



WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
9/22/2022 3:41:07 PM
Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Landscape Architects
RULE TYPE: Legislative TITLE-SERIES: 9-01
RULE NAME: Registration of Landscape Architects
CITE AUTHORITY: W.VA. Code §§ 30-22-6

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Kendra D Zamora -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

9CSR1

TITLE 9
LEGISLATIVE RULE
WEST VIRGINIA STATE BOARD OF LANDSCAPE ARCHITECTS
SERIES 1
REGISTRATION OF LANDSCAPE ARCHITECTS

§9-1-1. General.

1.1. Scope. -- This rule sets forth standards for the regulation and conduct of persons or firms wanting to become licensed as a landscape architect or to offer landscape architectural services. This rule is binding upon persons applying and registered under W. Va. Code §§30-22-1 et seq. and is applicable to persons or firms providing landscape architectural services and holding a certificate of authorization.

1.2. Authority. -- W. Va. Code §§30-22-6.

1.3. Filing Date. -- ~~April 22, 2021.~~

1.4. Effective Date. -- ~~April 22, 2021.~~

1.5. Sunset Provision -- This rule shall terminate and have no further force and effect upon ~~expiration of ten (10) years from the filing date~~ August 1, 2033.

§9-1-2. Definitions.

2.1. Terms Defined by Statute -- Terms defined in W. Va. Code §30-22-4 have the same meanings when used in this rule unless the context or subject matter clearly requires a different interpretation.

2.2. Terms Defined -- As used in this rule, the following terms have the following meanings unless the context or subject matter clearly requires a different interpretation:

2.2.a. Applicant Record -- Verified documentation of an individual's education, experience, examination, licensure and professional conduct.

2.2.b. CLARB -- The Council of Landscape Architectural Registration Boards, or its successor.

2.2.c. CLARB Certificate -- A record compiled by CLARB consisting of verified documentation of the certificate holder's education, experience, examination and professional conduct which meet or exceed CLARB's certification standards.

2.2.d. CLARB Uniform Continuing Education Standards -- Standards for content, structure and duration of continuing education that are approved by CLARB's member boards and adopted by the board as the minimum standards for licensure renewal.

2.2.e. COA -- Certificate of Authorization, issued under the provisions of W. Va. Code §30-22-19, to a firm providing landscape architectural services.

2.2.f. Direct Control and Personal Supervision -- That degree of supervision by a landscape architect overseeing the work of another whereby the supervisor has been directly involved in all judgments affecting the health, safety and welfare of the public.

2.2.g. Fiscal Year -- The West Virginia fiscal year, which operates July 1 of the current year through June 30 of the following year.

2.2.h. Good Cause -- Circumstances which prohibit an applicant from executing his or her obligations to the Board. These circumstances may include personal illness, auto accident, child delivery, death or severe illness in the immediate family or other severe physical or emotional hardship.

2.2.i. L.A.R.E. -- The Landscape Architect Registration Examination. An examination prepared by CLARB, designed to determine whether an applicant possesses sufficient knowledge, skills and abilities to provide landscape architectural services without endangering the health, safety and welfare of the public.

2.2.j. PDH -- Professional Development Hour, each unit of which equals fifty (50) minutes of structured coursework designed to increase the landscape architect's knowledge and competence.

2.2.k. Principal -- An individual who is a landscape architect and is in charge of a firm's landscape architectural practice.

2.2.l. Registrant -- A current licensee or COA holder.

2.2.m. Responsible Charge -- The direct control and/or having personal supervision of the practice of landscape architecture.

2.2.n. Seal -- A symbol, image, or information in the form of a rubber stamp, embossed seal, computer generated data, or other form acceptable to the board that is applied or attached to a document to verify authenticity of the document's origin.

§9-1-3. Administration.

3.1. The Board will provide reasonable accommodation to a qualified applicant with a disability in accordance with the Americans with Disabilities Act (ADA), 42 USC Section 12101 et seq. Requests for accommodations must be made in writing and received by the Board by the application deadline along with the appropriate documentation.

3.2. The Board shall retain membership in CLARB and at least one (1) member of the Board may attend meetings of CLARB when approved, as required by the State procedures. Expenses for attending a meeting shall be borne by the Board.

3.3. The West Virginia State Board of Landscape Architects shall hold a regular meeting at least once a year at a time and place to be determined by the Board. A meeting notice shall be given to the Secretary of State at least fourteen (14) days in advance to be made available to the public and news media.

3.4. The Board shall also give notice of the time, place and purpose of all special meetings to the Secretary of State at least fourteen (14) days in advance or as soon as practicable, to be made available to the public and news media.

3.5. Meeting notices shall appear in the West Virginia Register as published by the Secretary of State at least five (5) calendar days before the meeting. The Board shall provide notice of all regular and special meetings directly to the secretaries of other organizations upon written request from the secretaries of such organizations.

3.6. As provided by statute, the notice provisions of this rule are not required in the event of an emergency requiring immediate official action.

§9-1-4. Applications.

4.1. All applicants must be endorsed by ~~four (4)~~ three (3) other persons not related by blood or marriage to the applicant. Two (2) of those endorsing must be landscape architects. No more than one (1) of these landscape architects may be from the applicant's place of employment. The ~~two (2)~~ one (1) non-landscape ~~architects~~ architect may be a general character reference ~~references~~ reference. An applicant may not use a relative or a current Board member as a reference. Applicants unable to obtain endorsements by two (2) landscape architects may use an architect, professional engineer or professional surveyor, licensed in this State, provided that the applicant obtains Board approval for such an endorsement.

4.2. Where the CLARB certificate is transferred to the Board, the forms may be used as part of the normal forms prescribed by the Board.

4.3. The Board may request additional information and/or documentary evidence of qualifications. The Board may also request a personal appearance by the applicant before the Board at a time and place designated by the Board.

4.4. The Board may retain any documents submitted as evidence of qualifications for registration. Notarized photocopies of original documents may be submitted.

4.5. Failure to appear before the Board or to comply with a written request from the Board for additional evidence or information within sixty (60) days of the notice, may be sufficient and just cause for the disapproval of the application.

4.6. The Board shall consider all applicants individually and pass or reject the application by a roll call vote. The Board Secretary shall record the action taken in the minutes. Approval of an applicant requires a majority vote of the Board.

4.7. The Board shall outline the action taken on each application.

4.8. The Board may establish or change the classification under which the applicant is claiming eligibility.

4.9. Appeals from the actions of the Board, unless provided by law, shall be filed with the Board within thirty (30) days from the date of receipt of the notice of such decision. The correspondence shall be sent by certified or registered mail.

4.10. The Board shall issue a certificate of licensure and similar wallet card to an applicant who has met the requirements of this State. The certificate signed by the Board members shall show the applicant's license number and the seal of the Board.

4.11. All fees shall accompany the applications and are non-refundable.

4.12. New Applications.

4.12.a. The Board shall receive applications for registration as a landscape architect at any time during regular business hours at the office of the Board. An applicant shall file an application for written examination with the prescribed examination fee in that office at least ten (10) weeks prior to the date of the examination.

4.12.b. Applicants applying in accordance with W. Va. Code §30-22-9(a) may use military experience to fulfill the required experience, provided that the military experience has been spent in the practice of landscape architecture as defined by the Act.

4.12.c. An applicant may take the L.A.R.E. upon acceptance of his or her application but may not receive a license until successful completion of requirements specified under W. Va. Code §30-22-9(a).

4.12.d. If an applicant receives a degree in landscape architecture from an accredited foreign institution, the Board may review the applicant's transcripts and waive the need to submit additional information.

4.12.e. An applicant shall demonstrate to the Board's satisfaction that he or she has met the experience requirements prescribed in W. Va. Code §30-22-9(a). The Board may require evidence to support the adequacy of the work experience required. Periods of full time employment of less than ten (10) weeks may not be considered as valid work experience. Work experience received outside the United States or Canada is limited to one (1) year maximum. Work experience verifications are the responsibility of the applicant and shall be submitted on forms supplied by the Board as part of the completed application package.

4.13. Reciprocal Applications.

4.13.a. An applicant applying for registration in accordance with W. Va. Code §30-22-11, will be accepted only:

4.13.a.1. If he or she holds a CLARB certification; or

4.13.a.2. If he or she submits satisfactory proof that he or she is registered in good standing in another State.

4.13.b. The applicant may apply for a temporary permit to practice until the next scheduled examination date as provided in section 6 of this rule.

§9-1-5. Examinations.

5.1. An applicant qualifying for licensure in accordance with W. Va. Code §30-22-6(a), shall submit to and pass the L.A.R.E.

5.2. Applicants who fail the examination may retake those portions of the examination not passed at the next regularly scheduled examination period. If the applicant fails to successfully complete those portions failed within a two (2) year period, the Board may require the applicant to retake the entire examination unless he or she can show good cause to the Board.

5.3. The applicant who fails to complete, successfully, all sections of the examination within a five (5) year period may be required to retake the entire examination.

§9-1-6. Temporary Permits.

6.1. An applicant, licensed in another jurisdiction, applying for a temporary permit in accordance with W. Va. Code §30-22-16, shall submit an application on forms prescribed by the Board and pay the required fee.

6.2. The Board may grant a temporary permit to an applicant who desires to practice or offer to practice in this State for a period of time not to exceed one (1) year.

6.3. A temporary permit may not be renewed or a new one issued.

§9-1-7. Renewal, Reinstatement and Replacement

7.1. The registrant shall notify the Board of any change in information previously submitted, such as name change, change of address, change of employer, or similar matter requiring current information within thirty (30) days of the change.

7.2. Licenses expire on June 30th of each year without hearing. Expired licenses may be reinstated after June 30th, as prescribed in subsection 7.5 of this rule.

7.3. Renewals.

7.3.a. The Board shall annually, during the month of April, mail a renewal notice to the last known address of every current registrant. The notice shall indicate the expiration date of the license, the amount of the renewal fee and required continuing education requirements established by the Board.

7.3.b. The registrant shall submit the renewal application, the renewal fee and certification of compliance with continuing education requirements and with the standards of practice and conduct to the Board on or before June 30th of each year.

7.3.c. A late fee shall accompany renewals postmarked after June 30th, along with any non-refundable fees, in accordance with West Virginia State Board of Landscape Architects Rule, Fees, 9 CSR 3.

7.4. Inactive or retired licensee.

7.4.a. A current registrant desiring to have his or her license placed on inactive or retired status shall submit a written request to the Board. Upon receipt of the notification and review, the Board may grant inactive or retired status.

7.4.b. The Board shall reserve the original assigned license number for any registrant who elects to convert to inactive or retired status. This number shall remain on file in the event that the registrant chooses to reinstate his or her license as long as the registrant maintains his or her inactive or retired status.

7.4.c. The Board shall issue an appropriate wallet card to a retired registrant who has met the requirements of this State and who has paid appropriate fees.

7.4.d. The Board may not issue any documentation to the inactive registrant but shall maintain the records of the registrant and note the status of the registrant's license on the annual roster.

7.4.e. Registrants who are granted inactive or retired status are exempt from meeting continuing education requirements.

7.4.f. Registrants who elect inactive status may not hold themselves out as licensed landscape architects or practice landscape architecture in this State.

7.4.g. Registrants who elect retired status shall retire their seal and certify that they are no longer receiving remuneration from providing professional landscape architectural services.

7.4.h. An inactive or retired registrant desiring to have his or her license reinstated shall submit a completed reinstatement application on forms prescribed by the Board, along with the current renewal fee. The registrant shall also complete a minimum of sixteen (16) and no more than thirty two (32) continuing education PDH units.

7.4.i. Inactive or retired registrants who fail to renew their inactive or retired status are subject to late renewal fees established by the Board.

7.4.j. The inactive or retired registrant whose status has been expired for four (4) or more years may be required to submit a new application as prescribed in section 4 of this rule.

7.5. Reinstatement of a license.

7.5.a. A former registrant, whose license has been expired less than four (4) years and who desires to renew his or her license shall submit a completed reinstatement application on forms prescribed by the Board, along with the current renewal and late fees, and the renewal fee for the previous year.

7.5.b. A former registrant, whose license has been expired for four (4) years or more, may be required to submit a new application, as provided in section 4 of this rule. The Board may require the applicant to submit to all or parts of the L.A.R.E.

7.5.c. A former registrant seeking reinstatement shall complete all delinquent continuing education PDH units up to a maximum of thirty two (32) PDH units, as determined by the Board.

7.5.d. The Board may waive the continuing education requirements if the former registrant submits to taking all or parts of the L.A.R.E., and other written and/or oral examinations as a requirement for reinstatement.

7.5.e. A registrant whose license has been reinstated shall be regarded as having been continuously licensed without interruption.

7.6. Any current registrant may obtain replacement for a lost, destroyed or damaged current certificate upon submission of a fee and a written statement indicating the nature of the loss, destruction or damage.

§9-1-8. Seal Requirements.

8.1. All final professional documents, including maps, plans, designs, drawings, specifications, estimates and reports issued by a landscape architect shall contain a seal, signature and date whenever they are presented to a client, the public or a governmental agency. A landscape architect's license shall be in full force and effect in order to seal documents.

8.2. A signature shall be:

8.2.a. A handwritten message containing the name of the person who applied it; or

8.2.b. A digital signature, provided pursuant to an electronic authentication process approved by the Board, attached or logically associated with an electronic document. The digital signature shall be:

8.2.b.1. Unique to the person using it;

8.2.b.2. Capable of verification;

8.2.b.3. Under the sole control of the person using it; and

8.2.b.4. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

8.3. A landscape architect shall not affix his or her seal or signature to documents that were developed by others not under the direct control and personal supervision of the landscape architect.

8.4. A seal shall contain the following information:

8.4.a. The words "State of West Virginia";

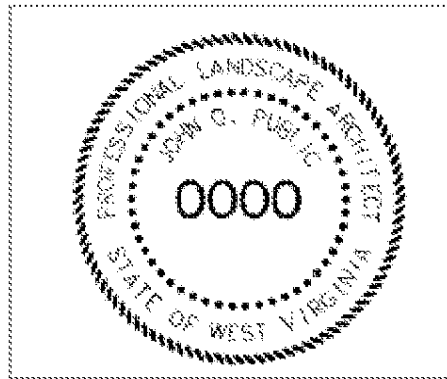
8.4.b. The licensee's full name;

8.4.c. The license number; and

8.4.d. The words "Professional Landscape Architect".

8.5. Each licensee shall obtain a rubber stamp or embosser seal which shall be 1-3/4" in diameter. The Board may approve minor modifications as to size and marginal lines as long as the seal is easily legible.

8.6. The seal shall follow the wording and format as shown in this subsection:



8.7. Any seal, rubber stamp or embossing must be filed with and approved by the Board before it may be used.

8.8. A registrant shall report the loss or theft of his or her seal to the Board as soon as practical after the loss or theft.

8.9. The use of a licensee's seal on any plans, drawings, specifications, reports or other instruments of service which were not prepared by the licensee or under his or her immediate and responsible supervision, or permitting a licensee's name to be used for the purpose of assisting any person to evade the provisions of W. Va. Code §30-22-1 et seq., shall subject the licensee to suspension or revocation of his or her license or temporary permit.

8.10. The licensee shall apply his or her seal or reproducible facsimile on all original drawings to produce a legible reproduction on all copies or prints made from the drawings.

8.11. Documents submitted for landscape architectural services in this State shall be signed and sealed by the firm's landscape architect in responsible charge or the project landscape architect.

8.12. The licensee shall seal, number, date and initial any revisions he or she has made.

8.13. The licensee is responsible for the improper use of his or her seal on work not prepared either by the licensee or under his or her direct supervision.

8.14. When a landscape architect registered in another State has a temporary permit to practice in this State, that person shall use his or her seal and affix his or her signature along with the temporary permit number to documents submitted for landscape architectural services performed in this State.

§9-1-9. Certificates of Authorization.

9.1. The Board shall issue a COA to firms which have satisfied the requirements of W. Va. Code §30-22-19. The certificate shall be signed by the Board Chairperson and Secretary and shall show the firm's COA number and seal.

9.2. A sole proprietorship firm is not required to obtain a COA.

9.3. A firm desiring to obtain a COA shall submit a completed application on forms prescribed by the Board, along with any non-refundable fees, prescribed in West Virginia State Board of Landscape Architects Rule, Fees, 9 CSR 3. Each application, including those for renewal and reinstatement, shall include the names and titles of the corporate officers, the name of the landscape architect, licensed in this State, in responsible charge and the name or names of any employed landscape architect in accordance with W. Va. Code §30-22-19.

9.4. The Board shall issue a COA upon satisfactory completion of all application requirements. The firm shall display the Certificate at the firm's principal place of business where the public can readily view it.

9.5. The Board shall assign each firm a number at the time a COA is granted by the Board. Numbers are issued consecutively in the order in which a firm is granted a COA.

9.6. Expiration, Renewal and Reinstatement. COA's expire on June 30th of each year and are voided without hearing after that date unless renewed in accordance with the following:

9.6.a. The Board shall annually, during the month of April, mail a renewal notice to the last known address of every firm currently holding a COA. The notice shall indicate the expiration date of the COA and the amount of the renewal fee, prescribed in West Virginia State Board of Landscape Architects Rule, Fees, 9 CSR 3.

9.6.b. A late fee shall accompany COA renewals postmarked after June 30th, provided in West Virginia State Board of Landscape Architects Rule, Fees, 9 CSR 3.

9.6.c. A firm which is no longer doing business in this State may request inactive status. A firm on inactive status may not practice or offer to practice landscape architecture until the COA is reinstated.

9.7. A firm desiring to reinstate a COA shall submit a completed application on forms prescribed by the Board, along with any non-refundable fees, prescribed in West Virginia State Board of Landscape Architects Rule, Fees, 9 CSR 3.

9.8. The firm shall notify the Board when a COA is lost, destroyed or mutilated, and, if the firm is in good standing, the Board shall replace it, upon presentation of a statement of the loss along with any non-refundable fees, prescribed in West Virginia State Board of Landscape Architects Rule, Fees, 9 CSR 3.

9.9. The firm shall notify the Board of any change in information previously submitted, such as name change, change of address, change of the landscape architect in responsible charge any or similar matter requiring current information.

9.10. The landscape architect in responsible charge on the COA is responsible for compliance with W. Va. Code §30-22-1 et seq. and this rule notwithstanding any limitations of liability prescribed in W. Va. Code §§47B-3-6 and 31B-13-1305.

§9-1-10. Professional Ethics.

10.1. All registrants are charged with having knowledge of the Rules governing the practice of landscape architecture in this State. The Board shall notify every registrant in writing of amendments to the rules. The Board shall publish the Rules as amended on the Board's website.

10.2. The landscape architect shall conduct his or her practice in order to protect the health, safety, interest and welfare of the public in the performance of his or her professional duties. If his or her judgment is overruled under circumstances where the health, safety, interest and welfare of the public are endangered, he or she shall inform his or her employer, in writing, of the possible consequences and notify any other proper authorities of the situation, as may be appropriate.

10.3. The landscape architect shall perform his or her services only in the areas of his or her competence.

10.3.a. The landscape architect shall perform landscape architectural assignments only when qualified by education or experience in the specific technical field of professional landscape architecture involved.

10.3.b. The landscape architect may accept an assignment requiring education or experience outside his or her own field of competence, but only to the extent that his or her services are restricted to those phases of the project in which he or she is qualified. All other phases of the project shall be performed by qualified associates, consultants or employees.

10.3.c. In designing a project, the landscape architect shall take into account all applicable construction laws, zoning codes and other applicable laws or rules. The landscape architect shall not knowingly design a project in violation of the laws and rules.

10.3.d. The landscape architect shall not affix his or her signature and/or seal to any plan or document dealing with subject matter to which he or she lacks competence by virtue of education or experience to any plan or document not prepared under his or her direct supervisory control.

10.3.e. In the event a question arises as to the competence of a landscape architect to perform a landscape architectural assignment in a specific technical field which cannot be otherwise resolved to the Board's satisfaction, the Board, either upon request or by its own volition, may require him or her to submit to an appropriate examination as determined by the Board.

10.4. The landscape architect shall recognize his or her responsibility to the public and shall represent his or herself before the public only in an objective and truthful manner.

10.4.a. The landscape architect shall disclose whenever he or she is being compensated for making public Statements concerning landscape architectural issues.

10.4.b. The landscape architect shall solicit work only on the basis of his or her qualifications.

10.4.c. The landscape architect shall accurately represent to a prospective or existing client or employer the landscape architect's qualifications and clearly define the scope of his or her responsibility in connection with work for which the landscape architect is claiming responsibility.

10.4.d. If a landscape architect becomes aware of a decision made by his or her employer or clients against the landscape architect's advice which violates applicable construction laws, zoning codes or other applicable rules and that will, in the landscape architect's judgment, materially and adversely affect the public health, safety, interest and welfare, the landscape architect shall notify his or her employer or client, in writing, of the possible consequences and notify any other proper authority of the situation, as may be appropriate.

10.4.e. The landscape architect, when serving as an expert or technical witness before any court, commission or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter and upon honest conviction of the accuracy and propriety of his or her testimony.

10.4.f. In circumstances where the landscape architect reasonably believes that other decisions will be made notwithstanding his or her objection, the landscape architect shall terminate his or her services with reference to the project.

10.4.g. The landscape architect may not deliberately make a materially false Statement or deliberately fail to disclose a material fact requested in connection with an application for licensure or renewal.

10.4.h. The landscape architect may not assist in the application for licensure of a person known by the landscape architect to be unqualified with respect to education, examination, experience or character.

10.4.i. The landscape architect possessing knowledge of a violation of this rule by another landscape architect shall report his or her knowledge to the Board.

10.5. The landscape architect shall avoid conflicts of interest with his or her employer or client, but when unavoidable, the landscape architect shall immediately disclose the circumstances to his or her employer or client.

10.5.a. The landscape architect shall promptly notify his or her employer or client of any business association interests or circumstances which could influence his or her judgment or the quality of his or her services.

10.5.b. The landscape architect shall not accept compensation, financial or otherwise, from more than one (1) party for services pertaining to the same project, unless the circumstances are fully disclosed to and agreed to by all interested parties.

10.5.c. The landscape architect may not solicit or accept financial or other valuable considerations from material or equipment manufacturers or suppliers for specifying their products.

10.5.d. The landscape architect may not solicit or accept gratuities, directly or indirectly, from contractors, their agents or other parties dealing with his or her client or employer in connection with work for he or she is responsible.

10.5.e. The landscape architect may not solicit or accept a professional contract from a governmental body on which a principal or officer of his or her firm serves as a member. Conversely, landscape architects serving as members, advisors, or employees of a governmental body or department, who are the principals or employees of a firm, may not participate in decisions with respect to professional services offered or provided by the firm to the governmental body which they serve unless their participation is approved by the West Virginia Ethics Commission.

10.5.f. The landscape architect may not offer, give, solicit or receive, either directly or indirectly, any commission, or gift, or other valuable consideration in order to secure work, and may not make any political contribution with the intent to influence the award of a contract by a public authority.

10.5.g. The landscape architect may not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other landscape architects, nor indiscriminately criticize other landscape architects' work.

10.6. The landscape architect may not falsify or permit misrepresentation of his or her own or his or her associates' academic or professional qualifications. He or she may not misrepresent or exaggerate his or her degree of responsibility in or for the subject matter of prior assignments.

10.7. The landscape architect may not knowingly associate with or permit the use of his or her name or firm in a business venture by any person or firm which he or she knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.

10.8. If a landscape architect has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of W. Va. Code §30-22-1 et seq., he or she shall present the information to the Board, in writing, and shall cooperate with the Board in furnishing any further information or assistance required by the Board.

10.9. Conviction of a felony or the revocation or suspension of a professional landscape architect's license by another jurisdiction, if for a cause which the State of West Virginia would constitute a violation of W. Va. Code §30-22-1 et seq. or this rule, is grounds for charging a violation of this rule.