

HB 2532
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2532**

(By Delegates Morgan, Stephens, Martin and Swartzmiller)



Passed April 10, 2009

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 2532

(BY DELEGATES MORGAN, STEPHENS,
MARTIN AND SWARTZMILLER)

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to repeal §30-31-7a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-31-1, §30-31-2, §30-31-3, §30-31-4, §30-31-5, §30-31-6, §30-31-7, §30-31-8, §30-31-9, §30-31-10, §30-31-11, §30-31-12, §30-31-13, §30-31-14 and §30-31-15; and to amend said code by adding thereto two new sections, designated §30-31-16 and §30-31-17, all relating to the Board of Examiners of Counseling; prohibiting the practice of counseling and marriage and family therapy without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rulemaking authority; continuing a special revenue account; establishing license requirements; establishing renewal requirements; providing for exemptions from licensure; providing for licensure for persons licensed in another state; setting forth grounds for disciplinary actions; allowing for specific

disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; providing for privileged communication and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That §30-31-7a of the Code of West Virginia, 1931, as amended, be repealed; that §30-31-1, §30-31-2, §30-31-3, §30-31-4, §30-31-5, §30-31-6, §30-31-7, §30-31-8, §30-31-9, §30-31-10, §30-31-11, §30-31-12, §30-31-13, §30-31-14 and §30-31-15, as amended, be amended and reenacted; and to amend said code by adding thereto two new sections, designated §30-31-16 and §30-31-17, all to read as follows:

ARTICLE 31. COUNSELORS.

§30-31-1. License required.

1 It is unlawful for any person to practice or offer to
2 practice professional counseling or marriage and family
3 therapy in this state without a license issued under the
4 provisions of this article, or advertise or use any title or
5 description tending to convey the impression that the person
6 is a licensed professional counselor or a licensed marriage
7 and family therapist unless the person has been licensed
8 under the provisions of this article, and the license has not
9 expired, been suspended, revoked or exempted.

§30-31-2. Applicable law.

1 The practices of professional counseling and marriage
2 and family therapy, and the Board of Examiners of
3 Counseling are subject to the provisions of article one of this

4 chapter, the provisions of this article and any rules
5 promulgated hereunder.

§30-31-3. 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 (a) "Applicant" means a person making an application for
5 a license or renewal under the provisions of this article.

6 (b) "Board" means the West Virginia Board of Examiners
7 in Counseling.

8 (c) "Clinical counseling procedures" means an approach
9 to counseling that emphasizes the counselor's role in
10 systematically assisting clients through all of the following
11 including, but are not limited to, observing, assessing and
12 analyzing background and current information; utilizing
13 assessment techniques useful in appraising aptitudes,
14 abilities, achievements, interests or attitudes; diagnosing; and
15 developing a treatment plan. The goal of these procedures is
16 the prevention or elimination of symptomatic, maladaptive,
17 or undesired behavior, cognitions, or emotions in order to
18 integrate a wellness, preventative, pathology and
19 multicultural model of human behavior to assist an
20 individual, couple, family, group of individuals, organization,
21 institution or community to achieve mental, emotional,
22 physical, social, moral, educational, spiritual, vocational or
23 career development and adjustment through the life span of
24 the individual, couple, family, group of individuals,
25 organization, institution or community.

26 (d) "Licensed professional counselor" means a person
27 licensed under the provisions of this article to practice
28 professional counseling.

29 (e) "Licensee" means a person holding a license issued
30 under the provisions of this article.

31 (f) "Licensed marriage and family therapist" means a
32 person licensed under the provisions of this article to practice
33 marriage and family therapy.

34 (g) "Marriage and family therapy" means the diagnosis
35 and treatment of mental and emotional disorders whether
36 cognitive, affective or behavioral, specifically within the
37 context of marriage and family systems, that involve the
38 professional application of theories and techniques to
39 individuals, couples and families, singly or in groups.

40 (h) "Professional counseling" means the assessment,
41 diagnosis, treatment and prevention of mental, emotional or
42 addiction disorders through the application of clinical
43 counseling procedures. Professional counseling includes the
44 use of psychotherapy, assessment instruments, counseling,
45 consultation, treatment planning, and supervision in the
46 delivery of services to individuals, couples, families and
47 groups.

§30-31-4. Board of Examiners in Counseling.

1 (a) The West Virginia Board of Examiners in Counseling
2 is continued. The members of the board in office on July 1,
3 2009, shall, unless sooner removed, continue to serve until
4 their respective terms expire and until their successors have
5 been appointed and qualified.

6 (b) To be effective on July 1, 2009, the Governor shall
7 appoint, by and with the advice and consent of the Senate, a
8 licensed marriage and family therapist from a list of three
9 nominees submitted by The West Virginia Association of
10 Marriage and Family Therapy, to replace the citizen member

11 whose term ends on June 30, 2009, and for any vacancy
12 thereafter.

13 (c) Commencing July 1, 2009, the board shall consist of
14 the following seven members:

15 (1) Two licensed professional counselors engaged in the
16 teaching of counseling at an accredited institution of higher
17 education;

18 (2) Three licensed professional counselors;

19 (3) One licensed marriage and family therapist; and

20 (4) One citizen, who is not licensed under the provisions
21 of this article and who does not perform any services related
22 to the practice of the professions regulated under the
23 provisions of this article.

24 (d) Each member shall be appointed by the Governor by
25 and with the advice and consent of the Senate. The term is
26 for five years.

27 (e) A member may not serve more than two consecutive
28 full terms. A member having served two consecutive full
29 terms may not be appointed for one year after completion of
30 his or her second full term. A member may continue to serve
31 until a successor has been appointed and has qualified.

32 (f) Each licensed member shall maintain an active license
33 with the board: *Provided*, That the initial marriage and
34 family therapist appointed to the board must qualify for
35 licensure under the provisions of section nine of this article.

36 (g) Each member of the board shall be a resident of West
37 Virginia during the appointment term.

38 (h) A vacancy on the board shall be filled by appointment
39 by the Governor for the unexpired term of the member whose
40 office is vacant and the appointment shall be made within
41 sixty days of the vacancy.

42 (i) The Governor may remove any member from the
43 board for neglect of duty, incompetency or official
44 misconduct.

45 (j) A member of the board immediately and automatically
46 forfeits membership to the board if his or her license to
47 practice is suspended or revoked, is convicted of a felony
48 under the laws of any jurisdiction, or becomes a nonresident
49 of this state.

50 (k) The board shall elect annually one of its members as
51 chairperson who serves at the will of the board.

52 (l) Each member of the board is entitled to compensation
53 and expense reimbursement in accordance with article one of
54 this chapter.

55 (m) A majority of the members of the board shall
56 constitute a quorum.

57 (n) The board shall hold at least two annual meetings.
58 Other meetings shall be held at the call of the chairperson or
59 upon the written request of two members, at the time and
60 place as designated in the call or request.

61 (o) Prior to commencing his or her duties as a member of
62 the board, each member shall take and subscribe to the oath
63 required by section five, article four of the Constitution of
64 this state.

§30-31-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
2 this article, by rule, in article one of this chapter and
3 elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer
6 examinations;

7 (2) Establish requirements for licenses;

8 (3) Establish procedures for submitting, approving and
9 rejecting applications for a license;

10 (4) Determine the qualifications of any applicant for a
11 license;

12 (5) Prepare, conduct, administer and grade written, oral
13 or written and oral examinations for a license;

14 (6) Determine the passing grade for the examinations;

15 (7) Maintain records of the examinations the board or a
16 third party administers, including the number of persons
17 taking the examination and the pass and fail rate;

18 (8) Hire, discharge, establish the job requirements and fix
19 the compensation of the executive director;

20 (9) Maintain an office, and hire, discharge, establish the
21 job requirements and fix the compensation of employees and
22 contracted employees necessary to enforce the provisions of
23 this article;

24 (10) Investigate alleged violations of the provisions of
25 this article, legislative rules, orders and final decisions of the
26 board;

27 (11) Establish a fee schedule;

28 (12) Issue, renew, deny, suspend, revoke or reinstate a
29 license;

30 (13) Conduct disciplinary hearings of persons regulated
31 by the board;

32 (14) Determine disciplinary action and issue orders;

33 (15) Institute appropriate legal action for the enforcement
34 of the provisions of this article;

35 (16) Maintain an accurate registry of names and
36 addresses of all persons regulated by the board;

37 (17) Keep accurate and complete records of its
38 proceedings, and certify the same as may be necessary and
39 appropriate;

40 (18) Establish the continuing education requirements for
41 licensees;

42 (19) Propose rules in accordance with the provisions of
43 article three, chapter twenty-nine-a of this code to implement
44 the provisions of this article; and

45 (20) Take all other actions necessary and proper to
46 effectuate the purposes of this article.

47 (c) The board may:

48 (1) Contract with third parties to administer the
49 examinations required under the provisions of this article;

50 (2) Sue and be sued in its official name as an agency of
51 this state; and

52 (3) Confer with the Attorney General or his or her
53 assistant in connection with legal matters and questions.

§30-31-6. Rulemaking.

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:

5 (1) Standards and requirements for licenses to practice
6 professional counseling and marriage and family therapy;

7 (2) Procedures for examinations and reexaminations;

8 (3) Requirements for third parties to prepare and/or
9 administer examinations and reexaminations;

10 (4) Educational and experience requirements;

11 (5) The passing grade on the examination;

12 (6) Standards for approval of courses;

13 (7) Procedures for the issuance and renewal of a license;

14 (8) A fee schedule;

15 (9) Continuing education requirements for licensees;

16 (10) The procedures for denying, suspending, revoking,
17 reinstating or limiting the practice of a licensee;

18 (11) Requirements to reinstate a revoked license;

19 (12) Specific master's and doctoral degree programs
20 considered to be equivalent to a master's or doctoral degree
21 program required under this article;

22 (13) The nature of supervised professional experience
23 approved by the board for the purposes of licensure of this
24 article;

25 (14) A code of ethics; and

26 (15) Any other rules necessary to effectuate the
27 provisions of this article.

28 (b) All of the board's rules in effect on July 1, 2009, shall
29 remain in effect until they are amended or repealed, and
30 references to provisions of former enactments of this article
31 are interpreted to mean provisions of this article.

§30-31-7. Fees; special revenue account.

1 (a) All fees and other moneys, except administrative
2 fines, received by the board shall be deposited in a separate
3 special revenue fund in the State Treasury designated the
4 "Board of Examiners in Counseling Fund". The fund is used
5 by the board for the administration of this article. Except as
6 may be provided in article one of this chapter, the board
7 retains the amount in the special revenue account from year
8 to year. No compensation or expense incurred under this
9 article is a charge against the General Revenue Fund.

10 (b) Any amount received as fines, imposed pursuant to
11 this article, shall be deposited into the General Revenue Fund
12 of the State Treasury.

§30-31-8. Requirements for license to practice counseling.

1 (a) To be eligible for a license to practice professional
2 counseling, an applicant must:

3 (1) Be of good moral character;

4 (2) Be at least eighteen years of age;

5 (3) Be a citizen of the United States or be eligible for
6 employment in the United States;

7 (4) Pay the applicable fee;

8 (5)(A)(i) Have earned a master's degree in an accredited
9 counseling program or in a field closely related to an
10 accredited counseling program as determined by the board,
11 or have received training equivalent to such degree as may be
12 determined by the board; and

13 (ii) Have at least two years of supervised professional
14 experience in counseling of such a nature as is designated by
15 the board after earning a master's degree or equivalent; or

16 (B)(i) Have earned a doctorate degree in an accredited
17 counseling program or in a field closely related to an
18 accredited counseling program as determined by the board,
19 or have received training equivalent to such degree as may be
20 determined by the board; and

21 (ii) Have at least one year of supervised professional
22 experience in counseling of such a nature as is designated by
23 the board after earning a doctorate degree or equivalent;

24 (6) Have passed a standardized national certification
25 examination in counseling approved by the board;

26 (7) Not have been convicted of a felony or crime
27 involving moral turpitude under the laws of any jurisdiction:

28 (A) If the applicant has never been convicted of a felony
29 or a crime involving moral turpitude, the applicant shall
30 submit letters of recommendation from three persons not
31 related to the applicant and a sworn statement from the
32 applicant stating that he or she has never been convicted of a
33 felony or a crime involving moral turpitude; or

34 (B) If the applicant has been convicted of a felony or a
35 crime involving moral turpitude, it is a rebuttable
36 presumption that the applicant is unfit for licensure unless he
37 or she submits competent evidence of sufficient rehabilitation
38 and present fitness to perform the duties of a licensed
39 professional counselor as may be established by the
40 production of:

41 (i) Documentary evidence including a copy of the
42 relevant release or discharge order, evidence showing
43 compliance with all conditions of probation or parole,
44 evidence showing that at least one year has elapsed since
45 release or discharge without subsequent conviction, and
46 letters of reference from three persons who have been in
47 contact with the applicant since his or her release or
48 discharge; and

49 (ii) Any collateral evidence and testimony as may be
50 requested by the board which shows the nature and
51 seriousness of the crime, the circumstances relative to the
52 crime or crimes committed and any mitigating circumstances
53 or social conditions surrounding the crime or crimes and any
54 other evidence necessary for the board to judge present
55 fitness for licensure or whether licensure will enhance the
56 likelihood that the applicant will commit the same or similar
57 offenses;

58 (8) Not be an alcohol or drug abuser as these terms are
59 defined in section eleven, article one-a, chapter twenty-seven
60 of this code: *Provided*, That an applicant who has had at
61 least two continuous years of uninterrupted sobriety in an
62 active recovery process, which may, in the discretion of the
63 board, be evidenced by participation in a twelve-step
64 program or other similar group or process, may be
65 considered; and

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

68 (b) A person who holds a license or other authorization
69 to practice counseling issued by another state, the
70 qualifications for which license or other authorization are
71 determined by the board to be at least substantially equivalent
72 to the license requirements in this article, is eligible for
73 licensure.

74 (c) A person seeking licensure under the provisions of
75 this section shall submit an application on a form prescribed
76 by the board and pay all applicable fees.

77 (d) A person who has been continually licensed under
78 this article since 1987, pursuant to prior enactments
79 permitting waiver of certain examination and other
80 requirements, is eligible for renewal under the provisions of
81 this article.

82 (e) A license to practice professional counseling issued
83 by the board prior to July 1, 2009, shall for all purposes be
84 considered a license issued under this article: *Provided*, That
85 a person holding a license issued prior to July 1, 2009, must
86 renew the license pursuant to the provisions of this article.

§30-31-9. Requirements for a license to practice marriage and family therapy.

1 (a) To be eligible for a license to practice marriage and
2 family therapy, an applicant must:

3 (1) Be of good moral character;

4 (2) Be at least eighteen years of age;

5 (3) Be a citizen of the United States or be eligible for
6 employment in the United States;

7 (4) Pay the applicable fee;

8 (5)(A)(i) Have earned a master's in marriage and family
9 therapy from a program accredited by the Commission on
10 Accreditation for Marriage and Family Therapy Education,
11 Council for Accreditation of Counseling and Related
12 Education Programs or a comparable accrediting body as
13 approved by the board or in a field closely related to an
14 accredited marriage and family therapy program as
15 determined by the board, or have received training equivalent
16 to such degree as may be determined by the board; and

17 (ii) Have at least two years of supervised professional
18 experience in marriage and family therapy of such a nature as
19 is designated by the board after earning a master's or
20 equivalent.

21 (B) (i) Have earned a doctorate degree in marriage and
22 family therapy from a program accredited by the Commission
23 on Accreditation for Marriage and Family Therapy
24 Education, the Council for Accreditation of Counseling and
25 Related Education Programs, or a comparable accrediting
26 body as approved by the board or in a field closely related to

27 an accredited marriage and family therapy program as
28 determined by the board, or have received training equivalent
29 to such degree as may be determined by the board; and

30 (ii) Have at least one year of supervised professional
31 experience in marriage and family therapy of such a nature as
32 is designated by the board after earning a doctorate or
33 equivalent.

34 (6) Have passed a standardized national certification
35 examination in marriage and family therapy as approved by
36 the board.

37 (7) Not have been convicted of a felony or crime
38 involving moral turpitude under the laws of any jurisdiction:

39 (A) If the applicant has never been convicted of a felony
40 or a crime involving moral turpitude, the applicant shall
41 submit letters of recommendation from three persons not
42 related to the applicant and a sworn statement from the
43 applicant stating that he or she has never been convicted of a
44 felony or a crime involving moral turpitude; or

45 (B) If the applicant has been convicted of a felony or a
46 crime involving moral turpitude, it is a rebuttable
47 presumption that the applicant is unfit for licensure unless he
48 or she submits competent evidence of sufficient rehabilitation
49 and present fitness to perform the duties of a licensed
50 professional counselor as may be established by the
51 production of:

52 (i) Documentary evidence including a copy of the
53 relevant release or discharge order, evidence showing
54 compliance with all conditions of probation or parole,
55 evidence showing that at least one year has elapsed since
56 release or discharge without subsequent conviction, and
57 letters of reference from three persons who have been in

58 contact with the applicant since his or her release or
59 discharge; and

60 (ii) Any collateral evidence and testimony as may be
61 requested by the board which shows the nature and
62 seriousness of the crime, the circumstances relative to the
63 crime or crimes committed and any mitigating circumstances
64 or social conditions surrounding the crime or crimes and any
65 other evidence necessary for the board to judge present
66 fitness for licensure or whether licensure will enhance the
67 likelihood that the applicant will commit the same or similar
68 offenses;

69 (8) Not be an alcohol or drug abuser as these terms are
70 defined in section eleven, article one-a, chapter twenty-seven
71 of this code: *Provided*, That an applicant who has had at
72 least two continuous years of uninterrupted sobriety in an
73 active recovery process, which may, in the discretion of the
74 board, be evidenced by participation in a twelve-step
75 program or other similar group or process, may be
76 considered; and

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

79 (b) A person seeking licensure under the provisions of
80 this section shall submit an application on a form prescribed
81 by the board and pay all applicable fees.

82 (c) A person who is licensed for the five years prior to the
83 effective date of this section and has substantially similar
84 qualifications as required by subdivision (1), (2), (3),
85 (5)(A)(i), (5)(B)(i), (6) and (7) of subsection (a) of this
86 section is eligible for a license to practice marriage and
87 family therapy until July 1, 2013, and is eligible for renewal
88 under section ten.

§30-31-10. Renewal requirements.

1 (a) A licensed professional counselor and a licensed
2 marriage and family therapist shall annually or biennially
3 renew his or her license at a time determined by the board, by
4 completing a form prescribed by the board, paying the
5 renewal fee and submitting any other information required by
6 the board.

7 (b) The board shall charge a fee for each renewal of a
8 license and a late fee for any renewal not properly completed
9 and received with the appropriate fee by the board at the
10 appropriate date.

11 (c) The board shall require as a condition of renewal that
12 each licensee complete continuing education.

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

§30-31-11. Persons exempted from licensure.

1 (a) The following activities are exempt from the
2 provisions of this article:

3 (1) Teaching, lecturing or engaging in research in
4 professional counseling or marriage and family therapy so
5 long as such activities do not otherwise involve the practice
6 of professional counseling or marriage and family therapy
7 directly affecting the welfare of the person counseled;

8 (2) The official duties of persons employed as
9 professional counselors or marriage and family therapists by
10 the State of West Virginia or any of its departments,
11 agencies, divisions, bureaus or political subdivisions,

12 counties, county boards of education, regional education
13 service agencies, municipalities or any other facilities or
14 programs established, supported or funded, in whole or in
15 part, by the governmental entity;

16 (3) The official duties of persons employed as
17 professional counselors or marriage and family therapists by
18 any department, agency, division or bureau of the United
19 States of America;

20 (4) The official duties of persons serving as professional
21 counselors or marriage and family therapists, whether as
22 volunteers or for compensation or other personal gain, in any
23 public or private nonprofit corporations, organizations,
24 associations or charities;

25 (5) The official duties of persons who are employed by a
26 licensed professional counselor or licensed marriage and
27 family therapist, whose duties are supervised by a licensed
28 professional counselor or licensed marriage and family
29 therapists and who represent themselves by the title
30 provisionally licensed counselor or provisionally licensed
31 marriage and family therapist, and do not represent
32 themselves as licensed professional counselors or licensed
33 marriage and family therapists as defined in this article;

34 (6) The activities of a student of professional counseling
35 or marriage and family therapy which are part of the
36 prescribed course of study at an accredited educational
37 institution and are supervised by a licensed professional
38 counselor, licensed marriage and family therapist or by a
39 teacher, instructor or professor of counseling or marriage and
40 family therapy acting within the official duties or scope of
41 activities exempted by this section; or

42 (7) The activities and services of qualified members of

43 other recognized professions such as physicians,
44 psychologists, psychoanalysts, social workers, lawyers,
45 clergy, nurses or teachers performing counseling or marriage
46 and family therapy consistent with the laws of this state, their
47 training and any code of ethics of their professions so long as
48 such persons do not represent themselves as licensed
49 professional counselors or licensed marriage and family
50 therapists as defined by section three of this article.

51 (b) Nothing in the article requires licensing of the
52 following persons pursuant to this article:

53 (1) A school counselor who holds a school counseling
54 certificate issued by the West Virginia Department of
55 Education and who is engaged in counseling solely within the
56 scope of his or her employment with the department, a
57 county board of education or a regional education service
58 agency; or

59 (2) A nonresident professional counselor or marriage and
60 family therapist who holds a license or other authorization to
61 engage in the practice of professional counseling or marriage
62 and family therapy issued by another state, the qualifications
63 for which in the opinion of the board are at least as stringent
64 as those provided in section eight and section nine of this
65 article, and who renders counseling services in this state for
66 no more than thirty days in any calendar year.

67 (c) Nothing in this article permits a licensed professional
68 counselor or licensed marriage and family therapist to
69 administer or prescribe drugs or otherwise engage in the
70 practice of medicine as defined in articles three and fourteen
71 of chapter thirty of this code.

**§30-31-12. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

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

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

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

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

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

24 (f) Any member of the board or its executive director
25 may sign a consent decree or other legal document on behalf
26 of the board.

27 (g) The board may, after notice and opportunity for
28 hearing, deny or refuse to renew, suspend or revoke the
29 license of, impose probationary conditions upon or take
30 disciplinary action against, any licensee for any of the

31 following reasons once a violation has been proven by a
32 preponderance of the evidence:

33 (1) Obtaining a license by fraud, misrepresentation or
34 concealment of material facts;

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

37 (3) Being guilty of unprofessional conduct as defined by
38 legislative rule of the board;

39 (4) A violation of a lawful order or rule of the board;

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

44 (6) Aiding or abetting unlicensed practice; or

45 (7) Engaging in an act which has endangered or is likely
46 to endanger the health, welfare or safety of the public.

47 (h) For the purposes of subsection (g) of this section,
48 effective July 15, 2009, disciplinary action may include:

49 (1) Reprimand;

50 (2) Probation;

51 (3) Administrative fine, not to exceed \$1,000 per day per
52 violation;

53 (4) Mandatory attendance at continuing education
54 seminars or other training;

- 55 (5) Practicing under supervision or other restriction;
- 56 (6) Requiring the licensee to report to the board for
57 periodic interviews for a specified period of time; or
- 58 (7) Other corrective action considered by the board to be
59 necessary to protect the public, including advising other
60 parties whose legitimate interests may be at risk.

§30-31-13. Procedures for hearing; right of appeal.

- 1 (a) Hearings shall be governed by the provisions of
2 section eight, article one of this chapter.
- 3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.
- 5 (c) If the hearing is conducted by an administrative law
6 judge, at the conclusion of a hearing he or she shall prepare
7 a proposed written order containing findings of fact and
8 conclusions of law. The proposed order may contain
9 proposed disciplinary actions if the board so directs. The
10 board may accept, reject or modify the decision of the
11 administrative law judge.
- 12 (d) Any member or the executive director of the board
13 has the authority to administer oaths, examine any person
14 under oath and issue subpoenas and subpoenas duces tecum.
- 15 (e) If, after a hearing, the board determines the licensee
16 has violated any provision of this article or the board's rules,
17 a formal written decision shall be prepared which contains
18 findings of fact, conclusions of law and a specific description
19 of the disciplinary actions imposed.

§30-31-14. Judicial review.

1 Any licensee adversely affected by a decision of the
2 board entered after a hearing may obtain judicial review of
3 the decision in accordance with section four, article five,
4 chapter twenty-nine-a of this code, and may appeal any ruling
5 resulting from judicial review in accordance with article six,
6 chapter twenty-nine-a of this code.

§30-31-15. Criminal proceedings; penalties.

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

6 (b) Effective July 15, 2009, a person violating section one
7 of this article is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not less than \$500 nor more
9 than \$1,000 or confined in jail not more than six months, or
10 both fined and confined.

§30-31-16. Disclosure.

1 All information communicated to or acquired by a
2 licensee while engaged in the practice of counseling or
3 marriage and family therapy with a client is privileged
4 information and may not be disclosed by the licensee except:

5 (a) With the written consent of the client, or in the case of
6 death or disability, with the written consent of a personal
7 representative or other person authorized to sue, or the
8 beneficiary of any insurance policy on the client's life, health
9 or physical condition;

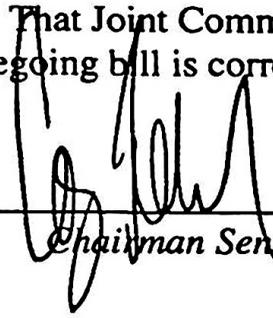
10 (b) When a communication reveals the contemplation of
11 an act dangerous to the client or others; or

12 (c) When the client, or his or her personal representative,
13 waives the privilege by bringing charges against the licensee.

§30-31-17. Single act evidence of practice.

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

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



Chairman Senate Committee



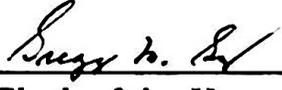
Chairman House Committee

Originating in the House.

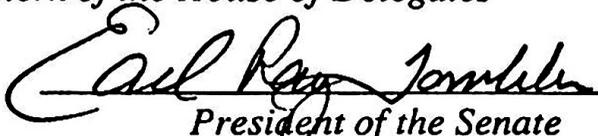
In effect ninety days from passage.



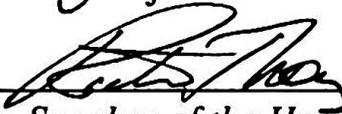
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 24th
day of April 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 21 2009

Time 4:00 pm