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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2005

ENROLLED

SENATE BILL NO. 737

(By Senator Bowman, et al)

PASSED April 9, 2005

In Effect 90 days from Passage

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Senate Bill No. 737

(BY SENATORS BOWMAN, BAILEY, CHAFIN, HARRISON,
JENKINS, KESSLER, LANHAM, MCCABE, MINARD,
PLYMALE, WEEKS AND WHITE)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §30-1-5 and §30-1-8 of the Code of West Virginia, 1931, as amended, all relating to licensing boards; establishing a time limit for licensing boards to issue a status report and a final ruling on complaints; exception; and authorizing licensing boards to suspend and revoke licenses when a licensee cannot be located.

Be it enacted by the Legislature of West Virginia:

That §30-1-5 and §30-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§30-1-5. Meetings; quorum; investigatory powers; duties.

1 (a) Every board referred to in this chapter shall hold at
2 least one meeting each year, at such time and place as it
3 may prescribe by rule, for the examination of applicants
4 who desire to practice their respective professions or
5 occupations in this state and to transact any other business
6 which may legally come before it. The board may hold
7 additional meetings as may be necessary, which shall be
8 called by the secretary at the direction of the president or
9 upon the written request of any three members. A major-
10 ity of the members of the board constitutes a quorum for
11 the transaction of its business.

12 (b) The board is authorized to compel the attendance of
13 witnesses, to issue subpoenas, to conduct investigations
14 and hire an investigator and to take testimony and other
15 evidence concerning any matter within its jurisdiction.
16 The president and secretary of the board are authorized to
17 administer oaths for these purposes.

18 (c) Every board referred to in this chapter has a duty to
19 investigate and resolve complaints which it receives and
20 shall, within six months of the complaint being filed, send
21 a status report to the party filing the complaint by certi-
22 fied mail with a signed return receipt and within one year
23 of the status report's return receipt date issue a final
24 ruling, unless the party filing the complaint and the board
25 agree in writing to extend the time for the final ruling.

26 (d) Every board shall provide public access to the record
27 of the disposition of the complaints which it receives in
28 accordance with the provisions of chapter twenty-nine-b
29 of this code. Every board has a duty to report violations of
30 individual practice acts contained in this chapter to the
31 board by which the individual may be licensed and shall
32 do so in a timely manner upon receiving notice of such
33 violations. Every person licensed or registered by a board
34 has a duty to report to the board which licenses or regis-
35 ters him or her a known or observed violation of the
36 practice act or the board's rules by any other person
37 licensed or registered by the same board and shall do so in

38 a timely manner. Law-enforcement agencies or their
39 personnel and courts shall report in a timely manner to the
40 appropriate board any violations of individual practice
41 acts by any individual.

42 (e) Whenever a board referred to in this chapter obtains
43 information that a person subject to its authority has
44 engaged in, is engaging in or is about to engage in any act
45 which constitutes or will constitute a violation of the
46 provisions of this chapter which are administered and
47 enforced by that board, it may apply to the circuit court
48 for an order enjoining the act. Upon a showing that the
49 person has engaged, is engaging or is about to engage in
50 any such act, the court shall order an injunction, restrain-
51 ing order or other order as the court may deem appropri-
52 ate.

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

1 (a) Every board referred to in this chapter may suspend
2 or revoke the license of any person who has been convicted
3 of a felony or who has been found to have engaged in
4 conduct, practices or acts constituting professional
5 negligence or a willful departure from accepted standards
6 of professional conduct. Where any person has been
7 convicted of a felony or has been found to have engaged in
8 such conduct, practices or acts, every board referred to in
9 this chapter may enter into consent decrees, to reprimand,
10 to enter into probation orders, to levy fines not to exceed
11 one thousand dollars per day per violation, or any of these,
12 singly or in combination. Each board may also assess
13 administrative costs. Any costs which are assessed shall
14 be placed in the special account of the board and any fine
15 which is levied shall be deposited in the state treasury's
16 general revenue fund.

17 (b) For purposes of this section, the word "felony" means
18 a felony or crime punishable as a felony under the laws of
19 this state, any other state or the United States.

20 (c) Every board referred to in this chapter may promul-
21 gate rules in accordance with the provisions of chapter
22 twenty-nine-a of this code to delineate conduct, practices
23 or acts which, in the judgment of the board, constitute
24 professional negligence, a willful departure from accepted
25 standards of professional conduct or which may render an
26 individual unqualified or unfit for licensure, registration
27 or other authorization to practice.

28 (d) Every board referred to in this chapter may revoke
29 the license or registration of an individual licensed or
30 otherwise lawfully practicing within this state whose
31 license or registration in any other state, territory, juris-
32 diction or foreign nation has been revoked by the licensing
33 authority thereof.

34 (e) Notwithstanding any other provision of law to the
35 contrary, no certificate, license, registration or authority
36 issued under the provisions of this chapter may be sus-
37 pended or revoked without a prior hearing before the
38 board or court which issued the certificate, license,
39 registration or authority, except:

40 (1) A board is authorized to suspend or revoke a certifi-
41 cate, license, registration or authority prior to a hearing if
42 the person's continuation in practice constitutes an
43 immediate danger to the public; or

44 (2) After due diligence, if a board cannot locate a person
45 licensed under the provisions of this chapter within sixty
46 days of a complaint being filed against the licensee, then
47 the board may suspend the license, certificate, registration
48 or authority of the person without holding a hearing.
49 After due diligence, if a Board still cannot locate the
50 person licensed under the provisions of this chapter thirty
51 days after the suspension of the person's license, certifi-
52 cate, registration or authority, then the board may revoke
53 the license, certificate, registration or authority of the
54 person without holding a hearing.

55 (f) In all proceedings before a board or court for the
56 suspension or revocation of any certificate, license,
57 registration or authority issued under the provisions of
58 this chapter, a statement of the charges against the holder
59 of the certificate, license, registration or authority and a
60 notice of the time and place of hearing shall be served
61 upon the person as a notice is served under section one,
62 article two, chapter fifty-six of this code at least thirty
63 days prior to the hearing and he or she may appear with
64 witnesses and be heard in person, by counsel, or both. The
65 board may take oral or written proof, for or against the
66 accused, as it may consider advisable. If upon hearing the
67 board finds that the charges are true, it may suspend or
68 revoke the certificate, license, registration or authority and
69 suspension or revocation shall take from the person all
70 rights and privileges acquired thereby.

71 (g) Pursuant to the provisions of section one, article five,
72 chapter twenty-nine-a of this code, informal disposition
73 may also be made by the board of any contested case by
74 stipulation, agreed settlement, consent order or default.
75 Further, the board may suspend its decision and place a
76 licensee found by the board to be in violation of the
77 applicable practice on probation.

78 (h) Any person denied a license, certificate, registration
79 or authority who believes the denial was in violation of
80 this article or the article under which the license, certifi-
81 cate, registration or authority is authorized shall be
82 entitled to a hearing on the action denying the license,
83 certificate, registration or authority. Hearings under this
84 subsection are in accordance with the provisions for
85 hearings which are set forth in this section.

86 (i) A stenographic report of each proceeding on the
87 denial, suspension or revocation of a certificate, license,
88 registration or authority shall be made at the expense of
89 the board and a transcript of the hearing retained in its
90 files. The board shall make a written report of its findings,
91 which shall constitute part of the record.

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

94 (k) On or before the first day of July, two thousand one,
95 every board referred to in this chapter shall adopt proce-
96 dural rules in accordance with the provisions of article
97 three, chapter twenty-nine-a of this code, which shall
98 specify a procedure for the investigation and resolution of
99 all complaints against persons licensed under this chapter.
100 The proposed legislative rules relating only to complaint
101 procedures or contested case hearing procedures required
102 by the prior enactment of this subsection shall be
103 redesignated as procedural rules in accordance with the
104 provisions of article three, chapter twenty-nine-a of this
105 code. Each board shall file the procedural rules required
106 by this subsection by the thirty-first day of January, two
107 thousand one. The public hearing or public comment
108 period conducted for the proposed legislative rules shall
109 serve as the public hearing or public comment period
110 required by section five, article three, chapter twenty-
111 nine-a of this code.

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

Clayton White
.....
Chairman Senate Committee

W. Paul Brey
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell E. Adams
.....
Clerk of the Senate

Gregory M. Sear
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *21st*
Day of *April*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 15 2005

Time 4:00 pm