

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977

ENROLLED

SENATE BILL NO. 483

(By Mr. Galpin & Mr. Kusie)

PASSED April 8 1977

In Effect ninty days from Passage

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(By MR. GALPERIN and MR. KUSIC)

[Passed April 8, 1977; in effect ninety days from passage.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three, relating generally to the practice of radiologic technology and the licensing of persons engaging in the practice of radiologic technology; setting forth certain legislative findings and a declaration of purpose; defining terms; requiring the licensing of persons engaged in the practice of radiologic technology; providing prohibitions and restrictions on certain activities; creating the West Virginia radiologic technology board of examiners; relating to the appointment, qualifications, terms of office, oath, removal and expenses of members of the board; relating to the officers, meetings and quorum of the board; relating to vacancies on the board; specifying powers and duties of the board; relating to the receipt and disbursement of funds; establishing qualifications of applicants for license; providing for reciprocal licensing of certain radiologic technologists; exempting certain persons from license requirements; authorizing issuance of license to persons who have practiced radiologic technology at least one of the last five years under certain circumstances, without examination and without meeting certain educational requirements; relating to applications and fees; providing for the issuance of license, renewal thereof and fees in connection therewith; relating to the issuance of a temporary permit to practice radiologic technology; authorizing the board to suspend or revoke license or temporary permit and establishing the grounds therefor; authorizing board to conduct investigations and hold hearings; relating to hearing

procedures; providing a time and place for such hearings; specifically making chapter twenty-nine-a of the code applicable; authorizing the board to issue subpoenas and subpoenas duces tecum; providing automatic stay or suspension of certain orders of board pending hearing; relating to the cost of any such hearing; providing for judicial review of decisions of the board entered following hearing; providing for appeals to the supreme court of appeals; providing legal representation for the board; providing for injunctive relief; and establishing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-three, to read as follows:

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-1. Legislative findings and declarations of public policy.

1 The Legislature finds and declares that in the interest
2 of public health, the people of this state should be pro-
3 tected from excessive and improper exposure to ionizing
4 radiation. It is the purpose of this article to establish
5 minimum standards of education, training and experience
6 for radiologic technologists and to prescribe means for
7 assuring that these standards are met.

§30-23-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Board" means the West Virginia radiologic
4 technology board of examiners.

5 (b) "License" means a license granted and issued by
6 the board for the practice of radiologic technology.

7 (c) "Licensed practitioner" means a person licensed to
8 practice medicine, chiropractic, podiatry, osteopathy or
9 dentistry.

10 (d) "Licensee" means any person holding a license or
11 a temporary permit issued under the provisions of this
12 article.

13 (e) "Radiologic technologist" means a person, other
14 than a licensed practitioner who applies x-rays or as-
15 sists in the application of x-rays to human beings for
16 diagnostic or therapeutic purposes under the supervision
17 of a licensed practitioner.

18 (f) "Radiologic technology" means the application of
19 x-rays or assisting in the application of x-rays to human
20 beings for diagnostic or therapeutic purposes under the
21 supervision of a licensed practitioner.

22 (g) "Radiologist" means a licensed practitioner who
23 specializes in the use of ionizing radiation for the diag-
24 nosis or treatment of disease.

25 (h) "Radiology resident" means a licensed practitioner
26 who is in training to become a radiologist and who uses
27 ionizing radiation in the diagnosis or treatment of disease,
28 under the supervision of a radiologist.

29 (i) "Supervision" means responsibility for and control
30 of quality, radiation safety and technical aspects in the
31 application of ionizing radiation of human beings for
32 diagnostic or therapeutic purposes.

33 (j) "Technology" hereinafter relates to radiologic
34 technology.

§30-23-3. License required.

1 (a) No person may engage in, offer to engage in, or
2 hold himself out to the public as being engaged in, the
3 practice of radiologic technology in this state, nor may
4 any person use in connection with any trade, business,
5 profession or occupation, except in those instances
6 specifically provided in subdivisions (1), (2), (3) and
7 (4), subsection (c), section six of this article, the word
8 radiologic technologist or any other title, word or ab-
9 breviation which induces or tends to induce the belief
10 that such person is qualified to engage or is engaged in
11 the practice of radiologic technology, unless and until
12 he first obtains a license or temporary permit to engage
13 in the practice of radiologic technology in accordance
14 with the provisions of this article, which license or
15 temporary permit remains unexpired, unsuspended and
16 unrevoked: *Provided*, That no such license or temporary
17 permit may be required for a radiologic technologist

18 who is not a resident of this state, who is the holder of
19 a license or certificate to engage in the practice of radio-
20 logic technology issued by a state with licensing or
21 certification requirements determined by the board to
22 be at least equal to those provided in this article,
23 who has no regular place of practice in this state and
24 who engages in the practice of radiologic technology in
25 this state for a period of not more than ten days in
26 any calendar year.

27 (b) No firm, association or corporation may, except
28 through a licensee or licensees, render any service or
29 engage in any activity which if rendered or engaged in
30 by any individual would constitute the practice of radio-
31 logic technology.

§30-23-4. Creation of board of examiners of radiologic technologists; members; appointment by governor; qualifications; terms; vacancies; officers; oath; compensation; general provisions.

1 There is hereby created a West Virginia radiologic
2 technology board of examiners, hereinafter called the
3 board. The governor shall appoint the members of such
4 board, by and with the advice and consent of the Senate.
5 The board shall consist of seven members, composed of
6 one member from the division of radiologic health of
7 the West Virginia state department of health, three
8 licensed practitioners, two of whom shall be radiologists,
9 and three radiologic technologists who are licensed here-
10 under, or, in the case of the members first appointed,
11 are eligible for a license hereunder without passing a
12 proficiency examination if such person has a total of
13 three years' experience as a radiologic technologist im-
14 mediately prior to the effective date of this article.

15 Each member shall be appointed for a term of three
16 years and shall serve until a successor has been ap-
17 pointed and has qualified: *Provided*, That of the first
18 appointees, a licensed practitioner and a radiologic
19 technologist shall each be appointed for a term of one
20 year, a licensed practitioner and a radiologic technologist
21 shall each be appointed for a term of two years and a
22 licensed practitioner, a radiologic technologist and a

23 representative from the division of radiologic health,
24 West Virginia state department of health shall each be
25 appointed for a term of three years. All members of the
26 board shall be residents of West Virginia. A member
27 may succeed himself. Vacancies shall be filled by ap-
28 pointment by the governor for the unexpired term. Be-
29 fore entering upon the performance of his duties, each
30 member shall take and subscribe to the oath required
31 by section five, article four of the constitution of this
32 state.

33 The board shall elect from its membership a chair-
34 man and secretary who shall serve at the will and
35 pleasure of the board. A majority of the members of
36 the board constitutes a quorum, and meetings shall be
37 held at the call of the chairman or upon the written
38 request of three members at such time and place as
39 designated in such call or request, and, in any event,
40 the board shall meet at least twice annually to conduct
41 the examination hereinafter provided for and to trans-
42 act such other business as may come before it. The board
43 shall hold its first meeting within thirty days after the
44 appointment of the members. The members of the board
45 shall receive no compensation for their services as
46 members, but shall be reimbursed for all reasonable and
47 necessary expenses actually incurred in the performance
48 of their duties under this article. Any member may be
49 removed by the governor in case of incompetency,
50 neglect of duty, gross immorality or malfeasance in office.

§30-23-5. Board of examiners; powers and duties; funds of board.

1 (a) The board shall:

2 (1) Promulgate reasonable rules and regulations im-
3 plementing the provisions of this article and the powers
4 and duties conferred upon the board hereby and such
5 reasonable rules and regulations shall be promulgated
6 in accordance with the provisions of article three, chapter
7 twenty-nine-a of this code;

8 (2) Examine applicants and determine their eligibility
9 for a license or temporary permit to practice radiologic
10 technology;

11 (3) Prepare, conduct and grade an examination of
12 applicants for a license and determine the satisfactory
13 passing score thereon;

14 (4) Issue, renew, deny, suspend or revoke licenses
15 and temporary permits to engage in the practice of
16 radiologic technology in accordance with the provisions
17 of this article and, in accordance with the administra-
18 tive procedures hereinafter provided, review, affirm,
19 reverse, vacate or modify its order with respect to any
20 such denial, suspension or revocation;

21 (5) Investigate alleged violations of provisions of this
22 article, reasonable rules and regulations promulgated
23 hereunder and orders and final decisions of the board
24 and take appropriate disciplinary action against any
25 licensee for the violation thereof or institute appro-
26 priate legal action for the enforcement of the provisions
27 of this article, rules and regulations promulgated here-
28 under and orders and final decisions of the board;

29 (6) Employ, direct, discharge and define the duties of
30 full or part-time professional, clerical or other personnel
31 necessary to effectuate the provisions of this article;

32 (7) Keep accurate and complete records of its pro-
33 ceedings, certify the same as may be appropriate, and
34 prepare, from time to time, a list showing the names
35 and addresses of all licensees;

36 (8) Provide standards for approved schools of
37 technology, procedures for obtaining and maintaining
38 approval, and procedures of revocation of approval
39 where standards are not maintained: *Provided*, That such
40 standards for approved schools meet at least the minimal
41 requirements of the American society of radiologic tech-
42 nologists;

43 (9) Whenever it deems it appropriate, confer with the
44 attorney general or his assistants in connection with all
45 legal matters and questions; and

46 (10) Take such other action as may be reasonably
47 necessary or appropriate to effectuate the provisions of
48 this article.

49 (b) All moneys paid to the board shall be accepted
50 by a person designated by the board and deposited by

51 him with the treasurer of the state and credited to an
52 account to be known as the "board of examiners of radio-
53 logic technologist fund." The reimbursement of all rea-
54 sonable and necessary expenses actually incurred by
55 members of the board and all other costs and expenses
56 incurred by the board in the administration of this article
57 shall be paid from such fund, and no part of the state's
58 general revenue fund shall be expended for this purpose.

**§30-23-6. Qualifications of applicants; exceptions; applications;
fee.**

1 (a) To be eligible for a license to practice radiologic
2 technology the applicant must:

3 (1) Be of good moral character;

4 (2) Have completed four years of high school educa-
5 tion or its equivalent;

6 (3) Have successfully completed a minimum twenty-
7 four-month course in radiologic study in a school of
8 radiologic technology approved by the board;

9 (4) Have passed the examination prescribed by the
10 board, which examination shall cover the basic subject
11 matter of radiologic technology, skills and techniques;
12 and

13 (5) Not have been convicted of a felony in any court
14 in this state or any federal court in this or any other
15 state within ten years preceding the date of application
16 for registration, which conviction remains unreversed;
17 and not have been convicted of a felony in any court
18 in this state or any federal court in this or any other
19 state at any time if the offense for which he was con-
20 victed related to the practice of radiologic technology,
21 which conviction remains unreversed.

22 (b) Any person who holds a license or certificate,
23 including the American Registry of Radiologic Tech-
24 nologists, to practice radiologic technology issued by any
25 other state, the requirements for which license or certifi-
26 cate are found by the board to be at least equal to
27 those provided in this article, shall be eligible for a
28 license to practice radiologic technology in this state
29 without examination.

30 (c) The following persons are not required to obtain
31 a license in accordance with the provisions of this article:

32 (1) A technology student enrolled in or attending an
33 approved school of technology who as part of his course
34 of study applies ionizing radiation to a human being
35 under the supervision of a licensed practitioner;

36 (2) A person acting as a dental assistant who under
37 the supervision of a licensed dentist operates only radio-
38 graphic dental equipment for the sole purpose of dental
39 radiography;

40 (3) A person engaged in performing the duties of a
41 technologist in his employment by an agency, bureau
42 or division of the government of the United States; and

43 (4) Any licensed practitioner, radiologist or radiology
44 resident.

45 (d) Any person who has engaged in the practice of
46 radiologic technology in this state for a period of three
47 years or more within the last five years as of the ef-
48 fective date of this article is eligible for a license to
49 engage in the practice of radiologic technology without
50 examination and without meeting the requirements of
51 subdivision (3), subsection (a) of this section, if ap-
52 plication for such license is made within twelve months
53 after the effective date of this article and if such person
54 meets the requirements of subdivisions (1), (2) and (5),
55 subsection (a) of this section.

56 (e) Any person who has been engaged as a radiologic
57 technologist for at least one of the three years im-
58 mediately prior to the effective date of this article and
59 passes a proficiency examination prepared by the board
60 is eligible for a license to engage in the practice of
61 radiologic technology without further examination and
62 without meeting the requirements of subdivision (3),
63 subsection (a) of this section, if application for such
64 license is made within twelve months after the
65 effective date of this article and if such person
66 meets the requirements of subdivisions (1), (2) and (5),
67 subsection (a) of this section.

68 (f) Any applicant for any such license shall submit
69 an application therefor at such time (subject to the time

70 limitation set forth in subsection (d) of this section), in
71 such manner, on such forms and containing such informa-
72 tion as the board may from time to time by reasonable
73 rule and regulation prescribe, and pay to the board a
74 license fee of thirty dollars, which fee shall be returned
75 to the applicant if he is denied a license.

§30-23-7. Issuance of license; renewal of license; renewal fee.

1 Whenever the board finds that an applicant meets all
2 the requirements of this article for a license to engage in
3 the practice of radiologic technology, it shall forthwith
4 issue to him such license; and otherwise the board shall
5 deny the same. The license is valid for a period of two
6 years from the date issued and shall be renewed every two
7 years without examination upon application for renewal
8 on a form prescribed by the board and payment to the
9 board of a renewal fee of twenty dollars: *Provided*, That
10 the board may deny an application for renewal for any
11 reason which would justify the denial of an original
12 application for a license.

§30-23-8. Temporary permits.

1 Upon proper application the board may issue a tempo-
2 rary permit to engage in the practice of radiologic technol-
3 ogy in this state to an applicant who meets the qualifica-
4 tions of subdivisions (1), (2), (3) and (5), subsection (a),
5 section six of this article, pending examination of such
6 applicant, which temporary permit shall expire thirty
7 days after the board gives written notice of the results of
8 the examination held following the issuance of such tem-
9 porary permit, and such permit may not be renewed or
10 another thereof issued to the same person.

§30-23-9. Suspension or revocation of license or temporary permit.

1 (a) The board may at any time upon its own motion and
2 shall upon the verified written complaint of any person
3 conduct an investigation to determine whether there are
4 grounds for suspension or revocation of a license or a
5 temporary permit issued under the provisions of this
6 article.

7 (b) The board shall suspend or revoke any license or
8 temporary permit when it finds the holder thereof has:

9 (1) Been convicted of a felony in any court in this
10 state or any federal court in this or any other state within
11 ten years preceding the date of the motion or complaint,
12 which conviction remains unreversed; or been convicted of
13 a felony in any court in this state or any federal court in
14 this or any other state at any time if the offense for which
15 he was convicted related to the practice of radiologic
16 technology, which conviction remains unreversed;

17 (2) Obtained a license or temporary permit by means
18 of fraud or deceit;

19 (3) Been incompetent, grossly negligent, or guilty of
20 other malpractice as defined by the board by reasonable
21 rules and regulations;

22 (4) Failed or refused to comply with the provisions of
23 this article or any reasonable rule and regulation promul-
24 gated by the board hereunder or any order or final deci-
25 sion of the board; or

26 (5) Except in emergency situations, failed to obtain
27 written authorization from the attending licensed prac-
28 titioner or from the patient, and if the patient is a minor,
29 from a parent or a person having custody of the minor.

30 (c) The board shall also suspend or revoke any license
31 or temporary permit if it finds the existence of any
32 grounds which would justify the denial of an application
33 for such license or temporary permit if application were
34 then being made for it.

§30-23-10. Procedures for hearing.

1 (a) Whenever the board denies an application for any
2 original or renewal license or denies an application for
3 a temporary permit or suspends or revokes any license
4 or temporary permit, it shall make an interim order to
5 that effect and serve a copy thereof on the applicant or
6 licensee, as the case may be, by certified mail, return
7 receipt requested. Such order shall state the grounds
8 for the action taken and shall require that any license or
9 temporary permit suspended or revoked thereby shall be

10 returned to the board by the holder within twenty days
11 after receipt of said copy of said order.

12 (b) Any person adversely affected by any such order
13 is entitled to a hearing thereon (as to all issues not
14 excluded from the definition of a "contested case" as set
15 forth in article one, chapter twenty-nine-a of this code)
16 if, within twenty days after receipt of a copy thereof,
17 he files with the board a written demand for such hear-
18 ing. A demand for hearing shall operate automatically
19 to stay or suspend the execution of any order suspend-
20 ing or revoking a license or temporary permit or denying
21 an application for a renewal license. The board may re-
22 quire the person demanding such hearing to give reason-
23 able security for the cost thereof and if such person does
24 not substantially prevail at such hearing such cost shall
25 be assessed against him and may be collected by civil
26 action or other proper remedy.

27 (c) Upon receipt of a written demand for such hear-
28 ing, the board shall set a time and place therefor not
29 less than ten and not more than thirty days thereafter.
30 Any scheduled hearing may be continued by the board
31 upon its own motion or for good cause shown by the
32 person demanding the hearing.

33 (d) All of the pertinent provisions of article five,
34 chapter twenty-nine-a of this code apply to and govern
35 the hearing and the administrative procedures in connec-
36 tion with and following such hearing, with like effect
37 as if the provisions of said article five were set forth in
38 this subsection.

39 (e) Any such hearing shall be conducted by a quorum
40 of the board. For the purpose of conducting any such
41 hearing any member of the board may issue subpoenas
42 and subpoenas duces tecum which shall be issued and
43 served within the time, for the fees and shall be enforced
44 as specified in section one, article five of said chapter
45 twenty-nine-a, and all of the said section one provisions
46 dealing with subpoenas and subpoenas duces tecum shall
47 apply to subpoenas and subpoenas duces tecum issued
48 for the purpose of a hearing hereunder.

49 (f) At any such hearing the person who demanded

50 the same may represent himself or be represented by
51 an attorney-at-law admitted to practice before any circuit
52 court of this state. Upon request by the board, it shall
53 be represented at any such hearing by the attorney
54 general or his assistants without additional compensa-
55 tion.

56 (g) After any such hearing and consideration of all
57 testimony, evidence and record in the case, the board
58 shall render its decision in writing. The written decision
59 of the board shall be accompanied by findings of fact
60 and conclusions of law as specified in section three, article
61 five, chapter twenty-nine-a of this code, and a copy of
62 such decision and accompanying findings and conclusions
63 shall be served by certified mail, return receipt requested,
64 upon the person demanding such hearing, and his at-
65 torney of record if any.

66 (h) The decision of the board is final unless reversed,
67 vacated or modified upon judicial review thereof in
68 accordance with the provisions of section eleven of this
69 article.

**§30-23-11. Judicial review; appeal to supreme court of appeals;
legal representation for board.**

1 Any person adversely affected by a decision of the
2 board rendered after a hearing held in accordance with
3 the provisions of section ten of this article is entitled to
4 judicial review thereof. All of the pertinent provisions
5 of section four, article five, chapter twenty-nine-a of this
6 code apply to and govern such judicial review with like
7 effect as if the provisions of said section four were set
8 forth in this section.

9 The judgment of the circuit court is final unless re-
10 versed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of sec-
12 tion one, article six, chapter twenty-nine-a of this code.

13 Legal counsel and services for the board in all appeal
14 proceedings in any circuit court and the supreme court
15 of appeals shall be provided by the attorney general or
16 his assistants and in any circuit court by the prosecuting
17 attorney of the county as well, all without additional
18 compensation.

§30-23-12. Actions to enjoin violations.

1 Whenever it appears to the board that any person has
2 been or is violating or is about to violate any provision
3 of this article, any reasonable rule and regulation promul-
4 gated hereunder or any order or final decision of the
5 board, the board may apply in the name of the state to
6 the circuit court of the county in which the violation or
7 violations or any part thereof has occurred, is occurring
8 or is about to occur, for an injunction against any such
9 person and any such other persons who have been, are or
10 are about to be, involved in any practice, acts or omissions,
11 so in violation, enjoining such person or persons from
12 any such violation or violations. Such application may
13 be made and prosecuted to conclusion whether or not any
14 such violation or violations have resulted or shall result
15 in prosecution or conviction under the provisions of
16 section thirteen of this article.

17 Upon application by the board, the circuit courts of
18 this state may by mandatory or prohibitory injunction
19 compel compliance with the provisions of this article, the
20 reasonable rules and regulations promulgated hereunder
21 and all orders and final decisions of the board. The court
22 may issue a temporary injunction in any case pending
23 a decision on the merits of any application filed.

24 The judgment of the circuit court upon any application
25 permitted by the provisions of this section shall be final
26 unless reversed, vacated or modified on appeal to the
27 supreme court of appeals. Any such appeal shall be
28 sought in the manner and within the time provided by
29 law for appeals from circuit courts in other civil actions.

30 The board shall be represented in all such proceedings
31 by the attorney general or his assistants and in such
32 proceedings in the circuit court by the prosecuting at-
33 torneys of the several counties as well, all without
34 additional compensation.

§30-23-13. Penalties.

1 Any person who violates any provisions of this article,
2 any of the reasonable rules and regulations promulgated
3 hereunder or any order or any final decision of the board

4 shall be guilty of a misdemeanor, and, upon conviction
5 thereof, shall be fined not more than one thousand dollars,
6 or imprisoned in the county jail not more than six months,
7 or both fined and imprisoned.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence C. Christensen Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

James L. Sullivan Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. B. Bartholomew
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 24
day of April, 1977.

James D. Rhyne
Governor

RECEIVED

APR 12 2 09 PM '77

OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 24, 1977

Time 1:00 p.m.

RECEIVED

77 APR 25 12:42

OFFICE
SECY. OF STATE