

1 **COMMITTEE SUBSTITUTE**

2 **FOR**

3 **H. B. 4012**

4
5 (By Delegates Morgan, Manypenny, Martin and
6 Swartzmiller)

7 [Originating in the Committee on Government Organization]

8 (February 7, 2012)

9
10 A BILL to amend and reenact §16-1-7 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §30-16-4 of said code;
12 to amend and reenact §30-23-5 of said code; and to amend and
13 reenact §30-26-3 and §30-26-4 of said code, all relating to
14 boards; changing the membership of boards; removing the
15 Commissioner of the Bureau for Public Health from certain
16 boards; removing the requirement that the commissioner provide
17 support to certain boards; allowing certain boards to receive
18 compensation not to exceed the amount paid to legislators; and
19 updating the name of certain boards.

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

21 That §16-1-7 of the Code of West Virginia, 1931, as amended,
22 be amended and reenacted; that §30-16-4 of said code be amended and
23 reenacted; that §30-23-5 of said code be amended and reenacted;
24 and that §30-26-3 and §30-26-4 of said code be amended and
25 reenacted, all to read as follows:

26 **CHAPTER 16. PUBLIC HEALTH.**

1 **ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

2 **§16-1-7. Duties and powers of the commissioner; service on**
3 **advisory councils; boards and commissions; authority**
4 **to designate a representative to serve in his or her**
5 **place on certain boards and commissions.**

6 (a) Effective July 1, 2012, the commissioner ~~shall serve~~
7 serves on the following ~~business, profession or occupation~~
8 licensing boards:

9 ~~(1) The West Virginia Board of Barbers and Cosmetologists;~~

10 ~~(2) The West Virginia board of chiropractic examiners;~~

11 ~~(3) The West Virginia board of hearing aid dealers;~~

12 ~~(4)~~ (1) The West Virginia Board of Medicine, provided in
13 article three, chapter thirty; and

14 ~~(5) The West Virginia nursing home administrators licensing~~
15 ~~board;~~

16 ~~(6) The West Virginia radiologic technology board of~~
17 ~~examiners;~~

18 ~~(7)~~ (2) The West Virginia board of registration for
19 sanitarians; and The State Board of Sanitarians, as provided in
20 article seventeen, chapter thirty.

21 ~~(8) Any other licensing board or commission as directed by the~~
22 ~~secretary.~~

23 (b) Effective July 1, 2012, the commissioner ~~shall serve~~
24 serves on the following advisory councils, boards and commissions:

25 (1) The Advisory Committee on Cancer (Cancer Registry);

1 ~~(2) The Advisory Committee on Hemophilia;~~
2 ~~(3) (2) The Air Quality Board;~~
3 ~~(4) (3) The Appalachian States Low-level Radioactive Waste~~
4 Commission;
5 ~~(5) The Attorney General of West Virginia Public Health~~
6 Trust;
7 ~~(6) The Breast and Cervical Cancer Screening Program Advisory~~
8 Coalition;
9 ~~(7) (4) The Child Fatality Review Team;~~
10 ~~(8) The Clinical Laboratories Quality Assurance Act Advisory~~
11 Board;
12 ~~(9) (5) The Childhood Immunization Advisory Committee;~~
13 ~~(10) (6) The Early Intervention Coordinating Council;~~
14 ~~(11) (7) The Interagency Council on Osteoporosis;~~
15 ~~(12) The Jail and Prison Standards Commission;~~
16 ~~(13) The Medical Service Fund Advisory Council;~~
17 ~~(14) The Nursing Home Licensing Advisory Council;~~
18 ~~(15) (8) The Sewage Advisory Board;~~
19 ~~(16) (9) The State Emergency Response Commission;~~
20 ~~(17) (10) The State Groundwater Coordinating Committee;~~
21 ~~(18) The Sudden Infant Death Syndrome Advisory Council;~~
22 ~~(19) (11) The Water Development Authority;~~
23 ~~(20) (12) The West Virginia Commission for the Deaf and Hard~~
24 of Hearing;
25 ~~(21) (13) The West Virginia Infrastructure and Jobs~~
26 Development Council;

1 ~~(22) The West Virginia Solid Waste Management Board;~~ and

2 ~~(23)~~ (14) Any other advisory council, board or commission as
3 assigned by the secretary except for business, professional or
4 occupational licensing boards.

5 (c) Notwithstanding any other provision of this code to the
6 contrary, the commissioner may, at his or her discretion,
7 designate, in writing, a representative to serve in his or her
8 stead at the meetings and in the duties of all boards and
9 commissions on which the commissioner is designated as an ex
10 officio member. The appropriately designated representative or
11 proxy ~~may act~~ acts with the full power and authority of the
12 commissioner in voting, acting upon matters concerning the public
13 health and welfare and ~~any~~ other business that is properly the duty
14 of any board or commission. ~~with~~ The representative ~~serving~~ serves
15 as proxy ~~for~~ at the commissioner's ~~at his or her~~ will and pleasure.
16 ~~Provided, That~~ The provisions of this section do not apply to the
17 ~~medical licensing board,~~ West Virginia Board of Medicine, the Air
18 Quality Board or ~~any~~ other board, commission or body on which the
19 commissioner is designated by this code as chairman ex officio,
20 secretary ex officio or ~~any~~ a board, commission or body on which
21 the commissioner is designated by this code as being that person
22 whose signature must appear on licenses, minutes or other documents
23 necessary to carry out the intents and purposes of the board,
24 commission or body.

25 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

1 **ARTICLE 16. CHIROPRACTORS.**

2 **§30-16-4. West Virginia Board of Chiropractic; establishment and**
3 **composition.**

4 (a) The ~~board known as the~~ "West Virginia Board of
5 Chiropractic" is continued. Effective July 1, 2012, the board is
6 composed of ~~the director of health, ex officio, three~~ four licensed
7 chiropractors and one person to represent the interest of the
8 public. All ~~shall be~~ are appointed by the Governor, ~~by and~~ with
9 the advice and consent of the Senate, from a list of three names
10 recommended by the West Virginia Chiropractic Society,
11 Incorporated. Each chiropractic member of the board shall have
12 been a resident of and engaged in the active practice of
13 chiropractic in the state for a period of at least five years
14 preceding his or her appointment.

15 (b) ~~On July 1, 1998, there shall be appointed, as provided in~~
16 ~~this section, one chiropractic member for a three-year term.~~ As
17 existing ~~chiropractic~~ board members' terms expire, newly appointed
18 ~~chiropractic~~ board members ~~shall be~~ are appointed by the Governor
19 for a term of office of three years. No member may serve more than
20 two full consecutive three-year terms. When a vacancy in the
21 membership of the board occurs for ~~any~~ a cause other than the
22 expiration of a term, the Governor shall appoint a new member from
23 a list of three names recommended by West Virginia Chiropractic
24 Society, Incorporated, ~~a successor as a member of the board to fill~~
25 the unexpired portion of the term of office. ~~of the member whose~~

1 ~~office has been vacated.~~

2 (c) The Governor may remove any member of the board in case of
3 incompetency, neglect of duty, gross immorality or malfeasance in
4 office.

5 (d) The board shall conduct ~~a~~ an annual training program ~~to be~~
6 ~~held annually~~ to familiarize new board members with their duties.

7 (e) Each member of the board ~~shall receive~~ is entitled to
8 receive compensation in ~~an amount not to exceed the same~~
9 ~~compensation as is~~ the amount paid to members of the Legislature
10 for ~~their~~ interim duties ~~as recommended by the Citizens Legislative~~
11 ~~Compensation Commission and authorized by law~~ for each day or
12 substantial portion ~~thereof~~ that he or she is engaged in the work
13 of the board or of its committees. ~~and shall be~~ Members are
14 entitled to be reimbursed for ~~all~~ actual and necessary expenses
15 incurred in carrying out his or her duties.

16 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

17 **ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.**

18 **§30-23-5. Medical Imaging and Radiation Therapy Technology Board**
19 **of Examiners.**

20 (a) The West Virginia Medical Imaging and Radiation Therapy
21 Technology Board of Examiners is continued. The members of the
22 board in office, unless sooner removed, continue to serve until
23 their respective terms expire and until their successors have been
24 appointed and qualified.

25 (b) The board shall consist of the following ~~eleven~~ nine

1 members, appointed by the Governor by and with the advice and
2 consent of the Senate:

3 ~~(1) One Radiologic Health Specialist from the Radiation,~~
4 ~~Toxics and Indoor Air Division of the West Virginia Department of~~
5 ~~Health and Human Resources;~~

6 (1) Three licensed practitioners, two of whom shall be
7 Radiologists;

8 (2) Three licensed Radiologic Technologists, one of whom shall
9 be an active medical imaging educator;

10 (3) One licensed Nuclear Medicine Technologist;

11 (4) One licensed Magnetic Resonance Imaging; and

12 (5) ~~Two~~ One citizen ~~members~~ member, who ~~are~~ is not licensed
13 under the provisions of this article and ~~do~~ does not perform any
14 services related to the practice licensed under the provisions of
15 this article.

16 (c) Each member shall be appointed for a term of three years
17 and may not serve more than two consecutive full terms. A member
18 having served two consecutive full terms may not be appointed for
19 one year after completion of his or her second full term. A member
20 continues to serve until a successor has been appointed and has
21 qualified. The terms shall be staggered in accordance with the
22 initial appointments under prior enactments of this article.

23 (d) Each member of the board shall be a resident of West
24 Virginia during the appointment term.

25 (e) The Radiologic Technologists, Nuclear Medicine
26 Technologists and the Magnetic Resonance Imaging Technologists

1 serving on the board shall maintain an active license with the
2 board.

3 (f) A vacancy on the board shall be filled by appointment by
4 the Governor for the unexpired term of the member whose office is
5 vacant.

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

8 (h) A licensed member of the board immediately and
9 automatically forfeits membership to the board if his or her
10 license to practice has been suspended or revoked. A member of the
11 board immediately and automatically forfeits membership to the
12 board if he or she is convicted of a felony under the laws of any
13 state or the United States, or becomes a nonresident of this state.

14 (i) The board shall designate one of its members as
15 chairperson and one member as secretary who shall serve at the will
16 of the board.

17 (j) Each member of the board shall receive compensation and
18 expense reimbursement in accordance with article one of this
19 chapter.

20 (k) A majority of the members serving on the board shall
21 constitute a quorum.

22 (l) The board shall hold at least two annual meetings. Other
23 meetings shall be held at the call of the chairperson or upon the
24 written request of two members, at such time and place as
25 designated in the call or request.

26 (m) Prior to commencing his or her duties as a member of the

1 board, each member shall take and subscribe to the oath required by
2 section five, article four of the Constitution of this state.

3 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

4 **ARTICLE 26. HEARING-AID DEALERS AND FITTERS.**

5 **§30-26-3. West Virginia board of hearing-aid dealers created;**
6 **members; qualifications; term; oath; salary and**
7 **expenses; powers and duties.**

8 (a) There is ~~hereby created~~ continued the West Virginia board
9 of hearing-aid dealers, which ~~shall be~~ is composed of five members
10 to be appointed by the Governor, ~~by and~~ with the advice and consent
11 of the Senate. The members of the board shall be residents of this
12 state. One member shall be a person licensed to practice medicine
13 in this state and one member shall hold a degree in audiology from
14 an accredited college or university. The remaining three members
15 shall be persons having no less than five years' experience as
16 hearing-aid dealers or fitters and shall hold a valid license under
17 the provisions of this article. ~~except that the hearing-aid dealers~~
18 ~~or fitters to be first appointed to the board shall obtain a~~
19 ~~license under the provisions of this article within six months~~
20 ~~following their appointment to the board.~~

21 (b) The ~~term~~ terms of office of each member of the board shall
22 be four years, ~~excepting that as to the members first appointed to~~
23 ~~the board, one shall be appointed for two years; two shall be~~
24 ~~appointed for three years; and two shall be appointed for four~~
25 ~~years~~ staggered in accordance with initial appointments under prior

1 enactments of this act. A board member shall serve until his or her
2 successor has been ~~duly~~ appointed and qualified and any vacancy in
3 the office of a member shall be filled by appointment for the
4 unexpired term of such member. Any member of the board shall be
5 eligible for reappointment.

6 (c) The board shall annually at its meeting first succeeding
7 May 1 elect from its own members a chairman and vice chairman.

8 (d) Each member of the board ~~shall~~ is entitled to receive for
9 each day actually engaged in the duties of his or her office, ~~a per~~
10 ~~diem salary of \$100~~ an amount not to exceed the amount paid to
11 legislators for their interim duties, and ~~shall~~ is entitled to be
12 reimbursed for all reasonable and necessary expenses actually
13 incurred in the performance of his or her duties as a member of
14 such board.

15 (e) All fees and other moneys collected by the board, pursuant
16 to the provisions of this article, shall be kept in a separate fund
17 and shall be expended solely for the purposes of this article. The
18 compensation for the members of the board and all expenses incurred
19 under this article shall be paid from this special fund and no such
20 compensation or expenses shall be paid from the General Revenue
21 Fund of this state. All disbursements of funds necessary to carry
22 out the provisions of this article shall be so disbursed only upon
23 the authority of the board.

24 (f) The board ~~is hereby empowered, with the assistance of the~~
25 ~~department to generally supervise,~~ shall regulate and control the
26 practice of dealing in or fitting of hearing aids in this state,

1 and ~~in so doing,~~ shall administer qualifying examinations in
2 accordance with the provisions of this article to test the
3 knowledge and proficiency of all prospective licensees or trainees.

4 (g) The board may purchase and maintain or rent audiometric
5 equipment and other facilities necessary to carry out the
6 examination of applicants as provided in this article and may
7 purchase such other equipment and supplies and employ such persons
8 as it deems appropriate to carry out the provisions of this
9 article.

10 (h) The board shall ~~promulgate reasonable rules and~~
11 ~~regulations in accordance with and subject to the provisions of~~
12 ~~chapter twenty-nine-a of this code~~ propose rules for legislative
13 approval in accordance with the provisions of article three,
14 chapter twenty-nine-a of this code:

15 ~~(a)~~ (1) For the proper performance of its duties;

16 ~~(b)~~ (2) To define and prescribe the ethical practice of
17 dealing in or fitting of hearing aids for the safety, protection
18 and welfare of the public;

19 ~~(c)~~ (3) To govern the time, place and manner of conducting the
20 examinations required by this article and the standard, scope and
21 subject of such examinations, which examinations shall, as a
22 minimum, conform with the standards, scope and subjects set forth
23 in section six of this article and manner, and the form in which
24 applications for such examinations shall be filed;

25 ~~(d)~~ (4) To establish procedures for determining whether
26 persons holding similar valid licenses from other states or

1 jurisdictions shall be required to take and successfully pass the
2 appropriate qualifying examination as a condition for such
3 licensing in this state; and

4 ~~(e)~~ (5) To establish such fees for such examinations, permits,
5 licenses and renewals as may be necessary to cover the costs of
6 administration.

7 **~~§30-26-4. Powers and duties of the state department of health~~**
8 **Administrative duties; examinations; register; use of fees.**

9 (a) Effective July 1, 2012, the administrative work of the
10 board shall be performed by ~~and in the state department of health~~
11 the board. The ~~department~~ board shall keep full and complete
12 records of all of ~~the~~ their proceedings ~~of the board and of its~~
13 accounts, which said records and accounts shall be open to public
14 inspection at all reasonable times.

15 (b) The ~~department~~ board is hereby authorized to ~~assist in the~~
16 ~~supervision and administration of~~ conduct, supervise, and
17 administer the qualifying examinations authorized and required by
18 this article, to maintain for ~~the board~~ a register or record of
19 persons who apply for a license or a temporary trainee permit as
20 well as a register or record of the name and last-known business
21 address of all persons to whom a license or trainee permit is
22 issued pursuant to this article.

23 ~~At the direction and request of the board the department shall~~
24 ~~conduct periodic inspections of the establishment and facilities of~~
25 ~~persons who are licensed to engage in the practice of dealing in or~~
26 ~~fitting of hearing aids and shall report its findings and the~~

1 ~~results of such inspections to the board.~~

2 ~~When requested by the board, the department may assist the~~
3 ~~board generally in carrying out any of the powers and duties~~
4 ~~granted to the board, but none of the cost incidental to such~~
5 ~~assistance, powers, functions and duties given to the department~~
6 ~~pursuant to this article shall be borne from any of the~~
7 ~~appropriations made to the department, but shall be borne by the~~
8 ~~board and to this extent the department shall be entitled to~~
9 ~~reimbursement from the funds of the board.~~

10 (c) Effective July 1, 2012, the board shall bear the costs of
11 carrying out the powers and duties granted to it by this article
12 from the fees collected by it for these purposes.