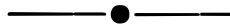


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# **WEST VIRGINIA LEGISLATURE**

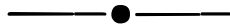
**SECOND REGULAR SESSION, 2000**



# **ENROLLED**

## **House Bill No. 4062**

(By Delegates Douglas, Varner, Kuhn, Perdue,  
Caputo, Modesitt and Willison)



Passed February 15, 2000

In Effect Ninety Days from Passage

HB 4062  
00 HB 21 FEB 13  
FEB 13 2000

## ENROLLED

### H. B. 4062

(BY DELEGATES DOUGLAS, VARNER, KUHN, PERDUE,  
CAPUTO, MODESITT AND WILLISON)

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

AN ACT to amend and reenact sections two-a, eight and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of professional licensing boards; orientation session; requiring legislative rules for complaint procedures; and filing of annual reports.

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

That sections two-a, eight and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

**§30-1-2a. Required orientation session.**

- 1 (a) After the first day of April and not later than the first
- 2 day of December of each year, the auditor shall provide at least
- 3 one orientation session on relevant state law and rules govern-
- 4 ing state boards and commissions. All state agencies shall
- 5 cooperate with and assist in providing the orientation session if
- 6 the auditor requests.

7 (b) After the effective date of this section, all chairs or chief  
8 financial officers of state boards and commissions newly  
9 created by the Legislature shall attend an orientation session  
10 designed to inform the state boards and commissions of the  
11 duties and requirements imposed on state boards and commis-  
12 sions by state law and rules. The chair or chief financial officer  
13 of the newly created board or commission shall attend an  
14 orientation session at the earliest possible date following the  
15 creation of the board or commission.

16 (c) The orientation session shall include a minimum of  
17 thirty minutes of instructional time dedicated to the statutory  
18 duty of boards to investigate and resolve complaints, including  
19 procedures for investigations, administrative hearings and  
20 remedies, due process protections, and the duty to provide  
21 public access to records of the disposition of complaints, as set  
22 forth in section five of this article.

23 (d) Topics for the orientation session may include, but are  
24 not limited to: The official conduct of members, state budgeting  
25 and financial procedures, purchasing requirements, open  
26 meetings requirements, ethics, rule-making procedures, records  
27 management, annual reports and any other topics the auditor  
28 determines to be essential in the fulfillment of the duties of the  
29 members of state boards and commissions.

30 (e) The orientation session shall be open to any member of  
31 new or existing boards and commissions and each board or  
32 commission may approve expense reimbursement for the  
33 attendance of one or more of its members. The chair or chief  
34 financial officer of each existing board or commission shall  
35 attend an orientation session within two years following the  
36 effective date of this section.

37 (f) No later than the thirty-first day of December of each  
38 year, the auditor shall provide to the chairs of the joint standing  
39 committee on government operations a list of the names of

40 board or commission members attending, together with the  
41 names of the boards and commissions represented, the orienta-  
42 tion session or sessions offered by the auditor during the  
43 previous year.

44 (g) The auditor may charge a registration fee for the  
45 orientation session to cover the cost of providing the orientation  
46 session. The fee may be paid from funds available to a board or  
47 commission.

48 (h) Notwithstanding the member's normal rate of compen-  
49 sation for serving on a board, a member attending the orienta-  
50 tion session may be reimbursed for necessary and actual  
51 expenses, as long as the member attends the complete orienta-  
52 tion session.

53 (i) Ex officio members who are elected or appointed state  
54 officers or employees, and members of boards or commissions  
55 that have purely advisory functions with respect to a department  
56 or agency of the state, are exempt from the requirements of this  
57 section.

**§30-1-8. Denial, suspension or revocation of a license or registra-  
tion; probation; proceedings; effect of suspension or  
revocation; transcript; report; judicial review.**

1 (a) Every board referred to in this chapter is authorized to  
2 suspend or revoke the license of any person who has been  
3 convicted of a felony or who has been found to have engaged  
4 in conduct, practices or acts constituting professional negli-  
5 gence or a willful departure from accepted standards of  
6 professional conduct. Where any person has been so convicted  
7 of a felony or has been found to have engaged in such conduct,  
8 practices or acts, every board referred to in this chapter is  
9 further authorized to enter into consent decrees, to reprimand,  
10 to enter into probation orders, to levy fines not to exceed one  
11 thousand dollars per day per violation, or any of these, singly or

12 in combination. Each board is also authorized to assess admin-  
13 istrative costs. Any costs which are assessed shall be placed in  
14 the special account of the board, and any fine which is levied  
15 shall be deposited in the state treasury's general revenue fund.  
16 For purposes of this section, the word "felony" means a felony  
17 or crime punishable as a felony under the laws of this state, any  
18 other state, or the United States. Every board referred to in this  
19 chapter is authorized to promulgate rules in accordance with the  
20 provisions of chapter twenty-nine-a of this code to delineate  
21 conduct, practices or acts which, in the judgment of the board,  
22 constitute professional negligence, a willful departure from  
23 accepted standards of professional conduct or which may render  
24 an individual unqualified or unfit for licensure, registration or  
25 other authorization to practice.

26 (b) Notwithstanding any other provision of law to the  
27 contrary, no certificate, license, registration or authority issued  
28 under the provisions of this chapter may be suspended or  
29 revoked without a prior hearing before the board or court which  
30 issued the certificate, license, registration or authority. How-  
31 ever, this does not apply in cases where a board is authorized to  
32 suspend or revoke a certificate, license, registration or authority  
33 prior to a hearing if the individual's continuation in practice  
34 constitutes an immediate danger to the public.

35 (c) In all proceedings before a board or court for the  
36 suspension or revocation of any certificate, license, registration  
37 or authority issued under the provisions of this chapter, a  
38 statement of the charges against the holder thereof and a notice  
39 of the time and place of hearing shall be served upon the person  
40 as a notice is served under section one, article two, chapter  
41 fifty-six of this code, at least thirty days prior to the hearing,  
42 and he or she may appear with witnesses and be heard in  
43 person, by counsel, or both. The board may take oral or written  
44 proof, for or against the accused, as it may deem advisable. If  
45 upon hearing the board finds that the charges are true, it may

46 suspend or revoke the certificate, license, registration or  
47 authority, and suspension or revocation shall take from the  
48 person all rights and privileges acquired thereby.

49 (d) Pursuant to the provisions of section one, article five,  
50 chapter twenty-nine-a of this code, informal disposition may  
51 also be made by the board of any contested case by stipulation,  
52 agreed settlement, consent order or default. Further, the board  
53 may suspend its decision and place a licensee found by the  
54 board to be in violation of the applicable practice on probation.

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

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

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

70 (h) On or before the first day of July, two thousand, every  
71 board referred to in this chapter shall propose rules for legisla-  
72 tive approval in accordance with the provisions of article three,  
73 chapter twenty-nine-a of this code, which shall specify a  
74 procedure for the investigation and resolution of all complaints  
75 against persons licensed under this chapter.

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

1       (a) The secretary of every board shall keep a record of its  
2       proceedings and a register of all applicants for license or  
3       registration, showing for each the date of his or her application,  
4       his or her name, age, educational and other qualifications, place  
5       of residence, whether an examination was required, whether the  
6       applicant was rejected or a certificate of license or registration  
7       granted, the date of this action, the license or registration  
8       number, all renewals of the license or registration, if required,  
9       and any suspension or revocation thereof. The books and  
10      register of the board shall be open to public inspection at all  
11      reasonable times, and the books and register, or a copy of any  
12      part thereof, certified by the secretary and attested by the seal  
13      of the board, shall be prima facie evidence of all matters  
14      recorded therein.

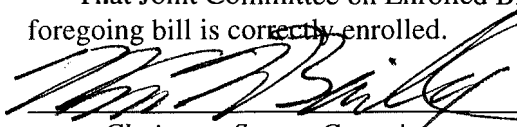
15      (b) On or before the first day of January of each year in  
16      which the Legislature meets in regular session, the board shall  
17      submit to the governor and to the Legislature a report of its  
18      transactions for the preceding two years, an itemized statement  
19      of its receipts and disbursements for that period, a full list of the  
20      names of all persons licensed or registered by it during that  
21      period, statistical reports by county of practice, by specialty if  
22      appropriate to the particular profession, and a list of any  
23      complaints which were filed against persons licensed by the  
24      board, including any action taken by the board regarding those  
25      complaints. The report shall be certified by the president and  
26      the secretary of the board, and a copy of the report shall be filed  
27      with the secretary of state and with the legislative librarian.


28      (c) To promote public access, the secretary of every board  
29      shall ensure that the address and telephone number of the board  
30      are included every year in the state government listings of the

31 Charleston area telephone directory. Every board shall regularly  
32 evaluate the feasibility of adopting additional methods of  
33 providing public access, including, but not limited to, listings  
34 in additional telephone directories, toll-free telephone numbers,  
35 facsimile and computer-based communications.



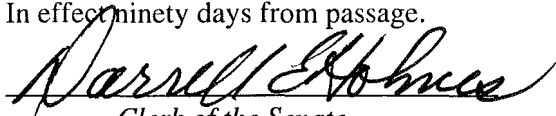
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

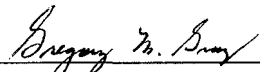
  
Chairman Senate Committee

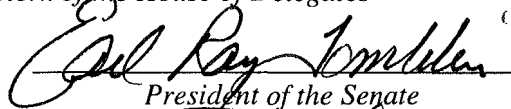
  
Chairman House Committee


Originating in the House.

In effect ninety days from passage.

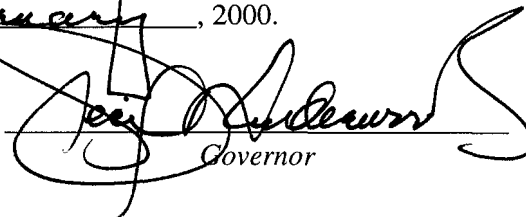
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 23rd  
day of February, 2000.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 2/18/00

Time 4:15pm