WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED

SENATE BILL NO. 695

(By Senator Prezioso)

PASSED April 13, 2001

In Effect 90 days from Passage
AN ACT to amend and reenact section twelve, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article five-h of said chapter, all relating to administrative appeals of civil assessments, license limitations, suspensions or revocations concerning personal care homes and residential board and care homes; and providing an informal and formal appeal process.

Be it enacted by the Legislature of West Virginia:

That section twelve, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twelve, article five-h of said chapter be amended and reenacted, all to read as follows:

ARTICLE 5D. PERSONAL CARE HOMES.
§16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article may request a formal or informal hearing with the director or program manager in order to contest the order as contrary to law or unwarranted by the facts or both. If the contested matter is not resolved at the informal hearing, the licensee or applicant may request a formal hearing before the director. An informal hearing is not a prerequisite for requesting a formal hearing.

(b) Informal hearings shall be held within twenty business days of the director's receipt of timely request for appeal, unless the licensee or applicant consents to a postponement or continuance. In no event may the informal hearing occur more than thirty business days after the director receives a timely request for appeal. Neither the licensee or applicant nor the director may be represented by an attorney at the informal hearing. Within ten business days of the conclusion of the informal hearing the director, program manager or designee shall issue an informal hearing order, including the basis for the decision. If the order is not favorable to the licensee or applicant, the licensee or applicant may request an appeal and a formal hearing. The director shall notify the administrative hearing examiner of the request for appeal within five business days of receiving the request for an appeal and a formal hearing.

(c) If the applicant or licensee requests a formal hearing without a prior informal hearing, or if an applicant or licensee appeals the order issued as a result of the informal hearing, the director shall proceed in accordance with the department's rules of procedure for contested case hearings and declaratory rulings and the pertinent provisions of article five, chapter twenty-nine-a of this code.
(d) Following a formal hearing, the director shall make
and enter a written order either dismissing the complaint
or taking other action as is authorized in this article. The
written order of the director shall be accompanied by
findings of fact and conclusions of law as specified in
section three, article five, chapter twenty-nine-a of this
code and a copy of the order and accompanying findings
and conclusions shall be served upon the licensee and his
or her attorney of record, if any, by certified mail, return
receipt requested. If the director suspends a personal care
home's license, the order shall also specify the conditions
giving rise to the suspension, to be corrected by the
licensee during the period of suspension in order to entitle
the licensee to reinstatement of the license. If the director
revokes a license, the director may stay the effective date
of revocation by not more than ninety days upon a show-
ing that the delay is necessary to assure appropriate
placement of residents. The order of the director shall be
final unless vacated or modified upon judicial review of
the order in accordance with the provisions of section
thirteen of this article.

(e) In addition to all other powers granted by this
chapter, the director may hold the case under advisement
and make a recommendation as to requirements to be met
by the licensee in order to avoid either suspension or
revocation. In such a case, the director shall enter an
order accordingly and so notify the licensee and his or her
attorney of record, if any, by certified mail, return receipt
requested. If the licensee meets the requirements of the
order, the director shall enter an order showing satisfac-
tory compliance and dismissing the complaint and shall so
notify the licensee and the licensee's attorney of record, if
any, by certified mail, return receipt requested.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-12. Administrative appeals for civil assessments, license
limitation, suspension or revocation.
(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article may request a formal or informal hearing with the director or the program manager in order to contest the order as contrary to law or unwarranted by the facts or both. If the contested matter is not resolved at the informal hearing, the licensee or applicant may request a formal hearing before the director. An informal hearing is not a prerequisite for requesting a formal hearing.

(b) Informal hearings shall be held within twenty business days of the director's receipt of timely request for appeal, unless the licensee or applicant consents to a postponement or continuance. In no event may the informal hearing occur more than thirty business days after the director receives a timely request for appeal. Neither the licensee or applicant nor the director may be represented by an attorney at the informal hearing. Within ten business days of the conclusion of the informal hearing the director, program manager or designee shall issue an informal hearing order, including the basis for the decision. If the order is not favorable to the licensee or applicant, the licensee or applicant may request an appeal and a formal hearing. The director shall notify the administrative hearing examiner of the request for appeal within five business days of receiving the request for an appeal and a formal hearing.

(c) If the applicant or licensee requests a formal hearing without a prior informal hearing or if an applicant or licensee appeals the order issued as a result of the informal hearing, the director shall proceed in accordance with the department's rules of procedure for contested case hearings and declaratory rulings and the pertinent provisions of article five, chapter twenty-nine-a of this code.

(d) Following the formal hearing, the director shall make and enter a written order either dismissing the complaint or taking other action as is authorized in this article. The written order of the director shall be accompanied by
findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code and a copy of the order and accompanying findings and conclusions shall be served upon the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the director suspends a residential board and care home's license, the order shall also specify the conditions giving rise to the suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of the license. If the director revokes a license, the director may stay the effective date of revocation by not more than ninety days upon a showing that the delay is necessary to assure appropriate placement of residents. The order of the director shall be final unless vacated or modified upon judicial review of the order in accordance with the provisions of section thirteen of this article.

(e) In addition to all other powers granted by this chapter, the director may hold the case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid either suspension or revocation. In such a case, the director shall enter an order accordingly and so notify the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the licensee meets the requirements of the order, the director shall enter an order showing satisfactory compliance and dismissing the complaint and shall so notify the licensee and the licensee's attorney of record, if any, by certified mail, return receipt requested.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within............. this the........... Day of............., 2001.

Governor