

# VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

## CHAPTER 638

*An Act to amend the Code of Virginia by adding a section numbered 2.2-4020.2, relating to the Virginia Administrative Process Act; default by nonappearing party.*

[S 928]

Approved March 26, 2015

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 2.2-4020.2 as follows:**

**§ 2.2-4020.2. Default.**

A. Unless otherwise provided by law, if a party without good cause fails to attend or appear at a formal hearing conducted in accordance with § 2.2-4020, or at an informal fact-finding proceeding conducted pursuant to § 2.2-4019, the presiding officer may issue a default order.

B. A default order shall not be issued by the presiding officer unless the party against whom the default order is entered has been sent the notice that contains a notification that a default order may be issued against that party if that party fails without good cause to attend or appear at the hearing or informal fact-finding proceeding that is the subject of the notice.

C. If a default order is issued, the presiding officer may conduct all further proceedings necessary to complete the adjudication without the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.

D. A recommended, initial, or final order issued against a defaulting party may be based on the defaulting party's admissions or other evidence that may be used without notice to the defaulting party. If the burden of proof is on the defaulting party to establish that the party is entitled to the agency action sought, the presiding officer may issue a recommended, initial, or final order without taking evidence.

E. Not later than 15 days after notice to a party subject to a default order that a recommended, initial, or final order has been rendered against the party, the party may petition the presiding officer to vacate the recommended, initial, or final order. If good cause is shown for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If good cause is not shown for the party's failure to appear, the presiding officer shall deny the motion to vacate.

F. The provisions of this section shall not apply to any administrative hearings process that is governed by § 32.1-325.1 relating to provider appeals.