

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

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ENROLLED

Comm. Auth. for
HOUSE BILL No. 912

(By Mr. *Speaker (Mr. White)* and *Mr. Jones (of course)*)

—●—
PASSED March 10, 1967

In Effect July 1, 1967 Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-12-67

912
Passed without Governor's signature

ENROLLED

Com. Sub. for House Bill No. 912

(By MR. SPEAKER (MR. WHITE) and MR. JONES (of Mason))

[Passed March 10, 1967; in effect July 1, 1967.]

AN ACT to amend and reenact sections one, two, four, six, eleven and twelve, article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said chapter sixteen by adding thereto a new article, designated article five-c, relating to the licensing of hospitals, sanatoriums or extended care facilities operated in connection with a hospital; providing for suspension and revocation of such licenses; and providing penalties; said new article five-c providing for the licensing of nursing homes and similar institutions; providing definitions; creating the West Virginia nursing home licensing board; providing for the ap-

pointment of the members of the board and their terms; providing for filling vacancies on the board; providing for meetings of the board; providing for officers of the board and the salary and expenses of members of the board; providing for license applications; requiring all nursing homes to be licensed; providing for hearings on the denial of licenses and for judicial review; providing for license fees and their disposition; providing for inspections of nursing homes; providing for promulgation of rules and regulations; providing for suspension or revocation of licenses and for hearings thereon and judicial review thereof; stating certain acts to be unlawful and providing for penalties and injunctions; providing for the effective date of this article; and providing for repeal of conflicting laws and for a severability clause.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, six, eleven and twelve, article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted and that said chapter sixteen of the said code be further amended by adding thereto a new article, designated article five-c, to read as follows:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-1. Hospitals and other institutions affected.

1 After July one, one thousand nine hundred sixty-seven,
2 no person, partnership, association, corporation, or any
3 local governmental unit or any division, department,
4 board or agency thereof shall establish, conduct, or main-
5 tain in the state of West Virginia any hospital, sana-
6 torium or extended care facility operated in connection
7 with a hospital without first obtaining a license therefor
8 in the manner hereinafter provided: *Provided*, That only
9 one license shall be required for any person, partnership,
10 association, corporation, or any local governmental unit
11 or any division, department, board or agency thereof who
12 operates any combination of a hospital, sanatorium or
13 extended care facility operated in connection with a
14 hospital, or more than one thereof, at the same location.
15 Hospitals operated by the federal government or the state
16 government shall be exempt from the provisions of this
17 article.

18 A hospital, sanatorium or extended care facility oper-
19 ated in connection with a hospital within the meaning

20 of this article, shall mean any institution, place, building,
21 or agency in which an accommodation of five or more
22 beds is maintained, furnished, or offered for the hos-
23 pitalization of the sick or injured: *Provided*, That nothing
24 contained in this article shall apply to nursing homes, rest
25 homes, domiciliary care homes, homes for the aged, ex-
26 tended care facilities not operated in connection with a hos-
27 pital, boarding homes, homes for the infirm or chronically
28 ill, convalescent homes, hotels or other similar places that
29 furnish to their guests only board and room, or either of
30 them: *Provided, however*, That the hospitalization, care
31 or treatment in a household, whether for compensation
32 or not, of any person related by blood or marriage,
33 within the degree of consanguinity of second cousin to
34 the head of the household, or his or her spouse, shall
35 not be deemed to constitute the premises a hospital,
36 sanatorium or extended care facility operated in con-
37 nection with a hospital, within the meaning of this
38 article.

39 Nothing in this article shall authorize any person, part-
40 nership, association, corporation, or any local govern-

41 mental unit or any division, department, board or agency
 42 thereof to engage in any manner in the practice of medi-
 43 cine, as defined by law. This article shall not be con-
 44 strued to restrict or modify any statute pertaining to the
 45 placement or adoption of children.

§16-5B-2. Existing hospitals and institutions to obtain license.

1 No person, partnership, association, corporation, or any
 2 local governmental unit or any division, department,
 3 board or agency thereof may continue to operate an
 4 existing hospital, sanatorium or extended care facility
 5 operated in connection with a hospital, or open a hospital,
 6 sanatorium, or extended care facility operated in con-
 7 nection with a hospital after July one, one thousand nine
 8 hundred sixty-seven, unless such operation shall have
 9 been approved and regularly licensed by the state as
 10 hereinafter provided.

11 Before a license shall be issued under this article, the
 12 person applying, if an individual, shall submit evidence
 13 satisfactory to the state department of health that he is
 14 not less than twenty-one years of age, of reputable and
 15 responsible character, and otherwise qualified. In the

16 event the applicant is an association, corporation or gov-
17 ernmental unit, like evidence shall be submitted as to
18 the members thereof and the persons in charge. Every
19 applicant shall, in addition, submit satisfactory evidence
20 of his ability to comply with the minimum standards
21 and with all rules and regulations lawfully promulgated
22 hereunder.

§16-5B-4. License fees.

1 The application of any person, partnership, association,
2 corporation, or local governmental unit for a license to
3 operate a hospital, sanatorium, or extended care facility
4 operated in connection with a hospital, shall be accom-
5 panied by a fee to be determined by the number of
6 beds available for patients, according to the following
7 schedule of fees: Those with five beds but less than
8 fifty beds shall pay a fee of twenty dollars; those with
9 fifty beds or more and less than one hundred beds shall
10 pay a fee of thirty dollars; those with one hundred beds
11 or more and less than two hundred beds shall pay a
12 fee of forty dollars; and those with two hundred beds
13 or more shall pay a fee of fifty dollars. No such fee shall

14 be refunded. All licenses issued under this article shall
15 expire on the thirtieth day of June following their is-
16 suance, shall be on a form prescribed by the state de-
17 partment of health, shall not be transferable or assign-
18 able, shall be issued only for the premises named in the
19 application, shall be posted in a conspicuous place on
20 the licensed premises, and may be renewed from year to
21 year upon application, investigation, and payment of the
22 license fee, as in the case of the procurement of an
23 original license: *Provided*, That any such license in
24 effect on the thirtieth day of June of any year, for which
25 timely application for renewal, together with payment
26 of the proper fee, has been made to the state department
27 of health in conformance with the provisions of this
28 article and the rules and regulations issued thereunder,
29 and prior to the expiration date of such license, shall con-
30 tinue in effect until (a) the thirtieth day of June next
31 following the expiration date of such license, or (b)
32 the date of the revocation or suspension of such license
33 pursuant to the provisions of this article, or (c) the date
34 of issuance of a new license, whichever date first occurs.

35 All fees received by the state department of health under
36 the provisions of this article shall be paid into the state
37 treasury general revenue fund.

§16-5B-6. State department of health to issue licenses.

1 The state department of health is hereby authorized
2 to issue licenses for the operation of hospitals, sana-
3 toriums or extended care facilities operated in connec-
4 tion with hospitals, which are found to comply with
5 the provisions of this article and with all regulations
6 lawfully promulgated by the department.

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

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

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

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

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

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

35 All of the pertinent provisions of article five, chapter
36 twenty-nine-a of this code shall apply to and govern any
37 hearing authorized and required by the provisions of this

38 article and the administrative procedure in connection
39 with and following any such hearing, with like effect as
40 if the provisions of said article five were set forth in
41 extenso in this section.

§16-5B-11. Violations; penalties.

1 Any person, partnership, association or corporation,
2 and any local governmental unit or any division, depart-
3 ment, board or agency thereof establishing, conducting,
4 managing, or operating a hospital, sanatorium, or ex-
5 tended care facility operated in connection with a hos-
6 pital, without first obtaining a license therefor as herein
7 provided, or violating any provision of this article or
8 any rule or regulation lawfully promulgated thereunder,
9 shall be guilty of a misdemeanor, and, upon conviction
10 thereof, shall be punished for the first offense by a fine
11 of not more than one hundred dollars, or by imprison-
12 ment in the county jail for a period of not more than
13 ninety days, or by both such fine and imprisonment, in
14 the discretion of the court. For each subsequent offense
15 the fine may be increased to not more than five hundred

16 dollars, with imprisonment in the county jail for a period
17 of not more than ninety days, or both such fine and
18 imprisonment in the discretion of the court. Each day
19 of a continuing violation after conviction shall be con-
20 sidered a separate offense.

§16-5B-12. Injunction; severability of article.

1 Notwithstanding the existence or pursuit of any other
2 remedy, the department may, in the manner provided by
3 law, maintain an action in the name of the state for an in-
4 junction against any person, partnership, association,
5 corporation, or any local governmental unit, or any divi-
6 sion, department, board or agency thereof, to restrain
7 or prevent the establishment, conduct, management or
8 operation of any hospital, sanatorium, or extended care
9 facility operated in connection with a hospital without
10 first obtaining a license therefor in the manner herein-
11 before provided.

12 If any part of this article shall be declared unconsti-
13 tutional, such declaration shall not affect any other part
14 thereof.

ARTICLE 5C. NURSING HOMES AND SIMILAR INSTITUTIONS.

§16-5C-1. Purpose.

1 It is the policy of this state to encourage and promote
2 the development and utilization of resources to insure
3 the effective care and treatment of persons who are
4 convalescing or whose physical or mental condition re-
5 quires them to receive a degree of nursing or related
6 health care greater than that necessary for well indi-
7 viduals, but not so acute as to require hospitalization.
8 Such care and treatment requires a living environment
9 for such persons which, to the extent practicable, will
10 approximate a normal home environment. To this end,
11 the guiding principle for administration of the laws of
12 this state is that such persons shall be encouraged and
13 assisted in securing necessary care and treatment in
14 noninstitutional surroundings. In recognition that for
15 many such persons effective care and treatment can only
16 be secured from proprietary, voluntary and governmental
17 nursing homes, it is the policy of this state to encourage,
18 promote and require the maintenance of institutions other

19 than hospitals offering nursing or related health care so
20 as to insure protection of those using the services of
21 such facilities.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) The term "nursing home" means and shall be
4 construed to include any building, structure, agency, insti-
5 tution, or other place, for the reception, accommodation,
6 board, care or treatment of not less than twenty-four
7 hours in any week of five or more unrelated individuals,
8 hereinafter designated patients, who are unable suffi-
9 ciently or properly to care for themselves, and for which
10 reception, accommodation, board, care or treatment a
11 charge is made: *Provided*, That the reception, accommo-
12 dation, board, care or treatment in a household or family,
13 for compensation, of a person or persons related by blood
14 or marriage to the head of such household or family, or
15 to his or her spouse or family, within the degree of con-
16 sanguinity of first cousins, shall not be deemed to be a

17 nursing home. The term "nursing home" shall include,
18 but not be limited to, homes for the aged, convalescent
19 homes, and extended care facilities not operated in con-
20 nection with a hospital. The term "nursing home" shall
21 not include institutions operated by the federal or state
22 governments or hospitals, institutions for the treatment
23 and care of psychiatric patients, boarding homes for
24 children, day nurseries, child-care institutions, children's
25 homes and child-placing agencies, as defined under
26 the laws of this state, nor hotels or offices of physi-
27 cians.

28 (b) The term "person" means any individual, firm,
29 partnership, corporation, company, association, or joint
30 stock association and the legal successor thereof.

31 (c) The term "board" shall mean the West Virginia
32 nursing home licensing board as herein created.

33 (d) The term "aged" relates to any individual who
34 has attained the age of sixty-five years.

§16-5C-3. West Virginia nursing home licensing board; members; appointment; vacancies.

1 There is hereby created a state board to be known and
2 designated as the "West Virginia Nursing Home Licensing
3 Board" which shall consist of nine members, six of whom
4 shall be appointed by the governor, by and with the
5 advice and consent of the senate, and the initial appoint-
6 ments shall be made within twenty days after the effec-
7 tive date of this article. One of said six members to be
8 appointed by the governor shall be a member of the
9 medical profession having an unlimited license to prac-
10 tice medicine and surgery in the state of West Virginia,
11 one such member shall be a licensed pharmacist, one
12 such member shall be a registered nurse, one such mem-
13 ber shall be a person with experience or education in the
14 field of aging, and two such members shall be persons
15 who have been engaged in the management of an oper-
16 ating nursing home for four years immediately prior to
17 the date of appointment, who shall hereinafter be re-
18 ferred to as nursing home administrators. The three
19 remaining members shall be ex officio members, one of

20 whom shall be the commissioner of welfare, or his offi-
21 cial designate, one of whom shall be the state fire marshal,
22 or his official designate, and the other of whom shall
23 be the state director of health, or his official designate.
24 The ex officio members shall always serve during their
25 regular tenure of office. No member of the board, other
26 than the two nursing home administrators, shall have
27 any direct or indirect financial or pecuniary interest in
28 any nursing home in this state. Of the original board
29 members appointed, the one who is a registered nurse
30 shall serve for one year, the one who has experience or
31 education in the field of aging shall serve for two years,
32 the one who is a member of the medical profession shall
33 serve for three years, the one who is a licensed pharma-
34 cist shall serve for four years, one of the two nursing
35 home administrators shall serve for five years, and the
36 other nursing home administrator shall serve for six
37 years. All subsequent appointments shall be for six
38 years, except that in case of a vacancy, the appointee
39 shall be appointed for the remainder of the unex-
40 pired term. Any vacancy shall be filled by the gover-

41 nor, with the advice and consent of the senate, from the
42 same group as was represented by the outgoing member.
43 All members of the board, unless sooner removed, shall
44 continue to serve until their respective terms expire and
45 until their successors are appointed and have qualified.

§16-5C-4. Powers, duties and rights of board.

1 In the administration of this article, the board shall
2 have the following powers, duties and rights:

3 (a) To adopt, promulgate, amend, modify and en-
4 force regulations and standards for nursing homes.

5 (b) To exercise as sole authority all powers relat-
6 ing to the issuance, suspension and revocation of licenses
7 of nursing homes.

8 (c) To adopt, promulgate, amend and modify rules
9 and regulations governing the qualifications of applicants
10 for nursing home licenses including but not limited to
11 educational requirements, financial requirements, moral,
12 personal and ethical requirements.

13 (d) To adopt, promulgate, amend and modify such
14 other reasonable rules and regulations to carry out
15 the intent and purpose of this article.

16 In addition, the board may classify nursing homes
17 into care categories such as homes for the aged, con-
18 valescent homes, and extended care facilities not oper-
19 ated by hospitals, and other comparable categories under
20 the terms of this article, if, in the opinion of the board,
21 the best interest of the public is served by so doing.
22 Such classification shall be by rules and regulations duly
23 promulgated and adopted in accordance with the re-
24 quirements hereinafter set out.

§16-5C-5. Meetings of board.

1 The first meeting of the board shall be on a date not
2 later than sixty days after the board has been appointed.
3 Thereafter, the board shall meet at least twice each year
4 on dates to be set by the board. Special meetings of
5 the board shall be called by the chairman or on the
6 written request of any three members of the board.
7 Five members shall constitute a quorum for the transac-
8 tion of all business when such number includes at least one
9 nursing home administrator. The board shall establish
10 rules governing its own deliberations and procedures.

§16-5C-6. Chairman of the board; officers; salaries and expenses.

1 The board shall elect its own chairman and chairman
2 pro tempore and any other officers as the board shall
3 deem necessary in the conduct of its official duties. The
4 members of the board shall serve without salary, but
5 they shall be reimbursed for all reasonable and necessary
6 expenses actually incurred in the discharge of their offi-
7 cial duties out of the receipts of the board: *Provided,*
8 That the ex officio members of the board shall be reim-
9 bursed for such expenses out of the funds of their re-
10 spective departments.

§16-5C-7. Application for license; licensing of nursing homes and similar institutions; existing operations.

1 Subject to the provisions of section fourteen of this
2 article, no person shall establish, conduct, operate or
3 maintain a nursing home unless and until he first obtains
4 a license therefor as hereinafter provided, which license re-
5 mains unsuspended, unrevoked and unexpired. The
6 procedure for obtaining such license shall be as follows:
7 (a) The applicant shall submit an application to the
8 board on a form to be prescribed by the board, containing

9 such information as may be necessary to show that the
10 applicant is reputable and responsible and able to com-
11 ply with the standards for nursing homes as established
12 by the rules and regulations lawfully promulgated under
13 this article. The application shall contain the following in-
14 formation: The name of the applicant; the type of insti-
15 tution to be operated; the location thereof; the name of the
16 person to be in charge thereof; and such other informa-
17 tion as the board may require.

18 (b) The board may, without further evidence, direct
19 and approve the issuance of a license or a renewal upon
20 application and payment of the required fee when the
21 requirements of the board established pursuant to section
22 four (c) of this article have been satisfied: *Provided,*
23 That, in its discretion, the board may, and, upon the de-
24 mand of the applicant, shall hold a hearing to determine
25 whether a license should be issued or renewed, as the case
26 may be. Such hearing shall be held in accordance with
27 and be governed by the provisions of article five, chapter
28 twenty-nine-a of this code with like effect as if the pro-
29 visions of said article five were set forth in extenso in
30 this section.

31 (c) If, after such hearing, the board determines that
 32 the applicant complies, and will in the future comply,
 33 with the provisions of this article, and the rules and
 34 regulations promulgated hereunder, the board shall
 35 direct the issuance or renewal of a license licensing
 36 the applicant to operate said nursing home. An original
 37 license shall be renewable, conditioned only upon the
 38 licensee filing timely application for the extension of the
 39 term of the license accompanied by the fee. A license
 40 to operate a nursing home shall be issued only for the
 41 premises named in the application and shall be posted in
 42 a conspicuous place in such nursing home. No license
 43 issued hereunder shall be transferable or assignable
 44 without the written consent of the board, but such con-
 45 sent shall not be arbitrarily or capriciously withheld.

46 (d) In determining whether to approve or reject a
 47 license application for a presently existing and operating
 48 nursing home, the board shall consider the economic
 49 impact of the denial of a license, based upon standards
 50 adopted after such nursing home commenced operations
 51 and was first licensed, upon the owner or operator of the
 52 nursing home and the effects upon the patients served

53 thereby as well as upon the community. If undue hard-
54 ship would result from denial of said license, the board
55 shall approve or reject such application on the basis of
56 the standards adopted and in effect at the time such
57 nursing home commenced functioning and was first
58 licensed.

59 (e) In the event the board finds that an applicant
60 seeking to renew a license substantially complies and
61 will soon fully comply with standards set pursuant to
62 the provisions of this article, it may issue a provisional
63 renewal of the license conditioned upon full and timely
64 compliance with requirements specifically stated by the
65 board. A provisional renewal may be automatically re-
66 voked if its terms are not met within the period specified:
67 *Provided, That* a provisional renewal may not be issued
68 for a period greater than one year.

69 In any case where a license or renewal is not issued, the
70 fee is to be returned to the applicant. If the board re-
71 fuses to issue or renew the license after a hearing de-
72 manded by the applicant as provided in this section, the
73 applicant is entitled to judicial review thereof. All of the

74 pertinent provisions of section four, article five, chapter
75 twenty-nine-a of this code shall apply to and govern such
76 review with like effect as if the provisions of said section
77 four were set forth in extenso in this section.

78 The judgment of the circuit court shall be final unless
79 reversed, vacated or modified on appeal to the supreme
80 court of appeals in accordance with the provisions of sec-
81 tion one, article six, chapter twenty-nine-a of this code.

82 Legal counsel and services for the board in all appeal
83 proceedings in any circuit court and the supreme court
84 of appeals shall be provided by the attorney general or
85 his assistants, and in appeal proceedings in any circuit
86 court by the prosecuting attorney of the county as well,
87 all without additional compensation.

§16-5C-8. License fees; amount, disposition.

1 An application fee in the amount of one hundred dol-
2 lars for an original nursing home license shall be paid at
3 the time application is made for such license. The license
4 fee for renewal of license shall be one dollar per bed
5 based on the approved bed capacity as determined by
6 the board. All such license fees shall be due and payable

7 to the board on or before June thirtieth of each year.
8 Such fee and application shall be submitted to the secre-
9 tary of the board who shall retain both the applica-
10 tion and fee pending final action on the application.
11 Thereafter, upon order of the auditor of the state, all
12 such fees shall be transmitted to the state treasurer
13 to be deposited to the credit of the general revenue fund:
14 *Provided*, That authorized expenses of the board are to
15 be paid out of such fees.

§16-5C-9. Inspection.

1 Inspection of nursing homes shall be made regularly as
2 required by the board and in accordance with the rules
3 and regulations adopted and promulgated hereunder. Re-
4 ports of such inspection shall be in writing which shall
5 be filed with the board. The department of health of
6 this state, by its employees or authorized agents, shall
7 make all health, sanitation and like inspections. The
8 state fire marshal, by his employees or authorized agents,
9 shall make all fire, safety, and like inspections. The board
10 may provide for such other inspections and the enforce-
11 ment of its rules and regulations as it may deem neces-
12 sary to carry out the intent and purpose of this article.

§16-5C-10. Rules and regulations.

1 All rules and regulations shall be approved by the
2 board and promulgated in the manner provided by the
3 provisions of article three, chapter twenty-nine-a of this
4 code.

§16-5C-11. Suspension or revocation of license; hearing; judicial review; appeal.

1 The board may suspend or revoke a license issued
2 hereunder on any of the following grounds:

3 (1) Violation of any of the provisions of this article
4 or the standards or rules and regulations promulgated
5 pursuant hereto.

6 (2) Conduct or practices found by the board to be
7 detrimental to the welfare of the patients of the nursing
8 home.

9 Whenever a license is suspended or revoked, the board
10 shall file a complaint stating facts constituting a ground
11 or grounds for revocation or suspension. Upon the filing
12 of the complaint, the board shall notify the licensee in
13 writing of the filing of the complaint and of the time and
14 place of the hearing, and shall also enclose a copy of the

15 complaint with such notice. Such notice and copy of the
16 complaint shall be served on such licensee by certified
17 mail, return receipt requested. The hearing shall be held
18 by the board not less than fifteen days after such service
19 on the licensee. The licensee shall be entitled to be rep-
20 resented by counsel at said hearing.

21 All of the pertinent provisions of article five, chapter
22 twenty-nine-a of this code shall apply to and govern any
23 such hearing and the administrative procedures in con-
24 nection with and following such hearing, with like effect
25 as if the provisions of said article five were set forth in
26 extenso in this section.

27 Following such hearing the board shall make and enter
28 a written order either suspending or revoking such li-
29 cense, dismissing the complaint or taking such other ac-
30 tion as is authorized in this article. If the board sus-
31 pends such license, it may also specify the conditions
32 giving rise to such suspension, to be corrected by the li-
33 censee during the period of suspension, in order to en-
34 title the licensee to reinstatement of his license.

35 The written order of the board shall be accompanied

36 by findings of fact and conclusions of law as specified in
37 section three, article five, chapter twenty-nine-a of this
38 code, and a copy of such order and accompanying find-
39 ings and conclusions shall be served upon the licensee
40 and his attorney of record, if any, by certified mail, re-
41 turn receipt requested. The order of the board shall be
42 final unless vacated or modified upon judicial review
43 thereof in accordance with the provisions of this section.

44 In addition to all other powers granted it by this sec-
45 tion, the board may hold the case under advisement and
46 make a recommendation as to requirements to be met
47 by said licensee in order to avoid either suspension or
48 revocation. In such a case, the board shall enter an or-
49 der accordingly and so notify the licensee and his at-
50 torney of record, if any, by certified mail, return re-
51 ceipt requested. If the licensee meets the requirements
52 of such order, the board shall enter an order showing
53 satisfactory compliance and dismissing the complaint and
54 shall so notify the licensee and his attorney of record,
55 if any, by certified mail, return receipt requested.

56 Any licensee adversely affected by an order of the

57 board rendered after a hearing held in accordance with
58 the provisions of this section is entitled to judicial re-
59 view thereof. All of the pertinent provisions of section
60 four, article five, chapter twenty-nine-a of this code shall
61 apply to and govern such review with like effect as if
62 the provisions of said section four were set forth in ex-
63 tenso in this section.

64 The judgment of the circuit court shall be final un-
65 less reversed, vacated or modified on appeal to the su-
66 preme court of appeals in accordance with the provisions
67 of section one, article six, chapter twenty-nine-a of this
68 code.

69 Legal counsel and services for the board in all appeal
70 proceedings in any circuit court and the supreme court
71 of appeals shall be provided by the attorney general
72 or his assistants, and in appeal proceedings in any cir-
73 cuit court by the prosecuting attorney of the county as
74 well, all without additional compensation.

75 Information received by the board under the provisions
76 of this article shall be confidential and shall not be pub-

77 licly disclosed except in a proceeding involving the ques-
78 tion of the issuance or revocation of a license.

§16-5C-12. Unlawful acts.

1 It shall be unlawful for any person to conduct, main-
2 tain or operate, or permit to be conducted, maintained or
3 operated, or to participate in the conduct, maintenance
4 or operation of a nursing home in this state, unless and
5 until a license therefor is first issued in accordance with
6 this article, which license remains unexpired, unsus-
7 pended and unrevoked.

8 Any person violating the provisions of this section shall
9 be guilty of a misdemeanor, and, upon conviction thereof,
10 shall be fined not more than one hundred dollars for the
11 first offense, and not less than fifty nor more than one
12 hundred dollars for each subsequent offense. Each day
13 a violation continues after conviction shall be consid-
14 ered a separate offense.

§16-5C-13. Injunctions.

1 If any person conducts, manages or operates a nurs-
2 ing home without first having obtained a license there-

3 for, which license remains unexpired, unsuspended and
4 unrevoked, the circuit court, or the judge thereof in vaca-
5 tion, of the county in which such conduct, management or
6 operation occurred, shall upon proper application by the
7 board in the name of the state, and after ten days written
8 notice thereof to such person, issue an injunction pro-
9 hibiting such person from managing or operating such
10 nursing home until he has fully complied with the provi-
11 sions of this article. The remedy provided in this sec-
12 tion shall be in addition to all other penalties and reme-
13 dies provided by law.

§16-5C-14. License in force upon effective date of article.

1 All licenses for nursing homes which are in force upon
2 the taking effect of this article shall continue in full
3 force and effect during the period for which issued un-
4 less sooner revoked as provided in this article.

§16-5C-15. Repeal of conflicting laws; severability of article.

1 The provisions of all acts or parts of acts, or of this
2 code, which are inconsistent with the provisions of this
3 article are hereby repealed to the extent of such incon-
4 sistency. The provisions of this article are severable

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5 and if any shall be held unconstitutional or invalid, such
6 determination shall not affect or impair any of the re-
7 maining provisions thereof.

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

William Tompkins
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect July 1, 1967.

Howard Hughes
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

H. Labau White
Speaker House of Delegates

The within _____ this the _____
day of _____, 1967.

Governor



**PRESENTED TO THE
GOVERNOR**

Date 3/11/67

Time 4:00 PM.