

HB 4142

WEST VIRGINIA LEGISLATURE

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LEGISLATURE

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SECOND REGULAR SESSION, 2010



ENROLLED

House Bill No. 4142

(By Delegates Morgan, Stephens, Swartzmiller,
Martin, Hartman, Manypenny and Staggers)



Passed March 13, 2010

In Effect Ninety Days From Passage

E N R O L L E D

FILED
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H. B. 4142

OFFICE OF THE CLERK
SECRETARY OF STATE

(BY DELEGATES MORGAN, STEPHENS, SWARTZMILLER,
MARTIN, HARTMAN, MANYPENNY AND STAGGERS)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §30-17-1, §30-17-2, §30-17-3, §30-17-4, §30-17-5, §30-17-6, §30-17-7, §30-17-8, §30-17-9, §30-17-10, §30-17-11, §30-17-12, §30-17-13, §30-17-14, §30-17-15 and §30-17-16 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §30-17-17, §30-17-18 and §30-17-19, all relating to the State Board of Sanitarians; prohibiting the practice of environmental health science and public health sanitation without a license, certification or permit; updating definitions; changing the board composition; clarifying the powers and duties of the board; clarifying rule-making authority; authorizing emergency rules; continuing a special revenue account; establishing license, permit and certificate requirements; providing exemptions from licensure; licensing requirements for persons licensed in another state; establishing renewal requirements; requiring display of license, certification and permit; setting grounds for disciplinary actions; establishing specific disciplinary actions; providing procedures for investigation of complaints, judicial review, appeals of decisions, hearings, notice and civil causes of action; providing criminal penalties; and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That §30-17-1, §30-17-2, §30-17-3, §30-17-4, §30-17-5, §30-17-6, §30-17-7, §30-17-8, §30-17-9, §30-17-10, §30-17-11, §30-17-12, §30-17-13, §30-17-14, §30-17-15 and §30-17-16 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 §30-17-17, §30-17-18 and §30-17-19, all to read as follows:

ARTICLE 17. SANITARIANS.

§30-17-1. Unlawful acts.

1 It is unlawful for any person to practice or offer to
2 practice environmental health science and public health
3 sanitation in this state without being licensed, certified or
4 permitted under the provisions of this article, or to advertise
5 or use any title or description tending to convey the
6 impression that the person is a registered sanitarian,
7 sanitarian or sanitarian-in-training unless he or she has been
8 duly authorized under the provisions of this article, and the
9 license, certification or permit has not expired or been
10 suspended or revoked.

§30-17-2. Applicable law.

1 The practice of environmental health science and public
2 health sanitation, and the board are subject to the provisions
3 of article one of this chapter, the provisions of this article and
4 any rules promulgated hereunder.

§30-17-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings:

- 3 (a) “Board” means the State Board of Sanitarians.
- 4 (b) “Bureau” means the Bureau for Public Health.
- 5 (c) “Certificate holder” means a person holding a
6 certification issued by the board.
- 7 (d) “Certificate” means a document issued to a sanitarian
8 under the provisions of this article.
- 9 (e) “Environmental health science” means public health
10 science that includes, but is not limited to, the following
11 bodies of knowledge: air quality, food quality and protection,
12 hazardous and toxic substances, consumer product safety,
13 housing, institutional health and safety, community noise
14 control, radiation protection, recreational facilities, solid and
15 liquid waste management, vector control, drinking water
16 quality, milk sanitation and rabies control.
- 17 (f) “License” means a document issued to a registered
18 sanitarian under the provisions of this article.
- 19 (g) “Licensee” means a person holding a license issued
20 by the board.
- 21 (h) “Permit” means a document issued to a sanitarian-in-
22 training under the provisions of this article.
- 23 (i) “Permittee” means a person holding a permit issued by
24 the board.
- 25 (j) “Practice of public health sanitation” means the
26 consultation, instruction, investigation, inspection or
27 evaluation by an employee of the bureau, or a municipal or
28 county health department with the primary purpose of
29 improving or conducting administration of enforcement of
30 state laws and rules.

31 (k) "Registered sanitarian" means a person who is
32 licensed by the board and is uniquely qualified by education,
33 specialized training, experience and examination to assist in
34 the enforcement of public health sanitation laws and
35 environmental sanitation regulations, and to effectively plan,
36 organize, manage, evaluate and execute one or more of the
37 many diverse disciplines comprising the field of public health
38 sanitation.

39 (l) "Sanitarian" means a person who is certified by the
40 board and is uniquely qualified by education in the arts and
41 sciences, specialized training and credible field experience to
42 assist in the enforcement of public health sanitation laws and
43 environmental sanitation regulations, and to effectively plan,
44 organize, manage, evaluate and execute one or more of the
45 many diverse disciplines comprising the field of public health
46 sanitation.

47 (m) "Sanitarian-in-training" means a person who is
48 permitted by the board and possesses the necessary
49 educational qualifications for certificate as a sanitarian, but
50 who has not completed the experience requirements in the
51 fields of public health sanitation and environmental health
52 science as required for certificate.

§30-17-4. State Board of Sanitarians.

1 (a) The Board of Registration for Sanitarians is continued
2 and commencing July 1, 2010, shall be known as the State
3 Board of Sanitarians. Any member of the board, except one
4 registered sanitarian, in office on July 1, 2010, may continue
5 to serve until his or her successor has been appointed and
6 qualified.

7 (b) Prior to July 1, 2010, the Governor, by and with the
8 advice and consent of the Senate, shall appoint one certified
9 sanitarian to replace one registered sanitarian.

10 (c) Commencing July 1, 2010, the board shall consist of
11 the following seven voting members with staggered terms
12 and 1 non-voting member:

13 (1) The Commissioner of the Bureau of Public Health, or
14 his or her designee, who is a nonvoting member;

15 (2) Four members who are registered sanitarians, who are
16 voting members;

17 (3) One member who has a certificate as a sanitarian at
18 the time of the appointment, who is a voting member:
19 *Provided*, That if the member becomes a registered sanitarian
20 during his or her appointment term, then the person may not
21 be reappointed as the certified sanitarian member, but may be
22 reappointed as a registered sanitarian member; and

23 (4) Two citizen members, who are not licensed, certified
24 or permitted under the provisions of this article, and who do
25 not perform any services related to the practice of the
26 professions regulated under the provisions of this article, who
27 are voting members.

28 (d) Each voting member must be appointed by the
29 Governor, by and with the advice and consent of the Senate,
30 and must be a resident of this state during the appointment
31 term.

32 (e) The term of each voting board member is five years.

33 (f) No voting member may serve more than two
34 consecutive full terms and any voting member having served
35 two full terms may not be appointed for one year after
36 completion of his or her second full term. A voting member
37 shall continue to serve until his or her successor has been
38 appointed and qualified.

39 (g) Each licensed or certified member shall have been
40 engaged in the practice of environmental health science or
41 public health sanitation for at least five years immediately
42 preceding the appointment.

43 (h) Each licensed or certified member shall maintain an
44 active license or certificate with the board during his or her
45 term.

46 (i) The Governor may remove any voting member from
47 the board for neglect of duty, incompetency or official
48 misconduct.

49 (j) A licensed or certified member of the board
50 immediately and automatically forfeits membership to the
51 board if his or her license or certificate to practice is
52 suspended or revoked.

53 (k) A voting member of the board immediately and
54 automatically forfeits membership to the board if he or she is
55 convicted of a felony under the laws of any jurisdiction or
56 becomes a nonresident of this state.

57 (l) The board shall designate one of its members as
58 chairperson who serves at the will of the board.

59 (m) Each voting member of the board is entitled to
60 receive compensation and expense reimbursement in
61 accordance with section eleven, article one of this chapter.

62 (n) A majority of the members of the board shall
63 constitute a quorum.

64 (o) The board shall hold at least two annual meetings.
65 Other meetings may be held at the call of the chairperson, or
66 upon the written request of two members, at such time and
67 place as designated in the call or request.

68 (p) Prior to commencing his or her duties as a voting
69 member of the board, each voting member shall take and
70 subscribe to the oath required by section five, article four of
71 the Constitution of this state.

§30-17-5. Powers and duties of the board.

1 The board has all the powers and duties set forth in article
2 one of this chapter and also the following powers and duties:

3 (1) Hold meetings, conduct hearings and administer
4 examinations;

5 (2) Set the requirements for a license, permit and
6 certificate;

7 (3) Establish procedures for submitting, approving and
8 rejecting applications for a license, permit and certificate;

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

11 (5) Prepare, conduct, administer and grade written, oral
12 or written and oral examinations for a license;

13 (6) Determine the passing grade for the examinations;

14 (7) Contract with third parties to administer the
15 examinations required under the provisions of this article;

16 (8) Maintain records of the examinations the board or a
17 third party administers, including the number of persons
18 taking the examination and the pass and fail rate;

19 (9) Maintain an office, and hire, discharge, establish the
20 job requirements and fix the compensation of employees and

21 contracted employees necessary to enforce the provisions of
22 this article;

23 (10) Define the fees charged under the provisions of this
24 article;

25 (11) Issue, renew, deny, suspend, revoke or reinstate a
26 license, permit and certificate;

27 (12) Investigate alleged violations of the provisions of
28 this article, legislative rules, orders and final decisions of the
29 board;

30 (13) Conduct disciplinary hearings of persons regulated
31 by the board;

32 (14) Determine disciplinary action and issue orders;

33 (15) Institute appropriate legal action for the enforcement
34 of the provisions of this article;

35 (16) Maintain an accurate registry of names and
36 addresses of all persons regulated by the board;

37 (17) Keep accurate and complete records of its
38 proceedings, and certify the same as may be necessary and
39 appropriate;

40 (18) Establish the continuing education requirements for
41 licensees, permittees and certificate holders;

42 (19) 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;

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

47 (21) Confer with the Attorney General or his or her
48 assistant in connection with legal matters and questions; and

49 (22) Take all other actions necessary and proper to
50 effectuate the purposes of this article.

§30-17-6. 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 a license, permit or
6 certificate;

7 (2) Procedures for examinations and reexaminations;

8 (3) Requirements for third parties to prepare and/or
9 administer examinations and reexaminations;

10 (4) Educational, experience and training requirements,
11 and the passing grade on the examination;

12 (5) Standards for approval of courses;

13 (6) Procedures for the issuance and renewal of a license,
14 permit or certificate;

15 (7) A fee schedule;

16 (8) The continuing education requirements;

17 (9) The procedures for denying, suspending, revoking,
18 reinstating or limiting the practice of a licensee, permittee or
19 certificate holder;

20 (10) Requirements for an inactive or revoked license,
21 permit or certificate; and

22 (11) Any other rules necessary to effectuate the
23 provisions of this article.

24 (b) All of the board's rules in effect on July 1, 2010, shall
25 remain in effect until they are amended or repealed, and
26 references to provisions of former enactments of this article
27 are interpreted to mean provisions of this article.

28 (c) The board is authorized to promulgate emergency
29 rules pursuant to the provisions of section fifteen, article
30 three, chapter twenty-nine-a of this code, to set fees for the
31 issuance and renewal of licenses, certificates and permits for
32 an eighteen month period commencing July 1, 2010, and
33 ending December 31, 2011.

§30-17-7. 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 "Sanitarians Operating Fund", which fund is continued. The
5 fund shall be used by the board for the administration of this
6 article. Except as may be provided in article one of this
7 chapter, the board shall retain the amounts in the special
8 revenue account from year to year. No compensation or
9 expense incurred under this article is a charge against the
10 General Revenue Fund.

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

§30-17-8. Qualifications for licensure as a registered sanitarian.

1 (a) To be eligible to be licensed as a registered sanitarian,
2 the applicant must:

3 (1) Be of good moral character;

4 (2) Have a bachelor's or higher degree from an accredited
5 college or university;

6 (3) Successfully complete a sanitarian's training course of
7 a minimum of three hundred hours, as approved by the board;

8 (4) Have at least two years of experience in the field of
9 public health sanitation and environmental health science;
10 and

11 (5) Pass an examination, as required by the board.

12 (b) An applicant may substitute a successfully completed
13 master's or higher degree in public health, environmental
14 science, sanitary science, community hygiene or other
15 science field, as approved by the board, for one of the
16 required years of experience.

17 (c) A registration issued by the board prior to July 1,
18 2010, shall for all purposes be considered a license issued
19 under this article: *Provided*, That a person holding a
20 registration issued prior to July 1, 2010, must renew pursuant
21 to the provisions of this article.

§30-17-9. Qualifications for certificate as a sanitarian.

1 (a) To be eligible to be certified as a sanitarian, the
2 applicant must:

3 (1) Be of good moral character;

4 (2) Have a bachelor's or higher degree from an accredited
5 college or university;

6 (3) Successfully complete a sanitarian's training course of
7 a minimum of three hundred hours, as approved by the board;
8 and

9 (4) Have at least two years of experience in the field of
10 public health sanitation and environmental health science.

11 (b) An applicant may substitute a successfully completed
12 master's or higher degree in public health, environmental
13 science, sanitary science, community hygiene or other
14 science field as approved by the board for one of the required
15 years of experience.

16 (c) A person who is registered as a sanitarian-in-training
17 by the board and on or before July 1, 2010, has two or more
18 years of experience in the field of public health sanitation and
19 environmental health science, as approved by the board, shall
20 for all purposes be considered certified under this article:
21 *Provided*, That such a person must renew pursuant to the
22 provisions of this article.

§30-17-10. Qualifications for permit as a sanitarian-in-training.

1 (a) To be eligible to be permitted as a sanitarian-in-
2 training, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a bachelor's or higher degree from an accredited
5 college or university; and

6 (3) Successfully complete a sanitarian's training course of
7 a minimum of three hundred hours within twelve months of
8 being hired as a sanitarian-in-training.

9 (b) A person may practice as a sanitarian-in-training for
10 a period not to exceed three years.

11 (c) The board may waive the requirements of subdivision
12 (3) of subsection (a) and subsection (b) of this section, for a
13 person who experiences an undue hardship, as determined by
14 the board.

§30-17-11. Persons exempted from licensure.

1 The activities and services of qualified members of other
2 recognized professions practicing environmental health
3 science consistent with the laws of this state, their training
4 and any code of ethics of their professions so long as such
5 person does not represent themselves as a registered
6 sanitarian, sanitarian or sanitarian-in-training as defined by
7 this article.

§30-17-12. License from another state.

1 The board may issue a license or a certificate to practice
2 environmental health science or public health sanitation in
3 this state, without requiring an examination, to an applicant
4 from another jurisdiction who:

5 (1) Is of good moral character;

6 (2) Holds a valid sanitarian license or other authorization
7 to practice environmental health science or public health
8 sanitation in another jurisdiction and meets requirements
9 which are substantially equivalent to the requirements set
10 forth in this article;

11 (3) Is not currently being investigated by a disciplinary
12 authority of this state or another jurisdiction, does not have
13 charges pending against his or her license or other

14 authorization to practice environmental health science or
15 public health sanitation, and has never had a license or other
16 authorization to practice environmental health science or
17 public health sanitation revoked;

18 (4) Has not previously failed an examination for licensure
19 in this state;

20 (5) Has paid all the applicable fees;

21 (6) Completes any additional training as determined by
22 the board; and

23 (7) Completes such other action as required by the board.

§30-17-13. Renewal requirements.

1 (a) The board may issue, renew and charge fees for
2 licenses, certificates and permits for an eighteen month
3 period commencing July 1, 2010, and ending December 31,
4 2011.

5 (b) Commencing January 1, 2012, and annually or
6 biennially thereafter, a person regulated by this article shall
7 renew his or her license, permit or certificate by completing
8 a form prescribed by the board, paying the applicable fees
9 and submitting any other information required by the board.

10 (c) The board shall charge a fee for each renewal of a
11 license, permit or certificate and may charge a late fee for any
12 renewal not paid by the due date.

13 (d) The board shall require as a condition for the renewal
14 of a license, permit or certificate that each person regulated
15 by this article complete continuing education.

16 (e) The board may deny an application for renewal for
17 any reason which would justify the denial of an original
18 application for a license, permit or certificate.

§30-17-14. Display of license, permit or certificate.

1 (a) The board shall prescribe the form for a license,
2 permit and certificate and may issue a duplicate upon
3 payment of a fee.

4 (b) Any person, not employed by the bureau or a
5 municipal or county health department, shall conspicuously
6 display his or her license, permit or certificate at his or her
7 principal place of practice.

8 (c) A person regulated by the board shall carry valid
9 proof of licensure, permit or certificate on his or her person
10 during the performance of his or her duties.

**§30-17-15. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

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

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

8 (c) The board may cause an investigation to be made into
9 the facts and circumstances giving rise to the complaint.

10 (d) After reviewing any information obtained through an
11 investigation, the board shall determine if probable cause

12 exists that the licensee, permittee or certificate holder has
13 violated this article.

14 (e) Upon a finding that probable cause exists that the
15 licensee, permittee or certificate holder has violated this
16 article, the board may enter into a consent decree or hold a
17 hearing for the suspension or revocation of the license,
18 certificate or permit or the imposition of sanctions against the
19 licensee, permittee or certificate holder. The hearing shall be
20 held in accordance with the provisions of this article.

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

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

28 (h) The board may, after notice and opportunity for
29 hearing, deny or refuse to renew, suspend or revoke the
30 license, permit or certificate of, impose probationary
31 conditions upon or take disciplinary action against, any
32 licensee, permittee or certificate holder for any of the
33 following reasons:

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

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

38 (3) Being guilty of unprofessional conduct which placed
39 the public at risk;

40 (4) Violating this article or lawful order of the board that
41 placed the public at risk;

42 (5) Having had a license or other authorization revoked
43 or suspended, other disciplinary action taken, or an
44 application for licensure or other authorization denied by the
45 proper authorities of another jurisdiction, irrespective of
46 intervening appeals and stays; or

47 (6) Engaging in any act which has endangered or is likely
48 to endanger the health, welfare or safety of the public.

49 (i) For the purposes of subsection (h) of this section,
50 disciplinary action may include:

51 (1) Reprimand;

52 (2) Probation;

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

55 (4) Mandatory attendance at continuing education
56 seminars or other training;

57 (5) Practicing under supervision or other restriction;

58 (6) Requiring the licensee, permittee or certificate holder
59 to report to the board for periodic interviews for a specified
60 period of time; or

61 (7) Other corrective action considered by the board to be
62 necessary to protect the public, including advising other
63 parties whose legitimate interests may be at risk.

§30-17-16. Procedures for hearing; right of appeal.

1 (a) Hearings are governed by the provisions of section
2 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, at the conclusion of a hearing he or she shall prepare
7 a proposed written order containing findings of fact and
8 conclusions of law. The proposed order may contain
9 proposed disciplinary actions if the board so directs. The
10 board may accept, reject or modify the decision of the
11 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 permittee or certificate holder has violated this article, a
17 formal written decision shall be prepared which contains
18 findings of fact, conclusions of law and a specific description
19 of the disciplinary actions imposed.

§30-17-17. Judicial review; appeal to Supreme Court of Appeals.

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

§30-17-18. 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 permittee or certificate holder has knowingly violated this
4 article, the board may bring its information to the attention of
5 an appropriate law-enforcement official who may cause
6 criminal proceedings to be brought.

7 (b) If a court finds that a person violating this article, is
8 guilty of a misdemeanor and, upon conviction thereof, shall
9 be fined not less than \$500 nor more than \$1,000 or confined
10 in jail not more than six months, or both fined and confined.

§30-17-19. 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.

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

[Handwritten signature]

Chairman Senate Committee

[Handwritten signature]

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

[Handwritten signature]

Clerk of the Senate

[Handwritten signature]

Clerk of the House of Delegates

[Handwritten signature]

President of the Senate

[Handwritten signature]

Speaker of the House of Delegates

2010 APR -1 PM 4:26
COM. CLERK OF SENATE

The within is approved this the 18th
day of April, 2010.

[Handwritten signature]

Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2010

Time 10:00am