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Veto

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

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ENROLLED

HOUSE BILL No. 1256

(By Mr. Del. Norton & Del. Kiedelbusch)

— ● —

Passed March 10, 1984

In Effect Ninety Days From Passage



ENROLLED

H. B. 1256

(By DELEGATE WOOTON and DELEGATE WIEDEBUSCH)

[Passed March 10, 1984; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, four-a, five, six, seven, eight, ten, eleven, twelve and fifteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-a, all relating to state boards of licensing and examination generally; providing for the application of this article; specifying eligibility requirements for the reappointment of board members; providing for the registration of board officers; setting forth limitations with regard to lay members of certain boards; providing for subpoena and investigative powers; specifying licensing application, examination and fee requirements; prescribing the contents of licenses and grounds for suspension, revocation or probation; providing for the disposition of moneys; board members' compensation; annual reports by the boards; and granting immunity from civil liability in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four-a, five, six, seven, eight, ten, eleven, twelve and fifteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section two-a, all to read as follows:

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

§30-1-1. Application of article.

1 Notwithstanding any provision of this chapter to the con-
2 trary, every board of examination or registration referred to
3 in this chapter including the West Virginia board of health,
4 shall conform to the requirements prescribed in the following
5 sections of this article.

§30-1-2a. Members.

1 A board member is eligible for reappointment for one addi-
2 tional consecutive term. A board member shall hold his ap-
3 pointment until a successor is appointed, however this period
4 may not extend beyond one year after the member's term
5 expires, at which time the member ceases to serve.

6 A board member or member of the immediate family of a
7 board member is prohibited from employment as staff for
8 the board.

§30-1-3. Officers.

1 Every such board shall elect annually from its members a
2 president and a secretary who shall hold their offices for one
3 year and until their successors are elected: *Provided*, That all
4 state boards of examination and registration may each elect a
5 secretary from outside its membership. These officers shall
6 register annually with the governor, the commissioner of fi-
7 nance and administration, the legislative auditor and the sec-
8 retary of state.

§30-1-4a. Lay members of health profession boards.

1 Notwithstanding any provisions of this code to the contrary,
2 the governor shall appoint at least one lay person to repre-
3 sent the interests of the public on every health professional
4 licensing board. If the total number of members on any of
5 such boards after the appointment of one such lay person is an
6 even number, one additional lay person shall be appointed.
7 Said lay members shall serve in addition to any other members

8 otherwise provided for by law or regulation. Such lay mem-
9 bers shall be of the age of eighteen years or over, of good
10 moral character, and competent to represent and safeguard
11 the interests of the public. The lay member is empowered to
12 participate in and vote on all transactions and business of the
13 board, committee or group to which he is appointed.

14 Any person whose addition to a board as a lay member
15 under the provisions of this section results in the addition
16 of an odd number of lay additions to the board, shall serve
17 for a term ending in an odd-numbered year on the date in
18 that year on which terms of the professional members expire;
19 of such members first appointed, each shall serve for a term
20 ending on such date in the year one thousand nine hundred
21 seventy-nine, and the successor to each such person shall
22 serve for a term equal in length to the terms of the other
23 professional members of the board. Any person whose addi-
24 tion to a board as a lay member under the provisions of this
25 section results in the addition of an even number of lay
26 additions to the board, shall serve for a term ending in an
27 even-numbered year on the date in that year on which terms
28 of the professional members expire; of such members first ap-
29 pointed, each shall serve for a term ending on such date in the
30 year one thousand nine hundred seventy-eight, and the succes-
31 sor to each such person shall serve for a term equal in length
32 to the terms of the other professional members of the board.

33 The health profession licensing boards shall include those
34 boards provided for in articles two-a, four, five, six, seven,
35 seven-a, eight, ten, fourteen, sixteen, seventeen, twenty, twenty-
36 one, twenty-three, twenty-five, twenty-six, twenty-seven and
37 twenty-eight of this chapter.

§30-1-5. Meetings; quorum; powers relating to investigations.

1 Every such board shall hold at least two meetings each
2 year, at such times and places as it may prescribe by rule,
3 for the examination of applicants who desire to practice
4 their respective professions or occupations in this state, and
5 for the transaction of such other business as may legally
6 come before it. The board may hold such additional meet-
7 ings as may be necessary, which shall be called by the secre-

8 tary at the direction of the president or upon the written
9 request of any three members. A majority of the members
10 of the board constitutes a quorum for the transaction of its
11 business. The board has the power to compel the attendance
12 of witnesses, to issue subpoenas, to conduct investigations
13 and hire an investigator, and to take testimony and evidence
14 concerning any matter within its jurisdiction. For these pur-
15 poses the president and secretary of the board has the power
16 to administer oaths. Whenever a board obtains information
17 that a person subject to its authority has engaged in, is
18 engaging in or is about to engage in an act which constitutes,
19 or will constitute, a violation of the provisions of this chapter,
20 the board may make application to the circuit court for an
21 order enjoining those acts, and upon a showing that the
22 person has engaged, is engaging or is about to engage, in any
23 such act, an injunction, restraining order or other order as
24 the court deems appropriate shall be entered by the court.

**§30-1-6. Application; renewal and single service fees; examina-
tion; reexamination.**

1 Every applicant for license or registration under the pro-
2 visions of this chapter shall apply therefor in writing to the
3 proper board and shall transmit with his application an ex-
4 amination fee to the board which is authorized to charge for
5 an examination or investigation into such applicant's quali-
6 fications to practice. Each board is hereby authorized to
7 establish by rule or regulation a deadline for application
8 for examination which shall be not less than ten nor more
9 than ninety days prior to the date of the examination.

10 Boards may set by rule or regulation the following fees
11 relating to the licensing or registering of individuals:

12 (a) Application, examination or renewal fees which may
13 not exceed two hundred dollars each, except for those set by
14 the board of medicine, as provided for in section ten, article
15 three of this chapter; and

16 (b) All other single service fees which may not exceed
17 fifty dollars.

§30-1-7. Contents of license or certificate of registration.

1 Every license or certificate of registration issued by such

2 board shall bear a serial number, the full name of the appli-
3 cant, the date of issuance, the seal of the board, and shall be
4 signed by its president, secretary or executive secretary. No
5 license or certificate of registration granted or issued under
6 the provisions of this chapter is assignable.

**§30-1-8. Denial, suspension or revocation of a license or registra-
tion; probation; proceedings; effect of suspension or re-
vocation; transcript; report; judicial review.**

1 (a) Each board governed by this chapter is hereby autho-
2 rized to suspend or revoke the license of any person found
3 guilty of a felony or crime or for conduct, practices or acts con-
4 stituting negligence or willful departure from accepted stan-
5 dards of professional conduct. The words "felony" or "crime"
6 mean a felony or crime in violation of the laws of this state,
7 the United States or any other state. Each board is hereby
8 authorized to promulgate rules and regulations, in accordance
9 with the provisions of chapter twenty-nine-a of this code, and
10 to delineate conduct, practices or acts which in the judgment
11 of the board, constitute negligence or willful departure from
12 accepted standards of professional conduct.

13 (b) Notwithstanding any other provision of law to the
14 contrary, no certificate, license, registration or authority is-
15 sued under the provisions of this chapter may be suspended
16 or revoked without a prior hearing before the board or court
17 issuing said certificate, license, registration or authority.

18 (c) In all proceedings before a board or court for the sus-
19 pension or revocation of any certificate, license, registration
20 or authority issued under the provisions of this chapter, a
21 statement of the charges against the holder thereof and a notice
22 of the time and place of hearing shall be served upon such
23 person as a notice is served under section one, article two,
24 chapter fifty-six of this code, at least thirty days prior to the
25 hearing, and he may appear with witnesses and be heard in
26 person, by counsel, or both. The board may take such oral or
27 written proof, for or against the accused, as it may deem ad-
28 visable. If upon such hearing the board finds that the charges
29 are true, it may suspend or revoke the certificate, license, regis-

30 tration or authority, and such suspension or revocation shall
31 take from the person all rights and privileges acquired thereby.

32 The board may resolve any charges by informal disposition,
33 as provided in section one, article five, chapter twenty-nine-a
34 of this code, and may suspend its own decision and place a
35 licensee heard and found guilty by the board on probation.

36 (d) Any person denied a license, certificate, registration or
37 authority who believes such denial was in violation of this
38 article or the article under which said license, certificate, regis-
39 tration or authority is authorized shall be entitled to a hearing
40 on the action denying said license, certificate, registration or au-
41 thority. Hearings under this subsection shall be in accordance
42 with the provisions for hearings set forth in subsection (c).

43 (e) A stenographic report of each proceeding on the denial,
44 suspension or revocation of a certificate, license, registration
45 or authority shall be made at the expense of the board and a
46 transcript thereof retained in its files. The board shall make
47 a written report of its findings, which shall constitute part of
48 the record.

49 (f) All proceedings under the provisions of this section shall
50 be subject to review by the supreme court of appeals.

§30-1-10. Disposition of moneys; report to auditor.

1 The secretary of every such board shall receive and ac-
2 count for all moneys derived by virtue of the provisions of this
3 chapter applicable to such board, and shall pay them into a
4 separate special fund in the state treasury.

5 When the special fund of the board accumulates in excess
6 of twice the annual budget of the board or ten thousand dol-
7 lars, whichever is greater, the amount in excess shall be
8 transferred by the state treasurer to the state general revenue
9 fund.

§30-1-11. Compensation of members; expenses.

1 Each member of every such board shall receive not to exceed
2 one hundred dollars for each day actually spent in attending
3 the sessions of the board, or of its committees, and in necessary
4 travel, which amount shall be set by the board by rule or regu-

5 lation, and shall be reimbursed for all actual and necessary
6 expenses incurred in carrying out the provisions of this chapter
7 applicable to such board.

**§30-1-12. Record of proceedings; register of applicants; certified
copies of records prima facie evidence; report to
governor.**

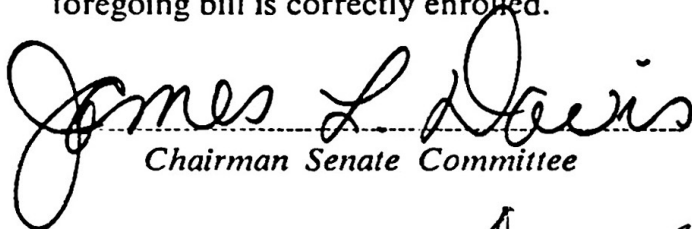
1 The secretary of every such board shall keep a record of its
2 proceedings and a register of all applicants for license or
3 registration, showing for each the date of his application,
4 his name, age, educational and other qualifications, place
5 of residence, whether an examination was required, whether
6 the applicant was rejected or a certificate of license or
7 registration granted, the date of such action, the license or
8 registration number, all renewals of such license or registration,
9 if required, and any suspension or revocation thereof. The
10 books and register of the board shall be open to public
11 inspection at all reasonable times, and such books and register,
12 or a copy of any part thereof, certified by the secretary and
13 attested by the seal of the board, shall be prima facie evidence
14 of all matters recorded therein.

15 On or before the first day of January of each year in
16 which the Legislature meets in regular session the board
17 shall submit to the governor a report of its transactions for
18 the preceding year, together with an itemized statement of its
19 receipts and disbursements, a full list of the names of all
20 persons licensed or registered by it during such period and a
21 list of any complaints filed regarding those licensed and
22 registered along with the action taken, certified by the presi-
23 dent and the secretary. A copy of the report shall be filed
24 with the secretary of state.

§30-1-15. Civil immunity for board members.

1 All members of the boards herein are immune from in-
2 dividual civil liability while acting within the scope of their
3 duties as board members.

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

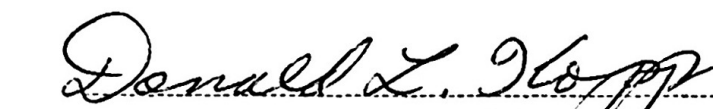
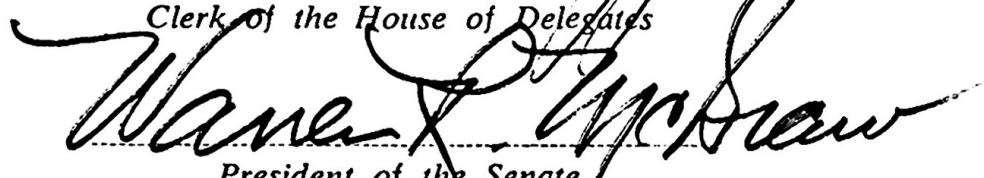

Chairman Senate Committee

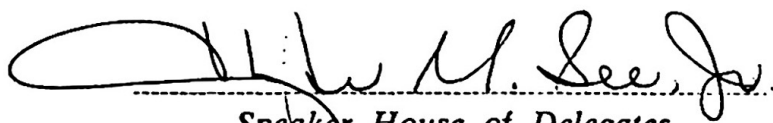

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates

President of the Senate


Speaker House of Delegates

The within is disapproved this the 28
day of March, 1984.


Governor

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