

RECEIVED

1993 MAY 12 PM 5:03

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 1993



**ENROLLED**

*Com. Sub. For*  
HOUSE BILL No. *2618*

(By Delegates *Kessel and Rutledge*)



Passed *April 8,* 1993

In Effect *Ninety Days From* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2618**  
(By DELEGATES KESSEL AND RUTLEDGE)

---

[Passed April 8, 1993; in effect ninety days from passage.]

---

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-three, relating to dietitians and nutritionists generally; defining terms; requiring a license to practice; creating a board of dietitians and nutritionists; providing for terms of service; authorizing powers and creating duties; providing for the organization of the board; allowing for interim permits; enumerating qualifications for licensure; authorizing licensing and providing the standards and criteria therefor; providing for license renewal; exempting certain persons from licensure requirements; providing for denying, suspending or revoking a license and reinstatement; authorizing the imposition of license fees; defining the crime of falsely obtaining, selling or practicing nutrition or dietetics without a license and providing criminal penalties therefor; and providing for sunset termination of the board.

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

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-three,

to read as follows:

**ARTICLE 33. BOARD OF DIETITIANS AND NUTRITIONISTS.**

**§30-33-1. License required to practice.**

1 In order to safeguard life and health, any person  
2 practicing or offering to practice as a dietitian or  
3 nutritionist is required to submit evidence that he or she  
4 is qualified so to practice, and is licensed as provided  
5 in this article. After the thirtieth day of June, one  
6 thousand nine hundred ninety-three, unless licensed  
7 under the provisions of this article, no person may  
8 practice or offer to practice as a dietitian or nutritionist  
9 in this state, or to use any title, sign, card or device to  
10 indicate that the person is a dietitian or nutritionist,  
11 except a dietitian registered by the commission on  
12 dietetic registration may use the title registered  
13 dietitian.

**§30-33-2. Practice of dietetics defined.**

1 Any one or combination of the following activities  
2 constitute the practice of dietetics or nutrition:

3 (1) The practice of providing nutrition assessment,  
4 nutrition counseling and nutrition consultation in health  
5 and disease for individuals or groups;

6 (2) The performance as a member of a management  
7 team effecting the nutritional care of groups through  
8 the development, implementation and management of  
9 food service systems that maintain appropriate stand-  
10 ards of food and nutrition care services;

11 (3) The planning, conducting and evaluation of  
12 educational programs in nutrition and dietetic subject  
13 matter for clients, dietetic students or interns, dietetic  
14 support personnel and other health care personnel; or

15 (4) The performance as a member of a health care  
16 team to plan, investigate, interpret, evaluate and  
17 communicate nutrition research findings through  
18 reports and publications.

**§30-33-3. Definitions.**

1 As used in this article, the following terms have the

2 meanings ascribed to them:

3 (1) "Association" means the American dietetic  
4 association;

5 (2) "Board" means the West Virginia board of  
6 dietitians and nutritionists;

7 (3) "Commission on dietetic registration" means the  
8 commission on dietetic registration that is a member of  
9 the national commission for health certifying agencies;

10 (4) "Dietitian" and "nutritionist" are interchangeably  
11 used and mean a person engaged in the practice of  
12 dietetics as described in section two of this article;

13 (5) "Fund" means the board of examiners for dieti-  
14 cians and nutritionists administrative fund created  
15 pursuant to the provisions of section five of this article;

16 (6) "Nutrition assessment" means the evaluation of the  
17 nutrition needs of individuals and groups based upon  
18 biochemical, anthropometric, physical and dietary data  
19 to determine nutrient needs and recommend appropri-  
20 ate nutrition intake;

21 (7) "Nutrition care service" means assessing the  
22 nutritional needs of individuals and groups and deter-  
23 mining resources and constraints in the practice setting;  
24 establishing priorities, goals and objectives that meet  
25 nutrition needs and are consistent with available  
26 resources and constraints; providing nutrition counsel-  
27 ing in health and disease; developing, implementing and  
28 managing nutrition care systems; and evaluating,  
29 making changes in and maintaining appropriate stand-  
30 ards of quality in food and nutrition care services;

31 (8) "Nutrition counseling" means the advising or  
32 assisting of individuals or groups on appropriate  
33 nutrition intake and meal preparation.

34 (9) "Nutrition educator" means one who provides  
35 information on food sources of nutrients to meet normal  
36 nutrition needs based on the most current "Recom-  
37 mended Dietary Allowances" of the food and nutrition  
38 board (the national academy of sciences/national  
39 research council);

40 (10) "Regionally accredited institution" means a  
41 school, college or university approved by a regional  
42 accreditation agency recognized by the council on  
43 postsecondary accreditation and the United States  
44 department of education; and

45 (11) "Registered dietitian" means a person registered  
46 by the commission on dietetic registration.

**§30-33-4. Board of dietitians and nutritionists.**

1 (a) There is hereby created a new board designated  
2 the "Board of Examiners for Dietitians and Nutrition-  
3 ists." The board shall be composed of five members who  
4 shall be appointed by the governor from lists submitted  
5 to the governor by the West Virginia dietetic association  
6 and with the advice and consent of the Senate. Individ-  
7 uals appointed to the board must possess the following  
8 qualifications: One member shall be a clinical dietitian;  
9 one member shall be an administrative dietitian; one  
10 member shall be a public health or community nutri-  
11 tionist; one member shall be a consultant nutritionist;  
12 and one member shall be a lay person not engaged in  
13 the practice of dietetics or nutrition. In addition, each  
14 member of the board hereafter appointed shall be a  
15 citizen of the United States and a resident of this state,  
16 and have engaged in the practice of dietetics for a  
17 minimum of three years within the next preceding years  
18 prior to appointment: *Provided*, That the lay person  
19 shall be a citizen of the United States and a resident of  
20 this state, and may not have engaged in the practice of  
21 dietetics nor have any household members who engage  
22 in the practice of dietetics.

23 (b) The members of the board shall be appointed for  
24 overlapping terms of four years, except that the  
25 governor shall appoint initially one member for a term  
26 of one year, one for a term of two years, one for a term  
27 of three years and two for a term of four years. No  
28 member of the board may serve more than four years.

29 (c) In the event a board member is unable to complete  
30 a term, the governor shall appoint a person with similar  
31 qualification to complete the unexpired term. The  
32 successor of any board member appointed pursuant to

33 this article must possess the qualification prescribed  
34 herein. Each vacancy occurring in the office shall be  
35 filled by appointment within sixty days after such  
36 vacancy.

37 (d) Each member of the board shall be reimbursed for  
38 all reasonable and necessary expenses actually incurred  
39 in the performance of the board member's duties.

40 (e) The chair shall preside over the meetings and  
41 hearings of the board. The vice chair shall assume the  
42 chair's duties in the absence of the chair. All of the  
43 meetings shall be general meetings for the consideration  
44 of any and all matters which may properly come before  
45 the board. A majority of the board shall constitute a  
46 quorum for the transaction of business. The board shall  
47 meet at least once a year and at such other times and  
48 places as it may determine; and shall meet on call of the  
49 chair. It shall be the duty of the chair to call a meeting  
50 of the board on the written request of three members  
51 thereof. The board shall keep an accurate record of all  
52 of its proceedings and maintain such board records. The  
53 board may employ personnel necessary to accomplish  
54 the performance of its duties.

**§30-33-5. Powers and duties of the board; rule making.**

1 (a) The board is authorized to perform the following  
2 functions and possesses the following powers and duties:

3 (1) To propose legislative rules for promulgation, in  
4 accordance with article twenty-nine-a of this code, to  
5 implement and effectuate the provisions of this article,  
6 including, but not limited to, legislative rules establish-  
7 ing the following:

8 (A) A code of professional ethics;

9 (B) Continuing education requirements and standards;

10 (C) Examination, licensure and renewal requirements  
11 of a duly qualified applicants; and

12 (D) Procedures and guidelines for the suspension or  
13 revocation of a license.

14 (2) To adopt procedural and interpretive rules in

15 accordance with the provisions of chapter twenty-nine-  
16 a of this code;

17 (3) To adopt an official seal;

18 (4) To conduct license examinations of duly qualified  
19 applicants;

20 (5) To issue and renew licenses and to issue interim  
21 permits to duly qualified applicants;

22 (6) To suspend, revoke and reinstate licenses;

23 (7) To conduct hearings on licensing issues and any  
24 other matter properly within the jurisdiction of the  
25 board;

26 (8) To maintain a record of all proceedings of the  
27 board; and

28 (9) To submit a biennial report to the governor  
29 describing the activities of the board.

30 (b) All fees and other moneys collected by the board  
31 pursuant to the provisions of this article shall be  
32 deposited in an appropriated special revenue account  
33 designated the "Board of Examiners for Dietitians and  
34 Nutritionists Administrative Fund" which is hereby  
35 created in the state treasury. Moneys in the fund are to  
36 be expended solely for the purposes set forth in this  
37 article. All expenses incurred under this article shall be  
38 paid from this special fund. No compensation or expense  
39 incurred under this article may be a charge against the  
40 general revenue funds of this state: *Provided*, That  
41 monies from the fund may only be expended upon line  
42 item appropriation by the Legislature: *Provided*,  
43 *however*, That amounts collected which are found from  
44 time to time to exceed the funds needed to effectuate the  
45 purposes set forth in this subsection may be transferred  
46 to other accounts or funds and redesignated for other  
47 purposes upon appropriation by the Legislature.

**§30-33-6. Provisional permits.**

1 Provisional permits to engage in the practice of a  
2 dietetics or nutrition may be issued by the board to  
3 persons who have not met the experience requirements

4 set forth in this article upon the filing of an application  
5 and submission of evidence of successful completion of  
6 the education requirements as set forth in this article.  
7 A provisional permit expires one year from the date of  
8 issuance. Renewals may be issued for a period not to  
9 exceed three years upon submission to the board of  
10 satisfactory explanation for the applicant's failure to  
11 become licensed. The fee for a provisional permit is fifty  
12 dollars which shall be submitted with the application for  
13 the permit to the board and deposited to the credit of  
14 the fund.

**§30-33-7. Qualifications; licensure; examinations; fees.**

1 To obtain a license to engage in the practice of  
2 dietetics or nutrition, an applicant for the license shall  
3 submit to the board written evidence, verified by oath,  
4 that he or she (a) complies with the code of ethics  
5 adopted by the boards; (b) has completed a major course  
6 of study in human nutrition, foods and nutrition,  
7 dietetics of food systems management and possesses a  
8 baccalaureate or postbaccalaureate degree from a  
9 regionally accredited institution; and (c) has completed  
10 a planned continuous preprofessional experience compo-  
11 nent in dietetic practice of not less than nine hundred  
12 hours under the supervision of a registered dietitian or  
13 licensed dietitian.

14 Each applicant is required to pass a written exami-  
15 nation demonstrating competence in the discipline of  
16 dietetics and nutrition. Each written examination may  
17 be supplemented by an oral examination. Upon success-  
18 fully passing such examination or examinations, the  
19 board shall issue to the applicant a license to engage in  
20 the practice of dietetics or nutrition. The board shall  
21 determine the times and places for examinations. In the  
22 event an applicant has failed to pass examinations on  
23 three occasions, the applicant shall, in addition to the  
24 other requirements of this section, present to the board  
25 such other evidence of his or her qualifications as the  
26 board may prescribe: *Provided*, That for one year from  
27 the thirtieth day of June, one thousand nine hundred  
28 ninety-three, the board shall waive the examination  
29 requirements and shall grant a license to any person



30 who is registered by the commission on dietetic regis-  
31 tration as a registered dietitian or who possesses a  
32 baccalaureate or postbaccalaureate degree from a  
33 regionally accredited institution and completed a major  
34 course of study in the fields of human nutrition, food and  
35 nutrition, dietetics, food systems management or  
36 equivalent as approved by the board and has been  
37 engaged in the practice of dietetics or nutrition for three  
38 of the last ten years.

39 The board may, upon application and submission of  
40 the proper fee, waive the examination requirement and  
41 issue a license to practice dietetics or nutrition to an  
42 applicant who is registered by the commission on  
43 dietetic registration or who has been duly licensed as a  
44 nutritionist or dietitian under the laws of another state  
45 if the standards for licensing in that state are no less  
46 stringent than that required under the provisions of this  
47 article.

48 Any person applying for a license as a dietitian or  
49 nutritionist under the provisions of this article shall  
50 submit a fee of fifty dollars with the application to the  
51 board to be deposited to the credit of the fund.

**§30-33-8. Renewal of licenses; reinstatement; fees; penal-  
ties; inactive list.**

1 The license of every person licensed under the  
2 provisions of this article shall be annually renewed  
3 except as hereinafter provided. At such time or times  
4 as the board in its discretion may determine, the board  
5 shall mail a renewal application to every person whose  
6 license was initially granted or renewed during the  
7 previous year and persons seeking renewal shall submit  
8 a completed application and fifty dollar annual renewal  
9 fee. Upon receipt of the application and fee, the board  
10 shall verify the accuracy of the application and, if it is  
11 accurate, issue to the applicant a certificate of renewal  
12 of the license for the current year. The certificate of  
13 renewal entitles the holder thereof to practice dietetics  
14 or nutrition for the period stated on the certificate of  
15 renewal. Any licensee who allows his or her license to  
16 lapse by failing to renew for a period not exceeding

17 three years, may be reinstated by the board on satisfac-  
18 tory explanation for such failure to renew his or her  
19 license and on payment to the board of the annual  
20 renewal fee hereinabove provided and a reinstatement  
21 fee of twenty-five dollars. Any person allowing his or her  
22 license to lapse for a period exceeding three years is  
23 required to be reinstated as a licensed dietitian or  
24 nutritionist, to pass a written examination established  
25 by the board, and pay to the board a licensing fee of fifty  
26 dollars. Any person engaged in the practice of dietetics  
27 or nutrition during the time his or her license has lapsed  
28 is in violation of the provisions of this article and is  
29 subject to the penalties provided for in section twelve of  
30 this article. A person licensed under the provisions of  
31 this article desiring to retire from practice temporarily  
32 shall send a written notice of such desire to the board.  
33 Upon receipt of such notice the board shall place the  
34 name of such person upon the inactive list. While  
35 remaining on this list the person is not subject to the  
36 payment of any renewal fees and may not engage in the  
37 practice dietetics or nutrition in this state. When the  
38 person desires to resume active practice, application for  
39 renewal of license and payment of the renewal fee for  
40 the current year shall be made to the board.

**§30-33-9. Contents of license or provisional permit.**

1 Each license or provisional permit issued by the board  
2 shall bear a serial number, the full name of the  
3 applicant, the date of expiration of any such license, or  
4 the date of issuance and expiration of any such provi-  
5 sional permit, the seal of the board, and shall be signed  
6 by the secretary of the board. The licensee must display  
7 the license in an appropriate location in view of the  
8 public.

**§30-33-10. License exemptions.**

1 Persons who fall under the following categories are  
2 exempt from licensing requirements:

3 (1) Persons licensed to practice medicine and dentistry  
4 who perform nutrition counseling in the course of the  
5 practice of their profession and those persons licensed  
6 to practice medicine with postgraduate education in

7 nutrition in an accredited graduate medical program or  
8 with certification from the American board of nutrition;

9 (2) Persons licensed to practice pharmacy, chiroprac-  
10 tic medicine or nursing who perform nutrition activities  
11 as a part of the scope of their practice and perform  
12 nutrition counseling in the course of the practice of their  
13 profession;

14 (3) Persons with a master or doctorate degree with a  
15 major in nutrition or related field from an accredited  
16 institution and who are engaged in education or  
17 research;

18 (4) An employee of a county board of education or an  
19 accredited private or parochial elementary or secondary  
20 school insofar as the activities and services are part of  
21 the duties of the employee's salaried position;

22 (5) Persons employed by an agency, bureau or division  
23 of the federal government while in the discharge of  
24 official duties. If such person engages in the practice of  
25 dietetics or nutrition in this state and outside the scope  
26 of such official duty, he must be licensed as herein  
27 provided;

28 (6) Consulting dietitians who do not reside in West  
29 Virginia and who practice no more than twelve days  
30 annually in this state;

31 (7) A dietetic student, dietetic trainee, dietetic intern,  
32 dietary technician student or nutrition graduate student  
33 who is involved in an approved academic program  
34 leading to a degree in the field of dietetic or nutrition  
35 from an accredited college or university who is under  
36 the direct supervision of a licensed dietitian and who  
37 engages in the practice of dietetics or nutrition as part  
38 of such program or employment, if the person is  
39 designated by a title which clearly indicates that the  
40 person is a student, trainee, intern or technician;

41 (8) A dietary technician, dietary assistant, dietary  
42 manager or certified dietary manager employed full  
43 time in a health care institution and working under the  
44 direction or with consultation from a licensed dietitian  
45 who counsel hospitalized or long term care patients

46 regarding food recommendations or restrictions or  
47 dietary regimens prescribed by the attending physician;

48 (9) Persons who provide nutrition information as a  
49 nutrition educator and a nutrition aide who are in the  
50 employ of a federal, state, county or municipal agency  
51 or who is in the employ or service of a nonprofit  
52 organization: *Provided*, That the nutrition information  
53 is based on current recommended dietary allowances of  
54 the food and nutrition board (national academy of  
55 sciences/national research council); or has been deve-  
56 loped with the assistance of and has been approved by  
57 a person licensed to engage in the practice of dietetics  
58 or nutrition;

59 (10) Persons who provide weight control classes and  
60 services without a licensed dietitian, licensed nutrition-  
61 ist or registered dietitian on the person's staff: *Provided*,  
62 That the classes and services have been developed with  
63 the assistance of a person licensed to engage in the  
64 practice of dietetics or nutrition or a registered  
65 dietitian; or

66 (11) Individuals who furnish general nutrition infor-  
67 mation on food, food materials or dietary supplements  
68 or who engage in the explanation to customers about  
69 food or food products in connection with the marketing  
70 and distribution of these products, and who do not claim  
71 to be a dietician or nutritionist.

**§30-33-11. Denial, revocation or suspension of license;  
grounds for discipline.**

1 The board may deny, revoke or suspend any license  
2 to engage in the practice of dietetics or nutrition issued  
3 or applied for in accordance with the provisions of this  
4 article, or to otherwise discipline a licensee or applicant  
5 upon proof that he or she:

6 (1) Is or was guilty of fraud or deceit in procuring or  
7 attempting to procure a license or renewal to practice  
8 nutrition or dietetics;

9 (2) Has been grossly negligent or exhibited unprofes-  
10 sional or unethical conduct in the practice of dietetics  
11 or nutrition;

12 (3) Is habitually intemperate or is addicted to the use  
13 of alcohol or controlled substances;

14 (4) Is mentally incompetent; or

15 (5) Has willfully or repeatedly violated any of the  
16 provisions of this article.

**§30-33-12. Prohibitions and penalties.**

1 It is a misdemeanor for any person, including any  
2 corporation or association, to:

3 (1) Sell or fraudulently obtain or furnish or to assist  
4 in selling, fraudulently obtaining or furnishing any  
5 nutrition or dietetics license or record;

6 (2) Engage in the practice of dietetics or nutrition  
7 under cover of any diploma, license or record, illegally  
8 or fraudulently obtained;

9 (3) Engage in the practice of dietetics or nutrition  
10 unless duly licensed to do so under the provisions of this  
11 article;

12 (4) Use in connection with his or her name any  
13 designation tending to imply that he or she is licensed  
14 to engage in the practice of dietetics or nutrition unless  
15 duly licensed so to practice under the provisions of this  
16 article;

17 (5) Engage in the practice of dietetics or nutrition  
18 during the time his or her license issued under the  
19 provisions of this article is suspended or revoked; or

20 (6) Otherwise violate any provisions of this article.

21 Any person, corporation or association in violation of  
22 any of the provisions of this article is guilty of a  
23 misdemeanor, and, upon conviction thereof, shall be  
24 fined not less than two hundred fifty dollars nor more  
25 than five hundred dollars.

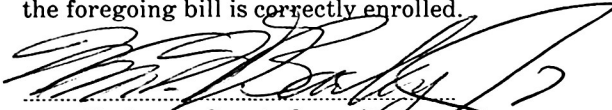
**§30-33-13. Termination of board.**

1 The board of examiners for dietitians and nutritionists  
2 shall be terminated pursuant to the provisions of article  
3 ten, chapter four of this code, on the first day of July,  
4 one thousand nine hundred ninety-eight, unless sooner

5 terminated or unless continued or reestablished pursu-  
6 ant to that article.

Enr. Com. Sub. for H. B. 2618] 14

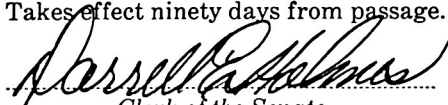
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.)

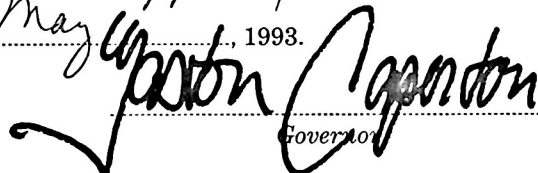
  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker of the House of Delegates

The within is disapproved this the 12<sup>th</sup>  
day of May, 1993.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/93

Time 10:32am