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SENATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 49

(By Senator BLATNIK)



PASSED MARCH 11 1995
In Effect 90 DAYS FROM Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 49

(SENATOR BLATNIK, *original sponsor*)

[Passed March 11, 1995; 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 two new sections, designated sections one-a and seven-a, all relating to state boards of examination or registration; application of article; legislative findings and declaration; registration of officers; bond of secretary; lay members for professional boards; meetings; quorum; powers relating to investigations; duties; applications for licensing; setting of fees; examination of applicants; contents of licenses or certificates; requirements for continuing education; grounds for denial, suspension or revocation of license; probation; hearings; disposition of fees and fines; annual audits; compensation and expenses of members; records of

proceedings; register of applicants; annual reports; immunity of members; limitations on liability of reporting professionals; reporting results of litigation; and penalties.

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 two new sections, designated sections one-a and seven-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 Unless otherwise specifically provided, every board of
- 2 examination or registration referred to in this chapter
- 3 shall conform to the requirements prescribed in the
- 4 following sections of this article.

§30-1-1a. Legislative findings and declaration.

- 1 The Legislature hereby finds and declares that as a
- 2 matter of public policy, the practice of the professions
- 3 referred to in this chapter is a privilege and not a natural
- 4 right of individuals. The fundamental purpose of
- 5 licensure and registration is to protect the public and
- 6 any license, registration, certificate or other authoriza-
- 7 tion to practice issued pursuant to this statute is a
- 8 revocable privilege.

§30-1-3. Officers; bond of secretary.

- 1 Every board referred to in this chapter shall elect
- 2 annually from its members a president and a secretary
- 3 who shall hold their offices for one year and until their
- 4 successors are elected: *Provided*, That the state board of
- 5 law examiners, the state board of examiners for nurses
- 6 and the state board of dental examiners may each elect
- 7 a secretary from outside its membership. Such officers
- 8 shall register annually with the governor, the secretary

9 of administration, the legislative auditor and the secre-
10 tary of state. The secretary shall execute a surety bond
11 conditioned as required by law, which bond shall be
12 approved by the attorney general as to form and by the
13 auditor as to sufficiency, and, when so approved, shall be
14 filed and recorded in the office of the secretary of state.
15 The premium on said bond shall be regarded a proper
16 and necessary expense of the board.

§30-1-4a. Lay members for professional 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, referred to in this
5 chapter. If the total number of members on any of these
6 boards after the appointment of one such lay person is an
7 even number, one additional lay person shall be ap-
8 pointed. These lay members shall serve in addition to
9 any other members otherwise provided for by law or
10 rules. These lay members shall be of the age of eighteen
11 years or over, of good moral character and competent to
12 represent and safeguard the interests of the public. Each
13 lay member is empowered to participate in and vote on
14 all transactions and businesses of the board, committee
15 or group to which he or she is appointed.

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

30 numbered year on the date in that year on which terms
31 of the professional members expire; of such members
32 first appointed, each shall serve for a term ending on
33 such date in the year one thousand nine hundred sev-
34 enty-eight, and the successor to each such person shall
35 serve for a term equal in length to the terms of the other
36 professional members of the board.

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

1 Every board referred to in this chapter shall hold at
2 least one meeting each year, at such times and places as
3 it may prescribe by rule, for the examination of appli-
4 cants who desire to practice their respective professions
5 or occupations in this state, and for the transaction of
6 other business as may legally come before it. The board
7 may hold additional meetings as may be necessary,
8 which shall be called by the secretary at the direction of
9 the president or upon the written request of any three
10 members. A majority of the members of the board
11 constitutes a quorum for the transaction of its business.
12 The board is authorized to compel the attendance of
13 witnesses, to issue subpoenas, to conduct investigations
14 and hire an investigator and to take testimony and proof
15 concerning any matter within its jurisdiction, and for
16 these purposes the president and secretary of the board
17 are authorized to administer oaths.

18 Every board referred to in this chapter has a duty to,
19 and shall in a timely manner, investigate and resolve
20 complaints made to it and shall provide public access to
21 the record of disposition of complaints made to it in
22 accordance with the provisions of chapter twenty-nine-b
23 of this code; and every board has a duty to report, and
24 shall report in a timely manner upon receiving notice
25 thereof, violations of individual practice acts contained
26 in this chapter by an individual, to the board by which
27 the individual may be licensed. Every person licensed or
28 registered by such board has a duty to report, and shall
29 report in a timely manner, to the board which licenses or

30 registers him or her, a known or observed violation of the
31 practice act or the board's rules by any other person
32 licensed or registered by the same board. Law-
33 enforcement agencies or their personnel and courts shall
34 report in a timely manner to the appropriate board any
35 violations of individual practice acts by any individual.

36 Whenever a board referred to in this chapter obtains
37 information that a person subject to its authority has
38 engaged in, is engaging in or is about to engage in any
39 act which constitutes or will constitute a violation of the
40 provisions of this chapter administered and enforced by
41 that board, it may make application to the circuit court
42 for an order enjoining the acts and upon a showing that
43 the person has engaged, is engaging or is about to engage
44 in any such act, an injunction, restraining order or other
45 order as the court may deem appropriate shall be entered
46 by the court.

**§30-1-6. Application; renewal and single service fees; exami-
nation; reexamination.**

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 or her
4 application an examination fee which the board is
5 authorized to charge for an examination or investigation
6 into the applicant's qualifications to practice.

7 Each board referred to in this chapter is authorized to
8 establish by rule a deadline for application for examina-
9 tion which shall be no less than ten nor more than ninety
10 days prior to the date of the examination.

11 Boards may set by rule fees relating to the licensing or
12 registering of individuals, which shall be sufficient to
13 enable the boards to carry out effectively their responsi-
14 bilities of licensure or registration and discipline of
15 individuals subject to their authority: *Provided*, That
16 when any board proposes to promulgate a rule regarding
17 fees for licensing or registration, that board shall notify
18 its membership of the proposed rule by mailing a copy

19 thereof to the membership at the time that the proposed
20 rule is filed with the secretary of state for publication in
21 the state register in accordance with section five, article
22 three, chapter twenty-nine-a of this code.

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

1 Every license or certificate of registration issued by
2 each 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 and secretary or
5 executive secretary. No license or certificate of registra-
6 tion granted or issued under the provisions of this
7 chapter may be assigned.

§30-1-7a. Continuing education.

1 Each board referred to in this chapter shall establish
2 continuing education requirements as a prerequisite to
3 license renewal. Each board shall develop continuing
4 education criteria appropriate to its discipline, which
5 shall include, but not be limited to, course content,
6 course approval, hours required and reporting periods.

**§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) Every board referred to in this chapter is autho-
2 rized to suspend or revoke the license of any person
3 convicted of a felony or who has been found to have
4 engaged in conduct, practices or acts constituting
5 professional negligence or a willful departure from
6 accepted standards of professional conduct. Where any
7 person has been so convicted of a felony or has been
8 found to have engaged in such conduct, practices or acts,
9 every board referred to in this chapter is further autho-
10 rized to enter into consent decrees, to reprimand, to
11 enter into probation orders; to levy fines not to exceed
12 one thousand dollars per day per violation; or any of
13 these, singly or in combination; and further, to assess
14 administrative costs in addition thereto: *Provided*, That

15 any costs assessed shall be placed in the special account
16 of said board and any fine levied shall be deposited in
17 the state treasury's general revenue fund. For purposes
18 of this section, the word "felony" means a felony or
19 crime punishable as a felony under the laws of this state,
20 the United States or any of them. Every board referred
21 to in this chapter is authorized to promulgate rules in
22 accordance with the provisions of chapter twenty-nine-a
23 of this code to delineate conduct, practices or acts which,
24 in the judgment of the board, constitute professional
25 negligence, a willful departure from accepted standards
26 of professional conduct or which may render an individ-
27 ual unqualified or unfit for licensure, registration or
28 other authorization to practice.

29 (b) Notwithstanding any other provision of law to the
30 contrary, no certificate, license, registration or authority
31 issued under the provisions of this chapter may be
32 suspended or revoked without a prior hearing before the
33 board or court issuing said certificate, license, registra-
34 tion or authority: *Provided*, That this subsection does
35 not apply in cases where a board is authorized to sus-
36 pend or revoke a certificate, license, registration or
37 authority prior to a hearing if the individual's continua-
38 tion in practice constitutes an immediate danger to the
39 public.

40 (c) In all proceedings before a board or court for the
41 suspension or revocation of any certificate, license,
42 registration or authority issued under the provisions of
43 this chapter, a statement of the charges against the
44 holder thereof and a notice of the time and place of
45 hearing shall be served upon the person as a notice is
46 served under section one, article two, chapter fifty-six of
47 this code, at least thirty days prior to the hearing and he
48 or she may appear with witnesses and be heard in
49 person, by counsel, or both. The board may take oral or
50 written proof, for or against the accused, as it may deem
51 advisable. If upon hearing the board finds that the
52 charges are true, it may suspend or revoke the certifi-
53 cate, license, registration or authority, and suspension or

54 revocation shall take from the person all rights and
55 privileges acquired thereby.

56 Pursuant to the provisions of section one, article five,
57 chapter twenty-nine-a of this code, informal disposition
58 may also be made by the board of any contested case by
59 stipulation, agreed settlement, consent order or default.
60 Further, the board may suspend its decision and place a
61 licensee found by the board to be in violation of the
62 applicable practice on probation.

63 (d) Any person denied a license, certificate, registration
64 or authority who believes the denial was in violation of
65 this article or the article under which said license,
66 certificate, registration or authority is authorized shall
67 be entitled to a hearing on the action denying said
68 license, certificate, registration or authority. Hearings
69 under this subsection shall be in accordance with the
70 provisions for hearings set forth in subsection (c) of this
71 section.

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

78 (f) All proceedings under the provisions of this section
79 are subject to review by the supreme court of appeals.

§30-1-10. Disposition of moneys; fines; annual audit.

1 The secretary of every board referred to in this chapter
2 shall receive and account for all moneys derived by
3 virtue of the provisions of this chapter applicable to it
4 and shall pay them into a separate special fund of the
5 state treasury established for each board where the
6 funds shall be used exclusively by each board for pur-
7 poses of administration and enforcement of its statute:
8 *Provided, That* when the special fund of any board
9 accumulates in excess of two times the annual budget of
10 the board or ten thousand dollars, whichever is greater,

11 the amount in excess shall be transferred by the state
12 treasurer to the state general revenue fund: *Provided*,
13 *however*, That any fines levied shall be deposited in the
14 general revenue fund of the state treasury. The state
15 auditor shall audit the financial records of each board
16 annually and shall report to each board and the Legisla-
17 ture as to the audit.

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

1 Each member of every board shall receive compensa-
2 tion and expense reimbursement not in excess of the
3 amount paid to members of the Legislature for their
4 interim duties as recommended by the citizens legislative
5 compensation commission and authorized by law for
6 each day or portion thereof engaged in the discharge of
7 official duties.

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

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

16 On or before the first day of January of each year in
17 which the Legislature meets in regular session the board
18 shall submit to the governor and to the Legislature a
19 report of its transactions for the preceding two years,

20 together with an itemized statement of its receipts and
21 disbursements, a full list of the names of all persons
22 licensed or registered by it during that period and
23 statistical reports by county of practice, by specialty, if
24 appropriate to the particular profession, and a list of any
25 complaints filed regarding those so licensed or registered
26 and any action taken thereon, certified by the president
27 and the secretary. A copy of the report shall be filed
28 with the secretary of state.

§30-1-15. Civil immunity for board members; liability limitations of professionals reporting to boards; peer review committees and professional review committees; reporting results of litigation to committees; procedure for imposing penalties.

1 (a) All members of the boards herein are immune from
2 civil liability while acting within the scope of their
3 duties as board members.

4 (b) Any member of a professional group or organiza-
5 tion, who is subject to the provisions of this chapter,
6 including, but not limited to, doctors of medicine,
7 doctors of chiropractic, doctors of veterinary medicine,
8 osteopathic physicians and surgeons, doctors of den-
9 tistry, pharmacists, attorneys-at-law, real estate brokers,
10 architects, professional engineers, certified public
11 accountants, public accountants, registered nurses or
12 licensed practical nurses who, pursuant to the provisions
13 of this chapter, or pursuant to any rule promulgated by
14 the applicable governing board for that profession, or
15 pursuant to the rules or by-laws of any peer review
16 organization, reports or otherwise provides evidence of
17 the professional negligence, impairment or incompetence
18 of another member of his or her profession to the govern-
19 ing board for the profession or to any peer review
20 organization or committee, is not liable to any person for
21 making such a report: *Provided*, That the report is made
22 without actual malice and in the reasonable belief that
23 the report is warranted by the facts known to him or her
24 at the time.

25 (c) If a claim or cause of action is asserted against a
 26 member of any profession included within the provisions
 27 of this chapter, whether an individual or an entity, as a
 28 result of the filing of a report by that member pursuant
 29 to the provisions of this chapter, or the rules of the
 30 applicable governing board for that profession, or
 31 pursuant to the rules or by-laws of any peer review
 32 organization or committee, and the claim or cause of
 33 action is subsequently dismissed, settled or adjudicated
 34 in favor of the person or entity making the required
 35 report, the person or persons who initiated the claim or
 36 action is liable for all attorney's fees, costs and expenses
 37 incurred by the reporting professional or entity only if
 38 the circuit court finds that the action was brought with
 39 malice or in violation of rule eleven of the West Virginia
 40 rules of civil procedure.

41 (d) Within thirty days of the dismissal, settlement,
 42 adjudication or other termination of any claim or cause
 43 of action asserted against any professional or entity
 44 reporting under the provisions of this chapter, the person
 45 or persons filing the claim or cause of action shall submit
 46 to the applicable governing board the following informa-
 47 tion:

48 (1) The parties involved;

49 (2) The court in which the action was filed, if applica-
 50 ble;

51 (3) The basis and nature of the claim or cause of action;
 52 and

53 (4) The result or disposition of the claim or cause of
 54 action.

55 (e) The governing boards of each profession subject to
 56 the provisions of this chapter shall promulgate legisla-
 57 tive rules pursuant to the provisions of chapter twenty-
 58 nine-a of this code, establishing procedures for imposing
 59 sanctions and penalties against any member of the
 60 profession who fails to submit to the board the informa-
 61 tion required by this section.

62 (f) The provisions of this section do not preclude the
63 application of any protection of immunity which may be
64 otherwise set forth under any article in this chapter.

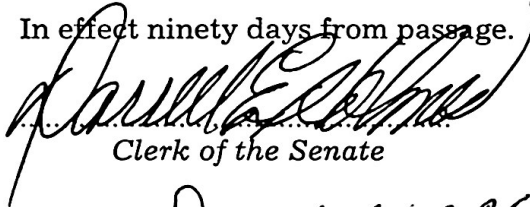
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee



.....
Chairman House Committee

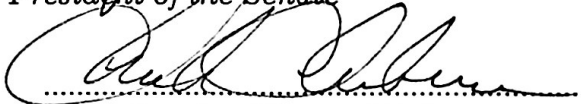
Originated in the Senate.


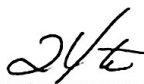

In effect ninety days from passage.

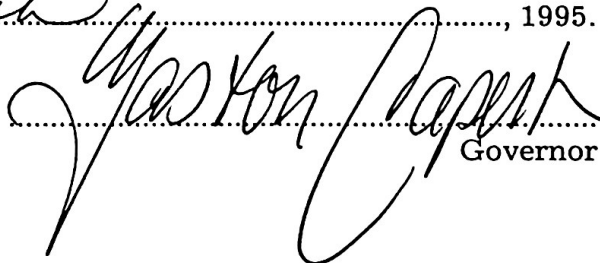

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within  is disapproved this the  day of , 1995.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/23/95

Time

3:41 pm