

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time _____

No: 1187

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 1187

(By Mr. Burdette + Miss Shuman)

— ● —

Passed April 11, 1981

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1187
(By MR. BURDETTE and MISS SHUMAN)

[Passed April 11, 1981; in effect ninety days from passage.]

AN ACT to repeal sections four, four-a, seven and eight, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and five, article one of said chapter; and to further amend said chapter by adding thereto a new article, designated article two-b, all relating to abolishing the state licensing board for child welfare agencies; transferring the powers and duties of the board to the commissioner of welfare; stating policy and purposes; defining terms; providing for licenses and approvals of all residential child care facilities, day care centers and child placing agencies; providing certain exceptions; requiring the commissioner to promulgate rules and regulations; empowering the commissioner to seek court injunctions, to make licenses conditional and to permit waivers and variances to requirements; providing for applications for licenses and approvals; requiring the commissioner to investigate child care facilities; providing for revocation of licenses or approvals and for provisional licensing and approval; empowering the commissioner to close facilities in certain cases; providing for administrative and judicial review; and providing for penalties.

Be it enacted by the Legislature of West Virginia:

That sections four, four-a, seven and eight, article two, chapter

forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one and five, article one of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article two-b, all to read as follows:

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

1 (a) The purpose of this chapter is to provide a comprehensive
2 sive system of child welfare throughout the state which will
3 assure to each child such care and guidance, preferably in his
4 or her home, and will serve the spiritual, emotional, mental and
5 physical welfare of the child; preserve and strengthen the child's
6 family ties whenever possible with recognition of the funda-
7 mental rights of parenthood and with recognition of the state's
8 responsibility to assist the family in providing necessary edu-
9 cation and training and to reduce the rate of juvenile delin-
10 quency and to provide a system for the rehabilitation or deten-
11 tion of juvenile delinquents and the protection of the welfare
12 of the general public. In pursuit of these goals it is the inten-
13 tion of the Legislature to provide for removing the child from
14 the custody of parents only when the child's welfare or the
15 safety and protection of the public cannot be adequately safe-
16 guarded without removal; and, when the child has to be re-
17 moved from his or her family, to secure for the child custody,
18 care and discipline consistent with the child's best interests and
19 other goals herein set out.

20 (b) The child welfare service of the state shall be administer-
21 ed by the state department of welfare.

22 The state department of welfare is designated as the agency
23 to cooperate with the United States department of health,
24 education and welfare and United States department of justice
25 in extending and improving child welfare services, to comply
26 with regulations thereof, and to receive and expend federal
27 funds for these services.

§49-1-5. Definitions of other terms.

1 (1) "State department" means the state department of wel-
2 fare;

3 (2) "State board" means the state advisory board;

4 (3) "Commissioner" means the commissioner of welfare;

5 (4) "Child welfare agency" means any agency or facility
6 maintained by the state or any county or municipality thereof,
7 or any agency or facility maintained by an individual, firm,
8 corporation, association or organization, public or private, to
9 receive children for care and maintenance or for placement in
10 residential care facilities, including without limitation, private
11 homes, or any facility that provides care for unmarried mothers
12 and their children.

13 (5) "Custodian" means a person who has or shares actual
14 physical possession or care and custody of a child, regardless
15 of whether such person has been granted custody of the child
16 by any contract, agreement or legal proceedings;

17 (6) "Referee" means a juvenile referee appointed pur-
18 suant to section one, article five-a of this chapter, except that
19 in any county which does not have a juvenile referee the judge
20 or judges of the circuit court may designate one or more mag-
21 istrates of the county to perform the functions and duties
22 which may be performed by a referee under this chapter;

23 (7) "Court" means the circuit court of the county with juris-
24 diction of the case or the judge thereof in vacation unless
25 otherwise specifically provided; and

26 (8) "Guardian" means a person who has care and custody
27 of a child as a result of any contract, agreement or legal pro-
28 ceeding.

**ARTICLE 2B. DUTIES OF COMMISSIONER OF WELFARE FOR CHILD
WELFARE.**

**§49-2B-1. Policy and purpose; transfer of powers of child welfare
licensing board.**

1 It is the policy of the state to assist a child and his or her
2 family as the basic unit of society through efforts to strengthen
3 and preserve the family unit. In the event of absence, tempo-
4 rary or permanent, of parents or the separation of a child from
5 the family unit, for care or treatment purposes, it is the policy
6 of the state to assure that a child receives care and nurturing

7 as close as possible to society's expectations of a family's care
8 and nurturing of its child. The state has a duty to assure that
9 proper and appropriate care is given and maintained.

10 Through licensing and approving child care facilities, and
11 child welfare agencies, the state exercises its benevolent police
12 power to protect the user of a service from risks against which
13 he or she would have little or no competence for self protec-
14 tion. Licensing and approval processes must therefore continu-
15 ually balance the child's rights and need for protection with
16 the interests, rights and responsibility of the service providers.

17 In order to carry out the above policy, the Legislature enacts
18 this article to protect and prevent harm to children separated
19 from their families and to enhance their continued growth and
20 well-being while in care.

21 The purposes of this article are:

22 (i) To protect the health, safety and well-being of children
23 in substitute care by preventing improper and harmful care; (ii)
24 to establish statewide rules for regulating programs as defined
25 in this article; and (iii) to encourage and assist in the improve-
26 ment of child care programs. In order to carry out these pur-
27 poses, the powers of the child welfare licensing board, created
28 by chapter nineteen, acts of the Legislature, nineteen hundred
29 forty-five, are hereby transferred to the commissioner of wel-
30 fare, along with the other powers granted by this article.

§49-2B-2. Definitions.

1 As used in this article, unless the context otherwise requires:

2 "Approval" means a finding by the commissioner that a
3 facility operated by the state has met the requirements set
4 forth in the rules and regulations promulgated pursuant to
5 this article.

6 "Certificate of Approval" means statement of the commis-
7 sioner that a facility operated by the state has met the require-
8 ments set forth in the rules and regulations promulgated pur-
9 suant to this article.

10 "Certificate of license" means a statement issued by the
11 commissioner authorizing an individual, corporation, part-

12 nership, voluntary association, municipality or county, or any
13 agency thereof, to provide specified services for a limited period
14 of time in accordance with the terms of the certificate.

15 “Child” means any person under eighteen years of age.

16 “Child care” means responsibilities assumed and services
17 performed in relation to a child’s physical, emotional, psy-
18 chological, social and personal needs and the consideration of
19 the child’s rights and entitlements.

20 “Child placing agency” means a child welfare agency orga-
21 nized for the purpose of placing children in private family
22 homes for foster care or for adoption. The function of a child
23 placing agency may include the investigation and certification
24 of foster family homes and foster family group homes as pro-
25 vided in this chapter. The function of a child placing agency
26 may also include the supervision of children who are sixteen or
27 seventeen years old and living in unlicensed residences,

28 “Commissioner” means the commissioner of welfare.

29 “Day care center” means a facility operated by a child wel-
30 fare agency for the care of seven or more children on a non-
31 residential basis.

32 “Department” means the state department of welfare.

33 “Facility” means a place, or residence, including personnel,
34 structures, grounds and equipment used for the care of a child
35 or children on a residential or other basis for any number of
36 hours a day in any shelter or structure maintained for that
37 purpose.

38 “Foster family group home” means a private residence
39 which is used for the care on a residential basis of six, seven
40 or eight children who are unrelated by blood, marriage or
41 adoption to any adult member of the household.

42 “Foster family home” means a private residence which is
43 used for the care on a residential basis of no more than five
44 children who are unrelated by blood, marriage, or adoption
45 to any adult member of the household.

46 “Group home” means any facility, public or private, which
47 is used to provide residential care for ten or fewer children.

48 “Group home facility” means any facility, public or private,
49 which is used to provide residential care for eleven or more
50 children.

51 “License” means a grant of official permission to a facility
52 to engage in an activity which would otherwise be prohibited.

53 “Residential child care” or “child care on a residential
54 basis” means child care which includes the provision of night-
55 time shelter and the personal discipline and supervision of a
56 child by guardians, custodians or other persons or entities on
57 a continuing or temporary basis.

58 “Rule” means a statement issued by the commissioner of
59 the standard to be applied in the various areas of child care.

60 “Variance” means a declaration that a rule may be ac-
61 complished in a manner different from the manner set forth in
62 the rule.

63 “Waiver” means a declaration that a certain rule is inappli-
64 cable in a particular circumstance.

§49-2B-3. License and approval requirements.

1 (a) Any person, corporation, or child welfare agency other
2 than a state agency, which operates a residential child care
3 facility, a child placing agency or a day care center shall have
4 a license.

5 (b) Any residential child care facility, day care center or
6 any child placing agency operated by the state shall obtain
7 approval of its operations from the commissioner. Such fa-
8 cilities and placing agencies shall maintain the same stand-
9 ards of care applicable to licensed facilities, centers or placing
10 agencies of the same category.

11 (c) This section does not apply to:

12 (1) a kindergarten, pre-school or school education program
13 which is operated by a public school or which is accredited by
14 the state department of education, or any other kindergartens,
15 pre-school or school programs which operate with sessions not
16 exceeding four hours per day for any child;

17 (2) a facility operated for occasional nonresidential care of

18 children for brief periods while parents are shopping, engaging
19 in recreational activities, attending religious services or en-
20 gaging in other business or personal affairs;

21 (3) summer recreation camps operated for children attend-
22 ing sessions for periods not exceeding thirty days; or

23 (4) hospitals or other medical facilities which are primarily
24 used for temporary residential care of children for treatment,
25 convalescence or testing.

§49-2B-4. Rules and regulations.

1 The commissioner shall promulgate rules and regulations
2 for the purpose of carrying out the provisions of this article
3 within one hundred eighty days of the effective date hereof
4 pursuant to the provisions of chapter twenty-nine-a of this
5 code. The rules and regulations of the child welfare licensing
6 board which are in effect on the date of its termination shall
7 continue in full force and effect until the rules and regulations
8 promulgated by the commissioner become effective.

9 The commissioner shall review the rules and regulations
10 promulgated pursuant to the provisions of this article at least
11 once every five years, making revisions when necessary or
12 convenient.

§49-2B-5. Penalties; injunctions.

1 (a) Any individual or corporation which operates a child
2 welfare agency, residential child care facility or day care center
3 without a license when a license is required is guilty of a mis-
4 demeanor and, upon conviction thereof, shall be punished by
5 imprisonment in jail not exceeding one year, or a fine of not
6 more than five hundred dollars, or both fined and imprisoned.

7 (b) Where a violation of this article or a rule or regulation
8 promulgated by the commissioner may result in serious harm
9 to children under care, the commissioner may seek injunctive
10 relief against any person, corporation, child welfare agency,
11 child placing agency, day care center or governmental official
12 through proceedings instituted by the attorney general, or the
13 appropriate county prosecuting attorney, in the circuit court
14 of Kanawha County or in the circuit court of any county where
15 the children are residing or may be found.

§49-2B-6. Conditions of licensure and approval.

1 (a) A license or approval is effective for a period of two
2 years from the date of issuance, unless revoked or modified to
3 provisional status based on evidence of a failure to comply with
4 the provisions of this article or any rules and regulations
5 promulgated pursuant to this article. The license or approval
6 shall be reinstated upon application to the commissioner and
7 a determination of compliance.

8 The license or approval issued under this article is not
9 transferable and applies only to the facility and its location
10 stated in the application. The license or approval shall be pub-
11 licly displayed, except foster family homes, foster family group
12 homes and group homes shall be required to display licenses
13 upon request rather than by posting.

14 (b) A provisional license or approval may be issued as

15 (i) An initial license or approval to a new facility which
16 has been unable to demonstrate full compliance because the
17 facility is not fully operational, or

18 (ii) A temporary license or approval to an established licens-
19 ed facility which is temporarily unable to conform to the pro-
20 visions of this article or the rules and regulations promulgated
21 hereunder.

22 A provisional license or approval shall expire six months
23 from the date of issuance and may be reinstated no more than
24 two times. The issuance of a provisional license or approval
25 shall be contingent upon the submission to the commissioner
26 of an acceptable plan to overcome identified deficiencies within
27 the period of the provisional license or approval.

28 (c) The commissioner, as a condition of issuing a license or
29 approval, may:

30 (i) Limit the age, sex or type of problems of children al-
31 lowed admission to a particular facility,

32 (ii) Prohibit intake of any children, or

33 (iii) Reduce the number of children which the agency or
34 facility operated by the agency is licensed or approved to
35 receive.

§49-2B-7. Waivers and variances to rules and regulations.

1 Waivers or variances of rules or regulations may be granted
2 by the commissioner if the health, safety or well-being of a
3 child would not be endangered thereby. The commissioner
4 shall promulgate by rule or regulation criteria and procedures
5 for the granting of waivers or variances so that uniform prac-
6 tices may be maintained throughout the state.

§49-2B-8. Application for license or approval.

1 Any person or corporation, or any governmental agency in-
2 tending to act as a child welfare agency shall apply for a
3 license or approval to operate child care facilities regulated
4 by this article. Applications for license or approval shall be
5 made separately for each child care facility to be licensed or
6 approved.

7 The commissioner may prescribe forms and reasonable ap-
8 plication procedures. Before issuing a license or approval, the
9 commissioner shall investigate the facility, program and persons
10 responsible for the care of children. The investigation shall
11 include, but not be limited to, review of resource need, repu-
12 tation, character and purposes of applicants, a check of per-
13 sonnel criminal records, if any, and personnel medical re-
14 cords, the financial records of applicants, and consideration
15 of the proposed plan for child care from intake to discharge.

16 The commissioner shall make a decision on each appli-
17 cation within sixty days of its receipt and shall provide to
18 unsuccessful applicants written reasons for the decision.

§49-2B-9. Supervision and consultation required.

1 The commissioner shall provide supervision to ascertain
2 compliance with the rules and regulations promulgated pur-
3 suant to this article through regular monitoring, visits to fa-
4 cilities, documentation, evaluation and reporting. The com-
5 missioner shall consult with applicants, the personnel of child
6 welfare agencies, and children under care to assure the highest
7 quality child care possible. The director of the department of
8 health and the state fire marshal shall cooperate with the com-
9 missioner in the administration of the provisions of this article

10 by providing such reports and assistance as may be requested
11 by the commissioner.

§49-2B-10. Investigating authority.

1 The commissioner shall enforce the provisions of this article.
2 An on-site evaluation of every facility regulated pursuant to
3 this article shall be conducted no less than once per year by
4 announced or unannounced visits. The commissioner shall have
5 access to the premises, personnel, children in care and records
6 of the facility, including, but not limited to, case records,
7 corporate and financial records and board minutes. Applicants
8 for licenses and approvals shall consent to reasonable on-site
9 administrative inspections, made with or without prior notice,
10 as a condition of licensing or approval. When a complaint is
11 received by the commissioner alleging violations of licensure or
12 approval requirements, the commissioner shall investigate the
13 allegations. The commissioner may notify the facility's director
14 before or after a complaint is investigated and shall cause a
15 written report of the results of the investigation to be made.

16 The commissioner may enter any unlicensed or unapproved
17 child care facility or personal residence for which there is
18 probable cause to believe that the facility or residence is oper-
19 ating in violation of this article. Such entries shall be made
20 with a law-enforcement officer present.

§49-2B-11. Revocation; provisional licenses and approvals.

1 The commissioner may revoke or make provisional the
2 license of any facility or child welfare agency regulated pur-
3 suant to this article if a certificate holder materially violates
4 any provision of this article, or any terms or conditions of the
5 license or approval issued, or fails to maintain established re-
6 quirements of child care.

§49-2B-12. Closing of facilities by the commissioner; placement of children.

1 When the commissioner finds that the operation of a child
2 care facility constitutes an immediate danger of serious harm
3 to children served by the facility, the commissioner shall issue
4 an order of closure terminating operation of the facility. When
5 necessary, the commissioner shall place or direct the place-
6 ment of the children in a residential child care facility which
7 has been closed into appropriate facilities. A facility closed by

8 the commissioner may not operate pending administrative or
9 judicial review without court order.

§49-2B-13. Administrative and Judicial Review.

1 Any person, corporation, governmental official or child
2 welfare agency, aggrieved by a decision of the commissioner
3 made pursuant to the provisions of this article may contest
4 the decision upon making a request for a hearing by the com-
5 missioner within thirty days of receipt of notice of the deci-
6 sion. Administrative and judicial review shall be made in ac-
7 cordance with the provisions of article five, chapter twenty-
8 nine-a of this code. Any decision issued by the commissioner
9 may be made effective from the date of issuance. Immediate
10 relief therefrom may be obtained upon a showing of good
11 cause made by verified petition to the circuit court of Kana-
12 wha County or the circuit court of any county where the
13 affected facility or child welfare agency may be located. The
14 pendency of administrative or judicial review shall not prevent
15 the commissioner from obtaining injunctive relief pursuant to
16 section five of this article.

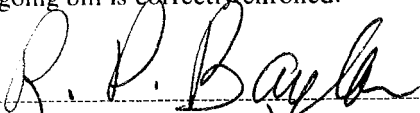
§49-2B-14. Annual reports.

1 The commissioner shall submit on or before the first day
2 of January of each year a report to the governor, and upon
3 request to members of the Legislature, concerning the regula-
4 tion of child welfare agencies, child placing agencies, day care
5 centers and child care facilities during the year. The report
6 shall include, but not be limited to, data on the number of
7 children and staff at each facility, applications received, types
8 of licenses and approvals granted, denied, made provisional
9 or revoked and any injunctions obtained or facility closures
10 ordered.

11 The commissioner also shall compile annually a directory
12 of licensed and approved child care providers including a brief
13 description of their program and facilities, the program's ca-
14 pacity and a general profile of children served.

15 Licensing reports and recommendations for licensure which
16 are a part of the yearly review of each licensed facility shall
17 be sent to the facility director. Copies shall be available to
18 the public upon written request to the commissioner.

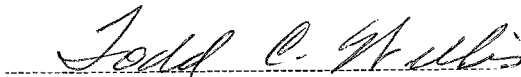
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

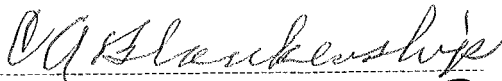

Chairman Senate Committee

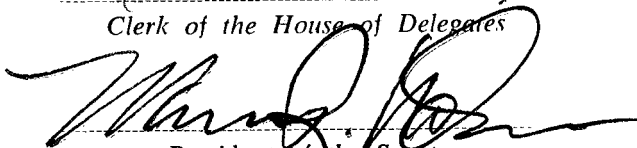

Chairman House Committee

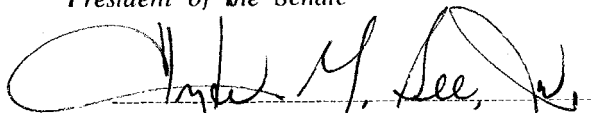
Originated in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 20
day of April, 1981.


Governor

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OFFICE OF THE GOVERNOR