

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2951

BY DELEGATES HOWELL, PACK, C. MARTIN, D. JEFFRIES,

ELLINGTON, STAGGERS, HILL AND HANSEN

[Introduced February 8, 2019; Referred
to the Committee on Government Organization.]

1 A BILL to amend and reenact §30-1-1 of the Code of West Virginia, 1931, as amended; to repeal
2 §30-2-1, §30-2-2, §30-2-3, §30-2-4, §30-2-5, §30-2-5a, §30-2-6, §30-2-7, §30-2-8, §30-3-9,
3 §30-2-10, §30-2-11, §30-2-12, §30-2-13, §30-2-14, §30-2-15 and §30-2-16 and
4 redesignate as §30A-1-1, §30A-1-2, §30A-1-3, §30A-1-4, §30A-1-5, §30A-1-6, §30A-1-7,
5 §30A-1-8, §30A-1-9, §30A-1-10, §30A-1-11, §30A-1-12, §30A-1-13, §30A-1-14, §30A-1-
6 15, §30A-1-16, and §30A-1-17; to repeal §30-6-1, §30-6-2, §30-6-3, §30-6-4, §30-6-5,
7 §30-6-6, §30-6-7, §30-6-8, §30-6-9, §30-6-10, §30-6-11, §30-6-12, §30-6-13, §30-6-14,
8 §30-6-15, §30-6-16, §30-6-17, §30-6-16-, §30-6-19, §30-6-20, §30-6-21, §30-6-22, §30-
9 6-23, §30-6-24, §30-6-22-, §30-6-26, §30-6-27, §30-6-28, §30-6-29, §30-6-30, and §30-
10 6-31 and redesignate as §30A-2-1, §30A-2-3, §30A-2-4, §30A-2-5, §30A-2A-6, §30A-2-
11 7, §30A-2-8, §30A-2-9, §30A-2-10, §30A-2-11, §30A-2-12, §30A-2-13, §30A-2-14, §30A-
12 2-15, §30A-2-16, §30A-2-17, §30A-2-16-, §30A-2-19, §30A-2-20, §30A-2-21, §30A-2-22,
13 §30A-2-23, §30A-2-24, §30A-2-25, §30A-2-26, §30A-2-27, §30A-2-28, §30A-2-29, §30A-
14 2-30, and §30A-2-31; to repeal §30-9-1, §30-9-2, §30-9-3, §30-9-4, §30-9-5, §30-9-6, §30-
15 9-7, §30-9-8 §30-9-9, §30-9-10 §30-9-11, §30-9-12, §30-9-13, §30-9-14, §30-9-15, §30-
16 9-16, §30-9-17, §30-9-16-, §30-9-19, §30-9-20, §30-9-21, §30-9-22, §30-9-23, §30-9-24,
17 §30-9-25, §30-9-26, §30-9-27, §30-9-28, §30-9-29, §30-9-30, §30-9-31, 30-9-33 and §30-
18 9-34 and redesignate as §30A-3-1, §30A-3-2, §30A-3-3, §30A-3-4, §30A-3-5, §30A-3-6,
19 §30A-3-7, §30A-3-8, §30A-3-9, §30A-3-10, §30A-3-11, §30A-3-12, §30A-3-13, §30A-3-
20 14, §30A-3-15, §30A-3-16, §30A-3-17, §30A-3-18, §30A-3-19, §30A-3-20, §30A-3-21,
21 §30A-3-22, §30A-3-23, §30A-3-24, §30A-3-25, §30A-3-26, §30A-3-27, §30A-3-28, §30A-
22 3-29, §30A-3-30, §30A-3-31, §30A-3-33, and §30A-3-34; to repeal §30-12-1, §30-12-2,
23 §30-12-3, §30-12-4, §30-12-5, §30-12-6, §30-12-7, §30-12-8, §30-12-9, §30-12-10, §30-
24 12-11, §30-12-11a, §30-12-12, §30-12-13, and §30-12-14 and redesignate as §30A-4-1,
25 §30A-4-2, §30A-4-3, §30A-4-4, §30A-4-5, §30A-4-6, §30A-4-7, §30A-4-8, §30A-4-9,
26 §30A-4-10, §30A-4-11, §30A-4-11a, §30A-4-12, §30A-4-13, and §30A-4-14,; to repeal

27 §30-13-1, §30-13-2, §30-13-3, §30-13-4, §30-13-5, §30-13-6, §30-13-7, §30-13-8, §30-
28 13-9, §30-13-10, §30-13-11, §30-13-12, §30-13-13, §30-13-13a, §30-13-14, §30-13-15,
29 §30-13-16, §30-13-17, §30-13-18, §30-13-19, §30-13-20. §30-13-21, §30-13-22, §30-13-
30 23, and §30-13-24 and redesignate as §30A-5-1, §30A-5-2, §30A-5-3, §30A-5-4, §30A-5-
31 5, §30A-5-6, §30A-5-7, §30A-5-8, §30A-5-9, §30A-5-10, §30A-5-11, §30A-5-12, §30A-5-
32 13, §30A-5-13a, §30A-5-14, §30A-5-15, §30A-5-16, §30A-5-17, §30A-5-18, §30A-5-19,
33 §30A-5-20, §30A-5-21, §30A-5-22, §30A-5-23, and §30A-5-24 ; to repeal §30-13A-1, §30-
34 13A-2, §30-13A-3, §30-13A-4, §30-13A-5, §30-13A-6, §30-13A-7, §30-13A-8, §30-13A-9,
35 §30-13A-10, §30-13A-11, §30-13A-12, §30-13A-13, §30-13A-14, §30-13A-15, §30-13A-
36 16, §30-13A-17, §30-13A-18, §30-13A-19, §30-13A-20, §30-13A-21, §30-13A-22, §30-
37 13A-23, §30-13A-24, and §30-13A-25, and redesignate as §30A-6-1, §30A-6-2, §30A-6-
38 3, §30A-6-4, §30A-6-5, §30A-6-6, §30A-6-7, §30A-6-8, §30A-6-9, §30A-6-10, §30A-6-11,
39 §30A-6-12, §30A-6-13, §30A-6-14, §30A-6-15, §30A-6-16, §30A-6-17, §30A-6-16, §30A-
40 6-19, §30A-6-20, §30A-6-21, §30A-6-22, §30A-6-23, §30A-6-24, and §30A-6-25; to repeal
41 §30-18-1, §30-18-2, §30-18-3, §30-18-4, §30-18-5, §30-18-6, §30-18-7, §30-18-8, §30-
42 18-9, §30-18-10, §30-18-11, §30-18-12, and §30-18-13 and redesignate as §30A-7-1,
43 §30A-7-2, §30A-7-3, §30A-7-4, §30A-7-5, §30A-7-6, §30A-7-7, §30A-7-8, §30A-7-9,
44 §30A-7-10, §30A-7-11, §30A-7-12, and §30A-7-13; to repeal §30-19-1, §30-19-2, §30-19-
45 3, §30-19-4, §30-19-5, §30-19-6, §30-19-7, §30-19-8, §30-19-9, §30-19-10, §30-19-11,
46 §30-19-12, §30-19-13, §30-19-14, §30-19-15, §30-19-16 and §30-19-17 and redesignate
47 as §30A-8-1, §30A-8-2, §30A-8-3, §30A-8-4, §30A-8-5, §30A-8-6, §30A-8-7, §30A-8-8,
48 §30A-8-9, §30A-8-10, §30A-8-11, §30A-8-12, §30A-8-13, §30A-8-14, §30A-8-15, §30A-
49 8-16, and §30A-8-17; to repeal §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5,
50 §30-20A-6, and §30-20A-7 and redesignate as §30A-9-1, §30A-9-2, §30A-9-3, §30A-9-4,
51 §30A-9-5, §30A-9-6, and §30A-9-7; to repeal §30-22-1, §30-22-2, §30-22-3, §30-22-4,
52 §30-22-5, §30-22-6, §30-22-7, §30-22-8, §30-22-9, §30-22-10, §30-22-11, §30-22-12,

53 §30-22-13, §30-22-14, §30-22-15, §30-22-16, §30-22-17, §30-22-18, §30-22-19, §30-22-
54 20, §30-22-21, §30-22-22, §30-22-23, §30-22-24, §30-22-25, §30-22-26, §30-22-27, and
55 §30-22-28, and redesignate as §30A-10-1, §30A-10-2, §30A-10-3, §30A-10-4, §30A-10-
56 5, §30A-10-6, §30A-10-7, §30A-10-8, §30A-10-9, §30A-10-10, §30A-10-11, §30A-10-12,
57 §30A-10-13, §30A-10-14, §30A-10-15, §30A-10-16, §30A-10-17, §30A-10-18, §30A-10-
58 19, §30A-10-20, §30A-10-21, §30A-10-22, §30A-10-23, §30A-10-24, §30A-10-25, §30A-
59 10-26, §30A-10-27, and §30A-10-28, to repeal §30-25-1, §30-25-2, §30-25-3, §30-25-4,
60 §30-25-5, §30-25-6, §30-25-7, §30-25-8, §30-25-9, §30-25-10, §30-25-11, §30-25-12,
61 §30-25-13, §30-25-14, §30-25-15, §30-25-16, §30-25-17, and §30-25-18 and redesignate
62 as §30A-11-1, §30A-11-2, §30A-11-3, §30A-11-4, §30A-11-5, §30A-11-6, §30A-11-7,
63 §30A-11-8, §30A-11-9, §30A-11-10, §30A-11-11, §30A-11-12, §30A-11-13, §30A-11-14,
64 §30A-11-15, §30A-11-16, §30A-11-17, and 30A-11-18; to repeal §30-26-1, §30-26-2, §30-
65 26-3, §30-26-4, §30-26-5, §30-26-6, §30-26-7, §30-26-8, §30-26-9, §30-26-10, §30-26-
66 11, §30-26-12, §30-26-13, §30-26-14, §30-26-15, §30-26-16, §30-26-17, §30-26-18, §30-
67 26-19, and §30-26-20 and redesignate as §30A-12-1, §30A-12-2, §30A-12-3, §30A-12-4,
68 §30A-12-5, §30A-12-6, §30A-12-7, §30A-12-8, §30A-12-9, §30A-12-10, §30A-12-11,
69 §30A-12-12, §30A-12-13, §30A-12-14, §30A-12-15, §30A-12-16, §30A-12-17, §30A-12-
70 18, §30A-12-19, and §30A-12-20; to repeal §30-27-1, §30-27-2, §30-27-3, §30-27-4, §30-
71 27-5, §30-27-6, §30-27-7, §30-27-8, §30-27-8a, §30-27-8b, §30-27-9, §30-27-10, §30-27-
72 11, §30-27-11a, §30-27-12, §30-27-13, §30-27-14, §30-27-15, §30-27-16, §30-27-17,
73 §30-27-18, §30-27-19, §30-27-20, §30-27-21, §30-27-22, §30-27-23, and §30-27-24 and
74 redesignate as §30A-13-1, §30A-13-2, §30A-13-3, §30A-13-4, §30A-13-5, §30A-13-6,
75 §30A-13-7, §30A-13-8, §30A-13-8a, §30A-13-8b, §30A-13-9, §30A-13-10, §30A-13-11,
76 §30A-13-11a, §30A-13-12, §30A-13-13, §30A-13-14, §30A-13-15, §30A-13-16, §30A-13-
77 17, §30A-13-18, §30A-13-19, §30A-13-20, §30A-13-21, §30A-13-22, §30A-13-23, and
78 §30A-13-24; to repeal §30-29-1, §30-29-2, §30-29-3, §30-29-4, §30-29-5, §30-29-6, §30-

79 29-7, §30-29-8, §30-29-9, §30-29-10, §30-29-11, §30-29-12, and §30-29-13 and
80 redesignate as §30A-14-1, §30A-14-2, §30A-14-3, §30A-14-4, §30A-14-5, §30A-14-6,
81 §30A-14-7, §30A-14-8, §30A-14-9, §30A-14-10, §30A-14-11, §30A-14-12, and §30A-14-
82 13; to repeal §30-30-1, §30-30-2, §30-30-3, §30-30-4, §30-30-5, §30-30-6, §30-30-7, §30-
83 30-8, §30-30-9, §30-30-10, §30-30-11, §30-30-12, §30-30-13, §30-30-14, §30-30-15, §30-
84 30-16, §30-30-17, §30-30-18, §30-30-19, §30-30-20, §30-30-21, §30-30-22, §30-30-23,
85 §30-30-24, §30-30-25, §30-30-26, §30-30-27, §30-30-28, and §30-30-29 and redesignate
86 as §30A-15-1, §30A-15-2, §30A-15-3, §30A-15-4, §30A-15-5, §30A-15-6, §30A-15-7,
87 §30A-15-8, §30A-15-9, §30A-15-10, §30A-15-11, §30A-15-12, §30A-15-13, §30A-15-14,
88 §30A-15-15, §30A-15-16, §30A-15-17, §30A-15-18, §30A-15-19, §30A-15-20, §30A-15-
89 21, §30A-15-22, §30A-15-23, §30A-15-24, §30A-15-25, §30A-15-26, §30A-15-27, §30A-
90 15-28, and §30A-15-29; to repeal §30-31-1, §30-31--2, §30-31-3, §30-31-4, §30-31-5,
91 §30-31-6, §30-31-7, §30-31-8, §30-31-9, §30-31-10, §30-31-11, §30-31-12, §30-31-13,
92 §30-31-14, §30-31-15, §30-31-16, and §30-31-17 and redesignate as §30A-16-1, §30A-
93 16-2, §30A-16-3, §30A-16-4, §30A-16-5, §30A-16-6, §30A-16-7, §30A-16-8, §30A-16-9,
94 §30A-16-10, §30A-16-11, §30A-16-12, §30A-16-13, §30A-16-14, §30A-16-15, §30A-16-
95 16, and §30A-16-17; to repeal §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5, §30-
96 32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13, §30-
97 32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-16-, §30-32-19, §30-32-20, §30-32-21,
98 §30-32-22, and §30-32-23 and redesignate as §30A-17-1, §30A-17-2, §30A-17-3, §30A-
99 17-4, §30A-17-5, §30A-17-6, §30A-17-7, §30A-17-8, §30A-17-9, §30A-17-10, §30A-17-
100 11, §30A-17-12, §30A-17-13, §30A-17-14, §30A-17-15, §30A-17-16, §30A-17-17, §30A-
101 17-18, §30A-17-19, §30A-17-20, §30A-17-21, §30A-17-22, and §30A-17-23; to repeal
102 §30-36-1, §30-36-2, §30-36-3, §30-36-4, §30-36-5, §30-36-6, §30-36-7, §30-36-8, §30-
103 36-9, §30-36-10, §30-36-11, §30-36-12, §30-36-13, §30-36-14, §30-36-15, §30-36-16,
104 §30-36-17, §30-36-18, and §30-36-19, and redesignate as §30A-18-1, §30A-18-2, §30A-

105 18-3, §30A-18-4, §30A-18-5, §30A-18-6, §30A-18-7, §30A-18-8, §30A-18-9, §30A-18-10,
106 §30A-18-11, §30A-18-12, §30A-18-13, §30A-18-14, §30A-18-15, §30A-18-16, §30A-18-
107 17, §30A-18-18, and §30A-18-19; to repeal §30-37-1, §30-37-2, §30-37-3, §30-37-4, §30-
108 37-5, §30-37-6, §30-37-7, §30-37-8, §30-37-9, §30-37-10, and §30-37-11 and redesignate
109 as §30A-19-1, §30A-19-2, §30A-19-3, §30A-19-4, §30A-19-5, §30A-19-6, §30A-19-7,
110 §30A-19-8, §30A-19-9, §30A-19-10, and §30A-19-11; to repeal §30-38-1, §30-38-2, §30-
111 38-3, §30-38-4, §30-38-5, §30-38-6, §30-38-7, §30-38-8, §30-38-9, §30-38-10, §30-38-
112 11, §30-38-12, §30-38-13, §30-38-14, §30-38-15, §30-38-16, §30-38-17, §30-38-18, and
113 §30-38-19 and redesignate as §30A-20-1, §30A-20-2, §30A-20-3, §30A-20-4, §30A-20-5,
114 §30A-20-6, §30A-20-7, §30A-20-8, §30A-20-9, §30A-20-10, §30A-20-11, §30A-20-12,
115 §30A-20-13, §30A-20-14, §30A-20-15, §30A-20-16, §30A-20-17, §30A-20-18, and §30A-
116 20-19; to repeal §30-38A-1, §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6,
117 §30-38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12, §30-38A-13,
118 §30-38A-14, §30-38A-15, §30-38A-16, and §30-38A-17 and redesignate as §30A-21-1,
119 §30A-21-2, §30A-21-3, §30A-21-4, §30A-21-5, §30A-21-6, §30A-21-7, §30A-21-8, §30A-
120 21-9, §30A-21-10, §30A-21-11, §30A-21-12, §30A-21-13, §30A-21-14, §30A-21-15,
121 §30A-21-16, and §30A-21-17; and to repeal §30-39-1, §30-39-2, §30-39-3, §30-39-4, §30-
122 39-5, §30-39-6, §30-39-7, §30-39-8, §30-39-9, §30-39-10, §30-39-11, §30-39-12, §30-39-
123 13, §30-39-14, §30-39-15, §30-39-16, §30-39-17, §30-39-18, §30-39-19, §30-39-20, and
124 30-39-21 and redesignate as §30A-22-1, §30A-22-2, §30A-22-3, §30A-22-4, §30A-22-5,
125 §30A-22-6, §30A-22-7, §30A-22-8, §30A-22-9, §30A-22-10, §30A-22-11, §30A-22-12,
126 §30A-22-13, §30A-22-14, §30A-22-15, §30A-22-16, §30A-22-17, §30A-22-18, §30A-22-
127 19, §30A-22-20, and §30A-22-21 to repeal §30-40-1, §30-40-2, §30-40-3, §30-40-4, §30-
128 40-5, §30-40-6, §30-40-7, §30-40-8, §30-40-9, §30-40-10, §30-40-11, §30-40-12, §30-40-
129 13, §30-40-14, §30-40-15, §30-40-16, §30-40-17, §30-40-18, §30-40-19, §30-40-20, §30-
130 40-21, §30-40-22, §30-40-23, §30-40-24, §30-40-25, §30-40-26, and §30-40-27 and

131 redesignate as §30A-23-1, §30A-23-2, §30A-23-3, §30A-23-4, §30A-23-5, §30A-23-6,
 132 §30A-23-7, §30A-23-8, §30A-23-9, §30A-23-10, §30A-23-11, §30A-23-12, §30A-23-13,
 133 §30A-23-14, §30A-23-15, §30A-23-16, §30A-23-17, §30A-23-18, §30A-23-19, §30A-23-
 134 20, §30A-23-21, §30A-23-22, §30A-23-23, §30A-23-24, §30A-23-25, §30A-23-26, and
 135 §30A-23-27; all relating to placing the regulation of non-medical professions and
 136 occupations in a new chapter 30A, leaving the regulation of all medically related
 137 professions and occupations in chapter 30 and making no substantive changes in any of
 138 these laws.

Be it enacted by the Legislature of West Virginia:

CHAPTER 30. HEALTH RELATED PROFESSIONS AND OCCUPATIONS.

§30-1-1. Application of article.

1 Unless otherwise specifically provided, every board of examination or registration referred
 2 to in this chapter and chapter thirty-a of this code shall conform to the requirements prescribed in
 3 the following sections of this article.

CHAPTER 30A. NON-MEDICAL RELATED PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. ATTORNEYS-AT-LAW.

§30A-1-1. Certificate of good moral character; examination of applicants for license; licenses.

1 Any person desiring to obtain a license to practice law in the courts of this state shall
 2 appear before the circuit court of the county in which he or she has resided for the last preceding
 3 year and prove to the satisfaction of the court, or to the satisfaction of a committee of three
 4 attorneys practicing before the court, appointed by the court, that he or she is a person of good

5 moral character, that he or she is eighteen years of age, and that he or she has resided in such
6 county for one year next preceding the date of his or her appearance; and upon the presentation
7 of such proof, the court shall enter an order on its record accordingly. The Supreme Court of
8 Appeals shall prescribe and publish rules and regulations for the examination of all applicants for
9 admission to practice law, which shall include the period of study and degree of preparation
10 required of applicants previous to being admitted, as well as the method of examinations, whether
11 by the court or otherwise. And the Supreme Court of Appeals may, upon the production of a duly
12 certified copy of the order of the circuit court, hereinbefore mentioned, and upon being satisfied
13 that the applicant has shown, upon an examination conducted in accordance with such rules and
14 regulations, that he or she is qualified to practice law in the courts of this state, and upon being
15 further satisfied that such rules and regulations have been complied with in all respects, grant
16 such applicant a license to practice law in the courts of this state, and such license shall show
17 upon its face that all the provisions of this section and of the said rules have been complied with:
18 *Provided*, That any person who shall produce a duly certified copy of such order of the circuit
19 court, and also a diploma of graduation from the college of law of West Virginia University
20 reflecting a date of graduation prior to July 1, 1983, shall, upon presentation thereof in any of the
21 courts of this state, be entitled to practice in any and all courts of this state, and the order so
22 admitting him or her shall state the facts pertaining to the same.

§30A-1-2. Attorneys from other jurisdictions.

1 Any person duly authorized to practice as an attorney at law in any jurisdiction other than
2 this state may be admitted to practice as such in the courts of this state, as a visiting attorney, or
3 as a resident attorney, upon first complying with the rules and regulations applicable thereto
4 prescribed by the Supreme Court of Appeals of West Virginia, without being required to take the
5 bar examinations of this state, if the other jurisdiction in which such person is already authorized
6 to practice allows attorneys of this state to be admitted to the bar or to practice law in such
7 jurisdiction without making it one of the necessary requirements that attorneys of this state take

8 the bar examinations of such jurisdiction. The Supreme Court of Appeals of West Virginia shall
9 prescribe specific rules and regulations dealing with the admission of such person from another
10 jurisdiction to practice law in this state either as a visiting attorney or as a resident attorney; and
11 no person from another jurisdiction shall be permitted to practice in the courts of this state in either
12 classification until he or she has complied with the rules and regulations pertaining to such
13 classification established by the Supreme Court of Appeals. Nothing herein contained shall affect
14 the right or status of attorneys admitted to practice in this state prior to the enactment of this
15 section.

§30A-1-3. Oath.

1 Every attorney at law shall take the following oath before each court in which he or she
2 proposes to practice, that is to say: If he or she be a resident of this state, an oath that he or she
3 will support the Constitution of the United States and the Constitution of the State of West Virginia,
4 honestly demean himself or herself in the practice of the law, and to the best of his or her ability
5 execute his or her office of attorney at law; if he or she be not a resident of this state, an oath that
6 he or she will support the Constitution of the United States, honestly demean himself or herself in
7 the practice of the law, and to the best of his or her ability execute his or her office of attorney at
8 law.

§30A-1-4. Practice without license or oath; penalty; qualification after institution of suits.

1 (a) It is unlawful for any person to practice or appear as an attorney-at-law for another in
2 a court in this state or to make it a business to solicit employment for any attorney, or to hold
3 himself or herself out to the public or any member thereof as being entitled to practice law, or in
4 any other manner to assume, use or advertise the title of lawyer, attorney and counselor-at-law,
5 attorney and counselor or equivalent terms in any language, in such manner as to convey the
6 impression that he or she is a legal practitioner of law, or in any manner to advertise that he or
7 she, either alone or together with other persons, has, owns, conducts or maintains a law office,
8 without first having been duly and regularly licensed and admitted to practice law in the courts of

9 this state, and without having subscribed and taken the oath required by the provisions of section
10 three of this article.

11 (b) Any person violating the provisions of subsection (a) of this section is guilty of a
12 misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000, or confined in
13 jail not more than ninety days, or both fined and confined, and on any subsequent offense, is
14 guilty of a misdemeanor and shall be fined not more than \$10,000, or confined in jail not more
15 than one year, or both fined and confined: *Provided*, That nothing herein prohibits a lawyer from
16 advertising services or hiring a person to assist in advertising services as permitted by the Rules
17 of Professional Conduct.

§30A-1-5. Practice by corporations or voluntary associations; penalties; limitations of section.

1 Except as provided by section five-a of this article, it shall be unlawful for any corporation
2 or voluntary association to practice or appear as an attorney at law for any person in any court of
3 this state or before any judicial body, or to hold itself out to the public as being entitled to practice
4 law, or to render or furnish legal services or advice, or to furnish an attorney or counsel to render
5 legal services of any kind in actions or proceedings of any nature, or in any other manner to
6 assume to be entitled to practice law, or assume, use or advertise the title of lawyer in such
7 manner as to convey the impression that it is entitled to practice law or to furnish legal advice,
8 services or counsel, or to advertise that, either alone or together with or by or through any person,
9 whether a duly and regularly admitted attorney at law or not, it has, owns, conducts or maintains
10 a law office for the practice of law, or for furnishing legal advice, services or counsel. It shall be
11 unlawful further for any corporation or voluntary association to solicit, itself or by or through its
12 officers, agents or employees, any claim or demand for the purpose of bringing an action thereon,
13 or of settling the estate of any insolvent debtor, or of representing as attorney at law, or of
14 furnishing legal advice, services or counsel to, a person sued or about to be sued in any action
15 or proceeding, or against whom an action or proceeding has been or is about to be brought, or

16 who may be affected by any action or proceeding which has or may be instituted in any court or
17 before any judicial body, or for the purpose of so representing any person in the pursuit of any
18 civil or criminal remedy. Any corporation or voluntary association violating the provisions of this
19 section, or any officer, trustee, director, agent or employee of such corporation or voluntary
20 association who directly or indirectly engages in any of the acts herein prohibited, or assists such
21 corporation or voluntary association to do such prohibited acts, shall be guilty of a misdemeanor,
22 and, upon conviction thereof, shall be fined not more than \$1,000. The fact that any such officer,
23 trustee, director, agent or employee shall be a duly and regularly admitted attorney at law shall
24 not be held to permit or allow any such corporation or voluntary association to do the acts
25 prohibited herein, nor shall such fact be a defense upon the trial of any of the persons mentioned
26 herein for a violation of the provisions of this section.

27 This section shall not apply to a partnership composed of licensed attorneys, or to a
28 corporation or voluntary association lawfully engaged in examining and insuring the titles to real
29 property, nor shall it prohibit a corporation or voluntary association from employing an attorney or
30 attorneys in and about its own immediate affairs or in any litigation to which it is or may be a party,
31 nor shall it apply to organizations organized for benevolent or charitable purposes, or for the
32 purpose of assisting persons without means in the pursuit of any civil remedy.

§30A-1-6. Legal corporations.

1 (a) One or more individuals, each of whom is licensed to practice law within this state, may
2 organize and become a shareholder or shareholders of a legal corporation. Individuals who may
3 be practicing law as an organization created otherwise than pursuant to the provisions of this
4 section may incorporate under and pursuant to this section. This section is not intended to amend
5 the statutory or common law as it relates to associations or partnerships, except to allow
6 partnerships of lawyers to organize as a legal corporation.

7 (b) A legal corporation may render professional service only through officers, employees
8 and agents who are themselves duly licensed to render legal service within this state. The term

9 “employee” or “agent” as used in this section does not include secretaries, clerks, typists,
10 paralegal personnel or other individuals who are not usually and ordinarily considered by custom
11 and practice to be rendering legal services for which a license is required.

12 (c) This section does not modify the law as it relates to the relationship between a person
13 furnishing legal services and his or her client, nor does it modify the law as it relates to liability
14 arising out of such a professional service relationship. Except for permitting legal corporations,
15 this section is not intended to modify any legal requirement or court rule relating to ethical
16 standards of conduct required of persons providing legal service.

17 (d) A legal corporation may issue its capital stock only to persons who are duly licensed
18 attorneys.

19 (e) When not inconsistent with this section, the organization and procedures of legal
20 corporations shall conform to the requirements of article one, chapter thirty-one of this code.

21 (f) The West Virginia State Bar may require that lawyers under its licensing authority must
22 obtain its prior authorization before beginning to act as a legal corporation and may require a fee
23 of not more than \$50 for each application for authorization to form a legal corporation. The State
24 Bar may adopt rules: (1) To set reasonable standards for granting or refusing prior approval; (2)
25 to require appropriate information therefor from a legal corporation applicant; and (3) to notify the
26 Secretary of State that certain persons have been given authorization by the state Bar to form a
27 legal corporation.

28 (g) Upon notification by the West Virginia State Bar of its approval, the Secretary of State,
29 upon compliance by the incorporators with this section and the applicable provisions of chapter
30 thirty-one of this code, may issue to the incorporators a certificate of incorporation for the legal
31 corporation which then may engage in practice through duly licensed or otherwise legally
32 authorized stockholders, employees and agents.

33 (h) A shareholder of a legal corporation may sell or transfer his or her shares of stock in
34 such corporation only to another individual who is duly licensed to practice law in this state or

35 back to the corporation. However, a fiduciary representative of the estate of a lawyer may hold
36 the stock or interest of the lawyer for a reasonable time during the administration of the estate.

37 (i) The corporate name of a legal corporation shall contain the last name or names of one
38 or more of its shareholders. If the rules of the state Bar so permit, the corporate name may contain
39 or include the name or names of former shareholders or of persons who were associated with a
40 predecessor partnership or other organization. The corporate name shall also contain the words
41 "legal corporation" or the abbreviation "L.C." The use of the word "company", "corporation" or
42 "incorporated" or any other words or abbreviations in the name of a corporation organized under
43 this article which indicates that such corporation is a corporation, other than the words "legal
44 corporation" or the abbreviation "L.C.", is specifically prohibited.

**§30A-1-7. Annulment or suspension of license for conviction of felony or crime involving
moral turpitude.**

1 Any court before which any attorney has been qualified, on proof being made to it that he
2 or she has been convicted of any felony, or any other crime involving moral turpitude, shall annul
3 his or her license to practice therein or suspend the same for such time as the court may prescribe.

§30A-1-8. Suspension or annulment of license for malpractice; appeal.

1 If the Supreme Court of Appeals or any court of record of this state, except the county
2 court, observe any malpractice therein by any attorney, or if complaint, verified by affidavit, be
3 made to any such court of malpractice by any attorney therein, such court shall order the attorney
4 to be summoned to show cause why his or her license shall not be suspended or annulled. A
5 summons shall thereupon be issued by the clerk of such court containing a copy of the charges
6 and requiring the attorney to appear and answer the same on a day to be named therein, which
7 summons may be served in the same manner as a summons commencing an action may be
8 served, and the service shall be made at least five days before the return day thereof. Upon the
9 return of the summons executed, if the attorney appear and deny the charge of malpractice, the
10 court shall, without a jury, try the same. If the attorney be found guilty by the court, or if he or she

11 fail to appear and deny the charge, the court may either suspend or annul the license of such
12 attorney as in its judgment shall seem right.

13 Whenever a judgment or decree shall be standing or rendered in any of said courts against
14 an attorney for money collected by him or her as such, it shall be the duty of such court to suspend
15 the license of such attorney until such judgment or decree shall be satisfied.

16 An appeal shall lie from any court of record of limited jurisdiction established under the
17 provisions of section 19 of article VIII of the Constitution of this state, to the circuit court of the
18 county, and from any circuit court to the Supreme Court of Appeals of the state, from any order
19 suspending or annulling the license of any attorney proceeded against under the provisions of
20 this section.

§30A-1-9. Security for good behavior; contempt.

1 Nothing in the preceding section shall affect the right of any court to require from an
2 attorney therein security for his or her good behavior, or to fine him or her for a contempt of the
3 court.

§30A-1-10. Revocation, annulment or suspension of license effective throughout state.

1 Any revocation, annulment or suspension of a license to practice law shall operate and be
2 effective throughout the state.

§30A-1-11. Clerk and sheriff or their deputies not to act as attorneys.

1 If any clerk, sheriff, or any deputy of either, or any person interested in the profits of any
2 such office, shall act as attorney at law in any case in any court of which such clerk or sheriff is
3 an officer, he or she shall forfeit \$30.

§30A-1-12. Liability of attorney to client for neglect of duty.

1 Every attorney at law shall be liable to his or her client for any damages sustained by the
2 client by the neglect of his or her duty as such attorney.

§30A-1-13. Liability of attorney or agent for loss of debt or money.

1 If any attorney at law or agent shall, by his or her negligence or improper conduct, lose

2 any debt or other money of his or her client, he or she shall be charged with the principal of what
3 is so lost, and interest thereon, in like manner as if he or she had received such principal, and it
4 may be recovered from him or her by suit or motion.

§30A-1-14. Liability of attorney for failure to pay over moneys collected; penalty.

1 If any attorney receive money for his or her client as such attorney and fail to pay the same
2 on demand, or within six months after receipt thereof, without good and sufficient reason for such
3 failure, it may be recovered from him or her by suit or motion; and damages in lieu of interest, not
4 exceeding fifteen percent per annum until paid, may be awarded against him or her, and he or
5 she shall be deemed guilty of a misdemeanor and, be fined not less than twenty nor more than
6 \$500.

§30A-1-14. Liability of attorney for failure to pay over moneys collected; penalty.

1 Any attorney convicted under the next preceding section shall, in addition to the
2 punishment therein prescribed, be disbarred from practicing as an attorney in any of the courts of
3 this state, and the same shall be entered by the court as part of its judgment.

§30A-1-16. Compensation.

1 An attorney shall be entitled for his or her services as such to such sums as he or she may
2 contract for with the party for whom the service is rendered; and, in the absence of such contract,
3 he or she may recover of such party what his or her services were reasonably worth.

§30A-1-17. Solicitation of employment by or for attorney in cases of personal injury or death; limitation of section; penalty.

1 It shall be unlawful for any attorney at law, either himself or herself or by or through an
2 agent, employee or other person acting on his or her behalf, to solicit in this state another person
3 to employ, or procure or bring about the employment of, said attorney at law or any other attorney
4 at law for the purpose of presenting, making, collecting, enforcing or prosecuting a claim, suit or
5 action for damages for personal injury or death. It shall be unlawful for any person, as agent or
6 employee or otherwise acting on behalf of an attorney at law, to solicit in this state another person

7 to employ, or procure or bring about the employment of, said attorney at law or any other attorney
8 at law for the purpose of presenting, making, collecting, enforcing or prosecuting such a claim,
9 suit or action for damages. The solicitation by any person of another person to employ, or procure
10 or bring about the employment of, any attorney at law for the purpose of presenting, making,
11 collecting, enforcing or prosecuting such a claim, suit or action for damages, if followed by the
12 employment of said attorney for such purposes, shall, in any prosecution of such person so
13 soliciting, be prima facie evidence that such person so soliciting was an agent, employee or acting
14 on behalf of said attorney at law.

15 Nothing in this section shall be construed to prohibit any person from employing or
16 furnishing any attorney at law for the purpose of presenting, making, collecting, enforcing,
17 prosecuting or defending against a claim, suit or action to which such person is or may be a party,
18 or on it or by reason of which such person is or may be directly or indirectly liable to pay or respond
19 in money, or to prohibit any attorney at law so employed or furnished from presenting, making,
20 collecting, enforcing, prosecuting or defending against said claim, suit or action. Nothing in this
21 section shall be construed to prohibit any benevolent or charitable organization from assisting
22 persons without means in the pursuit of any civil remedy. Nothing in this section shall impair or
23 affect the disciplinary powers of the courts over attorneys at law and counsel appearing or
24 practicing therein. In the construction of this section the words "attorney at law" shall be applied
25 to and include any attorney at law, whether admitted or licensed to practice, or practicing, law in
26 this state or in any other place or in any court thereof.

27 Any person violating any provision of this section shall be guilty of a misdemeanor, and,
28 upon conviction thereof, shall be fined not more than \$1,000 or confined in the county jail not
29 more than six months, or both.

ARTICLE 2. BOARD OF FUNERAL SERVICE EXAMINERS.

§30A-2-1. License required to practice.

1 The practice of preparing dead human bodies for burial or cremation and the subsequent

2 burial or cremation thereof has serious public health and safety considerations and should only
3 be practiced by a person who has specific training in those fields.

4 Therefore, the Legislature hereby finds that to protect the public interest a person must
5 have a license, as provided in this article, to practice embalming, funeral directing and cremation
6 and to operate a funeral establishment and crematory in the State of West Virginia.

§30A-2-2. Short title.

1 This article shall be known and may be cited as the “West Virginia Funeral Service
2 Examiners Act”.

§30A-2-3. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
2 the context clearly indicates otherwise:

3 (a) “Apprentice” means a person who is preparing to become a licensed funeral director
4 and embalmer and is learning the practice of embalming, funeral directing or cremation under the
5 direct supervision and personal instruction of a duly licensed embalmer or funeral director.

6 (b) “Authorized representative” means a person legally authorized or entitled to order the
7 cremation of the deceased, as established by rule. An authorized representative may include in
8 the following order of precedence:

9 (1) The deceased, who has expressed his or her wishes regarding the disposal of their
10 remains through a last will and testament, an advance directive or preneed funeral contract, as
11 defined in section two, article fourteen, chapter forty-five of this code;

12 (2) The surviving spouse of the deceased, unless a petition to dissolve the marriage was
13 pending at the time of decedent's death;

14 (3) An individual previously designated by the deceased as the person with the right to
15 control disposition of the deceased's remains in a writing signed and notarized by the deceased:
16 *Provided*, That no person may be designated to serve in such capacity for more than one
17 nonrelative at any one time;

- 18 (4) The deceased's next of kin;
- 19 (5) A court order;
- 20 (6) A public official who is charged with arranging the final disposition of an indigent
21 deceased; or
- 22 (7) A representative of an institution who is charged with arranging the final disposition of
23 a deceased who donated his or her body to science.
- 24 (c) "Board" means the West Virginia Board of Funeral Service Examiners.
- 25 (d) "Certificate" means a certification by the board to be a crematory operator.
- 26 (e) "Courtesy card holder" means a person who only practices funeral directing periodically
27 in West Virginia and is a licensed embalmer and funeral director in a state which borders West
28 Virginia.
- 29 (f) "Cremated remains" or "cremains" means all human remains, including foreign matter
30 cremated with the human, recovered after the completion of cremation.
- 31 (g) "Cremation" means the mechanical or thermal process whereby a dead human body
32 is reduced to ashes and bone fragments and then further reduced by additional pulverization,
33 burning or reinterment when necessary.
- 34 (h) "Crematory" means a licensed place of business where a deceased human body is
35 reduced to ashes and bone fragments and includes a crematory that stands alone or is part of or
36 associated with a funeral establishment.
- 37 (i) "Crematory operator" means a person certified by the board to operate a crematory.
- 38 (j) "Crematory operator in charge" means a certified crematory operator who accepts
39 responsibility for the operation of a crematory.
- 40 (k) "Deceased" means a dead human being for which a death certificate is required.
- 41 (l) "Embalmer" means a person licensed to practice embalming.
- 42 (m) "Embalming" means the practice of introducing chemical substances, fluids or gases
43 used for the purpose of preservation or disinfection into the vascular system or hollow organs of

44 a dead human body by arterial or hypodermic injection for the restoration of the physical
45 appearance of a deceased.

46 (n) "Funeral" means a service, ceremony or rites performed for the deceased with a body
47 present.

48 (o) "Funeral directing" means the business of engaging in the following:

49 (1) The shelter, custody or care of a deceased;

50 (2) The preparation of a deceased for burial or other disposition;

51 (3) The arranging or supervising of a funeral or memorial service for a deceased; and

52 (4) The maintenance of a funeral establishment for the preparation, care or disposition of
53 a deceased.

54 (p) "Funeral director" means a person licensed to practice funeral directing.

55 (q) "Funeral establishment" means a licensed place of business devoted to: the care,
56 preparation and arrangements for the transporting, embalming, funeral, burial or other disposition
57 of a deceased. A funeral establishment can include a licensed crematory.

58 (r) "Funeral service licensee" means a person licensed after July 1, 2003, to practice
59 embalming and funeral directing.

60 (s) "License" means a license, which is not transferable or assignable, to:

61 (1) Practice embalming and funeral directing;

62 (2) Operate a crematory or a funeral establishment.

63 (t) "Licensee" means a person holding a license issued under the provisions of this article.

64 (u) "Licensee in charge" means a licensed embalmer and funeral director who accepts
65 responsibility for the operation of a funeral establishment.

66 (v) "Memorial service" means a service, ceremony or rites performed for the deceased
67 without a body present.

68 (w) "Mortuary" means a licensed place of business devoted solely to the shelter, care and
69 embalming of the deceased.

70 (x) "Person" means an individual, partnership, association, corporation, not-for-profit
71 organization or any other organization.

72 (y) "Registration" means a registration issued by the board to be an apprentice to learn
73 the practice of embalming, funeral directing or cremation.

74 (z) "State" means the State of West Virginia.

§30A-2-4. Board of funeral service examiners.

1 (a) The "West Virginia Board of Embalmers and Funeral Directors" is hereby continued
2 and shall, after June 30, 2002, be known as the "West Virginia Board of Funeral Service
3 Examiners". The members of the board in office on July 1, 2002 shall, unless sooner removed,
4 continue to serve until their respective terms expire and until their successors have been
5 appointed and qualified.

6 (b) Commencing with the board terms beginning July 1, 2002, the board shall consist of
7 seven members appointed for terms of four years by the Governor, by and with the advice and
8 consent of the Senate. Five members must be licensed embalmers and funeral directors, and one
9 member must be a citizen member who is not licensed, certified or registered under the provisions
10 of this article and who is not a person who performs any services related to the practice of
11 embalming or funeral directing. Commencing with the board terms beginning July 1, 2002, the
12 Governor shall appoint, by and with the advice and consent of the Senate, one person who
13 operates a crematory in West Virginia which person shall replace the current board member
14 whose term ended on June 30, 2002. The crematory operator who is appointed for the term
15 commencing July 1, 2002, shall register and be certified, pursuant to the provisions of this article.
16 Any crematory operator appointed thereafter shall be certified, pursuant to the provisions of this
17 article.

18 (c) Each licensed member of the board, at the time of his or her appointment, must have
19 held a license in this state for a period of not less than five years immediately preceding the
20 appointment and each member must be a resident of this state during the appointment term. Each

21 certified member must abide by the provisions of subsection (b) of this section. Board members
22 must represent at least four different geographic regions of the state.

23 (d) No member may serve more than two consecutive full terms and any member having
24 served two full terms may not be appointed for one year after completion of his or her second full
25 term. A member shall continue to serve until his or her successor has been appointed and
26 qualified.

27 (e) The Governor may remove any member from the board for neglect of duty,
28 incompetency or official misconduct.

29 (f) Any member of the board immediately and automatically forfeits his or her membership
30 if he or she has his or her license or certificate to practice suspended or revoked by the board, is
31 convicted of a felony under the laws of any state or the United States or becomes a nonresident
32 of this state.

33 (g) The board shall annually elect one of its members as president and one of its members
34 as secretary.

35 (h) Each member of the board shall receive compensation and expense reimbursement
36 in accordance with section eleven, article one of this chapter.

§30A-2-5. Powers of the board.

1 The board has all the powers set forth in article one of this chapter and in addition may:

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

3 (2) Hire, fix the compensation of and discharge an executive director;

4 (3) Hire, fix the compensation of and discharge the employees necessary to enforce the
5 provisions of this article;

6 (4) Set the requirements to be an inspector;

7 (5) Examine and determine the qualifications of any applicant for a license;

8 (6) Determine the qualifications of any applicant for a certificate;

9 (7) Set cremation procedures and requirements;

- 10 (8) Set the fees charged under the provisions of this article;
- 11 (9) Set the fines assessed under the provisions of this article;
- 12 (10) Issue, renew, deny, suspend, revoke or reinstate licenses and certificates and
13 discipline licensees and certificate holders;
- 14 (11) Set the continuing education requirements for licensees and certificate holders;
- 15 (12) Investigate alleged violations of the provisions of this article and the rules
16 promulgated hereunder, and orders and final decisions of the board;
- 17 (13) Conduct hearings upon charges calling for discipline of a licensee or revocation or
18 suspension of a license;
- 19 (14) Propose rules in accordance with the provisions of article three, chapter twenty-nine-
20 a of this code to implement the provisions of this article; and
- 21 (15) Take all other actions necessary and proper to effectuate the purposes of this article.

§30A-2-6. Rule-making authority.

- 1 (a) The board shall propose rules for legislative approval in accordance with the provisions
2 of article three, chapter twenty-nine-a of this code to implement the provisions of this article
3 including, but not limited to, the following:
- 4 (1) The general practice of embalming, funeral directing and cremating, and operating a
5 funeral establishment and crematory: *Provided*, That the board cannot require that an applicant
6 for a license to operate a funeral establishment or crematory have either an embalmer's or funeral
7 director's license, or a certificate to operate a crematory.
- 8 (2) The examinations administered under this article;
- 9 (3) The issuing and renewing of licenses, certificates and courtesy cards, including
10 establishing a staggered biennial renewal schedule;
- 11 (4) The requirements for inactive licensees;
- 12 (5) The registration and regulation of apprentices;
- 13 (6) Establish a cremation procedure and crematory requirements;

14 (7) Establish inspection requirements for funeral establishments and crematories,
15 including an inspection of a new facility and annual inspections of existing facilities;

16 (8) Establish inspector and investigator requirements;

17 (9) Setting the fees charged under the provisions of this article;

18 (10) Setting the fines assessed under the provisions of this article;

19 (11) Implementing requirements for continuing education for licensees;

20 (12) Denying, suspending, revoking, reinstating or limiting the practice of a licensee or
21 certificate of qualification;

22 (13) The investigation and resolution of complaints against persons licensed, certified or
23 registered under this article;

24 (14) Establish advertising standards; and

25 (15) Propose any other rules necessary to effectuate the provisions of this article.

26 (b) All rules in effect on the effective date of this article shall remain in effect until they are
27 withdrawn, revoked or amended.

§30A-2-7. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative fines, received by the board shall be
2 deposited in a separate special revenue fund in the state Treasury and be used for the
3 administration of this article. Except as may be provided in section eleven, article one of this
4 chapter, the board shall retain the amounts in the special revenue account from year to year. No
5 compensation or expense incurred under this article is a charge against the General Revenue
6 Fund.

7 (b) Any amounts received as administrative fines imposed pursuant to this article shall be
8 deposited into the General Revenue Fund of the state Treasury.

§30A-2-8. Embalmer license requirements.

1 (a) The board shall issue a license to practice embalming to an applicant who:

2 (1) Is of good moral character;

3 (2) Is eighteen years of age or over;

4 (3) Is a citizen of the United States or is eligible for employment in the United States;

5 (4) Has a high school diploma or its equivalent;

6 (5) Has completed one of the following education requirements, as evidenced by a
7 transcript submitted to the board for evaluation:

8 (A) (i) Has an associate degree from an accredited college or university; or

9 (ii) Has successfully completed at least sixty semester hours or ninety quarter hours of
10 academic work in an accredited college or university toward a baccalaureate degree with a
11 declared major field of study; and (iii) Has graduated from a school of mortuary science,
12 accredited by the American Board of Funeral Service Education, Inc., which requires as a
13 prerequisite to graduation the completion of a course of study of not less than twelve months; or

14 (B) Has a bachelor degree in mortuary science from an accredited college or university;

15 (6) Has completed a one-year apprenticeship, under the supervision of a licensed
16 embalmer and funeral director actively and lawfully engaged in the practice of embalming and
17 funeral directing in this state, which apprenticeship consisted of:

18 (A) Diligent attention to the work in the course of regular and steady employment and not
19 as a side issue to another employment; and

20 (B) The apprentice taking an active part in:

21 (i) The operation of embalming not less than thirty-five dead human bodies; and

22 (ii) Conducting not less than thirty-five funeral services;

23 (7) Passes, with an average score of not less than seventy-five percent, the following
24 examinations:

25 (A) The National Conference of Funeral Services examination at a testing site provided
26 by the national conference, which passage is a condition precedent to taking the state law
27 examination;

28 (B) The state law examination administered by the board, which examination must be

29 offered at least twice each year; and

30 (C) Any other examination required by the board; and

31 (8) Has paid all the appropriate fees.

32 (b) A license to practice embalming issued by the board prior to July 1, 2012, shall for all
33 purposes be considered a license issued under this section: *Provided*, That a person holding a
34 license issued prior to July 1, 2012, must renew the license pursuant to the provisions of this
35 article.

§30A-2-9. Funeral director license requirements.

1 (a) The board shall issue a license to practice funeral directing to an applicant who meets
2 the following requirements:

3 (1) Holds an embalmer's license issued by the board; and

4 (2) Has paid all the appropriate fees.

5 (b) A license to practice funeral directing issued by the board prior to July 1, 2002, shall
6 for all purposes be considered a license issued under this section: *Provided*, That a person
7 holding a license issued prior to July 1, 2002, must renew the license pursuant to the provisions
8 of this article.

§30A-2-10. Funeral service license requirements.

1 (a) Commencing July 1, 2003, the board shall issue a license to practice embalming and
2 funeral directing, which license shall be known as a funeral service license, to an applicant who
3 meets the following requirements:

4 (1) Is of good moral character;

5 (2) Is eighteen years of age or over;

6 (3) Is a citizen of the United States or is eligible for employment in the United States;

7 (4) Holds a high school diploma or its equivalent;

8 (5) Has completed one of the education requirements for an embalmer's license, set out
9 in subdivision (5), subsection (a), section eight of this article; and

10 (6) Has paid all the appropriate fees.

11 (b) A license to practice embalming and funeral directing issued by the board prior to July
12 1, 2003, shall for all purposes be considered a license issued under this section.

13 (c) A person holding a license to practice embalming and funeral directing issued prior to
14 July 1, 2003, must after July 1, 2003, renew his or her license pursuant to the provisions of this
15 section.

16 (d) After July 1, 2003, wherever the terms "license to practice embalming and funeral
17 directing" or "embalming and funeral directing license" are used in the code, the term "funeral
18 service license" shall apply.

§30A-2-11. Crematory operator certificate requirements.

1 (a) All crematory operators shall be certified by the board. The board shall issue a
2 certificate to be a crematory operator to an applicant who meets the following requirements:

3 (1) Has completed a class, authorized by the board, on cremation and operating a
4 crematory;

5 (2) Has paid all the appropriate fees; and

6 (3) Has completed such other requirements as prescribed by the board.

7 (b) All persons currently operating crematories shall by January 1, 2003, register with the
8 board. By July 1, 2003, all persons currently operating crematories shall obtain a certificate to
9 operate a crematory, pursuant to the provisions of this section.

10 (c) All certificates must be renewed biennially upon or before July 1.

11 (d) After July 1, 2003, all licensed crematories must have a certified crematory operator in
12 charge.

**§30A-2-12. Licenses or equivalent from another state; license or certificate to practice in
this state.**

1 The board may issue a license to practice embalming and funeral directing or a certificate
2 to be a crematory operator to an applicant of good moral character who holds a valid license or

3 its equivalent to practice from another state if the applicant demonstrates that:

4 (1) He or she holds a license or its equivalent to practice in another state which was
5 granted after completion of educational requirements substantially equivalent to those required in
6 this state;

7 (2) He or she holds a license or its equivalent to practice in another state which was
8 granted after passing, in that or another state, an examination that is substantially equivalent to
9 the examination required in this state;

10 (3) Reciprocal rights are provided by such other state to holders of funeral director's or
11 embalmer's licenses granted in this state. Such reciprocal licenses may be renewed biennially
12 upon payment of the renewal license fee;

13 (4) He or she is not currently being investigated by a disciplinary authority of another state,
14 does not have charges pending against his or her license or something equivalent to practice and
15 has never had a license or something equivalent to practice revoked;

16 (5) He or she has not previously failed an examination for licensure as an embalmer or
17 funeral director in this state;

18 (6) He or she has paid the application fee specified by rule; and

19 (7) Has completed such other action as required by the board.

§30A-2-13. Courtesy cards.

1 (a) The board may issue biennial courtesy cards, on July 1, to licensed funeral directors
2 and licensed embalmers in the states bordering on West Virginia, after the:

3 (1) Application for a courtesy card is made on a form prescribed by the board;

4 (2) Payment of a fee; and

5 (3) Adherence to such other requirements as specified by the board.

6 (b) A courtesy card may be issued under the following conditions:

7 (1) Holders of courtesy cards shall not be permitted to open or operate a place of business
8 for the purpose of conducting funerals, embalming bodies or cremating in the State of West

9 Virginia; and

10 (2) Holders of courtesy cards shall not be permitted to maintain an office or agency in this
11 state for the purpose of conducting funerals, embalming bodies or cremating in the State of West
12 Virginia.

13 (c) A violation of this section shall be sufficient cause for the board to immediately revoke
14 or cancel the courtesy card of the violator.

§30A-2-14. License and certificate renewal; conditions of renewal.

1 (a) The board shall biennially on July 1, and pursuant to a staggered schedule, renew a
2 license to practice embalming and funeral directing or a certificate to be a crematory operator to
3 every licensee or certificate holder desiring to continue in active practice or service.

4 (b) The board shall charge a fee for each renewal and a late fee for nonrenewal of a
5 license or certificate.

6 (c) The board shall require as a condition for the renewal of a license to practice
7 embalming and funeral directing or a certificate to be a crematory operator that each licensee
8 participate in continuing education: *Provided*, That any licensed embalmer or funeral director
9 sixty-five years or older with at least ten years experience as a licensed embalmer or licensed
10 funeral director, is entitled to be issued, after payment of a fee, a license as an embalmer emeritus
11 or funeral director emeritus and is exempt from all continuing education requirements. The
12 emeritus license shall entitle the holder to all the rights and privileges of the license previously
13 held by the licensee.

14 (d) Any person licensed to practice embalming and funeral directing or certified to be a
15 crematory operator who does not desire to continue in active practice shall notify the board, in a
16 manner specified by the board, and pay a fee, and shall, during such period, be listed by the
17 board as being inactive. At such time a person desires to return to active practice, he or she must
18 notify the board, in a manner specified by the board, and complete all the continuing education
19 requirements.

§30A-2-15. Continuing education.

1 (a) The board shall conduct annually a school of instruction to apprise funeral directors
2 and embalmers of the most recent scientific knowledge and developments affecting their
3 profession. This school shall qualify as continuing education and shall fulfill as many continuing
4 education required hours as the board specifies. Qualified lecturers and demonstrators may be
5 employed by the board for this purpose. The board shall give notice of the time and place at which
6 the school will be held for all licensed funeral directors and embalmers: *Provided*, That the location
7 of any school of continuing education shall accommodate the geographic diversity of the
8 embalmers and funeral directors of this state.

9 (b) Hours of continuing education may be obtained by attending and participating in board-
10 approved programs, meetings, seminars or activities. It is the responsibility of each licensee to
11 finance his or her costs of continuing education.

12 (c) Compliance with the requirements of continuing education, as specified by the board,
13 is a prerequisite for license renewal.

§30a-2-16. Inspector and inspection requirements.

1 (a) All inspectors employed by the board to inspect funeral establishments and
2 crematories, pursuant to the provisions of this article, shall have a West Virginia embalmer's
3 license and a West Virginia funeral director's license.

4 (b) Each inspector shall inspect a specific region, as designated by the board. Any person
5 being employed as an inspector is prohibited from inspecting in the region in which he or she
6 practices. If there is only one inspector, a board member, who is not from the region where the
7 inspector practices, is authorized to inspect the facilities in the region where the inspector
8 practices.

9 (c) All inspections shall be conducted in a manner so as not to interfere with the conduct
10 of business within the funeral establishment or crematory. The board has the authority to enter,
11 at all reasonable hours, for the purpose of inspecting the premises in which the business of

12 embalming, funeral directing or cremating is conducted.

13 (d) All of an inspector's expenses, per diem and compensation shall be paid out of the
14 receipts of the board, but the allowances shall at no time exceed the receipts of the board.

15 (e) The board is authorized to set fees for inspections: *Provided*, That there shall be no
16 fee for an annual inspection.

§30A-2-17. Apprenticeship.

1 (a) After January 1, 2003, the board shall issue a registration to be an apprentice funeral
2 director or apprentice embalmer to an applicant who meets the following requirements:

3 (1) Is of good moral character and temperate habits;

4 (2) Is eighteen years of age or over;

5 (3) A citizen of the United States or be eligible for employment in the United States;

6 (4) Has a high school diploma or its equivalent;

7 (5) Has completed one of the education requirements for an embalmer's license, as set
8 out in subdivision (5), subsection (a), section eight of this article;

9 (6) Is not attending school and will not be attending school during the apprenticeship
10 period; and

11 (7) Has paid the appropriate fees.

12 (b) Any person that commences an apprenticeship prior to January 1, 2003, may continue
13 to serve such apprenticeship and is not subject to the requirements set forth in this section, but is
14 subject to board approval.

15 (c) The board may set the requirements for an apprenticeship, including the manner in
16 which it shall be served and the length of time, which shall not be more than one year.

17 (d) No licensed funeral director or licensed embalmer shall be permitted to register or have
18 registered more than five apprentices under his or her license at the same time.

§30A-2-18. Funeral establishment license requirements.

1 (a) Every funeral establishment in West Virginia shall be licensed prior to opening a funeral

2 establishment for business to the public. The board shall issue a license to operate a funeral
3 establishment to an applicant who meets the following requirements:

4 (1) The place of business has been approved by the board as having met all the
5 requirements and qualifications to be a funeral establishment as are required by this article;

6 (2) Notify the board, in writing, at least thirty days before the proposed opening date, so
7 there can be an inspection of the funeral establishment;

8 (3) Show proof that the funeral establishment passed the inspection;

9 (4) Show that the funeral establishment has employed a licensee in charge;

10 (5) Show that the licensee in charge is a licensed funeral director;

11 (6) Show that the licensee in charge will manage the funeral establishment and be
12 responsible for all business conducted and services performed therein;

13 (7) Pay all the appropriate fees; and

14 (8) Complete such other requirements as specified by the board.

15 (b) All funeral establishment licenses must be renewed biennially, by a staggered
16 schedule, upon or before July 1, and pay a renewal fee.

17 (c) Each funeral establishment license shall be valid for only one funeral establishment to
18 be located at a specific street address. There shall be a separate license issued and a separate
19 fee assessed to operate additional funeral establishments by the same applicant.

20 (d) A holder of a funeral establishment license that fails to pay fees for either the principal
21 establishment or additional establishments by July 1, of the renewal year is subject to a penalty,
22 a reinstatement fee for each establishment and the required renewal fee.

23 (e) The holder of a funeral establishment license who ceases to operate the funeral
24 establishment at the location specified in the application shall, within twenty days thereafter,
25 surrender the funeral establishment license to the board and the license shall be canceled by the
26 board. In the event of the death of an individual who was the holder of a funeral establishment
27 license, it shall be the duty of the holder's personal representative to surrender the funeral

28 establishment license within one hundred twenty days of qualifying as the personal
29 representative.

30 (f) If a licensee in charge ceases to be employed by a funeral establishment, then the
31 holder of the funeral establishment license shall notify the board within thirty days of the cessation.
32 Within thirty days after such notification, the holder of a funeral establishment license shall
33 execute a new application for a funeral establishment license specifying the name of the new
34 licensee in charge. A funeral establishment is prohibited from operating more than thirty days
35 without a licensee in charge.

36 (g) A licensee whose embalmer's or funeral director's license has been revoked or a holder
37 of a license to operate a funeral establishment whose license to operate has been revoked shall
38 not operate, either directly or indirectly, or hold any interest in any funeral establishment or
39 crematory: *Provided*, That a holder of a license to operate a funeral establishment whose license
40 to operate has been revoked is not prohibited from leasing any property owned by him or her for
41 use as a funeral establishment, so long as the property owner does not participate in the control
42 or profit of the funeral establishment except as lessor of the premises for a fixed rental not
43 dependent upon earnings.

44 (h) Failure to comply with any of these provisions shall be grounds for revocation of a
45 funeral establishment license.

46 (i) A license to operate a funeral establishment issued by the board prior to July 1, 2002,
47 shall for all purposes be considered a license issued under this section: *Provided*, That a funeral
48 establishment holding a license issued prior to July 1, 2002, must renew the license pursuant to
49 this section.

§30A-2-19. Funeral establishment to be managed by a licensee in charge; license displayed.

1 (a) Every separate funeral establishment in this state offering the services set forth in this
2 article shall be operated under the supervision and management of a licensee in charge who is

3 licensed as a funeral director in this state.

4 (b) Each separate funeral establishment in this state offering the services set forth in this
5 article shall have its own license, which license shall be prominently displayed within the funeral
6 establishment.

7 (c) All funeral establishments shall display in all advertising the name of the licensee in
8 charge of the establishment.

9 (d) All funeral establishments shall prominently display within the funeral establishment
10 the license of the licensee in charge.

11 (e) A licensee in charge shall supervise each separate establishment.

§30A-2-20. Crematory license requirements.

1 (a) Every crematory shall be licensed in West Virginia. The board shall issue a crematory
2 license to an applicant who meets the following requirements:

3 (1) The place of business has been approved by the board as having met all the
4 requirements and qualifications to be a crematory as are required by this article;

5 (2) The crematory conforms with all local building codes;

6 (3) The crematory meets all applicable environmental standards;

7 (4) Notify the board, in writing, at least thirty days before the proposed opening date so
8 there can be an inspection of the crematory;

9 (5) Show proof that the crematory passed the inspection;

10 (6) Have a certified crematory operator in charge;

11 (7) Pay all the appropriate fees; and

12 (8) Complete such other requirements as specified by the board.

13 (b) All crematory licenses must be renewed biennially, by a staggered schedule, upon or
14 before July 1, and pay a renewal fee.

15 (c) Each crematory license shall be valid for only one crematory to be located at a specific
16 street address. There shall be a separate license issued and a separate fee assessed to operate

17 additional crematories by the same applicant.

18 (d) A holder of a crematory license that fails to pay fees for either the principal crematory
19 or additional crematories by July 1, of the renewal year is subject to a penalty, a reinstatement
20 fee for each crematory and the required renewal fee.

21 (e) The holder of a crematory license who ceases to operate the crematory at the location
22 specified in the application shall, within twenty days thereafter, surrender the crematory license
23 to the board and the license shall be canceled by the board. In the event of the death of an
24 individual who was the holder of a crematory license, it shall be the duty of the holder's personal
25 representative to surrender the crematory license within one hundred twenty days of qualifying
26 as the personal representative.

27 (f) A holder of a certificate to operate a crematory whose certificate to operate has been
28 revoked or a holder of a crematory license whose license has been revoked shall not operate,
29 either directly or indirectly, or hold any interest in any crematory or funeral establishment:
30 *Provided*, That a holder of a crematory license whose license has been revoked is not prohibited
31 from leasing any property owned by him or her for use as a crematory, so long as the property
32 owner does not participate in the control or profit of the crematory except as lessor of the premises
33 for a fixed rental not dependent upon earnings.

34 (g) Failure to comply with any of these provisions shall be grounds for revocation of a
35 crematory license.

36 (h) All persons that operate crematories shall by January 1, 2003, register with the board.
37 By July 1, 2003, all persons that operate crematories shall obtain a crematory license, pursuant
38 to the provisions of this section.

39 (i) All crematory licenses must be renewed biennially upon or before July 1.

40 (j) After July 1, 2003, all licensed crematories must have a certified crematory operator in
41 charge.

42 (k) If a certified crematory operator in charge ceases to be employed by a crematory, then

43 the holder of the crematory license shall notify the board within thirty days of the cessation. Within
44 thirty days after such notification, the holder of a crematory license shall execute a new application
45 for a crematory license specifying the name of the new certified crematory operator in charge. A
46 crematory is prohibited from operating more than thirty days without a certified crematory operator
47 in charge.

§30A-2-21. Requirements for cremating.

1 (a) A crematory shall obtain written permission prior to cremating a dead human body.
2 The written permission shall be obtained from persons authorized by the board as specified in
3 rules.

4 (b) The written permission shall be on a standard form, prescribed by the board, and shall
5 contain the following information:

6 (1) The identity of the deceased;

7 (2) The name of the person authorizing the cremation and the relationship, if any, to the
8 deceased;

9 (3) Permission for the crematory to perform the cremation;

10 (4) The name of the person who will claim the cremains from the crematory; and

11 (5) Any other information required by the board.

12 (c) A crematory shall obtain a permit or authorization for cremation from the county medical
13 examiner, the assistant county medical examiner or the county coroner of the county wherein the
14 death occurred and do such other acts as required by section nine, article twelve, chapter sixty-
15 one of this code: *Provided*, That a crematory may obtain a permit or authorization for cremation
16 from the chief medical examiner if:

17 (1) The crematory is unable to obtain a permit from the county medical examiner, the
18 assistant county medical examiner or the county coroner of the county wherein the death
19 occurred; or

20 (2) The crematory has concerns following authorization by county personnel regarding the

21 identity or cause of death of the deceased.

22 (d) The permit or authorization for cremation shall be on forms prescribed by the chief
23 medical examiner. A permit or authorization for cremation may be done by facsimile.

24 (e) All crematories shall implement a cremation procedure. The board, by rules, shall
25 establish the cremation procedure which shall include:

26 (1) An identification process for bodies;

27 (2) A tracking process for bodies from the time a body is delivered to a crematory through
28 the time the cremains are claimed by the authorized person;

29 (3) Obtaining all the required signatures, as specified by the board, on the written
30 permission for cremation;

31 (4) Only cremating one human body at a time and prohibiting comingling of cremains;

32 (5) The specified time period a crematory is required to keep unclaimed cremains;

33 (6) How to dispose of unclaimed cremains;

34 (7) A record-keeping process for cremations; and

35 (8) Any other requirements necessary to effectuate the provisions of this article.

36 (f) The board shall establish requirements for:

37 (1) The equipment needed to complete the cremation process; and

38 (2) The containers needed to store the cremains.

§30A-2-22. Disposition of body of deceased person; penalty.

1 (a) No public officer, employee, physician or surgeon, or other person having a
2 professional relationship with the deceased, shall send, or cause to be sent to an embalmer,
3 funeral director or crematory operator the body of a deceased without first inquiring the desires of
4 the deceased who has designated his or her wishes regarding the disposal of their remains
5 through a last will and testament, an advance directive or preneed funeral contract, as defined in
6 section two, article fourteen, chapter forty-five of this code; the surviving spouse of the deceased,
7 unless a petition to dissolve the marriage was pending at the time of decedent's death; and, an

8 individual previously designated by the deceased as the person with the right to control disposition
9 of the deceased's remains in a writing signed and notarized by the deceased: *Provided*, That no
10 person may be designated to serve in such capacity for more than one nonrelative at any one
11 time. If there is no last will and testament, advance directive or preneed funeral contract, surviving
12 spouse, or designated person, then the authority and direction of any next of kin or person who
13 may be chargeable with the funeral expenses of the deceased shall be used as to the disposal of
14 the body of the deceased. The provisions of this subsection are not applicable if the remains of
15 the decedent are subject to disposition pursuant to subsection (b) of this section.

16 (b) Notwithstanding any provision of this code to the contrary, a United States Department
17 of Defense Record of Emergency Data Form (DD Form 93) executed by a declarant who dies
18 while serving in a branch of the United States Military as defined in 10 U. S. C. §1481 constitutes
19 a valid form of declaration instrument and governs the disposition of the declarant's remains. The
20 person named in the form as the person authorized to direct disposition of the remains may
21 arrange for the final disposition of the declarant's last remains.

22 (c) Any person who violates the provisions of this section is guilty of a misdemeanor and,
23 upon conviction thereof, shall be fined not less than \$500, nor more than \$1,000, or imprisoned
24 not less than ten days nor more than ninety days, or both.

**§30A-2-22a. Right of disposition; preneed contract; affidavit on disposition of remains; role
of county commission; liability of funeral home.**

1 (a) Notwithstanding section twenty-two of this article, a person who is eighteen years of
2 age or older and of sound mind, by entering into a preneed funeral contract, as defined in section
3 two, article fourteen, chapter forty-seven of this code, may direct the location, manner and
4 conditions of the disposition of the person's remains and the arrangements for funeral goods and
5 services to be provided upon the person's death. The disposition directions and funeral
6 prearrangements that are contained in a preneed funeral contract are not subject to cancellation
7 to revision unless any resources set aside to fund the preneed funeral contract are insufficient

8 under the terms of the preneed funeral contract to carry out the disposition directions and funeral
9 prearrangements contained in the contract.

10 (b) As to any matter not addressed in a preneed funeral contract as described in
11 subsection (a) of this section and except as provided in subsection (c) of this section, the right to
12 control the disposition of the remains of a deceased person, the location, manner and conditions
13 of disposition, and arrangements for funeral goods and services to be provided vests in the
14 following, in the order named, provided that the person is eighteen years or older and is of sound
15 mind:

16 (1) (A) A person designated by the decedent as the person with the right to control the
17 disposition in an affidavit executed in accordance with paragraph (B) of this subdivision; and

18 (B) A person who is eighteen years of age or older and of sound mind wishing to authorize
19 another person to control the disposition of his or her remains may execute an affidavit before a
20 notary public in substantially the following form:

21 "I, _____, do hereby designate _____ with the right to
22 control the disposition of my remains upon my death. I ___ have/ ___ have not attached specific
23 directions concerning the disposition of my remains with which the designee shall substantially
24 comply, provided that these directions are lawful and there are sufficient resources in my estate
25 to carry out the directions.

26 _____

27 Signed

28 State of _____

29 County of _____

30 I, _____, a Notary Public of said County, do certify that
31 _____, as principal whose name is signed to the writing
32 above bearing date on the _____ day of _____, 20____, has this day acknowledged the
33 same before me.

34 Given under my hand this _____ day of _____, 20__.

35 My commission expires: _____

36 _____

37 Notary Public”;

38 (2) The surviving spouse of the decedent;

39 (3) The sole surviving child of the decedent or, if there is more than one child of the
40 decedent, the majority of the surviving children. However, less than one half of the surviving
41 children shall be vested with the rights under this section if they have used reasonable efforts to
42 notify all other surviving children of their instructions and are not aware of any opposition to those
43 instructions on the part of more than one half of all surviving children;

44 (4) The surviving parent or parents of the decedent. If one of the surviving parents is
45 absent, the remaining parent shall be vested with the rights and duties under this section after
46 reasonable efforts have been unsuccessful in locating the absent surviving parent;

47 (5) The surviving brother or sister of the decedent or, if there is more than one sibling of
48 the decedent, the majority of the surviving siblings. However, less than the majority of surviving
49 siblings shall be vested with the rights and duties under this section if they have used reasonable
50 efforts to notify all other surviving siblings of their instructions and are not aware of any opposition
51 to those instructions on the part of more than one half of all surviving siblings;

52 (6) The surviving grandparent of the decedent or, if there is more than one surviving
53 grandparent, the majority of the grandparents. However, less than the majority of the surviving
54 grandparents shall be vested with the rights and duties under this section if they have used
55 reasonable efforts to notify all other surviving grandparents of their instructions and are not aware
56 of any opposition to those instructions on the part of more than one half of all surviving
57 grandparents;

58 (7) The guardian of the person of the decedent at the time of the decedent's death if one
59 had been appointed;

60 (8) The personal representative of the estate of the decedent;

61 (9) The person in the classes of the next degree of kinship, in descending order, under
62 the laws of descent and distribution to inherit the estate of the decedent. If there is more than one
63 person of the same degree, any person of that degree may exercise the right of disposition;

64 (10) If the disposition of the remains of the decedent is the responsibility of the state or a
65 political subdivision of the state, the public officer, administrator or employee responsible for
66 arranging the final disposition of decedent's remains; or

67 (11) In the absence of any person under subdivisions (1) through (10) of this subsection,
68 any other person willing to assume the responsibilities to act and arrange the final disposition of
69 the decedent's remains, including the funeral director with custody of the body, after attesting in
70 writing that a good-faith effort has been made to no avail to contact the individuals under
71 subdivisions (1) through (10) of this subsection.

72 (c) A person entitled under law to the right of disposition forfeits that right, and the right is
73 passed on to the next qualifying person as listed in subsection (b) of this section, in the following
74 circumstances:

75 (1) Any person charged with murder or voluntary manslaughter in connection with the
76 decedent's death and whose charges are known to the funeral director. However, if the charges
77 against that person are dismissed or if the person is acquitted of the charges, the right of
78 disposition is returned to the person;

79 (2) Any person who does not exercise his or her right of disposition within two days of
80 notification of the death of decedent or within three days of decedent's death, whichever is earlier;

81 (3) If the person and the decedent are spouses and a petition to dissolve the marriage
82 was pending at the time of decedent's death.

83 (d) Any person signing a funeral service agreement, cremation authorization form or any
84 other authorization for disposition shall be deemed to warrant the truthfulness of any facts set
85 forth therein, including the identity of the decedent whose remains are to be buried, cremated or

86 otherwise disposed of, and the party's authority to order the disposition. A funeral home has the
87 right to rely on that funeral service agreement or authorization and shall have the authority to carry
88 out the instructions of the person or persons the funeral home reasonably believes holds the right
89 of disposition. The funeral home has no responsibility to independently investigate the existence
90 of any next of kin or relative of the decedent where a means of disposition is fully set forth in a
91 preneed funeral contract or other written directive of the deceased in accordance with this section.
92 If there is more than one person in a class who are equal in priority and the funeral home has no
93 knowledge of any objection by other members of that class, the funeral home may rely on and act
94 according to the instructions of the first person in the class to make funeral and disposition
95 arrangements, if no other person in that class provides written objections to the funeral home.

96 (e) No funeral establishment or funeral director who relies in good faith upon the
97 instructions of a preneed funeral contract, written directive of the deceased, or an individual
98 claiming the right of disposition in accordance with this section shall be subject to criminal or civil
99 liability or subject to disciplinary action under this section for carrying out the disposition of the
100 remains in accordance with those instructions.

§30A-2-23. Refusal to issue or renew, suspension or revocation of license; disciplinary action.

1 (a) The board may refuse to renew, suspend, revoke or limit any license, certificate or
2 registration or practice privilege of a licensee, or certificate or registration holder and may take
3 disciplinary action against a licensee, or certificate or registration holder after a hearing. The board
4 may refuse to issue, refuse to renew, suspend, revoke or limit any license, certificate or
5 registration or practice privilege of a licensee, or certificate or registration holder for any of the
6 following reasons:

7 (1) Fraud or deceit in obtaining or maintaining a license;

8 (2) Failure by any licensee, or certificate or registration holder to maintain compliance with
9 requirements for issuance or renewal of a license, certificate or registration or to timely notify the

10 board as required in this article;

11 (3) Dishonesty, fraud, professional negligence in the performance of services, or a willful
12 departure from accepted standards and professional conduct;

13 (4) Violation of any provision of this article or any rule, including the violation of any
14 professional standard or rule of professional conduct, or public health laws;

15 (5) Conviction of a felony or any crime of which dishonesty or fraud under the laws of the
16 United States or this state, or conviction of any similar crime under the laws of any other state if
17 the underlying act or omission involved would have constituted a crime under the laws of this
18 state;

19 (6) Any conduct adversely affecting upon the licensee's, or certificate or registration
20 holder's fitness to perform professional services;

21 (7) The use of false, misleading or unethical advertising by any licensee, or certificate or
22 registration holder, or applicant for a license or certificate of registration;

23 (8) Upon satisfactory proof that a licensed embalmer, a licensed funeral director, or a
24 certified crematory operator has taken undue advantage of his or her patrons or has committed a
25 fraudulent act in the conduct of business;

26 (9) Solicitation of business by the licensee, or certificate or registration holder, or any
27 agents, assistants or employees, whether such solicitation occurs after death or while death is
28 impending, as specified by the board: *Provided*, That this subdivision does not prohibit proper
29 advertising;

30 (10) If a licensee, or certificate or registration holder, knowingly permits a person not
31 licensed, not certified, or not registered to engage in the profession of embalming, funeral
32 directing or cremation;

33 (11) If a licensee, or certificate or registration holder, knowingly permits a person not
34 licensed, not certified, or not registered to use his or her license number or numbers for the
35 purpose of practicing, or discharging any of the duties of, the professions of embalming, funeral

36 directing or cremation;

37 (12) Employment by the licensee of persons as “cappers”, “steerers” or “solicitors”, or
38 other such persons to obtain funeral or cremation business;

39 (13) Employment, directly or indirectly, of any apprentice, agent, assistant, embalmer,
40 employee or other person, on part or full time, or on commission, for the purpose of calling upon
41 individuals or institutions by whose influence dead human bodies may be turned over to a
42 particular funeral director, funeral establishment or crematory;

43 (14) The buying of business by the licensee, or certificate or registration holder, or any
44 agents, assistants or employees, or the direct or indirect payment or offer of payment of a
45 commission by the licensee, or certificate or registration holder, or any agent, assistants or
46 employees, for the purpose of securing business;

47 (15) Gross immorality; and

48 (16) Chronic or persistent inebriety or addiction to alcohol, narcotics or other substance.

49 (b) If the board suspends, revokes, refuses to renew or limits any license, certificate or
50 registration or practice privilege, the board shall give written notice of the action, including a
51 statement of charges setting forth the reasons for the action, and notice of the date, time and
52 place for a hearing. The hearing shall be held in accordance with the provisions of this article.

53 (c) Disciplinary action includes, but is not limited to, a reprimand, censure, probation,
54 suspension of license, administrative fine not to exceed \$1,000 per day per violation and
55 mandatory attendance at continuing education seminars.

§30A-2-24. Complaints; investigations.

1 (a) Upon receipt of a written complaint filed against any licensee, or certificate or
2 registration holder, the board shall provide a copy of the complaint to the licensee, or certificate
3 or registration holder.

4 (b) The board may investigate the complaint. If the board finds upon investigation that
5 probable cause exists that the licensee, or certificate or registration holder, has violated any

6 provision of this article or the rules promulgated hereunder, then the board shall serve the
7 licensee, or certificate or registration holder, with a written statement of charges and a notice
8 specifying the date, time and place of the hearing. The hearing shall be held in accordance with
9 the provisions of this article.

10 (c) In addition to other sanctions imposed, the board may require a licensee, or certificate
11 or registration holder to pay the costs of the proceeding if the licensee, or certificate or registration
12 holder is in violation of any provision of this article or the rules promulgated hereunder.

§30A-2-25. Hearing and judicial review.

1 (a) A hearing on a statement of charges shall be held in accordance with the provisions
2 for hearing set forth in section eight, article one of this chapter and procedures specified by rule
3 by the board.

4 (b) Any licensee, or certificate or registration holder, adversely affected by any decision of
5 the board entered after a hearing, may obtain judicial review of the decision in accordance with
6 section four, article five, chapter twenty-nine-a of this code and may appeal any ruling resulting
7 from judicial review in accordance with said article.

§30A-2-26. Reinstatement.

1 If the board has suspended, revoked or refused to renew a license, certificate or
2 registration, the licensee, or certificate or registration holder, shall be afforded an opportunity to
3 demonstrate the qualifications to resume practice. The application for reinstatement shall be in
4 writing and subject to the procedures specified by the board.

§30A-2-27. Unlawful acts.

1 It is unlawful for any person not licensed or certified under the provisions of this article to
2 practice or offer to practice embalming, funeral directing or cremation, or to operate a funeral
3 establishment or crematory in this state.

§30A-2-28. Injunctions.

1 When, as a result of an investigation under this article or otherwise, the board or any other

2 interested person believes that any person: (1) Has engaged, is engaging or is about to engage
3 in the practice of embalming, funeral directing or cremating without a license or certificate; (2) has
4 operated, is operating or is about to operate a funeral establishment or crematory; or (3) is in
5 violation of any of the provisions of this article, the board or any other interested person may make
6 application to any court of competent jurisdiction for an order enjoining the acts or practices and
7 upon a showing that the person has engaged or is about to engage in any act or practice, an
8 injunction, restraining order or another appropriate order may be granted by the court without
9 bond.

§30A-2-29. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article or otherwise, the board has
2 reason to believe that a person has knowingly violated the provisions of this article, the board
3 may bring its information to the attention of the Attorney General or other appropriate law-
4 enforcement officer who may cause appropriate criminal proceedings to be brought.

5 (b) Any person who knowingly violates any provision of this article is guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not more than \$2,500 or confined in the
7 county or regional jail not more than one year, or both fined and imprisoned.

§30A-2-30. Single act evidence of practice.

1 In any action brought or any proceeding initiated under this article, evidence of the
2 commission of a single act prohibited by this article is sufficient to justify a penalty, injunction,
3 restraining order or conviction without evidence of a general course of conduct.

§30A-2-31. Inapplicability of article.

1 The provisions of this article do not apply to or interfere with:

2 (1) The duties of an officer of any local or state board of health who, in compliance with
3 local or state board of health rules, may be charged with the duty of preparation for burial of a
4 human body when death was caused by a virulent, communicable disease;

5 (2) The duties of an officer of a medical college, county medical society, anatomical

6 association or other recognized person carrying out his or her responsibilities of dealing with
7 indigent dead human bodies who are held subject for anatomical study; or

8 (3) The customs or rites of any religious sect in the burial of its dead: *Provided, That*
9 embalming shall only be performed by a licensed embalmer.

ARTICLE 3. ACCOUNTANTS.

§30A-3-1. License required to practice.

1 To protect the public interest in receiving accurate and reliable financial information and
2 assurance, certified public accountants, public accountants, and accounting firms are required to
3 be licensed as provided in this article.

§30A-3-2. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
2 the context or associated language clearly indicates otherwise:

3 (1) "Affiliated entity" means an entity that controls, is controlled by, or is under common
4 control with, a firm. For purposes of this definition, an entity controls another entity if the entity
5 directly or indirectly or acting in concert with one or more other affiliated entities, or through one
6 or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing,
7 more than fifty percent of the voting interest in such entity.

8 (2) "Assurance" means any act or action, whether written or oral, expressing an opinion
9 or conclusion about the reliability of a financial statement or about its conformity with any financial
10 accounting standards.

11 (3) "Attest services" means providing the following services:

12 (A) Any audit or other engagement to be performed in accordance with the statements on
13 Auditing Standards (SAS);

14 (B) Any review of a financial statement to be performed in accordance with the statements
15 on Standards for Accounting and Review Services (SSARS);

16 (C) Any examination of prospective financial information to be performed in accordance

17 with applicable Statements on Standards for Attestation Engagements (SSAE);

18 (D) Any engagement to be performed in accordance with the Auditing Standards of the
19 Public Company Accounting Oversight Board (PCAOB); or

20 (E) Any examination, review or agreed upon procedures engagement to be performed in
21 accordance with the statements on Standards for Attestation Engagements (SSAE), other than
22 an examination described in paragraph (C) of this subdivision.

23 (4) "Audit" means expressing an opinion about the fairness of presentation of financial
24 statements in accordance with the statements on Auditing Standards.

25 (5) "Authorization" means an authorization issued pursuant to this article that entitles a
26 permit holder or an individual practitioner to perform attest or compilation services.

27 (6) "Board" means the West Virginia Board of Accountancy.

28 (7) "Business entity" means any corporation, partnership, limited partnership, limited
29 liability partnership, professional limited liability partnership, limited liability company, professional
30 limited liability company, joint venture, business trust or any other form of business organization.
31 The term "business entity" includes a firm.

32 (8) "Certificate" means a certificate as a certified public accountant issued or renewed by
33 the board pursuant to this article or corresponding provisions of prior law.

34 (9) "Certified public accountant" or "CPA" means the holder of a certificate.

35 (10) "Client" means a person or entity that agrees with a licensee or licensee's employer
36 to receive any professional service.

37 (11) "Commission" means compensation, except a referral fee, for recommending or
38 referring any product or service to be supplied by another person.

39 (12) "Compilation services" means providing a service performed in accordance with the
40 statements on Standards for Accounting and Review Services that presents, in the form of a
41 financial statement, information that is the representation of management without an expression
42 of assurance on the statement: *Provided*, That this definition does not apply to the use of the term

43 “compilation” in section thirty-one of this article.

44 (13) “Contingent fee” means a fee established for the performance of any service pursuant
45 to an arrangement in which no fee will be charged unless a specified finding or result is attained,
46 or in which the amount of the fee is otherwise dependent upon the finding or result of the service.
47 A fee fixed by a court, taxing authority or other public authority is not a contingent fee.

48 (14) “Examination”, when used with reference to prospective financial statements, means
49 expressing an opinion about the fairness of presentation of financial information in accordance
50 with the statements on Standards for Attestation Engagements.

51 (15) “Financial statement” means a writing or other presentation, including accompanying
52 notes, which presents, in whole or in part, historical or prospective financial position, results of
53 operations or changes in financial position of any person, corporation, partnership or other entity.

54 (16) “Firm” means any business entity, including, but not limited to, accounting
55 corporations and professional limited liability companies, in which two or more certified public
56 accountants or public accountants hold an ownership or membership interest, in terms of the
57 financial interests and voting rights of all partners, officers, shareholders, members or managers,
58 and the primary business activity of which is the provision of professional services to the public
59 by certified public accountants or public accountants.

60 (7) “Firm ownership requirements” means, with respect to:

61 (A) Any professional limited liability company organized pursuant to article thirteen,
62 chapter thirty-one-b of this code, consisting of one or more licensed certified public accountants
63 or licensed public accountants;

64 (B) Any other firm where:

65 (i) A simple majority of ownership of the firm, in terms of financial interests and voting
66 rights of all partners, officers, shareholders, members or managers, belongs either to:

67 (l) Certified public accountants holding a certificate under section twelve of this article or
68 the equivalent provision of another state; or

69 (II) Public accountants who have met the continuing professional education requirements
70 of subsection (b), section twelve of this article and who are not subject to the exemption or
71 limitation set forth in subdivisions (1) or (2), subsection (b), section twelve of this article or similar
72 provisions of another state.

73 (ii) All owners of the firm who are not certified public accountants or public accountants
74 are active participants in the firm or in affiliated entities.

75 (8) "Foreign" means any country other than the United States.

76 (19) "Good moral character" means lack of a history of dishonesty or felonious activity.

77 (20) "Home office" means the client's office address.

78 (21) "Individual practitioner" means a certified public accountant or a public accountant
79 who offers professional services to the public but who does not practice in a firm.

80 (22) "License" means a certificate, permit, registration or authorization.

81 (23) "Licensee" means the holder of a license.

82 (24) "Manager" means a manager of a professional limited liability company.

83 (25) "Member" means a member of a professional limited liability company.

84 (26) "Nonlicensee" means a person or business entity that does not hold a license.

85 (27) "Out-of-state certificate" means a valid certificate as a certified public accountant or
86 equivalent designation issued or renewed under the laws of another state: *Provided*, That "out-
87 of-state certificate" does not include any certificate as a certified public accountant or equivalent
88 designation that was issued or renewed solely by virtue of a holder's prior status as a public
89 accountant or its equivalent in the state of issuance and not by virtue of the holder's having met
90 the certification requirements of the state of issuance.

91 (28) "Out-of-state permit" means a valid permit as a firm of certified public accountants or
92 another designation equivalent to a permit issued or renewed by the board and that is issued or
93 renewed under the laws of another state.

94 (29) "Peer Review" means a study, appraisal or review of one or more aspects of the

95 professional work of a licensee by a person who holds a certificate or an out-of-state certificate
96 and who is not affiliated with the licensee being reviewed.

97 (30) "Permit" means a permit issued to a firm pursuant to this article.

98 (31) "Principal place of business" means the licensee's office location in the state where
99 the licensee holds a certificate or registration.

100 (32) "Professional services" means those services that involve the specialized knowledge
101 and skills of a certified public accountant or a public accountant delivered by any means, including
102 but not limited to, in person, by mail, telephone or by electronic means.

103 (33) "Public accountant" means a person holding a registration who is not a certified public
104 accountant.

105 (34) "Referral fee" means compensation for recommending or referring any service of a
106 licensee to any person.

107 (35) "Registration" means a registration as a public accountant issued by the board
108 pursuant to prior law governing the registration of public accountants and renewed by the board
109 pursuant to this article.

110 (36) "Report", when used with reference to financial statements, means an opinion or
111 disclaimer of opinion or other form of language or representation which states or implies any form
112 of assurance or denial of assurance.

113 (37) "Rule" means any rule proposed for legislative approval by the board pursuant to this
114 article.

115 (38) "State" means any state of the United States, the District of Columbia, Puerto Rico,
116 the U.S. Virgin Islands or Guam.

117 (39) "Substantial equivalency" or "substantially equivalent" means or refers to a
118 determination by the board or its designee that the education, examination and experience
119 requirements contained in the statutes or rules of another state are comparable to or exceed the
120 education, examination and experience requirements contained in the Uniform Accountancy Act,

121 or that an individual certified public accountant's education, examination and experience
122 qualifications are comparable to or exceed the education, examination and experience
123 requirements contained in the Uniform Accountancy Act.

124 (40) "Substantial equivalency practitioner" means any individual whose principal place of
125 business is not in this state, who holds a certificate from another state and has complied with the
126 provisions of section sixteen of this article.

127 (41) "Uniform Accountancy Act" means the Uniform Accountancy Act, fifth edition, revised
128 (July 2007), jointly published by the American Institute of Certified Public Accountants and the
129 National Association of State Boards of Accountancy.

**§30A-3-3. Board of accountancy; appointment; terms, qualifications of members; removal
of members; compensation of members; civil liability protection for members.**

1 (a) The West Virginia board of accountancy is hereby continued.

2 (b) (1) Commencing with the board terms beginning July 1, 2001, the board shall consist
3 of seven members appointed for terms of three years by the Governor with the advice and consent
4 of the Senate. Five members must be certified public accountants; one member must be a public
5 accountant so long as twenty-five or more public accountants are registered by the board, but if
6 there are fewer than twenty-five public accountants registered by the board, then the member
7 may be either a public accountant or a certified public accountant; and one member must be a
8 citizen member who is a resident of this state, who is not licensed under the provisions of this
9 article and who also is not a bookkeeper, enrolled agent or a person who provides or offers to
10 provide to the public any bookkeeping, tax preparation, financial advisory or insurance service:
11 *Provided*, That the members of the board in office on July 1, 2001, shall continue to serve until
12 their respective terms expire.

13 (2) Each licensed member of the board, at the time of his or her appointment, must have
14 held a license in this state for a period of not less than five years immediately preceding the
15 appointment and each member must be a resident of this state during the appointment term.

16 (3) Each appointment of a public accountant, whether for a full term or to fill a vacancy,
17 must be made by the Governor from among three nominees selected by the West Virginia Public
18 Accountants Association and each appointment of a certified public accountant, whether for a full
19 term or to fill a vacancy, must be made by the Governor from among three nominees selected by
20 the West Virginia Society of Certified Public Accountants: *Provided*, That when the appointment
21 of a certified public accountant is to fill the seat held on July 1, 2001, by a public accountant, then
22 the appointment, whether for a full term or to fill a vacancy, must be made by the Governor from
23 among three nominees selected by the West Virginia Public Accountants Association. When the
24 appointment is for a full term, the nominations must be submitted to the Governor not later than
25 eight months prior to the date on which the appointment will become effective. When the
26 appointment is to fill a vacancy, the nominations must be submitted to the Governor within ten
27 days after a request for the nominations has been made by the Governor to the president of the
28 West Virginia Society of Certified Public Accountants or president of the West Virginia Public
29 Accountants Association. If the society or the association fails to submit to the Governor
30 nominations for an appointment in accordance with the requirements of this section, the Governor
31 may make the appointment without the nominations.

32 (c) No member may serve more than two consecutive full terms, and any member having
33 served two full terms may not be appointed for one year after completion of his or her second full
34 term. A member shall continue to serve until his or her successor has been appointed and
35 qualified.

36 (d) If a board member is unable to complete a term, the Governor shall appoint a person
37 of similar qualifications to complete the unexpired term: *Provided*, That if the board member is a
38 certified public accountant or public accountant, the Governor shall appoint a person from any
39 nominees submitted pursuant to subdivision (3), subsection (b) of this section. Each vacancy
40 occurring on the board must be filled by appointment within sixty days after the vacancy is created.

41 (e) The Governor may remove any member from the board for neglect of duty,

42 incompetency or official misconduct.

43 (f) Any member of the board shall immediately and automatically forfeit his or her
44 membership if he or she has his or her certificate or registration suspended or revoked by the
45 board, is convicted of a felony under the laws of any state or the United States, or becomes a
46 nonresident of this state.

47 (g) Each member of the board shall receive compensation and expense reimbursement
48 in accordance with section eleven, article one of this chapter.

49 (h) Board members are exempt from civil liability for any decision made or any act done
50 in good faith in the performance of any duty or the exercise of any power granted under this article.

§30A-3-4. Powers of the board.

1 The board has all the powers set forth in article one of this chapter, and in addition may:

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

3 (2) Hire, fix the compensation of and discharge the employees necessary for the
4 administration of this article;

5 (3) Examine and determine the qualifications of any applicant for a license;

6 (4) Issue, renew, deny, suspend, revoke or reinstate licenses and take disciplinary action
7 against licensees;

8 (5) Investigate alleged violations of the provisions of this article, reasonable rules
9 promulgated hereunder and orders and final decisions of the board;

10 (6) Conduct hearings upon charges calling for the revocation or suspension of a license
11 or take disciplinary action against a licensee, firm or substantial equivalency practitioner;

12 (7) Cooperate with the appropriate authorities in other states in the investigation and
13 enforcement of violations of this article or comparable acts of other states;

14 (8) Propose rules in accordance with the provisions of article three, chapter twenty-nine-
15 a of this code; and

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

§30A-3-5. Rule-making authority.

- 1 (a) The board shall propose rules for legislative approval in accordance with the provisions
2 of article three, chapter twenty-nine-a of this code to implement the provisions of this article,
3 including, but not limited to, the following:
- 4 (1) The education required of an applicant;
 - 5 (2) The experience required of an applicant;
 - 6 (3) The examination administered under this article;
 - 7 (4) Issuing or renewing a certificate, registration, permit or authorization;
 - 8 (5) Denying, suspending, revoking, or reinstating a certificate, registration, permit or
9 authorization;
 - 10 (6) The conduct of investigations;
 - 11 (7) Firm ownership requirements;
 - 12 (8) Accounting corporations;
 - 13 (9) Substantial equivalency requirements;
 - 14 (10) Continuing professional education requirements for licensees, including exemptions;
 - 15 (11) Peer review requirements;
 - 16 (12) Professional conduct requirements;
 - 17 (13) Identifying professional services required to be performed in accordance with the
18 applicable statements on standards;
 - 19 (14) Use of the titles “certified public accountant,” “CPA,” “public accountant” and “PA”;
 - 20 (15) Use of commissions, referral fees and contingent fees;
 - 21 (16) Fees for the issuance and renewal of a certificate, registration, permit or authorization
22 and other fees authorized by this article; and
 - 23 (7) Other rules the board considers necessary and proper for implementing the provisions
24 of this article.
 - 25 (b) All rules in effect on July 1, 2001, will remain in effect until they are superseded.

§30A-3-6. Fees; special fund; administrative fines.

1 (a) All fees and other moneys, except administrative fines, received by the board must be
2 deposited in the separate special fund which has been established for the board in the State
3 Treasury and must be used for the administration of this article. Except as may be provided in
4 section eleven, article one of this chapter, the board shall retain the amounts in the special fund
5 from year to year. No compensation or expense incurred under this article is a charge against the
6 General Revenue Fund.

7 (b) Any amounts received as administrative fines imposed pursuant to this article must be
8 deposited into the General Revenue Fund of the State Treasury.

§30A-3-7. Issuance of certificate; certificates issued prior to the first day of July, 2001.

1 (a) The board shall issue an original certificate to an applicant who demonstrates that:

2 (1) He or she has met one of the following qualifications for a certificate:

3 (A) He or she meets the qualifications for a certificate set forth in section eight of this
4 article;

5 (B) He or she holds an out-of-state certificate and meets the requirements of section nine
6 of this article;

7 (C) He or she holds an out-of-state certificate, does not meet the requirements of section
8 nine of this article but does meet the requirements of section ten of this article; or

9 (D) He or she holds a substantially equivalent foreign designation and meets the
10 requirements of section eleven of this article.

11 (2) He or she has submitted an application, in writing, on a form prescribed by the board:
12 *Provided*, That the application must require an applicant to list all states in which he or she has
13 applied for or holds an out-of-state certificate and any past denial, revocation or suspension of an
14 out-of-state certificate;

15 (3) He or she is trustworthy and of good moral character;

16 (4) He or she has paid the appropriate fee prescribed by the board;

17 (5) He or she has submitted to a state and national criminal history record check, as set
18 forth in this subdivision.

19 (A) This requirement is found not to be against public policy.

20 (B) The criminal history record check shall be based on fingerprints submitted to the West
21 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

22 (C) The applicant shall meet all requirements necessary to accomplish the state and
23 national criminal history record check, including:

24 (i) Submitting fingerprints for the purposes set forth in this subsection; and

25 (ii) Authorizing the board, the West Virginia State Police and the Federal Bureau of
26 Investigation to use all records submitted and produced for the purpose of screening the applicant
27 for a certificate.

28 (D) The results of the state and national criminal history record check may not be released
29 to or by a private entity except:

30 (i) To the individual who is the subject of the criminal history record check;

31 (ii) With the written authorization of the individual who is the subject of the criminal history
32 record check; or

33 (iii) Pursuant to a court order.

34 (E) The criminal history record check and related records are not public records for the
35 purposes of chapter twenty-nine-b of this code.

36 (F) The applicant shall pay the actual costs of the fingerprinting and criminal history record
37 check.

38 (G) The board may propose rules to implement the provisions of this section for legislative
39 approval in accordance with article three, chapter twenty-nine-a of this code. The rules must be
40 consistent with standards established by the Federal Bureau of Investigation and the National
41 Crime Prevention and Privacy Compact as authorized by 42 U. S. C. §14611, *et seq.*

42 (b) Certificates will initially be issued for a period to expire on June 30 following the date

43 of issue.

44 (c) A certificate issued by the board prior to July 1, 2001, will for all purposes be considered
45 a certificate issued under this section: *Provided*, That a person holding a certificate issued prior
46 to July 1, 2001, must renew the certificate pursuant to section twelve of this article.

§30A-3-8. Education, examination and experience certificate requirements.

1 The board shall issue a certificate to an applicant of good moral character who meets the
2 following requirements:

3 (1) At least one hundred fifty semester hours of college education including a
4 baccalaureate or higher degree conferred by a college or university, the total education program
5 to include an accounting concentration or equivalent, as determined by the board to be
6 appropriate;

7 (2) Passage of the uniform certified public accountant examination published by the
8 American institute of certified public accountants or its successor and any additional examination
9 required by the board by rule that tests the applicant's knowledge of subjects related to the
10 practice of accounting: *Provided*, That before applying for the examination required by this
11 subsection, an applicant is required to have met the baccalaureate degree requirement but not
12 the one hundred fifty semester hour requirement of subsection (1) of this section; and

13 (3) At least one year of experience in providing any type of service or advice involving the
14 use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting
15 skills. The experience requirement may be satisfied by employment in private practice,
16 government, industry, not-for-profit organization, academia or public practice. An applicant's
17 experience must be verified by a licensee and must meet requirements specified by rule.

§30A-3-9. Substantial equivalency certificate requirements.

1 The board shall issue a certificate to an applicant who holds a valid out-of-state certificate
2 if the state of issuance extends similar privileges to holders of certificates under circumstances
3 similar to those described in this section and if the board determines that:

4 (1) The state of issuance of the out-of-state certificate has certified public accountant
5 certification requirements that are substantially equivalent to the certified public accountant
6 certification requirements of the uniform accountancy act; or

7 (2) The applicant has individual qualifications that are substantially equivalent to the
8 certified public accountant certification requirements of the uniform accountancy act.

§30A-3-10. Not substantially equivalent certificate requirements.

1 The board shall issue a certificate to an applicant of good moral character who holds a
2 valid out-of-state certificate but who does not qualify for a certificate under the provisions of
3 section nine of this article if the applicant meets the education, experience, examination and
4 continuing education requirements specified by the board by rule.

§30A-3-11. Foreign designation certificate requirements.

1 The board shall issue a certificate to an applicant of good moral character who holds a
2 foreign designation in public accountancy if:

3 (1) The foreign authority that granted the designation regulates the practice of public
4 accountancy and allows a person holding a certificate issued by this state to obtain the foreign
5 authority's comparable designation; and

6 (2) The applicant meets the education, examination, experience and continuing education
7 requirements specified by the board by rule.

§30A-3-12. Certificate renewal; conditions of renewal.

1 (a) The board shall renew a certificate for a one-year period beginning on July 1, of each
2 year after its issuance in accordance with renewal procedures and fees specified by rule:
3 *Provided*, That an applicant for renewal of a certificate shall list on his or her application all states
4 and foreign jurisdictions in which he or she has applied for or held an out-of-state certificate or
5 foreign designation and any denial, revocation or suspension of an out-of-state certificate or
6 foreign designation.

7 (b) The board shall require as a condition for the renewal of a certificate that each certified

8 public accountant participate in continuing professional education in accordance with the
9 requirements specified by rule, subject to the following exemptions and limitations:

10 (1) The board shall by rule exempt from the continuing professional education
11 requirements set forth in this subsection any certified public accountant who does not perform or
12 offer to perform any professional service to the public, either directly or indirectly through his or
13 her employer.

14 (2) Any certified public accountant receiving the exemption from continuing professional
15 education requirements must place the word "inactive" adjacent to his or her "CPA" title on any
16 business card, telephone directory listing, letterhead or any other similar document or device, with
17 the exception of the licensee's certificate on which the "CPA" title appears: *Provided*, That a
18 certified public accountant receiving the exemption from continuing professional education
19 requirements who has completely discontinued his or her performance of professional services,
20 who has no active management or supervisory responsibilities in a firm, and who is at least sixty-
21 two years of age is not required to place the word "inactive" or any other word adjacent to his or
22 her "CPA" title on any business card, telephone directory listing, letterhead or any other similar
23 document or device.

24 (3) The board may by rule phase in continuing professional education requirements over
25 a period of three years for any certified public accountant who, as of July 1, 2001, has not been
26 subject to continuing professional education requirements and who subsequently elects to
27 perform or offers to perform any professional service to the public during a subsequent certificate
28 renewal period within the three-year phase-in period.

§30A-3-13. Duty to inform board of denials, suspensions, revocations, limitations.

1 Each licensee must notify the board, within thirty days of its occurrence, of any denial,
2 suspension or revocation of or any limitation placed on a license or out-of-state certificate.

**§30A-3-14. Holder of out-of-state certificate establishing principal place of business in
state.**

1 A holder of an out-of-state certificate who intends to establish his or her principal place of
2 business in this state must first apply for the issuance of a certificate.

§30A-3-15. Public accountants.

1 A person who on July 1, 2001, holds a registration as a public accountant issued under
2 prior law is entitled to have the registration renewed under the same terms, upon fulfillment of the
3 same continuing professional education requirements, on the same renewal schedule and subject
4 to the same restrictions and the payment of the same fees that are required for the renewal of a
5 certificate under section twelve of this article. Any registration not so renewed will expire on June
6 30, 2002.

§30A-3-16. Substantial equivalency practice privileges.

1 (a) An individual whose principal place of business is not in this state and who holds an
2 out-of-state certificate has all the rights and privileges of a certificate holder of this state without
3 the need to obtain a certificate if:

4 (1) The state that issued the out-of-state certificate has certification requirements that are
5 substantially equivalent to the certification requirements of the Uniform Accountancy Act; or

6 (2) The individual holds a valid license as a certified public accountant from any state
7 which the National Association of State Boards of Accountancy National Qualification Appraisal
8 Service has not verified to be in substantial equivalence with the CPA licensure requirements of
9 the Uniform Accountancy Act and the individual has obtained from the National Association of
10 State Boards of Accountancy National Qualification Appraisal Service verification that his or her
11 CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform
12 Accountancy Act. Any individual who qualifies for practice privileges pursuant to this subdivision
13 before January 1, 2012, and who passed the uniform CPA examination and holds a valid license
14 issued by any other state is exempt from the education requirement in the Uniform Accountancy
15 Act for purposes of this section.

16 (b) An individual who offers or renders professional services under this section shall be

17 granted practice privileges in this state, and no notice, fee, or other submission is required of any
18 such individual. Such an individual is subject to the requirements in subsection (c) of this section.

19 (c) (1) Any individual performing or offering to perform any services in the state as a
20 substantial equivalency practitioner and the firm which employs that out-of-state certificate holder
21 are simultaneously subject to the jurisdiction of the board concerning all matters within the scope
22 of this article and are required to comply with the provisions of this article and applicable rules.

23 (2) The state board of accountancy of the state of issuance of any substantial equivalency
24 practitioner's certificate is appointed as his or her agent upon which process may be served in an
25 action or proceeding by the board.

26 (d) In the event the certificate from the state of the individual's principal place of business
27 is no longer valid, the individual will cease offering or rendering professional services in this state
28 individually and on behalf of a firm.

29 (e) Subject to the provisions of subsection (f) of this section, an individual who qualifies
30 for the practice privileges under this section may only perform any of the following services, for
31 any entity with its home office in this state, through a firm which has obtained a permit issued
32 under section seventeen of this article and an authorization issued under section nineteen of this
33 article:

34 (1) A financial statement audit or other engagement to be performed in accordance with
35 the statements on Auditing Standards;

36 (2) An examination of prospective financial information to be performed in accordance with
37 the statements on Standards for Attestation Engagements; or

38 (3) An engagement to be performed in accordance with the Auditing Standards of the
39 Public Company Accounting Oversight Board.

40 (f) An individual practitioner who is also a substantial equivalency practitioner may provide
41 the services set out in subsection (e) of this section without obtaining a permit issued under
42 section seventeen of this article, but must obtain the authorization issued under section nineteen

43 of this article.

44 (g) A certificate holder of this state offering or rendering services or using their CPA title
45 in another state is subject to disciplinary action in this state for an act committed in another state
46 for which the certificate holder would be subject to discipline in that other state.

47 (h) The board shall investigate any complaint made by the board of accountancy of
48 another state.

§30A-3-17. Issuance and renewal of permits.

1 (a) The board shall grant or renew permits to firm applicants that demonstrate their
2 qualifications in accordance with this section.

3 (b) Firms meeting the following criteria must hold a permit issued under this section:

4 (1) Any firm with an office in this state performing attest or compilation services;

5 (2) Any firm with an office in this state that uses the title "CPA" or "CPA firm"; or

6 (3) Any firm that does not have an office in this state but performs attest services described
7 in subdivisions (A), (C) or (D), subsection (3), section two of this article for a client having its home
8 office in this state.

9 (c) A firm that does not have an office in this state may perform services described in
10 subdivision (B), subsection (3), section two of this article, or subsection (12), section two of this
11 article, for a client having its home office in this state and may use the title "CPA" or "CPA firm"
12 without a permit issued under this section only if it meets firm ownership requirements and is
13 undergoing a peer review program that conforms with applicable rules, and performs the services
14 through an individual with practice privileges under section sixteen of this article.

15 (d) A firm that does not have an office in this state and does not perform attest services or
16 compilation services for a client having its home office in this state may perform other professional
17 services while using the title "CPA" or "CPA firm" in this state without a permit issued under this
18 section only if it performs the services through an individual with practice privileges under section
19 sixteen of this article: *Provided*, That the firm may lawfully perform the services in the state where

20 the individuals with practice privileges have their principal place of business.

21 (e) Applicants for a permit must demonstrate that:

22 (1) Each partner, officer, shareholder, member or manager of the firm whose principal
23 place of business is in this state and who performs or offers to perform professional services in
24 this state holds a certificate or a registration; and

25 (2) The firm meets firm ownership requirements.

26 (f) An application for the issuance of a permit must be made in the form specified by the
27 board by rule and must include the following information:

28 (1) The names of all partners, officers, shareholders, members or managers of the firm
29 whose principal place of business is in this state;

30 (2) The location of each office of the firm within this state and the name of the certified
31 public accountant or public accountant in charge of each office; and

32 (3) Any issuance, denial, revocation or suspension of an out-of-state permit.

33 (g) Permits will initially be issued for a period to expire on June 30 following the date of
34 issue.

35 (h) The board shall renew a permit for a one-year period beginning on July 1, of each year
36 after initial issuance in accordance with the requirements for initial issuance of a permit in this
37 section.

38 (i) The board shall charge an application fee for the initial issuance or renewal of a permit
39 in an amount specified by rule.

§30A-3-18. Notification of changes in firm ownership; revocation of permit.

1 (a) A permit holder must notify the board in writing, within thirty days after its occurrence,
2 of any change in the identities of partners, officers, shareholders, members or managers whose
3 principal place of business is in this state, any change in the number or location of offices within
4 this state, any change in the identity of the persons in charge of those offices, and any issuance,
5 denial, revocation or suspension of a permit or equivalent designation by any other state.

6 (b) The board shall suspend or revoke the permit of any firm that ceases to meet firm
7 ownership requirements due to changes in firm ownership or personnel due to the death or
8 retirement of a partner, officer, shareholder, member or manager and that fails to take corrective
9 action in the manner and during the time period specified by rule.

§30A-3-19. Issuance and renewal of authorizations.

1 (a) Commencing with July 1, 2001, no person or business entity may provide attest or
2 compilation services without having first obtained an authorization issued by the board. An
3 applicant may apply to provide attest services or compilation services or both. This requirement
4 does not apply to individuals performing attest or compilation services based on the practice
5 privilege under section sixteen of this article except as required under subsection (e) of that
6 section, or to business entities performing attest or compilation services that are not required to
7 obtain a permit under subsections (c) or (d), section seventeen of this article. Any substantial
8 equivalency practitioner who issues a compilation report as an individual practitioner or on behalf
9 of a business entity may do so without obtaining an authorization under this section so long as
10 such individual does so in accordance with the requirements set out in subdivisions (1) and (2),
11 subsection (f) of this section.

12 (b) Applications for the issuance of authorizations must be made in the form specified by
13 the board by rule.

14 (c) Authorizations will initially be issued for a period to expire on June 30 following the date
15 of initial issuance.

16 (d) The board shall issue an authorization to a permit holder that demonstrates that:

17 (1) Any certified public accountant, public accountant or substantial equivalency
18 practitioner who signs or authorizes someone to sign an attest or compilation report on behalf of
19 the permit holder meets the competency requirements set forth in the professional standards for
20 those services specified by rule;

21 (2) All attest and compilation services rendered by the permit holder in this state are

22 verified by a certified public accountant, substantial equivalency practitioner or a public
23 accountant; and

24 (3) The permit holder is undergoing a peer review program that conforms with applicable
25 rules.

26 (e) A firm may simultaneously apply for the issuance or renewal of a permit and the
27 issuance or renewal of an authorization by demonstrating that the firm meets the requirements of
28 section seventeen of this article and subsection (d) of this section.

29 (f) The board shall issue an authorization to an individual practitioner who demonstrates
30 that he or she:

31 (1) Signs an attest or compilation report as a certified public accountant, public accountant
32 or substantial equivalency practitioner, as applicable and meets the competency requirements
33 set forth in the professional standards for those services specified by rule; and

34 (2) Is undergoing a peer review program that conforms with applicable rules.

35 (g) The board shall renew an authorization for a one year period beginning on July 1, of
36 each year after initial issuance in accordance with the requirements for initial issuance of an
37 authorization in this section.

38 (h) The board shall charge an application fee for the initial issuance or renewal of an
39 authorization in an amount specified by rule.

**§30A-3-20. Refuse to issue or renew; suspension, revocation of license; disciplinary
action.**

1 (a) The board may refuse to issue, refuse to renew, suspend, revoke or limit any license
2 or practice privilege of any licensee, substantial equivalency practitioner or firm and may take
3 disciplinary action against a licensee or substantial equivalency practitioner practicing in this state
4 who, after hearing, has been adjudged by the board as unqualified because of any of the following
5 reasons:

6 (1) Fraud or deceit in obtaining or maintaining a license or substantial equivalency practice

7 privilege;

8 (2) Cancellation, revocation, suspension or refusal to renew an out-of-state certificate, an
9 out-of-state permit or substantial equivalency practice privilege for disciplinary reasons in any
10 other state for any cause other than a failure to pay an annual fee for the renewal of an out-of-
11 state certificate or out-of-state permit in the other state;

12 (3) Failure by any licensee to maintain compliance with requirements for issuance or
13 renewal of a license or to timely notify the board as required under section eighteen of this article;

14 (4) Revocation or suspension of the right of a licensee or substantial equivalency
15 practitioner to practice before any state or federal agency;

16 (5) Dishonesty, fraud, professional negligence in the performance of services as a
17 licensee or substantial equivalency practitioner or in the filing or failure to file the licensee's or
18 substantial equivalency practitioner's own income tax returns, or a willful departure from accepted
19 standards of professional conduct applicable to licensees and substantial equivalency
20 practitioners;

21 (6) Violation of any provision of this article or any rule, including the violation of any
22 professional standard or rule of professional conduct;

23 (7) Conviction of a felony or any crime an element of which is dishonesty or fraud under
24 the laws of the United States or this state, or conviction of any similar crime under the laws of any
25 other state if the underlying act or omission involved would have constituted a crime under the
26 laws of this state;

27 (8) Performance of any fraudulent act by any licensee or substantial equivalency
28 practitioner;

29 (9) Any conduct adversely reflecting upon the licensee's or substantial equivalency
30 practitioner's fitness to perform professional services;

31 (10) Making any false or misleading statement or verification in support of an application
32 for a license filed by another person or firm; or

33 (11) Engaging in the unlawful practice of law as defined by the West Virginia Supreme
34 Court of Appeals.

35 (b) If the board suspends, revokes, refuses to issue, refuses to renew or limits any license
36 or practice privilege, the board shall give written notice of the denial, including a statement of
37 charges setting forth the reasons for the denial, and notice of the date, time and place for hearing.
38 The hearing must be held in accordance with the provisions of section twenty-two of this article.

39 (c) Disciplinary action includes, but is not limited to, a reprimand, censure, probation,
40 administrative fine not to exceed \$1,000 per day per violation, and mandatory attendance at
41 continuing professional education seminars.

§30A-3-21. Complaints; investigation.

1 (a) Upon receipt of a written complaint filed against any licensee, substantial equivalency
2 practitioner or firm, the board shall provide a copy of the complaint to the licensee, substantial
3 equivalency practitioner or firm.

4 (b) The board may investigate the complaint. If the board finds upon investigation that
5 probable cause exists that the licensee, substantial equivalency practitioner or firm has violated
6 any provision of this article or the rules, the board shall serve the licensee, substantial equivalency
7 practitioner or firm with a written statement of charges and a notice specifying the date, time and
8 place of hearing. The hearing must be held in accordance with section twenty-two of this article.

9 (c) The board may review the publicly available professional work of a licensee, substantial
10 equivalency practitioner, or firm on a general and random basis, without any requirement of a
11 formal complaint or suspicion of impropriety. If the board discovers reasonable grounds, the board
12 may conduct an investigation and upon its own motion, may file a written statement of charges,
13 including a notice specifying the date, time and place of hearing, against the licensee, firm or
14 substantial equivalency practitioner.

**§30A-3-22. Hearing; judicial review; notification to out-of-state board of accountancy;
costs of proceedings.**

1 (a) A hearing on a statement of charges must be held in accordance with the provisions
2 for hearing set forth in section eight, article one of this chapter and procedures specified by rule.

3 (b) Any licensee, substantial equivalency practitioner or firm adversely affected by any
4 decision of the board entered after a hearing may obtain judicial review of the decision in
5 accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any
6 ruling resulting from judicial review in accordance with article five, chapter twenty-nine-a of this
7 code.

8 (c) If the board renders a decision refusing to issue, refusing to renew, suspending or
9 revoking a license, or the board takes disciplinary action, the board shall determine whether the
10 licensee, substantial equivalency practitioner or firm holds an out-of-state certificate or permit,
11 and if so, the board shall notify the board of accountancy of the state of issuance of its decision
12 in the manner, under the circumstances and within the time specified by rule.

13 (d) In addition to other sanctions imposed, the board shall require a licensee, firm or
14 substantial equivalency practitioner to pay the costs of the proceeding.

§30A-3-23. Reinstatement.

1 If the board has suspended, revoked or refused to renew a license or has revoked the
2 practice privileges of a substantial equivalency practitioner, the licensee, firm or substantial
3 equivalency practitioner against whom action has been taken under the provisions of this article,
4 must be afforded an opportunity to demonstrate the qualifications to resume practice. The
5 application for reinstatement must be in writing and is subject to the procedures specified by rule.

§30A-3-24. Licensees' working papers; clients' records.

1 (a) Any statement, record, schedule, working paper, and memorandum made by a
2 licensee or a partner, shareholder, officer, director, member, manager or employee of a licensee
3 incident to, or in the course of, rendering services to a client while a licensee, remains the property
4 of the licensee in the absence of an express agreement between the licensee and the client to
5 the contrary: *Provided*, That this subsection does not apply to a report submitted by the licensee

6 to the client or to a statement, record, schedule, working paper or memorandum provided by the
7 client to the licensee or to a partner, shareholder, officer, director, member, manager or employee
8 of a licensee.

9 (b) No statement, record, schedule, working paper, or memorandum made by a licensee
10 or a partner, shareholder, officer, director, member, manager or employee of a licensee incident
11 to, or in the course of, rendering services to a client while a licensee may be sold, transferred or
12 bequeathed, without the consent of the client or the client's personal representative or assignee,
13 to anyone other than one or more surviving partners, stockholders, members or new partners,
14 new stockholders, or new members of the licensee, or any combined or merged firm or successor
15 in interest to the licensee.

16 (c) Nothing in this section may be construed to prohibit any temporary transfer of a
17 workpaper or other material necessary in the course of carrying out a peer review or as otherwise
18 interfering with the disclosure of information as authorized by rule.

19 (d) In addition to any statement, record, schedule, working paper, memorandum or report
20 required to be furnished or returned to a client in accordance with subsection (a) of this section,
21 a licensee shall furnish to a client or former client, upon request made within a reasonable time
22 after original issuance of the document in question:

23 (1) A copy of the tax return of the client;

24 (2) A copy of any report or other document issued by the licensee to or for the client and
25 not formally withdrawn or disavowed by the licensee prior to the request;

26 (3) A copy of any working paper, to the extent that it would ordinarily constitute part of the
27 client's records and is not otherwise available to the client; and

28 (4) Any accounting or other record belonging to, or obtained from or on behalf of, a client
29 that the licensee removed from the client's premises or received for the client's account: *Provided,*
30 That a licensee may make and retain copies of the documents of the client when they form the
31 basis for work done by the licensee.

32 (e) Nothing in this section requires a licensee to keep any workpaper beyond the period
33 prescribed in any other applicable statute.

§30A-3-25. Commissions, referral fees and contingent fees.

1 (a) To the extent specified by rule, a licensee may for a contingent fee represent a client
2 before a taxing authority within the scope of practice of public accounting: *Provided*, That this
3 provision may not be construed either to limit or to expand the scope of practice of public
4 accounting, and may not be construed to permit the unauthorized practice of law.

5 (b) All agreements or arrangements in which a licensee is to be paid a commission, referral
6 fee or contingent fee must be in writing, state the method by which the fee is to be determined,
7 must be signed by both the licensee and the client, and must be delivered to the client before the
8 performance of any services or the delivery of any product to which the commission, referral fee
9 or contingent fee relates. A contingent fee arrangement must state the method of calculation of
10 the fee, including the percentage or percentages which accrue to the licensee in the event of all
11 foreseeable outcomes, the expenses to be deducted from any recovery, collection or other
12 amount on which the fee may be based, and whether the expenses are to be deducted before or
13 after the contingent fee is calculated.

§30A-3-26. Unlawful acts.

1 (a) No authorization holder or substantial equivalency practitioner may perform attest or
2 compilation services in a manner other than pursuant to the statements on standards relating to
3 those services specified by rule.

4 (b) (1) No licensee or substantial equivalency practitioner or firm may, for a commission
5 or referral fee, recommend or refer to a client any product or service or refer any product or service
6 to be supplied by a client, or perform for a contingent fee any professional services for or receive
7 a referral fee, commission or contingent fee from a client for whom the licensee, the substantial
8 equivalency practitioner or firm works or associates or in which either of them owns an interest or
9 who performs for that client:

10 (A) An audit or review of a financial statement;

11 (B) A compilation of a financial statement when the licensee or substantial equivalency
12 practitioner expects, or reasonably might expect, that a third party will use the financial statement
13 and the compilation report does not disclose a lack of independence; or

14 (C) An examination of prospective financial information.

15 (2) The prohibition in subdivision one of this subsection applies only during the period in
16 which the licensee or substantial equivalency practitioner is engaged to perform any of the
17 services listed in subdivision (1) of this subsection and the period covered by any historical
18 financial statements involved in any of those listed services.

19 (c) No licensee or substantial equivalency practitioner may for a contingent fee prepare
20 an original or amended tax return or claim for a tax refund or serve as an expert witness.

21 (d) No licensee may use a professional or firm name or designation that: (1) Is deceptive
22 or misleading about the legal form of the firm, or about the persons who are partners, officers,
23 members, managers or shareholders of the firm, or about any other matter; or (2) contains a name
24 or term other than past or present partners, officers, members, managers or shareholders of the
25 firm or of a predecessor firm engaged in the practice of accounting.

26 (e) No person or firm that does not hold an authorization to perform attest services, or is
27 not otherwise exempt from the authorization requirement, may perform or offer to perform attest
28 services, and no person or firm that does not hold an authorization to perform compilation
29 services, or is not otherwise exempt from the authorization requirement, may perform or offer to
30 perform compilation services.

31 (f) No individual practitioner who holds an authorization may perform or offer to perform
32 attest services for a client of his or her employer through or on behalf of his or her employer.

33 (g) No person who is not a certified public accountant, a public accountant or a substantial
34 equivalency practitioner may:

35 (1) Issue a report on financial statements of any other person, business entity, or

36 governmental unit or otherwise render or offer to render any attest or compilation service:
37 *Provided*, That this subdivision does not prohibit any act of a public official or public employee in
38 the performance of that person's duties or the performance by any person of other services
39 involving the use of accounting skills, including the preparation of tax returns, management
40 advisory services, and the preparation of financial statements without the issuance of reports
41 thereon: *Provided, however*, That this subdivision does not prohibit any person who is not a
42 certified public accountant, a public accountant or a substantial equivalency practitioner to
43 prepare financial statements or issue nonattest transmittals of information thereon that do not
44 purport to have been performed in accordance with the applicable statements on standards;

45 (2) Claim to hold a certificate, registration or authorization or make any other claim of
46 licensure or approval related to the preparation of financial statements or the issuance of reports
47 thereon that is false or misleading;

48 (3) Claim to have used "generally accepted accounting principles," "generally accepted
49 accounting standards," "public accountancy standards," "public accountancy principles,"
50 "generally accepted auditing principles" or "generally accepted auditing standards" in connection
51 with the preparation of any financial statement, or use any of these terms to describe any complete
52 or partial variation from those standards or principles or to imply complete or partial conformity
53 with those standards or principles;

54 (4) State or imply that he or she is tested, competent, qualified or proficient in financial
55 standards established by the American institute of certified public accountants or any agency
56 thereof, the governmental accounting standards board or any agency thereof, the securities and
57 exchange commission or any agency thereof, the financial accounting standards board or any
58 agency thereof, or any successor entity to any of these entities;

59 (5) Assume or use the titles "certified accountant," "chartered accountant," "enrolled
60 accountant," "licensed accountant," "registered accountant," "Auditor," "independent Auditor" or
61 any other title or designation that a reasonable person may confuse with the titles "certified public

62 accountant” or “public accountant,” or assume or use the abbreviations “CA,” “LA,” “RA,” or similar
63 abbreviation that a reasonable person may confuse with the abbreviations “CPA” or “PA”:
64 *Provided*, That the title “Enrolled Agent” and the abbreviation “EA” may only be used by individuals
65 so designated by the Internal Revenue Service;

66 (6) Use language in any statement relating to the financial affairs of a person or entity that
67 is conventionally used by a licensee in a report on a financial statement;

68 (7) Use the words “audit,” “audit report,” “independent audit,” “examine,” “examination,”
69 “opinion” or “review” in a report on a financial statement;

70 (8) Assume or use any title that includes the words “accountant,” “Auditor,” or “accounting”
71 in connection with any other language (including the language of a report) that implies that the
72 person or business entity holds a license or has special competence in accounting or auditing:
73 *Provided*, That this subdivision does not prohibit any officer, partner, member, manager or
74 employee of any business entity from affixing that person's own signature to any statement in
75 reference to the financial affairs of the business entity with any wording designating the position,
76 title, or office that the person holds therein, nor does it prohibit any act of a public official or
77 employee in the performance of the person's duties;

78 (9) Use or assume the title “certified public accountant,” the abbreviation “CPA,” or any
79 other title, designation, word, combination of letters, abbreviation, sign, card or device that may
80 lead a reasonable person to believe that the person is a certified public accountant or the holder
81 of an out-of-state certificate; or

82 (10) Assume or use the title “public accountant,” the abbreviation “PA,” or any other title,
83 designation, word, combination of letters, abbreviation, sign, card or device that may lead a
84 reasonable person to believe that the person is a public accountant.

85 (h) Only a business entity that holds a permit or is exempt from the permit requirement
86 under subsections (c) or (d), section seventeen of this article, may assume or use the designations
87 “certified public accountants,” “CPA firm,” “public accountants,” or “PA firm” or the abbreviations

88 “CPAs,” or “PAs,” or any other title, designation, word, combination of letters, abbreviation, sign,
89 card or device that may lead a reasonable person to believe that the business entity is a firm or
90 holds a permit.

91 (i) The display or uttering by a person of any printed, engraved or written instrument,
92 bearing the name of the person in conjunction with any of the claims, titles, words or phrases
93 listed in this section is, for purposes of this section, prima facie evidence that the person has
94 engaged in the acts.

95 (j) Notwithstanding any provision in this section to the contrary, it is not a violation of this
96 section for a firm or business entity which does not hold a permit under section seventeen or an
97 authorization under section nineteen of this article and which does not have an office in this state
98 to provide its professional services in this state so long as it complies with subsection (c) or (d) of
99 section seventeen, whichever is applicable, and with any applicable provision of section nineteen
100 of this article.

§30A-3-27. Injunctions against unlawful acts.

1 When, as a result of an investigation under this article or otherwise, the board or any other
2 interested person believes that any person or business entity has engaged, is engaging, or is
3 about to engage in any acts or practices that constitute or will constitute a violation of section
4 twenty-six of this article, the board or any other interested person may make application to any
5 court of competent jurisdiction for an order enjoining the acts or practices, and upon a showing
6 that the person or business entity has engaged or is about to engage in any act or practice, an
7 injunction, restraining order, or another appropriate order may be granted by the court without
8 bond.

§30A-3-28. Criminal proceedings; penalties.

1 (a) When, by reason of an investigation under section twenty-one of this article or
2 otherwise, the board has reason to believe that any person or firm has knowingly engaged in acts
3 or practices that constitute a violation of section twenty-six of this article, the board may bring its

4 information to the attention of the Attorney General or other appropriate law-enforcement officer
5 who may cause appropriate criminal proceedings to be brought thereon.

6 (b) Any person or firm who knowingly violates any provision of section twenty-six of this
7 article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000
8 or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned.

§30A-3-29. Single act evidence of practice.

1 In any action or proceeding brought under sections twenty-seven or twenty-eight of this
2 article or any proceeding initiated under section twenty-one of this article, evidence of the
3 commission of a single act prohibited by this article is sufficient to justify a penalty, injunction,
4 restraining order or conviction, respectively, without evidence of a general course of conduct.

§30A-3-30. Accounting corporations.

1 (a) All accounting corporations created prior to July 1, 2001, are hereby continued.

2 (b) On or after July 1, 2001, one or more certified public accountants or public accountants
3 may organize and become a shareholder or shareholders of an accounting corporation domiciled
4 within this state under the terms and conditions and subject to the limitations and restrictions
5 specified by rule.

6 (c) When the Secretary of State receives a certification of authorization to act as an
7 accounting corporation, he or she shall attach the authorization to the corporation application and,
8 upon compliance with the applicable provisions of chapter thirty-one of this code, the Secretary
9 of State shall issue to the incorporators a certificate of incorporation for the accounting
10 corporation.

§30A-3-31. Inapplicability of article.

1 (a) Nothing contained in this article may be construed to prevent any person from
2 describing himself or herself as an "accountant" or a "bookkeeper" or from stating that he or she
3 practices accountancy or bookkeeping; nor, subject to certification and registration requirements
4 herein imposed, may this article be construed to prevent any person from: (1) Performing services

5 involving the use of accounting skills; (2) rendering tax services, management advisory or
6 consulting services; (3) keeping of books of account and related accounting records; or (4)
7 preparing, compiling or assembling financial statements without the expression of an assurance.

8 (b) The prohibitions of this section and the other provisions of this article may not be
9 construed to preclude a person or business entity not holding a certificate or registration from
10 using the following or substantially similar language: "I (We) have compiled the accompanying
11 (financial statements) of (name of entity) as of (time period) for the (period) then ended. A
12 compilation is limited to presenting in the form of financial statements information that is the
13 representation of management (owners). I (We) have not audited or reviewed the accompanying
14 financial statements and, accordingly, do not express an opinion or any other form of assurance
15 on them. Management has elected to omit substantially all (or certain) required disclosures (and
16 the statement of changes in financial position). If omitted disclosures were included in the financial
17 statements, they might influence the user's conclusions about the (entity's) financial position,
18 results of operations and changes in financial position. Accordingly, these financial statements
19 are not designed for those who are not informed about these matters."

20 (c) Nothing contained in this article may be construed to prohibit an employee from
21 furnishing services to his or her employer.

22 (d) Nothing in this article prohibits a practicing attorney or group of attorneys from
23 preparing or presenting records or documents customarily prepared by an attorney or group of
24 attorneys in connection with the attorney's professional work in the practice of law.

§30A-3-33. Mandatory training in federal antitrust law and state action immunity.

1 It shall be required of the West Virginia Board of Accountancy, and their representatives
2 from the Attorney General's office, to obtain initial training on the subject of federal antitrust law
3 and state action immunity by July 1, 2016, and thereafter on an annual basis. The purpose of the
4 training is to provide those members with the knowledge to be able to identify the risks of any
5 action that may be taken by the board that could be construed as possible antitrust violations.

§30A-3-34. Indemnification.

In the event that a lawsuit is filed alleging violation of federal antitrust laws, the board may indemnify its board members and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties

ARTICLE 4. ARCHITECTS.**§30A-4-1. Board of architects.**

1 In order to safeguard the life, health, property and public welfare of the people of this state
2 and to protect the people against the unauthorized, unqualified and improper practice of
3 architecture, the West Virginia board of architects, heretofore created, shall continue in existence
4 and shall consist of seven members, five of whom shall be architects, appointed by the Governor
5 by and with the advice and consent of the Senate, and two of whom shall be lay members, not of
6 the same political party affiliation, appointed by the Governor by and with the advice and consent
7 of the Senate. Each member who is an architect shall have been engaged in the active practice
8 of his or her profession in the State of West Virginia for not fewer than ten years previous to his
9 or her appointment. The members of the board in office on the date this article takes effect, in the
10 year one thousand nine hundred ninety, shall, unless sooner removed, continue to serve until
11 their respective terms expire and until their successors have been appointed and have qualified.
12 Each member shall be appointed for a term of five years.

13 The board shall pay each member the same compensation and expense reimbursement
14 as is paid to members of the Legislature for their interim duties as recommended by the citizens
15 legislative compensation commission and authorized by law for each day or portion thereof
16 engaged in the discharge of official duties.

17 Pursuant to the provisions of chapter twenty-nine-a of this code, the board, in addition to
18 the authority, powers and duties granted to it by this article, has the authority to promulgate rules
19 relating to the regulation of the practice of architecture and may include rules pertaining to the

20 registration of architects. Any disciplinary proceedings held by the board shall be held in
21 accordance with the provisions of the administrative procedures act for contested cases pursuant
22 to the provisions of article five of said chapter.

§30A-4-2. Definitions.

1 The following words as used in this article, unless the context otherwise requires, have
2 the following meanings:

3 (1) "Architect" means any person who engages in the practice of architecture as
4 hereinafter defined.

5 (2) "Board" means the West Virginia board of architects established by section one of this
6 article.

7 (3) "Direct supervision" means that degree of supervision by a person overseeing the work
8 of another person whereby the supervisor has both control over and detailed professional
9 knowledge of the work prepared under his or her supervision.

10 (4) "Good moral character" means such character as will enable a person to discharge the
11 fiduciary duties of an architect to his or her client and to the public for the protection of health,
12 safety and welfare. Evidence of inability to discharge such duties include the commission of an
13 offense justifying discipline under section eight of this article.

14 (5) "Practice of architecture" means rendering or offering to render those services,
15 hereinafter described, in connection with the design and construction, enlargement or alteration
16 of a building or group of buildings and the space within and surrounding such buildings, which
17 have as their principal purpose human occupancy or habitation; the services referred to include
18 planning, providing preliminary studies, designs, drawings, specifications and other technical
19 submissions and administration of construction contracts.

20 (6) "Registered architect" means an architect holding a current registration.

21 (7) "Registration" means the certificate of registration issued by board.

22 (8) "Technical submissions" means designs, drawings, specifications, studies and other

23 technical reports prepared in the course of practicing architecture.

§30A-4-3. Fees.

1 (a) Notwithstanding any other provision of the law to the contrary, the board is authorized
2 and empowered to establish by legislative rule in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code a schedule of fees to be charged to applicants. The board shall
4 charge for: Examination, reexamination, renewal of certificates, restoration of expired certificates,
5 reciprocal registration and for any other matters deemed appropriate by the board.

6 (b) Until such time as the board establishes otherwise, the fees previously set by legislative
7 rule remain in effect.

§30A-4-4. Registration qualifications.

1 Every person applying to the board for initial registration shall submit an application
2 accompanied by the fee established in accordance with section three of this article with
3 satisfactory evidence that such person holds an accredited professional degree in architecture or
4 has completed such other education as the board considers equivalent to an accredited
5 professional degree and with satisfactory evidence that such person has completed such practical
6 training in architectural work as the board requires. If an applicant is qualified, the board shall, by
7 means of a written examination, examine the applicant on such technical and professional
8 subjects as prescribed by it. None of the examination materials are public records as defined in
9 article one, chapter twenty-nine-b of this code. The board may exempt from such written
10 examination an applicant who holds certification issued by the national council of architectural
11 registration boards. The board may adopt as its own rules governing practical training and
12 education those guidelines published from time to time by the national council of architectural
13 registration boards. The board may also adopt the examinations and grading procedures of the
14 national council of architectural registration board and the accreditation decisions of the national
15 architectural accrediting board. The board shall issue its registration to each applicant who is
16 found to be of good moral character and who satisfies the requirements set forth in this section.

17 The registration is effective upon issuance.

§30A-4-5. Registration renewal.

1 The board shall mail each year to every registered architect an application for renewal of
2 registration. The application, properly filled out and accompanied by the renewal fee established
3 in accordance with section three of this article, shall be returned to the board on or before the
4 date established by the board. After verification of the facts stated in the renewal application, the
5 board shall issue a registration which is valid for one year, expiring on June 30 of each year. Any
6 holder of a registration who fails to renew his or her application on or before the prescribed date,
7 before again engaging in the practice of architecture within the state, is required to apply for
8 reinstatement, pay the prescribed fee and, in circumstances considered appropriate by the board,
9 may be required to be reexamined.

§30A-4-6. Certificate of registration.

1 Every registered architect having a place of business or employment within the state shall
2 display his or her certificate of registration in a conspicuous place in such place of business or
3 employment. A new certificate of registration, to replace a lost, destroyed or mutilated certificate,
4 shall be issued by the board upon payment of a fee established in accordance with section three
5 of this article and such certificate shall be stamped or marked "duplicate."

§30A-4-7. Seal.

1 (a) Every registered architect shall have a seal of a design authorized by the board by
2 rule. All technical submissions prepared by such architect, or under his or her direct supervision,
3 shall be stamped with the impression of his or her seal. No architect holding a registration may
4 impress his or her seal on any technical submissions unless they were prepared under his or her
5 direct supervision: *Provided*, That in the case of the portions of such technical submissions
6 prepared under the direct supervision of persons consulting with or employed by the architect,
7 the architect may sign or seal those portions of the technical submission if the architect has
8 reviewed such portions and has coordinated their preparation.

9 (b) No public official charged with the enforcement duties of a municipal building inspector
10 may accept or approve any technical submissions involving the practice of architecture unless
11 the technical submissions have been stamped as required by this section or by a registered
12 engineer or the applicant has certified thereon the applicability of a specific exception under
13 section twelve of this article permitting the preparation of such technical submissions by a person
14 not registered thereunder. A building permit issued with respect to technical submissions which
15 do not conform with the requirements of this section is invalid.

§30A-4-8. Disciplinary powers.

1 The board may revoke, suspend or annul a registration, or impose a civil penalty in an
2 amount not more than \$2,000 for each violation, upon satisfactory proof to the board that any
3 person has violated the provisions of this article or any rules promulgated by the board under this
4 article. In hearing matters arising under this section, the board may take into account suitable
5 evidence of reform.

§30A-4-9. Disciplinary proceedings.

1 Charges against any person involving any matter coming within the jurisdiction of the
2 board shall be in writing and shall be filed with the board. Such charges, at the discretion of the
3 board, shall be heard within a reasonable time after being so filed. The accused person has the
4 right at such hearing to appear personally, with or without counsel, to cross-examine adverse
5 witnesses and to produce evidence and witnesses in his or her defense. The board shall set the
6 time and place for such hearing and shall cause a copy of the charges, together with a notice of
7 the time and place fixed for the hearing, to be sent by registered mail to the accused person, at
8 his or her latest place or residence or business known to the board, at least thirty days before
9 such date. If after such hearing the board finds the accused person has violated any of the
10 provisions of this article or any of the rules promulgated by the board, it may issue any order
11 described in section eight of this article. If the board finds no such violation, then it shall enter an
12 order dismissing the charges. If the order revokes, suspends or annuls an architect's registration,

13 the board shall so notify, in writing, the Secretary of State and the clerk of the municipality in the
14 state wherein such architect has a place of business, if any.

15 The board may reissue a registration to any person whose registration has been revoked.
16 Application for the reissuance of the registration shall be made in such a manner as the board
17 may direct and shall be accompanied by a fee established in accordance with section three of
18 this article.

§30A-4-10. Registration; prima facie evidence.

1 Every registration issued and remaining in force is prima facie evidence in all courts of the
2 state that the person named therein is legally registered as an architect for the period for which it
3 is issued and of all other facts stated therein.

§30A-4-11. Prohibition.

1 Except as hereinafter set forth in section twelve of this article, no person may directly or
2 indirectly engage in the practice of architecture in the state or use the title "architect," "registered
3 architect," "architectural designer," or display or use any words, letters, figures, titles, sign, card,
4 advertisement or other symbol or device indicating that such person is an architect or is practicing
5 architecture, unless he or she is registered under the provisions of this article. No person may aid
6 or abet any person, not registered under the provisions of this chapter, in the practice of
7 architecture.

§30A-4-11a. Construction administration services required.

1 (a) The owner of any real property who allows a project to be constructed on such real
2 property shall be engaged in the practice of architecture unless such owner may have employed
3 or may have caused others to have employed a registered architect or registered engineer to
4 furnish "construction administration services" with respect to such project.

5 (b) For purposes of this section, the following terms shall have the following meanings:

6 (1) "Building official" means the person appointed by the municipality or state subdivision
7 having jurisdiction over the project to have principal responsibility for the safety of the project as

8 finally built.

9 (2) "Construction administration services" comprises at the following services: (A) Visiting
10 the construction site on a regular basis as is necessary to determine that the work is proceeding
11 generally in accordance with the technical submissions submitted to the building official at the
12 time the building permit was issued; (B) processing shop drawings, samples, and other submittals
13 required of the contractor by the terms of construction contract documents; and (C) notifying an
14 owner and the building official of any code violations, changes which affect code compliance, the
15 use of any materials, assemblies, components, or equipment prohibited by a code, major or
16 substantial changes between such technical submissions which he or she identifies as
17 constituting a hazard to the public, which he or she observes in the course of performing his or
18 her duties.

19 (3) "Owner" means with respect to any real property and of the following persons: (A) The
20 holder of a mortgage secured by such real property; (B) the holder, directly or indirectly, of an
21 equity interest in such real property exceeding ten percent of the aggregate equity interests in
22 such real property; (C) the record owner of such real property; or (D) the lessee of all or any
23 portion of such real property when the lease covers all of that portion of such real property upon
24 which the project is being constructed, the lessee has significant approval rights with respect to
25 the project, and the lease, at the time the construction of the project begins, has a remaining term
26 of not less than ten years.

27 (4) "Project" means the construction, enlargement, or alteration of a building, other than a
28 building exempted by the provisions of section twelve of this article, which has as its principal
29 purpose human occupancy or habitation.

30 (c) If the registered engineer or registered architect who sealed the technical submissions
31 which were submitted to the building official at the time the building permit was issued has not
32 been employed to furnish construction administration services at the time such registered
33 architect or registered engineer issued such technical submissions, he or she shall note on such

34 technical submissions that he or she has not been so employed. If he or she is not employed to
35 furnish construction administration services when construction of the project begins, he or she
36 shall file, not later than thirty days after such construction begins, with the board and with the
37 building official, on a form prescribed by the board, a notice setting forth the names of the owner
38 or owners known to him or her, the address of the project, and the name, if known to him or her,
39 of the registered architect employed to perform construction administration services. If he or she
40 believes that no registered architect or registered engineer has been so employed, he or she shall
41 so state on the form. Any registered architect or registered engineer who fails to place the note
42 on his or her technical submissions or to file such notice, as required by this paragraph, shall have
43 violated the provisions of this chapter and shall be subject to discipline as set forth herein.

44 (d) If the board determines, with respect to a particular project or class of projects, that the
45 public is adequately protected without the necessity of a registered architect or registered
46 engineer performing construction administrative services, the board may waive the requirements
47 of this section with respect to such project or class of projects.

§30A-4-12. Exceptions.

1 Nothing in this article may be construed to prevent:

2 (a) Any of the activities that, apart from this exemption, would constitute the practice of
3 architecture, if performed in connection with any of the following:

4 (1) A detached single family dwelling and any sheds, storage buildings and garages
5 incidental thereto;

6 (2) A multifamily residential structure not in excess of three stories excluding any
7 basement area;

8 (3) Farm buildings, including barns, silos, sheds or housing for farm equipment and
9 machinery, livestock, poultry or storage, if such structures are designed to be occupied by no
10 more than ten persons;

11 (4) Any alteration, renovation or remodeling of a building, if such alteration, renovation or

12 remodeling does not affect structural or other safety features of the building or if the work
13 contemplated by the design does not require the issuance of a permit under any applicable
14 building code;

15 (5) Preengineered buildings, including mobile classrooms purchased by county school
16 boards; and

17 (6) A commercial structure which is to contain not more than seventy-six hundred square
18 feet and not in excess of one story excluding any basement area.

19 (b) The preparation of any detailed or shop drawings required to be furnished by a
20 contractor, or the administration of construction contracts by persons customarily engaged in
21 contracting work.

22 (c) The preparation of technical submissions or the administration of construction
23 contracts by employees of a person or organization lawfully engaged in the practice of
24 architecture when such employees are acting under the direct supervision of a registered
25 architect.

26 (d) Officers and employees of the United States of America from engaging in the practice
27 of architecture as employees of said United States of America.

28 (e) A partnership, corporation or other business entity from performing or holding itself out
29 as able to perform any of the services involved in the practice of architecture, provided such
30 practice is actually carried on under the direct supervision of architects registered in the State of
31 West Virginia.

32 (f) A nonresident, who holds a certificate to practice architecture in the state in which he
33 or she resides and in addition holds the certification issued by the national council of architectural
34 registration boards, from agreeing to perform or holding herself or himself or herself out as able
35 to perform any of the professional services involved in the practice of architecture: *Provided*, That
36 he or she may not perform any of the professional services involved in the practice of architecture
37 until registered as hereinbefore provided and he or she notifies the board in writing if, prior to

38 registration, he or she engages in any of the activities permitted by this paragraph.

39 (g) The practice of landscape architecture as defined in section two, article twenty-two of
40 this chapter.

§30A-4-13. Enforcement.

1 The board shall enforce the provisions of this article and of the rules adopted hereunder.
2 If any person refuses to obey any decision or order of the board, the board or, upon the request
3 of the board, the Attorney General or the appropriate prosecuting attorney, may file an action for
4 the enforcement of such decision or order, including injunctive relief, in the circuit court of the
5 county of residence of such person. After due hearing, the court shall order the enforcement of
6 such decision or order, or any part thereof, if legally and properly made by the board and, where
7 appropriate, injunctive relief.

§30A-4-14. Penalties.

1 Whoever violates any provision of this article is guilty of a misdemeanor, and, upon
2 conviction thereof, shall be fined not more than \$1,000 or imprisoned in the county jail for not
3 more than twelve months, or both fined and imprisoned.

ARTICLE 5. ENGINEERS.

§30A-5-1. Legislative findings; intent.

1 The Legislature hereby determines the need to regulate the practice of engineering; to
2 provide for the registration of qualified persons as professional engineers and the certification of
3 engineer interns; to define the terms "engineer", "professional engineer", "engineer intern" and
4 "practice of engineering"; to create a state board of registration for professional engineers and
5 provide for the appointment and compensation of its members; to fix the term of members of the
6 board and define its powers and duties; to set forth the minimum qualifications and other
7 requirements for registration as an engineer and certification as an engineer intern; to establish
8 registration fees with expiration and renewal requirements; to impose certain duties upon the state
9 and political subdivisions thereof in connection with public works; and to provide for the

10 enforcement of this article and penalties for its violation.

§30A-5-2. General provisions.

1 In order to safeguard life, health and property and to promote the public welfare, the
2 practice of engineering in this state is hereby declared to be subject to regulation in the public
3 interest. It is unlawful for any person to practice or to offer to practice engineering in this state, as
4 defined in the provisions of this article, or to use in connection with his or her name or otherwise
5 assume or advertise any title or description tending to convey the impression that he or she is a
6 registered or licensed engineer, unless the person has been duly registered or exempted under
7 the provisions of this article. Engineering is hereby declared a learned profession and its
8 practitioners are held accountable to the state and the public by professional standards in keeping
9 with the ethics and practice of other learned professions in this state. The practice of engineering
10 is a privilege granted by the state.

§30A-5-3. Definitions.

1 Unless the context in which used clearly requires a different meaning as used in this
2 article:

3 (a) "Board" means the West Virginia state board of registration for professional engineers
4 as provided for in this article.

5 (b) "Consulting engineer" means a professional engineer whose principal occupation is
6 the independent practice of engineering; whose livelihood is obtained by offering engineering
7 services to the public; who serves clients as an independent fiduciary; who is devoid of public,
8 commercial and product affiliation that might tend to infer a conflict of interest; and who is
9 cognizant of their public and legal responsibilities and is capable of discharging them.

10 (c) "Engineer" means a person who is qualified to practice engineering by reason of special
11 knowledge and use of the mathematical, physical and engineering sciences and the principles
12 and methods of engineering analysis and design, acquired by engineering education and
13 engineering experience.

14 (d) "Engineer intern" means a person who has qualified for, taken and has passed an
15 examination in the fundamental engineering subjects, as provided in this article.

16 (e) "Practice of engineering" means any service or creative work, the adequate
17 performance of which requires engineering education, training and experience in the application
18 of special knowledge of the mathematical, physical and engineering sciences to such services or
19 creative work as consultation, investigation, evaluation, planning and design of engineering works
20 and systems; planning the use of land and water; teaching of advanced engineering subjects,
21 engineering surveys and studies; and the review of construction for the purpose of assuring
22 compliance with drawings and specifications any of which embraces such services or work, either
23 public or private, in connection with any utilities, structures, buildings, machines, equipment,
24 processes, work systems, projects and industrial or consumer products or equipment of a
25 mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve
26 safeguarding life, health or property, and including such other professional services as may be
27 necessary to the planning, progress and completion of any engineering services. Engineering
28 surveys include all survey activities required to support the sound conception, planning, design,
29 construction, maintenance and operation of engineered projects.

30 Any person who practices any branch of the profession of engineering or who, by verbal
31 claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to
32 be a professional engineer, or by using another title implies that he or she is a professional
33 engineer or that he or she is registered under this article or who holds himself or herself out as
34 able to perform, or who performs any engineering service or work or any other service designated
35 by the practitioner which is recognized as engineering, is considered to practice or offer to practice
36 engineering within the meaning and intent of this article.

37 (f) "Professional engineer" means a person who has been duly registered or licensed as
38 a professional engineer by the board. The board may designate a professional engineer, on the
39 basis of education, experience and examination, as being licensed in a specific discipline or

40 branch of engineering signifying the area in which the engineer has demonstrated competence.

41 (g) "Responsible charge" means direct control and personal supervision of engineering
42 work.

43 (h) "Rules of professional responsibility for professional engineers" means those rules, if
44 any, promulgated by the West Virginia state board of registration for professional engineers as
45 authorized by this article.

§30A-5-4. Board of registration for professional engineers; appointment and term.

1 There is hereby created the board of registration for professional engineers which shall
2 hereafter be referred to as the board. The board shall be composed of five members appointed
3 by the Governor, by and with the consent of the Senate, preferably from a list of names submitted
4 by the West Virginia society of professional engineers. The members of the board shall be
5 qualified and shall meet the requirements of section five of this article. The Governor shall present
6 each board member with a certificate of appointment. Each board member shall make and file an
7 oath or affirmation with the Secretary of State to faithfully execute the duties of a member of the
8 board. Members of the board shall serve a term of five years. Of the members first appointed,
9 one shall serve a term of one year, one shall serve a term of two years, one shall serve a term of
10 three years, one shall serve a term of four years and one shall serve a term of five years. Members
11 are eligible for reappointment but no member may be appointed for more than three full
12 consecutive terms. Each member shall hold office until the expiration of the term for which
13 appointed or until a successor has been duly appointed and has qualified. In the event of a
14 vacancy on the board due to resignation, death or for any cause resulting in an unexpired term
15 and if not filled within three months by the Governor, the board may appoint a member to serve
16 in the vacancy until the Governor makes the appointment. Members of the former board whose
17 terms have not expired shall fill the term on this board which corresponds with the length of the
18 unexpired term of that member.

§30A-5-5. Board qualifications.

1 Each member of the board must be a citizen of the United States and a resident of this
2 state. Each member shall have been engaged in the lawful practice of engineering as a
3 professional engineer for at least twelve years; shall have been in responsible charge of
4 engineering projects for at least five years; and shall be a registered professional engineer in this
5 state.

§30A-5-6. Compensation and expenses.

1 Each member of the board shall receive compensation for time spent, and reimbursement
2 for reasonable and necessary expenses incurred, in the performance of board-related duties
3 pursuant to section eleven, article one of this chapter.

§30A-5-7. Removal of members and vacancies.

1 The Governor may remove any member of the board for misconduct, incompetency,
2 neglect of duty or for any reason prescribed by law for removal of state officials. Vacancies in the
3 membership of the board shall be filled for the unexpired term.

§30A-5-8. Organization and meetings.

1 The board shall hold at least one regular meeting each year. Special meetings may be
2 held as the bylaws of the board provide. Each year the board shall elect the following officers: A
3 president, a vice president and a secretary, who shall serve at the will and pleasure of the board.
4 A quorum of the board shall consist of not less than three professional engineer members.

§30A-5-9. Board powers.

1 (a) The board may adopt and amend bylaws not inconsistent with the Constitution and
2 laws of this state. The board may promulgate and shall adopt “rules of professional responsibility
3 for professional engineers”. These rules are binding to any person registered with the board under
4 the provisions of this article. These rules are also applicable to firms holding a certificate of
5 authorization as provided in section seventeen of this article.

6 (b) The board may subpoena witnesses and compel their attendance and it may also
7 subpoena books, papers, documents or other pertinent data in any disciplinary matters or in any

8 case involving an allegation of a violation of the provisions of this article. The board may apply to
9 the circuit court of Kanawha county to enforce compliance with any subpoena it issues.

10 (c) The board may seek an injunction in circuit court to enforce the provisions of this article
11 or to restrain a person or entity from violating a provision of this article. In pursuing injunctive relief
12 under this section, the board shall not be required to prove that an adequate remedy at law does
13 not exist or that substantial or irreparable damage would result from the continued violation. The
14 members of the board may not be personally liable for any decisions made in good faith in
15 pursuing injunctive relief.

16 (d) The board may require all applicants for registration to take and successfully pass an
17 examination of their fitness and qualifications to become registered.

18 (e) The board may require that a registered professional engineer demonstrate continuing
19 professional competency in engineering as a condition of renewal or reregistration.

20 (f) Board members are exempt from civil liability for any decision made or any act done in
21 good faith in the performance of any duty or the exercise of any power granted under this article.

§30A-5-10. Receipt of fees, fund established, disbursements.

1 There is hereby established within the State Treasury a “board of professional engineers
2 fund”. The board shall deposit all fees and other moneys received by the board into the fund. The
3 moneys in the fund shall be used for expenses of the board and shall be requisitioned on the
4 signatures of the president and secretary of the board. The secretary of the board shall annually
5 furnish an accounting of all funds received and expended by the board to the Governor and to
6 each house of the Legislature. The board may use the moneys in the fund to employ necessary
7 staff, pay for membership fees to the national council of examiners for engineering and surveying
8 and for any other necessary and reasonable expense of the board: *Provided*, That the board may
9 not issue warrants in excess of moneys in the fund.

§30A-5-11. Records and reports.

1 (a) The board shall keep a record of its proceedings and of all applications for registration.

2 The record shall show: (1) The name, age and last known address of each applicant; (2) the date
3 of application; (3) place of business of such applicant; (4) education, experience and other
4 qualifications; (5) type of examination required; (6) whether or not the applicant was rejected; (7)
5 whether or not a certificate of registration was granted; (8) the date of the action by the board;
6 and (9) such information as may be deemed necessary by the board.

7 (b) The record of the board is prima facie evidence of the proceedings of the board and a
8 transcript duly certified by the secretary shall be admissible as evidence with the same force and
9 effect as if the original were produced.

10 (c) On July 1, of each year, the board shall submit to the Governor a report of its
11 transactions of the preceding year and shall transmit to the Governor a complete statement of the
12 receipts and expenditures of the board, attested to by affidavits of its chairman and secretary.

13 (d) Board records and papers of the following class are of a confidential nature and are
14 not public records: Examination material for examinations not yet given, file records of
15 examination problem solutions, letters of inquiry and reference concerning applicants, board
16 inquiry forms concerning applicants, investigation files where any investigation is still pending and
17 all other materials of like confidential nature.

§30A-5-12. Roster.

1 A complete roster with the names and the last known addresses of all registered
2 professional engineers shall be published by the secretary of the board at intervals established
3 by the board. Copies of this roster may be mailed to each person registered and shall be placed
4 on file with the Secretary of State and may be distributed or sold to county and city officials and
5 to the public.

§30A-5-13. Requirements for registration of professional engineers and certification of engineer interns.

1 (a) *General requirements.* – Every person who desires to be certified as an engineer intern
2 or to be registered as a professional engineer in this state must comply with the following

3 requirements:

4 (1) Submission of a completed application specified by the board and payment of the
5 application fee specified by rule of the board;

6 (2) Be at least eighteen years of age;

7 (3) Be of good moral character;

8 (4) Submit statements of reference as specified by rule of the board;

9 (5) Graduate from a four-year engineering curriculum accredited by the Engineering
10 Accreditation Commission of the Accreditation Board for Engineering and Technology
11 (EAC/ABET), or an equivalent as approved by the board as being of satisfactory standing; and

12 (6) Be free of any grounds for disqualification as set forth in subsection of (a) of section
13 twenty-one of this article.

14 (b) *Certification of an engineer intern.* – In addition to the foregoing general requirements,
15 an applicant must meet the following requirements to be certified as an engineer intern in this
16 state:

17 (1) Satisfactorily complete the required examination on the fundamentals of engineering;

18 and

19 (2) Complete each additional requirement that the board may specify by legislative rule.

20 (c) *Registration of a professional engineer.* – In addition to the general requirements
21 specified in subsection (a) of this section, an applicant must meet the following requirements to
22 be certified as a professional engineer in this state:

23 (1) Meet all the requirements for certification as an engineer intern;

24 (2) Submit a record of four years or more of progressive experience in engineering work
25 of a grade and a character that indicates to the board that the applicant may be competent to
26 practice engineering;

27 (3) Satisfactorily complete the required examination on the principles and practice of
28 engineering;

29 (4) Complete each additional requirement that the board may specify by legislative rule.

30 (d) *Registration of a professional engineer through comity or reciprocal registration.* –

31 Notwithstanding the requirements of the foregoing subsection of this section, the board may issue
32 a license to an applicant who holds a valid license or other authorization to practice engineering
33 from another state, if the applicant satisfies the general requirements of subsection (a) of this
34 section, satisfies the additional requirements specified by rule of the board and meets one of the
35 following requirements:

36 (1) Holds a license or other authorization to engage in the practice of engineering issued
37 by a proper authority of any jurisdiction, based on requirements that do not conflict with the
38 provisions of this article and possesses credentials that are, in the judgment of the board, of a
39 standard equivalent to or not lower than that specified in the applicable licensure act and rules in
40 effect in this state at the time such license was issued, upon application, which may include a
41 council record with NCEES; or

42 (2) Holds a valid council record with NCEES, which is the compilation of documents
43 maintained by NCEES of an applicant's qualifications as a professional engineer, including official
44 transcripts, engineering examination results, employment verifications and references, which
45 indicates that the applicant meets the requirements of this article.

46 (e) *Certification or registration of qualified applicants.* – The board shall issue a certification
47 to a qualified applicant who meets the requirements for certification as an engineer intern and
48 shall issue a professional engineer registration to a qualified applicant who meets the
49 requirements for registration as a professional engineer.

50 (f) *Continuation of existing registrations and certificates.* – A registration or certificate
51 issued by the board prior to July 1, 2013, shall for all purposes be considered a registration or
52 certificate issued under this article: *Provided*, That a person registered or certified prior to July 1,
53 2013, must renew the registration or certification pursuant to the provisions of this article and the
54 rules of the board.

§30A-5-13a. Designations of nonpracticing status.

1 The board may designate a professional engineer as ineligible to practice or offer to
2 practice engineering in this state using one of the following terms:

3 (1) *Professional engineer-retired.* – A registrant may apply for retired status upon
4 certification that he or she is no longer practicing or offering to practice engineering in this state
5 for remuneration.

6 (2) *Professional engineer-inactive.* – A registrant may request inactive status upon
7 affirmation that he or she is no longer practicing or offering to practice engineering in this state.

8 (3) *Professional engineer-lapsed.* – A registrant's license is lapsed when the registrant
9 does not respond to renewal notices or pay the required fees.

10 (4) *Professional engineer-invalidated.* – A registrant's license is invalidated when he or
11 she is unable to provide sufficient proof that any condition of renewal set forth in this article or by
12 board rule has been met.

§30A-5-14. Application and registration fee.

1 Every person seeking to become registered as a professional engineer or seeking to
2 become certified as an engineer intern shall file an application on forms provided by the board.
3 The application shall be made under oath and shall include:

- 4 (a) The level of education of the applicant;
5 (b) A summary of the applicant's technical experience; and
6 (c) The names and complete mailing addresses of any references.

7 Applicants may not use the names of board members as references.

8 In lieu of information required on the board's application forms, the board may accept the
9 verified information contained in a valid council record issued by the national council of examiners
10 for engineering and surveying for professional engineer applicants.

11 The board shall set fees for all applicants for registration and certification by promulgating
12 legislative rules under the provisions of article three, chapter twenty-nine-a of this code.

13 Fees of unsuccessful applicants and the fees of applicants who have been refused
14 registration or certification for any purpose shall be retained by the board to cover administrative
15 costs.

§30A-5-15. Examinations.

1 (a) The board has the power to establish, by legislative rule, the requirements for
2 examination for registration as a professional engineer and certification as an engineer intern
3 including, but not limited to, the following criteria: subject matter, prerequisites for testing, passing
4 score, examination sites and schedules, entities authorized to administer examinations,
5 prerequisites for testing and form of testing, including examination by electronic or other means.

6 (b) The board's rules for examination shall include the following minimum requirements:

7 (1) An examination to qualify to be an engineer intern, to test the applicant's knowledge
8 and understanding of the fundamentals of engineering; and

9 (2) An examination to qualify as a professional engineer, to test the applicant's knowledge
10 and understanding of the principles and practice of engineering.

11 (c) If the board determines that the safe and ethical practice of engineering in this state
12 requires examination of matters specific to the law and practice in this state, the board may also
13 establish criteria, by legislative rule, for an examination of the applicant's knowledge and
14 understanding of this state's statutes, rules, professional ethics and design requirements.

15 (d) A candidate for registration as a professional engineer who fails the examination of the
16 principles and practice of engineering may retake the examination one time upon payment of the
17 fee established by the board. In the event of a second failure, the candidate may not repeat the
18 examination unless the examinee demonstrates to the board that he or she has pursued
19 additional instruction or training to correct the candidate's deficit areas of knowledge.

20 (e) In the event that examination requirements, test administration procedures, scoring or
21 testing methods are modified by a board-approved testing entity providing standard tests for use
22 by the board, the board has the authority to promulgate emergency rules to adopt and reflect

23 those changes.

§30A-5-16. Certificates and seals.

1 (a) The board shall issue a certificate of registration to any applicant who, in the opinion
2 of the board, has met the requirements of this article. The certificate of registration shall carry the
3 designation "professional engineer". It shall give the full name of the registrant with their
4 registration number and shall be signed by the chairman and the secretary under the seal of the
5 board. The certificate of registration grants the recipient authority to practice in this state.

6 (b) An unexpired and unrevoked certificate is prima facie evidence that the person named
7 on it is entitled to all rights, privileges and responsibilities of a professional engineer.

8 (c) Every registrant shall obtain a seal for use in identifying his or her official professional
9 work. The design of the seal shall be determined by the board and shall bear the registrant's
10 name, registrant's registration number, the legend "registered professional engineer, state of
11 West Virginia" and such other words or figures as the board may prescribe. The seal may be a
12 rubber stamp. Whenever the seal is applied, the registrant's written signature shall be adjacent to
13 or across the seal. No further words or wording are required. A facsimile signature is not
14 acceptable. Whenever presented to a client or any public or governmental agency, the seal,
15 signature and date shall be placed on all specifications, reports, drawings, plans, design
16 information and calculations in accordance with rules promulgated by the board. The seal and
17 signature shall be used by registrants only when the work being stamped was under the
18 registrant's complete direction and control.

19 In the case of a registrant of another state using a temporary permit issued by this state,
20 the registrant shall use the state of permanent registration seal and shall affix his or her signature
21 and temporary permit number to all work. In the case of a registrant checking the work of an out-
22 of-state registrant, the state registrant shall completely check and have complete dominion and
23 control of the design. The complete dominion and control includes possession of the sealed and
24 signed reproducible construction drawings with complete signed and sealed design calculations

25 indicating all changes in design.

26 (d) The board shall issue to any applicant who, in the opinion of the board, has met the
27 requirements of this article, an enrollment card as engineer intern, which indicates that his or her
28 name has been recorded in the board office. The engineer intern enrollment card does not
29 authorize the holder to practice as a professional engineer. It is unlawful for a registrant to affix or
30 to permit his or her seal and signature to be affixed to any document after the expiration of his or
31 her certificate or for the purpose of aiding or abetting any other person to evade or attempt to
32 evade any provisions of this article.

§30A-5-17. Certificates of authorization required; naming of engineering firms.

1 (a) No person or firm is authorized to practice or offer to practice engineering in this state
2 until the person or firm has been issued a certificate of authorization by the board.

3 (b) A person or firm desiring a certificate of authorization must file all the required
4 information with the board on an application form specified by the board. The required information
5 shall include the sworn statement of the engineer in responsible charge who is a professional
6 engineer registered in this state. The board shall issue a certificate of authorization to an applicant
7 who has met all the requirements and paid the fees set forth in board rules.

8 (c) No person or firm is relieved of responsibility for the conduct or acts of its agents,
9 employees, officers or partners due to compliance with the provisions of this article. No individual
10 practicing engineering under the provisions of this article is relieved of responsibility for
11 engineering services performed due to his or her employment or other relationship with a person
12 or firm holding a certificate of authorization.

13 (d) An engineer who renders occasional, part-time or contract engineering services to or
14 for a firm may not be designated as being in responsible charge for the professional activities of
15 the firm unless that engineer is an owner or principal of the firm.

16 (e) The Secretary of State shall not issue a certificate of authority or business registration
17 or license to an applicant whose business includes, among the objectives for which it is

18 established, the words engineer, engineering or any modification or derivation thereof unless the
19 board of registration for this profession has issued to the applicant a certificate of authorization or
20 a letter indicating eligibility to receive the certificate. The certificate or letter from the board shall
21 be filed with the application filed with the Secretary of State to do business in West Virginia.

22 (f) The Secretary of State shall decline to register a trade name or service mark which
23 includes the words engineer, engineering or modifications or derivatives thereof in its business
24 name or logotype except those businesses holding a certificate of authorization issued under the
25 provisions of this article.

26 (g) The certificate of authorization may be renewed or reinstated in accordance with board
27 rule and upon payment of the required fees.

28 (h) Every holder of a certificate of authorization has a duty to notify the board promptly of
29 any change in information previously submitted to the board in an application for a certificate of
30 authorization.

§30A-5-16-. Renewals and reinstatement.

1 (a) Certificates of registration and certificates of authorization expire on the last day of
2 December of the year indicated on the certificate, and the holder of any certificate that is not timely
3 renewed is ineligible to practice or offer to practice engineering in this state until the certificate
4 has been reinstated in accordance with rules promulgated by the board.

5 (b) Certificates may be renewed only in accordance with board rule, which may include
6 payment of a late fee for renewals not postmarked by December 31 of the year in which renewal
7 is required. The board shall notify every person or firm holding an active certificate under this
8 article of the certificate renewal requirements at least one month prior to the renewal date. The
9 notice shall be made by mail or electronic means using the contact information provided to the
10 board.

11 (c) A certificate that was not timely renewed or for other reason was given a nonpracticing
12 status may be reinstated under rules promulgated by the board and may require reexamination

13 and payment of fees set forth in board rules.

14 (d) Effective July 1, 2015, the board may renew certificates on a biennial basis.

15 (e) The board shall promulgate emergency rules pursuant to section fifteen, article three,
16 chapter twenty-nine-a of this code to implement the provisions of this section.

§30A-5-19. Reissuance of certificates.

1 A new certificate of registration or certificate of authorization to replace any certificate lost,
2 destroyed or mutilated may be issued subject to the rules of the board. A charge established by
3 rule shall be made for each new certificate.

§30A-5-20. Public works.

1 Government agencies, authorities, officials and employees may not engage in the practice
2 of engineering involving either public or private property unless the provisions of this article are
3 met.

**§30A-5-21. Disciplinary action--Revocation, suspension, refusal to issue, restore or renew,
probation, civil penalty, reprimand.**

1 (a) The board may suspend or revoke or refuse to issue, restore or renew a certificate of
2 registration of, or place on probation, impose a civil penalty or reprimand any professional
3 engineer who has:

4 (1) Perpetrated any fraud or deceit in obtaining or attempting to obtain or renew a
5 certificate of registration or certificate of authorization;

6 (2) Been negligent, incompetent or committed an act of misconduct in the practice of
7 engineering;

8 (3) Been convicted of or has entered a plea of nolo contendere to any crime under the
9 laws of the United States or any state or territory thereof, which is a felony whether related to
10 practice or not; and conviction of or entry of a plea of nolo contendere to any crime, whether a
11 felony, misdemeanor or otherwise, an essential element of which is dishonesty, or which is directly
12 related to the practice of engineering;

13 (4) Failed to comply with any of the provisions of this article or any of the rules promulgated
14 under it;

15 (5) Been disciplined by another state, territory, the District of Columbia, foreign country,
16 the United States government or any other governmental agency, if at least one of the grounds
17 for discipline is the same or substantially equivalent to those grounds for discipline contained in
18 this article;

19 (6) Failed within thirty days to provide information requested by the board as a result of a
20 formal or informal complaint to the board which would indicate a violation of this article;

21 (7) Knowingly made false statements or signed false statements, certificates or affidavits
22 to induce payment;

23 (8) Aided or assisted another person in violating any provision of this article or the rules
24 promulgated;

25 (9) Violated any terms of probation imposed by the board or using a seal or practicing
26 engineering while the professional engineer's license is suspended, revoked, nonrenewed or
27 inactive;

28 (10) Signed or affixed the professional engineer's seal or permitted the professional
29 engineer's seal or signature to be affixed to any specifications, reports, drawings, plans, design
30 information, construction documents or calculations or revisions which have not been prepared
31 or completely checked by the professional engineer or under the professional engineer's direct
32 supervision or control;

33 (11) Engaged in dishonorable, unethical or unprofessional conduct of a character likely to
34 deceive, defraud or harm the public;

35 (12) Provided false testimony or information to the board; and

36 (13) Been habitually intoxicated or addicted to or by the use of drugs or alcohol.

37 (b) In addition to any other penalty provided in this article, the board may assess civil
38 penalties against any person who violates any provision of this article or any rule promulgated by

39 the board for each offense in an amount determined by the board.

40 (c) The board shall prepare and shall adopt “rules of professional responsibility for
41 professional engineers”. The board may revise and amend these “rules of professional
42 responsibility for professional engineers” from time to time and shall notify each registrant in
43 writing of any revisions or amendments.

44 (d) The board may:

45 (1) Revoke a certificate of authorization;

46 (2) Suspend a certificate of authorization of any firm for a period of time not exceeding two
47 years where one or more of its officers or directors of the firm have been found guilty of any
48 conduct which would authorize a revocation or suspension of his or her certificate of registration
49 under the provisions of this article;

50 (3) Place the person or firm on probation for a period of time and make the person or firm
51 subject to conditions as the board may specify;

52 (4) Assess a civil penalty and related costs for each count or separate offense in an
53 amount set by the board.

§30A-5-22. Disciplinary action -- Procedures.

1 (a) Any person may file a complaint with the board that a person or firm subject to the
2 provisions of this article has committed a fraud, been deceitful, been grossly negligent,
3 incompetent, guilty of misconduct or has violated the “rules of professional responsibility for
4 professional engineers”.

5 (b) All complaints, unless dismissed by the board as unfounded, trivial or unless settled
6 informally, shall be heard by the board within six months after the date each complaint was
7 received by the board.

8 (c) The board shall fix the time and place for hearings on complaints and a copy of all
9 charges, together with a notice of the time and place of hearing on the complaint the person or
10 firm complained against or mailed to the last known address of the person or firm at least thirty

11 days prior to the hearing. At the hearing, the person or firm shall have the right to appear in person
12 or by counsel, or both, to cross-examine witnesses and to produce evidence and witnesses in his
13 or her, her or its defense. If the accused person or firm fails or refuses to appear, the board may
14 proceed to hear the complaint and determine the validity of the charges.

15 (d) If after the hearing a majority of the board votes in favor of sustaining the charges, the
16 board shall reprimand or assess a civil penalty against the person or firm complained against.
17 The board may also suspend, revoke, refuse to issue or refuse to restore or renew an individual's
18 certificate of registration or a firm's certificate of authorization. In addition, the board may place a
19 registrant on probation.

20 (e) Any person or firm aggrieved by any action of the board in assessing a civil penalty,
21 denying, suspending, refusing to issue, refusing to restore or renew or revoking a certificate of
22 registration or a certificate of authorization, may appeal the board's decision to the circuit court.

23 (f) Any civil penalty assessed as a result of a hearing shall be paid within fifty days after
24 the decision becomes final.

25 (g) The board may, upon petition of a person or firm, reissue a certificate of registration or
26 authorization, provided that a majority of the members of the board votes in favor of such
27 issuance.

§30A-5-23. Criminal offenses.

1 Any person who practices or offers to practice engineering in this state without being
2 registered in accordance with the provisions of this article, or any person, firm, partnership,
3 organization, association, corporation or other entity using or employing the words engineer,
4 engineering or any modification or derivative thereof in its name or form of business activity except
5 as authorized in this article, or any person presenting or attempting to use the certificate of
6 registration or the seal of another, or any person who gives any false or forged evidence of any
7 kind to the board or to any member thereof in obtaining or attempting to obtain a certificate of
8 registration, or any person who falsely impersonates any other registrant of like or different name,

9 or any person who attempts to use an expired, suspended or revoked or nonexistent certificate
10 of registration, or who practices or offers to practice when not qualified, or any person who falsely
11 claims that he or she is registered or authorized under this article, or any person who violates any
12 of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be
13 fined not more than \$500, or imprisoned in the county jail not more than six months, or both fined
14 and imprisoned.

15 Any person who commits a second or subsequent offense under this section is guilty of a
16 felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor
17 more than twenty years.

18 The Attorney General may act as legal adviser to the board and render any legal
19 assistance as may be necessary in carrying out the provisions of this article. The board may
20 employ counsel and necessary assistance to aid in the enforcement of this article and the
21 compensation and expenses of the council shall be paid from the funds of the board.

§30A-5-24. Exemptions.

1 This article may not be construed to prevent the practice by:

2 (a) Other professions. -- The practice of any other legally recognized profession;

3 (b) Temporary permits. -- The practice or offer to practice engineering by a person not a
4 resident of or having no established place of business in this state, provided the person is legally
5 qualified by registration to practice engineering, as defined in this article, in their own state or
6 country. The person shall make application to the board in writing and after payment of a fee
7 established by the board may be granted a written permit for a definite period of time not to exceed
8 one year to do a specific job: *Provided*, That no right to practice engineering shall accrue to the
9 applicant with respect to any other works not set forth in the permit; and

10 (c) Employees and subordinates. -- The work of an employee or a subordinate of a person
11 holding a certificate of registration under this article, or an employee of a person practicing
12 lawfully: *Provided*, That the work does not include final engineering designs or decisions and is

13 done under the direct supervision of and verified by a person holding a certificate of registration
14 under this article or a person practicing lawfully. Any regular full-time employee of a person,
15 partnership, corporation or other business entity who is engaged solely and exclusively in
16 performing services for such person, partnership, corporation or other business entity, who is not
17 required by any provision of the law other than this article to be a registered professional engineer
18 and whose services are performed on, or in connection with, property owned or leased by such
19 person, partnership, corporation or other business entity, or in which such person, partnership,
20 corporation or other business entity has an interest, estate or possessory right, and are not offered
21 or made available to the public. This exemption includes the use of job title and personal
22 classification by such person, but no name, title or words may be used which tend to convey the
23 impression that an unlicensed person is offering professional engineering services to the public.

ARTICLE 6. LAND SURVEYORS.

§30A-6-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice surveying in this state without
2 a license issued under the provisions of this article, or advertise or use any title or description
3 tending to convey the impression that they are a surveyor, unless such person has been licensed
4 under the provisions of this article.

5 (b) It is unlawful for any firm to practice or offer to practice surveying in this state without
6 a certificate of authorization issued under the provisions of this article, or advertise or use any title
7 or description tending to convey the impression that it is a surveying firm, unless such firm has
8 been issued a certificate of authorization under the provisions of this article.

§30A-6-2. Applicable law.

1 The practice of surveying and the West Virginia Board of Professional Surveyors are
2 subject to the provisions of article one of this chapter, the provisions of this article and the board's
3 rules.

§30A-6-3. Definitions.

1 As used in this article, the following words and terms have the following meanings:

2 (a) "Applicant" means a person making application for a license or a firm making
3 application for a certificate of authorization, under the provisions of this article.

4 (b) "Board" means the West Virginia Board of Professional Surveyors.

5 (c) "Boundary survey" means a survey, in which property lines and corners of a parcel of
6 land have been established by a survey and a description of survey has been written and a plat
7 has been prepared for the property.

8 (d) "Cadastral survey" means a survey representing the ownership, relative positions and
9 dimensions of land, objects and estates.

10 (e) "Certificate holder" means a firm holding a certificate of authorization issued by the
11 board.

12 (f) "Certificate of authorization" means a certificate issued under the provisions of this
13 article to a firm providing surveying services.

14 (g) "Construction survey" means the laying of stakes for a construction project.

15 (h) "Direct supervision" means the responsible licensee is in direct control of all field and
16 office surveying operations. Direct control does not necessarily require the actual physical
17 presence of the responsible licensee at the site of the survey, nor prohibit the responsible licensee
18 from maintaining simultaneous direct supervision of more than one survey.

19 (i) "Endorsee" means a person holding an endorsement to practice in a specialized field
20 of surveying issued by the board under the provisions of this article.

21 (j) "Endorsement" means an authorization, in addition to a professional surveyor license,
22 to practice in a specialized field of surveying issued by the board.

23 (k) "Firm" means any nongovernmental business entity, including an individual,
24 association, partnership or corporation, providing surveying services.

25 (l) "Geodetic control survey" means a survey involving the precise measurement of points
26 on the earth's surface which form the framework or control for a large map or project.

27 (m) "Geographic information system (GIS)" means a system of hardware, software and
28 procedures designed to support the capture and management of spatially referenced information.

29 (n) "Hydrographic survey" means a survey that measures and determines the topographic
30 features of water bodies and the adjacent land areas, including the width, depth and course of
31 water bodies and other relative features.

32 (o) "Inactive" means the status granted by the board to a licensee or endorsee.

33 (p) "Land information system (LIS)" means a system of hardware, software and
34 procedures designed to support the capture and management of spatially referenced information.

35 (q) "License" means a surveying license issued under the provisions of this article.

36 (r) "Licensee" means a person holding a surveying license issued under the provisions of
37 this article.

38 (s) "Metes and bounds" means a description where the land or the associated effects on
39 the land have been measured by starting at a known point and describing, in sequence, the lines
40 by direction and distance forming the boundaries of the land or a defined area relative to the
41 physical land features, associated effects or structural improvements on the land.

42 (t) "Monument" means a permanent marker, either boundary or nonboundary, used to
43 establish corners or mark boundary lines of a parcel of land or reference the geospatial
44 relationship of other objects.

45 (u) "Mortgage/loan inspection survey" means a survey in which property lines and corners
46 have not been established.

47 (v) "Oil or gas well survey" means a survey and plat of a proposed oil or gas well, including
48 the location of the well, the surface or mineral tract on which the well is located, the physical
49 features surrounding the well, all creeks or streams near the well and any other identifying
50 characteristics of the land to specify the location of the well. An oil or gas well survey must be
51 performed in accordance with other provisions of this code affecting oil and gas well surveys.

52 (w) "Partition survey" means a survey where the boundary lines of a newly created parcel

53 of land are established and the new corners are monumented.

54 (x) "Photogrammetry" means the use of aerial photography, other imagery and surveying
55 principles to prepare scaled maps or other survey products reflecting the contours, features and
56 fixed works of the earth's surface.

57 (y) "Practice of surveying" means providing professional surveying services, including
58 consulting, investigating, expert testimony, evaluating, planning, mapping and surveying.

59 (z) "Responsible charge" means direct control of surveying work under the direct
60 supervision of a licensee or person authorized in another state or country to engage in the practice
61 of surveying.

62 (aa) "Retracement survey" means a survey where the boundary lines and corners of a
63 parcel of land are reestablished from an existing legal or deed description.

64 (bb) "Strip" means a description of an area by reference to an alignment, usually a right-
65 of-way or an easement, stating the number of feet on each side of the alignment, the relative
66 position of the alignment, a reference to the measurements and monuments where the alignment
67 crosses a parcel of land and the source of title for each parcel of land the alignment crosses.

68 (cc) "Subdivision" means the division of a lot, tract or parcel of land into two or more lots,
69 tracts or parcels of land.

70 (dd) "Surface mine survey" means a survey of the surface mine permit area, including the
71 location of the surface mine, the surface or mineral tracts on which the surface mine is located,
72 the physical features surrounding the surface mine, all creeks or streams near the surface mine
73 and any other identifying characteristics of the land to specify the location of the surface mine
74 permit area. A surface mine survey must be performed in accordance with other provisions of this
75 code affecting surface mine surveys.

76 (ee) "Survey" or "land survey" means to measure a parcel of land and ascertain its
77 boundaries, corners and contents or make any other authoritative measurements.

78 (ff) "Surveying" or "land surveying" means providing, or offering to provide, professional

79 services using such sciences as mathematics, geodesy, and photogrammetry, and involving both:

80 (1) The making of geometric measurements and gathering related information pertaining
81 to the physical or legal features of the earth, improvements on the earth, the space above, on or
82 below the earth; and

83 (2) Providing, utilizing or developing the same into survey products such as graphics, data,
84 maps, plans, reports, descriptions or projects. Professional services include acts of consultation,
85 investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling
86 and interpreting gathered measurements and information related to any one or more of the
87 following:

88 (A) Determining by measurement the configuration or contour of the earth's surface or the
89 position of fixed objects thereon.

90 (B) Determining by performing geodetic surveys the size and shape of the earth or the
91 position of any point on the earth.

92 (C) Determining the position for any survey control monument or reference point.

93 (D) Creating, preparing or modifying electronic, computerized or other data relative to the
94 performance of the activities in the above-described paragraphs (A) through (C), inclusive, of this
95 subdivision.

96 (E) Locating, relocating, establishing, reestablishing or retracing property lines or
97 boundaries of any tract of land, road, right-of-way or easement.

98 (F) Making any survey for the division, subdivision, or consolidation of any tract or tracts
99 of land.

100 (G) Locating or laying out alignments, positions or elevations for the construction of fixed
101 works.

102 (H) Determining, by the use of principles of surveying, the position for any boundary or
103 nonboundary survey monument or reference point, or establishing or replacing any such
104 monument or reference point.

105 (l) Creating, preparing or modifying electronic or computerized or other data relative to the
106 performance of the activities in the above-described paragraphs (E) through (H), inclusive, of this
107 subdivision.

108 (3) Any person who engages in surveying, who by verbal claim, sign, advertisement,
109 letterhead, card or in any other way represents themselves to be a professional surveyor, or who
110 implies through the use of some other title that they are able to perform, or who does perform,
111 any surveying service or work or any other service designated by the practitioner which is
112 recognized as surveying, is practicing, or offering to practice, surveying within the meaning and
113 intent of this article.

114 (gg) "Surveyor", "professional surveyor" or "land surveyor" means a person licensed to
115 practice surveying under the provisions of this article.

116 (hh) "Surveyor, retired", "professional surveyor, retired" or "land surveyor, retired" means
117 a licensed surveyor no longer practicing surveying, who has chosen to retire and has been
118 granted the honorific title of "Professional Surveyor, Retired".

119 (ii) "Surveyor-in-charge" means a licensee designated by a firm to oversee the surveying
120 activities and practices of the firm.

121 (jj) "Surveyor intern" means a person who has passed an examination covering the
122 fundamentals of land surveying.

123 (kk) "Underground survey" means a survey that includes the measurement of underground
124 mine workings and surface features relevant to the underground mine, the placing of survey points
125 (spads) for mining direction, the performance of horizontal and vertical control surveys to
126 determine the contours of a mine, the horizontal and vertical location of mine features, and the
127 preparation of maps, reports and documents, including mine progress maps and mine ventilation
128 maps. An underground mine survey must be performed in accordance with other provisions of
129 this code affecting underground mine surveys.

§30A-6-4. Board of Professional Surveyors.

1 (a) The “West Virginia Board of Professional Surveyors” is continued. Any member of the
2 board, except the endorsed underground surveyor member, in office on July 1, 2010, may
3 continue to serve until his or her successor has been appointed and qualified.

4 (b) Prior to July 1, 2010, the Governor, by and with the advice and consent of the Senate,
5 shall appoint one licensed professional surveyor with at least ten years of experience in land
6 surveying to replace the endorsed underground surveyor.

7 (c) Commencing July 1, 2010, the board shall consist of the following five members with
8 staggered terms:

9 (1) Three licensed professional surveyors with at least ten years of experience in land
10 surveying;

11 (2) One person who has a license in another field of practice other than surveying and
12 also who has a surveyor license by examination and has practiced surveying for at least ten years;
13 and

14 (3) One citizen member who is not regulated under the provisions of this article and does
15 not perform any services related to the practice of surveying under the provisions of this article.

16 (d) Each licensed member of the board, at the time of his or her appointment, must have
17 held a license in this state for a period of not less than three years immediately preceding the
18 appointment.

19 (e) Each member must be appointed by the Governor, by and with the advice and consent
20 of the Senate, and must be a resident of this state during the appointment term.

21 (f) The term of each board member is four years.

22 (g) No member may serve more than two consecutive full terms and any member having
23 served two full terms may not be appointed for one year after completion of his or her second full
24 term. A member shall continue to serve until his or her successor has been appointed and
25 qualified.

26 (h) The Governor may remove any member from the board for neglect of duty,

27 incompetency or official misconduct.

28 (i) A licensed member of the board immediately and automatically forfeits membership to
29 the board if his or her license to practice is suspended or revoked.

30 (j) A member of the board immediately and automatically forfeits membership to the board
31 if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident
32 of this state.

33 (k) The board shall designate one of its members as chairperson and one member as
34 secretary-treasurer.

35 (l) Each member of the board is entitled to receive compensation and expense
36 reimbursement in accordance with section eleven, article one of this chapter.

37 (m) A majority of the members of the board shall constitute a quorum.

38 (n) The board shall hold at least one annual meeting. Other meetings shall be held at the
39 call of the chairperson, or upon the written request of two members, at such time and place as
40 designated in the call or request.

§30A-6-5. Powers and duties of the board.

1 The board has all the powers and duties set forth in article one of this chapter and also
2 the following powers and duties:

3 (1) Hold meetings, conduct hearings and administer examinations and reexaminations;

4 (2) Set the requirements for a license, endorsement, surveyor-in-charge and certificate of
5 authorization;

6 (3) Establish qualifications for licensure and procedures for submitting, approving and
7 disapproving applications for a license, endorsement and certificate of authorization;

8 (4) Examine the qualifications of any applicant for a license and endorsement;

9 (5) Prepare, conduct, administer and grade examinations and reexaminations required
10 under the provisions of this article;

11 (6) Determine the passing grade for the examinations and reexaminations required under

12 the provisions of this article;

13 (7) Administer, or contract with third parties to administer, the examinations and
14 reexaminations required under the provisions of this article;

15 (8) Maintain records of the examinations and reexaminations the board or a third party
16 administers, including the number of persons taking the examination or reexamination and the
17 pass and fail rate;

18 (9) Maintain an accurate registry of names and addresses of all licensees and endorsees;

19 (10) Maintain an accurate registry of names and addresses of firms holding a certificate
20 of authorization;

21 (11) Establish the standards for surveys;

22 (12) Define the fees charged under the provisions of this article;

23 (13) Issue, renew, deny, suspend, revoke or reinstate licenses and endorsements, and
24 discipline such persons;

25 (14) Issue, renew, deny, suspend, revoke or reinstate certificates of authorization and
26 discipline such firms;

27 (15) Establish and implement the continuing education requirements for licensees and
28 endorsees;

29 (16) Sue and be sued in its official name as an agency of this state;

30 (7) Hire, set the job requirements for, fix the compensation of and discharge investigators
31 and the employees necessary to enforce the provisions of this article;

32 (8) Investigate alleged violations of the provisions of this article, the rules promulgated
33 hereunder, and orders and final decisions of the board;

34 (19) Conduct hearings upon charges calling for discipline of a licensee, endorsee or
35 certificate holder, or revocation or suspension of a license, endorsement or certificate of
36 authorization;

37 (20) Set disciplinary action and issue orders;

38 (21) Propose rules in accordance with the provisions of article three, chapter twenty-nine-
39 a of this code to implement the provisions of this article; and

40 (22) Take all other actions necessary and proper to effectuate the purposes of this article.

§30A-6-6. Rule-making authority.

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

4 (1) Setting the standards and requirements for licensure, endorsement, surveyor-in-
5 charge and certificate of authorization;

6 (2) Setting the procedure for examinations and reexaminations;

7 (3) Establishing requirements for third parties to administer examinations and
8 reexaminations;

9 (4) Establishing procedures for the issuance and renewal of a license, endorsement and
10 certificate of authorization;

11 (5) Setting a schedule of fees;

12 (6) Establishing and implementing requirements for continuing education for licensees and
13 endorsees;

14 (7) Evaluating the curriculum, experience and the instructional hours required for a license
15 and endorsement;

16 (8) Denying, suspending, revoking, reinstating or limiting the practice of a licensee,
17 endorsee or certificate holder;

18 (9) Establishing electronic signature requirements;

19 (10) Establishing minimum standards for surveys;

20 (11) Establishing a process to record plats;

21 (12) Establishing seal and document certification standards; and

22 (13) Proposing any other rules or taking other action necessary to effectuate the provisions

23 of this article.

24 (b) All rules in effect on July 1, 2010, shall remain in effect until they are amended,
25 modified, repealed or replaced.

§30A-6-7. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative fines, received by the board shall be
2 deposited in a separate special revenue fund in the State Treasury designated the "Board of
3 Professional Surveyors Fund" which fund is continued. The fund shall be used by the board for
4 the administration of this article. Except as may be provided in section eleven, article one of this
5 chapter, the board shall retain the amounts in the special revenue fund from year to year. No
6 compensation or expense incurred under this article is a charge against the General Revenue
7 Fund.

8 (b) Any amounts received as fines imposed pursuant to this article shall be deposited into
9 the General Revenue Fund of the State Treasury.

§30A-6-8. Education, experience and examination requirements for a surveying license.

1 (a) Before a person may apply for a surveying license, the person must have completed
2 one of the following educational, experience and examination requirements:

3 (1) Has a four-year degree or a bachelor degree in surveying approved by the board,
4 which degree must include a minimum of thirty hours of surveying or surveying-related courses,
5 has passed an examination in the fundamentals of land surveying, has two years or more of
6 experience in surveying in responsible charge, has passed an examination in the principles and
7 practice of land surveying and has passed the West Virginia examination;

8 (2) Has a four-year degree or a bachelor degree, has completed a minimum of thirty hours
9 of surveying or surveying-related courses, has passed an examination in the fundamentals of land
10 surveying, has four years or more of experience in surveying, including two years of experience
11 in responsible charge under the direct supervision of a licensee or a person authorized in another
12 jurisdiction to engage in the practice of surveying, has passed an examination in the principles

13 and practice of land surveying and has passed the West Virginia examination; or

14 (3) Has a two-year degree or an associate degree in surveying or a related field approved
15 by the board, which degree must include a minimum of thirty hours of surveying or surveying-
16 related courses, has passed an examination in the fundamentals of land surveying, has four years
17 or more of experience in surveying, including two years of experience in responsible charge under
18 the direct supervision of a licensee or a person authorized in another state or country to engage
19 in the practice of surveying, has passed an examination in the principles and practice of land
20 surveying and has passed the West Virginia examination.

21 (b) A person graduating from a two-year or four-year approved surveying degree program
22 with a grade point average of 3.0 or higher is permitted to take the examination in the
23 fundamentals of land surveying during his or her final semester.

24 (c) A person must pass the examination in the fundamentals of land surveying and
25 complete the work experience before he or she is allowed to take the examination in the principles
26 and practice of land surveying and the West Virginia examination.

27 (d) The examination in the fundamentals of land surveying, the examination in the
28 principles and practice of land surveying and the West Virginia examination shall each be held at
29 least once each year at the time and place determined by the board. A person who fails to pass
30 all or any part of an examination may apply for reexamination, as prescribed by the board, and
31 shall furnish additional information and fees as required by the board.

32 (e) A person who began the education, experience or examination requirements and were
33 approved by the board prior to December 31, 2004, have until December 31, 2012, to complete
34 such requirements for licensure.

§30A-6-9. Surveying license requirements.

1 (a) The board shall issue a surveying license to an applicant who meets the following
2 requirements:

3 (1) Is of good moral character;

- 4 (2) Is at least eighteen years of age;
- 5 (3) Is a citizen of the United States or is eligible for employment in the United States;
- 6 (4) Holds a high school diploma or its equivalent;
- 7 (5) Has not been convicted of a crime involving moral turpitude; and
- 8 (6) Has completed all of one of the education, experience and examination requirements
- 9 set out in section eight of this article.

10 (b) An application for a surveying license shall be made on forms provided by the board

11 and include the following:

- 12 (1) Name and address of the applicant;
- 13 (2) Applicant's education and experience;
- 14 (3) Location and date of passage of all the examinations;
- 15 (4) Names of five persons for reference, at least three of whom shall be licensees or
- 16 persons authorized in another jurisdiction to engage in the practice of surveying, and who have
- 17 knowledge of the applicant's work; and
- 18 (5) Any other information the board prescribes.

19 (c) An applicant shall pay all the applicable fees.

20 (d) A license to practice surveying issued by the board prior to July 1, 2010, shall for all

21 purposes be considered a license issued under this article: *Provided*, That a person holding a

22 license to practice surveying issued by the board prior to July 1, 2010, must renew the license

23 pursuant to the provisions of this article.

§30A-6-10. Scope of Practice.

1 (a) A licensee may measure a parcel of land and ascertain its boundaries, corners and

2 contents or make any other authoritative measurements. The practice of surveying can be any of

3 the following, but not limited to:

- 4 (1) The performance of a boundary, cadastral, construction, geodetic control,
- 5 hydrographic, land, mortgage/loan inspection, oil or gas well, partition, photogrammetry,

6 retracement, subdivision or surface mine survey; or

7 (2) The location, relocation, establishment, reestablishment, laying out or retracement of
8 any property line or boundary of any parcel of land or of any road or utility right-of-way, easement,
9 strip or alignment or elevation of any fixed works by a licensed surveyor.

10 (b) Activities that must be performed under the responsible charge of a professional
11 surveyor, unless specifically exempted in subsection (c) of this section, include, but are not limited
12 to, the following:

13 (1) The creation of maps and georeferenced databases representing authoritative
14 locations for boundaries, the location of fixed works, or topography;

15 (2) Maps and georeferenced databases prepared by any person, firm, or government
16 agency where that data is provided to the public as a survey product;

17 (3) Original data acquisition, or the resolution of conflicts between multiple data sources,
18 when used for the authoritative location of features within the following data themes: Geodetic
19 control, orthoimagery, elevation and hydrographic, fixed works, private and public boundaries,
20 and cadastral information;

21 (4) Certification of positional accuracy of maps or measured survey data;

22 (5) Adjustment or authoritative interpretation of raw survey data;

23 (6) Geographic Information System (GIS) - based parcel or cadastral mapping used for
24 authoritative boundary definition purposes wherein land title or development rights for individual
25 parcels are, or may be, affected;

26 (7) Authoritative interpretation of maps, deeds, or other land title documents to resolve
27 conflicting data elements;

28 (8) Acquisition of field data required to authoritatively position fixed works or cadastral data
29 relative to geodetic control; and

30 (9) Analysis, adjustment or transformation of cadastral data of the parcel layer(s) with
31 respect to the geodetic control layer within a GIS resulting in the affirmation of positional accuracy.

32 (c) The following items are not included as activities within the practice of surveying:

33 (1) The creation of general maps:

34 (A) Prepared by private firms or government agencies for use as guides to motorists,
35 boaters, aviators, or pedestrians;

36 (B) Prepared for publication in a gazetteer or atlas as an educational tool or reference
37 publication;

38 (C) Prepared for or by education institutions for use in the curriculum of any course of
39 study;

40 (D) Produced by any electronic or print media firm as an illustrative guide to the geographic
41 location of any event; or

42 (E) Prepared by laypersons for conversational or illustrative purposes. This includes
43 advertising material and users guides.

44 (2) The transcription of previously georeferenced data into a GIS or LIS by manual or
45 electronic means, and the maintenance thereof, provided the data are clearly not intended to
46 indicate the authoritative location of property boundaries, the precise definition of the shape or
47 contour of the earth, and/or the precise location of fixed works of humans.

48 (3) The transcription of public record data, without modification except for graphical
49 purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or
50 electronic means, and the maintenance of that cadastre, provided the data are clearly not
51 intended to authoritatively represent property boundaries. This includes tax maps and zoning
52 maps.

53 (4) The preparation of any document by any federal government agency that does not
54 define real property boundaries. This includes civilian and military versions of quadrangle
55 topographic maps, military maps, satellite imagery, and other such documents.

56 (5) The incorporation or use of documents or databases prepared by any federal agency
57 into a GIS/LIS, including but not limited to federal census and demographic data, quadrangle

58 topographic maps, and military maps.

59 (6) Inventory maps and databases created by any organization, in either hard-copy or
60 electronic form, of physical features, facilities, or infrastructure that are wholly contained within
61 properties to which they have rights or for which they have management responsibility. The
62 distribution of these maps and/or databases outside the organization must contain appropriate
63 metadata describing, at a minimum, the accuracy, method of compilation, data source(s) and
64 date(s), and disclaimers of use clearly indicating that the data are not intended to be used as a
65 survey product.

66 (7) Maps and databases depicting the distribution of natural resources or phenomena
67 prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists,
68 historians, or other persons qualified to document such data.

69 (8) Maps and georeferenced databases depicting physical features and events prepared
70 by any government agency where the access to that data is restricted by statute. This includes
71 georeferenced data generated by law enforcement agencies involving crime statistics and
72 criminal activities.

§30A-6-11. Exemptions from licensing.

1 (a) The following persons are exempt from licensure under the provisions of this article:

2 (1) Any employee of a person or firm, when such employee is engaged in the practice of
3 land surveying exclusively for the person or firm, by which employed, or, if a corporation, its
4 parents, affiliates or subsidiaries, and such person, firm, association or corporation does not hold
5 himself, herself or itself out to the public as being engaged in the business of land surveying.

6 (2) Any employee or officer of the United States, this state or any political subdivision
7 thereof, or their agents, when such employee is engaged in the practice of land surveying
8 exclusively for such governmental unit: *Provided*, That each county surveyor of lands first elected
9 or first appointed after January 1, 2013, pursuant to section 1, article IX of the West Virginia
10 Constitution, shall be a surveyor licensed pursuant to the provisions of this article and such

11 licensee shall be in good standing.

12 (b) The minimum standards for surveys, established by the board, apply notwithstanding
13 the exemptions provided by this section.

§30A-6-12. Surveyor intern requirements.

1 (a) To be recognized as a surveyor intern by the board, a person must meet the following
2 requirements:

3 (1) Is of good moral character;

4 (2) Is at least eighteen years of age;

5 (3) Is a citizen of the United States or is eligible for employment in the United States;

6 (4) Holds a high school diploma or its equivalent;

7 (5) Has not been convicted of a crime involving moral turpitude;

8 (6) Has completed one of the education requirements set out in section eight of this article;

9 and

10 (7) Has passed an examination in the fundamentals of land surveying.

11 (b) A surveyor intern must pass the principles and practice of land surveying examination
12 and the West Virginia examination within ten years of passing the fundamentals of land surveying
13 examination. If the examinations are not passed within ten years, then the surveyor intern must
14 retake the fundamentals of land surveying examination.

§30A-6-13. License from another state.

1 The board may issue a license to practice surveying in this state to an applicant of good
2 moral character who holds a valid license or other authorization to practice surveying from another
3 state if the applicant demonstrates that:

4 (1) He or she or she holds a license or other authorization to practice surveying in another
5 state which was granted after completion of educational, experience and examinations
6 requirements substantially equivalent to those required in this state;

7 (2) He or she is not currently being investigated by a disciplinary authority of another state,

8 does not have charges pending against his or her license or other authorization to practice
9 surveying and has never had a license or other authorization to practice surveying revoked;

10 (3) He or she has not previously failed an examination for licensure in this state;

11 (4) He or she has paid all the applicable fees; and

12 (5) Has completed such other action as required by the board.

§30A-6-14. License, endorsement and certificate of authorization renewal requirements.

1 (a) A licensee or endorsee wanting to continue in active practice shall, annually or
2 biennially, on or before July 1, renew his or her license or endorsement and pay a renewal fee.

3 (b) A certificate holder wanting to continue in active practice shall, annually or biennially,
4 on or before January 1, renew the certificate and pay a renewal fee.

5 (c) The board shall charge a fee for each a renewal and a late fee for any renewal not paid
6 by the due date.

7 (d) The board shall require as a condition of renewal that each licensee or endorsee
8 complete continuing education.

9 (e) The board may deny an application for renewal for any reason which would justify the
10 denial of an original application for a license, endorsement or certificate of authorization.

11 (f) The board may authorize the waiving of the renewal fee of a licensee or endorsee
12 during the period when he or she is on active duty with any branch of the armed services.

§30A-6-15. Inactive license requirements.

1 (a) A licensee who does not want to continue in active practice shall notify the board in
2 writing and be granted inactive status.

3 (b) A person granted inactive status shall pay an inactive fee and is exempt from the
4 continuing education requirements and cannot practice in this state.

5 (c) When an inactive licensee wants to return to active practice, he or she must complete
6 all the continuing education requirements and pay all the applicable fees as determined by the
7 board.

§30A-6-16. Delinquent and expired license requirements.

1 (a) If a license is not renewed when due, then the board shall automatically place the
2 licensee on delinquent status.

3 (b) The fee for a person on delinquent status shall increase at a rate, determined by the
4 board, for each month or fraction thereof that the renewal fee is not paid, up to a maximum of
5 thirty-six months.

6 (c) Within thirty-six months of being placed on delinquent status, if a licensee wants to
7 return to active practice, he or she must complete all the continuing education requirements and
8 pay all the applicable fees as determined by the board.

9 (d) After thirty-six months of being placed on delinquent status, a license is automatically
10 placed on expired status and cannot be renewed. A person whose license has expired must
11 reapply for a new license.

§30A-6-17. Retired license requirements.

1 (a) A licensee who does not want to continue practicing surveying and who has chosen to
2 retire shall notify the board in writing and may be granted retired status.

3 (b) A person granted retired status shall be given the honorific title of “Professional
4 Surveyor, Retired” and cannot practice in this state.

§30A-6-18. Requirements for when a person fails an examination.

1 (a) Any person failing any of the examinations for surveying is not permitted to work as a
2 licensed surveyor under the provisions of this article until the person has passed all the
3 examinations.

4 (b) A person failing the fundamentals of land surveying examination may still gain
5 experience as required in section eight of this article until he or she passes the examination.

6 (c) A person who has passed the fundamentals of land surveying examination, but failed
7 the principles and practice examination or West Virginia examination may only work as a surveyor
8 intern under the direct supervision of a licensee or a person authorized in another jurisdiction to

9 engage in the practice of surveying until he or she passes all of the examinations.

§30A-6-19. Display of license, endorsement and certificate of authorization.

1 (a) The board shall prescribe the form for a license, endorsement and certificate of
2 authorization and may issue a duplicate license, endorsement and certificate of authorization
3 upon payment of a fee.

4 (b) A licensee, endorsee and certificate holder shall conspicuously display his or her
5 license, endorsement or certificate of authorization at his or her principal place of practice.

§30A-6-20. Certificate of authorization requirements.

1 (a) Each firm practicing surveying in West Virginia shall have a certificate of authorization.

2 (b) The board shall issue a certificate of authorization to a firm that:

3 (1) Practices surveying in West Virginia;

4 (2) Provides proof that the firm has employed a surveyor-in-charge;

5 (3) Has paid all applicable fees; and

6 (4) Completes such other requirements as specified by the board.

§30A-6-21. Surveyor-in-charge requirements.

1 (a) A firm practicing surveying must operate all surveying activities under the supervision
2 and management of a surveyor-in-charge who shall be a licensee who is licensed in this state.

3 (b) The designated surveyor-in-charge is responsible for the surveying work in this state
4 provided by the firm.

5 (c) A licensee cannot be designated as a surveyor-in-charge for more than one firm without
6 approval of the board.

7 (d) A licensee who performs part-time or consulting surveying services for a firm cannot
8 be designated as a surveyor-in-charge for that firm unless the licensee is an officer, a majority
9 interest holder or owner of the firm.

10 (e) The responsibilities of a surveyor-in-charge include:

11 (1) Renewal of the certificate of authorization;

- 12 (2) Notification to the board of any change in the surveyor-in-charge;
- 13 (3) Supervising the firm's employees, including licensees, and other personnel providing
14 surveying services in this state; and
- 15 (4) Ensuring that the policies of the firm adhere to the provisions of this article.
- 16 (f) The board may authorize a licensee to supervise the work of an individual that is not
17 an employee of the licensee, nor is employed by the same firm as the licensee. The potential
18 supervisor must apply to the board for this authorization.

**§30A-6-22. Complaints; investigations; due process procedure; grounds for disciplinary
action.**

- 1 (a) The board may upon its own motion based on credible information, and shall upon the
2 written complaint of any person, cause an investigation to be made to determine whether grounds
3 exist for disciplinary action under this article.
- 4 (b) Upon initiation or receipt of the complaint, the board shall provide a copy of the
5 complaint to the licensee or certificate holder.
- 6 (c) After reviewing any information obtained through an investigation, the board shall
7 determine if probable cause exists that the licensee or certificate holder has violated this article.
- 8 (d) Upon a finding that probable cause exists that the licensee or certificate holder has
9 violated this article, the board may enter into a consent decree or hold a hearing for the
10 suspension or revocation of the license or certificate of authorization or the imposition of sanctions
11 against the licensee or certificate holder. Any hearing shall be held in accordance with the
12 provisions of this article.
- 13 (e) Any member of the board or the executive secretary of the board may issue subpoenas
14 and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of
15 allegations against any person regulated by the article.
- 16 (f) Any member of the board or its executive secretary may sign a consent decree or other
17 legal document on behalf of the board.

18 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
19 suspend, restrict or revoke the license or certificate of authorization of, or impose probationary
20 conditions upon or take disciplinary action against, any licensee or certificate holder for any of the
21 following reasons once a violation has been proven by a preponderance of the evidence:

22 (1) Obtaining a license or certificate of authorization by fraud, misrepresentation or
23 concealment of material facts;

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

25 (3) Being guilty of unprofessional conduct which placed the public at risk;

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

27 (5) Having had a license or other authorization to practice revoked or suspended, or other
28 disciplinary action taken by the proper authorities of another jurisdiction;

29 (6) Aiding or abetting unlicensed practice; or

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

32 (h) For the purposes of subsection (g) of this section, disciplinary action may include:

33 (1) Reprimand;

34 (2) Probation;

35 (3) Restrictions;

36 (4) Administrative fine, not to exceed \$1,000 per day per violation;

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

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

39 (7) Requiring the licensee or certificate holder to report to the board for periodic interviews
40 for a specified period of time.

41 (i) In addition to any other sanction imposed, the board may require a licensee or certificate
42 holder to pay the costs of the proceeding.

§30A-6-23. Procedures for hearing.

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

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

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

8 (d) Any member or the executive secretary of the board has the authority to administer
9 oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

10 (e) If, after a hearing, the board determines the licensee or certificate holder has violated
11 provisions of this article, a formal written decision shall be prepared which contains findings of
12 fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30A-6-24. Judicial review.

1 Any licensee or certificate holder adversely affected by a decision of the board entered
2 after a hearing may obtain judicial review of the decision in accordance with section four, article
3 five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review
4 in accordance with article six, chapter twenty-nine-a of this code.

§30A-6-25. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article or otherwise, the board has
2 reason to believe that a person has knowingly violated the provisions of this article, the board
3 may bring its information to the attention of the appropriate law-enforcement officer who may
4 cause appropriate criminal proceedings to be brought.

5 (b) If a court of law finds that a person knowingly violated this article, any order of the
6 board or any final decision of the board, then the person is guilty of a misdemeanor and, upon
7 conviction thereof, shall be fined no less than \$100 and no more than \$1,000 for each violation,
8 confinement in a regional correctional facility for up to thirty days for each violation, or both fined

9 and confined.

ARTICLE 7. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30A-7-1. Definitions.

1 For the purposes of this article, except where the context clearly requires otherwise, the
2 following terms shall have the meanings ascribed to them:

3 (1) "Applicant" means a person who files a completed application as required by sections
4 three and six of this article to be licensed to conduct a private investigation business or a security
5 guard business. When a person other than a natural person is applying for a license, the applicant
6 shall be the person whose qualifications are presented to meet the experience or education
7 requirements of sections two or five of this article.

8 (2) "Private investigation business" means the business of doing an investigation or
9 investigations, for hire, reward or any other type of remuneration, to obtain information about:

10 (A) A crime which is alleged to have occurred or is threatened to occur;

11 (B) The habits, activities, conduct, movements, location, associations, transactions,
12 reputation or character of any person;

13 (C) The credibility of witnesses or other persons;

14 (D) The location or recovery of lost or stolen property;

15 (E) The causes or origins of any fire, accident or injury to any property, real or personal,
16 or to identify or locate any person or persons responsible for any such fire, accident or injury;

17 (F) The truth or falsity of any statement or representation, whether written or oral, or of
18 any type of depiction;

19 (G) Any matters which constitute evidence or which may lead to the discovery of evidence
20 to be used before any judicial or quasijudicial tribunal, including, but not limited to, civil or criminal
21 courts, administrative agencies, investigating committees, or boards of award or arbitration;

22 (H) The whereabouts of any missing or kidnapped person;

23 (I) The affiliation, connection or relationship of any person with any corporation or other

24 business entity, union, organization, society or association, or with any official, member or
25 representative thereof;

26 (J) Any person or persons seeking employment in the place of any employee or employees
27 who have quit work by reason of any strike; or

28 (K) The conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors
29 and subcontractors.

30 (3) "Firm license" means the license held by a person whom the Secretary of State has
31 authorized to operate a private detective investigative firm or security guard firm after such person
32 has filed and completed an application pursuant to the application requirements contained in
33 sections three or six and has satisfied the eligibility requirements contained in sections two or five.

34 (4) "Person" means a natural person, a group of persons or individuals acting individually
35 or as a group, a corporation, company, partnership, association, society, firm, or any business
36 organization or entity organized or existing under the laws of this or any other state or country;

37 (5) (A) "Private detective" or "private investigator" means a person who is licensed
38 pursuant to the provisions of this article to conduct a private investigation business, as defined in
39 subdivision (2) of this section, and who conducts such business individually and independently
40 from any private detective or investigative firm;

41 (B) "Private detective" or "private investigator" does not include:

42 (i) Any individual while acting as an adjuster for an insurance company or companies;

43 (ii) Individuals employed exclusively and regularly by only one employer in connection with
44 the affairs of such employer only;

45 (iii) An officer or employee of the United States, or any law-enforcement officer of this state
46 or any political subdivision thereof, while such officer or employee is engaged in the performance
47 of his or her official duties or while working for a private employer in his or her off-duty hours;

48 (iv) Attorneys or counselors-at-law or any employee or representative of such attorney or
49 counselor;

50 (v) Any corporation duly authorized by this state to operate central burglar or fire alarm
51 protection business; or

52 (vii) Any investigator of crime appointed by a prosecuting attorney of a county pursuant to
53 the provisions of section two, article four, chapter seven of this code.

54 (6) "Private detective or investigative firm" means any private detective agency or business
55 or any investigative agency or business that is operated by a licensed private detective or
56 investigator and which employs one or more other persons who actually conduct the private
57 investigation business as defined in subdivision (2) of this section.

58 (7) (A) "Security guard" means a person who is licensed pursuant to the provisions of this
59 article to conduct a security guard business, as defined in subdivision (8) of this section, and who
60 conducts such business individually and independently from a security guard firm.

61 (B) "Security guard" does not include a person who is employed exclusively and regularly
62 by only one employer in connection with the affairs of such employer only, or a person who is
63 otherwise hereinafter excluded from the requirements of this article;

64 (8) (A) "Security guard business" means the business of furnishing, for hire, reward or
65 other remuneration, watchmen, guards, bodyguards, private patrolmen or other persons, to:

66 (i) Protect property, real or personal, or any person;

67 (ii) To prevent theft, unlawful taking, misappropriation or concealment of goods, wares or
68 merchandise, money, bonds, stocks, notes or other valuable documents, papers and articles of
69 value; or

70 (iii) To furnish for hire, guard dogs or armored motor vehicle security services, in
71 connection with the protection of persons or property;

72 (B) "Security guard business" does not include any activities or duties for which it is
73 necessary to be trained and certified as a law-enforcement officer in accordance with the
74 provisions of article twenty-nine, chapter thirty of this code.

75 (9) "Security guard firm" means any security guard agency or business that is operated by

76 a licensed security guard and which employs one or more other persons who actually conduct a
77 security guard business as defined in subdivision (8) of this section.

§30A-7-2. Eligibility requirements for license to conduct the private investigation business.

1 (a) In order to be eligible for any license to conduct the private investigation business, an
2 applicant shall:

3 (1) Be at least eighteen years of age;

4 (2) Be a citizen of the United States or an alien who is legally residing within the United
5 States;

6 (3) Not have had any previous license to conduct a private investigation business or to
7 conduct a security guard business revoked or any application for any such licenses or
8 registrations denied by the appropriate governmental authority in this or any other state or
9 territory;

10 (4) Not have been declared incompetent by reason of mental defect or disease by any
11 court of competent jurisdiction unless a court has subsequently determined that the applicant's
12 competency has been restored;

13 (5) Not suffer from habitual drunkenness or from narcotics addiction or dependence;

14 (6) Be of good moral character;

15 (7) Have a minimum of two years of experience, education or training in any one of the
16 following areas, or some combination thereof:

17 (A) Course work that is relevant to the private investigation business at an accredited
18 college or university;

19 (B) Employment as a member of any United States government investigative agency,
20 employment as a member of a state or local law-enforcement agency or service as a sheriff;

21 (C) Employment by a licensed private investigative or detective agency for the purpose of
22 conducting the private investigation business;

23 (D) Service as a magistrate in this state; or

- 24 (E) Any other substantially equivalent training or experience;
- 25 (8) Not have been convicted of a felony in this state or any other state or territory;
- 26 (9) Not have been convicted of any of the following:
- 27 (A) Illegally using, carrying or possessing a pistol or other dangerous weapon;
- 28 (B) Making or possessing burglar's instruments;
- 29 (C) Buying or receiving stolen property;
- 30 (D) Entering a building unlawfully;
- 31 (E) Aiding an inmate's escape from prison;
- 32 (F) Possessing or distributing illicit drugs;
- 33 (G) Any misdemeanor involving moral turpitude or for which dishonesty of character is a
- 34 necessary element; and
- 35 (10) Not have violated any provision of section eight of this article.

36 The provisions of this section shall not prevent the issuance of a license to any person

37 who, subsequent to his or her conviction, shall have received an executive pardon therefor,

38 removing this disability.

39 (b) Any person who qualifies for a private investigator's license shall also be qualified to

40 conduct security guard business upon notifying the Secretary of State in writing that the person

41 will be conducting such business.

42 (c) No person may be employed as a licensed private investigator while serving as

43 magistrate.

§30A-7-3. Application requirements for a license to conduct the private investigation business.

1 (a) To be licensed to be a private detective, a private investigator or to operate a private

2 detective or investigative firm, each applicant shall complete and file a written application, under

3 oath, with the Secretary of State and in such form as the secretary may prescribe.

4 (b) On the application each applicant shall provide the following information: The

5 applicant's name, birth date, citizenship, physical description, military service, current residence,
6 residences for the preceding seven years, qualifying education or experience, the location of each
7 of his or her offices in this state and any other information requested by the Secretary of State in
8 order to comply with the requirements of this article.

9 (c) In the case of a corporation that is seeking a firm license, the application shall be signed
10 by the president, and verified by the secretary or treasurer of such corporation and shall specify
11 the name of the corporation, the date and place of its incorporation, the names and titles of all
12 officers, the location of its principal place of business, and the name of the city, town or village,
13 stating the street and number, and otherwise such apt description as will reasonably indicate the
14 location. If the corporation has been incorporated in a state other than West Virginia, a certificate
15 of good standing from the state of incorporation must accompany the application. This information
16 must be provided in addition to that required to be provided by the applicant.

17 (d) The applicant shall provide:

18 (1) Information in the application about whether the applicant has ever been arrested for
19 or convicted of any crime or wrongs, either done or threatened, against the government of the
20 United States;

21 (2) Information about offenses against the laws of West Virginia or any state; and

22 (3) Any facts as may be required by the Secretary of State to show the good character,
23 competency and integrity of the applicant.

24 To qualify for a firm license, the applicant shall provide such information for each person
25 who will be authorized to conduct the private investigation business and for each officer, member
26 or partner of the firm.

27 (e) As part of the application, each applicant shall give the Secretary of State permission
28 to review the records held by the division of public safety for any convictions that may be on record
29 for the applicant.

30 (f) For each applicant for a license and for each officer, member and partner of the firm

31 applying for a license, the application shall be accompanied by one recent full-face photograph
32 and one complete set of the person's fingerprints.

33 (g) For each applicant, the application shall be accompanied by:

34 (1) Character references from at least five reputable citizens. Each reference must have
35 known the applicant for at least five years preceding the application. No reference may be
36 connected to the applicant by blood or marriage. All references must have been written for the
37 purpose of the application for a license to conduct the private investigation business; and

38 (2) A nonrefundable application processing service charge of \$50, which shall be payable
39 to the Secretary of State to offset the cost of license review and criminal investigation background
40 report from the department of public safety, along with a license fee of \$100 if the applicant is an
41 individual, or \$200 if the applicant is a firm, or \$500 if the applicant is a nonresident of West
42 Virginia or a foreign corporation or business entity. The license fee shall be deposited to the
43 General Revenue Fund, and shall be refunded only if the license is denied.

44 (h) All applicants for private detective or private investigator licenses or for private
45 investigation firm licenses shall file in the office of Secretary of State a surety bond. Such bond
46 shall:

47 (1) Be in the sum of \$2,500 and conditioned upon the faithful and honest conduct of such
48 business by such applicant;

49 (2) Be written by a company recognized and approved by the Insurance Commissioner of
50 West Virginia and approved by the Attorney General of West Virginia with respect to its form;

51 (3) Be in favor of the State of West Virginia for any person who is damaged by any violation
52 of this article. The bond must also be in favor of any person damaged by such a violation.

53 (i) Any person claiming against the bond required by subsection (h) of this section for a
54 violation of this article may maintain an action at law against any licensed individual or firm and
55 against the surety. The surety shall be liable only for damages awarded under section twelve of
56 this article and not the punitive damages permitted under that section. The aggregate liability of

57 the surety to all persons damaged by a person or firm licensed under this article may not exceed
58 the amount of the bond.

§30A-7-4. Requirements for employees conducting the private investigation business under a firm license.

1 (a) Any person who has a private detective firm or investigative firm license shall be
2 responsible for supervising any employee or other individual who conducts the private
3 investigation business under the authority of such person's firm license, regardless of whether
4 such employee or other individual receives compensation for conducting such business. Such
5 supervision shall include providing any education or training that is reasonably necessary to
6 ensure compliance with the requirements of this article.

7 (b) Any employee or individual who conducts the private investigation business under the
8 authority of a private detective or investigative firm license shall:

9 (1) Satisfy the requirements of section two of this article, except that such person need
10 not satisfy the education and training requirements contained in subdivision (7) of section two;
11 and

12 (2) Authorize the Secretary of State to review the records held by the division of public
13 safety for any convictions that may be on record for such employee or individual.

14 (c) A holder of a private detective or investigative firm license is prohibited from authorizing
15 any individual or employee to conduct a private investigation business if such individual does not
16 comply with the requirements of this section.

17 (d) For every employee or individual who conducts the business of private investigation
18 under the authority of a private detective or investigative firm license, the holder of such license
19 must maintain a recent full-face photograph and one complete set of fingerprints on file at such
20 firm's central business location in this state. Upon request, the holder of the firm license must
21 release the photographs and fingerprints to the Secretary of State.

§30A-7-5. Eligibility requirements to be licensed to conduct security guard business.

1 (a) In order to be eligible for any license to conduct security guard business, an applicant
2 shall:

3 (1) Be at least eighteen years of age;

4 (2) Be a citizen of the United States or an alien who is legally residing within the United
5 States;

6 (3) Not have had any previous license to conduct security guard business or to conduct
7 the private investigation business revoked or any application for any such licenses or registrations
8 denied by the appropriate governmental authority in this or any other state or territory;

9 (4) Not have been declared incompetent by reason of mental defect or disease by any
10 court of competent jurisdiction unless said court has subsequently determined that the applicant's
11 competency has been restored;

12 (5) Not suffer from habitual drunkenness or from narcotics addiction or dependence;

13 (6) Be of good moral character;

14 (7) Have had at least one year verified, full time employment conducting security guard
15 business or conducting the private investigation business working for a licensed firm or have one
16 year of substantially equivalent training or experience;

17 (8) Not have been convicted of a felony in this state or any other state or territory;

18 (9) Not have been convicted of any of the following:

19 (A) Illegally using, carrying or possessing a pistol or other dangerous weapon;

20 (B) Making or possessing burglar's instruments;

21 (C) Buying or receiving stolen property;

22 (D) Entering a building unlawfully;

23 (E) Aiding an inmate's escape from prison;

24 (F) Possessing or distributing illicit drugs;

25 (G) Any misdemeanor involving moral turpitude or for which dishonesty of character is a
26 necessary element; and

27 (10) Not having violated any provision of section eight of this article.

28 The provisions of this section shall not prevent the issuance of a license to any person
29 who, subsequent to his or her conviction, shall have received an executive pardon therefor,
30 removing this disability.

§30A-7-6. Application requirements for a license to conduct security guard business.

1 (a) To be licensed as a security guard or to operate a security guard firm, each applicant
2 shall complete and file a written application, under oath, with the Secretary of State and in such
3 form as the secretary may prescribe.

4 (b) On the application, each applicant shall provide the following information: The
5 applicant's name, birth date, citizenship, physical description, military service, current residence,
6 residences for the preceding seven years, qualifying education or experience, the location of each
7 of his or her offices in this state and any other information requested by the Secretary of State in
8 order to comply with the requirements of this article.

9 (c) In the case of a corporation that is seeking a firm license, the application shall be signed
10 by the president, and verified by the secretary or treasurer of such corporation and shall specify
11 the name of the corporation, the date and place of its incorporation, the names and titles of all
12 officers, the location of its principal place of business, and the name of the city, town or village,
13 stating the street and number, and otherwise such apt description as will reasonably indicate the
14 location. If the corporation has been incorporated in a state other than West Virginia, a certificate
15 of good standing from the state of incorporation must accompany the application. This information
16 shall be provided in addition to that required to be provided the applicant.

17 (d) The applicant shall provide:

18 (1) Information in the application about whether the applicant has ever been arrested for
19 or convicted of any crime or wrongs, either done or threatened, against the government of the
20 United States;

21 (2) Information about offenses against the laws of West Virginia or any state; and

22 (3) Any facts as may be required by the Secretary of State to show the good character,
23 competency and integrity of the applicant.

24 To qualify for a firm license, the applicant shall provide such information for each person
25 who would be authorized to conduct security guard business under the applicant's firm license
26 and for each officer, member or partner in the firm.

27 (e) As part of the application, each applicant shall give the Secretary of State permission
28 to review the records held by the department of public safety for any convictions that may be on
29 record for the applicant.

30 (f) For each applicant for a license and for each officer, member and partner of the firm
31 applying for a license, the application shall be accompanied by one recent full-face photograph
32 and one complete set of the person's fingerprints.

33 (g) For each applicant, the application shall be accompanied by:

34 (1) Character references from at least five reputable citizens. Each reference must have
35 known the applicant for at least five years preceding the application. No reference may be
36 connected to the applicant by blood or marriage. All references must have been written for the
37 purpose of the application for a license to conduct security guard business; and

38 (2) A nonrefundable application processing service charge of \$50, which shall be payable
39 to the Secretary of State to offset the cost of license review and criminal investigation background
40 report from the department of public safety, along with a license fee of \$100 if the applicant is an
41 individual, or \$200 if the applicant is a firm, or \$500 if the applicant is a nonresident of West
42 Virginia or a foreign corporation or business entity. The license fee shall be deposited to the
43 General Revenue Fund, and shall be refunded only if the license is denied.

44 (h) All applicants for security guard licenses or security guard firm licenses shall file in the
45 office of Secretary of State a surety bond. Such bond shall:

46 (1) Be in the sum of \$2,500 and conditioned upon the faithful and honest conduct of such
47 business by such applicant;

48 (2) Be written by a company recognized and approved by the Insurance Commissioner of
49 West Virginia and approved by the Attorney General of West Virginia with respect to its form;

50 (3) Be in favor of the State of West Virginia for any person who is damaged by any violation
51 of this article. The bond must also be in favor of any person damaged by such a violation.

52 (i) Any person claiming against the bond required by subsection (h) of this section for a
53 violation of this article may maintain an action at law against any licensed individual or firm and
54 against the surety. The surety shall be liable only for damages awarded under section twelve of
55 this article and not the punitive damages permitted under that section. The aggregate liability of
56 the surety to all persons damaged by a person or firm licensed under this article may not exceed
57 the amount of the bond.

**§30A-7-7. Requirements for employees conducting security guard business under a firm
license.**

1 (a) Any person who has a security guard firm license shall be responsible for supervising
2 any employee or other individual who conducts security guard business under the authority of
3 such person's firm license, regardless of whether such employee or other individual receives
4 compensation for conducting such business. Such supervision shall include providing any
5 education or training that is reasonably necessary to ensure compliance with the requirements of
6 this article.

7 (b) Any employee or individual who conducts security guard business under the authority
8 of a firm license shall:

9 (1) Satisfy the requirements of section five of this article, except that such person need
10 not satisfy the prior employment requirements contained in subdivision (7) of section five; and

11 (2) Authorize the Secretary of State to review the records held by the department of public
12 safety for any convictions that may be on record for such employee or individual.

13 (c) A holder of a security guard firm license is prohibited from authorizing any individual or
14 employee to conduct security guard business if such individual does not comply with the

15 requirements of this section.

16 (d) For every employee or individual who conducts security guard business under the
17 authority of a security guard firm license, the holder of such license must maintain a recent full-
18 face photograph and one complete set of fingerprints on file at such firm's central business
19 location in this state. Upon request, the holder of the firm license must release the photographs
20 and fingerprints to the Secretary of State.

§30A-7-8. Prohibitions.

1 (a) No person shall engage in the private investigation business or security guard business
2 without having first obtained from the Secretary of State a license to conduct such business.

3 (b) All licensed persons, including private detectives, private investigators, security
4 guards, private detective or investigative firms and security guard firms, are prohibited from
5 transferring their licenses to an unlicensed person, firm or agency. This prohibition includes
6 contracting or subcontracting with an unlicensed person, firm or agency to conduct the private
7 investigation business or security guard business.

8 (c) It is unlawful for any person subject to the provisions of this article to knowingly commit
9 any of the following:

10 (1) Employ any individual to perform the duties of an employee who has not first complied
11 with all provisions of this article and the adopted regulations;

12 (2) Falsely represent that a person is the holder of a valid license;

13 (3) Make a false report with respect to any matter with which he or she is employed;

14 (4) Divulge any information acquired from or for a client to persons other than the client or
15 his or her authorized agent without express authorization to do so or unless required by law;

16 (5) Accept employment which includes obtaining information intended for illegal purposes;

17 (6) Authorize or permit another person to violate any provision of this article or any rule of
18 the Secretary of State adopted for this article.

§30A-7-9. Renewal of license.

1 A license granted under the provisions of this article shall be in effect for one year from
2 the date the certificate of license is issued and may be renewed for a period of one year by the
3 Secretary of State upon application, in such form as the secretary may prescribe, and upon
4 payment of the fee and the filing of the surety bond. At the time of applying for renewal of a license,
5 the Secretary of State may require any person to provide additional information to reflect any
6 changes in the original application or any previous renewal.

§30A-7-10. Authority of Secretary of State.

1 (a) When the Secretary of State is satisfied as to the good character, competency and
2 integrity of an applicant, of all employees or individuals conducting the private investigation
3 business or security guard services under a firm license and, if the applicant is a firm, of each
4 member, officer or partner, he or she shall issue and deliver to the applicant a certificate of license.
5 Each license issued shall be for a period of one year and is revocable at all times for cause shown
6 pursuant to subsection (b) of this section or any rules promulgated pursuant thereto.

7 (b) The Secretary of State may propose for promulgation in accordance with the provisions
8 of chapter twenty-nine-a of this code legislative rules necessary for the administration and
9 enforcement of this article and for the issuance, suspension and revocation of licenses issued
10 under the provisions of this article. The Secretary of State shall afford any applicant an opportunity
11 to be heard in person or by counsel when a determination is made to deny, revoke or suspend an
12 applicant's license or application for license, including a renewal of a license. The applicant has
13 fifteen days from the date of receiving written notice of the Secretary of State's adverse
14 determination to request a hearing on the matter of denial, suspension or revocation. The action
15 of the Secretary of State in granting, renewing, or in refusing to grant or to renew, a license is
16 subject to review by the circuit court of Kanawha County or other court of competent jurisdiction.

17 (c) At any hearing before the Secretary of State to challenge an adverse determination by
18 the Secretary of State on the matter of a denial, suspension or revocation of a license, if the
19 adverse determination is based upon a conviction for a crime which would bar licensure under

20 the provisions of this article, the hearing shall be an identity hearing only and the sole issue which
21 may be contested is whether the person whose application is denied or whose license is
22 suspended or revoked is the same person convicted of the crime.

23 (d) The Secretary of State shall require each applicant to submit to a state and national
24 criminal history record check, as set forth in this subsection:

25 (1) The criminal history record check shall be based on fingerprints submitted to the West
26 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

27 (2) The applicant shall meet all requirements necessary to accomplish the state and
28 national criminal history record check, including:

29 (A) Submitting fingerprints for the purposes set forth in this section; and

30 (B) Authorizing the Secretary of State, the West Virginia State Police and the Federal
31 Bureau of Investigation to use all records submitted and produced for the purpose of screening
32 the applicant for a license.

33 (3) The results of the state and national criminal history record check may not be released
34 to or by a private entity except:

35 (A) To the individual who is the subject of the criminal history record check;

36 (B) With the written authorization of the individual who is the subject of the criminal history
37 record check; or

38 (C) Pursuant to a court order.

39 (4) The criminal history record check and related records are not public records for the
40 purposes of chapter twenty-nine-b of this code.

41 (5) The applicant shall ensure that the criminal history record check is completed as soon
42 as possible after the date of the original application for registration.

43 (6) The applicant shall pay the actual costs of the fingerprinting and criminal history record
44 check.

§30A-7-11. Penalties.

1 (a) Any person, licensed or unlicensed, who violates any of the provisions of this article is
2 guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than
3 \$5,000 or be confined in jail for not more than one year, or both.

4 (b) In the case of a violation of subsection (a) of section eight, a fine is assessed by the
5 court for each day that an individual conducted the private investigation business or security guard
6 business. In the case of a firm license, the fine is based on each day that the private investigative
7 or security services were provided multiplied by the number of unauthorized persons providing
8 those services.

§30A-7-12. Action for damages.

1 Any individual who is injured by a violation of this article may bring an action for recovery
2 of damages, including punitive damages plus reasonable attorney's fees and court costs.

§30A-7-13. Disposition of fees.

1 All fees collected hereunder by the Secretary of State shall be paid to the treasurer of the
2 state and deposited in the General Revenue Fund.

ARTICLE 8. FORESTERS.

§30A-8-1. Use of descriptive title restricted.

1 (a) No person may use in connection with his or her name or otherwise assume, use or
2 advertise any title or description tending to convey the impression that he or she is a registered
3 forester or registered forestry technician unless he or she is certified in accordance with this
4 article.

5 (b) Nothing contained in this article shall be construed as preventing any person, firm,
6 partnership or corporation from practicing forestry, managing woodlands or forests, removing any
7 products or planting trees on any land, in any manner desired.

§30A-8-2. Applicable law.

1 The practice of forestry and the state Board of Registration of Foresters are subject to
2 article one of this chapter, this article, and any rules promulgated hereunder.

§30A-8-3. Definitions.

1 As used in this article, the following words and terms have the following meanings:

2 (a) "Board" means the state Board of Registration of Foresters.

3 (b) "Certificate" means a certificate issued to practice as a registered forester or registered
4 forestry technician.

5 (c) "Certification" means a certificate issued under the provisions of this article.

6 (d) "Certified" means a person holding a certification issued under the provisions of this
7 article.

8 (e) "Forester" means a person who has acquired specialized forestry training by reason of
9 his or her knowledge of the natural sciences, mathematics, silviculture, forest protection, forest
10 management, forest economics and forest utilization, acquired by professional forestry education
11 and practical experience.

12 (f) "Forester-in-training" or "Forestry technician-in-training" means a person who
13 possesses the necessary educational qualifications as prescribed in this article for certification,
14 but who has not completed the experience requirements in the field of forestry as required for
15 certification.

16 (g) "Forestry" means the professional practice embracing the science, business, and the
17 art of creating, conserving and managing forests and forestlands for the sustained use and
18 enjoyment of their resources, material or other forest produce.

19 (h) "Practice of forestry" means professional forestry services, including the consultation,
20 investigation, evaluation, planning or responsible supervision of any forestry activities when such
21 professional service requires the application of forestry principles and techniques.

22 (i) "Permit" means a document issued as evidence of qualification to practice as a forester-
23 in-training or forestry technician-in-training under this article.

24 (j) "Permitee" means a person holding a permit issued under the provisions of this article.

25 (k) "Registered Forester" means a forester certified under this article.

26 (l) "Registered Forestry Technician" means a forestry technician certified under this article.

§30A-8-4. State Board of Registration of Foresters.

1 (a) The State Board of Registration of Foresters is continued. The members of the board
2 in office on July 1, 2009, shall, unless sooner removed, continue to serve until their respective
3 terms expire and until their successors have been appointed and qualified.

4 (b) To be effective on July 1, 2009, the Governor shall appoint, by and with the advise and
5 consent of the Senate, a registered forestry technician to replace the board member whose term
6 ends on June 30, 2009.

7 (c) Commencing July 1, 2009, the board shall consist of the following five members:

8 (1) Four registered foresters; and

9 (2) One registered forestry technician.

10 (d) Each member shall be appointed by the Governor, by and with the consent of the
11 Senate, from five nominees recommended by the West Virginia Division of the Society of
12 American Foresters. The term is for five years.

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

17 (f) Each member of the board shall be a resident of West Virginia during the appointment
18 term.

19 (g) Each member must have been certified in this state for a period of not less than three
20 years prior to his or her appointment and must have engaged in the practice of forestry for at least
21 ten years.

22 (h) Each member shall maintain an active certification with the board.

23 (i) The Governor may remove any member from the board for neglect of duty,
24 incompetency or official misconduct.

25 (j) A member of the board immediately and automatically forfeits membership to the board
26 if his or her certification has been suspended or revoked, is convicted of a felony under the laws
27 of any jurisdiction, or becomes a nonresident of this state.

28 (k) The board shall elect annually one of its members as chairperson and one member as
29 secretary who shall serve at the will and pleasure of the board.

30 (l) Each member of the board is entitled to compensation and expense reimbursement in
31 accordance with article one of this chapter.

32 (m) A majority of the members serving on the board constitutes a quorum.

33 (n) The board shall hold at least two meetings annually. Other meetings shall be held at
34 the call of the chairperson or upon the written request of two members, at such time and place as
35 designated in the call or request.

36 (o) Prior to commencing his or her duties as a member of the board, each member shall
37 take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30A-8-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this article, by rule, in article one
2 of this chapter and elsewhere in law.

3 (b) The board shall:

4 (1) Hold meetings, conduct hearings and administer examinations;

5 (2) Establish requirements for a certification or permit;

6 (3) Establish procedures for submitting, approving and rejecting applications for a
7 certification or permit;

8 (4) Determine the qualifications of any applicant for a certification or permit;

9 (5) Prepare, conduct, administer and grade written, oral or written and oral examinations
10 for a certificate;

11 (6) Determine the passing grade for the examinations;

12 (7) Maintain records of the examinations the board or a third party administers, including

13 the number of persons taking the examination and the pass and fail rate;

14 (8) Maintain an office, and hire, discharge, establish the job requirements and fix the
15 compensation of employees and contracted employees necessary to enforce this article;

16 (9) Investigate alleged violations of this article, legislative rules, orders and final decisions
17 of the board;

18 (10) Conduct disciplinary hearings of persons regulated by the board;

19 (11) Determine disciplinary action and issue orders;

20 (12) Institute appropriate legal action for the enforcement of this article;

21 (13) Maintain an accurate registry of names and addresses of all persons regulated by the
22 board;

23 (14) Keep accurate and complete records of its proceedings, and certify the same as may
24 be necessary and appropriate;

25 (15) Establish, by legislative rule, the continuing education requirements for certificate
26 holders and permittees; and

27 (16) Propose rules in accordance with article three, chapter twenty-nine-a of this code to
28 implement this article.

29 (c) The board may:

30 (1) Contract with third parties to administer the examinations required under this article;

31 (2) Define, by legislative rule, the fees charged under this article;

32 (3) Issue, renew, deny, suspend, revoke or reinstate a certification or permit;

33 (4) Sue and be sued in its official name as an agency of this state;

34 (5) Confer with the Attorney General or his or her assistant in connection with legal matters
35 and questions; and

36 (6) Take all other actions proper to effectuate the purposes of this article.

§30A-8-6. Rulemaking.

1 (a) The board shall propose rules for legislative approval, in accordance with article three,

2 chapter twenty-nine-a of this code, to implement this article, including:

3 (1) Standards and requirements for a certification and permit;

4 (2) Procedures for examinations and reexaminations;

5 (3) Requirements for third parties to prepare and/or administer examinations and
6 reexaminations;

7 (4) Educational and experience requirements, and the passing grade on the examination;

8 (5) Standards for ethical conduct;

9 (6) Procedures for the issuance and renewal of a certification and permit;

10 (7) A fee schedule;

11 (8) Continuing education requirements for a certificate holder and permittee;

12 (9) Procedures for denying, suspending, revoking, reinstating or limiting the practice of a
13 certificate holder or permittee;

14 (10) Requirements for inactive or revoked certificate and permit; and

15 (11) Any other rules necessary to effectuate the provisions of this article.

16 (b) All of the board's rules in effect on the effective date of this article shall remain in effect
17 until amended or repealed, and references to former enactments of this act are interpreted to
18 mean this article.

§30A-8-7. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative fines, received by the board shall be
2 deposited in a separate special revenue fund in the state Treasury designated the "Board of
3 Foresters Fund", which fund is continued. The fund shall be used by the board for the
4 administration of this article. Except as provided in article one of this chapter, the board shall
5 retain the amounts in the special revenue account from year to year. No compensation or expense
6 incurred under this article is a charge against the General Revenue Fund.

7 (b) Any amounts received as administrative fines imposed pursuant to this article shall be
8 deposited into the General Revenue Fund of the state Treasury.

§30A-8-8. General requirements to be certified as a registered forester.

1 (a) To be eligible to be certified as a registered forester, the applicant must:

2 (1) Be of good moral character;

3 (2) Have a high school diploma or its equivalent;

4 (3) Have obtained either:

5 (A) Completion of a four-year degree program or masters degree program in forest
6 management, accredited by the Society of American Foresters, or other accrediting body as
7 determined by the board, and have two years related experience in the field of forestry; or

8 (B) Completion of a two-year technical forestry program in a program accredited or
9 recognized by the Society of American Foresters, completion of a bachelor's degree in a field
10 used in the practice of forestry as approved by the board and four years related experience in the
11 field of forestry;

12 (4) Successfully pass an examination approved by the board.

13 (b) Those persons licensed by the board as a forester as of the effective date of this
14 section are not required to take the examination.

§30A-8-9. General requirements to be registered forestry technician.

1 To be eligible to be certified as a registered forestry technician, the applicant must:

2 (1) Be of good moral character;

3 (2) Have a high school diploma or its equivalent;

4 (3) Graduate from a two-year technical forestry program accredited or recognized by the
5 Society of American Foresters;

6 (4) Complete four years of related experience in the field of forestry.

§30A-8-10. Qualifications for permit as a forester-in-training or a forestry technician-in-training.

1 (a) The board may issue a permit to practice as a forester-in-training or a forestry
2 technician-in-training to an applicant who meets all the requirements for certification, except the

3 experience requirements of paragraph (A) or (B), subdivision three, subsection (a), section eight
4 or subdivision four, section nine.

5 (b) A permit to practice as a forester-in-training or forestry technician-in-training may be
6 renewed annually for a period not to exceed five years. The board may extend the five year
7 limitation if the board finds the applicant experienced an undue hardship which prevented the
8 attainment of the required experience.

§30A-8-11. License from another state.

1 The board may issue a certification to a person as a registered forester in this state,
2 without requiring an examination, to an applicant from another jurisdiction who:

3 (1) Is not a resident of this state;

4 (2) Is of good moral character;

5 (3) Holds a valid forestry license or other authorization to practice forestry in another
6 jurisdiction which meets requirements that are substantially equivalent to the certification
7 requirements set forth in this article;

8 (4) Is not currently being investigated by a disciplinary authority of this state or another
9 jurisdiction, does not have charges pending against his or her authorization, and has never had
10 his or her authorization revoked;

11 (5) Has not previously failed an examination for certification in this state;

12 (6) Has paid all the applicable fees; and

13 (7) Has completed such other action as required by the board.

§30A-8-12. Renewal requirements.

1 (a) All persons regulated under the provisions of this article shall annually before January
2 1, renew his or her certification or permit by completing a form prescribed by the board and submit
3 any other information required by the board.

4 (b) At least thirty days prior to July 1 of each year, the board shall mail to every person
5 regulated under the provisions of this article an application for renewal.

6 (c) The board shall charge a fee for each renewal of a certification or permit and may
7 charge a late fee for any renewal not paid in a timely manner.

8 (d) The board shall require as a condition for the renewal of a certification or permit that
9 each person regulated under the provisions of this article complete continuing education.

10 (e) The board may deny an application for renewal for any reason which would justify the
11 denial of an original application for a certification or permit.

**§30A-8-13. Complaints; investigations; due process procedure; grounds for disciplinary
action.**

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

4 (b) Upon initiation or receipt of the complaint, the board shall provide a copy of the
5 complaint to the certificate holder or permittee.

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

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

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

17 (f) Any member of the board or its executive director may sign a consent decree or other
18 legal document on behalf of the board.

19 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
20 suspend or revoke the certification or permit of, impose probationary conditions upon or take
21 disciplinary action against, any certificate holder or permittee for any of the following reasons once
22 a violation has been proven by a preponderance of the evidence:

23 (1) Obtaining a certification or permit by fraud, misrepresentation or concealment of
24 material facts;

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

26 (3) Being guilty of unprofessional conduct as defined by legislative rule of the board;

27 (4) Violating this article or lawful order or rule of the board;

28 (5) Having had a certificate or permit revoked or suspended, other disciplinary action
29 taken, or an application for certification or permit or other authorization refused, revoked or
30 suspended by the proper authorities of another jurisdiction; or

31 (6) Engaging in any act which has endangered or is likely to endanger the health, welfare
32 or safety of the public.

33 (h) For the purposes of subsection (g) of this section, disciplinary action may include:

34 (1) Reprimand;

35 (2) Probation;

36 (3) Administrative fine, not to exceed \$1,000 per day per violation;

37 (4) Mandatory attendance at continuing education seminars or other training;

38 (5) Practicing under supervision or other restriction;

39 (6) Requiring the certificate holder or permittee to report to the board for periodic interviews
40 for a specified period of time; or

41 (7) Other corrective action considered by the board to be necessary to protect the public,
42 including advising other parties whose legitimate interests may be at risk.

§30A-8-14. Procedures for hearing; right of appeal.

1 (a) Hearings shall be governed by section eight, article one of this chapter.

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

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

8 (d) Any member or the executive director of the board has the authority to administer
9 oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

10 (e) If, after a hearing, the board determines the certificate holder or permittee has violated
11 this article or the board's rules, a formal written decision shall be prepared which contains findings
12 of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30A-8-15. Judicial review; appeal to Supreme Court of Appeals.

1 Any certificate holder or permittee adversely affected by a decision of the board entered
2 after a hearing may obtain judicial review of the decision in accordance with section four, article
3 five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review
4 in accordance with article six, chapter twenty-nine-a of this code.

§30A-8-16. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article or otherwise, the board has
2 reason to believe that a certificate holder or permittee has committed a criminal offense under this
3 article, the board may bring the information to the attention of an appropriate law-enforcement
4 official.

5 (b) Effective July 15, 2009, a person violating a provision of this article is guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
7 \$1,000 or confined in jail not more than six months, or both fined and confined.

§30A-8-17. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under this article, evidence of the

2 commission of a single act prohibited by this article is sufficient to justify a penalty, injunction,
3 restraining order or conviction without evidence of a general course of conduct.

ARTICLE 9. ATHLETIC TRAINERS.

§30A-9-1. Definitions.

1 As used in this article:

2 (1) "Applicant" means any person making application for an original or renewal registration
3 to act as an athletic trainer under the provisions of this article.

4 (2) "Board" means the West Virginia Board of Physical Therapy established under article
5 twenty of this chapter.

6 (3) "Registrant" means a person registered as an athletic trainer under the provisions of
7 this article.

8 (4) "Registration" means a registration issued by the board to practice athletic training.

§30A-9-2. Title protection.

1 (a) A person may not advertise or represent himself or herself as an athletic trainer in this
2 state and may not use the initials "AT", the words "registered athletic trainer" or "athletic trainer",
3 or any other words, abbreviations, titles or insignia that indicates, implies or represents that he or
4 she is an athletic trainer, unless he or she is registered by the board.

5 (b) Nothing contained in this article shall be construed as preventing any person, firm,
6 partnership or corporation from practicing athletic training, in any manner desired.

7 (c) Nothing in this article may be construed to prohibit or otherwise limit the use of the term
8 "athletic trainer" in secondary school settings by persons who were practicing athletic training
9 under a West Virginia Board of Education Athletic Certification, provided the practice is in
10 accordance with Board of Education policy in effect prior to July 1, 2011.

§30A-9-3. Powers and duties of the board.

1 The board has the following powers and duties:

2 (1) Establish procedures for submitting, approving and denying applications for

3 registration;

4 (2) Investigate alleged violations of the provisions of this article;

5 (3) Establish a fee schedule;

6 (4) Issue, renew, deny, suspend, revoke or reinstate a registration;

7 (5) Determine disciplinary action and issue orders;

8 (6) Institute appropriate legal action for the enforcement of the provisions of this article;

9 and

10 (7) Maintain an accurate registry of the names and addresses of registrants.

§30A-9-4. Rulemaking authority.

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

4 (1) Procedures for the issuance and renewal of a registration;

5 (2) A fee schedule;

6 (3) Procedures for denying, suspending, revoking, reinstating or limiting the registration of
7 a registrant; and

8 (4) Any other rules necessary to effectuate the provisions of this article.

§30A-9-5. Requirements for registration.

1 (a) To be eligible for registration by the board as an athletic trainer, an applicant shall:

2 (1) Submit an application in the form prescribed by the board;

3 (2) Submit a current certification from the National Athletic Trainers' Association Board of
4 Certification or successor organization; and

5 (3) Pay the required fee.

6 (b) The board shall issue a registration to an applicant satisfying all the requirements in
7 subsection (a) of this section: *Provided*, That the board may deny an application for registration if
8 the applicant:

9 (1) Has been convicted of a felony or other crime involving moral turpitude;

10 (2) Is an alcohol or drug abuser as these terms are defined in section eleven, article one-
11 a, chapter twenty-seven of this code: *Provided*, That the board may take into consideration that
12 an applicant in an active recovery process, which may, in the discretion of the board, be evidenced
13 by participation in a twelve-step program or other similar group or process;

14 (3) Has been convicted of fraudulent, false, misleading or deceptive advertising;

15 (4) Has been convicted for wrongfully prescribing medicines or drugs, or practicing any
16 licensed profession without legal authority;

17 (5) Has had a registration or other authorization revoked, suspended, restricted or other
18 disciplinary action taken by the proper authorities of another jurisdiction;

19 (6) Is incapacitated by a physical or mental disability which is determined by a physician
20 to render further practice by the applicant inconsistent with competency and ethic requirements;
21 or

22 (7) Has been convicted of sexual abuse or sexual misconduct.

23 (c) In determining whether an application should be denied for any of the reasons set forth
24 in subsection (b), the board may consider:

25 (1) How recently the conduct occurred;

26 (2) The nature of the conduct and the context in which it occurred; and

27 (3) Any other relevant conduct of the applicant.

28 (d) A registration issued by the board is valid for two years from the date it was issued.

§30A-9-6. Renewal requirements.

1 (a) A registrant may apply to renew his or her registration by submitting an application for
2 renewal in the form prescribed by the board and paying the renewal fee. The renewal application
3 must be signed by the applicant.

4 (b) A renewal of registration issued by the board is valid for two years from the date it was
5 issued.

6 (c) The board may deny an application for renewal for any reason which would justify the
7 denial of an original application for a registration.

§30A-9-7. Due process procedures; grounds for disciplinary action.

1 (a) The board may, after notice and opportunity for hearing, suspend, restrict or revoke a
2 registration of, impose probationary conditions upon or take disciplinary action against, any
3 registrant if the board determines the registrant:

4 (1) Is grossly negligent in the practice of athletic training;

5 (2) Obtained a registration by fraud, misrepresentation or concealment of material facts;
6 engaged in the practice of athletic training under a false or assumed name; or impersonated
7 another registrant of a like or different name; or

8 (3) Has violated any of the provisions of subsection (b), section five of this article.

9 (b) For purposes of subsection (a) of this section, disciplinary action may include:

10 (1) Reprimand;

11 (2) Probation;

12 (3) Administrative fines;

13 (4) Practicing under supervision or other restriction;

14 (5) Requiring the registrant to report to the board for periodic interviews for a specified
15 period of time; or

16 (6) Other corrective action as determined by the board.

ARTICLE 10. LANDSCAPE ARCHITECTS.

§30A-10-1. License required to practice.

1 The practice of landscape architecture requires education, training and experience and
2 should only be practiced by a licensed landscape architect. Therefore, the Legislature finds that
3 in order to protect the health, safety, interest and welfare of the public and to provide for the
4 regulation of landscape architecture in this state, a person must have a license, as provided in
5 this article, to practice as a landscape architect.

§30A-10-2. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice landscape architecture in
2 this state without a license issued under the provisions of this article, or advertise or use any title
3 or description tending to convey the impression that the person is a licensed landscape architect,
4 unless such person has been duly licensed under the provisions of this article.

5 (b) It is unlawful for any firm to practice or offer to practice landscape architecture in this
6 state without a certificate of authorization issued under the provisions of this article, or advertise
7 or use any title or description tending to convey the impression that it is a landscape architectural
8 firm, unless such firm has been issued a certificate of authorization under the provisions of this
9 article.

§30A-10-3. Applicable law.

1 The practice of landscape architecture and the board of Landscape Architects are subject
2 to the provisions of article one of this chapter and the provisions of this article and any rules
3 promulgated thereunder.

§30A-10-4. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
2 the context clearly indicates otherwise:

3 (a) "Accredited" means a school, college or university accredited by the Landscape
4 Architectural Accreditation Board (LAAB) or any other accrediting body recognized by the board.

5 (b) "Applicant" means a person making application for a license or a permit, or a firm
6 making application for a certificate of authorization, under the provisions of this article.

7 (c) "Board" means the West Virginia Board of Landscape Architects.

8 (d) "Certificate of authorization" means a certificate issued under the provisions of this
9 article to a firm providing landscape architectural services.

10 (e) "Certificate of authorization holder" means a firm certified under the provisions of this
11 article to provide landscape architectural services.

12 (f) "Examination" means the examination in landscape architecture required for licensure.

13 (g) "Firm" means any business entity, partnership, association, company, corporation,
14 limited partnership, limited liability company or other entity providing landscape architectural
15 services.

16 (h) "Landscape architect" means a person licensed under the provisions of this article to
17 practice landscape architecture.

18 (i) "Landscape architecture" means the analysis, planning, design, management and
19 stewardship of the natural and built environments.

20 (j) "License" means a landscape architecture license issued under the provisions of this
21 article.

22 (k) "Licensee" means a person holding a landscape architecture license issued under the
23 provisions of this article.

24 (l) "Permittee" means a person holding a temporary permit.

25 (m) "Practice of landscape architecture" means the performance of professional services,
26 including but not limited to, analysis, consultations, evaluations, research, planning, design,
27 management or responsible supervision of projects principally directed at the functional, aesthetic
28 use, preservation and stewardship of the land and natural and built environments, including:

29 (1) Investigation, selection and allocation of land and water resources for appropriate
30 uses;

31 (2) Formulation of feasibility studies and graphic and written criteria to govern the planning,
32 design and management of land and water resources;

33 (3) Preparation, review and analysis of those aspects of land use master plans,
34 subdivision plans and preliminary plats as are related to landscape architecture;

35 (4) Determination of the location and siting of improvements, including buildings and other
36 features, as well as the access and environs for those improvements associated with the practice
37 of landscape architecture;

38 (5) Design of land forms, soil conservation and erosion control methods, site lighting, water
39 features, irrigation systems, plantings, pedestrian and vehicular circulation systems and related
40 construction details, and natural drainage, surface and ground water drainage systems: *Provided*,
41 That such systems do not require structural design of system components or a hydraulic analysis
42 of the receiving storm water conveyance system; and

43 (6) Preparation, filing and administration of plans, drawings, specifications and other
44 related construction documents.

45 (n) "Temporary permit" means a permit to practice landscape architecture issued by the
46 board for a period of time not to exceed one year.

§30A-10-5. Board of Landscape Architects.

1 (a) The West Virginia Board of Landscape Architects is hereby continued and shall be
2 composed of three members, two of whom must be licensed landscape architects, appointed by
3 the Governor by and with the advice and consent of the Senate, for staggered terms of three
4 years.

5 (b) Each licensed member of the board, at the time of his or her appointment, must have
6 held a license in this state for a period of not less than three years and must have been a resident
7 of this state for a period of not less than one year immediately preceding the appointment.

8 (c) Each member of the board must be a resident of this state during the appointment
9 term.

10 (d) No member may serve more than three consecutive full terms and any member having
11 served three consecutive full terms may not be appointed for one year after completion of his or
12 her third full term. A member shall continue to serve until his or her successor has been appointed
13 and qualified. Any member currently serving on the board on the effective date of this article may
14 be reappointed in accordance with the provisions of this section.

15 (e) A vacancy on the board shall be filled by appointment by the Governor for the
16 unexpired term of the member whose office is vacant.

17 (f) The Governor may remove any member from the board for neglect of duty,
18 incompetency or official misconduct.

19 (g) Any member of the board immediately and automatically forfeits his or her membership
20 if he or she has his or her license to practice suspended or revoked by the board, is convicted of
21 a felony under the laws of any state or the United States, or becomes a nonresident of this state.

22 (h) The board shall designate one of its members as chairperson and one member as
23 secretary-treasurer who shall serve at the will of the board.

24 (i) Each member of the board is entitled to receive compensation and expense
25 reimbursement in accordance with article one of this chapter.

26 (j) A majority of the members of the board shall constitute a quorum.

27 (k) The board shall hold at least one annual meeting. Other meetings shall be held at the
28 call of the chairperson or upon the written request of two members, at such time and place as
29 designated in the call or request.

§30A-10-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this article, by rule, in article one
2 of this chapter, and elsewhere in law.

3 (b) The board's powers and duties include:

4 (1) Holding meetings, conducting hearings and administering examinations and
5 reexaminations;

6 (2) Setting the requirements for a license, temporary permit and certificate of authorization;

7 (3) Establishing procedures for submitting, approving and rejecting applications for a
8 license, temporary permit and certificate of authorization;

9 (4) Determining the qualifications of any applicant for a license, temporary permit and
10 certificate of authorization;

11 (5) Preparing, conducting, administering and grading written, oral or written and oral
12 examinations and reexaminations for a license;

13 (6) Contracting with third parties to prepare and/or administer the examinations and
14 reexaminations required under the provisions of this article;

15 (7) Determining the passing grade for the examinations;

16 (8) Maintaining records of the examinations and reexaminations the board or a third party
17 administers, including the number of persons taking the examination or reexamination and the
18 pass and fail rate;

19 (9) Maintaining an accurate registry of names and addresses of all persons and firms
20 regulated by the board;

21 (10) Defining, by legislative rule, the fees charged under the provisions of this article;

22 (11) Issuing, renewing, denying, suspending, revoking or reinstating licenses, temporary
23 permits and certificates of authorization;

24 (12) Establishing, by legislative rule, the continuing education requirements for licensees;

25 (13) Suing and being sued in its official name as an agency of this state;

26 (14) Maintaining an office, and hiring, discharging, setting the job requirements and fixing
27 the compensation of employees and investigators necessary to enforce the provisions of this
28 article;

29 (15) Investigating alleged violations of the provisions of this article, the rules promulgated
30 hereunder, and orders and final decisions of the board;

31 (16) Conducting disciplinary hearings of all persons and business entities regulated by the
32 board;

33 (7) Setting disciplinary action and issuing orders;

34 (8) Instituting appropriate legal action for the enforcement of the provisions of this article;

35 (19) Keeping accurate and complete records of its proceedings, and certifying the same
36 as may be appropriate;

37 (20) Proposing rules in accordance with the provisions of article three, chapter twenty-
38 nine-a of this code to implement the provisions of this article; and

39 (21) Taking all other actions necessary and proper to effectuate the purposes of this
40 article.

§30A-10-7. Rule-making authority.

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

4 (1) Standards and requirements for licensure, temporary permits and certificates of
5 authorization;

6 (2) Procedures for examinations and reexaminations;

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

9 (4) Educational and experience requirements, and the passing grade on the examination
10 for licensure;

11 (5) Procedures for the issuance and renewal of a license, temporary permit and certificate
12 of authorization;

13 (6) A fee schedule: *Provided*, That the fee schedule in effect as of July 1, 2005, will remain
14 in effect until amended, modified, repealed or replaced by the legislative rule promulgated
15 pursuant to this subsection;

16 (7) Continuing education requirements for licensees;

17 (8) The procedures for denying, suspending, revoking, reinstating or limiting the practice
18 of a licensee, permittee or certificate of authorization holder;

19 (9) Requirements for inactive or revoked licenses, temporary permits or certificates of
20 authorization; and

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

22 (b) All rules in effect on the effective date of this article shall remain in effect until they are
23 amended, modified, repealed or replaced.

§30A-10-8. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative fines, received by the board shall be
2 deposited in a separate special revenue fund in the state Treasury designated the "Board of
3 Landscape Architects Fund," which fund is hereby continued. The fund shall be used by the board
4 for the administration of this article. Except as may be provided in article one of this chapter, the
5 board shall retain the amounts in the special revenue account from year to year. No compensation
6 or expense incurred under this article is a charge against the General Revenue Fund.

7 (b) Any amounts received as fines imposed pursuant to this article shall be deposited into
8 the General Revenue Fund of the state Treasury.

§30A-10-9. Education, experience and examination requirements for licensure.

1 (a) An applicant for licensure under this article must have completed one of the following
2 educational and/or experience requirements:

3 (1) Has a bachelor degree in landscape architecture from an accredited college or
4 university and at least two years of experience in landscape architecture under the supervision of
5 a landscape architect or a person having qualifications acceptable to the board and similar to the
6 qualifications of a landscape architect;

7 (2) Has a graduate degree in landscape architecture from an accredited college or
8 university and at least one year of experience in landscape architecture under the supervision of
9 a landscape architect or a person having qualifications acceptable to the board and similar to the
10 qualifications of a landscape architect; or

11 (3) (A) Prior to December 31, 2006, has completed at least ten years of experience in
12 landscape architecture, including at least six years of experience in landscape architecture under
13 the supervision of a landscape architect or a person having qualifications acceptable to the board
14 and similar to the qualifications of a landscape architect; or

15 (B) Prior to December 31, 2006, has begun the ten years of experience in landscape
16 architecture set out in subdivision (3) (A) of this subsection, and has not completed the experience

17 requirements prior to December 31, 2006, then the person must notify the board that he or she
18 will be making application under this subdivision and comply with the procedures prescribed by
19 the board; or

20 (C) On and after January 1, 2007, has completed at least ten years of experience in
21 landscape architecture under the supervision of a landscape architect or a person having
22 qualifications acceptable to the board and similar to the qualifications of a landscape architect.

23 (b) An applicant for licensure under this article must pass the examination prescribed by
24 the board.

§30A-10-10. License requirements.

1 (a) The board shall issue a license to practice under the provisions of this article to an
2 applicant who meets the following requirements:

- 3 (1) Is of good moral character;
- 4 (2) Is at least eighteen years of age;
- 5 (3) Is a citizen of the United States or is eligible for employment in the United States;
- 6 (4) Has not been convicted of a crime involving moral turpitude;
- 7 (5) Has not had his or her application for a license to practice as a landscape architect
8 refused in any state of the United States;
- 9 (6) Has not had his or her license to practice landscape architecture suspended or revoked
10 in any state of the United States; and
- 11 (7) Has completed the licensure requirements set out in this article and the rules
12 promulgated hereunder.

13 (b) The board may issue a license to practice under the provisions of this article to an
14 applicant who does not meet the licensure requirements set out in subdivisions (5) or (6) of
15 subsection (a) of this section, but who does meet the licensure requirements established by rule
16 by the board.

17 (c) An application for a license shall be made on forms prescribed by the board.

18 (d) An applicant shall pay all the applicable fees.

19 (e) A license to practice landscape architecture issued by the board prior to July 1, 2006,
20 shall for all purposes be considered a license issued under this article: *Provided*, That a person
21 holding a license to practice landscape architecture issued prior to July 1, 2006, must renew the
22 license pursuant to the provisions of this article.

§30A-10-11. License from another jurisdiction; license to practice in this state.

1 The board may issue a license to practice landscape architecture in this state, without
2 requiring an examination, to an applicant of good moral character who holds a valid license or
3 other authorization to practice landscape architecture from another jurisdiction, if the applicant:

4 (1) Holds a license or other authorization to practice landscape architecture in another
5 jurisdiction and meets requirements which are substantially equivalent to the licensure
6 requirements set forth in this article;

7 (2) Is not currently being investigated by a disciplinary authority of this state or another
8 jurisdiction, does not have charges pending against his or her license or other authorization to
9 practice landscape architecture, and has never had a license or other authorization to practice
10 landscape architecture revoked;

11 (3) Has not previously failed an examination for licensure in this state;

12 (4) Has paid all the applicable fees; and

13 (5) Has completed such other action as required by the board.

§30A-10-12. License renewal requirements.

1 (a) A licensee shall, annually or biennially upon or before July 1, renew his or her license
2 by completing a form prescribed by the board and paying a renewal fee.

3 (b) At least thirty days prior to July 1, either annually or biennially, the secretary-treasurer
4 of the board shall mail to every licensee a notice of renewal, an application for renewal and a
5 statement for the renewal fee.

6 (c) The board shall charge a fee for each renewal of a license and a late fee for any

7 renewal not paid in a timely manner.

8 (d) The board shall require as a condition for the renewal of a license that each licensee
9 complete continuing education requirements.

10 (e) The board may deny an application for renewal for any reason which would justify the
11 denial of an original application for a license.

§30A-10-13. Inactive license requirements.

1 (a) A licensee who chooses not to continue in active practice and notifies the board in
2 writing, may be granted inactive status.

3 (b) A person granted inactive status shall pay an inactive fee, is exempt from the
4 continuing education requirements and cannot practice in this state.

5 (c) When an inactive licensee wants to return to active practice, he or she must complete
6 all the continuing education requirements, pay all the applicable fees and meet all the other
7 requirements prescribed by the board.

§30A-10-14. Retired license requirements.

1 (a) A licensee who chooses to retire and notifies the board in writing, may be granted
2 retired status.

3 (b) A person granted retired status cannot practice landscape architecture in this state.

§30A-10-15. Reinstatement.

1 The board may reinstate a license upon a showing that the applicant is qualified to resume
2 practice. The applicant shall pay all applicable fees and shall meet all the requirements prescribed
3 by the board.

§30A-10-16. Temporary permits.

1 (a) Upon proper application and payment of the applicable fees, the board may issue a
2 temporary permit, for a period of time not to exceed one year, to an applicant who has completed
3 the educational and/or experience requirements set out in this article, but who has not taken the
4 examination.

5 (b) The temporary permit expires thirty days after the board gives written notice to the
6 permittee of the results of the first examination held following the issuance of the temporary
7 permit.

8 (c) The temporary permit may not be renewed nor another temporary permit be issued to
9 the same person.

10 (d) The temporary permit may be revoked for any reason which would justify the
11 suspension, revocation, limitation or denial of a license.

§30A-10-17. Display of license.

1 (a) The board shall prescribe the form for a license and may issue a duplicate license,
2 upon payment of a fee.

3 (b) A licensee shall conspicuously display his or her license at his or her principal place of
4 practice.

§30A-10-18. Seal requirements.

1 (a) Each licensee must have a seal, authorized by the board, which seal shall include the
2 licensee's name and the words: "Professional Landscape Architect, State of West Virginia," and
3 any other words or figures prescribed by the board.

4 (b) All working drawings and specifications prepared by a licensee shall be signed and
5 stamped with the licensee's seal: *Provided*, That nothing contained in this article shall be
6 construed to permit the seal of a landscape architect to serve as a substitute for the seal of an
7 architect, an engineer or a professional surveyor whenever the seal of such architect, engineer
8 or professional surveyor is required by law.

9 (c) It is unlawful for a person who is not licensed under the provisions of this article to affix
10 a seal on a document.

§30A-10-19. Certificate of authorization requirements.

1 (a) After July 1, 2006, a firm practicing landscape architecture in West Virginia shall have
2 a certificate of authorization.

3 (b) The board shall issue a certificate of authorization to a firm that:

4 (1) Wants to practice landscape architecture in West Virginia;

5 (2) Provides proof that the firm employs a West Virginia licensed landscape architect;

6 (3) Has paid all applicable fees; and

7 (4) Completes such other requirements as specified by the board.

8 (c) The name of the employed licensee in direct control or having personal supervision of
9 the practice of the firm shall appear as the landscape architect on all plans, drawings,
10 specifications, reports or other instruments of service rendered or submitted by the firm.

§30A-10-20. Certificate of authorization renewal requirements.

1 (a) A firm wanting to continue in active practice shall, annually or biennially upon or before
2 July 1, renew its certificate of authorization and pay a renewal fee.

3 (b) At least thirty days prior to July 1, either annually or biennially, the secretary-treasurer
4 of the board shall mail to every certificate of authorization holder a notice of renewal, an
5 application for renewal and a statement for the renewal fee.

6 (c) The board shall charge a fee for each renewal of a certificate of authorization and a
7 late fee for any renewal not paid in a timely manner.

§30A-10-21. Display of certificate of authorization.

1 (a) The board shall prescribe the form for a certificate of authorization, and may issue a
2 duplicate certificate of authorization upon payment of a fee.

3 (b) A firm shall conspicuously display its certificate of authorization at its principal place of
4 practice.

§30A-10-22. Exemptions from article.

1 (a) Nothing in this article shall prohibit any professional engineer, professional surveyor,
2 or forester licensed or registered under the provisions of this code from providing services for
3 which they are licensed or registered.

4 (b) Nothing in this article shall prohibit any architect licensed or registered under the

5 provisions of this code from performing any of the services included within the definition of the
6 practice of landscape architecture as set forth in subsection (m), section four of this article when
7 incidental to the practice of architecture as defined in article twelve of this chapter.

8 (c) Nothing in this article shall prohibit a nursery person, agriculturist, horticulturist,
9 gardener, landscape designer, landscape contractor, grader, cultivator of land, garden or lawn
10 caretaker from engaging in the occupation of growing or marketing nursery stock, preparing
11 planting plans, installing plant material, providing drawings or graphic diagrams necessary for the
12 proper layout of goods or materials, or arranging for the installation of goods or materials on
13 private or public land.

14 (d) Nothing in this article shall prohibit state, county, city or other municipal, urban or
15 regional planners and designers from preparing plans or diagrams necessary to the planning,
16 design and management of communities or regions.

17 (e) Nothing in this article shall prohibit an individual from making landscape plans,
18 drawings or specifications for property owned, leased or rented by the individual for his or her
19 personal use.

20 (f) Only licensed landscape architects shall use the title, "Landscape Architect", or other
21 similar words or titles which implies licensure.

§30A-10-23. Refusal to issue or renew, suspension or revocation; disciplinary action.

1 (a) The board may refuse to issue, refuse to renew, suspend, revoke or limit any license,
2 temporary permit, certificate of authorization or practice privilege and may take disciplinary action
3 against a licensee, permittee or certificate of authorization holder who, after notice and a hearing,
4 has been adjudged by the board as unqualified for any of the following reasons:

5 (1) Fraud, misrepresentation or deceit in obtaining or maintaining a license, temporary
6 permit or certificate of authorization;

7 (2) Failure by any licensee, permittee or certificate of authorization holder to maintain
8 compliance with the requirements for the issuance or renewal of a license, temporary permit or

9 certificate of authorization;

10 (3) Dishonesty, fraud, professional negligence in the performance of landscape
11 architectural services, or a willful departure from the accepted standards of landscape architecture
12 and the professional conduct of landscape architects;

13 (4) Violation of any provision of this article or any rule promulgated hereunder;

14 (5) Violation of any professional standard or rule of professional conduct;

15 (6) Failure to comply with the provisions of this article or any rule promulgated hereunder;

16 (7) Failure to comply with any order or final decision of the board;

17 (8) Failure to respond to a request or action of the board;

18 (9) Conviction of a crime involving moral turpitude;

19 (10) Conviction of a felony or a crime involving dishonesty or fraud or any similar crime
20 under the laws of the United States, this state or another jurisdiction, if the underlying act or
21 omission involved would have constituted a crime under the laws of this state;

22 (11) Any conduct adversely affecting the licensee's, permittee's or certificate of
23 authorization holder's fitness to perform landscape architectural services; or

24 (12) Knowingly using any false or deceptive statements in advertising.

25 (b) If the board suspends, revokes, refuses to issue, refuses to renew or limits any license,
26 temporary permit, certificate of authorization or practice privilege, the board shall make and enter
27 an order to that effect and give written notice of the order to the person by certified mail, return
28 receipt requested, which order shall include a statement of the charges setting forth the reasons
29 for the action, and notice of the date, time and place of the hearing. If a license, temporary permit,
30 certificate of authorization is ordered suspended or revoked, then the licensee, permittee or
31 certificate of authorization holder shall, within twenty days after receipt of the order, return the
32 license, temporary permit, certificate of authorization to the board. The hearing shall be held in
33 accordance with the provisions of this article.

34 (c) Disciplinary action includes, but is not limited to, a reprimand, censure, probation,

35 administrative fines, and mandatory attendance at continuing education seminars.

§30A-10-24. Complaints; investigations; notice.

1 (a) The board may, on its own motion, conduct an investigation to determine whether there
2 are any grounds for disciplinary action against a licensee, permittee or certificate of authorization
3 holder. The board shall, upon the verified written complaint of any person, conduct an
4 investigation to determine whether there are any grounds for disciplinary action against a
5 licensee, permittee or certificate of authorization holder.

6 (b) Upon receipt of a written complaint filed against any licensee, permittee or certificate
7 of authorization holder, the board shall provide a copy of the complaint to the licensee, permittee
8 or certificate of authorization holder.

9 (c) If the board finds, upon investigation, that probable cause exists that the licensee,
10 permittee or certificate of authorization holder has violated any provision of this article or the rules
11 promulgated hereunder, then the board shall serve the licensee, permittee or certificate of
12 authorization holder with a written statement of charges and a notice specifying the date, time
13 and place of the hearing. The hearing shall be held in accordance with the provisions of this
14 article.

§30A-10-25. Hearing and judicial review.

1 (a) Any person adversely affected by an order entered by the board is entitled to a hearing.
2 A hearing on a statement of the charges shall be held in accordance with the provisions for
3 hearings set forth in article one of this chapter and the procedures specified by the board by rule.

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

§30A-10-26. Injunctions.

1 (a) When, by reason of an investigation under this article or otherwise, the board or any
 2 other interested person believes that a person has violated or is about to violate any provision of
 3 this article, any rule promulgated hereunder, any order of the board or any final decision of the
 4 board, the board or any other interested person may apply to any court of competent jurisdiction
 5 for an injunction against such person enjoining such person from the violation. Upon a showing
 6 that the person has engaged in or is about to engage in any prohibited act or practice, an
 7 injunction, restraining order or other appropriate order may be granted by the court without bond.

8 (b) A cause of action by the board may be brought in the circuit court of the county where
 9 the cause of action took place.

§30A-10-27. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article or otherwise, the board has
 2 reason to believe that a person has knowingly violated the provisions of this article, the board
 3 may bring its information to the attention of the Attorney General or other appropriate law-
 4 enforcement officer who may cause appropriate criminal proceedings to be brought.

5 (b) If a court of law finds that a person knowingly violated any provision of this article, any
 6 rule promulgated hereunder, any order of the board or any final decision of the board, then the
 7 person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100
 8 and no more than \$1,000 for each violation, imprisoned for up to thirty days for each violation, or
 9 both fined and imprisoned.

§30A-10-28. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under this article, evidence of the
 2 commission of a single act prohibited by this article is sufficient to justify a penalty, injunction,
 3 restraining order or conviction without evidence of a general course of conduct.

ARTICLE 11. NURSING HOME ADMINISTRATORS.

§30A-11-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice nursing home administration

2 in this state without a license or permit issued under the provisions of this article, or advertise or
3 use any title or description tending to convey the impression that they are a nursing home
4 administrator unless the person has been duly licensed or permitted under the provisions of this
5 article.

6 (b) A business entity may not render any service or engage in any activity which, if
7 rendered or engaged in by an individual, would constitute the practice of nursing home
8 administration, except through a licensee or permittee.

§30A-11-2. Applicable law.

1 The practice licensed under the provisions of this article and the West Virginia Nursing
2 Home Administrators Licensing Board is subject to article one of this chapter, the provisions of
3 this article, and any rules promulgated hereunder.

§30A-11-3. Definitions.

1 As used in this article:

2 (1) "Applicant" means any person making application for an original or renewal license or
3 a temporary or emergency permit under the provisions of this article.

4 (2) "Board" means the West Virginia Nursing Home Administrators Licensing Board
5 created by this article.

6 (3) "License" means a license to practice nursing home administration under the
7 provisions of this article.

8 (4) "Licensee" means a nursing home administrator licensed under this article.

9 (5) "Nursing home" means a nursing home as that term is defined in subdivision (c),
10 section two, article five-c, chapter sixteen of this code.

11 (6) "Nursing home administrator" means a person who performs or is responsible for
12 planning, organizing, directing and controlling a nursing home, whether or not such the person
13 has an ownership interest in the nursing home or shares the functions.

14 (7) "Permit" means a temporary permit or emergency permit issued under the provisions

15 of this article.

16 (8) "Permittee" means any person holding a permit issued pursuant to the provisions of
17 this article.

18 (9) "Practice of nursing home administration" means any service requiring nursing home
19 administration education, training, or experience and applying such to planning, organizing,
20 staffing, directing, and controlling of the total management of a nursing home.

§30A-11-4. West Virginia Nursing Home Administrators Licensing Board.

1 (a) The West Virginia Nursing Home Administrators Licensing Board terminates on June
2 30, 2010. The terms of the members of the board serving on June 1, 2010, terminate on June 30,
3 2010.

4 (b) Prior to July 1, 2010, the Governor shall appoint, by and with advice and consent of
5 the Senate:

6 (1) Two persons who are licensed nursing home administrators, each for a term of five
7 years;

8 (2) One person who is licensed as a nursing home administrator for a term of four years;

9 (3) One person who is licensed as a nursing home administrator for a term of three years;

10 (4) One person who is licensed as a nursing home administrator for a term of two years;

11 and

12 (5) Two citizen members, who are not licensed under the provisions of this article and who
13 do not perform any services related to the practice of the profession regulated under the
14 provisions of this article, one for a term of four years, and one for a term of three years.

15 (c) After the initial appointment, the term shall be for five years. All appointments to the
16 board shall be made by the Governor by and with the advice and consent of the Senate.

17 (d) Commencing July 1, 2010, the board is created and shall consist of the following seven
18 voting members and one ex-officio nonvoting member:

19 (1) Five members who are licensed nursing home administrators;

20 (2) Two citizen members, who are not licensed under the provisions of this article and who
21 do not perform any services related to the practice of the professions regulated under the
22 provisions of this article, for a term of three years; and

23 (3) The Commissioner of the Bureau for Public Health or his or her designee is an ex-
24 officio nonvoting member.

25 (e) Each licensed member of the board, at the time of his or her appointment, must have
26 held a license in this state for a period of not less than five years immediately preceding the
27 appointment.

28 (f) Each member of the board must be a resident of this state during the appointment term.

29 (g) A member may not serve more than two consecutive full terms. A member may
30 continue to serve until a successor has been appointed and has qualified.

31 (h) A vacancy on the board shall be filled by appointment by the Governor for the
32 unexpired term of the member whose office is vacant and the appointment shall be made within
33 sixty days of the vacancy.

34 (i) The Governor may remove any member from the board for neglect of duty,
35 incompetency or official misconduct.

36 (j) A member of the board immediately and automatically forfeits membership to the board
37 if his or her license to practice is suspended or revoked, he or she is convicted of a felony under
38 the laws of any jurisdiction, or he or she becomes a nonresident of this state.

39 (k) The board shall elect annually one of its members as a chairperson and one of its
40 members as a secretary who serve at the will of the board.

41 (l) Each member of the board is entitled to compensation and expense reimbursement in
42 accordance with article one of this chapter.

43 (m) A majority of the members of the board constitutes a quorum.

44 (n) The board shall hold at least two meetings each year. Other meetings may be held at
45 the call of the chairperson or upon the written request of two members, at the time and place as

46 designated in the call or request.

47 (o) Prior to commencing his or her duties as a member of the board, each member shall
48 take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30A-11-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this article, by rule, in article one
2 of this chapter and elsewhere in law.

3 (b) The board shall:

4 (1) Hold meetings, conduct hearings and administer examinations;

5 (2) Establish requirements for licenses and permits;

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

8 (4) Determine the qualifications of any applicant for licenses and permits;

9 (5) Prepare, conduct, administer and grade examinations for licenses;

10 (6) Determine the passing grade for the examinations;

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

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

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

18 (10) Investigate alleged violations of the provisions of this article, legislative rules, orders
19 and final decisions of the board;

20 (11) Conduct disciplinary hearings of persons regulated by the board;

21 (12) Determine disciplinary action and issue orders;

22 (13) Institute appropriate legal action for the enforcement of the provisions of this article;

23 (14) Maintain an accurate registry of names and addresses of all persons regulated by the
24 board;

25 (15) Keep accurate and complete records of its proceedings, and certify the same as may
26 be necessary and appropriate;

27 (16) Establish the continuing education requirements for licensees;

28 (7) Issue, renew, combine, deny, restrict, suspend, restrict, revoke or reinstate licenses
29 and permits;

30 (8) Establish a fee schedule;

31 (19) Propose rules in accordance with the provisions of article three, chapter twenty-nine-
32 a of this code to implement the provisions of this article; and

33 (20) Take all other actions necessary and proper to effectuate the purposes of this article.

34 (c) The board may:

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

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

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

§30A-11-6. Rulemaking.

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

4 (1) Standards and requirements for licenses and permits;

5 (2) Procedures for examinations and reexaminations;

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

8 (4) Educational and experience requirements;

- 9 (5) The passing grade on the examinations;
- 10 (6) Standards for approval of courses and curriculum;
- 11 (7) Procedures for the issuance and renewal of licenses and permits;
- 12 (8) Procedures to address substandard quality of care notices from the West Virginia
13 Office of Health Facility Licensure;
- 14 (9) A fee schedule;
- 15 (10) Procedure to publish a notice of a disciplinary hearing against a licensee;
- 16 (11) Continuing education requirements for licensees;
- 17 (12) The procedures for denying, suspending, restricting, revoking, reinstating or limiting
18 the practice of licensees and permittees;
- 19 (13) Adoption of a standard for ethics;
- 20 (14) Requirements for inactive or revoked licenses or permits; and
- 21 (15) Any other rules necessary to effectuate the provisions of this article.
- 22 (b) All of the board's rules in effect on July 1, 2010, shall remain in effect until they are
23 amended or repealed, and references to provisions of former enactments of this article are
24 interpreted to mean provisions of this article.

§30A-11-7. Fees; special revenue account; administrative fines.

- 1 (a) All fees and other moneys, except administrative fines, received by the board shall be
2 deposited in a separate special revenue fund in the State Treasury designated the West Virginia
3 Nursing Home Administrators Licensing Board Fund”, which is continued. The fund is used by the
4 board for the administration of this article. Except as may be provided in article one of this chapter,
5 the board retains the amount in the special revenue account from year to year. No compensation
6 or expense incurred under this article is a charge against the General Revenue Fund.
- 7 (b) Any amount received as fines, imposed pursuant to this article, shall be deposited into
8 the General Revenue Fund of the State Treasury.

§30A-11-8. Qualifications for license; exceptions; application; fees.

1 (a) To be eligible for a license to engage in the practice of nursing home administration,
2 the applicant must:

3 (1) Submit an application to the board;

4 (2) Be of good moral character;

5 (3) Obtain a baccalaureate degree;

6 (4) Pass a state and national examination as approved by the board;

7 (5) Complete the required experience as prescribed by the board;

8 (6) Successfully complete a criminal background check, through the West Virginia State
9 Police and the National Criminal Investigative Center;

10 (7) Successfully complete a Health Integrity Protection Data Bank check;

11 (8) Not be an alcohol or drug abuser as these terms are defined in section eleven, article
12 one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery
13 process, which may, in the discretion of the board, be evidenced by participation in a twelve-step
14 program or other similar group or process, may be considered;

15 (9) Not have been convicted of a felony in any jurisdiction within ten years preceding the
16 date of application for license which conviction remains unreversed;

17 (10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense
18 for which he or she was convicted related to the practice of nursing home administration, which
19 conviction remains unreversed; and

20 (11) Has fulfilled any other requirement specified by the board.

21 (b) A license issued by the board prior to July 1, 2010, shall for all purposes be considered
22 a license issued under this article: *Provided*, That a person holding a license issued prior to July
23 1, 2010, must renew the license pursuant to the provisions of this article.

§30A-11-9. License to practice nursing home administration from another jurisdiction.

1 The board may issue a license to practice to an applicant of good moral character who
2 holds a valid license or other authorization to practice nursing home administration from another

3 state, if the applicant:

4 (1) Holds a license or other authorization to practice in another state which was granted
5 after the completion of educational requirements substantially equivalent to those required in this
6 state and passed examinations that are substantially equivalent to the examinations required in
7 this state;

8 (2) Does not have charges pending against his or her license or other authorization to
9 practice, and has never had a license or other authorization to practice revoked;

10 (3) Has not previously failed an examination for licensure in this state;

11 (4) Has paid the applicable fee;

12 (5) Is a citizen of the United States or is eligible for employment in the United States; and

13 (6) Has fulfilled any other requirement specified by the board.

§30A-11-10. Temporary and Emergency Permits.

1 (a) The board may issue a temporary permit for a period of ninety days, to an applicant
2 seeking licensure pursuant to section nine of this article who has accepted employment in West
3 Virginia, but who must wait for the board to meet to act on his or her application. The temporary
4 permit may be renewed at the discretion of the board.

5 (b) The board may issue an emergency permit to a person who is designated as an acting
6 nursing home administrator, if a licensed nursing home administrator dies or is unable to continue
7 due to an unexpected cause. The board may issue the emergency permit to the owner, governing
8 body or other appropriate authority in charge of the nursing home, if it finds the appointment will
9 not endanger the safety of the occupants of the nursing home. A emergency permit is valid for a
10 period determined by the board not to exceed six months and shall not be renewed.

11 (c) The board shall charge a fee for the temporary permit and emergency permit.

§30A-11-11. Renewal requirements.

1 (a) All persons regulated by the article shall annually before June 30, renew his or her
2 license by completing a form prescribed by the board and submitting any other information

3 required by the board.

4 (b) The board shall charge a fee for each renewal of a license or permit and shall charge
5 a late fee for any renewal not properly completed and received with the appropriate fee by the
6 board before June 30.

7 (c) The board shall require as a condition for the renewal that each licensee complete
8 continuing education.

9 (d) The board may deny an application for renewal for any reason which would justify the
10 denial of an original application for a license.

§30A-11-12. Inactive license requirements.

1 (a) A licensee who does not want to continue in active practice shall notify the board in
2 writing and be granted inactive status.

3 (b) A person granted inactive status is exempt from fee requirements and continuing
4 education requirements, and cannot practice in this state.

5 (c) When an inactive licensee wants to return to active practice, he or she must complete
6 all the continuing education requirements for every licensure year the licensee was on inactive
7 status and pay all the applicable fees as determined by the board.

§30A-11-13. Display of license.

1 (a) The board shall prescribe the form for a license and permit, and may issue a duplicate
2 upon payment of a fee.

3 (b) Any person regulated by the article shall conspicuously display his or her license or
4 permit at his or her principal business location.

**§30A-11-14. Complaints; investigations; due process procedure; grounds for disciplinary
action.**

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

4 article.

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

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

10 (d) Upon a finding that probable cause exists that the licensee or permittee has violated
11 subsection (g) of this section or rules promulgated pursuant to this article, the board may enter
12 into a consent decree or hold a hearing for the suspension or revocation of the license or permit
13 or the imposition of sanctions 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 executive director of the board may issue subpoenas
16 and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of
17 allegations against any person regulated by the article.

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

20 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
21 suspend or revoke the license or permit of, impose probationary conditions upon or take
22 disciplinary action against, any licensee or permittee for any of the following reasons once a
23 violation has been proven by a preponderance of the evidence:

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

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

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

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

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

33 (6) Aiding or abetting unlicensed practice; or

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

36 (h) For the purposes of subsection (g) of this section, disciplinary action may include:

37 (1) Reprimand;

38 (2) Probation;

39 (3) Administrative fine, not to exceed \$1,000 per day per violation;

40 (4) Mandatory attendance at continuing education seminars or other training;

41 (5) Practicing under supervision or other restriction;

42 (6) Requiring the licensee or permittee to report to the board for periodic interviews for a
43 specified period of time; or

44 (7) Other corrective action considered by the board to be necessary to protect the public,
45 including advising other parties whose legitimate interests may be at risk.

§30A-11-15. Procedures for hearing; right of appeal.

1 (a) Hearings shall be governed by the provisions of section eight, article one of this
2 chapter.

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

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

9 (d) Any member or the executive director of the board has the authority to administer

10 oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

11 (e) If, after a hearing, the board determines the licensee, or permittee has violated any
12 provision of this article or the board's rules, a formal written decision shall be prepared which
13 contains findings of fact, conclusions of law and a specific description of the disciplinary actions
14 imposed.

§30A-11-16. Judicial review.

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

§30A-11-17. Criminal proceedings; penalties.

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

4 (b) A person violating section one of this article is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined not less than \$100 not more than \$1,000 or confined in jail not
6 more than six months, or both fined and confined.

§30A-11-18. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under this article, evidence of the
2 commission of a single act prohibited by this article is sufficient to justify a penalty, injunction,
3 restraining order or conviction without evidence of a general course of conduct.

ARTICLE 12. HEARING-AID DEALERS AND FITTERS.

§30A-12-1. Definitions.

1 Unless the context clearly requires otherwise, as used in this article:

2 (1) "Advertise," and any of its variants, means and includes the use of a newspaper,
3 magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign,

4 placard, card, label, tag, window display, store sign, radio, television announcement or any other
5 means or methods now or hereinafter employed to bring to the attention of the public the practice
6 of fitting or dealing in hearing aids.

7 (2) "Board" means the West Virginia board of hearing-aid dealers.

8 (3) "Department" means the state department of health and when appropriate shall include
9 the state director of health.

10 (4) "Hearing aid" means any wearable device or instrument or any combination thereof,
11 designed for, represented as or offered for sale for the purpose of aiding, improving or
12 compensating for defective or impaired human hearing and shall include earmolds, parts,
13 attachments or other accessories thereto, but excluding batteries and cords.

14 (5) "Hearing-aid dealer" and "hearing-aid fitter" means any person engaged in the practice
15 of dealing in or fitting of hearing aids.

16 (6) "License" means any license issued under the provisions of this article and shall include
17 a temporary license. "Licensee" means any person holding any such license.

18 (7) "Person" means and includes any individual, partnership, trust, association,
19 corporation or other like organization, or any combination thereof.

20 (8) "Practice of dealing in or fitting of hearing aids" means and includes:

21 (a) The measurement or other testing of human hearing by means of an audiometer, or
22 by any other means;

23 (b) The selection, adaptation, fitting or sale of hearing aids by a person for the use of
24 another person; or

25 (c) The making of impressions for earmolds.

26 (9) "Sell" or "sale" or any variant thereof, means any transfer of title or of the right of use
27 by lease, bailment or any other contract, but shall not include transactions between distributors,
28 dealers or licensees where the item transferred is intended for sale.

29 (10) "Trainee" means any person training to become a licensed hearing-aid dealer or fitter.

§30A-12-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

1 (a) Except as provided in subsections (b), (c) and (d) hereof no person shall, on or after
2 the effective date of this article, engage in the practice of dealing in or fitting of hearing aids, either
3 as a hearing-aid dealer, fitter or as a trainee, nor shall any person advertise or assume any such
4 practice, without first being licensed or otherwise qualified under the provisions of this article.

5 (b) If the applicant is a partnership, trust, association, corporation or other like
6 organization, the application, in addition to such other information as the board may require, shall
7 be accompanied by an application for a license for each person, whether owner or employee, of
8 such applicant who serves in the capacity of a hearing-aid dealer or fitter, or shall contain a
9 statement that such applications for all such persons are submitted separately. No partnership,
10 trust, association, corporation or other like organization shall permit any unlicensed person to sell
11 hearing aids or to engage in the practice of dealing in or fitting of hearing aids.

12 (c) This article is not intended to prevent any person who is not licensed under this article
13 from engaging in the practice of measuring human hearing for the purpose of selection of hearing
14 aids, provided such person or organization employing such person does not sell hearing aids or
15 accessories thereto, except in the case of earmolds to be used only for the purpose of audiologic
16 evaluation.

17 State or local governmental organizations or agencies and organizations chartered as
18 not-for-profit shall not be eligible for licensure to fit and dispense hearing aids.

§30A-12-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

1 (a) There is continued the West Virginia board of hearing-aid dealers, which is composed
2 of five members to be appointed by the Governor, with the advice and consent of the Senate. The
3 members of the board shall be residents of this state. One member shall be a person licensed to
4 practice medicine in this state and one member shall hold a degree in audiology from an

5 accredited college or university. The remaining three members shall be persons having no less
6 than five years' experience as hearing-aid dealers or fitters and shall hold a valid license under
7 the provisions of this article.

8 (b) The terms of office of each member of the board shall be four years, staggered in
9 accordance with initial appointments under prior enactments of this act. A board member shall
10 serve until his or her successor has been appointed and qualified and any vacancy in the office
11 of a member shall be filled by appointment for the unexpired term of such member. Any member
12 of the board shall be eligible for reappointment.

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

15 (d) Each member of the board is entitled to receive for each day actually engaged in the
16 duties of his or her office, an amount not to exceed the amount paid to legislators for their interim
17 duties, and is entitled to be reimbursed for all reasonable and necessary expenses actually
18 incurred in the performance of his or her duties as a member of such board.

19 (e) All fees and other moneys collected by the board, pursuant to the provisions of this
20 article, shall be kept in a separate fund and shall be expended solely for the purposes of this
21 article. The compensation for the members of the board and all expenses incurred under this
22 article shall be paid from this special fund and no such compensation or expenses shall be paid
23 from the General Revenue Fund of this state. All disbursements of funds necessary to carry out
24 the provisions of this article shall be so disbursed only upon the authority of the board.

25 (f) The board shall regulate and control the practice of dealing in or fitting of hearing aids
26 in this state, and shall administer qualifying examinations in accordance with the provisions of this
27 article to test the knowledge and proficiency of all prospective licensees or trainees.

28 (g) The board may purchase and maintain or rent audiometric equipment and other
29 facilities necessary to carry out the examination of applicants as provided in this article and may
30 purchase such other equipment and supplies and employ such persons as it deems appropriate

31 to carry out the provisions of this article.

32 (h) The board shall propose rules for legislative approval in accordance with the provisions
33 of article three, chapter twenty-nine-a of this code:

34 (1) For the proper performance of its duties;

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

37 (3) To govern the time, place and manner of conducting the examinations required by this
38 article and the standard, scope and subject of such examinations, which examinations shall, as a
39 minimum, conform with the standards, scope and subjects set forth in section six of this article
40 and manner, and the form in which applications for such examinations shall be filed;

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

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

§30A-12-4. Administrative duties; examinations; register; use of fees.

1 (a) Effective July 1, 2012, the administrative work of the board shall be performed by the
2 board. The board shall keep full and complete records of all of their proceedings and accounts,
3 which said records and accounts shall be open to public inspection at all reasonable times.

4 (b) The board may conduct, supervise and administer the qualifying examinations
5 authorized and required by this article, to maintain for a register or record of persons who apply
6 for a license or a temporary trainee permit as well as a register or record of the name and last-
7 known business address of all persons to whom a license or trainee permit is issued pursuant to
8 this article.

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

§30A-12-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.

1 Each person desiring to obtain a license from the board to engage in the practice of dealing
2 in or fitting of hearing aids shall make application to the board. The application shall be made in
3 such manner and form as prescribed by the board and shall be accompanied by the prescribed
4 fee. The application shall state under oath that the applicant:

5 (1) Intends to maintain a permanent office or place of business in this state or that the
6 applicant has at the time of application a permanent office or place of business in another state
7 within a reasonable commuting distance from this state. The board shall determine and prescribe
8 by regulation the term "reasonable distance" as used herein;

9 (2) Is a person of good moral character and that he or she has never been convicted of
10 nor is presently under indictment for a crime involving moral turpitude;

11 (3) Is eighteen years of age or older;

12 (4) Has an education equivalent to a four-year course in an accredited high school; and

13 (5) Is free of chronic infectious or contagious diseases.

14 Any person who fails to meet any of the standards set forth in the next preceding
15 paragraph shall not be eligible or qualified to take the examination nor shall any such person be
16 eligible or qualified to engage in the practice of dealing in or fitting of hearing aids.

17 The board, after first determining that the applicant is qualified and eligible in every respect
18 to take the examination, shall notify the applicant that he or she has fulfilled all of the qualifications
19 and eligibility requirements as required by this section and shall advise him or her of the date,
20 time and place for him or her to appear to be examined as required by the provisions of this article
21 and the regulations promulgated by the board pursuant to this article.

22 The board, with the aid and assistance of the department, shall give at least one annual
23 examination of the type required by this article and may give such additional examinations, at
24 such times and places, as the board and the department may deem proper, giving consideration

25 to the number of applications.

§30A-12-6. Standards, scope and subject of examination.

1 (a) Before obtaining a license to engage in the practice of dealing in or fitting of hearing-
2 aids, an applicant must meet the following requirements:

3 (1) The applicant must pass the International Licensing Examination for Hearing
4 Healthcare Professionals, prepared by the International Hearing Society, or an equivalent
5 examination selected by the board.

6 (2) The applicant must pass a practical examination, which shall be a nationally
7 recognized test selected by the board, or a test designed by the board to test the applicant's
8 proficiency in the following techniques as they pertain to the fitting of hearing aids: (A) Pure tone
9 audiometry, including air conduction testing;

10 (B) Live voice or recorded voice speech audiometry, including speech reception threshold
11 testing and speech discrimination testing; and

12 (C) Masking when indicated and effective masking.

13 (3) The applicant must pass an examination, which shall be developed by the board, to
14 test an applicant's competency in the following subjects: (A) Ability to counsel the person or family
15 who will receive the hearing aid relative to the care and use of the instrument;

16 (B) Knowledge regarding the medical and rehabilitative facilities for hearing-handicapped
17 children and adults in the area being served;

18 (C) Knowledge and understanding of the grounds for revocation, suspension, or probation
19 of a license as outlined in this article; and

20 (D) Knowledge and understanding of criminal offenses as outlined in this article.

21 (b) The board may promulgate rules to implement the requirements of this section,
22 including emergency rules promulgated pursuant to the provisions of article three, chapter twenty-
23 nine-a of this code.

24 (c) The examinations required by this section shall be collectively referred to in this article

25 as "the examination."

§30A-12-7. Results of examination disclosed to applicant; issuance of license; fees.

1 (a) Any person who has taken the examination shall be notified by the board within thirty
2 days following such examination as to whether he or she has satisfactorily passed the
3 examination. Such person shall also be advised of his or her right to take the examination in the
4 future.

5 If such applicant has satisfactorily passed the examination, he or she shall be advised of
6 that fact by the board and, upon payment of the prescribed fee, the board shall register the
7 applicant as a licensee and shall issue a license to such applicant. Such license shall remain in
8 effect until the next succeeding June 30.

9 (b) Within six months following the effective date of this article, any applicant for a license
10 who has been engaged in the practice of dealing in or fitting of hearing aids in this state for a
11 period of three years immediately prior to such effective date, shall be so registered and issued a
12 license without being required to undergo or take the examination required by this article:
13 *Provided*, That such person meets all other requirements of this article and the rules and
14 regulations promulgated pursuant thereto. All of the fees which such prospective licensee would
15 be otherwise required to pay shall be paid by such prospective licensee in the same manner and
16 to the same extent as if such prospective licensee had not so engaged in such practice in this
17 state for such three-year period.

18 (c) The issuance of a license by the board must have the concurrence of a majority of its
19 members.

§30A-12-8. Posting of license required; duplicate copies.

1 Each person who holds a hearing-aid dealer's or fitter's license and engages in the
2 practice of dealing in the fitting of hearing aids shall display such license in a conspicuous place
3 in his or her office or place of business at all times. Each person who maintains more than one
4 office or place of business shall post a duplicate copy of the license at each location. The board

5 shall issue duplicate copies of a license upon receipt of a properly completed application and
6 payment of \$1 for each copy requested.

§30A-12-9. Renewal of license.

1 (a) A person who is engaged in the practice of dealing in or fitting of hearing aids shall
2 renew his or her license annually upon payment of the prescribed renewal fee. A thirty-day period
3 shall be allowed after expiration of a license during which any such license may be renewed upon
4 payment of the renewal fee plus a penalty for late filing. After the expiration of such thirty-day
5 period, the board may renew such license upon payment of twice the prescribed renewal fee. No
6 person who applies for renewal, whose license was suspended for failure to renew, may be
7 required to submit to any examination as a condition of renewal if application is made within two
8 years following the date such license was so suspended.

9 (b) In each even numbered year beginning with the year one thousand nine hundred
10 eighty-eight, each applicant for renewal of license shall present to the board evidence of
11 continuing study and education of not less than twenty hours in a course of study approved by
12 the board. Such twenty hours of instruction must have been gained during the immediately
13 preceding two years.

§30A-12-10. Notification of change of address of licensee required.

1 Every licensee under the provisions of this article shall notify the board in writing of the
2 address of each place where he or she is, or intends to be, engaged in the practice of dealing in
3 or fitting of hearing aids. The board shall cause to be kept a record of each place of business of
4 every such licensee. Any notice required to be given by the board or the department to any such
5 licensee shall be given by mailing the same to him or her at the address shown upon such records.

§30A-12-11. Reciprocity.

1 Whenever the board determines that another state or jurisdiction has requirements for the
2 licensing of persons to engage in the practice of dealing in or fitting of hearing aids, which
3 requirements meet the minimum requirements and standards set forth in this article and the rules

4 and regulations promulgated pursuant to this article, the board may, in the manner prescribed by
5 its rules and regulations, issue a license without the examination required by this article, to any
6 person holding a license in such other state or jurisdiction, upon application, providing such
7 prospective licensee meets all of the requirements set forth in this article and the rules and
8 regulations of the board with respect thereto. All of the fees which such prospective licensee
9 would be otherwise required to pay, shall be paid by such prospective licensee in the same
10 manner and to the same extent as if such prospective licensee were not qualified to engage in
11 such other state or jurisdiction.

§30A-12-12. Temporary trainee permits.

1 A person who meets all of the qualifications and requirements set forth in subdivision (2),
2 section five of this article may obtain a temporary trainee permit upon application to the board. All
3 such applications for a temporary trainee permit shall be made in the manner and form prescribed
4 in the rules and regulations of the board.

5 Upon receiving an application for a temporary trainee permit as prescribed in this section,
6 accompanied by the prescribed fee, the board shall issue such permit which shall entitle the
7 applicant trainee to engage in the practice of dealing in or fitting of hearing aids for a period of
8 one year under the supervision and control of a licensee, such licensee to be responsible for the
9 supervision, training and control of such trainee.

10 If a person holding a temporary trainee permit under this section has not successfully
11 passed the licensing examination within one year from the date of issuance of such permit, the
12 permit may be renewed or reissued under such conditions as the board may require in its rules
13 and regulations for an additional one-year period upon payment of the prescribed fee. No such
14 temporary trainee permit shall be reissued, renewed or extended more than once.

**§30A-12-13. Refusal to issue, suspension or revocation of license or trainee permit; false
and deceptive advertising.**

1 (a) The board may refuse to issue or renew, or may suspend or revoke any license or

2 trainee permit for any one, or any combination of the following causes: Violation of a rule or
3 regulation governing the ethical practice of dealing in or fitting of hearing aids promulgated by the
4 board under the authority granted by this article; conviction of a felony, as shown by a certified
5 copy of the record of the court wherein such conviction was had after such conviction has become
6 final; the obtaining of or the attempt to obtain a license, money or any other thing of value, by
7 fraudulent misrepresentation; malpractice; continued practice of dealing in or fitting of hearing
8 aids by a person knowingly having a chronic infectious or contagious disease; habitual
9 drunkenness or addiction to the use of a controlled substance as defined in chapter sixty-a of this
10 code; advertising, practicing or attempting to practice under a name other than one's own;
11 advertising by means of or selling by the use of knowingly false or deceptive statements.

12 (b) False and deceptive advertisement shall constitute unethical practice and the board,
13 by rules and regulations may regulate and proscribe acts considered by it to be false and
14 deceptive advertisement.

15 The rules and regulations promulgated pursuant to this subsection shall include
16 prohibitions against (1) advertising a particular model or type of hearing aid for sale when
17 purchasers or prospective purchasers responding to the advertisement cannot purchase the
18 advertised model or type, where it is established that the purpose of the advertisement is to obtain
19 prospects for the sale of a different model or type than that advertised, (2) representing that the
20 service or advice of a person licensed to practice medicine will be used or made available in the
21 selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using
22 the words "doctor," "clinic" or similar words, abbreviations or symbols which tend to connote the
23 medical profession when such use is not accurate, and (3) advertising a manufacturer's product
24 or using a manufacturer's name or trademark which implies a relationship with the manufacturer
25 that does not exist or using the words "audiologist," "state licensed clinic," "state registered," "state
26 certified," or "state approved" or any other term, abbreviation or symbol when it would falsely give
27 the impression that service is being provided by persons holding a degree in audiology or trained

28 in clinical audiology, or that licensee's service has been recommended by the state when such is
29 not the case.

30 (c) The refusal to issue or renew a license or trainee permit or the suspension or revocation
31 of a license or trainee permit by the board must have the concurrence of a majority of the members
32 of the board.

§30A-12-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

1 (a) Every licensee engaged in the practice of dealing in or fitting of hearing aids shall, prior
2 to the sale or the fitting of a hearing aid intended to be worn or used by any person under eighteen
3 years of age, first ascertain whether such person has within the next preceding six months been
4 examined for the defective or impaired hearing condition sought to be relieved by an
5 otolaryngologist or other duly licensed physician. If such person has been so examined, the
6 licensee shall, prior to the sale or fitting of such hearing aid, obtain from such otolaryngologist or
7 physician written authority to fit a hearing aid. If such person has not been so examined, the
8 licensee shall not proceed to the sale or fitting of a hearing aid until after such person has been
9 so examined. If the prospective user is eighteen years of age or older, the hearing aid dispenser
10 may afford the prospective user an opportunity to waive the medical evaluation requirement
11 provided that the hearing aid dispenser:

12 (1) Informs the prospective user that the exercise of the waiver is not in the user's best
13 health interest;

14 (2) Does not in any way actively encourage the prospective user to waive such a medical
15 evaluation;

16 (3) Affords the prospective user the opportunity to sign the following statement: I have
17 been advised by (hearing aid dispenser's name) that the Food and Drug Administration has
18 determined that my best health interest would be served if I had a medical evaluation by a licensed
19 physician, preferably one who specializes in diseases of the ear, before purchasing a hearing aid.
20 I do not wish a medical evaluation before purchasing a hearing aid.

21 (b) Prior to the sale of a hearing aid, every licensee shall be required to advise in writing,
22 in the manner and form prescribed by the board, the person to whom he or she intends to sell or
23 fit with such hearing aid that such person's best interest would be served by consulting an
24 otolaryngologist or other physician specializing in diseases of the ear, or any other physician duly
25 licensed to practice medicine in this state, if any of the following conditions are found upon
26 examination of such person:

- 27 (1) Visible congenital or traumatic deformity of the ear;
28 (2) History of active ear discharge within the previous ninety days;
29 (3) History of a sudden or rapidly progressive hearing loss within the previous ninety days;
30 (4) Acute or chronic dizziness;
31 (5) Unilateral hearing loss of sudden or recent onset within the previous ninety days; or
32 (6) Significant air-bone gap.

33 (c) A copy of any writing or form required to be given to a prospective purchaser or other
34 person by the terms of this section shall be retained in the records of the licensee for a period of
35 seven years following the issuance of each writing.

**§30A-12-15. Receipt required to be furnished to a person supplied with hearing aid;
information required; right to rescind purchase agreement.**

1 (a) Any person who practices the fitting and sale of hearing aids shall deliver to each
2 person supplied with a hearing aid a receipt which shall contain his or her signature, his or her
3 business address and the number of his or her license; the specifications as to the make and
4 model of the hearing aid furnished; the full terms of the sale, including the date upon which the
5 hearing aid was supplied to the person; and the following statement: "Any person supplied with a
6 hearing aid by a hearing-aid dealer licensed in this state has the right to return the hearing aid to
7 the dealer from whom the aid was purchased within thirty days after receipt of the aid and rescind
8 the purchase agreement except for reasonable fitting and examination charges if the person is
9 dissatisfied with the hearing aid." If a hearing aid which has been previously sold at retail is sold,

10 the receipt shall be clearly marked as “used” or “reconditioned,” whichever is applicable, with
11 terms of guarantee, if any.

12 Such receipt shall be in the manner and form as prescribed by the board in its rules and
13 regulations. Such rules and regulations shall prescribe the type and size of print to be used in
14 such receipt and the receipt shall set forth such additional information as the board may prescribe.
15 A copy of such receipt shall be retained in the records of the licensee for a period of seven years
16 following the issuance of such receipt.

17 (b) Each person supplied with a hearing aid by a hearing-aid dealer licensed pursuant to
18 the provisions of this article shall have the right to return the hearing aid to the dealer within thirty
19 calendar days of receipt and rescind the purchase agreement if the hearing aid does not function
20 properly, cannot be adjusted to satisfactorily correct the deficiency in the person's hearing or the
21 person is otherwise dissatisfied with the hearing aid. If a hearing-aid dealer, pursuant to being
22 notified by a person to whom he or she has supplied a hearing aid that the hearing aid does not
23 function properly, does not satisfactorily correct the deficiency in the person's hearing or that the
24 person is otherwise dissatisfied with the hearing aid, makes an adjustment to the hearing aid or
25 advises the person to continue use of the hearing aid for the purpose of becoming more
26 accustomed thereto or any other reason, the right of the person to whom the hearing aid was
27 supplied shall be extended for thirty calendar days following the date upon which such adjustment
28 was made or advisement was given.

29 (c) An exercise of the right to rescind the purchase agreement by a person to whom a
30 hearing aid has been supplied may not preclude the dealer from charging reasonable fees for
31 examination and fitting. The maximum fees which may be charged by a hearing-aid dealer for
32 examination and fitting shall be fixed by the West Virginia board of hearing-aid dealers by rule
33 and regulation lawfully promulgated in accordance with the provisions of chapter twenty-nine-a of
34 this code.

§30A-12-16. Hearing procedures; judicial review.

1 Any person, including a person who brings a complaint against a licensee or trainee before
2 the board, adversely affected by any decision, ruling or order of the board shall be entitled to a
3 hearing before the board. The hearing may be held by the board or a majority thereof either in the
4 county wherein the licensee, trainee, prospective licensee or prospective trainee resides or may
5 be held in the county wherein the person adversely affected resides or may be so held in some
6 other county as the board may direct. All of the pertinent provisions of article five, chapter twenty-
7 nine-a of this code shall apply to any hearing held by the board and the administrative procedures
8 in connection with and following such hearing shall apply with like effect as if the provisions of
9 said article five were set forth in extenso in this section. For the purpose of conducting such
10 hearing the board shall have the power and authority to issue subpoenas and subpoenas duces
11 tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a. Any
12 such hearing shall be held within thirty days after the date upon which a request therefor was
13 made. All requests for hearings shall be made in writing to the board by certified or registered
14 mail, return receipt requested. The board may postpone or continue any hearing on its own motion
15 or upon application for good cause shown.

16 Any person, including a person who brings a complaint against a licensee or trainee before
17 the board, who may be adversely affected by any ruling or order made or entered by the board
18 following a hearing, shall be entitled to judicial review of such order, in accordance with the
19 provisions of section four, article five, chapter twenty-nine-a of this code and the provisions of
20 said section four shall apply to and govern such appeal with like effect as if the provisions of said
21 section four were set forth in extenso in this section and the provisions of article six of said chapter
22 twenty-nine-a shall apply with respect to appeals to the Supreme Court of Appeals in the same
23 manner.

§30A-12-17. Prohibited acts and practices.

1 Any of the following acts are hereby prohibited and shall be punishable under section
2 eighteen of this article and shall also constitute unethical practice and no person shall:

- 3 (1) Sell, barter or offer to sell or barter a license issued pursuant to this article.
- 4 (2) Purchase or procure by barter any such license with intent to use it as evidence of the
5 holder's qualifications to engage in the practice of dealing in or fitting of hearing aids.
- 6 (3) Alter materially a license issued pursuant to this article.
- 7 (4) Use or attempt to use as a valid license any license which has been purchased,
8 fraudulently obtained, counterfeited or materially altered.
- 9 (5) Willfully make any false statement in an application for license or for renewal thereof.
- 10 (6) Advertise for the mail-order sale of hearing aids in any advertising medium or sell
11 hearing aids by mail to any person other than distributors, dealers or those excluded from the
12 provisions of this article.

§30A-12-18. Offenses and penalties.

1 Any person who shall engage in the practice of dealing in or fitting of hearing aids without
2 qualifying to do so under the provisions of this article or any person who commits any of the acts
3 prohibited under the provisions of section seventeen of this article shall be guilty of a
4 misdemeanor, and, upon conviction for the first offense, shall be fined not less than \$100 nor
5 more than \$500 or imprisoned in the county jail for not more than six months, or be subject to
6 both such fine and imprisonment, and for the second or any subsequent offense, shall be fined
7 not less than \$500 nor more than \$1,000 or imprisoned in the county jail for not less than thirty
8 days nor more than one year or be subject to both such fine and imprisonment. Each sale made
9 in violation of this article shall constitute a separate offense. Magistrates shall have concurrent
10 jurisdiction with circuit courts for the enforcement of this article.

§30A-12-19. Injunction.

1 Notwithstanding the existence of any other remedy, the board may, in the manner
2 provided by law, maintain an action for an injunction against any person to restrain or prevent the
3 practice of dealing in or fitting of hearing aids when such person repeatedly refuses to obtain a
4 license therefor and continues such practice without first obtaining a license therefor in the

5 manner hereinbefore provided, and an action for an injunction may be maintained for any
6 continued and repeated violation of any of the provisions of this article and the rules and
7 regulations promulgated pursuant thereto.

§30A-12-20. Construction and severability.

1 The provisions of this article and the regulations promulgated thereunder shall be liberally
2 construed so as to carry into effect its purposes and to protect the health, safety and welfare of
3 the public.

4 If any provision of this article or the application thereof to any person or circumstance shall
5 be held invalid, the remainder of the article and the application of such provision to other persons
6 or circumstances shall not be affected thereby.

ARTICLE 13. BOARD OF BARBERS AND COSMETOLOGISTS.

§30A-13-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice barbering, barber permanent
2 waving, cosmetology, hairstyling, waxing, shampoo assisting, aesthetics or nail care in this state
3 without a license or certification issued under the provisions of this article, or advertise or use any
4 title or description tending to convey the impression that the person is a licensed or certified
5 aesthetician, barber, barber crossover, barber permanent wavist, cosmetologist, cosmetologist
6 crossover, hairstylist, shampoo assistant, waxing specialist or nail technician unless the person
7 has been licensed or obtained certification under the provisions of this article and the license or
8 certification has not expired, been suspended or revoked.

9 (b) No salon, except through a licensee or certification, may render any service or engage
10 in any activity which, if rendered or engaged in by an individual, would constitute the practices
11 licensed or certified under the provisions of this article.

12 (c) No school, except through a certified instructor, may instruct, render any service or
13 engage in any activity which, if taught, rendered or engaged in by an individual, would constitute
14 the practices licensed under the provisions of this article.

§30A-13-2. Applicable law.

1 The practices licensed under the provisions of this article and the board of Barbers and
2 Cosmetologists are subject to the provisions of article one of this chapter, the provisions of this
3 article, and any rules promulgated hereunder.

§30A-13-3. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
2 the context clearly indicates otherwise:

3 (a) "Aesthetics" or "esthetics" means any one or any combination of the following acts
4 when done on the human body for compensation and not for the treatment of disease:

5 (1) Administering cosmetic treatments to enhance or improve the appearance of the skin,
6 including cleansing, toning, performing effleurage or other related movements, stimulating,
7 exfoliating or performing any other similar procedure on the skin of the human body or scalp;

8 (2) Applying, by hand or with a mechanical or electrical apparatus, any cosmetics,
9 makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations
10 necessary for the practice of aesthetics to another person's face, neck, back, shoulders, hands,
11 elbows and feet up to and including the knee;

12 (3) The rubbing, cleansing, exercising, beautifying or grooming of another person's face,
13 neck, back, shoulders, hands, elbows and feet up to and including the knee;

14 (4) The waxing and tweezing of hair on another person's body;

15 (5) The wrapping of another person's body in a body wrap;

16 (6) Applying artificial eyelashes and eyebrows; and

17 (7) The lightening of hair on the body except the scalp.

18 (b) "Aesthetician" or "esthetician" means a person licensed under the provisions of this
19 article who engages in the practice of aesthetics and has completed six hundred clock hours of
20 training.

21 (c) "Applicant" means a person making application for a professional license, license,

22 certificate, registration, permit or renewal under the provisions of this article.

23 (d) "Barber" means a person licensed under the provisions of this article who engages in
24 the practice of barbering and has completed a twelve hundred clock-hour barber training program
25 without chemical services or a fifteen hundred clock-hour barber training program with chemical
26 services, or has successfully completed the barber apprenticeship program.

27 (e) "Barbering" means any one or any combination of the following acts when done on the
28 head and neck for compensation and not for the treatment of disease:

29 (1) Shaving, shaping and trimming the beard, or both;

30 (2) Cutting, singeing, shampooing, arranging, dressing, tinting, bleaching, or applying
31 lotions or tonics on human hair, or a wig or hairpiece; and

32 (3) Applications, treatments or rubs of the scalp, face, or neck with oils, creams, lotions,
33 cosmetics, antiseptics, powders, or other preparations in connection with the shaving, cutting or
34 trimming of the hair or beard.

35 (f) "Barber crossover" " is a person who has completed twelve hundred or fifteen hundred
36 clock hours of training, is licensed as a barber, and completed additional hours of training in nails,
37 aesthetics and/or chemical services, to the total amount of twenty-one hundred hours, to perform
38 cosmetology.

39 (g) "Barber permanent waving" means the following acts performed on the head and neck
40 for compensation and not for the treatment of disease:

41 (1) The bleaching or tinting of hair; and

42 (2) The permanent waving of hair.

43 (h) "Barber permanent wavist" means a person who has completed two thousand clock
44 hours of training and was licensed to perform barbering and barber permanent waiving enrolled
45 by August 28, 2012.

46 (i) "Board" means the West Virginia Board of Barbers and Cosmetologists.

47 (j) "Certificate" means an instructor certificate to teach in a school under the provisions of

48 this article or a document issued by the board for certification obtained pursuant to section eight-
49 b of this article.

50 (k) "Certificate holder" means a person certified as an instructor to teach in a school under
51 the provisions of this article or who has obtained a certification pursuant to section eight-b of this
52 article.

53 (l) "Cosmetologist" means a person licensed under the provisions of this article who
54 engages in the practice of cosmetology and who has completed eighteen hundred clock hours of
55 training.

56 (m) "Cosmetology" means any one or any combination of the following acts when done on
57 the human body for compensation and not for the treatment of disease:

58 (1) Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions,
59 curling, waving, permanent waving, relaxing, straightening, shampooing, cleansing, singeing,
60 bleaching, tinting, coloring, waxing, tweezing, or similarly work on human hair, or a wig or
61 hairpiece, by any means, including hands, mechanical or electrical devices or appliances;

62 (2) Nail care;

63 (3) Applying by hand or with a mechanical or electrical device or appliance, any cosmetics,
64 makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations
65 necessary for the practice of aesthetics to another person's face, neck, shoulders, hands, elbows
66 and feet up to and including the knee;

67 (4) The rubbing, cleansing, exercising, beautifying or grooming of another person's face,
68 neck, shoulders, hands, elbows and feet up to and including the knee;

69 (5) The wrapping of another person's body in a body wrap; and

70 (6) Performing aesthetics.

71 (n) "Cosmetology crossover" is a person who has completed eighteen hundred clock hours
72 of training, is licensed as a cosmetologist and completes an additional three hundred hours of
73 training in clipper cuts and face shaving to perform barbering, for a total of twenty-one hundred

74 hours.

75 (o) "General supervision" means:

76 (1) For schools, a master or certified instructor is on the premises and is quickly and easily
77 available; or

78 (2) For salons, a professional licensee is on the premises and is quickly and easily
79 available.

80 (p) "Hair styling" means any one or any combination of the following acts when done on
81 the head and neck for compensation and not for the treatment of disease:

82 Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions,
83 curling, facial hair trimming, scalp treatments, waving, permanent waving, relaxing, straightening,
84 shampooing, singeing, bleaching, tinting, coloring, or similarly work on human hair, or a wig or
85 hairpiece, by any means, including hands, mechanical or electrical devices or appliances.

86 (q) "Hair stylist" means a person licensed under the provisions of this article who engages
87 in the practice of hair styling and who has completed one thousand clock hours of training,
88 effective July 1, 2016.

89 (r) "License" means a professional license, a salon license or a school license.

90 (s) "Licensed school" means a facility which has been approved by the West Virginia
91 Council for Community and Technical College Education (CCTCE), Department of Education in
92 conjunction with CCTCE or Department of Education in conjunction with the Department of
93 Corrections pursuant to section nine, article two-b, chapter eighteen-b of this code to educate
94 persons to be licensed or issued certain permits under the provisions of this article.

95 (t) "Licensee" means a person, corporation or firm holding a license issued under the
96 provisions of this article.

97 (u) "Nail care" means any one or any combination of the following acts when done on the
98 human body for compensation and not for the treatment of disease:

99 (1) The cleansing, dressing, or polishing of nails of a person;

100 (2) Performing artificial nail service; and

101 (3) The cosmetic treatment of the feet up to the knee and the hands up to the elbow.

102 (v) "Nail technician" or "manicurist" means a person licensed under the provisions of this
103 article who engages in the practice of nail care and has completed four hundred clock hours of
104 training.

105 (w) "Permit" means a work permit.

106 (x) "Permitee" means a person holding a work permit.

107 (y) "Professional license" means a license to practice as an aesthetician, barber, barber
108 crossover, barber permanent waviest, cosmetologist, cosmetologist crossover, hairstylist or nail
109 technician.

110 (z) "Registration" means a registration issued by the board to a person who rents or leases
111 a booth or chair from a licensed salon owner and operator, or both, or a registration issued by the
112 board to a person who is a student in a school.

113 (aa) "Registrant" means a person who holds a registration under the provisions of this
114 article.

115 (bb) "Salon" means a shop or other facility where a person practices under a professional
116 license.

117 (cc) "Salon license" means a license to own and operate a salon.

118 (dd) "Student registration" means a registration issued by the board to a student to study
119 at a school licensed under the provisions of this article.

120 (ee) "Waxing specialist" means a person certified under the provisions of this article who
121 engages in the practice of waxing and tweezing of hair on another person's body.

122 (ff) "Shampoo assistant" means a person certified under the provisions of this article who
123 engages in the practice of shampooing and rinsing hair; removing rollers or permanent rods and
124 cleansing or other sink-related functions not requiring the skill of a license. They must work at all
125 times under the direct supervision of a licensed barber, hairstylist or cosmetologist.

126 (gg) Hair braiding, threading and any other item not spelled out are not regulated by the
127 West Virginia Board of Barbers and Cosmetologists.

§30A-13-4. Board of Barbers and Cosmetologists.

1 (a) The West Virginia Board of Barbers and Cosmetologists is continued. The members
2 of the board in office on July 1, 2016, shall, unless sooner removed, continue to serve until their
3 respective terms expire and until their successors have been appointed and qualified.

4 (b) The Governor, by and with the advice and consent of the Senate, shall appoint:

5 (1) One licensed cosmetologist;

6 (2) One licensed barber or barber permanent waviest;

7 (3) One licensed aesthetician who is not a cosmetologist;

8 (4) One licensed nail technician who is not a cosmetologist;

9 (5) One representative from a privately owned beauty school licensed by the West Virginia
10 Council for Community and Technical College Education (CCTCE), Department of Education in
11 conjunction with CCTCE or Department of Education with the Department of Corrections; and

12 (6) Four citizen members representing the public;

13 (c) After the initial appointment term, the term shall be for five years. All appointments to
14 the board shall be made by the Governor by and with the advice and consent of the Senate.

15 (d) Each licensed member of the board, at the time of his or her appointment, must have
16 held a professional license in this state for a period of not less than three years immediately
17 preceding the appointment.

18 (e) Each member of the board must be a resident of this state during the appointment
19 term.

20 (f) A member may not serve more than two consecutive full terms. A member may continue
21 to serve until a successor has been appointed and has qualified. A member serving on the board
22 on June 30, 2016, may be reappointed in accordance with the provisions of this section.

23 (g) A vacancy on the board shall be filled by appointment by the Governor for the

24 unexpired term of the member whose office is vacant and the appointment shall be made within
25 sixty days of the vacancy.

26 (h) The Governor may remove any member from the board for neglect of duty,
27 incompetency or official misconduct.

28 (i) A member of the board immediately and automatically forfeits membership to the board
29 if his or her license to practice is suspended or revoked, is convicted of a felony under the laws
30 of any jurisdiction or becomes a nonresident of this state.

31 (j) The board shall elect annually one of its members as chairperson who serves at the will
32 of the board.

33 (k) Each member of the board is entitled to compensation and expense reimbursement in
34 accordance with article one of this chapter.

35 (l) A majority of the members of the board constitutes a quorum.

36 (m) The board shall hold at least two annual meetings. Other meetings may be held at the
37 call of the chairperson or upon the written request of two members, at the time and place as
38 designated in the call or request.

39 (n) Prior to commencing his or her duties as a member of the board, each member shall
40 take and subscribe to the oath required by section five, article IV of the constitution of this state.

§30A-13-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this article, by rule, provided such
2 rule does not contradict the provisions of this article and does not exceed the authorities granted
3 in this article, in article one of this chapter and elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer examinations;

6 (2) Establish requirements for licenses, permits, certificates and registrations;

7 (3) Establish procedures for submitting, approving and rejecting applications for licenses,
8 permits, certificates and registrations;

9 (4) Determine the qualifications of any applicant for licenses, permits, certificates and
10 registrations;

11 (5) Prepare, conduct, administer and grade examinations for professional licenses and
12 certificates: *Provided*, That the examinations must meet national standards;

13 (6) Determine the passing grade for the examinations;

14 (7) Maintain records of the examinations the board or a third party administers, including
15 the number of persons taking the examinations and the pass and fail rate;

16 (8) Set operational standards and requirements for licensed schools: *Provided*, That a
17 licensed school shall have a minimum of one chair per student available during practical
18 instruction;

19 (9) Hire, discharge, establish the job requirements and fix the compensation of the
20 executive director;

21 (10) Maintain an office and hire, discharge, establish the job requirements and fix the
22 compensation of employees, investigators/inspectors and contracted employees necessary to
23 enforce the provisions of this article: *Provided*, That any investigator/inspector employed by the
24 board on July 1, 2009, shall retain their coverage under the classified service, including job
25 classification, job tenure and salary, until that person retires or is dismissed: *Provided, however*,
26 That nothing may prohibit the disciplining or dismissal of any investigator/inspector for cause;

27 (11) Investigate alleged violations of the provisions of this article, legislative rules, orders
28 and final decisions of the board;

29 (12) Establish the criteria for the training of investigators/inspectors;

30 (13) Set the requirements for investigations and inspections;

31 (14) Conduct disciplinary hearings of persons regulated by the board;

32 (15) Determine disciplinary action and issue orders;

33 (16) Institute appropriate legal action for the enforcement of the provisions of this article;

34 (7) Report violations of the provisions of this article, and legislative rules promulgated

35 pursuant to this article, alleged to have been committed by a licensed school to the West Virginia
36 Council for Community and Technical College Education or the Department of Education. If the
37 board determines that probable cause exists that a violation occurred, the board immediately shall
38 advise and provide its investigation file to the West Virginia Council for Community and Technical
39 College Education or the Department of Education;

40 (8) Maintain an accurate registry of names and addresses of all persons regulated by the
41 board;

42 (19) Keep accurate and complete records of its proceedings, and certify the same as may
43 be necessary and appropriate;

44 (20) Establish the continuing education requirements for professional licensees and
45 certificate holders;

46 (21) Issue, renew, combine, deny, suspend, revoke or reinstate licenses, permits,
47 certificates and registrations;

48 (22) Establish a fee schedule;

49 (23) Propose rules in accordance with the provisions of article three, chapter twenty-nine-
50 a of this code to implement the provisions of this article; and

51 (24) Take all other actions necessary and proper to effectuate the purposes of this article.

52 (c) The board may:

53 (1) Establish joint licenses;

54 (2) Contract with third parties to administer the examinations required under the provisions
55 of this article;

56 (3) Sue and be sued in its official name as an agency of this state;

57 (4) Confer with the Attorney General or his or her assistant in connection with legal matters
58 and questions.

59 (d) Notwithstanding any other provision of this code, the board may not restrict a certificate
60 holder or licensee from practicing his or her licensed craft at temporary on-site events in

61 connection with, but not limited to: Fairs, carnivals, weddings, pageants or photographs: *Provided*,
62 That the certificate holder or licensee is compliant with all other prescribed requirements and rules
63 under this code. If an out-of-state licensee works in a temporary capacity, less than five days, in
64 connection with an event or temporary commercial enterprise, he or she may be granted a
65 temporary permit to work after submitting his or her current license certification to this state and
66 paying the applicable fee: *Provided, however*, That the licensee shall display or have immediately
67 available their license for the duration of his or her practice at a temporary event.

§30A-13-6. Rulemaking.

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

3 (1) Standards and requirements for licenses, permits, certificates and registrations;

4 (2) Procedures for examinations and reexaminations: *Provided*, That the board shall offer
5 examinations in all languages other than English if available to the board and requested by the
6 applicant;

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

9 (4) Educational and experience requirements;

10 (5) The passing grade on the examinations;

11 (6) Standards for approval of courses and curriculum;

12 (7) Procedures for the issuance and renewal of licenses, permits, certificates and
13 registrations;

14 (8) A fee schedule;

15 (9) Continuing education requirements for professional licensees and certificate holders;

16 (10) The procedures for denying, suspending, revoking, reinstating or limiting the practice
17 of licensees, permittees, certificate holders and registrants;

18 (11) Designating the regions for investigators/inspectors;

- 19 (12) Criteria for the training of investigators/inspectors;
20 (13) Requirements for investigations and inspections;
21 (14) Requirements for inactive or revoked licenses, permits, certificates and registrations;
22 (15) Establishing the training program and requirements for instructors for schools
23 licensed under this article;
24 (16) Establishing operating procedures for salons; and
25 (7) Any other rules necessary to effectuate the provisions of this article.

§30A-13-7. Fees; special revenue account; administrative fines.

- 1 (a) All fees in effect on January 1, 2009, shall remain in effect until they are amended or
2 repealed by legislative rule or statute.
- 3 (b) All fees and other moneys, except administrative fines, received by the board shall be
4 deposited in a separate special revenue fund in the state Treasury designated the "Barbers and
5 Beauticians Special Fund", which is continued and shall be known as the "Board of Barbers and
6 Cosmetologists Special Fund". The fund is used by the board for the administration of this article.
7 Except as may be provided in article one of this chapter, the board retains the amount in the
8 special revenue account from year to year. No compensation or expense incurred under this
9 article is a charge against the General Revenue Fund.
- 10 (c) Any amount received as fines, imposed pursuant to this article, shall be deposited into
11 the General Revenue Fund of the state Treasury.

§30A-13-8. Professional license requirements.

- 1 (a) An applicant for a professional license to practice as an aesthetician, barber, barber
2 crossover, cosmetologist, hair stylist, cosmetologist crossover or nail technician shall present
3 satisfactory evidence that he or she:
- 4 (1) Is at least eighteen years of age;
5 (2) Is of good moral character;
6 (3) Has a high school diploma, a GED, or has passed the "ability to benefit test" approved

7 by the United States Department of Education;

8 (4) Has graduated from a licensed school which has been approved by the West Virginia
9 Council for Community and Technical College Education (CCTCE), Department of Education in
10 conjunction with CCTCE or Department of Education with the Department of Corrections or has
11 completed education requirements in another state and meets the licensure provisions of the
12 board;

13 (5) Has passed an examination that tests the applicant's knowledge of subjects specified
14 by the board: *Provided*, That the board may recognize a certificate or similar license in lieu of the
15 examination or part of the examination that the board requires: *Provided, however*, That any
16 examination meets national standards;

17 (6) Has paid the applicable fee;

18 (7) Presents a certificate of health from a licensed physician;

19 (8) Is a citizen of the United States or is eligible for employment in the United States; and

20 (9) Has fulfilled any other requirement specified by the board.

21 (b) A license to practice issued by the board prior to July 1, 2016, shall for all purposes be
22 considered a professional license issued under this article: *Provided*, That a person holding a
23 license issued prior to July 1, 2016, must renew the license pursuant to the provisions of this
24 article.

25 (c) A person, who by education and experience qualifies to be a barber and a
26 cosmetologist or a barber crossover or cosmetologist crossover, may elect at any time to practice
27 solely as a barber and, after notice and application to the board, may be licensed as a barber
28 without other designation.

§30A-13-8a. Barber apprentice.

1 (a) The board may establish an apprenticeship program to become a barber. A barber
2 apprentice shall work at all times under the direct supervision of a licensed barber and any permit

3 issued by the board to work as a barber apprentice does not allow a person to practice individually
4 as a barber.

5 (b) An applicant for a barber apprenticeship shall present satisfactory evidence that he or
6 she:

7 (1) Is at least sixteen years of age;

8 (2) Is of good moral character;

9 (3) Is in high school or has a high school diploma, a GED, or has passed the "ability to
10 benefit test" approved by the United States Department of Education;

11 (4) Has paid the applicable fee;

12 (5) Has a certificate of health from a licensed physician;

13 (6) Is a citizen of the United States or is eligible for employment in the United States; and

14 (7) Has fulfilled any other requirement specified by the board.

15 (c) An applicant for a sponsor of a barber apprentice shall present satisfactory evidence
16 that he or she:

17 (1) Is licensed as a barber under the provisions of this article;

18 (2) Has paid the applicable fee; and

19 (3) Has fulfilled any other requirement specified by the board.

20 (d) A sponsor of a barber apprentice shall be a current licensed barber with at least five
21 years' experience and has worked in a shop for the last five years.

22 (e) The board may propose emergency rules and rules for legislative approval, in
23 accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement
24 the provisions of this section, including:

25 (1) The requirements for:

26 (A) The barber apprenticeship program;

27 (B) The barber apprentice permit; and

28 (C) A licensed barber to sponsor a barber apprentice;

- 29 (2) Procedures for an examination;
- 30 (3) A fee schedule; and
- 31 (4) Any other rules necessary to effectuate the provisions of this section.

§30A-13-8b. Certifications.

- 1 (a) The board shall issue a certification to an applicant who obtains training at a licensed
- 2 school or continuing education provider, in West Virginia, in the following area:
- 3 *Waxing Specialist.*—
- 4 An applicant for a waxing specialist shall present satisfactory evidence that he or she:
- 5 (A) Is at least eighteen years of age;
- 6 (B) Is of good moral character;
- 7 (C) Has a high school diploma, a GED, or has passed the “ability to benefit test” approved
- 8 by the United States Department of Education;
- 9 (D) Has paid the applicable fee;
- 10 (E) Has a certificate of health from a licensed physician;
- 11 (F) Is a citizen of the United States or is eligible for employment in the United States;
- 12 (G) Has completed a one hundred-hour class that consists of: Professional requirements,
- 13 safety and health, skin structure, disorders and diseases, removal of superfluous hair and twenty-
- 14 five hours on the clinic floor, supervised, for a total of one hundred twenty-five hours;
- 15 (H) If not currently licensed, must take the West Virginia state law test; and
- 16 (I) Has fulfilled any other requirement specified by the board.

- 17 (b) The board shall issue to any barber the fifteen hundred clock-hour level licensure who
- 18 has previously completed a twelve hundred clock-hour training program, and who subsequently
- 19 completes a three hundred clock-hour certification program in chemical services.

§30A-13-9. Professional license from another state; license to practice in this state.

- 1 (a) The board may issue a professional license to practice to an applicant of good moral
- 2 character who holds a valid license or other authorization to practice in that particular field from

3 another state, if the applicant demonstrates that he or she:

4 (1) Holds a license or other authorization to practice in another state which was granted
5 after completion of educational requirements substantially equivalent to those required in this
6 state and passed an examination that is substantially equivalent to the examination required in
7 this state;

8 (2) Does not have charges pending against his or her license or other authorization to
9 practice and has never had a license or other authorization to practice revoked;

10 (3) Has not previously failed an examination for professional licensure in this state;

11 (4) Has paid the applicable fee;

12 (5) Is at least eighteen years of age;

13 (6) Has a high school diploma, a GED, or has passed the "ability to benefit test" approved
14 by the United States Department of Education;

15 () (7) Is a citizen of the United States or is eligible for employment in the United States;

16 () (8) Has presented a certificate of health issued by a licensed physician; and

17 () (9) Has fulfilled any other requirement specified by the board.

18 (b) In its discretion, the board may examine a person by a written, oral or skills test for
19 licensing under this section, and may enter into agreements for reciprocal licensing with other
20 jurisdictions having substantially similar requirements for licensure.

§30A-13-10. Professional license and certificate renewal requirements.

1 (a) A professional licensee and certificate holder shall annually on or before January 1,
2 renew his or her professional license or certificate by completing a form prescribed by the board,
3 paying the renewal fee and submitting any other information required by the board.

4 (b) The board shall charge a fee for each renewal of a license or certificate, and a late fee
5 for any renewal not paid by the due date.

6 (c) The board shall require as a condition of renewal of a professional license or certificate

7 that each licensee or certificate holder complete continuing education: subject to the following
8 exceptions:

9 (1) When a barber or cosmetologist has been licensed and in practice for ten years, that
10 barber or cosmetologist will not be required to complete any continuing education other than a
11 three-hour sanitation class every other year for a period of ten years; and

12 (2) A person, who by education and experience qualifies to be a barber and a
13 cosmetologist or a barber crossover or cosmetologist crossover, may elect to be licensed solely
14 as a barber and shall not be required to attend or participate in continuing education programs
15 that are not required of licensed barbers.

16 (d) The board may approve for continuing education credit any education course providing
17 instruction in any curriculum, subject matter or discipline included in the education required for
18 licensure that is submitted to the board or offered by:

19 (1) A licensed school or instructor, outside of school instruction;

20 (2) A manufacturer or distributor of barbering, aesthetics, nail technology or cosmetology
21 products;

22 (3) A barber or cosmetology trade organization; or

23 (4) Any course offered at an accredited private or public university, college or community
24 college in this state that relates to the profession or a general business class.

25 (e) The board may deny an application for renewal for any reason which would justify the
26 denial of an original application for a license or certificate.

27 (f) The board shall recognize reciprocity for military barbers for the purpose of the state
28 examination for barbers.

§30A-13-11. Work permit.

1 (a) The board may issue a work permit to practice to an applicant who meets the following
2 conditions:

3 (1) Has graduated from a licensed school approved by the West Virginia Council for
4 Community and Technical College Education (CCTCE), Department of Education in conjunction
5 with CCTCE or Department of Education with the Department of Corrections or has completed
6 education requirements in another state and meets the licensure provisions of the board;

7 (2) Is waiting to take the examination;

8 (3) Has employment in the field in which he or she applied to take the examination and is
9 working under the general supervision of a professional licensee;

10 (4) Has paid the work permit fee;

11 (5) Has presented a certificate of health issued by a licensed physician;

12 (6) Is a citizen of the United States or is eligible for employment in the United States; and

13 (7) Meets all the other requirements specified by the board.

14 (b) A work permit expires at the end of the month after issuance following the next
15 examination in the specific field. A work permit may be renewed once.

16 (c) While in effect, a work permittee is subject to the restrictions and requirements imposed
17 by this article.

§30A-13-11a. Shampoo assistant.

18 (a) The board may establish a shampoo assistant permit. A shampoo assistant shall work
19 at all times under the direct supervision of a licensed barber or cosmetologist and any permit
20 issued by the board to work as a shampoo assistant does not allow a person to practice
21 individually as a shampoo assistant.

22 (b) A shampoo assistant is only authorized to perform the following services:

23 (1) Shampooing and rinsing hair;

24 (2) Removing rollers or permanent rods; and

25 (3) Cleansing or other sink-related functions not requiring the skill of a licensee.

26 (c) An applicant for a shampoo assistant permit shall present satisfactory evidence that
27 he or she:

- 28 (1) Is at least sixteen years of age;
- 29 (2) Is of good moral character;
- 30 (3) Is in high school or has a high school diploma, a GED, or has passed the “ability to
- 31 benefit test” approved by the United States Department of Education;
- 32 (4) Has paid the applicable fee;
- 33 (5) Has a certificate of health from a licensed physician;
- 34 (6) Is a citizen of the United States or is eligible for employment in the United States; and
- 35 (7) Has fulfilled any other requirement specified by the board.
- 36 (d) The board may propose rules for legislative approval, in accordance with the provisions
- 37 of article three, chapter twenty-nine-a of this code, to implement the provisions of this section,
- 38 including:
- 39 (1) The requirements and procedures for a shampoo assistant permit:
- 40 (2) A fee schedule; and
- 41 (3) Any other rules necessary to effectuate the provisions of this section.

§30A-13-12. Student registration; classes.

- 1 (a) Prior to commencing studies in a licensed school, a student shall acquire a student
- 2 registration issued by the board.
- 3 (b) An applicant for a student registration shall present satisfactory evidence that he or
- 4 she meets the following conditions:
- 5 (1) Is enrolled as a student in a licensed school;
- 6 (2) Is of good moral character;
- 7 (3) Has paid the required fee;
- 8 (4) Has presented a certificate of health issued by a licensed physician; and
- 9 (5) Is a citizen of the United States or is eligible for employment in the United States.
- 10 (c) The student registration is good during the prescribed period of study for the student.
- 11 (d) The student may perform acts constituting barbering, hairstyling, cosmetology,

12 aesthetics or nail care in a school under the general supervision of a master or certified instructor.

13 (e) The student is not required to take class hours that are consecutive.

§30A-13-13. Display of professional license and permits.

1 (a) The board shall prescribe the form for a professional license and work and student
2 permits, including a photograph, and may issue a duplicate license or permit upon payment of a
3 fee.

4 (b) Every professional licensee and work permittee shall display his or her license or permit
5 in a conspicuous place at his or her work station.

6 (c) Every student shall have available his or her student permit and be able to produce it
7 upon request.

8 (d) Every professional licensee, work permittee, or certificate holder must present such
9 license, permit, certification or registration to an investigator/inspector or a board member upon
10 request.

§30A-13-14. Health certificate requirements.

1 (a) It is unlawful for a person to practice as a professional licensee, certificate holder or be
2 a permittee or be a certified instructor while having an infectious, contagious or communicable
3 disease.

4 (b) The board may, with cause, require a professional licensee, permittee, certificate holder
5 or certified instructor to submit to a physical examination and file a certificate of health.

§30A-13-15. Schools may provide certain classes at different locations.

1 A licensed school may provide clinical instruction and theory instruction in separate
2 locations. Any school authorized under this article cannot be established within the same physical
3 structure as a salon, spa or similar business licensed under W. Va. Code §30A-13-7.

§30A-13-16. Certification requirements to be an instructor in a school.

1 (a) The board may issue a certificate to be an instructor in a school to an applicant who
2 meets the following requirements:

- 3 (1) Meets the educational requirements established by the board;
- 4 (2) Has completed and passed a course in teaching techniques at a post-secondary
5 educational level;
- 6 (3) Has passed the instructor examination;
- 7 (4) Has paid the appropriate fees;
- 8 (5) Presents a certificate of health from a licensed physician;
- 9 (6) Is a citizen of the United States or is eligible for employment in the United States; and
- 10 (7) Has fulfilled any other requirement specified by the board.

11 (b) All instructor certifications must be renewed annually or biennially on or before January
12 1 and pay a renewal fee.

13 (c) A certification to be an instructor issued by the board prior to January 1, 2009, shall for
14 all purposes be considered a certification issued under this article: *Provided*, That a person
15 holding a certification issued prior to January 1, 2009, must renew the certification pursuant to the
16 provisions of this article.

17 (d) An instructor with an expired certificate must comply with the following to renew his or
18 her certificate:

- 19 (1) Notify the board that he or she wants to be placed on inactive status; or
- 20 (2) Pay all lapsed renewal fees;
- 21 (3) Present a new certificate of health; and
- 22 (4) Meet the qualifications for certification set out in this article.

23 (e) A certified instructor is not required to have an active professional license, unless the
24 instructor is in fact practicing outside the scope of his or her employment as an instructor.

§30A-13-17. Salon license requirements.

1 (a) Prior to opening a salon, any person, firm or corporation owning and/or operating a
2 salon, and any person, firm or corporation practicing in a field authorized by this article, shall meet
3 the following requirements to acquire a salon license to do business:

4 (1) The salon has been approved by the board as having met all the requirements and
5 qualifications for the place of business as are required by this article;

6 (2) Notify the board, in writing, at least twenty days before the proposed opening date, so
7 there can be an inspection of the salon: *Provided*, That if an inspection is not made within ten
8 days of the opening of the salon, or a salon license to open has not been granted or refused, then
9 the salon may open provisionally subject to a later inspection and to all other provisions and rules
10 provided in this article;

11 (3) Pay all applicable fees;

12 (4) All rooms, facilities, bathrooms, toilets and adjoining rooms used in the place of
13 business are kept clean, sanitary, well lighted and ventilated at all times. The use of chunk alum,
14 powder puffs and styptic pencils in any shop is prohibited;

15 (5) Every professional licensee, certificate holder, or permittee in the place of business
16 thoroughly cleans his or her hands with soap and water immediately before serving any patron;
17 and

18 (6) Every patron is served with clean, freshly laundered linen that is kept in a closed
19 cabinet used for that purpose only. All linens, immediately after being used, must be placed in a
20 receptacle used for that purpose only.

21 (b) All rules shall be kept posted in a conspicuous place in each place of business.

22 (c) All salon licenses must be renewed annually on or before July 1 and pay a renewal
23 fee.

24 (d) A license to operate a salon issued by the board prior to July 1, 2009, shall for all
25 purposes be considered a salon license issued under this article: *Provided*, That a person holding
26 a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this
27 article.

28 (e) The salon license shall be permanently displayed in the salon and a suitable sign shall
29 be displayed at the main entrance of the salon which shall plainly indicate what type of salon is

30 being operated.

§30A-13-18. Salon management requirements.

1 (a) Every salon in this state offering the services set forth in this article shall be operated
2 under the supervision and management of a professional licensee or certificate holder licensed
3 under this article.

4 (b) Any services set forth in this article may be conducted within the same salon. A suitable
5 sign shall be displayed at the main entrance of all salons plainly indicating the business conducted
6 therein.

§30A-13-19. Booth or chair rental registration requirements.

1 (a) Any professional licensee or certificate holder who elects to rent or lease a booth or
2 chair from a licensed salon owner and/or operator must comply with the following to receive a
3 registration from the board:

4 (1) Register with the board;

5 (2) Register with the state Tax Division and present the registration to the board;

6 (3) Pay a registration fee;

7 (4) Notify the board of the length of any rental or lease agreement;

8 (5) State the name of the person or salon from which a chair or booth is being rented or
9 leased; and

10 (6) State the effective date of the rental or lease.

11 (b) If a person registered with the board pursuant to this section elects to move from one
12 salon to rent or lease a chair or booth from another salon, then he or she must register again with
13 the board and pay a fee.

14 (c) Each licensed salon owner and/or operator who elects to rent or lease chairs or booths
15 shall notify the board in writing of such rental or lease within ten days of the effective date of the
16 rental or lease.

17 (d) The board shall quarterly notify the state Tax Commissioner of all persons registered

18 pursuant to this section during the previous quarter. Such notice shall be in writing and shall
19 include the following:

20 (1) The names of all the registered professional licensees or certificate holders;

21 (2) The names of the salons where space is being rented or leased; and

22 (3) The length of time of each rental or lease agreement.

23 (e) All registrations must be renewed annually on or before July 1 and pay a renewal fee.

24 (f) A registration to rent or lease a booth or chair issued by the board prior to July 1, 2009,
25 shall for all purposes be considered a registration issued under this article: *Provided*, That a
26 person holding a registration to rent or lease a booth or chair issued prior to July 1, 2009, must
27 renew the registration pursuant to the provisions of this article.

**§30A-13-20. Complaints; investigations; due process procedure; grounds for disciplinary
action.**

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

4 (b) Upon initiation or receipt of the complaint, the board shall provide a copy of the
5 complaint to the licensee, permittee, registrant or certificate holder.

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

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

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

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

20 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
21 suspend or revoke the license, permit, registration or certification of, impose probationary
22 conditions upon or take disciplinary action against, any licensee, permittee, registrant or certificate
23 holder for any of the following reasons once a violation has been proven by a preponderance of
24 the evidence:

25 (1) Obtaining a license, permit, registration or certification by fraud, misrepresentation or
26 concealment of material facts;

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

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

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

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

34 (6) Aiding or abetting unlicensed practice; or

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

37 (h) For the purposes of subsection (g) of this section, effective July 15, 2009, disciplinary
38 action may include:

39 (1) Reprimand;

40 (2) Probation;

- 41 (3) Administrative fine, not to exceed \$1,000 per day per violation;
- 42 (4) Mandatory attendance at continuing education seminars or other training;
- 43 (5) Practicing under supervision or other restriction;
- 44 (6) Requiring the licensee, permittee, registrant or certificate holder to report to the board
45 for periodic interviews for a specified period of time; or
- 46 (7) Other corrective action considered by the board to be necessary to protect the public,
47 including advising other parties whose legitimate interests may be at risk.

§30A-13-21. Procedures for hearing; right of appeal.

- 1 (a) Hearings shall be governed by the provisions of section eight, article one of this
2 chapter.
- 3 (b) The board may conduct the hearing or elect to have an administrative law judge
4 conduct the hearing.
- 5 (c) If the hearing is conducted by an administrative law judge, at the conclusion of a
6 hearing he or she shall prepare a proposed written order containing findings of fact and
7 conclusions of law. The proposed order may contain proposed disciplinary actions if the board so
8 directs. The board may accept, reject or modify the decision of the administrative law judge.
- 9 (d) Any member or the executive director of the board has the authority to administer
10 oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.
- 11 (e) If, after a hearing, the board determines the licensee, permittee, registrant or certificate
12 holder has violated subsection (g) of this section or the board's rules, a formal written decision
13 shall be prepared which contains findings of fact, conclusions of law and a specific description of
14 the disciplinary actions imposed.

§30A-13-22. Judicial review.

- 1 Any licensee, permittee, registrant or certificate holder adversely affected by a decision of
2 the board entered after a hearing may obtain judicial review of the decision in accordance with
3 section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting

4 from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30A-13-23. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article or otherwise, the board has
2 reason to believe that a licensee, permittee, registrant or certificate holder has committed a
3 criminal offense under this article, the board may bring its information to the attention of an
4 appropriate law-enforcement official.

5 (b) Effective July 15, 2009, a person violating a provision of this article is guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
7 \$1,000 or confined in jail not more than six months, or both fined and confined.

§30A-13-24. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under this article, evidence of the
2 commission of a single act prohibited by this article is sufficient to justify a penalty, injunction,
3 restraining order or conviction without evidence of a general course of conduct.

ARTICLE 14. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30A-14-1. Definitions.

1 For the purposes of this article, unless a different meaning clearly appears in the context:

2 (1) "Approved law-enforcement training academy" means any training facility which is
3 approved and authorized to conduct law-enforcement training as provided in this article;

4 (2) "Chief executive" means the Superintendent of the State Police; the chief natural
5 resources police officer of the Division of Natural Resources; the sheriff of any West Virginia
6 county; any administrative deputy appointed by the chief natural resources police officer of the
7 Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement
8 agency;

9 (3) "County" means the 55 major political subdivisions of the state;

10 (4) "Exempt rank" means any noncommissioned or commissioned rank of sergeant or
11 above;

12 (5) "Governor's Committee on Crime, Delinquency, and Correction" or "Governor's
13 committee" means the Governor's Committee on Crime, Delinquency, and Correction established
14 as a state planning agency pursuant to §15-3-1 of this code;

15 (6) "Law-enforcement officer" means any duly authorized member of a law-enforcement
16 agency who is authorized to maintain public peace and order, prevent and detect crime, make
17 arrests, and enforce the laws of the state or any county or municipality thereof, other than parking
18 ordinances, and includes those persons employed as campus police officers at state institutions
19 of higher education in accordance with the provisions of §8B-4-5 of this code, and persons
20 employed by the Public Service Commission as motor carrier inspectors and weight-enforcement
21 officers charged with enforcing commercial motor vehicle safety and weight restriction laws,
22 although those institutions and agencies may not be considered law-enforcement agencies. The
23 term also includes those persons employed as county litter control officers charged with enforcing
24 litter laws: Provided, That those persons have been trained and certified as law-enforcement
25 officers and that certification is currently active. The term also includes those persons employed
26 as rangers by resort area districts in accordance with the provisions of §7-11-23 of this code,
27 although no resort area district may be considered a law-enforcement agency: Provided, however,
28 That the subject rangers shall pay the tuition and costs of training. As used in this article, the term
29 "law-enforcement officer" does not apply to the chief executive of any West Virginia law-
30 enforcement agency or any watchman or special natural resources police officer;

31 (7) "Law-enforcement official" means the duly appointed chief administrator of a
32 designated law-enforcement agency or a duly authorized designee;

33 (8) "Municipality" means any incorporated town or city whose boundaries lie within the
34 geographic boundaries of the state;

35 (9) "Subcommittee" or "law-enforcement professional standards subcommittee" means
36 the subcommittee of the Governor's Committee on Crime, Delinquency, and Correction created
37 by §30A-14-2 of this code; and

38 (10) "West Virginia law-enforcement agency" means any duly authorized state, county, or
39 municipal organization employing one or more persons whose responsibility is the enforcement
40 of laws of the state or any county or municipality thereof: Provided, That neither the Public Service
41 Commission nor any state institution of higher education nor any resort area district is a law-
42 enforcement agency.

§30A-14-2. Law-enforcement professional standards subcommittee.

1 (a) The Law-Enforcement Professional Standards Subcommittee is continued as a
2 subcommittee of the Governor's Committee on Crime, Delinquency and Correction. The
3 subcommittee has the following responsibilities:

4 (1) Review and administer programs for qualification, training and certification of law-
5 enforcement officers in the state; and

6 (2) Consider applications by law-enforcement officers whose certification is deemed
7 inactive as a result of his or her separation from employment with a law-enforcement agency.

8 (b) The subcommittee shall be comprised of eleven members, including one
9 representative of each of the following:

10 (1) West Virginia State Police;

11 (2) Law-enforcement section of the Department of Natural Resources;

12 (3) West Virginia Sheriffs' Association;

13 (4) West Virginia Association of Chiefs of Police;

14 (5) West Virginia Deputy Sheriffs' Association;

15 (6) West Virginia State Lodge Fraternal Order of Police;

16 (7) West Virginia Municipal League;

17 (8) West Virginia Association of County Officials;

18 (9) Human Rights Commission;

19 (10) West Virginia Troopers Association; and

20 (11) The public at large.

21 (c) The subcommittee shall elect a chairperson and a vice chairperson. Special meetings
22 may be held upon the call of the chairperson, vice chairperson or a majority of the members of
23 the subcommittee. A majority of the members of the subcommittee who are present in person, by
24 proxy or designation, or by electronic means constitutes a quorum. Any member appointed to the
25 subcommittee who is a written designated representative has the full rights of a member, including
26 the right to vote, serve on subcommittees or perform any other function.

§30A-14-3. Duties of the subcommittee.

1 (a) The subcommittee shall, by or pursuant to rules proposed for legislative approval in
2 accordance with article three, chapter twenty-nine-a of this code:

3 (1) Provide funding for the establishment and support of law- enforcement training
4 academies in the state;

5 (2) Establish standards governing the establishment and operation of the law-enforcement
6 training academies, including regional locations throughout the state, in order to provide access
7 to each law-enforcement agency in the state in accordance with available funds;

8 (3) Establish minimum law-enforcement instructor qualifications;

9 (4) Certify qualified law-enforcement instructors;

10 (5) Maintain a list of approved law-enforcement instructors;

11 (6) Promulgate standards governing the training, firearms qualification and initial and
12 ongoing professional certification of law-enforcement officers and the entry-level law-enforcement
13 training curricula. These standards shall require satisfactory completion of a minimum of four
14 hundred classroom hours as promulgated by legislative rule, shall provide for credit to be given
15 for relevant classroom hours earned pursuant to training other than training at an established law-
16 enforcement training academy if earned within five years immediately preceding the date of
17 application for certification, and shall provide that the required classroom hours can be
18 accumulated on the basis of a part-time curricula spanning no more than twelve months or a full-
19 time curricula;

20 (7) Establish standards governing in-service law-enforcement officer training curricula and
21 in-service supervisory level training curricula;

22 (8) Certify organized criminal enterprise investigation techniques with a qualified anti-racial
23 profiling training course or module;

24 (9) Establish standards governing mandatory training to effectively investigate organized
25 criminal enterprises as defined in article thirteen, chapter sixty-one of this code while preventing
26 racial profiling, as defined in section ten of this article, for entry level training curricula and for law-
27 enforcement officers who have not received such training as certified by the subcommittee as
28 required in this section;

29 (10) Establish procedures for implementation of a course in investigation of organized
30 criminal enterprises which includes an anti-racial training module to be available on the Internet
31 or otherwise to all law-enforcement officers. The procedures shall include the frequency with
32 which a law-enforcement officer shall receive training in investigation of organized criminal
33 enterprises and anti-racial profiling and a time frame for which all law-enforcement officers must
34 receive such training: *Provided*, That all law-enforcement officers in this state shall receive such
35 training no later than July 1, 2012. In order to implement and carry out the intent of this section,
36 the subcommittee may promulgate emergency rules pursuant to section fifteen, article three,
37 chapter twenty-nine-a of this code;

38 (11) Certify or decertify or reactivate law-enforcement officers, as provided in sections five
39 and eleven of this article;

40 (12) Establish standards and procedures for the reporting of complaints and certain
41 disciplinary matters concerning law-enforcement officers and for reviewing the certification of law-
42 enforcement officers. These standards and procedures shall provide for preservation of records
43 and access to records by law-enforcement agencies and conditions as to how the information in
44 those records is to be used regarding an officer's law-enforcement employment by another law-
45 enforcement agency;

46 (A) The subcommittee shall establish and manage a database that is available to all law-
47 enforcement agencies in the state concerning the status of any person's certification.

48 (B) Personnel or personal information not resulting in a criminal conviction is exempt from
49 disclosure pursuant to the provisions of chapter twenty-nine-b of this code.

50 (13) Seek supplemental funding for law-enforcement training academies from sources
51 other than the fees collected pursuant to section four of this article;

52 (14) Any responsibilities and duties as the Legislature may, from time to time, see fit to
53 direct to the subcommittee; and

54 (15) Submit, on or before September 30 of each year, to the Governor, the Speaker of the
55 House, the President of the Senate and, upon request, to any individual member of the Legislature
56 a report on its activities during the previous year and an accounting of funds paid into and
57 disbursed from the special revenue account established pursuant to section four of this article.

58 (16) Develop and promulgate rules for state, county and municipal law-enforcement
59 officers, law-enforcement agencies, and communications and emergency operations centers that
60 dispatch law- enforcement officers with regard to the identification, investigation, reporting and
61 prosecution of suspected child abuse and neglect: *Provided*, That such rules and procedures
62 must be consistent with the priority criteria prescribed by generally applicable department
63 procedures.

64 (7) Make recommendations to the Governor's Committee on Crime, Delinquency and
65 Correction for legislation related to the subcommittee's duties and responsibilities, or for research
66 or studies by the Division of Justice and Community Services on topics related to the
67 subcommittee's duties and responsibilities.

68 (b) In addition to the duties authorized and established by this section, the subcommittee
69 may:

70 (1) Establish training to effectively investigate human trafficking offenses as defined in
71 article two, chapter sixty-one of this code for entry level training curricula and for law- enforcement

72 officers who have not received such training as certified by the committee as required by this
73 section; and

74 (2) Establish procedures for the implementation of a course in investigation of human
75 trafficking offenses. The course may include methods of identifying and investigating human
76 trafficking and methods for assisting trafficking victims. In order to implement and carry out the
77 intent of this subdivision, the committee may promulgate emergency rules pursuant to section
78 fifteen, article three, chapter twenty-nine-a of this code.

§30A-14-4. Special revenue account -- Collections; disbursements; administrative expenses.

1 (a) A \$2 fee shall be added to the usual court costs of all criminal court proceedings
2 involving violation of any criminal law of the state or any county or municipality thereof, excluding
3 violations of municipal parking ordinances, unless such fee is later modified pursuant to legislative
4 rule.

5 (b) A \$2 fee shall be added to the amount of any cash or property bond posted for violation
6 of any criminal law of the state or any county or municipality thereof, excluding bonds posted
7 solely for violation of municipal parking ordinances, unless such fee is later modified pursuant to
8 legislative rule. Upon forfeiture of such bond, the \$2 fee shall be deposited as provided in
9 subsection (c) of this section.

10 (c) All fees collected pursuant to subsections (a) and (b) of this section shall be deposited
11 in a separate account by the collecting agency. Within ten calendar days following the beginning
12 of each calendar month, the collecting agency shall forward the amount deposited to the State
13 Treasurer. The Treasurer shall deposit all fees so received to a special revenue account. Funds
14 in the account shall be disbursed by the subcommittee for the funding of law-enforcement entry
15 level training programs, professional development programs, the certification of law-enforcement
16 officers and to pay expenses of the Governor's Committee on Crime, Delinquency and Correction
17 or the subcommittee in administering the provisions of this article, which expenses may not in any

18 fiscal year exceed fifteen percent of the funds deposited to said special revenue account during
19 that fiscal year.

20 (d) The fees established by this section may be modified by legislative rule as provided in
21 section three of this article.

§30A-14-5. Certification requirements and power to decertify or reinstate.

1 (a) Except as provided in subsections (b) and (g) of this section, a person may not be
2 employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any
3 state institution of higher education or by the Public Service Commission of West Virginia on or
4 after the effective date of this article unless the person is certified, or is certifiable in one of the
5 manners specified in subsections (c) through (e), inclusive, of this section, by the subcommittee
6 as having met the minimum entry level law-enforcement qualification and training program
7 requirements promulgated pursuant to this article: *Provided*, That the provisions of this section do
8 not apply to persons hired by the Public Service Commission as motor carrier inspectors and
9 weight enforcement officers before July 1, 2007.

10 (b) Except as provided in subsection (g) of this section, a person who is not certified, or
11 certifiable in one of the manners specified in subsections (c) through (e), inclusive, of this section,
12 may be conditionally employed as a law-enforcement officer until certified: *Provided*, That within
13 ninety calendar days of the commencement of employment or the effective date of this article if
14 the person is already employed on the effective date, he or she makes a written application to
15 attend an approved law-enforcement training academy. The person's employer shall provide
16 notice, in writing, of the ninety-day deadline to file a written application to the academy within thirty
17 calendar days of that person's commencement of employment. The employer shall provide full
18 disclosure as to the consequences of failing to file a timely written application. The academy shall
19 notify the applicant in writing of the receipt of the application and of the tentative date of the
20 applicant's enrollment. Any applicant who, as the result of extenuating circumstances acceptable
21 to his or her law-enforcement official, is unable to attend the scheduled training program to which

22 he or she was admitted may reapply and shall be admitted to the next regularly scheduled training
23 program. An applicant who satisfactorily completes the program shall, within thirty days of
24 completion, make written application to the subcommittee requesting certification as having met
25 the minimum entry level law-enforcement qualification and training program requirements. Upon
26 determining that an applicant has met the requirements for certification, the subcommittee shall
27 forward to the applicant documentation of certification. An applicant who fails to complete the
28 training program to which he or she is first admitted, or was admitted upon reapplication, may not
29 be certified by the subcommittee: *Provided, however,* That an applicant who has completed the
30 minimum training required by the subcommittee may be certified as a law-enforcement officer,
31 notwithstanding the applicant's failure to complete additional training hours required in the training
32 program to which he or she originally applied.

33 (c) Any person who is employed as a law-enforcement officer on the effective date of this
34 article and is a graduate of the West Virginia basic police training course, the West Virginia State
35 Police cadet training program, or other approved law-enforcement training academy, is certifiable
36 as having met the minimum entry level law-enforcement training program requirements and is
37 exempt from the requirement of attending a law-enforcement training academy. To receive
38 certification, the person shall make written application within ninety calendar days of the effective
39 date of this article to the subcommittee requesting certification. The subcommittee shall review
40 the applicant's relevant scholastic records and, upon determining that the applicant has met the
41 requirements for certification, shall forward to the applicant documentation of certification.

42 (d) Any person who is employed as a law-enforcement officer on the effective date of this
43 article and is not a graduate of the West Virginia basic police training course, the West Virginia
44 State Police Cadet Training Program or other approved law-enforcement training academy, is
45 certifiable as having met the minimum entry level law-enforcement training program requirements
46 and is exempt from the requirement of attending a law-enforcement training academy if the person
47 has been employed as a law-enforcement officer for a period of not less than five consecutive

48 years immediately preceding the date of application for certification. To receive certification, the
49 person shall make written application within ninety calendar days following the effective date of
50 this article to the subcommittee requesting certification. The application shall include notarized
51 statements as to the applicant's years of employment as a law-enforcement officer. The
52 subcommittee shall review the application and, upon determining that the applicant has met the
53 requirements for certification, shall forward to the applicant documentation of certification.

54 (e) Any person who begins employment on or after the effective date of this article as a
55 law-enforcement officer is certifiable as having met the minimum entry level law-enforcement
56 training program requirements and is exempt from attending a law-enforcement training academy
57 if the person has satisfactorily completed a course of instruction in law enforcement equivalent to
58 or exceeding the minimum applicable law-enforcement training curricula promulgated by the
59 subcommittee. To receive certification, the person shall make written application within ninety
60 calendar days following the commencement of employment to the subcommittee requesting
61 certification. The application shall include a notarized statement of the applicant's satisfactory
62 completion of the course of instruction in law enforcement, a notarized transcript of the applicant's
63 relevant scholastic records and a notarized copy of the curriculum of the completed course of
64 instruction. The subcommittee shall review the application and, if it finds the applicant has met
65 the requirements for certification, shall forward to the applicant documentation of certification. The
66 subcommittee may set the standards for required records to be provided by or on behalf of the
67 applicant officer to verify his or her training, status, or certification as a law-enforcement officer.
68 The subcommittee may allow an applicant officer to participate in the approved equivalent
69 certification program to gain certification as a law-enforcement officer in this state.

70 (f) Except as provided in subdivisions (1) through (3), inclusive, of this subsection, any
71 person who is employed as a law-enforcement officer on or after the effective date of this article
72 and fails to be certified shall be automatically terminated and no further emoluments shall be paid
73 to such officer by his or her employer. Any person terminated shall be entitled to reapply, as a

74 private citizen, to the subcommittee for training and certification, and upon being certified may
75 again be employed as a law-enforcement officer in this state: *Provided*, That if a person is
76 terminated under this subsection because an application was not timely filed to the academy, and
77 the person's employer failed to provide notice or disclosure to that person as set forth in
78 subsection (b) of this section, the employer shall pay the full cost of attending the academy if the
79 person's application to the subcommittee as a private citizen is subsequently approved.

80 (1) Any person who is employed as a law-enforcement officer on or after the effective date
81 of this article and fails to be certified as a result of hardship and/or circumstance beyond his or
82 her control may apply to the director of a training academy for reentry to the next available
83 academy.

84 (2) Any person who is employed as a law-enforcement officer on or after the effective date
85 of this article and fails to be certified as a result of voluntary separation from an academy program
86 shall be automatically terminated and no further emoluments may be paid to such officer by his
87 or her employer. Any person terminated as a result of voluntary separation from an academy
88 program may not be conditionally employed as a law-enforcement officer for a period of two years
89 from the date of voluntary separation.

90 (3) Any person who is employed as a law-enforcement officer on or after the effective date
91 of this article and fails to be certified as a result of dismissal from an academy program shall be
92 automatically terminated and no further emoluments may be paid to such officer by his or her
93 employer. Any person terminated as a result of dismissal from an academy program may not be
94 conditionally employed as a law-enforcement officer for a period of five years from the date of
95 dismissal and receiving approval from the subcommittee.

96 (g) Nothing in this article may be construed as prohibiting any governing body, Civil
97 Service Commission or chief executive of any West Virginia law-enforcement agency from
98 requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course
99 of law-enforcement instruction which exceeds the minimum entry level law-enforcement

100 qualification and training curricula promulgated by the subcommittee.

101 (h) The subcommittee, or its designee, may decertify or reactivate a law-enforcement
102 officer pursuant to the procedure contained in this article and legislative rules promulgated by the
103 subcommittee.

104 (i) Any person aggrieved by a decision of the subcommittee made pursuant to this article
105 may contest the decision in accordance with the provisions of article five, chapter twenty-nine-a
106 of this code.

107 (j) The subcommittee may issue subpoenas for the attendance of witnesses and the
108 production of necessary evidence or documents in any proceeding, review or investigation
109 relating to certification or hearing before the subcommittee.

§30A-14-6. Review of certification.

1 Certification of each West Virginia law-enforcement officer shall be reviewed annually
2 following the first certification and until such time as the officer may achieve exempt rank.
3 Certification may be revoked, suspended or not renewed if any law-enforcement officer fails to
4 attend annually an in-service approved law-enforcement training program, or if a law-enforcement
5 officer achieving exempt rank fails to attend biennially an approved in-service supervisory level
6 training program. When a law-enforcement officer is a member of the United States Air Force,
7 Army, Coast Guard, Marines or Navy, or a member of the national guard or reserve military forces
8 of any such armed forces, and has been called to active duty, resulting in separation from a law-
9 enforcement agency for more than twelve months but less than twenty-four months, he or she
10 shall attend and complete the mandated in-service training for the period and rank and qualify
11 with his or her firearm within ninety days from his or her reappointment as a law-enforcement
12 officer by a law-enforcement agency.

§30A-14-7. Compliance.

1 The subcommittee and the executive of each West Virginia law-enforcement agency shall
2 ensure employee compliance with this article.

§30A-14-8. Compensation for employees attending law-enforcement training academy; limitations; agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

1 (a) A West Virginia law-enforcement agency shall, and a governing board may, pay
2 compensation to employees, including wages, salaries, benefits, tuition and expenses, for the
3 employees' attendance at a law-enforcement training academy. The compensation paid to the
4 employees for such attendance may not include overtime compensation under the provisions of
5 section three, article five-c, chapter twenty-one of this code and shall be at the regular rate to
6 which each employee would be entitled for a workweek of forty hours in regular employment with
7 the employer.

8 (b) In consideration for such compensation, the governing board, county commission or
9 municipal government may require each employee to enter into a written agreement in advance
10 of such attendance that obligates the employee to repay the employer if he or she voluntarily
11 discontinues employment within one year immediately following completion of the training
12 curriculum. The amount of repayment shall be a pro rata portion of the total compensation which
13 is equal to the portion of the year which the employee chose not to remain employed.

14 (c) As used in this section, "governing board" has the meaning ascribed in section two,
15 article one, chapter eighteen-b of this code.

§30A-14-9. Special railroad police permitted to attend law-enforcement training academies.

1 Special railroad police officers shall be permitted to attend law-enforcement training
2 academies for law-enforcement officers: *Provided*, That the railroad companies shall pay a tuition
3 fee in an amount sufficient to pay the entire cost of training each employee who attends an
4 academy, which fee shall in no event be less than \$45 per day: *Provided, however*, That special
5 railroad police officers shall be permitted to attend an academy only as space may be available.

§30A-14-10. Prohibition of racial profiling.

1 (a) The Legislature finds that the use by a law-enforcement officer of race, ethnicity, or

2 national origin in deciding which persons should be subject to traffic stops, stops and frisks,
3 questioning, searches, and seizures is a problematic law-enforcement tactic. The reality or public
4 perception of racial profiling alienates people from police, hinders community policing efforts, and
5 causes law-enforcement officers and law-enforcement agencies to lose credibility and trust
6 among the people law-enforcement is sworn to protect and serve. Therefore, the West Virginia
7 Legislature declares that racial profiling is contrary to public policy and should not be used as a
8 law-enforcement investigative tactic.

9 (b) For purposes of this section:

10 (1) The term "law-enforcement officer" means any duly authorized member of a law-
11 enforcement agency who is authorized to maintain public peace and order, prevent and detect
12 crime, make arrests and enforce the laws of the state or any county or municipality thereof.

13 (2) The term "municipality" means any incorporated town or city whose boundaries lie
14 within the geographic boundaries of the state.

15 (3) The term "racial profiling" means the practice of a law-enforcement officer relying, to
16 any degree, on race, ethnicity, or national origin in selecting which individuals to subject to routine
17 investigatory activities, or in deciding upon the scope and substance of law-enforcement activity
18 following the initial routine investigatory activity. Racial profiling does not include reliance on race,
19 ethnicity, or national origin in combination with other identifying factors when the law-enforcement
20 officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part
21 of the description of the suspect.

22 (4) The term "state and local law-enforcement agencies" means any duly authorized state,
23 county or municipal organization employing one or more persons whose responsibility is the
24 enforcement of laws of the state or any county or municipality thereof.

25 (c) No law-enforcement officer shall engage in racial profiling.

26 (d) All state and local law-enforcement agencies shall establish and maintain policies and
27 procedures designed to eliminate racial profiling. Policies and procedures shall include the

28 following:

29 (1) A prohibition on racial profiling;

30 (2) Independent procedures for receiving, investigating, and responding to complaints
31 alleging racial profiling by law-enforcement officers;

32 (3) Procedures to discipline law-enforcement officers who engage in racial profiling;

33 (4) Procedures to insure the inclusion of training in the investigation of organized criminal
34 enterprises and anti-racial profiling training in new officer training and to law-enforcement officers
35 who have not received such training as certified by the Governor's committee; and

36 (5) Any other policies and procedures deemed necessary by state and local law-
37 enforcement agencies to eliminate racial profiling.

§30A-14-11. Certified law-enforcement officers who are separated from their employment.

1 (a) The certification of a law-enforcement officer who is separated from his or her
2 employment with a West Virginia law-enforcement agency, shall immediately become inactive
3 and remain inactive until the subcommittee authorizes reactivation of the officer's certification
4 pursuant to the procedure set forth in this section.

5 (b) Whenever a law-enforcement officer is separated from his or her employment with a
6 West Virginia law-enforcement agency, the chief law-enforcement officer of that law-enforcement
7 agency shall notify the subcommittee of the separation within ten days of the date of separation.
8 The notification of the separation from employment shall include reason or reasons the officer is
9 no longer employed.

10 (c) A person whose law-enforcement certification has become inactive pursuant to
11 subsection (a), may apply to the subcommittee to have his or her certification reactivated.

12 (d) At the time of his or her application, an applicant for the reactivation of his or her
13 certification, whether for employment purposes or otherwise, shall provide the subcommittee with
14 an authorization for the release of his or her personnel file from the law-enforcement agency with
15 which they were most recently employed.

16 (e) Upon receipt of an application for reactivation, the subcommittee shall review the
17 notification of separation received from the law-enforcement agency with which the applicant was
18 most recently employed, and unless the notification indicates that the separation from
19 employment was based on circumstances that would result in the applicant being ineligible for
20 certification pursuant to section five of this article, the subcommittee shall grant the applicant a
21 temporary reactivation of his or her certification until a final determination is made pursuant to
22 subsection (i).

23 (f) The subcommittee may request that the law-enforcement agency from which the
24 applicant was most recently separated, provide a copy of the applicants personnel file or other
25 information relevant to the applicant's separation of employment. (g) Upon receipt of a request by
26 the subcommittee, the chief law-enforcement official of the law-enforcement agency with which
27 the applicant was most recently employed, or his or her designee, shall, within eight calendar
28 days, provide the subcommittee with a copy of the applicant's personnel file or other information
29 relevant to the applicant's separation of employment.

30 (h) An applicant shall be entitled to a copy of all documents or other materials submitted
31 to the subcommittee related to the application.

32 (i) Within thirty days of the receipt of the applicant's personnel file or any other information
33 provided by the law-enforcement agency, the subcommittee shall review the information and
34 issue a final decision.

35 (j) For the purpose of making a determination on an application for reactivation, the
36 subcommittee is authorized to examine witnesses and to subpoena persons, books, records or
37 documents from law-enforcement agencies in this state.

38 (k) An application for reactivation shall be approved unless the subcommittee affirmatively
39 demonstrates, in writing, that the applicant has engaged in conduct that may result in his or her
40 decertification. Where information available to the subcommittee indicates that the applicant has
41 engaged in conduct that is in violation of this article or other laws or rules, the application for

42 reactivation may not be granted.

43 (l) An applicant whose certification is not reactivated pursuant to a final decision of the
44 subcommittee, may appeal the final decision of the subcommittee to the Governor's committee.

45 (m) Nothing in this section shall be construed to require the rehiring of a person by a law
46 enforcement agency from which he or she was separated, even though the subcommittee
47 authorizes his or her certification to be reactivated.

48 (n) A law-enforcement official, or appointing officer, or his or her designee, is immune from
49 civil liability for providing to the subcommittee any information required or requested by this
50 section.

51 (o) The provisions of this section apply only to those certified law-enforcement officers
52 who are separated from employment with a West Virginia law enforcement agency after the
53 effective date of this section during the 2011 Regular Session of the Legislature.

**§30A-14-12. Law-enforcement officers to receive identification and certification to carry
weapons off duty.**

1 (a) Every person employed by a West Virginia state, county or municipal agency as a
2 qualified law-enforcement officer within the meaning of 8 U. S. C. §926B, shall receive an
3 appropriate photo identification and certification of training required to carry a concealed firearm
4 under the federal Law-Enforcement Officers Safety Act, 8 U. S. C. §926B. No currently employed
5 officer may be charged a fee for the photo identification and certification. This subsection does
6 not prohibit a law-enforcement agency from controlling the use of any department-owned weapon.

7 (b) When a qualified law-enforcement officer, within the meaning of 8 U. S. C. §926B,
8 retires from, or otherwise honorably ceases employment with, a West Virginia state, county or
9 municipal agency, the agency shall provide, at no charge, an appropriate photo identification to
10 show the former employee's status as an honorably separated or retired qualified retired law-
11 enforcement officer within the meaning of 8 U. S. C. §926C. Every West Virginia state, county or
12 municipal law enforcement agency which conducts firearms qualification for current employees

13 shall offer its honorably retired or separated former employees an opportunity to participate in
14 such firearms qualification on an annual basis. The former employees shall provide, at their own
15 expense, an appropriate firearm and ammunition and may be charged a fee not to exceed \$25
16 for such training. Upon completion of the training and payment of any fee, the law-enforcement
17 agency shall issue a new photo identification and certification which identifies the former
18 employee as a “qualified retired law-enforcement officer” who has satisfied the annual training
19 requirements of 8 U. S. C. §926C.

20 (c) A law-enforcement agency may, in its sole discretion, allow a person who honorably
21 retired or separated from another federal, state, county or municipal law-enforcement agency as
22 a qualified law-enforcement officer within the meaning of 8 U. S. C. §926B, the opportunity to
23 participate in firearms qualification the agency provides its own former employees under
24 subsection (b) of this section. Participants shall provide, at their own expense, an appropriate
25 firearm and ammunition and may be charged a fee not to exceed \$50 for such training. Upon
26 completion of the training and payment of any fee, the law-enforcement agency shall issue a
27 certificate which states that the retiree satisfied the training requirements of 8 U. S. C. §926C.

28 **§30A-14-13. Chief executive requirements.**

1 Notwithstanding any provision of this code to the contrary, on or after July 1, 208, any
2 person appointed to serve as the chief executive of a municipal law-enforcement agency shall be
3 a certified, or certifiable as, a law-enforcement officer as provided in §30A-14-5 of this code:
4 Provided, That chief executives of municipal law-enforcement agencies employed prior to July 1,
5 208, who are not certified law-enforcement officers are exempt from this requirement for purposes
6 of the position he or she holds as of that date.

ARTICLE 15. SOCIAL WORKERS.

§30A-15-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice social work in this state
2 without a license or permit issued under this article, or advertise or use any title or description

3 tending to convey the impression that the person is a social worker, unless the person has been
4 licensed or permitted under this article, and the license or permit has not expired, been suspended
5 or revoked.

6 (b) No business entity, except through a licensee, may render any service or engage in
7 any activity which if rendered or engaged in by an individual, would constitute the practices
8 regulated under this article.

§30A-15-2. General provisions.

1 The practices regulated under this article and the Board of Social Work are subject to
2 article one of this chapter, this article, and any rules promulgated hereunder.

§30A-15-3. Definitions.

1 As used in this article:

2 (1) "Applicant" means any person making application for a license or a permit under this
3 article.

4 (2) "Board" means the Board of Social Work.

5 (3) "Business entity" means any firm, partnership, association, company, corporation,
6 limited partnership, limited liability company or other entity providing social work services.

7 (4) "Code of Ethics" means the Code of Ethics of the National Association of Social
8 Workers.

9 (5) "General Supervision" means the supervising social worker provides instructions and
10 oversight for services and is easily accessible.

11 (6) "Indirect supervision" means the performance of an action after instruction from a
12 supervising social worker.

13 (7) "License" means a license issued under this article. A license does not mean a
14 provisional license issued under this article.

15 (8) "Licensee" means a person holding a license under this article. A licensee does not
16 mean a person provisionally licensed under this article.

17 (9) "Permit" means a temporary permit to practice social work issued by the board.

18 (10) "Permittee" means a person holding a permit issued under this article.

19 (11) "Supervising social worker" means a social worker, who meets the requirements of
20 this article, who assumes responsibility for the professional care given by a person authorized by
21 this article to work under his or her general or indirect supervision.

§30A-15-4. Board of Social Work.

1 (a) The State Board of Social Work Examiners is continued. On July 1, 2011, the State
2 Board of Social Work Examiners is renamed the Board of Social Work. The members of the board
3 in office on July 1, 2011, shall, unless sooner removed, continue to serve until their respective
4 terms expire and until their successors have been appointed and qualified.

5 (b) The board shall consist of the following seven members who are appointed by the
6 Governor with the advice and consent of the Senate:

7 (1) One independent clinical social worker;

8 (2) Two certified social workers;

9 (3) One graduate social worker;

10 (4) Two social workers; and

11 (5) One citizen member.

12 (c) The terms shall be for five years.

13 (d) Each licensed member of the board, at the time of his or her appointment, must have
14 held a license in this state for at least five years;

15 (e) Each member of the board must be a resident of this state during the appointment
16 term.

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

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

24 (h) The Governor may remove any member from the board for neglect of duty,
25 incompetency or official misconduct.

26 (i) Any member of the board immediately and automatically forfeits his or her membership
27 if his or her license to practice is suspended or revoked by the board, is convicted of a felony
28 under the laws of any jurisdiction, or becomes a nonresident of this state.

29 (j) The board shall elect annually one of its members as chairperson who serves at the will
30 of the board.

31 (k) Each member of the board is entitled to compensation and expense reimbursement in
32 accordance with article one of this chapter.

33 (l) A majority of the members of the board constitutes a quorum.

34 (m) The board shall hold at least two meetings annually. Other meetings may be held at
35 the call of the chairperson or upon the written request of four members, at the time and place as
36 designated in the call or request.

37 (n) Prior to commencing his or her duties as a member of the board, each member shall
38 take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30A-15-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this article, by rule, in article one
2 of this chapter and elsewhere in 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 rejecting applications for licenses
7 and permits;

- 8 (4) Determine the qualifications of an applicant for licenses and permits;
- 9 (5) Maintain records of the examinations the board or a third party administers, including
10 the number of persons taking the examinations and the pass and fail rate;
- 11 (6) Hire, discharge, establish the job requirements and fix the compensation of the
12 executive director;
- 13 (7) Maintain an office, and hire, discharge, establish the job requirements and fix the
14 compensation of employees, investigators and contracted employees necessary to enforce this
15 article;
- 16 (8) Investigate alleged violations of this article, legislative rules, orders and final decisions
17 of the board;
- 18 (9) Conduct disciplinary hearings of persons regulated by the board;
- 19 (10) Determine disciplinary action and issue orders;
- 20 (11) Institute appropriate legal action for the enforcement of this article;
- 21 (12) Maintain an accurate registry of names and addresses of all persons regulated by the
22 board;
- 23 (13) Keep accurate and complete records of its proceedings, and certify the same as may
24 be necessary and appropriate;
- 25 (14) Establish the continuing education requirements for licensees;
- 26 (15) Issue, renew, combine, deny, suspend, revoke or reinstate licenses and permits;
- 27 (16) Establish a fee schedule;
- 28 (7) Propose rules in accordance with article three, chapter twenty-nine-a of this code to
29 implement this article; and
- 30 (8) Take all other actions necessary and proper to implement this article.
- 31 (c) The board may:
- 32 (1) Contract with third parties to administer the examinations required under this article;
- 33 (2) Sue and be sued in its official name as an agency of this state; and

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

§30A-15-6. Rulemaking.

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

3 (1) Additional standards and requirements for licenses and permits;

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

6 (3) Educational and experience requirements;

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

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

9 (6) A fee schedule;

10 (7) Continuing education requirements for licensees;

11 (8) Qualifications for supervisors; providing type of required supervision; requirements that
12 shall be included within a supervisory plan; and detailed periodic documentation and successful
13 completion of supervision required;

14 (9) Baccalaureate degrees related to social work;

15 (10) Establish critical social work workforce shortage positions, setting, areas or fields of
16 practice;

17 (11) Establishing credentialing guidelines identifying advanced social work practice in
18 existing and emerging specializations, skills and settings;

19 (12) The procedures for denying, suspending, revoking, reinstating or limiting the practice
20 of licensees and permittees;

21 (13) Requirements for inactive or revoked licenses and permits; and

22 (14) Any other rules necessary to implement this article.

23 (b) All of the board's rules in effect on January 1, 2011, shall remain in effect until they are

24 amended or repealed, and references to former enactments of this article are interpreted to be
25 consistent with this article.

§30A-15-7. Fees; special revenue account; administrative fines.

1 (a) All fees in effect, shall remain in effect until they are amended or repealed by legislative
2 rule or statute.

3 (b) All fees and other moneys, except administrative fines, received by the board shall be
4 deposited in a separate special revenue fund in the State Treasury designated the "Board of
5 Social Work Fund", which is continued. The fund is used by the board for the administration of
6 this article. Except as may be provided in article one of this chapter, the board retains the amount
7 in the special revenue account from year to year. No compensation or expense incurred under
8 this article is a charge against the General Revenue Fund.

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

§30A-15-8. License to practice as an independent clinical social worker.

1 To be eligible for a license to practice as an independent clinical social worker, the
2 applicant must:

3 (1) Submit an application to the board;

4 (2) Be at least eighteen years of age;

5 (3) Be of good moral character;

6 (4) Have obtained a master's degree from a school of social work accredited by the council
7 on social work education that included a concentration of clinically oriented course work as
8 defined by the board;

9 (5) Have completed a supervised clinical field placement at the graduate level, or post-
10 master's clinical training that is found by the board to be equivalent;

11 (6) Have practiced clinical social work for at least two years in full-time employment, or
12 three thousand hours under the supervision of an independent clinical social worker, or clinical

13 supervision that is found by the board to be equivalent;

14 (7) Have passed an examination approved by the board;

15 (8) Have satisfied the board that he or she merits the public trust by providing the board
16 with three letters of recommendation from persons not related to the applicant;

17 (9) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article
18 one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery
19 process, which may, in the discretion of the board, be evidenced by participation in an
20 acknowledged substance abuse treatment and/or recovery program may be considered;

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

23 (11) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense
24 for which he or she was convicted related to the practice of social work, which conviction remains
25 unreversed; and

26 (12) Meet any other requirements established by the board.

§30A-15-9. Scope of practice for an independent clinical social worker.

1 A clinical social worker may:

2 (1) Perform all duties within the scope of practice of a licensed certified social worker,
3 licensed graduate social worker, and licensed social worker.

4 (2) Apply social work theory, methods, assessment, ethics and the professional use of self
5 to the diagnosis, treatment and prevention of psychological dysfunction, disability or impairment,
6 including emotional and mental disorders and developmental disabilities.

7 (3) Clinical social work practice is based on knowledge of one or more theories of
8 biological, psychological and social development, normal human behavior, psychopathology, the
9 causes and effects of physical illness and disability, unconscious motivation, interpersonal
10 relationships, family dynamics, environmental stress, social systems and cultural diversity with
11 particular attention to the person existing as a combination of biological, psychological and social

12 elements in his or her environment.

13 (4) Clinical social work includes interventions directed to interpersonal interactions,
14 intrapsychic dynamics and life-support and management issues.

15 (5) Clinical social work services consist of assessment, diagnosis, treatment, including
16 psychotherapy and counseling, client-centered advocacy, consultation and evaluation. The
17 process of clinical social work is undertaken within the objectives of the social work profession
18 and the principles and values of its code of ethics.

§30A-15-10. License to practice as a certified social worker.

1 (a) To be eligible for a license to practice as certified social worker, the applicant must:

2 (1) Submit an application to the board;

3 (2) Be at least eighteen years of age;

4 (3) Be of good moral character;

5 (4) Have obtained a master's degree from a school of social work accredited by the council
6 on social work education;

7 (5) Have practiced social work for at least two-years post-master's experience in full-time
8 employment or earned three thousand hours of post-masters social work experience;

9 (6) Have passed an examination approved by the board;

10 (7) Have satisfied the board that he or she merits the public trust by providing the board
11 with three letters of recommendation from persons not related to the applicant;

12 (8) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article
13 one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery
14 process, which may, in the discretion of the board, be evidenced by participation in an
15 acknowledged substance abuse treatment and/or recovery program may be considered;

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

18 (10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense

19 for which he or she was convicted related to the practice of social work, which conviction remains
20 unreversed; and

21 (11) Meet other additional requirements as established by the board.

22 (b) A certified social worker may engage in the practice of clinical social work, if that
23 certified social worker has:

24 (1) Obtained a master's degree from a school of social work accredited by the council on
25 social work education that included a concentration of clinically oriented course work as defined
26 by the board;

27 (2) Has completed a supervised clinical field placement at the graduate level, or post-
28 master's clinical training that is found by the board to be equivalent;

29 (3) Has contracted, in writing, with a licensed clinical social worker who shall assume
30 responsibility for and supervise the certified social worker's practice as directed by the board by
31 promulgation of legislative rules;

32 (4) Is an employee of an institution or organization in which the certified social worker has
33 no direct or indirect interest other than employment.

34 (c) A certified social worker may not practice clinical social work until his or her contract
35 has been approved by the board, and shall cease the practice of clinical social work immediately
36 upon the termination of the contract. At the termination of the contract, the certified social worker
37 shall apply for licensure as a licensed clinical social worker or request an extension of the contract
38 from the board.

§30A-15-11.Scope of practice for a licensed certified social worker.

1 A licensed certified social worker may:

2 (1) Perform all duties within the scope of practice of a licensed graduate social worker and
3 licensed social worker;

4 (2) Apply social work theory and methods to the diagnosis, treatment and prevention of
5 psychological dysfunction, disability or impairment, including emotional and mental disorders and

6 developmental disabilities; and

7 (3) Determine behavioral health diagnosis, using diagnostic taxonomies commonly
8 accepted across disciplines among behavioral health professionals.

§30A-15-12. License to practice as a licensed graduate social worker.

1 (a) To be eligible for a license to practice as a graduate social worker, the applicant must:

2 (1) Submit an application to the board;

3 (2) Be at least eighteen years of age;

4 (3) Be of good moral character;

5 (4) Have obtained a master's degree from a school of social work accredited by the council
6 on social work education;

7 (5) Have passed an examination approved by the board;

8 (6) Have satisfied the board that he or she merits the public trust by providing the board
9 with three letters of recommendation from persons not related to the applicant;

10 (7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article
11 one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery
12 process, which may, in the discretion of the board, be evidenced by participation in an
13 acknowledged substance abuse treatment and/or recovery program may be considered;

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

16 (9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense
17 for which he or she was convicted related to the practice of social work, which conviction remains
18 unreversed; and

19 (10) Meet any other requirements established by the board.

20 (b) A licensed graduate social worker may engage in the practice of clinical social work, if
21 he or she has:

22 (1) Obtained a master's degree from a school of social work accredited by the council on

23 social work education that included a concentration of clinically oriented course work as defined
24 by the board;

25 (2) Has completed a supervised clinical field placement at the graduate level, or post-
26 master's clinical training that is found by the board to be equivalent;

27 (3) Has contracted, in writing, with a licensed clinical social worker who shall assume
28 responsibility for and supervise the certified social worker's practice as directed by the board by
29 promulgation of legislative rules;

30 (4) Be employed by an institution or organization in which the graduate social worker has
31 no direct or indirect interest other than employment.

32 (c) A graduate social worker may not practice clinical social work until this contract has
33 been approved by the board, and shall cease the practice of clinical social work immediately upon
34 the termination of the contract. At the termination of the contract, the graduate social worker shall
35 apply for licensure as a licensed independent clinical social worker or request an extension of the
36 contract from the board.

§30A-15-13. Scope of practice for a licensed graduate social worker.

1 A licensed graduate social worker may perform all duties within the scope of practice of a
2 licensed social worker and provisional social worker as well as:

3 (1) Appropriately conduct social work education, formally teaching social work theory and
4 methodology to bachelor's and master's level social work students.

5 (2) Conduct clinical or psychotherapeutic services, under the clinical supervision of
6 another experienced and credentialed behavioral health professional, including individual, family
7 and group methodologies.

§30A-15-14. License to practice as a social worker.

1 To be eligible for a license to practice as a social worker, the applicant must:

2 (1) Submit an application to the board;

3 (2) Be at least eighteen years of age;

4 (3) Be of good moral character;

5 (4) Have a baccalaureate degree in social work from a program accredited by the council
6 on social work education;

7 (5) Have passed an examination approved by the board;

8 (6) Have satisfied the board that he or she merits the public trust by providing the board
9 with three letters of recommendation from persons not related to the applicant;

10 (7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article
11 one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery
12 process, which may, in the discretion of the board, be evidenced by participation in an
13 acknowledged substance abuse treatment and/or recovery program may be considered;

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

16 (9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense
17 for which he or she was convicted related to the practice of social work, which conviction remains
18 unreversed; and

19 (10) Meet any other requirements established by the board.

§30A-15-15. Scope of Practice for a Social Worker.

1 (a) A licensed social worker may perform all duties within the scope of practice of a
2 provisional social worker as well as:

3 (1) Apply social work theory, knowledge, methods, ethics and the professional use of self
4 in social work practice including assessment, planning, intervention, counseling, evaluation, and
5 case management supervision;

6 (2) Provide social advocacy activities, designed to influence social service systems and
7 social policies in the direction of reduced disparities in social and distributive justice, especially
8 for at risk and socially or economically disadvantaged populations;

9 (3) Community organization activities, designed to assist client systems at the community

10 level to achieve desirable social or policy change toward goals of enhanced civic functioning and
11 improved environmental responsiveness to client quality of life issues;

12 (4) Administration and program development, designed to develop, structure and, oversee
13 social service systems at the organizational level; and

14 (5) Training activities, designed to assist clients or client systems with skill development
15 deemed desirable to restore or enhance social functioning or adaptation; or, to assist less
16 experienced social workers with professional skill development.

17 (b) A licensed social worker with a baccalaureate degree or master's degree in social work
18 from a program accredited by the council on social work education and two years of experience,
19 may supervise a provisionally licensed social worker.

§30A-15-16. Provisional license to practice as a social worker.

1 (a) To be eligible for a provisional license to practice as a social worker, the applicant
2 must:

3 (1) Submit an application to the board;

4 (2) Be at least eighteen years of age;

5 (3) Be of good moral character;

6 (4) Have a baccalaureate degree in a related field, as provided by legislative rule:
7 *Provided*, That an individual seeking employment as a provisionally licensed social worker with
8 the West Virginia Department of Health and Human Resources shall have a baccalaureate
9 degree;

10 (5) Have obtained regular supervised employment, or the reasonable promise of regular
11 supervised employment contingent upon receiving a provisional license, in a critical social work
12 workforce shortage position, area or setting requiring a social work license: *Provided*, That such
13 employment shall not as an independent practitioner, contracted employee, sole proprietor,
14 consultant or other nonregular employment;

15 (6) Have satisfied the board that he or she merits the public trust by providing the board

16 with three letters of recommendation from persons not related to the applicant;

17 (7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article
18 one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery
19 process, which may, in the discretion of the board, be evidenced by participation in an
20 acknowledged substance abuse treatment and/or recovery program may be considered;

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

23 (9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense
24 for which he or she was convicted related to the practice of social work, which conviction remains
25 unreversed; and

26 (10) Meet any other requirements established by the board.

27 (b) The board shall promulgate emergency rules, in accordance with section fifteen, article
28 three, chapter twenty-nine-a of this code, to implement the provisions of subsection (a) of this
29 section.

30 (c) A provisionally licensed social worker may become a licensed social worker, by
31 completing the following:

32 (1) Be continuously employed for four years as a social worker and supervised. The board
33 shall promulgate by legislative rule the supervision requirements;

34 (2) Complete twelve credit hours of core social work study from a program accredited by
35 the council on social work education, as defined by legislative rule, within the four-year provisional
36 license period: *Provided*, That an individual employed as a provisionally licensed social worker
37 with the West Virginia Department of Health and Human Resources shall satisfy this requirement
38 upon completion of the social work training program with the West Virginia Department of Health
39 and Human Resources. The Secretary of the West Virginia Department of Health and Human
40 Resources shall, with the advice of the Higher Education Policy Commission, West Virginia
41 University School of Social Work and Marshall University Department of Social Work, promulgate

42 legislative rules, in accordance with article three, chapter twenty-nine-a of this code, to implement
43 the provisions of this subdivision;

44 (3) Complete continuing education as required by legislative rule; and

45 (4) Pass an examination approved by the board.

46 (d) On or before July 1, 2020, the Legislative Auditor shall cause to be performed a
47 performance audit of the provisional license to practice as a social worker application process
48 and the application process by which a provisional licensee may become a licensed social worker.

§30A-15-17. Scope of practice for a provisionally licensed social worker.

1 A provisionally licensed social worker may perform all of the following functions and social
2 work services under supervision:

3 (1) Multi-dimensional assessment of client or client system strengths and problems with
4 functioning or psychosocial adaptation, not including formal mental health diagnosis.

5 (2) Service planning and contracting with clients or clients systems to outline proposed
6 interventive strategies for clients or client systems in order to restore or enhance social,
7 psychosocial, or biopsychosocial functioning;

8 (3) Implementing service plans and problem solving methodologies to restore or enhance
9 social, psychosocial or biospsychosocial functioning of clients or client systems;

10 (4) Supportive and palliative counseling activities, designed to offer comfort and social
11 encouragement to clients or client systems, not including psychotherapy;

12 (5) Preventive strategies such as psychoeducation and consciousness raising for at-risk
13 systems or populations, designed to forestall difficulties with functioning and psychosocial
14 adaptation;

15 (6) Case management activities designed to assist clients or client systems with gaining
16 access to needed resources and services and to assist with coordination of services in situations
17 where multiple providers may be involved with client care;

18 (7) Information and referral services; and

19 (8) Personal practice assessment designed to assess and document outcomes and
20 effectiveness of one's practice.

§30A-15-18. Exemptions from this article.

1 The following persons are exempt from licensure, unless specifically stated in writing by
2 the employer:

3 (1) A person employed as the director or administrative head of a social service agency
4 or division, or applicants for employment to be licensed;

5 (2) Licensed or qualified members of other professions, such as physicians, psychologists,
6 lawyers, counselors, clergy, educators, or the general public engaged in social work-like activities,
7 from doing social work consistent with their training if they do not hold themselves out to the public
8 by a title or description incorporating the words "licensed social worker" or "licensed clinical social
9 worker" or a variation thereof;

10 (3) An employer from performing social work-like activities performed solely for the benefit
11 of employees;

12 (4) Activities and services of a student, intern, or resident in social work pursuing a course
13 of study at an accredited university or college or working in a generally recognized training center
14 if the activities and services constitute a part of the supervised course of study; and

15 (5) Pending disposition of the application for a license, activities and services by a person
16 who has recently become a resident of this state, has applied for a license within ninety days of
17 taking up residency in this state, and is licensed to perform the activities and services in the state
18 of former residence.

§30A-15-19. Renewal of license.

1 (a) All licenses are effective on the date of issuance from the board and shall expire in
2 twenty-four months and the number of days remaining in the month after the date the license was
3 issued.

4 (b) The board shall charge a fee for each renewal of a license and shall charge a late fee

5 for any renewal not paid by the due date.

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

8 (d) The board may deny an application for renewal for any reason which would justify the
9 denial of an original application for a license.

10 (e) A provisional licensee shall provide all information and document progress in
11 completing all requirements for the board to renew his or her provisional license.

§30A-15-20. Delinquent and expired license requirements.

1 (a) If a license is not renewed when due, then the board shall automatically place the
2 licensee on delinquent status. A licensee on delinquent status may not practice social work in this
3 state.

4 (b) The fee for a person on delinquent status shall increase at a rate, determined by the
5 board, for each month or fraction thereof that the renewal fee is not paid, up to a maximum of
6 thirty-six months.

7 (c) Within thirty-six months of being placed on delinquent status, if a licensee wants to
8 return to active practice, he or she must complete all the continuing education requirements and
9 pay all the applicable fees as set by rule.

10 (d) After thirty-six months of being placed on delinquent status, a license is automatically
11 placed on expired status and cannot be renewed. A person whose license has expired must
12 reapply for a new license.

§30A-15-21. Inactive license requirements.

1 (a) A licensee who does not want to continue an active practice must submit an application
2 and the applicable fee to be granted inactive status.

3 (b) A person granted inactive status is not subject to the payment of any fee and may not
4 practice social work in this state.

5 (c) When the person wants to return to the practice of social work, the person shall submit

6 an application for renewal along with all applicable fees as set by rule.

§30A-15-22. Temporary permit to practice social work.

1 (a) Upon completion of the application and payment of the nonrefundable fees, the board
2 may issue a temporary permit, for a period not to exceed six months, to an applicant to practice
3 in this state, if the applicant has completed the educational requirements set out in this article,
4 pending the examination and who works under a supervising social worker with the scope of the
5 supervision to be defined by legislative rule. The applicant may renew the permit if the licensee
6 receives a failing score on the examination.

7 (b) A temporary permit may be revoked by a majority vote of the board.

§30A-15-23. Display of license.

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

3 (b) Any person regulated by the article shall conspicuously display his or her license or
4 permit at his or her principal business location.

§30A-15-24. Privileged communications.

1 (a) A licensee may not disclose any information acquired provided by a client or from
2 persons consulting the licensee in a professional capacity, except that which may be voluntarily
3 disclosed under these following circumstances:

4 (1) In the course of formally reporting, conferring or consulting with administrative
5 superiors, colleagues or consultants who share professional responsibility, in which instance all
6 recipients of such information are similarly bound to regard the communication as privileged;

7 (2) With the written consent of the person who provided the information;

8 (3) In case of death or disability, with the written consent of a personal representative,
9 other person authorized to sue, or the beneficiary of an insurance policy on the person's life,
10 health or physical condition;

11 (4) When a communication reveals the intended commission of a crime or harmful act and

12 such disclosure is judged necessary by the social worker to protect any person from a clear,
13 imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the
14 public safety; or

15 (5) When the person waives the privilege by bringing any public charges against the
16 licensee.

17 (b) When the person is a minor and the information acquired by the licensee indicates the
18 minor was the victim of or witness to a crime, the licensee may be required to testify in any judicial
19 proceedings in which the commission of that crime is the subject of inquiry and when the court
20 determines that the interests of the minor in having the information held privileged are outweighed
21 by the requirements of justice.

22 (c) Any person having access to records or anyone who participates in providing social
23 work services or who, in providing any human services, is supervised by a licensee, is similarly
24 bound to regard all information and communications as privileged in accord with this section.

25 (d) Nothing shall be construed to prohibit a licensee from voluntarily testifying in court
26 hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to
27 children, elderly, and physically and mentally impaired adults, except as prohibited under the
28 applicable state and federal laws.

§30A-15-25. Actions to enjoin violations.

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

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

8 (c) The judgment of the circuit court on an application permitted by this section is final

9 unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals.

§30A-15-26. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The board may upon its own motion based on credible information, and shall upon the
2 written complaint of any person, cause an investigation to be made to determine whether grounds
3 exist for disciplinary action under this article or the legislative rules promulgated pursuant to this
4 article.

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

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

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

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

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

20 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
21 suspend, restrict or revoke the license or permit of, or impose probationary conditions upon or
22 take disciplinary action against, any licensee or permittee for any of the following reasons once a
23 violation has been proven by a preponderance of the evidence:

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

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

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

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

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

33 (6) Aiding or abetting unlicensed practice; or

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

36 (h) For the purposes of subsection (g) of this section, effective July 1, 2011, disciplinary
37 action may include:

38 (1) Reprimand;

39 (2) Probation;

40 (3) Restrictions;

41 (4) Administrative fine, not to exceed \$1,000 per day per violation;

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

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

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

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

§30A-15-27. Procedures for hearing; right of appeal.

1 (a) Hearings are governed by section eight, article one of this chapter.

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

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

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

10 (e) If, after a hearing, the board determines the licensee or permittee has violated this
11 article or the board's rules, a formal written decision shall be prepared which contains findings of
12 fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30A-15-28. Judicial review.

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

§30A-15-29. Criminal proceedings; penalties.

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

4 (b) A person violating section one of this article is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined not less than \$100 nor more than \$5,000 or confined in jail not
6 more than six months, or both fined and confined.

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30A-16-1. License required.

1 It is unlawful for any person to practice or offer to practice professional counseling or

2 marriage and family therapy in this state without a license issued under the provisions of this
3 article, or advertise or use any title or description tending to convey the impression that the person
4 is a licensed professional counselor or a licensed marriage and family therapist unless the person
5 has been licensed under the provisions of this article, and the license has not expired, been
6 suspended, revoked or exempted.

§30A-16-2. Applicable law.

1 The practices of professional counseling and marriage and family therapy, and the board
2 of Examiners of Counseling are subject to the provisions of article one of this chapter, the
3 provisions of this article and any rules promulgated hereunder.

§30A-16-3. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
2 the context clearly indicates otherwise:

3 (a) "Applicant" means a person making an application for a license or renewal under the
4 provisions of this article.

5 (b) "Board" means the West Virginia Board of Examiners in Counseling.

6 (c) "Clinical counseling procedures" means an approach to counseling that emphasizes
7 the counselor's role in systematically assisting clients through all of the following including, but
8 are not limited to, observing, assessing and analyzing background and current information;
9 utilizing assessment techniques useful in appraising aptitudes, abilities, achievements, interests
10 or attitudes; diagnosing; and developing a treatment plan. The goal of these procedures is the
11 prevention or elimination of symptomatic, maladaptive or undesired behavior, cognitions or
12 emotions in order to integrate a wellness, preventative, pathology and multicultural model of
13 human behavior to assist an individual, couple, family, group of individuals, organization,
14 institution or community to achieve mental, emotional, physical, social, moral, educational,
15 spiritual, vocational or career development and adjustment through the life span of the individual,
16 couple, family, group of individuals, organization, institution or community.

17 (d) "Licensed professional counselor" means a person licensed under the provisions of
18 this article to practice professional counseling.

19 (e) "Licensee" means a person holding a license issued under the provisions of this article.

20 (f) "Licensed marriage and family therapist" means a person licensed under the provisions
21 of this article to practice marriage and family therapy.

22 (g) "Marriage and family therapy" means the diagnosis and treatment of mental and
23 emotional disorders, whether cognitive, affective or behavioral, specifically within the context of
24 marriage and family systems, that involve the professional application of theories and techniques
25 to individuals, couples and families, singly or in groups.

26 (h) "Permit" means a temporary permit to practice professional counseling or marriage
27 and family therapy issued by the board under the provisions of this article.

28 (i) "Permittee" means a person holding a temporary permit under the provisions of this
29 article.

30 (j) "Professional counseling" means the assessment, diagnosis, treatment and prevention
31 of mental, emotional or addiction disorders through the application of clinical counseling
32 procedures. Professional counseling includes the use of psychotherapy, assessment instruments,
33 counseling, consultation, treatment planning and supervision in the delivery of services to
34 individuals, couples, families and groups.

§30A-16-4. Board of Examiners in Counseling.

1 (a) The West Virginia Board of Examiners in Counseling is continued. The members of
2 the board in office on July 1, 2009, shall, unless sooner removed, continue to serve until their
3 respective terms expire and until their successors have been appointed and qualified.

4 (b) To be effective on July 1, 2009, the Governor shall appoint, by and with the advice and
5 consent of the Senate, a licensed marriage and family therapist from a list of three nominees
6 submitted by The West Virginia Association of Marriage and Family Therapy, to replace the citizen
7 member whose term ends on June 30, 2009, and for any vacancy thereafter.

8 (c) Commencing July 1, 2009, the board shall consist of the following seven members:

9 (1) Two licensed professional counselors engaged in the teaching of counseling at an
10 accredited institution of higher education;

11 (2) Three licensed professional counselors;

12 (3) One licensed marriage and family therapist; and

13 (4) One citizen, who is not licensed under the provisions of this article and who does not
14 perform any services related to the practice of the professions regulated under the provisions of
15 this article.

16 (d) Each member shall be appointed by the Governor by and with the advice and consent
17 of the Senate. The term is for five years.

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

22 (f) Each licensed member shall maintain an active license with the board: *Provided*, That
23 the initial marriage and family therapist appointed to the board must qualify for licensure under
24 the provisions of section nine of this article.

25 (g) Each member of the board shall be a resident of West Virginia during the appointment
26 term.

27 (h) A vacancy on the board shall be filled by appointment by the Governor for the
28 unexpired term of the member whose office is vacant and the appointment shall be made within
29 sixty days of the vacancy.

30 (i) The Governor may remove any member from the board for neglect of duty,
31 incompetency or official misconduct.

32 (j) A member of the board immediately and automatically forfeits membership to the board
33 if his or her license to practice is suspended or revoked, is convicted of a felony under the laws

34 of any jurisdiction, or becomes a nonresident of this state.

35 (k) The board shall elect annually one of its members as chairperson who serves at the
36 will of the board.

37 (l) Each member of the board is entitled to compensation and expense reimbursement in
38 accordance with article one of this chapter.

39 (m) A majority of the members of the board shall constitute a quorum.

40 (n) The board shall hold at least two annual meetings. Other meetings shall be held at the
41 call of the chairperson or upon the written request of two members, at the time and place as
42 designated in the call or request.

43 (o) Prior to commencing his or her duties as a member of the board, each member shall
44 take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30A-16-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this article, by rule, in article one
2 of this chapter and elsewhere in law.

3 (b) The board shall:

4 (1) Hold meetings, conduct hearings and administer examinations;

5 (2) Establish requirements for licenses;

6 (3) Establish procedures for submitting, approving and rejecting applications for a license;

7 (4) Determine the qualifications of any applicant for a license;

8 (5) Prepare, conduct, administer and grade written, oral or written and oral examinations
9 for a license;

10 (6) Determine the passing grade for the examinations;

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

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

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

18 (10) Investigate alleged violations of the provisions of this article, legislative rules, orders
19 and final decisions of the board;

20 (11) Establish a fee schedule;

21 (12) Issue, renew, deny, suspend, revoke or reinstate a license;

22 (13) Conduct disciplinary hearings of persons regulated by the board;

23 (14) Determine disciplinary action and issue orders;

24 (15) Institute appropriate legal action for the enforcement of the provisions of this article;

25 (16) Maintain an accurate registry of names and addresses of all persons regulated by the
26 board;

27 (7) Keep accurate and complete records of its proceedings, and certify the same as may
28 be necessary and appropriate;

29 (8) Establish the continuing education requirements for licensees;

30 (19) Propose rules in accordance with the provisions of article three, chapter twenty-nine-
31 a of this code to implement the provisions of this article; and

32 (20) Take all other actions necessary and proper to effectuate the purposes of this article.

33 (c) The board may:

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

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

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

§30A-16-6. Rulemaking.

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

4 (1) Standards and requirements for licenses to practice professional counseling and
5 marriage and family therapy;

6 (2) Procedures for examinations and reexaminations;

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

9 (4) Educational and experience requirements;

10 (5) The passing grade on the examination;

11 (6) Standards for approval of courses;

12 (7) Procedures for the issuance and renewal of a license or permit;

13 (8) A fee schedule;

14 (9) Continuing education requirements for licensees;

15 (10) The procedures for denying, suspending, revoking, reinstating or limiting the practice
16 of a licensee;

17 (11) Requirements to reinstate a revoked license;

18 (12) Specific master's and doctoral degree programs considered to be equivalent to a
19 master's or doctoral degree program required under this article;

20 (13) The nature of supervised professional experience approved by the board for the
21 purposes of licensure of this article;

22 (14) A code of ethics; and

23 (15) Any other rules necessary to effectuate the provisions of this article.

24 (b) All of the board's rules in effect on July 1, 2009, shall remain in effect until they are
25 amended or repealed and references to provisions of former enactments of this article are
26 interpreted to mean provisions of this article.

§30A-16-7. Fees; special revenue account.

1 (a) All fees and other moneys, except administrative fines, received by the board shall be
2 deposited in a separate special revenue fund in the state Treasury designated the "Board of
3 Examiners in Counseling Fund". The fund is used by the board for the administration of this article.
4 Except as may be provided in article one of this chapter, the board retains the amount in the
5 special revenue account from year to year. No compensation or expense incurred under this
6 article is a charge against the General Revenue Fund.

7 (b) Any amount received as fines, imposed pursuant to this article, shall be deposited into
8 the General Revenue Fund of the state Treasury.

§30A-16-8. Requirements for license to practice counseling.

1 (a) To be eligible for a license to practice professional counseling, an applicant must:

2 (1) Be of good moral character;

3 (2) Be at least eighteen years of age;

4 (3) Be a citizen of the United States or be eligible for employment in the United States;

5 (4) Pay the applicable fee;

6 (5)(A)(i) Have earned a master's degree in an accredited counseling program or in a field
7 closely related to an accredited counseling program as determined by the board or have received
8 training equivalent to such degree as may be determined by the board; and

9 (ii) Have at least two years of supervised professional experience in counseling of such a
10 nature as is designated by the board after earning a master's degree or equivalent; or

11 (B)(i) Have earned a doctorate degree in an accredited counseling program or in a field
12 closely related to an accredited counseling program as determined by the board or have received
13 training equivalent to such degree as may be determined by the board; and

14 (ii) Have at least one year of supervised professional experience in counseling of such a
15 nature as is designated by the board after earning a doctorate degree or equivalent;

16 (6) Have passed a standardized national certification examination in counseling approved
17 by the board;

18 (7) Not have been convicted of a felony or crime involving moral turpitude under the laws
19 of any jurisdiction:

20 (A) If the applicant has never been convicted of a felony or a crime involving moral
21 turpitude, the applicant shall submit letters of recommendation from three persons not related to
22 the applicant and a sworn statement from the applicant stating that he or she has never been
23 convicted of a felony or a crime involving moral turpitude; or

24 (B) If the applicant has been convicted of a felony or a crime involving moral turpitude, it
25 is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits
26 competent evidence of sufficient rehabilitation and present fitness to perform the duties of a
27 licensed professional counselor as may be established by the production of:

28 (i) Documentary evidence including a copy of the relevant release or discharge order,
29 evidence showing compliance with all conditions of probation or parole, evidence showing that at
30 least one year has elapsed since release or discharge without subsequent conviction, and letters
31 of reference from three persons who have been in contact with the applicant since his or her
32 release or discharge; and

33 (ii) Any collateral evidence and testimony as may be requested by the board which shows
34 the nature and seriousness of the crime, the circumstances relative to the crime or crimes
35 committed and any mitigating circumstances or social conditions surrounding the crime or crimes
36 and any other evidence necessary for the board to judge present fitness for licensure or whether
37 licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

38 (8) Not be an alcohol or drug abuser as these terms are defined in section eleven, article
39 one-a, chapter twenty-seven of this code: *Provided*, That an applicant who has had at least two
40 continuous years of uninterrupted sobriety in an active recovery process, which may, in the

41 discretion of the board, be evidenced by participation in a twelve-step program or other similar
42 group or process, may be considered; and

43 (9) Has fulfilled any other requirement specified by the board.

44 (b) A person who holds a license or other authorization to practice counseling issued by
45 another state, the qualifications for which license or other authorization are determined by the
46 board to be at least substantially equivalent to the license requirements in this article, is eligible
47 for licensure.

48 (c) A person seeking licensure under the provisions of this section shall submit an
49 application on a form prescribed by the board and pay all applicable fees. A person applying for
50 licensure may elect for a temporary permit to utilize during the application process while the
51 applicant takes the required examination. The temporary permit shall be valid for a period not to
52 exceed six months and may not be renewed. The fee for the temporary permit is \$50. The
53 permittee shall be supervised by an approved licensed professional supervisor while practicing
54 under the temporary permit. Supervision hours completed under the temporary permit count as
55 supervised professional experience as required for licensure under this section. The supervision
56 requirements are the same as required with a provisional license as defined in section six of this
57 article. The temporary permit may be revoked at any time by a majority vote of the board.

58 (d) A person who has been continually licensed under this article since 1987, pursuant to
59 prior enactments permitting waiver of certain examination and other requirements, is eligible for
60 renewal under the provisions of this article.

61 (e) A license to practice professional counseling issued by the board prior to July 1, 2009,
62 shall for all purposes be considered a license issued under this article: *Provided*, That a person
63 holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions
64 of this article.

§30A-16-9. Requirements for a license to practice marriage and family therapy.

1 (a) To be eligible for a license to practice marriage and family therapy, an applicant must:

- 2 (1) Be of good moral character;
- 3 (2) Be at least eighteen years of age;
- 4 (3) Be a citizen of the United States or be eligible for employment in the United States;
- 5 (4) Pay the applicable fee;
- 6 (5)(A)(i) Have earned a master's degree in marriage and family therapy from a program
- 7 accredited by the Commission on Accreditation for Marriage and Family Therapy Education, the
- 8 Council for Accreditation of Counseling and Related Education Programs, or a comparable
- 9 accrediting body as approved by the board, or in a field closely related to an accredited marriage
- 10 and family therapy program as determined by the board, or have received training equivalent to
- 11 such degree as may be determined by the board; and
- 12 (ii) Have at least two years of supervised professional experience in marriage and family
- 13 therapy of such a nature as is designated by the board after earning a master's degree or
- 14 equivalent; or
- 15 (B)(i) Have earned a doctorate degree in marriage and family therapy from a program
- 16 accredited by the Commission on Accreditation for Marriage and Family Therapy Education, the
- 17 Council for Accreditation of Counseling and Related Education Programs, or a comparable
- 18 accrediting body as approved by the board, or in a field closely related to an accredited marriage
- 19 and family therapy program as determined by the board, or have received training equivalent to
- 20 such degree as may be determined by the board; and
- 21 (ii) Have at least one year of supervised professional experience in marriage and family
- 22 therapy of such a nature as is designated by the board after earning a doctorate degree or
- 23 equivalent;
- 24 (6) Have passed a standardized national certification examination in marriage and family
- 25 therapy as approved by the board;
- 26 (7) Not have been convicted of a felony or crime involving moral turpitude under the laws
- 27 of any jurisdiction:

28 (A) If the applicant has never been convicted of a felony or a crime involving moral
29 turpitude, the applicant shall submit letters of recommendation from three persons not related to
30 the applicant and a sworn statement from the applicant stating that he or she has never been
31 convicted of a felony or a crime involving moral turpitude; or

32 (B) If the applicant has been convicted of a felony or a crime involving moral turpitude, it
33 is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits
34 competent evidence of sufficient rehabilitation and present fitness to perform the duties of a
35 person licensed to practice marriage and family therapy as may be established by the production
36 of:

37 (i) Documentary evidence including a copy of the relevant release or discharge order,
38 evidence showing compliance with all conditions of probation or parole, evidence showing that at
39 least one year has elapsed since release or discharge without subsequent conviction, and letters
40 of reference from three persons who have been in contact with the applicant since his or her
41 release or discharge; and

42 (ii) Any collateral evidence and testimony as may be requested by the board which shows
43 the nature and seriousness of the crime, the circumstances relative to the crime or crimes
44 committed and any mitigating circumstances or social conditions surrounding the crime or crimes,
45 and any other evidence necessary for the board to judge present fitness for licensure or whether
46 licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

47 (8) Not be an alcohol or drug abuser as these terms are defined in section eleven, article
48 one-a, chapter twenty-seven of this code: *Provided*, That an applicant who has had at least two
49 continuous years of uninterrupted sobriety in an active recovery process, which may, in the
50 discretion of the board, be evidenced by participation in a twelve-step program or other similar
51 group or process, may be considered; and

52 (9) Has fulfilled any other requirement specified by the board.

53 (b) A person who holds a license or other authorization to practice marriage and family
54 therapy issued by another state, the qualifications for which license or other authorization are
55 determined by the board to be at least substantially equivalent to the license requirements in this
56 article, is eligible for licensure.

57 (c) A person seeking licensure under the provisions of this section shall submit an
58 application on a form prescribed by the board and pay all applicable fees. A person applying for
59 licensure may elect for a temporary permit to utilize during the application process while the
60 applicant takes the required examination. The temporary permit shall be valid for a period not to
61 exceed six months and may not be renewed. The fee for the temporary permit is \$50. The
62 permittee shall be supervised by an approved licensed professional supervisor while practicing
63 under the temporary permit. Supervision hours completed under the temporary permit count as
64 supervised professional experience as required for licensure under this section. The supervision
65 requirements are the same as required with a provisional license as defined in section six of this
66 article. The temporary permit may be revoked at any time by a majority vote of the board.

67 (d) A person who is licensed for five years as of July 1, 2010, and has substantially similar
68 qualifications as required by subdivisions (1), (2), (3), (4), (5)(A)(i) or (5)(B)(i), (7) and (8),
69 subsection (a) of this section is eligible for a license to practice marriage and family therapy until
70 July 1, 2012, and is eligible for renewal under section ten of this article.

§30A-16-10. Renewal requirements.

1 (a) A licensed professional counselor and a licensed marriage and family therapist shall
2 annually or biennially renew his or her license at a time determined by the board, by completing
3 a form prescribed by the board, paying the renewal fee and submitting any other information
4 required by the board.

5 (b) The board shall charge a fee for each renewal of a license and a late fee for any
6 renewal not properly completed and received with the appropriate fee by the board at the
7 appropriate date.

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

10 (d) The board may deny an application for renewal for any reason which would justify the
11 denial of an original application for a license.

§30A-16-11. Persons exempted from licensure.

1 (a) The following activities are exempt from the provisions of this article:

2 (1) Teaching, lecturing or engaging in research in professional counseling or marriage and
3 family therapy so long as such activities do not otherwise involve the practice of professional
4 counseling or marriage and family therapy directly affecting the welfare of the person counseled;

5 (2) The official duties of persons employed as professional counselors or marriage and
6 family therapists by the State of West Virginia or any of its departments, agencies, divisions,
7 bureaus or political subdivisions, counties, county boards of education, regional education service
8 agencies, municipalities or any other facilities or programs established, supported or funded, in
9 whole or in part, by the governmental entity;

10 (3) The official duties of persons employed as professional counselors or marriage and
11 family therapists by any department, agency, division or bureau of the United States of America;

12 (4) The official duties of persons serving as professional counselors or marriage and family
13 therapists, whether as volunteers or for compensation or other personal gain, in any public or
14 private nonprofit corporations, organizations, associations or charities;

15 (5) The official duties of persons who are employed by a licensed professional counselor
16 or licensed marriage and family therapist, whose duties are supervised by a licensed professional
17 counselor or licensed marriage and family therapists and who represent themselves by the title
18 provisionally licensed counselor or provisionally licensed marriage and family therapist, and do
19 not represent themselves as licensed professional counselors or licensed marriage and family
20 therapists as defined in this article;

21 (6) The activities of a student of professional counseling or marriage and family therapy

22 which are part of the prescribed course of study at an accredited educational institution and are
23 supervised by a licensed professional counselor, licensed marriage and family therapist or by a
24 teacher, instructor or professor of counseling or marriage and family therapy acting within the
25 official duties or scope of activities exempted by this section; or

26 (7) The activities and services of qualified members of other recognized professions such
27 as physicians, psychologists, psychoanalysts, social workers, lawyers, clergy, nurses or teachers
28 performing counseling or marriage and family therapy consistent with the laws of this state, their
29 training and any code of ethics of their professions so long as such persons do not represent
30 themselves as licensed professional counselors or licensed marriage and family therapists as
31 defined by section three of this article.

32 (b) Nothing in the article requires licensing of the following persons pursuant to this article:

33 (1) A school counselor who holds a school counseling certificate issued by the West
34 Virginia Department of Education and who is engaged in counseling solely within the scope of his
35 or her employment with the department, a county board of education or a regional education
36 service agency; or

37 (2) A nonresident professional counselor or marriage and family therapist who holds a
38 license or other authorization to engage in the practice of professional counseling or marriage
39 and family therapy issued by another state, the qualifications for which in the opinion of the board
40 are at least as stringent as those provided in section eight and section nine of this article, and
41 who renders counseling services in this state for no more than thirty days in any calendar year.

42 (c) Nothing in this article permits a licensed professional counselor or licensed marriage
43 and family therapist to administer or prescribe drugs or otherwise engage in the practice of
44 medicine as defined in articles three and fourteen of chapter thirty of this code.

**§30A-16-12. Complaints; investigations; due process procedure; grounds for disciplinary
action.**

1 (a) The board may upon its own motion based on credible information, and shall upon the

2 written complaint of any person cause an investigation to be made to determine whether grounds
3 exist for disciplinary action under this article or the legislative rules of the board.

4 (b) Upon initiation or receipt of the complaint, the board shall provide a copy of the
5 complaint to the licensee.

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

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

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

17 (f) Any member of the board or its executive director may sign a consent decree or other
18 legal document on behalf of the board.

19 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
20 suspend or revoke the license of, impose probationary conditions upon or take disciplinary action
21 against, any licensee for any of the following reasons once a violation has been proven by a
22 preponderance of the evidence:

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

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

25 (3) Being guilty of unprofessional conduct as defined by legislative rule of the board;

26 (4) A violation of a lawful order or rule of the board;

27 (5) Having had a license or other authorization revoked or suspended, other disciplinary

28 action taken, or an application for licensure or other authorization revoked or suspended by the
29 proper authorities of another jurisdiction;

30 (6) Aiding or abetting unlicensed practice; or

31 (7) Engaging in an act which has endangered or is likely to endanger the health, welfare
32 or safety of the public.

33 (h) For the purposes of subsection (g) of this section, effective July 15, 2009, disciplinary
34 action may include:

35 (1) Reprimand;

36 (2) Probation;

37 (3) Administrative fine, not to exceed \$1,000 per day per violation;

38 (4) Mandatory attendance at continuing education seminars or other training;

39 (5) Practicing under supervision or other restriction;

40 (6) Requiring the licensee to report to the board for periodic interviews for a specified
41 period of time; or

42 (7) Other corrective action considered by the board to be necessary to protect the public,
43 including advising other parties whose legitimate interests may be at risk.

§30A-16-13. Procedures for hearing; right of appeal.

1 (a) Hearings shall be governed by the provisions of section eight, article one of this
2 chapter.

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

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

9 (d) Any member or the executive director of the board has the authority to administer

10 oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

11 (e) If, after a hearing, the board determines the licensee has violated any provision of this
12 article or the board's rules, a formal written decision shall be prepared which contains findings of
13 fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30A-16-14. Judicial review.

1 Any licensee adversely affected by a decision of the board entered after a hearing may
2 obtain judicial review of the decision in accordance with section four, article five, chapter twenty-
3 nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with
4 article six, chapter twenty-nine-a of this code.

§30A-16-15. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article or otherwise, the board has
2 reason to believe that a licensee has committed a criminal offense under this article, the board
3 may bring the information to the attention of an appropriate law-enforcement official.

4 (b) Effective July 15, 2009, a person violating section one of this article is guilty of a
5 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
6 \$1,000 or confined in jail not more than six months, or both fined and confined.

§30A-16-16. Disclosure.

1 All information communicated to or acquired by a licensee while engaged in the practice
2 of counseling or marriage and family therapy with a client is privileged information and may not
3 be disclosed by the licensee except:

4 (a) With the written consent of the client, or in the case of death or disability, with the
5 written consent of a personal representative or other person authorized to sue, or the beneficiary
6 of any insurance policy on the client's life, health or physical condition;

7 (b) When a communication reveals the contemplation of an act dangerous to the client or
8 others; or

9 (c) When the client, or his or her personal representative, waives the privilege by bringing

10 charges against the licensee.

§30A-16-17. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under this article, evidence of the
2 commission of a single act prohibited by this article is sufficient to justify a penalty, injunction,
3 restraining order or conviction without evidence of a general course of conduct.

ARTICLE 17. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30A-17-1. Unlawful acts; criminal penalties.

1 (a) It is unlawful for any person to practice or offer to practice speech-language pathology
2 or audiology in this state, or advertise or use any title or description tending to convey the
3 impression that the person is a speech-language pathologist or audiologist unless the person has
4 been licensed under the provisions of this article, and the license has not expired, been
5 suspended or revoked.

6 (b) As of July 1, 2014, it is unlawful for any person to practice or represent that he or she
7 is qualified to practice as a speech-language pathology assistant or an audiology assistant unless
8 the person has registered with the West Virginia Board of Examiners for Speech-Language
9 Pathology and Audiology under the provisions of this article, and the registration has not expired,
10 been suspended or revoked.

11 (c) It is unlawful for any business entity, except through a licensee, to render any service
12 or engage in any activity which if rendered or engaged in by an individual, would constitute the
13 practices licensed under the provisions of this article.

14 (d) Any person violating any provision of subsections (a), (b) or (c) of this article is guilty
15 of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
16 \$1,000 or confined in jail not more than six months, or both.

§30A-17-2. Exemptions.

1 Nothing in this article prevents or restricts:

2 (1) Any person licensed or registered under any other law of this state from practicing the

3 profession and performing services for which he or she is licensed or registered;

4 (2) A licensed physician or surgeon while engaging in the profession for which he or she
5 is licensed;

6 (3) A trained individual providing hearing testing or balance system assessment under the
7 direct supervision of a licensed physician or surgeon;

8 (4) A person credentialed by this state as a teacher of the deaf;

9 (5) The activities and services of persons pursuing a course of study leading to a degree
10 in speech-language pathology or audiology at a college or university, if:

11 (A) These activities and services constitute a part of a planned course of study at that
12 institution;

13 (B) They are designated by a title such as intern, trainee, student or other title clearly
14 indicating the status appropriate to their level of education; and

15 (C) They work under the supervision of a person licensed by this state to practice speech-
16 language pathology or audiology;

17 (6) The activities of persons who are nonresidents of this state from engaging in the
18 practice of speech-language pathology or audiology if the activities of the persons do not exceed
19 five days in any calendar year and they:

20 (A) Meet the qualifications of this article;

21 (B) Register with the board in accordance with procedures specified by the board; and

22 (C) Abide by the standards of professional conduct;

23 (7) The practice of a licensed hearing aid dealer engaged solely in the practice of dealing
24 in or fitting of hearing aids; or

25 (8) The activity of an occupational hearing conservationist engaged in hearing testing as
26 part of a hearing conservation program in compliance with regulations of the Occupational Safety
27 and Health Administration.

§30A-17-3. General provisions.

1 The practices licensed under the provisions of this article and the West Virginia Board of
2 Examiners for Speech-Language Pathology and Audiology are subject to the provisions of article
3 one of this chapter, the provisions of this article and any rules promulgated hereunder.

§30A-17-4. Definitions.

1 The following terms have the following meanings:

2 (1) "Applicant" means a person applying for a license required by this article.

3 (2) "Assistant" means a registered speech-language pathology assistant or a registered
4 audiology assistant.

5 (3) "Audiologist" means a person who engages in the practice of audiology and is licensed
6 pursuant to the provisions of this article.

7 (4) "Audiology" means the application of principles, methods, and procedures related to
8 hearing and the disorders of hearing and to related language and speech disorders.

9 (5) "Audiology assistant" means a person registered with the board who practices under
10 the supervision of an licensed audiologist.

11 (6) "Audiology disorders" means any and all conditions, whether of organic or nonorganic
12 origin, peripheral or central, that impede the normal process of human communication including,
13 but not limited to, disorders of auditory sensitivity, acuity, function or processing.

14 (7) "Board" means the West Virginia Board of Speech-Language Pathology and
15 Audiology.

16 (8) "Business entity" means any firm, partnership, association, company, corporation,
17 limited partnership, limited liability company or other entity.

18 (9) "Direct supervision" means the actual physical presence of a supervising licensed
19 speech-language pathologist or supervising licensed audiologist in the room where treatment is
20 provided by an assistant.

21 (10) "General supervision" means initial direction and periodic inspection of the activities
22 of an assistant by the supervising licensed speech-language pathologist or supervising licensed

23 audiologist, who is physically present in the building where treatment is provided and is quickly
24 and easily available.

25 (11) "Initial supervision training" means training required of supervising licensed speech-
26 language pathologists and supervising licensed audiologists before providing supervision of
27 assistants.

28 (12) "Instruction" means:

29 (A) Providing speech-language pathology or audiology services in infant/toddler,
30 preschool, elementary or secondary school programs; or

31 (B) Teaching students in institutions of higher education.

32 (13) "License" means a license issued pursuant to the provisions of this article.

33 (14) "Licensee" means a person who is licensed pursuant to the provisions of this article.

34 (15) "Provisional license" means a license issued pursuant to the provisions of this article.

35 (16) "Registrant" means an assistant who is registered pursuant to the provisions of this
36 article.

37 (7) "Registration" means a registration issued pursuant to the provisions of this article.

38 (8) "Speech-language pathologist" means any person who engages in the practice of
39 speech-language pathology and who is licensed pursuant to the provisions of this article.

40 (19) "Speech-language pathology" means the application of principles, methods and
41 procedures related to the development, disorders and effectiveness of human communication
42 and related functions.

43 (20) "Speech-language pathology assistant" means a person registered with the board
44 who practices under the supervision of a licensed speech-language pathologist.

45 (21) "Speech-language pathology disorders" means conditions, whether of organic or
46 nonorganic origin, that impede the normal process of human communication including, but not
47 limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written
48 language, Auditory comprehension, cognition/communication, and oral, pharyngeal and/or

49 laryngeal sensorimotor competencies.

50 (22) "Telepractice" means the application of telecommunication technology to deliver
51 speech-language pathology or audiology services through real time interaction from one site to
52 another for assessment, intervention or consultation in a manner sufficient to ensure patient
53 confidentiality.

§30A-17-5. Board of Examiners for Speech-language Pathology and Audiology.

1 (a) The West Virginia Board of Examiners for Speech-Language Pathology and Audiology
2 is continued. The members of the board in office on July 1, 2013 may, unless sooner removed,
3 continue to serve until their respective terms expire or until their successors have been appointed
4 and qualified.

5 (b) The board consists of the following members appointed by the Governor by and with
6 the advice and consent of the Senate:

7 (1) Two persons who are licensed speech-language pathologists;

8 (2) Two persons who are licensed audiologists; and

9 (3) One citizen member who is not licensed or registered under this article.

10 (c) The terms are for three years. No member may serve for more than two consecutive
11 terms.

12 (d) Each licensed member of the board, at the time of his or her appointment, must have
13 held a license in this state for at least three years.

14 (e) Each member of the board must be a resident of this state during the appointment
15 term.

16 (f) No board member may serve as an officer of the West Virginia Speech Language and
17 Hearing Association concurrently with his or her service on the board.

18 (g) A vacancy on the board shall be filled by appointment by the Governor for the
19 unexpired term of the member whose office is vacant.

20 (h) The Governor may remove any member from the board for neglect of duty,

21 incompetency or official misconduct.

22 (i) A licensed member of the board immediately and automatically forfeits membership to
23 the board if his or her license or registration to practice is suspended or revoked.

24 (j) A member of the board immediately and automatically forfeits membership to the board
25 if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident
26 of this state.

27 (k) The board shall elect annually one of its members as chairperson and one of its
28 members as secretary-treasurer who shall serve at the will and pleasure of the board.

29 (l) Each member of the board is entitled to receive compensation and expense
30 reimbursement in accordance with article one of this chapter.

31 (m) A majority of the members of the board constitutes a quorum.

32 (n) The board shall hold at least one annual meeting. Other meetings shall be held at the
33 call of the chairperson or upon the written request of four members, at the time and place as
34 designated in the call or request.

35 (o) Prior to commencing his or her duties as a member of the board, each member shall
36 take and subscribe to the oath required by section five, article four of the Constitution of this state.

37 (p) Board members are immune from civil liability for the performance of their official duties
38 so long as they act in good faith.

§30A-17-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this article, by legislative rule, in
2 article one of this chapter and elsewhere in law.

3 (b) The board shall:

4 (1) Hold meetings and conduct hearings;

5 (2) Establish requirements for licenses and registrations;

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

8 (4) Determine the qualifications of any applicant for a license or registration;

9 (5) Communicate disciplinary actions to relevant state and federal authorities, the
10 American Speech-Language-Hearing Association, the West Virginia Speech-Language and
11 Hearing Association and other applicable authorities when public safety is at risk;

12 (6) Maintain an office and hire, discharge, establish the job requirements and fix the
13 compensation of employees and contracted employees necessary to enforce the provisions of
14 this article;

15 (7) Investigate alleged violations of the provisions of this article, legislative rules, orders
16 and final decisions of the board;

17 (8) Conduct disciplinary hearings of persons regulated by the board;

18 (9) Determine disciplinary action and issue orders;

19 (10) Institute appropriate legal action for the enforcement of the provisions of this article;

20 (11) Maintain an accurate registry of names and addresses of all persons regulated by the
21 board;

22 (12) Keep accurate and complete records of its proceedings, and certify the same as may
23 be necessary and appropriate;

24 (13) Issue, renew, combine, deny, suspend, revoke or reinstate licenses and registrations
25 pursuant to the provisions of this article;

26 (14) Establish a fee schedule;

27 (15) Take all actions necessary and proper to effectuate the purposes of this article; and

28 (16) Propose rules in accordance with the provisions of article three, chapter twenty-nine-
29 a of this code to implement the provisions of this article.

30 (c) The board may:

31 (1) Approve and contract with third parties to administer the examinations required under
32 the provisions of this article;

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

34 (3) Confer with the Attorney General or his or her assistants in connection with legal
35 matters and questions; and

36 (4) Perform random audits of continuing education, supervision records and
37 documentation of licensure and registration requirements to determine compliance with this
38 article.

§30A-17-7. Rulemaking.

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

4 (1) Standards and requirements for licenses and registrations;

5 (2) Requirements, qualifications and designation of third parties to establish educational
6 requirements and to prepare and/or administer examinations and reexaminations;

7 (3) Procedures for the issuance and renewal of a license, registration and provisional
8 license;

9 (4) A fee schedule;

10 (5) Continuing education and competency requirements for licensees and registrants;

11 (6) Establishment of competency standards;

12 (7) The procedures for denying, suspending, revoking, reinstating or limiting the practice
13 of a licensee or registrant;

14 (8) Requirements for reinstatement of revoked licenses and registrations;

15 (9) Guidelines for telepractice;

16 (10) Rules to define the role of the speech-language pathology assistant or audiology
17 assistant, including, but not limited to:

18 (A) The supervision requirements of licensees;

19 (B) The ratio of assistants to licensees;

20 (C) The scope of duties and restrictions of responsibilities of assistants;

21 (D) The frequency, duration and documentation of supervision required under the
22 provisions of this article; and

23 (E) The quantity and content of pre-service and in-service instruction.

24 (11) Professional conduct and ethical standards of practice; and

25 (12) Any other rules necessary to effectuate the provisions of this article.

26 (b) The board may promulgate emergency rules in accordance with section fifteen, article
27 three, chapter twenty-nine-a of this code to establish requirements and procedures for telepractice
28 in accordance with the provisions of this article, including the scope of duties and restrictions of
29 assistants in telepractice.

30 (c) All rules in effect on January 1, 2013 shall remain in effect until they are amended or
31 repealed, and references to provisions of former enactments of this article are interpreted to mean
32 provisions of this article.

§30A-17-8. Funds.

1 (a) All fees and other moneys, except administrative fines, received by the board shall be
2 deposited in a separate special revenue fund in the State Treasury designated the "Board of
3 Examiners for Speech-Language Pathology and Audiology Fund", which is continued. The fund
4 is used by the board for the administration of this article. Except as may be provided in article one
5 of this chapter, the board retains the amount in the special revenue account from year to year. No
6 compensation or expense incurred under this article is a charge against the General Revenue
7 Fund.

8 (b) Any amount received as fines, imposed pursuant to this article, shall be deposited into
9 the General Revenue Fund of the State Treasury.

§30A-17-9. Qualifications for licensure as a speech-language pathologist.

1 (a) To be eligible for licensure by the board as a speech-language pathologist, the
2 applicant shall:

3 (1) Make application to the board, upon a form prescribed by the board;

4 (2) Pay to the board an application fee as established by the board;

5 (3) Possess at least a master's degree or equivalent in speech-language pathology from
6 an educational institution approved by the board which consists of coursework approved by the
7 board and delineated in legislative rule;

8 (4) Complete supervised clinical practicum experiences from an educational institution or
9 its cooperating programs, the content of which shall be approved by the board and delineated in
10 the rules;

11 (5) Complete a postgraduate professional experience as approved by the board and
12 described in legislative rule;

13 (6) Pass the national examination in speech-language pathology; and

14 (7) Pass a jurisprudence examination developed by the board.

15 (b) Subject to the renewal requirements set forth in section seventeen of this article, a
16 license issued by the board under prior enactments of this article shall for all purposes be
17 considered a license issued under this article.

§30A-17-10. Qualifications for licensure as an audiologist.

1 (a) To be eligible for licensure by the board as an audiologist, the applicant shall:

2 (1) Make application to the board, upon a form prescribed by the board;

3 (2) Pay to the board an application fee as established by the board;

4 (3) Possess at least a master's degree or equivalent in audiology from an educational
5 institution approved by the board which consists of coursework approved by the board and
6 delineated in legislative rule;

7 (4) Complete supervised clinical practicum experiences from an educational institution or
8 its cooperating programs, the content of which shall be approved by the board and delineated in
9 the rules;

10 (5) Complete a postgraduate professional experience as approved by the board and
11 described in legislative rule;

12 (6) Pass the national examination in audiology; and

13 (7) Pass a jurisprudence examination developed by the board.

14 (b) Subject to the renewal requirements set forth in section seventeen of this article, a
15 license issued by the board under prior enactments of this article shall for all purposes be
16 considered a license issued under this article.

§30A-17-11. Provisional licenses.

1 (a) The board may issue a provisional license to an applicant who is in the process of
2 obtaining postgraduate professional experience and who:

3 (1) Meets the academic, practicum, and examination requirements of this article;

4 (2) Submits an application to the board, upon a form prescribed by the board, including a
5 plan for the content of the postgraduate professional experience; and

6 (3) Pays the fee.

7 (b) A provisional licensee may practice speech-language pathology or audiology under
8 the general supervision of a licensed speech pathologist or audiologist only in the professional
9 field for which the provisional license was issued.

10 (c) The provisional license shall be valid for a term of one year and may be renewed.

§30A-17-12. Waiver of requirements; practice pending disposition of application.

1 (a) The board shall waive the national examination requirements in speech-language
2 pathology and/or audiology for an applicant who either:

3 (1) Presents proof of current licensure in a state that has standards that are substantially
4 equivalent to those of this state; or

5 (2) Holds a certificate of clinical competence in speech-language pathology or audiology
6 from the American Speech-Language-Hearing Association in the professional field for which they
7 seek licensure.

8 (b) An applicant who holds current licensure from another state with substantially
9 equivalent standards or who holds the certificate of clinical competence from the American

10 Speech-Language-Hearing Association may practice speech-language pathology or audiology in
11 this state, pending the board's disposition of the application, if the applicant:

12 (1) Is practicing in the professional field in which the licensure or certificate of clinical
13 competence was granted; and

14 (2) Has filed an application with the board and paid the appropriate application fee.

§30A-17-13. Scope of practice for speech-language pathology.

1 The scope of practice for speech-language pathology includes:

2 (1) Prevention, screening, consultation, assessment and diagnosis, treatment,
3 intervention, management, counseling and follow-up services for disorders of speech (i.e.,
4 articulation, fluency, resonance and voice), language (i.e., phonology, morphology, syntax,
5 preliteracy and language-based skills), swallowing or other upper aerodigestive functions;

6 (2) Cognitive aspects of communication (i.e., attention, memory, problem solving);

7 (3) Establishing augmentative and alternative communication techniques and strategies,
8 including developing, selecting and prescribing of systems and devices (e.g., speech generating
9 devices) and providing training in their use;

10 (4) Providing services to individuals with hearing loss and their families (e.g., Auditory
11 training, speech reading, speech and language intervention secondary to hearing loss;

12 (5) Screening hearing of individuals who can participate in conventional puretone air
13 conduction methods and screening middle ear pathology through screening tympanometry for the
14 purpose of referral for further evaluation: *Provided*, That judgments and descriptive statements
15 about the results of the screenings are limited to pass/fail determinations;

16 (6) Using instrumentation (e.g., videofluoroscopy) to observe, collect data and measure
17 parameters of communication and swallowing as directed by a licensed physician; and

18 (7) Selecting, fitting and establishing effective use of prosthetic/adaptive devices for
19 communication, swallowing or other upper aerodigestive functions.

§30A-17-14. Scope of practice for audiology.

1 (a) The scope of practice for audiology includes:

2 (1) Facilitating the conservation of Auditory system function, developing and implementing
3 environmental and occupational hearing conservation programs;

4 (2) Screening, identifying, assessing and interpreting, preventing and rehabilitating
5 peripheral and central Auditory system disorders;

6 (3) Providing and interpreting behavioral and electro- physiological measurements of
7 Auditory and vestibular functions;

8 (4) Selecting, fitting, programming and dispensing of amplification, assistive listening and
9 alerting devices and programming and other systems (e.g., implantative devices) and providing
10 training in their use;

11 (5) Providing audiologic and aural rehabilitation and related counseling services to
12 individuals with hearing impairments and their families;

13 (6) Providing vestibular rehabilitation;

14 (7) Cerumen removal; and

15 (8) Screening of speech-language and other factors affecting communication disorders:
16 *Provided*, That judgments and descriptive statements about the results of the screenings are
17 limited to pass/fail determinations.

18 (b) A person licensed under this article as an audiologist is not required to obtain a license
19 under the provisions of article twenty-six of this chapter.

§30A-17-15. Speech-language pathology and audiology assistants; supervision requirements.

1 (a) Commencing July 1, 2014, speech-language pathology assistants and audiology
2 assistants shall register with the board and shall:

3 (1) Possess a minimum of an associate's degree from an institution or technical training
4 program with a program of study designed to prepare the student to be a speech language
5 pathology or audiology assistant;

6 (2) Work only under the supervision of a licensee licensed in the professional field in which
7 the assistant is working; and

8 (3) Meet all requirements set by the board.

9 (b) Licensees who supervise assistants shall:

10 (1) Report to the board the name and field of practice of each assistant working under the
11 licensee's supervision;

12 (2) Complete initial supervision training prior to accepting an assistant for supervision and
13 upgrade supervision training as required by the board;

14 (3) Document preservice training and credentials of the assistant;

15 (4) Provide direct supervision of the first three hours of treatment by the assistant for each
16 patient or client, followed by a minimum of one direct observation for each subsequent two week
17 period and document the direct observation;

18 (5) Provide general supervision and be responsible for the extent, kind and quality of
19 service provided by the assistant and for all services provided by the assistant;

20 (6) Ensure that persons receiving services from an assistant receive prior written
21 notification that services are to be provided, in whole or in part, by an assistant; and

22 (7) Meet all other requirements set by the board.

§30A-17-16. Telepractice services.

1 (a) Licensed speech-language pathologists and audiologists may provide services in this
2 state by telepractice.

3 (b) Speech-language pathologists and audiologists providing services by telepractice shall
4 deliver services consistent with the quality of services delivered in person, and shall:

5 (1) Acquire written informed consent from the student, patient or client before the services
6 are provided;

7 (2) Maintain the confidentiality of the student, patient or client as required by law;

8 (3) Provide documentation of the delivery of services;

- 9 (4) Train assistants before allowing them to assist in the delivery of service by telepractice,
10 and document the training and delivery of service by the assistants; and
11 (5) Meet any other requirements set by the board.

§30A-17-17. Renewal of license or registration; renewal of lapsed license or registration; suspension, revocation and refusal to renew; reinstatement of revoked license or registration.

- 1 (a) Licenses, except provisional licenses, and registrations may be renewed biennially,
2 upon documentation of required continuing education and payment of a renewal fee.
- 3 (b) A license or registration which has lapsed may be renewed within one year of its
4 expiration date in the manner set by the board.
- 5 (c) A license or registration which has lapsed for more than one year but fewer than five
6 years may be reinstated, upon documentation of continuing education credits earned during the
7 lapsed period equal to the credits required for renewal and payment of a reinstatement fee.
- 8 (d) A license or registration which has lapsed for more than five years may not be
9 reinstated. A new license or registration may be issued to an applicant who complies with the
10 requirements relating to the issuance of an original license or registration in effect at the time of
11 the application.
- 12 (e) The board may suspend, revoke or refuse to renew a license or registration for any
13 reason which would justify the denial of an original application for licensure or registration.
- 14 (f) The board may consider the reinstatement of a license or registration which has been
15 revoked upon a showing that the applicant can resume practicing with reasonable skill and safety.

§30A-17-18. Actions to enjoin violations.

- 1 (a) If the board obtains information that any person has engaged in, is engaging in or is
2 about to engage in any act which constitutes or will constitute a violation of the provisions of this
3 article, the rules promulgated pursuant to this article, or a final order or decision of the board, it
4 may issue a notice to the person to cease and desist in engaging in the act and/or apply to the

5 circuit court in the county of the alleged violation for an order enjoining the act.

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

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

**§30A-17-19. Complaints; investigations; due process procedure; grounds for disciplinary
action.**

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

4 (b) Upon initiation or receipt of the complaint, the board shall provide a copy of the
5 complaint to the licensee or registrant.

6 (c) After reviewing any information obtained through an investigation, the board shall
7 determine if probable cause exists that the licensee or registrant has violated any provision of this
8 article.

9 (d) Upon a finding that probable cause exists that the licensee or registrant has violated
10 any provision of this article or rules promulgated pursuant to this article, the board may enter into
11 a consent decree or hold a hearing for the suspension or revocation of the license or registration
12 or the imposition of sanctions against the licensee or registrant.

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

16 (f) Any member of the board may sign a consent decree or other legal document on behalf
17 of the board.

18 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,

19 suspend or revoke the license or registration of, impose probationary conditions upon or take
20 disciplinary action against, any licensee or registrant for any of the following reasons once a
21 violation has been proven by a preponderance of the evidence:

22 (1) Obtaining a license or registration by fraud, misrepresentation or concealment of
23 material facts;

24 (2) Being convicted of a felony or misdemeanor crime of moral turpitude;

25 (3) Being guilty of unprofessional conduct as defined by legislative rule of the board;

26 (4) Violating provisions of this article, rule or a lawful order of the board;

27 (5) Providing substandard care due to a deliberate or negligent act or failure to act
28 regardless of whether actual injury to a patient or client is established;

29 (6) As an assistant, exceeding the authority to perform components of service selected
30 and delegated by the supervising speech-language pathologist or audiologist regardless of
31 whether actual injury to a patient is established;

32 (7) Knowingly delegating responsibilities to an individual who does not have the
33 knowledge, skills or abilities to perform those responsibilities;

34 (8) As a licensee, failing to provide appropriate supervision to a speech-language
35 pathology assistant or audiology assistant in accordance with this article and legislative rules of
36 the board;

37 (9) Practicing when competent services to recipients may not be provided due to physical
38 or mental impairment;

39 (10) Having had a speech-language pathologist or audiologist license or assistant
40 registration revoked or suspended, other disciplinary action taken, or an application for licensure
41 or registration refused, revoked or suspended by the proper authorities of another jurisdiction;

42 (11) Engaging in sexual misconduct which includes:

43 (A) Initiating or soliciting sexual relationships, whether consensual or nonconsensual,
44 while a professional relationship exists between the licensee or registrant and a patient or client;

45 or

46 (B) Making sexual advances, requesting sexual favors or engaging in physical contact of
47 a sexual nature with a patient or client;

48 (12) Aiding or abetting a person who is not licensed or registered in this state and who
49 directly or indirectly performs activities requiring a license or registration;

50 (13) Abandoning or neglecting a patient or client in need of immediate professional care
51 without making reasonable arrangements for the continuation of care; or

52 (14) Engaging in any act which has endangered or is likely to endanger the health, welfare
53 or safety of the public.

54 (h) Disciplinary action may include:

55 (1) Reprimand;

56 (2) Probation;

57 (3) Administrative fine, not to exceed \$1,000 per day per violation;

58 (4) Mandatory attendance at continuing education seminars or other training;

59 (5) Practicing under supervision or other restriction;

60 (6) Requiring the licensee or registrant to report to the board for periodic interviews for a
61 specified period of time;

62 (7) Denial, suspension, revocation or nonrenewal of license or registration; or

63 (8) Other disciplinary action considered by the board to be necessary to protect the public,
64 including advising other parties whose legitimate interests may be at risk.

§30A-17-20. Procedures for hearing; right of appeal.

1 (a) Notice and hearing requirements are governed by the provisions of article one of this
2 chapter.

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

5 (c) If the hearing is conducted by an administrative law judge, the administrative law judge

6 shall prepare a proposed written order at the conclusion of a hearing containing findings of fact
7 and conclusions of law. The proposed order may contain proposed disciplinary actions if the board
8 so directs. The board may accept, reject or modify the decision of the administrative law judge.

9 (d) Any member of the board has the authority to administer oaths, examine any person
10 under oath and issue subpoenas and subpoenas duces tecum.

11 (e) If, after a hearing, the board determines the licensee or registrant has violated any
12 provision of this article or the board's rules, a formal written decision shall be prepared which
13 contains findings of fact, conclusions of law and a specific description of the disciplinary actions
14 imposed.

§30A-17-21. Judicial review.

1 Any licensee or registrant adversely affected by a decision of the board entered after a
2 hearing may obtain judicial review of the decision in accordance with section four, article five,
3 chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in
4 accordance with article six, chapter twenty-nine-a of this code.

§30A-17-22. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under this article, evidence of the
2 commission of a single act prohibited by this article is sufficient to justify a penalty, injunction,
3 restraining order or conviction without evidence of a general course of conduct.

§30A-17-23. Required update of review of Legislative Auditor.

1 On or before December 1, 2014, the Legislative Auditor shall update the Sunrise Report
2 of January 2013 on the requirements for speech-language pathologists, audiologists and
3 assistants to practice in public schools, and present the report to the Joint Standing Committee
4 on Government Organization, with recommendations.

ARTICLE 18. ACUPUNCTURISTS.

§30A-18-1. License required to practice.

1 In order to protect the life, health and safety of the public, any person practicing or offering

2 to practice as an acupuncturist is required to submit evidence that he or she is qualified to practice,
3 and is licensed as provided in this article. After June 30, 1997, it shall be unlawful for any person
4 not licensed under the provisions of this article to practice acupuncture in this state, or to use any
5 title, sign, card or device to indicate that he or she is an acupuncturist. The provisions of this
6 article are not intended to limit, preclude or otherwise interfere with the practice of other health
7 care providers working in any setting and licensed by appropriate agencies or boards of the State
8 of West Virginia whose practices and training may include elements of the same nature as the
9 practice of a licensed acupuncturist.

§30A-18-2. Definitions.

1 (a) Unless the context in which used clearly requires a different meaning, as used in this
2 article:

3 (1) "Acupuncture" means a form of health care, based on a theory of energetic physiology,
4 that describes the interrelationship of the body organs or functions with an associated point or
5 combination of points.

6 (2) "Board" means the West Virginia Acupuncture Board.

7 (3) "License" means a license issued by the board to practice acupuncture.

8 (4) "Moxibustion" means the burning of mugwort on or near the skin to stimulate the
9 acupuncture point.

10 (5) "Practice acupuncture" means the use of oriental medical therapies for the purpose of
11 normalizing energetic physiological functions including pain control, and for the promotion,
12 maintenance, and restoration of health.

13 (b) (1) "Practice acupuncture" includes:

14 (A) Stimulation of points of the body by the insertion of acupuncture needles;

15 (B) The application of moxibustion; and

16 (C) Manual, mechanical, thermal, or electrical therapies only when performed in
17 accordance with the principles of oriental acupuncture medical theories.

18 (2) The practice of acupuncture does not include the procedure of auricular acupuncture
19 when used in the context of a chemical dependency treatment program when the person is trained
20 and approved by the National Acupuncture Detoxification Association or an equivalent certifying
21 body.

§30A-18-3. Board established.

1 There is hereby created a state board to be known and designated as the “West Virginia
2 Acupuncture Board.”

§30A-18-4. Board membership.

1 (a) The board shall consist of five members appointed by the Governor with the advise
2 and consent of the Senate.

3 (1) Three shall be licensed acupuncturists appointed from a list submitted as provided in
4 subsection (c) of this section;

5 (2) One shall be a member of the general public; and

6 (3) One shall be a physician licensed to practice medicine in the State of West Virginia.

7 (b) Each licensed acupuncturist shall:

8 (1) Be a resident of the state; and

9 (2) For at least three years immediately prior to appointment have been engaged in the
10 practice of acupuncture in the state.

11 (c) For each vacancy of an acupuncture member, the board shall compile a list of names
12 to be submitted to the Governor in the following manner:

13 (1) The board shall notify all licensed acupuncturists in the state of the vacancy to solicit
14 nominations to fill the vacancy;

15 (2) Each professional association of acupuncturists in the state shall nominate at least two
16 persons for every vacancy; and

17 (3) Each educational institution that provides acupuncture training in the state shall
18 nominate at least two persons for every vacancy.

19 (d) The member from the general public:

20 (1) May not be or ever have been an acupuncturist or in training to become an
21 acupuncturist;

22 (2) May not have a household member who is an acupuncturist or in training to become
23 an acupuncturist;

24 (3) May not participate or ever have participated in a commercial or professional field
25 related to acupuncture;

26 (4) May not have a household member who participates in a commercial or professional
27 field related to acupuncture; and

28 (5) May not have had within two years prior to appointment a substantial financial interest
29 in a person regulated by the board.

30 (e) While a member of the board, the member from the general public may not have a
31 substantial financial interest in a person regulated by the board.

32 (f) Before taking office, each appointee to the board shall take and subscribe to the oath
33 prescribed by section 5, article IV of the Constitution of this state.

34 (g) Tenure; vacancies.

35 (1) The term of a member is three years.

36 (2) The terms of members are staggered from July 1, 1996. The terms of the members
37 first appointed shall expire as designated by the Governor at the time of the nomination, one at
38 the end of the first year, two at the end of the second year, and two at the end of the third year.
39 As these original appointments expire, each subsequent appointment shall be for a full three-year
40 term.

41 (3) At the end of a term, a member continues to serve until a successor is appointed and
42 qualifies.

43 (4) A member may not serve more than two consecutive full terms.

44 (5) A member who is appointed after a term has begun serves only for the rest of the term

45 and until a successor is appointed and qualifies.

46 (h) The Governor may remove any member from the board for neglect of any duty required
47 by law or for incompetence or unethical or dishonorable conduct.

§30A-18-5. Officers.

1 From among its members, the board shall elect officers in a manner and for terms that the
2 board determines.

§30A-18-6. Quorum; meetings; reimbursement; staff.

1 (a) A majority of the full authorized membership of the board constitutes a quorum.

2 (b) The board shall meet at least twice a year, at the times and places that it determines.

3 (c) Each member of the board is entitled to reimbursement of travel and other necessary
4 expenses actually incurred while engaging in board activities. All reimbursement of expenses
5 shall be paid out of the acupuncture board fund created by the provisions of this article.

6 (d) The board may employ such staff as necessary to perform the functions of the board,
7 including an administrative secretary, and pay all personnel from the acupuncture board fund in
8 accordance with the state budget.

9 (e) The board may contract with other state boards or state agencies to share offices,
10 personnel and other administrative function as authorized under this article.

§30A-18-7. Rule-making authority; miscellaneous powers and duties.

1 (a) The board may propose for promulgation legislative rules to carry out the provisions of
2 this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

3 (b) The board may adopt a code of ethics for licensure.

4 (c) In addition to the powers set forth elsewhere in this article, the board shall keep:

5 (1) Records and minutes necessary for the orderly conduct of business; and

6 (2) A list of each currently licensed acupuncturist.

§30A-18-8. Acupuncture board fund; fees; expenses; disposition of funds.

1 (a) There is hereby established an acupuncture board fund in the State Treasurer's office.

2 (b) The board may set reasonable fees for the issuance and renewal of licenses and its
3 other services. All funds to cover the compensation and expenses of the board members or staff
4 shall be generated by the fees set under this subsection.

5 (c) The board shall pay all fees collected under the provisions of this article to the State
6 Treasurer.

7 (d) The fund shall be used exclusively to cover the actual documented direct and indirect
8 costs of fulfilling the statutory and regulatory duties of the board as provided by the provisions of
9 this article. The fund is a continuing, nonlapsing fund. Any unspent portions of the fund may not
10 be transferred or revert to the General Revenue Fund of the state, but shall remain in the fund to
11 be used for the purposes specified in this article.

12 (e) The Legislative Auditor shall audit the accounts and transactions of the fund.

§30A-18-9. License required; exemptions.

1 (a) Except as otherwise provided in this article, an individual shall be licensed by the board
2 before he or she may practice acupuncture in this state.

3 (b) This section does not apply to:

4 (1) An individual employed by the federal government as an acupuncturist while practicing
5 within the scope of that employment; or

6 (2) A student, trainee or visiting teacher who is designated as a student, trainee or visiting
7 teacher while participating in a course of study or training under the supervision of a licensed
8 acupuncturist in a program that is approved by the board or the state Board of Education.

§30A-18-10. Qualifications of applicants.

1 To qualify for a license, an applicant shall:

2 (a) Be of good moral character;

3 (b) Be at least 8 years of age;

4 (c) Demonstrate competence in performing acupuncture by meeting one of the following
5 standards for education, training or demonstrated experience:

6 (1) Graduation from a course of training of at least one thousand eight hundred hours,
7 including three hundred clinical hours, that is:

8 (A) Approved by the national accreditation commission for schools and colleges of
9 acupuncture and oriental medicine; or

10 (B) Found by the board to be equivalent to a course approved by the national accreditation
11 commission for schools and colleges of acupuncture and oriental medicine;

12 (2) Achievement of a passing score on an examination that is:

13 (A) Given by the national commission for the certification of acupuncturists; or

14 (B) Determined by the board to be equivalent to the examination given by the national
15 commission for the certification of acupuncturists;

16 (3) Successful completion of an apprenticeship consisting of at least two thousand seven
17 hundred hours within a five-year period under the direction of an individual properly approved by
18 that jurisdiction to perform acupuncture; or

19 (4) Performance of the practice of acupuncture in accordance with the law of another
20 jurisdiction or jurisdictions for a period of at least three years within the five years immediately
21 prior to application that consisted of at least five hundred patient visits per year; and

22 (d) Achievement of any other qualifications that the board establishes in rules.

§30A-18-11. Applications for license.

1 To apply for a license, an applicant shall:

2 (a) Submit an application to the board on the form that the board requires; and

3 (b) Pay to the board the application fee set by the board.

§30A-18-12. Issuance of license.

1 The board shall issue a license to any applicant who meets the requirements of this article
2 and the rules adopted by the board pursuant to this article.

§30A-18-13. Scope of license.

1 Except as otherwise provided in this article, a license authorizes the licensee to practice

2 acupuncture while the license is effective.

§30A-18-14. Term and renewal of licenses; advertisements.

1 (a) Terms of license:

2 (1) The board shall provide for the term and renewal of licenses under this section;

3 (2) The term of a license may not be more than three years;

4 (3) A license expires at the end of its term, unless the license is renewed for a term as
5 provided by the board.

6 (b) Renewal notice. At least one month before the license expires, the board shall send to
7 the licensee, by first-class mail to the last known address of the licensee, a renewal notice that
8 states:

9 (1) The date on which the current license expires;

10 (2) The date by which the renewal application must be received by the board for the
11 renewal to be issued and mailed before the license expires; and

12 (3) The amount of the renewal fee.

13 (c) Applications for renewal. Before the license expires, the licensee periodically may
14 renew it for an additional term, if the licensee:

15 (1) Otherwise is entitled to be licensed;

16 (2) Pays to the board a renewal fee set by the board; and

17 (3) Submits to the board:

18 (A) A renewal application on the form that the board requires; and

19 (B) Satisfactory evidence of compliance with any continuing education requirements set
20 under this section for license renewal.

21 (d) In addition to any other qualifications and requirements established by the board, the
22 board may establish continuing education requirements as a condition to the renewal of licenses
23 under this section.

24 (e) The board shall renew the license of and issue a renewal certificate to each licensee

25 who meets the requirements of this section.

26 (f) A licensee may advertise only as permitted by rules adopted by the board.

§30A-18-15. Reciprocal licensure of acupuncturists from other states or countries.

1 (a) The acupuncture board may by reciprocity license acupuncturists in this state who
2 have been legally registered or licensed acupuncturists in another state: *Provided*, That the
3 applicant for such licensure shall meet the requirements of the rules for reciprocity promulgated
4 by the board in accordance with the provisions of chapter twenty-nine-a of this code: *Provided*,
5 *however*, That reciprocity is not authorized for acupuncturists from another state where that state
6 does not permit reciprocity to acupuncturists licensed in West Virginia.

7 (b) The board may refuse reciprocity to acupuncturists from another country unless the
8 applicant qualifies under such rules as may be promulgated by the board for licensure of foreign
9 applicants.

10 (c) Applicants for licensure under this section shall, with their application, forward to the
11 board the established fee.

§30A-18-16. Inactive status; reinstatement of expired license.

1 (a) The board shall place a licensee on inactive status if the licensee submits to the board:

2 (1) An application for inactive status on the form required by the board; and

3 (2) The inactive status fee set by the board.

4 (b) The board shall issue a license to an individual who is on inactive status if the individual
5 complies with the renewal requirements that exist at the time the individual changes from inactive
6 to active status.

7 (c) The board shall reinstate the license of a former licensee who has failed to renew the
8 license for any reason if the former licensee:

9 (1) Meets the renewal requirements of section fourteen of this article; and

10 (2) Pays to the board a reinstatement fee set by the board.

§30A-18-17. Surrender of license by licensee.

1 (a) Unless the board agrees to accept the surrender of a license, a licensee may not
2 surrender the license nor may the license lapse by operation of law while the licensee is under
3 investigation or while charges are pending against the licensee.

4 (b) The board may set conditions on its agreement with the licensee under investigation
5 or against whom charges are pending to accept surrender of the license.

§30A-18-18-. Reprimands, probations, suspensions and revocations; grounds.

1 The board, on the affirmative vote of a majority of its full authorized membership, may
2 reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the
3 licensee:

4 (a) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or
5 licensee or for another;

6 (b) Fraudulently or deceptively:

7 (1) Uses a license; or

8 (2) Solicits or advertises.

9 (c) Is guilty of immoral or unprofessional conduct in the practice of acupuncture;

10 (d) Is professionally, physically or mentally incompetent;

11 (e) Provides professional services while:

12 (1) Under the influence of alcohol; or

13 (2) Using any narcotic or controlled substance, as defined in section one hundred one,
14 article one, chapter sixty-a of this code, or other drug that is in excess of therapeutic amounts or
15 without a valid medical indication;

16 (f) Knowingly violates any provision of this article or any rule of the board adopted under
17 this article;

18 (g) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving
19 moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction
20 or plea set aside;

21 (h) Practices acupuncture with an unauthorized person or assists an unauthorized person
22 in the practice of acupuncture;

23 (i) Is disciplined by the licensing or disciplinary authority of any other state or country or
24 convicted or disciplined by a court of any state or country for an act that would be grounds for
25 disciplinary action under this section;

26 (j) Willfully makes or files a false report or record in the practice of acupuncture;

27 (k) Willfully fails to file or record any report as required by law, willfully impedes or obstructs
28 the filing or recording of the report, or induces another to fail to file or record the report;

29 (l) Submits a false statement to collect a fee; or

30 (m) Refuses, withholds from, denies or discriminates against an individual with regard to
31 the provision of professional services for which the person is licensed and qualified to render
32 because the individual is HIV positive, in conformity with standards established for treatment by
33 physicians, dentists and other licensed health care professionals in cases of this nature.

§30A-18-19. Due process procedure.

1 (a) Upon filing with the board a written complaint charging a person with being guilty of
2 any of the acts described in section sixteen of this article, the administrative secretary or other
3 authorized employee of the board shall provide a copy of the complaint or list of allegations to the
4 person about whom the complaint was filed. That person will have twenty days thereafter to file a
5 written response to the complaint. The board shall thereafter, if the allegations warrant, make an
6 investigation. If the board finds reasonable grounds for the complaint, a time and place for a
7 hearing shall be set, notice of which shall be served on the licensee or applicant at least fifteen
8 calendar days in advance of the hearing date. The notice shall be by personal service or by
9 certified or registered mail sent to the last known address of the person.

10 (b) The board may petition the circuit court for the county within which the hearing is being
11 held to issue subpoenas for the attendance of witnesses and the production of necessary
12 evidence in any hearing before it. Upon request of the respondent or of his or her counsel, the

13 board shall petition the court to issue subpoenas in behalf of the respondent. The circuit court
14 upon petition may issue such subpoenas as it deems necessary.

15 (c) Unless otherwise provided in this article, hearing procedures shall be promulgated in
16 accordance with, and a person who feels aggrieved by a decision of the board may take an appeal
17 pursuant to, the administrative procedures in this state as provided in chapter twenty-nine-a of
18 this code.

ARTICLE 19. MASSAGE THERAPISTS.

§30A-19-1. License required to practice.

1 To protect the health, safety and welfare of the public and to ensure standards of
2 competency, it is necessary to require licensure of those engaged in the practice of massage
3 therapy. After June 30, 1998, it shall be unlawful for any person not licensed under the provisions
4 of this article to practice massage therapy in this state, or to use the initials LMT, C.M.T., or the
5 words "licensed massage therapist," "masseur," or "masseuse," or any other words or titles which
6 imply or represent that the person, corporation or association is engaging in the practice of
7 massage therapy, or employ any person, not duly licensed, who is engaging in the practice of
8 massage therapy or who is using such words or titles to imply or represent that he or she is
9 engaging in the practice of massage therapy.

§30A-19-2. Definitions.

1 (a) "Board" means the West Virginia massage therapy licensure board.

2 (b) "Massage therapist" means a person licensed to practice the health care service of
3 massage therapy under this article who practices or administers massage therapy to a client of
4 either gender for compensation. No person licensed by the massage therapy licensure board may
5 be referred to as a primary care provider nor be permitted to use such designation.

6 (c) "Massage therapy" means a health care service which is a scientific and skillful
7 manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle
8 tone, circulation, promoting health and physical well-being. Massage therapy includes massage,

9 myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including
10 hydrotherapy, superficial hot and cold applications, vibration and topical applications or other
11 therapies which involve manipulation of the muscle and connective tissue of the body, for the
12 purpose of enhancing health, reducing stress, improving circulation, aiding muscle relaxation,
13 increasing range of motion, or relieving neuro-muscular pain. Massage therapy does not include
14 diagnosis or service which requires a license to practice medicine or surgery, osteopathic
15 medicine, chiropractic, or podiatry, and does not include service performed by nurses,
16 occupational therapists, or physical therapists who act under their own professional license,
17 certificate or registration.

18 (d) "Massage establishment" means a place of business wherein massage therapy is
19 practiced.

§30A-19-3. Board established; membership; terms.

1 (a) The West Virginia massage therapy licensure board consists of five members who are
2 appointed by the Governor with the advice and consent of the Senate. Three members of the
3 board shall be massage therapists, one member of the board shall be an osteopathic physician
4 or chiropractor who is knowledgeable of modalities which are included in massage therapy, and
5 one member of the board shall be a lay person who is not a massage therapist or other health
6 care professional.

7 (b) The terms of board members shall be staggered initially from July 1, 1997. The
8 Governor shall appoint initially three members for a term of one year and two members for a term
9 of two years. Subsequent appointments shall be for a term of two years. Each member shall serve
10 until that member's successor is appointed and qualified, unless the board member is no longer
11 competently performing the duties of office. Any vacancy on the board shall be filled by the
12 Governor for the balance of the unexpired term. The Governor may remove members of the board
13 from office for cause.

§30A-19-4. Quorum meetings; officers; reimbursement; staff.

1 (a) A majority of the full authorized membership of the board constitutes a quorum.

2 (b) The board shall meet at least twice a year, at the times and places that it determines.

3 (c) The board shall annually elect a chairperson and a secretary/treasurer.

4 (d) Each member of the board is entitled to reimbursement of travel and other necessary
5 expenses actually incurred while engaging in board activities. All reimbursement of expenses
6 shall be paid out of the massage therapy board fund created by the provisions of this article.

7 (e) The board may employ staff as necessary to perform the functions of the board,
8 including an administrative secretary, and pay all personnel out of the massage therapy board
9 fund created by the provisions of this article.

10 (f) The board may contract with other state boards or state agencies to share offices,
11 personnel, and other administrative functions as authorized under this article.

§30A-19-5. Massage therapy board fund; fees; expenses; disposition of funds.

1 (a) There is hereby continued a massage therapy licensure board fund in the State
2 Treasurer's office.

3 (b) The board may set, by legislative rule, reasonable fees for the issuance or renewal of
4 licenses and its other services. All funds to cover the compensation and expenses of the board
5 members shall be generated by the fees set under this subsection.

6 (c) The disposition of all funds received by the board shall be governed by the provisions
7 of section ten, article one, chapter thirty of this code.

§30A-19-6. Duties of board; authorization to propose rules and fees.

1 The board shall propose rules for legislative approval in accordance with the provisions of
2 article three, chapter twenty-nine-a of this code as are necessary to implement the provisions of
3 this article, which shall include provisions regarding:

4 (a) Licensure and continuing education requirements, standards of practice, professional
5 ethics, disciplinary actions, and other issues of concern;

6 (b) Personal cleanliness of massage therapists and the sanitary conditions of towels,

7 linens, creams, lotions and other materials, facilities, and equipment used in the practice of
8 massage therapy; and

9 (c) All fees for licensure, renewal of licensure, and all other related matters.

§30A-19-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.

1 (a) The board shall propose rules for legislative approval in accordance with article three,
2 chapter twenty-nine-a of this code, establishing a procedure for licensing of massage therapists.

3 License requirements shall include the following:

4 (1) Completion of a program of massage education at a school approved by the West
5 Virginia Council for Community and Technical College Education pursuant to section nine, article
6 two-b, chapter eighteen-b of this code or by a state agency in another state, the District of
7 Columbia or a United States territory which approves educational programs and which meets
8 qualifications for the National Certification Exam administered through the National Certification
9 Board for Therapeutic Massage and Bodywork. This school shall require a diploma from an
10 accredited high school, or the equivalent, and require completion of at least five hundred hours of
11 supervised academic instruction;

12 (2) Successful completion of the National Certification for Therapeutic Massage and
13 Bodywork (NCTMB) examination, or other board approved examination; and

14 (3) Payment of a reasonable fee every two years required by the board which shall
15 compensate and be retained by the board for the costs of administration.

16 (b) A license to practice massage therapy issued by the board prior to July 1, 2006, shall
17 for all purposes be considered a license issued under this section: *Provided*, That a person
18 holding a license to practice massage therapy issued prior to July 1, 2006, must renew the license
19 pursuant to the provisions of this article: *Provided, however*, That a person whose license was
20 issued by the board prior to July 1, 2006, and whose license subsequently lapses may, in the
21 discretion of the board, be subject to the licensing requirements of this section.

22 (c) In addition to provisions for licensure, the rules shall include:

23 (1) Requirements for completion of continuing education hours conforming to NCTMB
24 guidelines; and

25 (2) Requirements for issuance of a reciprocal license to licensees of states with
26 requirements which may include the successful completion of the NCTMB examination or other
27 board approved examination.

28 (d) Subject to the provisions of subsection (b) of this section, the board may deny an
29 application for renewal for any reason which would justify the denial of an application for initial
30 licensure.

31 (e) Any person practicing massage therapy during the time his or her license has lapsed
32 is in violation of this article and is subject to the penalties provided in this article.

33 (f) A massage therapist who is licensed by the board shall be issued a certificate and a
34 license number. The current, valid license certificate shall be publicly displayed and available for
35 inspection by the board and the public at a massage therapist's work site.

§30A-19-8. Enforcement.

1 (a) The board has the power and authority to enter into any court of this state having
2 proper jurisdiction to seek an injunction against any person, corporation or association not in
3 compliance with the provisions of this article, and is further empowered to enter into any court to
4 enforce the provisions of this article to ensure compliance with such provisions.

5 (b) The board may suspend, revoke, or impose probationary conditions upon a license or
6 impose disciplinary sanctions upon a licensee pursuant to rules adopted in accordance with this
7 article concerning board requirements for licensure. The following are grounds for revocation,
8 suspension, annulment or the imposition of other disciplinary sanctions when a person,
9 corporation or association is:

10 (1) Guilty of fraud in practice of massage, or fraud or deceit in the licensee's application
11 for licensure;

12 (2) Engaged in practice under a false or assumed name, or impersonating another

13 practitioner of a like or different name;

14 (3) Addicted to the habitual use of drugs, alcohol or stimulants to an extent as to
15 incapacitate that person's performance of professional duties;

16 (4) Guilty of fraudulent, false, misleading or deceptive advertising, or for prescribing
17 medicines or drugs, or practicing or offering to practice any licensed profession without legal
18 authority. The licensee may not diagnose, or imply or advertise in any way a service for a condition
19 that would require diagnosis;

20 (5) Practicing or offering to practice beyond the scope of licensure of massage therapy
21 without legal authority;

22 (6) Grossly negligent in the practice of massage or guilty of employing, allowing or
23 permitting an unlicensed person to perform massage in the licensee's work site;

24 (7) Practicing massage or bodywork with a license from another state or jurisdiction that
25 has been canceled, revoked, suspended or otherwise restricted;

26 (8) Incapacitated by a physical or mental disability which is determined by a physician to
27 render further practice by the licensee inconsistent with competency and ethics requirements;

28 (9) Convicted of sexual misconduct, assignation or the solicitation or attempt thereof;

29 (10) Engaging in any act of sexual abuse, sexual misconduct or sexual exploitation related
30 to the licensee's practice of massage therapy;

31 (11) Obtaining any fee by fraud, deceit or misrepresentation; or

32 (12) In violation of any of the provisions of this article or any substantive rule adopted
33 under the authority of this article.

§30A-19-9. Hearing for revocation, suspension, other discipline, nonrenewal of license.

1 All proceedings for the revocation, suspension, or other disciplinary sanctions, or
2 nonrenewal of licenses issued under the authority of this chapter shall be governed by the
3 provisions of section eight, article one, chapter thirty of this code.

§30A-19-10. Prohibitions and penalties.

1 (a) After June 30, 1998, a person, corporation or association who is not licensed pursuant
2 to the provisions of this article may not engage in the practice of massage therapy and may not
3 use the initials LMT, C.M.T., or the words “licensed massage therapist,” “masseur,” or
4 “masseuse,” or any other words or titles which imply or represent that the person, corporation or
5 association is engaging in the practice of massage therapy, nor may a person, corporation or
6 association employ any person, not duly licensed, who is engaging in the practice of massage
7 therapy or who is using such words or titles to imply or represent that he or she is engaging in the
8 practice of massage therapy.

9 (b) Any person, corporation or association who violates the provisions of subsection (a) of
10 this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than
11 \$500 nor more than \$1,000, or confined in jail not more than one year, or both fined and
12 imprisoned.

§30A-19-11. Exemptions.

1 Nothing in this article may be construed to prohibit or otherwise limit:

2 (a) The practice of a profession by persons who are licensed, certified or registered under
3 the laws of this state and who are performing services within their authorized scope of practice.
4 Persons exempted under this subdivision include, but are not limited to, those licensed, certified
5 or registered to practice within the scope of any branch of medicine, nursing, osteopathy,
6 chiropractic and podiatry, as well as licensed, certified or registered barbers, cosmetologists,
7 athletic trainers, physical and occupational therapists; and any student enrolled in a program of
8 massage education at a school approved by the West Virginia State College System Board or by
9 a state agency in another state, the District of Columbia or a United States territory which
10 approves educational programs and which meets qualifications for the National Certification Exam
11 administered through the National Certification Board for Therapeutic Massage and Bodywork,
12 provided that the student does not hold himself or herself out as a licensed massage therapist
13 and does not charge or receive a fee; and

14 (b) The activities of any resort spa that has been operating on a continuing basis since
15 January 1, 1975, or any employees of the resort spa. The exemption set forth in this subsection
16 does not extend to any person, corporation or association providing escort services, nude dancing
17 or other sexually oriented services not falling within the scope of massage therapy as defined in
18 this article, irrespective of how long the person, corporation or association has been in operation.

**ARTICLE 20. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION
ACT.**

§30A-20-1. Real estate appraiser license required; exceptions.

1 (a) It is unlawful for any person, for compensation or valuable consideration, to prepare a
2 valuation appraisal or a valuation appraisal report relating to real estate or real property in this
3 state without first being licensed or certified as provided in this article. This section shall not be
4 construed to apply to persons who do not render significant professional assistance in arriving at
5 a real estate appraisal analysis, opinion or conclusion. Nothing in this article may be construed to
6 prohibit any person who is licensed to practice in this state under any other law from engaging in
7 the practice for which he or she is licensed.

8 (b) No person other than a person licensed or certified under this article may use the title
9 of licensed appraiser or certified appraiser or any title, designation or abbreviation likely to create
10 the impression that the person is licensed or certified by the state.

11 (c) This article does not apply to:

12 (1) A real estate broker or salesperson licensed by this state who, in the ordinary course
13 of his or her business, gives an opinion to a potential seller or third party as to the recommended
14 listing price of real estate or an opinion to a potential purchaser or third party as to the
15 recommended purchase price of real estate, when this opinion as to the listing price or the
16 purchase price is not to be referred to as an appraisal, no opinion is rendered as to the value of
17 the real estate and no fee is charged;

18 (2) A casual or drive-by inspection of real estate in connection with a consumer loan
19 secured by the real estate, when the inspection is not referred to as an appraisal, no opinion is
20 rendered as to the value of the real estate and no fee is charged for the inspection;

21 (3) An employee who renders an opinion as to the value of real estate for his or her full-
22 time employer, for the employer's internal use only and performed in the regular course of the
23 employee's position, when the opinion is not referred to as an appraisal and no fee is charged;

24 (4) Appraisals of personal property, including, but not limited to, jewelry, household
25 furnishings, vehicles and manufactured homes not attached to real estate;

26 (5) Any officer or employee of the United States, or of the State of West Virginia or a
27 political subdivision thereof, when the employee or officer is performing his or her official duties:
28 *Provided*, That such individual does not furnish advisory service for compensation to the public
29 or act as an independent contracting party in West Virginia or any subdivision thereof in
30 connection with the appraisal of real estate or real property: *Provided, however*, That this
31 exception shall not apply with respect to federally related transactions as defined in Title XI of the
32 United States Code, entitled "Financial Institutions Reform, Recovery, and Enforcement Act of
33 1989"; or

34 (6) Any evaluation of the value of real estate serving as collateral for a loan made by a
35 financial institution insured by the federal deposit insurance corporation: *Provided*, That: (A) The
36 amount of the loan is equal to or less than \$250,000; (B) the evaluation is used solely by the
37 lender in its records to document the collateral value; (C) the evaluation clearly indicates on its
38 face that it is for the lender's internal use only; (D) the evaluation is not labeled an appraisal; and
39 (E) the evaluation is on a form approved by the board. Individuals performing these evaluations
40 may be compensated for their services. The lender shall notify its customer if it intends to use an
41 unlicensed evaluator and give the customer the opportunity to elect an evaluation, by a certified
42 or licensed appraiser, the cost of which will be paid as agreed between the lender and the
43 customer.

§30A-20-2. Short title.

1 This article is known and may be cited as the “Real Estate Appraiser Licensing and
2 Certification Act.”

§30A-20-3. Definitions.

1 As used in this article, the following terms have the following meanings:

2 (a) “Appraisal” means an analysis, opinion or conclusion prepared by a real estate
3 appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of,
4 identified real estate or identified real property. An appraisal may be classified by the nature of
5 the assignment as a valuation appraisal, an analysis assignment or a review assignment.

6 (b) “Analysis assignment” means an analysis, opinion or conclusion prepared by a real
7 estate appraiser that relates to the nature, quality or utility of identified real estate or identified real
8 property.

9 (c) “Appraisal foundation” means the appraisal foundation established on November 30,
10 1987, as a not-for-profit corporation under the laws of Illinois.

11 (d) “Appraisal report” means any communication, written or oral, of an appraisal. An
12 appraisal report may be classified by the nature of the assignment as a “valuation report”,
13 “analysis report” or “review report”. For the purposes of this article, the testimony of an appraiser
14 dealing with the appraiser’s analyses, conclusions or opinions concerning identified real estate or
15 identified real property is considered an oral appraisal report.

16 (e) “Board” means the real estate appraiser licensing and certification board established
17 by the provisions of this article.

18 (f) “Certified appraisal report” means a written appraisal report that is certified by a state
19 licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal
20 report as “certified”, the real estate appraiser must indicate the type of licensure or certification he
21 or she holds. By certifying an appraisal report, a state licensed residential real estate appraiser,
22 a state certified general real estate appraiser or a state certified residential real estate appraiser,

23 represents to the public that the report meets the appraisal standards established by this article.

24 (g) "Certified real estate appraiser" means a person who holds a current, valid certification
25 as a state certified residential real estate appraiser or a state certified general real estate appraiser
26 issued to him or her under the provisions of this article.

27 (h) "Complex appraisal" means an appraisal that: (1) For nonresidential property, relies on
28 all three approaches to value, being the cost approach, the income approach and the sales
29 comparison approach, or does not have the characteristics of a noncomplex appraisal; and (2)
30 for residential property, relies to any significant degree on at least two of the three approaches to
31 value, with one approach being the sales comparison approach, or does not have the
32 characteristics of a noncomplex appraisal.

33 (i) "Cost approach" means an approach to valuing real estate which requires an appraiser
34 to: (1) Develop an opinion of site value by an appropriate appraisal method or technique; (2)
35 analyze comparable cost data as are available to estimate the cost new of the improvements if
36 any; and (3) analyze comparable data as are available to estimate the difference between cost
37 new and the present worth of the improvements, also called accrued depreciation.

38 (j) "Income approach" means an approach to valuing real estate which requires an
39 appraiser to: (1) Analyze comparable rental data as are available to estimate the market rental of
40 the property; (2) analyze comparable operating expense data as are available to estimate the
41 operating expenses of the property; (3) analyze comparable data as are available to estimate
42 rates of capitalization or rates of discount; and (4) base projections of future rent and expenses
43 on reasonably clear and appropriate evidence.

44 (k) "Licensed real estate appraiser" means a person who holds a current, valid license as
45 a state licensed residential real estate appraiser issued to him or her under the provisions of this
46 article.

47 (l) "Noncomplex appraisal" means an appraisal for which: (1) There is an active market of
48 essentially identical properties; (2) adequate data is available to the appraiser; (3) adjustments to

49 comparable sales are not large in the aggregate, specifically not exceeding the trading range
50 found in the market of essentially identical properties; and (4) for residential properties, the
51 contract sales price falls within the market norm or median sales price for homes or lots within the
52 same area.

53 (m) "Real estate" means an identified parcel or tract of land, including improvements, if
54 any.

55 (n) "Real estate appraisal activity" means the act or process of making an appraisal of real
56 estate or real property and preparing an appraisal report.

57 (o) "Real estate appraiser" means a person who engages in real estate appraisal activity
58 for a fee or other valuable consideration.

59 (p) "Real property interests" means one or more defined interests, benefits or rights
60 inherent in the ownership of real estate.

61 (q) "Review assignment" means an analysis, opinion or conclusion prepared by a real
62 estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation
63 appraisal or an analysis assignment.

64 (r) "Sales comparison approach" means an approach to valuing real estate which requires
65 an appraiser to analyze such comparable sales data as are available to indicate a value
66 conclusion.

67 (s) "Valuation appraisal" means an analysis, opinion or conclusion prepared by a real
68 estate appraiser that estimates the value of an identified parcel of real estate or identified real
69 property at a particular point in time.

**§30A-20-4. Classifications of licensure and certification; authority of appraisers;
classification and license or certificate number required on all documents;
corporations.**

1 (a) The three classifications of real estate appraisers are state licensed residential real
2 estate appraiser, state certified residential real estate appraiser and state certified general real

3 estate appraiser.

4 (b) A state licensed residential real estate appraiser is authorized to conduct appraisals
5 of: (1) Complex residential real estate of one to four units having a value of less than \$250,000;
6 (2) noncomplex residential real estate of one to four units having a value of less than \$1 million;
7 and (3) nonresidential real estate having a value of less than \$100,000.

8 (c) A state certified residential real estate appraiser is authorized to conduct appraisals of
9 residential real estate of one to four units without regard to value or complexity, and nonresidential
10 real estate when the value is less than \$100,000.

11 (d) A state certified general real estate appraiser is authorized to conduct appraisals of all
12 types of real estate.

13 (e) The board is authorized to establish by legislative rule other classifications of appraiser
14 licensing not prohibited by applicable federal law.

15 (f) An appraiser shall indicate his or her classification and license or certificate number, on
16 all appraisals, statements of qualification, contracts and other instruments, including advertising
17 media.

18 (g) A license or certificate may not be issued under the provisions of this article to a
19 corporation, partnership, firm or group.

20 (h) Nothing contained in this article prohibits any person licensed or certified under this
21 article from engaging in the practice of real estate appraising as a professional corporation in
22 accordance with the provisions of the professional service corporation act of this state.

§30A-20-5. Reciprocal credentialing.

1 The board shall issue a reciprocal license or certification to an applicant from another state
2 if the applicant holds a valid license or certification from a state whose licensing and certification
3 program:

4 (1) Is in compliance with the provisions of Title XI of the Financial Institutions Reform,
5 Recovery and Enforcement Act of 1989 [12 U.S.C. 3331-3351] as amended by the Dodd-Frank

6 Wall Street Reform and Consumer Protection Act of 2010; and

7 (2) That has credentialing requirements that meet or exceed those of West Virginia.

§30A-20-6. Board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff.

1 (a) The West Virginia real estate appraiser licensing and certification board, which consists
2 of nine members appointed by the Governor with the advice and consent of the Senate, is
3 continued.

4 (1) Each member shall be a resident of the state of West Virginia, except the appraisal
5 management company representative is not required to be a resident of West Virginia.

6 (2) Four members shall be certified real estate appraisers having at least five years'
7 experience in appraisal as a principal line of work immediately preceding their appointment, and
8 shall remain certified real estate appraisers throughout their terms.

9 (3) Two members shall have at least five years' experience in real estate lending as
10 employees of financial institutions.

11 (4) Two members may not be engaged in the practice of real estate appraisal, real estate
12 brokerage or sales or have any financial interest in these practices.

13 (5) One member shall be a representative from an appraisal management company
14 registered under the provisions of article thirty-eight-a of this chapter.

15 (6) No member of the board may concurrently be a member of the West Virginia real estate
16 commission.

17 (7) Not more than two appraiser members may be appointed from each congressional
18 district.

19 (b) Members will be appointed for three-year terms, which are staggered in accordance
20 with the initial appointments under prior enactment of this act.

21 (1) No member may serve for more than three consecutive terms.

22 (2) Before entering upon the performance of his or her duties, each member shall
23 subscribe to the oath required by section five, article four of the constitution of this state.

24 (3) The Governor shall, within sixty days following the occurrence of a vacancy on the
25 board, fill the vacancy by appointing a person who meets the requirements of this section for the
26 unexpired term.

27 (4) Any member may be removed by the Governor in case of incompetency, neglect of
28 duty, gross immorality or malfeasance in office.

29 (c) The board shall elect a chairman.

30 (d) A majority of the members of the board constitutes a quorum.

31 (e) The board shall meet at least once in each calendar quarter on a date fixed by the
32 board.

33 (1) The board may, upon its own motion, or shall upon the written request of three
34 members of the board, call additional meetings of the board upon at least twenty-four hours'
35 notice.

36 (2) No member may participate in a proceeding before the board to which a corporation,
37 partnership or unincorporated association is a party, and of which he or she is or was at any time
38 in the preceding twelve months a director, officer, owner, partner, employee, member or
39 stockholder.

40 (3) A member may disqualify himself or herself from participation in a proceeding for any
41 other cause the member considers sufficient.

42 (f) The appointed members will receive compensation and expense reimbursement in
43 accordance with the provisions of section eleven, article one of this chapter.

44 (g) The board may employ staff as necessary to perform the functions of the board, to be
45 paid out of the board fund created by the provisions of this article. Persons employed by any real
46 estate agent, broker, appraiser or lender, or by any partnership, corporation, association or group

47 engaged in any real estate business, may not be employed by the board.

§30A-20-7. General powers and duties.

1 The board shall:

2 (a) Define by rule the type of educational experience, appraisal experience and equivalent
3 experience that will meet the statutory requirements of this article;

4 (b) Establish examination specifications as prescribed herein and provide for appropriate
5 examinations;

6 (c) Establish registration requirements and procedures for appraisal management
7 companies under the provisions of article thirty-eight-a of this chapter;

8 (d) Approve or disapprove applications for certification and licensure;

9 (e) Approve or disapprove applications for registration under the provisions of article thirty-
10 eight-a of this chapter;

11 (f) Define by rule continuing education requirements for the renewal of certifications and
12 licenses;

13 (g) Censure, suspend or revoke licenses and certification as provided in this article;

14 (h) Suspend or revoke registrations under the provisions of article thirty-eight-a of this
15 chapter;

16 (i) Hold meetings, hearings and examinations;

17 (j) Establish procedures for submitting, approving and disapproving applications;

18 (k) Maintain an accurate registry of the names, addresses and contact information of all
19 persons certified or issued a license to practice under this article;

20 (l) Maintain an accurate registry of the names, addresses and contact information of all
21 persons and firms registered under the provisions of article thirty-eight-a of this chapter;

22 (m) Maintain accurate records on applicants and licensed or certified real estate
23 appraisers;

24 (n) Maintain accurate records on applicants under the provisions of article thirty-eight-a of

25 this chapter;

26 (o) Issue to each licensed or certified real estate appraiser a pocket card with the
27 appraiser's name and license or certification number. Pocket cards are the property of the State
28 of West Virginia and, upon suspension or revocation of the license to practice pursuant to this
29 article, will be returned immediately to the board;

30 (p) Issue registration numbers to registrants under the provisions of article thirty-eight-a of
31 this chapter;

32 (q) Deposit all fees collected by the board to the credit of the West Virginia appraiser
33 licensing and certification board fund established in the office of the State Treasurer. The board
34 shall disburse moneys from the account to pay the cost of board operation. Disbursements from
35 the account may not exceed the moneys credited to it;

36 (r) Keep records and make reports as required by article one of this chapter; and

37 (s) Perform any other functions and duties necessary to carry out the provisions of this
38 article and article thirty-eight-a of this chapter.

§30A-20-8. Board fund; disposition of funds.

1 (a) The West Virginia appraiser licensing and certification board fund established in the
2 office of the State Treasurer is continued.

3 (b) The disposition of all funds received by the board shall be governed by the provisions
4 of section ten, article one of this chapter.

§30A-20-9. Rulemaking.

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

3 (1) Licensure and certification requirements, including requirements for applications,
4 examinations, reciprocity, temporary permits, apprentice permits and reinstatement;

5 (2) Registration requirements, including delinquent and expired registrations, for appraisal
6 management companies under the provisions of article thirty-eight-a of this chapter;

7 (3) Fees for licenses, renewals of licenses and other services provided by the board;

8 (4) A fee schedule for registrations of appraisal management companies under the
9 provisions of article thirty-eight-a of this chapter;

10 (5) Surety bond requirements for registrations of appraisal management companies under
11 the provisions of article thirty-eight-a of this chapter;

12 (6) Requirements and procedures for appraisal management companies to maintain
13 records under the provisions of article thirty-eight-a of this chapter;

14 (7) Experience, education and continuing education requirements and approval of
15 courses; and

16 (8) Any other purpose to carry out the requirements of this article and article thirty-eight-a
17 of this chapter.

18 (b) The rule governing appraiser qualifications must include requirements which meet or
19 exceed the education, experience and examination requirements issued or endorsed by the
20 appraisal qualifications board of the appraisal foundation.

21 (c) Any rules in effect on the effective date of the reenactment of this section during the
22 regular session of the legislature in 2013 will remain in effect until amended, modified, repealed
23 or replaced, except that references to provisions of former enactments of this act are interpreted
24 to mean provisions of this article.

**§30A-20-10. Civil liability for board members; liability limitations of professionals reporting
to board.**

1 (a) Members of the board will be immune from individual civil liability for actions taken in
2 good faith and without malice, within the scope of their duties as board members.

3 (b) Any person licensed or certified by this board who reports or otherwise provides
4 evidence of violations of this article or the board's rules by another person engaging in real estate
5 appraisal activity to the board, is not liable for making the report if it is made without malice and
6 in the reasonable belief that the report is warranted by the facts known to him or her at the time.

§30A-20-11. Applications for license or certification; renewals.

1 (a) An individual who desires to engage in real estate appraisal activity in this state shall
2 make application for a license, in writing, in a form as the board may prescribe. In addition to any
3 other information required, the applicant's social security number will be recorded on the
4 application.

5 (b) To assist the board in determining whether grounds exist to deny the issuance of a
6 license to an applicant, the board may require the fingerprinting of every applicant for an original
7 license.

8 (c) The payment of the appropriate fee must accompany all applications for original
9 certification and renewal of certification and all applications to take an examination.

10 (d) At the time of filing an application for original certification or for renewal of certification,
11 each applicant shall sign a pledge to comply with the standards of professional appraisal practice
12 and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or
13 she understands the types of misconduct, as set forth in this article, for which disciplinary
14 proceedings may be initiated.

15 (e) To obtain a renewal of license or certification under this article, the holder of a current
16 license or certification shall make application and pay the prescribed fee to the board no earlier
17 than one hundred twenty days nor later than thirty days prior to the expiration date of the current
18 license or certification. Each application for renewal must be accompanied by evidence in the
19 form prescribed by the board that the applicant has completed the continuing education
20 requirements for renewal specified in this article and the board's rules.

21 (f) If the board determines that an applicant for renewal has failed to meet the requirements
22 for renewal of license or certification through mistake, misunderstanding, or circumstances
23 beyond the control of the applicant, the board may extend the term of the applicant's license or
24 certification for a period not to exceed six months upon payment by the applicant of a prescribed
25 fee for the extension. If the applicant for renewal of license or certification satisfies the

26 requirements for renewal during the extension period, the beginning date of his or her renewal
27 license or certificate shall be the day following the expiration of the certificate previously held by
28 the applicant.

29 (g) If a state licensed or certified real estate appraiser under this article fails to renew his
30 or her license or certification prior to its expiration or within any period of extension granted by the
31 board pursuant to this article, the applicant may obtain a renewal of his or her license or
32 certification by satisfying all of the requirements for renewal and filing an application for renewal,
33 accompanied by a late renewal fee, within two years of the date that his or her certification expired.

34 (h) The board may deny the issuance or renewal of a license or certification for any reason
35 enumerated in this article or in the rules of the board, or for any reason for which it may refuse an
36 initial license or certification.

**§30A-20-12. Refusal to issue or renew license or certification; suspension or revocation;
grounds for disciplinary action.**

1 (a) The following acts or omissions are grounds for disciplinary action, and the board may
2 refuse to issue or renew a license or certification, or after issuance may suspend or revoke a
3 license or certification or impose disciplinary sanctions for:

4 (1) Procuring or attempting to procure license or certification under this article by
5 knowingly making a false statement, submitting false information or making a material
6 misrepresentation in an application filed with the board, or procuring or attempting to procure a
7 license or certification through fraud or misrepresentation;

8 (2) Paying money other than the fees provided for by this article to any member or
9 employee of the board to procure a license or certification under this article;

10 (3) An act or omission in the practice of real estate appraising which constitutes
11 dishonesty, fraud or misrepresentation with the intent to substantially benefit the licensee or
12 another person or with the intent to substantially injure another person;

13 (4) Entry of a final civil or criminal judgment against a licensee on grounds of fraud,

14 misrepresentation or deceit in the making of an appraisal of real estate;

15 (5) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of a
16 crime which is substantially related to the qualifications, functions or duties of a person developing
17 real estate appraisals and communicating real estate appraisals to others;

18 (6) Making a false or misleading statement in that portion of a written appraisal report that
19 deals with professional qualifications or in any testimony concerning professional qualifications;

20 (7) Violation of any section of this article, or any rule of the board;

21 (8) Violation of the confidential nature of governmental records to which a licensee gained
22 access through employment or engagement as an appraiser by a governmental agency;

23 (9) Acceptance of a fee that is or was contingent upon the appraiser reporting a
24 predetermined analysis, opinion, or conclusion, or is or was contingent upon the analysis, opinion,
25 conclusion or valuation reached, or upon the consequences resulting from the appraisal
26 assignment;

27 (10) Failing to meet the minimum qualifications for state licensure or certification
28 established by or pursuant to this article; or

29 (11) Failing or refusing without good cause to exercise reasonable diligence, or negligence
30 or incompetence, in developing an appraisal, preparing an appraisal report, or communicating an
31 appraisal.

32 (b) Every person licensed or certified by the board has a duty to report to the board in a
33 timely manner any known or observed violation of this article or the board's rules by any other
34 person licensed or certified by the board.

§30A-20-13. Disciplinary proceedings.

1 (a) The board may, upon its own motion, and shall, upon the written complaint of any
2 aggrieved person, cause an investigation to be made with respect to an alleged violation of this
3 article or the rules of the board.

4 (b) The board may revoke, suspend or refuse to renew the license or certificate or

5 otherwise discipline an appraiser, or deny an application, for any of the acts or omissions set forth
6 in this article or in the rules of the board.

7 (c) If an investigation indicates that an appraiser licensed or certified by the board has
8 violated a law or rule, the board shall serve a formal complaint upon the appraiser. The accused
9 party is required to file an answer within twenty days of the date of service.

10 (d) In responding to a complaint, the accused party may admit the allegations of the
11 complaint, deny the allegations of the complaint or otherwise plead. Failure to make a timely
12 response shall be considered an admission of the allegations of the complaint.

13 (e) The board may make informal disposition of the matter, including entering into a
14 consent agreement, or taking one or more of the disciplinary actions set forth in the board's rules.

15 (f) In a disciplinary proceeding based upon a civil judgment, the licensee shall be afforded
16 an opportunity to present matters in mitigation and extenuation but may not collaterally attack the
17 civil judgment.

**§30A-20-14. Hearings; orders; entry of order without notice and hearing; judicial review;
appeals to Supreme Court of Appeals.**

1 (a) Subject to the provisions of subsection (c) of this section, the board shall provide notice
2 and hearing to the accused party in advance of the entry of any order. The hearing and the
3 administrative procedures are governed by the provisions of article five, chapter twenty-nine-a of
4 this code and the board's rules, and will be held at a time and place set by the board, but may not
5 be held less than thirty or more than ninety days after the notice is given. A hearing may be
6 continued by the board on its own motion or for good cause shown. At any hearing a party may
7 represent himself or herself, or be represented by an attorney admitted to practice before any
8 circuit court of this state.

9 (b) The board has the power and authority to issue subpoenas and subpoenas duces
10 tecum, administer oaths and examine any person under oath in connection with any subject
11 relating to duties imposed upon or powers vested in the board.

12 (c) If the board finds that extraordinary circumstances exist which require immediate
13 action, it may without notice or hearing enter an order taking any action permitted by this article.
14 Immediately upon the entry of the order, certified copies shall be served upon all persons affected,
15 who upon demand are entitled to a hearing at the earliest practicable time.

16 (d) If, at the conclusion of the hearing, the board determines that an appraiser has violated
17 any of the provisions of this article or the board's rules, it shall prepare a formal decision containing
18 findings of fact, conclusions of law, and disciplinary actions to be taken.

19 (e) The board may elect to have an administrative law judge or hearing examiner conduct
20 the hearing. If the board makes this election, the administrative law judge or hearing examiner
21 shall present a decision containing recommended findings of fact, conclusions of law, and
22 appropriate disciplinary actions to be taken. The board may accept, reject or modify the decision
23 of the administrative law judge or hearing examiner.

24 (f) Any party adversely affected by a final order or decision made by the board after a
25 hearing is entitled to judicial review as provided in article five, chapter twenty-nine-a of this code.

26 (g) Any party adversely affected by a final judgment of a circuit court following judicial
27 review may seek review by appeal to the Supreme Court of Appeals in the manner provided in
28 article six, chapter twenty-nine-a of this code.

§30A-20-15. Penalties.

1 (a) Any person engaging in real estate appraisal activity in this state who is not licensed
2 under this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than
3 \$500 nor more than \$1,000 and shall be ineligible to obtain a license for a period of one year from
4 the date of his or her conviction of such offense: *Provided*, That the board, at its discretion, may
5 grant a license within a period of one year upon a finding of extenuating circumstances, and after
6 an administrative hearing.

7 (b) Any person acting or purporting to act as a certified real estate appraiser who is not
8 certified under this article is guilty of a misdemeanor and, upon conviction, shall be fined not more

9 than \$2,500 or imprisoned in the county or regional jail for not more than one year, or both.

10 (c) If any person receives any money or the equivalent as a fee, commission,
11 compensation or profit by or in consequence of a violation of any provision of this article, he or
12 she shall, in addition to the penalties prescribed above, be subject to a penalty of not less than
13 the sum of money so received nor more than three times the sum as may be determined by the
14 court, which penalty may be recovered in a court of competent jurisdiction by any person
15 aggrieved as a result of any such violation.

§30A-20-16. Collection of appraisal fees.

1 No person engaged in the business of real estate appraising in this state or acting in the
2 capacity of a real estate appraiser in this state may bring or maintain any action in any court of
3 this state to collect compensation for the performance of real estate appraisal services for which
4 a license is required by this article without alleging and proving that he or she was the holder of a
5 valid real estate appraiser license in this state at all times during the performance of such services.

§30A-20-17. Standards of professional appraisal practice.

1 Each real estate appraiser licensed or certified under this act shall comply with generally
2 accepted standards of professional appraisal practice and generally accepted ethical rules to be
3 observed by a real estate appraiser. Generally accepted standards of professional appraisal
4 practice are currently evidenced by the uniform standards of professional appraisal practice
5 promulgated by the appraisal foundation. The board may, after a public hearing or public comment
6 period held in accordance with provisions of article three, chapter twenty-nine-a of this code,
7 adopt revised versions or make modifications of or additions to the uniform standards of
8 professional appraisal practice.

§30A-20-18. Attorney general opinions and duties.

1 At the request of the board, the state Attorney General shall render to the board an opinion
2 with respect to all questions of law arising in connection with the administration of this article and
3 shall act as attorney for the board in all actions and proceedings brought by or against the board

4 under, or pursuant to, any of the provisions of this article. All fees and expenses of the Attorney
5 General arising out of such duties shall be paid out of the special fund created under this article
6 to pay the expenses of the administration of this article.

§30A-20-19. Temporary permit.

1 (a) The board may issue a temporary permit to perform one specific assignment relating
2 to the appraisal of real estate or real property in this state to an applicant who:

3 (1) Completes an application;

4 (2) Pays a nonrefundable application fee;

5 (3) Provides an irrevocable consent that service of process upon him or her may be made
6 by service of process to the Secretary of State if, in an action against the applicant in a court of
7 this state arising out of the applicant's activities as a real estate appraiser in this state, the plaintiff
8 cannot, in the exercise of due diligence, effect personal service upon the applicant; and

9 (4) Meets the requirements for a temporary permit as established by the board by
10 legislative rule.

11 (b) The temporary permit is subject to the terms, conditions and limitations set forth by the
12 board by legislative rule.

ARTICLE 21. APPRAISAL MANAGEMENT COMPANIES REGISTRATION ACT.

§30A-21-1. Unlawful acts.

1 (a) Commencing July 1, 2014, it is unlawful for any person or firm to perform or offer to
2 perform appraisal management services, or act as an appraisal management company within this
3 state without a registration issued by the West Virginia Real Estate Appraiser Licensing and
4 Certification Board under the provisions of this article.

5 (b) Commencing July 1, 2014, it is unlawful for any person or firm not registered under the
6 provisions of this article to advertise or use a title or description conveying the impression that the
7 person or firm is registered to perform appraisal management services or registered to act as an
8 appraisal management company within this state.

§30A-21-2. Applicable law.

1 Appraisal management companies and appraisal management services covered under
2 the provisions of this article are subject to the requirements set forth in this article and the rules
3 promulgated hereunder, and the provisions of article one and article thirty-eight of this chapter.

§30A-21-3. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
2 the context clearly indicates otherwise:

3 (a) "Applicant" means a person or firm making an application for registration under the
4 provisions of this article.

5 (b) "Appraisal" means an analysis, opinion or conclusion prepared by a real estate
6 appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of,
7 identified real estate or identified real property. An appraisal may be classified by the nature of
8 the assignment as a valuation appraisal, an analysis assignment or a review assignment.

9 (c) "Appraisal Management Company" means a person or firm that performs or provides
10 appraisal management services, directly or indirectly, through the use of software products or
11 online, or by any means of communication.

12 (d) "Appraisal management services" means the business of managing the process of
13 having an appraisal performed for compensation or pecuniary gain, including but not limited to
14 any of the following actions:

15 (1) Conducting business directly or indirectly by telephone, electronically, mail or in
16 person;

17 (2) Providing related administrative and clerical duties;

18 (3) Recruiting, selecting or retaining appraisers;

19 (4) Verifying qualifications of appraisers;

20 (5) Establishing and administering an appraiser panel;

21 (6) Receiving appraisal orders from clients;

22 (7) Contracting and negotiating fees with appraisers to perform appraisal services;

23 (8) Receiving appraisals from the appraiser and submitting completed appraisals to
24 clients;

25 (9) Tracking and determining the status of orders for appraisals;

26 (10) Reviewing, verifying and conducting quality control of a completed appraisal;

27 (11) Collecting fees from the clients; and

28 (12) Compensating appraisers for appraisal services rendered.

29 (e) "Appraisal review" means the act of developing and communicating an opinion about
30 the quality of another appraiser's work that was performed as part of an appraiser assignment.

31 The review does not include:

32 (1) An examination of an appraisal for grammatical, typographical or other similar errors
33 that do not make a substantive valuation change; or

34 (2) A general examination for compliance including regulatory and/or client requirements
35 as specified in the agreement process that do not communicate an opinion as to the valuation
36 conclusion.

37 (f) "Appraisal services" means the practice of developing an opinion of the value of real
38 estate in conformity with the minimum USPAP standards.

39 (g) "Appraiser" means a person licensed or certified, under the provisions of article thirty-
40 eight of this chapter, to perform an appraisal.

41 (h) "Appraiser panel" means a group of appraisers that perform appraisals for an appraisal
42 management company as independent contractors.

43 (i) "Automated valuation model (AVM)" means a mathematically based computer software
44 program that produces an estimate of market value based on market analysis of location, market
45 conditions, and real estate characteristics from information that was previously and separately
46 collected.

47 (j) "Board" means the West Virginia Real Estate Appraiser Licensing and Certification

48 Board established under the provisions of article thirty-eight of this chapter.

49 (k) "Client" means a person or firm that contracts or enters into an agreement with an
50 appraisal management company for the performance of an appraisal.

51 (l) "Controlling person" means a person authorized by an appraisal management company
52 to contract or enter into agreements with clients and independent appraisers for the performance
53 of appraisal services and who has the power to manage the appraisal management company.

54 (m) "Firm" means a corporation, limited liability company, partnership, sole proprietorship
55 or any other business entity.

56 (n) "Registrant" means a person or firm holding a registration issued by the board under
57 the provisions of this article.

58 (o) "Registration" means a registration issued by the board under the provisions of this
59 article.

60 (p) "State" means the State of West Virginia.

61 (q) "USPAP" means the Uniform Standards of Professional Appraisal Practice.

§30A-21-4. Registration requirements.

1 (a) A person or firm performing or offering to perform appraisal management services or
2 acting as an appraisal management company within this state shall be registered with the board
3 by July 1, 2014.

4 (b) A firm applying for a registration may not be owned, directly or indirectly, by any
5 employee or consultant who is:

6 (1) A person who has had a license or certificate to act as an appraiser refused, denied,
7 canceled or revoked in this state or any other jurisdiction, unless the license or certificate was
8 subsequently granted or reinstated; or

9 (2) A firm that employs a person who has had a license or certificate to act as an appraiser
10 refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction, unless
11 the license or certificate was subsequently granted or reinstated.

12 (c) The board may issue a registration to perform appraisal management services or act
13 as an appraisal management company to a person or firm that:

14 (1) Makes written application to the board as set out in section six of this article;

15 (2) Submits certifications as set out in section seven of this article;

16 (3) Submits national and state criminal background checks as set out in section eight of
17 this article;

18 (4) Posts a surety bond as set out in section nine of this article;

19 (5) Pays the applicable fees as set out in section ten of this article;

20 (6) Has a designated controlling person as set out in section eleven of this article; and

21 (7) Meets any other requirement set by the board.

22 (d) The registrations issued under the provisions of this article shall be renewed annually
23 on July 1.

24 (e) Registrations not renewed in a timely manner are delinquent. To reinstate a delinquent
25 registration, the registrant must pay a monthly penalty, as set by the board.

26 (f) A registration that has been delinquent for more than three months shall be considered
27 expired and a new application for registration is required.

28 (g) The board shall issue a registration number to each appraisal management company
29 registered in this state.

30 (h) The board shall keep a list of appraisal management company registered in this state
31 and publish the list on its website.

§30A-21-5. Exemptions.

1 This article does not apply to:

2 (a) A financial institution, including a department or unit within an institution that is
3 regulated by an agency of this state or the United States government; or

4 (b) An appraisal management company that is a subsidiary wholly owned and controlled
5 by a financial institution regulated by a federal financial institution regulatory agency.

§30A-21-6. Written application requirements.

1 (a) The written application shall be submitted on a form prescribed by the board and shall
2 include:

3 (1) The name, the street and mailing address and the contact information, including
4 telephone number and e-mail address, of the person or firm seeking registration;

5 (2) The name, the street and mailing address and the contact information, including
6 telephone number and e-mail address, of each owner of more than ten percent of the firm seeking
7 registration;

8 (3) The name, the street and mailing address and the contact information, including
9 telephone number and e-mail address, of the controlling person of the firm seeking registration;
10 and

11 (4)(A) If the applicant is a domestic firm, the designation of an agent for service of process;
12 or

13 (B) If the applicant is a foreign firm, documentation that the foreign firm is authorized to do
14 business in West Virginia and that an agent for service of process has been designated and the
15 following has been submitted:

16 (i) A copy of the filing with the Secretary of State's Office appointing an agent for service
17 of process; and

18 (ii) A certificate of authority issued by the Secretary of State.

19 (b) The board shall maintain a list of all applicants for registration that includes the
20 information in the written application.

§30A-21-7. Certification requirements.

1 (a) The certification for registration shall be in writing, on a form prescribed by the board
2 and signed by the applicant or controlling person. The certification shall include statements that
3 the applicant:

4 (1) Has a process in place to verify that any person used as an appraiser or added to the

5 appraiser panel of the applicant is a licensed or certified appraiser in good standing in West
6 Virginia;

7 (2) Has set requirements to verify that appraisers are geographically competent and can
8 perform the appraisals assigned;

9 (3) Has set procedures for an appraiser, licensed or certified in this state or in any state
10 with a minimum of the same certification level for the property type as the appraiser who
11 performed the appraisal, to review the work of the appraisers performing appraisals for the
12 applicant to verify that the appraisals are being conducted in accordance with the minimum
13 USPAP standards;

14 (4) Will require appraisals to be conducted independently and free from inappropriate
15 influence and coercion as required by the appraisal independence standards established under
16 Section 129E of the Truth in Lending Act and the rules and regulations issued pursuant to the
17 Act, including the requirement that appraisers be compensated at a customary and reasonable
18 rate when the appraisal management company is providing services for a consumer credit
19 transaction secured by the principal dwelling of a consumer;

20 (5) Maintains a detailed record of each request for appraisal it receives from a client and
21 the appraiser that performs the appraisal; and

22 (6) Has submitted any other information required by the board.

23 (b) The applicant, each owner who is an employee of or consultant for the applicant and
24 any controlling person shall submit a written verification, on a form prescribed by the board, that
25 includes statements that:

26 (1) The written application and verification for registration contain no false or misleading
27 statements;

28 (2) The applicant has complied with the requirements of this article;

29 (3) The applicant, each owner who is an employee of or consultant for the applicant, and
30 the controlling person of the firm seeking registration has not pleaded guilty or nolo contendere

31 to or been convicted of a felony;

32 (4) Within the past ten years, the applicant, each owner who is an employee of or
33 consultant for the applicant, and the controlling person of the firm seeking registration has not
34 pleaded guilty or nolo contendere to or been convicted of:

35 (A) A misdemeanor involving mortgage lending or real estate appraisals; or

36 (B) An offense involving breach of trust or fraudulent or dishonest dealing;

37 (5) The applicant, each owner who is an employee of or consultant for the applicant, and
38 the controlling person of the firm seeking registration are of good character and reputation and
39 that none of them has had a license or certificate to act as an appraiser refused, denied, canceled,
40 revoked or surrendered in this state or any other jurisdiction, and the license or certification was
41 not subsequently granted or reinstated;

42 (6) The applicant, each owner who is an employee of or consultant for the applicant, and
43 the controlling person of the firm seeking registration are not permanently or temporarily enjoined
44 by a court of competent jurisdiction from engaging in or continuing any conduct or practice
45 involving appraisals, appraisal management services or operating an appraisal management
46 company;

47 (7) The applicant, each owner who is an employee of or consultant for the applicant, and
48 the controlling person of the firm seeking registration are not the subject of an order of the board
49 or any other jurisdiction's agency that regulates appraisal management companies that denied,
50 suspended or revoked the applicant's or firm's privilege to operate as an appraisal management
51 company;

52 (8) The applicant, each owner who is an employee of or consultant for the applicant, and
53 the controlling person of the firm seeking registration have not acted as an appraisal management
54 company while not being properly registered by the board; and

55 (9) Set forth any other requirements of the board.

§30A-21-8. Background check requirements.

1 (a) Upon application, the applicant, each owner who is an employee of or consultant for
2 the applicant, and the controlling person of the firm seeking registration shall submit to a state
3 and national criminal history record check, as set forth in this section.

4 (1) This requirement is found not to be against public policy.

5 (2) The criminal history record check shall be based on fingerprints submitted to the West
6 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

7 (3) The applicant shall meet all requirements necessary to accomplish the state and
8 national criminal history record check, including:

9 (A) Submitting fingerprints for the purposes set forth in this subsection; and

10 (B) Authorizing the board, the West Virginia State Police and the Federal Bureau of
11 Investigation to use all records submitted and produced for the purpose of screening the applicant
12 for a license.

13 (b) The results of the state and national criminal history record check may not be released
14 to or by a private entity except:

15 (1) To the individual who is the subject of the criminal history record check;

16 (2) With the written authorization of the individual who is the subject of the criminal history
17 record check; or

18 (3) Pursuant to a court order.

19 (c) The criminal history record check and related records are not public records for the
20 purposes of chapter twenty-nine-b of this code.

21 (d) The applicant shall ensure that the criminal history record check is completed as soon
22 as possible after the date of the original application for registration.

23 (e) The applicant shall pay the actual costs of the fingerprinting and criminal history record
24 check.

§30A-21-9. Surety bond requirements and claims.

1 (a) Each applicant shall post and maintain a surety bond with the board. The aggregate

2 liability of the surety bond may not exceed the principal sum of the surety bond.

3 (b) The surety bond shall:

4 (1) Be established by the board through rules;

5 (2) Not exceed \$100,000;

6 (3) Be in the form prescribed by the board;

7 (4) Be issued by an surety company authorized to do business in West Virginia; and

8 (5) Accrue to the state for the benefit of any claimant against the registrant to secure the
9 faithful performance of the registrant's obligations.

10 (c) The board may bring suit on behalf of the party having a claim against the registrant.

11 (d) Consumer claims shall be given priority in recovering from the surety bond.

12 (e) Claimants may make claim under the bond for up to one year after the applicant ceases
13 doing business in West Virginia.

14 (f) An appropriate deposit of cash or security may be accepted by the board in lieu of the
15 required bond, as determined by the board through legislative rule.

§30A-21-10. Fee requirements.

1 The fees assessed by the board, as established by legislative rule, shall include the annual
2 fee for appraisal management companies to be included in the national registry maintained by
3 the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

§30A-21-11. Controlling person requirements.

1 (a) An appraisal management company shall have a designated controlling person who
2 will ensure compliance with this article and will be the main contact for all communication between
3 the board and the appraisal management company.

4 (b) The controlling person shall:

5 (1) Be of good character and reputation;

6 (2) Submit to national and state criminal background checks as set out in section eight of
7 this article;

8 (3) Never have had a license or certificate to act as an appraiser refused, denied,
9 canceled, revoked or surrendered in this state or any other jurisdiction and not subsequently
10 granted or reinstated;

11 (4) Never have been a part of a firm that was permanently or temporarily enjoined by a
12 court of competent jurisdiction from engaging in or continuing any conduct or practice involving
13 appraisals, appraisal management services or operating an appraisal management company;
14 and

15 (5) Never have been the subject of an order of the board or any other jurisdiction's
16 appraisal management company regulatory agency that denied or revoked the applicant's or
17 firm's privilege to operate as an appraisal management company.

§30A-21-12. Requirements for removal from an appraiser panel.

1 (a) Except within sixty days from the date an appraiser is first added to the appraiser panel
2 of an appraisal management company, an appraisal management company may only remove an
3 appraiser from an appraiser panel or refuse to assign appraisals to an appraiser after providing
4 the appraiser twenty days prior written notice stating the reasons for the removal or refusal and
5 providing an opportunity for the appraiser to be heard.

6 (b) An appraiser who is removed from an appraiser panel or refused appraisal
7 assignments for an alleged act or omission that would constitute grounds for disciplinary action
8 under the provisions of section twelve, article thirty-eight of this chapter, a violation of the USPAP
9 or a violation of state law or legislative rule may file a complaint with the board for a review of the
10 appraisal management company's decision.

11 (c) The board's review under this subsection is limited to determining whether:

12 (1) The appraisal management company has complied with subsection (a) of this section;
13 and

14 (2) The appraiser has engaged in an act or omission that would constitute grounds for
15 disciplinary action under the provisions of section twelve, article thirty-eight of this code, or has

16 committed a violation of the USPAP or a violation of state law or legislative rule.

17 (d) The board shall hold a hearing on the complaint within a reasonable time, not
18 exceeding six months after the complaint was filed unless there are extenuating circumstances
19 that are noted in the board's minutes.

20 (e) If the board determines after the hearing that an appraisal management company
21 acted improperly then the board shall order the appraisal management company to restore the
22 appraiser to the appraiser panel or assign appraisals to the appraiser.

23 (f) After the board's order, an appraisal management company may not:

24 (1) Reduce the number of appraisals given to the appraiser; or

25 (2) Penalize the appraiser in any other manner.

§30A-21-13. Duties of appraisal management companies.

1 (a) Each appraisal management company shall:

2 (1) Verify that an appraiser receiving work or being placed on an appraiser panel is:

3 (A) Professionally and geographically competent;

4 (B) Competent to perform the appraisal service being assigned to the appraiser;

5 (C) Licensed or certified under the provisions of article thirty-eight of this chapter; and

6 (D) In good standing in this state;

7 (2) Designate a controlling person responsible for ensuring compliance with this article,

8 including filing with the board the following:

9 (A) The name of the controlling person;

10 (B) The contact information for the controlling person;

11 (C) A verified acceptance of responsibility from the controlling person; and

12 (D) An updated registration form identifying the current controlling person submitted within
13 ten business days, when there is a change of the controlling person;

14 (3) Maintain complete detailed records of requests for appraisals from clients, including:

15 (A) The type of appraisal requested;

16 (B) The name and license or certification number of the appraiser to whom the appraisal
17 was referred;

18 (C) The fees received from the client; and

19 (D) The fees paid to the appraiser or any third party for services performed;

20 (4) Ensure that appraisal services are provided in an independent manner, free from
21 inappropriate influence and coercion, as required by appraisal independence standards
22 established under Section 129E of the Truth in Lending Act and the rules and regulations issued
23 pursuant to the Act, including the requirement that fee appraisers be compensated at a customary
24 and reasonable rate when the appraisal management company is providing services for a
25 consumer credit transaction secured by the principal dwelling of a consumer;

26 (5) Except in cases of breach of contract or substandard performance, pay an independent
27 appraiser for the completion of an appraisal within forty-five days after the appraiser provides the
28 completed appraisal to the appraisal management company, unless otherwise agreed to by the
29 parties;

30 (6) Disclose its registration number on all engagement documentation with appraisers;

31 (7) Disclose to its clients the fees paid:

32 (A) For appraisal management services; and

33 (B) To the appraiser for the completion of an appraisal assignment;

34 (8) Inform the board, when it has a reasonable basis to believe, that an appraiser has:

35 (A) Failed to comply with USPAP and the failure to comply is likely to significantly affect
36 the opinion of value;

37 (B) Violated applicable laws or rules; or

38 (C) Engaged in unethical or unprofessional conduct;

39 (9) Keep all records, including, but not limited to, appraisals ordered by the appraisal
40 management company, for a minimum of five years after an appraisal is completed or two years
41 after final disposition of a judicial proceeding related to the assignment, whichever period expires

42 later; and

43 (10) Maintain a registered agent for service of process and provide the board with the
44 same information for the agent that is provided to the Secretary of State.

45 (b) The board may inspect the records of appraisal management companies at any time
46 without prior notice.

47 (c) A sole proprietor of an appraisal management company is considered the controlling
48 person.

49 (d) If information on a disclosure becomes inaccurate for any reason, then a revised or
50 amended disclosure shall be provided within five business days after the change. The revised or
51 amended disclosure shall be clearly marked as revised or amended and contain sufficient
52 information for the client to identify the original disclosure referenced.

53 (e) The provisions of this section do not exempt a registrant from any other reporting
54 requirements contained in any federal or state law.

§30A-21-14. Unprofessional conduct.

1 An appraisal management company commits unprofessional conduct if it:

2 (1) Requires an appraiser to modify an aspect of an appraisal which modification is not
3 related to substandard performance or noncompliance with the terms of a contract or agreement;

4 (2) Requires an appraiser to prepare an appraisal when the appraiser believes, in his or
5 her own professional judgment and notifies the appraisal management company in a timely
6 manner, that the appraiser does not have the necessary expertise for the specific geographic
7 area or is otherwise not competent to perform the appraisal;

8 (3) Requires an appraiser to prepare an appraisal under a certain time frame that the
9 appraiser believes, in his or her own professional judgment and notifies the appraisal
10 management company in a timely manner, that the appraiser does not have the necessary time
11 to meet all the necessary and relevant legal and professional obligations;

12 (4) Prohibits or inhibits communication between an appraiser and any other person from

13 whom the appraiser, in the appraiser's own professional judgment, believes information would be
14 relevant;

15 (5) Requests an appraiser to do anything that does not comply with:

16 (A) The USPAP; or

17 (B) The requests of the client; or

18 (6) Makes any portion of the appraiser's fee or the appraisal management company's fee
19 contingent on a favorable outcome, including:

20 (A) A loan closing; or

21 (B) An appraisal for a specific dollar amount.

§30A-21-15. Prohibited acts.

1 (a) An appraisal management company or any person acting for an appraisal
2 management company as a controlling person, owner, director, officer, agent, employee or
3 independent contractor may not:

4 (1) Improperly influence or attempt to improperly influence the development, reporting,
5 result or review of an appraisal through:

6 (A) Intimidation, inducement, coercion, extortion, collusion, bribery, compensation,
7 blackmail, threat of exclusion from future appraisal work or any other means that unduly
8 influences or pressures the appraiser;

9 (B) Withholding payment to an appraiser or compensating the appraiser at less than the
10 customary and reasonable rate for appraisal services unless for breach of contract; or

11 (C) Expressly or impliedly promise future business, promotions or increased
12 compensation to an appraiser;

13 (2) Knowingly employ a person to a position of responsibility who has had a license or
14 certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state
15 or any other jurisdiction, and not subsequently granted or reinstated;

16 (3) Knowingly enter into a contract with a person for the performance of appraisal services

17 who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked or
18 surrendered in this state or any other jurisdiction, and not subsequently granted or reinstated;

19 (4) Knowingly enter into a contract, agreement or other business relationship for the
20 purpose of obtaining real estate appraisal services with a firm that employs or contracts with a
21 person who has had a license or certificate to act as an appraiser refused, denied, canceled,
22 revoked or surrendered in this state or any other jurisdiction, and not subsequently granted or
23 reinstated;

24 (5) Knowingly fail to separate and disclose any fees charged to a client by the appraisal
25 management company for an appraisal by an appraiser from fees charged to a client by the
26 appraisal management company for appraisal management services;

27 (6) Prohibit an appraiser from stating, in a submitted appraisal, the fee paid by the
28 appraisal management company to the appraiser for the appraisal;

29 (7) Request, allow or require an appraiser to collect any portion of the fee, including the
30 appraisal fee, charged by the appraisal management company to the client;

31 (8) Require an appraiser to provide the registrant with the appraiser's signature or seal in
32 any form;

33 (9) Alter, amend or change an appraisal submitted by an appraiser;

34 (10) Remove an appraiser's signature or seal from an appraisal;

35 (11) Add information to or remove information from an appraisal with the intent to change
36 the conclusion of the appraisal;

37 (12) Remove an appraiser from an appraiser panel without twenty days prior written notice
38 to the appraiser and an opportunity for the appraiser to be heard;

39 (13) Enter into an agreement or contract for the performance of appraisal services with an
40 appraiser who is not in good standing with the board;

41 (14) Request or require an appraiser to provide an estimated, predetermined or desired
42 valuation in an appraisal;

43 (15) Request or require an appraiser to provide estimated values or comparable sales at
44 any time prior to the appraiser completing an appraisal;

45 (16) Condition a request for an appraisal or the payment of an appraisal fee on:

46 (A) An opinion, conclusion or valuation reached; or

47 (B) A preliminary estimate or opinion requested from an appraiser;

48 (7) Provide to an appraiser an anticipated, estimated, encouraged or desired value for an
49 appraisal or a proposed or targeted amount to be loaned or borrowed, except that a copy of the
50 sales contract for the purchase transaction may be provided;

51 (8) Require an appraiser to indemnify or hold harmless an appraisal management
52 company for any liability, damage, losses or claims arising out of the services provided by the
53 appraisal management company;

54 (19) Have a direct or indirect interest, financial or otherwise, in the property or transaction
55 involving the appraisal;

56 (20) Provide to an appraiser or a person related to the appraiser stock or other financial
57 or nonfinancial benefits;

58 (21) Obtain, use or pay for a second or subsequent appraisal or order an automated
59 valuation model, unless:

60 (A) There is a reasonable basis to believe that the initial appraisal was flawed and the
61 basis is clearly and appropriately noted in the file;

62 (B) The second or subsequent appraisal, or automated valuation model is done under a
63 bona fide prefunding or post-funding appraisal review or quality control process;

64 (C) The second appraisal is required by law; or

65 (D) The second or subsequent appraisal or automated valuation model is ordered by a
66 client; or

67 (22) Commit an act or practice that impairs or attempts to impair an appraiser's
68 independence, objectivity or impartiality.

69 (b) This section does not prohibit an appraisal management company from requesting that
70 an appraiser:

- 71 (1) Provide additional information about the basis for a valuation;
72 (2) Correct objective factual errors in an appraisal;
73 (3) Provide further detail, substantiation or explanation for the appraiser's conclusion; or
74 (4) Consider additional appropriate property information, including the consideration of
75 additional comparable properties to make or support an appraisal.

§30A-21-16. Disciplinary action.

1 The board may deny, revoke or refuse to issue or renew the registration of an appraisal
2 management company or may restrict or limit the activities of an appraisal management company
3 or of a person or firm that owns an interest in or participates in the business of an appraisal
4 management company for the following reasons:

- 5 (1) A person or firm acted as an appraisal management company or performed appraisal
6 management services without being properly registered with the board;
7 (2) A person or firm did not perform the duties set out in this article;
8 (3) A person or firm engaged in unprofessional conduct as set out in this article;
9 (4) A person or firm engaged in a prohibited act set out in this article;
10 (5) The application for registration contained false or misleading information;
11 (6) A person or firm fraudulently or deceptively obtains or attempts to obtain a registration;
12 (7) A person or firm fraudulently or deceptively used a registration;
13 (8) A person or firm violated the provisions of this article, this code, or the board's rules;
14 (9) A person or firm was found guilty of a felony or pleaded guilty or nolo contendere to a
15 felony;
16 (10) Within the past ten years, a person or firm was found guilty of or pleaded guilty or
17 nolo contendere to a misdemeanor involving:
18 (A) Mortgage lending;

19 (B) Appraisals;

20 (C) Breach of trust; or

21 (D) Fraudulent or dishonest dealing;

22 (11) A person or firm is permanently or temporarily enjoined by a court of competent
23 jurisdiction from engaging in or continuing any conduct or practice involving appraisal
24 management services or operating an appraisal management company;

25 (12) A person or firm is the subject of an order of the board or any other jurisdiction's
26 appraisal management company regulatory agency that denied, revoked or restricted a person's
27 or firm's privilege to operate as an appraisal management company;

28 (13) A person or firm failed to pay the applicable fees; or

29 (14) For any other finding by the board.

§30A-21-17. Notice and hearing procedures.

1 (a) The board, on its own motion or upon receipt of a written complaint, may investigate
2 an appraisal management company, a person or firm associated with an appraisal management
3 company, and a person or firm performing appraisal management services.

4 (b) If the board determines after the investigation there are grounds for disciplinary action,
5 the board may hold a hearing after giving thirty days' prior notice.

6 (c) The board has the same powers set out in article thirty-eight of this chapter.

7 (d) After notice and a hearing, the board may:

8 (1) Deny, revoke or refuse to issue or renew the registration of an appraisal management
9 company or restrict or limit the activities of an appraisal management company or of a person or
10 firm that owns an interest in or participates in the business of an appraisal management company;

11 (2) Impose a fine not to exceed \$25,000 for each violation; or

12 (3) Take other disciplinary action as established by the board by rule.

13 (e) The board may seek injunctive relief in the Kanawha County Circuit Court to prevent a
14 person or firm from violating the provisions of this article or the rules promulgated hereunder. The

15 circuit court may grant a temporary or permanent injunction.

ARTICLE 22. UNIFORM ATHLETE AGENTS ACT.

§30A-22-1. Short title.

1 This article may be cited as the Uniform Athlete Agents Act

2 In this article:

3 (1) "Agency contract" means an agreement in which a student-athlete authorizes a person
4 to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or
5 an endorsement contract.

6 (2) "Athlete agent" means an individual who enters into an agency contract with a student-
7 athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency
8 contract. The term includes an individual who represents to the public that the individual is an
9 athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of
10 the student-athlete or an individual acting solely on behalf of a professional sports team or
11 professional sports organization.

12 (3) "Athletic director" means an individual responsible for administering the overall athletic
13 program of an educational institution or, if an educational institution has separately administered
14 athletic programs for male students and female students, the athletic program for males or the
15 athletic program for females, as appropriate.

16 (4) "Contact" means a communication, direct or indirect, between an athlete agent and a
17 student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

18 (5) "Endorsement contract" means an agreement under which a student-athlete is
19 employed or receives consideration to use on behalf of the other party any value that the student-
20 athlete may have because of publicity, reputation, following, or fame obtained because of athletic
21 ability or performance.

22 (6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility
23 requirements for participation by a student-athlete are established by a national association for

24 the promotion or regulation of collegiate athletics.

25 (7) "Person" means an individual, corporation, business trust, estate, trust, partnership,
26 limited liability company, association, joint venture, government; governmental subdivision,
27 agency, or instrumentality; public corporation, or any other legal or commercial entity.

28 (8) "Professional-sports-services contract" means an agreement under which an individual
29 is employed or agrees to render services, as a player on a professional sports team, with a
30 professional sports organization, or as a professional athlete.

31 (9) "Record" means information that is inscribed on a tangible medium or that is stored in
32 an electronic or other medium and is retrievable in perceivable form.

33 (10) "Registration" means registration as an athlete agent pursuant to this article.

34 (11) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
35 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
36 United States.

37 (12) "Student-athlete" means an individual who engages in, is eligible to engage in, or may
38 be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently
39 ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete
40 for purposes of that sport.

§30A-22-3. Service of process; subpoenas.

1 (a) By acting as an athlete agent in this state, a nonresident individual appoints the
2 Secretary of State as the individual's agent for service of process in any civil action in this state
3 related to the individual's acting as an athlete agent in this state.

4 (b) The Secretary of State may issue subpoenas for any material that is relevant to the
5 administration of this article.

§30A-22-4. Athlete agents: registration required; void contracts.

1 (a) Except as otherwise provided in subsection (b) of this section, an individual may not
2 act as an athlete agent in this state without holding a certificate of registration under section six

3 or eight of this article.

4 (b) Before being issued a certificate of registration, an individual may act as an athlete
5 agent in this state for all purposes except signing an agency contract, if:

6 (1) A student-athlete or another person acting on behalf of the student-athlete initiates
7 communication with the individual; and

8 (2) Within seven days after an initial act as an athlete agent, the individual submits an
9 application for registration as an athlete agent in this state.

10 (c) An agency contract resulting from conduct in violation of this section is void and the
11 athlete agent shall return any consideration received under the contract.

§30A-22-5. Registration as athlete agent; form; requirements.

1 (a) An applicant for registration shall submit an application for registration to the Secretary
2 of State in a form prescribed by the Secretary of State. An application filed under this section is a
3 public record. The application must be in the name of an individual and, except as otherwise
4 provided in subsection (b) of this section, signed or otherwise authenticated by the applicant under
5 penalty of perjury and state or contain:

6 (1) The name of the applicant and the address of the applicant's principal place of
7 business;

8 (2) The name of the applicant's business or employer, if applicable;

9 (3) Any business or occupation engaged in by the applicant for the five years next
10 preceding the date of submission of the application;

11 (4) A description of the applicant's:

12 (A) Formal training as an athlete agent;

13 (B) Practical experience as an athlete agent; and

14 (C) Educational background relating to the applicant's activities as an athlete agent;

15 (5) The names and addresses of three individuals not related to the applicant who are
16 willing to serve as references;

17 (6) The name, sport and last known team for each individual for whom the applicant acted
18 as an athlete agent during the five years next preceding the date of submission of the application;

19 (7) The names and addresses of all persons who are:

20 (A) With respect to the athlete agent's business if it is not a corporation, the partners,
21 members, officers, managers, associates or profit-sharers of the business; and

22 (B) With respect to a corporation employing the athlete agent, the officers, directors and
23 any shareholder of the corporation having an interest of five percent or greater;

24 (8) Whether the applicant or any person named pursuant to subdivision (7) of this
25 subsection has been convicted of a crime that, if committed in this state, would be a crime
26 involving moral turpitude or a felony and, identify the crime;

27 (9) Whether there has been any administrative or judicial determination that the applicant
28 or any person named pursuant to subdivision (7) of this subsection has made a false, misleading,
29 deceptive, or fraudulent representation;

30 (10) Any instance in which the conduct of the applicant or any person named pursuant to
31 subdivision (7) of this subsection resulted in the imposition of a sanction, suspension, or
32 declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a
33 student-athlete or educational institution;

34 (11) Any sanction, suspension, or disciplinary action taken against the applicant or any
35 person named pursuant to subdivision (7) of this subsection arising out of occupational or
36 professional conduct; and

37 (12) Whether there has been any denial of an application for, suspension or revocation of,
38 or refusal to renew, the registration or licensure of the applicant or any person named pursuant
39 to subdivision (7) of this subsection as an athlete agent in any state.

40 (b) An individual who has submitted an application for, and holds a certificate of,
41 registration or licensure as an athlete agent in another state, may submit a copy of the application
42 and certificate in lieu of submitting an application in the form prescribed pursuant to subsection

43 (a) of this section. The Secretary of State shall accept the application and the certificate from the
44 other state as an application for registration in this state if the application to the other state:

45 (1) Was submitted in the other state within six months next preceding the submission of
46 the application in this state and the applicant certifies that the information contained in the
47 application is current;

48 (2) Contains information substantially similar to or more comprehensive than that required
49 in an application submitted in this state; and

50 (3) Was signed by the applicant under penalty of perjury.

§30A-22-6. Certificate of registration; issuance or denial; renewal.

1 (a) Except as otherwise provided in subsection (b) of this section, the Secretary of State
2 shall issue a certificate of registration to an individual who complies with subsection (a), section
3 five of this article or whose application has been accepted under subsection (b), section five of
4 this article.

5 (b) The Secretary of State may refuse to issue a certificate of registration if the Secretary
6 of State determines that the applicant has engaged in conduct that has a significant adverse effect
7 on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary
8 of State may consider whether the applicant has:

9 (1) Been convicted of a crime that, if committed in this state, would be a crime involving
10 moral turpitude or a felony;

11 (2) Made a materially false, misleading, deceptive, or fraudulent representation in the
12 application or as an athlete agent;

13 (3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary
14 capacity;

15 (4) Engaged in conduct prohibited by section fourteen of this article;

16 (5) Had a registration or licensure as an athlete agent suspended, revoked, or denied or
17 been refused renewal of registration or licensure as an athlete agent in any state;

18 (6) Engaged in conduct the consequence of which was that a sanction, suspension, or
19 declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was
20 imposed on a student-athlete or educational institution; or

21 (7) Engaged in conduct that significantly adversely reflects on the applicant's credibility,
22 honesty or integrity.

23 (c) In making a determination under subsection (b) of this section, the Secretary of State
24 shall consider:

25 (1) How recently the conduct occurred;

26 (2) The nature of the conduct and the context in which it occurred; and

27 (3) Any other relevant conduct of the applicant.

28 (d) An athlete agent may apply to renew a registration by submitting an application for
29 renewal in a form prescribed by the Secretary of State. An application filed under this section is a
30 public record. The application for renewal must be signed by the applicant under penalty of perjury
31 and must contain current information on all matters required in an original registration.

32 (e) An individual who has submitted an application for renewal of registration or licensure
33 in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to
34 subsection (d) of this section, may file a copy of the application for renewal and a valid certificate
35 of registration or licensure from the other state. The Secretary of State shall accept the application
36 for renewal from the other state as an application for renewal in this state if the application to the
37 other state:

38 (1) Was submitted in the other state within six months next preceding the filing in this state
39 and the applicant certifies the information contained in the application for renewal is current;

40 (2) Contains information substantially similar to or more comprehensive than that required
41 in an application for renewal submitted in this state; and

42 (3) Was signed by the applicant under penalty of perjury.

43 (f) A certificate of registration or a renewal of a registration is valid for two years.

§30A-22-7. Suspension, revocation, or refusal to renew registration.

1 (a) The Secretary of State may suspend, revoke or refuse to renew a registration for
2 conduct that would have justified denial of registration under subsection (b), section six of this
3 article.

4 (b) The Secretary of State may deny, suspend, revoke or refuse to renew a certificate of
5 registration or licensure only after proper notice and an opportunity for a hearing. The provisions
6 of article five, chapter twenty-nine-a of this code apply to this article.

1 The Secretary of State may issue a temporary certificate of registration while an
2 application for registration or renewal of registration is pending.

§30A-22-9. Registration and renewal fees.

1 An application for registration or renewal of registration must be accompanied by a fee in
2 the following amount:

3 (1) Fifty dollars for an initial application for registration;

4 (2) Fifty dollars for an application for registration based upon a certificate of registration or
5 licensure issued by another state;

6 (3) Ten dollars for an application for renewal of registration; or

7 (4) Ten dollars for an application for renewal of registration based upon an application for
8 renewal of registration or licensure submitted in another state.

§30A-22-10. Required form of contract.

1 (a) An agency contract must be in a record, signed or otherwise authenticated by the
2 parties.

3 (b) An agency contract must state or contain:

4 (1) The amount and method of calculating the consideration to be paid by the student-
5 athlete for services to be provided by the athlete agent under the contract and any other
6 consideration the athlete agent has received or will receive from any other source for entering into

7 the contract or for providing the services;

8 (2) The name of any person not listed in the application for registration or renewal of
9 registration who will be compensated because the student-athlete signed the agency contract;

10 (3) A description of any expenses that the student-athlete agrees to reimburse;

11 (4) A description of the services to be provided to the student-athlete;

12 (5) The duration of the contract; and

13 (6) The date of execution.

14 (c) An agency contract must contain, in close proximity to the signature of the student-
15 athlete, a conspicuous notice in boldface type in capital letters stating:

16 WARNING TO STUDENT-ATHLETE

17 IF YOU SIGN THIS CONTRACT:

18 (1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN
19 YOUR SPORT;

20 (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING
21 INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR
22 ATHLETIC DIRECTOR; AND

23 (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT.
24 CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

25 (d) An agency contract that does not conform to this section is voidable by the student-
26 athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay
27 any consideration under the contract or to return any consideration received from the athlete
28 agent to induce the student-athlete to enter into the contract.

29 (e) The athlete agent shall give a record of the signed or otherwise authenticated agency
30 contract to the student-athlete at the time of execution.

§30A-22-11. Notice to educational institution.

1 (a) Within seventy-two hours after entering into an agency contract or before the next

2 scheduled athletic event in which the student-athlete may participate, whichever occurs first, the
3 athlete agent shall give notice in a record of the existence of the contract to the athletic director
4 of the educational institution at which the student-athlete is enrolled or the athlete agent has
5 reasonable grounds to believe the student-athlete intends to enroll.

6 (b) Within seventy-two hours after entering into an agency contract or before the next
7 athletic event in which the student-athlete may participate, whichever occurs first, the student-
8 athlete shall inform the athletic director of the educational institution at which the student-athlete
9 is enrolled that he or she has entered into an agency contract.

§30A-22-12. Student-athlete's right to cancel.

1 (a) A student-athlete may cancel an agency contract by giving notice of the cancellation
2 to the athlete agent in a record within fourteen days after the contract is signed.

3 (b) A student-athlete may not waive the right to cancel an agency contract.

4 (c) If a student-athlete cancels an agency contract, the student-athlete is not required to
5 pay any consideration under the contract or to return any consideration received from the athlete
6 agent to induce the student-athlete to enter into the contract.

§30A-22-13. Required records.

1 (a) An athlete agent shall retain the following records for a period of five years:

2 (1) The name and address of each individual represented by the athlete agent;

3 (2) Any agency contract entered into by the athlete agent; and

4 (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a
5 student-athlete to enter into an agency contract.

6 (b) Records required by subsection (a) of this article to be retained are open to inspection
7 by the Secretary of State during normal business hours.

§30A-22-14. Prohibited conduct.

1 (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency
2 contract, may not:

3 (1) Give any materially false or misleading information or make a materially false promise
4 or representation;

5 (2) Furnish anything of value to a student-athlete before the student-athlete enters into the
6 agency contract; or

7 (3) Furnish anything of value to any individual other than the student-athlete or another
8 registered athlete agent.

9 (b) An athlete agent may not intentionally:

10 (1) Initiate contact with a student-athlete unless registered under this article;

11 (2) Refuse or fail to retain or permit inspection of the records required to be retained by
12 section thirteen of this article;

13 (3) Fail to register when required by section four of this article;

14 (4) Provide materially false or misleading information in an application for registration or
15 renewal of registration;

16 (5) Predate or postdate an agency contract; or

17 (6) Fail to notify a student-athlete before the student-athlete signs or otherwise
18 authenticates an agency contract for a particular sport that the signing or authentication may make
19 the student-athlete ineligible to participate as a student-athlete in that sport.

§30A-22-15. Criminal penalties.

1 An athlete agent who violates subsection (a), section fourteen of this article is guilty of a
2 felony and, upon conviction thereof, shall be fined not more than \$50,000 or confined in a state
3 correctional facility for not less than one nor more than three years, or both so fined and confined.

4 An athlete agent who violates subsection (b), section fourteen of this article is guilty of a
5 misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in a
6 county or regional jail for not more than one year, or both so fined and confined.

§30A-22-16. Civil Remedies.

1 (a) An educational institution has a right of action against an athlete agent or a former

2 student-athlete for damages caused by a violation of this article. In an action under this section,
3 the court may award to the prevailing party costs and reasonable attorney's fees.

4 (b) Damages of an educational institution under subsection (a) of this section include
5 losses and expenses incurred because, as a result of the conduct of an athlete agent or former
6 student-athlete, the educational institution was injured by a violation of this article or was
7 penalized, disqualified or suspended from participation in athletics by a national association for
8 the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed
9 disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

10 (c) A right of action under this section does not accrue until the educational institution
11 discovers or by the exercise of reasonable diligence would have discovered the violation by the
12 athlete agent or former student-athlete.

13 (d) Any liability of the athlete agent or the former student-athlete under this section is
14 several and not joint.

15 (e) This article does not restrict rights, remedies, or defenses of any person under law or
16 equity.

§30A-22-17. Administrative penalty.

1 The Secretary of State may assess a civil
1 enalty against an athlete agent not to exceed \$25,000 for a violation of this article.

§30A-22-18. Uniformity of application and construction.

1 In applying and construing this uniform act, consideration must be given to the need to
2 promote uniformity of the law with respect to its subject matter among states that enact it.

§30A-22-19. Electronic signatures in global and national commerce act.

1 The provisions of this article governing the legal effect, validity, or enforceability of
2 electronic records or signatures, and of contracts formed or performed with the use of such
3 records or signatures conform to the requirements of Section 102 of the Electronic Signatures in
4 Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede,

5 modify, and limit the Electronic Signatures in Global and National Commerce Act.

§30A-22-20. Severability.

1 If any provision of this article or its application to any person or circumstance is held invalid,
2 the invalidity does not affect other provisions or applications of this article which can be given
3 effect without the invalid provision or application, and to this end the provisions of this article are
4 severable.

§30A-22-21. Effective date.

1 This article takes effect on July 1, 2001.

ARTICLE 23. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30A-23-1. Legislative findings.

1 The Legislature hereby finds and declares that the practice of real estate brokerage is a
2 privilege and any person engaged in the professional practice of real estate brokerage should
3 possess the requisite experience and training and be subject to adequate regulation and control.
4 As a matter of public policy, it is necessary to protect the public interest from the unauthorized,
5 unqualified and unregulated practice of real estate brokerage through enactment of this article
6 and to regulate the granting of such privileges and their use. This article shall be liberally
7 construed to carry out these purposes.

§30A-23-2. Short title.

1 This article shall be known and may be cited as the "West Virginia Real Estate License
2 Act".

§30A-23-3. License required.

1 It shall be unlawful for any person to engage in or carry on, directly or indirectly, or to
2 advertise or hold himself or herself out as engaging in or carrying on the business or act in the
3 capacity of a real estate broker, associate broker or salesperson within this state without first
4 obtaining a license as provided for in this article.

§30A-23-4. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this
2 article:

3 (a) "Applicant" means any person who is making application to the commission for a
4 license.

5 (b) "Associate broker" means any person who qualifies for a broker's license, but who is
6 employed or engaged by a licensed broker to engage in any activity regulated by this article, in
7 the name of and under the direct supervision of the licensed broker.

8 (c) "Broker" means any person who for compensation or with the intention or expectation
9 of receiving or collecting compensation:

10 (1) Lists, sells, purchases, exchanges, options, rents, manages, leases or auctions any
11 interest in real estate; or

12 (2) Directs or assists in the procuring of a prospect calculated or intended to result in a
13 real estate transaction; or

14 (3) Advertises or holds himself or herself out as engaged in, negotiates or attempts to
15 negotiate, or offers to engage in any activity enumerated in subdivision (1) of this subsection.

16 (d) "Commission" means the West Virginia Real Estate Commission as established in
17 section six of this article.

18 (e) "Compensation" means fee, commission, salary or other valuable consideration, in the
19 form of money or otherwise.

20 (f) "Designated broker" means a person holding a broker's license who has been
21 appointed by a partnership, association, corporation, or other form of business organization
22 engaged in the real estate brokerage business, to be responsible for the acts of the business and
23 to whom the partners, members, or board of directors have delegated full authority to conduct the
24 real estate brokerage activities of the business organization.

25 (g) "Distance education" means courses of instruction in which instruction takes place
26 through media where the teacher and student are separated by distance and sometimes by time.

27 (h) "Inactive" means a licensee who is not authorized to conduct any real estate business
28 and is not required to comply with any continuing education requirements.

29 (i) "License" means a license to act as a broker, associate broker or salesperson.

30 (j) "Licensee" means a person holding a license.

31 (k) "Member" means a commissioner of the Real Estate Commission.

32 (l) "Real estate" means any interest or estate in land and anything permanently affixed to
33 land.

34 (m) "Salesperson" means a person employed or engaged by or on behalf of a broker to
35 do or deal in any activity included in this article, in the name of and under the direct supervision
36 of a broker, other than an associate broker.

§30A-23-5. Scope of practice; exceptions.

1 (a) The practice of real estate brokerage includes acting in the capacity of a broker,
2 associate broker or salesperson as defined in section four of this article.

3 (b) The practice of real estate brokerage does not include the activities normally performed
4 by an appraiser, mortgage company, lawyer, engineer, contractor, surveyor, home inspector or
5 other professional who may perform an ancillary service in conjunction with a real estate
6 transaction.

7 (c) The provisions of this article do not apply to:

8 (1) Any person acting on his or her own behalf as owner or lessor of real estate.

9 (2) The regular employees of an owner of real estate, who perform any acts regulated by
10 this article, where the acts are incidental to the management of the real estate: *Provided*, That
11 the employee does not receive additional compensation for the act and does not perform the act
12 as a vocation.

13 (3) Attorneys-at-law: *Provided*, That attorneys-at-law shall be required to submit to the
14 written examination required under section twelve of this article in order to qualify for a broker's
15 license: *Provided, however*, That an attorney-at-law who is licensed as a real estate broker prior

16 to July 1, 1980, is exempt from the written examination required under section twelve of this
17 article.

18 (4) Any person holding, in good faith, a valid power of attorney from the owner or lessor
19 of the real estate.

20 (5) Any person acting as a receiver, trustee, administrator, executor, guardian,
21 conservator or under the order of any court or under the authority of a deed of trust or will.

22 (6) A public officer while performing his or her official duties.

23 (7) Any person acquiring or disposing of any interest in timber or minerals, or acquiring or
24 disposing of properties for easements and rights-of-ways for pipelines, electric power lines and
25 stations, public utilities, railroads or roads.

26 (8) Any person employed exclusively to act as the management or rental agent for the real
27 estate of one person, partnership or corporation.

28 (9) Any person properly licensed pursuant to the provisions of article two-c, chapter
29 nineteen of this code when conducting an auction, any portion of which contains any leasehold
30 or estate in real estate, only when the person so licensed is retained to conduct an auction by:

31 (A) A receiver or trustee in bankruptcy;

32 (B) A fiduciary acting under the authority of a deed of trust or will; or

33 (C) A fiduciary of a decedent's estate.

34 (10) Any person employed by a broker in a noncommissioned secretarial or clerical
35 capacity who may in the normal course of employment, be required to:

36 (A) Disseminate brokerage preprinted and predetermined real estate sales and rental
37 information;

38 (B) Accept and process rental reservations or bookings for a period not to exceed thirty
39 consecutive days in a manner and procedure predetermined by the broker;

40 (C) Collect predetermined rental fees for the rentals which are to be promptly tendered to
41 the broker;

- 42 (D) Make appointments on behalf of the broker or licensed salesperson with buyers and
43 sellers of real estate and potential buyers and sellers of real estate; or
44 (E) Any combination thereof.

§30A-23-6. Commission created; membership; appointment and removal of members; qualifications; terms; organization.

1 (a) The West Virginia Real Estate Commission is hereby continued. The members of the
2 commission in office on the date this section takes effect shall, unless sooner removed, continue
3 to serve until their respective terms expire and until their successors have been appointed and
4 qualified.

5 (b)(1) Commencing with the terms beginning with July 1, 2002, the commission shall
6 consist of five persons appointed for terms of four years by the Governor with the advice and
7 consent of the Senate. Four commissioners must be licensed under the provisions of this article
8 and one commissioner must be a citizen member who is not licensed under the provisions of this
9 article.

10 (2) Each licensed commissioner, at the time of his or her appointment, must have been
11 licensed and practiced in this state as a real estate broker, associate broker or salesperson as
12 his or her primary vocation for a period of not less than ten years immediately preceding the
13 appointment. Each commissioner must have been a resident of this state for at least six years
14 prior to his or her appointment and must remain a resident during the appointment term. No more
15 than four commissioners shall belong to the same political party.

16 (3) The appointment of three licensed commissioners, whether for a full term or to fill a
17 vacancy, shall be made by the Governor with the advice and consent of the Senate. The
18 appointment of one licensed commissioner, whether for a full term or to fill a vacancy, shall be
19 made by the Governor from among three nominees selected by the West Virginia association of
20 realtors. If the appointment is for a full term, the nominations must be submitted to the Governor
21 not later than three months prior to the date on which the appointment becomes effective. If the

22 appointment is to fill a vacancy, the nominations must be submitted to the Governor within thirty
23 days after a request for the nominations has been made by the Governor to the West Virginia
24 association of realtors. If the association fails to submit nominations in accordance with the
25 requirements of this section, the Governor may make the appointment without the nominations.

26 (c) Any commissioner immediately and automatically forfeits his or her membership on the
27 commission if he or she has his or her license to practice as a real estate broker, associate broker
28 or salesperson suspended or revoked by the board, is convicted of a felony under the laws of this
29 state or of the United States, becomes a nonresident of this state, or holds any elective public
30 office or becomes a member of any political committee.

31 (d) No member of the commission may be removed from office by the Governor except
32 for official misconduct, incompetency, neglect of duty, gross immorality or other good cause, but
33 then only in the manner prescribed by law for the removal by the Governor of state elective
34 officials.

35 (e) No member of the commission may serve more than two consecutive full terms and
36 any member having served two full terms may not be appointed for one year after completion of
37 his or her second full term. A member shall continue to serve until his or her successor has been
38 appointed and qualified.

39 (f) The Governor shall designate one member of the commission as chairman and the
40 members shall choose a vice chairman and a secretary, each of whom shall continue to serve in
41 their respective capacity until replaced.

42 (g) Three members shall constitute a quorum for the conduct of official business.

43 (h) Each commissioner shall receive the same compensation as is paid to members of the
44 Legislature for their interim duties as recommended by the citizens legislative compensation
45 commission and authorized by law for each day or portion thereof engaged in the discharge of
46 official duties. Each commissioner shall be reimbursed for his or her actual and necessary
47 expenses for each day or portion thereof engaged in the discharge of official duties in a manner

48 consistent with guidelines of the travel management office of the Department of Administration.

§30A-23-7. General powers and duties.

1 The commission has all the powers set forth in article one of this chapter and in addition:

2 (a) May sue and be sued in its official name as an agency of this state;

3 (b) Shall employ an executive director and shall fix his or her compensation subject to the
4 general laws of this state. The commission shall determine the duties of the executive director as
5 it shall consider necessary and appropriate to discharge the duties imposed by the provisions of
6 this code;

7 (c) Shall employ or contract with such other investigators, hearing examiners, attorneys,
8 consultants, clerks and assistants as the commission considers necessary and determine the
9 duties and fix the compensation of such investigators, clerks and assistants subject to the general
10 laws of this state;

11 (d) Shall have the authority to issue subpoenas and subpoenas duces tecum through any
12 member, its executive director or any duly authorized representative;

13 (e) Shall prescribe, examine and determine the qualifications of any applicant for a license;

14 (f) Shall provide for an appropriate examination of any applicant for a license;

15 (g) May enter into agreements with other jurisdictions whereby the license issued by
16 another jurisdiction may be recognized as successfully qualifying a nonresident for a license in
17 this state;

18 (h) Shall issue, renew, deny, suspend, revoke or reinstate licenses and take disciplinary
19 action against any licensee;

20 (i) May investigate or cause to be investigated alleged violations of the provisions of this
21 article, the rules promulgated hereunder and the orders or final decisions of the commission;

22 (j) Shall conduct hearings or cause hearings to be conducted upon charges calling for the
23 discipline of a licensee or for the suspension or revocation of a license;

24 (k) May examine the books and records relating to the real estate business of a licensee

25 if the licensee is charged in a complaint of any violation of this article, commission rule or any
26 order or final decision issued by the commission: *Provided*, That such examination shall not
27 extend beyond the specific violation charged in the complaint;

28 (l) May impose one or more sanctions as considered appropriate in the circumstances for
29 the discipline of a licensee. Available sanctions include, but are not limited to, denial of a license
30 or renewal thereof, administrative fine not to exceed \$1,000 per day per violation, probation,
31 revocation, suspension, restitution, require additional education, censure, denial of future license,
32 downgrade of license, reprimand or order the return of compensation collected from an injured
33 consumer;

34 (m) Shall meet at least once each calendar year at such place and time as the commission
35 shall designate and at such other times and places as it considers necessary to conduct
36 commission business;

37 (n) Shall publish an annual directory of licensees in compliance with the provisions of
38 section thirteen, article one, chapter thirty of this code;

39 (o) May sponsor real estate-related educational seminars, courses, workshops or
40 institutes, may incur and pay the necessary expenses and may charge a fee for attendance;

41 (p) May assist libraries, institutions and foundations with financial aid or otherwise in
42 providing texts, sponsoring studies, surveys and programs;

43 (q) May perform compliance audits on real estate brokerage offices, education providers
44 or any other person regulated by the commission;

45 (r) May provide distance education courses for applicants for a license sufficient to meet
46 the educational requirements contained in subsections (a) and (b), section fourteen of this article;

47 and

48 (s) Shall take all other actions necessary and proper to effectuate the purposes of this
49 article.

§30A-23-8. Rule-making authority.

1 (a) The commission may propose rules for legislative approval in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code which are necessary for the conduct
3 of its business, the holding of hearings and for the general implementation, enforcement and
4 administration of the provisions of this article, including, but not limited to, establishing,
5 administering and governing the following:

6 (1) Fees for applications, examinations, licenses, renewal of licenses, changes to licenses
7 requiring reissuance, courses, investigations, copies of records, license certifications and other
8 fees considered necessary by the commission, none of which shall be prorated or refundable:
9 *Provided*, That the fee schedule in effect prior to enactment of this article, enumerated in section
10 nine, article twelve, chapter forty-seven of this code, shall continue to be effective until withdrawn,
11 revoked or amended;

12 (2) The minimum requirements and qualifications necessary for approval by the
13 commission of providers, instructors and the course content of any prelicense education course
14 required in section fourteen of this article;

15 (3) The experience required of an applicant;

16 (4) The minimum standards for licensure;

17 (5) The standards for examinations;

18 (6) The minimum requirements and qualifications necessary for approval by the
19 commission of providers, instructors and courses of continuing professional education required
20 by section sixteen of this article;

21 (7) Continuing professional education requirements for licensees, including any
22 exemptions;

23 (8) Renewal of licenses;

24 (9) Use of firm or trade name;

25 (10) Denying, suspending, revoking or reinstating a license;

26 (11) Form and use of contracts used in a real estate transaction;

- 27 (12) Notification required to clients or customers of agency relationship;
28 (13) Professional conduct requirements; and
29 (14) Any other purpose to carry out the requirements of this article or to protect the public
30 interest.

31 (b) All rules in effect as of the passage of this article previously promulgated by the
32 commission pursuant to article twelve, chapter forty-seven of this code will remain in effect until
33 amended, modified, repealed or replaced, except that references to provisions of former
34 enactments of this article are interpreted to mean provisions of this article.

§30A-23-9. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative fines, received by the commission
2 shall be deposited into the treasury of the state, at least once each month, into a special revenue
3 fund known as the "real estate license fund" which is continued.

4 (b) Except as may be provided in section ten, article one of this chapter, the commission
5 shall retain the amounts in the special revenue fund from year to year and no funds collected
6 under this article may be used by the commission for any purpose other than the administration
7 and enforcement of this article. No compensation or expense incurred under this article is a
8 charge against the General Revenue Fund.

9 (c) Any amounts received as administrative fines imposed pursuant to this article shall be
10 deposited into the General Revenue Fund of the state Treasury.

**§30A-23-10. Civil liability for commission members; liability limitations of person reporting
to commission.**

1 (a) Members of the commission shall be immune from individual civil liability for actions
2 taken in good faith and without malice, within the scope of their duties as commission members.

3 (b) Any person who reports or otherwise provides evidence of violations of this article, the
4 commission's rules, orders or final decisions to the commission or other law-enforcement agency,
5 is not liable for making the report if it is made without malice and in the reasonable belief that the

6 report is warranted by the facts known to him or her at the time.

§30A-23-11. Application for license.

1 The commission shall only issue an original license to an applicant if he or she:

2 (a) Submits an application, in writing, in a form prescribed by the commission which must
3 contain, but is not limited to:

4 (1) The applicant's social security number;

5 (2) The recommendation of at least two persons who:

6 (A) Are property owners at the time of signing the application;

7 (B) Have been property owners for at least twelve months preceding the signing of the
8 application;

9 (C) Have known the applicant for at least two years;

10 (D) Are not related to the applicant;

11 (E) Are not affiliated with the applicant as an employer, partner or associate or with the
12 broker that will employ the applicant;

13 (F) Believe the applicant bears a good reputation for honesty, trustworthiness and fair
14 dealing; and

15 (G) Believe the applicant is competent to transact the business of a real estate broker,
16 associate broker or salesperson, as the case may be, in a manner that would protect the interest
17 of the public.

18 (3) A clear record indicating all jurisdictions where the applicant holds or has held any
19 professional license.

20 (4) A clear record indicating if the applicant has been convicted of any criminal offense or
21 if there is any criminal charge pending against the applicant, or a member or officer of the
22 brokerage business, at the time of application.

23 (b) Is at least eighteen years of age.

24 (c) Is a high school graduate or the holder of an equivalency diploma.

25 (d) Is trustworthy, of good moral character and competent to transact the business of a
26 broker, associate broker or salesperson.

27 (e) Has paid the appropriate fee, if any, which must accompany all applications for original
28 license or renewal.

29 (f) Has submitted to a state and national criminal history record check, as set forth in this
30 subsection: *Provided*, That an applicant for a license who is an attorney at law may submit a letter
31 of good standing from the Clerk of the Supreme Court of Appeals of West Virginia in lieu of
32 submitting to a state and national criminal history record check.

33 (1) This requirement is found not to be against public policy.

34 (2) The criminal history record check shall be based on fingerprints submitted to the West
35 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

36 (3) The applicant shall meet all requirements necessary to accomplish the state and
37 national criminal history record check, including:

38 (A) Submitting fingerprints for the purposes set forth in this subsection; and

39 (B) Authorizing the commission, the West Virginia State Police and the Federal Bureau of
40 Investigation to use all records submitted and produced for the purpose of screening the applicant
41 for a license.

42 (4) The results of the state and national criminal history record check may not be released
43 to or by a private entity except:

44 (A) To the individual who is the subject of the criminal history record check;

45 (B) With the written authorization of the individual who is the subject of the criminal history
46 record check; or

47 (C) Pursuant to a court order.

48 (5) The criminal history record check and related records are not public records for the
49 purposes of chapter twenty-nine-b of this code.

50 (6) The applicant shall pay the actual costs of the fingerprinting and criminal history record

51 check.

52 (7) Before implementing the provisions of this subsection, the commission shall propose
53 rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code.
54 The rules shall set forth the requirements and procedures for the criminal history check and must
55 be consistent with standards established by the Federal Bureau of Investigation and the National
56 Crime Prevention and Privacy Compact as authorized by 42 U. S. C. A. §14611, *et seq.*

§30A-23-12. Qualifications for broker's license.

1 (a) An applicant for a broker's license shall:

2 (1) Have served an apprenticeship as a licensed salesperson for two years or shall
3 produce evidence satisfactory to the commission, in its sole discretion, of real estate experience
4 equivalent to two years full-time experience as a licensed salesperson;

5 (2) Submit satisfactory evidence of having completed the required education course as
6 provided for in section fourteen of this article;

7 (3) Successfully pass the examination or examinations provided by the commission.

8 (b) No broker's license shall be issued in the name of a corporation, association or
9 partnership except through one of its members or officers.

10 (c) No broker's license shall be issued in the name of a corporation, association or
11 partnership unless each member or officer, who will engage in the real estate business, obtains
12 a license as a real estate salesperson or associate broker.

§30A-23-13. Qualifications for salesperson's license.

1 An applicant for a salesperson's license shall:

2 (1) Submit satisfactory evidence of having completed the required education course as
3 provided in section fourteen of this article.

4 (2) Successfully pass the examination or examinations provided by the commission.

§30A-23-14. Prelicense education.

1 (a) Applicants for a broker's license shall provide evidence satisfactory to the commission

2 that he or she has completed at least one hundred eighty clock-hours, equivalent to twelve college
3 semester credit hours, in a course or courses approved by the commission: *Provided*, That an
4 applicant for a broker's license who holds a salesperson's license in this state shall only be
5 required to provide evidence that he or she has completed ninety clock-hours, equivalent to six
6 college semester hours, in a course or courses approved by the commission.

7 (b) Applicants for a salesperson's license shall provide evidence satisfactory to the
8 commission that he or she has completed ninety clock-hours, equivalent to six college semester
9 credit hours, in a course or courses approved by the commission.

10 (c) Any course required by subsection (a) or (b) of this section must have been completed
11 during the five-year period preceding the date of application in order to be accepted by the
12 commission.

§30A-23-15. Licensing nonresidents.

1 (a) The commission may recognize a valid license issued by another jurisdiction as
2 satisfactorily qualifying a nonresident person to obtain a comparable license in this state:
3 *Provided*, That the nonresident has qualified for original license in his or her jurisdiction of
4 residence by examination and by complying with all the provisions for obtaining an original license
5 in that jurisdiction and the jurisdiction affords the same privilege to licensees of this state.

6 (b) In order to obtain a license in this state, a nonresident applicant must:

7 (1) Submit the appropriate application and fee, if any;

8 (2) Sign a statement that the applicant has read the real estate license law and rules of
9 this state and agrees to abide by those provisions in all brokerage activity conducted in this state;

10 (3) Cause the real estate licensing body of the applicant's resident jurisdiction to furnish a
11 certification of licensure which shall contain a clear record of any disciplinary actions;

12 (4) Cause the real estate licensing body of any other jurisdiction where the applicant
13 currently holds or has held a real estate license to furnish a certification of licensure which shall
14 contain a clear record of any disciplinary actions;

15 (5) File with the commission an irrevocable written designation that appoints the executive
16 director of the commission to act as the nonresident licensee's agent, upon whom all judicial and
17 other process or legal notices directed to the licensee may be served. The designation must
18 stipulate and agree that service upon the executive director is equivalent to personal service upon
19 the licensee. A copy of the designation of appointment, certified by the seal of the commission,
20 may be admitted into evidence with the same force and affect as the original. The executive
21 director shall mail a copy of any process or legal notice immediately upon receipt, by certified
22 mail, to the last known business address of the licensee. No judgment by default may be taken in
23 any action or proceeding until after thirty days of mailing and then only upon certification by the
24 executive director that a copy of the judicial, other process or legal notice was mailed as required;
25 and

26 (6) File with the commission, a bond in the penalty of \$2,000 if the applicant wishes to
27 maintain an active license in this state. The bond must be issued by a recognized surety and must
28 be for the benefit of and to indemnify any person in this state who may have a cause of action
29 against the principal.

§30A-23-16. Continuing professional education.

1 (a) Every licensee shall complete seven hours of continuing professional education for
2 each fiscal year, with each hour equaling fifty minutes of instruction.

3 (b) Upon application for the renewal of a real estate license on active status, each licensee
4 must furnish satisfactory evidence, as established by the commission, that he or she has
5 completed seven hours of approved continuing professional education during the term of the
6 previous license: *Provided*, That if the commission issues a license certificate for a period of more
7 than one fiscal year, each licensee must furnish satisfactory evidence that he or she has
8 completed the equivalent of seven hours of continuing professional education for each year
9 covered by the term of the previous license.

10 (c) When a licensee in an inactive status makes application to revert to an active status,

11 he or she must furnish satisfactory evidence to the commission that he or she has completed the
12 approved continuing professional education that would have been required for active status at the
13 time the license was renewed.

14 (d) Approval from the commission shall be obtained by each provider and instructor and
15 for any course prior to any advertising or offering of the course.

16 (e) Real estate-related continuing education courses provided by or approved by the real
17 estate appraiser licensing and certification board, the department of highways, the West Virginia
18 State Bar or other agency of this state shall be recognized as approved by the commission.

19 (f) If approved in advance by the commission, distance education courses may be used
20 to satisfy the continuing education requirement.

21 (g) Any licensee holding a license on July 1, 1969, and continuously thereafter, shall be
22 exempt from the continuing professional education requirement.

**§30A-23-17. Place of business; branch offices; display of certificates; custody of license
certificates; change of address; change of employer by a salesperson or associate
broker; license certificates; term of license.**

1 (a) Every person holding a broker's license under the provisions of this article shall:

2 (1) Have and maintain a definite place of business within this state, which shall be a room
3 or rooms used for the transaction of real estate business and any allied business. The definite
4 place of business shall be designated in the license certificate issued by the commission and the
5 broker may not transact business at any other location, unless such other location is properly
6 licensed by the commission as a branch office: *Provided*, That a nonresident broker who
7 maintains a definite place of business in his or her jurisdiction of residence may not be required
8 to maintain an office in this state if said jurisdiction offers the same privilege to licensed brokers
9 of this state;

10 (2) Conspicuously display his or her broker's license in the main office and the license of
11 each associate broker and salesperson employed by the broker who is primarily working from the

12 main office;

13 (3) Conspicuously display his or her branch office license in each branch office and the
14 license of each associate broker and salesperson employed by the broker who is primarily
15 working from each branch office;

16 (4) Make application to the commission before changing the address of any office or within
17 ten days after any change;

18 (5) Maintain in his or her custody and control the license of each associate broker and
19 salesperson employed by him or her; and

20 (6) Promptly return the license of any associate broker or salesperson whose employment
21 with the broker is terminated.

22 (b) Every person holding an associate broker's or salesperson's license under the
23 provisions of this article shall:

24 (1) Conduct real estate brokerage activities only under the direct supervision and control
25 of his or her employing broker, which shall be designated in the license certificate;

26 (2) Promptly make application to the commission of any change of employing broker:
27 *Provided*, That it shall be unlawful to perform any act contained in this article, either directly or
28 indirectly, after employment has been terminated until the associate broker or salesperson has
29 made application to the commission for a change of employing broker and the application is
30 approved.

31 (c) The commission shall issue a license certificate which shall:

32 (1) Be in such form and size as shall be prescribed by the commission;

33 (2) Be imprinted with the seal of the commission and shall contain such other information
34 as the commission may prescribe: *Provided*, That a salesperson's and an associate broker's
35 license shall show the name of the broker by whom he or she is employed;

36 (3) In the case of an active licensee, be mailed or delivered to the broker's main office
37 address;

38 (4) In the case of an inactive licensee, be held in the commission office;

39 (5) Be valid for a period that coincides with the fiscal year beginning on July 1, and ending
40 on June 30 and may be issued for a period covering more than one fiscal year at the discretion
41 of the commission: *Provided*, That nothing contained herein shall authorize any person to transact
42 real estate business prior to becoming properly licensed.

§30A-23-18. Trust fund accounts.

1 (a) Every person licensed as a broker under the provisions of this article who does not
2 immediately deliver all funds received, in relation to a real estate transaction, to his or her principal
3 or to a neutral escrow depository shall maintain one or more trust fund accounts in a recognized
4 financial institution and shall place all funds therein: *Provided*, That nothing contained herein shall
5 require a broker to maintain a trust fund account if the broker does not hold any money in trust for
6 another party.

7 (b) Funds that must be deposited into a trust fund account include, but are not limited to,
8 earnest money deposits, security deposits, rental receipts, auction proceeds and money held in
9 escrow at closing.

10 (c) Each trust fund account must be established at a financial institution which is insured
11 against loss by an agency of the federal government and the amount deposited therein cannot
12 exceed the amount that is insured against loss.

13 (d) Each trust fund account must provide for the withdrawal of funds without notice.

14 (e) No trust fund account may earn interest or any other form of income, unless specifically
15 authorized by commission rule.

16 (f) The broker may not commingle his or her own funds with trust funds and the account
17 may not be pledged as collateral for a loan or otherwise utilized by the broker in a manner that
18 would violate his or her fiduciary obligations in relation to the trust funds: *Provided*, That nothing
19 contained herein prevents the broker from depositing a maximum of \$100 of his or her own money
20 in the trust fund account to maintain a minimum balance in the account.

21 (g) No financial institution, in which a trust fund account is established under the provisions
22 of this article, shall require a minimum balance in excess of the amount authorized in subsection
23 (f) of this section.

24 (h) The broker shall be the designated trustee of the account and shall maintain complete
25 authority and control over all aspects of each trust fund account, including signature authority:
26 *Provided*, That only one other member or officer of a corporation, association or partnership, who
27 is licensed under the provisions of this article, may be authorized to disburse funds from the
28 account: *Provided, however*, That if disbursements from a trust fund account require two
29 signatures, one additional member or officer may be a signatory as provided in this section.

30 (i) The broker shall, at a minimum, maintain records of all funds deposited into the trust
31 fund account, which shall clearly indicate the date and from whom the money was received, date
32 deposited, date of withdrawal, to whom the money belongs, for whose account the money was
33 received and other pertinent information concerning the transaction. All records shall be open to
34 inspection by the commission or its duly authorized representative at all times during regular
35 business hours at the broker's place of business.

36 (j) The broker shall cause the financial institution wherein a trust fund account is
37 maintained, to execute a statement, prepared by the commission, which shall include, but is not
38 limited to:

- 39 (1) Exact title of the account as registered by the financial institution;
- 40 (2) The account number of the trust fund account;
- 41 (3) Identification of all persons authorized to make withdrawals from the account;
- 42 (4) Name and address of the financial institution;
- 43 (5) Title of the person executing the statement on behalf of the financial institution;
- 44 (6) Date the statement was executed; and
- 45 (7) Certification that the financial institution will notify the Real Estate Commission if any
46 checks drawn against the account are returned for insufficient funds and that the financial

47 institution does not require a minimum balance in excess of the amount authorized in subsection
48 (f) of this section.

49 (k) The broker shall execute a statement authorizing the commission, or its duly authorized
50 representative, to make periodic inspections of the trust fund account and to obtain copies of
51 records from any financial institution wherein a trust fund account is maintained. A copy of any
52 authorization shall be accepted by any financial institution with the same force and effect as the
53 original.

54 (l) The broker shall notify the commission, within ten days, of the establishment of or any
55 change to a trust fund account.

56 (m) Nothing provided in this section creates any duty or obligation on a financial institution
57 to monitor the activities of a broker designated as trustee of a trust fund account, except for those
58 duties or obligations specifically provided in subsection (g) of this section and subdivision (7),
59 subsection (j) of this section.

§30A-23-19. Refusal, suspension or revocation of a license.

1 (a) The commission shall have full power to refuse a license for reasonable cause or to
2 revoke, suspend or impose any other sanction against a licensee if the licensee:

3 (1) Obtains, renews or attempts to obtain or renew a license, for himself, herself or
4 another, through the submission of any application or other writing that contains false, fraudulent
5 or misleading information;

6 (2) Makes any substantial misrepresentation;

7 (3) Makes any false promises or representations of a character likely to influence,
8 persuade or induce a person involved in a real estate transaction;

9 (4) Pursues a course of misrepresentation or makes false promises or representations
10 through agents or any medium of advertising or otherwise;

11 (5) Uses misleading or false advertising;

12 (6) Uses any trade name or insignia of membership in any organization in which the

13 licensee is not a member;

14 (7) Acts for more than one party in a transaction without the knowledge and written consent
15 of all parties for whom he or she acts;

16 (8) Fails, within a reasonable time, to account for or to remit moneys or other assets
17 coming into his or her possession, which belong to others;

18 (9) Commingles moneys belonging to others with his or her own funds;

19 (10) Advertises or displays a "for sale", "for rent" or other such sign on any property without
20 an agency relationship being established or without the owner's knowledge and written consent;

21 (11) Advertises any property on terms other than those authorized by the owner;

22 (12) Fails to disclose, on the notice of agency relationship form promulgated by the
23 commission, whether the licensee represents the seller, buyer or both;

24 (13) Fails to voluntarily furnish copies of the notice of agency relationship, listing contract,
25 sale contract, lease contract or any other contract to each party executing the same;

26 (14) Pays or receives any rebate, profit, compensation, commission or other valuable
27 consideration, resulting from a real estate transaction, to or from any person other than the
28 licensee's principal: *Provided*, That this subsection may not be construed to prevent the sharing
29 of compensation or other valuable consideration between licensed brokers;

30 (15) Induces any person to a contract to break the contract for the purpose of substituting
31 a new contract with a third party;

32 (16) Accepts compensation as a salesperson or associate broker for any act specified in
33 this article from any person other than his or her employer who must be a broker;

34 (7) Pays compensation to any person for acts or services performed either in violation of
35 this article or the real estate licensure laws of any other jurisdiction;

36 (8) Pays a compensation to any person knowing that they will pay a portion or all of that
37 which is received, in a manner that would constitute a violation of this article if it were paid directly
38 by a licensee of this state;

39 (19) Violates any of the provisions of this article, any rule or any order or final decision
40 issued by the commission;

41 (20) Procures an attorney for any client or customer, or solicits legal business for any
42 attorney-at-law;

43 (21) Engages in the unlawful or unauthorized practice of law as defined by the Supreme
44 Court of Appeals of West Virginia;

45 (22) Commits or is a party to any material fraud, misrepresentation, concealment,
46 conspiracy, collusion, trick, scheme or other device whereby any other person relies upon the
47 word, representation or conduct of the licensee;

48 (23) Continues in the capacity of or accepts the services of any broker, associate broker
49 or salesperson who is not properly licensed;

50 (24) Fails to disclose any information within his or her knowledge or to produce any
51 document, book or record in his or her possession for inspection of and copying by the
52 commission or its duly authorized representatives;

53 (25) Accepts other than cash or its equivalent as earnest money or other deposit unless
54 this fact is disclosed in the contract to which the deposit relates;

55 (26) Accepts, takes or charges any undisclosed compensation on expenditures made by
56 or on behalf of the licensee's principal;

57 (27) Discriminates against any person involved in a real estate transaction which is in
58 violation of any federal or state antidiscrimination law, including any fair housing law;

59 (28) Fails to preserve for five years following its consummation, records relating to any
60 real estate transaction;

61 (29) Fails to maintain adequate records on the broker's "trust fund account";

62 (30) In the case of a broker, fails to adequately supervise all associate brokers and
63 salespersons employed by him or her;

64 (31) Breaches a fiduciary duty owed by a licensee to his or her principal in a real estate

65 transaction;

66 (32) Directs any party to a real estate transaction in which the licensee is involved, to any
67 lending institution for financing with the expectation of receiving a financial incentive, rebate or
68 other compensation, without first obtaining from his or her principal the signed acknowledgment
69 of and consent to the receipt of the financial incentive, rebate or other compensation;

70 (33) Represents to any lending institution, or other interested party either verbally or
71 through the preparation of false documents, an amount in excess of the true and actual sale price
72 of the real estate or terms differing from those actually agreed upon;

73 (34) Fails to disclose to an owner the licensee's true position if he or she directly or
74 indirectly through a third party, purchases for himself or herself or acquires or intends to acquire
75 any interest in or any option to purchase the property;

76 (35) Lends a broker's license to any person, including a salesperson, or permits a
77 salesperson to operate as a broker;

78 (36) Has been convicted in a court of competent jurisdiction in this or any other jurisdiction
79 of forgery, embezzlement, obtaining money under false pretense, bribery, larceny, extortion,
80 conspiracy to defraud, any other similar offense, a crime involving moral turpitude, or a felony;

81 (37) Engages in any act or conduct which constitutes or demonstrates bad faith,
82 incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing;

83 (38) Induces any person to alter, modify or change another licensee's fee or commission
84 for brokerage services, without that licensee's prior written consent;

85 (39) Negotiates a real estate transaction directly with any person that is represented
86 exclusively by another broker, unless the conduct is specifically authorized by the other broker;

87 (40) Obtains, negotiates or attempts to obtain or negotiate a contract whereby the broker
88 is entitled to a commission only to the extent that the sales price exceeds a given amount,
89 commonly referred to as a net listing;

90 (41) Fails or refuses, on demand, to furnish copies of a document to a person whose

91 signature is affixed to the document;

92 (42) In the case of an associate broker or salesperson, represents or attempts to represent
93 a broker other than his or her employing broker;

94 (43) Fails to reduce a bona fide offer to writing;

95 (44) Guarantees, or authorizes or permits another licensee to guarantee, future profits
96 which may result from a real estate transaction;

97 (45) Is disciplined by another jurisdiction if at least one of the grounds for that discipline is
98 the same as or equivalent to one of the grounds for discipline in this article; or

99 (46) Engages in any other act or omission in violation of professional conduct
100 requirements of licensees established by legislative rule of the commission.

101 (b) The provisions of this section shall be liberally construed in order to carry out the
102 objectives and purposes of this article.

103 (c) As used in this section:

104 (1) The words "convicted in a court of competent jurisdiction" mean a plea of guilty or nolo
105 contendere entered by a person or a verdict of guilt returned against a person at the conclusion
106 of a trial;

107 (2) A certified copy of a conviction order entered in a court is sufficient evidence to
108 demonstrate a person has been convicted in a court of competent jurisdiction.

109 (d) Every person licensed by the commission has an affirmative duty to report, in a timely
110 manner, any known or observed violation of this article or the rules, orders or final decisions of
111 the commission.

112 (e) The revocation of a broker's license shall automatically suspend the license of every
113 associate broker and salesperson employed by the broker: *Provided*, That the commission shall
114 issue a replacement license for any licensee so affected to a new employing broker, without
115 charge, if a proper application is submitted to the commission during the same license term.

116 (f) A licensee whose license has been revoked shall be ineligible to apply for a new license

117 until after the expiration of two years from the date of revocation.

§30A-23-20. Complaints; investigation.

1 (a) The commission may upon its own motion and shall upon the filing of a complaint
2 setting forth a cause of action under this article, or the rules promulgated thereunder, ascertain
3 the facts and if warranted hold a hearing for the suspension or revocation of a license, or the
4 imposition of sanctions against a licensee: *Provided*, That no disciplinary action may be brought
5 against a licensee upon any complaint that is filed more than two years after the acts or omissions
6 alleged in the complaint or, where the licensee is alleged to have engaged in fraud, deceit or
7 misrepresentation, more than two years after the date at which the complainant discovered, or
8 through reasonable diligence should have discovered, the alleged unprofessional conduct. Time
9 limits for the filing of a complaint shall be tolled during any period in which material evidence
10 necessary for the commission's evaluation or use is unavailable to the commission due to an
11 ongoing criminal investigation or prosecution.

12 (b) All complaints must be submitted in writing and must fully describe the acts or
13 omissions constituting the alleged unprofessional conduct.

14 (c) Upon initiation or receipt of the complaint, the commission shall provide a copy of the
15 complaint to the licensee for his or her response to the allegations contained in the complaint.
16 The accused party shall file an answer within twenty days of the date of service. Failure of the
17 licensee to file a timely response may be considered an admission of the allegations in the
18 complaint: *Provided*, That nothing contained herein shall prohibit the accused party from obtaining
19 an extension of time to file a response, if the commission, its executive director or other authorized
20 representative permits the extension.

21 (d) The commission may cause an investigation to be made into the facts and
22 circumstances giving rise to the complaint and any person licensed by the commission has an
23 affirmative duty to assist the commission, or its authorized representative, in the conduct of its
24 investigation.

25 (e) After receiving the licensee's response and reviewing any information obtained through
26 investigation, the commission shall determine if probable cause exists that the licensee has
27 violated any provision of this article or the rules.

28 (f) If a determination that probable cause exists for disciplinary action, the commission
29 may hold a hearing in compliance with section twenty-one of this article or may dispose of the
30 matter informally through a consent agreement or otherwise.

§30A-23-21. Hearings; judicial review; cost of proceedings.

1 (a) Hearings shall be conducted in accordance with the provisions of article five, chapter
2 twenty-nine-a of this code and the commission's rules.

3 (b) Hearings shall be held at a time and place determined by the commission, but in no
4 event less than thirty days after the notice of hearing is given.

5 (c) Any member has the authority to administer oaths and to examine any person under
6 oath.

7 (d) If, after hearing, the commission determines the licensee has violated any provision of
8 this article, or the commission's rules, a formal decision shall be prepared which contains findings
9 of fact, conclusions of law and specifically lists the disciplinary actions imposed.

10 (e) The commission may elect to have an administrative law judge or hearing examiner
11 conduct the hearing. If the commission makes this election, the administrative law judge or
12 hearing examiner, at the conclusion of a hearing, shall prepare a proposed order which shall
13 contain findings of fact and conclusions of law. The commission may request that disciplinary
14 actions imposed be a part of the proposed order, or may reserve this obligation for its
15 consideration. The commission may accept, reject or modify the decision of the administrative
16 law judge or hearing examiner.

17 (f) Any person adversely affected by any decision or final order made by the commission,
18 after a hearing, is entitled to judicial review by the circuit court of the county where the hearing
19 was held.

20 (g) In addition to any other sanction imposed, the commission may require a licensee to
21 pay the costs of the proceeding.

§30A-23-22. Penalties for violations.

1 (a) Any person violating a provision of this article or the commission's rules is guilty of a
2 misdemeanor. Any person convicted of a first violation shall be fined not less than \$1,000 nor
3 more than \$2,000, or confined in the county or regional jail not more than ninety days, or both
4 fined and confined;

5 (b) Any person convicted of a second or subsequent violation shall be fined not less than
6 \$2,000 nor more than \$5,000, or confined in the county or regional jail for a term not to exceed
7 one year, or both fined and confined;

8 (c) Any corporation, association or partnership convicted of a first violation of this article
9 or the commission's rules, shall be fined not less than \$2,000 nor more than \$5,000;

10 (d) Any corporation, association or partnership convicted of a second or subsequent
11 violation, shall be fined not less than \$5,000 nor more than \$10,000;

12 (e) Any officer, member, employee or agent of a corporation, association or partnership,
13 shall be subject to the penalties herein prescribed for individuals;

14 (f) Each and every day a violation of this article continues shall constitute a separate
15 offense;

16 (g) In addition to the penalties herein provided, if any person receives compensation for
17 acts or services performed in violation of this article, he or she shall also be subject to a penalty
18 of not less than the value of the compensation received nor more than three times the value of
19 the compensation received, as may be determined by a court of competent jurisdiction. Any
20 penalty may be recovered by a person aggrieved as a result of a violation of this article;

21 (h) The penalties provided in this section do not apply to a violation of the duties or
22 obligations of a financial institution under the certification required by subdivision (7), subsection
23 (j), section eighteen of this article by a financial institution providing trust fund account services to

24 a broker.

§30A-23-23. Single act evidence of practice.

1 One act by any person in consideration of receiving compensation, or with the expectation
2 or intention of receiving such compensation, or upon the promise of receiving compensation for
3 any act or service contained in this article shall constitute and consider the person a broker,
4 associate broker or salesperson subject to the provisions of this article.

§30A-23-24. Injunctions; criminal proceedings.

1 (a) Whenever the commission or other interested person believes that any person has
2 engaged, is engaging or is about to engage in any act that constitutes a violation of this article,
3 the commission or other interested person may make application to any court of competent
4 jurisdiction for an order enjoining the acts or services. Upon a showing that the person has
5 engaged in or is about to engage in any act which violates this article, an injunction, restraining
6 order or another appropriate order may be granted by the court without bond.

7 (b) Whenever the commission, its executive director or its authorized representative has
8 reason to believe that any person has knowingly violated a provision of this article, the commission
9 or its authorized representative may bring its information to the prosecuting attorney in the county
10 where the violation has occurred who shall cause appropriate criminal proceedings to be brought.

11 (c) Whenever any other interested person has reason to believe that any person has
12 knowingly violated a provision of this article, such person may bring its information to the attention
13 of the appropriate law-enforcement officer who may cause an investigation to be made in order
14 for appropriate criminal proceedings to be brought.

§30A-23-25. Collection of compensation.

1 No person may bring or maintain any action in any court of this state for the recovery of
2 compensation for the performance of any act or service for which a broker's license is required,
3 without alleging and proving that he or she was the holder of a valid broker's license at all times
4 during the performance or rendering of any act or service: *Provided*, That an associate broker or

5 salesperson shall have the right to institute suit in his or her own name for the recovery of
6 compensation from his or her employing broker for acts or services performed while in the employ
7 of said employing broker.

§30A-23-26. Duties of licensees.

1 Every broker, associate broker and salesperson owes certain inherent duties to the
2 consumer which are required by virtue of the commission granting a license under this article.
3 The duties include, but are not limited to:

4 (a) At the time of securing any contract whereby the broker is obligated to represent a
5 principal to a real estate transaction, every licensee shall supply a true legible copy of the contract
6 to each person signing the contract.

7 (b) Any contract in which a broker is obligated to represent a principal to a real estate
8 transaction shall contain a definite expiration date, and no provision may be included in any
9 contract whereby the principal is required to notify the broker of his or her intention to cancel the
10 contract after the definite expiration date.

11 (c) No provision may be inserted in any contract for representation that would obligate the
12 person signing the contract to pay a fee, commission or other valuable consideration to the broker,
13 after the contract's expiration date, if the person subsequently enters into a contract for
14 representation with a different broker.

15 (d) Every licensee shall disclose in writing, on the notice of agency relationship form
16 promulgated by the commission, whether the licensee represents the seller, the buyer or both.
17 The disclosure shall be made prior to any person signing any contract for representation by a
18 licensee or a contract for the sale or purchase of real estate.

19 (e) Every licensee shall promptly deliver to his or her principal, every written offer received.

20 (f) Every licensee shall make certain that all the terms and conditions of a real estate
21 transaction are contained in any contract prepared by the licensee.

22 (g) At the time of securing the signature of any party to a contract, the licensee shall deliver

23 a true copy of the contract to the person whose signature was obtained.

24 (h) Upon the final acceptance or ratification of any contract, the licensee shall promptly

25 deliver a true copy to each party that has signed the contract.

§30A-23-27. Duration of existing licenses.

1 Any valid license issued by the commission to a broker, associate broker or salesperson

2 pursuant to the provisions of article twelve, chapter forty-seven of this code prior to the effective

3 date of this article shall continue to be valid until June 30, 2002.

NOTE: The purpose of this bill is to move non-health related professions and occupations from Chapter 30 of the code to a new Chapter 30A. The old and new references are shown in the title. No substantive changes were made in the transferred articles.

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