

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

SENATE BILL No. 51

(By Mr. Vickers, Mr. President)



PASSED February 12th 1947

In Effect Ninety Days from Passage

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Senate Bill No. 51

(By MR. VICKERS, MR. PRESIDENT)

[Passed February 12, 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,

3 corporation, or any local governmental unit or any divi-
4 sion, department, board or agency thereof shall estab-
5 lish, conduct, or maintain in the State of West Virginia
6 any hospital, sanatorium, rest home, nursing home, or
7 other institution having five or more beds for the hos-
8 pitalization or care of the sick or injured or for the care
9 of any human being requiring or receiving chronic or
10 convalescent care without first obtaining a license there-
11 for in the manner hereinafter provided. Hospitals oper-
12 ated by the federal government or the state government
13 shall be exempt from the provisions of this article.

14 Hospital, sanatorium, rest home, nursing home, and
15 other related institutions within the meaning of this
16 article, shall mean any institution, place, building, or
17 agency in which an accommodation of five or more beds is
18 maintained, furnished or offered for the hospitalization of
19 the sick or injured or care of any persons requiring or
20 receiving chronic or convalescent care. Nothing con-
21 tained in this article, however, shall apply to hotels or
22 other similar places that furnish to their guests only
23 board and room, or either of them.

24 Nothing in this article shall authorize any person, part-
25 nership, association, corporation, or any local government
26 unit or any division, department, board or agency there-
27 of to engage in any manner in the practice of medicine, as
28 defined by law. This article shall not be construed to
29 restrict or modify any statute pertaining to the place-
30 ment or adoption of children.

Sec. 2. *Existing Hospitals and Institutions to Obtain*
2 *Licenses.*—No person, partnership, association, corpora-
3 tion, or any local governmental unit or any division, de-
4 partment, board or agency thereof may continue to oper-
5 ate an existing hospital, sanatorium, rest home, nursing
6 home, or related institution or open a hospital, sanator-
7 ium, rest home, nursing home, or related institution
8 after July 1, 1948, unless such operation shall have been
9 approved and regularly licensed by the state as herein-
10 after provided.

11 Before a license shall be issued under this act, the per-
12 son applying, if an individual, shall submit evidence sat-
13 isfactory to the state department of health that he is not
14 less than 21 years of age, of reputable and responsible

15 character, and otherwise qualified. In the event the ap-
16 plicant is an association, corporation or governmental
17 unit, like evidence shall be submitted as to the members
18 thereof and the persons in charge. Every applicant
19 shall, in addition, submit satisfactory evidence of his
20 ability to comply with the minimum standards and with
21 all rules and regulations lawfully promulgated here-
22 under.

Sec. 3. *Application for Licenses.*—Any person, partner-
2 ship, association, or corporation, or any local governmen-
3 tal unit or any division, department, board or agency
4 thereof desiring a license hereunder shall file with the
5 state department of health a verified application stating
6 the name of the applicant, and if the applicant is an in-
7 dividual, his age; the type of institution to be operated;
8 the location thereof; the name of the person in charge
9 thereof; and such other information as the state depart-
10 ment of health may require. An application on behalf
11 of a corporation, association or governmental unit shall
12 be made by any two officers thereof or by its managing
13 agents and shall contain like information. The applica-

14 tion shall be on a form prescribed, prepared and fur-
15 nished by the state department of health.

Sec. 4. *License Fees.*—The application by any person,
2 partnership, association, corporation or local governmental
3 unit for a license to operate a hospital, sanatorium, rest
4 home, nursing home, or related institution within the
5 meaning of this article shall be accompanied by a fee to be
6 determined by the number of beds available for patients,
7 according to the following schedule of fees: Those with 5
8 beds but less than 50 beds shall pay a fee of \$20.00; those
9 with 50 beds or more and less than 100 beds shall pay a fee
10 of \$30.00; those with 100 beds or more and less than 200
11 beds shall pay a fee of \$40.00; and those with 200 beds or
12 more shall pay a fee of \$50.00. No such fee shall be refund-
13 ed. All licenses issued under this article shall expire on the
14 thirtieth day of June following their issuance, shall be on
15 a form prescribed by the state department of health, shall
16 not be transferable or assignable, shall be issued only for
17 the premises named in the application, shall be posted in a
18 conspicuous place on the licensed premises, and may be
19 renewed from year to year upon application, investigation,

20 and payment of the license fee, as in the case of the pro-
21 curement of an original license. All fees received by the
22 state department of health under the provisions of this
23 article shall be paid into the state treasury general
24 revenue fund.

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

Sec. 6. *State Department of Health to Issue Licenses.*—
2 The state department of health is hereby authorized to
3 issue licenses for the operation of hospitals, sanatoriums,
4 rest homes, nursing homes, or other related institutions
5 as herein defined, which are found to comply with the

6 provisions of this article and with all regulations law-
7 fully promulgated by the department.

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

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

13 (2) Knowingly permitting, aiding or abetting the com-
14 mission of any illegal act in such institution;

15 (3) Conduct or practices detrimental to the health or
16 safety of the patients and employees of such institu-
17 tion.

18 Before any such license is suspended or revoked, how-
19 ever, written notice shall be given the licensee, stating
20 the grounds of the complaint, and of the date, time, and
21 place set for the hearing of the complaint, which date
22 shall not be less than thirty days from the time the notice
23 is given. Such notice shall be sent by registered mail
24 to the licensee at the address where the institution con-
25 cerned is located. The licensee shall be entitled to be
26 represented by legal counsel at the hearing.

27 If a license is revoked as herein provided, a new appli-
28 cation for a license shall be considered by the state de-
29 partment of health if, when, and after the conditions upon
30 which revocation was based have been corrected and evi-
31 dence of this fact has been furnished. A new license
32 shall then be granted after proper inspection has been
33 made and all provisions of this article and rules and regu-
34 lations promulgated hereunder have been satisfied.

Sec. 7. *Judicial Review.*—Any applicant or licensee
2 who is dissatisfied with the decision of the state depart-
3 ment of health as a result of the hearing provided in sec-
4 tion six may, within thirty days after receiving notice
5 of the decision, appeal to the circuit court, in term or in
6 vacation, of the county in which the applicant or licensee
7 is located for judicial review of the decision. The court
8 may, if it so desires, refer the matter to a commissioner
9 in chancery for a hearing, with a request that he report
10 to the court his findings of fact together with his recom-
11 mendation.

12 The department shall promptly certify and file in the

13 court the transcript of the hearings on which its decision
14 is based.

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

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

Sec. 8. *State Department of Health to Establish Stand-*
2 *ards.*—The state department of health shall have the
3 power, with the advice and counsel of the advisory board,
4 to establish and enforce such minimum standards and
5 such rules and regulations, not in conflict with any pro-

6 vision of this article, as it finds necessary, or in the public
7 interest, in order to protect patients in institutions re-
8 quired to be licensed under this article from detrimental
9 practices and conditions, or to insure adequate provision
10 for their accommodations and care. In like manner, the
11 department, with the advice and counsel of the advis-
12 ory board, may from time to time rescind or modify such
13 standards, rules and regulations in such manner as may
14 be deemed in the public interest, but no rule, regulation,
15 or standard of the board shall be adopted or enforced
16 which would have the effect of denying a license to a
17 hospital or other institution required to be licensed here-
18 under, solely by reason of the school or system of prac-
19 tice employed or permitted to be employed by physicians
20 therein: *Provided*, That such school or system of practice
21 is recognized by the laws of this state.

Sec. 9. *Appointment and Term of Office of Advisory*
2 *Board Members.*—There shall be an advisory board of
3 seven members, all of whom shall be citizens of West
4 Virginia, to assist in the establishment of rules, regula-
5 tions and standards necessary to carry out the provisions

6 of this act and to serve as consultants to the commissioner
7 of health. The board shall meet at least twice each year
8 and at the call of the commissioner of health. The
9 members of the board shall annually elect one of its
10 members to serve as **chairman**.

11 The advisory board shall be appointed by the gov-
12 ernor by and with the consent of the senate. Of the
13 seven members of the board, four shall be persons who
14 are well-versed in hospital organization and administra-
15 tion, and the remaining three shall be chosen from per-
16 sons of recognized ability in the fields of medicine and
17 surgery, nursing, welfare, public health, architecture, or
18 allied professions in the field of health, or consumers of
19 hospital services.

20 The members shall be appointed for seven year terms
21 except that in the original appointments one person shall
22 be appointed for one year, one person for two years, one
23 person for three years, one person for four years, one per-
24 son for five years, one person for six years, and one per-
25 son for seven years. Thereafter each member shall be
26 appointed to serve seven years or until his successor is

27 appointed. In the case of a vacancy the appointee shall
28 serve the remainder of the unexpired term.

29 Members of the advisory board shall be eligible to
30 succeed themselves. Members of the advisory board
31 shall serve without compensation but shall be entitled to
32 reimbursement for actual expenses incurred in the per-
33 formance of the duties of their office.

Sec. 10. *Information Not to be Disclosed Except in*
2 *Certain Cases.*—Information received by the state de-
3 partment of health under the provisions of this article
4 shall be confidential and shall not be publicly disclosed
5 except in a proceeding involving the question of the is-
6 suance or revocation of a license.

Sec. 11. *Violations; Penalties; Separability.*—Any per-
2 son, partnership, association, or corporation, and any local
3 governmental unit or any division, department, board or
4 agency thereof establishing, conducting, managing, or
5 operating a hospital, sanatorium, rest home, nursing
6 home, or institution within the meaning of this article,
7 without first obtaining a license therefor as herein pro-
8 vided, or violating any provision of this article or any

9 rule or regulation lawfully promulgated thereunder,
10 shall be guilty of a misdemeanor, and upon conviction
11 thereof shall be punished for the first offense by a fine
12 of not more than one hundred dollars, or by imprison-
13 ment in the county jail for a period of not more than
14 ninety days, or by both such fine and imprisonment, in
15 the discretion of the court. For each subsequent offense
16 the fine may be increased to not more than five hundred
17 dollars, with imprisonment in the county jail for a per-
18 iod of not more than ninety days, or both such fine and
19 imprisonment in the discretion of the court. Each day
20 of a continuing violation after conviction shall be con-
21 sidered a separate offense.

Sec. 12. *Injunction.*—Notwithstanding the existance or
2 pursuit of any other remedy, the department may, in
3 the manner provided by law, maintain an action in the
4 name of the state for injunction against any person,
5 partnership, association, corporation, or any local gov-
6 ernmental unit, or any division, department, board or
7 agency thereof to restrain or prevent the establishment,
8 conduct, management or operation of any hospital, sana-

9 torium, 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.

Forest L. Moore

Chairman Senate Committee

R. L. Maecher

Chairman House Committee

Originated in the Senate

Takes effect Ninety Days from passage.

Howard Hughes

Clerk of the Senate

J. Ruff

Clerk of the House of Delegates

Amul M. Vickens

President of the Senate

John E. Amos

Speaker House of Delegates

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

Glenn Hodder

Governor.



Filed in the Office of the Secretary of State
of West Virginia

FEB 19 1947
WM. S. GONEN,
SECRETARY OF STATE