SECOND ENROLLMENT

COMMITTEE SUBSTITUTE FOR
House Bill No. 4239

(By Delegates Morgan and Perdue)

Amended and again passed, in an effort to meet the objections of the Governor, March 16, 2012

To Take Effect From Passage
AN ACT to amend and reenact §30-14-1, §30-14-2, §30-14-3 and §30-14-12b of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Board of Osteopathy; renaming the board the West Virginia Board of Osteopathic Medicine; providing definitions; increasing board membership; providing board composition; increasing the board membership term length; adding term limits; authorizing certain associations to make recommendations on board membership; and adding certain requirements to qualify to serve on the board.

Be it enacted by the Legislature of West Virginia:

That §30-14-1, §30-14-2, §30-14-3 and §30-14-12b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-1. License required.

It is unlawful for any person to practice or offer to practice medicine and surgery as an osteopathic physician and surgeon in this state without a license or permit issued by the West Virginia Board of Osteopathic Medicine: Provided, That any license heretofore issued under the laws of this state, authorizing its holder to practice osteopathy and surgery, shall in no way be affected by the enactment of this article; except that the holder of every such license shall be subject to all of the provisions of this article respecting the requirements and obligations herein prescribed for the continuance in force of such license.

§30-14-2. Definitions.

(a) “Accredited osteopathic college” means a college of osteopathy and surgery which requires as a minimum prerequisite for admission preprofessional training of at least two years of academic work in specified scientific subjects, as prescribed by the board or by the college accrediting agency of the American Osteopathic Association, in an accredited college of arts and sciences and which requires for graduation a course of study approved by the board in accordance with the minimum standards established by the American Osteopathic Association;

(b) “Approved program of postgraduate clinical training” means a program of clinical training approved by, or subject of approval by, the American Osteopathic Association or approved by the Accreditation Council for Graduate Medical Education for the purposes of intern or resident training;
(c) "Board" means the West Virginia Board of Osteopathic Medicine: Provided, That where used elsewhere in the Code, the West Virginia Board of Osteopathy and Board of Osteopathy shall also mean the West Virginia Board of Osteopathic Medicine;

(d) "License" means legal authorization issued by the board to a fully qualified osteopathic physician to engage in the regular practice of osteopathic medicine and surgery;

(e) "Osteopathy" means that system of the healing art which places the chief emphasis on the structural integrity of the body mechanism as being the most important single factor in maintaining the well-being of the organism in health and disease;

(f) "Permit" means a limited, legal authorization issued by the board to an osteopathic physician to practice osteopathic medicine and surgery in this state while serving under special circumstances of public need or while undergoing post-graduate clinical training as a prerequisite to licensure;

(g) "Reciprocal endorsement" means a duly authenticated verification of the board, addressed to a board or agency of another country, state, territory, province or the District of Columbia, vouching that a license issued to an osteopathic physician and surgeon pursuant to the laws of this state is currently valid and not suspended or revoked for any cause or causes specified in this article.

§30-14-3. Board of Osteopathic Medicine.

(a) The West Virginia Board of Osteopathy is continued and effective July 1, 2012 shall be known as the West Virginia Board of Osteopathic Medicine. The members of
the board shall continue to serve until a successor is appointed and may be reappointed.

(b) The Governor shall appoint, by and with advice and consent of the Senate, two additional members and stagger their initial terms:

(1) One person who is a licensed osteopathic physician or surgeon; and

(2) One person who is a licensed osteopathic physician assistant.

c) The board consists of the following seven members, who are appointed to staggered terms by the Governor with the advice and consent of the Senate:

(1) Four licensed osteopathic physicians and surgeons;

(2) One licensed osteopathic physician assistant; and

(3) Two citizen members, who are not associated with the practice of osteopathic medicine.

d) After the initial appointment, a board member's term shall be for 5 years.

e) The West Virginia Osteopathic Medical Association may submit recommendations to the Governor for the appointment of an osteopathic physician board member, and the West Virginia Association of Physician Assistants may submit recommendations to the Governor for the appointment of an osteopathic physician assistant board member.

(f) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for
(g) Each member of the board must be a U.S. citizen and a resident of this state for a period of not less than five years immediately preceding the appointment and while serving as a member of the board.

(h) A member may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member may continue to serve until a successor has been appointed and has qualified.

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

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

(k) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, he or she is convicted of a felony under the laws of any jurisdiction, or he or she becomes a nonresident of this state.

(l) The board shall elect annually one of its members as a chairperson and one of its members as a secretary who shall serve at the will of the board.

(m) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.
(n) A simple majority of the membership serving on the board at a given time constitutes a quorum.

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

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

(q) The members of the board when acting in good faith, without malice and within the scope of their duties as board members shall enjoy immunity from individual civil liability.

§30-14-12b. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

(a) There is hereby established a special volunteer medical license for physicians retired or retiring from the active practice of osteopathy who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer medical license shall be issued by the West Virginia Board of Osteopathic Medicine to physicians licensed or otherwise eligible for licensure under this article and the rules promulgated hereunder without the payment of any application fee, license fee or renewal fee, shall be issued for a fiscal year or part thereof, and shall be renewable annually. The board shall develop application forms for the special license provided for in this subsection which shall contain the physician's acknowledgment that: (1) The physician's practice under the
special volunteer medical license will be exclusively and totally devoted to providing medical care to needy and indigent persons in West Virginia; (2) the physician will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any medical services rendered under the special volunteer medical license; (3) the physician will supply any supporting documentation that the board may reasonably require; and (4) the physician agrees to continue to participate in continuing medical education as required of physicians in active practice.

(b) Any physician who renders any medical service to indigent and needy patients of clinics organized, in whole or in part, for the delivery of health care services without charge under a special volunteer medical license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the physician and the clinic pursuant to which the physician will provide voluntary noncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the physician at the clinic: Provided, That any clinic entering into such written agreement shall be required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (a) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge shall not be relieved from imputed liability for the negligent acts of a
physician rendering voluntary medical services at or for the
clinic under a special volunteer medical license authorized
under subsection (a) of this section.

(d) For purposes of this section, "otherwise eligible for
licensure" means the satisfaction of all the requirements for
licensure as listed in section ten of this article and in the
legislative rules promulgated hereunder, except the fee
requirements of subsections (b) and (d) of said section and of
the legislative rule promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring
the board to issue a special volunteer medical license to any
physician whose medical license is or has been subject to any
disciplinary action or to any physician who has surrendered
a medical license or caused such license to lapse, expire and
become invalid in lieu of having a complaint initiated or other
action taken against his or her medical license, or who has
elected to place a medical license in inactive status in lieu of
having a complaint initiated or other action taken against his
or her medical license, or who have been denied a medical
license.

(f) Any policy or contract of liability insurance providing
coverage for liability sold, issued or delivered in this state to
any physician covered under the provisions of this article
shall be read so as to contain a provision or endorsement
whereby the company issuing such policy waives or agrees
not to assert as a defense on behalf of the policyholder or any
beneficiary thereof, to any claim covered by the terms of such
policy within the policy limits, the immunity from liability of
the insured by reason of the care and treatment of needy and
indigent patients by a physician who holds a special volunteer
medical license.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chancellor, Senate Committee

Originating in the House.
To take effect from passage.

Clerk of the House of Delegates
Clerk of the Senate
Speaker of the House of Delegates
President of the Senate

The within is approved this the 2nd day of April, 2012.

Governor

2012 APR 2 PM 3:14
OFFICE OF THE GOVERNOR
SECRETARY OF STATE
FILED
PRESENTED TO THE GOVERNOR

MAR 29 2012

Time 1:35 p.m.