

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

Com. Sub. for House Bill No. 4601

(By Delegates Beane, Johnson, Trump, Fantasia,
Ennis, Facemyer and L. White)



Passed March 14, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE
FOR
H. B. 4601

(BY DELEGATES BEANE, JOHNSON, TRUMP, FANTASIA,
ENNIS, FACEMYER AND L. WHITE)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to revising the law regulating the practice of chiropractic; legislative purpose and policy; licensure and exceptions to licensure; revising definitions; composition of and appointment to board; removal from board; training program for new board members; compensation; powers and duties of board; legislative rules; licensure requirements and application; examination and certificates of license; disqualification from practice; licensing of foreign graduates; licensure by endorsement; temporary and restricted licensure; licensing chiropractors from other states; fees; disciplinary actions; confidentiality of disciplinary proceedings; providing for civil and criminal penalties; determination and treatment of impairment; qualified immunity; enforcement of article; renewal and reinstatement; continuing education; reporting of felony convictions to board; minimum educational requirements for spinal manipulation; use of procedures and instruments; chiropractic assistants; expert testimony; use of physiotherapeutic and electrodiagnostic devices; specialty

practice; setting forth certain illegal acts and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. CHIROPRACTORS.

§30-16-1. Purpose and legislative intent.

1 It is declared to be a policy of this state that the
2 practice of chiropractic is a privilege granted to qualified
3 persons and that, in order to safeguard the public health,
4 safety and welfare, protect the public from the
5 unprofessional, improper, incompetent and unlawful
6 practice of chiropractic, it is necessary to provide
7 regulatory authority over persons practicing chiropractic.
8 The primary responsibility and obligation of the West
9 Virginia board of chiropractic is to protect the public.

§30-16-2. License required; exceptions.

1 (a) No person may practice or offer to practice, in this
2 state, chiropractic without a license issued by the West
3 Virginia board of chiropractic. A certificate or license
4 issued under the laws of this state, authorizing its holder to
5 practice chiropractic, before the effective date of this
6 article is not affected by the enactment of this article,
7 except that the holder of a certificate of license issued
8 prior to the effective date of this article is subject to all the
9 provisions of this article respecting the requirements and
10 obligations prescribed for the continuance in force of the
11 certificate of license.

12 (b) This article does not prohibit:

13 (1) Students from engaging in training in a
14 chiropractic school accredited by the counsel on
15 chiropractic education or its successor;

16 (2) Licensed chiropractors from providing service in
17 cases of emergency where no fee or other consideration is
18 contemplated, charged or received;

19 (3) Commissioned chiropractic officers of the armed
20 forces of the United States and chiropractic officers of the
21 United States public health service or the veterans'
22 administration of the United States from discharging their
23 official duties, except:

24 (A) Those officers who hold chiropractic licenses in
25 the state are subject to the provisions of this article; and

26 (B) Those officers shall be fully licensed to practice
27 chiropractic in one or more jurisdictions of the United
28 States;

29 (4) Individuals from practicing the tenets of a religion
30 or administering to the sick or suffering by mental or
31 spiritual means in accord with the tenets. This provision
32 does not exempt these individuals from the public health
33 laws of the state or federal government; or

34 (5) A person from administering a lawful domestic or
35 family remedy to a member of his or her own family.

§30-16-3. Definitions.

1 The following words, unless the context clearly
2 indicates otherwise, have the meaning ascribed to them in
3 this section:

4 (1) "Board" means the West Virginia board of
5 chiropractic;

6 (2) "Chiropractor" means a practitioner of
7 chiropractic;

8 (3) "Chiropractic services" means those health care
9 services provided within the scope of chiropractic practice
10 as defined by this article and by chiropractors licensed by
11 the board;

12 (4) "Chiropractic" is the science and art which utilizes
13 the inherent recuperative powers of the body and the
14 relationship between the neuromusculoskeletal structures
15 and functions of the body, particularly of the spinal
16 column and the nervous system, in the restoration and
17 maintenance of health. The use of the designation doctor
18 of chiropractic, chiropractor, chiropractic physician or

19 D.C., is the practice of chiropractic.

20 The practice of chiropractic also includes the
21 examination and assessment of members of the public that
22 are not patients of the examining chiropractor. Further,
23 the practice of chiropractic includes the review of
24 information relating to the duration and necessity of
25 chiropractic care that affects the course of care, the
26 treatment plan or payment and reimbursement concerning
27 chiropractic patients residing within the state of West
28 Virginia.

29 The practices and procedures which may be employed
30 by doctors of chiropractic are based on the academic and
31 clinical training received in and through chiropractic
32 colleges accredited by the council of chiropractic
33 education or its successors and as determined by the
34 board. These include the use of diagnostic, analytical and
35 therapeutic procedures specifically including the
36 adjustment and manipulation of the articulations and
37 adjacent tissues of the human body, particularly of the
38 spinal column, including the treatment of intersegmental
39 disorders. Patient care and management is conducted with
40 due regard for environmental and nutritional factors, as
41 well as first aid, hygiene, sanitation, rehabilitation and
42 physiological therapeutic procedures designed to assist in
43 the restoration and maintenance of neurological integrity
44 and homeostatic balance;

45 (5) "Spinal manipulation" and "spinal adjustment" are
46 interchangeable terms that identify a method of skillful
47 and beneficial treatment where a person uses direct thrust
48 or leverage to move a joint of the patient's spine beyond
49 its normal range of motion, but without exceeding the
50 limits of anatomical integrity.

**§30-16-4. West Virginia board of chiropractic; establishment
and composition.**

1 (a) The board known as the "West Virginia board of
2 chiropractic" is continued. It is composed of the director
3 of health, ex officio, three licensed chiropractors and one
4 person to represent the interest of the public. All shall be
5 appointed by the governor, by and with the advice and

6 consent of the Senate from a list of three names
7 recommended by the West Virginia chiropractic society,
8 incorporated. Each chiropractic member of the board
9 shall have been a resident of and engaged in the active
10 practice of chiropractic in the state for a period of at least
11 five years preceding his or her appointment.

12 (b) On the first day of July, one thousand nine
13 hundred ninety-eight, there shall be appointed, as
14 provided in this section, one chiropractic member for a
15 three-year term. As existing chiropractic board members'
16 terms expire, newly appointed chiropractic board
17 members shall be appointed for a term of office of three
18 years. No member may serve more than two full
19 consecutive three-year terms. When a vacancy in the
20 membership of the board occurs for any cause other than
21 the expiration of a term, the governor shall appoint from a
22 list of three names recommended by West Virginia
23 chiropractic society, incorporated, a successor as a
24 member of the board to fill the unexpired portion of the
25 term of office of the member whose office has been
26 vacated.

27 (c) The governor may remove any member of the
28 board in case of incompetency, neglect of duty, gross
29 immorality or malfeasance in office.

30 (d) The board shall conduct a training program to be
31 held annually to familiarize new board members with their
32 duties.

33 (e) Each member of the board shall receive an amount
34 not to exceed the same compensation as is paid to
35 members of the Legislature for their interim duties as
36 recommended by the citizens legislative compensation
37 commission and authorized by law for each day or
38 substantial portion thereof that he or she is engaged in the
39 work of the board or of its committees, and shall be
40 reimbursed for all actual and necessary expenses incurred
41 in carrying out his or her duties.

§30-16-5. Powers and duties of the board.

1 (a) The board shall:

2 (1) Administer, coordinate and enforce the provisions
3 of this article, evaluate the qualifications of applicants,
4 supervise the examination of applicants, issue or deny
5 original or endorsement licenses;

6 (2) Investigate allegations of violations of this article
7 and impose penalties if violations of this article have
8 occurred;

9 (3) Propose rules for legislative approval in
10 accordance with the provisions of article three, chapter
11 twenty-nine-a of this code, which shall after adoption
12 govern and control the professional conduct of every
13 person who holds a license to practice chiropractic in this
14 state, and which shall include, but not be limited to, rules
15 that:

16 (A) Delineate qualifications for licensure, including
17 qualifications for practice in specialties;

18 (B) Specify requirements for the renewal of licensure;

19 (C) Set forth procedures for licensure of
20 chiropractors;

21 (D) Establish a fee schedule for the amount and
22 payment of all fees and charges;

23 (E) Establish standards of professional conduct;

24 (F) Establish procedures for disciplinary actions and
25 complaint resolutions; and

26 (G) Provide for duties of board members;

27 (4) Evaluate the professional education and training of
28 applicants for licensure and licensure renewal;

29 (5) Evaluate the previous professional performance of
30 applicants for licensure and licensure renewal;

31 (6) Accept or deny applications for license renewal;

32 (7) Establish appropriate fees and charges to support
33 the active and effective pursuit of its legal responsibilities;

34 (8) Employ personnel as determined by its needs and
35 budget;

36 (9) Request legal advice and assistance, as needed,
37 from the attorney general;

38 (10) Enter into contracts necessary to carry out its
39 responsibilities under this article, including contracts for
40 professional services that may include investigation,
41 financing or legal services;

42 (11) Develop and adopt a budget; and

43 (12) Communicate disciplinary actions to relevant
44 state and federal authorities and to other state chiropractic
45 licensing authorities.

§30-16-6. Application for license; requirements for licensure.

1 (a) Any person wanting to practice chiropractic in this
2 state shall apply to the board for license to practice and
3 shall provide the board and attest to the following
4 information and documentation in a manner required by
5 the board:

6 (1) His or her full name, and any other name ever
7 used, current address, social security number and date and
8 place of birth;

9 (2) A recent signed photograph and sample of
10 handwriting;

11 (3) Originals of all documents and credentials
12 required by the board or notarized photocopies of other
13 verification acceptable to the board;

14 (4) A list of all jurisdictions, United States or foreign,
15 in which the applicant is licensed or has applied for
16 licensure to practice chiropractic or is authorized or has
17 applied for authorization to practice chiropractic;

18 (5) A list of all jurisdictions, United States or foreign,
19 in which the applicant has been denied licensure or
20 authorization to practice chiropractic or has voluntarily
21 surrendered a license or an authorization to practice
22 chiropractic;

23 (6) A list of all sanctions, judgments, awards,
24 settlements or convictions against the applicant in any

25 jurisdiction, United States or foreign, that would constitute
26 grounds for disciplinary action under this article or the
27 board's rules;

28 (7) A detailed educational history, including places,
29 institutions, dates and program descriptions, of all his or
30 her education beginning with secondary schooling
31 including all college, preprofessional, professional and
32 professional graduate education; and

33 (8) Any other information or documentation the
34 board may later determine necessary and as adopted by
35 reasonable rules in accordance with the provisions of
36 article three, chapter twenty-nine-a of this code.

37 (b) Each applicant shall establish to the board that the
38 applicant:

39 (1) Is eighteen years of age or older;

40 (2) Is of good moral character;

41 (3) Is a graduate of an accredited high school giving a
42 four-year course or has an education equivalent to the
43 same;

44 (4) Has attended for at least two academic years,
45 consisting of no less than sixty semester hours, an
46 accredited academic college or university and that after
47 the first day of July, two thousand five, the applicant has
48 obtained a bachelor's degree consisting of no less than one
49 hundred twenty-eight semester hours from an accredited
50 academic college or university, with a minimum of sixty
51 hours in basic sciences mandated by the council on
52 chiropractic education;

53 (5) Is a holder of the degree of doctor of chiropractic
54 from and a graduate of a chiropractic college or school
55 located in the United States, its territories or possessions
56 which was approved by the council on chiropractic
57 education or its successor at the time the degree was
58 conferred or that the applicant is the holder of a degree of
59 doctor of chiropractic from college of a foreign country
60 that the board determines is acceptable as set forth in
61 section eight;

62 (6) Has passed the national board of chiropractic
63 licensing examination Parts I, II, III and IV, satisfactory to
64 the board and any other examination, test or procedure
65 determined necessary by the board;

66 (7) Has demonstrated familiarity with the statutes and
67 rules of the jurisdiction relating to the practice of
68 chiropractic and acknowledges in writing that he or she
69 has read and understands this article and the current rules
70 relating to the practice of chiropractic in West Virginia;

71 (8) Is physically, mentally and professionally capable
72 of practicing chiropractic in a manner acceptable to the
73 board and submits to a physical, mental or professional
74 competency examination or a drug dependency
75 evaluation considered necessary by the board; and

76 (9) Has paid all fees and completed and attested to the
77 accuracy of all application and information forms
78 required by the board.

79 (c) The applicant is responsible for verifying to the
80 satisfaction of the board, the validity of all credentials
81 required for his or her chiropractic licensure. The board
82 shall review and verify chiropractic credentials and screen
83 applicant records through recognized national
84 chiropractic physician information services and data
85 banks.

§30-16-7. Examination; certificates of license.

1 (a) No person may receive a license to practice
2 chiropractic unless he or she successfully completes the
3 national board of chiropractic examination Parts I, II, III
4 and IV and an oral examination administered by the
5 board covering jurisprudence. Examinations shall be
6 conducted at least two times throughout the calendar year
7 and the board shall issue certificates of license to all
8 applicants who successfully pass the examinations. No
9 license may be issued under this section until the person
10 applying has paid to the board the prescribed fee.

11 (b) All applicants are required to attain a minimum
12 passing score in each national board Parts I, II, III and IV
13 examinations. All applicants are required to secure an

14 average grade of seventy percent on the oral examination.
15 If an applicant does not successfully complete the oral
16 examination, he or she may retake the oral examination.
17 If a satisfactory score is not achieved on the second
18 attempt, the applicant shall take and successfully complete
19 a national special purposes examination for chiropractic
20 examination before sitting for another oral examination.

21 (c) Any individual found by the board to have
22 engaged in conduct that subverts or attempts to subvert the
23 chiropractic licensing examination process is, at the
24 discretion of the board, subject to having the scores on the
25 licensing examination withheld or declared invalid, being
26 disqualified from the practice of chiropractic or subjected
27 to other appropriate sanctions. The federation of
28 chiropractic licensing boards shall be informed of all such
29 actions. The board shall provide notification to all
30 applicants of the prohibitions on conduct that subverts or
31 attempts to subvert the licensing examination process and
32 of the sanctions imposed for the conduct. A copy of the
33 notification attesting that he or she has read and
34 understood the notification shall be signed by the
35 applicant and filed with his or her application.

§30-16-8. Licensing of foreign graduates.

1 (a) Any person wanting to practice chiropractic in this
2 state who is a graduate of a chiropractic school located
3 outside the United States, its territories or possessions, shall
4 establish to the board that the applicant:

5 (1) Possesses a degree of doctor of chiropractic or a
6 board approved equivalent based upon satisfactory
7 completion of educational programs acceptable to the
8 board;

9 (2) Is eligible by virtue of his or her chiropractic
10 education and training for unrestricted licensure or
11 authorization to practice chiropractic in the country in
12 which he or she received that education and training;

13 (3) Has successfully completed all required parts of
14 the examination conducted by the national board of
15 chiropractic;

16 (4) Has a demonstrated command of the English
17 language; and

18 (5) Has satisfied all applicable requirements of the
19 United States immigration and naturalization service.

20 (b) All credentials, diplomas and other required
21 documentation in a foreign language submitted to the
22 board by or on behalf of an applicant, shall be
23 accompanied by notarized English translations acceptable
24 to the board.

**§30-16-9. Licensure by endorsement; temporary licensure;
restricted licensure.**

1 (a) The board is authorized, in its discretion, to issue a
2 license by endorsement to an applicant who:

3 (1) Has complied with all current chiropractic
4 licensing requirements except for the oral examination;

5 (2) Has passed a chiropractic licensing examination
6 given in English in another state, the District of Columbia
7 or a territory or possession of the United States, that the
8 board determines is equivalent to its own current
9 examination requirements;

10 (3) Has a valid current chiropractic license in another
11 state, the District of Columbia or a territory or possession
12 of the United States without any past or current
13 disciplinary action taken upon that license; and

14 (4) Successfully completes an oral examination
15 administered by the board covering jurisprudence and
16 clinical competency.

17 (b) No license may be issued under the provisions of
18 this section until the person applying has paid to the board
19 the prescribed fee.

20 (c) The board is authorized, in its discretion, to issue a
21 temporary license to visiting chiropractic physicians and
22 visiting professors for the treatment of individuals
23 involved with special events to applicants demonstrably
24 qualified for a full and unrestricted chiropractic license
25 under the requirements of this article and that hold a

26 current valid license in another state, territory or
27 possession of the United States or the District of Columbia
28 without any past or current disciplinary actions against
29 that license. A temporary license may not be issued under
30 the provisions of this section until the person applying has
31 paid to the board the prescribed fee.

32 (d) The board is authorized to issue conditional,
33 restricted or otherwise circumscribed licenses for a limited
34 and specific period of time as it determines necessary.

§30-16-10. Licensing chiropractors from other states; fee.

1 Persons licensed to practice chiropractic under the
2 laws of any other state, territory or the District of
3 Columbia having requirements equivalent to those of this
4 article, and extending like privileges to practitioners of this
5 state, may in the discretion of the board be licensed to
6 practice in this state without examination. No license may
7 be issued under the provisions of this section until the
8 person applying has completed satisfactorily an oral
9 examination and has paid the fee required by the board.

§30-16-11. Disciplinary actions.

1 (a) The board may take disciplinary action against any
2 licensee or certificate holder holding a license or
3 certificate issued under this article after giving reasonable
4 notice and an opportunity to be heard pursuant to the
5 provisions of section one, article five, chapter twenty-nine-
6 a of this code, when it finds that any person has engaged
7 in conduct in violation of the rules adopted by the board,
8 including, but not limited to, the following:

9 (1) Fraud or misrepresentation in applying for or
10 procuring a chiropractic license or in connection with
11 applying for or procuring periodic renewal of a
12 chiropractic license;

13 (2) Cheating on or attempting to subvert the
14 chiropractic licensing examination or examinations;

15 (3) Being found guilty of a crime in any jurisdiction,
16 which offense is a felony, involves moral turpitude or
17 directly relates to the practice of chiropractic. Any plea of

18 nolo contendere is a conviction for the purposes of this
19 subdivision;

20 (4) Conduct likely to deceive, defraud or harm the
21 public;

22 (5) Making a false or misleading statement regarding
23 his or her skill or the efficiency or value of the
24 chiropractic treatment;

25 (6) Representing to a patient that an incurable
26 condition, sickness, disease or injury can be cured;

27 (7) Willfully or negligently violating the
28 confidentiality between chiropractic physician and patient
29 except as required by law;

30 (8) Negligence in the practice of chiropractic as
31 determined by the board;

32 (9) Being found mentally incompetent or insane by
33 any court of competent jurisdiction;

34 (10) Being physically or mentally unable to engage
35 safely in the practice of chiropractic;

36 (11) Practice or other behavior that demonstrates an
37 incapacity or incompetence to practice chiropractic;

38 (12) Use of any false, fraudulent or deceptive
39 statement in any document connected with the practice of
40 chiropractic;

41 (13) Practicing chiropractic under a false or assumed
42 name;

43 (14) Aiding or abetting the practice of chiropractic by
44 an unlicensed, incompetent or impaired person;

45 (15) Allowing another person or organization to use
46 his or her license to practice chiropractic;

47 (16) Commission of any act of sexual abuse, sexual
48 misconduct or sexual exploitation related to the licensee's
49 practice of chiropractic;

50 (17) Being addicted or habituated to a drug or
51 intoxicant;

52 (18) Obtaining any fee by fraud, deceit or
53 misrepresentation;

54 (19) Employing abusive billing practices;

55 (20) Directly or indirectly giving or receiving any fee,
56 commission, rebate or other compensation for
57 professional services not actually rendered: *Provided*, That
58 this prohibition does not preclude the legal functioning of
59 lawful professional partnerships, corporations or
60 associations;

61 (21) Disciplinary action of another state or jurisdiction
62 against a license or other authorization to practice
63 chiropractic based upon acts or conduct by the licensee
64 similar to acts or conduct that constitute grounds for
65 action as defined in this section, a certified copy of the
66 record of the action taken by the other state or jurisdiction
67 being conclusive evidence thereof;

68 (22) Failure to report to the board within thirty days
69 of any adverse action, disciplinary action, sanctions or
70 punishment taken against him or her by another state
71 licensing board or licensing jurisdiction, United States or
72 foreign, by a peer review body, health care institution,
73 professional or chiropractic society or association,
74 governmental agency, law-enforcement agency or court
75 for acts or conduct similar to acts or conduct that
76 constitute grounds for action as defined in this section;

77 (23) Failure to report to the board within thirty days
78 of the surrender of a license or other authorization to
79 practice chiropractic in another state or jurisdiction or
80 surrender of membership on any chiropractic staff or in
81 any chiropractic or professional association or society
82 while under disciplinary investigation by any of those
83 authorities or bodies for acts or conduct similar to acts or
84 conduct that constitute grounds for action as defined in
85 this section;

86 (24) Any adverse judgment, award or settlement
87 against the licensee resulting from a chiropractic liability
88 claim related to acts or conduct similar to acts or conduct
89 that constitute grounds for action as defined in this

90 section;

91 (25) Failure to report to the board within thirty days
92 any adverse judgment, settlement or award arising from a
93 chiropractic liability claim related to acts or conduct
94 similar to acts or conduct that constitute grounds for
95 action as defined in this section;

96 (26) Failure to transfer or release pertinent and
97 necessary chiropractic records to another physician in a
98 timely fashion when legally requested to do so by the
99 subject patient or by a legally designated representative of
100 the subject patient;

101 (27) Improper management of chiropractic patient
102 records;

103 (28) Failure to furnish the board, its investigators or
104 representatives, information legally requested by the
105 board;

106 (29) Failure to cooperate with a lawful investigation
107 conducted by the board; or

108 (30) Violation of any provision of this article or the
109 rules of the board or of an action, stipulation or agreement
110 with the board.

111 (b) Upon a finding of a violation by a chiropractor of
112 one or more of the grounds for discipline contained in
113 subsection (a) of this section, the board may impose one
114 or more of the following penalties:

115 (1) Revocation of the chiropractic license;

116 (2) Suspension of the chiropractic license;

117 (3) Probation;

118 (4) Stipulations, limitations, restrictions and conditions
119 relating to practice;

120 (5) Reprimand;

121 (6) Monetary redress to another party;

122 (7) A period of free public or charity service;

123 (8) Satisfactory completion of an educational, training
124 or treatment program, or a combination of programs;

125 (9) Imposition of an administrative penalty, not to
126 exceed one thousand dollars per day per violation; or

127 (10) Payment of administrative costs for the
128 disciplinary action, including, but not limited to, attorney
129 fees, investigation expenses, hearing examiner fees, witness
130 fees and cost of monitoring compliance with the board's
131 orders.

132 (c) The board may issue a confidential letter of
133 concern to a licensee when, though evidence does not
134 warrant formal proceedings, the board has noted
135 indications of possible misconduct of a licensee that could
136 lead to serious consequences and formal action. In the
137 letter of concern, the board is also authorized at its
138 discretion to request clarifying information from the
139 licensee.

140 (d) The board may require professional competency,
141 physical, mental or chemical dependency examinations of
142 any applicant or licensee including withdrawal and
143 laboratory examination of bodily fluids.

144 (e) In every disciplinary case considered by the board
145 pursuant to this article, whether initiated by the board or
146 upon complaint or information from any person or
147 organization, the board shall make a preliminary
148 determination whether probable cause exists to
149 substantiate charges due to any reasons set forth in this
150 section. If probable cause is not found in the complaint,
151 all proceedings relating to the complaint and the response
152 of the licensee or his or her representative shall be held
153 confidential and may not be made available to the public
154 or to any other state or federal agency or court. If
155 probable cause is found to exist, all proceedings on the
156 charges shall be open to the public, who are entitled to all
157 reports, records and non-deliberative materials introduced
158 at the hearing, including the record of any final action
159 taken: *Provided*, That any medical records pertaining to
160 the person who has not waived his or her right to the
161 confidentiality of the records are not open to the public.

162 For purposes of the hearing, the board has the power to
163 subpoena witnesses, documents or any other tangible
164 evidence. The board may, in its discretion, meet in an
165 informal conference with the accused licensee who seeks
166 or agrees to the conference. Disciplinary action taken
167 against a licensee as a result of the informal conference
168 and agreed to in writing by the board and the accused
169 licensee is binding and a matter of public record. The
170 holding of an informal conference does not preclude an
171 open formal hearing if the board determines it is
172 necessary.

173 (f) If the board determines that the evidence in its
174 possession indicates that a chiropractor's continuation in
175 practice or unrestricted practice constitutes an immediate
176 threat to the public health and safety or when a licensee is
177 convicted of a felony, whether or not related to the
178 practice of chiropractic, the board may seek an injunction
179 in the circuit court of proper jurisdiction for immediate
180 relief implementing any of the board's authority provided
181 in this article.

182 (g) All disciplinary actions taken by the board shall be
183 reported to the federation of licensing boards, appropriate
184 federal agencies and any other state boards with which the
185 disciplined licensee may also be registered or licensed and
186 all the actions, including related findings of fact and
187 conclusions of law, are matters of public record.
188 Voluntary surrender of and voluntary limitations on a
189 chiropractic license of any person are also matters of
190 public record and shall also be reported to the appropriate
191 agencies.

§30-16-12. Impaired chiropractors.

1 (a) As contained in this section the term impairment is
2 defined as the inability of a licensee to practice
3 chiropractic with reasonable skill and safety by reason of:

4 (1) Mental illness;

5 (2) Physical illness, including, but not limited to,
6 physical deterioration that adversely affects cognitive,
7 motor or perceptive skills; or

8 (3) Habitual or excessive use or abuse of drugs
9 defined in law as controlled substances, of alcohol or other
10 substances that impair ability.

11 (b) The board may after a probable cause
12 determination and hearing require a licensee or applicant
13 to submit to a mental or physical examination or a
14 chemical dependency evaluation by physicians designated
15 by the board. The results of the examination or
16 evaluation are admissible at any hearing before the board
17 despite any claim of privilege under contrary rule or
18 statute. Every person who receives a license to practice
19 chiropractic or files an application for a license to practice
20 chiropractic thereby consents to submit to a mental or
21 physical examination or a chemical dependency
22 evaluation and has waived all objections to the
23 admissibility of the results in any hearing before the
24 board. If a licensee or applicant fails to submit to an
25 examination or evaluation when properly directed to do so
26 by the board, the board may enter a final order upon
27 proper notice, hearing and proof of their refusal.

28 (c) Upon the determination by the board after
29 examination and hearing that a licensee is impaired the
30 board shall take one or more of the following actions:

31 (1) Direct the licensee to submit to care, counseling or
32 treatment acceptable to the board;

33 (2) Suspend, limit or restrict the chiropractic license
34 for the duration of the impairment; or

35 (3) Revoke the chiropractic license.

36 (d) Any licensee or applicant prohibited from
37 practicing chiropractic under this section, shall at
38 reasonable intervals be afforded an opportunity to
39 demonstrate to the satisfaction of the board that he or she
40 can assume or begin the practice of chiropractic with
41 reasonable skill and safety.

§30-16-13. Protected action, immunity and communication.

1 (a) There is no monetary liability on the part of, and
2 no cause of action for damages arising against, any

3 current or former member, officer, administrator, peer
4 review committee member, staff member, committee
5 member, examiner, representative, agent, employee,
6 consultant, witness or any other person serving or having
7 served the board, either as a part of the board's operation
8 or as an individual, as a result of any act, omission,
9 proceeding, conduct or decision related to his or her
10 duties undertaken or performed in good faith and within
11 the scope of the function of the board.

12 (b) A current or former member, officer,
13 administrator, staff member, committee member,
14 examiner, representative, agent, employee, consultant or
15 any other person serving or having served the board may
16 request the state to defend him or her against any claim or
17 action arising out of any act, omission, proceeding,
18 conduct or decision related to his or her duties undertaken
19 or performed in good faith and within the scope of the
20 function of the board.

21 (c) Every communication made by or on behalf of
22 any person, institution, agency or organization to the
23 board or to any person designated by the board relating to
24 an investigation or the initiation of an investigation,
25 whether by way of report, complaint or statement, is
26 privileged. No action or proceeding, civil or criminal, is
27 permitted against the person, institution, agency or
28 organization by whom or on whose behalf the
29 communication was made in good faith.

§30-16-14. Enforcement.

1 (a) The board shall enforce the provisions of this
2 article and the rules adopted under this article. If any
3 person refuses to obey any decision or order of the board,
4 the board or, upon the request of the board, the attorney
5 general or the appropriate prosecuting attorney, may file
6 an action for the enforcement of the decision or order,
7 including injunctive relief, in the circuit court of the
8 county of residence of the person. After due hearing, the
9 court shall order the enforcement of the decision or order,
10 or any part thereof, if legally and properly made by the
11 board and where appropriate, injunctive relief. The board
12 is authorized to issue a cease and desist order to restrain

13 any person or any corporation or association and its
14 officers and directors from violating the provisions of this
15 article.

16 (b) Each of the following acts is a misdemeanor,
17 punishable upon conviction by a fine of not less than five
18 hundred dollars nor more than maximum allowed by
19 state law, or by confinement in a county or regional jail
20 for not less than thirty days nor more than one year, or
21 both, in the discretion of the court:

22 (1) The obtaining of or attempt to obtain a license by
23 the use of fraud, deceit or willful misrepresentation;

24 (2) The practice or attempting to practice as a
25 chiropractor without a license granted under the
26 provisions of this article, or practicing or attempting to
27 practice while the license is suspended or after the license
28 has been revoked;

29 (3) The use of any title to induce belief that the use of
30 the title is engaged in the practice of chiropractic, if the
31 use of the title has not fully complied with the provisions
32 of this article;

33 (4) The buying, selling or fraudulent procurement of
34 any diploma of, or license to practice chiropractic; and

35 (5) The violation of any provision of this article
36 regulating the practice of chiropractors.

37 (c) Each day any person violates a provision of this
38 article is a separate and distinct offense.

§30-16-15. Annual renewal; failure to renew; reinstatement.

1 (a) All holders of certificates of license to practice
2 chiropractic in this state shall renew them annually on or
3 before the first day of July of each year by:

4 (1) Paying the board an annual renewal fee in an
5 amount determined by the board;

6 (2) Returning the renewal application form with all
7 required information complete and accurate; and

8 (3) Presenting to the board evidence of completion of
9 at least eighteen hours of continuing education each year
10 of which up to six hours may be mandated in special
11 subjects by the board.

12 (b) The board shall propose rules for legislative
13 approval in accordance with the provisions of article three,
14 chapter twenty-nine-a of this code, establishing all
15 additional continuing education requirements and all
16 criteria for fulfillment of the continuing education
17 requirements.

18 (c) The board shall notify each certificate holder by
19 mail, at least thirty days prior to the first day of July of
20 each year, of the necessity of renewing his or her
21 certificate. Failure to renew a certificate of license to
22 practice chiropractic operates as an automatic suspension
23 of the rights and privileges granted by its issuance.

24 (d) A certificate or license suspended by a failure to
25 make the required annual renewal may be reinstated by
26 the board, except as provided in subsection (e) of this
27 section, upon:

28 (1) Presentation of evidence of completion of the
29 required hours of continuing education for each year the
30 license has been suspended; and

31 (2) Payment of all fees that would have been paid if
32 the certificate holder had maintained the certificate in
33 good standing and the payment to the board of a
34 reinstatement fee in an amount to be determined by the
35 board.

36 (e) No certificate may be reinstated after a lapse of two
37 years. After a lapse of two years, a license may be issued
38 only after the former certificate holder, subsequent to the
39 lapse, has fulfilled all other requirements of licensure as
40 set forth in section six of this article and has passed the
41 national special purposes examination for chiropractic
42 examination.

**§30-16-16. Initiation of suspension or revocation proceedings
allowed and required; reporting of information
to board pertaining to professional malprac-**

**tice and professional incompetence required;
penalties.**

- 1 (a) The board may independently initiate suspension
2 or revocation proceedings as well as initiate suspension or
3 revocation proceedings based on information received
4 from any person. The board shall initiate investigations as
5 to professional incompetence or other reasons for which a
6 licensed chiropractor may be adjudged unqualified if the
7 board receives notice that five or more judgments or
8 settlements arising from professional liability have been
9 rendered or made against the chiropractor.
- 10 (b) Upon request of the board, any peer review
11 committee in this state shall report any information that
12 may relate to the practice or performance of any
13 chiropractor known to that peer review committee. Copies
14 of the requests for information from a peer review
15 committee may be provided to the subject chiropractor if,
16 in the discretion of the board, the provision of the copies
17 does not jeopardize the board's investigation. In the event
18 that copies are provided, the subject chiropractor is
19 allowed fifteen days to comment on the requested
20 information and the comments shall be considered by the
21 board.
- 22 (c) After the completion of a hospital's formal
23 disciplinary procedure and after any resulting legal action,
24 the chief executive officer of the hospital shall report in
25 writing to the board within sixty days the name of any
26 chiropractor who is a member of the staff or any other
27 chiropractor practicing in the hospital whose hospital
28 privileges have been revoked, restricted, reduced or
29 terminated for any cause, including resignation, together
30 with all pertinent information relating to the action. The
31 chief executive officer shall also report any other formal
32 disciplinary action taken against any chiropractor by the
33 hospital upon the recommendation of its professional staff
34 relating to professional ethics, medical incompetence,
35 medical malpractice, moral turpitude or drug or alcohol
36 abuse. Temporary suspension for failure to maintain
37 records on a timely basis or failure to attend staff or
38 section meetings need not be reported.

39 (d) Any professional society in this state comprised
40 primarily of chiropractors which takes any form of
41 disciplinary action against a member relating to
42 professional ethics, professional incompetence,
43 professional malpractice, moral turpitude or drug or
44 alcohol abuse, shall report in writing to the board within
45 sixty days of a final decision the name of the member,
46 together with all pertinent information relating to the
47 action.

48 (e) Every person, partnership, corporation, association,
49 insurance company, professional society or other
50 organization providing professional liability insurance to a
51 chiropractor in this state shall submit to the board the
52 following information within thirty days from any
53 judgment, dismissal or settlement of a civil action or of
54 any claim involving the insured:

55 (1) The date of any judgment, dismissal or settlement;

56 (2) Whether any appeal has been taken on the
57 judgment, and if so, by which party;

58 (3) The amount of any settlement or judgment against
59 the insured; and

60 (4) Other information the board requires.

61 (f) Within thirty days after a person known to be a
62 chiropractor licensed or otherwise lawfully practicing
63 chiropractic in this state or applying to be so licensed is
64 convicted of a felony under the laws of this state involving
65 alcohol or drugs in any way, including any controlled
66 substance under state or federal law, the clerk of the court
67 of record in which the conviction was entered shall
68 forward to the board a certified true and correct abstract
69 of the record of the convicting court. The abstract shall
70 include the name and address of the chiropractor or
71 applicant, the nature of the offense committed and the
72 final judgment and sentence of the court.

73 (g) Upon a determination of the board that there is
74 probable cause to believe that any person, partnership,
75 corporation, association, insurance company, professional
76 society or other organization has failed or refused to make

77 a report required by this subsection, the board shall
78 provide written notice to the alleged violator stating the
79 nature of the alleged violation and the time and place at
80 which the alleged violator shall appear to show good cause
81 why a civil penalty should not be imposed. The hearing
82 shall be conducted in accordance with the provisions of
83 article five, chapter twenty-nine-a of this code. After
84 reviewing the record of the hearing, if the board
85 determines that a violation of this subsection has occurred,
86 the board shall assess a civil penalty of not less than one
87 thousand dollars nor more than ten thousand dollars
88 against the violator. Anyone so assessed shall be notified
89 of the assessment in writing and the notice shall specify
90 the reasons for the assessment. If the violator fails to pay
91 the amount of the assessment to the board within thirty
92 days, the attorney general may institute a civil action in the
93 circuit court of Kanawha County to recover the amount of
94 the assessment. In any such civil action, the court's review
95 of the board's action shall be conducted in accordance
96 with the provisions of section four, article five, chapter
97 twenty-nine-a of this code.

98 (h) Any person may report to the board relevant facts
99 about the conduct of any chiropractor in this state which
100 in the opinion of the person amounts to professional
101 malpractice or professional incompetence.

102 (i) The board shall provide forms for filing reports
103 pursuant to this section. Reports submitted in other forms
104 including verbal report shall be accepted by the board.

105 (j) The filing of a report with the board pursuant to
106 any provision of this article, any investigation by the
107 board or any disposition of a case by the board does not
108 preclude any action by a hospital, other health care facility
109 or professional society comprised primarily of
110 chiropractors to suspend, restrict or revoke the privileges
111 or membership of the chiropractor.

**§30-16-17. Who may practice chiropractic; title of
chiropractor; minimum education required
for spinal manipulation.**

1 (a) No person licensed under chapter thirty of this
2 code may perform or authorize a spinal manipulation or
3 spinal adjustment without having first received a minimum
4 of four hundred hours of classroom instruction in spinal
5 manipulation or spinal adjustment and a minimum of
6 eight hundred hours of supervised clinical training at a
7 facility where spinal manipulation or spinal adjustment is a
8 primary method of treatment. Violation of this section is
9 an unlawful practice of chiropractic and is grounds for the
10 offending health care provider's licensing board to
11 suspend, revoke or refuse to renew provider's license or
12 take any other disciplinary action allowed by law.

13 (b) Every chiropractor who has complied with the
14 provisions of this article is entitled to practice chiropractic
15 in this state. The title of chiropractor shall be doctor of
16 chiropractic and is designated by the letters "D.C." The
17 titles "D.C.," doctor of chiropractic, chiropractor,
18 chiropractic physician are interpreted as the same.

**§30-16-18. Scope of practice; chiropractic assistants; expert
testimony.**

1 (a) Any chiropractor who has complied with the
2 provisions of this article may use any instrument or
3 procedure, for the purpose of diagnosis and analysis of
4 disease or abnormalities: *Provided*, That the person is
5 trained to perform the procedures and use the instruments
6 through a chiropractic college approved by the counsel on
7 chiropractic education or its successor. Any chiropractor
8 properly qualified under this article may engage in the use
9 of physiotherapeutic devices, physiotherapeutic modalities,
10 physical therapy and physical therapy techniques.
11 Licensed chiropractors may also employ properly trained
12 chiropractic assistants to perform duties under supervision
13 that are generally conducted by chiropractic assistants
14 which are not otherwise prohibited by the board. The
15 board shall propose and promulgate rules in accordance
16 with the provisions governing legislative rules, contained
17 in article three, chapter twenty-nine-a of this code
18 governing chiropractic assistants, including, but not
19 limited to, minimum qualification, scope of practice, and
20 supervision requirements. A licensed chiropractor may not

21 engage in conduct outside this scope and beyond his or
22 her training and knowledge.

23 (b) A doctor of chiropractic duly licensed under this
24 article is presumed to be competent to testify before the
25 circuit courts of this state or in any other state
26 administrative proceeding as an expert witness.

**§30-16-19. Duty of chiropractor to observe health rules;
reports of health officer and local registrar of
vital statistics.**

1 Doctors of chiropractic shall observe and are subject
2 to all state and municipal rules in regard to the control of
3 infectious diseases, and to any and all other matters
4 pertaining to public health. They shall report to the
5 public health officer in the manner required by law. It is
6 the duty of each doctor of chiropractic in this state to
7 report to the registrar of vital statistics of his or her
8 magisterial district, within ten days of its occurrence, any
9 death which may come under his or her supervision, with a
10 certificate of the cause of death and correlative facts as
11 may be at that time required by the division of health.

**§30-16-20. Use of physiotherapeutic devices; electrodiagnostic
devices; specialty practice.**

1 (a) No chiropractor may use any physiotherapeutic
2 devices or electrodiagnostic devices in practice until he or
3 she has certified to the board that he or she has completed
4 at least the minimum classroom hours required for
5 certification in the use of these procedures in classes
6 sponsored by or conducted by a chiropractic college
7 approved by the council of chiropractic education or its
8 successor.

9 (b) Electrodiagnostic devices include, but are not
10 limited to, the following: Videofluoroscopy and
11 diagnostic ultrasound, including needle and surface
12 electromyography, nerve conduction velocity studies,
13 somatosensory testing and neuromuscular junction testing.
14 The board may designate other devices as
15 electrodiagnostic devices covered by this section by rule.

16 (c) As contained in this section, the term "specialty"
17 includes, but is not limited to, orthopedics, neurology,
18 chiropractic sports physician, radiology, pediatrics,
19 nutrition, rehabilitation, acupuncture, chiropractic internist,
20 behavioral health, diagnostic imaging and
21 physiotherapeutics. No chiropractor is permitted to
22 practice in a specialty in the chiropractic field or hold
23 himself or herself out as being a specialist in the
24 chiropractic field until the licensee has successfully
25 completed a certified program in that specialty at a
26 chiropractic college approved by the council on
27 chiropractic education or its successor and approved by
28 the board. The program shall consist of a minimum
29 number of hours to be determined by the board.
30 Successful completion of the final certification exam is
31 required.

§30-16-21. Chiropractic corporations.

1 (a) One or more individuals, each of whom is licensed
2 to practice chiropractic within this state may organize and
3 become a shareholder or shareholders of a chiropractic
4 corporation. Individuals who may be practicing
5 chiropractic as an organization created otherwise than
6 pursuant to the provisions of this section may incorporate
7 under and pursuant to this section. This section is not
8 intended to amend the statutory or common law as it
9 relates to associations or partnerships, except to allow
10 partnerships of chiropractors to organize as a chiropractic
11 corporation.

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

21 (c) This section does not modify the law as it relates to
22 the relationship between a person furnishing chiropractic
23 services and his or her client, nor does it modify the law as

24 it relates to liability arising out of the professional service
25 relationship. Except for permitting chiropractic
26 corporations this section is not intended to modify any
27 legal requirement or court rule relating to ethical
28 standards of conduct required of persons providing
29 chiropractic services.

30 (d) A chiropractic corporation may issue its capital
31 stock only to persons who are duly licensed by the board.

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

§30-16-22. Offenses; penalties.

1 (a) Each of the following acts shall constitute a
2 misdemeanor, punishable upon conviction by a fine of not
3 less than one hundred dollars nor more than five hundred
4 dollars, or by imprisonment in the county jail for not less
5 than thirty days nor more than one year, or both, in the
6 discretion of the court, and each day any person shall so
7 violate any provisions of this article shall constitute a
8 separate and distinct offense:

9 (1) The obtaining of or attempt to obtain a license by
10 the use of fraud, deceit or willful misrepresentation;

11 (2) The practice, or attempting to practice, as a
12 chiropractor without a license granted under the
13 provisions of this article, or practicing or attempting to
14 practice while said license is suspended, or after said
15 license has been revoked;

16 (3) The use of any title to induce belief that the user
17 of said title is engaged in the practice of chiropractic, if
18 the user of said title has not fully complied with the
19 provisions of this article;

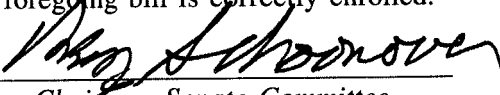
20 (4) The buying, selling or fraudulent procurement of
21 any diploma of, or license to practice, chiropractic;

22 (5) The violation of any provision of this article
23 regulating the practice of chiropractors.

24 (b) A person shall not engage in the practice of
25 chiropractic or hold himself or herself out as qualified to
26 practice chiropractic or use any title, word or abbreviation
27 to indicate to or induce others to believe that he or she is
28 licensed to chiropractic in this state unless he or she is
29 actually licensed under the provisions of this article. Any
30 person who violates the provisions of this subsection is
31 guilty of a misdemeanor, and, upon conviction thereof,
32 shall be fined not more than one thousand dollars, or
33 imprisoned in the county jail not more than three months,
34 or both fined and imprisoned.

Enr. Com. Sub. for H. B. 4601] 30

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



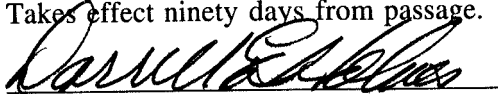
Chairman Senate Committee



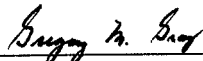
Chairman House Committee

Originating in the House.

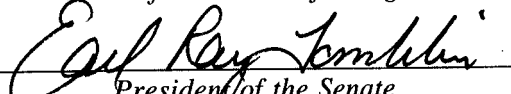
Takes effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

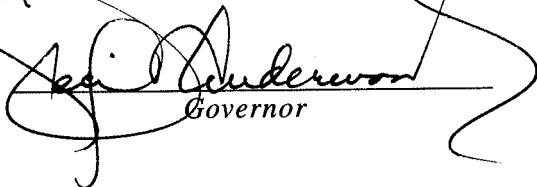


President of the Senate



Speaker of the House of Delegates

The within approved this the 7th
day of April, 1998.



Governor

PRESENTED TO THE
GOVERNOR

Date 4/6/98

Time 12:07pm