ENROLLED

COM. SUB. FOR
HOUSE BILL NO. 2618

(By Delegates Kessel and Rutledge)

Passed April 8, 1993
In Effect Ninety Days From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2618
(BY DELEGATES KESSEL AND RUTLEDGE)

[Passed April 8, 1993; 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 thirty-three, relating to dietitians and nutritionists generally; defining terms; requiring a license to practice; creating a board of dietitians and nutritionists; providing for terms of service; authorizing powers and creating duties; providing for the organization of the board; allowing for interim permits; enumerating qualifications for licensure; authorizing licensing and providing the standards and criteria therefor; providing for license renewal; exempting certain persons from licensure requirements; providing for denying, suspending or revoking a license and reinstatement; authorizing the imposition of license fees; defining the crime of falsely obtaining, selling or practicing nutrition or dietetics without a license and providing criminal penalties therefor; and providing for sunset termination of the 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-three,
to read as follows:

ARTICLE 33. BOARD OF DIETITIANS AND NUTRITIONISTS.

§30-33-1. License required to practice.

In order to safeguard life and health, any person practicing or offering to practice as a dietitian or nutritionist is required to submit evidence that he or she is qualified so to practice, and is licensed as provided in this article. After the thirtieth day of June, one thousand nine hundred ninety-three, unless licensed under the provisions of this article, no person may practice or offer to practice as a dietitian or nutritionist in this state, or to use any title, sign, card or device to indicate that the person is a dietitian or nutritionist, except a dietitian registered by the commission on dietetic registration may use the title registered dietitian.

§30-33-2. Practice of dietetics defined.

Any one or combination of the following activities constitute the practice of dietetics or nutrition:

(1) The practice of providing nutrition assessment, nutrition counseling and nutrition consultation in health and disease for individuals or groups;

(2) The performance as a member of a management team effecting the nutritional care of groups through the development, implementation and management of food service systems that maintain appropriate standards of food and nutrition care services;

(3) The planning, conducting and evaluation of educational programs in nutrition and dietetic subject matter for clients, dietetic students or interns, dietetic support personnel and other health care personnel; or

(4) The performance as a member of a health care team to plan, investigate, interpret, evaluate and communicate nutrition research findings through reports and publications.

§30-33-3. Definitions.

As used in this article, the following terms have the
meanings ascribed to them:

(1) "Association" means the American dietetic association;

(2) "Board" means the West Virginia board of dietitians and nutritionists;

(3) "Commission on dietetic registration" means the commission on dietetic registration that is a member of the national commission for health certifying agencies;

(4) "Dietitian" and "nutritionist" are interchangeably used and mean a person engaged in the practice of dietetics as described in section two of this article;

(5) "Fund" means the board of examiners for dietitians and nutritionists administrative fund created pursuant to the provisions of section five of this article;

(6) "Nutrition assessment" means the evaluation of the nutrition needs of individuals and groups based upon biochemical, anthropometric, physical and dietary data to determine nutrient needs and recommend appropriate nutrition intake;

(7) "Nutrition care service" means assessing the nutritional needs of individuals and groups and determining resources and constraints in the practice setting; establishing priorities, goals and objectives that meet nutrition needs and are consistent with available resources and constraints; providing nutrition counseling in health and disease; developing, implementing and managing nutrition care systems; and evaluating, making changes in and maintaining appropriate standards of quality in food and nutrition care services;

(8) "Nutrition counseling" means the advising or assisting of individuals or groups on appropriate nutrition intake and meal preparation.

(9) "Nutrition educator" means one who provides information on food sources of nutrients to meet normal nutrition needs based on the most current "Recommended Dietary Allowances" of the food and nutrition board (the national academy of sciences/national research council);
(10) "Regionally accredited institution" means a school, college or university approved by a regional accreditation agency recognized by the council on postsecondary accreditation and the United States department of education; and

(11) "Registered dietitian" means a person registered by the commission on dietetic registration.

§30-33-4. Board of dietitians and nutritionists.

(a) There is hereby created a new board designated the "Board of Examiners for Dietitians and Nutritionists." The board shall be composed of five members who shall be appointed by the governor from lists submitted to the governor by the West Virginia dietetic association and with the advice and consent of the Senate. Individuals appointed to the board must possess the following qualifications: One member shall be a clinical dietitian; one member shall be an administrative dietitian; one member shall be a public health or community nutritionist; one member shall be a consultant nutritionist; and one member shall be a lay person not engaged in the practice of dietetics or nutrition. In addition, each member of the board hereafter appointed shall be a citizen of the United States and a resident of this state, and have engaged in the practice of dietetics for a minimum of three years within the next preceding years prior to appointment: Provided, That the lay person shall be a citizen of the United States and a resident of this state, and may not have engaged in the practice of dietetics nor have any household members who engage in the practice of dietetics.

(b) The members of the board shall be appointed for overlapping terms of four years, except that the governor shall appoint initially one member for a term of one year, one for a term of two years, one for a term of three years and two for a term of four years. No member of the board may serve more than four years.

(c) In the event a board member is unable to complete a term, the governor shall appoint a person with similar qualification to complete the unexpired term. The successor of any board member appointed pursuant to
this article must possess the qualification prescribed herein. Each vacancy occurring in the office shall be filled by appointment within sixty days after such vacancy.

(d) Each member of the board shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the board member's duties.

(e) The chair shall preside over the meetings and hearings of the board. The vice chair shall assume the chair's duties in the absence of the chair. All of the meetings shall be general meetings for the consideration of any and all matters which may properly come before the board. A majority of the board shall constitute a quorum for the transaction of business. The board shall meet at least once a year and at such other times and places as it may determine; and shall meet on call of the chair. It shall be the duty of the chair to call a meeting of the board on the written request of three members thereof. The board shall keep an accurate record of all of its proceedings and maintain such board records. The board may employ personnel necessary to accomplish the performance of its duties.

§30-33-5. Powers and duties of the board; rule making.

(a) The board is authorized to perform the following functions and possesses the following powers and duties:

(1) To propose legislative rules for promulgation, in accordance with article twenty-nine-a of this code, to implement and effectuate the provisions of this article, including, but not limited to, legislative rules establishing the following:

(A) A code of professional ethics;

(B) Continuing education requirements and standards;

(C) Examination, licensure and renewal requirements of a duly qualified applicants; and

(D) Procedures and guidelines for the suspension or revocation of a license.

(2) To adopt procedural and interpretive rules in
accordance with the provisions of chapter twenty-nine-a of this code;

(3) To adopt an official seal;

(4) To conduct license examinations of duly qualified applicants;

(5) To issue and renew licenses and to issue interim permits to duly qualified applicants;

(6) To suspend, revoke and reinstate licenses;

(7) To conduct hearings on licensing issues and any other matter properly within the jurisdiction of the board;

(8) To maintain a record of all proceedings of the board; and

(9) To submit a biennial report to the governor describing the activities of the board.

(b) All fees and other moneys collected by the board pursuant to the provisions of this article shall be deposited in an appropriated special revenue account designated the “Board of Examiners for Dieticians and Nutritionists Administrative Fund” which is hereby created in the state treasury. Moneys in the fund are to be expended solely for the purposes set forth in this article. All expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article may be a charge against the general revenue funds of this state: Provided, That monies from the fund may only be expended upon line item appropriation by the Legislature: Provided, however, That amounts collected which are found from time to time to exceed the funds needed to effectuate the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes upon appropriation by the Legislature.

§30-33-6. Provisional permits.

Provisional permits to engage in the practice of a dietetics or nutrition may be issued by the board to persons who have not met the experience requirements
set forth in this article upon the filing of an application and submission of evidence of successful completion of the education requirements as set forth in this article. A provisional permit expires one year from the date of issuance. Renewals may be issued for a period not to exceed three years upon submission to the board of satisfactory explanation for the applicant's failure to become licensed. The fee for a provisional permit is fifty dollars which shall be submitted with the application for the permit to the board and deposited to the credit of the fund.

§30-33-7. Qualifications; licensure; examinations; fees. To obtain a license to engage in the practice of dietetics or nutrition, an applicant for the license shall submit to the board written evidence, verified by oath, that he or she (a) complies with the code of ethics adopted by the boards; (b) has completed a major course of study in human nutrition, foods and nutrition, dietetics of food systems management and possesses a baccalaureate or postbaccalaureate degree from a regionally accredited institution; and (c) has completed a planned continuous preprofessional experience component in dietetic practice of not less than nine hundred hours under the supervision of a registered dietitian or licensed dietitian.

Each applicant is required to pass a written examination demonstrating competence in the discipline of dietetics and nutrition. Each written examination may be supplemented by an oral examination. Upon successfully passing such examination or examinations, the board shall issue to the applicant a license to engage in the practice of dietetics or nutrition. The board shall determine the times and places for examinations. In the event an applicant has failed to pass examinations on three occasions, the applicant shall, in addition to the other requirements of this section, present to the board such other evidence of his or her qualifications as the board may prescribe: Provided, That for one year from the thirtieth day of June, one thousand nine hundred ninety-three, the board shall waive the examination requirements and shall grant a license to any person
who is registered by the commission on dietetic registration as a registered dietitian or who possesses a baccalaureate or postbaccalaureate degree from a regionally accredited institution and completed a major course of study in the fields of human nutrition, food and nutrition, dietetics, food systems management or equivalent as approved by the board and has been engaged in the practice of dietetics or nutrition for three of the last ten years.

The board may, upon application and submission of the proper fee, waive the examination requirement and issue a license to practice dietetics or nutrition to an applicant who is registered by the commission on dietetic registration or who has been duly licensed as a nutritionist or dietitian under the laws of another state if the standards for licensing in that state are no less stringent than that required under the provisions of this article.

Any person applying for a license as a dietitian or nutritionist under the provisions of this article shall submit a fee of fifty dollars with the application to the board to be deposited to the credit of the fund.

§30-33-8. Renewal of licenses; reinstatement; fees; penalties; inactive list.

The license of every person licensed under the provisions of this article shall be annually renewed except as hereinafter provided. At such time or times as the board in its discretion may determine, the board shall mail a renewal application to every person whose license was initially granted or renewed during the previous year and persons seeking renewal shall submit a completed application and fifty dollar annual renewal fee. Upon receipt of the application and fee, the board shall verify the accuracy of the application and, if it is accurate, issue to the applicant a certificate of renewal of the license for the current year. The certificate of renewal entitles the holder thereof to practice dietetics or nutrition for the period stated on the certificate of renewal. Any licensee who allows his or her license to lapse by failing to renew for a period not exceeding
three years, may be reinstated by the board on satisfactory explanation for such failure to renew his or her license and on payment to the board of the annual renewal fee hereinafore provided and a reinstatement fee of twenty-five dollars. Any person allowing his or her license to lapse for a period exceeding three years is required to be reinstated as a licensed dietitian or nutritionist, to pass a written examination established by the board, and pay to the board a licensing fee of fifty dollars. Any person engaged in the practice of dietetics or nutrition during the time his or her license has lapsed is in violation of the provisions of this article and is subject to the penalties provided for in section twelve of this article. A person licensed under the provisions of this article desiring to retire from practice temporarily shall send a written notice of such desire to the board. Upon receipt of such notice the board shall place the name of such person upon the inactive list. While remaining on this list the person is not subject to the payment of any renewal fees and may not engage in the practice dietetics or nutrition in this state. When the person desires to resume active practice, application for renewal of license and payment of the renewal fee for the current year shall be made to the board.

§30-33-9. Contents of license or provisional permit.

Each license or provisional permit issued by the board shall bear a serial number, the full name of the applicant, the date of expiration of any such license, or the date of issuance and expiration of any such provisional permit, the seal of the board, and shall be signed by the secretary of the board. The licensee must display the license in an appropriate location in view of the public.

§30-33-10. License exemptions.

Persons who fall under the following categories are exempt from licensing requirements:

(1) Persons licensed to practice medicine and dentistry who perform nutrition counseling in the course of the practice of their profession and those persons licensed to practice medicine with postgraduate education in
nutrition in an accredited graduate medical program or
with certification from the American board of nutrition;

(2) Persons licensed to practice pharmacy, chiroprac-
tic medicine or nursing who perform nutrition activities
as a part of the scope of their practice and perform
nutrition counseling in the course of the practice of their
profession;

(3) Persons with a master or doctorate degree with a
major in nutrition or related field from an accredited
institution and who are engaged in education or
research;

(4) An employee of a county board of education or an
accredited private or parochial elementary or secondary
school insofar as the activities and services are part of
the duties of the employee's salaried position;

(5) Persons employed by an agency, bureau or division
of the federal government while in the discharge of
official duties. If such person engages in the practice of
dietetics or nutrition in this state and outside the scope
of such official duty, he must be licensed as herein
provided;

(6) Consulting dietitians who do not reside in West
Virginia and who practice no more than twelve days
annually in this state;

(7) A dietetic student, dietetic trainee, dietetic intern,
dietary technician student or nutrition graduate student
who is involved in an approved academic program
leading to a degree in the field of dietetic or nutrition
from an accredited college or university who is under
the direct supervision of a licensed dietitian and who
engages in the practice of dietetics or nutrition as part
of such program or employment, if the person is
designated by a title which clearly indicates that the
person is a student, trainee, intern or technician;

(8) A dietary technician, dietary assistant, dietary
manager or certified dietary manager employed full
time in a health care institution and working under the
direction or with consultation from a licensed dietitian
who counsel hospitalized or long term care patients
regarding food recommendations or restrictions or dietary regimens prescribed by the attending physician;

(9) Persons who provide nutrition information as a nutrition educator and a nutrition aide who are in the employ of a federal, state, county or municipal agency or who is in the employ or service of a nonprofit organization: Provided, That the nutrition information is based on current recommended dietary allowances of the food and nutrition board (national academy of sciences/national research council); or has been developed with the assistance of and has been approved by a person licensed to engage in the practice of dietetics or nutrition;

(10) Persons who provide weight control classes and services without a licensed dietitian, licensed nutritionist or registered dietitian on the person’s staff: Provided, That the classes and services have been developed with the assistance of a person licensed to engage in the practice of dietetics or nutrition or a registered dietitian; or

(11) Individuals who furnish general nutrition information on food, food materials or dietary supplements or who engage in the explanation to customers about food or food products in connection with the marketing and distribution of these products, and who do not claim to be a dietician or nutritionist.

§30-33-11. Denial, revocation or suspension of license; grounds for discipline.

1 The board may deny, revoke or suspend any license to engage in the practice of dietetics or nutrition issued or applied for in accordance with the provisions of this article, or to otherwise discipline a licensee or applicant upon proof that he or she:

(1) Is or was guilty of fraud or deceit in procuring or attempting to procure a license or renewal to practice nutrition or dietetics;

(2) Has been grossly negligent or exhibited unprofessional or unethical conduct in the practice of dietetics or nutrition;

§30-33-12. Prohibitions and penalties.

It is a misdemeanor for any person, including any corporation or association, to:

1. Sell or fraudulently obtain or furnish or to assist in selling, fraudulently obtaining or furnishing any nutrition or dietetics license or record;

2. Engage in the practice of dietetics or nutrition under cover of any diploma, license or record, illegally or fraudulently obtained;

3. Engage in the practice of dietetics or nutrition unless duly licensed to do so under the provisions of this article;

4. Use in connection with his or her name any designation tending to imply that he or she is licensed to engage in the practice of dietetics or nutrition unless duly licensed so to practice under the provisions of this article;

5. Engage in the practice of dietetics or nutrition during the time his or her license issued under the provisions of this article is suspended or revoked; or

6. Otherwise violate any provisions of this article.

Any person, corporation or association in violation of any of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than five hundred dollars.


The board of examiners for dietitians and nutritionists shall be terminated pursuant to the provisions of article ten, chapter four of this code, on the first day of July, one thousand nine hundred ninety-eight, unless sooner
terminated or unless continued or reestablished pursuant to that article.

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

Chairman Senate Committee
[Signature]

Chairman House Committee
Ernest C. Moore

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate
[Signature]

Chief of the House of Delegates
Donald L. Hegg

President of the Senate
[Signature]

Speaker of the House of Delegates

[Signature]

The within is approved this the 12th day of May, 1993.

Governor
[Signature]

Jason Cooper
PRESENTED TO THE
GOVERNOR
Date 1/26/93
Time 10:32 A.M.