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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



# ENROLLED

## House Bill No. 4060

(By Delegates Douglas, Varner, Kuhn,  
Perdue, Angotti, Stalnaker and Willison)



Passed February 15, 2000

In Effect Ninety Days from Passage

LEGISLATIVE  
COMMISSION  
OFFICE  
STATE HOUSE  
MARTINSBURG, WV

## ENROLLED

# H. B. 4060

(BY DELEGATES DOUGLAS, VARNER, KUHN,  
PERDUE, ANGOTTI, STALNAKER AND WILLISON)

[Passed February 15, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section five-b; to amend and reenact section eighteen, article three, chapter thirty of said code; to amend and reenact section three, article thirteen-a of said chapter; and to amend and reenact section three, article thirty of said chapter, all relating to establishing a sunset review process for regulatory boards.

*Be it enacted by the Legislature of West Virginia:*

That section three, article ten, chapter four 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 a new section, designated section five-b; that section eighteen, article three, chapter thirty of said code be amended and reenacted; that section three, article thirteen-a of said chapter be amended and reenacted; and that section three, article thirty of said chapter be amended and reenacted, all to read as follows:

**CHAPTER 4. THE LEGISLATURE.**

**ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.**

**§4-10-3. Definitions.**

1 As used in this article, unless the context clearly indicates  
2 a different meaning:

3 (1) "Agency" means any bureau, department, division,  
4 commission, agency, committee, office, board, authority,  
5 subdivision, program, council, advisory body, cabinet, panel,  
6 system, task force, fund, compact, institution, survey, position,  
7 coalition or other entity, however designated, in the state of  
8 West Virginia.

9 (2) "Committee" means the joint committee on government  
10 operations, hereinafter continued, to perform duties under this  
11 article.

12 (3) "Full performance evaluation" means to determine for  
13 an agency whether or not the agency is operating in an efficient  
14 and effective manner and to determine whether or not there is  
15 a demonstrable need for the continuation of the agency,  
16 pursuant to the provisions of section ten of this article. Refer-  
17 ences in this code to performance audit or full performance  
18 audit shall be taken as and shall mean full performance evalua-  
19 tion.

20 (4) "Preliminary performance review" means to determine  
21 for an agency whether or not the agency is performing in an  
22 efficient and effective manner and to determine whether or not  
23 there is a demonstrable need for the continuation of the agency  
24 pursuant to the provisions of section eleven of this article.

25 (5) "Compliance monitoring and further inquiry update"  
26 means to determine for an agency whether or not the agency has

27 complied with recommendations contained in a completed full  
28 performance evaluation or a completed preliminary perfor-  
29 mance review conducted pursuant to this article and that further  
30 inquiry into the operation of the agency may be conducted  
31 pursuant to the provisions of sections ten-a and eleven-a of this  
32 article.

33 (6) "Regulatory board evaluation" means to determine for  
34 a board whether or not the board is necessary for the protection  
35 of public health and safety and whether or not the board is  
36 operating in compliance with the policies and provisions of  
37 chapter thirty of this code and other applicable laws and rules.  
38 A regulatory board evaluation may be based on reported data  
39 which is not independently verified.

**§4-10-5b. Termination of boards created to regulate professions  
and occupations.**

1 (a) The legislative auditor shall evaluate each board created  
2 under chapter thirty of this code to regulate professions and  
3 occupations, at least once every twelve years. The evaluation  
4 shall assess whether the board complies with the policies and  
5 provisions of chapter thirty of this code and other applicable  
6 laws and rules, whether the board follows a disciplinary  
7 procedure which observes due process rights and protects the  
8 public interest, and whether the public interest requires that the  
9 board be continued.

10 (b) The following boards shall be terminated on the date  
11 indicated, but no board may be terminated under this section  
12 unless a regulatory board evaluation has been conducted upon  
13 the board:

14 (1) On the first day of July, two thousand one: Board of  
15 accountancy; board of architects; massage therapy licensure  
16 board; board of licensed dietitians; board of medicine.

17       (2) On the first day of July, two thousand two: Board for  
18 respiratory care; board of examiners for speech language  
19 pathology and audiology; board of examiners for registered  
20 practical nurses; board of examiners for licensed practical  
21 nurses.

22       (3) On the first day of July, two thousand three: Board of  
23 pharmacy; board of dental examiners; board of osteopathy.

24       (4) On the first day of July, two thousand four: Board of  
25 examiners of land surveyors; board of landscape architects;  
26 board of registration for foresters.

27       (5) On the first day of July, two thousand five: Board of  
28 social work examiners; board of veterinary medicine; acupunc-  
29 ture board.

30       (6) On the first day of July, two thousand six: Board of  
31 examiners in counseling; board of examiners of psychologists.

32       (7) On the first day of July, two thousand seven: Board of  
33 registration for sanitarians; board of embalmers and funeral  
34 directors; board of optometry.

35       (8) On the first day of July, two thousand eight: Nursing  
36 home administrators board; board of hearing aid dealers; board  
37 of barbers and cosmetologists.

38       (9) On the first day of July, two thousand nine: Board of  
39 physical therapy; board of chiropractic examiners; board of  
40 occupational therapy.

41       (10) On the first day of July, two thousand ten: Professional  
42 firefighters board; board of registration for professional  
43 engineers; radiologic technology board of examiners.

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.****ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.****§30-3-18. Continuation of board.**

1       The board of medicine shall continue to exist until the first  
2 day of July, two thousand, pursuant to the provisions of article  
3 ten, chapter four of this code, to allow for the completion of a  
4 regulatory board evaluation by the joint committee on govern-  
5 ment operations.

**ARTICLE 13A. LAND SURVEYORS.****§30-13A-3. Board of examiners of land surveyors created;  
appointment, terms, removal, etc., of members;  
officers; meetings; quorum; compensation and  
expenses.**

1       (a) There is hereby created the state board of examiners of  
2 land surveyors which shall be composed of three members  
3 appointed by the governor by and with the advice and consent  
4 of the Senate. Each member shall have been actively engaged  
5 in the practice of land surveying for at least ten years and shall  
6 be the holder of a license under the provisions of this article.

7       (b) The members of the board shall be appointed for  
8 overlapping terms of three years each ending on the thirtieth  
9 day of June, and until their respective successors have been  
10 appointed and qualified. Members may be reappointed for any  
11 number of terms. Before entering upon the performance of his  
12 duties, each member shall take and subscribe to the oath  
13 required by section five, article IV of the constitution of this  
14 state. Vacancies shall be filled by appointment by the governor  
15 for the unexpired term of the member whose office shall be  
16 vacant and such appointment shall be made within sixty days of  
17 the occurrence of such vacancy. Any member may be removed

18 by the governor in case of incompetency, neglect of duty, gross  
19 immorality or malfeasance in office.

20 (c) The board shall elect from its membership a chairman  
21 and secretary-treasurer. A majority of the members of the board  
22 shall constitute a quorum and meetings shall be held at the call  
23 of the chairman or upon the written request of two members at  
24 such time and place as designated in such call or request, and,  
25 in any event, the board shall meet at least once annually to  
26 conduct the examination hereinafter provided for and to transact  
27 such other business as may come before it.

28 (d) Members shall be paid such reasonable compensation  
29 as the board may from time to time determine, and in addition  
30 may be reimbursed for all reasonable and necessary expenses  
31 actually incurred in the performance of their duties, which  
32 compensation and expenses shall be paid in accordance with the  
33 provisions of subsection (b), section four of this article.

34 (e) After having conducted a regulatory board evaluation  
35 through its joint committee on government operations, pursuant  
36 to section nine, article ten, chapter four of this code, the  
37 Legislature hereby finds and declares that the board of examin-  
38 ers of land surveyors should be continued and reestablished.  
39 Accordingly, notwithstanding the provisions of section four of  
40 said article, the board of examiners of land surveyors shall  
41 continue to exist until the first day of July, two thousand four.

#### ARTICLE 30. SOCIAL WORKERS.

##### §30-30-3. Board of social work examiners.

1 (a) For the purpose of carrying out the provisions of this  
2 article, there is hereby created a West Virginia board of social  
3 work examiners, consisting of seven members who shall be  
4 appointed by the governor, subject to the following require-  
5 ments:

6 (1) No person may be excluded from serving on the board  
7 by reason of race, sex or national origin;

8 (2) One member shall be an independent clinical social  
9 worker, two members shall be certified social workers, one  
10 member shall be a graduate social worker and two members  
11 shall be social workers. All such members must be licensed  
12 under the provisions of this article in accordance with their  
13 respective titles. In addition, there shall be one member of the  
14 board chosen from the general public: *Provided*, That those  
15 members who are appointed by the governor to serve as the first  
16 board after the effective date of this article shall be persons  
17 eligible for the licensing required under this article: *Provided*,  
18 *however*, That the member from the general public shall never  
19 be required to be eligible for licensing;

20 (3) The members of the first board to serve after the  
21 effective date of this article shall be appointed within ninety  
22 days thereof;

23 (4) The term of office for each member of the board shall  
24 be three years: *Provided*, That one of the members of the first  
25 board to serve after the effective date of this article shall serve  
26 a term of two years, three of them shall serve a term of three  
27 years and the remaining three shall serve a term of four years;  
28 and

29 (5) The governor shall, whenever there is a vacancy on the  
30 board due to circumstances other than the expiration of the term  
31 of a member, appoint another member with the same qualifica-  
32 tions as the member who has vacated to serve the duration of  
33 the unexpired term.

34 For the purpose of accepting nominations for the replace-  
35 ment of a member, the governor shall cause a notice of the  
36 vacancy to be published at least thirty days prior to an an-



37 nouncement of the replacement member, as a Class I-0 legal  
38 advertisement, in accordance with the provisions of section two,  
39 article three, chapter fifty-nine of this code. The publication  
40 area shall be statewide.

41 If the governor fails to make appointment in ninety days  
42 after expiration of any term, the board shall make the necessary  
43 appointment. Each member shall hold office until the expiration  
44 of the term for which such member is appointed and until a  
45 successor shall have been duly appointed and qualified.

46 (b) Any members of the board may be removed from office  
47 for cause, in accordance with procedures set forth in this code  
48 for the removal of public officials from office.

49 (c) The board shall pay each member the same compensa-  
50 tion as is paid to members of the Legislature for their interim  
51 duties as recommended by the citizens legislative compensation  
52 commission and authorized by law for each day or portion  
53 thereof engaged in the discharge of official duties and shall  
54 reimburse each member for actual and necessary expenses  
55 incurred in the discharge of official duties: *Provided*, That such  
56 compensation and such expenses shall not exceed the amount  
57 received by the board from licensing fees and penalties imposed  
58 under subdivision (4), subsection (e) of this section.

59 (d) The board shall hold an annual election for the purpose  
60 of electing a chairman, vice chairman and secretary. The  
61 requirements for meetings and management of the board shall  
62 be established in regulations promulgated by the board as  
63 required by this article.

64 (e) In addition to the duties set forth in other provisions of  
65 this article, the board shall:

66 (1) Recommend to the Legislature any proposed modifica-  
67 tions to this article;

68       (2) Report to county prosecutors any suspected violations  
69 of this article: *Provided*, That no report shall be made until the  
70 board has given the suspected violator ninety days written  
71 notice of the suspected violation and the violator has, within  
72 such ninety-day period, been afforded an opportunity to respond  
73 to the board with respect to the allegation;

74       (3) Publish an annual report and a roster listing the names  
75 and addresses of all persons who have been licensed in accor-  
76 dance with the provisions of this article as an independent  
77 clinical social worker, certified social worker, graduate social  
78 worker or social worker;

79       (4) Establish a fee schedule by legislative rule, pursuant to  
80 the provisions of chapter twenty-nine-a of this code, which  
81 schedule may include fees for the initial examination, license  
82 fee, license renewal, license replacement, reciprocal license,  
83 license classification change, continuing education provider  
84 approval and monitoring, mailing lists and requests for informa-  
85 tion and reports; fees for requests for information and reports  
86 shall not be greater than the cost of personnel, time and supplies  
87 incurred by the board and shall not be applied to the annual  
88 report;

89       (5) Establish standards and requirements by legislative rule,  
90 pursuant to the provisions of chapter twenty-nine-a of this code,  
91 for continuing education. In establishing these requirements the  
92 board shall consult with professional groups and organizations  
93 representing all levels of practice provided for in this article and  
94 the board shall consider recognized staff development pro-  
95 grams, continuing education programs offered by colleges and  
96 universities having social work programs approved or accred-  
97 ited by the council on social work education, and continuing  
98 education programs offered by recognized state and national  
99 social work bodies: *Provided*, That such standards and require-

100 ments for continuing education shall not be construed to alter  
101 or affect in any way the standards and requirements for licens-  
102 ing as set forth elsewhere in this article;

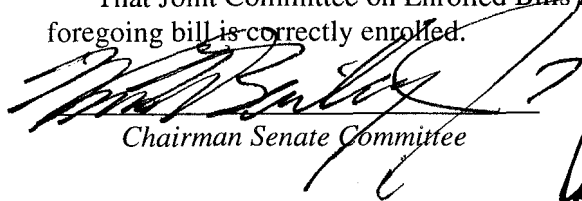
103 (6) Establish standards and requirements for the practice of  
104 social work and the differentiation of qualifications, education,  
105 training, experience, supervision, responsibilities, rights, duties  
106 and privileges at the independent clinical social worker,  
107 certified social worker, graduate social worker and social  
108 worker license levels. In establishing these standards and  
109 requirements the board shall consult with professional groups  
110 and organizations representing all levels of practice provided  
111 for in this article. Standards and requirements may include, but  
112 are not limited to, practice standards, practice parameters,  
113 quality indicators, minimal standards of acceptance, advanced  
114 training and certification and continuing education: *Provided,*  
115 That such standards and requirements for practice may not be  
116 construed to alter or affect in any way the standards and  
117 requirements for licensing as set forth elsewhere in this article;

118 (7) Conduct its proceedings in accordance with provisions  
119 of article nine-a, chapter six of this code; and

120 (8) Employ, direct and define the duties of administrative  
121 clerical support staff.

122 (f) After having conducted a regulatory board evaluation  
123 through its joint committee on government operations, pursuant  
124 to article ten, chapter four of this code, the Legislature hereby  
125 finds and declares that the board of social work examiners be  
126 continued and reestablished. Accordingly, notwithstanding the  
127 provisions of said article, the board of social work examiners  
128 shall continue to exist until the first day of July, two thousand  
129 five.

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



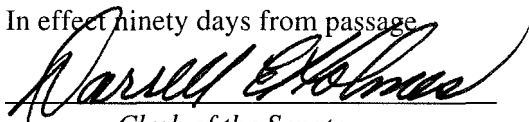
Chairman Senate Committee



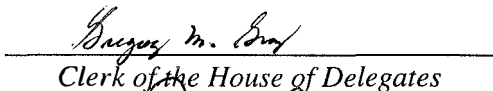
Chairman House Committee

Originating in the House.

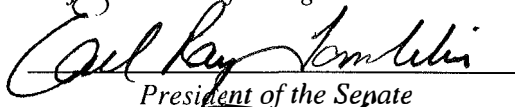
In effect ninety days from passage



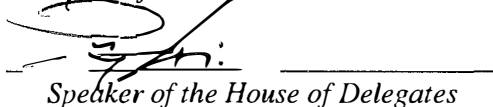
Clerk of the Senate



Clerk of the House of Delegates

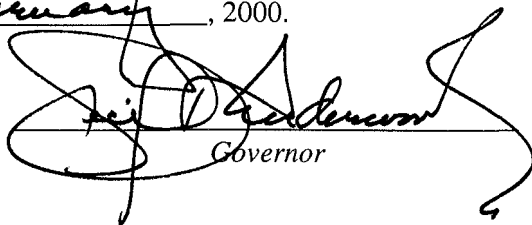


President of the Senate



Speaker of the House of Delegates

The within approved this the 27<sup>th</sup>  
day of February, 2000.



Governor

PRESENTED TO THE

GOVERNOR

Date 2/18/10

Time 4:14 pm