

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 492

BY SENATOR MAYNARD

[Introduced January 31, 2019; Referred
to the Committee on Government Organization; and then
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §30-1-22, relating to permitting unlicensed persons to be hired by consumers;
 3 providing for a short title; providing for definitions; providing for disclosure information;
 4 providing for an example disclosure form; providing for working without a license; providing
 5 for defense and relief; providing for remedies; providing for applicability; providing for
 6 limitations; providing for preemption of state statutes; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF
 EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.**

§30-1-22. The occupational licensing consumer choice act.

1 (a) Short title. – This section may be cited as “The Occupational Licensing Consumer
 2 Choice Act.”

3 (b) Legislative purpose. – The Legislature intends for this act to:

4 (1) Expand opportunities, promote innovation and increase competition by allowing
 5 consumers to make decisions in hiring and contracting with providers of their choice;

6 (2) Relieve providers from burdensome occupational licenses;

7 (3) Promote the use of less-restrictive regulatory alternatives to occupational licenses to
 8 protect consumers’ health and safety;

9 (4) Encourage trade associations and similar private organizations to self-regulate;

10 (5) Promote interstate mobility and flexible labor markets; and

11 (6) Reduce the exposure of members of occupational licensing boards to liability under
 12 federal and state antitrust laws.

13 (c) Definitions. – For purposes of this section, the following definitions shall apply:

14 “Lawful occupation” means a course of conduct, pursuit or profession that includes the
 15 sale of goods or services that are not themselves illegal to sell irrespective of whether the human

16 person (person) selling them is subject to the requirements of an occupational license.

17 “Nonlicensed disclosure” means a disclosure that a person is working in a lawful
18 occupation without an occupational license as required by subsection (d) of this section.

19 “Occupational license” means a statute, rule, policy, enforcement practice or action, or
20 any other requirement by a state authority that requires a person to obtain and maintain personal
21 qualifications to work in a lawful occupation. It excludes a business license, facility license,
22 building permit, inspection requirement, building code, zoning law, or land-use regulation except
23 to the extent any of those legal requirements regulate a person’s personal qualifications to
24 perform a lawful occupation.

25 “Personal qualifications” are criteria related to a person’s personal background and
26 characteristics including completion of an approved educational program, satisfactory
27 performance on an examination, work experience, other evidence of attainment of requisite skills
28 or knowledge, and completion of continuing education.

29 “State authority” means any state agency, department, board, commission, or other
30 governing body, and includes executive and administrative officers of such bodies.

31 (d) Nonlicensed disclosure information and means. – (1) To provide a service for which
32 state law otherwise requires an occupational license, an unlicensed person must make a
33 nonlicensed disclosure using no less than a 14-point font set in boldface that:

34 (A) The unlicensed person is working in a lawful occupation without a license;

35 (B) The state otherwise requires that providers of the service hold an occupational license;

36 and

37 (C) The unlicensed person is allowed to provide the service under §30-1-22 of this code.

38 (2) The unlicensed person must make the nonlicensed disclosure in subdivision (1) of this
39 subsection (d) by at least one of the following means:

40 (A) By notice on the homepage of the unlicensed person’s website;

41 (B) By the unlicensed person sending a letter, email or other written correspondence to
42 the consumer prior to providing the service;

43 (C) By notice posted at the entry of the facility where the consumer enters to receive
44 services from the unlicensed person; or

45 (D) In a written contract or purchase order signed by unlicensed person and the consumer
46 prior to providing the service.

47 (e) Example of a nonlicensed disclosure by contract – An unlicensed person may meet
48 the requirements in subsection (d) of this section by using this or a substantially similar form:

49 I. PROVIDER’s DISCLOSURE: “West Virginia state law requires providers of the service
50 that you, the consumer, are agreeing to purchase in this contract to hold an occupational license.
51 I am not licensed by the state, but by providing this nonlicensed disclosure I am allowed by [cite
52 this section] to perform the service in this contract.

53 _____
54 Unlicensed Person’s Name (Printed) _____ Unlicensed Person’s Website

55 _____
56 _____
57 Unlicensed Person’s Physical Address _____ Unlicensed Person’s
58 E-mail Address

59 _____
60 () _____ () _____
61 Unlicensed Person’s Telephone Number _____ Unlicensed Person’s 2nd Telephone Number

62 _____
63 Service provided:
64 [insert description]
65 _____
66 Unlicensed Person’s Signature _____ Date

67 The unlicensed person may list the private trade organizations to which the unlicensed
68 person belongs and any titles or credentials the unlicensed person earned from those
69 organizations.

70 II. CONSUMER ACKNOWLEDGEMENT: I acknowledge I am entering into an agreement
71 with a provider who does not hold an occupational license. I understand West Virginia licenses
72 this occupation, and I may contract with either a licensed or unlicensed person for this service.

73 _____
74 Consumer's Signature _____ Date

75 (f) Working without an occupational license. – (1) A person otherwise subject to the
76 requirements of an occupational license by a state authority may work in West Virginia without an
77 occupational license if the person makes a nonlicensed disclosure.

78 (2) An employer or contractor may: (A) Hire or contract with an unlicensed person
79 otherwise subject to the requirements of occupational license; and (B) offer that unlicensed
80 person's service to a consumer if the employer or contractor makes a nonlicensed disclosure.

81 (3) An unlicensed person may not be denied any benefit provided to a person who holds
82 an occupational license as long as: (A) The unlicensed person; or (B) the unlicensed person's
83 employer or contractor makes a nonlicensed disclosure.

84 (4) A state authority must disclose on its internet website and all written or digital and
85 online application forms for occupational licenses that a person may work in West Virginia without
86 an occupational license otherwise required if: (A) The unlicensed person; or (B) the unlicensed
87 person's employer or contractor makes a nonlicensed disclosure.

88 (g) Defense and relief. –

89 (1) Production of a nonlicensed disclosure is a defense against any administrative, civil or
90 criminal action brought by a state authority for the purpose of enforcing the personal qualifications
91 necessary to obtain and maintain an occupational license.

92 (2) Production of a nonlicense disclosure shall require immediate dismissal with prejudice

93 of any administrative, civil or criminal action brought by a state authority for the purpose of
94 enforcing the personal qualifications necessary to obtain and maintain an occupational license
95 against an unlicensed person engaged in a lawful occupation.

96 (h) *Remedy.* - In addition to the remedies otherwise provided by law, any consumer injured
97 by an unlicensed person operating under this statutory code section may bring in small-claims or
98 district court a civil action and recover damages, together with costs and disbursements, including
99 costs of investigation and reasonable attorney's fees, and receive other equitable relief as
100 determined by the court. The court may, as appropriate, enter a consent judgment or decree
101 without the finding of illegality.

102 (i) *Applicability exceptions.* - The act applies to the regulation of all occupations in West
103 Virginia except for the following providers of human healthcare:

- 104 (1) Medical Doctors in §30-3-1 et. seq of this code;
105 (2) Registered nurses in §30-7-1 et. seq of this code;
106 (3) License practical nurse in §30-7A-1 et. seq of this code;
107 (4) Dentists in §30-4-1 et. seq of this code; and
108 (5) Pharmacists in §30-5-1 et. seq of this code.

109 (j) *Limitations.* – Nothing in this section shall be construed to require:

110 (1) A state authority, county or other governmental body to employ or contract with a
111 person who does not hold an occupational license;

112 (2) The federal government to grant credentials, privileges or benefits under federal law
113 to a person who does not hold an occupational license;

114 (3) A consumer to employ or contract with an unlicensed person;

115 (4) An employer, person or company to employ or contract with an unlicensed person;

116 (5) An insurance or bonding company to issue a policy or bond to an unlicensed person;

117 (6) A judicial court to allow an unlicensed person to practice law before it on behalf of a
118 consumer;

119 (7) A state authority to refrain ordering the revocation of occupational license and
120 prohibiting the person from working as an unlicensed person in that same occupation;

121 (8) A state authority to refrain from obtaining a court order enjoining a person whose
122 previously-held occupational license was revoked from working as an unlicensed person in that
123 same occupation;

124 (9) A state authority to refrain from enforcing health-and-safety regulations, including
125 regulations permitting inspections, which are not related to the personal qualifications necessary
126 to obtain and maintain an occupational license; or

127 (10) A private certification organization to grant or deny its private certification to any
128 person.

129 (k) Further Limitations. – This act shall not be construed to impose any new or additional
130 requirement on a person who is engaged in a lawful occupation that is not subject to the
131 requirements of an occupational license.

132 (l) Preemption. – This section preempts all other statutes in West Virginia.

133 (m) Effective Date. – This section will become effective upon passage.

NOTE: The purpose of this bill is to create the Occupational Licensing Consumer Choice Act to allow persons to work for employers or consumers without first obtaining a professional license.

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