

Senate Bill No. 214

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

[Introduced January 17, 2012; referred to
the Committee on Government Organization.]

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.

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

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

19 being sought, or for which ~~substantial~~ establishment,
20 revision or expansion of the scope of practice of a regulated
21 profession or occupation is being sought.

22 (c) The completed application shall contain:

23 (1) A description of the occupational or professional
24 group or organization for which regulation is proposed, or
25 for which a ~~substantial~~ establishment, revision or expansion
26 of the scope of practice of a regulated profession or occupa-
27 tion is proposed, including a list of associations, organiza-
28 tions and other groups currently representing the practitio-
29 ners in this state, and an estimate of the number of practitio-
30 ners in each group;

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

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

37 (4) A detailed statement of the proposed funding mecha-
38 nism to pay the administrative costs of the regulation or the
39 ~~substantial~~ establishment, revision or expansion of the scope

40 of practice, or of the fee structure conforming with the
41 statutory requirements of financial autonomy as set out in
42 this chapter;

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

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

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

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

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

6 (b) The Performance Evaluation and Research Division
7 of the Office of the Legislative Auditor shall conduct an
8 analysis and evaluation of the application. The analysis and
9 evaluation shall be based upon the criteria listed in subsec-
10 tion (c) of this section. The Performance Evaluation and

11 Research Division of the Office of the Legislative Auditor
12 shall submit a report, and such supporting materials as may
13 be required, to the Joint Standing Committee on Government
14 Organization, as set out in this section.

15 (c) For an application proposing the regulation of an
16 unregulated professional or occupational group or organiza-
17 tion, the report shall include evaluation, analysis and
18 findings as to:

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

24 (2) Whether the practice of the profession or occupation
25 requires specialized skill or training which is readily
26 measurable or quantifiable so that examination or training
27 requirements would reasonably assure initial and continuing
28 professional or occupational competence;

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

31 (4) Whether the professional or occupational group or
32 organization should be regulated as proposed in the applica-
33 tion.

34 (d) For an application proposing the ~~substantial~~ estab-
35 lishment, revision or expansion of the scope of practice of a
36 regulated profession or occupation, the report shall include
37 the evaluation, analysis and findings as set forth in subsec-
38 tion (c) of this section inasmuch as applicable, and a clear
39 recommendation as to whether the scope of practice should
40 be ~~substantial~~ established, revised or expanded as proposed
41 in the application.

42 (e) For an application received after December 1, and on
43 or before June 1, the Performance Evaluation and Research
44 Division of the Office of the Legislative Auditor shall present
45 a report to the Joint Committee on Government Organization
46 by December 31 of that year.

47 (f) For an application received after June 1 and on or
48 before December 1, the Performance Evaluation and Re-
49 search Division of the Office of the Legislative Auditor shall
50 present a report to the Joint Committee on Government
51 Organization by June 30 of the next year.

§30-1A-5. Reapplication requirements.

1 (a) If the Joint Standing Committee on Government
2 Organization approves an application for regulation of a
3 professional or occupational group or organization, but the

4 legislation incorporating its recommendations does not
5 become law in the year in which it is first introduced, the
6 applicants for regulation may introduce legislation during
7 each of the two successive regular sessions without having to
8 make reapplication.

9 (b) If the Joint Standing Committee on Government
10 Organization does not approve an application for regulation,
11 establishment, revision or expansion of the scope of practice
12 of a professional or occupational group or organization, any
13 party who continues to propose the regulation, establish-
14 ment, revision or expansion must reapply in accordance with
15 the provisions of this article.

§30-1A-6. Article construction.

1 (a) Nothing in this article shall be construed as limiting
2 or interfering with the right of any member of the Legisla-
3 ture to introduce or of the Legislature to consider any bill
4 that would create a new state governmental department or
5 agency or amend the law with respect to an existing one.

6 (b) Notwithstanding the provisions of subsection (a) of
7 this section, the recommendations of the Joint Standing
8 Committee on Government Organization are to be given
9 considerable weight in determining if a profession or

- 10 occupation should be regulated, or if the scope of practice of
- 11 a regulated profession or occupation should be established.
- 12 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.)