ENROLLED

SENATE BILL NO. 737

(By Senator Bowman et al)

PASSED April 9, 2005

In Effect 90 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.
(a) Every board referred to in this chapter shall hold at least one meeting each year, at such time and place as it may prescribe by rule, for the examination of applicants who desire to practice their respective professions or occupations in this state and to transact any other business which may legally come before it. The board may hold additional meetings as may be necessary, which shall be called by the secretary at the direction of the president or upon the written request of any three members. A majority of the members of the board constitutes a quorum for the transaction of its business.

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

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

(d) Every board shall provide public access to the record of the disposition of the complaints which it receives in accordance with the provisions of chapter twenty-nine-b of this code. Every board has a duty to report violations of individual practice acts contained in this chapter to the board by which the individual may be licensed and shall do so in a timely manner upon receiving notice of such violations. Every person licensed or registered by a board has a duty to report to the board which licenses or registers him or her a known or observed violation of the practice act or the board's rules by any other person licensed or registered by the same board and shall do so in
a timely manner. Law-enforcement agencies or their personnel and courts shall report in a timely manner to the appropriate board any violations of individual practice acts by any individual.

(e) Whenever a board referred to in this chapter obtains information that a person subject to its authority has engaged in, is engaging in or is about to engage in any act which constitutes or will constitute a violation of the provisions of this chapter which are administered and enforced by that board, it may apply to the circuit court for an order enjoining the act. Upon a showing that the person has engaged, is engaging or is about to engage in any such act, the court shall order an injunction, restraining order or other order as the court may deem appropriate.

§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 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.

(b) 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.
(c) 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.

(d) 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.

(e) 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, except:

1. A board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person's continuation in practice constitutes an immediate danger to the public; or

2. After due diligence, if a board cannot locate a person licensed under the provisions of this chapter within sixty days of a complaint being filed against the licensee, then the board may suspend the license, certificate, registration or authority of the person without holding a hearing. After due diligence, if a Board still cannot locate the person licensed under the provisions of this chapter thirty days after the suspension of the person's license, certificate, registration or authority, then the board may revoke the license, certificate, registration or authority of the person without holding a hearing.
(f) 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.

(g) 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.

(h) 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.

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

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

Chairman Senate Committee
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within............. is approved this the.............

Day of ............., 2005.

Governor