WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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ENROLLED

Can. sub. for

HOUSE BILL No. 2885

(By Delegate Hatfield & Lane)

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article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, three, four-a, five, six, seven, eight, ten, eleven and twelve of said article be amended and reenacted; and that said article be further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

§30-1-1. Application of article.

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

§30-1-2a. Members.

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

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

§30-1-3. Officers.

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

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

1. Notwithstanding any provisions of this code to the contrary, the governor shall appoint at least one lay person to represent the interests of the public on every health professional licensing board. If the total number of members on any of such boards after the appointment of one such lay person is an even number, one additional lay person shall be appointed. Said lay members shall serve in addition to any other members otherwise provided for by law or regulation. Such lay members shall be of the age of eighteen years or over, of good moral character, and competent to represent and
safeguard the interests of the public. The lay member
is empowered to participate in and vote on all transac-
tions and business of the board, committee or group to
which he is appointed.

Any person whose addition to a board as a lay member
under the provisions of this section results in the
addition of an odd number of lay additions to the board,
shall serve for a term ending in an odd-numbered year
on the date in that year on which terms of the profes-
sonal members expire; of such members first ap-
pointed, each shall serve for a term ending on such date
in the year one thousand nine hundred seventy-nine, and
the successor to each such person shall serve for a term
equal in length to the terms of the other professional
members of the board. Any person whose addition to a
board as a lay member under the provisions of this
section results in the addition of an even number of lay
additions to the board, shall serve for a term ending in
an even-numbered year on the date in that year on
which terms of the professional members expire; of such
members first appointed, each shall serve for a term
ending on such date in the year one thousand nine
hundred seventy-eight, and the successor to each such
person shall serve for a term equal in length to the
terms of the other professional members of the board.

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

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

Every such board shall hold at least two meetings
each year, at such times and places as it may prescribe
by rule, for the examination of applicants who desire to
practice their respective professions or occupations in
this state, and for the transaction of such other business
as may legally come before it. The board may hold such
additional meetings as may be necessary, which shall be
called by the secretary at the direction of the president
or upon the written request of any three members. A majority of the members of the board constitutes a quorum for the transaction of its business. The board has the power to compel the attendance of witnesses, to issue subpoenas, to conduct investigations and hire an investigator, and to take testimony and evidence concerning any matter within its jurisdiction. For these purposes the president and secretary of the board have the power to administer oaths. Whenever a board obtains information that a person subject to its authority has engaged in, is engaging in or is about to engage in an act which constitutes, or will constitute, a violation of the provisions of this chapter, the board may make application to the circuit court for an order enjoining those acts, and upon a showing that the person has engaged, is engaging or is about to engage, in any such act, an injunction, restraining order or other order as the court deems appropriate shall be entered by the court.

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

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

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

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

Every license or certificate of registration issued by such board shall bear a serial number, the full name of the applicant, the date of issuance, the seal of the board, and shall be signed by its president, secretary or
executive secretary. No license or certificate of registration granted or issued under the provisions of this 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.

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

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

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

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

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

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

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

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

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

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

Each member of every such board shall receive not
to exceed two hundred fifty dollars for each day actually
spent in attending the sessions of the board, or of its
committees, and in necessary travel, which amount shall
be set by the board by rule or regulation, and shall be
reimbursed for all actual and necessary expenses incurred in carrying out the provisions of this chapter applicable to such board. Compensation which is now set by law for the boards will remain as is until set by rule and regulation.

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

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

On or before the fifteenth day of January of each year in which the Legislature meets in regular session the board shall submit to the governor a report of its transactions for the preceding year, together with an itemized statement of its receipts and disbursements, a full list of the names of all persons licensed or registered by it during such period and a list of any complaints filed regarding those licensed and registered along with the action taken, certified by the president and secretary. A copy of the report shall be filed with the secretary of state.
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 is hereby disapproved this the 31st day of December, 1988.

Governor