

COMMITTEE SUBSTITUTE

FOR

H. B. 3050

(BY DELEGATES MORGAN, STEPHENS AND MARTIN)

(Originating in the Committee on Finance)
[February 23, 2011]

A BILL to repeal §30-35-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-35-1, §30-35-2, §30-35-3, §30-35-4, §30-35-5, §30-35-6, §30-35-7, §30-35-8, §30-35-9, §30-35-10, §30-35-11, §30-35-12, §30-35-13 and §30-35-14 of said code; and to amend said code by adding thereto four new sections, designated §30-35-15, §30-35-16, §30-35-17 and §30-35-18, all relating to the practice of dietetics; providing that it

is unlawful to practice dietetics without a license; defining terms; providing board member qualifications; describing conditions and terms of board appointments; describing powers and duties of the board; defining board rulemaking authority; continuing the Board of Licensed Dieticians Fund in the State Treasury; establishing conditions for licensure; defining the scope of practice of dieticians; authorizing the issuance of temporary permits; requiring license renewal; requiring display of a license; providing the board may enjoin licensees; authorizing the board to investigate complaints; providing for due process for licensees; describing procedures for hearings and rights of appeal; authorizing criminal proceedings; and describing penalties for violations of the act.

Be it enacted by the Legislature of West Virginia:

That §30-35-2a of the Code of West Virginia, 1931, as amended, be repealed; that §30-35-1, §30-35-2, §30-35-3, §30-35-4, §30-35-5, §30-35-6, §30-35-7, §30-35-8, §30-35-9, §30-35-10, §30-35-11, §30-35-12, §30-35-13 and §30-35-14 of said code be amended and reenacted; and that said code be amended by adding

thereto four new sections, designated §30-35-15, §30-35-16, §30-35-17 and §30-35-18, all to read as follows:

ARTICLE 35. BOARD OF DIETITIANS.

§30-35-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to
2 practice dietetics in this state without a license or permit
3 issued under the provisions of this article, or advertise or use
4 any title or description tending to convey the impression that
5 the person is a dietician, unless the person has been licensed
6 or permitted under the provisions of this article, and the
7 license or permit has not expired, been suspended or revoked.

8 (b) No business entity, except through a licensee, may
9 render any service or engage in any activity which if
10 rendered or engaged in by an individual, would constitute the
11 practice regulated under the provisions of this article.

§30-35-2. General provisions.

1 The practice regulated under the provisions of this article
2 and the Board of Licensed Dieticians are subject to the
3 provisions of article one of this chapter, the provisions of this
4 article, and any rules promulgated hereunder.

§30-35-3. Definitions.

1 As used in this article, the following terms mean the
2 following:

3 (a) “Board” means the West Virginia Board of Licensed
4 Dietitians;

5 (b) “Commission on Dietetic Registration” means the
6 Commission on Dietetic Registration that is a member of the
7 national commission for health certifying agencies;

8 (c) “Dietetics” means the integration and application of
9 the principles derived from the sciences of nutrition,
10 biochemistry, food, physiology, and management and from
11 the behavioral and social sciences to achieve and maintain
12 a person’s health throughout the person’s life.

13 (d) “Licensed dietitian” means a person licensed to
14 practice dietetics under this article;

15 (e) “Licensee” means a person licensed to practice
16 dietetics under this article;

17 (f) “Medical nutrition therapy” or “nutrition therapy”
18 means nutritional diagnostic assessment and nutrition therapy
19 services for the purpose of disease management;

20 (g) “Permittee” means a person permitted to temporarily
21 practice dietetics under this article;

22 (h) “Registered dietitian” means a person registered by
23 the Commission on Dietetic Registration, the accrediting
24 body of the American Dietetic Association; and

25 (i) “Temporary permit” means an authorization issued by
26 the board to a person to temporarily practice dietetics under
27 this article.

§30-35-4. Board of Licensed Dietitians.

1 (a) The Board of Licensed Dieticians is continued. The
2 members of the board in office on July 1, 2011, shall, unless
3 sooner removed, continue to serve until their respective terms
4 expire and until their successors have been appointed and
5 qualified.

6 (b) The board shall consist of the following five members
7 who are appointed by the Governor with the advice and
8 consent of the Senate:

9 (1) Four members, who are a registered or licensed
10 dietitian; and

11 (2) One citizen member.

12 (d) Each licensed member of the board, at the time of his
13 or her appointment, must have held a license in this state for
14 at least three years;

15 (e) Each member of the board must be a resident of this
16 state during the appointment term.

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

22 (g) A vacancy on the board shall be filled by appointment
23 by the Governor for the unexpired term of the member whose
24 office shall be vacant and the appointment shall be made
25 within sixty days of the vacancy.

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

29 (i) Any member of the board immediately and
30 automatically forfeits his or her membership if his or her
31 license to practice is suspended or revoked by the board, is
32 convicted of a felony under the laws of any jurisdiction, or
33 becomes a nonresident of this state.

34 (j) The board shall elect annually one of its members as
35 chairperson who serves at the will of the board.

36 (k) Each member of the board is entitled to compensation
37 and expense reimbursement in accordance with article one of
38 this chapter.

39 (l) A simple majority of the membership serving on the
40 board at a given time is a quorum for the transaction of
41 business.

42 (m) The board shall hold at least two meetings annually.
43 Other meetings may be held at the call of the chairperson or
44 upon the written request of two members, at the time and
45 place as designated in the call or request.

46 (n) Prior to commencing his or her duties as a member of
47 the board, each member shall take and subscribe to the oath

48 required by section five, article four of the Constitution of
49 this state.

§30-35-5. Powers and duties of the board.

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

4 (b) The board shall:

5 (1) Hold meetings;

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 an applicant for
10 licenses and permits;

11 (5) Maintain records of the examinations the board or a
12 third party administers, including the number of persons
13 taking the examinations and the pass and fail rate;

14 (6) Hire, discharge, establish the job requirements and fix
15 the compensation of the executive director;

16 (7) Maintain an office, and hire, discharge, establish the
17 job requirements and fix the compensation of employees,
18 investigators and contracted employees necessary to enforce
19 the provisions of this article;

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

23 (9) Conduct disciplinary hearings of persons regulated by
24 the board;

25 (10) Determine disciplinary action and issue orders;

26 (11) Institute appropriate legal action for the enforcement
27 of the provisions of this article;

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

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

33 (14) Establish the continuing education requirements for
34 licensees;

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

37 (16) Establish a fee schedule;

38 (17) Propose rules in accordance with the provisions of
39 article three, chapter twenty-nine-a of this code to implement
40 the provisions of this article; and

41 (18) Take all other actions necessary and proper to
42 effectuate the purposes of this article.

43 (c) The board may:

44 (1) Contract with third parties to administer the
45 examinations required under the provisions of this article;

46 (2) Sue and be sued in its official name as an agency of
47 this state; and,

48 (3) Confer with the Attorney General or his or her
49 assistant in connection with legal matters and questions.

§30-35-6. Rule-making.

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) Additional standards and requirements for licenses
6 and permits;

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

9 (3) Educational and experience requirements;

10 (4) Standards for approval of courses and curriculum;

11 (5) Procedures for the issuance and renewal of licenses
12 and permits;

13 (6) A fee schedule;

14 (7) Continuing education requirements for licensees;

15 (8) The procedures for denying, suspending, revoking,
16 reinstating or limiting the practice of licensees and permittees;

17 (9) Requirements for inactive or revoked licenses and
18 permits; and

19 (10) Any other rules necessary to effectuate the
20 provisions of this article.

21 (b) All of the board's rules in effect on January 1, 2011,
22 shall remain in effect until they are amended or repealed, and
23 references to provisions of former enactments of this article
24 are interpreted to mean provisions of this article.

§30-35-7. Fees; special revenue account; administrative fines.

1 (a) All fees in effect, shall remain in effect until they are
2 amended or repealed by legislative rule or statute.

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

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

§30-35-8. License to practice as a dietitian.

1 To be eligible for a license to practice as an dietitian, the
2 applicant must:

3 (1) Submit an application to the board;

4 (2) Be at least eighteen years of age;

5 (3) Be of good moral character;

6 (4) Have completed a major course of study in human
7 nutrition, dietetics, food systems management or the
8 equivalent thereof, as determined by the board;

9 (5) Have a baccalaureate or post-baccalaureate degree;

10 (6) Have completed a planned continuous professional
11 experience component in dietetic practice of not less than
12 900 hours under the supervision of a registered or licensed
13 dietitian.

14 (7) Have completed a written and/or oral examination.
15 Each demonstrating competence in the discipline of dietetics
16 and nutrition;

17 (8) Not have been convicted of a felony in any
18 jurisdiction within five years preceding the date of
19 application for license which conviction remains unreversed;

20 (9) Not have been convicted of a misdemeanor or felony
21 in any jurisdiction if the offense for which he or she was

22 convicted related to the practice of dietetics, which
23 conviction remains unreversed; and
24 (10) Meet any other requirements established by the
25 board.

§30-35-9. Scope of practice.

1 A licensed dietitians may:
2 (1) Perform medical nutrition therapy;
3 (2) Perform a nutritional assessment to determine
4 nutritional needs and to recommend appropriate nutritional
5 intake, including enteral and parenteral nutrition;
6 (3) Perform nutritional counseling or education as
7 components of preventive curative and restorative health
8 care;
9 (4) Develop, administer, evaluate and consult regarding
10 nutritional care standards.

§30-35-10. Temporary permit.

1 (a) The board may issue a temporary permit to practice
2 dietetics to a person who has not met the experience
3 requirements set forth in section eight upon the filing of an

4 application, payment of a fee, and submission of evidence of
5 successful completion of the education requirements of this
6 article.

7 (b) A temporary permit expires one year from the date of
8 issuance.

9 (c) Renewals may be issued three times upon request by
10 the applicant and submission of a satisfactory explanation for
11 the applicant's failure to become licensed.

§30-35-11. Exemptions from this article.

1 The following exemptions apply to this article:

2 (1) A dietitian registered by the Commission on Dietetic
3 Registration may use the title of registered dietitian;

4 (2) Nothing in this article may be construed to affect a
5 person employed as a cook at any public or private
6 educational institution in this state;

7 (3) Nothing in this article may be construed to affect a
8 person who furnishes nutrition information on food, food
9 materials or dietary supplements or who engages in
10 explanation to customers about food, food materials or

11 dietary supplements in connection with the marketing and
12 distribution of those products;
13 (4) Nothing in this article may be construed to prohibit or
14 otherwise limit the practice of a profession by a person who
15 is licensed, certified or registered under the laws of this state
16 and who is performing services within their authorized scope
17 of practice.

§30-35-12. Renewal of license.

1 (a) A persons regulated by this article shall annually or
2 biannually, renew his or her authorization by completing a
3 form prescribed by the board and submitting any other
4 information required by the board.
5 (b) The board shall charge a fee for each renewal of an
6 authorization and shall charge a late fee for any renewal not
7 paid by the due date.
8 (c) The board shall require as a condition of renewal that
9 each licensee complete continuing education.
10 (d) The board may deny an application for renewal for any
11 reason which would justify the denial of an original application.

§30-35-13. Display of license.

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

4 (b) Any person regulated by the article shall
5 conspicuously display his or her license or permit at his or
6 her principal business location.

§30-35-14. Actions to enjoin violations.

1 (a) If the board obtains information that any person has
2 engaged in, is engaging in or is about to engage in any act
3 which constitutes or will constitute a violation of the
4 provisions of this article, the rules promulgated pursuant to
5 this article, or a final order or decision of the board, it may
6 issue a notice to the person to cease and desist in engaging in
7 the act and/or apply to the circuit court in the county of the
8 alleged violation for an order enjoining the act.

9 (b) The circuit courts of this state may issue a temporary
10 injunction pending a decision on the merits, and may issue a
11 permanent injunction based on its findings in the case.

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

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

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

29 (g) The board may, after notice and opportunity for
30 hearing, deny or refuse to renew, suspend, restrict or revoke
31 the license or permit of, or impose probationary conditions
32 upon or take disciplinary action against, any licensee or

33 permittee for any of the following reasons once a violation
34 has been proven by a preponderance of the evidence:

35 (1) Obtaining a license or permit by fraud, misrepresentation or
36 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 which placed
40 the public at risk, as defined by legislative rule of the board;

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

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

47 (6) Aiding or abetting unlicensed practice; or

48 (7) Engaging in an act while acting in a professional
49 capacity which has endangered or is likely to endanger the
50 health, welfare or safety of the public.

51 (h) For the purposes of subsection (g) of this section,

52 effective July 1, 2011, disciplinary action may include:

53 (1) Reprimand;

54 (2) Probation;

55 (3) Restrictions;

56 (4) Administrative fine, not to exceed \$1,000 per day per

57 violation;

58 (5) Mandatory attendance at continuing education

59 seminars or other training;

60 (6) Practicing under supervision or other restriction; or

61 (7) Requiring the licensee or permittee to report to the

62 board for periodic interviews for a specified period of time.

63 (i) In addition to any other sanction imposed, the board

64 may require a licensee or permittee to pay the costs of the

65 proceeding.

§30-35-16. 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 administrator of the board has the
13 authority to administer oaths, examine any person under oath
14 and issue subpoenas and subpoenas duces tecum.

15 (e) If, after a hearing, the board determines the licensee
16 or permittee has violated provisions 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.

§30-35-17. Judicial review.

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

§30-35-18. 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 or permittee has committed a criminal offense under this
4 article, the board may bring its information to the attention of
5 an appropriate law-enforcement official.

6 (b) A person violating section one of this article is guilty
7 of a misdemeanor and, upon conviction thereof, shall be
8 finned not less than \$100 nor more than \$1,000 or confined in
9 jail not more than six months, or both fined and confined.