

HB 4136

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

96 MAR 25 PM 4:07

RECEIVED

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Cum. Sub. for

HOUSE BILL No. 4136

(By Delegate Mr. Speaker, Mr. Chambers and)
Delegates Adkins, Sprouse, Amores and Leach



Passed March 9, 1996

In Effect ninety days from Passage

RECEIVED

96 MAR 27 PM 4:07

OFFICE OF THE CLERK
WEST VIRGINIA LEGISLATURE
STATE HOUSE, MARTINSBURG, WV 26150

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4136

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATES ADKINS,
SPOUSE, AMORES AND LEACH)

[Passed March 9, 1996; 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-five, relating to licensed dietitians generally; requiring a license to practice; creating exceptions; defining terms; creating a board of dietitians; providing for terms of service; defining scope of authority and creating duties; creating a special revenue account within the state treasury; providing for expenditures, appropriations and transfers; issuance of interim permits; establishing fees; qualifications for licensure; establishing standards and criteria for licensing; license renewal; waivers; reinstatement; contents of licenses; provisions for denying, suspending or revoking licenses; administrative hearings and procedures; judicial review; prohibitions and penalties; and 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-five, to read as follows:

ARTICLE 35. BOARD OF DIETITIANS.

§30-35-1. License to practice.

1 (a) After the thirtieth day of June, one thousand nine
2 hundred ninety-seven, anyone who represents or implies
3 to the public by use of the title "dietician" or "licensed
4 dietician" or any other title intended to convey the impres-
5 sion that he or she is authorized to practice dietetics in this
6 state must be licensed pursuant to this article.

7 (b) No person may use any title, sign, card or other
8 device which indicates that such person is a licensed dieti-
9 tian unless expressly authorized and licensed pursuant to
10 the provisions of this article: *Provided*, That a dietitian
11 registered by the commission on dietetic registration may
12 use the title of registered dietitian: *Provided, however*,
13 That the requirements and provisions of this article do not
14 apply to any person employed as a cook at any public or
15 private educational institution in this state.

16 (c) Nothing in this article may be construed to affect
17 individuals who furnish nutrition information on food,
18 food materials or dietary supplements or who engage in
19 explanation to customers about food, food materials or
20 dietary supplements in connection with the marketing and
21 distribution of those products, and who do not use the title
22 "dietician" or "licensed dietician."

§30-35-2. Definitions.

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

3 (a) "Board" means the West Virginia board of licensed
4 dietitians;

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

8 (c) "Fund" means the board of examiners for dieti-
9 tians' administrative fund created pursuant to the provision
10 of section five of this article;

11 (d) "Licensed dietitian" means any person who has

12 obtained a license to practice as a licensed dietitian from
13 the West Virginia board of licensed dietitians; and

14 (e) "Registered dietitian" means a person registered by
15 the commission on dietetic regulation.

§30-35-3. Board of licensed dietitians.

1 (a) There is hereby created the West Virginia board of
2 licensed dietitians. The board consists of five members
3 who shall be appointed by the governor, by and with the
4 advice and consent of the Senate. The governor shall
5 make appointments from a list of not less than eight
6 names submitted to the governor by the West Virginia
7 dietetic association. Each member of the board shall be a
8 citizen of the United States and a resident of this state.
9 Four members shall have experience as a registered or
10 licensed dietitian for a minimum of three years preceding
11 the date of appointment. One member of the board shall
12 be a lay person who is not a registered or licensed dietitian
13 and not subject to the practice requirements of this subsec-
14 tion.

15 (b) The governor shall appoint initially one member
16 for a term of one year, one for a term of two years, one
17 for a term of three years and two for a term of four years.
18 Thereafter, the members of the board shall be appointed
19 for overlapping terms of four years. No member of the
20 board may serve more than four years.

21 (c) In the event a board member is unable to complete
22 a term, the governor shall appoint a person with similar
23 qualifications to complete the unexpired term. Each va-
24 cancy occurring on the board shall be filled by appoint-
25 ment within sixty days after such vacancy is created.

26 (d) Each member of the board shall be reimbursed for
27 all reasonable and necessary expenses actually incurred in
28 the performance of the board member's duties, not to
29 exceed fifty dollars per day.

30 (e) At its initial meeting, and annually thereafter, the
31 members shall elect a chair, vice chair and secretary. The
32 chair shall preside over the meetings and hearings of the
33 board. The vice chair shall assume the chair's duties in the

34 absence of the chair. All meetings shall be general meet-
35 ings for the consideration of any matter which may prop-
36 erly come before the board. A majority of the board
37 constitutes a quorum for the transaction of business. The
38 board shall meet at least once a year and at such other
39 times and places as it may determine; and shall meet on
40 the call of the chair. It shall be the duty of the chair to
41 call a meeting of the board on the written request of three
42 members thereof. The board shall keep an accurate re-
43 cord of all proceedings and maintain such board records.
44 The board may employ personnel necessary to accom-
45 plish the performance of its duties: *Provided*, That the
46 board may not expend more than it has available to it
47 solely through the fees established in this article.

§30-35-4. Powers and duties of board.

- 1 (a) The board may, in its discretion, perform the fol-
2 lowing functions and duties, depending on the financial
3 resources available to the board:
- 4 (1) Promulgate rules in accordance with the provisions
5 of chapter twenty-nine-a of this code to implement and
6 effectuate the provisions of this article, including, but not
7 limited to, legislative rules establishing the following:
- 8 (A) A code of professional ethics;
- 9 (B) Continuing education requirements and standards;
- 10 (C) Examination, licensure and renewal requirements
11 of duly qualified applicants; and
- 12 (D) Procedures and guidelines for the suspension or
13 revocation of a license.
- 14 (2) Adopt procedural and interpretive rules in accor-
15 dance with the provisions of chapter twenty-nine-a of this
16 code;
- 17 (3) Adopt an official seal;
- 18 (4) Conduct license examinations of duly qualified
19 applicants;

21 (5) Issue and renew licenses and issue interim permits
22 to duly qualified applicants;

23 (6) Impose and collect fees for the issuance and re-
24 newal of permits or licenses;

25 (7) Suspend, revoke and reinstate licenses;

26 (8) Conduct hearings on licensing issues and any
27 other matter properly within the jurisdiction of the board;

28 (9) Maintain a record of all proceedings of the board;
29 and

30 (10) Submit a biennial report to the governor describ-
31 ing the activities of the board.

32 (b) The Legislature finds and declares that this board
33 is intended to be fully self supported through the fee
34 structure provided for in this article, and that the board
35 shall not require any legislative appropriation beyond the
36 revenues the board receives in fees. Accordingly, in the
37 event the board has insufficient moneys to perform its
38 duties under this article, the board shall prioritize its duties
39 under this article so at all times to remain within the mon-
40 ey available to it through the fees established in this arti-
41 cle. The board created in this article has only discretion-
42 ary duties.

§30-35-5. Fees; special revenue account; expenditures and transfers.

1 (a) All fees and other moneys collected by the board
2 pursuant to the provisions of this article shall be deposited
3 in an appropriated special revenue account designated the
4 "board of examiners for licensed dietitians," which is here-
5 by created in the state treasury.

6 (b) All expenses incurred by the board shall be paid
7 from the special fund provided in subsection (a) herein.
8 No compensation or expense incurred pursuant to the
9 provisions of this article may be charged against the gen-
10 eral revenue funds of this state. Expenditures shall be
11 made only in accordance with appropriation by the Legis-
12 lature pursuant to the provisions of article three, chapter
13 twelve of this code and upon the fulfillment of the provi-

14 sions of article two, chapter five-a of this code. Expendi-
15 tures from the special fund shall be for the purposes set
16 forth in this article and are not authorized from collec-
17 tions: *Provided*, That for the fiscal year ending the thirti-
18 eth day of June, one thousand nine hundred ninety-six,
19 expenditures are authorized from collections rather than
20 pursuant to an appropriation by the Legislature.

21 (c) Amounts collected which are found from time to
22 time to exceed the funds needed to effectuate the purposes
23 set forth in this section may be transferred to other ac-
24 counts or funds and redesignated for other purposes upon
25 appropriation by the Legislature.

§30-35-6. Provisional permits; renewals; fees.

1 (a) The board may issue a provisional permit to en-
2 gage in practice as a licensed dietitian to any person who
3 has not met the experience requirements set forth in this
4 article upon the filing of an application and submission of
5 evidence of successful completion of the education re-
6 quirements of this article. A provisional permit expires
7 one year from the date of issuance. Renewals may be
8 issued for a period not to exceed three years upon request
9 by the applicant and submission of a satisfactory explana-
10 tion for the applicant's failure to become licensed.

11 (b) The fee for a provisional permit or renewal is fifty
12 dollars, which shall be submitted with the application. All
13 fees collected shall be deposited to the credit of the fund
14 provided in section five of this article.

**§30-35-7. Qualifications; licensure; examinations; waivers
and fees.**

1 (a) An applicant for a license to engage in practice as
2 a licensed dietitian shall submit to the board written evi-
3 dence, verified by oath, that he or she:

4 (1) Complies with the code of ethics adopted by the
5 board;

6 (2) Has completed a major course of study in human
7 nutrition, dietetics, food systems management or equiva-
8 lent thereof and possesses a baccalaureate or postbacc-

9 laureate degree; and

10 (3) Has completed a planned continuous professional
11 experience component in dietetic practice of not less than
12 nine hundred hours under the supervision of a registered
13 or licensed dietitian.

14 (b) Each applicant is required to pass a written exami-
15 nation demonstrating competence in the discipline of
16 dietetics and nutrition. Each written examination may be
17 supplemented by an oral examination. The board shall
18 determine the times and places for examinations.

19 (c) Upon successfully passing such examination or
20 examinations, the board shall issue to the applicant a li-
21 cense to engage in practice as a licensed dietitian. In the
22 event an applicant has failed to pass examinations on three
23 occasions, the applicant shall, in addition to the other re-
24 quirements of this section, present to the board such other
25 evidence of his or her qualifications as the board may
26 prescribe.

27 (d) Prior to the thirtieth day of June, one thousand
28 nine hundred ninety-seven, the board shall waive the ex-
29 amination requirements of this section and shall grant a
30 license to any person who:

31 (1) Is registered by the commission on dietetic regis-
32 tration as a registered dietitian; or

33 (2) Possesses a baccalaureate or postbaccalaureate
34 degree and has completed a major course of study in the
35 fields of human nutrition, dietetics, food systems manage-
36 ment or equivalent, as approved by the board, and has
37 been engaged in the practice of dietetics or nutrition for
38 three of the last ten years.

39 (e) Upon application and submission of the applica-
40 ble fee, the board may waive the examination require-
41 ments of this section and issue a license to practice as a
42 licensed dietitian to an applicant who is registered by the
43 commission on dietetic registration or who has been duly
44 licensed as a nutritionist or dietitian under the laws of
45 another state if the standards for licensing in that state are
46 no less stringent than those required under the provisions

47 of this article.

48 (f) Any person applying for a dietitian license shall
49 submit a fee of fifty dollars with the application to the
50 board, which fee shall be deposited to the credit of the
51 fund provided in section five of this article.

**§30-35-8. Renewal of licenses; reinstatement; fees; penalties;
inactive lists.**

1 (a) The license of every person licensed under the
2 provisions of this article shall be annually renewed except
3 as otherwise provided by this section. At such times as the
4 board, in its discretion, may determine, the board shall
5 mail a renewal application to every person whose license
6 was initially granted or renewed during the previous calen-
7 dar year. All persons seeking renewal shall submit a com-
8 pleted application and a fifty-dollar annual renewal fee.
9 Upon receipt of the application and fee, the board shall
10 verify the accuracy of the application and, if it is accurate,
11 issue to the applicant a certificate of renewal of the license
12 for the current year. The certificate of renewal entitles the
13 holder thereof to practice dietetics for the period stated on
14 the certificate of renewal.

15 (b) Any licensee who allows his or her license to lapse
16 by failing to renew for a period not exceeding three years,
17 may be reinstated by the board upon receipt of a satisfac-
18 tory explanation for such failure to renew his or her li-
19 cense and payment of the annual renewal fee plus a rein-
20 statement fee of twenty-five dollars.

21 (c) Any person allowing his or her license to lapse for
22 a period exceeding three years is required, to be reinstated
23 as a licensed dietitian, to pass a written examination estab-
24 lished by the board, and to pay to the board a licensing
25 fee of fifty dollars.

26 (d) Any person engaged in the practice of licensed
27 dietetics during the time his or her license has lapsed is in
28 violation of the provisions of this article and is subject to
29 the penalties provided in section fourteen of this article.

30 (e) Any licensed dietitian who desires to retire from
31 practice temporarily shall submit a written notice of such

32 retirement to the board. Upon receipt of such notice the
33 board shall place the name of such person upon the inac-
34 tive list. Any person remaining on the inactive list may
35 not engage in the practice of licensed dietetics in this state
36 and is not subject to the payment of any renewal fees.
37 Upon submission of an application for renewal of license
38 and payment of the renewal fee for the current year, a
39 licensed dietitian may resume active practice.

§30-35-9. Contents of license or provisional permit.

1 Each license or provisional permit issued by the board
2 shall bear a serial number, the full name of the applicant,
3 the date of expiration of any such license, or the date of
4 issuance and expiration of any such provisional permit
5 and the seal of the board, and shall be signed by the secre-
6 tary of the board. The licensee shall display the license in
7 his or her place of business in view of the public.

**§30-35-10. Denial, revocation or suspension of license;
grounds for discipline.**

1 (a) The board may at any time upon its own motion,
2 and shall upon the verified written complaint of any per-
3 son, conduct an investigation to determine whether there
4 are grounds for denial, suspension or revocation of a li-
5 cense issued pursuant to the provisions of this article.

6 (b) The board may deny, revoke or suspend any li-
7 cense to engage in the practice of licensed dietetics issued
8 pursuant to the provisions of this article, or any applica-
9 tion therefor, or may otherwise discipline a licensee or
10 applicant upon proof that he or she:

11 (1) Is or was guilty of fraud or deceit in procuring or
12 attempting to procure a license or renewal to practice as a
13 licensed dietitian;

14 (2) Has been grossly negligent or exhibited unprofes-
15 sional or unethical conduct in the practice as a licensed
16 dietitian;

17 (3) Is habitually intemperate or is addicted to the use
18 of alcohol or controlled substances;

19 (4) Is mentally incompetent; or

20 (5) Has willfully or repeatedly violated any of the
21 provisions of this article.

§30-35-11. Procedures for hearing.

1 (a) Whenever the board denies an application for any
2 original or renewal license or denies an application for a
3 license or suspends or revokes any license, it shall make an
4 interim order to that effect and serve a copy thereof on the
5 applicant or licensee by certified mail, return receipt re-
6 quested. Such order shall state the grounds for the action
7 taken and shall require that any license or temporary per-
8 mit suspended or revoked thereby be returned to the
9 board by the holder within twenty days after receipt of the
10 copy of such order.

11 (b) Any person adversely affected by any such order
12 is entitled to a hearing thereon pursuant to the provisions
13 of article five, chapter twenty-nine-a of this code if, within
14 twenty days after receipt of a copy of the order, he or she
15 files with the board a written demand for such hearing. A
16 demand for hearing shall operate automatically to stay or
17 suspend the execution of any order. The board may re-
18 quire the person demanding such hearing to give reason-
19 able security for the cost of the hearing. If such person
20 does not substantially prevail at the hearing, the costs
21 therefor shall be assessed against him or her and may be
22 collected by civil action or other proper remedy.

23 (c) Upon a receipt of a written demand for a hearing,
24 the board shall set a time and place therefor not less than
25 ten and not more than thirty days thereafter. Any sched-
26 uled hearing may be continued by the board upon its own
27 motion or for good cause shown by the person demand-
28 ing the hearing.

29 (d) The provisions of article five, chapter twenty-
30 nine-a of this code apply to and govern the hearing and
31 administrative procedures in connection therewith.

32 (e) All administrative hearings shall be conducted by
33 a quorum of the board. For the purpose of conducting
34 any such hearing any member of the board may issue
35 subpoenas and subpoenas duces tecum which shall be

36 issued and served pursuant to the provisions of section
37 one, article five, chapter twenty-nine-a of this code.

38 (f) At any hearing the person who demanded the same
39 may represent himself or herself or be represented by an
40 attorney admitted to practice in this state.

41 (g) After any such hearing and consideration of all
42 testimony, evidence and record in the case, the board shall
43 render its decision in writing. The written decision of the
44 board shall be accompanied by findings of fact and con-
45 clusions of law as specified in section three, article five,
46 chapter twenty-nine-a of this code. A copy of such deci-
47 sion and accompanying findings and conclusions shall be
48 served by certified mail, return receipt requested, upon the
49 person demanding such hearing, and the attorney of re-
50 cord.

51 (h) The decision of the board is final unless reversed,
52 vacated or modified upon judicial review thereof in accor-
53 dance with the provisions of section twelve of this article.

§30-35-12. Judicial review.

1 (a) Any applicant or licensee adversely affected by a
2 decision of the board rendered after a hearing held pursu-
3 ant to the provisions of section eleven of this article is
4 entitled to judicial review thereof. All of the provisions of
5 section four, article five, chapter twenty-nine-a of this code
6 apply to, and govern, such review.

7 (b) The judgment of the circuit court shall be final
8 unless reversed, vacated or modified on appeal to the su-
9 preme court of appeals in accordance with the provisions
10 of section one, article six, chapter twenty-nine-a of this
11 code.

§30-35-13. Actions to enjoin violations.

1 (a) Whenever it appears to the board that any person
2 has been or is violating or is about to violate any provision
3 of this article or any final decision of the board, the board
4 may apply in the name of the state to the circuit court of
5 the county in which the violation or violations or any part
6 thereof has occurred, is occurring or is about to occur, or

7 the judge thereof in vacation, for an injunction against the
8 person and any other persons who have been, are or are
9 about to be, involved in any practice, act or omission, so in
10 violation, enjoining the person or persons from any viola-
11 tion or violations. Such application may be made and
12 prosecuted to conclusion regardless of whether any viola-
13 tion has resulted or shall result in prosecution or convic-
14 tion pursuant to the provisions of section fourteen of this
15 article.

16 (b) Upon application by the board, any circuit court
17 of this state with appropriate jurisdiction may, by manda-
18 tory or prohibitory injunction, compel compliance with
19 the provisions of this article and all final decisions of the
20 board. The court may issue a temporary injunction in any
21 case pending a decision on the merits of any application
22 filed.

23 (c) The judgment of the circuit court upon any appli-
24 cation permitted by the provisions of this section shall be
25 final unless reversed, vacated or modified on appeal to the
26 supreme court of appeals. Any such appeal shall be
27 sought in the manner and within the time provided by law
28 for appeals from circuit courts in other civil cases.

§30-35-14. Prohibitions and penalties.

1 (a) It is a misdemeanor for any person, corporation or
2 association to:

3 (1) Sell, fraudulently obtain, furnish or assist in selling,
4 fraudulently obtaining or furnishing any dietitian license
5 or license record;

6 (2) Engage in the practice as a licensed dietitian under
7 cover of any diploma, license or record illegally or fraud-
8 ulently obtained;

9 (3) Represent or imply to the public that he or she is
10 authorized to use the title "dietician" or "licensed dietician"
11 or any other title intended to convey that impression, un-
12 less duly licensed pursuant to the provisions of this article.

13 (4) Engage in the practice as a licensed dietitian dur-
14 ing the time his or her license is suspended or revoked; or

15 (5) Otherwise violate any provisions of this article.

16 (b) Any person, corporation or association who vio-
17 lates the provisions of subsection (a) of this section is
18 guilty of a misdemeanor, and, upon conviction thereof,
19 shall be fined not less than fifty dollars nor more than one
20 hundred dollars.

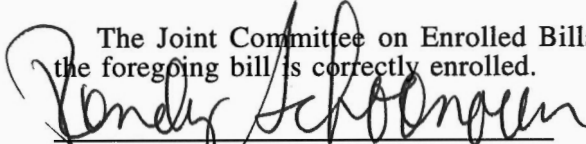
§30-35-15. Termination of board.

1 The board of examiners for licensed dietitians shall be
2 terminated pursuant to the provisions of article ten, chap-
3 ter four of this code, on the first day of July, two thousand,
4 unless sooner terminated, continued or reestablished pur-
5 suant to the provisions of such article.

[Faint handwritten signatures and text, including the name "Morgan" and the date "10/11/11" are visible.]

Enr. Com. Sub. for H. B. 4136] 14

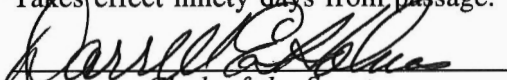
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

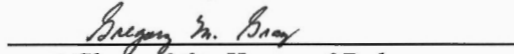

Chairman Senate Committee

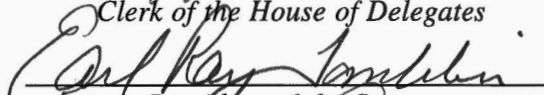

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

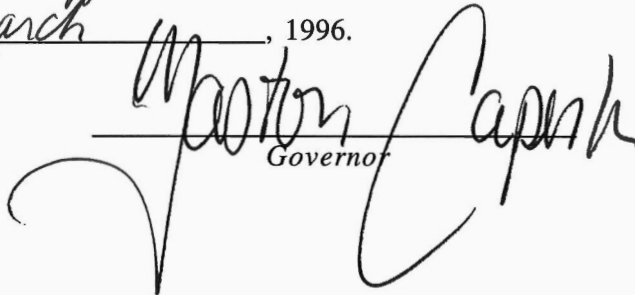

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 25th
day of March, 1996.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/11/96

Time 9:11 am