WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1970

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ENROLLED

HOUSE BILL No.____

(By Mr.____)

PASSED____ June 19, 1970

In Effect____ from____ Passage____

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 6-75-70
AN ACT to amend and reenact section two, article five-c, and section one, article five-d, 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-e, all relating to the regulation and licensing of nursing homes and personal care facilities by the West Virginia nursing home licensing board in order to comply with federal law so the state may receive federal moneys for its citizens pursuant to federal programs for nursing and related care; distinguishing personal care facilities from nursing homes; defining nursing homes, personal care facilities and other terms; relating to types of services
offered by nursing homes and personal care facilities; requiring a nursing home administrator for the operation of a nursing home; relating to certain exclusions from the definition of nursing homes and other terms; incorporating in said article five-e all of the provisions of article five-c concerning the powers, duties and rights vested in the West Virginia nursing home licensing board and all of the administrative and enforcement provisions, judicial review provisions and confidentiality provisions; relating to licensing fees; prescribing certain unlawful acts and imposing criminal penalties; authorizing injunctive relief; providing for the treatment of licenses heretofore issued for personal care homes and personal care facilities as licenses for personal care facilities under said article five-e; repealing certain inconsistent provisions and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That section two, article five-c, and section one, article five-d, 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 be further
amended by adding thereto a new article, designated article five-e, all to read as follows:

ARTICLE 5C. NURSING HOMES.

§16-5C-2. Definitions.

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

3 (a) The term "nursing home" means and shall be construed to include any building, structure, agency, institution, or other place, for the reception, accommodation, board, care or treatment of not less than twenty-four hours in any week in which an accommodation of three or more beds is maintained, furnished or offered for patients or individuals, who are unable sufficiently or properly to care for themselves, and for which reception, accommodation, board, care or treatment a charge is made: Provided, That the reception, accommodation, board, care or treatment in a household or family, for compensation, of a person or persons related by blood or marriage to the head of such household or family, or to his or her spouse or family, within the degree of consanguinity of first cousins, shall not
be deemed to be a nursing home. A “nursing home” is a home for chronic or convalescent patients who, on admission, are not as a rule, acutely ill and who do not usually require special facilities, such as an operating room, X-ray facilities, laboratory facilities and obstetrical facilities. A “nursing home” provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision. Professional nursing skills must be offered. All nursing homes shall be operated by a nursing home administrator, licensed, pursuant to article five-d of this chapter. The term “nursing home” shall not include institutions licensed as hospitals or institutions operated for the treatment and care of alcoholic patients, boarding homes for children, day nurseries, child-care institutions, children’s homes and child-placing agencies, as defined under the laws of this state, nor hotels or offices of physicians.
(b) The term "person" means any individual, firm, partnership, corporation, company, association or joint-stock association and the legal successor thereof.

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

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

ARTICLE 5D. NURSING HOME ADMINISTRATORS.

§16-5D-1. Definitions.

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

2 (1) The term "nursing home" means a nursing home as that term is defined in subdivision (a), section two, article five-c of this chapter.

3 (2) The term "nursing home administrator" means an individual responsible for planning, organizing, directing and controlling a nursing home, or who in fact performs such functions, whether or not such individual has an ownership interest in the nursing home and whether or not such functions are shared with one or more other persons.
(3) The word "board" shall mean the West Virginia nursing home licensing board created by section three, article five-c of this chapter.

(4) The word "person" or "applicant" shall mean an individual.

(5) The word "council" shall mean the state nursing home advisory council created by section eleven of this article.

ARTICLE 5E. PERSONAL CARE FACILITIES.

§16-5E-1. Definitions.

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

(a) The term "personal care facility" shall include, but not be limited to, homes for the aged, convalescent homes and other facilities not offering medical and nursing care on a full-time basis. A "personal care facility," as distinguished from a "nursing home" is a place for the care of aged or infirm persons whose principal need is a home with such sheltered and custodial care as their age or infirmities require. In such homes, medical care is only occasional or incidental, such as
may be required in the home of any individual or family for persons who are aged or infirm. The resident of such homes will not, as a rule, have remedial ailments or other ailments for which continuing skilled planned medical and nursing care is indicated. The term "personal care facility" shall not include boarding homes or hotels.

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

(c) The term "board" shall mean the West Virginia nursing home licensing board as created by section three, article five-c of this chapter.

§16-5E-2. Administration of article.

The administration of this article shall be vested in the West Virginia nursing home licensing board created in section three, article five-c of this chapter, and in the administration of this article, such board shall have all the powers, duties and rights vested in it under said article five-c with respect to nursing homes.
§16-5E-3. Licensing of personal care facilities.

1 All facilities coming within the definition of the term “personal care facility” in which an accommodation of four or more beds is maintained, furnished or offered for patients or individuals for board and personal care of not less than twenty-four hours in any week, shall be licensed as a personal care facility and not as a nursing home, and shall be subject to the rules and regulations adopted by said board under the provisions of this article and under the provisions of article five-c of this chapter. All of the provisions of said article five-c relating to the suspension or revocation of license, notice, hearing, judicial review, appeal and the confidentiality of certain information shall be as fully applicable to personal care facilities under the provisions of this article and to the administration of the provisions of this article as if said provisions of said article five-c were set forth in extenso herein.

§16-5E-4. License fees; amount, disposition.

1 An application fee in the amount of ten dollars for an original personal care facility license shall be paid
at the time application is made for such license. The license fee for renewal of license shall be two dollars per bed. The bed capacity for the holder of each license shall be determined by the board. All such license fees shall be due and payable to the board on or before June thirtieth of each year. Such fee and application shall be submitted to the secretary of the board who shall retain both the application and fee pending final action on the application. Thereafter, upon order of the auditor of the state, all such fees shall be transmitted to the state treasurer to be deposited to the credit of the general revenue fund: Provided, That the authorized expenses of the board are to be paid out of such fees.

§16-5E-5. Unlawful acts; penalty.

It shall be unlawful for any person to conduct, maintain or operate, or permit to be conducted, maintained or operated, or to participate in the conduct, maintenance or operation of a personal care facility in this state, unless and until a license therefor is first issued in accordance with this article, which license remains unexpired, unsuspended and unrevoked.
Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars for the first offense, and not less than fifty nor more than one hundred dollars for each subsequent offense. Each day a violation continues after conviction shall be considered a separate offense.

§16-SE-6. Injunctions.

If any person conducts, manages or operates a personal care facility without first having obtained a license therefor, which license remains unexpired, unsuspended and unrevoked, the circuit court, or the judge thereof in vacation, of the county in which such conduct, management or operation occurred, shall upon proper application by the board in the name of the state, and after ten days' written notice thereof to such person, issue an injunction prohibiting such person from managing or operating such personal care facility until he has fully complied with the provisions of this article. The remedy provided in this section shall be in addition to all other penalties and remedies provided by law.

§16-SE-7. License in force upon effective date of article.

All personal care facilities heretofore licensed as per-
sonal care homes under the provisions of article five-c
of this chapter, which licenses are still in force upon the
taking effect of this article, shall continue in full force
and effect during the period for which they were originally
issued but shall be treated as a personal care facility
license.

Furthermore, all personal care facilities heretofore
licensed as nursing homes under the provisions of article
five-c of this chapter, which licenses are still in force
upon the taking effect of this article, shall continue in
full force and effect during the period for which they
were originally issued but shall be treated as a personal
care facility license.

§16-SE-8. Repeal of conflicting laws; severability of article.

The provisions of all acts or parts of acts, or of this
code, which are inconsistent with the provisions of this
article are hereby repealed to the extent of such incon-
sistency. The provisions of this article are severable and
if any shall be held unconstitutional or invalid, such de-
termination shall not affect or impair any of the remaining
provisions thereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

W. A. Tampan  
Chairman Senate Committee

Clayton E. Davidson  
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. Hannah  
Clerk of the Senate

W. Blackburn  
Clerk of the House of Delegates

Lloyd T. Jackson  
President of the Senate

James I. Bonnely  
Speaker House of Delegates

The within approved this the 22nd day of June, 1970.

Ralph Snead Jr.  
Governor