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2021 regular session

Committee Substitute

for

House Bill 2007

By Delegates Espinosa, Foster, Horst, Hamrick, Howell, Miller, Steele, Holstein, Clark, Keaton and Burkhammer

[Originating in the Committee on Government Organization, February 11, 2021]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-17-1, §21-17-2, §21-17-3, §21-17-4, §21-17-5, §21-17-6, §21-17-7, §21-17-8, §21-17-9, §21-17-10, §21-17-11, §21-17-12, and §21-17-13; to amend said code by adding thereto a new article, designated §29-33-1, §29-33-2, §29-33-3, §29-33-4, §29-33-5, §29-33-6, §29-33-7, §29-33-8, §29-33-9, §29-33-10, §29-33-11, §29-33-12, and §29-33-13; to amend said code by adding thereto a new article, designated §30-1F-1, §30-1F-2, §30-1F-3, §30-1F-4, §30-1F-5, §30-1F-6, §30-1F-7, §30-1F-8, §30-1F-9, §30-1F-10, §30-1F-11, §30-1F-12, and §30-1F-13, all relating to occupational licensing or other authorization to practice; providing for definitions; providing for an application method for persons with a valid license in another state to be licensed in this state; providing that a person applying for licensure in this state has worked in the licensed occupation for at least one year; providing for other criteria a person must satisfy when applying for licensure in this state; establishing that an applicant seeking licensure in this state not have ever had a license revoked or suspended in another state; providing that an applicant seeking licensure in this state not have any pending investigations or disciplinary proceedings in another state; providing that the boards in every state where a person is licensed hold the applicant in good standing for licensure in this state; providing that an applicant pay all applicable fees; providing that an applicant meet all state bonding requirements for licensure in this state; providing for an application fee that may be assessed by the board; providing for 60 days for a board to take action on a completed application; providing for an appeal mechanism for a person to appeal any decision of a board relating to occupational licensure; providing for state law preemption against any township, municipality, county**,** or other government to regulate occupational licensure; and providing for rulemaking authority to any board affected to carry out the provisions of the article.

Be it enacted by the Legislature of West Virginia:

Chapter 21. Labor.

Article 17. universal recognition of occupational licenses act.

§21-17-1. Applicability.

The provisions of this article apply to all professions requiring an occupational license or other authorization to practice or perform a specific occupation in this state regulated by this chapter.

§21-17-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article unless the context clearly requires otherwise.

“Board” means a government agency, board, department, or other government entity that regulates a lawful occupation and issues an occupational license or other authorization to practice to an individual.

“Lawful occupation” means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational license.

“Occupational license” is a nontransferable authorization in law for an individual to perform or practice a lawful occupation based on meeting personal qualifications established by the Legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform or practice the occupation.

“Other authorization to practice” is a nontransferable acknowledgment, other than a license, by a state government or board that is provided to an individual asserting that the individual has met the educational and examination requirements to engage in a lawful occupation.

“Other state” or “another state” means any United States territory or state in the United States other than this state.

“Private certification” is a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use the designated title of “certified,” as permitted by the private organization.

“Scope of practice” means the procedures, actions, processes, and work that a person may perform under an occupational license or other authorization to practice issued in this state.

§21-17-3. Occupational license or other authorization to practice.

(a) Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application, if all the following apply:

(1) The person holds a valid occupational license or other authorization to practice in another state in a lawful occupation with a similar scope of practice, as determined by the board in this state;

(2) The person has held the occupational license or other authorization to practice in the other state for at least one year;

(3) The person has met all educational and examination requirements for occupational licensure or other authorization to practice in the state where he or she holds a valid license;

(4) A board in all other states where a person is licensed holds the person in good standing;

(5) The person indicates on the application that he or she is or intends to be a West Virginia resident;

(6) The person does not have a disqualifying criminal record as determined by the board in this state;

(7) The person has never had his or her license or other authorization to practice revoked by the board in another state because of negligence or intentional misconduct related to the person’s work in the occupation;

(8) The person did not surrender an occupational license or other authorization to practice because of negligence or intentional misconduct related to the person’s work in the occupation in another state;

(9) The person does not have a complaint, allegation, or investigation pending before a board in another state. If the person has a complaint, allegation, or investigation pending, the board in this state shall not issue or deny an occupational license or other authorization to practice to the person until the complaint, allegation, or investigation is resolved; and

(10) The person pays all applicable fees and meet all applicable bonding requirements in this state.

(b) If this state requires an occupational license to work, but another state does not issue an occupational license for the same profession and instead issues another authorization to practice, this state shall issue an occupational license to the person if the person otherwise satisfies subsection (a) of this section.

§21-17-4. Work experience.

Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application based on work experience in another state, if all the following apply:

(1) The person worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but this state uses an occupational license or other authorization to practice that regulates a lawful occupation with a similar scope of practice, as determined by the board;

(2) The person worked for at least two years in the lawful occupation; and

(3) The person satisfies §21-17-3(a)(5) through §21-17-3(a)(10) of this code.

§21-17-5. Private certification.

Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person based on holding a private certification and work experience in another state, if all the following apply:

(1) The person holds a private certification and worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but this state uses an occupational license or other authorization to practice that regulates a lawful occupation with a similar scope of practice, as determined by the board;

(2) The person worked for at least one year in the lawful occupation;

(3) The person holds a current and valid private certification in the lawful occupation;

(4) The private certification organization holds the person in good standing; and

(5) The person satisfies §21-17-3(a)(5) through §21-17-3(a)(10) of this code.

§21-17-6. State law examination.

A board may require a person to pass a jurisprudential examination specific to relevant state laws that regulate the occupation if an occupational license or other authorization to practice in this state requires a person to pass a jurisprudential examination specific to relevant state statutes and administrative rules that regulate the occupation.

§21-17-7. Decision.

The board will provide the person with a written decision regarding the application within 60 days after receiving a complete application.

§21-17-8. Appeal.

(a) The person may appeal the board’s decision to a court of general jurisdiction.

(b) The person may appeal the board’s:

(1) Denial of an occupational license or other authorization to practice;

(2) Determination of the occupation;

(3) Determination of the similarity of the scope of practice of the occupational license or other authorization to practice; or

(4) Other determinations under this article.

§21-17-9. State laws and jurisdiction.

A person who obtains an occupational license or other authorization to practice pursuant to this article is subject to:

(1) The laws regulating the occupation in this state; and

(2) The jurisdiction of the board in this state.

§21-17-10. Limitations.

(a) An occupational license or other authorization to practice issued pursuant to this article is valid only in this state. It does not make the person eligible to work in another state under an interstate compact or reciprocity agreement unless otherwise provided in law.

(b) Nothing in this article prevents this state from entering into a licensing compact or reciprocity agreement with another state, foreign province, or foreign country.

(c) Nothing in this article prevents this state from recognizing occupational credentials issued by a private certification organization, foreign province, foreign country, international organization, or other entity.

(d) Nothing in this article requires a private certification organization to grant or deny private certification to any individual.

§21-17-11. Cost for application.

The board may charge a fee to the person to recoup its costs. The fee may not exceed the cost of an application for original licensure charged by the board.

§21-17-12. Preemption.

This article preempts laws by township, municipal, county, and other governments in the state which regulate occupational licenses and other authorization to practice.

§21-17-13. Rulemaking.

 Boards affected by these provisions are authorized to promulgate rules pursuant to §29A-3-1 *et seq.* of this code to carry out the provisions of this article.

Chapter 29. Miscellaneous Boards and Officers.

Article 33. universal recognition of occupational licenses act.

§29-33-1. Applicability.

The provisions of this article apply to all professions requiring an occupational license or other authorization to practice or perform a specific occupation in this state regulated by this chapter.

§29-33-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article unless the context clearly requires otherwise.

“Board” means a government agency, board, department, or other government entity that regulates a lawful occupation and issues an occupational license or other authorization to practice to an individual.

“Lawful occupation” means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational license.

“Occupational license” is a nontransferable authorization in law for an individual to perform or practice a lawful occupation based on meeting personal qualifications established by the Legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform or practice the occupation.

“Other authorization to practice” is a nontransferable acknowledgment, other than a license, by a state government or board that is provided to an individual asserting that the individual has met the educational and examination requirements to engage in a lawful occupation.

“Other state” or “another state” means any United States territory or state in the United States other than this state.

“Private certification” is a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use the designated title of “certified,” as permitted by the private organization.

“Scope of practice” means the procedures, actions, processes, and work that a person may perform under an occupational license or other authorization to practice issued in this state.

§29-33-3. Occupational license or other authorization to practice.

(a) Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application, if all the following apply:

(1) The person holds a valid occupational license or other authorization to practice in another state in a lawful occupation with a similar scope of practice, as determined by the board in this state;

(2) The person has held the occupational license or other authorization to practice in the other state for at least one year;

(3) The person has met all educational and examination requirements for occupational licensure or other authorization to practice in the state where he or she holds a valid license;

(4) A board in all other states where a person is licensed holds the person in good standing;

(5) The person indicates on the application that he or she is or intends to be a West Virginia resident;

(6) The person does not have a disqualifying criminal record as determined by the board in this state;

(7) The person has never had his or her license or other authorization to practice revoked by the board in another state because of negligence or intentional misconduct related to the person’s work in the occupation;

(8) The person did not surrender an occupational license or other authorization to practice because of negligence or intentional misconduct related to the person’s work in the occupation in another state;

(9) The person does not have a complaint, allegation, or investigation pending before a board in another state. If the person has a complaint, allegation, or investigation pending, the board in this state shall not issue or deny an occupational license or other authorization to practice to the person until the complaint, allegation, or investigation is resolved; and

(10) The person pays all applicable fees and meet all applicable bonding requirements in this state.

(b) If this state requires an occupational license to work, but another state does not issue an occupational license for the same profession and instead issues another authorization to practice, this state shall issue an occupational license to the person if the person otherwise satisfies subsection (a) of this section.

§29-33-4. Work experience.

Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application based on work experience in another state, if all the following apply:

(1) The person worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but this state uses an occupational license or other authorization to practice that regulates a lawful occupation with a similar scope of practice, as determined by the board;

(2) The person worked for at least two years in the lawful occupation; and

(3) The person satisfies §29-33-4(a)(5) through §29-33-4(a)(10) of this code.

§29-33-5. Private certification.

Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person based on holding a private certification and work experience in another state, if all the following apply:

(1) The person holds a private certification and worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but this state uses an occupational license or other authorization to practice that regulates a lawful occupation with a similar scope of practice, as determined by the board;

(2) The person worked for at least one year in the lawful occupation;

(3) The person holds a current and valid private certification in the lawful occupation;

(4) The private certification organization holds the person in good standing; and

(5) The person satisfies §29-33-4(a)(5) through §29-33-4(a)(10) of this code.

§29-33-6. State law examination.

A board may require a person to pass a jurisprudential examination specific to relevant state laws that regulate the occupation if an occupational license or other authorization to practice in this state requires a person to pass a jurisprudential examination specific to relevant state statutes and administrative rules that regulate the occupation.

§29-33-7. Decision.

The board will provide the person with a written decision regarding the application within 60 days after receiving a complete application.

§29-33-8. Appeal.

(a) The person may appeal the board’s decision to a court of general jurisdiction.

(b) The person may appeal the board’s:

(1) Denial of an occupational license or other authorization to practice;

(2) Determination of the occupation;

(3) Determination of the similarity of the scope of practice of the occupational license or other authorization to practice; or

(4) Other determinations under this article.

§29-33-9. State laws and jurisdiction.

A person who obtains an occupational license or other authorization to practice pursuant to this article is subject to:

(1) The laws regulating the occupation in this state; and

(2) The jurisdiction of the board in this state.

§29-33-10. Limitations.

(a) An occupational license or other authorization to practice issued pursuant to this article is valid only in this state. It does not make the person eligible to work in another state under an interstate compact or reciprocity agreement unless otherwise provided in law.

(b) Nothing in this article prevents this state from entering into a licensing compact or reciprocity agreement with another state, foreign province, or foreign country.

(c) Nothing in this article prevents this state from recognizing occupational credentials issued by a private certification organization, foreign province, foreign country, international organization, or other entity.

(d) Nothing in this article requires a private certification organization to grant or deny private certification to any individual.

§29-33-11. Cost for application.

The board may charge a fee to the person to recoup its costs. The fee may not exceed the cost of an application for original licensure charged by the board.

§29-33-12. Preemption.

This article preempts laws by township, municipal, county, and other governments in the state which regulate occupational licenses and other authorization to practice.

§29-33-13. Rulemaking.

Boards affected by these provisions are authorized to promulgate rules pursuant to §29A-3-1 *et seq.* of this code to carry out the provisions of this article.

Chapter 30. Professions and Occupations.

Article 1F. universal recognition of occupational licenses act.

§30-1F-1. Applicability.

The provisions of this article apply to all boards offering an occupational license or other authorization to practice or perform a specific occupation in this state regulated by this chapter; *Provided*, That the provisions of this article do not apply to §30-2-1 *et seq.,* and §30-29-1 *et seq.*, of this code.

§30-1F-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article unless the context clearly requires otherwise.

“Board” means a government agency, board, department, or other government entity that regulates a lawful occupation and issues an occupational license or other authorization to practice to an individual.

“Lawful occupation” means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational license.

“Occupational license” is a nontransferable authorization in law for an individual to perform or practice a lawful occupation based on meeting personal qualifications established by the Legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform or practice the occupation.

“Other authorization to practice” is a nontransferable acknowledgment, other than a license, by a state government or board that is provided to an individual asserting that the individual has met the educational and examination requirements to engage in a lawful occupation.

“Other state” or “another state” means any United States territory or state in the United States other than this state.

“Private certification” is a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use the designated title of “certified,” as permitted by the private organization.

“Scope of practice” means the procedures, actions, processes, and work that a person may perform under an occupational license or other authorization to practice issued in this state.

§30-1F-3. Occupational license or other authorization to practice.

(a) Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application, if all the following apply:

(1) The person holds a valid occupational license or other authorization to practice in another state in a lawful occupation with a similar scope of practice, as determined by the board in this state;

(2) The person has held the occupational license or other authorization to practice in the other state for at least one year;

(3) The person has met all educational and examination requirements for occupational licensure or other authorization to practice in the state where he or she holds a valid license;

(4) A board in all other states where a person is licensed holds the person in good standing;

(5) The person indicates on the application that he or she is or intends to be a West Virginia resident; *Provided,* That any person offering telehealth services pursuant to §30-1-26 of this code does not need to meet the residency requirements;

(6) The person does not have a disqualifying criminal record as determined by the board in this state;

(7) The person has never had his or her license or other authorization to practice revoked by the board in another state because of negligence or intentional misconduct related to the person’s work in the occupation;

(8) The person did not surrender an occupational license or other authorization to practice because of negligence or intentional misconduct related to the person’s work in the occupation in another state;

(9) The person does not have a complaint, allegation, or investigation pending before a board in another state. If the person has a complaint, allegation, or investigation pending, the board in this state shall not issue or deny an occupational license or other authorization to practice to the person until the complaint, allegation, or investigation is resolved; and

(10) The person pays all applicable fees and meet all applicable bonding requirements in this state.

(b) If this state requires an occupational license to work, but another state does not issue an occupational license for the same profession and instead issues another authorization to practice, this state shall issue an occupational license to the person if the person otherwise satisfies subsection (a) of this section.

§30-1F-4. Work experience.

Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application based on work experience in another state, if all the following apply:

(1) The person worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but this state uses an occupational license or other authorization to practice a lawful occupation with a similar scope of practice, as determined by the board;

(2) The person worked for at least two years in the lawful occupation; and

(3) The person satisfies §30-1F-3(a)(5) through §30-1F-3(a)(10) of this code.

§30-1F-5. Private certification.

Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person based on holding a private certification and work experience in another state, if all the following apply:

(1) The person holds a private certification and worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but this state uses an occupational license or other authorization to practice that regulates a lawful occupation with a similar scope of practice, as determined by the board;

(2) The person worked for at least one year in the lawful occupation;

(3) The person holds a current and valid private certification in the lawful occupation;

(4) The private certification organization holds the person in good standing; and

(5) The person satisfies §30-1F-3(a)(5) through §30-1F-3(a)(10) of this code.

§30-1F-6. State law examination.

A board may require a person to pass a jurisprudential examination specific to relevant state laws that regulate the occupation if an occupational license or other authorization to practice in this state requires a person to pass a jurisprudential examination specific to relevant state statutes and administrative rules that regulate the occupation, if the board offers or approves a class or classes designed to teach the relevant jurisprudential material and the same is made available to such persons at a cost comparable to other classes required by the board.

§30-1F-7. Decision.

The board will provide the person with a written decision regarding the application within 60 days after receiving a complete application.

§30-1F-8. Appeal.

(a) The person may appeal the board’s decision to a court of general jurisdiction.

(b) The person may appeal the board’s:

(1) Denial of an occupational license or other authorization to practice;

(2) Determination of the occupation;

(3) Determination of the similarity of the scope of practice of the occupational license or other authorization to practice; or

(4) Other determinations under this article.

§30-1F-9. State laws and jurisdiction.

A person who obtains an occupational license or other authorization to practice pursuant to this article is subject to:

(1) The laws regulating the occupation in this state; and

(2) The jurisdiction of the board in this state.

§30-1F-10. Limitations.

(a) An occupational license or other authorization to practice issued pursuant to this article is valid only in this state. It does not make the person eligible to work in another state under an interstate compact or reciprocity agreement unless otherwise provided in law.

(b) Nothing in this article prevents this state from entering into a licensing compact or reciprocity agreement with another state, foreign province, or foreign country.

(c) Nothing in this article prevents this state from recognizing occupational credentials issued by a private certification organization, foreign province, foreign country, international organization, or other entity.

(d) Nothing in this article requires a private certification organization to grant or deny private certification to any individual.

§30-1F-11. Cost for application.

The board may charge a fee to the person to recoup its costs. The fee may not exceed the cost of an application for original licensure charged by the board.

§30-1F-12. Preemption.

This article preempts laws by township, municipal, county, and other governments in the state which regulate occupational licenses and other authorization to practice.

§30-1F-13. Rulemaking.

Boards affected by these provisions are authorized to promulgate rules pursuant to §29A-3-1 *et seq.* of this code to carry out the provisions of this article.

NOTE: The purpose of this bill is to provide for occupational licenses or other authorization to practice by recognition for qualified applicants from other states.

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