

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4634

BY DELEGATES ESPINOSA, FOSTER, STEELE, MARTIN,
JENNINGS, HORST, BURKHAMMER, HOLSTEIN, AND
HOWELL

[Originating in the Committee on Government
Organization; February 21, 2022]

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

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 17. REVIEW AND CREDENTIAL ACKNOWLEDGEMENT PROCEDURES

ACT.

§21-17-1. Applicability and short title.

1 The provisions of this article apply to all professions requiring an occupational license or
2 other authorization to practice or perform a specific occupation in this state regulated by this
3 chapter. This article may be known and cited as the “RECAP Act.”

§21-17-2. Definitions.

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

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

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

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

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

17 “Other state” or “another state” means any United States territory or state in the United
18 States other than West Virginia.

19 “Scope of practice” means the procedures, actions, processes, and work that a person
20 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.

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

3 (1) The person holds a valid occupational license or other authorization to practice in
4 another state in a lawful occupation with a similar scope of practice and with education,
5 experience, and examination requirements for licensure or authorization to practice similar to
6 those of this state, as determined by the board in this state;

7 (2) The person has held the occupational license or other authorization to practice in the
8 state where he or she holds a valid license or other authorization to practice for at least one year;

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

11 (4) The person is in good standing with the board in every other state where he or she
12 holds a valid license;

13 (5) The person has established residency as a West Virginia resident as defined by §11-
14 21-7(a) of this code;

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

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

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

23 (9) The person does not have a complaint, allegation, or investigation pending before a
24 board in another state. If the person has a complaint, allegation, or investigation pending, the

25 board in this state shall not issue or deny an occupational license or other authorization to practice
26 to the person until the complaint, allegation, or investigation is resolved; and

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

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

33 (c) Any person issued a license under this article must comply with all relevant continuing
34 education requirements to renew a license established by the board and any other rule
35 promulgated by the board as provided by §21-17-8 of this code.

§21-17-4. Work experience.

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

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

8 (2) The person worked for at least two years in the lawful occupation and has acquired
9 experience demonstrating knowledge and proficiency in the occupation similar to that which may
10 be achieved through compliance with the education and examination requirements to practice in
11 this state, as determined by the board;

12 (3) The person has taken and passed any required national examinations to lawfully
13 practice the occupation or use a title in connection with an occupation in another state; and

14 (4) The person satisfies §21-17-3(a)(5), §21-17-3(a)(6), and §21-17-3(a)(10) of this code.

§21-17-5. State law examination.

1 A board may require a person to pass a jurisprudential examination specific to relevant
2 West Virginia laws that regulate the occupation if an occupational license or other authorization
3 to practice in this state requires a person to pass such examination for original licensure.

§21-17-6. Decision.

1 The board will provide the person with a written decision issuing or denying a license within
2 60 days after receiving a complete application.

§21-17-7. Appeal.

1 (a) The person may appeal the board's decision to a court of general jurisdiction in the
2 county where the person resides.

3 (b) The person may appeal the board's:

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

5 (2) Determination of the occupation;

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

8 (4) Other determinations under this article.

§21-17-8. State laws and jurisdiction.

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

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

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

§21-17-9. Limitations.

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

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

6 (c) Nothing in this article prevents West Virginia from recognizing occupational credentials
7 issued by a foreign province, foreign country, international organization, or other entity.

§21-17-10. Cost for application.

1 The board may charge a fee to the person to recoup its costs. The fee may not exceed
2 the cost of an application for original licensure charged by the board. Any application for renewing
3 a license after obtaining a license under this article shall comply with the board's established
4 renewal procedures and fee schedule.

§21-17-11. Preemption.

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

§21-17-12. Rulemaking.

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 33. REVIEW AND CREDENTIAL ACKNOWLEDGEMENT PROCEDURES

ACT.

§29-33-1. Applicability.

1 The provisions of this article apply to all professions requiring an occupational license or
2 other authorization to practice or perform a specific occupation in this state regulated by this
3 chapter. This article may be known and cited as the "RECAP Act."

§29-33-2. Definitions.

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

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

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

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

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

17 “Other state” or “another state” means any United States territory or state in the United
18 States other than West Virginia.

19 “Scope of practice” means the procedures, actions, processes, and work that a person
20 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.

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

3 (1) The person holds a valid occupational license or other authorization to practice in
4 another state in a lawful occupation with a similar scope of practice and with education,
5 experience, and examination requirements for licensure or authorization to practice similar to
6 those of this state, as determined by the board in this state;

7 (2) The person has held the occupational license or other authorization to practice in the
8 state where he or she holds a valid license or other authorization to practice for at least one year;

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

11 (4) The person is in good standing with the board in every other state where he or she
12 holds a valid license;

13 (5) The person has established residency as a West Virginia resident as defined by §11-
14 21-7(a) of this code;

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

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

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

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

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

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

33 (c) Any person issued a license under this article must comply with all relevant continuing
34 education requirements to renew a license established by the board and any other rule
35 promulgated by the board as required in §29-33-8 of this code.

§29-33-4. Work experience.

1 Notwithstanding any other law, the board shall issue an occupational license or other
2 authorization to practice to a person upon application based on work experience in another state,
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5 authorization to practice that regulates a lawful occupation, but this state uses an occupational
6 license or other authorization to practice that regulates a lawful occupation with a similar scope
7 of practice, as determined by the board;

8 (2) The person worked for at least two years in the lawful occupation and has acquired
9 experience demonstrating knowledge and proficiency in the occupation similar to that which may
10 be achieved through compliance with the education and examination requirements to practice of
11 this state, as determined by the board;

12 (3) The person has taken and passed any required national examinations to lawfully
13 practice the occupation or use a title in connection with an occupation in another state; and

14 (4) The person satisfies §29-33-3(a)(5), §29-33-3(a)(6), and §29-33-3(a)(10) of this code.

§29-33-5. State law examination.

1 A board may require a person to pass a jurisprudential examination specific to relevant
2 West Virginia laws that regulate the occupation if an occupational license or other authorization
3 to practice in this state requires a person to pass such examination for original licensure.

§29-33-6. Decision.

1 The board will provide the person with a written decision issuing or denying a license within
2 60 days after receiving a complete application.

§29-33-7. Appeal.

1 (a) The person may appeal the board’s decision to a court of general jurisdiction in the
2 county where the person resides.

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2 to this article is subject to:

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

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7 issued by a foreign province, foreign country, international organization, or other entity.

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2 the cost of an application for original licensure charged by the board. Any application for renewing

3 a license after obtaining a license under this article shall comply with the board's established
4 renewal procedures and fee schedule.

§29-33-11. Preemption.

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

§29-33-12. Rulemaking.

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