

SB 358

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

96 APR -1 PM 4: 44

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SENATE BILL NO. 358

(By Senator WOOTON, ET AL)

PASSED MARCH 9, 1996

In Effect NINETY DAYS FROM Passage

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SECRETARY OF STATE

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Senate Bill No. 358

(BY SENATORS WOOTON, ANDERSON, BUCKALEW, DITTMAR,
MILLER, ROSS, SCHOONOVER, SCOTT AND YODER)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, four-a, five, six, seven, eight, ten, eleven and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections one-a and seven-a; and to amend and reenact section five-a, article two of said chapter, all relating to state boards of examination or registration; application of article; legislative findings and declaration; officers; lay members of professional boards; meetings; quorum; investigatory powers; duties; application for license or registration; fees; contents of license or certificate of registration; continuing education; denial, suspension or revocation of a license or registration; disposition of money; compensation of

members; expenses; record of proceedings; register of applicants; report to governor and Legislature; and legal corporations.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four-a, five, six, seven, eight, ten, eleven and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections one-a and seven-a; and that section five-a, article two of said chapter 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.

§30-1-1. Application of article.

1 Unless otherwise specifically provided, every board of
2 examination or registration referred to in this chapter
3 shall conform to the requirements prescribed in the
4 following sections of this article.

§30-1-1a. Legislative findings and declaration.

1 The Legislature hereby finds and declares that as a
2 matter of public policy the practice of the professions
3 referred to in this chapter is a privilege and is not a
4 natural right of individuals. The fundamental purpose
5 of licensure and registration is to protect the public, and
6 any license, registration, certificate or other authoriza-
7 tion to practice issued pursuant to this chapter is a
8 revocable privilege.

§30-1-3. Officers.

1 (a) Every board referred to in this chapter shall elect
2 annually from its members a president and a secretary
3 who shall hold their offices for one year, but shall
4 continue to hold their offices until their successors are
5 elected. However, the state board of law examiners, the
6 state board of examiners for nurses and the state board

7 of dental examiners may each elect a secretary from
8 outside their membership.

9 (b) The officers of the boards referred to in this chapter
10 shall register annually with the governor, the secretary
11 of administration, the legislative auditor and the secre-
12 tary of state.

§30-1-4a. Lay members of professional boards.

1 (a) Notwithstanding any provisions of this code to the
2 contrary, the governor shall appoint at least one lay
3 person to represent the interests of the public on every
4 health professional licensing board which is referred to
5 in this chapter. If the total number of members on any
6 of these boards after the appointment of one lay person
7 is an even number, one additional lay person shall be
8 appointed. Lay members shall serve in addition to any
9 other members otherwise provided for by law or rule.
10 Lay members shall be at least eighteen years of age, shall
11 be of good moral character, and shall be competent to
12 represent and safeguard the interests of the public. Each
13 lay member is empowered to participate in and vote on
14 all transactions and business of the board, committee or
15 group to which he or she is appointed.

16 (b) Any person whose addition to a board as a lay
17 member under the provisions of this section results in
18 the addition of an odd number of lay additions to the
19 board shall serve for a term ending in an odd-numbered
20 year on the date in that year on which terms of the
21 professional members expire. Of the members first
22 appointed, each shall serve for a term ending in the year
23 one thousand nine hundred seventy-nine, and the
24 successor to each of the first members shall serve for a
25 term equal in length to the terms of the other profes-
26 sional members of the board.

27 (c) Any person whose addition to a board as a lay
28 member under the provisions of this section results in
29 the addition of an even number of lay additions to the
30 board shall serve for a term ending in an even-numbered

31 year on the date in that year on which terms of the
32 professional members expire. Of the members first
33 appointed, each shall serve for a term ending in the year
34 one thousand nine hundred seventy-eight, and the
35 successor to each of the first members shall serve for a
36 term equal in length to the terms of the other profes-
37 sional members of the board.

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

1 (a) Every board referred to in this chapter shall hold at
2 least one meeting each year, at such time and place as it
3 may prescribe by rule, for the examination of applicants
4 who desire to practice their respective professions or
5 occupations in this state and to transact any other
6 business which may legally come before it. The board
7 may hold additional meetings as may be necessary,
8 which shall be called by the secretary at the direction of
9 the president or upon the written request of any three
10 members. A majority of the members of the board
11 constitutes a quorum for the transaction of its business.
12 The board is authorized to compel the attendance of
13 witnesses, to issue subpoenas, to conduct investigations
14 and hire an investigator, and to take testimony and other
15 evidence concerning any matter within its jurisdiction.
16 The president and secretary of the board are authorized
17 to administer oaths for these purposes.

18 (b) Every board referred to in this chapter has a duty
19 to investigate and resolve complaints which it receives
20 and shall do so in a timely manner. Every board shall
21 provide public access to the record of the disposition of
22 the complaints which it receives, in accordance with the
23 provisions of chapter twenty-nine-b of this code. Every
24 board has a duty to report violations of individual
25 practice acts contained in this chapter to the board by
26 which the individual may be licensed, and shall do so in
27 a timely manner upon receiving notice of such violations.
28 Every person licensed or registered by a board has a duty
29 to report to the board which licenses or registers him or
30 her a known or observed violation of the practice act or

31 the board's rules by any other person licensed or regis-
32 tered by the same board, and shall do so in a timely
33 manner. Law-enforcement agencies or their personnel
34 and courts shall report in a timely manner to the appro-
35 priate board any violations of individual practice acts by
36 any individual.

37 (c) Whenever a board referred to in this chapter
38 obtains information that a person subject to its authority
39 has engaged in, is engaging in, or is about to engage in
40 any act which constitutes or will constitute a violation of
41 the provisions of this chapter which are administered
42 and enforced by that board, it may apply to the circuit
43 court for an order enjoining the act. Upon a showing
44 that the person has engaged, is engaging, or is about to
45 engage in any such act, the court shall order an injunc-
46 tion, restraining order or other order as the court may
47 deem appropriate.

§30-1-6. Application for license or registration; examination fee.

1 (a) Every applicant for license or registration under the
2 provisions of this chapter shall apply for such license or
3 registration in writing to the proper board and shall
4 transmit with his or her application an examination fee
5 which the board is authorized to charge for an examina-
6 tion or investigation into the applicant's qualifications to
7 practice.

8 (b) Each board referred to in this chapter is authorized
9 to establish by rule a deadline for application for exami-
10 nation which shall be no less than ten nor more than
11 ninety days prior to the date of the examination.

12 (c) Boards may set by rule fees relating to the licensing
13 or registering of individuals, which shall be sufficient to
14 enable the boards to carry out effectively their responsi-
15 bilities of licensure or registration and discipline of
16 individuals subject to their authority: *Provided*, That
17 when any board proposes to promulgate a rule regarding
18 fees for licensing or registration, that board shall notify

19 its membership of the proposed rule by mailing a copy of
20 the proposed rule to the membership at the time that the
21 proposed rule is filed with the secretary of state for
22 publication in the state register in accordance with
23 section five, article three, chapter twenty-nine-a of this
24 code.

§30-1-7. Contents of license or certificate of registration.

1 Every license or certificate of registration issued by
2 each board shall bear a serial number, the full name of
3 the applicant, the date of issuance, and the seal of the
4 board. It shall be signed by the board's president and
5 secretary or executive secretary. No license or certifi-
6 cate of registration granted or issued under the provi-
7 sions of this chapter may be assigned.

§30-1-7a. Continuing education.

1 Each board referred to in this chapter shall establish
2 continuing education requirements as a prerequisite to
3 license renewal. Each board shall develop continuing
4 education criteria appropriate to its discipline, which
5 shall include, but not be limited to, course content,
6 course approval, hours required and reporting periods.

**§30-1-8. Denial, suspension or revocation of a license or
registration; probation; proceedings; effect of
suspension or revocation; transcript; report;
judicial review.**

1 (a) Every board referred to in this chapter is autho-
2 rized to suspend or revoke the license of any person who
3 has been convicted of a felony or who has been found to
4 have engaged in conduct, practices or acts constituting
5 professional negligence or a willful departure from
6 accepted standards of professional conduct. Where any
7 person has been so convicted of a felony or has been
8 found to have engaged in such conduct, practices or acts,
9 every board referred to in this chapter is further autho-
10 rized to enter into consent decrees, to reprimand, to
11 enter into probation orders, to levy fines not to exceed
12 one thousand dollars per day per violation, or any of

13 these, singly or in combination. Each board is also
14 authorized to assess administrative costs. Any costs
15 which are assessed shall be placed in the special account
16 of the board, and any fine which is levied shall be
17 deposited in the state treasury's general revenue fund.
18 For purposes of this section, the word "felony" means a
19 felony or crime punishable as a felony under the laws of
20 this state, any other state, or the United States. Every
21 board referred to in this chapter is authorized to promul-
22 gate rules in accordance with the provisions of chapter
23 twenty-nine-a of this code to delineate conduct, prac-
24 tices or acts which, in the judgment of the board, consti-
25 tute professional negligence, a willful departure from
26 accepted standards of professional conduct or which
27 may render an individual unqualified or unfit for licen-
28 sure, registration or other authorization to practice.

29 (b) Notwithstanding any other provision of law to the
30 contrary, no certificate, license, registration or authority
31 issued under the provisions of this chapter may be
32 suspended or revoked without a prior hearing before the
33 board or court which issued the certificate, license,
34 registration or authority. However, this does not apply
35 in cases where a board is authorized to suspend or
36 revoke a certificate, license, registration or authority
37 prior to a hearing if the individual's continuation in
38 practice constitutes an immediate danger to the public.

39 (c) In all proceedings before a board or court for the
40 suspension or revocation of any certificate, license,
41 registration or authority issued under the provisions of
42 this chapter, a statement of the charges against the
43 holder thereof and a notice of the time and place of
44 hearing shall be served upon the person as a notice is
45 served under section one, article two, chapter fifty-six of
46 this code, at least thirty days prior to the hearing, and he
47 or she may appear with witnesses and be heard in
48 person, by counsel, or both. The board may take oral or
49 written proof, for or against the accused, as it may deem
50 advisable. If upon hearing the board finds that the
51 charges are true, it may suspend or revoke the certifi-

52 cate, license, registration or authority, and suspension or
53 revocation shall take from the person all rights and
54 privileges acquired thereby.

55 (d) Pursuant to the provisions of section one, article
56 five, chapter twenty-nine-a of this code, informal
57 disposition may also be made by the board of any
58 contested case by stipulation, agreed settlement, consent
59 order or default. Further, the board may suspend its
60 decision and place a licensee found by the board to be in
61 violation of the applicable practice on probation.

62 (e) Any person denied a license, certificate, registration
63 or authority who believes the denial was in violation of
64 this article or the article under which the license,
65 certificate, registration or authority is authorized shall
66 be entitled to a hearing on the action denying the license,
67 certificate, registration or authority. Hearings under
68 this subsection shall be in accordance with the provi-
69 sions for hearings which are set forth in this section.

70 (f) A stenographic report of each proceeding on the
71 denial, suspension or revocation of a certificate, license,
72 registration or authority shall be made at the expense of
73 the board and a transcript thereof retained in its files.
74 The board shall make a written report of its findings,
75 which shall constitute part of the record.

76 (g) All proceedings under the provisions of this section
77 are subject to review by the supreme court of appeals.

§30-1-10. Disposition of money; fines; legislative audit.

1 (a) The secretary of every board referred to in this
2 chapter shall receive and account for all money which it
3 derives pursuant to the provisions of this chapter which
4 are applicable to it. With the exception of money
5 received as fines, each board shall pay all money which
6 is collected into a separate special fund of the state
7 treasury which has been established for each board.
8 This money shall be used exclusively by each board for
9 purposes of administration and enforcement of its duties
10 pursuant to this chapter. Any money received as fines

11 shall be deposited into the general revenue fund of the
12 state treasury. When the special fund of any board
13 accumulates to an amount which exceeds twice the
14 annual budget of the board or ten thousand dollars,
15 whichever is greater, the excess amount shall be trans-
16 ferred by the state treasurer to the state general revenue
17 fund.

18 (b) Every licensing board which is authorized by the
19 provisions of this chapter shall be subject to audit by the
20 office of the legislative auditor.

§30-1-11. Compensation of members; expenses.

1 Each member of every board which is referred to in
2 this chapter shall receive compensation and expense
3 reimbursement which shall not exceed the amount paid
4 to members of the Legislature for their interim duties as
5 recommended by the citizens legislative compensation
6 commission and authorized by law for each day or
7 portion thereof engaged in the discharge of official
8 duties.

**§30-1-12. Record of proceedings; register of applicants;
certified copies of records prima facie evi-
dence; report to governor and Legislature.**

1 (a) The secretary of every board shall keep a record of
2 its proceedings and a register of all applicants for license
3 or registration, showing for each the date of his or her
4 application, his or her name, age, educational and other
5 qualifications, place of residence, whether an examina-
6 tion was required, whether the applicant was rejected or
7 a certificate of license or registration granted, the date
8 of this action, the license or registration number, all
9 renewals of the license or registration, if required, and
10 any suspension or revocation thereof. The books and
11 register of the board shall be open to public inspection at
12 all reasonable times, and the books and register, or a
13 copy of any part thereof, certified by the secretary and
14 attested by the seal of the board, shall be prima facie
15 evidence of all matters recorded therein.

16 (b) On or before the first day of January of each year in
17 which the Legislature meets in regular session, the board
18 shall submit to the governor and to the Legislature a
19 report of its transactions for the preceding two years, an
20 itemized statement of its receipts and disbursements for
21 that period, a full list of the names of all persons licensed
22 or registered by it during that period, statistical reports
23 by county of practice, by specialty if appropriate to the
24 particular profession, and a list of any complaints which
25 were filed against persons licensed by the board, includ-
26 ing any action taken by the board regarding those
27 complaints. The report shall be certified by the presi-
28 dent and the secretary of the board, and a copy of the
29 report shall be filed with the secretary of state.

ARTICLE 2. ATTORNEYS-AT-LAW.

§30-2-5a. Legal corporations.

1 (a) One or more individuals, each of whom is licensed
2 to practice law within this state, may organize and
3 become a shareholder or shareholders of a legal corpora-
4 tion. Individuals who may be practicing law as an
5 organization created otherwise than pursuant to the
6 provisions of this section may incorporate under and
7 pursuant to this section. This section is not intended to
8 amend the statutory or common law as it relates to
9 associations or partnerships, except to allow partner-
10 ships of lawyers to organize as a legal corporation.

11 (b) A legal corporation may render professional service
12 only through officers, employees and agents who are
13 themselves duly licensed to render legal service within
14 this state. The term "employee" or "agent" as used in
15 this section does not include secretaries, clerks, typists,
16 paralegal personnel or other individuals who are not
17 usually and ordinarily considered by custom and prac-
18 tice to be rendering legal services for which a license is
19 required.

20 (c) This section does not modify the law as it relates to
21 the relationship between a person furnishing legal
22 services and his client, nor does it modify the law as it

23 relates to liability arising out of such a professional
24 service relationship. Except for permitting legal corpo-
25 rations, this section is not intended to modify any legal
26 requirement or court rule relating to ethical standards of
27 conduct required of persons providing legal service.

28 (d) A legal corporation may issue its capital stock only
29 to persons who are duly licensed attorneys.

30 (e) When not inconsistent with this section, the organi-
31 zation and procedures of legal corporations shall con-
32 form to the requirements of article one, chapter thirty-
33 one of this code.

34 (f) The West Virginia state bar may require that
35 lawyers under its licensing authority must obtain its
36 prior authorization before beginning to act as a legal
37 corporation and may require a fee of not more than fifty
38 dollars for each application for authorization to form a
39 legal corporation. The state bar may adopt rules: (1) To
40 set reasonable standards for granting or refusing prior
41 approval; (2) to require appropriate information therefor
42 from a legal corporation applicant; and (3) to notify the
43 secretary of state that certain persons have been given
44 authorization by the state bar to form a legal corpora-
45 tion.

46 (g) Upon notification by the West Virginia state bar of
47 its approval, the secretary of state, upon compliance by
48 the incorporators with this section and the applicable
49 provisions of chapter thirty-one of this code, may issue
50 to the incorporators a certificate of incorporation for the
51 legal corporation which then may engage in practice
52 through duly licensed or otherwise legally authorized
53 stockholders, employees and agents.

54 (h) A shareholder of a legal corporation may sell or
55 transfer his or her shares of stock in such corporation
56 only to another individual who is duly licensed to
57 practice law in this state or back to the corporation.
58 However, a fiduciary representative of the estate of a
59 lawyer may hold the stock or interest of the lawyer for a

60 reasonable time during the administration of the estate.

61 (i) The corporate name of a legal corporation shall
62 contain the last name or names of one or more of its
63 shareholders. If the rules of the state bar so permit, the
64 corporate name may contain or include the name or
65 names of former shareholders or of persons who were
66 associated with a predecessor partnership or other
67 organization. The corporate name shall also contain the
68 words "legal corporation" or the abbreviation "L.C."
69 The use of the word "company", "corporation" or
70 "incorporated" or any other words or abbreviations in
71 the name of a corporation organized under this article
72 which indicates that such corporation is a corporation,
73 other than the words "legal corporation" or the abbrevi-
74 ation "L.C.", is specifically prohibited.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates.

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *1st*
day of *April*, 1996.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/28/96

Time

9:38 am