WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

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ENROLLED

Comm. Sub. for
HOUSE BILL No. 1187

(By Mr. Bundette & Miss Shuman)

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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forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one and five, article one of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article,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.

(a) The purpose of this chapter is to provide a comprehensive system of child welfare throughout the state which will assure to each child such care and guidance, preferably in his or her home, and will serve the spiritual, emotional, mental and physical welfare of the child; preserve and strengthen the child's family ties whenever possible with recognition of the fundamental rights of parenthood and with recognition of the state's responsibility to assist the family in providing necessary education and training and to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation or detention of juvenile delinquents and the protection of the welfare of the general public. In pursuit of these goals it is the intention of the Legislature to provide for removing the child from the custody of parents only when the child's welfare or the safety and protection of the public cannot be adequately safeguarded without removal; and, when the child has to be removed from his or her family, to secure for the child custody, care and discipline consistent with the child's best interests and other goals herein set out.

(b) The child welfare service of the state shall be administered by the state department of welfare.

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

§49-1-5. Definitions of other terms.

(1) "State department" means the state department of welfare;
(2) "State board" means the state advisory board;

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

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

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

(6) "Referee" means a juvenile referee appointed pursuant to section one, article five-a of this chapter, except that in any county which does not have a juvenile referee the judge or judges of the circuit court may designate one or more magistrates of the county to perform the functions and duties which may be performed by a referee under this chapter;

(7) "Court" means the circuit court of the county with jurisdiction of the case or the judge thereof in vacation unless otherwise specifically provided; and

(8) "Guardian" means a person who has care and custody of a child as a result of any contract, agreement or legal proceeding.

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

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

It is the policy of the state to assist a child and his or her family as the basic unit of society through efforts to strengthen and preserve the family unit. In the event of absence, temporary or permanent, of parents or the separation of a child from the family unit, for care or treatment purposes, it is the policy of the state to assure that a child receives care and nurturing
as close as possible to society's expectations of a family's care
and nurturing of its child. The state has a duty to assure that
proper and appropriate care is given and maintained.

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

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

The purposes of this article are:

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


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

“Approval” means a finding by the commissioner that a
facility operated by the state has met the requirements set
forth in the rules and regulations promulgated pursuant to
this article.

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

“Certificate of license” means a statement issued by the
commissioner authorizing an individual, corporation, part-
nership, voluntary association, municipality or county, or any
agency thereof, to provide specified services for a limited period
of time in accordance with the terms of the certificate.

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

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

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

“Commissioner” means the commissioner of welfare.

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

“Department” means the state department of welfare.

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

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

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

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

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

“Residential child care” or “child care on a residential basis” means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis.

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

“Variance” means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

“Waiver” means a declaration that a certain rule is inapplicable in a particular circumstance.

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

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

(b) Any residential child care facility, day care center or any child placing agency operated by the state shall obtain approval of its operations from the commissioner. Such facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) This section does not apply to:

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

(2) a facility operated for occasional nonresidential care of
(3) summer recreation camps operated for children attending sessions for periods not exceeding thirty days; or

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


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

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

§49-2B-5. Penalties; injunctions.

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

(b) Where a violation of this article or a rule or regulation promulgated by the commissioner may result in serious harm to children under care, the commissioner may seek injunctive relief against any person, corporation, child welfare agency, child placing agency, day care center or governmental official through proceedings instituted by the attorney general, or the appropriate county prosecuting attorney, in the circuit court of Kanawha County or in the circuit court of any county where the children are residing or may be found.
§49-2B-6. Conditions of licensure and approval.

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

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

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

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

(ii) A temporary license or approval to an established licensed facility which is temporarily unable to conform to the provisions of this article or the rules and regulations promulgated hereunder.

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

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

(i) Limit the age, sex or type of problems of children allowed admission to a particular facility,

(ii) Prohibit intake of any children, or

(iii) Reduce the number of children which the agency or facility operated by the agency is licensed or approved to receive.
§49-2B-7. Waivers and variances to rules and regulations.

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

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

Any person or corporation, or any governmental agency intending to act as a child welfare agency shall apply for a license or approval to operate child care facilities regulated by this article. Applications for license or approval shall be made separately for each child care facility to be licensed or approved.

The commissioner may prescribe forms and reasonable application procedures. Before issuing a license or approval, the commissioner shall investigate the facility, program and persons responsible for the care of children. The investigation shall include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel criminal records, if any, and personnel medical records, the financial records of applicants, and consideration of the proposed plan for child care from intake to discharge.

The commissioner shall make a decision on each application within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for the decision.


The commissioner shall provide supervision to ascertain compliance with the rules and regulations promulgated pursuant to this article through regular monitoring, visits to facilities, documentation, evaluation and reporting. The commissioner shall consult with applicants, the personnel of child welfare agencies, and children under care to assure the highest quality child care possible. The director of the department of health and the state fire marshal shall cooperate with the commissioner in the administration of the provisions of this article.
by providing such reports and assistance as may be requested by the commissioner.

§49-2B-10. Investigating authority.

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

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


The commissioner may revoke or make provisional the license of any facility or child welfare agency regulated pursuant to this article if a certificate holder materially violates any provision of this article, or any terms or conditions of the license or approval issued, or fails to maintain established requirements of child care.

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

When the commissioner finds that the operation of a child care facility constitutes an immediate danger of serious harm to children served by the facility, the commissioner shall issue an order of closure terminating operation of the facility. When necessary, the commissioner shall place or direct the placement of the children in a residential child care facility which has been closed into appropriate facilities. A facility closed by
the commissioner may not operate pending administrative or
judicial review without court order.


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


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

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

Licensing reports and recommendations for licensure which
are a part of the yearly review of each licensed facility shall
be sent to the facility director. Copies shall be available to
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 _____________ this the ___ day of ______________, 1981.

Governor