

H. B. 2239

(By Delegates Howell, Ellington, Arvon, Householder, R. Phillips,
Miller, Storch, Waxman, Summers, Trecoast and Rohrbach)

[Introduced January 22, 2015; referred to the

Committee on Health and Human Resources then Government Organization.]

A BILL to repeal §30-1-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-1-5, §30-1-10, and §30-1-19 of said code; and to amend said code by adding thereto a new article, designated §30-1C-1, §30-1C-2, §30-1C-3, §30-1C-4, §30-1C-5, §30-1C-6, §30-1C-7, §30-1C-8, §30-1C-9, §30-1C-10, §30-1C-11 and §30-1C-12 all relating to creating a Board of Health Professions; establishing the purpose of the board; defining terms; providing for appointment of executive director; enumerating the powers and duties of the board; providing enforcement power to the executive director and investigative staff; establishing authority of board to protect escrow funds held by licensees of health regulatory boards; establishing composition of Board of Health Professions and board member appointment and terms; establishing who will act as chairman of the board; establishing a quorum of the board; and establishing powers and duties of the board of Health Professions.

Be it enacted by the Legislature of West Virginia:

That §30-1-15 of the Code of West Virginia, 1931, as amended, be repealed; and that §30-1-5, §30-1-10 and §30-1-19 of said code be amended and reenacted; and that said code be amended

1 by adding thereto a new article, designated §30-1C-1, §30-1C-2, §30-1C-3, §30-1C-4, §30-1C-5,
2 §30-1C-6, §30-1C-7, §30-1C-8, §30-1C-9, §30-1C-10, §30-1C-11 and §30-1C-12, all to read as
3 follows:

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

6 **§30-1-5. Meetings; quorum; investigatory powers; duties.**

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

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

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

1 (d) Every board shall provide public access to the record of the disposition of the complaints
2 which it receives in accordance with the provisions of chapter twenty-nine-b of this code. Every
3 board has a duty to report violations of individual practice acts contained in this chapter to the board
4 by which the individual may be licensed, or to the Health Professions Board for any complaint
5 regarding an individual licensed by a health regulatory board pursuant to article 1C of this chapter,
6 and shall do so in a timely manner upon receiving notice of such violations. Every person licensed
7 or registered by a board has a duty to report to the board which licenses or registers him or her a
8 known or observed violation of the practice act or the board's rules by any other person licensed or
9 registered by the same board and shall do so in a timely manner. Law-enforcement agencies or their
10 personnel and courts shall report in a timely manner to the appropriate board any violations of
11 individual practice acts by any individual.

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

18 **§30-1-10. Disposition of money fines; legislative audit.**

19 (a) The secretary of every board referred to in this chapter shall receive and account for all
20 money which it derives pursuant to the provisions of this chapter which are applicable to it. With
21 the exception of money received as fines, each board shall pay all money which is collected into a
22 separate special fund of the State Treasury which has been established for each board. This money

1 shall be used exclusively by each board ~~for purposes of~~ or boards responsible for the administration
 2 and enforcement of ~~its~~ their duties pursuant to this chapter. Any money received as fines shall be
 3 deposited into the General Revenue Fund of the State Treasury. When the special fund of any board
 4 accumulates to an amount which exceeds twice the annual budget of the board or \$10,000,
 5 whichever is greater, the excess amount shall be transferred by the State Treasurer to the state
 6 General Revenue Fund.

7 (b) Every licensing board which is authorized by the provisions of this chapter shall be
 8 subject to audit by the office of the Legislative Auditor.

9 **§30-1-19. Combining board staff functions.**

10 (a) Any board referred to in this chapter, with the exception of health regulatory boards
 11 defined in article 1C of this chapter, may combine administrative staff functions with any other
 12 board or boards referred to in this chapter, pursuant to the provisions of subsection (b) of this section,
 13 to carry out the administrative duties of the boards as set forth in this article, the practice acts of each
 14 board set forth in this chapter and the legislative rules of each board: *Provided*, That each board
 15 retains responsibility for fulfilling its statutory duties.

16 (b) Before combining administrative staff functions pursuant to subsection (a) of this section,
 17 the boards shall, in consultation with the office of the Attorney General, enter into a memorandum
 18 of understanding with the following provisions:

19 (1) The names of the boards combining administrative staff functions;

20 (2) The administrative staff functions being combined, including the staffs' titles and duties
 21 relative to each board;

22 (3) The prorata share of expenses that each board will be responsible for paying, including

1 salaries, office rent, office supplies, telephone, fax and computer services, travel expenses and any
 2 other expenses anticipated by the boards;

3 (4) A description of how decisions will be made by the boards, including employment of
 4 staff, the staff's functions and duties, and any other necessary decisions;

5 (5) A description of how modifications may be made to the terms of the agreement; and

6 (6) Any other provisions necessary to set forth the agreement of the boards.

7 (c) The boards that combine administrative staff functions pursuant to this section, may
 8 promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code, to make
 9 any necessary changes to facilitate the combining of administrative staff functions. The boards may
 10 also promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter
 11 twenty-nine-a of this code, to correct any conflicts with a board's current rules.

12 **ARTICLE 1C. BOARD OF HEALTH PROFESSIONS.**

13 **§30-1C-1. Purpose.**

14 The purpose of this article is to establish a Board of Health Professions that will provide
 15 consolidated administrative functions to the health regulatory boards in order to create efficiencies
 16 and increase consistency while maintaining the decision-making authority and autonomy of each
 17 health regulatory board.

18 **§30-1C-2. Definitions.**

19 As used in this article, unless the context requires a different meaning:

20 (1) "Board" means the board of Health Professions.

21 (2) "Executive director" means the executive director of the board of Health Professions.

22 (3) "Health regulatory board" or "regulatory board" means any board included within the

1 board of Health Professions as provided in section three of this article.

2 **§30-1C-3. Health Professions Boards.**

3 The following health regulatory boards are included within the board: medical practice,
4 dentistry, pharmacy, registered professional nurses, practical nurses, optometrists, osteopathic
5 medicine, chiropractic, physical therapy, psychologists, veterinary medicine, medical imaging,
6 speech language audiology and pathology, funeral service examiners, nursing home administrators,
7 hearing aid dealers, barbers and cosmetologists, occupational therapy, counseling, acupuncture,
8 massage therapists, social workers, sanitarians, dietitians, and respiratory care practitioners.

9 **§30-1C-4. Appointment of Executive Director.**

10 The Governor shall appoint the Executive Director of the Board of Health Professions.

11 **§30-1C-5. Powers and duties of Executive Director of Board.**

12 The executive director of the board has the following powers and duties:

13 (1) To supervise and manage the board;

14 (2) To perform or consolidate such administrative services or functions as may assist the
15 operation of the health regulatory boards;

16 (3) To prepare, approve and submit to the Governor, after consultation with the health
17 regulatory boards, all requests for appropriations and be responsible for all expenditures pursuant
18 to appropriations;

19 (4) To provide such office facilities as will allow the health regulatory boards to carry out
20 their duties;

21 (5) To employ personnel as required for the proper performance of the responsibilities of the
22 board;

(6) To receive all complaints made against regulated health care professionals;

(7) To develop administrative policies and procedures governing the receipt and recording of complaints;

(8) To monitor the status of actions taken under the auspices of the health regulatory boards regarding complaints until the closure of each case;

(9) To provide investigative and such other services as needed by the health regulatory boards to enforce their respective statutes and rules;

(10) To provide staff to assist in the performance of the duties of the board of Health Professions;

(11) To collect and account for all fees to be paid into each health regulatory board and account for and deposit the moneys so collected into a special fund from which the expenses of the health regulatory boards, and the board of Health Professions shall be paid. Such fees shall be held exclusively to cover the expenses of the health regulatory boards and the board of Health Professions.

(12) To make and enter into all contracts and agreements necessary or incidental to the performance of his or her duties and the execution of his or her powers, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of the State of West Virginia;

(13) To accept grants from the United States government, its agencies and instrumentalities, and any other source. The executive director has the power to comply with conditions and execute agreements as may be necessary, convenient or desirable;

(14) To report promptly, after consultation with the executive director of the appropriate

1 health regulatory board or his or her designee, to the appropriate attorney for the State of West
2 Virginia any information the board obtains which, upon appropriate investigation, indicates, in the
3 judgment of the executive director, that a person licensed by any of the health regulatory boards has
4 violated any provision of criminal law, including the laws relating to manufacturing, distributing,
5 dispensing, prescribing or administering drugs other than drugs classified as Schedule VI drugs.
6 When necessary, the appropriate attorney for the State of West Virginia shall request that the State
7 Police conduct any subsequent investigation of the report. Upon request and affidavit from an
8 attorney for the State of West Virginia, the executive director shall provide documents material to
9 a criminal investigation of a person licensed by a health regulatory board; however, peer review
10 documents may not be released and shall remain privileged pursuant to W.Va. Code §30-3C-1, et
11 seq.

12 (15) To keep records of the names and qualifications of registered, certified or licensed
13 persons;

14 (16) To exercise other powers and perform other duties required of the executive director by
15 the Governor;

16 (17) To issue subpoenas in accordance with the Administrative Procedures Act for any
17 informal fact finding or formal proceeding within the jurisdiction of the board or any regulatory
18 board;

19 **§30-1C-6. Enforcement of laws by Executive Director and investigative personnel; authority**
20 **of investigative personnel and Executive Director.**

21 (a) The executive director and investigative personnel appointed by him or her shall be sworn
22 to enforce the statutes and rules pertaining to the board and health regulatory boards and have the

1 authority to investigate any violations of those statutes and rules and to the extent otherwise
2 authorized by law inspect any office or facility operated, owned or employing individuals regulated
3 by any health regulatory board. The executive director or his or her designee has the power to
4 subpoena witnesses and to request and obtain patient records, business records, papers, and physical
5 or other evidence in the course of any investigation or to issue subpoenas requiring the production
6 of such evidence.

7 (b) All investigative personnel are vested with the authority to: (1) Administer oaths to
8 receive complaints of violations of individual practice acts of the health regulatory boards; (2)
9 compel the attendance of witnesses or serve subpoenas issued by the board, the executive director,
10 or in his or her absence a designated subordinate, or by any regulatory board under the authority of
11 the executive director; (3) request and receive criminal history information related to its
12 investigations; and (4) request and receive social security numbers from practitioners or federal
13 employee identification numbers from facilities.

14 (c) Whenever the board or the executive director obtains information that a person subject
15 to this chapter has engaged in, is engaging in, or about to engage in any act which violates the
16 provisions of this chapter enforced by the health regulatory boards, it may apply to the circuit court
17 for an order enjoining that act.

18 **§30-1C-7. Investigation of reported violations.**

19 Following its receipt of any complaint, the board shall inform the relevant health regulatory
20 board of the complaint. The health regulatory board retains the power to determine whether the
21 complaint warrants an investigation. Upon determination by the health regulatory board that a
22 complaint be investigated, the board has the authority to investigate complaints within the

1 jurisdiction of the health regulatory boards received from the general public and pursuant to
2 mandatory reporting statutes.

3 **§30-1C-8. Submission of required information.**

4 (a) The board is authorized to require individuals applying for initial licensure, certification,
5 or registration, and individuals who are licensed, certified, or registered by a health regulatory board
6 to provide information in addition to that which is required to determine the individual's
7 qualifications. Such additional information shall include identification of the individual's self-
8 designated specialties and subspecialties; credentials and certifications issued by professional
9 associations, institutions and boards; and locations of each practice site, number of hours spent
10 practicing at each practice site location, and demographic information. The board, in consultation
11 with the health regulatory boards, may establish criteria to identify additional data elements deemed
12 necessary for workforce and health planning purposes. Such information shall be collected and
13 maintained by the board for workforce and health planning purposes in cooperation with agencies
14 and institutions of the state and shall be released by the board only in the aggregate without reference
15 to any person's name or other individual identifiers; however, the board may release any information
16 that identifies specific individuals for the purpose of determining shortage designations and to
17 qualified personnel if pertinent to an investigation, research, or study, provided a written agreement
18 between such qualified personnel and the board, which ensures that any person to whom such
19 identities are divulged shall preserve the confidentiality of those identities, is executed. Prior to
20 collecting any information described in this section from individuals, the board shall first attempt
21 to obtain from other sources information sufficient for workforce planning purposes.

22 (b) For the purpose of expediting the dissemination of public health information, including

1 notice about a public health emergency, the board is authorized to require certain licensed, certified
2 or registered persons to report any email address, telephone number and facsimile number that may
3 be used to contact such person in the event of a public health emergency or to provide information
4 related to serving during a public health emergency. Such email addresses, telephone numbers and
5 facsimile numbers shall not be published, released or made available for any other purpose by the
6 board.

7 **§30-1C-9. Protection of escrow funds, etc., held by persons licensed by any of the health**
8 **regulatory boards.**

9 Whenever funds are held in escrow, in trust, or in some other fiduciary capacity by a person
10 licensed by any of the health regulatory boards and the executive director or investigative personnel
11 appointed by him or her have reason to believe that such person is not able or is unwilling to
12 adequately protect such funds or the interest of any person therein, the executive director may file
13 a petition with any court having jurisdiction over such person or any of the funds held by such person
14 stating the facts upon which he or she relies. The court may temporarily enjoin further activity by
15 such person and take such further action as shall be necessary to conserve, protect and disburse the
16 funds involved, including the appointment of a receiver. If a receiver is appointed his or her expenses
17 and a reasonable fee as determined by the court shall be paid by such person.

18 **§30-1C-10. Board of Health Professions; membership, appointments, and terms of office.**

19 The Board of Health Professions shall consist of one member selected from the membership
20 of each health regulatory board and five lay members to be appointed by the Governor. No member
21 of the board of Health Professions who represents a health regulatory board shall serve as such after
22 he or she ceases to be a member of that board. The members appointed by the Governor shall serve

1 for four-year terms.

2 **§30-1C-11. Chairman; meetings of board; quorum.**

3 The Chairman of the board of Health Professions shall be elected by the board from its
4 members. The board shall meet at least annually and may hold additional meetings as necessary to
5 perform its duties. A majority of the board constitutes a quorum for the conduct of business.

6 **§30-1C-12. Powers and duties of Board of Health Professions.**

7 The Board of Health Professions has the following powers and duties:

8 (1) To evaluate the need for coordination among the health regulatory boards and their staffs
9 and report its findings and recommendations to the executive director and the relevant health
10 regulatory boards;

11 (2) To evaluate all health care professions and occupations in the State of West Virginia,
12 including those regulated and those not regulated by other provisions of this chapter, to consider
13 whether each such profession or occupation should be regulated and the degree of regulation to be
14 imposed. Whenever the board determines that the public interest requires that a health care
15 profession or occupation which is not regulated by law should be regulated, the board shall
16 recommend to the Legislature a regulatory system to establish the appropriate degree of regulation;

17 (3) To review and comment on the budget for the board;

18 (4) To provide a means of citizen access to the board;

19 (5) To provide a means of publicizing the policies and programs of the board in order to
20 educate the public and elicit public support for board activities;

21 (6) To monitor the policies and activities of the board, serve as a forum for resolving conflicts
22 among the health regulatory boards and between the health regulatory boards and the board and have

1 access to board information;

2 (7) To advise the Governor, the Legislature and the executive director on matters relating to
 3 the regulation or deregulation of health care professions and occupations;

4 (8) To make bylaws for the government of the board of Health Professions and the proper
 5 fulfillment of its duties under this chapter;

6 (9) To promote the development of standards to evaluate the competency of the professions
 7 and occupations represented on the board;

8 (10) To review and comment, as it deems appropriate, on all rules promulgated or proposed
 9 for issuance by the health regulatory boards. At least one member of the relevant board shall be
 10 invited to be present during any comments by the board on proposed board rules;

11 (11) To review periodically the investigatory, disciplinary and enforcement processes of the
 12 board and the individual boards to ensure the protection of the public and the fair and equitable
 13 treatment of health professionals;

14 (12) To examine scope of practice conflicts involving regulated and unregulated professions
 15 and advise the health regulatory boards and the Legislature of the nature and degree of such conflicts.

NOTE: The purpose of this bill is to create a Board of Health Professions. Toward this purpose, the bill establishes the purpose of the board; defining terms; provides for appointment of executive director; sets forth the powers and duties of the board; provides enforcement power to the executive director and investigative staff; establishes the authority of board to protect escrow funds held by licensees of health regulatory boards; establishes composition of Board of Health Professions, board member appointment and terms; establishes the chairman of the board; establishes what constituta quorum of the board; and establishing powers and duties of the board of Health Professions.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Article 1C is new; therefore, it has been completely underscored.