

1 **H. B. 2533**
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4 (By Delegates Morgan, Stephens, Diserio, Hartman, Ferns,
5 Jones, Paxton and Smith, P.)
6

7 [Introduced February 19, 2013; referred to the
8 Committee on Government Organization then the Judiciary.]
9

10 A BILL to repeal §30-35-2a of the Code of West Virginia, 1931, as
11 amended; to amend and reenact §30-35-1, §30-35-2, §30-35-3,
12 §30-35-4, §30-35-5, §30-35-6, §30-35-7, §30-35-8, §30-35-9,
13 §30-35-10, §30-35-11, §30-35-12, §30-35-13 and §30-35-14 of
14 said code; and to amend said code by adding thereto four new
15 sections, designated §30-35-15, §30-35-16, §30-35-17 and
16 §30-35-18, all relating to the practice of dietetics;
17 providing that it is unlawful to practice dietetics without a
18 license; defining terms; providing board member
19 qualifications; describing conditions and terms of board
20 appointments; describing powers and duties of the board;
21 defining board rule-making authority; continuing the board of
22 Licensed Dieticians Fund in the State Treasury; establishing
23 conditions for licensure; defining the scope of practice of
24 dieticians; authorizing the issuance of temporary permits;
25 requiring license renewal; requiring display of a license;

1 providing the board may enjoin licensees; authorizing the
2 board to investigate complaints; providing for due process for
3 licensees; describing procedures for hearings and rights of
4 appeal; authorizing criminal proceedings and prescribing
5 criminal penalties for violations.

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

7 That §30-35-2a of the Code of West Virginia, 1931, as amended,
8 be repealed; that §30-35-1, §30-35-2, §30-35-3, §30-35-4, §30-35-5,
9 §30-35-6, §30-35-7, §30-35-8, §30-35-9, §30-35-10, §30-35-11,
10 §30-35-12, §30-35-13 and §30-35-14 of said code be amended and
11 reenacted; and that said code be amended by adding thereto four new
12 sections, designated §30-35-15, §30-35-16, §30-35-17 and §30-35-18,
13 all to read as follows:

14 **ARTICLE 35. BOARD OF DIETITIANS.**

15 **§30-35-1. Unlawful acts.**

16 (a) It is unlawful for any person to practice or offer to
17 practice dietetics in this state without a license or permit issued
18 under the provisions of this article, or advertise or use any title
19 or description tending to convey the impression that the person is
20 a dietitian, unless the person has been licensed or permitted under
21 the provisions of this article, and the license or permit has not
22 expired, been 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 practice regulated under
2 the provisions of this article.

3 **§30-35-2. General provisions.**

4 The practice regulated under the provisions of this article
5 and the board of Licensed Dieticians are subject to the provisions
6 of article one of this chapter, the provisions of this article and
7 any rules promulgated hereunder.

8 **§30-35-3. Definitions.**

9 As used in this article, the following terms mean the
10 following:

11 (a) "Board" means the West Virginia Board of Licensed
12 Dietitians;

13 (b) "Commission on Dietetic Registration" means the Commission
14 on Dietetic Registration that is a member of the national
15 commission for health certifying agencies;

16 (c) "Dietetics" means the integration and application of the
17 principles derived from the sciences of nutrition, biochemistry,
18 food, physiology and management and from the behavioral and social
19 sciences to achieve and maintain a person's health throughout the
20 person's life;

21 (d) "Licensed dietitian" means a person licensed to practice
22 dietetics under this article;

23 (e) "Licensee" means a person licensed to practice dietetics
24 under this article;

1 (f) "Medical nutrition therapy" or "nutrition therapy" means
2 nutritional diagnostic assessment and nutrition therapy services
3 for the purpose of disease management;

4 (g) "Permittee" means a person permitted to temporarily
5 practice dietetics under this article;

6 (h) "Practice of nutrition" means:

7 (1) Assessing the nutrition needs of individuals and groups,
8 and determining resources and constraints in the practice setting;
9 (2) Establishing priorities, goals, and objectives that meet
10 nutrition needs that are consistent with available resources and
11 constraints;

12 (3) Providing nutrition counseling in health and disease;

13 (4) Developing, implementing, managing and evaluating
14 nutrition care systems; and

15 (5) Developing, evaluating, altering and maintaining
16 appropriate standards of quality in food and nutrition care
17 services;

18 (i) "Registered dietitian" means a person registered by the
19 Commission on Dietetic Registration, the accrediting body of the
20 American Dietetic Association; and

21 (j) "Temporary permit" means an authorization issued by the
22 board to a person to temporarily practice dietetics under this
23 article.

24 **§30-35-4. Board of Licensed Dietitians.**

1 (a) The Board of Licensed Dieticians is continued. The
2 members of the board in office on July 1, 2013, shall, unless
3 sooner removed, continue to serve until their respective terms
4 expire and until their successors have been appointed and
5 qualified.

6 (b) The board shall consist of the following five members who
7 are appointed by the Governor for terms of five years with the
8 advice and consent of the Senate:

9 (1) Four members, who are a registered or licensed dietitian;
10 and

11 (2) One citizen member.

12 (c) 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 (d) Each member of the board must be a resident of this state
16 during the appointment term.

17 (e) A member may not serve more than two consecutive full
18 terms. A member having served two consecutive full terms may not
19 be appointed for one year after completion of his or her second
20 full term. A member may continue to serve until a successor has
21 been appointed and has qualified.

22 (f) A vacancy on the board shall be filled by appointment by
23 the Governor for the unexpired term of the member whose office
24 shall be vacant and the appointment shall be made within sixty days

1 of the vacancy.

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

4 (h) Any member of the board immediately and automatically
5 forfeits his or her membership if his or her license to practice is
6 suspended or revoked by the board, if he or she is convicted of a
7 felony under the laws of any jurisdiction, or if he or she becomes
8 a nonresident of this state.

9 (i) The board shall elect annually one of its members as
10 chairperson who serves at the will of the board.

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

14 (k) A simple majority of the membership serving on the board
15 at a given time is a quorum for the transaction of business.

16 (l) The board shall hold at least two meetings annually.
17 Other meetings may be held at the call of the chairperson or upon
18 the written request of two members, at the time and place as
19 designated in the call or request.

20 (m) 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 **§30-35-5. Powers and duties of the board.**

24 (a) The board has all the powers and duties set forth in this

1 article, by rule, in article one of this chapter and elsewhere in
2 law.

3 **(b) The board shall:**

4 **(1) Hold meetings;**

5 **(2) Establish requirements for licenses and permits;**

6 **(3) Establish procedures for submitting, approving and**
7 **rejecting applications for licenses and permits;**

8 **(4) Determine the qualifications of an applicant for licenses**
9 **and permits;**

10 **(5) Maintain records of the examinations the board or a third**
11 **party administers, including the number of persons taking the**
12 **examinations and the pass and fail rate;**

13 **(6) Hire, discharge, establish the job requirements and fix**
14 **the compensation of the executive director;**

15 **(7) Maintain an office, and hire, discharge, establish the job**
16 **requirements and fix the compensation of employees, investigators**
17 **and contracted employees necessary to enforce the provisions of**
18 **this article;**

19 **(8) Investigate alleged violations of the provisions of this**
20 **article, legislative rules, orders and final decisions of the**
21 **board;**

22 **(9) Conduct disciplinary hearings of persons regulated by the**
23 **board;**

24 **(10) Determine disciplinary action and issue orders;**

1 (11) Institute appropriate legal action for the enforcement of
2 the provisions of this article;

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

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

7 (14) Establish the continuing education requirements for
8 licensees;

9 (15) Issue, renew, combine, deny, suspend, revoke or reinstate
10 licenses and permits;

11 (16) Establish a fee schedule;

12 (17) Propose rules for legislative approval in accordance with
13 the provisions of article three, chapter twenty-nine-a of this code
14 to implement the provisions of this article; and

15 (18) Take all other actions necessary and proper to effectuate
16 the purposes of this article.

17 (c) The board may:

18 (1) Contract with third parties to administer the examinations
19 required under the provisions of this article;

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

22 (3) Confer with the Attorney General or his or her assistant
23 in connection with legal matters and questions.

24 **§30-35-6. Rule-making.**

1 (a) The board shall propose rules for legislative approval, in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code, to implement the provisions of this
4 article, including:

5 (1) Additional standards and requirements for licenses and
6 permits;

7 (2) Requirements for third parties to prepare and/or
8 administer examinations and reexaminations;

9 (3) Educational and experience requirements;

10 (4) Standards for approval of courses and curriculum;

11 (5) Procedures for the issuance and renewal of licenses and
12 permits;

13 (6) A fee schedule;

14 (7) Continuing education requirements for licensees;

15 (8) The procedures for denying, suspending, revoking,
16 reinstating or limiting the practice of licensees and permittees;

17 (9) Requirements for inactive or revoked licenses and permits;

18 and

19 (10) Any other rules necessary to effectuate the provisions of
20 this article.

21 (b) All of the board's rules in effect and not in conflict
22 with these provisions, shall remain in effect until they are
23 amended or rescinded.

24 **§30-35-7. Fees; special revenue account; administrative fines.**

1 (a) All fees in effect, shall remain in effect until they are
2 amended or repealed by legislative rule or statute.
3 (b) All fees and other moneys, except administrative fines,
4 received by the board shall be deposited in a separate Special
5 Revenue Fund in the State Treasury designated the "Board of
6 Licensed Dietitians Fund", which is continued. The fund is used by
7 the board for the administration of this article. Except as may be
8 provided in article one of this chapter, the board retains the
9 amount in the Special Revenue Account from year to year. No
10 compensation or expense incurred under this article is a charge
11 against the General Revenue Fund.

12 (c) Any amount received as fines, imposed pursuant to this
13 article, shall be deposited into the General Revenue Fund of the
14 State Treasury.

15 **§30-35-8. License to practice as a dietitian.**

16 To be eligible for a license to practice as an dietitian, the
17 applicant must:

- 18 (a) Submit an application to the board;
19 (b) Be at least eighteen years of age;
20 (c) Be of good moral character;
21 (d) Have completed a major course of study in human nutrition,
22 dietetics, food systems management or the equivalent thereof, as
23 determined by the board;
24 (e) Have a baccalaureate or post-baccalaureate degree;

1 (f) Have completed a planned continuous professional
2 experience component in dietetic practice of not less than nine
3 hundred hours under the supervision of a registered or licensed
4 dietitian.

5 (g) Have completed a written and/or oral examination. Each
6 demonstrating competence in the discipline of dietetics and
7 nutrition;

8 (h) Not have been convicted of a felony in any jurisdiction
9 within five years preceding the date of application for license
10 which conviction remains unreversed;

11 (i) Not have been convicted of a misdemeanor or felony in any
12 jurisdiction if the offense for which he or she was convicted
13 related to the practice of dietetics, which conviction remains
14 unreversed; and

15 (j) Meet any other requirements established by the board.

16 **§30-35-9. Scope of practice.**

17 A licensed dietitians may:

18 (a) Perform medical nutrition therapy;

19 (b) Perform a nutritional assessment to determine nutritional
20 needs and to recommend appropriate nutritional intake, including
21 enteral and parenteral nutrition;

22 (c) Perform nutritional counseling or education as components
23 of preventive, curative and restorative health care;

24 (d) Develop, administer, evaluate and consult regarding

1 nutritional care standards.

2 **§30-35-10. Temporary permit.**

3 (a) The board may issue a temporary permit to practice
4 dietetics to a person who has not met the experience requirements
5 set forth in section eight of this chapter upon the filing of an
6 application, payment of a fee, and submission of evidence of
7 successful completion of the education requirements of this
8 article.

9 (b) A temporary permit expires one year from the date of
10 issuance.

11 (c) Renewals may be issued three times upon request by the
12 applicant and submission of a satisfactory explanation for the
13 applicant's failure to become licensed.

14 **§30-35-11. Exemptions from this article.**

15 The following exemptions apply to this article:

16 (a) A dietitian registered by the Commission on Dietetic
17 Registration may use the title of registered dietitian;
18 (b) Nothing in this article affects a person employed as a
19 cook at any public or private educational institution in this
20 state;

21 (c) Nothing in this article affects a person who furnishes
22 nutrition information on food, food materials or dietary
23 supplements or who engages in explanation to customers about food,
24 food materials or dietary supplements in connection with the

1 marketing and distribution of those products;

2 (d) Nothing in this article prohibits or otherwise limits the
3 practice of a profession by a person who is licensed, certified or
4 registered under the laws of this state and who is performing
5 services within their authorized scope of practice; and

6 (e) A person using the title 'nutritionist', who practices
7 nutrition.

8 **§30-35-12. Renewal of license.**

9 (a) A person regulated by this article shall annually or
10 biannually, renew his or her authorization by completing a form
11 prescribed by the board and submitting any other information
12 required by the board.

13 (b) The board shall charge a fee for each renewal of an
14 authorization and shall charge a late fee for any renewal not paid
15 by the due date.

16 (c) The board shall require as a condition of renewal that
17 each licensee complete continuing education.

18 (d) The board may deny an application for renewal for any
19 reason which would justify the denial of an original application.

20 **§30-35-13. Display of license.**

21 (a) The board shall prescribe the form for a license and
22 permit, and may issue a duplicate license or permit upon payment of
23 a fee.

24 (b) Any person regulated by the article shall conspicuously

1 display his or her license or permit at his or her principal
2 business location.

3 **§30-35-14. Actions to enjoin violations.**

4 (a) If the board obtains information that any person has
5 engaged in, is engaging in or is about to engage in any act which
6 constitutes or will constitute a violation of the provisions of
7 this article, the rules promulgated pursuant to this article, or a
8 final order or decision of the board, it may issue a notice to the
9 person to cease and desist in engaging in the act and/or apply to
10 the circuit court in the county of the alleged violation for an
11 order enjoining the act.

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

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

19 **§30-35-15. Complaints; investigations; due process procedure;**

20 **grounds for disciplinary action.**

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

1 rules promulgated pursuant to this article.

2 (b) Upon initiation or receipt of the complaint, the board
3 shall provide a copy of the complaint to the licensee or permittee.

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

8 (d) Upon a finding that probable cause exists that the
9 licensee or permittee has violated subsection (g) of this section
10 or rules promulgated pursuant to this article, the board may enter
11 into a consent decree or hold a hearing for the suspension or
12 revocation of the license or permit or the imposition of sanctions
13 against the licensee or permittee. Any hearing shall be held in
14 accordance with the provisions of this article.

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

19 (f) Any member of the board or its administrator may sign a
20 consent decree or other legal document on behalf of the board.

21 (g) The board may, after notice and opportunity for hearing,
22 deny or refuse to renew, suspend, restrict or revoke the license or
23 permit of, or impose probationary conditions upon or take
24 disciplinary action against, any licensee or permittee for any of

1 the following reasons once a violation has been proven by a
2 preponderance of the evidence:

3 (1) Obtaining a license or permit by fraud, misrepresentation
4 or concealment of material facts;

5 (2) Being convicted of a felony or other crime involving moral
6 turpitude;

7 (3) Being guilty of unprofessional conduct which placed the
8 public at risk, as defined by legislative rule of the board;

9 (4) Intentional violation of a lawful order or legislative
10 rule of the board;

11 (5) Having had a license or other authorization revoked or
12 suspended, other disciplinary action taken, or an application for
13 licensure or other authorization revoked or suspended by the proper
14 authorities of another jurisdiction;

15 (6) Aiding or abetting unlicensed practice; or

16 (7) Engaging in an act while acting in a professional capacity
17 which has endangered or is likely to endanger the health, welfare
18 or safety of the public.

19 (h) For the purposes of subsection (g) of this section,
20 effective July 1, 2013, disciplinary action may include:

21 (1) Reprimand;

22 (2) Probation;

23 (3) Restrictions;

24 (4) Administrative fine, not to exceed \$1,000 per day per

1 violation;

2 (5) Mandatory attendance at continuing education seminars or
3 other training;

4 (6) Practicing under supervision or other restriction; or

5 (7) Requiring the licensee or permittee to report to the board
6 for periodic interviews for a specified period of time.

7 (i) In addition to any other sanction imposed, the board may
8 require a licensee or permittee to pay the costs of the proceeding.

9 **§30-35-16. Procedures for hearing; right of appeal.**

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

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

14 (c) If the hearing is conducted by an administrative law
15 judge, at the conclusion of a hearing he or she shall prepare a
16 proposed written order containing findings of fact and conclusions
17 of law. The proposed order may contain proposed disciplinary
18 actions if the board so directs. The board may accept, reject or
19 modify the decision of the administrative law judge.

20 (d) Any member or the administrator of the board has the
21 authority to administer oaths, examine any person under oath and
22 issue subpoenas and subpoenas duces tecum.

23 (e) If, after a hearing, the board determines the licensee or
24 permittee has violated provisions of this article or the board's

1 rules, a formal written decision shall be prepared which contains
2 findings of fact, conclusions of law and a specific description of
3 the disciplinary actions imposed.

4 **§30-35-17. Judicial review.**

5 Any licensee or permittee adversely affected by a decision of
6 the board entered after a hearing may obtain judicial review of the
7 decision in accordance with section four, article five, chapter
8 twenty-nine-a of this code, and may appeal any ruling resulting
9 from judicial review in accordance with article six, chapter
10 twenty-nine-a of this code.

11 **§30-35-18. Criminal proceedings; penalties.**

12 (a) When, as a result of an investigation under this article
13 or otherwise, the board has reason to believe that a licensee or
14 permittee has committed a criminal offense under this article, the
15 board may bring its information to the attention of an appropriate
16 law-enforcement official.

17 (b) A person violating section one of this article is guilty
18 of a misdemeanor and, upon conviction thereof, shall be fined not
19 less than \$100 nor more than \$1,000 or confined in jail not more
20 than six months, or both fined and confined.

NOTE: The purpose of this bill is to provide that it is unlawful to practice dietetics without a license, provide for board member qualifications and describe the powers and duties of the board; define board rule-making authority; establishing conditions for licensure and issuance of temporary permits; requiring license

renewal; requiring display of a license; providing the board may enjoin licensees; authorizing the board to investigate complaints; providing for due process for licensees; describing procedures for hearings and rights of appeal; authorizing criminal proceedings; and prescribing misdemeanor penalties for violations.

§30-35-1 through §30-35-14 has been completely rewritten; therefore, it has been completely underscored.

§30-35-15 through §30-35-18 is new; therefore, it has been completely underscored.