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
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.

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

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 The proposed joint legislative rule required by the prior enactment of this subsection shall be withdrawn.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

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

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

(b) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or
revoked without a prior hearing before the board or court which
issued the certificate, license, registration or authority. How-
ever, this requirement does not apply in cases where a board is
authorized to suspend or revoke a certificate, license, registra-
tion or authority prior to a hearing if the person’s continuation
in practice constitutes an immediate danger to the public.

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

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

(e) Any person denied a license, certificate, registration or
authority who believes the denial was in violation of this article
or the article under which the license, certificate, registration or
authority is authorized shall be entitled to a hearing on the
action denying the license, certificate, registration or authority.
Hearings under this subsection is in accordance with the
provisions for hearings which are set forth in this section.
(f) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript of the hearing retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.

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

(h) On or before the first day of July, two thousand one, every board referred to in this chapter shall adopt procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under this chapter. The proposed legislative rules relating only to complaint procedures or contested case hearing procedures required by the prior enactment of this subsection shall be redesignated as procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code. Each board shall file the procedural rules required by this subsection by the thirty-first day of January, two thousand one. The public hearing or public comment period conducted for the proposed legislative rules shall serve as the public hearing or public comment period required by section 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 _____________________ day of _____________________, 2000.

Governor