

2885-Veto

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

— ● —

ENROLLED

Com. Sub. for

HOUSE BILL No. *2885*

(By ~~MR.~~ *Delegates Hatfield & Lane*)

— ● —

Passed *March 12* 1988

In Effect *Ninety Days from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2885
(By DELEGATES HATFIELD and LOVE)

[Passed March 12, 1988; in effect ninety days from passage.]

AN ACT to repeal section fifteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four-a, five, six, seven, eight, ten, eleven and twelve of said article; and to further amend said article by adding thereto a new section, designated section two-a, all relating to general provisions applicable to all state boards of examination or registration; application of article; members of boards; officers; lay members of health profession boards; meetings, quorum and investigations; applications for licensing or registration; fees; examination; form of license; denial, suspension and revocation of license or registration; special fund and transfers to the general fund; compensation and expenses of members; records and reports.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, three, four-a, five, six, seven, eight, ten, eleven and twelve of said article be amended and reenacted; and that said article be further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 REGIS-
TRATION REFERRED TO IN CHAPTER.**

§30-1-1. Application of article.

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

§30-1-2a. Members.

1 A board member is eligible for reappointment for one
2 additional consecutive term. A board member shall hold
3 his appointment until a successor is appointed.

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

§30-1-3. Officers.

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

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

1 Notwithstanding any provisions of this code to the
2 contrary, the governor shall appoint at least one lay
3 person to represent the interests of the public on every
4 health professional licensing board. If the total number
5 of members on any of such boards after the appointment
6 of one such lay person is an even number, one additional
7 lay person shall be appointed. Said lay members shall
8 serve in addition to any other members otherwise
9 provided for by law or regulation. Such lay members
10 shall be of the age of eighteen years or over, of good
11 moral character, and competent to represent and

12 safeguard the interests of the public. The lay member
13 is empowered to participate in and vote on all transac-
14 tions and business of the board, committee or group to
15 which he is appointed.

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

37 The health profession licensing boards shall include
38 those boards provided for in articles four, five, six,
39 seven, seven-a, eight, ten, fourteen, sixteen, seventeen,
40 twenty, twenty-one, twenty-three, twenty-five, twenty-
41 six, twenty-seven and twenty-eight of this chapter.

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

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

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

§30-1-6. Application; examination; and fees.

1 Every applicant for license or registration under the
2 provisions of this chapter shall apply therefor in writing
3 to the proper board and shall transmit with his
4 application an examination fee to the board which is
5 authorized to charge for an examination or investigation
6 into such applicant's qualifications to practice. Each
7 board is hereby authorized to establish by rule or
8 regulation a deadline for application for examination
9 which shall be not more than ninety days prior to the
10 date of the examination. The fees now set shall be
11 applicable until changed.

12 Boards may set by rule or regulation the fees relating
13 to the licensing or registering of individuals. Fees which
14 are now set by law for the boards will remain as is until
15 set by rule and regulation.

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

1 Every license or certificate of registration issued by
2 such board shall bear a serial number, the full name of
3 the applicant, the date of issuance, the seal of the board,
4 and shall be signed by its president, secretary or

5 executive secretary. No license or certificate of registra-
 6 tion granted or issued under the provisions of this
 7 chapter is assignable.

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

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

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

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

34 icate, license, registration or authority, and such
35 suspension or revocation shall take from the person all
36 rights and privileges acquired thereby.

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

42 (d) Any person denied a license, certificate, registra-
43 tion or authority who believes such denial was in
44 violation of this article or the article under which said
45 license, certificate, registration or authority is autho-
46 rized shall be entitled to a hearing on the action denying
47 said license, certificate, registration or authority.
48 Hearings under this subsection shall be in accordance
49 with the provisions for hearings set forth in subsection
50 (c).

51 (e) A stenographic report of each proceeding on the
52 denial, suspension or revocation of a certificate, license,
53 registration or authority shall be made at the expense
54 of the board and a transcript thereof retained in its files.
55 The board shall make a written report of its findings,
56 which shall constitute part of the record.

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

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

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

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

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

6 reimbursed for all actual and necessary expenses
 7 incurred in carrying out the provisions of this chapter
 8 applicable to such board. Compensation which is now set
 9 by law for the boards will remain as is until set by rule
 10 and regulation.

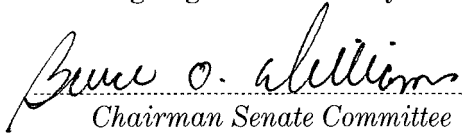
**§30-1-12. Record of proceedings; register of applicants;
 certified copies of records prima facie evi-
 dence; report to governor.**

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

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

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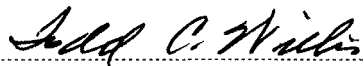
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

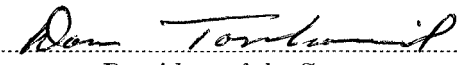

Chairman House Committee

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 of the House of Delegates

The within  this the 31st
day of March, 1988.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/88

Time 3:12 p.m.

RECEIVED

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OFFICE OF THE VICE
SECRETARY OF STATE