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2001 MAY -1 P 6:59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 695

(By Senator Prezioso **)**

PASSED April 13, 2001

In Effect 90 days from **Passage**

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Senate Bill No. 695

(BY SENATOR PREZIOSO, BY REQUEST)

[Passed April 13, 2001; in effect ninety 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.

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

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

10 (b) Informal hearings shall be held within twenty
11 business days of the director's receipt of timely request for
12 appeal, unless the licensee or applicant consents to a
13 postponement or continuance. In no event may the
14 informal hearing occur more than thirty business days
15 after the director receives a timely request for appeal.
16 Neither the licensee or applicant nor the director may be
17 represented by an attorney at the informal hearing.
18 Within ten business days of the conclusion of the informal
19 hearing the director, program manager or designee shall
20 issue an informal hearing order, including the basis for the
21 decision. If the order is not favorable to the licensee or
22 applicant, the licensee or applicant may request an appeal
23 and a formal hearing. The director shall notify the admin-
24 istrative hearing examiner of the request for appeal within
25 five business days of receiving the request for an appeal
26 and a formal hearing.

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

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

55 (e) In addition to all other powers granted by this
56 chapter, the director may hold the case under advisement
57 and make a recommendation as to requirements to be met
58 by the licensee in order to avoid either suspension or
59 revocation. In such a case, the director shall enter an
60 order accordingly and so notify the licensee and his or her
61 attorney of record, if any, by certified mail, return receipt
62 requested. If the licensee meets the requirements of the
63 order, the director shall enter an order showing satisfac-
64 tory compliance and dismissing the complaint and shall so
65 notify the licensee and the licensee's attorney of record, if
66 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.**

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

10 (b) Informal hearings shall be held within twenty
11 business days of the director's receipt of timely request for
12 appeal, unless the licensee or applicant consents to a
13 postponement or continuance. In no event may the
14 informal hearing occur more than thirty business days
15 after the director receives a timely request for appeal.
16 Neither the licensee or applicant nor the director may be
17 represented by an attorney at the informal hearing.
18 Within ten business days of the conclusion of the informal
19 hearing the director, program manager or designee shall
20 issue an informal hearing order, including the basis for the
21 decision. If the order is not favorable to the licensee or
22 applicant, the licensee or applicant may request an appeal
23 and a formal hearing. The director shall notify the admin-
24 istrative hearing examiner of the request for appeal within
25 five business days of receiving the request for an appeal
26 and a formal hearing.

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

34 (d) Following the formal hearing, the director shall make
35 and enter a written order either dismissing the complaint
36 or taking other action as is authorized in this article. The
37 written order of the director shall be accompanied by

38 findings of fact and conclusions of law as specified in
39 section three, article five, chapter twenty-nine-a of this
40 code and a copy of the order and accompanying findings
41 and conclusions shall be served upon the licensee and his
42 or her attorney of record, if any, by certified mail, return
43 receipt requested. If the director suspends a residential
44 board and care home's license, the order shall also specify
45 the conditions giving rise to the suspension, to be corrected
46 by the licensee during the period of suspension in order to
47 entitle the licensee to reinstatement of the license. If the
48 director revokes a license, the director may stay the
49 effective date of revocation by not more than ninety days
50 upon a showing that the delay is necessary to assure
51 appropriate placement of residents. The order of the
52 director shall be final unless vacated or modified upon
53 judicial review of the order in accordance with the provi-
54 sions of section thirteen of this article.

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

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *30th*
Day of *April*, 2001.
[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/01

Time 3:00 pm