WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

SENATE BILL No. 51

(By Mr. Victoria, Mr. President)

PASSED February 12th, 1947

In Effect Ninety Days from Passage
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article to be designated article five-b, defining and regulating hospitals, sanatoriums, rest homes, and related institutions, providing for the issuance, suspension and revocation of licenses therefor, and providing penalties for the violation of any provisions thereof.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article to be designated article five-b, to read as follows:

Article 5-B. Hospitals and Similar Institutions

Section 1. Hospitals and Other Institutions Affected.—

2 After July 1, 1948, no person, partnership, association,
corporation, or any local governmental unit or any division, department, board or agency thereof shall establish, conduct, or maintain in the State of West Virginia any hospital, sanatorium, rest home, nursing home, or other institution having five or more beds for the hospitalization or care of the sick or injured or for the care of any human being requiring or receiving chronic or convalescent care without first obtaining a license therefor in the manner hereinafter provided. Hospitals operated by the federal government or the state government shall be exempt from the provisions of this article.

Hospital, sanatorium, rest home, nursing home, and other related institutions within the meaning of this article, shall mean any institution, place, building, or agency in which an accommodation of five or more beds is maintained, furnished or offered for the hospitalization of the sick or injured or care of any persons requiring or receiving chronic or convalescent care. Nothing contained in this article, however, shall apply to hotels or other similar places that furnish to their guests only board and room, or either of them.
Nothing in this article shall authorize any person, partnership, association, corporation, or any local government unit or any division, department, board or agency thereof to engage in any manner in the practice of medicine, as defined by law. This article shall not be construed to restrict or modify any statute pertaining to the placement or adoption of children.

Sec. 2. Existing Hospitals and Institutions to Obtain Licenses.—No person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof may continue to operate an existing hospital, sanatorium, rest home, nursing home, or related institution or open a hospital, sanatorium, rest home, nursing home, or related institution after July 1, 1948, unless such operation shall have been approved and regularly licensed by the state as hereinafter provided.

Before a license shall be issued under this act, the person applying, if an individual, shall submit evidence satisfactory to the state department of health that he is not less than 21 years of age, of reputable and responsible
character, and otherwise qualified. In the event the applicant is an association, corporation or governmental unit, like evidence shall be submitted as to the members thereof and the persons in charge. Every applicant shall, in addition, submit satisfactory evidence of his ability to comply with the minimum standards and with all rules and regulations lawfully promulgated hereunder.

Sec. 3. Application for Licenses.—Any person, partnership, association, or corporation, or any local governmental unit or any division, department, board or agency thereof desiring a license hereunder shall file with the state department of health a verified application stating the name of the applicant, and if the applicant is an individual, his age; the type of institution to be operated; the location thereof; the name of the person in charge thereof; and such other information as the state department of health may require. An application on behalf of a corporation, association or governmental unit shall be made by any two officers thereof or by its managing agents and shall contain like information. The applica-
tion shall be on a form prescribed, prepared and fur-

ished by the state department of health.

Sec. 4. License Fees.—The application by any person,
partnership, association, corporation or local governmental
unit for a license to operate a hospital, sanatorium, rest
home, nursing home, or related institution within the
meaning of this article shall be accompanied by a fee to be
determined by the number of beds available for patients,
according to the following schedule of fees: Those with 5
beds but less than 50 beds shall pay a fee of $20.00; those
with 50 beds or more and less than 100 beds shall pay a fee
of $30.00; those with 100 beds or more and less than 200
beds shall pay a fee of $40.00; and those with 200 beds or
more shall pay a fee of $50.00. No such fee shall be refund-
ed. All licenses issued under this article shall expire on the
thirtieth day of June following their issuance, shall be on
a form prescribed by the state department of health, shall
not be transferable or assignable, shall be issued only for
the premises named in the application, shall be posted in a
conspicuous place on the licensed premises, and may be
renewed from year to year upon application, investigation,
and payment of the license fee, as in the case of the proc-
curement of an original license. All fees received by the
state department of health under the provisions of this
article shall be paid into the state treasury general
revenue fund.

Sec. 5. Inspection.—Every building, institution or es-
tablishment for which a license has been issued shall be
inspected periodically by a duly appointed representative
of the state department of health under rules and regu-
lations to be promulgated by the department. Inspec-
tion reports shall be prepared on form prescribed by the
state department of health. Institutions licensed here-
der shall in no way be exempt from being inspected or
licensed under the laws of this state relative to hotels,
restaurants, lodging houses, boarding houses and places
of refreshment.

Sec. 6. State Department of Health to Issue Licenses.—
The state department of health is hereby authorized to
issue licenses for the operation of hospitals, sanatoriums,
rest homes, nursing homes, or other related institutions
as herein defined, which are found to comply with the
provisions of this article and with all regulations lawfully promulgated by the department.

The state department of health is hereby authorized to suspend or revoke a license issued hereunder, on any of the following grounds:

(1) Violation of any of the provisions of this article or the rules and regulations issued pursuant thereto;

(2) Knowingly permitting, aiding or abetting the commission of any illegal act in such institution;

(3) Conduct or practices detrimental to the health or safety of the patients and employees of such institution.

Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and of the date, time, and place set for the hearing of the complaint, which date shall not be less than thirty days from the time the notice is given. Such notice shall be sent by registered mail to the licensee at the address where the institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.
27 If a license is revoked as herein provided, a new application for a license shall be considered by the state department of health if, when, and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules and regulations promulgated hereunder have been satisfied.

Sec. 7. Judicial Review.—Any applicant or licensee who is dissatisfied with the decision of the state department of health as a result of the hearing provided in section six may, within thirty days after receiving notice of the decision, appeal to the circuit court, in term or in vacation, of the county in which the applicant or licensee is located for judicial review of the decision. The court may, if it so desires, refer the matter to a commissioner in chancery for a hearing, with a request that he report to the court his findings of fact together with his recommendation.

The department shall promptly certify and file in the
court the transcript of the hearings on which its decision
is based.

Findings of fact by the department shall be considered
as prima facie correct, but the court may remand the case
to the department for the taking of further evidence.
The department may thereupon make new or modified
findings of fact which shall likewise be considered as
prima facie correct. All evidence in the case shall be
held secret until the final order is issued by the court
which order shall be made public.

The court shall have the power to affirm, modify or re-
verse the decision of the department and either the ap-
plicant or licensee or the department may appeal from
the court's decision to the supreme court of appeals.
Pending the final disposition of the matter the status quo
of the applicant or licensee shall be preserved.

Sec. 8. State Department of Health to Establish Stand-
dards.—The state department of health shall have the
power, with the advice and counsel of the advisory board,
to establish and enforce such minimum standards and
such rules and regulations, not in conflict with any pro-
vision of this article, as it finds necessary, or in the public
interest, in order to protect patients in institutions re-
quired to be licensed under this article from detrimental
practices and conditions, or to insure adequate provision
for their accommodations and care. In like manner, the
department, with the advice and counsel of the advis-
ory board, may from time to time rescind or modify such
standards, rules and regulations in such manner as may
be deemed in the public interest, but no rule, regulation,
or standard of the board shall be adopted or enforced
which would have the effect of denying a license to a
hospital or other institution required to be licensed here-
under, solely by reason of the school or system of prac-
tice employed or permitted to be employed by physicians
therein: Provided, That such school or system of practice
is recognized by the laws of this state.

Sec. 9. Appointment and Term of Office of Advisory
Board Members.—There shall be an advisory board of
seven members, all of whom shall be citizens of West
Virginia, to assist in the establishment of rules, regula-
tions and standards necessary to carry out the provisions
of this act and to serve as consultants to the commissioner of health. The board shall meet at least twice each year and at the call of the commissioner of health. The members of the board shall annually elect one of its members to serve as chairman.

The advisory board shall be appointed by the governor by and with the consent of the senate. Of the seven members of the board, four shall be persons who are well-versed in hospital organization and administration, and the remaining three shall be chosen from persons of recognized ability in the fields of medicine and surgery, nursing, welfare, public health, architecture, or allied professions in the field of health, or consumers of hospital services.

The members shall be appointed for seven year terms except that in the original appointments one person shall be appointed for one year, one person for two years, one person for three years, one person for four years, one person for five years, one person for six years, and one person for seven years. Thereafter each member shall be appointed to serve seven years or until his successor is
appointed. In the case of a vacancy the appointee shall serve the remainder of the unexpired term.

Members of the advisory board shall be eligible to succeed themselves. Members of the advisory board shall serve without compensation but shall be entitled to reimbursement for actual expenses incurred in the performance of the duties of their office.

Sec. 10. Information Not to be Disclosed Except in Certain Cases.—Information received by the state department of health under the provisions of this article shall be confidential and shall not be publicly disclosed except in a proceeding involving the question of the issuance or revocation of a license.

Sec. 11. Violations; Penalties; Separability.—Any person, partnership, association, or corporation, and any local governmental unit or any division, department, board or agency thereof establishing, conducting, managing, or operating a hospital, sanatorium, rest home, nursing home, or institution within the meaning of this article, without first obtaining a license therefor as herein provided, or violating any provision of this article or any
rule or regulation lawfully promulgated thereunder, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than five hundred dollars, with imprisonment in the county jail for a period of not more than ninety days, or both such fine and imprisonment in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

Sec. 12. Injunction.—Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for injunction against any person, partnership, association, corporation, or any local governmental unit, or any division, department, board or agency thereof to restrain or prevent the establishment, conduct, management or operation of any hospital, sana-
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9 atorium, rest home, nursing home or other institution hav-
10 ing five or more beds for the hospitalization or care of the
11 sick or injured or for the care of any human being re-
12 quiring or receiving chronic or convalescent care with-
13 out first obtaining a license therefor in the manner here-
14 inbefore provided.

Sec. 13. If any part of this article shall be declared un-
2 constitutional, such declaration shall not affect any other
3 part thereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect Ninety Days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 18th day of Feb., 1947.

Governor.