

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 269

BY SENATORS MAYNARD, SWOPE, AND KARNES

[Introduced February 12, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §21-17-1, §21-17-2, §21-17-3, §21-17-4, §21-17-5, §21-17-6, §21-17-7, §21-
 3 17-8, §21-17-9, §21-17-10, §21-17-11, and §21-17-12; to amend said code by adding
 4 thereto a new article, designated §29-33-1, §29-33-2, §29-33-3, §29-33-4, §29-33-5, §29-
 5 33-6, §29-33-7, §29-33-8, §29-33-9, §29-33-10, §29-33-11, and §29-33-12; to amend said
 6 code by adding thereto a new article, designated §30-1F-1, §30-1F-2, §30-1F-3, §30-1F-
 7 4, §30-1F-5, §30-1F-6, §30-1F-7, §30-1F-8, §30-1F-9, §30-1F-10, §30-1F-11, and §30-
 8 1F-12, all relating to occupational licensing or other authorization to practice; providing for
 9 definitions; providing for an application method for persons with a valid license in another
 10 state to be licensed in this state; establishing that an applicant seeking licensure in this
 11 state not have ever had a license revoked or suspended in another state; providing that
 12 an applicant seeking licensure in this state not have any pending investigations or
 13 disciplinary proceedings in another state; providing that the boards in every state where a
 14 person is licensed hold an applicant in good standing for licensure in this state; providing
 15 that an applicant pay all applicable fees; providing that an applicant meet all state bonding
 16 requirements for licensure in this state; providing for an application fee that may be
 17 assessed by the board; and requiring recognition for qualified applicants from other states.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 17. UNIVERSAL RECOGNITION OF OCCUPATIONAL LICENSES ACT.

§21-17-1. Applicability.

1 The provisions of this article apply to all professions requiring an occupational license or
 2 other authorization to practice or perform a specific occupation in this state regulated by this
 3 chapter.

§21-17-2. Definitions.

1 The words defined in this section have the meanings given them for purposes of this article
2 unless the context clearly requires otherwise.

3 “Board” means a government agency, board, department, or other government entity that
4 regulates a lawful occupation and issues an occupational license or other authorization to practice
5 to an individual.

6 “Lawful occupation” means a course of conduct, pursuit, or profession that includes the
7 sale of goods or services that are not themselves illegal to sell irrespective of whether the
8 individual selling them is subject to an occupational license.

9 “Occupational license” is a nontransferable authorization in law for an individual to perform
10 or practice a lawful occupation based on meeting personal qualifications established by the
11 Legislature. In an occupation for which a license is required, it is illegal for an individual who does
12 not possess a valid occupational license to perform or practice the occupation.

13 “Other authorization to practice” is a nontransferable acknowledgment, other than a
14 license, by a state government or board that is provided to an individual asserting that the
15 individual has met the educational and examination requirements to engage in a lawful
16 occupation.

17 “Other state” or “another state” means any United States territory or state in the United
18 States other than this state.

19 “Private certification” is a voluntary program in which a private organization grants
20 nontransferable recognition to an individual who meets personal qualifications and standards
21 relevant to performing the occupation as determined by the private organization. The individual
22 may use the designated title of “certified,” as permitted by the private organization.

23 “Scope of practice” means the procedures, actions, processes, and work that a person
24 may perform under an occupational license or other authorization to practice issued in this state.

§21-17-3. Occupational license or other authorization to practice.

1 (a) Notwithstanding any other law, the board shall issue an occupational license or other

2 authorization to practice to a person upon application, if all the following apply:

3 (1) The person holds a valid occupational license or other authorization to practice in
4 another state in a lawful occupation with a similar scope of practice, as determined by the board
5 in this state;

6 (2) The person has held the occupational license or other authorization to practice in the
7 other state for at least one year;

8 (3) The person has met all educational and examination requirements for occupational
9 licensure or other authorization to practice in the state where he or she holds a valid license;

10 (4) A board in all other states where a person is licensed holds the person in good
11 standing;

12 (5) The person does not have a disqualifying criminal record as determined by the board
13 in this state;

14 (6) The person has never had his or her license or other authorization to practice revoked
15 by the board in another state revoked the person's occupational license or other authorization to
16 practice because of negligence or intentional misconduct related to the person's work in the
17 occupation;

18 (7) The person did not surrender an occupational license or other authorization to practice
19 because of negligence or intentional misconduct related to the person's work in the occupation in
20 another state;

21 (8) The person does not have a complaint, allegation, or investigation pending before a
22 board in another state. If the person has a complaint, allegation, or investigation pending, the
23 board in this state shall not issue or deny an occupational license or other authorization to practice
24 to the person until the complaint, allegation, or investigation is resolved; and

25 (9) The person pays all applicable fees and meet all applicable bonding requirements in
26 this state.

27 (b) If this state requires an occupational license to work, but another state does not issue

28 an occupational license for the same profession and instead issues another authorization to
29 practice, this state shall issue an occupational license to the person if the person otherwise
30 satisfies subsection (a) of this section.

§21-17-4. Work experience.

1 Notwithstanding any other law, the board shall issue an occupational license or other
2 authorization to practice to a person upon application based on work experience in another state,
3 if all the following apply:

4 (1) The person worked in a state that does not use an occupational license or other
5 authorization to practice that regulates a lawful occupation, but this state uses an occupational
6 license or other authorization to practice that regulates a lawful occupation with a similar scope
7 of practice, as determined by the board;

8 (2) The person worked for at least one year the lawful occupation; and

9 (3) The person satisfies §30-1F-3(a)(5) through (9) of this code.

§21-17-5. Private certification.

1 Notwithstanding any other law, the board shall issue an occupational license or other
2 authorization to practice to a person based on holding a private certification and work experience
3 in another state, if all the following apply:

4 (1) The person holds a private certification and worked in a state that does not use an
5 occupational license or other authorization to practice that regulates a lawful occupation, but this
6 state uses an occupational license or other authorization to practice that regulates a lawful
7 occupation with a similar scope of practice, as determined by the board;

8 (2) The person worked for at least one year in the lawful occupation;

9 (3) The person holds a current and valid private certification in the lawful occupation;

10 (4) The private certification organization holds the person in good standing; and

11 (5) The person satisfies §30-1F-3(a)(5) through (9) of this code.

§21-17-6. State law examination.

1 A board may require a person to pass a jurisprudential examination specific to relevant
2 state laws that regulate the occupation if an occupational license or other authorization to practice
3 in this state requires a person to pass a jurisprudential examination specific to relevant state
4 statutes and administrative rules that regulate the occupation.

§21-17-7. Decision.

1 The board will provide the person with a written decision regarding the application within
2 60 days after receiving a complete application.

§21-17-8. Appeal.

- 1 (a) The person may appeal the board's decision to a court of general jurisdiction.
2 (b) The person may appeal the board's:
3 (1) Denial of an occupational license or other authorization to practice;
4 (2) Determination of the occupation;
5 (3) Determination of the similarity of the scope of practice of the occupational license or
6 other authorization to practice; or
7 (4) Other determinations under this article.

§21-17-9. State laws and jurisdiction.

- 1 A person who obtains an occupational license or other authorization to practice pursuant
2 to this article is subject to:
3 (1) The laws regulating the occupation in this state; and
4 (2) The jurisdiction of the board in this state.

§21-17-10. Limitations.

- 5 (a) An occupational license or other authorization to practice issued pursuant to this article
6 is valid only in this state. It does not make the person eligible to work in another state under an
7 interstate compact or reciprocity agreement unless otherwise provided in law.
8 (b) Nothing in this article prevents this state from entering into a licensing compact or
9 reciprocity agreement with another state, foreign province, or foreign country.

10 (c) Nothing in this article prevents this state from recognizing occupational credentials
 11 issued by a private certification organization, foreign province, foreign country, international
 12 organization, or other entity.

13 (d) Nothing in this article requires a private certification organization to grant or deny
 14 private certification to any individual.

§21-17-11. Cost for application.

1 The board may charge a fee to the person to recoup its costs. The fee may not exceed
 2 the cost of an application for original licensure charged by the board, or may not exceed \$100 for
 3 each application, whichever is lower.

§21-17-12. Preemption.

1 This article preempts laws by township, municipal, county, and other governments in the
 2 state which regulate occupational licenses and other authorization to practice.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 33. UNIVERSAL RECOGNITION OF OCCUPATIONAL LICENSES ACT.

§29-33-1. Applicability.

1 The provisions of this article apply to all professions requiring an occupational license or
 2 other authorization to practice or perform a specific occupation in this state regulated by this
 3 chapter.

§29-33-2. Definitions.

1 The words defined in this section have the meanings given them for purposes of this article
 2 unless the context clearly requires otherwise.

3 “Board” means a government agency, board, department, or other government entity that
 4 regulates a lawful occupation and issues an occupational license or other authorization to practice
 5 to an individual.

6 “Lawful occupation” means a course of conduct, pursuit, or profession that includes the

7 sale of goods or services that are not themselves illegal to sell irrespective of whether the
8 individual selling them is subject to an occupational license.

9 “Occupational license” is a nontransferable authorization in law for an individual to perform
10 or practice a lawful occupation based on meeting personal qualifications established by the
11 Legislature. In an occupation for which a license is required, it is illegal for an individual who does
12 not possess a valid occupational license to perform or practice the occupation.

13 “Other authorization to practice” is a nontransferable acknowledgment, other than a
14 license, by a state government or board that is provided to an individual asserting that the
15 individual has met the educational and examination requirements to engage in a lawful
16 occupation.

17 “Other state” or “another state” means any United States territory or state in the United
18 States other than this state.

19 “Private certification” is a voluntary program in which a private organization grants
20 nontransferable recognition to an individual who meets personal qualifications and standards
21 relevant to performing the occupation as determined by the private organization. The individual
22 may use the designated title of “certified,” as permitted by the private organization.

23 “Scope of practice” means the procedures, actions, processes, and work that a person
24 may perform under an occupational license or other authorization to practice issued in this state.

§29-33-3. Occupational license or other authorization to practice.

1 (a) Notwithstanding any other law, the board shall issue an occupational license or other
2 authorization to practice to a person upon application, if all the following apply:

3 (1) The person holds a valid occupational license or other authorization to practice in
4 another state in a lawful occupation with a similar scope of practice, as determined by the board
5 in this state;

6 (2) The person has held the occupational license or other authorization to practice in the
7 other state for at least one year;

8 (3) The person has met all educational and examination requirements for occupational
9 licensure or other authorization to practice in the state where he or she holds a valid license;

10 (4) A board in all other states where a person is licensed holds the person in good
11 standing;

12 (5) The person does not have a disqualifying criminal record as determined by the board
13 in this state;

14 (6) The person has never had his or her license or other authorization to practice revoked
15 by the board in another state revoked the person's occupational license or other authorization to
16 practice because of negligence or intentional misconduct related to the person's work in the
17 occupation;

18 (7) The person did not surrender an occupational license or other authorization to practice
19 because of negligence or intentional misconduct related to the person's work in the occupation in
20 another state;

21 (8) The person does not have a complaint, allegation, or investigation pending before a
22 board in another state. If the person has a complaint, allegation, or investigation pending, the
23 board in this state shall not issue or deny an occupational license or other authorization to practice
24 to the person until the complaint, allegation, or investigation is resolved; and

25 (9) The person pays all applicable fees and meet all applicable bonding requirements in
26 this state.

27 (b) If this state requires an occupational license to work, but another state does not issue
28 an occupational license for the same profession and instead issues another authorization to
29 practice, this state shall issue an occupational license to the person if the person otherwise
30 satisfies subsection (a) of this section.

§29-33-4. Work experience.

1 Notwithstanding any other law, the board shall issue an occupational license or other
2 authorization to practice to a person upon application based on work experience in another state,

3 if all the following apply:

4 (1) The person worked in a state that does not use an occupational license or other
5 authorization to practice that regulates a lawful occupation, but this state uses an occupational
6 license or other authorization to practice that regulates a lawful occupation with a similar scope
7 of practice, as determined by the board;

8 (2) The person worked for at least one year the lawful occupation; and

9 (3) The person satisfies §30-1F-3(a)(5) through (9) of this code.

§29-33-5. Private certification.

1 Notwithstanding any other law, the board shall issue an occupational license or other
2 authorization to practice to a person based on holding a private certification and work experience
3 in another state, if all the following apply:

4 (1) The person holds a private certification and worked in a state that does not use an
5 occupational license or other authorization to practice that regulates a lawful occupation, but this
6 state uses an occupational license or other authorization to practice that regulates a lawful
7 occupation with a similar scope of practice, as determined by the board;

8 (2) The person worked for at least one year in the lawful occupation;

9 (3) The person holds a current and valid private certification in the lawful occupation;

10 (4) The private certification organization holds the person in good standing; and

11 (5) The person satisfies §30-1F-3(a)(5) through (9) of this code.

§29-33-6. State law examination.

1 A board may require a person to pass a jurisprudential examination specific to relevant
2 state laws that regulate the occupation if an occupational license or other authorization to practice
3 in this state requires a person to pass a jurisprudential examination specific to relevant state
4 statutes and administrative rules that regulate the occupation.

§29-33-7. Decision.

1 The board will provide the person with a written decision regarding the application within

2 60 days after receiving a complete application.

§29-33-8. Appeal.

1 (a) The person may appeal the board’s decision to a court of general jurisdiction.

2 (b) The person may appeal the board’s:

3 (1) Denial of an occupational license or other authorization to practice;

4 (2) Determination of the occupation;

5 (3) Determination of the similarity of the scope of practice of the occupational license or
6 other authorization to practice; or

7 (4) Other determinations under this article.

§29-33-9. State laws and jurisdiction.

1 A person who obtains an occupational license or other authorization to practice pursuant
2 to this article is subject to:

3 (1) The laws regulating the occupation in this state; and

4 (2) The jurisdiction of the board in this state.

§29-33-10. Limitations.

5 (a) An occupational license or other authorization to practice issued pursuant to this article
6 is valid only in this state. It does not make the person eligible to work in another state under an
7 interstate compact or reciprocity agreement unless otherwise provided in law.

8 (b) Nothing in this article prevents this state from entering into a licensing compact or
9 reciprocity agreement with another state, foreign province, or foreign country.

10 (c) Nothing in this article prevents this state from recognizing occupational credentials
11 issued by a private certification organization, foreign province, foreign country, international
12 organization, or other entity.

13 (d) Nothing in this article requires a private certification organization to grant or deny
14 private certification to any individual.

§29-33-11. Cost for application.

1 The board may charge a fee to the person to recoup its costs. The fee may not exceed
2 the cost of an application for original licensure charged by the board, or may not exceed \$100 for
3 each application, whichever is lower.

§29-33-12. Preemption.

1 This article preempts laws by township, municipal, county, and other governments in the
2 state which regulate occupational licenses and other authorization to practice.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1F. UNIVERSAL RECOGNITION OF OCCUPATIONAL LICENSES ACT.

§30-1F-1. Applicability.

1 The provisions of this article apply to all boards offering an occupational license or other
2 authorization to practice or perform a specific occupation in this state regulated by this chapter.

§30-1F-2. Definitions.

3 The words defined in this section have the meanings given them for purposes of this article
4 unless the context clearly requires otherwise.

5 “Board” means a government agency, board, department, or other government entity that
6 regulates a lawful occupation and issues an occupational license or other authorization to practice
7 to an individual.

8 “Lawful occupation” means a course of conduct, pursuit, or profession that includes the
9 sale of goods or services that are not themselves illegal to sell irrespective of whether the
10 individual selling them is subject to an occupational license.

11 “Occupational license” is a nontransferable authorization in law for an individual to perform
12 or practice a lawful occupation based on meeting personal qualifications established by the
13 Legislature. In an occupation for which a license is required, it is illegal for an individual who does
14 not possess a valid occupational license to perform or practice the occupation.

15 “Other authorization to practice” is a nontransferable acknowledgment, other than a

16 license, by a state government or board that is provided to an individual asserting that the
17 individual has met the educational and examination requirements to engage in a lawful
18 occupation.

19 “Other state” or “another state” means any United States territory or state in the United
20 States other than this state.

21 “Private certification” is a voluntary program in which a private organization grants
22 nontransferable recognition to an individual who meets personal qualifications and standards
23 relevant to performing the occupation as determined by the private organization. The individual
24 may use the designated title of “certified,” as permitted by the private organization.

25 “Scope of practice” means the procedures, actions, processes, and work that a person
26 may perform under an occupational license or other authorization to practice issued in this state.

§30-1F-3. Occupational license or other authorization to practice.

1 (a) Notwithstanding any other law, the board shall issue an occupational license or other
2 authorization to practice to a person upon application, if all the following apply:

3 (1) The person holds a valid occupational license or other authorization to practice in
4 another state in a lawful occupation with a similar scope of practice, as determined by the board
5 in this state;

6 (2) The person has held the occupational license or other authorization to practice in the
7 other state for at least one year;

8 (3) The person has met all educational and examination requirements for occupational
9 licensure or other authorization to practice in the state where he or she holds a valid license;

10 (4) A board in all other states where a person is licensed holds the person in good
11 standing;

12 (5) The person does not have a disqualifying criminal record as determined by the board
13 in this state;

14 (6) The person has never had his or her license or other authorization to practice revoked

15 by the board in another state revoked the person's occupational license or other authorization to
16 practice because of negligence or intentional misconduct related to the person's work in the
17 occupation;

18 (7) The person did not surrender an occupational license or other authorization to practice
19 because of negligence or intentional misconduct related to the person's work in the occupation in
20 another state;

21 (8) The person does not have a complaint, allegation, or investigation pending before a
22 board in another state. If the person has a complaint, allegation, or investigation pending, the
23 board in this state shall not issue or deny an occupational license or other authorization to practice
24 to the person until the complaint, allegation, or investigation is resolved; and

25 (9) The person pays all applicable fees in this state.

26 (b) If this state requires an occupational license to work, but another state does not issue
27 an occupational license for the same profession and instead issues another authorization to
28 practice, this state shall issue an occupational license to the person if the person otherwise
29 satisfies subsection (a) of this section.

§30-1F-4. Work experience.

1 Notwithstanding any other law, the board shall issue an occupational license or other
2 authorization to practice to a person upon application based on work experience in another state,
3 if all the following apply:

4 (1) The person worked in a state that does not use an occupational license or other
5 authorization to practice that regulates a lawful occupation, but this state uses an occupational
6 license or other authorization to practice to regulate a lawful occupation with a similar scope of
7 practice, as determined by the board;

8 (2) The person worked for at least one year the lawful occupation; and

9 (3) The person satisfies §30-1F-3(a)(5) through (9) of this code.

§30-1F-5. Private certification.

1 Notwithstanding any other law, the board shall issue an occupational license or other
 2 authorization to practice to a person based on holding a private certification and work experience
 3 in another state, if all the following apply:

4 (1) The person holds a private certification and worked in a state that does not use an
 5 occupational license or other authorization to practice that regulates a lawful occupation, but this
 6 state uses an occupational license or other authorization to practice that regulates a lawful
 7 occupation with a similar scope of practice, as determined by the board;

8 (2) The person worked for at least one year in the lawful occupation;

9 (3) The person holds a current and valid private certification in the lawful occupation;

10 (4) The private certification organization holds the person in good standing; and

11 (5) The person satisfies §30-1F-3(a)(5) through (9) of this code.

§30-1F-6. State law examination.

1 A board may require a person to pass a jurisprudential examination specific to relevant
 2 state laws that regulate the occupation if an occupational license or other authorization to practice
 3 in this state requires a person to pass a jurisprudential examination specific to relevant state
 4 statutes and administrative rules that regulate the occupation.

§30-1F-7. Decision.

1 The board will provide the person with a written decision regarding the application within
 2 60 days after receiving a complete application.

§30-1F-8. Appeal.

1 (a) The person may appeal the board's decision to a court of general jurisdiction.

2 (b) The person may appeal the board's:

3 (1) Denial of an occupational license or other authorization to practice;

4 (2) Determination of the occupation;

5 (3) Determination of the similarity of the scope of practice of the occupational license or
 6 other authorization to practice; or

7 (4) Other determinations under this article.

§30-1F-9. State laws and jurisdiction.

1 A person who obtains an occupational license or other authorization to practice pursuant
2 to this article is subject to:

3 (1) The laws regulating the occupation in this state; and

4 (2) The jurisdiction of the board in this state.

§30-1F-10. Limitations.

5 (a) An occupational license or other authorization to practice issued pursuant to this article
6 is valid only in this state. It does not make the person eligible to work in another state under an
7 interstate compact or reciprocity agreement unless otherwise provided in law.

8 (b) Nothing in this article prevents this state from entering into a licensing compact or
9 reciprocity agreement with another state, foreign province, or foreign country.

10 (c) Nothing in this article prevents this state from recognizing occupational credentials
11 issued by a private certification organization, foreign province, foreign country, international
12 organization, or other entity.

13 (d) Nothing in this article requires a private certification organization to grant or deny
14 private certification to any individual.

§30-1F-11. Cost for application.

1 The board may charge a fee to the person to recoup its costs. The fee may not exceed
2 the cost of an application for original licensure charged by the board, or may not exceed \$100 for
3 each application, whichever is lower.

§30-1F-12. Preemption.

1 This article preempts laws by township, municipal, county, and other governments in the
2 state which regulate occupational licenses and other authorization to practice.

NOTE: The purpose of this bill is to provide for occupational licenses or other authorization

to practice by recognition for qualified applicants from other states.

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