

COMMITTEE SUBSTITUTE

FOR

**H. B. 4012**

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(BY DELEGATES MORGAN, MANYPENNY,  
MARTIN AND SWARTZMILLER)

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(Originating in the Committee on Government Organization)  
[February 7, 2012]

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

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

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

## **CHAPTER 16. PUBLIC HEALTH.**

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

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

1 (a) Effective July 1, 2012, the commissioner ~~shall serve~~

2 serve on the following ~~business, profession or occupation~~

3 licensing boards:

4 (1) ~~The West Virginia Board of Barbers and~~

5 ~~Cosmetologists;~~

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

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

8 (4) (1) The West Virginia Board of Medicine, provided  
9 in article three, chapter thirty; and

10 ~~(5) The West Virginia nursing home administrators~~  
11 ~~licensing board;~~

12 ~~(6) The West Virginia radiologic technology board of~~  
13 ~~examiners;~~

14 ~~(7) (2) The West Virginia board of registration for~~  
15 ~~sanitarians; and The State Board of Sanitarians, as provided~~  
16 ~~in article seventeen, chapter thirty.~~

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

19 (b) Effective July 1, 2012, the commissioner ~~shall serve~~  
20 erves on the following advisory councils, boards and  
21 commissions:

22 (1) The Advisory Committee on Cancer (Cancer  
23 Registry);

24 ~~(2) The Advisory Committee on Hemophilia;~~

25 ~~(3) (2) The Air Quality Board;~~

26       ~~(4)~~ (3) The Appalachian States Low-level Radioactive  
27 Waste Commission;

28       ~~(5) The Attorney General of West Virginia Public Health~~  
29 ~~Trust;~~

30       ~~(6) The Breast and Cervical Cancer Screening Program~~  
31 ~~Advisory Coalition;~~

32       ~~(7)~~ (4) The Child Fatality Review Team;

33       ~~(8) The Clinical Laboratories Quality Assurance Act~~  
34 ~~Advisory Board;~~

35       ~~(9)~~ (5) The Childhood Immunization Advisory  
36 Committee;

37       ~~(10)~~ (6) The Early Intervention Coordinating Council;

38       ~~(11)~~ (7) The Interagency Council on Osteoporosis;

39       ~~(12) The Jail and Prison Standards Commission;~~

40       ~~(13) The Medical Service Fund Advisory Council;~~

41       ~~(14) The Nursing Home Licensing Advisory Council;~~

42       ~~(15)~~ (8) The Sewage Advisory Board;

43       ~~(16)~~ (9) The State Emergency Response Commission;

44 ~~(17)~~ (10) The State Groundwater Coordinating  
45 Committee;

46 ~~(18) The Sudden Infant Death Syndrome Advisory~~  
47 ~~Council;~~

48 ~~(19)~~ (11) The Water Development Authority;

49 ~~(20)~~ (12) The West Virginia Commission for the Deaf  
50 and Hard of Hearing;

51 ~~(21)~~ (13) The West Virginia Infrastructure and Jobs  
52 Development Council;

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

55 ~~(23)~~ (14) Any other advisory council, board or  
56 commission as assigned by the secretary except for business,  
57 professional or occupational licensing boards.

58 (c) Notwithstanding any other provision of this code to  
59 the contrary, the commissioner may, at his or her discretion,  
60 designate, in writing, a representative to serve in his or her  
61 stead at the meetings and in the duties of all boards and

62 commissions on which the commissioner is designated as an  
63 ex officio member. The appropriately designated  
64 representative or proxy ~~may act~~ acts with the full power and  
65 authority of the commissioner in voting, acting upon matters  
66 concerning the public health and welfare and ~~any~~ other  
67 business that is properly the duty of any board or  
68 commission. ~~with~~ The representative ~~servin~~ serves as proxy  
69 ~~for~~ at the commissioner's ~~at his or her~~ will and pleasure.  
70 ~~Provided, That~~ The provisions of this section do not apply to  
71 the ~~medical licensing board~~, West Virginia Board of  
72 Medicine, the Air Quality Board or ~~any~~ other board,  
73 commission or body on which the commissioner is  
74 designated by this code as chairman ex officio, secretary ex  
75 officio or ~~any~~ a board, commission or body on which the  
76 commissioner is designated by this code as being that person  
77 whose signature must appear on licenses, minutes or other  
78 documents necessary to carry out the intents and purposes of  
79 the board, commission or body.

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

**ARTICLE 16. CHIROPRACTORS.**

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

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

13 (b) ~~On July 1, 1998, there shall be appointed, as provided~~  
14 ~~in this section, one chiropractic member for a three-year~~  
15 ~~term.~~ As existing chiropractic board members’ terms expire,

16 newly appointed ~~chiropractic~~ board members ~~shall be~~ are  
17 appointed by the Governor for a term of office of three years.  
18 No member may serve more than two full consecutive  
19 three-year terms. When a vacancy in the membership of the  
20 board occurs for ~~any~~ a cause other than the expiration of a  
21 term, the Governor shall appoint a new member from a list  
22 of three names recommended by West Virginia Chiropractic  
23 Society, Incorporated, ~~a successor as a member of the board~~  
24 to fill the unexpired portion of the term of office. ~~of the~~  
25 ~~member whose office has been vacated.~~

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

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

32 (e) Each member of the board ~~shall receive~~ is entitled to  
33 receive compensation in ~~an amount not to exceed the same~~

34 ~~compensation as is~~ the amount paid to members of the  
35 Legislature for ~~their~~ interim duties ~~as recommended by the~~  
36 ~~Citizens Legislative Compensation Commission and authorized~~  
37 ~~by law~~ for each day or substantial portion ~~thereof~~ that he or she is  
38 engaged in the work of the board or of its committees. ~~and shall~~  
39 ~~be~~ Members are entitled to be reimbursed for ~~all~~ actual and  
40 necessary expenses incurred in carrying out his or her duties.

## **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

### **ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.**

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

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

6 (b) The board shall consist of the following ~~eleven~~ nine  
7 members, appointed by the Governor by and with the advice  
8 and consent of the Senate:

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

12           (1) Three licensed practitioners, two of whom shall be  
13 Radiologists;

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

16           (3) One licensed Nuclear Medicine Technologist;

17           (4) One licensed Magnetic Resonance Imaging; and

18           (5) ~~Two~~ One citizen ~~members~~ member, who ~~are~~ is not  
19 licensed under the provisions of this article and ~~do~~ does not  
20 perform any services related to the practice licensed under  
21 the provisions of this article.

22           (c) Each member shall be appointed for a term of three  
23 years and may not serve more than two consecutive full  
24 terms. A member having served two consecutive full terms  
25 may not be appointed for one year after completion of his or  
26 her second full term. A member continues to serve until a

27 successor has been appointed and has qualified. The terms  
28 shall be staggered in accordance with the initial  
29 appointments under prior enactments of this article.

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

32 (e) The Radiologic Technologists, Nuclear Medicine  
33 Technologists and the Magnetic Resonance Imaging  
34 Technologists serving on the board shall maintain an active  
35 license with the board.

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

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

42 (h) A licensed member of the board immediately and  
43 automatically forfeits membership to the board if his or her  
44 license to practice has been suspended or revoked. A

45 member of the board immediately and automatically forfeits  
46 membership to the board if he or she is convicted of a felony  
47 under the laws of any state or the United States, or becomes  
48 a nonresident of this state.

49 (i) The board shall designate one of its members as  
50 chairperson and one member as secretary who shall serve at  
51 the will of the board.

52 (j) Each member of the board shall receive compensation  
53 and expense reimbursement in accordance with article one of  
54 this chapter.

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

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

61 (m) Prior to commencing his or her duties as a member  
62 of the board, each member shall take and subscribe to the

63 oath required by section five, article four of the Constitution  
64 of this state.

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

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

1       (a) There is ~~hereby created~~ continued the West Virginia  
2 board of hearing-aid dealers, which ~~shall be~~ is composed of  
3 five members to be appointed by the Governor, ~~by and~~ with  
4 the advice and consent of the Senate. The members of the  
5 board shall be residents of this state. One member shall be  
6 a person licensed to practice medicine in this state and one  
7 member shall hold a degree in audiology from an accredited  
8 college or university. The remaining three members shall be  
9 persons having no less than five years' experience as  
10 hearing-aid dealers or fitters and shall hold a valid license  
11 under the provisions of this article. ~~except that the~~  
12 ~~hearing-aid dealers or fitters to be first appointed to the board~~

13 ~~shall obtain a license under the provisions of this article~~  
14 ~~within six months following their appointment to the board.~~

15 (b) The ~~term~~ terms of office of each member of the board  
16 shall be four years, ~~excepting that as to the members first~~  
17 ~~appointed to the board, one shall be appointed for two years;~~  
18 ~~two shall be appointed for three years, and two shall be~~  
19 ~~appointed for four years~~ staggered in accordance with initial  
20 appointments under prior enactments of this act. A board  
21 member shall serve until his or her successor has been ~~duly~~  
22 appointed and qualified and any vacancy in the office of a  
23 member shall be filled by appointment for the unexpired  
24 term of such member. Any member of the board shall be  
25 eligible for reappointment.

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

29 (d) Each member of the board ~~shall~~ is entitled to receive  
30 for each day actually engaged in the duties of his or her

31 office, a ~~per diem salary of \$100~~ an amount not to exceed the  
32 amount paid to legislators for their interim duties, and shall  
33 is entitled to be reimbursed for all reasonable and necessary  
34 expenses actually incurred in the performance of his or her  
35 duties as a member of such board.

36 (e) All fees and other moneys collected by the board,  
37 pursuant to the provisions of this article, shall be kept in a  
38 separate fund and shall be expended solely for the purposes of  
39 this article. The compensation for the members of the board and  
40 all expenses incurred under this article shall be paid from this  
41 special fund and no such compensation or expenses shall be paid  
42 from the General Revenue Fund of this state. All disbursements  
43 of funds necessary to carry out the provisions of this article shall  
44 be so disbursed only upon the authority of the board.

45 (f) ~~The board is hereby empowered, with the assistance~~  
46 ~~of the department to generally supervise, shall~~ regulate and  
47 control the practice of dealing in or fitting of hearing aids in  
48 this state, and ~~in so doing,~~ shall administer qualifying

49 examinations in accordance with the provisions of this article  
50 to test the knowledge and proficiency of all prospective  
51 licensees or trainees.

52 (g) The board may purchase and maintain or rent  
53 audiometric equipment and other facilities necessary to carry  
54 out the examination of applicants as provided in this article  
55 and may purchase such other equipment and supplies and  
56 employ such persons as it deems appropriate to carry out the  
57 provisions of this article.

58 (h) The board shall ~~promulgate reasonable rules and~~  
59 ~~regulations in accordance with and subject to the provisions~~  
60 ~~of chapter twenty-nine-a of this code~~ propose rules for  
61 legislative approval in accordance with the provisions of  
62 article three, chapter twenty-nine-a of this code:

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

64 (b) (2) To define and prescribe the ethical practice of  
65 dealing in or fitting of hearing aids for the safety, protection  
66 and welfare of the public;

67       (☉) (3) To govern the time, place and manner of conducting  
68 the examinations required by this article and the standard, scope  
69 and subject of such examinations, which examinations shall, as  
70 a minimum, conform with the standards, scope and subjects set  
71 forth in section six of this article and manner, and the form in  
72 which applications for such examinations shall be filed;

73       (☉) (4) To establish procedures for determining whether  
74 persons holding similar valid licenses from other states or  
75 jurisdictions shall be required to take and successfully pass  
76 the appropriate qualifying examination as a condition for  
77 such licensing in this state; and

78       (☉) (5) To establish such fees for such examinations,  
79 permits, licenses and renewals as may be necessary to cover  
80 the costs of administration.

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

1       (a) Effective July 1, 2012, the administrative work of the  
2 board shall be performed by ~~and in the state department of~~

3 ~~health~~ the board. The ~~department~~ board shall keep full and  
4 complete records of all of ~~the~~ their proceedings ~~of the board~~  
5 and ~~of its~~ accounts, which said records and accounts shall be  
6 open to public inspection at all reasonable times.

7 (b) The ~~department~~ board is hereby authorized to assist  
8 ~~in the supervision and administration of~~ conduct, supervise,  
9 and administer the qualifying examinations authorized and  
10 required by this article, to maintain for ~~the board~~ a register or  
11 record of persons who apply for a license or a temporary  
12 trainee permit as well as a register or record of the name and  
13 last-known business address of all persons to whom a license  
14 or trainee permit is issued pursuant to this article.

15 ~~At the direction and request of the board the department~~  
16 ~~shall conduct periodic inspections of the establishment and~~  
17 ~~facilities of persons who are licensed to engage in the~~  
18 ~~practice of dealing in or fitting of hearing aids and shall~~  
19 ~~report its findings and the results of such inspections to the~~  
20 ~~board.~~

21 ~~When requested by the board, the department may assist~~  
22 ~~the board generally in carrying out any of the powers and~~  
23 ~~duties granted to the board, but none of the cost incidental to~~  
24 ~~such assistance, powers, functions and duties given to the~~  
25 ~~department pursuant to this article shall be borne from any of~~  
26 ~~the appropriations made to the department, but shall be borne~~  
27 ~~by the board and to this extent the department shall be~~  
28 ~~entitled to reimbursement from the funds of the board.~~

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