

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949



ENROLLED

HOUSE BILL No. 133

(By Mr. Speaker, Mr. Plannery)



PASSED February 21 1949

In Effect July 1, 1949 Passage



102

ENROLLED

House Bill No. 133

(BY MR. SPEAKER, MR. FLANNERY)

[Passed February 21, 1949; in effect July 1, 1949.]

AN ACT to amend chapter sixteen of the code of West Virginia one thousand nine hundred thirty-one, as amended, by repealing article one and enacting in lieu thereof a new article one, and by amending and reenacting sections three and four, article two; sections one, two, five, six, and twelve, article three; sections two and seventeen, article five; section one, article five-A; section nine, article five-B, and section three, article seven; establishing the organization of the state department of health, creating a state board of health, establishing the membership, organization, powers and duties of said board, providing for the employment by the said board, and establishing the qualifications, powers, and duties of a director of health and other employees, authorizing joint local boards of health, and vesting in the state board of health the power and

duty to administer the public health laws of the state, all relating to public health.

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 repealing article one and enacting in lieu thereof a new article one, and by amending and reenacting sections three and four article two; sections one, two, five, six, and twelve, article three; sections two and seventeen, article five; section one, article five-A; section nine, article five-B, and section three, article seven; all to read as follows:

Article 1. State Department of Health.

Section 1. *Composition of Department.*—There shall be
2 a state department of health, which shall consist of a
3 board of health, a director of health; directors of divisions,
4 and other employees as hereinafter provided.

Sec. 2. *Board of Health; Membership.*—There shall be
2 a state board of health, to be known as the West Virginia
3 board of health, which shall be a corporation and as such
4 may contract and be contracted with, plead and be im-
5 pleaded, sue and be sued, and have and use a common

6 seal. The state board of health shall consist of nine mem-
7 bers, who shall be appointed by the governor, by and with
8 the advice and consent of the senate. Three members of
9 the board shall be physicians or surgeons holding the
10 degree of doctor of medicine, one shall be a dentist, one
11 shall be an osteopathic physician, one shall be a pharma-
12 cist, one shall be chosen as the representative of the hos-
13 pitals licensed in the state of West Virginia and two shall
14 be representative citizens, neither of which said repre-
15 sentative citizens shall be an employee of, or connected
16 in any way with, any hospital licensed in this state, and
17 neither of whom shall be a member of any of the pro-
18 fessions named above.

19 All persons appointed to membership on the state board
20 of health shall be citizens of this state and shall have been
21 such citizens and residents of the state for at least five
22 years prior to the date of their appointment. Every pro-
23 fessional member of the said board shall be duly licensed
24 to practice his profession in this state on the date of his
25 appointment and shall have been so licensed and have
26 been actively practicing his profession for at least five

27 years immediately preceding the date of such appoint-
28 ment. Before appointing any professional member, the
29 governor shall request the state professional society of
30 the profession practiced by any proposed appointee to
31 furnish to the governor a full and complete report con-
32 cerning the qualifications and suitability of the proposed
33 appointee. All members of the board shall be appointed
34 for terms of nine years each, except that the persons
35 originally appointed, shall be appointed to serve for
36 designated terms beginning on the first day of July, one
37 thousand nine hundred forty-nine, and continuing for one,
38 two, three, four, five, six, seven, eight, and nine years
39 respectively. Upon the expiration of such initial appoint-
40 ments the term of each new appointee shall be nine years.
41 Any vacancy on the board shall be filled by the governor
42 by appointment for the unexpired term.

43 No more than five of the members of the board shall
44 belong to the same political party. Not less than one nor
45 more than two members shall be appointed from the same
46 congressional district. No person shall be eligible for
47 appointment to membership on the state board who is

48 a member of any political party executive committee, or
49 who holds any public office or public employment under
50 the Federal government or under the government of
51 this state or any of its political subdivisions, or who is
52 an appointee or employee of the board. All members
53 shall be eligible for re-appointment.

54 No member may be removed from office by the gov-
55 ernor except for official misconduct, incompetence, neg-
56 lect of duty or gross immorality and then only in the
57 manner prescribed by law for the removal by the gov-
58 ernor of state elective officers: *Provided, however,* That
59 the expiration or revocation of the professional license
60 of any professional member of the board shall be cause
61 for his removal.

62 No member shall receive any compensation for his
63 services but each shall be reimbursed for actual and
64 necessary travel and other expenses incurred by him in
65 the performance of his duties as a member of the board.

Sec. 3. *Board of Health; Powers and Duties.*—The
2 state board of health shall assume, carry on, and succeed
3 to, all the duties, rights, powers, obligations and liabili-

4 ties heretofore belonging to, exercised by, or assumed by
5 the state department of health, the public health council,
6 and the commissioner of health pursuant to statutory
7 authority heretofore existing and as changed or modified
8 by the provisions of this article: *Provided, however,*
9 That the said board shall not succeed to, or exercise any
10 of the powers heretofore exercised by the public health
11 council with regard to the licensure of physicians, sur-
12 geons, chiropodists, and chiropractors.

13 The state board of health shall have the power to ac-
14 quire by condemnation or otherwise land or buildings
15 and to hold title thereto, for the use and benefit of any
16 state institution subject to its control and management,
17 and, by and with the consent of the governor, to sell, ex-
18 change or otherwise convey any property title to which
19 is acquired or held by it. Any condemnation proceed-
20 ing instituted by the said board shall be conducted pur-
21 suant to the provisions of chapter fifty-four of this code.

22 The state board shall have supervision and control of
23 the business, fiscal, administrative and medical affairs of
24 the department of health and shall have advisory medical

25 supervision of all of the state institutions set forth in
26 section ten of this article. It shall have authority to em-
27 ploy, fix the compensation of, and discharge all persons
28 necessary for the proper execution and enforcement of
29 the laws of this state pertaining to public health, and the
30 efficient and proper discharge of the duties imposed upon,
31 and execution of the powers vested in, the said board by
32 law. It may place any or all of its employees under the
33 merit system, provided that the same may be done in
34 conformity with the applicable laws of this state and of
35 the Federal government.

35 The state board shall have the authority to enforce all
36 of the laws of this state concerning the public health,
37 and shall take care to protect the life and health of all
38 of the inhabitants of the state, and to that end shall
39 make or cause to be made sanitary investigations and in-
40 quiries respecting the cause of disease, especially of
41 epidemics and endemic conditions, and the means of pre-
42 vention, suppression or control of such conditions; the
43 source of mortality, and the effects of localities, employ-
44 ment, habits and circumstances of life on the public

45 health. It shall gather information in respect to the
46 said and kindred subjects for diffusion among the people
47 of the state. It shall inspect and examine food, drink
48 and drugs offered for sale, or for public consumption, in
49 such manner as it shall deem necessary to protect the
50 public health, and shall report all violations of the laws
51 of this state and the regulations adopted thereunder re-
52 lating to pure food, drink and drugs to the prosecuting
53 attorney of the county in which such violations occur,
54 and lay before such prosecuting attorney the evidence in
55 its knowledge of such violations. The board or its duly
56 designated employees may make complaint or cause
57 proceedings to be instituted against any person or per-
58 sons, or corporation, for the violation of any of the health
59 laws of this state. Such action may be taken by the
60 board without the sanction of the prosecuting attorney
61 of the county in which proceedings are instituted, if said
62 officer fail or refuse to discharge his duty. In no such
63 case shall the board or any person acting under its di-
64 rection be required to give security for costs.

65 The state board of health shall provide for the ef-

66 ficient and accurate registration of births and deaths, and
67 the recordation of cases of such diseases as may be re-
68 quired to be recorded by statute or regulation. It shall
69 have the power to inspect, and to make and enforce, for
70 the protection of the public health, reasonable rules and
71 regulations to control the sanitary condition of all insti-
72 tutions and schools, whether public or private, public
73 conveyances, dairies, creameries, slaughter houses, work
74 shops, factories, labor camps, places of entertainment,
75 hotels, tourist camps, all other places open to the general
76 public and inviting public patronage or public assem-
77 bly, or tendering to the public any item for human con-
78 sumption, and places where offensive trades or industries
79 are conducted. It shall have the power to make and en-
80 force reasonable rules and regulations to control occu-
81 pational and industrial health hazards, and to make in-
82 spections and conduct hearings respecting the cause and
83 control of such hazards. It shall have the power to in-
84 spect and to make reasonable rules and regulations to
85 control the sanitary condition of streams, sources of
86 water supply, and sewerage facilities.

87 The state board is empowered and directed to en-
88 courage and foster the cooperation of all physicians, vol-
89 unteer health organizations and other interested persons
90 and organizations in the improvement of public health,
91 and to disseminate information to the general public in
92 all matters pertaining to public health.

93 The state board shall promulgate and enforce regula-
94 tions governing the design of all public water systems,
95 plumbing systems, sewerage systems and sewage treat-
96 ment plants, swimming pools and excreta disposal meth-
97 ods in this state, whether publicly or privately owned;
98 the operation of all public chlorination and filtration
99 plants, and the qualifications of operators, chemists, bac-
100 teriologists and superintendents of filtration, or others,
101 who are in actual charge of the plant operation of all
102 public water systems, sewage treatment plants and swim-
103 ming pools.

104 The state board shall have the power and authority to
105 make and promulgate, and from time to time amend such
106 rules and regulations as it may deem necessary and ad-
107 visable to properly put into effect the public health laws

108 of this state, and for the administration of the powers
109 granted to it by this article.

110 Every general regulation adopted by the state board
111 of health shall state the day on which it takes effect. A
112 copy of any such regulation, duly signed by the director
113 of health, shall be filed in the office of the secretary of
114 state, and a copy thereof shall be sent by the director of
115 health to each health officer within the state and shall be
116 published in such manner as the board may determine.

117 *Provided, however,* That nothing herein contained shall
118 be construed to give the state department of health or
119 the state board of health power to regulate or interfere
120 with the drainage from any mine or manufacturing plant
121 unless the drainage from said mine or manufacturing
122 plant shall contain disease producing bacteria in suf-
123 ficient numbers to endanger health, or organic or in-
124 organic wastes of such nature as to cause the water in-
125 tended for public or private water supplies to be unfit
126 for use.

Sec. 4. *Board of Health; Organization, Reports, and*

2 *Offices.*—The state board of health shall adopt a seal. It

3 shall organize by electing from among its members a
4 chairman who shall serve as such for a period of two years.
5. Such chairman shall have the power to sign documents,
6 execute contracts and otherwise act for and in the name
7 of the board in all matters within its lawful powers and
8 duly authorized by a majority of its members.

9 The board shall determine the number, date and place
10 of its regular meetings, but at least one such meeting shall
11 be held annually at the board's established offices in the
12 city of Charleston. Whenever the convenience of the pub-
13 lic or of interested persons may be promoted, or delay or
14 expense may be prevented, the board may, in its discre-
15 tion, hold meetings, hearings or proceedings at any other
16 time or place designated by it.

17 The board shall report in writing to the governor on or
18 before the thirty-first day of August of each year. The
19 report shall contain a summary of the board's proceedings
20 during the preceding fiscal year, a detailed and itemized
21 statement of all revenue received and all expenditures
22 made by or on behalf of the board, such other information
23 as it may deem necessary or useful, and any additional

24 information which may be requested by the governor.
25 The fiscal year of the board and of the department of
26 health shall conform to the fiscal year of the state.

27 An office shall be established and maintained by the
28 board in the city of Charleston. In addition, the board
29 may establish and maintain such other offices within the
30 state as it may deem necessary and expedient.

Sec. 5. *Director of Health; Appointment, Qualifications,*
2 *Compensation.*—A state director of health shall be ap-
3 pointed by the state board of health, to serve for an in-
4 definite term at the pleasure of the board. The director
5 of health so appointed shall be a physician holding the
6 degree of doctor of medicine, a graduate of a reputable
7 medical college, and eligible for licensure as a physician
8 in this state, and shall have had at least five years ex-
9 perience in the practice of medicine. He shall be skilled
10 in sanitary science and experienced in public health ad-
11 ministration. He shall devote his entire time to the duties
12 of his office as required and prescribed by this article, and
13 shall not be actively engaged or employed in any other
14 business, vocation or employment. He shall receive such

15 compensation as the board may determine. He shall be
16 reimbursed for all necessary traveling and other expenses
17 incurred by him in the discharge of his official duties.

Sec. 6. *Director of Health; Duties and Powers.*—The
2 director of health shall be the executive officer of the state
3 board of health. Under its supervision, he shall admin-
4 ister the provisions of this article, all other laws of this
5 state relating to public health and within the authority of
6 the department of health, and the rules, regulations and
7 orders established, promulgated or issued by the board
8 of health. The director shall attend but not vote at all
9 meetings of the state board of health. He shall act as
10 secretary of the board and as such shall be in charge of its
11 offices and responsible to the board for the preparation of
12 reports and the collection and dissemination of data and
13 other public information relating to public health. At
14 the direction of the board of health, he shall, together with
15 the chairman of the board, execute all contracts entered
16 into by the board which are legally authorized. He shall
17 be the administrative head and chief executive officer of
18 the state department of health and as such shall organize

19 and supervise all of the activities of the department of
20 health.

Sec. 7. *Divisions of Department; Directors of Divisions.*

2 —There shall be included in the state department of
3 health the following divisions:

- 4 Division of communicable diseases,
- 5 Division of cancer control,
- 6 Division of vital statistics,
- 7 Division of sanitary engineering,
- 8 Division of child hygiene,
- 9 Division of barbers and beauticians.

10 The state board of health shall appoint, with the advice
11 of the director of health, a director for each division, and
12 shall prescribe, with the advice of the director of health,
13 the qualifications of each such division director, the duties
14 pertaining to each division, and the arrangement of the
15 subdivisions, if any, thereof.

16 The state board shall have authority to establish such
17 additional administrative sections or groupings within the
18 department of health as it may consider necessary or ad-

19 visable for the efficient administration of its powers and
20 duties.

Sec. 8. *Administrative and Other Employees of the Department of Health.*—The state board of health may at
2 such time or times as it may deem necessary, employ,
3 with the advice of the director of health, such administrative
4 employees, inspectors, examiners, or other persons
5 as may be necessary to properly carry out the provisions
6 of the public health laws of this state. Such inspectors,
7 examiners and other employees as may be duly designated
8 by the board of health shall act as its representatives and,
9 under the direction of the director of health, shall enforce
10 the provisions of the public health laws and all duly
11 promulgated rules and regulations of the board of health,
12 and in the discharge of official duties, shall have the right
13 of entry into any institution or school, whether public or
14 private, public conveyance, dairy, creamery, slaughter
15 house, work shop, factory, labor camp, place of entertain-
16 ment, hotel, tourist camp, all other places open to the gen-
17 eral public and inviting public patronage or public as-
18 ssembly, or tendering to the public any item for human

20 consumption, and places where offensive trades or indus-
21 tries are conducted.

22 Any person interfering with or attempting to interfere
23 with any inspector, examiner or other duly authorized
24 employee of the board of health in the discharge of his
25 duties under this section shall be guilty of a misdemeanor
26 and upon conviction shall be fined not less than ten dol-
27 lars, nor more than one hundred dollars.

Sec. 9. *Supervision Over Local Sanitation.*—No county
2 or municipal government, public or private institution,
3 firm, corporation or company, person or persons, shall in-
4 stall or establish any system or method of drainage, wa-
5 ter supply, excreta disposal or system of garbage and ref-
6 use disposal insofar as each affects the public health in this
7 state unless the same is installed or established in ac-
8 cordance with plans, specifications, and instructions issued
9 by the state department of health or which have been
10 approved in writing by the director of health or his au-
11 thorized representative.

12 Whenever the director of health or his authorized rep-
13 resentative finds upon investigation that any system or

14 method of drainage, water supply, excreta disposal or gar-
15 bage or refuse disposal, whether publicly or privately
16 owned, is such as to endanger the public health or is cre-
17 ating a nuisance that is detrimental to health, the director
18 of health or his duly authorized representative shall be
19 empowered to issue an order requiring the owner of such
20 system or method to make such alterations, within a rea-
21 sonable time, as may be necessary to correct the improper
22 condition.

23 The personnel of the state department of health shall
24 be at the disposal of any county, municipality, firm, cor-
25 poration, company, person or persons to consult and ad-
26 vise with them as to the most appropriate design, method
27 of operation or alteration of the systems or methods above
28 mentioned.

29 Any county, municipality, public or private institution,
30 firm, corporation, company, person or persons who shall
31 violate any provisions of this section shall be deemed
32 guilty of a misdemeanor and upon conviction thereof shall
33 be punished by a fine of not less than ten dollars nor more
34 than one hundred dollars.

Sec. 10. *Supervision of State Health Institutions.*—The
2 state department of health shall have the advisory med-
3 ical supervision of Denmar, Berkeley Springs, Pinecrest,
4 Hopemont and all other state sanitariums for the treat-
5 ment of tuberculosis or chronic diseases; Huntington,
6 Spencer, Lakin, Weston and all other state hospitals for
7 the treatment of mental or nervous diseases; and Fair-
8 mont and Welch emergency hospitals; and the state board
9 of control shall have the control of the business and fiscal
10 affairs thereof.

11 The director of the bureau of tuberculosis of the state
12 department of health, under the supervision of the state
13 board of health, shall encourage measures for the sup-
14 pression of tuberculosis, such as clinics, camps, open air
15 schools, sanitariums, district nursing, anti-tuberculosis
16 societies, diffusion of knowledge and other means.

17 The state board of health may promote mental health,
18 by having mental hygiene clinics conducted, by utilizing
19 the professional services available at the state mental
20 hospitals, by cooperating with the state department of
21 education and other school authorities in making the

22 services of psychologists and psychiatrists available to
23 schools, by conducting educational programs, and by any
24 other means that it may deem necessary or advisable.

Sec. 11. *State Laboratory; Branches.*—The state board
2 of health may establish and maintain a state hygienic
3 laboratory as an aid in performing the duties imposed
4 upon the said board, or the department of health, by law,
5 and may employ any chemists, bacteriologists, and other
6 employees that may be necessary to properly operate such
7 laboratory. The board of health may establish branches
8 of the state laboratory at such points within the state as
9 it may deem necessary in the interest of the public health.

Sec. 12. *Expenditures of State Department of Health.*—
2 The state department of health shall have power to ex-
3 pend annually, for the purpose of performing the duties
4 imposed on it, or authorized by law, such sum as may be
5 appropriated by the legislature for the department of
6 health. The director of health shall audit all bills, which
7 shall be made out in due form and verified by the members
8 of the board of health, directors of divisions, employees,
9 or agents rendering services or incurring traveling or

10 other expenses in the performance of the duties of their
11 offices or employments. Such bills, when approved by the
12 auditor, shall be paid out of the state treasury.

Sec. 13. *Disposition of Moneys Received by State Director of Health; Report to Auditor.*—The state director of
2 health, as secretary of the board of health, shall receive
3 and account for all moneys required to be paid to the
4 board of health as fees for permits, licenses, or registra-
5 tions, pursuant to the provisions of this Code, and shall
6 pay such moneys into the state treasury monthly, on or
7 before the tenth day of the month succeeding the month
8 in which such moneys were received. The director of
9 health shall, on the first day of January and the first day
10 of July in each year, or within five days thereafter, certify
11 to the state auditor a detailed statement of all such moneys
12 received by him during the preceding six months. If the
13 director of health shall fail or refuse to comply with the
14 provisions of this section, he shall be guilty of a misde-
15 meanor, and, upon conviction thereof, shall be fined for
16 each offense not less than fifty dollars, nor more than two
17 hundred dollars.

Sec. 14. *State Department of Health Authorized to Co-*
2 *operate with Federal Government in Hospital Construc-*
3 *tion Program.*—The state board of health is hereby desig-
4 nated as the sole state agency to cooperate with the fed-
5 eral government in its hospital construction program; and
6 is hereby authorized to make such an inventory of exist-
7 ing public health centers and public and private hospitals,
8 and the laboratory and other facilities thereof, and to
9 adopt and supervise the administration of such a state
10 wide plan for the construction of additional hospitals and
11 public health centers as may be necessary to comply with
12 the requirements and conditions of federal law in respect
13 to the granting of federal aid for such purposes.

14 The governor shall have authority to appoint such an
15 advisory council to consult with the state board of health
16 as may be necessary under federal law to effectuate the
17 purposes of this section. The members of any such ad-
18 visory council shall serve without compensation, but shall
19 be paid the amount of their traveling and other expenses
20 necessarily incurred in the performance of their duties.

Sec. 15. *Federal Aid.*—The state board of health is au-

2 thorized to accept, receive and receipt for federal moneys
3 and other moneys, either public or private, for and in be-
4 half of this state or any county or municipality thereof, for
5 public health purposes, or for the establishment or con-
6 struction of public health facilities, whether such work
7 is to be done by the state, or by such county or municipal-
8 ity, or jointly, aided by grants of aid from the United
9 States, upon such terms and conditions as are, or may be,
10 prescribed by the laws of the United States and any rules
11 or regulations made thereunder. The state board is au-
12 thorized to, and may, act as the agent of the state or any
13 of its agencies, or of any county or municipality of this
14 state, upon the request of any agency of the state or of
15 any such county or municipality, in accepting, receiving
16 and receipting for such moneys in its behalf, for public
17 health facilities financed either in whole or in part by
18 federal moneys.

19 The state, or any agency thereof, or any county or mu-
20 nicipality is authorized to, and may designate the state
21 board of health as its agent for the purposes above set
22 forth, and any such agency, county or municipality may

23 enter into an agreement with the board prescribing the
24 terms and conditions of such agency in accordance with
25 federal laws, rules and regulations, and with the laws of
26 this state. Such moneys as are paid over by the United
27 States government shall be retained by the state or paid
28 over to said counties or municipalities under such
29 terms and conditions as may be imposed by the United
30 States government in making such grants.

31 All moneys accepted for disbursement by the board
32 pursuant to this section shall be deposited in the state
33 treasury, and, unless otherwise prescribed by the au-
34 thority from which the money is received, kept in separate
35 funds, designated according to the purpose for which the
36 moneys were made available, and held by the state in
37 trust for such purposes. All such moneys are hereby ap-
38 propriated for the purposes for which the same were made
39 available and shall be expended in accordance with fed-
40 eral laws and regulations and with the laws of this state.
41 The board is authorized, whether acting for the state or
42 one of its agencies, or as the agency for any county or mu-
43 nicipality, when requested by the United States govern-

44 ment or any agency or department thereof, or when re-
45 quested by the state, a state agency, or any county or mu-
46 nicipality for which the moneys has been made available,
47 to disburse such moneys for the designated purposes, but
48 this shall not preclude any other authorized method of
49 disbursement.

Sec. 16. *Investigations, Hearings, Power to Subpoena*
2 *Witnesses; Self Crimination.*—The state board of health,
3 any member thereof, the director of health, or any of-
4 ficer or employee of the department of health designated
5 by the board of health, shall have the power to hold in-
6 vestigations, inquiries and hearings concerning matters
7 covered by the laws of this state pertaining to public
8 health and within the authority of the state board of
9 health, and the rules, regulations and orders of the board.
10 Hearings shall be open to the public and shall be held
11 upon such call or notice as the board shall deem ad-
12 visable.

13 Each member of the board, the director and every of-
14 ficer or employee of the department of health designated
15 to hold any inquiry, investigation or hearing shall have

16 the power to administer oaths and affirmations, certify
17 to all official acts, issue subpoenas and order the attend-
18 ance and testimony of witnesses in the production of
19 papers, books and documents. In case of the failure of
20 any person to comply with any subpoena or order issued
21 under the authority of this section, the board or its author-
22 ized representative may invoke the aid of any circuit
23 court of this state. The court may thereupon order such
24 person to comply with the requirements of the subpoena
25 order or to give evidence touching the matter in question.
26 Failure to obey the order of the court may be punished
27 by the court as a contempt thereof.

28 Subject to the foregoing provision the board may in its
29 discretion make available to appropriate federal, state
30 and municipal agencies information and material devel-
31 oped in the course of its investigation and hearings: *Pro-*
32 *vided, however,* That information obtained from studies
33 or from any investigation made or hearing held pursuant
34 to the provisions of this article shall not be admissible
35 in evidence in any action at law to recover damages for
36 personal injury or in any action under the workmen's

37 compensation act, but such information, if available, shall
38 be furnished upon request to the West Virginia compen-
39 sation commissioner for the sole purpose of adjusting
40 claims presented to the said commissioner.

Sec. 17. *State Board of Health, Orders, Notices and
2 Opportunity for Hearing.*—Every order of the state board
3 of health requiring performance of certain acts or com-
4 pliance with certain requirements and any denial or
5 revocation of an approval, certificate or license shall set
6 forth the reasons and shall state the acts to be done or
7 requirements to be met before approval by the board will
8 be given or the approval, license, or certificate granted
9 or restored or the order modified or changed. Orders is-
10 sued by the board pursuant to the provisions of this
11 article shall be served upon the persons affected either by
12 registered mail or in the manner provided by chapter
13 fifty-six, article two, section one of this code. In every
14 case where notice and opportunity for hearing are re-
15 quired under the provisions of this article, the order of
16 the board shall, on not less than ten days notice, specify
17 the time when and place where the person affected may

18 be heard, or the time within which he may request hear-
19 ing, and such order shall become effective upon the ex-
20 piration of the time for exercising such opportunity for
21 hearing unless a hearing is held or requested within the
22 time provided, in which case the order shall be sus-
23 pended until the board shall affirm, disaffirm or modify
24 such order after hearing held or default by the person
25 affected.

Sec. 18. *Judicial Review of Action by State Board of*
2 *Health.*—Any person aggrieved by any final order of the
3 state board of health shall have the right to a judicial
4 review of the action of the board upon certiorari by the
5 circuit court of the county in which the cause of action
6 arose. The granting of such review, upon certiorari, shall
7 be within the sound discretion of the judge of the said
8 circuit court. A petition for such review must be filed
9 with the said court, or with the judge thereof in vacation,
10 within a period of thirty days from the date of entry of
11 the final order complained of.

12 An appeal from any final order entered by the said cir-
13 cuit court upon granting such writ of certiorari may be

14 had by application to the supreme court of appeals of
15 West Virginia for a writ of error and supersedeas. Such
16 application to the supreme court of appeals shall be made
17 within thirty days of the entry of the order appealed
18 from by the said circuit court.

19 *Provided, however,* That when either the circuit court
20 or the supreme court of appeals has taken jurisdiction of
21 any such case, such court may, in its sound discretion,
22 refuse a stay of execution or supersedeas to the order or
23 any portion of the order, of the board, during the time
24 that the case is pending before the said court, if the
25 court is of the opinion that the order of the board or a
26 part of such order is reasonable and has been issued for
27 the protection of the public health.

Sec. 19. *Meaning of Words "Public Health Council"*
2 *and "Commissioner of Health"*. Wherever in this code
3 the words "public health council" or "state public health
4 council" appear, they shall mean, and be construed as
5 meaning the "West Virginia board of health".

6 Wherever in this code the words "commissioner of
7 health", "health commissioner", or "state commissioner

8 of health” appear, they shall mean, and be construed as
9 meaning “state director of health”.

Sec. 20. *Penalties for Violating of Provisions of this*
2 *Article.*—Any person violating any of the provisions of
3 this article, for which the penalty is not otherwise pro-
4 vided, or any of the rules, regulations or orders issued
5 pursuant thereto, shall be punishable by a fine of not more
6 than two hundred dollars or by imprisonment for not
7 more than thirty days, or both.

Sec. 21. *Severability.*—If any provision of this article,
2 or the application thereof to any person or circumstance,
3 shall be held invalid, such invalidity shall not affect the
4 provisions or applications of this article which can be
5 given effect without the invalid provisions or applica-
6 tion, and to this end the provisions of this article are
7 declared to be severable.

Article 2. Local Health Officers.

Sec. 3. *Counties, or Counties and Municipalities, May*
2 *Combine in Employment of Officers and Installation and*
3 *Maintenance of Equipment.*—Any two or more counties,
4 or any county or counties and any one or more munici-

5 palities within the said county or counties, may combine
6 to cooperate with the state department of health, by vote
7 of the county court in the case of a county and by vote of
8 the council or other governing body in the case of a
9 municipality, and may participate in the employment of
10 trained health officers and other agents or in the installa-
11 tion and maintenance of a common laboratory and other
12 equipment. Whenever any such units shall decide so to
13 cooperate and shall appropriate a sum or sums of money
14 for such joint or cooperative action, a sum equal to two-
15 fifths of the total amount contributed by the cooperating
16 units, shall be added thereto from the appropriation made
17 for the state department of health: *Provided*, That the
18 general plan of cooperation, as well as the principal
19 health officer, executive agent or laboratory director em-
20 ployed by the cooperating units, shall first have been
21 approved by the state board of health.

22 Each county or municipality participating in any such
23 cooperative action shall annually select and appoint by
24 vote of the county court in the case of a county, and by
25 vote of the council or other governing body in the case

26 of a municipality, not less than one nor more than three
27 persons to be members of a combined board of health. No
28 such person shall be selected by, nor represent on any
29 such combined board, more than one such county or
30 municipality. The number of persons to be selected by
31 each participating county or municipality as members of
32 such board, subject to the limitation contained in the two
33 preceding sentences, shall be agreed upon by the several
34 counties or municipalities participating. Any such com-
35 bined board of health shall consist of the several members
36 so selected. Such board shall organize by electing a
37 chairman from among its members. It shall have the
38 power to adopt, and from time to time amend, such rules
39 and regulations as it may deem necessary concerning the
40 time and place of its meetings, the procedure and method
41 of conducting its meetings or business, and any other
42 matters affecting, or necessary to, the orderly and ef-
43 ficient discharge of its duties or exercise of its powers.
44 All powers and duties belonging to or vested in county
45 boards of health or municipal boards of health are hereby
46 vested in, conferred upon, and declared to be, the powers

47 and duties of, any combined board of health created pur-
48 suant to the provisions of this section. The territorial
49 jurisdiction of any such combined board of health shall
50 be coextensive with the boundaries of all of the counties
51 and municipalities which have been combined to co-
52 operate as herein provided.

53 Upon the formation of a combined local board of health
54 as herein provided, and during the period that it continues
55 to exist, there shall be no separate county board of health
56 or municipal board of health in any county or municipal-
57 ity represented on the combined board of health.

Sec. 4. *State Board of Health May Supplant Local*
2 *Health Authority; Removal of Delinquent Local Officer.—*
3 When, in the opinion of the state board of health, any
4 local health authority shall fail or refuse to enforce
5 necessary laws and regulations to prevent and control
6 the spread of communicable or infectious disease de-
7 clared to be dangerous to the public health, or when, in
8 the opinion of the said state board, a public health emer-
9 gency exists, the state board may enforce its rules and
10 regulations within the territorial jurisdiction of such local

11 health authorities, and for that purpose shall have and
12 may exercise all the powers given by law to local health
13 authorities. All expenses so incurred shall be a charge
14 against the counties, cities, or towns concerned. And in
15 such cases the failure or refusal of any local health of-
16 ficer or local health body to carry out the lawful orders
17 and regulations of the state board of health shall be suf-
18 ficient cause for the removal of such local health officer
19 or local health body from office, and upon such removal
20 the proper county or municipal authorities shall at once
21 nominate a successor, other than the person removed, as
22 provided by law.

**Article 3. Prevention and Control of Communicable and In-
fectious Diseases.**

Section 1. *State Board of Health May Establish Quar-*
2 *antine and Control Epidemics.*—The state board of health
3 is empowered to establish and strictly maintain quaran-
4 tine at such places as it may deem proper, and forbid and
5 prevent the assembling of the people in any place, when
6 the said board or the state director of health or any
7 county or municipal health officer deems that the public

8 health and safety so demand, and may adopt rules and
9 regulations to obstruct and prevent the introduction or
10 spread of small pox or other communicable or infectious
11 diseases into or within the State, and shall have the
12 power to enforce these regulations by detention and ar-
13 rest, if necessary. It shall have power to enter into any
14 town, city, factory, railroad train, steamboat or other
15 place whatsoever, and enter upon and inspect private
16 property for the purpose of investigating the sanitary
17 and hygienic conditions and the presence of cases of
18 infectious diseases, and may, at its discretion, take charge
19 of any epidemic or endemic conditions, and enforce such
20 regulations as it may prescribe. All expenses incurred
21 in controlling any endemic or epidemic conditions shall
22 be paid by the county or municipality in which such
23 epidemic occurs.

Sec. 2. *Powers of County and Municipal Boards of
2 Health to Establish Quarantine; Penalty for Violation.*—
3 The county board of health of any county may declare
4 quarantine therein, or in any particular district or place
5 therein, whenever in their judgment it is necessary to

6 prevent the spread of any communicable or infectious
7 disease prevalent therein, or to prevent the introduction
8 of any communicable or infectious disease prevailing in
9 any other state, county or place, and of any and all per-
10 sons and things likely to spread such infection. As soon
11 as such quarantine is established such board shall, in
12 writing, inform the state board of health thereof, the
13 duty of which it shall be to ascertain, as soon as prac-
14 ticable, the necessity therefor, if any exists, and if the
15 said state board, or the state director of health, acting
16 for the said state board, finds that no such necessity
17 exists, the same shall, by the said state board, be declared
18 raised. The said county board of health shall have power
19 and authority to enforce such quarantine until the same
20 is raised as aforesaid, or by themselves, and may con-
21 fine any such infected person, or any person liable to
22 spread such infection, to the house or premises in which
23 he resides, or if he has no residence in the county, at a
24 place to be provided by them for the purpose; and if it
25 shall become necessary to do so, they shall summon
26 sufficient guard for the enforcement of their orders in the

27 premises. Every person who shall fail or refuse to com-
28 ply with any order made by such board under this
29 section, and every person summoned as such guard who
30 shall, without a lawful excuse, fail or refuse to obey the
31 orders and directions of such board in enforcing said
32 quarantine, shall be guilty of a misdemeanor, and for
33 such offense shall be fined not less than twenty-five nor
34 more than two hundred dollars. In cases of emergency
35 or actual necessity, and when the court or corporate
36 authorities are from any cause unable to meet or to
37 provide for the emergency or the necessity of the case,
38 all actual expenditures necessary for local and county
39 quarantine, as provided for in this section, shall be cer-
40 tified by the county board of health to the county court,
41 and the whole, or as much thereof as the said court
42 may deem right and proper, shall be paid out of the county
43 treasury. The board of health of any city, town or vil-
44 lage shall have, within the municipality, the same powers
45 and perform the same duties herein conferred upon and
46 required of the county board of health in their county.
47 So far as applicable the provisions of this section shall

48 apply to any quarantine established and maintained by
49 the state board of health pursuant to section one of this
50 article.

Sec. 5. *Free Serum or Vaccine Preventives of Disease.*

2 —The state board of health shall purchase vaccine lymph,
3 diphtheria antitoxin, tetanus antitoxin and such other
4 forms of serum or vaccine preventives of disease as it may
5 deem necessary, and shall distribute the same, free of
6 charge, in such quantities as it may deem necessary, to
7 county and municipal health officers, to be used by them
8 for the benefit of, and without expense to the indigent
9 within their respective jurisdictions, and in other
10 cases where it may be urgently necessary to check con-
11 tagions and control epidemics.

12 The state board of health shall also deliver, free of
13 charge, to such drug stores or other stores within each
14 county as the health officer of such county may designate
15 as proper depositories, such quantities of diphtheria anti-
16 toxin as said board may deem necessary for the use of the
17 indigent of such county, and such antitoxin shall be
18 kept at said drug stores or other stores at all times and in

19 sufficient quantities to permit immediate delivery to any
20 licensed physician who may require the same for the
21 treatment of any indigent person infected with diphtheria,
22 or to prevent such infection, without cost to the patient
23 so treated. The state board of health shall take a receipt
24 from the proprietor of each drug store or other store for
25 any antitoxin delivered as herein provided.

26 The auditor of the state shall pay the actual cost of all
27 said serum and vaccine preventives and the cost of deliv-
28 ering said diphtheria antitoxin to any drug store or other
29 store, upon the presentation of the original invoices
30 thereof, duly verified by affidavit and approved by the
31 state director of health, and shall in addition pay to said
32 drug stores or other stores, for delivery of said diphtheria
33 antitoxin to the physicians aforesaid, a commission of ten
34 percent of the original cost of said antitoxin so delivered.

Sec. 6. *Nuisances Affecting Public Health.*—The state
2 board of health, the state director of health or any county
3 or municipal health officer shall inquire into and investi-
4 gate all nuisances affecting the public health within its or
5 his jurisdiction; and the said board or any such officer or

6 the county court of any county or any municipality is au-
7 thorized and empowered to apply to the circuit court of
8 the county in which any such nuisance exists, or to the
9 judge thereof in vacation, for an injunction forthwith to
10 restrain, prevent or abate such nuisance.

Sec. 12. *Same; Duties of State Board of Health.*—It
2 shall be the duty of the state board of health:

3 (a) To enforce the provisions of sections seven to thir-
4 teen, inclusive, of this article.

5 (b) To promulgate such rules and regulations as shall
6 be necessary for the purpose of enforcing said provisions,
7 and as the state board of health may deem necessary for
8 the further and proper guidance of local health officers;

9 (c) To provide for the gratuitous distribution of one
10 percent solution of silver nitrate outfits, together with
11 proper directions for the use and administration thereof,
12 to all physicians and midwives who may be engaged in the
13 practice of obstetrics, or assisting at childbirth;

14 (d) To publish and promulgate such further advice
15 and information concerning the dangers of inflammation

16 of the eyes of the new-born as is necessary for prompt and
17 effective treatment;

18 (e) To furnish copies of sections seven to thirteen,
19 inclusive, of this article to all physicians and midwives
20 who may be engaged in the practice of obstetrics, or as-
21 sisting at childbirth;

22 (f) To keep a proper record of any and all cases of in-
23 flammation of the eyes of the new-born of which reports
24 are filed with the state board of health pursuant to law,
25 or which may come to their attention in any way, and to
26 constitute such records a part of the annual report to the
27 governor;

28 (g) To report any and all violations of the public
29 health laws or of any rules or regulations lawfully adopted
30 pursuant thereto that may come to their attention, to the
31 prosecuting attorney of the county wherein said viola-
32 tions may have occurred, and to assist said official in any
33 way possible in the prosecution of such cases.

Article 5. Vital Statistics.

Section 2. *Division of Vital Statistics; Supervision by*

2 *State Board of Health; State Registrar of Vital Statistics;*

3 *Appointment.*—The state board of health shall have gen-
4 eral supervision over the division of vital statistics, which
5 shall be under the immediate direction of the state reg-
6 istrar of vital statistics, who shall be appointed by the
7 state board of health, with the advice of the state director
8 of health, and who shall be a competent vital statistician.
9 The board shall provide for such clerical and other as-
10 sistants in the division of vital statistics as may be neces-
11 sary for the purposes of this article. The custodian of the
12 capitol shall provide for the division of vital statistics
13 suitable offices in the state capitol at Charleston, which
14 shall be properly equipped with fireproof vault and filing
15 cases for the permanent and safe preservation of all of-
16 ficial records made under and returned under this article.

Sec. 17. *Local Registrars; Duties.*—Each local registrar
2 shall supply blank forms of certificates to such persons as
3 require them. Each local registrar shall carefully exam-
4 ine each certificate of birth or death when presented for
5 record, in order to ascertain whether or not it has been
6 made in accordance with the provisions of this article and
7 the instructions of the state registrar; and if any certifi-

8 cate of death is incomplete or unsatisfactory, it shall be his
9 duty to call attention to the defects in the return, and to
10 withhold the burial or removal permit until such defects
11 are corrected. All certificates, either of birth or of death,
12 shall be written legibly, in durable black ink or with a
13 typewriter, and no certificate shall be held to be complete
14 and correct that does not supply all of the items of infor-
15 mation called for therein, or satisfactorily account for
16 their omission. If the certificate of death is properly exe-
17 cuted and complete, he shall then issue a burial or removal
18 permit to the undertaker; *Provided*, That in case the death
19 occurred from some disease which is held by the state
20 board of health to be infectious or communicable and
21 dangerous to the public health, no permit for the removal
22 or other disposition of the body shall be issued by the reg-
23 istrar, except under such conditions as may be prescribed
24 by the state board of health. If a certificate of birth is in-
25 complete, the local registrar shall immediately notify the
26 informant, and require him to supply the missing items of
27 information, if they can be obtained. He shall number,
28 consecutively, the certificates of birth and death, in two

29 separate series, beginning with number one (1) for the
30 first birth and the first death in each calendar year, and
31 sign his name as registrar in attest of the date of filing in
32 his office. He shall also make a complete and accurate
33 copy of each birth and each death certificate registered by
34 him, and shall, on or before the tenth day of each month,
35 transmit to the state registrar all original certificates reg-
36 istered by him for the preceding month and the copies of
37 such certificate made as herein provided. If no births or
38 no deaths occurred in any month, he shall, on the tenth
39 day of the folowing month, report that fact to the state
40 registrar, on a card provided for such purpose.

Article 5A. Cancer Control.

Section 1. *Division of Cancer Control.*—There is hereby
2 created a division of cancer control in the state depart-
3 ment of health. The division, under the supervision of
4 the state board of health, shall execute and administer
5 the provisions of this article relating to the diagnosis,
6 treatment and care of persons suffering from cancer. The
7 division shall have authority to direct, control, govern and
8 provide for the management of any state institution for

9 the care and treatment of cancer patients which may here-
10 after be created by law.

11 The head of the division shall be appointed in the same
12 manner as the heads of other divisions in the department.
13 He must meet the requirements and possess the qualifica-
14 tions fixed by the merit system council in consultation
15 with the state board of health. The said board may also
16 appoint such assistants and employees in the division of
17 cancer control as may be necessary for the proper admin-
18 istration of the provisions of this article, such appoint-
19 ments also to be made in accordance with the rules and
20 regulations of the merit council.

Article 5B. Hospitals and Similar Institutions.

Section 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 Vir-
4 ginia, to assist in the establishment of rules, regulations
5 and standards necessary to carry out the provisions of this
6 article and to serve as consultants to the state board of
7 health. The advisory board shall meet at least twice each
8 year and at the call of the state board of health. The

9 members of the advisory board shall annually elect one
10 of its members to serve as chairman.

11 The advisory board shall be appointed by the governor
12 by and with the consent of the senate. Of the seven mem-
13 bers of the board, four shall be persons who are well-
14 versed in hospital organization and administration, and
15 the remaining three shall be chosen from persons of rec-
16 ognized ability in the fields of medicine and surgery, nurs-
17 ing, welfare, public health, architecture, or allied profes-
18 sions in the field of health, or consumers of hospital serv-
19 ices.

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 person
25 for seven years. Thereafter each member shall be appoint-
26 ed to serve seven years or until his successor is appointed.
27 In the case of a vacancy the appointee shall serve the re-
28 mainder of the unexpired term.

29 Members of the advisory board shall be eligible to suc-

30 ceed themselves. Members of the advisory board shall
31 serve without compensation but shall be entitled to reim-
32 bursement for actual expenses incurred in the perform-
33 ance of the duties of their office.

Article 7. Pure Food and Drugs.

Section 3. *Inspection and Analysis of Food and Drugs.*—

2 Whenever the state board of health, the West Virginia
3 board of pharmacy, or any county or municipal health
4 officer has reason to believe that any food or drug manu-
5 factured for sale, offered for sale, or sold, within this
6 state, is adulterated, such board of health or board of
7 pharmacy, by its authorized agent, or such county or
8 municipal health officer, shall have the power, and it shall
9 be his duty, to enter, during the usual hours of business,
10 into any creamery, factory, store, sales room, drug store,
11 laboratory, or other place where he has reason to believe
12 such food or drug is manufactured, prepared, sold, or of-
13 fered for sale, within the county or municipality, as the
14 same may be, and to open any case, tub, jar, bottle or
15 package containing, or supposed to contain, any such
16 food or drug, and take a specimen thereof for examina-

17 tion and analysis. If less than a whole package is taken,
18 the specimen shall be sealed and properly prepared for
19 shipment to the person who shall make the analysis
20 hereinafter provided for. No whole or less than a whole
21 package taken and prepared for shipment shall be opened
22 before it has been received by the analyst aforesaid.

23 It shall be the duty of a qualified chemist of the state
24 health department to test and analyze any such speci-
25 men, to record the result of his analysis among the records
26 of the department, and to certify such findings to the state
27 board of health, the West Virginia board of pharmacy, or
28 to the county or municipal health officers, as the case may
29 be. If the analysis indicates that the said food or drug
30 is adulterated, a certificate of such result sworn to by the
31 person making the analysis, who shall also state in his
32 certificate the reasonable cost and expense of such ana-
33 lysis, shall be *prima facie* evidence of such adulteration in
34 any prosecution under this article.

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

Joseph L. Mencer

Chairman Senate Committee

W. B. Rafter

Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1949 passage.

Howard Meyer
Clerk of the Senate

J. G. Miss
Clerk of the House of Delegates

W. Douglas Huels
President of the Senate

W. E. Slamer
Speaker House of Delegates

The within APPROVED this the 26th day of FEBRUARY, 1949.

Okay L. Patton
Governor



Filed in the Office of the Secretary of State of West Virginia
FEB 28 1949
D. PITT O'BRIEN,
SECRETARY OF STATE