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# WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 2000



# ENROLLED

## House Bill No. 207

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]



Passed November 14, 2000

In Effect from Passage

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OFFICE OF THE CLERK  
SENATE OF WEST VIRGINIA

## ENROLLED

### H. B. 207

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)  
[BY REQUEST OF THE EXECUTIVE]

[Passed November 14, 2000; in effect from passage.]

AN ACT to amend and reenact section two, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight, article one, chapter thirty of said code, relating generally to the designation of certain legislative rules as procedural rules; authorizing the regional jail authority and division of corrections to promulgate procedural rules for inmate grievances; and authorizing licensing boards to promulgate procedural rules for complaint procedures and contested case hearings by licensing boards.

*Be it enacted by the Legislature of West Virginia:*

That section two, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section eight, article one, chapter thirty of said code be amended and reenacted, to read as follows:

#### **CHAPTER 25. DIVISION OF CORRECTIONS.**

##### **ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.**

**§25-1A-2. Mandatory exhaustion of administrative remedies.**

1 (a) An inmate may not bring a civil action until the admin-  
2 istrative remedies promulgated by the facility have been  
3 exhausted: *Provided*, That the remedies promulgated by the  
4 facility will be deemed completed within sixty days from the  
5 date the inmate filed his or her initial complaint if the inmate  
6 fully complied with the requirements for filing and appealing  
7 the administrative complaint.

8 (b) The commissioner of the division of corrections and the  
9 executive director of the regional jail authority are authorized  
10 to establish administrative procedures for processing inmate  
11 complaints concerning food quality, health care, nonviolent or  
12 nonsexual conduct of employees or contractors of the division  
13 of corrections or regional jail authority, loss of privileges and  
14 other general complaints about daily living conditions which do  
15 not directly and seriously concern an inmate's physical health  
16 or security. The proposed joint legislative rule required by the  
17 prior enactment of this subsection shall be withdrawn. The  
18 commissioner and the executive director shall, by the thirty-first  
19 day of January, two thousand one, each file a procedural rule in  
20 accordance with the provisions of article three, chapter twenty-  
21 nine-a of this code to meet the requirements of this subsection.  
22 The public comment period conducted for the proposed  
23 legislative rule shall serve as the public comment period  
24 required by section five, article three, chapter twenty-nine-a of  
25 this code.

26 (c) Notwithstanding any other provision of this code, no  
27 inmate shall be prevented from filing an appeal of his or her  
28 conviction or bringing a civil or criminal action alleging past,  
29 current or imminent physical or sexual abuse; if such a civil or  
30 criminal action is ultimately dismissed by a judge as frivolous,  
31 then the inmate shall pay the filing costs associated with the  
32 civil or criminal action as provided for in this article.

## CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

### ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

#### **§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.**

1 (a) Every board referred to in this chapter may suspend or  
2 revoke the license of any person who has been convicted of a  
3 felony or who has been found to have engaged in conduct,  
4 practices or acts constituting professional negligence or a  
5 willful departure from accepted standards of professional  
6 conduct. Where any person has been convicted of a felony or  
7 has been found to have engaged in such conduct, practices or  
8 acts, every board referred to in this chapter may enter into  
9 consent decrees, to reprimand, to enter into probation orders, to  
10 levy fines not to exceed one thousand dollars per day per  
11 violation, or any of these, singly or in combination. Each board  
12 may also assess administrative costs. Any costs which are  
13 assessed shall be placed in the special account of the board, and  
14 any fine which is levied shall be deposited in the state trea-  
15 sury's general revenue fund. For purposes of this section, the  
16 word "felony" means a felony or crime punishable as a felony  
17 under the laws of this state, any other state, or the United States.  
18 Every board referred to in this chapter may promulgate rules in  
19 accordance with the provisions of chapter twenty-nine-a of this  
20 code to delineate conduct, practices or acts which, in the  
21 judgment of the board, constitute professional negligence, a  
22 willful departure from accepted standards of professional  
23 conduct or which may render an individual unqualified or unfit  
24 for licensure, registration or other authorization to practice.

25 (b) Notwithstanding any other provision of law to the  
26 contrary, no certificate, license, registration or authority issued  
27 under the provisions of this chapter may be suspended or

28 revoked without a prior hearing before the board or court which  
29 issued the certificate, license, registration or authority. How-  
30 ever, this requirement does not apply in cases where a board is  
31 authorized to suspend or revoke a certificate, license, registra-  
32 tion or authority prior to a hearing if the person's continuation  
33 in practice constitutes an immediate danger to the public.

34 (c) In all proceedings before a board or court for the  
35 suspension or revocation of any certificate, license, registration  
36 or authority issued under the provisions of this chapter, a  
37 statement of the charges against the holder of the certificate,  
38 license, registration or authority and a notice of the time and  
39 place of hearing shall be served upon the person as a notice is  
40 served under section one, article two, chapter fifty-six of this  
41 code, at least thirty days prior to the hearing, and he or she may  
42 appear with witnesses and be heard in person, by counsel, or  
43 both. The board may take oral or written proof, for or against  
44 the accused, as it may consider advisable. If upon hearing the  
45 board finds that the charges are true, it may suspend or revoke  
46 the certificate, license, registration or authority, and suspension  
47 or revocation shall take from the person all rights and privileges  
48 acquired thereby.

49 (d) Pursuant to the provisions of section one, article five,  
50 chapter twenty-nine-a of this code, informal disposition may  
51 also be made by the board of any contested case by stipulation,  
52 agreed settlement, consent order or default. Further, the board  
53 may suspend its decision and place a licensee found by the  
54 board to be in violation of the applicable practice on probation.

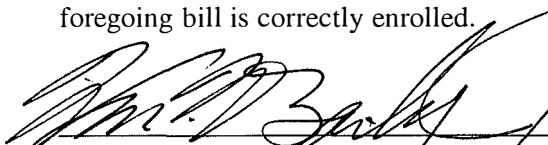
55 (e) Any person denied a license, certificate, registration or  
56 authority who believes the denial was in violation of this article  
57 or the article under which the license, certificate, registration or  
58 authority is authorized shall be entitled to a hearing on the  
59 action denying the license, certificate, registration or authority.  
60 Hearings under this subsection is in accordance with the  
61 provisions for hearings which are set forth in this section.

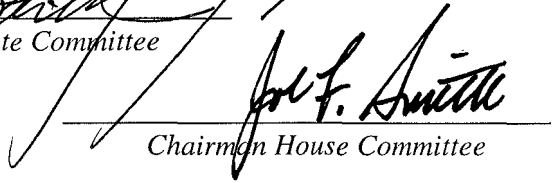
62 (f) A stenographic report of each proceeding on the denial,  
63 suspension or revocation of a certificate, license, registration or  
64 authority shall be made at the expense of the board and a  
65 transcript of the hearing retained in its files. The board shall  
66 make a written report of its findings, which shall constitute part  
67 of the record.

68 (g) All proceedings under the provisions of this section are  
69 subject to review by the supreme court of appeals.

70 (h) On or before the first day of July, two thousand one,  
71 every board referred to in this chapter shall adopt procedural  
72 rules in accordance with the provisions of article three, chapter  
73 twenty-nine-a of this code, which shall specify a procedure for  
74 the investigation and resolution of all complaints against  
75 persons licensed under this chapter. The proposed legislative  
76 rules relating only to complaint procedures or contested case  
77 hearing procedures required by the prior enactment of this  
78 subsection shall be redesignated as procedural rules in accor-  
79 dance with the provisions of article three, chapter twenty-nine-a  
80 of this code. Each board shall file the procedural rules required  
81 by this subsection by the thirty-first day of January, two  
82 thousand one. The public hearing or public comment period  
83 conducted for the proposed legislative rules shall serve as the  
84 public hearing or public comment period required by section  
85 five, article three, chapter twenty-nine-a of this code.

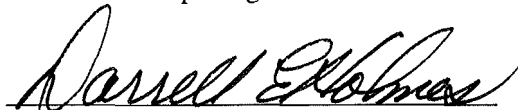
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

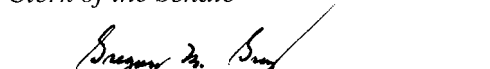
  
Chairman Senate Committee

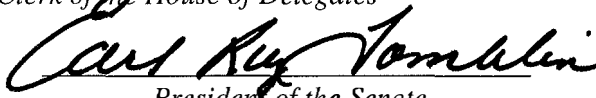
  
Chairman House Committee

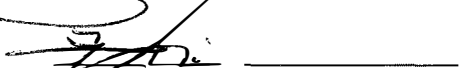
Originating in the House.

In effect from passage.

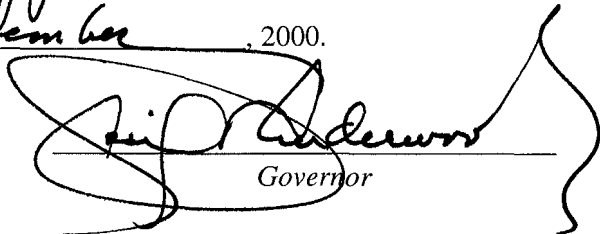
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 18<sup>th</sup>  
day of November, 2000.

  
Governor

PRESENTED YOUR

GOVERNOR

Date 11/17/00

Time 9:07 am