ENROLLED

House Bill No. 4124

(By Delegates Douglas, Kuhn, Prunty, Stephens and Leggett)

Passed February 15, 2002

In Effect from Passage
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H. B. 4124

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AN ACT to amend and reenact sections six, seven, eight, eleven and thirteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto two new sections, designated sections eight-a and eight-b, all relating to professional licensing boards; prohibiting discrimination; modifying contents of license or certificate; providing for denial of licenses and revocation of licenses; hearings; providing for reinstatement of license following revocation; providing for mediation of complaints; limiting compensation for board members to attendance at official meetings and other official duties; permitting boards to reimburse expenses; prohibiting board members from being compensated as employees of the board; permitting roster of licensees to be sorted alphabetically by county or city; and removing requirement for listing of social security numbers on rosters to be distributed to the public.

Be it enacted by the Legislature of West Virginia:
That sections six, seven, eight, eleven and thirteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections eight-a and eight-b, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

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

(a) Every applicant for license or registration under the provisions of this chapter shall apply for the 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 examination 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 examination 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 responsibilities 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.
(d) In addition to any other information required, the applicant’s social security number shall be recorded on the application.

(e) No board may discriminate against any applicant because of political or religious opinion or affiliation, marital status, race, color, gender, creed, age, national origin, disability or other protected group status.

(f) Any board may deny the application for licensure or registration of an applicant whose license or registration in any other state, territory, jurisdiction or foreign nation has been revoked by the licensing authority thereof. The application may be denied by a board without a hearing unless the applicant requests a hearing within thirty days of the denial. Any hearing must be conducted pursuant to the provisions of section eight of this article or provisions contained in the rules of the board.

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

Every license or certificate of registration issued by each board shall bear a serial or license number, the full name of the applicant, the date of issuance, and the seal of the board: Provided, That licenses or certificates of registration issued or renewed on or after the first day of July, two thousand three, will indicate both the date of issuance and the date of expiration. The licenses or certificates of registration shall be signed by the board’s president and secretary or executive secretary. No license or certificate of registration granted or issued under the provisions of this chapter may be assigned.

§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 may suspend or revoke the license of any person who has been convicted of a
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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 convicted of a felony or has been found to have engaged in such conduct, practices or acts, every board referred to in this chapter may 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 may also 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 may 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) Every board referred to in this chapter may revoke the license or registration of an individual licensed or otherwise lawfully practicing within this state whose license or registration in any other state, territory, jurisdiction or foreign nation has been revoked by the licensing authority thereof.

(c) 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 requirement does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registra-
tion or authority prior to a hearing if the person’s continuation in practice constitutes an immediate danger to the public.

(d) 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 of the certificate, license, registration or authority 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 consider advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority, and suspension or revocation shall take from the person all rights and privileges acquired thereby.

(e) 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.

(f) 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 are in accordance with the provisions for hearings which are set forth in this section.

(g) 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 of the hearing retained in its files. The board shall
make a written report of its findings, which shall constitute part
of the record.

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

(i) On or before the first day of July, two thousand one,
every board referred to in this chapter shall adopt procedural
rules in accordance with the provisions of article three, chapter
twenty-nine-a of this code, which shall specify a procedure for
the investigation and resolution of all complaints against
persons licensed under this chapter. The proposed legislative
rules relating only to complaint procedures or contested case
hearing procedures required by the prior enactment of this
subsection shall be redesignated as procedural rules in accord-
dance with the provisions of article three, chapter twenty-nine-a
of this code. Each board shall file the procedural rules required
by this subsection by the thirty-first day of January, two
thousand one. The public hearing or public comment period
conducted for the proposed legislative rules shall serve as the
public hearing or public comment period required by section
five, article three, chapter twenty-nine-a of this code.

§30-1-8a. Reinstatement of license.

(a) Every board referred to in this chapter is authorized to
consider the reinstatement of any license or registration that has
been suspended, revoked or not renewed, upon a showing that
the applicant can resume practicing with reasonable skill and
safety.

(b) Each board may adopt a procedural rule in accordance
with the provisions of article three, chapter twenty-nine-a of
this code, specifying forms and procedures for application for
reinstatement.
§30-1-8b. Mediation of complaints.

(a) Any board referred to in this chapter may, on its own motion or by stipulation of the parties, refer any complaints against persons licensed under this chapter to mediation.

(b) Any board may maintain a list of mediators with expertise in professional disciplinary matters or may obtain a list from the West Virginia center for dispute resolution or the West Virginia state bar’s mediator referral service. The board shall designate a mediator from the list by neutral rotation.

(c) The mediation is not considered a proceeding open to the public and any reports and records introduced at the mediation are not part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree to the use in writing.

(d) The mediation may not be used to delay any disciplinary proceeding.

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

(a) Each member of every board referred to in this chapter shall receive compensation for attending official meetings or engaging in official duties not to 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. The limitations contained in this section
do not apply if they conflict with provisions of this chapter
relating to a particular board and enacted after the first day of
January, one thousand nine hundred ninety-five.

(b) A board may reimburse actual and necessary expenses
incurred for each day or portion thereof engaged in the dis-
charge of official duties in a manner consistent with guidelines
of the travel management office of the department of adminis-
tration.

(c) No member of any board referred to in this chapter may
receive compensation as an employee of the board.

§30-1-13. Roster of licensed or registered practitioners.

The secretary of every board shall prepare and maintain a
complete roster of the names and office addresses of all persons
licensed, or registered, and practicing in this state the profession
or occupation to which such board relates, arranged alphabeti-
cally by name and also by the cities or counties in which their
offices are situated. Each board shall make the roster available
upon request to any member of the public.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the day of , 2002.

Governor
PRESENTED TO THE
GOVERNOR
Date: 2/20/02
Time: 3:10 PM