

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **ENGROSSED**

## **House Bill 4340**

(BY DELEGATES HOWELL, FOSTER, CANTERBURY,  
SUMMERS, WAXMAN, AZINGER, ROHRBACH, STORCH,  
CADLE, R. SMITH AND PERDUE)

[Introduced February 1, 2016;  
referred to the committee on  
Government Organization.]



1 A BILL to amend and reenact §30-1-5, of the Code of West Virginia, 1931, as amended;  
 2 and to amend said code by adding there to a new article, designated §30-1D-1, all  
 3 relating generally to boards of examination for licensure; amending licensing  
 4 requirements for an act which may be called Lynette's Law; requiring information  
 5 regarding completed disciplinary actions in which discipline was ordered, to be  
 6 posted on a website with public access; and requiring certain boards regulating  
 7 professions to require national criminal background checks on applicants being  
 8 licensed for the first time in West Virginia.

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

1 That §30-1-5 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; and that said code be amended by adding thereto a new article, designated  
 3 §30-1D-1, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF  
 EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.**

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

1 (a) Every board referred to in this chapter shall hold at least one meeting each year, at  
 2 such time and place as it may prescribe by rule, for the examination of applicants who desire to  
 3 practice their respective professions or occupations in this state and to transact any other  
 4 business which may legally come before it. The board may hold additional meetings as may be  
 5 necessary, which shall be called by the secretary at the direction of the president or upon the  
 6 written request of any three members. A majority of the members of the board constitutes a  
 7 quorum for the transaction of its business.

8 (b) The board ~~is authorized to~~ may compel the attendance of witnesses, to issue  
 9 subpoenas, to conduct investigations and hire an investigator and to take testimony and other

10 evidence concerning any matter within its jurisdiction. The president and secretary of the board  
11 ~~are authorized to~~ may administer oaths for these purposes.

12 (c) Every board referred to in this chapter ~~has a duty to~~ shall investigate and resolve  
13 complaints which it receives and shall, within six months of the complaint being filed, send a status  
14 report to the party filing the complaint by certified mail with a signed return receipt and within one  
15 year of the status report's return receipt date issue a final ruling, unless the party filing the  
16 complaint and the board agree in writing to extend the time for the final ruling.

17 (d) Every board shall provide public access to the record of the disposition of the  
18 complaints which it receives in accordance with the provisions of chapter twenty-nine-b of this  
19 code, and shall provide public access on a website to all completed disciplinary actions in which  
20 discipline was ordered. If a board is unable to provide access, the Attorney General shall provide  
21 a link to this information on the consumer protection division website, together with a link to the  
22 website of all other boards subject to this chapter. Every board ~~has a duty to~~ shall report violations  
23 of individual practice acts contained in this chapter to the board by which the individual may be  
24 licensed and shall do so in a timely manner upon receiving notice of ~~such~~ the violations. Every  
25 person licensed or registered by a board ~~has a duty to~~ shall report to the board which licenses or  
26 registers him or her a known or observed violation of the practice act or the board's rules by any  
27 other person licensed or registered by the same board and shall do so in a timely manner. Law-  
28 enforcement agencies or their personnel and courts shall report in a timely manner to the  
29 appropriate board any violations of individual practice acts by any individual.

30 (e) Whenever a board referred to in this chapter obtains information that a person subject  
31 to its authority has engaged in, is engaging in or is about to engage in any act which constitutes  
32 or will constitute a violation of the provisions of this chapter which are administered and enforced  
33 by that board, it may apply to the circuit court for an order enjoining the act. Upon a showing that  
34 the person has engaged, is engaging or is about to engage in any such act, the court shall order  
35 an injunction, restraining order or other order as the court may deem appropriate.

**ARTICLE 1D. PROVISIONS AFFECTING CERTAIN BOARDS OF LICENSURE.**

**§30-1D-1. Criminal background checks required of new applicants.**

1           (a) This article shall be known as “Lynette’s Law.”

2           (b) The requirements in subsection (c) of this section for criminal background checks apply  
3 to those persons applying to be licensed in West Virginia for the first time by the boards governing  
4 licensing under the following sections: Section ten, article three of this chapter; section four,  
5 article three-e of this chapter; section eight, article four of this chapter; section nine, article five of  
6 this chapter; section six, article seven of this chapter; section three, article seven-a of this chapter;  
7 section eight, article eight of this chapter; section eight, article ten of this chapter; section four,  
8 article fourteen of this chapter; and section seven, article twenty-one of this chapter.

9           (c) A person applying for licensing to a board listed in subsection (b) of this section must  
10 submit to a state and national criminal history record check, as set forth in this subsection:  
11 Provided, That an applicant for a license who is an attorney at law may submit a letter of good  
12 standing from the Clerk of the Supreme Court of Appeals of West Virginia in lieu of submitting to  
13 a state and national criminal history record check.

14           (1) This requirement is found not to be against public policy.

15           (2) The criminal history record check shall be based on fingerprints submitted to the West  
16 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

17           (3) The applicant shall meet all requirements necessary to accomplish the state and  
18 national criminal history record check, including:

19           (A) Submitting fingerprints for the purposes set forth in this subsection; and

20           (B) Authorizing the board, the West Virginia State Police and the Federal Bureau of  
21 Investigation to use all records submitted and produced for the purpose of screening the applicant  
22 for a license.

23           (4) The results of the state and national criminal history record check may not be released  
24 to or by a private entity except:

- 25           (A) To the individual who is the subject of the criminal history record check;  
26           (B) With the written authorization of the individual who is the subject of the criminal history  
27 record check; or  
28           (C) Pursuant to a court order.  
29           (5) The criminal history record check and related records are not public records for the  
30 purposes of chapter twenty-nine-b of this code.  
31           (6) The applicant shall pay the actual costs of the fingerprinting and criminal history record  
32 check.  
33           (d) Before implementing the provisions of this subsection, the board shall propose rules  
34 for legislative approval in accordance with article three, chapter twenty-nine-a of this code. The  
35 rules shall set forth the requirements and procedures for the criminal history check and must be  
36 consistent with standards established by the Federal Bureau of Investigation and the National  
37 Crime Prevention and Privacy Compact as authorized by 42 U. S. C. A. §14611, et seq.

NOTE: The purpose of this bill is to require numerous licensing boards in the medical field to place on websites with public access information on completed disciplinary actions in which discipline was ordered, and to require background checks on certain persons being licensed for the first time. The act may be known as Lynette's Law.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.