

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4323

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[Introduced January 26, 2018; Referred
to the Committee on Government Organization then the
Judiciary.]

1 A BILL to amend and reenact §30-1-6, §30-1-8, and §30-1-8a of the Code of West Virginia, 1931,
 2 as amended, all relating to the requirement that no board grant or renew any certificate,
 3 license, registration, or authority under Chapter 30 of said code to any person who is
 4 delinquent in the payment of state or local taxes, fees, or other moneys due to the state
 5 or its subdivisions with specified exceptions; and correcting the usage of terms related to
 6 certificate, license, registration, or authority in said code.

Be it enacted by the Legislature of West Virginia:

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

**§30-1-6. Application for ~~license or registration~~ certificate, license, registration, or authority;
 examination fee; establishment of application deadline and fees by legislative rule;
 prohibiting discrimination.**

1 (a) An applicant for an authorization to practice under the provisions of this chapter shall
 2 apply in writing to the proper board and submit the applicable fees.

3 (b) Each board may establish, by legislative rule, a deadline for an application for an
 4 examination.

5 (c) Notwithstanding the specific fees set forth in this chapter, each board may set fees by
 6 legislative rule that are sufficient to enable the board to effectively carry out its duties and
 7 responsibilities. At least 30 days prior to proposing a rule on fees, the board shall notify its
 8 membership of the proposed rule by:

9 (1) Mailing a copy of the proposed rule to its membership; or

10 (2) Posting the proposed rule on its website and notifying its membership of the website
 11 posting by:

12 (A) Mailing a postcard;

13 (B) Emailing a notice; or

14 (C) Placing a notice in its newsletter.

15 (d) In addition to any other information required by the board, an applicant's social security
16 number shall be recorded on an application: *Provided*, That the board shall redact the social
17 security number on any copies provided to the public.

18 (e) A board may not discriminate against an applicant because of political or religious
19 opinion or affiliation, marital status, race, color, gender, creed, age, national origin, disability or
20 other protected group status.

21 (f) A board may deny an applicant an authorization to practice in this state if an applicant's
22 authorization to practice in another jurisdiction has been revoked. The denial may be made by
23 the board without a hearing unless the applicant requests a hearing within 30 days of the denial.
24 A hearing must be conducted pursuant to the provisions of this article or the provisions contained
25 in the rules of the board.

26 (g) A board shall deny an applicant an authorization to practice in this state if an applicant
27 is delinquent in the payment of state or local taxes, fees, or other moneys due to the state or its
28 subdivisions: *Provided*, That this subsection shall not apply to any state or local taxes, fees, or
29 other moneys due that are currently in dispute, in repayment, or under a payment plan to which
30 the applicant is adhering.

**§30-1-8. Denial, suspension, or revocation of a license or registration certificate, license,
registration, or authority; probation; proceedings; effect of suspension or
revocation; transcript; report; judicial review.**

1 (a) Every board referred to in this chapter may suspend or revoke the license certificate,
2 license, registration, or authority issued under this chapter of any person who has been convicted
3 of a felony or who has been found to have engaged in conduct, practices or acts constituting
4 professional negligence or a willful departure from accepted standards of professional conduct.
5 Where any person has been convicted of a felony or has been found to have engaged in such
6 conduct, practices or acts, every board referred to in this chapter may enter into consent decrees,

7 to reprimand, to enter into probation orders, to levy fines not to exceed \$1,000 per day per
8 violation, or any of these, singly or in combination. Each board may also assess administrative
9 costs. Any costs which are assessed shall be placed in the special account of the board and any
10 fine which is levied shall be deposited in the state Treasury's General Revenue Fund.

11 (b) For purposes of this section, the word "felony" means a felony or crime punishable as
12 a felony under the laws of this state, any other state or the United States.

13 (c) Every board referred to in this chapter may promulgate rules in accordance with the
14 provisions of chapter 29A of this code to delineate conduct, practices or acts which, in the
15 judgment of the board, constitute professional negligence, a willful departure from accepted
16 standards of professional conduct or which may render an individual unqualified or unfit for
17 licensure, registration or other authorization to practice.

18 (d) Every board referred to in this chapter may revoke the ~~license or registration certificate,~~
19 license, registration, or authority issued under this chapter of an individual licensed or otherwise
20 lawfully practicing within this state whose ~~license or registration certificate, license, registration,~~
21 or authority issued under this chapter in any other state, territory, jurisdiction, or foreign nation
22 has been revoked by the licensing authority thereof.

23 (e) No board shall renew the certificate, license, registration, or authority issued under this
24 chapter of any person who is delinquent in the payment of state or local taxes, fees, or other
25 moneys due to the state or its subdivisions: *Provided*, That this subsection shall not apply to any
26 state or local taxes, fees, or other moneys due that are currently in dispute, in repayment, or under
27 a payment plan to which the person is adhering.

28 (e) (f) Notwithstanding any other provision of law to the contrary, no certificate, license,
29 registration, or authority issued under ~~the provisions of~~ this chapter may be suspended or revoked
30 without a prior hearing before the board or court which issued the certificate, license, registration,
31 or authority, except:

32 (1) A board is authorized to suspend or revoke a certificate, license, registration, or

33 authority prior to a hearing if the person's continuation in practice constitutes an immediate danger
34 to the public; or

35 (2) After due diligence, if a board cannot locate a person licensed under the provisions of
36 this chapter within 60 days of a complaint being filed against the licensee, then the board may
37 suspend the license, certificate, registration, or authority of the person without holding a hearing.
38 After due diligence, if a Board still cannot locate the person licensed under the provisions of this
39 chapter 30 days after the suspension of the person's license, certificate, registration, or authority,
40 then the board may revoke the license, certificate, registration, or authority of the person without
41 holding a hearing.

42 ~~(f)~~ (g) In all proceedings before a board or court for the suspension or revocation of any
43 certificate, license, registration, or authority issued under the provisions of this chapter, a
44 statement of the charges against the holder of the certificate, license, registration, or authority
45 and a notice of the time and place of hearing shall be served upon the person as a notice is served
46 under §56-2-1 *et seq.* of this code at least 30 days prior to the hearing and he or she may appear
47 with witnesses and be heard in person, by counsel, or both. The board may take oral or written
48 proof, for or against the accused, as it may consider advisable. If upon hearing the board finds
49 that the charges are true, it may suspend or revoke the certificate, license, registration or authority
50 and suspension or revocation shall take from the person all rights and privileges acquired thereby.

51 ~~(g)~~ (h) Pursuant to the provisions of §29A-5-1 *et seq.* of this code, informal disposition may
52 also be made by the board of any contested case by stipulation, agreed settlement, consent order,
53 or default. Further, the board may suspend its decision and place a licensee found by the board
54 to be in violation of the applicable practice on probation.

55 ~~(h)~~ (i) Any person denied a license, certificate, registration, or authority who believes the
56 denial was in violation of this article or the article under which the license, certificate, registration,
57 or authority is authorized shall be entitled to a hearing on the action denying the license,
58 certificate, registration, or authority. Hearings under this subsection are in accordance with the

59 provisions for hearings which are set forth in this section.

60 ~~(j)~~ (i) A stenographic report of each proceeding on the denial, suspension or revocation of
61 a certificate, license, registration, or authority shall be made at the expense of the board and a
62 transcript of the hearing retained in its files. The board shall make a written report of its findings,
63 which shall constitute part of the record.

64 ~~(j)~~ (k) All proceedings under the provisions of this section are subject to review by the
65 Supreme Court of Appeals.

66 ~~(k)~~ (l) On or before July 1, 2001, every board referred to in this chapter shall adopt
67 procedural rules in accordance with the provisions of §29A-3-1 *et seq.* of this code, which shall
68 specify a procedure for the investigation and resolution of all complaints against persons licensed
69 under this chapter. The proposed legislative rules relating only to complaint procedures or
70 contested case hearing procedures required by the prior enactment of this subsection shall be
71 redesignated as procedural rules in accordance with the provisions of §29A-3-1 *et seq.* of this
72 code. Each board shall file the procedural rules required by this subsection by January 31, 2001.
73 The public hearing or public comment period conducted for the proposed legislative rules shall
74 serve as the public hearing or public comment period required by §29A-3-5 of this code.

§30-1-8a. Reinstatement of license certificate, license, registration, or authority.

1 (a) Every board referred to in this chapter is authorized to consider the reinstatement of
2 any ~~license or registration~~ certificate, license, registration, or authority issued under this chapter
3 that has been suspended, revoked, or not renewed, upon a showing that the applicant:

4 (1) Can resume practicing with reasonable skill and safety; and,

5 (2) Is not delinquent in the payment of any state or local taxes, fees, or other moneys due
6 to the state or its subdivisions where the applicant's certificate, license, registration, or authority
7 issued under this chapter was not renewed under §30-1-8(e) of this code.

8 (b) Each board may adopt a procedural rule in accordance with the provisions of §29A-3-
9 1 *et seq.* of this code, specifying forms and procedures for application for reinstatement.

NOTE: The purpose of this bill is to prohibit boards from granting or renewing any certificate, license, registration, or authority to practice to any person who is delinquent in state or local taxes, fees, or other moneys due to the state or its subdivisions with exceptions and to correct terms related to certificate, license, registration, or authority to practice in the code.

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