

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 462

By Senator Takubo

[Introduced February 13, 2025; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §30-28-3 of the Code of West Virginia, 1931, as amended; to amend
2 said code by adding a new section, designated §30-28-4a; and to repeal §30-28-15,
3 relating to the Board of Occupational Therapy; defining terms; permitting the Board of
4 Occupational Therapy to require criminal history record checks; requiring rulemaking; and
5 repealing code related to special volunteer licenses and immunity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

§30-28-3. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
2 the context clearly indicates otherwise:

3 ~~(a)~~ "Association" means the West Virginia Occupational Therapy Association.

4 ~~(b)~~ "Board" means the West Virginia Board of Occupational Therapy.

5 ~~(c)~~ "Business entity" means any firm, partnership, association, company, corporation,
6 limited partnership, limited liability company or other entity doing business in the State of West
7 Virginia.

8 ~~(d)~~ "Client-related tasks" means tasks which are related to treatment and which, when
9 performed by an occupational therapy aide, must be performed under direct supervision, including
10 routine transfers, routine care of a patient's personal needs during the course of treatment,
11 execution of an established routine activity or exercise, and assisting the supervising occupational
12 therapist or occupational therapy assistant as directed during the course of treatment.

13 "Compact privilege" means the authorization, which is equivalent to a license, granted by a
14 remote state to allow a licensee from another member state to practice as an occupational
15 therapist or practice as an occupational therapy assistant in the remote state under its laws and
16 rules. The practice of occupational therapy occurs in the member state where the patient or client
17 is located at the time of the patient or client encounter;

18 ~~(e)~~ "Direct supervision" means the actual physical presence of a licensed supervising

occupational therapist or licensed occupational therapy assistant, and the specific delineation of tasks and responsibilities for personally reviewing and interpreting the results of any habilitative or rehabilitative procedures conducted by the limited permit holder, occupational therapy student, or aide. Direct supervision includes direct close supervision and direct continuous supervision.

(f) "Direct close supervision" means the licensed supervising occupational therapist or licensed occupational therapy assistant is in the building and has daily direct contact at the site of work.

(g) "Direct continuous supervision" means the licensed supervising occupational therapist or licensed occupational therapy assistant is physically present and in direct line of sight of the occupational therapy student or aide.

(h) "General supervision" means initial direction and periodic inspection of the activities of a licensed occupational therapist assistant by the supervising licensed occupational therapist, but does not necessarily require constant physical presence on the premises while the activities are performed.

(i) "License" means a valid and current license issued by the board under the provisions of this article.

(j) "Nonclient-related tasks" means tasks which are not related to treatment and do not require independent clinical reasoning, including clerical and maintenance activities, housekeeping, preparation of the work area or equipment, transporting patients, and ordering supplies, and which, when performed by an occupational therapy aide, must be performed under general supervision.

(k) "Occupational Therapist" means a person licensed by the board under the provisions of this article to engage in the practice of occupational therapy.

(l) "Occupational Therapy Assistant" means a person licensed by the board under the provisions of this article to assist in the practice of occupational therapy under the general supervision of an Occupational Therapist.

~~(m)~~ "Occupational Therapy Aide" means a person who may provide nonclient-related tasks under general supervision, or specifically delegated client-related tasks, subject to the conditions set forth in subsection (f), section four of this article, under direct supervision of an Occupational Therapist or an Occupational Therapy Assistant, in accordance with the provisions of this article.

~~(n)~~ "The practice of occupational therapy" means the therapeutic use of everyday life activities or occupations to address the physical, cognitive, psychosocial, sensory, and other aspects of performance of individuals or groups of individuals, including those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction, to promote health, wellness and participation in roles and situations in home, school, workplace, community and other settings.

§30-28-4a. West Virginia Board of Occupational Therapy criminal history record checks.

(a) The West Virginia Board of Occupational Therapy is authorized to require state and national criminal history record checks for the purpose of issuing compact privileges. The West Virginia Board of Occupational Therapy shall require an applicant, including occupational therapists, and occupational therapy assistants, as a condition of eligibility for compact privilege to submit to a state and national criminal history record check as set forth in this section.

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

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

(2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a compact privilege.

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

(1) To the individual who is the subject of the criminal history record check;

70 (2) With the written authorization of the individual who is the subject of the criminal history
71 record check; or

72 (3) Pursuant to a court order.

73 (d) The criminal history record check and related records are not public records for the
74 purposes of §29B-1-1 et seq. of this code.

75 (e) The applicant shall pay the actual costs of the fingerprinting and criminal history record
76 check.

77 (f) The board may not disqualify an applicant for initial licensure because of a prior criminal
78 conviction that has not been reversed unless that conviction is for a crime that bears a rational
79 nexus to the occupation requiring licensure.

80 (g) The board may not use crimes involving moral turpitude in making licensure
81 determinations.

82 (h) If an applicant is disqualified for licensure because of a criminal conviction that has not
83 been reversed, the board shall afford the applicant the opportunity to reapply for licensure after the
84 expiration of five years from the date of conviction or date of release from the penalty that was
85 imposed, whichever is later, if the individual has not been convicted of any other crime during that
86 period of time: Provided, That convictions for violent sexual offense or offenses shall subject an
87 individual to a longer period of disqualification, to be determined by the board.

88 (i) An individual with a criminal record who has not previously applied for licensure,
89 certification, or registration may petition the board at any time for a determination of whether the
90 individual's criminal record will disqualify the individual from obtaining a compact privilege or other
91 authorization to practice. This petition shall include sufficient details about the individual's criminal
92 record to enable the board to identify the jurisdiction where the conviction occurred, the date of the
93 conviction, and the specific nature of the conviction. The board shall inform the individual of his or
94 her standing within 60 days of receiving the petition from the applicant. The board may charge a
95 fee established by rule to recoup its costs for each petition.

96 (j) The board shall propose rules or amendments to existing rules for legislative approval to
97 comply with the provisions of this section. These rules or amendments to rules shall be proposed
98 pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time limit to be
99 considered by the Legislature during its regular session in the year 2026.

**§30-28-15. Special volunteer occupational therapist license; civil immunity for voluntary
services rendered to indigents.**

1 [Repealed].

NOTE: The purpose of this bill is to provide the Occupational Therapy Board with the ability to require criminal background check for applicants, requiring rulemaking, and to remove a duplicative provisions related to special volunteer licenses and immunity.

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