

H. B. 4388

(By Delegates Morgan, Stephens and Hatfield)

[Introduced February 1, 2012; referred to the

Committee on Government Organization then the Judiciary.]

10 A BILL to repeal §30-32-23 of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §30-32-1, §30-32-2,
12 §30-32-3, §30-32-4, §30-32-5, §30-32-6, §30-32-7, §30-32-8,
13 §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13,
14 §30-32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-18,
15 §30-32-19, §30-32-20 and §30-32-21 of said code, all relating
16 to the practice of speech-language pathology and audiology;
17 prohibiting practice without a license; providing exemptions;
18 specifying applicability of other law; providing definitions;
19 continuing the Board of Examiners for Speech-Language
20 Pathology and Audiology; specifying qualifications of board
21 members; providing terms and conditions of board members'
22 service; providing for election of board officers; providing
23 for compensation and expense reimbursement of board members;
24 setting forth powers and duties of the board; providing rule-

1 making authority; continuing the Board of Examiners for
2 Speech-Language Pathology and Audiology Fund; providing
3 qualifications for practicing speech-language pathology or
4 audiology; providing for provisional licenses to practice
5 while attaining required postgraduate professional experience;
6 providing for waiver of requirements for persons who hold a
7 license from another state with substantially equivalent
8 standards; providing for practice pending disposition of
9 application; requiring a license to practice in public
10 schools; providing requirements for attaining a license to
11 practice in public schools; providing scopes of practice for
12 speech-language pathology and audiology; requiring
13 speech-language pathology assistants and audiology assistants
14 to register with the board; providing registration and
15 supervision requirements for speech-language pathology
16 assistants and audiology assistants; requiring a license to
17 telepractice; providing conditions and requirements for
18 telepractice; providing for renewal of licenses and
19 registrations; providing for renewal of lapsed licenses and
20 registrations; providing for the suspension, revocation and
21 refusal to renew licenses and registrations; providing for the
22 reinstatement of revoked licenses and registrations;
23 authorizing actions to enjoin violations; providing for the
24 investigation of complaints; setting forth complaint

1 procedures and hearing procedures; establishing grounds for
2 disciplinary actions; providing for rights of appeal and
3 judicial review; providing that a single act is sufficient to
4 justify disciplinary action; providing for criminal
5 proceedings; and providing for criminal penalties.

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

7 That §30-32-23 of the Code of West Virginia, 1931, as amended,
8 be repealed; and that §30-32-1, §30-32-2, §30-32-3, §30-32-4,
9 §30-32-5, §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10,
10 §30-32-11, §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16,
11 §30-32-17, §30-32-18, §30-32-19, §30-32-20 and §30-32-21 of said
12 code be amended and reenacted, all to read as follows:

13 **ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.**

14 **§30-32-1. Unlawful acts; persons and practices not affected.**

15 (a) It is unlawful for any person to practice or offer to
16 practice speech-language pathology or audiology in this state
17 without a license issued under the provisions of this article, or
18 advertise or use any title or description tending to convey the
19 impression that the person is a speech-language pathologist or
20 audiologist unless the person has been licensed under the
21 provisions of this article, and the license has not expired, been
22 suspended or revoked.

23 (b) No business entity, except through a licensee, may render
24 any service or engage in any activity which if rendered or engaged

1 in by an individual, would constitute the practices licensed under
2 the provisions of this article.

3 (c) As of July 1, 2013, speech-language pathologists and
4 audiologists employed or contracted by the West Virginia Board of
5 Education, a county board of education or a regional education
6 service agency are required to be licensed under the provisions of
7 this article.

8 (d) As of July 1, 2013, speech-language pathology assistants
9 and audiology assistants employed or contracted by the West
10 Virginia Board of Education, a county board of education or a
11 regional education service agency are required to be registered
12 with the board under the provisions of this article.

13 (e) Nothing in this article prevents or restricts:

14 (1) Any person licensed or registered under any other law of
15 this state from practicing the profession and performing services
16 for which he or she is licensed or registered;

17 (2) A physician or surgeon licensed by this state while
18 engaging in the profession for which he or she is licensed;

19 (3) A trained individual providing hearing testing or balance
20 system assessment under the direct supervision of a licensed
21 physician or surgeon;

22 (4) A person credentialed by this state as a teacher of the
23 deaf;

24 (5) The activities and services of persons pursuing a course

1 of study leading to a degree in speech-language pathology or
2 audiology at a college or university, if:

3 (A) These activities and services constitute a part of a
4 planned course of study at that institution;

5 (B) They are designated by a title such as intern, trainee,
6 student or by other title clearly indicating the status appropriate
7 to their level of education; and

8 (C) They work under the supervision of a person licensed by
9 this state to practice speech-language pathology or audiology;

10 (6) The activities of persons who are nonresidents of this
11 state from engaging in the practice of speech-language pathology or
12 audiology if the activities of the persons do not exceed five days
13 in any calendar year and they:

14 (A) Meet the qualifications of this article;
15 (B) Register with the board in accordance with procedures
16 specified in its rules; and

17 (C) Abide by the standards of professional conduct contained
18 in this article and rules promulgated by the board;

19 (7) The practices and procedures of qualified licensed hearing
20 aid dealers engaged solely in the practice of dealing in or fitting
21 of hearing aids under article twenty-six of this chapter; or

22 (8) The activity of occupational hearing conservationists
23 engaged in hearing testing as part of a hearing conservation
24 program in compliance with regulations of the Occupational Safety

1 and Health Administration.

2 (f) A person licensed under this article as an audiologist is
3 not required to obtain a license under the provisions of article
4 twenty-six of this chapter.

5 **§30-32-2. General provisions.**

6 The practices licensed under the provisions of this article
7 and the West Virginia Board of Examiners for Speech-Language
8 Pathology and Audiology are subject to the provisions of article
9 one of this chapter, the provisions of this article and any rules
10 promulgated hereunder.

11 **§30-32-3. Definitions.**

12 The following terms have the following meanings:

13 (1) "Applicant" means a person applying for a license required
14 by this article.

15 (2) "Assistant" means a speech-language pathology assistant or
16 an audiology assistant as further defined in this section and who
17 is registered with the board in accordance with the provisions of
18 this article and legislative rule.

19 (3) "Audiologist" means a person who engages in the practice
20 of audiology and who is licensed pursuant to the provisions of this
21 article.

22 (4) "Audiology" means the application of principles, methods,
23 and procedures related to hearing and the disorders of hearing and
24 to related language and speech disorders.

1 (5) "Audiology disorders" means any and all conditions,
2 whether of organic or nonorganic origin, peripheral or central,
3 that impede the normal process of human communication including,
4 but not limited to, disorders of auditory sensitivity, acuity,
5 function or processing.

6 (6) "Audiology assistant" means a person who practices under
7 the direction and supervision of an audiologist licensed under this
8 article and who is registered with the board in accordance with
9 this article and legislative rule.

10 (7) "Board" means the West Virginia Board of Speech-Language
11 Pathology and Audiology.

12 (8) "Business entity" means any firm, partnership,
13 association, company, corporation, limited partnership, limited
14 liability company or other entity doing business in the State of
15 West Virginia.

16 (9) "Direct supervision" means the actual physical presence of
17 a supervising licensed speech-language pathologist or supervising
18 licensed audiologist in the room where treatment is provided by an
19 assistant.

20 (10) "General supervision" means initial direction and
21 periodic inspection of the activities of an assistant by the
22 supervising licensed speech-language pathologist or supervising
23 licensed audiologist, who is physically present in the building
24 where treatment is provided and is quickly and easily available.

1 (11) "Initial supervision training" means training required of
2 supervising licensed speech-language pathologists and supervising
3 licensed audiologists before providing supervision of assistants,
4 as further defined by legislative rule.

5 (12) "Instruction" means:

6 (A) Providing speech-language pathology or audiology services
7 in infant/toddler, preschool, elementary or secondary school
8 programs; or

9 (B) Teaching students in institutions of higher education.

10 (13) "Level I license" means a license to practice
11 exclusively in public schools issued pursuant to the provisions of
12 section eleven of this article.

13 (14) "License" means a license issued pursuant to the
14 provisions of this article.

15 (15) "Licensee" means a person who is licensed pursuant to the
16 provisions of this article.

17 (16) "Provisional license" means a license issued pursuant to
18 the provisions of section nine of this article.

19 (17) "Registrant" means an assistant who is registered
20 pursuant to the provisions of this article.

21 (18) "Registration" means a registration issued pursuant to
22 the provisions of this article.

23 (19) "Speech-language pathologist" means any person who
24 engages in the practice of speech-language pathology and who is

1 licensed pursuant to the provisions of this article.

2 (20) "Speech-language pathology" means the application of
3 principles, methods and procedures related to the development,
4 disorders and effectiveness of human communication and related
5 functions.

6 (21) "Speech-language pathology assistant" means a person who
7 practices under the direction and supervision of a speech-language
8 pathologist licensed under this article and who is registered with
9 the board in accordance with this article and legislative rule.

10 (22) "Speech-language pathology disorders" means conditions,
11 whether of organic or nonorganic origin, that impede the normal
12 process of human communication including, but not limited to,
13 disorders and related disorders of speech, articulation, fluency,
14 voice, verbal and written language, auditory comprehension,
15 cognition/communication, and oral, pharyngeal and/or laryngeal
16 sensorimotor competencies.

17 (23) "Telepractice" means the application of telecommunication
18 technology to deliver speech-language pathology or audiology
19 services through real time interaction from one site to another for
20 assessment, intervention or consultation in a manner sufficient to
21 ensure patient confidentiality.

22 **§30-32-4. Board of Examiners for Speech-language Pathology and**
23 **Audiology.**

24 (a) The West Virginia Board of Examiners for Speech-Language

1 Pathology and Audiology is continued. The members of the board in
2 office on July 1, 2012 may, unless sooner removed, continue to
3 serve until their respective terms expire or until their successors
4 have been appointed and qualified.

5 (b) The Governor shall appoint, by and with the advice and
6 consent of the Senate:

7 (1) Two persons who are speech-language pathologists;
8 (2) Two persons who are audiologists; and
9 (3) One citizen member who is not licensed under this article.

10 (c) The terms are for three years. No member may serve for
11 more than two consecutive terms.

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

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

17 (f) No board member may serve as an officer of the West
18 Virginia Speech Language and Hearing Association concurrently with
19 his or her service on the board.

20 (g) A vacancy on the board shall be filled by appointment by
21 the Governor for the unexpired term of the member whose office is
22 vacant.

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

1 (i) A licensed member of the board immediately and
2 automatically forfeits membership to the board if his or her
3 license or registration to practice is suspended or revoked.

4 (j) A member of the board immediately and automatically
5 forfeits membership to the board if he or she is convicted of a
6 felony under the laws of any jurisdiction or becomes a nonresident
7 of this state.

8 (k) The board shall elect annually one of its members as
9 chairperson and one of its members as secretary-treasurer who shall
10 serve at the will and pleasure of the board.

11 (l) Each member of the board is entitled to receive
12 compensation and expense reimbursement in accordance with article
13 one of this chapter.

14 (m) A majority of the members of the board constitutes a
15 quorum.

16 (n) The board shall hold at least one annual meeting. Other
17 meetings shall be held at the call of the chairperson or upon the
18 written request of four members, at the time and place as
19 designated in the call or request.

20 (o) Prior to commencing his or her duties as a member of the
21 board, each member shall take and subscribe to the oath required by
22 section five, article four of the Constitution of this state.

23 (p) Board members are immune from civil liability for the
24 performance of their official duties so long as they act in good

1 faith.

2 **§30-32-5. Powers and duties of the board.**

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

6 (b) The board shall:

7 (1) Hold meetings and conduct hearings;
8 (2) Establish requirements for licenses and registrations;
9 (3) Establish procedures for submitting, approving and
10 rejecting applications for licenses and registrations;

11 (4) Determine the qualifications of any applicant for a
12 license or registration;

13 (5) Propose rules for legislative approval relating to
14 professional conduct and ethical standards of practice;

15 (6) Communicate disciplinary actions to relevant state and
16 federal authorities, the American Speech-Language-Hearing
17 Association, the West Virginia Speech-Language and Hearing
18 Association and other applicable authorities when public safety is
19 at risk;

20 (7) Maintain an office and hire, discharge, establish the job
21 requirements and fix the compensation of employees and contracted
22 employees necessary to enforce the provisions of this article;

23 (8) Investigate alleged violations of the provisions of this
24 article, legislative rules, orders and final decisions of the

1 board;

2 (9) Conduct disciplinary hearings of persons regulated by the
3 board;

4 (10) Determine disciplinary action and issue orders;

5 (11) Institute appropriate legal action for the enforcement of
6 the provisions of this article;

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

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

11 (14) Establish by legislative rule the continuing education
12 and competency requirements for licensees and registrants;

13 (15) Issue, renew, combine, deny, suspend, revoke or reinstate
14 licenses and registrations pursuant to the provisions of this
15 article;

16 (16) Establish a fee schedule;

17 (17) Take all other actions necessary and proper to effectuate
18 the purposes of this article; and

19 (18) Propose rules in accordance with the provisions of
20 article three, chapter twenty-nine-a of this code to implement the
21 provisions of this article.

22 (c) The board may:

23 (1) Approve and contract with third parties to administer the
24 examinations required under the provisions of this article;

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

3 (3) Confer with the Attorney General or his or her assistants
4 in connection with legal matters and questions; and

5 (4) Perform random audits of continuing education and
6 supervision records and documentation of licensure and registration
7 requirements to determine compliance with this article and
8 legislative rule.

9 **§30-32-6. Rulemaking.**

10 (a) The board shall propose rules for legislative approval, in
11 accordance with the provisions of article three, chapter
12 twenty-nine-a of this code, to implement the provisions of this
13 article, including:

14 (1) Standards and requirements for licenses and registrations;
15 (2) Requirements, qualifications and designation of third
16 parties to establish educational requirements and to prepare and/or
17 administer examinations and reexaminations;

18 (3) Procedures for the issuance and renewal of a license,
19 registration and limited license to practice in public schools;

20 (4) A fee schedule;

21 (5) Continuing education and competency requirements for
22 licensees and registrants;

23 (6) Establishment of competency standards;

24 (7) The procedures for denying, suspending, revoking,

1 reinstating or limiting the practice of a licensee or registrant;

2 (8) Requirements for reinstatement of revoked licenses and

3 registrations;

4 (9) Guidelines for telepractice;

5 (10) Rules to define the role of the speech-language pathology

6 assistant or audiology assistant, including, but not limited to:

7 (A) The supervisory responsibilities of licensees;

8 (B) The ratio of assistants to licensees;

9 (C) The scope of duties and restrictions of responsibilities

10 of assistants;

11 (D) The frequency, duration and documentation of supervision

12 required under the provisions of this article;

13 (E) The quantity and content of pre-service and in-service

14 instruction; and

15 (F) The procedures for renewing, suspending or revoking the

16 registration of assistants; and

17 (11) Any other rules necessary to effectuate the provisions of

18 this article.

19 (b) The board may promulgate emergency rules in accordance

20 with section fifteen, article three, chapter twenty-nine-a of this

21 code to establish:

22 (1) Requirements and procedures for the issuance of a Level I

23 license to practice exclusively in public schools in accordance

24 with section eleven of this article; and

1 (2) Requirements and procedures for telepractice in accordance
2 with the provisions of section fourteen of this article, including
3 the scope of duties and restrictions of responsibilities of
4 assistants in telepractice.

5 (c) All rules in effect on the effective date of the 2012
6 revision of this article remain in effect until they are amended or
7 repealed, and references to provisions of former enactments of this
8 article are interpreted to mean provisions of this article.

9 **§30-32-7. Funds.**

10 (a) All fees and other moneys, except administrative fines,
11 received by the board shall be deposited in a separate special
12 revenue fund in the State Treasury designated the "Board of
13 Examiners for Speech-Language Pathology and Audiology Fund", which
14 is continued. The fund is used by the board for the administration
15 of this article. Except as may be provided in article one of this
16 chapter, the board retains the amount in the special revenue
17 account from year to year. No compensation or expense incurred
18 under this article is a charge against the General Revenue Fund.

19 (b) Any amount received as fines, imposed pursuant to this
20 article, shall be deposited into the General Revenue Fund of the
21 State Treasury.

22 **§30-32-8. Qualifications for licensure as a speech-language**
23 **pathologist or audiologist.**

1 (a) To be eligible for licensure by the board as a
2 speech-language pathologist, the applicant shall:
3 (1) Make application to the board, upon a form prescribed by
4 the board;
5 (2) Pay to the board an application fee as established by the
6 board;
7 (3) Possess at least a master's degree or equivalent in
8 speech-language pathology from an educational institution approved
9 by the board which consists of coursework approved by the board and
10 delineated in legislative rule;
11 (4) Complete supervised clinical practicum experiences from an
12 educational institution or its cooperating programs, the content of
13 which shall be approved by the board and delineated in the rules;
14 (5) Complete a postgraduate professional experience as
15 approved by the board and described in legislative rule;
16 (6) Pass the national examination in speech-language
17 pathology; and
18 (7) Pass a jurisprudence examination developed by the board.
19 (b) To be eligible for licensure by the board as an
20 audiologist, the applicant shall:
21 (1) Make application to the board, upon a form prescribed by
22 the board;
23 (2) Pay to the board an application fee as established by the
24 board;

1 (3) As of July 1, 2013, possess at least a doctorate degree or
2 equivalent in audiology from an educational institution approved by
3 the board which consists of coursework approved by the board and
4 delineated in legislative rule;

5 (4) Complete supervised clinical practicum experiences from an
6 educational institution or its cooperating programs, the content of
7 which shall be approved by the board and delineated in the rules;

8 (5) Complete a postgraduate professional experience as
9 approved by the board and described in legislative rule;

10 (6) Pass the national examination in audiology; and

11 (7) Pass a jurisprudence examination developed by the board.

12 (c) Subject to the renewal requirements set forth in section
13 fifteen of this article, a license issued by the board under prior
14 enactments of this article shall for all purposes be considered a
15 license issued under this article.

16 **§30-32-9. Provisional licenses.**

17 (a) The board shall issue a provisional license to an
18 applicant who, except for the postgraduate professional experience
19 set forth in subdivision (5), subsection (a) of section eight of
20 this article, or subdivision (5), subsection (b) of section eight
21 of this article:

22 (1) Meets the academic, practicum, and examination
23 requirements of this article;

24 (2) Submits an application to the board, upon a form

1 prescribed by the board, including a plan for the content of the
2 postgraduate professional experience; and

3 (3) Pays to the board the appropriate application fee for a
4 provisional license.

5 (b) A person holding a provisional license may practice
6 speech-language pathology or audiology only under the general
7 supervision of a person licensed to practice in the professional
8 field for which the provisional license was issued.

9 (c) The term for provisional licenses and the conditions for
10 their renewal are to be determined by the board and delineated in
11 legislative rule.

12 **§30-32-10. Waiver of requirements; practice pending disposition**
13 **of application.**

14 (a) The board shall waive the national examination
15 requirements in speech-language pathology and/or audiology for an
16 applicant who either:

17 (1) Presents proof of current licensure in a state that has
18 standards that are substantially equivalent to those of this state;
19 or

20 (2) Holds a certificate of clinical competence in
21 speech-language pathology or audiology from the American
22 Speech-Language-Hearing Association in the professional field for
23 which they seek licensure.

24 (b) An applicant who holds current licensure from another

1 state with substantially equivalent standards or who holds the
2 certificate of clinical competence from the American
3 Speech-Language-Hearing Association may practice speech-language
4 pathology or audiology in this state, pending the board's
5 disposition of the application, if the applicant:

- 6 (1) Is practicing in the professional field in which the
7 licensure or certificate of clinical competence was granted; and
8 (2) Has filed an application with the board and paid the
9 appropriate application fee.

10 **§30-32-11. Level I license to practice exclusively in public**

11 **schools.**

12 (a) As of July 1, 2012, the board shall issue a Level I
13 license to practice speech-language pathology exclusively in public
14 schools to applicants who:

- 15 (1) Apply for a Level I license to practice speech-language
16 pathology exclusively in public schools on or before July 1, 2013;
17 (2) Provide proof of being employed or contracted by the West
18 Virginia Board of Education, a county board of education or a
19 regional education service agency on or before July 1, 2012 in the
20 field of speech-language pathology; and
21 (3) Possess at least a bachelor's degree or equivalent in
22 speech-language pathology from an educational institution approved
23 by the board which consists of coursework approved by the board and
24 delineated in legislative rule.

1 (b) As of July 1, 2012, the board shall issue a Level I
2 license to practice audiology exclusively in public schools to
3 applicants who:

4 (1) Apply for a Level I license to practice audiology
5 exclusively in public schools on or before July 1, 2013;
6 (2) Provide proof of being employed or contracted by the West
7 Virginia Board of Education, a county board of education or a
8 regional education service agency on or before July 1, 2012 in the
9 field of audiology; and

10 (3) Possess at least a master's degree or equivalent in
11 audiology from an educational institution approved by the board
12 which consists of coursework approved by the board and delineated
13 in legislative rule.

14 **§30-32-12. Scope of practice for speech-language pathology and**
15 **audiology.**

16 (a) The practice of speech-language pathology includes:
17 (1) Prevention, screening, consultation, assessment and
18 diagnosis, treatment, intervention, management, counseling and
19 follow-up services for disorders of speech (i.e., articulation,
20 fluency, resonance and voice), language (i.e., phonology,
21 morphology, syntax, preliteracy and language-based skills),
22 swallowing or other upper aerodigestive functions;

23 (2) Cognitive aspects of communication (i.e., attention,
24 memory, problem solving);

1 (3) Establishing augmentative and alternative communication
2 techniques and strategies, including developing, selecting and
3 prescribing of systems and devices (e.g., speech generating
4 devices) and providing training in their use;

5 (4) Providing services to individuals with hearing loss and
6 their families (e.g., auditory training, speech reading, speech and
7 language intervention secondary to hearing loss;

8 (5) Screening hearing of individuals who can participate in
9 conventional pure-tone air conduction methods and screening middle
10 ear pathology through screening tympanometry for the purpose of
11 referral for further evaluation: Provided, That judgments and
12 descriptive statements about the results of the screenings are
13 limited to pass/fail determinations;

14 (6) Using instrumentation (e.g., videofluoscopy) to observe,
15 collect data and measure parameters of communication and swallowing
16 as directed by a licensed physician; and

17 (7) Selecting, fitting and establishing effective use of
18 prosthetic/adaptive devices for communication, swallowing or other
19 upper aerodigestive functions.

20 (b) The practice of audiology includes:

21 (1) Facilitating the conservation of auditory system function,
22 developing and implementing environmental and occupational hearing
23 conservation programs;

24 (2) Screening, identifying, assessing and interpreting,

1 preventing and rehabilitating peripheral and central auditory
2 system disorders;

3 (3) Providing and interpreting behavioral and electro-
4 physiological measurements of auditory and vestibular functions;

5 (4) Selecting, fitting, programming and dispensing of
6 amplification, assistive listening and alerting devices and
7 programming and other systems (e.g., implantative devices) and
8 providing training in their use;

9 (5) Providing audiology and aural rehabilitation and related
10 counseling services to individuals with hearing impairments and
11 their families;

12 (6) Providing vestibular rehabilitation;

13 (7) Cerumen removal; and

14 (8) Screening of speech-language and other factors affecting
15 communication disorders: *Provided, That judgments and descriptive*
16 *statements about the results of the screenings are limited to*
17 *pass/fail determinations.*

18 **§30-32-13. Speech-language pathology and audiology assistants;**
19 **supervision requirements.**

20 (a) On or before July 1, 2013, speech-language pathology
21 assistants and audiology assistants shall register with the board
22 in accordance with the provisions of this article and legislative
23 rule, and shall:

24 (1) Possess a minimum of an associate's degree from an

1 institution or technical training program with a program of study
2 designed to prepare the student to be a speech language pathology
3 or audiology assistant;

4 (2) Meet all requirements set forth in legislative rule; and
5 (3) Work only under the supervision of a licensee licensed in
6 the professional field in which the assistant is working.

7 (b) Licensees who supervise assistants shall:
8 (1) Report to the board the name of each assistant working
9 under the licensee's supervision;

10 (2) Complete initial supervision training prior to accepting
11 an assistant for supervision and upgrade supervision training on a
12 regular basis;

13 (3) Document preservice training and credentials of the
14 assistant;

15 (4) Provide direct supervision of the first three hours of
16 treatment by the assistant for each patient or client, followed by
17 a minimum of one direct observation for each subsequent two week
18 period and document the direct observation;

19 (5) Provide general supervision and be responsible for the
20 extent, kind and quality of service provided by the assistant and
21 for all services provided by the assistant, consistent with this
22 article and the board's legislative rule;

23 (6) Ensure that persons receiving services from an assistant
24 receive prior written notification that services are to be

1 provided, in whole or in part, by an assistant; and

2 (7) Meet all requirements set forth in legislative rule.

3 **§30-32-14. Telepractice.**

4 (a) Speech-language pathologists and audiologists may provide
5 services in this state by telepractice only if licensed under the
6 provisions of this article.

7 (b) Speech-language pathologists and audiologists providing
8 services by telepractice shall deliver services consistent with the
9 quality of services delivered in person, and shall:

10 (1) Secure informed consent of the student, patient or client
11 before the services are provided;

12 (2) Maintain the confidentiality of the student, patient or
13 client as required by law;

14 (3) Provide documentation of the delivery of services;

15 (4) Train assistants before allowing them to assist in the
16 delivery of service by telepractice, and document the training and
17 delivery of service by the assistants; and

18 (5) Meet any other requirements which may be set forth in
19 legislative rule.

20 **§30-32-15. Renewal of license or registration; renewal of lapsed**
21 **license or registration; suspension, revocation and**
22 **refusal to renew; reinstatement of revoked license**
23 **or registration.**

1 (a) Lenses and registrations may be renewed biennially, upon
2 documentation of required continuing education and payment of a
3 renewal fee.

4 (b) A license or registration which has lapsed may be renewed
5 within one year of its expiration date in the manner set by the
6 board.

7 (c) A license or registration which has lapsed for more than
8 one year but fewer than five years may be reinstated, upon
9 documentation of continuing education credits earned during the
10 lapsed period equal to the credits required for renewal and payment
11 of a reinstatement fee.

12 (d) A license or registration which has lapsed for more than
13 five years may not be reinstated. A new license or registration
14 may be issued to an applicant who complies with the requirements
15 relating to the issuance of an original license or registration in
16 effect at the time of the application.

17 (e) The board may suspend, revoke or refuse to renew a license
18 or registration for any reason which would justify the denial of an
19 original application for licensure or registration.

20 (f) The board may consider the reinstatement of a license or
21 registration which has been revoked upon a showing that the
22 applicant can resume practicing with reasonable skill and safety.

23 **§30-32-16. Actions to enjoin violations.**

24 (a) If the board obtains information that any person has

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

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

11 (c) The judgment of the circuit court on an application
12 permitted by the provisions of this section is final unless
13 reversed, vacated or modified on appeal to the West Virginia
14 Supreme Court of Appeals.

15 **§30-32-17. Complaints; investigations; due process procedure;**

16 **grounds for disciplinary action.**

17 (a) The board may upon its own motion based on credible
18 information, and shall, upon the written complaint of any person,
19 cause an investigation to be made to determine whether grounds
20 exist for disciplinary action under this article or the legislative
21 rules of the board.

22 (b) Upon initiation or receipt of the complaint, the board
23 shall provide a copy of the complaint to the licensee or
24 registrant.

1 (c) After reviewing any information obtained through an
2 investigation, the board shall determine if probable cause exists
3 that the licensee or registrant has violated any provision of
4 subsection (g) of this section or rules promulgated pursuant to
5 this article.

6 (d) Upon a finding that probable cause exists that the
7 licensee or registrant has violated any provision of this
8 subsection (g) of this section or rules promulgated pursuant to
9 this article, the board may enter into a consent decree or hold a
10 hearing for the suspension or revocation of the license or
11 registration or the imposition of sanctions against the licensee or
12 registrant.

13 (e) Any member of the board may issue subpoenas and subpoenas
14 duces tecum to obtain testimony and documents to aid in the
15 investigation of allegations against any person regulated by the
16 article.

17 (f) Any member of the board may sign a consent decree or other
18 legal document on behalf of the board.

19 (g) The board may, after notice and opportunity for hearing,
20 deny or refuse to renew, suspend or revoke the license or
21 registration of, impose probationary conditions upon or take
22 disciplinary action against, any licensee or registrant for any of
23 the following reasons once a violation has been proven by a
24 preponderance of the evidence:

- 1 (1) Obtaining a license or registration by fraud,
2 misrepresentation or concealment of material facts;
- 3 (2) Being convicted of a felony or other crime related to the
4 practice of the professions regulated by this article;
- 5 (3) Being guilty of unprofessional conduct as defined by
6 legislative rule of the board;
- 7 (4) Violating provisions of this article or a lawful order or
8 legislative rule of the board;
- 9 (5) Providing substandard care as an speech-language
10 pathologist, audiologist or assistant due to a deliberate or
11 negligent act or failure to act regardless of whether actual injury
12 to a patient or client is established;
- 13 (6) Providing substandard care as a speech-language pathology
14 or audiology assistant, including exceeding the authority to
15 perform components of service selected and delegated by the
16 supervising speech-language pathologist or audiologist regardless
17 of whether actual injury to a patient is established;
- 18 (7) Knowingly delegating responsibilities to an individual who
19 does not have the knowledge, skills or abilities to perform those
20 responsibilities;
- 21 (8) Failing to provide appropriate supervision to a
22 speech-language pathology assistant or audiology assistant in
23 accordance with this article and legislative rules of the board;
- 24 (9) Practicing as a speech-language pathologist, audiologist

1 or assistant when competent services to recipients may not be
2 provided due to the speech-language pathologist's, audiologist's or
3 assistant's own physical or mental impairment;

4 (10) Having had a speech-language pathologist, audiologist or
5 assistant license or registration revoked or suspended, other
6 disciplinary action taken, or an application for licensure or
7 registration refused, revoked or suspended by the proper
8 authorities of another jurisdiction;

9 (11) Engaging in sexual misconduct. For the purposes of this
10 subdivision, sexual misconduct includes:

11 (A) Engaging in or soliciting sexual relationships, whether
12 consensual or nonconsensual, while a relationship exists between
13 that person as a patient or client and the speech-language
14 pathologist, audiologist or assistant; or

15 (B) Making sexual advances, requesting sexual favors or
16 engaging in physical contact of a sexual nature with patients or
17 clients;

18 (12) Aiding or abetting a person who is not licensed as a
19 speech-language pathologist, audiologist or assistant in this state
20 and who directly or indirectly performs activities requiring a
21 license or registration;

22 (13) Abandoning or neglecting a patient or client under and in
23 need of immediate professional care without making reasonable
24 arrangements for the continuation of care; or

1 (14) Engaging in any act which has endangered or is likely to
2 endanger the health, welfare or safety of the public.

3 (h) For the purposes of subsection (g) of this section,
4 effective July 1, 2012, disciplinary action may include:

5 (1) Reprimand;

6 (2) Probation;

7 (3) Administrative fine, not to exceed \$1,000 per day per
8 violation;

9 (4) Mandatory attendance at continuing education seminars or
10 other training;

11 (5) Practicing under supervision or other restriction;

12 (6) Requiring the licensee or registrant to report to the
13 board for periodic interviews for a specified period of time;

14 (7) Denial, suspension, revocation or nonrenewal of license or
15 registration; or

16 (8) Other disciplinary action considered by the board to be
17 necessary to protect the public, including advising other parties
18 whose legitimate interests may be at risk.

19 **S30-32-18. Procedures for hearing; right of appeal.**

20 (a) Hearings are governed by the provisions of section eight,
21 article one of this chapter.

22 (b) The board may conduct the hearing or elect to have an
23 administrative law judge conduct the hearing.

24 (c) If the hearing is conducted by an administrative law

1 judge, the administrative law judge shall prepare a proposed
2 written order at the conclusion of a hearing containing findings of
3 fact and conclusions of law. The proposed order may contain
4 proposed disciplinary actions if the board so directs. The board
5 may accept, reject or modify the decision of the administrative law
6 judge.

7 (d) Any member of the board has the authority to administer
8 oaths, examine any person under oath and issue subpoenas and
9 subpoenas duces tecum.

10 (e) If, after a hearing, the board determines the licensee or
11 registrant has violated any provision of this article or the
12 board's rules, a formal written decision shall be prepared which
13 contains findings of fact, conclusions of law and a specific
14 description of the disciplinary actions imposed.

15 **§30-32-19. Judicial review.**

16 Any licensee or registrant adversely affected by a decision of
17 the board entered after a hearing may obtain judicial review of the
18 decision in accordance with section four, article five, chapter
19 twenty-nine-a of this code, and may appeal any ruling resulting
20 from judicial review in accordance with article six, chapter
21 twenty-nine-a of this code.

22 **§30-32-20. Single act evidence of practice.**

23 In any action brought or in any proceeding initiated under
24 this article, evidence of the commission of a single act prohibited

1 by this article is sufficient to justify a penalty, injunction,
2 restraining order or conviction without evidence of a general
3 course of conduct.

4 **§30-32-21. Criminal proceedings; penalties.**

5 (a) When, as a result of an investigation under this article
6 or otherwise, the board has reason to believe that a licensee or
7 registrant has committed a criminal offense, the board may bring
8 the information to the attention of an appropriate law-enforcement
9 official.

10 (b) Effective July 1, 2012, a person violating a provision of
11 this article is guilty of a misdemeanor and, upon conviction, shall
12 be fined not less than \$500 nor more than \$1,000 or confined in a
13 correctional facility not more than six months, or both fined and
14 confined.

NOTE: The purpose of this bill is to rewrite the article governing the practice of speech-language pathology and audiology to update standards and conform to current drafting conventions; and to require, after July 1, 2013, speech-language pathologists and audiologists who work in public schools to be licensed, and speech-language pathology assistants and audiology assistants who work in public schools to register, with the Board of Speech-Language Pathology and Audiology.

This article has been completely rewritten; therefore, it has been completely underscored.