

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4111**

4  
5 (By Delegates Morgan, Stephens, Hatfield,

6 Hartman and Swartzmiller)

7 (Originating in the Committee on the Judiciary]

8 [February 10, 2012]

9  
10 A BILL to repeal §30-4-25 of the Code of West Virginia, 1931, as  
11 amended; to repeal §30-4B-6 of said code; to repeal §30-5-23  
12 of said code; to repeal §30-6-28 of said code; to repeal §30-  
13 7-14 of said code; to repeal §30-7C-13 of said code; to repeal  
14 §30-7D-10 of said code; to repeal §30-9-27 of said code; to  
15 repeal §30-21-14 of said code; to repeal §30-22-26; to repeal  
16 §30-23-27 of said code; to repeal §30-26-19 of said code; to  
17 repeal §30-30-25 of said code; to repeal §30-32-20 of said  
18 code; to repeal §30-35-13 of said code; to amend and reenact  
19 §30-13-9 of said code; to amend and reenact §30-16-11 of said  
20 code; to amend and reenact §30-37-8 of said code; and to amend  
21 and reenact §30-40-24 of said code, all relating to the  
22 authority by state boards of examination and registration to  
23 apply for an injunctions.

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

25 That §30-4-25 of the Code of West Virginia, 1931, as amended,

1 be repealed; that §30-4B-6 of said code be repealed; that §30-5-23  
2 of said code be repealed; that §30-6-28 of said code be repealed;  
3 that §30-7-14 of said code be repealed; that §30-7C-13 of said code  
4 be repealed; that §30-7D-10 of said code be repealed; that §30-9-27  
5 of said code be repealed; that §30-21-14 of said code be repealed;  
6 that §30-22-26 of said code be repealed; that §30-23-27 of said  
7 code be repealed; that §30-26-19 of said code be repealed; that  
8 §30-30-25 of said code be repealed; that §30-32-20 of said code be  
9 repealed; that §30-35-13 of said code be repealed; that §30-13-9 of  
10 said code be amended and reenacted; that §30-16-11 of said code be  
11 amended and reenacted; that §30-37-8 of said code be amended and  
12 reenacted; and that §30-40-24 of said code be amended and  
13 reenacted, all to read as follows:

14                   **CHAPTER 30. PROFESSIONS AND OCCUPATIONS**

15 **ARTICLE 13. ENGINEERS.**

16 **§30-13-9. Board powers.**

17           (a) The board may adopt and amend bylaws not inconsistent with  
18 the constitution and laws of this state. The board may promulgate  
19 and shall adopt "rules of professional responsibility for  
20 professional engineers". These rules are binding to any person  
21 registered with the board under the provisions of this article.  
22 These rules are also applicable to firms holding a certificate of  
23 authorization as provided in section seventeen of this article.

24           (b) The board may subpoena witnesses and compel their  
25 attendance and it may also subpoena books, papers, documents or

1 other pertinent data in any disciplinary matters or in any case  
2 involving an allegation of a violation of the provisions of this  
3 article. The board may apply to the circuit court of Kanawha county  
4 to enforce compliance with any subpoena it issues.

5 ~~(c) The board may seek an injunction in circuit court to~~  
6 ~~enforce the provisions of this article or to restrain a person or~~  
7 ~~entity from violating a provision of this article. In pursuing~~  
8 ~~injunctive relief under this section, the board shall not be~~  
9 ~~required to prove that an adequate remedy at law does not exist or~~  
10 ~~that substantial or irreparable damage would result from the~~  
11 ~~continued violation. The members of the board may not be personally~~  
12 ~~liable for any decisions made in good faith in pursuing injunctive~~  
13 ~~relief.~~

14 ~~(d)~~ The board may require all applicants for registration to  
15 take and successfully pass an examination of their fitness and  
16 qualifications to become registered.

17 ~~(e)~~(d) The board may require that a registered professional  
18 engineer demonstrate continuing professional competency in  
19 engineering as a condition of renewal or reregistration.

20 ~~(f)~~(e) Board members are exempt from civil liability for any  
21 decision made or any act done in good faith in the performance of  
22 any duty or the exercise of any power granted under this article.

23 **ARTICLE 16. CHIROPRACTORS.**

24 **§30-16-11. Disciplinary actions.**

25 (a) The board may take disciplinary action against any

1 licensee or certificate holder holding a license or certificate  
2 issued under this article after giving reasonable notice and an  
3 opportunity to be heard pursuant to the provisions of section one,  
4 article five, chapter twenty-nine-a of this code, when it finds  
5 that any person has engaged in conduct in violation of the rules  
6 adopted by the board, including, but not limited to, the following:

7       (1) Fraud or misrepresentation in applying for or procuring a  
8 chiropractic license or in connection with applying for or  
9 procuring periodic renewal of a chiropractic license;

10       (2) Cheating on or attempting to subvert the chiropractic  
11 licensing examination or examinations;

12       (3) Being found guilty of a crime in any jurisdiction, which  
13 offense is a felony, involves moral turpitude or directly relates  
14 to the practice of chiropractic. Any plea of nolo contendere is a  
15 conviction for the purposes of this subdivision;

16       (4) Conduct likely to deceive, defraud or harm the public;

17       (5) Making a false or misleading statement regarding his or  
18 her skill or the efficiency or value of the chiropractic treatment;

19       (6) Representing to a patient that an incurable condition,  
20 sickness, disease or injury can be cured;

21       (7) Willfully or negligently violating the confidentiality  
22 between chiropractic physician and patient except as required by  
23 law;

24       (8) Negligence in the practice of chiropractic as determined  
25 by the board;

- 1 (9) Being found mentally incompetent or insane by any court of  
2 competent jurisdiction;
- 3 (10) Being physically or mentally unable to engage safely in  
4 the practice of chiropractic;
- 5 (11) Practice or other behavior that demonstrates an  
6 incapacity or incompetence to practice chiropractic;
- 7 (12) Use of any false, fraudulent or deceptive statement in  
8 any document connected with the practice of chiropractic;
- 9 (13) Practicing chiropractic under a false or assumed name;
- 10 (14) Aiding or abetting the practice of chiropractic by an  
11 unlicensed, incompetent or impaired person;
- 12 (15) Allowing another person or organization to use his or her  
13 license to practice chiropractic;
- 14 (16) Commission of any act of sexual abuse, sexual misconduct  
15 or sexual exploitation related to the licensee's practice of  
16 chiropractic;
- 17 (17) Being addicted or habituated to a drug or intoxicant;
- 18 (18) Obtaining any fee by fraud, deceit or misrepresentation;
- 19 (19) Employing abusive billing practices;
- 20 (20) Directly or indirectly giving or receiving any fee,  
21 commission, rebate or other compensation for professional services  
22 not actually rendered: Provided, That this prohibition does not  
23 preclude the legal functioning of lawful professional partnerships,  
24 corporations or associations;
- 25 (21) Disciplinary action of another state or jurisdiction

1 against a license or other authorization to practice chiropractic  
2 based upon acts or conduct by the licensee similar to acts or  
3 conduct that constitute grounds for action as defined in this  
4 section, a certified copy of the record of the action taken by the  
5 other state or jurisdiction being conclusive evidence thereof;

6       (22) Failure to report to the board within thirty days of any  
7 adverse action, disciplinary action, sanctions or punishment taken  
8 against him or her by another state licensing board or licensing  
9 jurisdiction, United States or foreign, by a peer review body,  
10 health care institution, professional or chiropractic society or  
11 association, governmental agency, law-enforcement agency or court  
12 for acts or conduct similar to acts or conduct that constitute  
13 grounds for action as defined in this section;

14       (23) Failure to report to the board within thirty days of the  
15 surrender of a license or other authorization to practice  
16 chiropractic in another state or jurisdiction or surrender of  
17 membership on any chiropractic staff or in any chiropractic or  
18 professional association or society while under disciplinary  
19 investigation by any of those authorities or bodies for acts or  
20 conduct similar to acts or conduct that constitute grounds for  
21 action as defined in this section;

22       (24) Any adverse judgment, award or settlement against the  
23 licensee resulting from a chiropractic liability claim related to  
24 acts or conduct similar to acts or conduct that constitute grounds  
25 for action as defined in this section;

1           (25) Failure to report to the board within thirty days any  
2 adverse judgment, settlement or award arising from a chiropractic  
3 liability claim related to acts or conduct similar to acts or  
4 conduct that constitute grounds for action as defined in this  
5 section;

6           (26) Failure to transfer or release pertinent and necessary  
7 chiropractic records to another physician in a timely fashion when  
8 legally requested to do so by the subject patient or by a legally  
9 designated representative of the subject patient;

10          (27) Improper management of chiropractic patient records;

11          (28) Failure to furnish the board, its investigators or  
12 representatives, information legally requested by the board;

13          (29) Failure to cooperate with a lawful investigation  
14 conducted by the board; or

15          (30) Violation of any provision of this article or the rules  
16 of the board or of an action, stipulation or agreement with the  
17 board.

18          (b) Upon a finding of a violation by a chiropractor of one or  
19 more of the grounds for discipline contained in subsection (a) of  
20 this section, the board may impose one or more of the following  
21 penalties:

22           (1) Revocation of the chiropractic license;

23           (2) Suspension of the chiropractic license;

24           (3) Probation;

25           (4) Stipulations, limitations, restrictions and conditions

1 relating to practice;

2 (5) Reprimand;

3 (6) Monetary redress to another party;

4 (7) A period of free public or charity service;

5 (8) Satisfactory completion of an educational, training or  
6 treatment program, or a combination of programs;

7 (9) Imposition of an administrative penalty, not to exceed one  
8 thousand dollars per day per violation; or

9 (10) Payment of administrative costs for the disciplinary  
10 action, including, but not limited to, attorney fees, investigation  
11 expenses, hearing examiner fees, witness fees and cost of  
12 monitoring compliance with the board's orders.

13 (c) The board may issue a confidential letter of concern to a  
14 licensee when, though evidence does not warrant formal proceedings,  
15 the board has noted indications of possible misconduct of a  
16 licensee that could lead to serious consequences and formal action.  
17 In the letter of concern, the board is also authorized at its  
18 discretion to request clarifying information from the licensee.

19 (d) The board may require professional competency, physical,  
20 mental or chemical dependency examinations of any applicant or  
21 licensee including withdrawal and laboratory examination of bodily  
22 fluids.

23 (e) In every disciplinary case considered by the board  
24 pursuant to this article, whether initiated by the board or upon  
25 complaint or information from any person or organization, the board



1 shall make a preliminary determination whether probable cause  
2 exists to substantiate charges due to any reasons set forth in this  
3 section. If probable cause is not found in the complaint, all  
4 proceedings relating to the complaint and the response of the  
5 licensee or his or her representative shall be held confidential  
6 and may not be made available to the public or to any other state  
7 or federal agency or court. If probable cause is found to exist,  
8 all proceedings on the charges shall be open to the public, who are  
9 entitled to all reports, records and non-deliberative materials  
10 introduced at the hearing, including the record of any final action  
11 taken: *Provided*, That any medical records pertaining to the person  
12 who has not waived his or her right to the confidentiality of the  
13 records are not open to the public. For purposes of the hearing,  
14 the board has the power to subpoena witnesses, documents or any  
15 other tangible evidence. The board may, in its discretion, meet in  
16 an informal conference with the accused licensee who seeks or  
17 agrees to the conference. Disciplinary action taken against a  
18 licensee as a result of the informal conference and agreed to in  
19 writing by the board and the accused licensee is binding and a  
20 matter of public record. The holding of an informal conference does  
21 not preclude an open formal hearing if the board determines it is  
22 necessary.

23 (f) ~~If the board determines that the evidence in its~~  
24 ~~possession indicates that a chiropractor's continuation in practice~~  
25 ~~or unrestricted practice constitutes an immediate threat to the~~

1 ~~public health and safety or when a licensee is convicted of a~~  
2 ~~felony, whether or not related to the practice of chiropractic, the~~  
3 ~~board may seek an injunction in the circuit court of proper~~  
4 ~~jurisdiction for immediate relief implementing any of the board's~~  
5 ~~authority provided in this article.~~

6       ~~(g)~~ All disciplinary actions taken by the board shall be  
7 reported to the federation of licensing boards, appropriate federal  
8 agencies and any other state boards with which the disciplined  
9 licensee may also be registered or licensed and all the actions,  
10 including related findings of fact and conclusions of law, are  
11 matters of public record. Voluntary surrender of and voluntary  
12 limitations on a chiropractic license of any person are also  
13 matters of public record and shall also be reported to the  
14 appropriate agencies.

15 **ARTICLE 37. MASSAGE THERAPISTS.**

16 **§30-37-8. Enforcement.**

17       ~~(a) The board has the power and authority to enter into any~~  
18 ~~court of this state having proper jurisdiction to seek an~~  
19 ~~injunction against any person, corporation or association not in~~  
20 ~~compliance with the provisions of this article, and is further~~  
21 ~~empowered to enter into any court to enforce the provisions of this~~  
22 ~~article to ensure compliance with such provisions.~~

23       ~~(b)~~ The board may suspend, revoke, or impose probationary  
24 conditions upon a license or impose disciplinary sanctions upon a  
25 licensee pursuant to rules adopted in accordance with this article

1 concerning board requirements for licensure. The following are  
2 grounds for revocation, suspension, annulment or the imposition of  
3 other disciplinary sanctions when a person, corporation or  
4 association is:

5 (1) Guilty of fraud in practice of massage, or fraud or deceit  
6 in the licensee's application for licensure;

7 (2) Engaged in practice under a false or assumed name, or  
8 impersonating another practitioner of a like or different name;

9 (3) Addicted to the habitual use of drugs, alcohol or  
10 stimulants to an extent as to incapacitate that person's  
11 performance of professional duties;

12 (4) Guilty of fraudulent, false, misleading or deceptive  
13 advertising, or for prescribing medicines or drugs, or practicing  
14 or offering to practice any licensed profession without legal  
15 authority. The licensee may not diagnose, or imply or advertise in  
16 any way a service for a condition that would require diagnosis;

17 (5) Practicing or offering to practice beyond the scope of  
18 licensure of massage therapy without legal authority;

19 (6) Grossly negligent in the practice of massage or guilty of  
20 employing, allowing or permitting an unlicensed person to perform  
21 massage in the licensee's work site;

22 (7) Practicing massage or bodywork with a license from another  
23 state or jurisdiction that has been canceled, revoked, suspended or  
24 otherwise restricted;

25 (8) Incapacitated by a physical or mental disability which is

1 determined by a physician to render further practice by the  
2 licensee inconsistent with competency and ethics requirements;

3 (9) Convicted of sexual misconduct, assignation or the  
4 solicitation or attempt thereof;

5 (10) Engaging in any act of sexual abuse, sexual misconduct or  
6 sexual exploitation related to the licensee's practice of massage  
7 therapy;

8 (11) Obtaining any fee by fraud, deceit or misrepresentation;  
9 or

10 (12) In violation of any of the provisions of this article or  
11 any substantive rule adopted under the authority of this article.

12 **ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT**

13 **~~§30-40-24. Injunctions; Criminal proceedings.~~**

14 (a) ~~Whenever the commission or other interested person~~  
15 ~~believes that any person has engaged, is engaging or is about to~~  
16 ~~engage in any act that constitutes a violation of this article, the~~  
17 ~~commission or other interested person may make application to any~~  
18 ~~court of competent jurisdiction for an order enjoining the acts or~~  
19 ~~services. Upon a showing that the person has engaged in or is~~  
20 ~~about to engage in any act which violates this article, an~~  
21 ~~injunction, restraining order or another appropriate order may be~~  
22 ~~granted by the court without bond.~~

23 (b) Whenever the commission, its executive director or its  
24 authorized representative has reason to believe that any person has  
25 knowingly violated a provision of this article, the commission or

1 its authorized representative may bring its information to the  
2 prosecuting attorney in the county where the violation has occurred  
3 who shall cause appropriate criminal proceedings to be brought.

4 ~~(c)~~ (b) Whenever any other interested person has reason to  
5 believe that any person has knowingly violated a provision of this  
6 article, such person may bring its information to the attention of  
7 the appropriate law-enforcement officer who may cause an  
8 investigation to be made in order for appropriate criminal  
9 proceedings to be brought.