WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 358

(By Senator Weston et al.)

PASSED March 9, 1996
In Effect NINETY DAYS FROM PASSAGE
ENROLLED

Senate Bill No. 358

(BY SENATORS WOOTON, ANDERSON, BUCKALEW, DITTMAR, MILLER, ROSS, SCHOONOVER, SCOTT AND YODER)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, four-a, five, six, seven, eight, ten, eleven and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections one-a and seven-a; and to amend and reenact section five-a, article two of said chapter, all relating to state boards of examination or registration; application of article; legislative findings and declaration; officers; lay members of professional boards; meetings; quorum; investigatory powers; duties; application for license or registration; fees; contents of license or certificate of registration; continuing education; denial, suspension or revocation of a license or registration; disposition of money; compensation of
members; expenses; record of proceedings; register of applicants; report to governor and Legislature; and legal corporations.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four-a, five, six, seven, eight, ten, eleven and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections one-a and seven-a; and that section five-a, article two of said chapter be amended and reenacted, 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 examination or registration referred to in this chapter shall conform to the requirements prescribed in the following sections of this article.

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

1 The Legislature hereby finds and declares that as a matter of public policy the practice of the professions referred to in this chapter is a privilege and is not a natural right of individuals. The fundamental purpose of licensure and registration is to protect the public, and any license, registration, certificate or other authorization to practice issued pursuant to this chapter is a revocable privilege.

§30-1-3. Officers.

1 (a) Every board referred to in this chapter shall elect annually from its members a president and a secretary who shall hold their offices for one year, but shall continue to hold their offices until their successors are elected. However, the state board of law examiners, the state board of examiners for nurses and the state board
of dental examiners may each elect a secretary from outside their membership.

(b) The officers of the boards referred to in this chapter shall register annually with the governor, the secretary of administration, the legislative auditor and the secretary of state.

§30-1-4a. Lay members of professional boards.

(a) Notwithstanding any provisions of this code to the contrary, the governor shall appoint at least one lay person to represent the interests of the public on every health professional licensing board which is referred to in this chapter. If the total number of members on any of these boards after the appointment of one lay person is an even number, one additional lay person shall be appointed. Lay members shall serve in addition to any other members otherwise provided for by law or rule. Lay members shall be at least eighteen years of age, shall be of good moral character, and shall be competent to represent and safeguard the interests of the public. Each lay member is empowered to participate in and vote on all transactions and business of the board, committee or group to which he or she is appointed.

(b) Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an odd number of lay additions to the board shall serve for a term ending in an odd-numbered year on the date in that year on which terms of the professional members expire. Of the members first appointed, each shall serve for a term ending in the year one thousand nine hundred seventy-nine, and the successor to each of the first members shall serve for a term equal in length to the terms of the other professional members of the board.

(c) Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an even number of lay additions to the board shall serve for a term ending in an even-numbered
year on the date in that year on which terms of the professional members expire. Of the members first appointed, each shall serve for a term ending in the year one thousand nine hundred seventy-eight, and the successor to each of the first members shall serve for a term equal in length to the terms of the other professional members of the board.

§30-1-5. Meetings; quorum; investigatory powers; duties.

(a) Every board referred to in this chapter shall hold at least one meeting each year, at such time and place as it may prescribe by rule, for the examination of applicants who desire to practice their respective professions or occupations in this state and to transact any other business which may legally come before it. The board may hold additional meetings as may be necessary, which shall be called by the secretary at the direction of the president or upon the written request of any three members. A majority of the members of the board constitutes a quorum for the transaction of its business. The board is authorized to compel the attendance of witnesses, to issue subpoenas, to conduct investigations and hire an investigator, and to take testimony and other evidence concerning any matter within its jurisdiction. The president and secretary of the board are authorized to administer oaths for these purposes.

(b) Every board referred to in this chapter has a duty to investigate and resolve complaints which it receives and shall do so in a timely manner. Every board shall provide public access to the record of the disposition of the complaints which it receives, in accordance with the provisions of chapter twenty-nine-b of this code. Every board has a duty to report violations of individual practice acts contained in this chapter to the board by which the individual may be licensed, and shall do so in a timely manner upon receiving notice of such violations. Every person licensed or registered by a board has a duty to report to the board which licenses or registers him or her a known or observed violation of the practice act or
the board’s rules by any other person licensed or regis-
tered by the same board, and shall do so in a timely
manner. Law-enforcement agencies or their personnel
and courts shall report in a timely manner to the appro-
priate board any violations of individual practice acts by
any individual.

(c) Whenever a board referred to in this chapter
obtains information that a person subject to its authority
has engaged in, is engaging in, or is about to engage in
any act which constitutes or will constitute a violation of
the provisions of this chapter which are administered
and enforced by that board, it may apply to the circuit
court for an order enjoining the act. Upon a showing
that the person has engaged, is engaging, or is about to
engage in any such act, the court shall order an injunc-
tion, restraining order or other order as the court may
deem appropriate.

§30-1-6. Application for license or registration; examination
fee.

(a) Every applicant for license or registration under the
provisions of this chapter shall apply for such license or
registration in writing to the proper board and shall
transmit with his or her application an examination fee
which the board is authorized to charge for an examina-
tion or investigation into the applicant’s qualifications to
practice.

(b) Each board referred to in this chapter is authorized
to establish by rule a deadline for application for exami-
nation which shall be no less than ten nor more than
ninety days prior to the date of the examination.

(c) Boards may set by rule fees relating to the licensing
or registering of individuals, which shall be sufficient to
enable the boards to carry out effectively their responsi-
bilities of licensure or registration and discipline of
individuals subject to their authority: Provided, That
when any board proposes to promulgate a rule regarding
fees for licensing or registration, that board shall notify
its membership of the proposed rule by mailing a copy of
the proposed rule to the membership at the time that the
proposed rule is filed with the secretary of state for
publication in the state register in accordance with
section five, article three, chapter twenty-nine-a of this
code.

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

Every license or certificate of registration issued by
each board shall bear a serial number, the full name of
the applicant, the date of issuance, and the seal of the
board. It shall be signed by the board's president and
secretary or executive secretary. No license or certifi-
cate of registration granted or issued under the provi-
sions of this chapter may be assigned.

§30-1-7a. Continuing education.

Each board referred to in this chapter shall establish
continuing education requirements as a prerequisite to
license renewal. Each board shall develop continuing
education criteria appropriate to its discipline, which
shall include, but not be limited to, course content,
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.

(a) Every board referred to in this chapter is autho-
rized to suspend or revoke the license of any person who
has been convicted of a felony or who has been found to
have engaged in conduct, practices or acts constituting
professional negligence or a willful departure from
accepted standards of professional conduct. Where any
person has been so convicted of a felony or has been
found to have engaged in such conduct, practices or acts,
every board referred to in this chapter is further autho-
rized to enter into consent decrees, to reprimand, to
enter into probation orders, to levy fines not to exceed
one thousand dollars per day per violation, or any of
these, singly or in combination. Each board is also authorized to assess administrative costs. Any costs which are assessed shall be placed in the special account of the board, and any fine which is levied shall be deposited in the state treasury’s general revenue fund.

For purposes of this section, the word “felony” means a felony or crime punishable as a felony under the laws of this state, any other state, or the United States. Every board referred to in this chapter is authorized to promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(b) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority. However, this does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the individual’s continuation in practice constitutes an immediate danger to the public.

(c) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder thereof and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one, article two, chapter fifty-six of this code, at least thirty days prior to the hearing, and he or she may appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may deem advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certifi-
(d) Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(e) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection shall be in accordance with the provisions for hearings which are set forth in this section.

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

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

§30-1-10. Disposition of money; fines; legislative audit.

(a) The secretary of every board referred to in this chapter shall receive and account for all money which it derives pursuant to the provisions of this chapter which are applicable to it. With the exception of money received as fines, each board shall pay all money which is collected into a separate special fund of the state treasury which has been established for each board. This money shall be used exclusively by each board for purposes of administration and enforcement of its duties pursuant to this chapter. Any money received as fines
shall be deposited into the general revenue fund of the state treasury. When the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board or ten thousand dollars, whichever is greater, the excess amount shall be transferred by the state treasurer to the state general revenue fund.

(b) Every licensing board which is authorized by the provisions of this chapter shall be subject to audit by the office of the legislative auditor.

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

Each member of every board which is referred to in this chapter shall receive compensation and expense reimbursement which shall not exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

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

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register of the board shall be open to public inspection at all reasonable times, and the books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.
(b) On or before the first day of January of each year in which the Legislature meets in regular session, the board shall submit to the governor and to the Legislature a report of its transactions for the preceding two years, an itemized statement of its receipts and disbursements for that period, a full list of the names of all persons licensed or registered by it during that period, statistical reports by county of practice, by specialty if appropriate to the particular profession, and a list of any complaints which were filed against persons licensed by the board, including any action taken by the board regarding those complaints. The report shall be certified by the president and the secretary of the board, and a copy of the report shall be filed with the secretary of state.

ARTICLE 2. ATTORNEYS-AT-LAW.

§30-2-5a. Legal corporations.

(a) One or more individuals, each of whom is licensed to practice law within this state, may organize and become a shareholder or shareholders of a legal corporation. Individuals who may be practicing law as an organization created otherwise than pursuant to the provisions of this section may incorporate under and pursuant to this section. This section is not intended to amend the statutory or common law as it relates to associations or partnerships, except to allow partnerships of lawyers to organize as a legal corporation.

(b) A legal corporation may render professional service only through officers, employees and agents who are themselves duly licensed to render legal service within this state. The term "employee" or "agent" as used in this section does not include secretaries, clerks, typists, paralegal personnel or other individuals who are not usually and ordinarily considered by custom and practice to be rendering legal services for which a license is required.

(c) This section does not modify the law as it relates to the relationship between a person furnishing legal services and his client, nor does it modify the law as it
relates to liability arising out of such a professional service relationship. Except for permitting legal corporations, this section is not intended to modify any legal requirement or court rule relating to ethical standards of conduct required of persons providing legal service.

(d) A legal corporation may issue its capital stock only to persons who are duly licensed attorneys.

(e) When not inconsistent with this section, the organization and procedures of legal corporations shall conform to the requirements of article one, chapter thirty-one of this code.

(f) The West Virginia state bar may require that lawyers under its licensing authority must obtain its prior authorization before beginning to act as a legal corporation and may require a fee of not more than fifty dollars for each application for authorization to form a legal corporation. The state bar may adopt rules: (1) To set reasonable standards for granting or refusing prior approval; (2) to require appropriate information therefor from a legal corporation applicant; and (3) to notify the secretary of state that certain persons have been given authorization by the state bar to form a legal corporation.

(g) Upon notification by the West Virginia state bar of its approval, the secretary of state, upon compliance by the incorporators with this section and the applicable provisions of chapter thirty-one of this code, may issue to the incorporators a certificate of incorporation for the legal corporation which then may engage in practice through duly licensed or otherwise legally authorized stockholders, employees and agents.

(h) A shareholder of a legal corporation may sell or transfer his or her shares of stock in such corporation only to another individual who is duly licensed to practice law in this state or back to the corporation. However, a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a
reasonable time during the administration of the estate.

(i) The corporate name of a legal corporation shall contain the last name or names of one or more of its shareholders. If the rules of the state bar so permit, the corporate name may contain or include the name or names of former shareholders or of persons who were associated with a predecessor partnership or other organization. The corporate name shall also contain the words "legal corporation" or the abbreviation "L.C." The use of the word "company", "corporation" or "incorporated" or any other words or abbreviations in the name of a corporation organized under this article which indicates that such corporation is a corporation, other than the words "legal corporation" or the abbreviation "L.C.", is specifically prohibited.
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.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ............... this the ............... day of ............... 1996

Governor