WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED
Com. Sub. for
HOUSE BILL No. 4134

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

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

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

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


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

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

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

(c) "Fund" means the board of examiners for dietitians' administrative fund created pursuant to the provision of section five of this article;

(d) "Licensed dietician" means any person who has
obtained a license to practice as a licensed dietitian from
the West Virginia board of licensed dietitians; and
(e) "Registered dietitian" means a person registered by
the commission on dietetic regulation.

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

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

(b) 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.
Thereafter, the members of the board shall be appointed
for overlapping terms 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
qualifications to complete the unexpired term. Each va-
cancy occurring on the board shall be filled by appoint-
ment within sixty days after such vacancy is created.

(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, not to
exceed fifty dollars per day.

(e) At its initial meeting, and annually thereafter, the
members shall elect a chair, vice chair and secretary. 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 meetings shall be general meetings for the consideration of any matter which may properly come before the board. A majority of the board constitutes 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 the 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 proceedings and maintain such board records. The board may employ personnel necessary to accomplish the performance of its duties: Provided, That the board may not expend more than it has available to it solely through the fees established in this article.


(a) The board may, in its discretion, perform the following functions and duties, depending on the financial resources available to the board:

(1) Promulgate rules in accordance with the provisions of chapter 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 duly qualified applicants; and

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

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

(3) Adopt an official seal;

(4) Conduct license examinations of duly qualified applicants;
(5) Issue and renew licenses and issue interim permits to duly qualified applicants;

(6) Impose and collect fees for the issuance and renewal of permits or licenses;

(7) Suspend, revoke and reinstate licenses;

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

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

(10) Submit a biennial report to the governor describing the activities of the board.

(b) The Legislature finds and declares that this board is intended to be fully self supported through the fee structure provided for in this article, and that the board shall not require any legislative appropriation beyond the revenues the board receives in fees. Accordingly, in the event the board has insufficient moneys to perform its duties under this article, the board shall prioritize its duties under this article so at all times to remain within the money available to it through the fees established in this article. The board created in this article has only discretionary duties.

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

(a) 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 licensed dietitians," which is hereby created in the state treasury.

(b) All expenses incurred by the board shall be paid from the special fund provided in subsection (a) herein. No compensation or expense incurred pursuant to the provisions of this article may be charged against the general revenue funds of this state. Expenditures shall be made only in accordance with appropriation by the Legislature pursuant to the provisions of article three, chapter twelve of this code and upon the fulfillment of the provi-
sions of article two, chapter five-a of this code. Expendi-
tures from the special fund shall be for the purposes set
forth in this article and are not authorized from collec-
tions: Provided, That for the fiscal year ending the thirti-
eighth day of June, one thousand nine hundred ninety-six,
expenditures are authorized from collections rather than
pursuant to an appropriation by the Legislature.

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

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

(a) The board may issue a provisional permit to en-
gage in practice as a licensed dietitian to any person who
has 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 re-
quirements of 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 request
by the applicant and submission of a satisfactory explana-
tion for the applicant's failure to become licensed.

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

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

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

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

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

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

(b) 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. The board shall determine the times and places for examinations.

(c) Upon successfully passing such examination or examinations, the board shall issue to the applicant a license to engage in practice as a licensed dietitian. 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.

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

(1) Is registered by the commission on dietetic registration as a registered dietitian; or

(2) Possesses a baccalaureate or postbaccalaureate degree and has completed a major course of study in the fields of human 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.

(e) Upon application and submission of the applicable fee, the board may waive the examination requirements of this section and issue a license to practice as a licensed dietitian 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 those required under the provisions
(f) Any person applying for a dietitian license shall submit a fee of fifty dollars with the application to the board, which fee shall be deposited to the credit of the fund provided in section five of this article.

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

(a) The license of every person licensed under the provisions of this article shall be annually renewed except as otherwise provided by this section. At such 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 calendar year. All persons seeking renewal shall submit a completed application and a 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 for the period stated on the certificate of renewal.

(b) 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 upon receipt of a satisfactory explanation for such failure to renew his or her license and payment of the annual renewal fee plus a reinstatement fee of twenty-five dollars.

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

(d) Any person engaged in the practice of licensed dietetics 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 in section fourteen of this article.

(e) Any licensed dietitian who desires to retire from practice temporarily shall submit a written notice of such
retirement to the board. Upon receipt of such notice the board shall place the name of such person upon the inactive list. Any person remaining on the inactive list may not engage in the practice of licensed dietetics in this state and is not subject to the payment of any renewal fees. 

Upon submission of an application for renewal of license and payment of the renewal fee for the current year, a licensed dietitian may resume active practice.

§30-35-9. 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 and the seal of the board, and shall be signed by the secretary of the board. The licensee shall display the license in his or her place of business in view of the public.

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

(a) The board may at any time upon its own motion, and shall upon the verified written complaint of any person, conduct an investigation to determine whether there are grounds for denial, suspension or revocation of a license issued pursuant to the provisions of this article.

(b) The board may deny, revoke or suspend any license to engage in the practice of licensed dietetics issued pursuant to the provisions of this article, or any application therefor, or may 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 as a licensed dietitian;

(2) Has been grossly negligent or exhibited unprofessional or unethical conduct in the practice as a licensed dietitian;

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

(4) Is mentally incompetent; or

(a) Whenever the board denies an application for any original or renewal license or denies an application for a license or suspends or revokes any license, it shall make an interim order to that effect and serve a copy thereof on the applicant or licensee by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or temporary permit suspended or revoked thereby be returned to the board by the holder within twenty days after receipt of the copy of such order.

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

(c) Upon a receipt of a written demand for a hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

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

(e) All administrative hearings shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board may issue subpoenas and subpoenas duces tecum which shall be
issued and served pursuant to the provisions of section 
one, article five, chapter twenty-nine-a of this code.

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

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

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


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

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


(a) Whenever it appears to the board that any person 
has been or is violating or is about to violate any provision 
of this article or any final decision of the board, the board 
may apply in the name of the state to the circuit court of 
the county in which the violation or violations or any part 
thereof has occurred, is occurring or is about to occur, or
the judge thereof in vacation, for an injunction against the
person and any other persons who have been, are or are
about to be, involved in any practice, act or omission, so in
violation, enjoining the person or persons from any viola-
tion or violations. Such application may be made and
prosecuted to conclusion regardless of whether any viola-
tion has resulted or shall result in prosecution or convic-
tion pursuant to the provisions of section fourteen of this
article.

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

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


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

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

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

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

(4) Engage in the practice as a licensed dietitian dur-
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.


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

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