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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002

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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E N R O L L E D

H. B. 4124

(BY DELEGATES DOUGLAS, KUHN, PRUNTY,
STEPHENS AND LEGGETT)

[Passed February 15, 2002; in effect from passage.]

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.**

1 (a) Every applicant for license or registration under the
2 provisions of this chapter shall apply for the license or registra-
3 tion in writing to the proper board and shall transmit with his or
4 her application an examination fee which the board is autho-
5 rized to charge for an examination or investigation into the
6 applicant's qualifications to practice.

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

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

22 (d) In addition to any other information required, the
23 applicant's social security number shall be recorded on the
24 application.

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

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

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

1 Every license or certificate of registration issued by each
2 board shall bear a serial or license number, the full name of the
3 applicant, the date of issuance, and the seal of the board:
4 *Provided*, That licenses or certificates of registration issued or
5 renewed on or after the first day of July, two thousand three,
6 will indicate both the date of issuance and the date of expira-
7 tion. The licenses or certificates of registration shall be signed
8 by the board's president and secretary or executive secretary.
9 No license or certificate of registration granted or issued under
10 the provisions of this chapter may be assigned.

**§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 may suspend or
2 revoke the license of any person who has been convicted of a

3 felony or who has been found to have engaged in conduct,
4 practices or acts constituting professional negligence or a
5 willful departure from accepted standards of professional
6 conduct. Where any person has been convicted of a felony or
7 has been found to have engaged in such conduct, practices or
8 acts, every board referred to in this chapter may enter into
9 consent decrees, to reprimand, to enter into probation orders, to
10 levy fines not to exceed one thousand dollars per day per
11 violation, or any of these, singly or in combination. Each board
12 may also assess administrative costs. Any costs which are
13 assessed shall be placed in the special account of the board, and
14 any fine which is levied shall be deposited in the state trea-
15 sury's general revenue fund. For purposes of this section, the
16 word "felony" means a felony or crime punishable as a felony
17 under the laws of this state, any other state, or the United States.
18 Every board referred to in this chapter may promulgate rules in
19 accordance with the provisions of chapter twenty-nine-a of this
20 code to delineate conduct, practices or acts which, in the
21 judgment of the board, constitute professional negligence, a
22 willful departure from accepted standards of professional
23 conduct or which may render an individual unqualified or unfit
24 for licensure, registration or other authorization to practice.

25 (b) Every board referred to in this chapter may revoke the
26 license or registration of an individual licensed or otherwise
27 lawfully practicing within this state whose license or registra-
28 tion in any other state, territory, jurisdiction or foreign nation
29 has been revoked by the licensing authority thereof.

30 (c) Notwithstanding any other provision of law to the
31 contrary, no certificate, license, registration or authority issued
32 under the provisions of this chapter may be suspended or
33 revoked without a prior hearing before the board or court which
34 issued the certificate, license, registration or authority. How-
35 ever, this requirement does not apply in cases where a board is
36 authorized to suspend or revoke a certificate, license, registra-

37 tion or authority prior to a hearing if the person's continuation
38 in practice constitutes an immediate danger to the public.

39 (d) In all proceedings before a board or court for the
40 suspension or revocation of any certificate, license, registration
41 or authority issued under the provisions of this chapter, a
42 statement of the charges against the holder of the certificate,
43 license, registration or authority and a notice of the time and
44 place of hearing shall be served upon the person as a notice is
45 served under section one, article two, chapter fifty-six of this
46 code, at least thirty days prior to the hearing, and he or she may
47 appear with witnesses and be heard in person, by counsel, or
48 both. The board may take oral or written proof, for or against
49 the accused, as it may consider advisable. If upon hearing the
50 board finds that the charges are true, it may suspend or revoke
51 the certificate, license, registration or authority, and suspension
52 or revocation shall take from the person all rights and privileges
53 acquired thereby.

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

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

67 (g) A stenographic report of each proceeding on the denial,
68 suspension or revocation of a certificate, license, registration or

69 authority shall be made at the expense of the board and a
70 transcript of the hearing retained in its files. The board shall
71 make a written report of its findings, which shall constitute part
72 of the record.

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

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

§30-1-8a. Reinstatement of license.

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

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

§30-1-8b. Mediation of complaints.

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

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

9 (c) The mediation is not considered a proceeding open to
10 the public and any reports and records introduced at the
11 mediation are not part of the public record. The mediator and all
12 participants in the mediation shall maintain and preserve the
13 confidentiality of all proceedings and records. The mediator
14 may not be subpoenaed or called to testify or otherwise be
15 subject to process requiring disclosure of confidential informa-
16 tion in any proceeding relating to or arising out of the disciplin-
17 ary or licensure matter mediated: *Provided*, That any confiden-
18 tiality agreement and any written agreement made and signed
19 by the parties as a result of mediation may be used in any
20 proceedings subsequently instituted to enforce the written
21 agreement. The agreements may be used in other proceedings
22 if the parties agree to the use in writing.

23 (d) The mediation may not be used to delay any disciplin-
24 ary proceeding.

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

1 (a) Each member of every board referred to in this chapter
2 shall receive compensation for attending official meetings or
3 engaging in official duties not to exceed the amount paid to
4 members of the Legislature for their interim duties as recom-
5 mended by the citizens legislative compensation commission

6 and authorized by law. The limitations contained in this section
7 do not apply if they conflict with provisions of this chapter
8 relating to a particular board and enacted after the first day of
9 January, one thousand nine hundred ninety-five.

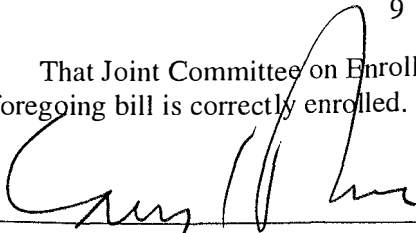
10 (b) A board may reimburse actual and necessary expenses
11 incurred for each day or portion thereof engaged in the dis-
12 charge of official duties in a manner consistent with guidelines
13 of the travel management office of the department of adminis-
14 tration.

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

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

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

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



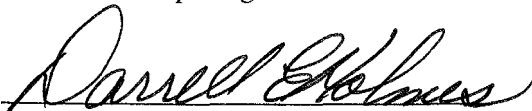
Chairman Senate Committee



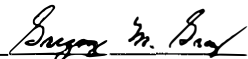
Chairman House Committee

Originating in the House.

In effect from passage.




Clerk of the Senate



Clerk of the House of Delegates

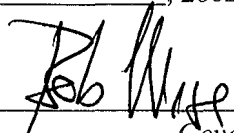


President of the Senate



Speaker of the House of Delegates

The within, is approved this the 26th
day of February, 2002.



Governor

PRESENTED TO THE

GOVERNOR

Date 2/20/02

Time 3:10 pm