing findings of fact and conclusions of law.

13 The proposed order may contain proposed disciplinary actions if the board so directs. The board

14 may accept, reject or modify the decision of the administrative law judge.

15 (d) Any member or the executive secretary of the board has the authority to administer oaths,

16 examine any person under oath and issue subpoenas and subpoenas duces tecum.

17 (e) If, after a hearing, the board determines the licensee or permittee has violated provisions

18 of this article or the board's rules, a formal written decision shall be prepared which contains findings

19 of fact, conclusions of law and a specific description of the disciplinary actions imposed.

20 **§30-20A-15. Judicial review.**

21 Any licensee or permittee adversely affected by a decision of the board entered after a hearing

22 may obtain judicial review of the decision in accordance with section four, article five, chapter

1 twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance
2 with article six, chapter twenty-nine-a of this code.

3 **§30-20A-16. Criminal proceedings; penalties.**

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

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

NOTE: The purpose of this bill is to rewrite the law governing athletic trainers. Athletic trainers would be licensed rather than registered as under current law.

Article 20A of Chapter 30 has been completely rewritten; therefore, strike-throughs and underscoring have been omitted.