

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2010

HB 4186

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 4186**

(By Delegates Williams, Morgan, Ennis, Stephens,  
Moye, C. Miller and Rowan)

—●—

Passed March 13, 2010

In Effect Ninety Days From Passage

2010 APR -1 PM 4:21

OFFICE OF THE CLERK  
WEST VIRGINIA  
STATE HOUSE OF STATE

**E N R O L L E D**

2010 APR -1 PM 4:21

COMMITTEE SUBSTITUTE

FOR

OFFICE OF THE CLERK  
SECRETARY OF STATE

## **H. B. 4186**

(BY DELEGATES WILLIAMS, MORGAN, ENNIS, STEPHENS,  
MOYE, C. MILLER AND ROWAN)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §30-25-1, §30-25-2, §30-25-3, §30-25-4, §30-25-5, §30-25-6, §30-25-7, §30-25-8, §30-25-9, §30-25-10 and §30-25-11 of the Code of West Virginia, as amended, be amended and reenacted; and that said code be amended by adding thereto seven new sections, designated §30-25-12, §30-25-13, §30-25-14, §30-25-15, §30-25-16, §30-25-17 and §30-25-18 all relating to the practice of nursing home administration; continuing the West Virginia Nursing Home Administrators Licensing Board; prohibiting the practice of nursing home administration 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; providing for licensure for persons licensed in another state; establishing renewal requirements; providing permit requirements; requiring display of license; 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 and providing that a single act is evidence of practice.

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

That §30-25-1, §30-25-2, §30-25-3, §30-25-4, §30-25-5, §30-25-6, §30-25-7, §30-25-8, §30-25-9, §30-25-10 and §30-25-11 of the Code of West Virginia, as amended, be amended and reenacted; and that said code be amended by adding thereto seven new sections, designated §30-25-12, §30-25-13, §30-25-14, §30-25-15, §30-25-16, §30-25-17 and §30-25-18, all to read as follows:

**ARTICLE 25. NURSING HOME ADMINISTRATORS.**

**§30-25-1. Unlawful acts.**

1 (a) It is unlawful for any person to practice or offer to  
2 practice nursing home administration in this state without a  
3 license or permit issued under the provisions of this article,  
4 or advertise or use any title or description tending to convey  
5 the impression that they are a nursing home administrator  
6 unless the person has been duly licensed or permitted under  
7 the provisions of this article.

8 (b) A business entity may not render any service or  
9 engage in any activity which, if rendered or engaged in by an  
10 individual, would constitute the practice of nursing home  
11 administration, except through a licensee or permittee.

**§30-25-2. Applicable law.**

1 The practice licensed under the provisions of this article  
2 and the West Virginia Nursing Home Administrators

3 Licensing Board is subject to article one of this chapter, the  
4 provisions of this article, and any rules promulgated  
5 hereunder.

**§30-25-3. Definitions.**

1 As used in this article:

2 (1) "Applicant" means any person making application for  
3 an original or renewal license or a temporary or emergency  
4 permit under the provisions of this article.

5 (2) "Board" means the West Virginia Nursing Home  
6 Administrators Licensing Board created by this article.

7 (3) "License" means a license to practice nursing home  
8 administration under the provisions of this article.

9 (4) "Licensee" means a nursing home administrator  
10 licensed under this article.

11 (5) "Nursing home" means a nursing home as that term  
12 is defined in subdivision (c), section two, article five-c,  
13 chapter sixteen of this code.

14 (6) "Nursing home administrator" means a person who  
15 performs or is responsible for planning, organizing, directing  
16 and controlling a nursing home, whether or not such the  
17 person has an ownership interest in the nursing home or  
18 shares the functions.

19 (7) "Permit" means a temporary permit or emergency  
20 permit issued under the provisions of this article.

21 (8) "Permittee" means any person holding a permit issued  
22 pursuant to the provisions of this article.

23 (9) "Practice of nursing home administration" means any  
24 service requiring nursing home administration education,  
25 training, or experience and applying such to planning,  
26 organizing, staffing, directing, and controlling of the total  
27 management of a nursing home.

**§30-25-4. West Virginia Nursing Home Administrators  
Licensing Board.**

1 (a) The West Virginia Nursing Home Administrators  
2 Licensing Board terminates on June 30, 2010. The terms of  
3 the members of the board serving on June 1, 2010, terminate  
4 on June 30, 2010.

5 (b) Prior to July 1, 2010, the Governor shall appoint, by  
6 and with advice and consent of the Senate:

7 (1) Two persons who are licensed nursing home  
8 administrators, each for a term of five years;

9 (2) One person who is licensed as a nursing home  
10 administrator for a term of four years;

11 (3) One person who is licensed as a nursing home  
12 administrator for a term of three years;

13 (4) One person who is licensed as a nursing home  
14 administrator for a term of two years; and

15 (5) Two citizen members, who are not licensed under the  
16 provisions of this article and who do not perform any services  
17 related to the practice of the profession regulated under the  
18 provisions of this article, one for a term of four years, and  
19 one for a term of three years.

20 (c) After the initial appointment, the term shall be for five  
21 years. All appointments to the board shall be made by the  
22 Governor by and with the advice and consent of the Senate.

23 (d) Commencing July 1, 2010, the board is created and  
24 shall consist of the following seven voting members and one  
25 ex-officio nonvoting member:

26 (1) Five members who are licensed nursing home  
27 administrators;

28 (2) Two citizen members, who are not licensed under the  
29 provisions of this article and who do not perform any services  
30 related to the practice of the professions regulated under the  
31 provisions of this article, for a term of three years; and

32 (3) The Commissioner of the Bureau for Public Health or  
33 his or her designee is an ex-officio nonvoting member.

34 (e) Each licensed member of the board, at the time of his  
35 or her appointment, must have held a license in this state for  
36 a period of not less than five years immediately preceding the  
37 appointment.

38 (f) Each member of the board must be a resident of this  
39 state during the appointment term.

40 (g) A member may not serve more than two consecutive  
41 full terms. A member may continue to serve until a successor  
42 has been appointed and has qualified.

43 (h) A vacancy on the board shall be filled by appointment  
44 by the Governor for the unexpired term of the member whose  
45 office is vacant and the appointment shall be made within  
46 sixty days of the vacancy.

47 (i) The Governor may remove any member from the  
48 board for neglect of duty, incompetency or official  
49 misconduct.

50 (j) A member of the board immediately and automatically  
51 forfeits membership to the board if his or her license to  
52 practice is suspended or revoked, he or she is convicted of a  
53 felony under the laws of any jurisdiction, or he or she  
54 becomes a nonresident of this state.

55 (k) The board shall elect annually one of its members as  
56 a chairperson and one of its members as a secretary who  
57 serve at the will of the board.

58 (l) Each member of the board is entitled to compensation  
59 and expense reimbursement in accordance with article one of  
60 this chapter.

61 (m) A majority of the members of the board constitutes  
62 a quorum.

63 (n) The board shall hold at least two meetings each year.  
64 Other meetings may be held at the call of the chairperson or  
65 upon the written request of two members, at the time and  
66 place as designated in the call or request.

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

**§30-25-5. Powers and duties of the board.**

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

4 (b) The board shall:

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

7 (2) Establish requirements for licenses and permits;

8 (3) Establish procedures for submitting, approving and  
9 rejecting applications for licenses and permits;

10 (4) Determine the qualifications of any applicant for  
11 licenses and permits;

12 (5) Prepare, conduct, administer and grade examinations  
13 for licenses;

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 examinations 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,  
22 investigators and contracted employees necessary to enforce  
23 the provisions of 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) Conduct disciplinary hearings of persons regulated  
28 by the board;

29 (12) Determine disciplinary action and issue orders;

30 (13) Institute appropriate legal action for the enforcement  
31 of the provisions of this article;

32 (14) Maintain an accurate registry of names and  
33 addresses of all persons regulated by the board;

34 (15) Keep accurate and complete records of its  
35 proceedings, and certify the same as may be necessary and  
36 appropriate;

37 (16) Establish the continuing education requirements for  
38 licensees;

39 (17) Issue, renew, combine, deny, restrict, suspend,  
40 restrict, revoke or reinstate licenses and permits;

41 (18) Establish a fee schedule;

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 examinations  
49 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

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

**§30-25-6. 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 and permits;

6 (2) Procedures for examinations and reexaminations;

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

9 (4) Educational and experience requirements;

10 (5) The passing grade on the examinations;

11 (6) Standards for approval of courses and curriculum;

12 (7) Procedures for the issuance and renewal of licenses  
13 and permits;

14 (8) Procedures to address substandard quality of care  
15 notices from the West Virginia Office of Health Facility  
16 Licensure;

17 (9) A fee schedule;

18 (10) Procedure to publish a notice of a disciplinary  
19 hearing against a licensee;

20 (11) Continuing education requirements for licensees;

21 (12) The procedures for denying, suspending, restricting,  
22 revoking, reinstating or limiting the practice of licensees and  
23 permittees;

24 (13) Adoption of a standard for ethics;

25 (14) Requirements for inactive or revoked licenses or  
26 permits; and

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

29 (b) All of the board's rules in effect on July 1, 2010, shall  
30 remain in effect until they are amended or repealed, and  
31 references to provisions of former enactments of this article  
32 are interpreted to mean provisions of this article.

**§30-25-7. 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 separate  
3 special revenue fund in the State Treasury designated the  
4 "West Virginia Nursing Home Administrators Licensing  
5 Board Fund", which is continued. The fund is used by the  
6 board for the administration of this article. Except as may be  
7 provided in article one of this chapter, the board retains the  
8 amount in the special revenue account from year to year. No  
9 compensation or expense incurred under this article is a  
10 charge against the General Revenue Fund.

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

**§30-25-8. Qualifications for license; exceptions; application;  
fees.**

1 (a) To be eligible for a license to engage in the practice  
2 of nursing home administration, the applicant must:

- 3 (1) Submit an application to the board;
- 4 (2) Be of good moral character;
- 5 (3) Obtain a baccalaureate degree;
- 6 (4) Pass a state and national examination as approved by  
7 the board;
- 8 (5) Complete the required experience as prescribed by the  
9 board;
- 10 (6) Successfully complete a criminal background check,  
11 through the West Virginia State Police and the National  
12 Criminal Investigative Center;
- 13 (7) Successfully complete a Health Integrity Protection  
14 Data Bank check;
- 15 (8) Not be an alcohol or drug abuser as these terms are  
16 defined in section eleven, article one-a, chapter twenty-seven  
17 of this code: *Provided*, That an applicant in an active  
18 recovery process, which may, in the discretion of the board,  
19 be evidenced by participation in a twelve-step program or  
20 other similar group or process, may be considered;
- 21 (9) Not have been convicted of a felony in any  
22 jurisdiction within ten years preceding the date of application  
23 for license which conviction remains unreversed;
- 24 (10) Not have been convicted of a misdemeanor or felony  
25 in any jurisdiction if the offense for which he or she was  
26 convicted related to the practice of nursing home  
27 administration, which conviction remains unreversed; and
- 28 (11) Has fulfilled any other requirement specified by the  
29 board.

30 (b) A license issued by the board prior to July 1, 2010,  
31 shall for all purposes be considered a license issued under  
32 this article: *Provided*, That a person holding a license issued  
33 prior to July 1, 2010, must renew the license pursuant to the  
34 provisions of this article.

**§30-28-9. License to practice nursing home administration from  
another jurisdiction.**

1 The board may issue a license to practice to an applicant  
2 of good moral character who holds a valid license or other  
3 authorization to practice nursing home administration from  
4 another state, if the applicant:

5 (1) Holds a license or other authorization to practice in  
6 another state which was granted after the completion of  
7 educational requirements substantially equivalent to those  
8 required in this state and passed examinations that are  
9 substantially equivalent to the examinations required in this  
10 state;

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

14 (3) Has not previously failed an examination for licensure  
15 in this state;

16 (4) Has paid the applicable fee;

17 (5) Is a citizen of the United States or is eligible for  
18 employment in the United States; and

19 (6) Has fulfilled any other requirement specified by the  
20 board.

**§30-25-10. Temporary and Emergency Permits.**

1 (a) The board may issue a temporary permit for a period  
2 of ninety days, to an applicant seeking licensure pursuant to  
3 section nine of this article who has accepted employment in  
4 West Virginia, but who must wait for the board to meet to act  
5 on his or her application. The temporary permit may be  
6 renewed at the discretion of the board.

7 (b) The board may issue an emergency permit to a person  
8 who is designated as an acting nursing home administrator,  
9 if a licensed nursing home administrator dies or is unable to  
10 continue due to an unexpected cause. The board may issue  
11 the emergency permit to the owner, governing body or other  
12 appropriate authority in charge of the nursing home, if it  
13 finds the appointment will not endanger the safety of the  
14 occupants of the nursing home. A emergency permit is valid  
15 for a period determined by the board not to exceed six  
16 months and shall not be renewed.

17 (c) The board shall charge a fee for the temporary permit  
18 and emergency permit.

**§30-25-11. Renewal requirements.**

1 (a) All persons regulated by the article shall annually  
2 before June 30, renew his or her license by completing a form  
3 prescribed by the board and submitting any other information  
4 required by the board.

5 (b) The board shall charge a fee for each renewal of a  
6 license or permit and shall charge a late fee for any renewal  
7 not properly completed and received with the appropriate fee  
8 by the board before June 30.

9 (c) The board shall require as a condition for the renewal  
10 that each licensee complete continuing education.

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

**§30-25-12. Inactive license requirements.**

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

4 (b) A person granted inactive status is exempt from fee  
5 requirements and continuing education requirements, and  
6 cannot practice in this state.

7 (c) When an inactive licensee wants to return to active  
8 practice, he or she must complete all the continuing education  
9 requirements for every licensure year the licensee was on  
10 inactive status and pay all the applicable fees as determined  
11 by the board.

**§30-25-13. Display of license.**

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

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

**§30-25-14. 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 promulgated pursuant to this  
6 article.

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

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

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

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

27 (f) Any member of the board or its executive director  
28 may sign a consent decree or other legal document on behalf  
29 of the board.

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

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

38 (2) Being convicted of a felony or other crime involving  
39 moral turpitude;

40 (3) Being guilty of unprofessional conduct which placed  
41 the public at risk, as defined by legislative rule of the board;

42 (4) Intentional violation of a lawful order or legislative  
43 rule of the board;

44 (5) Having had a license or other authorization revoked  
45 or suspended, other disciplinary action taken, or an  
46 application for licensure or other authorization revoked or  
47 suspended by the proper authorities of another jurisdiction;

48 (6) Aiding or abetting unlicensed practice; or

49 (7) Engaging in an act while acting in a professional  
50 capacity which has endangered or is likely to endanger the  
51 health, welfare or safety of the public.

52 (h) For the purposes of subsection (g) of this section,  
53 disciplinary action may include:

54 (1) Reprimand;

55 (2) Probation;

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

58 (4) Mandatory attendance at continuing education  
59 seminars or other training;

60 (5) Practicing under supervision or other restriction;

61 (6) Requiring the licensee or permittee to report to the  
62 board for periodic interviews for a specified period of time;  
63 or

64 (7) Other corrective action considered by the board to be  
65 necessary to protect the public, including advising other  
66 parties whose legitimate interests may be at risk.

**§30-25-15. 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 or permittee has violated any provision of this article or the  
17 board's rules, a formal written decision shall be prepared  
18 which contains findings of fact, conclusions of law and a  
19 specific description of the disciplinary actions imposed.

**§30-25-16. Judicial review.**

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

**§30-25-17. Criminal proceedings; penalties.**

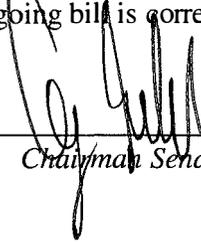
1 (a) When, as a result of an investigation under this article  
2 or otherwise, the board has reason to believe that a licensee  
3 has committed a criminal offense under this article, the board  
4 may bring its information to the attention of an appropriate  
5 law-enforcement official.

6 (b) A person violating section one of this article is guilty  
7 of a misdemeanor and, upon conviction thereof, shall be  
8 fined not less than \$100 not more than \$1,000 or confined in  
9 jail not more than six months, or both fined and confined.

**§30-25-18. 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.

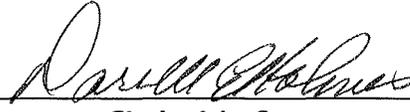
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

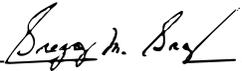
  
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Chairman Senate Committee

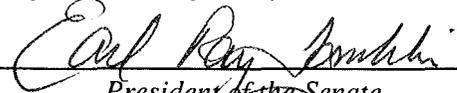
  
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Chairman House Committee

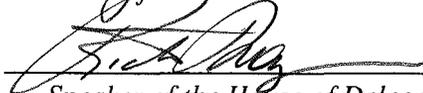
Originating in the House.

In effect ninety days from passage.

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

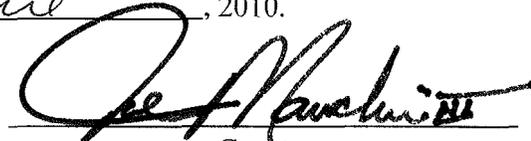
  
\_\_\_\_\_  
Clerk of the House of Delegates

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

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

2010 APR - 1 PM 4: 21  
SECRETARY OF STATE  
FILED

The within is approved this the 18<sup>th</sup>  
day of April, 2010.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2010

Time 10:05h