

HB 2348

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL NO. 2348

(By Delegate *Mr. Speaker, Mr. Chambers, +*
Delegates Gallagher, Jensch, Compton, Kias,
Calvert + Sprouse)

— ● —

Passed *March 10,* 1995

In Effect *90 Days From* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 2348

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATES GALLAGHER,
LEACH, COMPTON, KISS, CALVERT AND SPROUSE)

[Passed March 10, 1995; 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-four, relating to creating a self-supporting state board for respiratory care practitioners; requiring a license to practice; defining the scope of practice and related terms; specifying board composition, powers, responsibilities and operating procedures; establishing criteria and fees for issuing, renewing and reinstating full and limited licenses and temporary permits; creating misdemeanor penalties for nonlicensure and other acts; exempting certain categories from licensure; providing a grandfather clause; setting standards for disciplinary action, license revocation and suspension and due process; and delineating exceptions.

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-four, to read as follows:

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-1. License required to practice.

1 In order to protect the life, health and safety of the
2 public, any person practicing or offering to practice as a
3 respiratory care technician or respiratory therapist is re-
4 quired to submit evidence that he or she is qualified to
5 practice, and is licensed as provided in this article. After
6 the thirtieth day of June, one thousand nine hundred
7 ninety-six, it shall be unlawful for any person not licensed
8 under the provisions of this article to practice as a respira-
9 tory care technician or respiratory therapist in this state, to
10 deliver any portion of the description of services or scope
11 of practice, or to use any title, sign, card or device to indi-
12 cate that he or she is a respiratory care technician or respi-
13 ratory therapist. The provisions of this article are not
14 intended to limit, preclude or otherwise interfere with the
15 practice of other health care providers including those
16 health care providers working in any setting and licensed
17 by appropriate agencies or boards of the state of West
18 Virginia whose practices and training may include ele-
19 ments of the same nature as the practice of a licensed
20 respiratory care technician or a licensed respiratory thera-
21 pist.

§30-34-2. Definitions.

1 (a) "Board" means the West Virginia board for respira-
2 tory care;

3 (b) "Formal training" means a supervised, structured
4 educational activity that includes preclinical didactic and
5 laboratory activities and clinical activities. The training
6 must be approved by an accrediting agency recognized by
7 the board. It must include an evaluation of competence
8 through standardized testing mechanisms that the board
9 determines to be both valid and reliable;

10 (c) "Graduate respiratory care technician" means an
11 individual who has graduated from a respiratory care
12 technician education program and who is scheduled to
13 take the next available examination administered by the

14 state or a national organization approved by the board;

15 (d) "Graduate respiratory care therapist" means an
16 individual who has graduated from a respiratory therapist
17 educational program and is scheduled to take the next
18 available examination administered by the state or a na-
19 tional organization approved by the board;

20 (e) "Practice of respiratory care" means the practice of
21 respiratory care, and any part of respiratory care, by per-
22 sons licensed under the provisions of this article and shall
23 be limited to that which has been learned through formal
24 or special training including performance evaluation to
25 evaluate competence. The practice of respiratory care
26 may be performed in any clinic, hospital, skilled nursing
27 facility, private dwelling or other place deemed appropri-
28 ate or necessary by the board in accordance with the pre-
29 scription or verbal orders of a licensed physician or other
30 legally authorized person with prescriptive authority,
31 and/or under the direction of a qualified medical director.
32 Practice of respiratory care includes, but is not limited to:

33 (1) The administration of pharmacological, diagnostic
34 and therapeutic agents related to respiratory care proce-
35 dures necessary to implement a treatment, disease preven-
36 tion, pulmonary rehabilitative or diagnostic regimen pre-
37 scribed by a physician;

38 (2) Transcription and implementation of written or
39 verbal orders of a physician or other legally authorized
40 person with prescriptive authority, pertaining to the prac-
41 tice of respiratory care;

42 (3) Observing and monitoring signs and symptoms,
43 general behavior, general physical response to respiratory
44 care treatment and diagnostic testing, including determina-
45 tion of whether such signs, symptoms, reactions, behavior
46 or general response exhibit abnormal characteristics;

47 (4) Based on observed abnormalities, appropriate
48 reporting, referral or implementation of respiratory care
49 protocols or changes in treatment pursuant to the written
50 or verbal orders of a person with prescriptive authority
51 under the laws of the state of West Virginia; or

52 (5) The initiation of emergency procedures under the
53 regulations of the board or as otherwise permitted in this
54 article;

55 (f) "Qualified medical director" means the medical
56 director of any inpatient or outpatient respiratory care
57 service, department or home care agency. The medical
58 director shall be a licensed physician who is knowledge-
59 able in the diagnosis and treatment of respiratory prob-
60 lems. This physician shall be responsible for the quality,
61 safety and appropriateness of the respiratory services pro-
62 vided and require that respiratory care be ordered by a
63 physician, or other legally authorized person with pre-
64 scriptive authority, who has medical responsibility for the
65 patient. The medical director shall be readily accessible to
66 the respiratory care practitioners and assure their compe-
67 tency;

68 (g) "Respiratory care" means the allied health profes-
69 sion responsible for the direct and indirect services in the
70 treatment, management, diagnostic testing and care of
71 patients with deficiencies and abnormalities associated with
72 the cardiopulmonary system, under a qualified medical
73 director. Respiratory care includes inhalation therapy and
74 respiratory therapy;

75 (h) "Respiratory care education program" means a
76 course of study leading to eligibility for registry or certifi-
77 cation in respiratory care and the program is approved by
78 the board;

79 (i) "Respiratory therapist" means an individual who has
80 successfully completed an accredited training program,
81 and who has successfully completed an examination for
82 respiratory therapists administered by the state or a nation-
83 al organization approved by the board and who is licensed
84 by the board as a licensed respiratory therapist;

85 (j) "Respiratory care technician" means an individual
86 who has successfully completed an accredited training
87 program and who has successfully completed a certifica-
88 tion examination for respiratory care technicians adminis-
89 tered by the state or a national organization approved by
90 the board, and who is licensed by the board as a licensed

91 respiratory care technician; and

92 (k) "Student respiratory care therapist or student respi-
93 ratory care technician" means an individual enrolled in a
94 respiratory educational program and whose sponsoring
95 educational institution assumes responsibility for the su-
96 pervision of, and the services rendered by, the student
97 respiratory care practitioner while he or she is functioning
98 in a clinical training capacity.

§30-34-3. Board of respiratory care.

1 (a) There is hereby created the West Virginia board of
2 respiratory care. The board shall consist of seven mem-
3 bers, appointed by the governor with the advice and con-
4 sent of the senate and shall consist of one lay citizen mem-
5 ber; one practicing physician member currently licensed
6 in West Virginia with board certification, clinical training
7 and experience in the management of pulmonary disease;
8 and five members, licensed under the provisions of this
9 article and engaged in the practice of respiratory care for
10 the five years immediately preceding their appointment.
11 One of the respiratory practitioners appointed shall be
12 employed full time in home respiratory care by a home
13 medical equipment supplier. All appointees shall be citi-
14 zens of the United States and residents of this state. The
15 West Virginia society for respiratory care or its successor
16 organization shall make recommendations to the governor
17 regarding individuals to be considered for initial and sub-
18 sequent appointments.

19 (b) The members of the board shall each serve terms
20 that commence on the first day of July, one thousand nine
21 hundred ninety-five. Of the initial appointments to the
22 board, one physician and one respiratory care practitioner
23 shall serve for two year terms, one public member and two
24 respiratory care practitioners shall serve for three year
25 terms, and two respiratory care practitioners shall serve for
26 four year terms. Thereafter, each appointment shall be for
27 a four year term commencing upon the expiration of the
28 term of his or her previous term or of his or her
29 predecessor's term. No member may be appointed for
30 more than three consecutive terms. Vacancies shall be
31 appointed in a like manner for the balance of an unex-

32 pired term.

33 (c) The West Virginia medical association, or other
34 organizations if requested by the governor, may submit
35 the names of three physicians qualified to serve in that
36 designated position on the board.

37 (d) The governor may remove any member from the
38 board for neglect of any duty required by law or for in-
39 competence or unethical or dishonorable conduct.

**§30-34-4. Organization and meetings of board; quorum;
expenses.**

1 (a) The board shall meet at least twice a year and elect
2 annually a chairperson and a vice chairperson from its
3 members. The board may hold other meetings during the
4 year as the chairperson or board deem necessary to trans-
5 act its business.

6 (b) A majority, including one officer, constitutes a
7 quorum at any meeting, but a majority of the board is
8 required to take action by vote. The board members shall
9 receive travel and other necessary expenses actually in-
10 curred while engaged in board activities up to a maximum
11 of two hundred dollars per board meeting. All reimburse-
12 ment of expenses shall be paid out of the board of respira-
13 tory care fund created by the provisions of this article.

§30-34-5. Board responsibilities.

1 The board shall:

2 (a) Provide public notice to all state hospitals and to all
3 persons currently practicing as respiratory care practition-
4 ers that a license shall be required to continue practicing
5 as a respiratory care technician or respiratory therapist,
6 after the thirtieth day of June, one thousand nine hundred
7 ninety-six;

8 (b) Examine, license and renew the licenses of duly
9 qualified applicants;

10 (c) Maintain a current registry of persons licensed to
11 practice respiratory care under this article which shall
12 contain information on the licensee's place of employ-

13 ment, address, license number and the date of licensure;

14 (d) Cause the prosecution of all persons violating this
15 article, incurring any expenses necessary;

16 (e) Keep a record of all proceedings of the board and
17 make it available to the public for inspection during rea-
18 sonable business hours;

19 (f) Conduct hearings on charges that subject a licensee
20 to disciplinary action and on the denial, revocation or
21 suspension of a license;

22 (g) Maintain an information registry of persons whose
23 licenses have been suspended, revoked or denied. The
24 information shall include the individual's name, social
25 security number, type and cause of action, date of board
26 action, type of penalty incurred and the length of penalty.
27 This information shall be available for public inspection
28 during reasonable business hours and supplied to similar
29 boards in other states upon request;

30 (h) Establish rules pursuant to the provisions of chap-
31 ter twenty-nine-a of this code regarding relicensure and
32 continuing education requirements. Continuing education
33 requirements shall be established pursuant to a recog-
34 nized continuing respiratory care education program such
35 as, but not limited to, the program established by the
36 American association for respiratory care;

37 (i) Maintain continuing education records; and

38 (j) Approve the training, continuing education and
39 competency evaluation methods for respiratory care prac-
40 titioners to perform entry level and advanced procedures
41 in the art and techniques of respiratory care.

§30-34-6. Powers of the board; fund.

1 (a) The board may:

2 (1) Adopt rules pursuant to article three, chapter
3 twenty-nine-a of the code, as may be necessary to enable it
4 to effect the provisions of this article;

5 (2) Employ such personnel as necessary to perform

6 the functions of the board, including an administrative
7 secretary, and pay all personnel from the board of respira-
8 tory care fund;

9 (3) Establish relicensure requirements, rules of proba-
10 tion for licensees, and other procedures as deemed appro-
11 priate;

12 (4) Secure the services of resource consultants, as
13 deemed necessary by the board, who shall receive travel
14 and other necessary expenses, consistent with state laws
15 and policies, while engaged in consultative service to the
16 board and who shall be reimbursed exclusively from the
17 board of respiratory care fund;

18 (5) Fix appropriate and reasonable fees for mandatory
19 licensure, which shall be no greater than two hundred
20 dollars for initial licensure or one hundred fifty dollars for
21 annual license renewal. All fees shall be reviewed periodi-
22 cally and modified as necessary.

23 (b) The board shall designate one person to accept
24 and deposit moneys paid to the board. The money so
25 collected shall be deposited with the treasurer of the state
26 and credited to an account to be known as the "board of
27 respiratory care fund." Expenditures from the fund shall
28 be for the purposes set forth in this article and are not
29 authorized from collections but are to be made only in
30 accordance with appropriation by the Legislature and in
31 accordance with the provisions of article three, chapter
32 twelve of this code and upon the fulfillment of the provi-
33 sions set forth in article two, chapter five-a of this code:
34 *Provided*, That for the fiscal year ending the thirtieth day
35 of June, one thousand nine hundred ninety-six, expendi-
36 tures are authorized from collections rather than pursuant
37 to an appropriation by the Legislature. No part of the
38 state's general revenue fund shall be expended to carry out
39 the purposes of this article.

40 (c) The board may contract with other state boards or
41 state agencies to share offices, personnel and other admin-
42 istrative functions as authorized under this article.

**§30-34-7. Issuance of license; renewal of license; renewal fee;
display of license.**

1 (a) When the board finds that an applicant meets all of
2 the requirements of this article for a license to engage in
3 the practice of respiratory care, it shall forthwith issue to
4 that person a license. Otherwise, the board shall deny the
5 application. The application is to be submitted with a
6 license fee of two hundred dollars. If any application is
7 rejected, the board shall return the fee less any actual costs
8 incurred in processing the application.

9 (b) Every licensee shall renew his or her license on or
10 before the first day of January of each year by payment
11 of a fee established by the board which shall be no greater
12 than one hundred fifty dollars. Any license that is not so
13 renewed shall automatically lapse. A license which has
14 lapsed may be renewed within five years of its expiration
15 date by meeting the requirements set forth by the board
16 and payment of a fee equal to that established for the
17 initial license. After the expiration of such five-year peri-
18 od, a license may be renewed only by complying with the
19 provisions relating to the issuance of an original license.

20 (c) A person currently licensed to practice pursuant to
21 this article may apply for an inactive status by providing
22 written notice to the board and ceasing to engage in the
23 practice of respiratory care in this state: *Provided*, That
24 the inactive status is granted for no longer than five years.
25 The board shall maintain a list of licensees on inactive
26 status. Any person granted inactive status is not subject to
27 the payment of any fees otherwise required by the board.
28 Prior to engaging in the practice of respiratory care, the
29 person shall submit to the board an application for the
30 renewal of the license and payment of a renewal fee for
31 the current year.

32 (d) The board may deny any application for renewal
33 of a license for any reason which would justify the denial
34 of an original application for a license as specified by
35 provisions of this article.

36 (e) The board shall prescribe the form of licenses.

§30-34-8. Criteria for licensure.

1 (a) Upon payment of the proper fees, an applicant for

2 a license to practice respiratory care shall submit to the
3 board written evidence, verified by oath, that the applicant:

4 (1) Has completed an approved respiratory care edu-
5 cational program;

6 (2) Passed an examination, except where otherwise
7 provided in this article. This examination may be admin-
8 istered by the state or by a national agency approved by
9 the board. The board shall set the passing score for the
10 examination.

11 (b) The board may also issue a license to practice
12 respiratory care by endorsement to an applicant who is
13 currently licensed to practice respiratory care under the
14 laws of another state, territory or country if the qualifica-
15 tions of the applicant are deemed by the board to be
16 equivalent to, or greater than, those required in this state.

17 (c) The board may also issue a license to practice
18 respiratory care by endorsement to respiratory therapists
19 and respiratory care technicians holding credentials con-
20 ferred by the national board for respiratory care, inc. or
21 it's successor organizations, if the credentials have not
22 been suspended or revoked. Applicants applying under
23 the conditions of this section shall be required to certify
24 under oath that their credentials have not been suspended
25 or revoked.

26 (d) If an applicant fails to complete the requirements
27 for licensure within ninety days from the date of filing, the
28 application is deemed to be abandoned.

§30-34-9. Temporary permits.

1 Upon payment of the proper fee the board may issue
2 a temporary permit to practice respiratory care for a peri-
3 od of six months under the following conditions:

4 (a) The applicant is currently practicing, or has prac-
5 ticed within the last twelve months in another state, territo-
6 ry or country, and is completing the requirements for
7 licensing in this state: *Provided*, That the applicant pro-
8 vides written evidence, verified by oath of that practice;

9 (b) The applicant is a graduate of a respiratory care

10 educational program and is scheduled to take the next
11 available examination, or is awaiting the results of that
12 examination: *Provided*, That the temporary permit shall
13 be revoked in the event that the applicant does not achieve
14 a passing score on the entry level technician examination.

§30-34-10. Prohibitions and penalties.

1 It shall be a misdemeanor for any person, including
2 any corporation or association, to:

3 (a) Sell or fraudulently obtain or furnish any respira-
4 tory care provider license or record or aid or abet therein;

5 (b) Practice as a respiratory care provider under cover
6 of any diploma, license or record illegally or fraudulently
7 obtained or signed or issued or under fraudulent represen-
8 tation;

9 (c) Practice as a respiratory care provider unless duly
10 licensed to do so under the provisions of this article;

11 (d) Use in connection with his or her name any desig-
12 nation tending to imply that he or she is licensed to prac-
13 tice as a respiratory care provider unless duly licensed so
14 to practice under the provisions of this article;

15 (e) Practice as a respiratory care provider during the
16 time his or her license issued under the provisions of this
17 article is suspended or revoked;

18 (f) Conduct a respiratory care provider licensing pro-
19 gram for the preparation of respiratory care provider
20 unless such program has been accredited by the board; or

21 (g) Otherwise violate any provisions of this article.

22 Upon conviction, each misdemeanor shall be punish-
23 able by a fine of not less than twenty-five nor more than
24 two hundred fifty dollars.

§30-34-11. Grandfather clause.

1 (a) After the establishment of the board of respiratory
2 care, a license shall be issued to applicants who, on the
3 effective date of this article, have passed the national board
4 of respiratory care, inc. entry-level or registry examina-

5 tions, or their equivalent as approved by the board.

6 (b) Applicants who have not passed either of these
7 national examinations or their equivalent on the effective
8 date of this article and who, through written evidence and
9 verified by oath, demonstrate that they have been func-
10 tioning for two years in the capacity of a respiratory care
11 provider as defined by this article shall be issued a tempo-
12 rary license to practice respiratory care. A temporary
13 license issued pursuant to this section shall be renewed at
14 intervals prescribed by the board. A temporary license
15 shall not be valid after the first day of June, one thousand
16 nine hundred ninety-seven. Persons holding a temporary
17 license shall be issued a license to practice only after
18 achieving a passing score on a licensure exam adminis-
19 tered or approved by the board.

20 (c) Any person issued a license pursuant to this section
21 shall be required to pay the license or renewal fees estab-
22 lished in section seven of this article.

§30-34-12. Professional identification.

1 (a) A person holding a license to practice respiratory
2 care as a technician in this state may use the title "licensed
3 respiratory care technician" and the abbreviation "LRCT".

4 (b) A person holding a license to practice respiratory
5 care as a respiratory therapist in this state may use the title
6 "licensed respiratory therapist" and the abbreviation
7 "LRT".

8 (c) A licensee shall either show his or her license or
9 provide a copy thereof within twenty-four hours of a re-
10 quest from an employer or the board.

§30-34-13. Disciplinary criteria.

1 The board may revoke, suspend or refuse to renew
2 any license, or place on probation, or otherwise reprimand
3 a licensee or permit holder, or deny a license to an appli-
4 cant if it finds that the person:

5 (a) Is guilty of fraud or deceit in procuring or at-
6 tempting to procure a license or renewal of a license to
7 practice respiratory care;

8 (b) Is unfit or incompetent by reason of negligence,
9 habits or other causes of incompetence;

10 (c) Is habitually intemperate in the use of alcoholic
11 beverages;

12 (d) Is addicted to or has improperly obtained, pos-
13 sessed, used or distributed habit-forming drugs or narcot-
14 ics;

15 (e) Is convicted of a felony that materially affects the
16 person's ability to safely practice respiratory care;

17 (f) Is guilty of dishonest or unethical conduct as deter-
18 mined by the board of respiratory care;

19 (g) Has practiced respiratory care after his or her li-
20 cense or permit has expired, been suspended or revoked;

21 (h) Has practiced respiratory care under cover of any
22 permit or license illegally or fraudulently obtained or
23 issued; or

24 (i) Has violated or aided or abetted others in violation
25 of any provision of this article.

§30-34-14. Due process procedure.

1 (a) Upon filing with the board a written complaint
2 charging a person with being guilty of any of the acts
3 described in section thirteen of this article, the administra-
4 tive secretary or other authorized employee of the board
5 shall provide a copy of the complaint or list of allegations
6 to the person about whom the complaint was filed. That
7 person will have twenty days thereafter to file a written
8 response to the complaint. The board shall thereafter, if
9 the allegations warrant, make an investigation. If the
10 board finds reasonable grounds for the complaint, a time
11 and place for a hearing shall be set, notice of which shall
12 be served on the licensee, permit holder or applicant at
13 least fifteen calendar days in advance of the hearing date.
14 The notice shall be by personal service or by certified or
15 registered mail sent to the last known address of the per-
16 son.

17 (b) The board may petition the circuit court for the

18 county within which the hearing is being held to issue
19 subpoenas for the attendance of witnesses and the produc-
20 tion of necessary evidence in any hearing before it. Upon
21 request of the respondent or of his or her counsel, the
22 board shall petition the court to issue subpoenas in behalf
23 of the respondent. The circuit court upon petition may
24 issue such subpoenas as it deems necessary.

25 (c) Unless otherwise provided in this article, hearing
26 procedures shall be promulgated in accordance with, and a
27 person who feels aggrieved by a decision of the board
28 may take an appeal pursuant to, the administrative proce-
29 dures in this state as provided in chapter twenty-nine-a of
30 this code.

§30-34-15. Exceptions.

1 (a) A person may not practice respiratory care or
2 represent himself or herself to be a respiratory care practi-
3 tioner unless he or she is licensed under this article except
4 as otherwise provided by this article.

5 (b) This article does not prohibit:

6 (1) The practice of respiratory care which is an inte-
7 gral part of the program of study by students enrolled in
8 respiratory care education programs accredited by organi-
9 zations approved by the board. Students enrolled in respi-
10 ratory care education programs shall be identified as "stu-
11 dent RCP" and may only provide respiratory care under
12 clinical supervision;

13 (2) Self-care by a patient, or gratuitous care by a
14 friend or family member who does not represent or hold
15 himself out to be a respiratory care practitioner;

16 (3) Respiratory care services rendered in the course of
17 an emergency;

18 (4) Persons in the military services or working in fed-
19 eral facilities providing respiratory care services when
20 functioning in the course of their assigned duties; and

21 (5) The respiratory care practitioner from performing
22 advances in the art and techniques of respiratory care
23 learned through formalized or specialized training ap-

24 proved by the board.


25 (c) Nothing in this article is intended to limit, preclude
26 or otherwise interfere with the practices of other persons
27 and health care providers licensed by appropriate agencies
28 of the state.

29 (d) Nothing in this article shall prohibit home medical
30 equipment dealers from delivering and instructing persons
31 in the operation of home medical respiratory equipment,
32 or, from receiving requests for changes in equipment and
33 settings from physicians or other authorized individuals.

34 (e) An individual who passes an examination that
35 includes content in one or more of the functions included
36 in this article is not prohibited from performing such
37 procedures for which he or she was tested, so long as the
38 testing body offering the examination is approved by the
39 board.

§30-34-16. Practice of medicine prohibited.

1 Nothing in this article may be construed to permit the
2 practice of medicine.



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



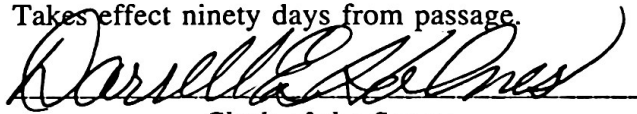
Chairman Senate Committee




Chairman House Committee

Originating in the House.

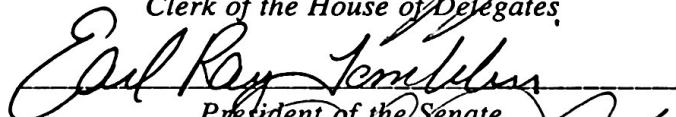
Takes effect ninety days from passage.




Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within _____ this the _____
day of _____, 1995.

Governor

PRESENTED TO THE

GOVERNOR,

Date 3/28/95

Time 8:47 am