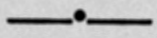


Veto-322

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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985



ENROLLED
Committee Substitute for
SENATE BILL NO. 322

(By Mr. Nelson)



PASSED April 13 1985

In Effect from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 322

(BY MR. NELSON)

(Originating in the Committee on Government Organization.)

[Passage April 13, 1985; in effect 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 thirty-one, relating generally to licensing of professional counselors; legislative purpose, definitions; exemption of certain activities and persons from licensure; limitations on licensed counselors; creating the West Virginia board of examiners in counseling; qualifications, composition and appointment of members of such board; vacancies; oath; meetings; honoraria and expenses; moneys of board to be deposited into treasury of state; board of examiners in counseling fund; no general revenues to board; powers and duties of such board; prohibiting the practice of counseling without a license; qualifications required of applicants for a license to practice counseling; license application fees; issuance of such licenses by the board; renewal of such licenses required biennially; license renewal fees; lapse and renewal thereafter; continued professional development required; grounds for suspension or revocation of license and

probationary procedures; providing procedures for hearing upon denial, suspension or revocation of a license or probationary period order; such hearing to be governed by the administrative procedures act; representation of board; judicial review of decisions of the board to be governed by the administrative procedures act; quorum; subpoenas; representation; decision in writing; review; appeal; penalties for violations; authorizing action to enjoin violations; procedures; disclosure; termination of board.

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 thirty-one, to read as follows:

ARTICLE 31. LICENSED COUNSELORS.

§30-31-1. Legislative purpose.

1 The Legislature hereby finds that in the public interest,
2 persons should not engage in the practice of counseling or
3 therapy in this state without the requisite experience and
4 training; and that there is presently no adequate means to
5 protect the interests of the citizens of this state from the
6 unauthorized, unqualified and unprofessional practice of
7 such counseling. It is therefore declared to be the public
8 policy of this state that the practice of counseling affects the
9 general welfare and public interest of the state and its
10 citizens; that persons without the necessary qualifications,
11 training, education and experience, and persons not of good
12 character, should not engage in the practice of counseling;
13 that the unauthorized, unqualified and unprofessional
14 practice of counseling may be best prevented, and the
15 interest of the public best served, by regulating and
16 controlling such practice as provided in this article; and
17 that this article should be liberally construed to effect such
18 objects and purposes.

§30-31-2. Definitions.

1 As used in this article:
2 (a) "Applicant" means any person making an
3 application for an original or renewal license under the
4 provisions of this article;

5 (b) "Board" means the West Virginia board of
6 examiners in counseling established by this article;

7 (c) "Counseling" means rendering, offering to render or
8 supervising those who render any service to any person or
9 entity for compensation or other personal gain involving
10 the application of mental health counseling procedures to
11 help in learning how to solve problems or make decisions
12 related to careers, personal growth, marriage, family or
13 other interpersonal or intrapersonal concerns;

14 (d) "Counseling procedures" include, but are not
15 restricted to, the use of methods and techniques which
16 contribute to self-understanding, desired personal
17 behavior change or more effective interpersonal behavior;
18 assessment techniques useful in appraising aptitudes,
19 abilities, achievement, interest or attitudes; informational
20 and community resources for career, personal or social
21 development; individual and group techniques which
22 facilitate problem-solving behavior or decision making;
23 and supervision, referral and placement techniques and
24 methods which serve to further the goals of counseling;

25 (e) "Counselor" means one who holds himself out to the
26 public as engaged in the practice of counseling or by any
27 other title or description of counseling procedures as
28 defined herein, and, in so doing, represents that he or she
29 has the knowledge, training, expertise and ethical
30 standards necessary to engage in such practice;

31 (f) "Executive committee" means the executive
32 committee of the West Virginia association for counseling
33 and development; and

34 (g) "Licensed counselor" means a counselor as defined
35 herein who holds a valid license to practice counseling
36 issued pursuant to this article.

**§30-31-3. Activities exempted; persons exempted from
licensing; limitations on licensed counselors.**

1 (a) Nothing in this article shall be construed to apply to
2 the following activities:

3 (1) Teaching, lecturing or engaging in research in
4 counseling so long as such activities do not otherwise
5 involve the practice of counseling directly affecting the
6 welfare of the person counselled;

7 (2) The official duties of persons employed as counselors

8 by the state of West Virginia, any of its departments,
9 agencies, divisions, bureaus, political subdivisions,
10 counties, county boards of education, regional education
11 service agencies, municipalities or any other facilities or
12 programs established, supported or funded, in whole or in
13 part, by any such governmental entity;

14 (3) The official duties of persons employed as counselors
15 by any department, agency, division or bureau of the United
16 States of America;

17 (4) The official duties of persons serving as counselors,
18 whether as volunteers or for compensation or other
19 personal gain, in any public or private nonprofit
20 corporation, association or charity;

21 (5) The official duties of persons employed by licensed
22 counselors which duties are supervised by a licensed
23 counselor and so long as such persons represent themselves
24 by a title such as "counselor trainee," "counselor intern,"
25 "counselor assistant" or other reasonable facsimile of such
26 title, and do not represent themselves as licensed counselors
27 as defined by section two of this article;

28 (6) The activities of a student of counseling, which
29 activities are part of the prescribed course of study at an
30 accredited educational institution and are supervised by a
31 licensed counselor or by a teacher, instructor or professor of
32 counseling acting within the official duties or scope of
33 activities exempted by this section; and

34 (7) The activities and services of qualified members of
35 other recognized professions such as physicians,
36 psychologists, psychoanalysts, social workers, lawyers,
37 nurses, teachers and clergymen or pastoral staff performing
38 counseling consistent with the laws of this state, their
39 training and any code of ethics of their professions so long
40 as such persons do not represent themselves as licensed
41 counselors as defined by section two of this article.

42 (b) Nothing in the article shall be construed to require
43 licensing of the following persons pursuant to this article:

44 (1) A school counselor who holds a school counseling
45 certificate issued by the West Virginia department of
46 education and who is engaged in counseling solely within
47 the scope of his employment with such department, a
48 county board of education or a regional educational service
49 agency; and

50 (2) A nonresident counselor who holds a license or
51 certificate to engage in the practice of counseling in his
52 state or country of residence, who has substantially the
53 same qualifications for licensing provided in section seven
54 of this article in the opinion of the board, and who renders
55 counseling services in this state for no more than thirty days
56 in any calendar year.

57 (c) Nothing in this article shall be construed as
58 permitting licensed counselors to administer or prescribe
59 drugs or otherwise engage in the practice of medicine as
60 defined by this code.

§30-31-4. Board of examiners in counseling.

1 (a) There is hereby created a West Virginia board of
2 examiners in counseling, consisting of seven members who
3 shall be appointed by the governor by and with the advice
4 and consent of the Senate, subject to the following
5 provisions:

6 (1) The board must at all times be composed of two
7 members who are counselor educators, three members who
8 are practicing counselors, and two members who are chosen
9 from the general public. The members who are counselor
10 educators and practicing counselors must be licensed
11 pursuant to this article except as otherwise provided in
12 subdivision (2) of this subsection. The membership of the
13 board shall represent the differences in gender, racial and
14 ethnic origins and the different levels of graduate degrees
15 and specialty represented in the West Virginia association
16 for counseling and development, though not all such
17 differences necessarily need be reflected at the same time in
18 board membership. Every board member is ineligible for
19 reappointment to the board for a period of three years after
20 the expiration of his term or resignation from the board.

21 (2) Within thirty days after the effective date of this
22 article, the executive committee shall submit to the
23 governor a list of qualified candidates for membership on
24 the board including at least four counselor educators, six
25 practicing counselors and four members of the general
26 public from which the initial appointments must be made.
27 The initial appointees who are counselor educators or
28 practicing counselors must be persons who have been
29 rendering counseling services for at least three years or who

30 have been teaching counseling at an accredited higher
31 educational institution for at least three years.

32 Each initial appointee shall commence serving a term on
33 the board on the first day of July, one thousand nine
34 hundred eighty-five. One initial appointee who is a
35 practicing counselor and one initial appointee who is
36 chosen from the general public shall serve terms of one year;
37 one initial appointee who is a practicing counselor and one
38 initial appointee who is a counselor educator shall serve
39 terms of two years; and the remaining initial appointees
40 shall serve terms of three years.

41 (3) On or before the first day of May, one thousand nine
42 hundred eighty-six, and each succeeding year thereafter,
43 the executive committee shall submit two qualified
44 candidates for each vacancy on the board occurring by
45 reason of expiration of a term from which the appointment
46 must be made. Each such appointee shall commence serving
47 a three-year term on the board on the first day of July of the
48 year of his appointment.

49 (4) Within thirty days after any vacancy on the board
50 occurring for any reason other than expiration of a term, the
51 executive committee shall submit two qualified candidates
52 for each such vacancy from which the appointment must be
53 made. Each such appointment must be made within thirty
54 days after the submission of candidates by the executive
55 committee. Each such appointee shall fill the unexpired
56 term of member whom he succeeds.

57 (b) Before entering upon the performance of his duties,
58 each member of the board shall take the oath required by
59 Section Five, Article IV of the Constitution of this state. Any
60 board member may be removed by the governor for
61 incompetence, neglect of duty, malfeasance in office or
62 moral turpitude upon notice and hearing.

63 (c) The board shall hold at least one regular meeting
64 each year to elect a chairperson and vice-chairperson from
65 its membership and to transact such other business as may
66 come before it. Additional meetings may be held at the call
67 of the chairperson or at the written request of any three
68 members. Four members of the board constitute a quorum.
69 Each member shall receive all reasonable and necessary
70 expenses actually incurred in attending meetings in
71 addition to an honorarium set by the board and approved by

72 the governor: *Provided*, That all such expenses and
73 honoraria do not exceed the funds available to the board.

§30-31-5. Powers and duties of board.

1 (a) In addition to the duties set forth elsewhere in this
2 article, the board shall:

3 (1) Issue, renew, deny, suspend or revoke licenses to
4 engage in the practice of counseling and place licensed
5 counselors on probation in accordance with the
6 administrative procedures hereinafter provided, may
7 review, affirm, reverse, vacate or modify its order with
8 respect to any such denial, suspension or revocation;

9 (2) Promulgate reasonable rules and regulations
10 pursuant to article three, chapter twenty-nine-a of this
11 code, implementing the provisions of this article and the
12 powers and duties conferred upon the board hereby
13 including, but not limited to, rules and regulations setting
14 forth:

15 (i) Any and all specific master's degree programs
16 deemed to be equivalent to a master's degree program in
17 counseling for purposes of licensure under subdivision (3),
18 subsection (a), section seven of this article,

19 (ii) The nature of supervised professional experience
20 approved by the board for the purposes of licensure under
21 subdivision (4), subsection (a), section seven of this article,

22 (iii) A code of ethics for licensed counselors patterned
23 after the codes of ethics of related professional groups, and

24 (iv) Forms for license applications and license renewal
25 applications;

26 (3) Keep accurate and complete records of its
27 proceedings, certify the same as may be appropriate and
28 submit an annual report to the governor in such form as the
29 governor may require;

30 (4) Adopt an official seal to be affixed to all licenses
31 issued by the board;

32 (5) Appoint an examiner to determine the eligibility of
33 applicants for a license to engage in the practice of
34 counseling;

35 (6) Employ, direct, discharge and define the duties of
36 any and all professional, clerical or other personnel
37 necessary to effectuate the provisions of this article;

38 (7) Take any such other actions as may be reasonably

39 necessary or appropriate to effectuate the provisions of this
40 article; and

41 (8) Accept gifts, grants and donations from any source
42 for the purposes of or incidental to this article.

43 (b) All moneys paid to the board shall be accepted by a
44 person designated by the board and deposited by him with
45 the treasurer of the state and credited to an account to be
46 known as the "board of examiners in counseling fund." The
47 honoraria to and reimbursement of all reasonable and
48 necessary expenses actually incurred by the members of the
49 board and all other costs and expenses incurred by the
50 board in the administration of this article shall be paid from
51 the fund, and no part of the state's general revenue fund
52 shall be expended for such purpose.

§30-31-6. License required.

1 Beginning two years after the date all initial appointees
2 to the board commence serving their terms, no person shall
3 engage in, offer to engage in or hold himself or herself out to
4 the public as being engaged as a counselor or by any other
5 title or description of counseling procedures unless such
6 person is licensed pursuant to this article.

§30-31-7. Qualifications of applicants for license; application fee.

1 (a) To be eligible for a license to engage in the practice of
2 counseling, an applicant must:

3 (1) Be of good moral character and professional ethics;

4 (2) Be a legal resident of the state of West Virginia;

5 (3) Not have been convicted of a felony or crime
6 involving moral turpitude;

7 (4) Not use narcotic drugs, other controlled substances
8 or alcohol to the extent it affects his professional
9 competency;

10 (5) Have a doctorate in counseling, the requirements for
11 which included a least ninety graduate semester hours or
12 the equivalent above the hours required for a master's;
13 degree in counseling, the requirements for which included
14 at least forty-five graduate semester hours or the equivalent
15 from an accredited counseling program;

16 (6) Have completed a minimum of two years experience
17 in the practice of counseling after having received a

TCU
or a master's

18 master's degree in counseling; or has completed a minimum
19 of one year of experience in the practice of counseling after
20 having received a doctor's degree in counseling; and

21 (7) Have passed a standardized national certification
22 examination in counseling approved by the board.

23 The board may exempt any applicant from specific hours
24 of counseling curriculum where the applicant has
25 demonstrated to the satisfaction of the board a proficient
26 knowledge of the subject matter contained in the particular
27 course of counseling curriculum to be exempted by
28 examination or as otherwise prescribed in rules and
29 regulations promulgated pursuant to article three, chapter
30 twenty-nine of the code.

31 (b) The following persons shall be eligible for a license
32 to engage in the practice of counseling without having
33 passed a standardized national certification examination in
34 counseling:

35 (1) Any person who meets the qualifications set forth in
36 subdivisions (1) through (6), subsection (a) of this section,
37 and who makes an application for a license within one year
38 after the date all initial appointees to the board commence
39 serving their terms;

40 (2) Any person who:

41 (i) Is a resident of or employed in this state on the
42 effective date of this article,

43 (ii) Makes an application for a license within twelve
44 months after the date all initial appointees to the board
45 commence serving their terms,

46 (iii) Meets the qualifications set forth in subdivisions (1)
47 through (4), subsection (a) of this section, and

48 (iv) Was in the practice of counseling for two years of
49 the five calendar years next preceding the effective date of
50 this article; and

51 (3) Any person who holds a license or certificate to
52 engage in the practice of counseling issued by any other
53 state, the qualifications for which license or certificate are
54 determined by the board to be at least as great as those
55 provided in this article.

56 (c) Any applicant must submit an application for a
57 license to practice counseling to the secretary of the board
58 in such manner, on such forms and containing such
59 information as the board may prescribe, and pay to the
60 board a nonrefundable application fee of fifty dollars.

§30-31-8. Issuance of license; renewal of license; renewal fee; information required in application for renewal.

1 (a) Whenever the board finds that an applicant meets all
2 of the qualifications of this article for a license to engage in
3 the practice of counseling, it shall forthwith issue a license
4 to such applicant; and otherwise the board shall deny the
5 same.

6 (b) Every license to engage in the practice of counseling
7 must be renewed biennially during the month of July. To
8 renew a license, a licensed counselor must submit an
9 application for renewal to the secretary of the board on such
10 forms as the board may prescribe, and pay to the board a
11 renewal fee of twenty-five dollars. Any license which is not
12 so renewed shall automatically lapse. A license which has
13 lapsed may be renewed within two years of its expiration
14 date by payment to the board of the appropriate renewal fee
15 for each period or part thereof during which the license was
16 not renewed.

17 (c) The board shall require that an application for
18 renewal contain or be accompanied by evidence of
19 continued professional development in the practice of
20 counseling. The board may require that an application for
21 renewal contain any such other reasonable information as
22 the board may deem appropriate.

§30-31-9. Suspension or revocation of license.

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

7 (b) The board, upon the affirmative vote of at least two
8 thirds of its members, shall place a licensed counselor on
9 probation, or suspend or revoke any license when it finds
10 that the holder thereof has:

11 (1) Been convicted of a felony or a crime involving moral
12 turpitude;

13 (2) Used narcotic drugs, other controlled substances or
14 alcohol to the extent that it affects his professional
15 competency;

16 (3) Been declared mentally incompetent by a court of
17 competent jurisdiction;

18 (4) Obtained or attempted to obtain a license issued
19 under the provisions of this article by fraud, deceit or
20 willful misrepresentation;

21 (5) Failed or refused to comply with the provisions of
22 this article or any rule and regulation promulgated by the
23 board hereunder or any order or final decision of the board;

24 (6) Has violated the current code of ethics adopted by
25 the board;

26 (7) Has impersonated another licensed counselor; or

27 (8) Has allowed his or her name or license issued under
28 the provisions of this article to be used by or with any
29 person or persons to perform counseling services.

§30-31-10. Procedures for hearing.

1 (a) Whenever the board shall deny an application for
2 any license or renewal of any license or shall suspend or
3 revoke any license, or place any licensed counselor on
4 probation, it shall make and enter an order to that effect
5 and serve a copy thereof on the applicant or licensed
6 counselor, as the case may be, at his or her last known
7 address, by certified mail, return receipt requested. Such
8 order shall state the grounds for the action taken and shall
9 require that any license suspended or revoked thereby shall
10 be 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 shall be 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) if,
16 within twenty days after receipt of a copy thereof, he files
17 with the board a written demand for such hearing. A
18 demand for hearing shall operate automatically to stay or
19 suspend the execution of any order placing a licensed
20 counselor on probation, suspending or revoking a license or
21 denying an application for a renewal license. The board
22 may require the person demanding such hearing to give
23 reasonable security for the costs thereof and if such person
24 does not substantially prevail at such hearing, such costs
25 shall be assessed against him and may be collected by an
26 action at law or other proper remedy.

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

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

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

50 (f) At any such hearing the person who demanded the
51 same may represent himself or be represented by an
52 attorney at law admitted to practice before any circuit court
53 of this state. Upon request by the board, it shall be
54 represented at any such hearing by the attorney general or
55 his assistants without additional compensation.

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

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

§30-31-11. Judicial review; appeal to supreme court of appeals; legal representation for board.

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

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section 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 of
15 appeals shall be provided by the attorney general or his
16 assistants and in any circuit court by the prosecuting
17 attorney of the county as well, all without additional
18 compensation.

§30-31-12. Penalties.

1 Any person who violates any of the provisions of section
2 six or subdivision seven or eight, subsection (b) of this
3 article, or any order or any final decision of the board is
4 guilty of a misdemeanor, and, upon conviction thereof, shall
5 be fined not more than five hundred dollars, or imprisoned
6 in the county jail not more than six months, or both fined
7 and imprisoned.

§30-31-13. 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 of
3 this article, any reasonable rule and regulation
4 promulgated hereunder or any order or final decision of the
5 board, the board may apply in the name of the state to the
6 circuit court of the county in which the violation or
7 violations or any part thereof has occurred, is occurring or
8 is about to occur, or the judge thereof in vacation, for an
9 injunction against such person and any other persons who
10 have been, are or are about to be, involved in any practices,
11 acts or omissions, so in violation, enjoining such person or

12 persons from any such violation or violations. Such
13 application may be made and prosecuted to conclusion
14 whether or not any such violation or violations have
15 resulted or shall result in prosecution or conviction under
16 the provisions of section thirteen of this article.

17 Upon application by the board, the circuit courts of this
18 state may by mandatory or prohibitory injunction compel
19 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 a
23 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 sought
28 in the manner and within the time provided by law for
29 appeals from circuit courts in other civil actions.

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

§30-31-14. Disclosure.

1 No licensed counselor may disclose any information
2 acquired from persons in the professional counseling
3 capacity that was necessary to enable the rendering of
4 services to those persons except:

5 (a) With the written consent of the client, or in the case
6 of death or disability, with the written consent of a personal
7 representative or other person authorized to sue or the
8 beneficiary of any insurance policy on the client's life,
9 health or physical condition;

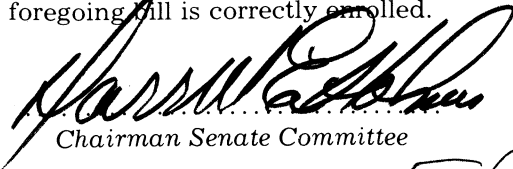
10 (b) When a communication reveals the contemplation of
11 an act dangerous to oneself or others; or

12 (c) When the person waives the privilege by bringing
13 charges against the board-licensed counselor.

§30-31-15. Termination of board.

1 The West Virginia board of examiners in counseling shall
2 be terminated pursuant to the provisions of article ten,

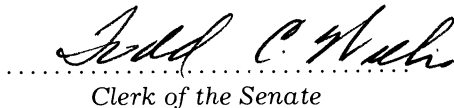
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

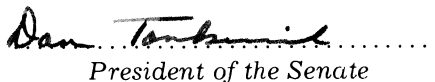

.....
Chairman House Committee

Originated in the Senate.

In effect from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within  this the  day of  1985.

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/85

Time 6:36 p.m.