

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 448

BY SENATORS GAUNCH AND BOSO

[Originating in the Committee on Government
Organization; Reported on February 23, 2018]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §47-9B-1, §47-9B-2, §47-9B-3, §47-9B-4, §47-9B-5, §47-9B-6, and §47-9B-7,
3 all relating to the establishment of professional associations; providing definitions;
4 requiring professional associations both domestic and foreign to be registered with the
5 Secretary of State; providing application criteria for registration with the Secretary of State;
6 requiring people who provide services for a professional association to be licensed in the
7 subject profession; providing for relinquishment or purchase of ownership interests in a
8 professional association when owners cease to be licensed in the subject profession;
9 providing for the transfer of ownership interests; setting forth liability; and providing for
10 joint practice by certain professionals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9B. PROFESSIONAL ASSOCIATIONS

§47-9B-1. Definitions.

1 For the purposes of this article:
2 “Professional association” means a foreign or domestic association that is:
3 (A) Formed for the purpose of providing the professional services rendered by professions
4 licensed under chapter 30 of this code, including, but not limited to, the following professions:
5 Physicians, podiatrists, dentists, pharmacists, pharmacy technicians, pharmacy interns, nurses,
6 practical nurses, optometrists, accountants, veterinarians, architects, engineers, land surveyors,
7 osteopathic physicians, surgeons, chiropractors, psychologists, social workers, and
8 acupuncturists; and
9 (B) Is not formed as a partnership under chapter 47B of this code or a corporation or other
10 entity under chapters 31 through 31F of this code.
11 “Professional person,” with respect to a professional association, means a person who is
12 licensed in this state or in another jurisdiction to provide the same professional services as is
13 rendered by the professional association.

14 “Professional services” means the services rendered by professions licensed under
15 chapter 30 of this code, including, but not limited to, the following professions: Physicians,
16 podiatrists, dentists, pharmacists, pharmacy technicians, pharmacy interns, nurses, practical
17 nurses, optometrists, accountants, veterinarians, architects, engineers, land surveyors,
18 osteopathic physicians, surgeons, chiropractors, psychologists, social workers, and
19 acupuncturists.

§47-9B-2. Professional associations established.

1 By this article, professional associations are hereby established in the State of West
2 Virginia.

§47-9B-3. Registration of domestic or foreign professional associations.

1 (a) A domestic or foreign professional association shall file an application for registration
2 to transact business in this state.

3 (b) The application shall include the following:

4 (1) The name of the professional association;

5 (2) The purpose of the professional association;

6 (3) The mailing address of the principal office of the professional association; and

7 (4) The name and address of each member having authority to execute instruments on
8 behalf of the professional association;

9 (c) For foreign professional associations, the application shall also include the following:

10 (1) The name of the jurisdiction of formation of the professional association;

11 (2) The address of the foreign professional association’s designated office in this state, if
12 any;

13 (3) The name and address of foreign professional association’s initial agent for service of
14 process in this state, if any; and

15 (4) Whether the jurisdiction of formation of the foreign professional association allows
16 reciprocity for professional individuals of the same profession licensed in this state.

17 (d) The Secretary of State shall not provide a registration to a foreign professional
18 association unless the jurisdiction of formation of that foreign professional association allows
19 reciprocity.

20 (e) Once registered by the Secretary of State, a professional association may provide
21 professional services in this state, subject to the provisions of this article.

§47-9B-4. Services provided by licensed owners, managerial officials, employees, or agents.

1 (a) Except as provided in §47-9B-4(c) of this code, any owner, managerial official,
2 employee, or agent of a professional association shall be a professional person as defined by
3 §47-9B-1 of this code.

4 (b) A professional association shall only provide professional services in this state through
5 its owners, managerial officials, employees, or agents, each of whom shall be a professional
6 person as defined by §47-9B-1 of this code.

7 (c) This section may not be construed to prohibit a professional association registered with
8 the Secretary of State from employing individuals who do not, according to general custom and
9 practice, ordinarily provide professional services, including clerks, secretaries, bookkeepers,
10 technicians, or assistants. To the extent this subsection conflicts with any other law, this
11 subsection controls.

§47-9B-5. Duties of owners, managerial officials, employees, or agents who cease to be licensed; relinquishment and purchase of certain ownership interests; transfer.

1 (a) Any owner, managerial official, employee, or agent of a professional association who
2 ceases to satisfy the requirements of §47-9B-3 of this code shall promptly resign his or her
3 position with the professional association.

4 (b) When the professional association knows, or should reasonably know, that its
5 employee or agent ceases to be a professional person as defined by §47-9B-1 of this code, the
6 professional association shall promptly terminate his or her employment or agency.

7 (c) An owner of a professional association who ceases to be a professional person as
8 defined in §47-9B-1 of this code shall promptly relinquish his or her ownership interest in the
9 association.

10 (d) A person who succeeds to or otherwise acquires an ownership interest in a
11 professional association shall promptly relinquish any financial interest in the professional
12 association if he or she is not a professional person as defined by §47-9B-1 of this code.

13 (e) A professional association shall purchase or cause to be purchased the ownership
14 interest in the association of a person who is required to relinquish the person's financial interest
15 in the association under §47-9B-5(d) of this code. The price and terms of a purchase of an
16 ownership interest required under this subsection may be provided by the governing documents
17 of the association or an applicable agreement.

18 (f) A person who owns all of the outstanding ownership interests in a professional
19 association but is required under this section to relinquish the person's financial interest in the
20 association may act as a managerial official or owner of the professional association only for the
21 purpose of winding up the professional association's affairs, including selling the outstanding
22 ownership interests and other assets of the professional association.

23 (g) Except as limited by the governing documents of the professional association or an
24 applicable agreement, an ownership interest in a professional association may be transferred only
25 to:

26 (1) An owner of the professional association;

27 (2) The professional association; or

28 (3) A professional person.

§47-9B-6. Liability.

1 (a) A professional association is jointly and severally liable for an error, omission,
2 negligent or incompetent act, or malfeasance committed by a person who:

3 (1) Is an owner, managerial official, employee, or agent of the professional association;

4 and

5 (2) While providing professional services for the professional association or during the
6 course of his or her ownership, official duty, employment, or agency commits the error, omission,
7 negligent or incompetent act, or malfeasance.

8 (b) An owner, managerial official, employee, or agent of a professional association other
9 than an owner, managerial official, employee, or agent liable under §47-9B-6(a) of this code is
10 not subject to the same liability imposed on the professional association under this section.

11 (c) If a person described in §47-9B-6(a) of this code is a professional organization, the
12 professional organization and the professional association are jointly and severally liable for the
13 error, omission, negligent or incompetent act, or malfeasance committed by the person while
14 providing professional services for the professional association.

§47-9B-7. Joint practice by certain professionals.

1 (a) One or more persons duly licensed or otherwise legally authorized to render the same
2 or compatible professional services or to otherwise practice together within this state may become
3 members of a professional association under the provisions of this article for the purpose of
4 rendering the same or compatible professional services. Notwithstanding any provision of this
5 code to the contrary, including any limitation or restriction set forth in any licensing provision of
6 chapter 30 of this code, a professional association may be formed to provide any professional
7 services as defined in §47-9B-1 of this code.

8 (b) Any one or more persons who, under applicable legal or ethical rules or principles, can
9 collectively practice the same or compatible professions, whether as general partners, joint
10 ventures, fellow shareholders, fellow members, or common business owners, may form, own, and
11 operate, as members, a professional association under this article. For purposes of this section,
12 members of professional associations may be professional persons, companies, partnerships, or
13 other business entities that otherwise satisfy the requirements of this article.

14 (c) No professional association organized under this article may have as a member
15 anyone who is not duly licensed or otherwise legally authorized to render the professional services
16 for which the professional association was organized. The names of individuals who have
17 signature authority for professional associations shall be furnished to the Secretary of State. Any
18 change in the persons who have signature authority for a professional association shall be
19 promptly reported to the Secretary of State.

NOTE: The purpose of this bill is to establish professional associations; require registration of domestic and foreign professional associations with the Secretary of State's office; provide definitions; require people who provide services for professional associations to be licensed in the subject profession; provide for relinquishment, purchase, or transfer of ownership rights in professional associations when owners cease to be or are not licensed in the subject profession; set forth liability; and provide for joint practice by certain professionals.

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