

1                                   **H. B. 4109**

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3                    (By Delegates Morgan, Givens, Martin, Cann,  
4                    Hall, R. Phillips, Romine and Householder)

5                    [Introduced January 18, 2012; referred to the  
6                    Committee on Government Organization.]

**Interim  
Bill**

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10 A BILL to amend and reenact §30-1A-2, §30-1A-3, §30-1A-5 and §30-  
11       1A-6 of the Code of West Virginia, 1931, as amended, all  
12       relating to professions and occupations; revising the sunrise  
13       process; deleting the requirement for substantial change; and  
14       providing for sunrise application when establishing a scope of  
15       practice.

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

17       That §30-1A-2, §30-1A-3, §30-1A-5 and §30-1A-6 of the Code of  
18 West Virginia, 1931, as amended, be amended and reenacted, all to  
19 read as follows:

20 **ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND**  
21                                   **PROFESSIONS.**

22 **§30-1A-2. Required application for regulation of professional or**  
23                                   **occupational group; application and reporting dates.**

24       (a) Any professional or occupational group or organization,

1 any individual or any other interested party which proposes the  
2 regulation of any unregulated professional or occupational group or  
3 organization, or who proposes to ~~substantially~~ establish, revise or  
4 expand the scope of practice of a regulated profession or  
5 occupation, shall submit an application to the Joint Standing  
6 Committee on Government Organization, as set out in this article.

7       (b) The Joint Standing Committee on Government Organization  
8 may only accept an application for regulation of a professional or  
9 occupational group or organization, or ~~substantial~~ establishment,  
10 revision or expansion of the scope of practice of a regulated  
11 profession or occupation, when the party submitting an application  
12 files with the committee a statement of support for the proposed  
13 regulation which has been signed by at least ten residents or  
14 citizens of the State of West Virginia who are members of the  
15 professional or occupational group or organization for which  
16 regulation is being sought, or for which ~~substantial~~ establishment,  
17 revision or expansion of the scope of practice of a regulated  
18 profession or occupation is being sought.

19       (c) The completed application shall contain:

20       (1) A description of the occupational or professional group or  
21 organization for which regulation is proposed, or for which ~~a~~  
22 ~~substantial~~ establishment, revision or expansion of the scope of  
23 practice of a regulated profession or occupation is proposed,  
24 including a list of associations, organizations and other groups

1 currently representing the practitioners in this state, and an  
2 estimate of the number of practitioners in each group;

3 (2) A definition of the problem and the reasons why regulation  
4 or ~~a substantial~~ establishment, revision or expansion of the scope  
5 of practice is necessary;

6 (3) The reasons why certification, registration, licensure or  
7 other type of regulation is being requested and why that regulatory  
8 alternative was chosen;

9 (4) A detailed statement of the proposed funding mechanism to  
10 pay the administrative costs of the regulation or the ~~substantial~~  
11 establishment, revision or expansion of the scope of practice, or  
12 of the fee structure conforming with the statutory requirements of  
13 financial autonomy as set out in this chapter;

14 (5) A detailed statement of the location and manner in which  
15 the group plans to maintain records which are accessible to the  
16 public as set out in this chapter;

17 (6) The benefit to the public that would result from the  
18 proposed regulation or ~~substantial~~ establishment, revision or  
19 expansion of the scope of practice; and

20 (7) The cost of the proposed regulation or ~~substantial~~  
21 establishment, revision or expansion of the scope of practice.

22 **§30-1A-3. Analysis and evaluation of application.**

23 (a) The Joint Committee on Government Organization shall refer  
24 the completed application of the professional or occupational group

1 or organization to the Performance Evaluation and Research Division  
2 of the Office of the Legislative Auditor.

3       (b) The Performance Evaluation and Research Division of the  
4 Office of the Legislative Auditor shall conduct an analysis and  
5 evaluation of the application. The analysis and evaluation shall  
6 be based upon the criteria listed in subsection © of this section.  
7 The Performance Evaluation and Research Division of the Office of  
8 the Legislative Auditor shall submit a report, and such supporting  
9 materials as may be required, to the Joint Standing Committee on  
10 Government Organization, as set out in this section.

11       © For an application proposing the regulation of an  
12 unregulated professional or occupational group or organization, the  
13 report shall include evaluation, analysis and findings as to:

14       (1) Whether the unregulated practice of the occupation or  
15 profession clearly harms or endangers the health, safety or welfare  
16 of the public, and whether the potential for the harm is easily  
17 recognizable and not remote or dependent upon tenuous argument;

18       (2) Whether the practice of the profession or occupation  
19 requires specialized skill or training which is readily measurable  
20 or quantifiable so that examination or training requirements would  
21 reasonably assure initial and continuing professional or  
22 occupational competence;

23       (3) Whether the public can be adequately protected by other  
24 means in a more cost-effective manner; and

1       (4) Whether the professional or occupational group or  
2 organization should be regulated as proposed in the application.

3       (d) For an application proposing the ~~substantial~~  
4 establishment, revision or expansion of the scope of practice of a  
5 regulated profession or occupation, the report shall include the  
6 evaluation, analysis and findings as set forth in subsection © of  
7 this section inasmuch as applicable, and a clear recommendation as  
8 to whether the scope of practice should be ~~substantial~~ established,  
9 revised or expanded as proposed in the application.

10       (e) For an application received after December 1, and on or  
11 before June 1, the Performance Evaluation and Research Division of  
12 the Office of the Legislative Auditor shall present a report to the  
13 Joint Committee on Government Organization by December 31, of that  
14 year.

15       (f) For an application received after June 1 and on or before  
16 December 1, the Performance Evaluation and Research Division of the  
17 Office of the Legislative Auditor shall present a report to the  
18 Joint Committee on Government Organization by June 30 of the next  
19 year.

20 **§30-1A-5. Reapplication requirements.**

21       (a) If the Joint Standing Committee on Government Organization  
22 approves an application for regulation of a professional or  
23 occupational group or organization, but the legislation  
24 incorporating its recommendations does not become law in the year

1 in which it is first introduced, the applicants for regulation may  
2 introduce legislation during each of the two successive regular  
3 sessions without having to make reapplication.

4 (b) If the Joint Standing Committee on Government Organization  
5 does not approve an application for regulation, establishment,  
6 revision or expansion of the scope of practice of a professional or  
7 occupational group or organization, any party who continues to  
8 propose the regulation, establishment, revision or expansion must  
9 reapply in accordance with the provisions of this article.

10 **§30-1A-6. Article construction.**

11 (a) Nothing in this article shall be construed as limiting or  
12 interfering with the right of any member of the Legislature to  
13 introduce or of the Legislature to consider any bill that would  
14 create a new state governmental department or agency or amend the  
15 law with respect to an existing one.

16 (b) Notwithstanding the provisions of subsection (a) of this  
17 section, the recommendations of the Joint Standing Committee on  
18 Government Organization are to be given considerable weight in  
19 determining if a profession or occupation should be regulated, or  
20 if the scope of practice of a regulated profession or occupation  
21 should be established, revised or expanded.

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NOTE: The purpose of this bill is to clarify that a sunrise review is required for the establishment, revision or expansion of a professional scope of practice.

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

**THIS BILL IS AN INTERIM BILL RECOMMENDED FOR PASSAGE BY THE  
Senate Bill No.**

(By Senators Snyder, Foster, Browning, Miller,  
Chafin and Boley)

[Introduced; referred to the Committee  
.]

A BILL to amend and reenact §30-1A-2, §30-1A-3, §30-1A-5 and §30-1A-6 of the Code of West Virginia, 1931, as amended, all relating to professions and occupations; revising the sunrise process; deleting the requirement for substantial change; and providing for sunrise application when establishing a scope of practice.

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

That §30-1A-2, §30-1A-3, §30-1A-5 and §30-1A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.**

**§30-1A-2. Required application for regulation of professional or occupational group; application and reporting dates.**

(a) Any professional or occupational group or organization, any individual or any other interested party which proposes the regulation of any unregulated professional or occupational group or organization, or who proposes to substantially establish, revise or expand the scope of practice of a regulated profession or occupation, shall submit an application to the Joint Standing Committee on Government Organization, as set out in this article.

(b) The Joint Standing Committee on Government Organization may only accept an application for regulation of a professional or occupational group or organization, or ~~substantial~~ establishment, revision or expansion of the scope of practice of a regulated profession or occupation, when the party submitting an application files with the committee a statement of support for the proposed regulation which has been signed by at least ten residents or citizens of the State of West Virginia who are members of the professional or occupational group or organization for which regulation is being sought, or for which ~~substantial~~ establishment, revision or expansion of the scope of practice of a regulated profession or occupation is being sought.

© The completed application shall contain:

(1) A description of the occupational or professional group or organization for which regulation is proposed, or for which a ~~substantial~~ establishment, revision or expansion of the scope of practice of a regulated profession or occupation is proposed, including a list of associations, organizations and other groups currently representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(2) A definition of the problem and the reasons why regulation or a ~~substantial~~ establishment, revision or expansion of the scope of practice is necessary;

(3) The reasons why certification, registration, licensure or other type of regulation is being requested and why that regulatory alternative was chosen;

(4) A detailed statement of the proposed funding mechanism to pay the administrative costs of the regulation or the ~~substantial~~ establishment, revision or expansion of the scope of practice, or of the fee structure conforming with the statutory requirements of financial autonomy as set out in this chapter;

(5) A detailed statement of the location and manner in which the group plans to maintain records which are accessible to the public as set out in this chapter;

(6) The benefit to the public that would result from the proposed regulation or ~~substantial~~ establishment, revision or expansion of the scope of practice; and

(7) The cost of the proposed regulation or ~~substantial~~ establishment, revision or expansion of the scope of practice.

**§30-1A-3. Analysis and evaluation of application.**

(a) The Joint Committee on Government Organization shall refer the completed application of the professional or occupational group or organization to the Performance Evaluation and Research Division of the Office of the Legislative Auditor.

(b) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall conduct an analysis and evaluation of the application. The analysis and evaluation shall be based upon the criteria listed in subsection © of this section. The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall submit a report, and such supporting materials as may be required, to the Joint Standing Committee on Government Organization, as set out in this section.

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(1) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(2) Whether the practice of the profession or occupation



1 requires specialized skill or training which is readily measurable  
2 or quantifiable so that examination or training requirements would  
3 reasonably assure initial and continuing professional or  
4 occupational competence;

5 (3) Whether the public can be adequately protected by other  
6 means in a more cost-effective manner; and

7 (4) Whether the professional or occupational group or  
8 organization should be regulated as proposed in the application.

9 (d) For an application proposing the ~~substantial~~  
10 establishment, revision or expansion of the scope of practice of a  
11 regulated profession or occupation, the report shall include the  
12 evaluation, analysis and findings as set forth in subsection © of  
13 this section inasmuch as applicable, and a clear recommendation as  
14 to whether the scope of practice should be ~~substantial~~ established,  
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31 in which it is first introduced, the applicants for regulation may  
32 introduce legislation during each of the two successive regular  
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35 does not approve an application for regulation, establishment,  
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37 occupational group or organization, any party who continues to  
38 propose the regulation, establishment, revision or expansion must  
39 reapply in accordance with the provisions of this article.

40 **§30-1A-6. Article construction.**

41 (a) Nothing in this article shall be construed as limiting or  
42 interfering with the right of any member of the Legislature to  
43 introduce or of the Legislature to consider any bill that would  
44 create a new state governmental department or agency or amend the  
45 law with respect to an existing one.

46 (b) Notwithstanding the provisions of subsection (a) of this  
47 section, the recommendations of the Joint Standing Committee on  
48 Government Organization are to be given considerable weight in

1 determining if a profession or occupation should be regulated, or  
2 if the scope of practice of a regulated profession or occupation  
3 should be established, revised or expanded.

NOTE: The purpose of this bill is to clarify that a sunrise review is required for the establishment, revision or expansion of a professional scope of practice.

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

This bill is an interim bill recommended for passage by the joint standing committee on government organization. **JOINT STANDING COMMITTEE ON GOVERNMENT ORGANIZATION.**