

**FILED**  
**APR 14 2001**  
**IN THE OFFICE OF**  
**SECRETARY OF STATE**  
**WEST VIRGINIA**

# **WEST VIRGINIA LEGISLATURE**

**FIRST REGULAR SESSION, 2001**



# **ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR**

**House Bill No. 2567**

(By Delegates Kuhn, Tucker, Hatfield, Perdue,  
Prunty, Angotti and Overington)



Passed April 3, 2001

In Effect Ninety Days from Passage

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**H. B. 2567**

(BY DELEGATES KUHN, TUCKER, HATFIELD, PERDUE,  
PRUNTY, ANGOTTI AND OVERINGTON)

[Passed April 3, 2001; in effect ninety days from passage.]

AN ACT to repeal article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty of said code by adding thereto a new article, designated article thirty-eight, relating to the real estate appraiser licensing and certification act; requiring real estate appraisers to be licensed; requiring real estate appraisers to be certified in order to perform certain functions; definitions; classifications of appraisers and authority of classifications; classifications and certificate numbers required on documents; corporations; nonresident licensure and certification; consent to service of process; temporary registration; license by reciprocity; board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff; powers and duties of the board; board funds; rulemaking authority; civil liability for

board members; liability limitations for reporting violations to board; applications for license and certification; renewals; suspending, revoking or refusing to issue or renew license or certification; grounds for disciplinary action; disciplinary proceedings; hearings; orders; entry of order without notice and hearing; when administrative law judge or hearing examiner may hold hearing; judicial review; appeals to supreme court of appeals; penalties, fines and imprisonment; requiring proof of license or certification to maintain action for fees; standards of professional appraisal practice; attorney general opinions and duties; continuation of board.

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

That article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter thirty of said code be amended by adding thereto a new article, designated article thirty-eight, to read as follows:

**ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.**

**§30-38-1. Real estate appraiser license required; exceptions.**

1       (a) It is unlawful for any person, for compensation or  
2 valuable consideration, to prepare a valuation appraisal or a  
3 valuation appraisal report relating to real estate or real property  
4 in this state without first being licensed or certified as provided  
5 in this article. This section shall not be construed to apply to  
6 persons who do not render significant professional assistance in  
7 arriving at a real estate appraisal analysis, opinion or conclu-  
8 sion. Nothing in this article may be construed to prohibit any  
9 person who is licensed to practice in this state under any other  
10 law from engaging in the practice for which he or she is  
11 licensed.

12 (b) No person other than a person licensed or certified  
13 under this article may use the title of licensed appraiser or  
14 certified appraiser or any title, designation or abbreviation  
15 likely to create the impression that the person is licensed or  
16 certified by the state.

17 (c) This article does not apply to:

18 (1) A real estate broker or salesperson licensed by this state  
19 who, in the ordinary course of his or her business, gives an  
20 opinion to a potential seller or third party as to the recom-  
21 mended listing price of real estate or an opinion to a potential  
22 purchaser or third party as to the recommended purchase price  
23 of real estate, when this opinion as to the listing price or the  
24 purchase price is not to be referred to as an appraisal, no  
25 opinion is rendered as to the value of the real estate and no fee  
26 is charged;

27 (2) A casual or drive-by inspection of real estate in connec-  
28 tion with a consumer loan secured by the real estate, when the  
29 inspection is not referred to as an appraisal, no opinion is  
30 rendered as to the value of the real estate and no fee is charged  
31 for the inspection;

32 (3) An employee who renders an opinion as to the value of  
33 real estate for his or her full-time employer, for the employer's  
34 internal use only and performed in the regular course of the  
35 employee's position, when the opinion is not referred to as an  
36 appraisal and no fee is charged;

37 (4) Appraisals of personal property, including, but not  
38 limited to, jewelry, household furnishings, vehicles and  
39 manufactured homes not attached to real estate;

40 (5) Any officer or employee of the United States, or of the  
41 state of West Virginia or a political subdivision thereof, when  
42 the employee or officer is performing his or her official duties:

43 *Provided*, That such individual does not furnish advisory  
44 service for compensation to the public or act as an independent  
45 contracting party in West Virginia or any subdivision thereof in  
46 connection with the appraisal of real estate or real property:  
47 *Provided, however*, That this exception shall not apply with  
48 respect to federally related transactions as defined in Title XI of  
49 the United States Code, entitled “Financial Institutions Reform,  
50 Recovery, and Enforcement Act of 1989”; or

51 (6) Any evaluation of the value of real estate serving as  
52 collateral for a loan made by a financial institution insured by  
53 the federal deposit insurance corporation: *Provided*, That: (A)  
54 The amount of the loan is equal to or less than two hundred  
55 fifty thousand dollars; (B) the evaluation is used solely by the  
56 lender in its records to document the collateral value; (C) the  
57 evaluation clearly indicates on its face that it is for the lender’s  
58 internal use only; (D) the evaluation is not labeled an appraisal;  
59 and (E) the evaluation is on a form approved by the board.  
60 Individuals performing these evaluations may be compensated  
61 for their services. The lender shall notify its customer if it  
62 intends to use an unlicensed evaluator and give the customer the  
63 opportunity to elect an evaluation, by a certified or licensed  
64 appraiser, the cost of which will be paid as agreed between the  
65 lender and the customer.

**§30-38-2. Short title.**

1 This article is known and may be cited as the “Real Estate  
2 Appraiser Licensing and Certification Act.”

**§30-38-3. Definitions.**

1 As used in this article, the following terms have the  
2 following meanings:

3 (a) “Appraisal” means an analysis, opinion or conclusion  
4 prepared by a real estate appraiser relating to the nature,

5 quality, value or utility of specified interests in, or aspects of,  
6 identified real estate or identified real property. An appraisal  
7 may be classified by the nature of the assignment as a valuation  
8 appraisal, an analysis assignment or a review assignment.

9 (b) “Analysis assignment” means an analysis, opinion or  
10 conclusion prepared by a real estate appraiser that relates to the  
11 nature, quality or utility of identified real estate or identified  
12 real property.

13 (c) “Appraisal foundation” means the appraisal foundation  
14 established on the thirtieth day of November, one thousand nine  
15 hundred eighty-seven, as a not-for-profit corporation under the  
16 laws of Illinois.

17 (d) “Appraisal report” means any communication, written  
18 or oral, of an appraisal. An appraisal report may be classified by  
19 the nature of the assignment as a “valuation report”, “analysis  
20 report” or “review report”. For the purposes of this article, the  
21 testimony of an appraiser dealing with the appraiser’s analyses,  
22 conclusions or opinions concerning identified real estate or  
23 identified real property is considered an oral appraisal report.

24 (e) “Board” means the real estate appraiser licensing and  
25 certification board established by the provisions of this article.

26 (f) “Certified appraisal report” means a written appraisal  
27 report that is certified by a state licensed or certified real estate  
28 appraiser. When a real estate appraiser identifies an appraisal  
29 report as “certified”, the real estate appraiser must indicate the  
30 type of licensure or certification he or she holds. By certifying  
31 an appraisal report, a state licensed residential real estate  
32 appraiser, a state certified general real estate appraiser or a state  
33 certified residential real estate appraiser, represents to the  
34 public that the report meets the appraisal standards established  
35 by this article.

36 (g) “Certified real estate appraiser” means a person who  
37 holds a current, valid certification as a state certified residential  
38 real estate appraiser or a state certified general real estate  
39 appraiser issued to him or her under the provisions of this  
40 article.

41 (h) “Complex appraisal” means an appraisal that: (1) For  
42 nonresidential property, relies on all three approaches to value,  
43 being the cost approach, the income approach and the sales  
44 comparison approach, or does not have the characteristics of a  
45 noncomplex appraisal; and (2) for residential property, relies to  
46 any significant degree on at least two of the three approaches to  
47 value, with one approach being the sales comparison approach,  
48 or does not have the characteristics of a noncomplex appraisal.

49 (i) “Cost approach” means an approach to valuing real  
50 estate which requires an appraiser to: (1) Develop an opinion of  
51 site value by an appropriate appraisal method or technique; (2)  
52 analyze comparable cost data as are available to estimate the  
53 cost new of the improvements if any; and (3) analyze compara-  
54 ble data as are available to estimate the difference between cost  
55 new and the present worth of the improvements, also called  
56 accrued depreciation.

57 (j) “Income approach” means an approach to valuing real  
58 estate which requires an appraiser to: (1) Analyze comparable  
59 rental data as are available to estimate the market rental of the  
60 property; (2) analyze comparable operating expense data as are  
61 available to estimate the operating expenses of the property; (3)  
62 analyze comparable data as are available to estimate rates of  
63 capitalization or rates of discount; and (4) base projections of  
64 future rent and expenses on reasonably clear and appropriate  
65 evidence.

66 (k) “Licensed real estate appraiser” means a person who  
67 holds a current, valid license as a state licensed residential real

68 estate appraiser issued to him or her under the provisions of this  
69 article.

70 (l) “Noncomplex appraisal” means an appraisal for which:  
71 (1) There is an active market of essentially identical properties;  
72 (2) adequate data is available to the appraiser; (3) adjustments  
73 to comparable sales are not large in the aggregate, specifically  
74 not exceeding the trading range found in the market of essen-  
75 tially identical properties; and (4) for residential properties, the  
76 contract sales price falls within the market norm or median  
77 sales price for homes or lots within the same area.

78 (m) “Real estate” means an identified parcel or tract of  
79 land, including improvements, if any.

80 (n) “Real estate appraisal activity” means the act or process  
81 of making an appraisal of real estate or real property and  
82 preparing an appraisal report.

83 (o) “Real estate appraiser” means a person who engages in  
84 real estate appraisal activity for a fee or other valuable consid-  
85 eration.

86 (p) “Real property interests” means one or more defined  
87 interests, benefits or rights inherent in the ownership of real  
88 estate.

89 (q) “Review assignment” means an analysis, opinion or  
90 conclusion prepared by a real estate appraiser that forms an  
91 opinion as to the adequacy and appropriateness of a valuation  
92 appraisal or an analysis assignment.

93 (r) “Sales comparison approach” means an approach to  
94 valuing real estate which requires an appraiser to analyze such  
95 comparable sales data as are available to indicate a value  
96 conclusion.



97 (s) "Valuation appraisal" means an analysis, opinion or  
98 conclusion prepared by a real estate appraiser that estimates the  
99 value of an identified parcel of real estate or identified real  
100 property at a particular point in time.

**§30-38-4. Classifications of licensure and certification; authority  
of appraisers; classification and license or certificate  
number required on all documents; corporations.**

1 (a) The three classifications of real estate appraisers are  
2 state licensed residential real estate appraiser, state certified  
3 residential real estate appraiser and state certified general real  
4 estate appraiser.

5 (b) A state licensed residential real estate appraiser is  
6 authorized to conduct appraisals of: (1) Complex residential  
7 real estate of one to four units having a value of less than two  
8 hundred fifty thousand dollars; (2) noncomplex residential real  
9 estate of one to four units having a value of less than one  
10 million dollars; and (3) nonresidential real estate having a value  
11 of less than one hundred thousand dollars.

12 (c) A state certified residential real estate appraiser is  
13 authorized to conduct appraisals of residential real estate of one  
14 to four units without regard to value or complexity, and  
15 nonresidential real estate when the value is less than one  
16 hundred thousand dollars.

17 (d) A state certified general real estate appraiser is autho-  
18 rized to conduct appraisals of all types of real estate.

19 (e) The board is authorized to establish by legislative rule  
20 other classifications of appraiser licensing not prohibited by  
21 applicable federal law.

22 (f) An appraiser shall indicate his or her classification and  
23 license or certificate number, on all appraisals, statements of

24 qualification, contracts and other instruments, including  
25 advertising media.

26 (g) A license or certificate may not be issued under the  
27 provisions of this article to a corporation, partnership, firm or  
28 group.

29 (h) Nothing contained in this article prohibits any person  
30 licensed or certified under this article from engaging in the  
31 practice of real estate appraising as a professional corporation  
32 in accordance with the provisions of the professional service  
33 corporation act of this state.

**§30-38-5. Licensure and certification of nonresidents; consent to  
service of process; temporary registration; license  
by reciprocity.**

1 (a) A nonresident of this state who has complied with the  
2 provisions of subsection (b) of this section may obtain a license  
3 or certification as a real estate appraiser in this state by comply-  
4 ing with all of the provisions of this article relating to the  
5 licensing or certification of real estate appraisers.

6 (b) Each nonresident applicant for licensure or certification  
7 and each nonresident registrant for temporary practice within  
8 this state shall submit, with his or her application, an irrevoca-  
9 ble consent that service of process upon him or her may be  
10 made by delivery of the process to the secretary of state if, in an  
11 action against the applicant in a court of this state arising out of  
12 the applicant's activities as a real estate appraiser in this state,  
13 the plaintiff cannot, in the exercise of due diligence, effect  
14 personal service upon the applicant.

15 (c) A nonresident of this state who is not licensed by this  
16 state but who is licensed in another state, district or territory,  
17 may perform one specific assignment relating to the appraisal  
18 of real estate or real property in this state, after being approved

19 by the board in accordance with the rule for temporary registra-  
20 tion and complying with the provisions of subsection (b) of this  
21 section.

22 (d) If the board determines that another state or territory or  
23 the District of Columbia has substantially equivalent licensure  
24 or certification laws for real estate appraisers, an applicant for  
25 licensure or certification in this state who is licensed or certified  
26 under the laws of the other state, territory or district may obtain  
27 a license or certificate as a real estate appraiser in this state  
28 upon the terms and conditions set by the board: *Provided*, That  
29 the laws of such state, territory or district accord substantially  
30 equal reciprocal rights to a licensed or certified real estate  
31 appraiser in good standing in this state, and that disciplinary  
32 proceedings are not pending against the applicant in his or her  
33 state of licensure or certification.

**§30-38-6. Board created; appointments, qualifications, terms,  
oath, removal of members; quorum; meetings;  
disqualification from participation; compensation;  
records; employing staff.**

1 (a) The West Virginia real estate appraiser licensing and  
2 certification board, which consists of nine members appointed  
3 by the governor with the advice and consent of the Senate, is  
4 continued. Each member shall be a resident of the state of West  
5 Virginia. Four members shall be certified real estate appraisers  
6 having at least five years' experience in appraisal as a principal  
7 line of work immediately preceding their appointment, and  
8 shall remain certified real estate appraisers throughout their  
9 terms. Two members shall have at least five years' experience  
10 in real estate lending as employees of financial institutions.  
11 Three members may not be engaged in the practice of real  
12 estate appraisal, real estate brokerage or sales or have any  
13 financial interest in these practices. No member of the board  
14 may concurrently be a member of the West Virginia real estate

15 commission. Not more than two appraiser members may be  
16 appointed from each congressional district.

17 (b) Members will be appointed for three-year terms, which  
18 are staggered in accordance with the initial appointments under  
19 prior enactment of this act. No member may serve for more  
20 than three consecutive terms. Before entering upon the perfor-  
21 mance of his or her duties, each member shall subscribe to the  
22 oath required by section five, article four of the constitution of  
23 this state. The governor shall, within sixty days following the  
24 occurrence of a vacancy on the board, fill the vacancy by  
25 appointing a person who meets the requirements of this section  
26 for the unexpired term. Any member may be removed by the  
27 governor in case of incompetency, neglect of duty, gross  
28 immorality or malfeasance in office.

29 (c) The board shall elect a chairman. A majority of the  
30 members of the board constitutes a quorum.

31 (d) The board shall meet at least once in each calendar  
32 quarter on a date fixed by the board. The board may, upon its  
33 own motion, or shall upon the written request of three members  
34 of the board, call additional meetings of the board upon at least  
35 twenty-four hours' notice. No member shall participate in a  
36 proceeding before the board to which a corporation, partnership  
37 or unincorporated association is a party, and of which he or she  
38 is or was at any time in the preceding twelve months a director,  
39 officer, owner, partner, employee, member or stockholder. A  
40 member may disqualify himself or herself from participation in  
41 a proceeding for any other cause the member considers suffi-  
42 cient.

43 (e) The appointed members will receive compensation and  
44 expense reimbursement in accordance with the provisions of  
45 section eleven, article one of this chapter.

46 (f) The board may employ staff as necessary to perform the  
47 functions of the board, to be paid out of the board fund created  
48 by the provisions of this article. Persons employed by any real  
49 estate agent, broker, appraiser or lender, or by any partnership,  
50 corporation, association or group engaged in any real estate  
51 business, may not be employed by the board.

**§30-38-7. General powers and duties.**

1 The board shall:

2 (a) Define by rule the type of educational experience,  
3 appraisal experience and equivalent experience that will meet  
4 the statutory requirements of this article;

5 (b) Establish examination specifications as prescribed  
6 herein and provide for appropriate examinations;

7 (c) Approve or disapprove applications for certification and  
8 licensure;

9 (d) Define by rule continuing education requirements for  
10 the renewal of certifications and licenses;

11 (e) Censure, suspend or revoke licenses and certification as  
12 provided in this article;

13 (f) Hold meetings, hearings and examinations;

14 (g) Establish procedures for submitting, approving and  
15 disapproving applications;

16 (h) Maintain an accurate registry of the names and ad-  
17 dresses of all persons certified or issued a license to practice  
18 under this article;

19 (i) Maintain accurate records on applicants and licensed or  
20 certified real estate appraisers;

21 (j) Issue to each licensed or certified real estate appraiser a  
22 pocket card with the appraiser's name and license or certifica-  
23 tion number. Pocket cards are the property of the state of West  
24 Virginia and, upon suspension or revocation of the license to  
25 practice pursuant to this article, will be returned immediately to  
26 the board;

27 (k) Deposit all fees collected by the board to the credit of  
28 the West Virginia appraiser licensing and certification board  
29 fund established in the office of the state treasurer. The board  
30 shall disburse moneys from the account to pay the cost of board  
31 operation. Disbursements from the account may not exceed the  
32 moneys credited to it;

33 (l) Keep records and make reports as required by article one  
34 of this chapter; and

35 (m) Perform any other functions and duties necessary to  
36 carry out the provisions of this article.

**§30-38-8. Board fund; disposition of funds.**

1 (a) The West Virginia appraiser licensing and certification  
2 board fund established in the office of the state treasurer is  
3 continued.

4 (b) The disposition of all funds received by the board shall  
5 be governed by the provisions of section ten, article one of this  
6 chapter.

**§30-38-9. Rulemaking.**

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

4 (1) Licensure and certification requirements, including  
5 requirements for applications, examinations, reciprocity,  
6 temporary permits, apprentice permits and reinstatement;

7 (2) Fees for licenses, renewals of licenses and other  
8 services provided by the board;

9 (3) Experience, education and continuing education  
10 requirements and approval of courses; and

11 (4) Any other purpose to carry out the requirements of this  
12 article.

13 (b) The rule governing appraiser qualifications must include  
14 requirements which meet or exceed the education, experience  
15 and examination requirements issued or endorsed by the  
16 appraisal qualifications board of the appraisal foundation.

17 (c) Any rules in effect as of the passage of this article will  
18 remain in effect until amended, modified, repealed or replaced,  
19 except that references to provisions of former enactments of  
20 this act are interpreted to mean provisions of this article.

**§30-38-10. Civil liability for board members; liability limitations  
of professionals reporting to board.**

1 (a) Members of the board will be immune from individual  
2 civil liability for actions taken in good faith and without malice,  
3 within the scope of their duties as board members.

4 (b) Any person licensed or certified by this board who  
5 reports or otherwise provides evidence of violations of this  
6 article or the board's rules by another person engaging in real  
7 estate appraisal activity to the board, is not liable for making  
8 the report if it is made without malice and in the reasonable  
9 belief that the report is warranted by the facts known to him or  
10 her at the time.

**§30-38-11. Applications for license or certification; renewals.**

1 (a) An individual who desires to engage in real estate  
2 appraisal activity in this state shall make application for a  
3 license, in writing, in a form as the board may prescribe. In

4 addition to any other information required, the applicant's  
5 social security number will be recorded on the application.

6 (b) To assist the board in determining whether grounds  
7 exist to deny the issuance of a license to an applicant, the board  
8 may require the fingerprinting of every applicant for an original  
9 license.

10 (c) The payment of the appropriate fee must accompany all  
11 applications for original certification and renewal of certifica-  
12 tion and all applications to take an examination.

13 (d) At the time of filing an application for original certifica-  
14 tion or for renewal of certification, each applicant shall sign a  
15 pledge to comply with the standards of professional appraisal  
16 practice and the ethical rules to be observed by an appraiser.  
17 Each applicant shall also certify that he or she understands the  
18 types of misconduct, as set forth in this article, for which  
19 disciplinary proceedings may be initiated.

20 (e) To obtain a renewal of license or certification under this  
21 article, the holder of a current license or certification shall make  
22 application and pay the prescribed fee to the board no earlier  
23 than one hundred twenty days nor later than thirty days prior to  
24 the expiration date of the current license or certification. Each  
25 application for renewal must be accompanied by evidence in  
26 the form prescribed by the board that the applicant has com-  
27 pleted the continuing education requirements for renewal  
28 specified in this article and the board's rules.

29 (f) If the board determines that an applicant for renewal has  
30 failed to meet the requirements for renewal of license or  
31 certification through mistake, misunderstanding, or circum-  
32 stances beyond the control of the applicant, the board may  
33 extend the term of the applicant's license or certification for a  
34 period not to exceed six months upon payment by the applicant



35 of a prescribed fee for the extension. If the applicant for  
36 renewal of license or certification satisfies the requirements for  
37 renewal during the extension period, the beginning date of his  
38 or her renewal license or certificate shall be the day following  
39 the expiration of the certificate previously held by the applicant.

40 (g) If a state licensed or certified real estate appraiser under  
41 this article fails to renew his or her license or certification prior  
42 to its expiration or within any period of extension granted by  
43 the board pursuant to this article, the applicant may obtain a  
44 renewal of his or her license or certification by satisfying all of  
45 the requirements for renewal and filing an application for  
46 renewal, accompanied by a late renewal fee, within two years  
47 of the date that his or her certification expired.

48 (h) The board may deny the issuance or renewal of a license  
49 or certification for any reason enumerated in this article or in  
50 the rules of the board, or for any reason for which it may refuse  
51 an initial license or certification.

**§30-38-12. Refusal to issue or renew license or certification;  
suspension or revocation; grounds for disciplinary  
action.**

1 (a) The following acts or omissions are grounds for  
2 disciplinary action, and the board may refuse to issue or renew  
3 a license or certification, or after issuance may suspend or  
4 revoke a license or certification or impose disciplinary sanc-  
5 tions for:

6 (1) Procuring or attempting to procure license or certifica-  
7 tion under this article by knowingly making a false statement,  
8 submitting false information or making a material misrepresen-  
9 tation in an application filed with the board, or procuring or  
10 attempting to procure a license or certification through fraud or  
11 misrepresentation;

12 (2) Paying money other than the fees provided for by this  
13 article to any member or employee of the board to procure a  
14 license or certification under this article;

15 (3) An act or omission in the practice of real estate apprais-  
16 ing which constitutes dishonesty, fraud or misrepresentation  
17 with the intent to substantially benefit the licensee or another  
18 person or with the intent to substantially injure another person;

19 (4) Entry of a final civil or criminal judgment against a  
20 licensee on grounds of fraud, misrepresentation or deceit in the  
21 making of an appraisal of real estate;

22 (5) Conviction, including a conviction based upon a plea of  
23 guilty or nolo contendere, of a crime which is substantially  
24 related to the qualifications, functions or duties of a person  
25 developing real estate appraisals and communicating real estate  
26 appraisals to others;

27 (6) Making a false or misleading statement in that portion  
28 of a written appraisal report that deals with professional  
29 qualifications or in any testimony concerning professional  
30 qualifications;

31 (7) Violation of any section of this article, or any rule of the  
32 board;

33 (8) Violation of the confidential nature of governmental  
34 records to which a licensee gained access through employment  
35 or engagement as an appraiser by a governmental agency;

36 (9) Acceptance of a fee that is or was contingent upon the  
37 appraiser reporting a predetermined analysis, opinion, or  
38 conclusion, or is or was contingent upon the analysis, opinion,  
39 conclusion or valuation reached, or upon the consequences  
40 resulting from the appraisal assignment;

41 (10) Failing to meet the minimum qualifications for state  
42 licensure or certification established by or pursuant to this  
43 article; or

44 (11) Failing or refusing without good cause to exercise  
45 reasonable diligence, or negligence or incompetence, in  
46 developing an appraisal, preparing an appraisal report, or  
47 communicating an appraisal.

48 (b) Every person licensed or certified by the board has a  
49 duty to report to the board in a timely manner any known or  
50 observed violation of this article or the board's rules by any  
51 other person licensed or certified by the board.

**§30-38-13. Disciplinary proceedings.**

1 (a) The board may, upon its own motion, and shall, upon  
2 the written complaint of any aggrieved person, cause an  
3 investigation to be made with respect to an alleged violation of  
4 this article or the rules of the board.

5 (b) The board may revoke, suspend or refuse to renew the  
6 license or certificate or otherwise discipline an appraiser, or  
7 deny an application, for any of the acts or omissions set forth in  
8 this article or in the rules of the board.

9 (c) If an investigation indicates that an appraiser licensed or  
10 certified by the board has violated a law or rule, the board shall  
11 serve a formal complaint upon the appraiser. The accused party  
12 is required to file an answer within twenty days of the date of  
13 service.

14 (d) In responding to a complaint, the accused party may  
15 admit the allegations of the complaint, deny the allegations of  
16 the complaint or otherwise plead. Failure to make a timely  
17 response shall be considered an admission of the allegations of  
18 the complaint.

19 (e) The board may make informal disposition of the matter,  
20 including entering into a consent agreement, or taking one or  
21 more of the disciplinary actions set forth in the board's rules.

22 (f) In a disciplinary proceeding based upon a civil judg-  
23 ment, the licensee shall be afforded an opportunity to present  
24 matters in mitigation and extenuation but may not collaterally  
25 attack the civil judgment.

**§30-38-14. Hearings; orders; entry of order without notice and  
hearing; judicial review; appeals to supreme court  
of appeals.**

1 (a) Subject to the provisions of subsection (c) of this  
2 section, the board shall provide notice and hearing to the  
3 accused party in advance of the entry of any order. The hearing  
4 and the administrative procedures are governed by the provi-  
5 sions of article five, chapter twenty-nine-a of this code and the  
6 board's rules, and will be held at a time and place set by the  
7 board, but may not be held less than thirty or more than ninety  
8 days after the notice is given. A hearing may be continued by  
9 the board on its own motion or for good cause shown. At any  
10 hearing a party may represent himself or herself, or be repre-  
11 sented by an attorney admitted to practice before any circuit  
12 court of this state.

13 (b) The board has the power and authority to issue subpoe-  
14 nas and subpoenas duces tecum, administer oaths and examine  
15 any person under oath in connection with any subject relating  
16 to duties imposed upon or powers vested in the board.

17 (c) If the board finds that extraordinary circumstances exist  
18 which require immediate action, it may without notice or  
19 hearing enter an order taking any action permitted by this  
20 article. Immediately upon the entry of the order, certified copies  
21 shall be served upon all persons affected, who upon demand are  
22 entitled to a hearing at the earliest practicable time.

23 (d) If, at the conclusion of the hearing, the board determines  
24 that an appraiser has violated any of the provisions of this  
25 article or the board's rules, it shall prepare a formal decision  
26 containing findings of fact, conclusions of law, and disciplinary  
27 actions to be taken.

28 (e) The board may elect to have an administrative law judge  
29 or hearing examiner conduct the hearing. If the board makes  
30 this election, the administrative law judge or hearing examiner  
31 shall present a decision containing recommended findings of  
32 fact, conclusions of law, and appropriate disciplinary actions to  
33 be taken. The board may accept, reject or modify the decision  
34 of the administrative law judge or hearing examiner.

35 (f) Any party adversely affected by a final order or decision  
36 made by the board after a hearing is entitled to judicial review  
37 as provided in article five, chapter twenty-nine-a of this code.

38 (g) Any party adversely affected by a final judgment of a  
39 circuit court following judicial review may seek review by  
40 appeal to the supreme court of appeals in the manner provided  
41 in article six, chapter twenty-nine-a of this code.

**§30-38-15. Penalties.**

1 (a) Any person engaging in real estate appraisal activity in  
2 this state who is not licensed under this article is guilty of a  
3 misdemeanor and, upon conviction, shall be fined not less than  
4 five hundred dollars nor more than one thousand dollars and  
5 shall be ineligible to obtain a license for a period of one year  
6 from the date of his or her conviction of such offense: *Provided,*  
7 That the board, at its discretion, may grant a license within a  
8 period of one year upon a finding of extenuating circumstances,  
9 and after an administrative hearing.

10 (b) Any person acting or purporting to act as a certified real  
11 estate appraiser who is not certified under this article is guilty

12 of a misdemeanor and, upon conviction, shall be fined not more  
13 than two thousand five hundred dollars or imprisoned in the  
14 county or regional jail for not more than one year, or both.

15 (c) If any person receives any money or the equivalent as a  
16 fee, commission, compensation or profit by or in consequence  
17 of a violation of any provision of this article, he or she shall, in  
18 addition to the penalties prescribed above, be subject to a  
19 penalty of not less than the sum of money so received nor more  
20 than three times the sum as may be determined by the court,  
21 which penalty may be recovered in a court of competent  
22 jurisdiction by any person aggrieved as a result of any such  
23 violation.

**§30-38-16. Collection of appraisal fees.**

1 No person engaged in the business of real estate appraising  
2 in this state or acting in the capacity of a real estate appraiser in  
3 this state may bring or maintain any action in any court of this  
4 state to collect compensation for the performance of real estate  
5 appraisal services for which a license is required by this article  
6 without alleging and proving that he or she was the holder of a  
7 valid real estate appraiser license in this state at all times during  
8 the performance of such services.

**§30-38-17. Standards of professional appraisal practice.**

1 Each real estate appraiser licensed or certified under this act  
2 shall comply with generally accepted standards of professional  
3 appraisal practice and generally accepted ethical rules to be  
4 observed by a real estate appraiser. Generally accepted stan-  
5 dards of professional appraisal practice are currently evidenced  
6 by the uniform standards of professional appraisal practice  
7 promulgated by the appraisal foundation. The board may, after  
8 a public hearing or public comment period held in accordance  
9 with provisions of article three, chapter twenty-nine-a of this  
10 code, adopt revised versions or make modifications of or

11 additions to the uniform standards of professional appraisal  
12 practice.

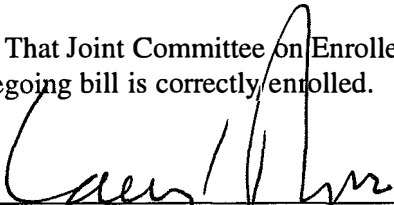
**§30-38-18. Attorney general opinions and duties.**

1 At the request of the board, the state attorney general shall  
2 render to the board an opinion with respect to all questions of  
3 law arising in connection with the administration of this article  
4 and shall act as attorney for the board in all actions and pro-  
5 ceedings brought by or against the board under, or pursuant to,  
6 any of the provisions of this article. All fees and expenses of the  
7 attorney general arising out of such duties shall be paid out of  
8 the special fund created under this article to pay the expenses of  
9 the administration of this article.

**§30-38-19. Continuation of board.**

1 The real estate appraiser licensing and certification board  
2 shall continue to exist until the first day of July, two thousand  
3 four, pursuant to the provisions of article ten, chapter four of  
4 this code, unless sooner terminated, continued or reestablished  
5 pursuant to the provision of that article.

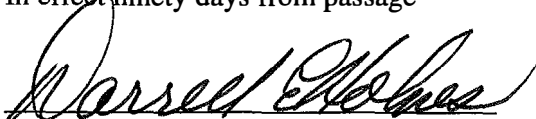
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

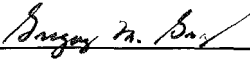
  
\_\_\_\_\_  
Chairman Senate Committee

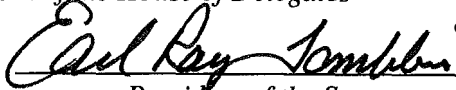
  
\_\_\_\_\_  
Chairman House Committee

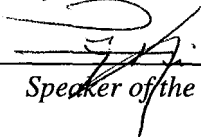
Originating in the House.

In effect ninety days from passage

  
\_\_\_\_\_  
Clerk of the Senate

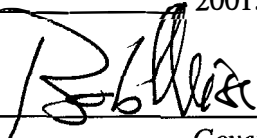
  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 14th  
day of April 2001.

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

  
\_\_\_\_\_  
Governor

2001 APR 14 P 5:48

FILED



PRESENTED TO THE

GOVERNOR

Date 4/9/01

Time 2:30 pm