

SB 258

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001



ENROLLED

Committee Substitute for

SENATE BILL NO. 258

(By Senators Kessler, Snyder & Boley)



PASSED March 26, 2001

In Effect July 1, 2001 **Passage**

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OFFICE WEST VIRGINIA
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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 258

(SENATORS BOWMAN, KESSLER, SNYDER

AND BOLEY, *original sponsors*)

[Passed March 26, 2001; to take effect July 1, 2001.]

AN ACT to amend and reenact article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article four-b, all relating to professions and occupations; regulating the practice of dentistry and dental laboratory services generally; establishing licensure and permit requirements for dentists and dental hygienists; and providing a civil cause of action and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by

adding thereto a new article, designated article four-b, all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-1. License required to practice.

1 In order to protect public health and safety, any person
2 practicing or offering to practice as a dentist or dental
3 hygienist must submit evidence that he or she is qualified
4 to practice and is licensed as provided in this article.

§30-4-2. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Dental Practice Act".

§30-4-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (1) "Approved dental hygiene program" means a pro-
5 gram that is approved by the board and is accredited or its
6 educational standards are deemed by the board to be
7 substantially equivalent to those required by the commis-
8 sion on dental accreditation of the American dental
9 association.

10 (2) "Approved dental school, college or dental depart-
11 ment of a university" means a dental school, college or
12 dental department of a university that is approved by the
13 board and is accredited or its educational standards are
14 deemed by the board to be substantially equivalent to
15 those required by the commission on dental accreditation
16 of the American dental association.

17 (3) "Authorize" means that the dentist is giving permis-
18 sion or approval to dental auxiliary personnel to perform
19 delegated procedures in accordance with the dentist's
20 diagnosis and treatment plan.

21 (4) "Board" means the West Virginia board of dental
22 examiners;

23 (5) "Certificate of qualification" means a certificate
24 authorizing a dentist to practice a specialty.

25 (6) "Delegated procedures" means those procedures
26 specified by law or by rule of the board and performed by
27 dental auxiliary personnel under the direct supervision of
28 a licensed dentist.

29 (7) "Dental assistant" means a person qualified by
30 education, training and experience who aids or assists a
31 dentist in the delivery of patient care in accordance with
32 delegated procedures or who may perform nonclinical
33 duties in the dental office: *Provided*, That no occupational
34 title other than dental assistant shall be used to describe
35 this auxiliary.

36 (8) "Dental auxiliary personnel" or "auxiliary" means
37 dental hygienists and dental assistants who assist the
38 dentist in the provision of oral health care services to
39 patients.

40 (9) "Dental hygienist" means a person licensed by the
41 board who provides preventative oral health care services
42 to patients in the dental office: *Provided*, That no occupa-
43 tional title other than dental hygienist may be used to
44 describe this auxiliary.

45 (10) "Dental laboratory" means a dental laboratory as
46 defined in section one, article four-b of this chapter.

47 (11) "Dental office" means the place where the licensed
48 dentist and dental auxiliary personnel are practicing
49 dentistry.

50 (12) "Dental prosthesis" means an artificial appliance
51 fabricated to replace one or more teeth or other oral or
52 peri-oral structure in order to restore or alter function or
53 aesthetics.

54 (13) "Dentist" means an individual licensed by the board
55 to practice dentistry.

56 (14) "Dentistry" means the evaluation, diagnosis,
57 prevention and treatment of diseases, disorders and
58 conditions of the oral cavity, maxillofacial area and the
59 adjacent and associated structures provided by a dentist.

60 (15) "Direct supervision" means supervision of dental
61 auxiliary personnel provided by a licensed dentist who is
62 physically present in the dental office.

63 (16) "Good moral character" means a lack of history of
64 dishonesty.

65 (17) "License" means a license to practice dentistry or
66 dental hygiene.

67 (18) "Licensee" means a person holding a license.

68 (19) "Specialty" means the practice of a certain branch
69 of dentistry.

§30-4-4. Board of dental examiners.

1 (a) The "West Virginia Board of Dental Examiners" is
2 hereby continued. The members of the board in office on
3 the date this section takes effect shall, unless sooner
4 removed, continue to serve until their respective terms
5 expire and until their successors have been appointed and
6 qualified.

7 (b)(1) Commencing with the board terms beginning the
8 first day of July, two thousand one, the board shall consist
9 of nine members appointed for terms of five years by the
10 governor with the advice and consent of the Senate. Six
11 members must be licensed dentists, one member must be a
12 licensed dental hygienist, one member must be a nationally
13 certified dental assistant and one member must be a
14 citizen member who is not licensed under the provisions of
15 this article and who is not a dental assistant or a person

16 who performs any services related to the practice of
17 dentistry.

18 (2) Each licensed or certified member of the board, at
19 the time of his or her appointment, must have held a
20 license in this state or have been nationally certified for a
21 period of not less than five years immediately preceding
22 the appointment and each member must be a resident of
23 this state during the appointment term.

24 (3) No person connected with a commercial entity that
25 may derive financial gain from the profession of dentistry
26 and no person connected with a dental college, school or
27 dental department of a university is eligible for appoint-
28 ment to the board.

29 (4) Each appointment of a licensed dentist, whether for
30 a full term or to fill a vacancy, shall be made by the
31 governor from among three nominees selected by the West
32 Virginia dental association; each appointment of a licensed
33 dental hygienist, whether for a full term or to fill a va-
34 cancy, shall be made by the governor from among three
35 nominees selected by the West Virginia dental hygienists'
36 association; and each appointment of a dental assistant,
37 whether for a full term or to fill a vacancy, shall be made
38 by the governor from among three nominees selected by
39 the West Virginia dental assistants' association. If the
40 appointment is for a full term, the nominations must be
41 submitted to the governor not later than eight months
42 prior to the date on which the appointment becomes
43 effective. If the appointment is to fill a vacancy, the
44 nominations must be submitted to the governor within
45 thirty days after a request for the nominations have been
46 made by the governor to the president of the West Virginia
47 dental association, president of the West Virginia dental
48 hygienists' association or president of the West Virginia
49 dental assistants' association. If the association fails to
50 submit to the governor nominations for an appointment in
51 accordance with the requirements of this section, the
52 governor may make the appointment without the nomina-
53 tions.

54 (c) No member may serve more than two consecutive full
55 terms and any member having served two full terms may
56 not be appointed for one year after completion of his or
57 her second full term. A member shall continue to serve
58 until his or her successor has been appointed and quali-
59 fied.

60 (d) The governor may remove any member from the
61 board for neglect of duty, incompetency or official miscon-
62 duct.

63 (e) Any member of the board immediately and automati-
64 cally forfeits his or her membership if he or she has his or
65 her license to practice dentistry or dental hygiene sus-
66 pended or revoked by the board, is convicted of a felony
67 under the laws of any state or the United States or be-
68 comes a nonresident of this state.

69 (f) Each member of the board shall receive compensation
70 and expense reimbursement in accordance with section
71 eleven, article one of this chapter.

§30-4-5. Powers of the board.

1 The board has all the powers set forth in article one of
2 this chapter and in addition may:

3 (1) Sue and be sued in its official name as an agency of
4 this state;

5 (2) Hire, fix the compensation of and discharge the
6 employees necessary to enforce the provisions of this
7 article;

8 (3) Examine and determine the qualifications of any
9 applicant for a license;

10 (4) Examine and determine the qualifications of any
11 applicant for a certificate of qualification;

12 (5) Issue, renew, deny, suspend, revoke or reinstate
13 licenses and discipline licensees;

14 (6) Issue, renew, deny, suspend, revoke or reinstate
15 certificates of qualification and discipline holders of a
16 certificate of qualification;

17 (7) Investigate alleged violations of the provisions of this
18 article and article four-b of this chapter, reasonable
19 regulations promulgated hereunder and orders and final
20 decisions of the board;

21 (8) Conduct hearings upon charges calling for discipline
22 of a licensee or revocation or suspension of a license;

23 (9) Propose rules in accordance with the provisions of
24 article three, chapter twenty-nine-a of this code to imple-
25 ment the provisions of this article; and

26 (10) Take all other actions necessary and proper to
27 effectuate the purposes of this article.

§30-4-6. Rule-making authority.

1 (a) The board shall propose rules for legislative approval
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to implement the provisions of
4 this article including, but not limited to, the following:

5 (1) The examinations administered under this article;

6 (2) Issuing and renewing a license;

7 (3) Issuing temporary permits, teaching permits and
8 dental intern or resident permits;

9 (4) Specialities that a dentist may practice;

10 (5) Issuing and renewing a certificate of qualification;

11 (6) Denying, suspending, revoking, reinstating or
12 limiting the practice of a licensee or certificate of qualifi-
13 cation;

14 (7) Continuing education requirements for licensees;

15 (8) Delegated procedures to be performed by a dental
16 hygienist;

17 (9) Delegated procedures to be performed by a dental
18 assistant;

19 (10) Use of firm or trade names;

20 (11) Dental corporations; and

21 (12) Professional conduct requirements.

22 (b) All rules in effect on the effective date of this article
23 shall remain in effect until they are withdrawn, revoked or
24 amended.

§30-4-7. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative
2 fines, received by the board shall be deposited in a sepa-
3 rate special revenue fund in the state treasury and be used
4 for the administration of this article. Except as may be
5 provided in section eleven, article one of this chapter, the
6 board shall retain the amounts in the special revenue
7 account from year to year. No compensation or expense
8 incurred under this article is a charge against the general
9 revenue fund.

10 (b) Any amounts received as administrative fines
11 imposed pursuant to this article shall be deposited into the
12 general revenue fund of the state treasury.

§30-4-8. License requirements; dentists.

1 (a) The board shall issue a license to practice dentistry
2 to an applicant who meets the following requirements:

3 (1) Is at least eighteen years of age;

4 (2) Is of good moral character;

5 (3) Is a graduate of and has a diploma from an approved
6 dental college, school or dental department of a university;

7 (4) Has passed an examination that tests the applicant's
8 knowledge of subjects specified by the board by rule:
9 *Provided*, That the board may recognize a certificate
10 granted by the national board of dental examiners in lieu
11 of the examination or part of the examination that the
12 board requires;

13 (5) Has not been found guilty of cheating, deception or
14 fraud in the examination or any part of the application;
15 and

16 (6) Has paid the application fee specified by rule.

17 (b) A license to practice dentistry issued by the board
18 prior to the first day of February, two thousand one, shall
19 for all purposes be considered a license issued under this
20 section: *Provided*, That a person holding a license issued
21 prior to the first day of February, two thousand one, must
22 renew the license pursuant to section twelve of this article.

**§30-4-9. Dentist from another state; license to practice dentistry
in this state.**

1 The board may issue a license to practice dentistry to an
2 applicant of good moral character who holds a valid
3 license to practice dentistry from another state if the
4 applicant demonstrates that:

5 (1) He or she holds a license to practice dentistry in
6 another state which was granted after completion of
7 educational requirements substantially equivalent to those
8 required in this state;

9 (2) He or she holds a license to practice dentistry in
10 another state which was granted after passing, in that or
11 another state, an examination that is substantially equiva-
12 lent to the examination required in this state;

13 (3) He or she is not currently being investigated by a
14 disciplinary authority of another state, does not have
15 charges pending against his or her license to practice
16 dentistry and has never had a license to practice dentistry
17 revoked;

18 (4) He or she has not previously failed an examination
19 for licensure as a dentist in this state; and

20 (5) He or she has paid the application fee specified by
21 rule.

§30-4-10. License requirements; dental hygienist.

1 (a) The board shall issue a dental hygienist license to an
2 applicant who meets the following requirements:

3 (1) Is at least eighteen years of age;

4 (2) Is of good moral character;

5 (3) Is a graduate with a degree in dental hygiene from an
6 approved dental hygiene program of a college, school or
7 dental department of a university;

8 (4) Has passed the national board dental hygiene
9 examination, a regional or state clinical examination and
10 a state law examination that tests the applicant's knowl-
11 edge of subjects specified by the board by rule;

12 (5) Has not been found guilty of cheating, deception or
13 fraud in the examination or any part of the application;
14 and

15 (6) Has paid the application fee specified by rule.

16 (b) A dental hygienist license issued by the board prior
17 to the first day of February, two thousand one, shall for all
18 purposes be considered a dental hygienist license issued
19 under this section: *Provided*, That a person holding a
20 dental hygienist license issued prior to the first day of
21 February, two thousand one, must renew the license
22 pursuant to section twelve of this article.

§30-4-11. Dental hygienist from another state; license to practice dental hygiene in this state.

1 The board may issue a dental hygiene license to an
2 applicant who holds a valid dental hygiene license from
3 another state if the applicant demonstrates that:

4 (1) He or she holds a dental hygiene license in another
5 state which was granted after completion of educational
6 requirements substantially equivalent to those required in
7 this state;

8 (2) He or she holds a dental hygiene license in another
9 state which was granted after passing, in that or another
10 state, an examination that is substantially equivalent to
11 the examination required in this state;

12 (3) He or she is not currently being investigated by a
13 disciplinary authority of another state, does not have
14 charges pending against his or her dental hygiene license
15 and has never had a dental hygiene license revoked;

16 (4) He or she has not previously failed an examination
17 for licensure as a dental hygienist in this state; and

18 (5) He or she has paid the application fee specified by
19 rule.

§30-4-12. License renewal; conditions of renewal.

1 (a) The board shall renew a license to practice dentistry
2 or dental hygiene for a one-year period after its issue in
3 accordance with procedures specified by rule.

4 (b) The board shall charge a fee for each renewal of a
5 license to practice dentistry or dental hygiene in amounts
6 specified by rule.

7 (c) The board shall require as a condition for the renewal
8 of a license to practice dentistry or dental hygiene that
9 each dentist and dental hygienist participate in continuing
10 professional education in accordance with the require-
11 ments specified by rule.

**§30-4-13. Temporary permits; dental intern or resident permit;
teaching permit; dentist.**

1 (a) The board shall issue a temporary permit to practice
2 dentistry to an applicant who:

3 (1) Has graduated from an approved dental college,
4 school or dental department of a university with a degree
5 in dentistry;

6 (2) Has been offered employment under the direct
7 supervision of a licensed dentist;

8 (3) Has not taken the examination required to be
9 granted a license to practice dentistry;

10 (4) Has paid the application fee specified by rule; and

11 (5) Meets the other qualifications specified by rule by
12 the board.

13 (b) A temporary permit to practice dentistry may not be
14 renewed and expires on the earlier of:

15 (1) The date the dentist ceases to be under the direct
16 supervision of a licensed dentist; or

17 (2) Sixty days after the date that the first examination
18 required by rule for a license to practice dentistry is
19 administered.

20 (c) The board shall issue a dental intern or dental
21 resident permit to an applicant who meets the qualifica-
22 tions set forth in subdivisions one, three, four and five of
23 subsection (a) of this section and who has been accepted as
24 a dental intern or dental resident by a licensed hospital or
25 dental school in this state which maintains an established
26 dental department under the supervision of a licensed
27 dentist.

28 (d) The dental intern or dental resident permit may not
29 be renewed and expires on the earlier of:

30 (1) The date the permit holder ceases to be a dental
31 intern or dental resident; or

32 (2) One year after the date of issue.

33 (e) The board shall issue a teaching permit to an appli-
34 cant who meets the qualifications set forth in subdivisions
35 one, three, four and five, subsection (a) of this section and
36 who has been certified by the dean of a dental school
37 located in this state to be a member of the teaching staff of
38 the dental school.

39 (f) A teaching permit is valid for one year from the date
40 of issue and may be renewed.

41 (g) While in effect, a temporary permit to practice
42 dentistry, a permit to practice as a dental intern or dental
43 resident and a teaching permit are subject to the restric-
44 tions and requirements imposed by this article. In addi-
45 tion, the holder of a permit to practice as a dental intern or
46 dental resident may not receive any fee for service other
47 than a salary paid by the hospital or dental school and the
48 holder of a teaching permit may only practice dentistry
49 within the facilities of the dental school.

§30-4-14. Temporary permits; teaching permit; dental hygienist.

1 (a) The board may issue a temporary permit to practice
2 dental hygiene to an applicant who:

3 (1) Has graduated from an approved dental hygiene
4 program of a college, school or dental department of a
5 university with a degree in dental hygiene;

6 (2) Has been offered employment as a dental hygienist;

7 (3) Has not taken the examination required to be
8 granted a dental hygiene license;

9 (4) Has paid the application fee specified by rule; and

10 (5) Meets the other qualifications specified by rule by
11 the board.

12 (b) A temporary permit to practice dental hygiene shall
13 not be renewed and expires on the earlier of:

14 (1) The date the dental hygienist ceases to be employed;
15 or

16 (2) Sixty days after the date that the first dental hygiene
17 examination required by rule for a dental hygiene license
18 is administered.

19 (c) The board may issue a teaching permit to an appli-
20 cant who meets the qualifications set forth in subdivisions
21 one, three, four and five, subsection (a) of this section and
22 who has been certified by the dean of a dental school
23 located in this state to be a member of the teaching staff of
24 the dental school.

25 (d) A teaching permit is valid for one year from the date
26 of issue and may be renewed.

27 (e) While in effect, a temporary permit to practice dental
28 hygiene and a teaching permit are subject to the restric-
29 tions and requirements imposed by this article. In addi-
30 tion, the holder of a teaching permit may only practice
31 dental hygiene within the facilities of the dental school.

§30-4-15. Scope of practice; dentist.

1 The practice of dentistry includes the following:

2 (1) Coordinating dental services to meet the oral health
3 needs of the patient;

4 (2) Examining, evaluating and diagnosing diseases,
5 disorders and conditions of the oral cavity, maxillofacial
6 area and adjacent and associated structures;

7 (3) Treating diseases, disorders and conditions of the
8 oral cavity, maxillofacial area and the adjacent and
9 associated structures;

10 (4) Providing services to prevent diseases, disorders and
11 conditions of the oral cavity, maxillofacial area and the
12 adjacent and associated structures;

13 (5) Fabricating, repairing or altering a dental prosthesis;

14 (6) Administering general anesthesia and parenteral
15 conscious sedation in accordance with the provisions of
16 article four-a of this chapter;

17 (7) Prescribing drugs necessary for the practice of
18 dentistry;

19 (8) Executing and signing a death certificate when it is
20 required in the practice of dentistry;

21 (9) Employing and supervising dental auxiliary person-
22 nel;

23 (10) Authorizing delegated procedures to be performed
24 by dental auxiliary personnel; and

25 (11) Performing any other work included in the curricu-
26 lum of an approved dental school, college or dental
27 department of a university.

§30-4-16. Specialties; dentist.

1 (a) The board shall by rule define specialties in which a
2 dentist may practice.

3 (b) A dentist may not represent to the public that he or
4 she is a specialist in any branch of dentistry or limit his or
5 her practice to any branch of dentistry unless first issued
6 a certificate of qualification in that branch of dentistry by
7 the board.

8 (c) The board shall by rule establish the qualifications
9 and examination requirements for a dentist who desires to
10 practice a specialty.

11 (1) The board may appoint not more than three special-
12 ists to examine the credentials of applicants for a certifi-
13 cate of qualification and each appointed specialist shall be
14 paid a fee set by rule by the board.

15 (2) The board may appoint not more than three special-
16 ists to administer and grade the examination given to
17 applicants for a certificate of qualification and each

18 appointed specialist shall be paid a fee set by rule by the
19 board.

20 (d) The board shall by rule establish the application
21 procedure and fee for issuance of a certificate of qualifica-
22 tion.

§30-4-17. Scope of practice; dental hygienist.

1 The practice of dental hygiene includes the following:

2 (1) Performing a complete prophylaxis, including the
3 removal of any deposit, accretion or stain from the surface
4 of a tooth or a restoration;

5 (2) Applying a medicinal agent to a tooth for a prophylactic
6 purpose;

7 (3) Taking a dental X-ray;

8 (4) Instructing a patient on proper oral hygiene practice;

9 (5) Performing all delegated procedure of a dental
10 hygienist specified by rule by the board; and

11 (6) Performing all delegated procedures of a dental
12 assistant specified by rule by the board.

§30-4-18. Scope of practice; dental assistant.

1 A dental assistant may perform only those delegated
2 procedures specified by rule by the board.

§30-4-19. Notification; changing dental office; adding dental office.

1 (a) Every licensed dentist within thirty days of changing
2 his or her place of practice or establishing a practice at an
3 additional dental office shall furnish the board with the
4 address of the new or additional dental office.

5 (b) Every licensed dental hygienist within thirty days of
6 changing his or her place of employment or establishing
7 employment at additional dental office shall furnish the

8 board with the name and address of the new or additional
9 employers.

**§30-4-20. Refusal to issue or renew, suspension or revocation of
license; disciplinary action.**

1 (a) The board may refuse to issue, refuse to renew,
2 suspend, revoke or limit any license or practice privilege
3 of a licensee and may take disciplinary action against a
4 licensee who, after hearing, has been adjudged by the
5 board as unqualified for any of the following reasons:

6 (1) The presentation to the board of any diploma, license
7 or certificate illegally or fraudulently obtained, or one
8 obtained from an institution which is not reputable, or one
9 obtained from an unrecognized or irregular institution or
10 state board;

11 (2) Suspension or revocation of a license issued by
12 another state or territory on grounds which would be the
13 basis of discipline in this state;

14 (3) Incompetent, negligent or willful misconduct in the
15 practice of dentistry or dental hygiene, which shall include
16 the departure from, or the failure to conform to, the
17 minimal standards of acceptable and prevailing dental or
18 dental hygiene practice in their area of expertise as shall
19 be determined by the board. The board need not establish
20 actual injury to the patient in order to adjudge a licensee
21 guilty of this conduct;

22 (4) Engaging in conduct that indicates a lack of knowl-
23 edge of, an inability to apply or the negligent application
24 of principles or skills of dentistry or dental hygiene;

25 (5) Being guilty of gross ignorance or gross inefficiency
26 in his or her profession;

27 (6) Being convicted of a felony; and a certified copy of
28 the record of the court of conviction shall be sufficient
29 proof of conviction;

30 (7) Announcing or otherwise holding himself or herself
31 out to the public as a specialist or as being specially
32 qualified in any particular branch of dentistry or as giving
33 special attention to any branch of dentistry or as limiting
34 his or her practice to any branch of dentistry without first
35 complying with the requirements established by the board
36 for the specialty and having been issued a certificate of
37 qualification in the specialty by the board; or

38 (8) Being guilty of unprofessional conduct as contained
39 in the American dental association principles of ethics and
40 code of professional conduct. The following acts or any of
41 them are conclusively presumed to be unprofessional
42 conduct:

43 (A) Being guilty of any fraud or deception;

44 (B) Committing a criminal operation or being convicted
45 of a crime involving moral turpitude;

46 (C) Abusing alcohol or drugs;

47 (D) Violating any professional confidence or disclosing
48 any professional secret;

49 (E) Being grossly immoral;

50 (F) Employing what are known as "cappers" or "steer-
51 ers" to obtain business;

52 (G) Obtaining any fee by fraud or misrepresentation;

53 (H) Employing directly or indirectly, or directing or
54 permitting any suspended or unlicensed person so em-
55 ployed, to perform operations of any kind or to treat
56 lesions of the human teeth or jaws or correct malimposed
57 formations thereof;

58 (I) Practicing, or offering, or undertaking to practice
59 dentistry under any firm name or trade name not approved
60 by the board;

61 (J) Having a professional connection or association with,
62 or lending his or her name to another, for the illegal
63 practice of dentistry, or professional connection or associ-
64 ation with any person, firm or corporation holding himself,
65 themselves or itself out in any manner contrary to this
66 article;

67 (K) Making use of any advertising relating to the use of
68 any drug or medicine of unknown formula;

69 (L) Advertising to practice dentistry or perform any
70 operation thereunder without causing pain;

71 (M) Advertising professional superiority or the perfor-
72 mance of professional services in a superior manner;

73 (N) Advertising to guarantee any dental service;

74 (O) Advertising in any manner that is false or misleading
75 in any material respect;

76 (P) Soliciting subscriptions from individuals within or
77 without the state for, or advertising or offering to individ-
78 uals within or without the state, a course or instruction or
79 course materials in any phase, part or branch of dentistry
80 or dental hygiene in any journal, newspaper, magazine or
81 dental publication, or by means of radio, television or
82 United States mail, or in or by any other means of contact-
83 ing individuals: *Provided*, That the provisions of this
84 paragraph may not be construed so as to prohibit: (i) An
85 individual dentist or dental hygienist from presenting
86 articles pertaining to procedures or technique to state or
87 national journals or accepted dental publications; or (ii)
88 educational institutions approved by the board from
89 offering courses or instruction or course materials to
90 individual dentists and dental hygienists from within or
91 without the state; or

92 (Q) Engaging in any action or conduct which would have
93 warranted the denial of the license.

94 (b) The term advertising, as used in this section, shall be
95 construed to include any type of public media.

96 (c) Disciplinary action includes, but is not limited to, a
97 reprimand, censure, probation, administrative fine not to
98 exceed one thousand dollars per day per violation and
99 mandatory attendance at continuing professional educa-
100 tion seminars.

101 (d) This entire section is passed in the interest of the
102 public health, safety and welfare and its provisions must
103 be liberally construed to carry out its object and purpose.

§30-4-21. Complaints; investigations.

1 (a) Upon receipt of a written complaint filed against any
2 dentist or dental hygienist, the board shall provide a copy
3 of the complaint to the dentist or dental hygienist.

4 (b) The board may investigate the complaint. If the
5 board finds upon investigation that probable cause exists
6 that the dentist or dental hygienist has violated any
7 provision of this article or the rules, the board shall serve
8 the dentist or dental hygienist with a written statement of
9 charges and a notice specifying the date, time and place of
10 hearing. The hearing shall be held in accordance with
11 section twenty-two of this article.

§30-4-22. Hearing and judicial review.

1 (a) A hearing on a statement of charges shall be held in
2 accordance with the provisions for hearing set forth in
3 section eight, article one of this chapter and procedures
4 specified by rule by the board by rule.

5 (b) Any dentist or dental hygienist adversely affected by
6 any decision of the board entered after a hearing may
7 obtain judicial review of the decision in accordance with
8 section four, article five, chapter twenty-nine-a of this
9 code and may appeal any ruling resulting from judicial
10 review in accordance with article five, chapter twenty-
11 nine-a of this code.

§30-4-23. Reinstatement.

1 Any dentist or dental hygienist against whom disciplin-
2 ary action has been taken under the provisions of this
3 article shall be afforded an opportunity to demonstrate the
4 qualifications to resume practice. The application for
5 reinstatement shall be in writing and subject to the
6 procedures specified by the board by rule.

§30-4-24. Unlawful acts.

1 It is unlawful for any person not licensed under the
2 provisions of this article to practice dentistry or dental
3 hygiene in this state.

§30-4-25. Injunctions.

1 When, as a result of an investigation under section
2 twenty-one of this article or otherwise, the board or any
3 other interested person believes that any person has
4 engaged, is engaging or is about to engage in the practice
5 of dentistry or dental hygiene without a license, the board
6 or any other interested person may make application to
7 any court of competent jurisdiction for an order enjoining
8 the acts or practices and upon a showing that the person
9 has engaged or is about to engage in any act or practice, an
10 injunction, restraining order or another appropriate order
11 may be granted by the court without bond.

§30-4-26. Criminal proceedings; penalties.

1 (a) When, by reason of an investigation under section
2 twenty-one of this article or otherwise, the board has
3 reason to believe that any person has knowingly violated
4 section twenty-four of this article, the board may bring its
5 information to the attention of the attorney general or
6 other appropriate law-enforcement officer who may cause
7 appropriate criminal proceedings to be brought.

8 (b) Any person who knowingly violates any provision of
9 section twenty-four of this article is guilty of a misde-
10 meanor and, upon conviction thereof, shall be fined not

11 more than two thousand five hundred dollars or confined
12 in the county or regional jail not more than one year, or
13 both fined and imprisoned.

§30-4-27. Single act evidence of practice.

1 In any action brought under section twenty-five of this
2 article or any proceeding initiated under section twenty-
3 six of this article, evidence of the commission of a single
4 act prohibited by this article is sufficient to justify a
5 penalty, injunction, restraining order or conviction
6 without evidence of a general course of conduct.

§30-4-28. Dental corporations.

1 (a) All dental corporations created prior to the first day
2 of July, two thousand one, are hereby continued.

3 (b) On or after the first day of July, two thousand one,
4 one or more dentists may organize and become a share-
5 holder or shareholders of a dental corporation domiciled
6 within this state under the terms and conditions and
7 subject to the limitations and restrictions specified by rule.

8 (c) No corporation may practice dentistry, or any of its
9 branches, or hold itself out as being capable of doing so
10 without a certificate of authorization from the board.

11 (d) When the secretary of state receives a certificate of
12 authorization to act as a dental corporation from the
13 board, he or she shall attach the authorization to the
14 corporation application and, upon compliance with the
15 applicable provisions of chapter thirty-one of this code,
16 the secretary of state shall issue to the incorporators a
17 certificate of incorporation for the dental corporation.

18 (e) A corporation holding a certificate of authorization
19 must register annually, on or before the thirtieth day of
20 June, on a form prescribed by the board and pay an annual
21 registration fee in an amount specified by rule.

22 (f) A dental corporation may practice dentistry only
23 through an individual dentist or dentists duly licensed to
24 practice dentistry in this state, but the dentist or dentists
25 may be employees rather than shareholders of the corpora-
26 tion.

27 (g) A dental corporation holding a certificate of authori-
28 zation shall cease to engage in the practice of dentistry
29 upon being notified by the board that any of its sharehold-
30 ers is no longer a duly licensed dentist or when any shares
31 of the corporation have been sold or disposed of to a
32 person who is not a duly licensed dentist: *Provided*, That
33 the personal representative of a deceased shareholder has
34 a period, not to exceed twelve months from the date of the
35 shareholder's death, to dispose of the shares; but nothing
36 contained herein may be construed as affecting the
37 existence of the corporation or its right to continue to
38 operate for all lawful purposes other than the practice of
39 dentistry.

§30-4-29. Inapplicability of article.

1 The provisions of this article do not apply to:

2 (1) A duly licensed physician or surgeon in the practice
3 of his or her profession when rendering dental relief in
4 emergency cases, unless he or she undertakes to reproduce
5 or reproduces lost parts of the human teeth or to restore or
6 replace lost or missing teeth in the human mouth;

7 (2) A dental laboratory in the performance of dental
8 laboratory services as that term is defined in section one,
9 article four-b of this chapter while the dental laboratory,
10 in the performance of the work, conforms in all respects to
11 the requirements of article four-b and further does not
12 apply to persons performing dental laboratory services
13 under the direct supervision of a licensed dentist or under
14 the direct supervision of a person authorized under this
15 article to perform any of the acts in this article defined to
16 constitute the practice of dentistry while the work is

17 performed in connection with, and as a part of, the dental
18 practice of the licensed dentist or other authorized person
19 and for his or her dental patients;

20 (3) Students enrolled in and regularly attending any
21 dental college recognized by the state board of dental
22 examiners, provided their acts are done in the dental
23 college and under the direct and personal supervision of
24 their instructor;

25 (4) Licensed or registered dentists of another state
26 temporarily operating a clinic under the auspices of a duly
27 organized and reputable dental college or reputable dental
28 society, or to one lecturing before a reputable society
29 composed exclusively of dentists; or

30 (5) The practice of dentistry by dentists whose practice
31 is confined exclusively to the service of the United States
32 army, the United States navy, the United States public
33 health service, the United States veteran's bureau or any
34 other authorized United States government agency or
35 bureau.

§30-4-30. Termination date.

1 The board shall terminate on the first day of July, two
2 thousand three, pursuant to the provisions of article ten,
3 chapter four of this code.

ARTICLE 4B. DENTAL LABORATORY SERVICES.

§30-4B-1. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise.

4 (1) "Board" means the West Virginia board of dental
5 examiners;

6 (2) "Dental laboratory" means a business performing
7 dental laboratory services: *Provided*, That there is ex-

8 cluded from the definition dentists and other dental
9 practitioners performing dental laboratory services and
10 persons performing dental laboratory services under the
11 direct supervision of a dentist or other dental practitioner
12 in cases where dental laboratory services are performed in
13 connection with, and as a part of, the dental practice of the
14 dentist or other dental practitioner and for his or her
15 dental patients;

16 (3) "Dental prosthesis" means an artificial appliance
17 fabricated to replace one or more teeth or other oral or
18 peri-oral structure in order to restore or alter function and
19 aesthetics;

20 (4) "Dental laboratory service" means the fabricating,
21 repairing or altering of any dental prosthesis;

22 (5) "Dental laboratory technician" means a person
23 qualified by education, training and experience who has
24 completed a dental laboratory technology education
25 program and who fabricates, repairs or alters a dental
26 prosthesis in accordance with a dentist's work authoriza-
27 tion;

28 (6) "Dentist" means a dentist licensed pursuant to the
29 provisions of article four of this chapter;

30 (7) "Other dental practitioner" means those persons
31 excluded from the definition of the practice of dentistry
32 under the provisions of subsections three, four and five,
33 section twenty-nine, article four of this chapter and also
34 those persons who hold temporary permits to practice
35 dentistry or teaching permits which have been issued to
36 them under the provisions of section fourteen, article four
37 of this chapter; and

38 (8) "Work authorization" means a written order for
39 dental laboratory services which has been issued by a
40 licensed dentist or other dental practitioner.

§30-4B-2. Work authorization required; contents; retention.

1 (a) No dental laboratory technician may perform any
2 dental laboratory service without the issuance of a work
3 authorization by a dentist or other dental practitioner.

4 (b) Each work authorization must contain the following
5 information: (1) The name and address of the dental
6 laboratory to which it is directed; (2) the case identifica-
7 tion; (3) a specification of the materials to be used; (4) a
8 description of the work to be done and, if necessary,
9 diagrams thereof; (5) the date of issue; and (6) the signa-
10 ture and address of the dentist or other dental practitioner
11 issuing the work authorization. A separate work authori-
12 zation must be issued for each patient of the dentist or
13 other dental practitioner for whom a dental laboratory
14 service is to be performed.

15 (c) Every work authorization must be made in duplicate
16 with the original being delivered to the dental laboratory
17 to which it is directed and the copy being retained in the
18 office of the issuing dentist or other dental practitioner. A
19 work authorization must be saved for a period of two years
20 from its date of issue.

§30-4B-3. Denture identification.

1 Every dental laboratory and every dentist who engages
2 in dental laboratory services and who fabricates any full
3 upper or full lower set of prosthetic dentures must affix
4 upon the dentures, in a nonremovable manner, the name of
5 the patient for whom the dentures are made and the
6 initials of the dentist's state of practice and license identi-
7 fication number.

§30-4B-4. Review of dental laboratory services.

1 The board may review the dental laboratory services of
2 a dental laboratory on a random and general basis without
3 any requirement of a formal complaint or suspicion of
4 impropriety.

§30-4B-5. Unlawful acts.

1 (a) It is unlawful for any dental laboratory either
2 directly or indirectly: (1) To advertise that it is engaged in
3 the business of performing dental laboratory services; (2)
4 to advertise it performs dental laboratory services for
5 members of the public; (3) to advertise a price for the
6 performance of dental laboratory services; or (4) to
7 advertise techniques used or materials employed by it in
8 the performance of dental laboratory services: *Provided*,
9 That this subsection does not prevent dental laboratories
10 from advertising in dental journals or in other professional
11 dental publications or from communicating directly to a
12 dentist and other dental practitioner or from listing the
13 dental laboratory in business and telephone directories if
14 the business and telephone directory announcements are
15 limited to name, address and telephone number and do not
16 occupy more than the number of lines necessary to disclose
17 the information, or from displaying the trade name and
18 address of the dental laboratory on the door of its place of
19 business or on name plates or door plates exhibited on the
20 interior or exterior of the place of business.

21 (b) It is unlawful for any person, other than a dentist or
22 other dental practitioner, to sell, offer for sale or furnish
23 any dental prosthesis or other dental laboratory service to
24 any person who is not a dentist or other dental practitio-
25 ner.

26 (c) It is unlawful for any person to perform dental
27 laboratory services without a work authorization: *Pro-*
28 *vided*, That this subsection does not apply to a dentist or
29 other dental practitioner, or to their employees working
30 under their direct supervision, performing dental labora-
31 tory services as a part of their own dental practice and for
32 their own dental patients.

33 (d) It is unlawful for any dental laboratory to perform
34 any dental laboratory service without the issuance of a

35 work authorization by a dentist or other dental practitio-
36 ner.

37 (e) It is unlawful for any dental laboratory or dentist
38 who fabricates a full upper or full lower set of prosthetic
39 dentures not to affix upon the dentures, in a nonremovable
40 manner, the name of the patient, the initials of the den-
41 tist's state of practice and license identification.

§30-4B-6. Injunction against unlawful acts.

1 When, as a result of a review under section four of this
2 article or otherwise, the board or any other interested
3 person believes that any person engaged, is engaging or is
4 about to engage in any act or practice that violates the
5 provisions of section five of this article, the board or any
6 other interested person may make application to any court
7 of competent jurisdiction for an order enjoining the acts or
8 practices and upon a showing that the person has violated
9 or is about to violate the provisions of this article, an
10 injunction, restraining order or another appropriate order
11 may be granted by the court without bond.

§30-4B-7. Criminal proceedings; penalties.

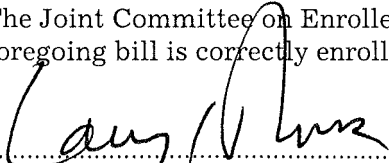
1 (a) When, by reason of a review under section four of
2 this article or otherwise, the board has reason to believe
3 that any person has knowingly engaged in an act or
4 practice that constitutes a violation of section five of this
5 article, the board may bring its information to the atten-
6 tion of the attorney general or other appropriate law-
7 enforcement officer who may cause appropriate criminal
8 proceedings to be brought.


9 (b) Any person or firm who knowingly violates any
10 provision of section five of this article is guilty of a
11 misdemeanor and, upon conviction thereof, shall be fined
12 not more than one thousand dollars or confined in the
13 county or regional jail not more than one year or both
14 fined and imprisoned.

§30-4B-8. Single act evidence of practice.

1 In any action or proceeding brought under section five
2 or six of this article, evidence of the commission of a single
3 act prohibited by this article is sufficient to justify an
4 injunction, restraining order or conviction without evi-
5 dence of a general course of conduct.

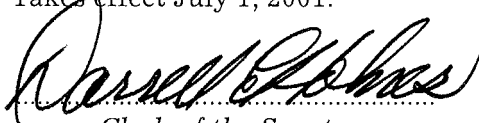
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

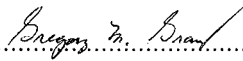

.....
Chairman Senate Committee

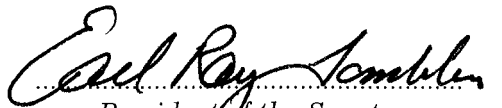

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Chairman House Committee


Originated in the Senate.

Takes effect July 1, 2001.

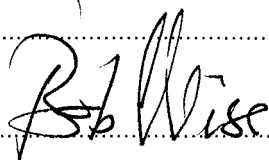

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 2nd
Day of April, 2001


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 2/29/61

Time 12:16 pm