

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2401

FISCAL
NOTE

BY DELEGATES CRISS, PYLES, HIGGINBOTHAM AND

HANNA

[Introduced January 14, 2019; Referred
to the Committee on Government Organization then
the Judiciary.]

1 A BILL to amend and reenact §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-
 2 20A-6 and §30-20A-7 of the Code of West Virginia, 1931, as amended; and to amend said
 3 code by adding thereto nine new sections, designated §30-20A-8, §30-20A-9, §30-20A-
 4 10, §30-20A-11, §30-20A-12, §30-20A-13, §30-20A-14, §30-20A-15 and §30-20A-16, all
 5 relating to licensing the practice of athletic training; making the practice of athletic training
 6 unlawful without license or permit; establishing applicable law; defining terms; establishing
 7 eligibility for license; defining the scope of practice; establishing requirements for
 8 reciprocal agreements; establishing requirements for temporary permits; establishing
 9 renewal requirements; establishing requirements for delinquent or expedited licenses;
 10 establishing requirements for an active license; creating exemptions; requiring display of
 11 license; establishing complaint process and investigation procedures; establishing
 12 grounds for disciplinary action; establishing hearing procedures and right to appeal;
 13 providing for judicial review of decision; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20A. ATHLETIC TRAINERS.

§30-20A-1. Definitions Unlawful acts.

1 As used in this article:
 2 (1) ~~“Applicant” means any person making application for an original or renewal registration~~
 3 ~~to act as an athletic trainer under the provisions of this article.~~
 4 (2) ~~“Board” means the West Virginia Board of Physical Therapy established under article~~
 5 ~~twenty of this chapter.~~
 6 (3) ~~“Registrant” means a person registered as an athletic trainer under the provisions of~~
 7 ~~this article.~~
 8 (4) ~~“Registration” means a registration issued by the board to practice athletic training~~
 9 (a) It is unlawful for any person to practice or offer to practice athletic training in this state
 10 without a license or permit issued under the provisions of this article, or advertise or use any title

11 or description tending to convey the impression that they are an athletic trainer unless the person
 12 has been duly licensed or permitted under the provisions of this article, and the license or permit
 13 has not expired, been suspended or revoked.

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

17 (c) A person may not advertise or represent himself or herself as an “athletic trainer,”
 18 “licensed athletic trainer,” “certified athletic trainer,” “athletic trainer certified,” “.T.,” “L.A.T.,”
 19 “C.A.T.,” and/or “ATC” or any words, abbreviations, titles or insignia that indicates, implies or
 20 represents that he or she is an athletic trainer, unless he or she is licensed by the board.

§30-20A-2. Title Protection Applicable law.

1 ~~(a) A person may not advertise or represent himself or herself as an athletic trainer in this~~
 2 ~~state and may not use the initials “AT”, the words “registered athletic trainer” or “athletic trainer”,~~
 3 ~~or any other words, abbreviations, titles or insignia that indicates, implies or represents that he or~~
 4 ~~she is an athletic trainer, unless he or she is registered by the board.~~

5 ~~(b) Nothing contained in this article shall be construed as preventing any person, firm,~~
 6 ~~partnership or corporation from practicing athletic training, in any manner desired.~~

7 ~~(c) Nothing in this article may be construed to prohibit or otherwise limit the use of the term~~
 8 ~~“athletic trainer” in secondary school settings by persons who were practicing athletic training~~
 9 ~~under a West Virginia Board of Education Athletic Certification, provided the practice is in~~
 10 ~~accordance with Board of Education policy in effect prior to July 1, 2011~~

11 The practices licensed under the provisions of this article and the board of physical therapy
 12 are subject to §30-1-1, et seq. and §30-20A-1, et seq. of this code, and any rules promulgated
 13 hereunder.

§30-20A-3. Powers and duties of the board Definitions.

1 The board has the following powers and duties:

- 2 ~~(1) Establish procedures for submitting, approving and denying applications for~~
3 ~~registration;~~
- 4 ~~(2) Investigate alleged violations of the provisions of this article;~~
- 5 ~~(3) Establish a fee schedule;~~
- 6 ~~(4) Issue, renew, deny, suspend, revoke or reinstate a registration;~~
- 7 ~~(5) Determine disciplinary action and issue orders;~~
- 8 ~~(6) Institute appropriate legal action for the enforcement of the provisions of this article;~~
- 9 and
- 10 ~~(7) Maintain an accurate registry of the names and addresses of registrants~~

11 As used in this article:

12 “Applicant” means any person making application for an original or renewal license to act
13 as an athletic trainer under the provisions of this article.

14 “Athletic injury or condition” means any injury or condition sustained by an individual that
15 occurs during, or as a result of, the individual’s participation in organized or recreational activity
16 or events that require physical strength, agility, flexibility, speed, stamina, or range of motion.

17 “Athletic trainer” is an individual engaged in the practice of athletic training who holds a
18 license under the provisions of this article.

19 “Athletic training” and “the practice of athletic training” means the care and services
20 provided by a licensed athletic trainer as described under the provisions of this article.

21 “Board” means the West Virginia Board of Physical Therapy established under §30-20-1,
22 et seq. of this code.

23 “BOC” means National Athletic Trainers’ Association Board of Certification.

24 “CAATE” means the Commission on Accreditation of Athletic Training Education.

25 “Direct supervision” means the licensed health care professional must be physically
26 present and be able to intervene on behalf of the athletic training student and patient.

27 “General supervision” means referral by prescription to treat conditions for an athletic

28 injury or condition from a licensed doctor of medicine, doctor of osteopathy, except that the
29 physical presence of the supervising physician or podiatrist is not required if the supervising
30 doctor of medicine, doctor of osteopathy or podiatrist is readily available for consultation by direct
31 communication, radio, telephone, facsimile, telecommunication or other electronic means.

32 “License” means an athletic trainer license or license to act as an athletic trainer issued
33 by the board under the provisions of this article.

34 “Licensed health care professional” means an individual who holds a current license to
35 practice the discipline in the state and whose discipline provides direct patient care in a field that
36 has direct relevancy to the practice and discipline of athletic training.

37 “Licensee” means a person licensed as an athletic trainer under the provisions of this
38 article.

39 “Permittee” means any person holding a temporary permit issued pursuant to the provision
40 of this article.

41 “Permit” or “temporary permit” means a temporary permit issued under the provisions of
42 this article.

43 “The practice of athletic training” does not include the practice of physical therapy, the
44 practice of occupational therapy, the practice of medicine, the practice of osteopathic medicine
45 and surgery, the practice of chiropractic, or reconditioning of systemic, neurological or other
46 conditions or diseases that are not within the professional preparation and education of a licensed
47 athletic trainer.

§30-20A-4. Rulemaking authority License to practice athletic training.

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

4 ~~(1) Procedures for the issuance and renewal of a registration;~~

5 ~~(2) A fee schedule;~~

6 ~~(3) Procedures for denying, suspending, revoking, reinstating or limiting the registration of~~
7 ~~a registrant; and~~

8 ~~(4) Any other rules necessary to effectuate the provisions of this article~~

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

11 (1) Be at least 18 years of age;

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

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

15 (4) If subsequent to July 1, 2015, submit a current certification, and be in good standing,
16 with the BOC and be a graduate of an accredited institution as approved by the Commission on
17 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 §27-1A-11 of this
20 code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of
21 the board, be evidenced by participation in a twelve-step program or other similar group or
22 process, may be considered;

23 (7) Not have been convicted of a felony in any jurisdiction within 10 years preceding the
24 date of application for license which conviction remains unreversed;

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

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

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

§30-20A-5. Requirements for registration Scope of practice of an athletic trainer.

1 ~~(a) To be eligible for registration by the board as an athletic trainer, an applicant shall:~~

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

3 ~~(2) Submit a current certification from the National Athletic Trainers' Association Board of~~

4 ~~Certification or successor organization; and~~

5 ~~(3) Pay the required fee.~~

6 ~~(b) The board shall issue a registration to an applicant satisfying all the requirements in~~

7 ~~subsection (a) of this section: *Provided*, That the board may deny an application for registration if~~

8 ~~the applicant:~~

9 ~~(1) Has been convicted of a felony or other crime involving moral turpitude;~~

10 ~~(2) Is an alcohol or drug abuser as these terms are defined in section eleven, article one-~~

11 ~~a, chapter twenty-seven of this code: *Provided*, That the board may take into consideration that~~

12 ~~an applicant in an active recovery process, which may, in the discretion of the board, be evidenced~~

13 ~~by participation in a twelve-step program or other similar group or process;~~

14 ~~(3) Has been convicted of fraudulent, false, misleading or deceptive advertising;~~

15 ~~(4) Has been convicted for wrongfully prescribing medicines or drugs, or practicing any~~

16 ~~licensed profession without legal authority;~~

17 ~~(5) Has had a registration or other authorization revoked, suspended, restricted or other~~

18 ~~disciplinary action taken by the proper authorities of another jurisdiction;~~

19 ~~(6) Is incapacitated by a physical or mental disability which is determined by a physician~~

20 ~~to render further practice by the applicant inconsistent with competency and ethic requirements;~~

21 ~~or~~

22 ~~(7) Has been convicted of sexual abuse or sexual misconduct.~~

23 ~~(c) In determining whether an application should be denied for any of the reasons set forth~~

24 ~~in subsection (b), the board may consider:~~

25 ~~(1) How recently the conduct occurred;~~

26 ~~(2) The nature of the conduct and the context in which it occurred; and~~

27 ~~(3) Any other relevant conduct of the applicant.~~

28 ~~(d) A registration issued by the board is valid for two years from the date it was issued~~

29 (a) The practice of athletic training is defined as the application of principles, methods and
30 procedures for managing athletic injuries or conditions, which shall include the prevention,
31 emergency care, clinical examination and assessment, therapeutic intervention reconditioning
32 and treatment of athletic injuries or conditions through the use of appropriate preventative and
33 supportive devices and within the professional preparation and education of a licensed athletic
34 trainer. Athletic training includes recognizing illness and referring to the appropriate medical
35 professional and implementation of treatment pursuant to physician`s orders. Athletic training also
36 includes instruction to coaches, athletes, parents, medical personnel and communities in the area
37 of care and prevention of athletic injuries or conditions.

38 (b) The scope of practice described in this section does not authorize the reconditioning
39 of systemic, neurological injuries, conditions or disease that are not within the professional
40 preparation and education of a licensed athletic trainer.

§30-20A-6. Renewal requirements License to practice athletic training from another jurisdiction.

1 ~~(a) A registrant may apply to renew his or her registration by submitting an application for~~
2 ~~renewal in the form prescribed by the board and paying the renewal fee. The renewal application~~
3 ~~must be signed by the applicant.~~

4 ~~(b) A renewal of registration issued by the board is valid for two years from the date it was~~
5 ~~issued.~~

6 ~~(c) The board may deny an application for renewal for any reason which would justify the~~
7 ~~denial of an original application for a registration~~

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

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

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

15 (3) Has paid the applicable fee;

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

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

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

§30-20A-7. ~~Due process procedures; grounds for disciplinary action~~ Temporary permits.

1 ~~(a) The board may, after notice and opportunity for hearing, suspend, restrict or revoke a~~
 2 ~~registration of, impose probationary conditions upon or take disciplinary action against, any~~
 3 ~~registrant if the board determines the registrant:~~

4 ~~(1) Is grossly negligent in the practice of athletic training;~~

5 ~~(2) Obtained a registration by fraud, misrepresentation or concealment of material facts;~~
 6 ~~engaged in the practice of athletic training under a false or assumed name; or impersonated~~
 7 ~~another registrant of a like or different name; or~~

8 ~~(3) Has violated any of the provisions of subsection (b), section five of this article.~~

9 ~~(b) For purposes of subsection (a) of this section, disciplinary action may include:~~

10 ~~(1) Reprimand;~~

11 ~~(2) Probation;~~

12 ~~(3) Administrative fines;~~

13 ~~(4) Practicing under supervision or other restriction;~~

14 ~~(5) Requiring the registrant to report to the board for periodic interviews for a specified~~
15 ~~period of time; or~~

16 ~~(6) Other corrective action as determined by the board~~

17 (a) Upon completion of the application and payment of the nonrefundable fees, the board
18 may issue a temporary permit, for a period not to exceed 90 days, to an applicant to practice as
19 an athletic trainer in this state, if the applicant has completed the educational requirements set
20 out in this article.

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

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

§30-20A-8. Renewal requirements.

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

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

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

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

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

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

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

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

3 (b) The fee for a person on delinquent status shall increase at a rate, determined by the
4 board, for each month or fraction thereof that the renewal fee is not paid, up to a maximum of 36
5 months.

6 (c) Within 36 months of being placed on delinquent status, if a licensee wants to return to
7 active practice, he or she must complete all the continuing education requirements and pay all
8 the applicable fees as set by rule.

9 (d) After 36 months of being placed on delinquent status, a license is automatically placed
10 on expired status and cannot be renewed. A person whose license has expired must reapply for
11 a new license.

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

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

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

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

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

1 The following persons are exempt from licensing requirements under the provisions of this
2 article:

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

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

8 (3) An athletic trainer who is licensed in another jurisdiction of the United States or
9 credentialed to practice athletic training in another country if that person is teaching,
10 demonstrating or providing athletic training services in connection with teaching or participating
11 in an educational seminar of no more than 60 calendar days in a calendar year;

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

13 (5) An athletic trainer who is licensed in another jurisdiction, if that person by contract or
14 employment is providing athletic training to individuals affiliated with or employed by established
15 athletic teams, athletic organizations or performing arts companies temporarily practicing,
16 competing or performing in the state for no more than 60 calendar days in a calendar year;

17 (6) An athletic trainer who is licensed in another jurisdiction who enters this state to provide
18 athletic training during a declared local, state or national disaster or emergency. This exemption
19 applies for no longer than 60 calendar days in a calendar year following the declaration of the
20 emergency. The athletic trainer shall notify the board of his or her intent to practice;

21 (7) An athletic trainer licensed in another jurisdiction who is forced to leave his or her
22 residence or place of employment due to a declared local, state or national disaster or emergency
23 and due to the displacement seeks to practice as an athletic trainer. This exemption applies for
24 no longer than 60 calendar days in a calendar year following the declaration of the emergency.
25 The athletic trainer shall notify the board of their intent to practice; and

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

§30-20A-12. Display of license.

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

3 (b) Any person regulated by the article shall conspicuously display his or her license or
4 permit at his or her principal business location.

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

action.

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

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

7 (c) After reviewing any information obtained through an investigation, the board shall
8 determine if probable cause exists that the licensee or permittee has violated §30-20A-13(g) of
9 this code or rules promulgated pursuant to this article.

10 (d) Upon a finding that probable cause exists that the licensee or permittee has violated
11 §30-20A-13(g) of this code or rules promulgated pursuant to this article, the board may enter into
12 a consent decree or hold a hearing for the suspension or revocation of the license or permit or
13 the imposition of sanctions 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 executive secretary of the board may issue subpoenas
16 and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of
17 allegations against any person regulated by the article.

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

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

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

- 26 (2) Being convicted of a felony or other crime involving moral turpitude;
27 (3) Being guilty of unprofessional conduct which placed the public at risk, as defined by
28 legislative rule of the board;
29 (4) Intentional violation of a lawful order or legislative rule of the board;
30 (5) Having had a license or other authorization revoked or suspended, other disciplinary
31 action taken, or an application for licensure or other authorization revoked or suspended by the
32 proper authorities of another jurisdiction;
33 (6) Aiding or abetting unlicensed practice; or
34 (7) Engaging in an act while acting in a professional capacity which has endangered or is
35 likely to endanger the health, welfare or safety of the public.
36 (h) For the purposes of §30-20A-13(g) of this code, effective July 1, 2018, disciplinary
37 action may include:
38 (1) Reprimand;
39 (2) Probation;
40 (3) Restrictions;
41 (4) Administrative fine, not to exceed \$1,000 per day per violation;
42 (5) Mandatory attendance at continuing education seminars or other training;
43 (6) Practicing under supervision or other restriction; or
44 (7) Requiring the licensee or permittee to report to the board for periodic interviews for a
45 specified period of time.
46 (i) In addition to any other sanction imposed, the board may require a licensee or permittee
47 to pay the costs of the proceeding.
§30-20A-14. Procedures for hearing; right of appeal.
1 (a) Hearings are governed by the §30-1-8 of this code.
2 (b) The board may conduct the hearing or elect to have an administrative law judge
3 conduct the hearing.

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

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

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

§30-20A-15. Judicial review.

1 Any licensee or permittee adversely affected by a decision of the board entered after a
2 hearing may obtain judicial review of the decision in accordance with §29A-5-4 of this code, and
3 may appeal any ruling resulting from judicial review in accordance with §29A-6-1 et seq. of this
4 code.

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

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

4 (b) A person violating §30-20A-1 of this code is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined not less than \$100 nor more than \$5,000 or confined in jail not
6 more than six months, or both fined and confined.

NOTE: The purpose of this bill is to license the practice of athletic training and provide criminal penalties.

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