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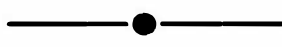
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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2009



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 2309

(By Delegates Morgan, Martin, Argento,  
Beach, Eldridge, Andes and C. Miller)



Passed April 11, 2009

In Effect Ninety Days from Passage

FILED

COMMITTEE SUBSTITUTE 2009 MAY 11 PM 4:07

FOR

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## H. B. 2309

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(BY DELEGATES MORGAN, MARTIN, ARGENTO,  
BEACH, ELDRIDGE, ANDES AND C. MILLER)

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[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §30-28-1, §30-28-2, §30-28-3, §30-28-4, §30-28-5, §30-28-6, §30-28-7, §30-28-8, §30-28-9, §30-28-10, §30-28-11, §30-28-12, §30-28-13, §30-28-14, §30-28-15, §30-28-16, §30-28-17 and §30-28-18 of the Code of West Virginia, 1931, as amended; and to amend said article by adding thereto three new sections, designated §30-28-19, §30-28-20 and §30-28-21, all relating to the practice of occupational therapy; providing definitions; setting forth the scope of practice of occupational therapy; prohibiting practice or use of titles unless licensed; removing the requirement for referral by a physician or other health care practitioner; setting forth supervision requirements for assistants and aides; clarifying qualifications to serve as a board member; setting forth powers and duties of the board; providing exemptions from licensure; clarifying qualifications for licensure; setting forth examination requirements; providing for licensure for

applicants from other jurisdictions; clarifying conditions of limited permits and temporary licenses; providing for renewal, suspension and revocation of licenses; providing for refusal to renew licenses; providing for reinstatement of lapsed licenses; setting forth complaint procedures; establishing grounds for disciplinary actions; providing for hearing procedures and rights of appeal; providing rulemaking authority; providing for criminal investigations, proceedings and penalties; establishing that a single act may constitute evidence of practice; establishing special, retired, volunteer and inactive licenses; providing civil immunity for healthcare professionals donating their expertise for the care and treatment of indigent and needy patients in a clinic setting; and providing effective dates for certain provisions.

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

That §30-28-1, §30-28-2, §30-28-3, §30-28-4, §30-28-5, §30-28-6, §30-28-7, §30-28-8, §30-28-9, §30-28-10, §30-28-11, §30-28-12, §30-28-13, §30-28-14, §30-28-15, §30-28-16, §30-28-17 and §30-28-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §30-28-19, §30-28-20 and §30-28-21, all to read as follows:

**ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.**

**§30-28-1. Short title.**

1 This article is known and may be cited as the “West  
2 Virginia Occupational Therapy Practice Act.”

**§30-28-2. Applicable law.**

1 The practices licensed under the provisions of this article

2 and the West Virginia Board of Occupational Therapy are  
3 subject to the provisions of article one of this chapter, the  
4 provisions of this article, and any rules promulgated  
5 hereunder.

**§30-28-3. Definitions.**

1 As used in this article, the following words and terms  
2 have the following meanings, unless the context clearly  
3 indicates otherwise:

4 (a) "Association" means the West Virginia Occupational  
5 Therapy Association.

6 (b) "Board" means the West Virginia Board of  
7 Occupational Therapy.

8 (c) "Business entity" means any firm, partnership,  
9 association, company, corporation, limited partnership,  
10 limited liability company or other entity doing business in the  
11 State of West Virginia.

12 (d) "Client-related tasks" means tasks which are related  
13 to treatment and which, when performed by an occupational  
14 therapy aide, must be performed under direct supervision,  
15 including routine transfers, routine care of a patient's  
16 personal needs during the course of treatment, execution of  
17 an established routine activity or exercise, and assisting the  
18 supervising occupational therapist or occupational therapy  
19 assistant as directed during the course of treatment.

20 (e) "Direct supervision" means the actual physical  
21 presence of a licensed supervising occupational therapist or  
22 licensed occupational therapy assistant, and the specific  
23 delineation of tasks and responsibilities for personally  
24 reviewing and interpreting the results of any habilitative or

25 rehabilitative procedures conducted by the limited permit  
26 holder, occupational therapy student, or aide. Direct  
27 supervision includes direct close supervision and direct  
28 continuous supervision.

29 (f) "Direct close supervision" means the licensed  
30 supervising occupational therapist or licensed occupational  
31 therapy assistant is in the building and has daily direct  
32 contact at the site of work.

33 (g) "Direct continuous supervision" means the licensed  
34 supervising occupational therapist or licensed occupational  
35 therapy assistant is physically present and in direct line of  
36 sight of the occupational therapy student or aide.

37 (h) "General supervision" means initial direction and  
38 periodic inspection of the activities of a licensed occupational  
39 therapist assistant by the supervising licensed occupational  
40 therapist, but does not necessarily require constant physical  
41 presence on the premises while the activities are performed.

42 (i) "License" means a valid and current license issued by  
43 the board under the provisions of this article.

44 (j) "Nonclient-related tasks" means tasks which are not  
45 related to treatment and do not require independent clinical  
46 reasoning, including clerical and maintenance activities,  
47 housekeeping, preparation of the work area or equipment,  
48 transporting patients, and ordering supplies, and which, when  
49 performed by an occupational therapy aide, must be  
50 performed under general supervision.

51 (k) "Occupational Therapist" means a person licensed by  
52 the board under the provisions of this article to engage in the  
53 practice of occupational therapy.

54 (l) "Occupational Therapy Assistant" means a person  
55 licensed by the board under the provisions of this article to  
56 assist in the practice of occupational therapy under the  
57 general supervision of an Occupational Therapist.

58 (m) "Occupational Therapy Aide" means a person who  
59 may provide nonclient-related tasks under general  
60 supervision, or specifically delegated client-related tasks,  
61 subject to the conditions set forth in subsection (f), section  
62 four of this article, under direct supervision of an  
63 Occupational Therapist or an Occupational Therapy  
64 Assistant, in accordance with the provisions of this article.

65 (n) "The practice of occupational therapy" means the  
66 therapeutic use of everyday life activities or occupations to  
67 address the physical, cognitive, psychosocial, sensory, and  
68 other aspects of performance of individuals or groups of  
69 individuals, including those who have or are at risk for  
70 developing an illness, injury, disease, disorder, condition,  
71 impairment, disability, activity limitation or participation  
72 restriction, to promote health, wellness and participation in  
73 roles and situations in home, school, workplace, community  
74 and other settings.

**§30-28-4. Scope of practice; license and supervision requirements.**

1 (a) The scope of practice of occupational therapy  
2 includes, but is not limited to:

3 (1) Methods or strategies selected to direct the process of  
4 interventions such as:

5 (A) Establishment, remediation, or restoration of a skill  
6 or ability that has not yet developed or is impaired;

7 (B) Compensation, modification, or adaptation of activity  
8 or environment to enhance performance;

9 (C) Maintenance and enhancement of capabilities without  
10 which performance in everyday life activities would decline;

11 (D) Health promotion and wellness to enable or enhance  
12 performance in everyday life activities; and

13 (E) Prevention of barriers to performance, including  
14 disability prevention.

15 (2) Evaluation of factors affecting activities of daily  
16 living (ADL), instrumental activities of daily living (IADL),  
17 education, work, play, leisure and social participation,  
18 including:

19 (A) Client factors, including body functions and body  
20 structures;

21 (B) Habits, routines, roles and behavior patterns;

22 (C) Cultural, physical, environmental, social and spiritual  
23 contexts and activity that affect performance; and

24 (D) Performance skills, including motor, process and  
25 communication/interaction skills.

26 (3) Interventions and procedures to promote or enhance  
27 safety and performance in activities of daily living (ADL),  
28 instrumental activities of daily living (IADL), education,  
29 work, play, leisure and social participation, including:

30 (A) Therapeutic use of occupations and preparatory,  
31 adjunctive and functional activities;

32 (B) Training in self-care, self-management home  
33 management and community/work reintegration;

34 (C) Development, remediation, or compensation of  
35 physical, cognitive, neuromuscular, sensory functions, visual,  
36 vestibular and behavioral skills;

37 (D) Therapeutic use of self, including one's personality,  
38 insights, perceptions and judgments, as part of the therapeutic  
39 process;

40 (E) Education and training of individuals, including  
41 family members, care givers and others;

42 (F) Care coordination, case management and transition  
43 services;

44 (G) Consultative services to groups, programs,  
45 organizations or communities;

46 (H) Modification of environments (home, work, school  
47 or community) and adaptation of processes, including the  
48 application of ergonomic principles;

49 (I) Assessment, design, fabrication, application, fitting  
50 and training in assistive technology, adaptive devices,  
51 orthotic devices and training in the use of prosthetic devices  
52 to enhance occupational performance;

53 (J) Assessment, recommendation and training in  
54 techniques to enhance functional mobility, including  
55 wheelchair management;

56 (K) Community mobility and re-entry;

57 (L) Management of feeding, eating and swallowing to  
58 enable eating and feeding performance; and



59 (M) Application of physical agent modalities, and use of  
60 a range of specific therapeutic procedures and techniques to  
61 enhance occupational performance skills. Use of physical  
62 agent modalities by occupational therapy assistants must be  
63 consistent with their education (e.g. superficial thermal and  
64 mechanical modalities) and used under the general  
65 supervision of an occupational therapist. The use of deep  
66 thermal or electrical modalities may only be performed by  
67 the occupational therapy assistant under the direct  
68 supervision of an occupational therapist, until the board shall  
69 promulgate rules as well as establish competency standards  
70 for the use of the modalities.

71 (b) No person may engage in the practice of occupational  
72 therapy or present herself or himself as an occupational  
73 therapist or occupational therapy assistant in this state, or use  
74 the words "occupational therapist," "licensed occupational  
75 therapist," "occupational therapist registered," "occupational  
76 therapy assistant," "licensed occupational therapy assistant,"  
77 "certified occupational therapy assistant," or "occupational  
78 therapy aide," or the letters "O.T.," "L.O.T.," "O.T.R.,"  
79 "O.T.A.," "L.O.T.A.," "C.O.T.A.," or any other words,  
80 letters, abbreviations or insignia indicating or implying that  
81 he or she is an occupational therapist or occupational therapy  
82 assistant, unless he or she holds a valid, current license issued  
83 in accordance with the provisions of this article, which has  
84 not expired, been suspended or revoked.

85 (c) No business entity may advertise or otherwise offer to  
86 provide or convey the impression that it is providing  
87 occupational therapy unless an individual holding a current  
88 valid license or permit under this article renders the  
89 occupational therapy services to which reference is made.

90 (d) An occupational therapy assistant may assist in the  
91 practice of occupational therapy under the general  
92 supervision of an occupational therapist.

93 (e) An occupational therapist or an occupational therapy  
94 assistant may delegate nonclient-related tasks to an  
95 occupational therapy aide only under the following  
96 conditions:

97 (1) The occupational therapy aide functions under the  
98 general supervision of either the occupational therapist or the  
99 occupational therapy assistant who is under the general  
100 supervision of the occupational therapist; and

101 (2) The occupational therapy aide provides only tasks for  
102 which he or she has been trained and has demonstrated  
103 competence.

104 (f) An occupational therapist or an occupational therapy  
105 assistant may delegate specifically selected client-related  
106 tasks to an occupational therapy aide only under the  
107 following conditions:

108 (1) The occupational therapy aide functions under the  
109 direct continuous supervision of either the occupational  
110 therapist or the occupational therapy assistant that is under  
111 the general supervision of the occupational therapist;

112 (2) The occupational therapy aide provides only tasks for  
113 which he or she has been trained and has demonstrated  
114 competence;

115 (3) The outcome anticipated for the delegated task is  
116 predictable;

117 (4) The client and the environment are stable and will not  
118 require judgment, interpretation or adaptation by the  
119 occupational therapy aide; and

120 (5) The supervising occupational therapist is responsible  
121 for the tasks delegated to the occupational therapy aide.

**§30-28-5. West Virginia Board of Occupational Therapy.**

1 (a) The West Virginia Board of Occupational Therapy is  
2 continued with the following five members appointed by the  
3 governor by and with the advice and consent of the Senate:

4 (1) Three licensed occupational therapists;

5 (2) One licensed occupational therapy assistant; and

6 (3) One citizen member, who is not licensed under the  
7 provisions of this article.

8 (b) The occupational therapist and occupational therapy  
9 assistant members shall have been engaged in rendering  
10 occupational therapy services to the public, teaching,  
11 consulting or conducting research in occupational therapy for  
12 at least three years immediately preceding their  
13 appointments.

14 (c) No board member may serve as an officer of the West  
15 Virginia Occupational Therapy Association concurrently with  
16 his or her service on the board.

17 (d) The members of the board in office on December 31,  
18 2008, shall, unless sooner removed, continue to serve until  
19 their respective terms expire or their successors have been  
20 appointed and qualified.

21 (e) The term shall be for three years commencing on  
22 January 1. A member may not serve more than two  
23 consecutive full terms. A member having served two  
24 consecutive full terms may not be appointed for one year  
25 after completion of his or her second full term. A member  
26 may continue to serve until a successor has been appointed  
27 and qualified.

28 (f) Each licensed member of the board, at the time of his  
29 or her appointment, must have held a license in this state for  
30 a period of not less than three years immediately preceding  
31 the appointment.

32 (g) Each member of the board must be a resident of this  
33 state during the appointment term.

34 (h) A vacancy on the board shall be filled by appointment  
35 by the Governor for the unexpired term of the member whose  
36 office is vacant and the appointment shall be made within  
37 sixty days of the vacancy.

38 (i) The Governor may remove any member from the  
39 board for neglect of duty, incompetency or official  
40 misconduct.

41 (j) A member of the board immediately and automatically  
42 forfeits membership to the board if his or her license to  
43 practice is suspended or revoked, is convicted of a felony  
44 under the laws of any jurisdiction, or becomes a nonresident  
45 of this state.

46 (k) The board shall elect annually one of its members as  
47 chairperson who serves at the will of the board.

48 (l) Each member of the board is entitled to compensation  
49 and expense reimbursement in accordance with article one of  
50 this chapter.

51 (m) A majority of the members of the board constitutes  
52 a quorum.

53 (n) The board shall hold at least two annual meetings.  
54 Other meetings may be held at the call of the chairperson or  
55 upon the written request of two members, at the time and  
56 place as designated in the call or request.

57 (o) Prior to commencing his or her duties as a member of  
58 the board, each member shall take and subscribe to the oath  
59 required by section five, article four of the Constitution of  
60 this state.

**§30-28-6. Powers and duties of the board.**

1 (a) The board has all the powers and duties set forth in  
2 this article, by legislative rule, in article one of this chapter  
3 and elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings and conduct hearings;

6 (2) Establish requirements for licenses and permits;

7 (3) Establish procedures for submitting, approving and  
8 rejecting applications for licenses and permits;

9 (4) Determine the qualifications of any applicant for a  
10 license or permit;

11 (5) Propose rules for legislative approval relating to  
12 professional conduct and ethical standards of practice;

13 (6) Communicate disciplinary actions to relevant state  
14 and federal authorities, the National Board for Certification  
15 in Occupational Therapy (NBCOT), the American  
16 Occupational Therapy Association (AOTA) and other  
17 applicable authorities when public safety is at risk;

18 (7) Maintain an office and hire, discharge, establish the job  
19 requirements and fix the compensation of employees and  
20 contracted employees necessary to enforce the provisions of this  
21 article including, but not limited to, the executive secretary;

22 (8) Investigate alleged violations of the provisions of this  
23 article, legislative rules, orders and final decisions of the  
24 board;

25 (9) Conduct disciplinary hearings of persons regulated by  
26 the board;

27 (10) Determine disciplinary action and issue orders;

28 (11) Institute appropriate legal action for the enforcement  
29 of the provisions of this article;

30 (12) Maintain an accurate registry of names and  
31 addresses of all persons regulated by the board;

32 (13) Keep accurate and complete records of its  
33 proceedings, and certify the same as may be necessary and  
34 appropriate;

35 (14) Establish by legislative rule the continuing education  
36 and competency requirements for licensees;

37 (15) Issue, renew, combine, deny, suspend, revoke or  
38 reinstate licenses and permits;

39 (16) Establish a fee schedule;

40 (17) Take all other actions necessary and proper to  
41 effectuate the purposes of this article; and

42 (18) Propose rules in accordance with the provisions of  
43 article three, chapter twenty-nine-a of this code to implement  
44 the provisions of this article.

45 (c) The board may:

46 (1) Approve and contract with third parties to administer  
47 the examinations required under the provisions of this article;

48 (2) Sue and be sued in its official name as an agency of  
49 this state; and

50 (3) Confer with the Attorney General or his or her  
51 assistants in connection with legal matters and questions.

**§30-28-7. Rulemaking.**

1 (a) The board shall propose rules for legislative approval,  
2 in accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code, to implement the provisions of  
4 this article, including:

5 (1) Standards and requirements for licenses and permits;

6 (2) Designate third parties to establish educational  
7 requirements and to prepare and/or administer examinations  
8 and reexaminations;

9 (3) Procedures for the issuance and renewal of a license,  
10 temporary license and limited permit;

11 (4) A fee schedule;

12 (5) Continuing education and competency requirements  
13 for licensees;

14 (6) Establishment of competency standards;

15 (7) The procedures for denying, suspending, revoking,  
16 reinstating or limiting the practice of a licensee or permittee;

17 (8) Requirements for reinstatement of revoked licenses; and

18 (9) Any other rules necessary to effectuate the provisions  
19 of this article.

20 (b) The board is authorized to promulgate emergency  
21 rules in accordance with section fifteen, article three, chapter  
22 twenty-nine-a of this code to establish competency standards  
23 for advance treatment techniques as set forth in subdivision  
24 six, subsection (a) of this section.

25 (c) All rules in effect on the effective date of this article  
26 shall remain in effect until they are amended or repealed, and  
27 references to provisions of former enactments of this article  
28 are interpreted to mean provisions of this article.

**§30-28-8. Fees; special revenue account; administrative fines.**

1 (a) All fees and other moneys, except administrative  
2 fines, received by the board shall be deposited in a separate  
3 special revenue fund in the State Treasury designated the  
4 “West Virginia Board of Occupational Therapy”, which is  
5 continued. The fund is used by the board for the  
6 administration of this article. Except as may be provided in  
7 article one of this chapter, the board retains the amount in the  
8 special revenue account from year to year. No compensation  
9 or expense incurred under this article is a charge against the  
10 General Revenue Fund.

11 (b) Any amount received as fines, imposed pursuant to  
12 this article, shall be deposited into the General Revenue Fund  
13 of the State Treasury.

**§30-28-9. Persons and practices not affected.**

1 This article does not prevent or restrict the practice,  
2 services or activities of:



3 (1) Any person licensed under any other law of this state  
4 performing services within the authorized scope of practice  
5 for which he or she is licensed;

6 (2) Any person pursuing a course of study leading to a  
7 degree in Occupational Therapy from an accredited  
8 educational program if the person acts under the supervision  
9 of a clinical supervisor or instructor of the accredited  
10 education program and is designated by a title which clearly  
11 indicates his or her status as a student; or

12 (3) Any person fulfilling the supervised fieldwork  
13 experience requirements of section ten of this article.

**§30-28-10. Qualifications of applicants for license.**

1 To be eligible for a license to engage in the practice of  
2 occupational therapy, the applicant must:

3 (1) Be of good moral character;

4 (2) Have successfully completed the academic  
5 requirements of an educational program for Occupational  
6 Therapists or Occupational Therapy Assistants that is  
7 accredited by the American Occupational Therapy  
8 Association's Accreditation Council for Occupational  
9 Therapy Education (ACOTE) or its predecessor  
10 organizations;

11 (3) Have successfully completed a period of supervised  
12 fieldwork experience required by the recognized  
13 educational institution where he or she met the academic  
14 requirements;

15 (4) Have passed an examination approved by the board;

16 (5) Have filed an application on forms provided by the  
17 board; and

18 (6) Have paid the applicable fee.

**§30-28-11. Examination.**

1 (a) A person who has met the requirements of subsections  
2 (1), (2) and (3), section ten of this article, may make  
3 application for examination.

4 (b) Each applicant for licensure shall be examined by  
5 written or computerized examination to test his or her  
6 knowledge of the basic and clinical sciences relating to  
7 occupational therapy, and occupational therapy theory and  
8 practice, including the professional skills and judgment of the  
9 applicant in the utilization of occupational therapy techniques  
10 and methods, and other subjects the board may require to  
11 determine the fitness for practice of the applicant. The  
12 examination may be administered by the National Board for  
13 Certification in Occupational Therapy, Inc. (NBCOT) or  
14 another nationally recognized credentialing body as approved  
15 by the board.

**§30-28-12. Licensees from other jurisdictions; internationally  
educated applicants.**

1 (a) The board may issue a license to practice to any  
2 applicant who presents proof of current licensure as an  
3 occupational therapist or an occupational therapy assistant in  
4 another jurisdiction which requires standards for licensure  
5 considered by the board or by a board-approved credentialing  
6 agency to be equivalent to the requirements for licensure in  
7 this state and who meets the requirements of section ten of  
8 this article.

9 (b) The board may grant a license to an applicant who  
10 was educated outside of the United States or its territories in  
11 an educational program whose standards are determined by  
12 the board or by a board-approved credentialing agency to be  
13 equivalent to the standards required for licensure in this state  
14 and who meets the requirements of section ten of this article.

15 (c) In its discretion, the board may examine a person by  
16 a written, oral or skills test for licensing under this section,  
17 and may enter into agreements for reciprocal licensing with  
18 other jurisdictions having substantially similar requirements  
19 for licensure.

**§30-28-13. Issuance of a license, limited permit and temporary  
license.**

1 (a) The board shall issue a license to any person who  
2 meets the requirements of this article upon payment of the  
3 license fee prescribed.

4 (b) The board may issue a limited permit to persons who  
5 have completed the education and fieldwork experience  
6 requirements of this article. The holder of a limited permit  
7 may practice occupational therapy only under the direct close  
8 supervision of an occupational therapist who holds a current  
9 license in this state. A limited permit is not renewable, and  
10 is valid for ninety days: *Provided*, That the limited permit  
11 expires immediately if the holder receives notification of a  
12 failing score on the examination.

13 (c) The board may issue a temporary license to an  
14 occupational therapist or an occupational therapy assistant who  
15 is licensed and in good standing in a jurisdiction whose  
16 standards are determined by the board or by a board-approved  
17 credentialing agency to be equivalent to the standards required  
18 for licensure in this state and who has submitted an application

19 and the required fee. The holder of a temporary license may  
20 practice occupational therapy only in accordance with the  
21 provisions of this article. A temporary license is nonrenewable  
22 and is valid for thirty days.

23 (d) The board shall prescribe the form of licenses. The  
24 licensee shall conspicuously display the license or a copy of  
25 the license at his or her principal place of employment. The  
26 licensee shall produce the original license upon the request of  
27 the board.

**§30-28-14. Renewal of license; renewal of lapsed license;  
suspension, revocation and refusal to renew;  
reinstatement of revoked license.**

1 (a) Licenses may be renewed biennially upon  
2 documentation of required continuing education and payment  
3 of a renewal fee.

4 (b) A license which has lapsed may be renewed within  
5 one year of its expiration date in the manner set by the board.  
6 After the expiration of one year, a license may be renewed  
7 only by complying with the requirements relating to the  
8 issuance of an original license.

9 (c) The board may suspend, revoke or refuse to renew a  
10 license for any reason which would justify the denial of an  
11 original application for licensure.

12 (d) The board may consider the reinstatement of a license  
13 which has been revoked upon a showing that the applicant  
14 can resume practicing with reasonable skill and safety.

**§30-28-15. Special volunteer occupational therapist license;  
civil immunity for voluntary services rendered to  
indigents.**

1 (a) There is established a special volunteer occupational  
2 therapist license for occupational therapists who are retired  
3 or are retiring from the active practice of occupational  
4 therapy and who wish to donate their expertise for the care  
5 and treatment of indigent and needy patients in the clinical  
6 setting of clinics organized, in whole or in part, for the  
7 delivery of health care services without charge.

8 (b) The special volunteer occupational therapist license  
9 shall be issued by the board to occupational therapists  
10 licensed or otherwise eligible for licensure under this article  
11 without the payment of an application fee, license fee or  
12 renewal fee, and the initial license shall be issued for the  
13 remainder of the licensing period, and renewed consistent  
14 with the boards other licensing requirements.

15 (c) The board shall develop application forms for the  
16 special license provided in this section which shall contain  
17 the occupational therapist's acknowledgment that:

18 (1) The occupational therapist's practice under the special  
19 volunteer occupational therapist license will be exclusively  
20 devoted to providing occupational therapy care to needy and  
21 indigent persons in West Virginia;

22 (2) The occupational therapist will not receive any  
23 payment or compensation, either direct or indirect, or have  
24 the expectation of any payment or compensation, for any  
25 occupational therapy services rendered under the special  
26 volunteer occupational therapist license;

27 (3) The occupational therapist will supply any supporting  
28 documentation that the board may reasonably require; and,

29 (4) The occupational therapist agrees to continue to  
30 participate in continuing education as required by the board  
31 for a special volunteer occupational therapists license.

32 (d) Any occupational therapist who renders any  
33 occupational therapy service to indigent and needy patients  
34 of a clinic organized, in whole or in part, for the delivery of  
35 health care services without charge under a special volunteer  
36 occupational therapist license authorized under this section  
37 without payment or compensation or the expectation or  
38 promise of payment or compensation is immune from  
39 liability for any civil action arising out of any act or omission  
40 resulting from the rendering of the occupational therapy  
41 service at the clinic unless the act or omission was the result  
42 of the occupational therapist's gross negligence or willful  
43 misconduct. In order for the immunity under this subsection  
44 to apply, before the rendering of any services by the  
45 occupational therapist at the clinic, there must be a written  
46 agreement between the occupational therapist and the clinic  
47 stating that the occupational therapist will provide voluntary  
48 uncompensated occupational therapy services under the  
49 control of the clinic to patients of the clinic: *Provided*, That  
50 any clinic entering into such written agreement is required to  
51 maintain liability coverage of not less than one million  
52 dollars per occurrence.

53 (e) Notwithstanding the provisions of subsection (d) of  
54 this section, a clinic organized, in whole or in part, for the  
55 delivery of health care services without charge is not relieved  
56 from imputed liability for the negligent acts of an  
57 occupational therapist rendering voluntary occupational  
58 therapy services at or for the clinic under a special volunteer  
59 occupational therapist license authorized under this section.

60 (f) For purposes of this section, "otherwise eligible for  
61 licensure" means the satisfaction of all the requirements for  
62 licensure in this article except the fee requirements.

63 (g) Nothing in this section may be construed as requiring  
64 the board to issue a special volunteer occupational therapist

65 license to any occupational therapist whose occupational  
66 therapist license is or has been subject to any disciplinary  
67 action or to any occupational therapist who has surrendered  
68 an occupational therapist license or caused such license to  
69 lapse, expire and become invalid in lieu of having a  
70 complaint initiated or other action taken against his or her  
71 occupational therapist license, or who has elected to place an  
72 occupational therapist license in inactive status in lieu of  
73 having a complaint initiated or other action taken against his  
74 or her occupational therapist license, or who has been denied  
75 an occupational therapist license.

76 (h) Any policy or contract of liability insurance providing  
77 coverage for liability sold, issued or delivered in this state to  
78 any occupational therapist covered under the provisions of  
79 this article shall be read so as to contain a provision or  
80 endorsement whereby the company issuing such policy  
81 waives or agrees not to assert as a defense on behalf of the  
82 policyholder or any beneficiary thereof, to any claim covered  
83 by the terms of such policy within the policy limits, the  
84 immunity from liability of the insured by reason of the care  
85 and treatment of needy and indigent patients by an  
86 occupational therapist who holds a special volunteer  
87 occupational therapist license.

**§30-28-16. Complaints; investigations; due process procedure;  
grounds for disciplinary action.**

1 (a) The board may upon its own motion based on credible  
2 information, and shall, upon the written complaint of any  
3 person, cause an investigation to be made to determine  
4 whether grounds exist for disciplinary action under this  
5 article or the legislative rules of the board.

6 (b) Upon initiation or receipt of the complaint, the board  
7 shall provide a copy of the complaint to the licensee or  
8 permittee.

9 (c) After reviewing any information obtained through an  
10 investigation, the board shall determine if probable cause  
11 exists that the licensee or permittee has violated any  
12 provision of subsection (g) of this section or rules  
13 promulgated pursuant to this article.

14 (d) Upon a finding that probable cause exists that the  
15 licensee or permittee has violated any provision of this  
16 subsection (g) of this section or rules promulgated pursuant  
17 to this article, the board may enter into a consent decree or  
18 hold a hearing for the suspension or revocation of the license  
19 or permit or the imposition of sanctions against the licensee  
20 or permittee. Any hearing shall be held in accordance with  
21 the provisions of this article.

22 (e) Any member of the board or the executive director of  
23 the board may issue subpoenas and subpoenas duces tecum  
24 to obtain testimony and documents to aid in the investigation  
25 of allegations against any person regulated by the article.

26 (f) Any member of the board or its executive director  
27 may sign a consent decree or other legal document on behalf  
28 of the board.

29 (g) The board may, after notice and opportunity for  
30 hearing, deny or refuse to renew, suspend or revoke the  
31 license of, impose probationary conditions upon or take  
32 disciplinary action against, any licensee for any of the  
33 following reasons once a violation has been proven by a  
34 preponderance of the evidence:

35 (1) Obtaining a license or permit by fraud,  
36 misrepresentation or concealment of material facts;

37 (2) Being convicted of a felony or other crime involving  
38 moral turpitude;



39 (3) Being guilty of unprofessional conduct as defined by  
40 legislative rule of the board;

41 (4) A violation of a lawful order or legislative rule of the  
42 board;

43 (5) Providing substandard care as an Occupation  
44 Therapist due to a deliberate or negligent act or failure to  
45 act regardless of whether actual injury to a patient is  
46 established;

47 (6) Providing substandard care as an Occupational  
48 Therapy Assistant, including exceeding the authority to  
49 perform components of intervention selected and delegated  
50 by the supervising Occupational Therapist regardless of  
51 whether actual injury to a patient is established;

52 (7) Knowingly delegating responsibilities to an individual  
53 who does not have the knowledge, skills or abilities to  
54 perform those responsibilities;

55 (8) Failing to provide appropriate supervision to an  
56 Occupational Therapy Assistant or Aide in accordance with  
57 this article and legislative rules of the board;

58 (9) Practicing as an Occupational Therapist or  
59 Occupational Therapy Assistant when competent services to  
60 recipients may not be provided due to the therapist's own  
61 physical or mental impairment;

62 (10) Having had an Occupational Therapist or  
63 Occupational Therapy Assistant license revoked or  
64 suspended, other disciplinary action taken, or an application  
65 for licensure refused, revoked or suspended by the proper  
66 authorities of another jurisdiction;

67 (11) Engaging in sexual misconduct. For the purposes of  
68 this subdivision, sexual misconduct includes:

69 (A) Engaging in or soliciting sexual relationships,  
70 whether consensual or nonconsensual, while an Occupational  
71 Therapist or Occupational Therapy Assistant/patient  
72 relationship exists with that person; or

73 (B) Making sexual advances, requesting sexual favors or  
74 engaging in physical contact of a sexual nature with patients  
75 or clients;

76 (12) Aiding or abetting a person who is not licensed as an  
77 Occupational Therapist or Occupational Therapy Assistant in  
78 this state and who directly or indirectly performs activities  
79 requiring a license;

80 (13) Abandoning or neglecting a patient or client under  
81 and in need of immediate professional care without making  
82 reasonable arrangements for the continuation of care; or

83 (14) Engaging in any act which has endangered or is  
84 likely to endanger the health, welfare or safety of the public.

85 (h) For the purposes of subsection (g) of this section,  
86 effective July 15, 2009, disciplinary action may include:

87 (1) Reprimand;

88 (2) Probation;

89 (3) Administrative fine, not to exceed \$1,000 per day per  
90 violation;

91 (4) Mandatory attendance at continuing education  
92 seminars or other training;

93 (5) Practicing under supervision or other restriction;

94 (6) Requiring the licensee or permittee to report to the  
95 board for periodic interviews for a specified period of time;  
96 or

97 (7) Other disciplinary action considered by the board to  
98 be necessary to protect the public, including advising other  
99 parties whose legitimate interests may be at risk.

**§30-28-17. Procedures for hearing; right of appeal.**

1 (a) Hearings shall be governed by the provisions of  
2 section eight, article one of this chapter.

3 (b) The board may conduct the hearing or elect to have an  
4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law  
6 judge, the administrative law judge shall prepare a proposed  
7 written order at the conclusion of a hearing containing  
8 findings of fact and conclusions of law. The proposed order  
9 may contain proposed disciplinary actions if the board so  
10 directs. The board may accept, reject or modify the decision  
11 of the administrative law judge.

12 (d) Any member or the executive director of the board  
13 has the authority to administer oaths, examine any person  
14 under oath and issue subpoenas and subpoenas duces tecum.

15 (e) If, after a hearing, the board determines the licensee  
16 or permittee has violated any provision of this article or the  
17 board's rules, a formal written decision shall be prepared  
18 which contains findings of fact, conclusions of law and a  
19 specific description of the disciplinary actions imposed.

**§30-28-18. Judicial review.**

1 Any licensee or permittee adversely affected by a decision  
2 of the board entered after a hearing may obtain judicial review  
3 of the decision in accordance with section four, article five,  
4 chapter twenty-nine-a of this code, and may appeal any ruling  
5 resulting from judicial review in accordance with article six,  
6 chapter twenty-nine-a of this code.

**§30-28-19. Criminal proceedings; penalties.**

1 (a) When, as a result of an investigation under this article  
2 or otherwise, the board has reason to believe that a licensee  
3 or permittee has committed a criminal offense under this  
4 article, the board may bring the information to the attention  
5 of an appropriate law-enforcement official.

6 (b) Effective July 15, 2009, a person violating a provision  
7 of this article is guilty of a misdemeanor and, upon  
8 conviction, shall be fined not less than \$500 nor more than  
9 \$1,000 or confined in jail not more than six months, or both  
10 fined and confined.

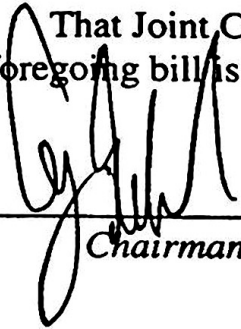
**§30-28-20. Single act evidence of practice.**

1 In any action brought or in any proceeding initiated under  
2 this article, evidence of the commission of a single act  
3 prohibited by this article is sufficient to justify a penalty,  
4 injunction, restraining order or conviction without evidence  
5 of a general course of conduct.

**§30-28-21. Effective dates of certain provisions.**

1 The provisions of this article as amended and reenacted  
2 during the regular session of 2009, except for the provisions  
3 of sections seven, sixteen and nineteen, are effective as of  
4 July 1, 2009.

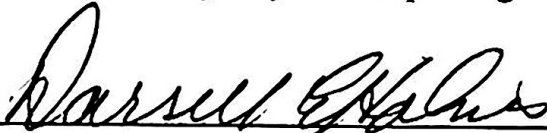
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

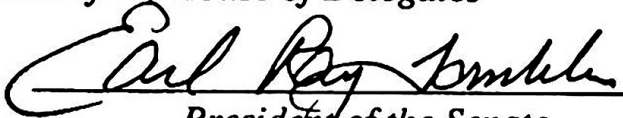
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

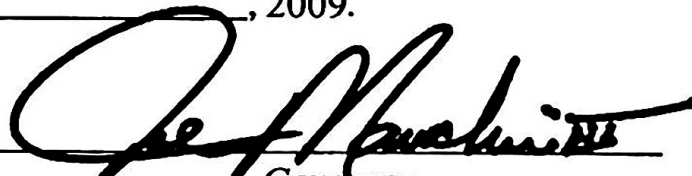
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 11<sup>th</sup>  
day of May, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAY - 6 2009

Time 3:45 p