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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977

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ENROLLED

Committee Substitute for
SENATE BILL NO. 585

(By Mr. *Brotherton, Mr. President, et al.*)

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PASSED April 9 1977

In Effect July 1, 1977 ~~Emergency~~

110: 383

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 585

(By MR. BROTHERTON, MR. PRESIDENT,
MR. PALUMBO and MR. HAMILTON)

[Passed April 9, 1977; in effect July 1, 1977.]

AN ACT to repeal sections eighteen and nineteen, article one, chapter sixteen; to repeal section six, article four-d of said chapter sixteen; to repeal section nine, article five-b of said chapter sixteen; to repeal article five-d of said chapter sixteen; to repeal article five-e of said chapter sixteen; to repeal section one, article six of said chapter sixteen; to repeal sections four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article fourteen of said chapter sixteen; to repeal article twenty-four of said chapter sixteen; to amend and reenact sections one, two, three, five, six, seven, eight, ten, eleven, thirteen, fourteen, fifteen and seventeen, article one; sections one, two, three and four, article two; sections three, seven and eight, article two-a; section one, article two-b; sections one, two, five, six, ten and twelve, article three; sections six, seven and twenty-one, article four; section three, article four-a; sections two, four, five, six, nine and ten, article four-c; sections three and four, article four-d; sections two, three, four, five, six, twenty-eight and thirty-two, article five; sections one, two, three, four and five, article five-a; sections one, two, four, six, eight, eleven, and twelve, article five-b; sections one, two, three, four, five, six, seven, eight, nine, ten, eleven,

twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five-c; sections two, four, five, seven, eight, nine, ten and twenty-four, article six; section three, article seven; and sections one and three, article fourteen, all of said chapter sixteen; to amend and reenact sections six and nine, article one; sections one, three, four and five, article two; section one, article two-a; section one, article four; sections three, seven and nine, article five; section one, article six-a; section five, article seven; sections one, two-a and three, article eight; section one, article nine; section two, article fourteen; and section two, article fifteen, all of chapter twenty-seven; and to further amend said chapter twenty-seven by adding thereto a new section, designated section six, article two; and to further amend said chapter twenty-seven by adding thereto a new article, designated article three; to amend and reenact section fifteen, article one, chapter thirty; section two, article three-b; sections one and three, article six; and section two, article seventeen; to further amend said chapter thirty by adding thereto a new section, designated section four-a, article one; to further amend said chapter thirty by adding thereto three new articles, designated articles twenty-five, twenty-six and twenty-seven; and to amend and reenact sections three, four, five, six, seven and fourteen, article twelve, chapter sixty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reorganizing and consolidating health and mental health services in the state; increasing the membership of the board of health; providing that the board of health have rule-making power; transferring certain administrative powers from the board of health to the director of health; increasing rule-making authority of the board of health; authorizing the board of health to establish certain advisory councils; providing for the appointment of the director of health by the governor with Senate confirmation; consolidating the functions of the present department of mental health into the department of health; requiring the director of health to report to the governor and the Legislature as to consolidation and reorganization; establishing an executive secretary to consolidate the ad-

ministrative functions of professional medical-related licensing boards; abolishing the nursing home licensing board and transferring its powers to the department of health; establishing a health resources advisory council to be headed by a chairman appointed by the governor with Senate confirmation; transferring certain state hospitals from the commissioner of public institutions to the department of health; setting forth a legislative purpose; providing for composition of the department of health; continuing civil service coverage; relating to membership, appointment, removal and composition of the board of health; relating to powers and duties of the board of health; relating to appointment, compensation, qualifications, term, oath, bond and vacancy of the director of health; relating to the powers and duties of the director of health, including the power of condemnation; relating to the state hygienic laboratory and branches; relating to disposition of moneys received by the director, reports to auditor compliance; authorizing the director of health to cooperate with state health planning and development agency and federal government; relating to receipt and disbursement of federal aid and other moneys for health purposes; relating to employees of the department of health; relating to county and municipal boards of health and officers; reports by physicians; relating to full-time county and municipal officers and nurse; relating to counties and municipalities combining in employment of officers, equipment and boards; relating to director of health's supplanting local health authority; relating to family planning and child spacing; relating to prevention and control of communicable and other infectious diseases; relating to venereal diseases; relating to prenatal examination; providing that the director and board of health be given authority with respect to emergency medical service; providing that the office of emergency medical services become a part of the department of health; providing the director and board of health with the authority to supervise vital statistics; providing the director and board of health with the authority in cancer control; providing the director and board of health authority to

license and oversee hospitals and health facilities including those for ambulatory health care and ambulatory surgical care; providing for the director to license, inspect and oversee nursing homes and personal care homes; requiring the department of health to publish certain information about nursing homes in the state; providing for enforcement of provisions relating to nursing homes and personal care homes; providing the director with authority to license and oversee personal care facilities; relating to revising the general laws regarding the regulation of nursing homes by expanding the board's jurisdiction to include personal care homes, expanding the powers and duties of the board, and revising the rights, duties and obligations of nursing homes, personal care homes and patients; transferring to the director of health authority previously vested in the hotel inspector; providing the director of health with authority concerning pure food and drugs; the committee of barbers and beauticians and transferring some of its authority to the department of health; transferring certain benevolent institutions from the commissioner of public institutions to the department of welfare or the department of health; providing for management supervision fees and transfers of residents in benevolent institutions transferred to the department of health; providing that certain state hospitals and mental health facilities operated by the department of mental health shall be transferred to the department of health; continuing civil service coverage; relating to operation and administration of such state hospitals and mental health facilities; authorizing the department of health to establish, maintain, and operate comprehensive health centers, and providing how such institutions are to be operated; restricting the department of health from operating certain comprehensive health centers; relating to defining confidential medical information; relating to the authority of the department of health concerning voluntary hospitalization; concerning custody for medical examinations; relating to hospitalization by agency of the United States; relating to authority of department of health for commitment of persons charged or convicted of a crime; relating to authority of department of health concerning escapees

and veterans in mental health facilities; relating to funding of state hospitals; relating to authority of department of health in local mental health programs; relating to authority of director of health in providing care of patients in boarding homes; relating to authority of director of health in licensing of institutions providing care and treatment of the mentally ill or mentally retarded; providing that the director of health shall be compact administrator for the Interstate Compact on Mental Health; relating to the Interstate Compact on the Mentally Disordered Offender; providing lay members on health profession boards; establishing an office of executive secretary for health profession licensing boards; relating to mobile intensive care paramedics; and funeral directors; relating to the board of sanitarians; creating a nursing home administrators licensing board to provide for licensing of nursing home administrators, including provisions for suspensions and revocations; relating to the board of hearing-aid dealers and fitters within the department of health including suspension, removal, prohibited acts, offenses and penalties; extending requirements for examinations before anyone can be fitted for a hearing aid; creating a board of barbers and beauticians with certain powers and duties including licensing provisions, violations, penalties and validity of prior certificates; providing that the office of medical examinations is to be operated under the control and supervision of the director of health; and providing penalties for violations of the sections, articles and chapters amended or enacted within.

Be it enacted by the Legislature of West Virginia:

That sections eighteen and nineteen, article one, chapter sixteen be repealed; that section six, article four-d of said chapter sixteen be repealed; that section nine, article five-b of said chapter sixteen be repealed; that article five-d of said chapter sixteen be repealed; that section one, chapter sixteen be repealed; that sections three, five and six, article five-c of said chapter sixteen be repealed; that article five-d of said chapter sixteen be repealed; that section one, article six of said chapter sixteen be repealed; that sections four, five, six, seven, eight, nine, ten,

eleven, twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, article fourteen of said chapter sixteen be repealed; that article twenty-four of said chapter sixteen be repealed; that sections one, two, three, four, five, six, seven, eight, ten, eleven, thirteen, fourteen, fifteen and seventeen, article one; sections one, two, three, and four, article two; sections three, seven and eight, article two-a; section one, article two-b; sections one, two, five, six, ten and twelve, article three; sections six, seven and twenty-one, article four; section three, article four-a; sections two, four, five, six, nine and ten, article four-c; sections three and four, article four-d; sections two, three, four, five, six, twenty-eight and thirty-two, article five; sections one, two, three, four and five, article five-a; sections one, two, four, six, eight, eleven and twelve, article five-b; sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five-c; sections two, four, five, seven, eight, nine, ten and twenty-four, article six; section three, article seven; and sections one and three, article fourteen, all of said chapter sixteen be amended and reenacted; that sections six and nine, article one; sections one, three, four and five, article two; section one, article two-a; section one, article four; sections three, seven and nine, article five; section one, article six-a; section five, article seven; sections one, two-a and three, article eight; section one, article nine; section two, article fourteen; and section two, article fifteen, all of chapter twenty-seven, be amended and reenacted; that said chapter twenty-seven be further amended by adding thereto a new section, designated section six, article two; that said chapter twenty-seven be further amended by adding thereto a new article, designated article three; that section fifteen, article one, chapter thirty be amended and reenacted; that section two, article three-b; sections one and three, article six; and section two, article seventeen; and that said chapter thirty be further amended by adding thereto a new section, designated section four-a, article one; that said chapter thirty be further amended by adding thereto three new articles, designated articles twenty-five, twenty-six and twenty-seven; and that sections three, four, five, six, seven and fourteen, article twelve, chapter sixty-one be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-1. Purpose.

1 It is the policy of this state to effect a significant
2 improvement in the delivery of health and mental health
3 services for the benefit of the citizens of this state; to
4 develop and implement a coordinated and comprehensive
5 continuum of health and mental health services to
6 meet current and future needs at a reasonable cost; to
7 promote the delivery of preventive care by emphasis on
8 primary care and community based services; to achieve
9 equal access to all types of quality care for all citizens of
10 the state; to encourage the active participation of the
11 citizens of this state in matters relating to the delivery
12 of health and mental health services; to avoid duplication
13 of services and costs created and fostered by
14 separation of such services; to review and regulate the
15 delivery of health care services to contain the spiraling
16 costs of health care; to integrate a broad variety of health
17 services and functions and to reorganize and innovatively
18 modify existing responsibilities, and where necessary,
19 plan and develop new responsibilities for the most effective
20 and efficient delivery of services; and thereby,
21 to provide quality health and mental health services to
22 the citizens of this state.

§16-1-2. Health resources advisory council creation, and composition.

1 There is hereby created the "Health Resources Advisory
2 Council", hereinafter referred to as the "council." The
3 council shall be made up of twenty-nine members, all of
4 whom are citizens and residents of this state appointed
5 by the governor, by and with the advice and consent of
6 the Senate. Members of the council shall include:

- 7 (1) Fourteen representatives of the health professions
8 licensed and certified in the state and of the allied health
9 professions;
- 10 (2) Five representatives of health professional schools
11 and programs;

12 (3) Five representatives of voluntary health agencies;
13 and

14 (4) Five representatives of the consumer public.

15 Members shall be representative of the geographic areas
16 and congressional districts of the state. Members shall be
17 appointed so that each of the congressional districts shall
18 have at least five representatives on the advisory council
19 who shall be residents of the district. No more than fifteen
20 members of the council shall belong to the same political
21 party.

22 Members of the council, except for the chairman, shall
23 be appointed for terms of three years each, except that
24 of the members first appointed, nine members shall be
25 appointed for terms of one year, ten members for terms
26 of two years, and nine members for terms of three
27 years. Members shall be eligible for reappointment for a
28 second three-year term. Vacancies shall be filled in the
29 same manner as the original appointments, for the dura-
30 tion of the unexpired term. The governor shall appoint,
31 by and with the advice and consent of the Senate, a chair-
32 man of the council who shall serve at the pleasure of the
33 governor.

34 A majority of the members of the council shall consti-
35 tute a quorum for the transaction of business. The coun-
36 cil shall elect from among its members a vice-chairman
37 and such other officers as it shall deem necessary. The
38 council shall meet at least four times during the calendar
39 year, and meetings shall be held upon a call of the chair-
40 man or a majority of the members.

**§16-1-3. Powers of health resources advisory council; report;
duration.**

1 The council shall serve as an advisory body to the
2 governor on the development of guidelines for the supply,
3 distribution, and organization of health resources.
4 Recognizing that it is critical to identify current and
5 prospective health manpower needs, the council shall
6 study and advise the governor on the supply of health
7 manpower including consideration of the interrelation-
8 ship among the different types of health manpower; shall

9 study and advise the governor on the distribution of health
10 manpower within and without institutions and geo-
11 graphically in the state; and shall study and advise the
12 governor on the most effective organization of health
13 manpower, including consideration of the relationship
14 of health manpower to institutions and the relationship
15 among different types of health manpower.

16 The council shall also undertake a study of national
17 standards for health resources, determine the appro-
18 priateness of such standards for the citizens of this state,
19 and make recommendations for such additional standards
20 as it may deem necessary in order to best serve the need
21 of the citizens of this state.

22 On or before January first of each year, the council
23 shall submit a written report to the governor and the
24 Legislature, summarizing its activities and findings of
25 the preceding year, in addition to such other recommenda-
26 tions and studies as it may submit from time to time.
27 Unless hereinafter extended by the Legislature, the
28 provisions of section two and three of this article shall
29 expire and be of no further force and effect on or after
30 the first day of July, one thousand nine hundred eighty-
31 three.

§16-1-5. Composition of department.

1 There shall be a state department of health which shall
2 consist of the board of health, the director of the depart-
3 ment, the subdivisions of the board of health and other
4 employees as hereinafter provided. Any person em-
5 ployed by the state department of health or any local
6 boards of health who on the effective date of this article
7 is a classified civil service employee shall, within the
8 limits contained in section two, article six of chapter
9 twenty-nine of this code, remain in the civil service sys-
10 tem as a covered employee.

§16-1-6. Board of health; membership; appointment and removal of members; compensation.

1 There shall be a state board of health, to be known
2 as the West Virginia board of health. The state board
3 of health shall consist of fifteen members, who shall be

4 appointed by the governor, by and with the advice and
5 consent of the Senate. Three members of the board shall
6 be physicians or surgeons holding the degree of doctor
7 of medicine, one shall be a dentist, one shall be an osteo-
8 pathic physician, one shall be a registered nurse, one
9 shall be a pharmacist, three shall be from mental health
10 disciplines, one shall be an administrator of a li-
11 censed hospital, one shall be an optometrist and three
12 shall be representative citizens, none of which repre-
13 sentative citizens shall be an employee of, spouse of an
14 employee of, or receive any other financial benefit from
15 any health facility located in this state, and none of
16 whom shall be a member of, or the spouse, child, or
17 parent of, or connected in any way with, any of the pro-
18 fessions named.

19 All persons appointed to membership on the state
20 board of health shall be citizens of this state and
21 shall have been such citizens and residents of the
22 state for at least five years prior to the date of their
23 appointment. Every professional member of the said
24 board shall be duly licensed to practice such profession
25 on the date of appointment and shall have been so
26 licensed and in active practice of the profession for
27 at least five years immediately preceding the date of
28 such appointment. Before appointing any professional
29 member, the governor shall request any professional
30 society of the profession practiced by the proposed ap-
31 pointee to furnish to the governor a full and complete
32 report concerning the qualifications and suitability of
33 the proposed appointee. All members of the board
34 shall be appointed for terms of five years each: *Pro-*
35 *vided*, That persons appointed prior to the effective
36 date of this section shall continue until the comple-
37 tion of their terms of original appointment: *Pro-*
38 *vided, however*, That in the case of the initial appoint-
39 ments of the representative citizens, one shall be desig-
40 nated to serve for a term of one year, one for a term of
41 two years and one for a term of four years; and in the case
42 of the initial appointments of the members from mental
43 health disciplines, one shall be designated to serve for
44 a term of two years, one for a term of three years and

45 one for a term of five years. Thereafter, the term of each
46 new appointee shall be five years except in the case of
47 any vacancy on the board which shall be filled by the
48 governor by appointment for the unexpired term. No
49 member shall be eligible for more than two terms.

50 No more than eight of the members of the board shall
51 belong to the same political party. At least one member,
52 but not more than four, shall be appointed from each
53 congressional district. No person shall be eligible for
54 appointment to membership on the state board who is a
55 member of any political party executive committee, or
56 who holds any public office or employment under the
57 federal government or under the government of this
58 state or any of its political subdivisions.

59 No member may be removed from office by the gov-
60 ernor except for official misconduct, incompetence,
61 neglect of duty or gross immorality and then only in the
62 manner prescribed by law for the removal by the gov-
63 ernor of state elective officers: *Provided*, That the expira-
64 tion, suspension or revocation of the professional license
65 of any professional member of the board shall be cause
66 for removal.

67 The members of the board shall be paid the sum of
68 thirty-five dollars for each day actually served in atten-
69 dance at official meetings of the board. Each member
70 shall be reimbursed for travel at the rate of fifteen cents
71 per mile if by private automobile and actual cost if
72 travel is by common carrier. Each member shall also be
73 reimbursed for other actual expenses incurred in the
74 performance of the duties of his office; except that in
75 the event the expenses are paid, or are to be paid, by a
76 third party, the member shall not be reimbursed by
77 the state.

78 The director of health shall serve as secretary to the
79 board, but shall not be entitled to vote. He shall be in
80 charge of the offices of the board and shall be respon-
81 sible to the board for the preparation of reports and the
82 collection and dissemination of data and other public
83 information relating to the development of drafts and

84 other materials concerning rules and regulations promul-
85 gated by the board.

§16-1-7. Powers and duties of the board of health.

1 The state board of health shall have the power to
2 promulgate such rules and regulations, in accordance
3 with the provisions of chapter twenty-nine-a of the code,
4 as are necessary and proper to effectuate the purposes of
5 this chapter and prevent the circumvention and evasion
6 thereof. The board shall have the power to appoint or
7 designate advisory councils of professionals in the areas
8 of hospitals, nursing homes, barbers and beauticians, post-
9 mortem examinations, mental health and mental retarda-
10 tion centers and such other areas as it deems necessary to
11 advise the board on rules and regulations. Such rules and
12 regulations shall include, but not be limited to, the regu-
13 lation of:

14 (1) The sanitary condition of all institutions and schools,
15 whether public or private, public conveyances, dairies,
16 slaughterhouses, workshops, factories, labor camps, all
17 other places open to the general public and inviting public
18 patronage or public assembly, or tendering to the public
19 any item for human consumption, and places where trades
20 or industries are conducted;

21 (2) Occupational and industrial health hazards, the
22 sanitary conditions of streams, sources of water supply,
23 sewerage facilities, and plumbing systems, and the qual-
24 ifications of personnel connected with any of such facili-
25 ties, without regard to whether such supplies or systems,
26 are publicly or privately owned; and the design of all
27 water systems, plumbing systems, sewerage systems,
28 sewage treatment plants, excreta disposal methods,
29 swimming pools in this state, whether publicly or private-
30 ly owned;

31 (3) Food and drug standards, including cleanliness,
32 proscription of additives, proscription of sale, and other
33 requirements in accordance with article seven of this
34 chapter, as are necessary to protect the health of the
35 citizens of this state;

36 (4) The training and examination requirements for

37 emergency medical service attendants and mobile in-
 38 tensive care paramedics; the designation of the health
 39 care facilities, health care services, and the industries
 40 and occupations in the state which must have emergency
 41 medical service attendants and mobile intensive care
 42 paramedics employed, and the availability, communica-
 43 tions, and equipment requirements with respect thereto;

44 (5) The collection of data on health status, the health
 45 system and the costs of health care;

46 (6) Other health-related matters which the depart-
 47 ment of health is authorized to supervise, and for which
 48 the rule-making authority has not been otherwise as-
 49 signed;

50 Notwithstanding any other provision of this code to
 51 the contrary, whenever in this code there is a reference
 52 to the state board of health and such reference does not
 53 relate to the making or promulgation of rules and regula-
 54 tions, it shall be construed to mean and shall be a refer-
 55 ence to the director of the state department of health.

**§16-1-8. Director of health—Appointment; compensation; quali-
 fications; term; oath and bond; vacancy.**

1 The chief executive officer and administrative head of
 2 the department shall be appointed by the governor, with
 3 the advice and consent of the Senate, and shall serve
 4 in the manner prescribed by section two-a, article seven,
 5 chapter six of this code and shall hereafter be referred to
 6 as the director. The annual salary of the director shall be
 7 not more than forty-five thousand dollars. In addition
 8 thereto, the director shall be reimbursed for all necessary
 9 travel incurred in the performance of his duties; except
 10 that in the event the expenses are paid, or are to be paid,
 11 by a third party, the director shall not be reimbursed
 12 by the state. The director so appointed shall be a phy-
 13 sician licensed under the laws of this state to practice
 14 medicine or a person holding a doctorate degree in public
 15 health administration. Such a person shall have not less
 16 than four years' experience in health services administra-
 17 tion or a related field. The director shall serve at the will
 18 and pleasure of the governor and shall not be actively
 19 engaged or employed in any other business, vocation or

20 employment, serving full time in the duties of the office
21 as prescribed by this article.

22 Before entering upon the duties of the office, the director
23 shall take and subscribe to the oath of office prescribed
24 by section five, article four of the constitution of this
25 state, and shall execute a bond with surety approved as
26 to form by the attorney general and as to sufficiency by the
27 governor in the penal sum of fifteen thousand dollars,
28 which executed oath and bond shall be filed in the office
29 of the secretary of state. If a vacancy occurs in the
30 position of director, the governor shall make a temporary
31 appointment until the next session of the Legislature, at
32 which time the governor shall present to the Senate the
33 nomination for the office.

34 As used in this chapter, the term "director" shall mean
35 director of the state department of health or his designee.

§16-1-10. Powers and duties of the director of health.

1 The director shall be the chief executive, administra-
2 tive, and fiscal officer of the department of health and
3 shall have the following powers and duties:

4 (1) To supervise and control the business, fiscal, ad-
5 ministrative and health affairs of the department of health,
6 and in that regard and in accordance with law, employ, fix
7 the compensation of, and discharge all persons necessary
8 for the proper execution of the laws of this state relating to
9 health and mental health, and the efficient and proper dis-
10 charge of the duties imposed upon, and execution of powers
11 vested in the director by law; to that end the director may
12 promulgate such written rules as are necessary and
13 proper to delegate functions, establish divisions, specify
14 duties and responsibilities, prescribe qualifications of di-
15 vision directors and otherwise administer or supervise
16 the department, subject to the safeguards of the state
17 civil service system as it now exists;

18 (2) To enforce all laws of this state concerning public
19 health, health, and mental health; to that end, the direc-
20 tor shall make, or cause to be made, sanitary investiga-
21 tions and inquiries respecting the cause of disease, espe-
22 cially of epidemics and endemic conditions, and the

23 means of prevention, suppression or control of such con-
24 ditions; the source of sickness and mortality, and the
25 effects of environment, employment, habits and circum-
26 stances of life on the public health. The director
27 shall further make, or cause to be made, inspec-
28 tions and examinations of food, drink and drugs offered
29 for sale or public consumption, in such manner as he
30 shall deem necessary to protect the public health and
31 shall report all violations of laws and regulations relating
32 thereto to the prosecuting attorney of the county in which
33 such violations occur;

34 (3) To make complaint or cause proceedings to be
35 instituted against any person, corporation or other entity
36 for the violation of any health law before any court or
37 agency, without being required to give security for costs;
38 such action may be taken without the sanction of the
39 prosecuting attorney of the county in which the proceed-
40 ings are instituted or to which the proceedings relate;

41 (4) To supervise and coordinate the administration
42 and operation of the state hospitals named in article two,
43 chapter twenty-seven of this code, and any other state
44 facility hereafter created for the mentally ill, mentally
45 retarded or addicted;

46 (5) To supervise and coordinate the administration
47 and operation of the health and other facilities named
48 in chapter twenty-six of this code, except as otherwise
49 therein provided, and any other state facility hereafter
50 created relating to health, not otherwise provided for;

51 (6) To supervise and coordinate the administration
52 and operation of the county and municipal boards of health
53 and health officers;

54 (7) To develop and maintain a state plan of operation
55 which sets forth the needs of the state in the areas of health
56 and mental health; goals and objectives for meeting those
57 needs; methods for achieving the stated goals and objec-
58 tives; and needed personnel, funds, and authority for
59 achieving the goals and objectives;

60 (8) To collect data as may be required to foster
61 knowledge on the citizenry's health status, the health
62 system and costs of health care;

63 (9) To delegate to any appointee, assistant or employee
64 any and all powers and duties vested in the director, in-
65 cluding, but not limited to, the power to execute contracts
66 and agreements in the name of the department: *Provided*,
67 That the director shall be responsible for the acts of such
68 appointees, assistants, and employees;

69 (10) To transfer any patient or resident between hospi-
70 tals and facilities under the control of the director and, by
71 agreement with the state commissioner of public institu-
72 tions or his successor and otherwise in accord with law,
73 accept a transfer of a resident of a facility under the juris-
74 diction of the state commissioner of public institutions or
75 his successor;

76 (11) To make periodic reports to the governor and to
77 the Legislature relative to specific subject areas of public
78 health or mental health, the state facilities under the
79 supervision of the director, or other matters affecting the
80 health or mental health of the people of the state;

81 (12) To accept and use for the benefit of the state,
82 for the benefit of the health of the people of this state, any
83 gift or devise of any property or thing which is lawfully
84 given: *Provided*, That if any gift is for a specific purpose or
85 for a particular state hospital or facility, it shall be used
86 as specified. Any profit which may arise from any such
87 gift or devise of any property or thing shall be deposited
88 in a special revenue fund with the state treasurer, and
89 shall be used only as specified by the donor or donors;

90 (13) To acquire by condemnation or otherwise any
91 interest, right, privilege, land or improvement and hold
92 title thereto, for the use or benefit of the state or a state
93 hospital or facility, and, by and with the consent of the
94 governor, to sell, exchange, or otherwise convey any
95 interest, right, privilege, land or improvement acquired
96 or held by the state, state hospital or state facility; which
97 condemnation proceedings shall be conducted pursuant
98 to chapter fifty-four of this code;

99 (14) To inspect, and enforce rules and regulations to
100 control the sanitary conditions of and license all institu-
101 tions and health care facilities as set forth in this chapter,
102 including, but not limited to, schools, whether public or

103 private, public conveyances, dairies, slaughterhouses,
104 workshops, factories, labor camps, places of entertain-
105 ment, hotels, motels, tourist camps, all other places open
106 to the general public and inviting public patronage or
107 public assembly, or tendering to the public any item for
108 human consumption, and places where trades or indus-
109 tries are conducted;

110 (15) To make inspections, conduct hearings, and to
111 enforce the rules and regulations of the board concerning
112 occupational and industrial health hazards, the sanitary
113 condition of streams, sources of water supply, sewerage
114 facilities, and plumbing systems, and the qualifications of
115 personnel connected with such supplies, facilities or sys-
116 tems without regard to whether they are publicly or
117 privately owned; and to make inspections, conduct hear-
118 ings and enforce the rules and regulations of the board
119 concerning the design of chlorination and filtration facil-
120 ities and swimming pools;

121 (16) To reorganize the functions and divisions of the
122 department of health, structuring all functions previously
123 assigned to the board of health, department of health,
124 department of mental health, and otherwise assigned to
125 the department of health by this chapter, to the end of
126 establishing the most efficient and economic delivery
127 of health services in accord with the purposes of this
128 chapter; to achieve such goal the director shall establish
129 such divisions, and delegate and assign such responsibili-
130 ties and functions as he deems necessary to accomplish
131 such reorganization. On or before the first day of Febru-
132 ary, one thousand nine hundred seventy-eight, the di-
133 rector shall submit to the Legislature a report on the
134 reorganization of such department and the effect thereof,
135 including, but not limited to, the cost, the administrative
136 results, and the effect on the delivery of health services;

137 (17) To direct and supervise the provision of dental
138 services in all state institutions;

139 (18) To provide for, except as otherwise specified herein,
140 a comprehensive system of community mental health and
141 mental retardation supportive services to the end of pre-
142 venting the unnecessary institutionalization of persons and

143 promoting the community placement of persons presently
144 residing in mental health and mental retardation facilities
145 and other institutions and for the planning of the provi-
146 sions of comprehensive mental health and mental retarda-
147 tion services throughout the state;

148 (19) To provide for a comprehensive program for the
149 care, treatment and rehabilitation of alcoholics and drug
150 abusers; for research into the cause and prevention of
151 alcoholism and drug abuse; for the training and employ-
152 ment of personnel to provide the requisite rehabilitation
153 of alcoholics and drug abusers; and for the education
154 of the public in relation thereto.

155 The department's program for the care, treatment,
156 and rehabilitation of alcoholics and drug abusers may
157 include, when intended for such purposes, the establish-
158 ment of special clinics or wards within, attached to, or
159 upon the grounds of, one or more of the state hospitals
160 under the control of the department of health; the acqui-
161 sition in the name of the department of real and personal
162 property and the construction of buildings and other
163 facilities; the leasing of suitable clinics, hospitals, or other
164 facilities; and the utilization, through contracts or other-
165 wise, of the available services and assistance of any pro-
166 fessional or nonprofessional persons, groups, organiza-
167 tions or institutions in the development, promotion and
168 conduct of the department's program.

169 The department of health shall not be required to
170 accept any alcoholic or drug abuser voluntarily seeking
171 hospitalization for clinical or hospital care, treatment, or
172 rehabilitation; but the department may accept, pursuant
173 to its adopted and promulgated rules and regulations,
174 responsibility for clinical or hospital care, treatment, or
175 rehabilitation of any alcoholic or drug abuser through
176 arrangements made voluntarily with the department by
177 him or some person acting in his behalf: *Provided, That*
178 any such person accepted by the department on a volun-
179 tary basis shall be charged a minimum fee unless he
180 shows, to the satisfaction of the department, that he is
181 unable to pay the fee.

182 The department's program of research into the causes,

183 prevention, and treatment of alcoholism and drug abuse
184 may include the utilization, through contracts or other-
185 wise, of the available services and assistance of any pro-
186 fessional or nonprofessional persons, groups, organiza-
187 tions or institutions, as well as cooperation with private
188 and public agencies engaged in research in alcoholism or
189 drug abuse or rehabilitation of alcoholics or drug
190 abusers.

191 The department's programs shall also provide for the
192 training of personnel to work with alcoholics and drug
193 abusers and the informing of the public as well as inter-
194 ested groups and persons concerning alcoholism and
195 drug abuse and the prevention and treatment thereof.

196 The department may employ such medical, psychiatric,
197 psychological, secretarial and other assistance as may be
198 necessary to carry out the provisions of this section.

199 As used in this subdivision (19):

200 (a) "Alcoholic" shall mean any person who chronically
201 and habitually uses alcoholic beverages to the extent
202 that he has lost the power of self-control as to the use
203 of such beverages, or, while chronically and habitually
204 under the influence of alcoholic beverages, endangers
205 public morals, health, safety or welfare.

206 (b) "Alcoholism" shall mean the condition of abnormal
207 behavior or illness resulting directly or indirectly from
208 the chronic and habitual use of alcoholic beverages.

209 (c) "Drug abuser" shall mean a person who is in a
210 state of psychic or physical dependence, or both, arising
211 from the administration of any controlled substance, as
212 that term is defined in chapter sixty-a of this code, on a
213 continuous basis.

214 (d) "Drug abuse" shall mean the use of any controlled
215 substance, as that term is defined in said chapter sixty-a,
216 until such time as the user has become dependent upon
217 or addicted to the same; and

218 (20) To exercise all other powers delegated to the de-
219 partment by this chapter or otherwise in this code, to
220 enforce all health laws and the rules and regulations
221 promulgated by the board, and to pursue all other activi-

222 ties necessary and incident to the authority and area of
223 concern entrusted to the department or director.

§16-1-11. State hygienic laboratory; branches thereof.

1 The director may establish and maintain a state hygienic
2 laboratory as an aid in performing the duties imposed
3 upon the director of the department of health, and may
4 employ chemists, bacteriologists, and other employees
5 that may be necessary to properly operate such laboratory.
6 The director may establish branches of the state labora-
7 tory at such points within the state as the director may
8 deem necessary in the interest of the public health.

§16-1-13. Disposition of moneys received by state director of health; report to auditor; noncompliance.

1 The state director of health shall receive and account
2 for all moneys required to be paid as fees for permits,
3 licenses, or registrations, pursuant to the provisions of
4 this code, and shall pay such moneys into the state trea-
5 sury monthly, on or before the tenth day of the month
6 succeeding the month in which such moneys were receiv-
7 ed. The director of health shall, on the first day of
8 January and the first day of July in each year, or within
9 five days thereafter, certify to the state auditor a detailed
10 statement of all such moneys received by him during the
11 preceding six months. If the director of health shall fail
12 or refuse to comply with the provisions of this section,
13 he shall be guilty of a misdemeanor, and, upon conviction
14 thereof, shall be fined for each offense not less than fifty
15 dollars, nor more than two hundred dollars.

§16-1-14. Director authorized to cooperate with the state health planning and development agency and federal government in hospital and other health facility programs.

1 The director is hereby authorized to cooperate with the
2 state health planning and development agency and the
3 federal government in their programs for construction of
4 public or private hospitals, diagnostic or treatment cen-
5 ters, chronic disease hospitals, rehabilitation facilities,
6 nursing homes, and similar or related facilities and in-
7 stitutions; and is authorized to make such inventories of

8 existing public health centers, public and private hospitals,
 9 diagnostic or treatment centers, chronic disease hospitals,
 10 rehabilitation facilities, nursing homes, and similar or
 11 related facilities and institutions, and the laboratories and
 12 other facilities thereof, to make surveys of the need for
 13 construction of such health facilities, and to adopt,
 14 develop, and supervise the administration of such state-
 15 wide plans or programs for the construction of additional
 16 public and private hospitals, public health centers, public
 17 or private diagnostic or treatment centers, chronic disease
 18 hospitals, rehabilitation facilities, nursing homes, and
 19 similar or related facilities and institutions, as may be
 20 necessary to comply with the requirements and condi-
 21 tions of federal law in respect to the granting of federal
 22 aid for such purposes. The director shall promulgate
 23 standards to assure that all requirements to obtain
 24 federal funds and meet the commitments therefor are
 25 met.

26 The state health plan of operation set forth in section
 27 ten of this article and the state medical facilities plan
 28 shall be a part of the state health plan developed by the
 29 state health planning and development agency.

**§16-1-15. Receipt and disbursement of federal aid and other
 moneys for health purposes.**

1 The director is authorized to accept, receive and receipt
 2 for federal moneys and other moneys, either public or
 3 private, for and in behalf of this state or any county or
 4 municipality thereof, for public health purposes, or for
 5 the establishment or construction of public health facili-
 6 ties, whether such work is to be done by the state, or by
 7 such county or municipality, or jointly, aided by grants of
 8 aid from the United States, upon such terms and condi-
 9 tions as are, or may be, prescribed by the laws of the
 10 United States and any rules or regulations made there-
 11 under. The director is authorized to, and may, act as the
 12 agent of the state or any of its agencies, or of any county
 13 or municipality of this state, upon the request of any
 14 agency of the state or of any such county or municipality,
 15 in accepting, receiving, and receipting for such moneys in

16 its behalf, for public health facilities financed either in
17 whole or in part by federal moneys.

18 The state, or any agency thereof, or any county or
19 municipality is authorized to, and may, designate the di-
20 rector as its agent for the purposes above set forth, and
21 any such agency, county or municipality may enter into
22 an agreement with the director prescribing the terms and
23 conditions of such agency in accordance with federal
24 laws, rules and regulations, and with the laws of this
25 state. Such moneys as are paid over by the United
26 States government shall be retained by the state or paid
27 over to said counties or municipalities under such terms
28 and conditions as may be imposed by the United States
29 government in making such grants.

30 All moneys accepted for disbursement pursuant to
31 this section shall be deposited in the state treasury, and
32 unless otherwise prescribed by the authority from which
33 the money is received, kept in separate funds, designated
34 according to the purpose for which the moneys were made
35 available, and held by the state in trust for such purposes.
36 All such moneys are hereby appropriated for the purposes
37 for which the same were made available and shall be
38 expended in accordance with federal laws and regula-
39 tions and with the laws of this state. The director is
40 authorized, whether acting for the state or one of its
41 agencies, or as the agency for any county or municipality,
42 when requested by the United States government or any
43 agency or department thereof, or when requested by the
44 state, a state agency, or any county or municipality for
45 which the moneys have been made available, to disburse
46 such moneys for the designated purposes, but this shall
47 not include any other authorized method of disbursement.

**§16-1-17. Administrative and other employees of department;
interfering with inspectors, etc.**

1 The director at such time or times as deemed necessary
2 may employ such administrative employees, inspectors,
3 examiners, or other persons as may be necessary to prop-
4 erly carry out the provisions of the public health laws of
5 this state. Such inspectors, examiners, and other employ-
6 ees shall act as the director's representatives and, under

7 the direction of the director of health, shall enforce the
 8 provisions of the public health laws and all duly promul-
 9 gated rules and regulations of the board of health, and
 10 in the discharge of official duties, shall have the right of
 11 entry into any institution or school, whether public or
 12 private, public conveyances, dairy, creamery, slaughter-
 13 house, workshop, factory, labor camp, place of entertain-
 14 ment, hotel, tourist camp, all other places open to the
 15 general public and inviting public patronage or public
 16 assembly, or tendering to the public any item for human
 17 consumption, and places where hazardous trades or indus-
 18 tries are conducted.

19 Any person interfering with or attempting to interfere
 20 with any inspector, examiner, or other duly authorized
 21 employee of the department of health in the discharge of
 22 his duties under this section shall be guilty of a misde-
 23 meanor, and, upon conviction thereof, shall be fined not
 24 less than ten dollars, nor more than five hundred dollars.

ARTICLE 2. LOCAL HEALTH OFFICERS.

§16-2-1. County and municipal health officers; reports by physicians; county board of health; penalty for noncompliance.

1 It shall be the duty of the director of the West Virginia
 2 department of health, upon the recommendation of the
 3 county commission of the county, to appoint in each
 4 county of this state a legally qualified physician, who shall
 5 be known as the county health officer. It shall also be the
 6 duty of such director, upon the recommendation of the
 7 municipal council or other governing body of any
 8 municipality, to appoint in such municipality a legally
 9 qualified physician, who shall be known as the municipal
 10 health officer: *Provided*, That no municipality organized
 11 and existing without a special charter from the Legisla-
 12 ture and located within a county which maintains a full-
 13 time county health officer, shall appoint a part-time
 14 municipal health officer. The county and municipal health
 15 officers in office on the date this section becomes effective
 16 shall, unless sooner removed, continue to serve until
 17 their respective terms expire, and until their successors
 18 have been appointed and have qualified. Beginning on

19 the first day of July, one thousand nine hundred thirty-
20 three, and on the first day of July of each fourth year
21 thereafter, a county health officer shall be appointed as
22 aforesaid to serve for a term of four years, unless sooner
23 removed by the said county commission or by the West
24 Virginia director of health. Beginning on the first day of
25 July, one thousand nine hundred thirty-one, and on the
26 first day of July of each alternate year thereafter, a
27 municipal health officer shall be appointed as aforesaid to
28 serve for a term of two years, unless sooner removed by
29 the said municipality or by the West Virginia director of
30 health. Should the West Virginia director of health fail
31 to confirm the nomination of the person recommended as
32 county or municipal health officer, or should the West
33 Virginia director of health or the county or municipal
34 authority remove any such officer, another nomination
35 shall at once be made to the West Virginia director of
36 health by the nominating authority.

37 The county health officer shall receive an official salary
38 of not less than three hundred dollars per annum, and
39 such other amount as the county commission may add
40 for additional services, and actual necessary traveling
41 expenses, unless for work specially done under orders of
42 the state department of health. The salary of the county
43 health officer shall be paid out of the treasury of the
44 county. It shall be the duty of every practicing physician
45 to report to the municipal or county health officer, where
46 there is such official, immediately on diagnosis, every case
47 of communicable or infectious disease that may arise or
48 come under his treatment within the municipality, and to
49 the county health officer cases occurring outside of the
50 municipality, and also, where there is no municipal health
51 officer, cases occurring within such municipality. The
52 health officer receiving such reports shall make to the
53 state health department a weekly report of all such cases,
54 stating the number of each kind of disease reported, the
55 action taken to arrest the infection, and the result.

56 The county health officer together with the president of
57 the county commission and the prosecuting attorney shall
58 constitute the county board of health, of which the county
59 health officer shall be the executive officer. The county

60 board of health shall exercise all the powers, and enforce
 61 all the rules and regulations of the West Virginia board
 62 of health, so far as applicable to such county. In a county
 63 which has a full-time county health officer, the jurisdic-
 64 tion of the county board of health and of the county
 65 health officer shall be coextensive with the county, and
 66 shall include every city, town and village therein which
 67 does not have a full-time health officer of its own, but
 68 shall not include any city, town or village therein which
 69 has such full-time health officer. But in a county which
 70 has a part-time health officer only, the jurisdiction of
 71 the county board of health and of such part-time health
 72 officer shall not extend to any city, town or village there-
 73 in having a full-time or part-time health officer of its own.
 74 All county and municipal boards of health and health
 75 officers shall be secondary to the West Virginia board of
 76 health, and the director of the West Virginia department
 77 of health, and subject to all orders of the director of the
 78 West Virginia department of health, who may, if deemed
 79 expedient, act through the county and municipal boards.
 80 Any failure to comply with any of the provisions of
 81 this section shall constitute a misdemeanor, and, upon
 82 conviction thereof, the offender shall be fined not more
 83 than one hundred dollars.

§16-2-2. Full-time county and municipal health officers; full-time public health nurse; levy.

1 The county commission of any county or the municipal
 2 council or other governing body of any municipality shall
 3 have the power and authority to provide for a full-time
 4 county or municipal health officer and the expenses of
 5 his administration, and for that purpose may levy a county
 6 or municipal tax, as the case may be, of not exceeding
 7 three cents on each one hundred dollars assessed valua-
 8 tion of the taxable property in such county or munici-
 9 pality according to the last assessment thereof. Such health
 10 officer shall be a legally qualified physician, and shall be
 11 nominated and appointed in the manner provided in
 12 section one of this article. He shall serve full time
 13 in the duties of his office in protecting and supervising the
 14 general health and sanitation of his county or municipi-

15 pality, including medical attendance by the county health
16 officer upon the indigent of the county in the infirmary,
17 and shall perform such duties in relation thereto as may
18 be prescribed by order of the county commission or ordi-
19 nance of the municipality duly entered or enacted, or by
20 order of the director of the department of health.

21 The county commission of any county or the municipal
22 council or other governing body of any municipality
23 which has not provided for a full-time health officer,
24 may provide for a full-time public health nurse and the
25 expenses of administration, and for that purpose may levy
26 a county or municipal tax, as the case may be, of not
27 exceeding two cents on each one hundred dollars
28 assessed valuation of the taxable property in such county
29 or municipality according to the last assessment thereof.
30 Such public health nurse shall be a legally qualified nurse
31 suitably trained in sanitary science and the nurse's
32 qualifications shall be satisfactory to the director of the
33 state department of health. The nurse shall be nominated
34 and appointed in the manner provided in section one of
35 this article. The nurse shall serve full time in protecting
36 and supervising the general health and sanitation of the
37 county or municipality, and shall perform such duties
38 in relation thereto as may be prescribed by order of the
39 county commission or ordinance of the municipality
40 duly entered or enacted, or by order of the director of
41 the state department of health.

**§16-2-3. Counties, or counties and municipalities, may combine
in employment of officers and installation and
maintenance of equipment; combined local boards
of health.**

1 Any two or more counties, or any county or counties
2 and any one or more municipalities within or partially
3 within the said county or counties, may combine to
4 cooperate with the state department of health, by vote of
5 the county commission in the case of a county and by
6 vote of the council or other governing body in the case
7 of a municipality, and may participate in the employ-
8 ment of trained health officers and other agents and
9 employees, or in the installation and maintenance of a

10 common laboratory and other equipment. Whenever any
11 such units shall decide so to cooperate and shall appro-
12 priate a sum or sums of money for such joint or coopera-
13 tive action, the state department of health is authorized
14 and empowered to pay over and contribute to such co-
15 operating units, and the cooperating units are authorized
16 and empowered to receive and expend for public purposes,
17 such sum or sums of money as may be available from
18 funds included in appropriations made for the state
19 department of health for such purposes: *Provided*, That
20 the general plan of cooperation, as well as the principal
21 health officers, executive agent or laboratory director
22 employed by the cooperating units, shall first have been
23 approved by the director of the department of health.
24 The amount of any such payment or contribution by the
25 state department of health to such cooperating units shall
26 be determined in accordance with regulations established
27 by the state board of health. Such regulations shall pro-
28 vide a method for determining the amount of any pay-
29 ment or contribution, and this method shall be uniformly
30 applied in determining the amount of any payment or
31 contribution to any such local governmental unit or
32 units.

33 Each county or municipality participating in any such
34 cooperative action shall select and appoint by vote of the
35 county commission in the case of a county, and by vote
36 of the council or other governing body in the case of a
37 municipality, not less than one nor more than three per-
38 sons to be members of a combined board of health. No such
39 person shall be selected by, nor represent on, any such
40 combined board, more than one such county or municipi-
41 pality. The number of persons to be selected by each
42 participating county or municipality as members of such
43 board, subject to the limitation contained in the two
44 preceding sentences, shall be agreed upon by the several
45 counties or municipalities participating.

46 All members of such combined board of health shall be
47 appointed for terms of five years each, except that the
48 persons first appointed pursuant to the provisions of this
49 section, if more than one such person is appointed at the
50 same time by any one county commission or municipal

51 governing body, shall be individually designated to serve
52 for terms of one, two and three years, respectively, and if
53 only one such person is appointed at such time by each
54 participating county or municipality, the several partici-
55 pating counties or municipalities shall initially appoint
56 such persons to serve for individually designated terms,
57 which shall be agreed upon by the several appointing
58 authorities, of one, two, three, four and five years, respec-
59 tively. Upon the expiration of the term of such initial
60 appointments, the term of each new appointee shall be
61 five years. Any vacancy on such board shall be filled by
62 appointment, by the original appointing authority, for the
63 unexpired term. All members shall serve until their duly
64 qualified successors have been appointed. The number of
65 members of such board belonging to one political party
66 shall not exceed by more than one the number of mem-
67 bers of such board belonging to any other political party.

68 All members of any such board shall be citizens and
69 residents of the county or municipality they are appointed
70 to represent. All members shall be eligible for reappoint-
71 ment.

72 No member of such board may be removed from office
73 during the term for which he is appointed, except for
74 official misconduct, incompetence, neglect of duty or gross
75 immorality.

76 No member of such board shall receive any compen-
77 sation for his services, but each may be reimbursed for
78 all reasonable and necessary travel and other expenses
79 actually incurred by him in the performance of his duties
80 as a member of such board.

81 Any such combined board of health shall consist of the
82 several members so selected. Such board shall organize by
83 electing a chairman from among its members. It shall
84 have the power to adopt, and from time to time amend,
85 such rules and regulations as it may deem necessary con-
86 cerning the time and place of its meetings, the procedure
87 and method of conducting its meetings or business, and
88 any other matters affecting, or necessary to, the orderly
89 and efficient discharge of its duties or exercise of its
90 powers. All powers and duties belonging to or

91 vested in county boards of health or municipal
 92 boards of health under any provision of the code
 93 are hereby vested in, conferred upon, and declared
 94 to be, the powers and duties of any combined board of
 95 health created pursuant to the provisions of this section.
 96 All powers and duties belonging to or vested in county
 97 or municipal health officers, so far as they are applicable
 98 and not in conflict with the provisions of this section,
 99 are hereby vested in, conferred upon, and declared to be,
 100 the powers and duties of any health officer appointed
 101 and employed by any combined board of health. Any
 102 health officer or other employee appointed or employed
 103 by any combined board of health shall be employed and
 104 serve, and may be discharged, at the will and pleasure
 105 of such board. The territorial jurisdiction of any such
 106 combined board of health shall be coextensive with the
 107 boundaries of all of the counties and municipalities which
 108 have been combined to cooperate as herein provided.

109 Upon the formation of a combined local board of health
 110 as herein provided, and during the period that it continues
 111 to exist, there shall be no separate county board of health
 112 or municipal board of health in any county or municipi-
 113 pality represented on the combined board of health.

**§16-2-4. State director of health may supplant local health
 authority; removal of delinquent local officer.**

1 When, in the opinion of the director of the state health
 2 department, any local health authority shall fail or re-
 3 fuse to enforce necessary laws and regulations to prevent
 4 and control the spread of communicable or infectious
 5 disease declared to be dangerous to the public health, or
 6 when, in the opinion of the said director, a public health
 7 emergency exists, the director may enforce the rules
 8 and regulations of the state board of health within the
 9 territorial jurisdiction of such local health authorities,
 10 and for that purpose shall have and may exercise all the
 11 powers given by law to local health authorities. All
 12 expenses so incurred shall be a charge against the
 13 counties, cities, or towns concerned. And in such cases
 14 the failure or refusal of any local health officer or local
 15 health body to carry out the lawful orders and regula-

16 tions of the state board of health shall be sufficient cause
17 for the removal of such local health officer or the mem-
18 bers of such local health body from office, and upon such
19 removal the proper county or municipal authorities shall
20 at once nominate a successor, other than the person re-
21 moved, as provided by law.

**ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL
HEALTH AGENCIES.**

**§16-2A-3. Powers and duties of county and municipal boards
of health; filing of rules and regulations.**

1 County or municipal boards of health created and
2 established pursuant to the provisions of this article
3 shall direct, supervise, and control all matters relating
4 to the general health and sanitation of their respective
5 counties or municipalities, and shall possess and exercise
6 such power in relation thereto as may be exercised and
7 is possessed by the state board of health or the director,
8 as the case may be, so far as such powers are applicable
9 to such county or municipality. Such local boards of
10 health shall also have the power and authority to adopt
11 and promulgate and from time to time amend such rules
12 and regulations, consistent with the laws of this state
13 and the rules and regulations of the state board of health,
14 as may be necessary and proper for the protection of
15 the general health of the county or municipality and the
16 prevention of the introduction, propagation and spread
17 of disease therein. All such rules and regulations shall
18 be filed, in the case of a county board, with the clerk of
19 the county commission, and in the case of a municipal
20 board, with the clerk, recorder, or similar officer of the
21 municipality. Such rules and regulations shall be kept
22 by such clerk or recording officer in a separate book and
23 shall be public records.

24 It shall be the duty of such local boards of health to
25 protect the general health and supervise and control the
26 sanitation of their respective counties and municipalities;
27 to enforce the laws of this state pertaining to public
28 health, and the rules and regulations of the state board
29 of health, insofar as they are applicable to such counties

30 or municipalities, and to perform such duties in relation
 31 to public health as may be prescribed by order of the
 32 county commission of such counties or ordinances of
 33 such municipalities, consistent with the public health
 34 laws of this state and the regulations duly adopted by
 35 the state board of health. All such local boards of health
 36 receiving state or federal funds for health purposes shall
 37 first receive approval by the director of the state depart-
 38 ment of health of their general plans of operation for
 39 health purposes. Such director may, if deemed necessary
 40 or expedient by him, act through any county or municipal
 41 board of health created, established and operated pur-
 42 suant to the provisions of this article.

**§16-2A-7. Charges by local boards of health for inspection of
 milk distribution, production or pasteurization
 facilities outside of state.**

1 Any local board of health, whether created and main-
 2 tained pursuant to the provisions of this article or article
 3 two of this chapter, may cause an inspection to be made
 4 of the physical plant and facilities of any distributor,
 5 producer, or pasteurizer of milk whose milk distribution,
 6 production, or pasteurization plant or facilities are located
 7 outside this state but who sells or distributes in this
 8 state, or transports, or causes or permits to be transported,
 9 into this state, milk, or milk products, for resale, use or
 10 consumption in this state and within the territorial juris-
 11 diction of such local board of health. The local board of
 12 health may charge to, and collect from such distributor,
 13 producer, or pasteurizer of milk, all of the expense of
 14 such inspection.

15 The amount of such charge for expense of inspection
 16 shall be based on the number of inspections made, mile-
 17 age traveled, and time consumed by the inspecting offi-
 18 cial in traveling to and from the place of the inspection
 19 and in actually making the inspection: *Provided*, That in
 20 any case in which such milk distribution, production, or
 21 pasteurization plant or facilities are regularly inspected in
 22 the course of a regular inspection schedule or itinerary
 23 by any duly authorized representative of any agency of
 24 this state or its governmental subdivisions, or any agency

25 of any other state or its governmental subdivisions, which
26 has been certified as an approved inspection agency by
27 the director of the state department of health, no charge
28 for expense of inspection shall be made by any local
29 board of health unless it is the agency making the regular
30 inspection. In any event, not more than one local board
31 of health shall act as and be deemed, the regular inspec-
32 tion agency for any such milk distribution, production, or
33 pasteurization plant or facility. Where two or more
34 agencies each include any such plant or facility in a
35 regular inspection schedule or itinerary, the director of
36 the health department shall designate one of such agencies
37 as the regular inspection agency for such plant or facility.

§16-2A-8. State director of health may supplant local health authority; removal of delinquent local officers.

1 When, in the opinion of the director of the health de-
2 partment, any local health authority shall fail or refuse
3 to enforce laws and regulations necessary to prevent and
4 control the spread of communicable or infectious disease
5 declared to be dangerous to the public health, or when,
6 in the opinion of the director, a public health emergency
7 exists, the director may enforce the rules and regulations
8 of the state board of health within the territorial juris-
9 diction of such local health authority, and for that pur-
10 pose shall have and may exercise all the powers given by
11 law to local health authorities. All expenses so incurred
12 shall be a charge against the counties, cities, or towns
13 concerned. And in such cases the failure or refusal of any
14 local health officer or local health body to carry out the
15 lawful orders and regulations of the state board of health
16 shall be sufficient cause for the removal of such local
17 health officer, or local health body or its members, from
18 office, and upon such removal a successor or successors to
19 the person or persons removed shall immediately be ap-
20 pointed in the manner, and for the term, provided for in
21 this article.

ARTICLE 2B. FAMILY PLANNING AND CHILD SPACING.

§16-2B-1. Family planning and child spacing; authorized functions; funds.

1 The state department of health is authorized to pro-

2 vide printed material, guidance, advice, financial assist-
 3 ance, appliances, devices, drugs, approved methods, and
 4 medicines to local boards of health requesting the same
 5 for use in the operation of family planning and child
 6 spacing clinics to the extent of funds appropriated by
 7 the Legislature and any federal funds made available for
 8 such purpose.

**ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE
 AND OTHER INFECTIOUS DISEASES.**

**§16-3-1. State director of health authority to quarantine and
 to enforce regulations; state board of health au-
 thority to issue regulations to control infectious
 or contagious diseases.**

1 The state director of health is empowered to establish
 2 and strictly maintain quarantine at such places as he
 3 may deem proper and forbid and prevent the assembling
 4 of the people in any place, when the state director of
 5 health or any county or municipal health officer deems
 6 that the public health and safety so demand, and the
 7 state board of health may adopt rules and regulations
 8 to obstruct and prevent the introduction or spread of
 9 smallpox or other communicable or infectious diseases
 10 into or within the state, and the state director of health
 11 shall have the power to enforce these regulations by
 12 detention and arrest, if necessary. The state director of
 13 health shall have power to enter into any town, city,
 14 factory, railroad train, steamboat or other place whatso-
 15 ever, and enter upon and inspect private property for
 16 the purpose of investigating the sanitary and hygienic
 17 conditions and the presence of cases of infectious diseases,
 18 and may, at his discretion, take charge of any epidemic
 19 or endemic conditions, and enforce such regulations as
 20 the state board of health may prescribe. All expenses
 21 incurred in controlling any endemic or epidemic condi-
 22 tions shall be paid by the county or municipality in which
 23 such epidemic occurs.

**§16-3-2. Powers of county and municipal boards of health to
 establish quarantine; penalty for violation.**

1 The county board of health of any county may declare

2 quarantine therein, or in any particular district or place
3 therein, whenever in their judgment it is necessary to
4 prevent the spread of any communicable or infectious
5 disease prevalent therein, or to prevent the introduction
6 of any communicable or infectious disease prevailing in
7 any other state, county or place, and of any and all per-
8 sons and things likely to spread such infection. As soon
9 as such quarantine is established such board shall, in
10 writing, inform the director of health thereof, the duty
11 of whom it shall be to ascertain, as soon as practicable,
12 the necessity therefor, if any exists, and if the state di-
13 rector of health finds that no such necessity exists, the
14 same shall, by the said director, be declared raised. The
15 said county board of health shall have power and au-
16 thority to enforce such quarantine until the same is
17 raised as aforesaid, or by themselves, and may confine
18 any such infected person, or any person liable to spread
19 such infection, to the house or premises in which he re-
20 sides, or if he has no residence in the county, at a place
21 to be provided by them for the purpose; and if it shall
22 become necessary to do so, they shall summon sufficient
23 guard for the enforcement of their orders in the premises.
24 Every person who shall fail or refuse to comply with any
25 order made by such board under this section, and every
26 person summoned as such guard who shall, without a
27 lawful excuse, fail or refuse to obey the orders and direc-
28 tions of such board in enforcing said quarantine, shall
29 be guilty of a misdemeanor, and, upon conviction thereof,
30 shall be fined not less than twenty-five nor more than two
31 hundred dollars. In cases of emergency or actual necessity,
32 and when the county commission or corporate authorities
33 are from any cause unable to meet or to provide for the
34 emergency or the necessity of the case, all actual expendi-
35 tures necessary for local and county quarantine, as pro-
36 vided for in this section, shall be certified by the county
37 board of health to the county commission, and the whole,
38 or as much thereof as the said commission may deem
39 right and proper, shall be paid out of the county treasury.
40 The board of health of any city, town or village shall
41 have, within the municipality, the same powers and per-
42 form the same duties herein conferred upon and required

43 of the county board of health in their county. So far as
44 applicable the provisions of this section shall apply to
45 any quarantine established and maintained by the state
46 director of health pursuant to section one of this article.

§16-3-5. Free serum or vaccine preventives of disease.

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

11 The state director of health shall also deliver, free of
12 charge, to such drugstores or other stores within each
13 county as the health officer of such county may designate
14 as proper depositories, such quantities of diphtheria anti-
15 toxin as said director may deem necessary for the use of
16 the indigent of such county, and such antitoxin shall be
17 kept at said drugstores or other stores at all times and in
18 sufficient quantities to permit immediate delivery to any
19 licensed physician who may require the same for the
20 treatment of any indigent person infected with diphtheria,
21 or to prevent such infection, without cost to the patient
22 so treated. The state director of health shall take a receipt
23 from the proprietor of each drugstore or other store for
24 any antitoxin delivered as herein provided.

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

§16-3-6. Nuisances affecting public health.

1 The state director of health or any county or municipal
2 health officer shall inquire into and investigate all nuisan-
3 ces affecting the public health within his jurisdiction; and
4 the said director or any such officer or the county com-
5 mission of any county or any municipality is authorized
6 and empowered to apply to the circuit court of the county
7 in which any such nuisance exists, or to the judge thereof
8 in vacation, for an injunction forthwith to restrain, pre-
9 vent or abate such nuisance.

**§16-3-10. Same—Use of silver nitrate drops as prophylactic;
birth report.**

1 It shall be unlawful for any physician, or midwife,
2 practicing midwifery, to neglect or otherwise fail to in-
3 still or have instilled, immediately upon its birth, in the
4 eyes of the newborn babe, one or two drops of a one
5 percent solution of silver nitrate, furnished by the West
6 Virginia director of health. Every physician or midwife
7 shall, in making a report of a birth, state whether or not
8 the above solution was instilled into the eyes of said
9 infant.

**§16-3-12. Same—Duties of the state director of health; duties
of board of health.**

1 It shall be the duty of the state director of health:

2 (a) To enforce the provisions of sections seven through
3 thirteen, inclusive, of this article;

4 (b) To provide for the gratuitous distribution of one
5 percent solution of silver nitrate outfits, together with
6 proper directions for the use and administration thereof,
7 to all physicians and midwives who may be engaged in
8 the practice of obstetrics, or assisting at childbirth;

9 (c) To publish and promulgate such further advice and
10 information concerning the dangers of inflammation of
11 the eyes of the newborn as is necessary for prompt and
12 effective treatment;

13 (d) To furnish copies of sections seven through thir-
14 teen, inclusive, of this article to all physicians and mid-

15 wives who may be engaged in the practice of obstetrics,
16 or assisting at childbirth;

17 (e) To keep a proper record of any and all cases of
18 inflammation of the eyes of the newborn of which reports
19 are filed with the state director of health pursuant to law,
20 or which may come to his attention in any way, and to
21 constitute such records a part of the annual report to the
22 governor; and

23 (f) To report any and all violations of the public health
24 laws or of any rules or regulations lawfully adopted pur-
25 suant thereto that may come to his attention, to the prose-
26 cuting attorney of the county wherein said violations may
27 have occurred, and to assist said official in any way pos-
28 sible in the prosecution of such cases.

29 It shall be the duty of the state board of health to
30 promulgate such rules and regulations as shall be neces-
31 sary for the purpose of enforcing said provisions, and as
32 the state director of health may deem necessary for the
33 further and proper guidance of local health officers.

ARTICLE 4. VENEREAL DISEASES.

§16-4-6. Reports by physicians.

1 It shall be the duty of every practicing physician or
2 other person who makes a diagnosis in, or treats a case
3 of, syphilis, gonorrhea or chancroid, to make two reports
4 of the case, as follows: One report shall be made to the
5 local municipal health officer, if the party for whom the
6 diagnosis was made or case treated lives within any
7 municipality having a health officer, and if the munici-
8 pality has no health officer, or if the party lives outside
9 of a municipality, then to the health officer of the county
10 in which such person lives; the second report shall be
11 made to the director of health of the state. And every
12 superintendent or manager of a hospital, dispensary, or
13 charitable or penal institution in which there is a case of
14 venereal disease shall report the same under like condi-
15 tions.

16 The reports above required shall state the street num-
17 ber and address of the person reported as diseased, the

18 age, sex, color, marital state and occupation of such per-
19 son, the date of the onset of the disease, the source of
20 infection, whether said disease is in an infectious state,
21 and whether the person reported is at the time of making
22 report engaged in any occupation forbidden under this
23 article and hereafter mentioned. The reports, when made
24 out, shall be mailed or handed to the parties to whom
25 they are directed to be made within forty-eight hours
26 after a diagnosis is made or treatment started; and the
27 municipal health officer or county health officer, as the
28 case may be, shall file and preserve said reports, and
29 they shall be open to inspection by the director of the
30 state department of health, and by local health officers,
31 or officers whose duties are connected with executing the
32 laws against these diseases.

§16-4-7. False report or information.

1 Any physician or other person required to make re-
2 ports of a venereal disease hereunder, or who is re-
3 quired to report the failure of any patient to return for
4 further treatment, who fails or refuses to make any
5 such reports, or who knowingly reports a person under
6 a false or fictitious name or address, or who makes any
7 other statements on any report which he has reason to
8 believe are untrue, shall be guilty of a misdemeanor,
9 and shall be punished as hereinafter provided; and each
10 report that should have been made, and each name that
11 should have been given, and each address that should
12 have been given, or has been wrongfully reported or
13 given, shall be a separate offense; and a second convic-
14 tion of a physician for failure to comply with any pro-
15 vision of this section shall be sufficient ground and reason
16 for the director of health, upon the recommendation of
17 the medical licensing board, to revoke the license of such
18 physician. Any person suffering with a venereal disease,
19 whose name is required to be reported hereunder, who
20 gives to the physician or person required to make reports
21 herein required a false or fictitious name or address, or
22 who shall fail or refuse to answer any proper question
23 required to be reported hereunder, or who makes any

24 false statement in answer to any such question, shall be
25 guilty of a misdemeanor, and shall be punished as here-
26 inafter provided.

§16-4-21. Quarantine.

1 In establishing quarantine for a venereal disease under
2 the provisions of this article, the health officer establish-
3 ing said quarantine may confine any person infected, or
4 reasonably suspected of having such venereal disease, or
5 any other person liable to spread such disease, to the house
6 or premises in which such infected person lives, or he may
7 require any such person to be quarantined in any other
8 place, hospital or institution in his jurisdiction that may
9 have been provided. If no such place has been provided,
10 then such person shall be confined in the county or city
11 jail under a quarantine order, and such jails shall always
12 be available for such purposes. But if such person is to
13 be quarantined in his home, then said health officer
14 shall designate the area, room or rooms, that such person
15 is to occupy while so confined, and no one except the
16 attending physician or his immediate attendants shall
17 enter or leave such room or rooms so designated without
18 permission of said health officer, and no one except the
19 local health officer shall terminate said quarantine, and
20 this shall not be done until the diseased person has be-
21 come noninfectious as determined by thorough clinical
22 tests, or permission has been given by the West Virginia
23 state director of health. If, to make any quarantine
24 effective as provided herein, it becomes necessary, the
25 local health officer may summon a sufficient guard for
26 the enforcement of his orders in the premises. And every
27 person who fails or refuses to obey or comply with any
28 order made by said health officer hereunder, or under
29 any other section concerning quarantine, and every per-
30 son summoned as a guard who shall, without a lawful
31 excuse therefor, fail or refuse to obey the orders and
32 directions of the health officer in enforcement of said
33 quarantine, shall be guilty of a misdemeanor, and shall
34 be punished as hereinafter provided.

ARTICLE 4A. PRENATAL EXAMINATION.

§16-4A-3. Identification of specimen; report.

1 Any physician who takes or causes to be taken from a
2 woman in pregnancy or suspected pregnancy a blood test
3 for syphilis shall identify such specimen as being from a
4 pregnant woman, and the laboratory shall provide a
5 report in triplicate on forms prepared and furnished by
6 the state department of health showing the results of
7 such tests. The original of each such report shall be sent
8 at once to the physician submitting the specimen, a dupli-
9 cate shall be forwarded to the state department of health
10 during the week that the test was performed, and the
11 triplicate shall be retained by the laboratory for its files.
12 All laboratory reports shall be confidential and shall not
13 be open to public inspection. The laboratory test for
14 syphilis in compliance with this article shall be performed
15 free of charge by the state hygienic laboratory on the
16 application of any municipal or county health officer or
17 other physician, or any other person permitted by law to
18 secure such specimens.

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

§16-4C-2. Definitions.

1 As used in this article, unless the context clearly re-
2 quires a different meaning:

3 "Ambulance" means any privately or publicly owned
4 vehicle or aircraft which is designed, constructed or modi-
5 fied; equipped or maintained; and operated for the trans-
6 portation of patients.

7 "Ambulance service" means the transportation, and
8 treatment at the site of pickup and en route, of a patient
9 to or from a place where medical, hospital or clinical
10 service is normally available.

11 "Emergency medical service attendant" means any per-
12 son who is responsible for attending, caring for and
13 giving life-saving or life-preserving treatment to a patient
14 transported in an ambulance. This term includes both
15 the driver of an ambulance and any person assigned to
16 the ambulance to attend patients.

17 "Governing body" shall have the meaning ascribed
18 to it as applied to a municipality in subsection (b), sub-
19 division (1), section two, article one, chapter eight of this
20 code.

21 "Municipality" shall have the meaning ascribed to it
22 in subsection (a), subdivision (1), section two, article
23 one, chapter eight of this code.

24 "Patient" means any sick, injured, wounded or other-
25 wise incapacitated or helpless person, or an expectant
26 mother who needs medical, hospital or clinical service
27 under an existing or imminent emergency situation.

28 "State board" means the state board of health.

29 "Director" means the director of the state department
30 of health.

**§16-4C-4. Standards for emergency medical service attendants;
issuance, renewal, suspension and revocation of
emergency medical service attendant certificates;
issuance of temporary certificates.**

1 After the first day of January, one thousand nine hun-
2 dred seventy-five, every ambulance, except those vehicles
3 and aircraft exempted in section three of this article,
4 shall have at least one physician, osteopathic physician,
5 any state licensed health provider qualified to render first
6 aid or mobile intensive care paramedic duly licensed to
7 serve in such capacity under the laws of this state or one
8 person who possesses a valid emergency medical service
9 attendant certificate issued hereunder by the director in
10 its patient compartment at all times when a patient is
11 being transported.

12 In accordance with the provisions of chapter twenty-
13 nine-a of this code, the state board shall promulgate rules
14 regarding the age, training and physical requirements of
15 emergency medical service attendants. As a minimum
16 training requirement, every emergency medical service at-
17 tendant shall have earned and possess a valid American
18 red cross advanced first aid certificate, or an advanced first
19 aid certificate issued by the United States bureau of mines
20 (now referred to as the mining enforcement and safety
21 administration, United States department of the interior)

22 or the equivalent thereof; or have successfully completed
23 the course on emergency care and transportation of the
24 sick and injured recommended by the American academy
25 of orthopedic surgeons or the equivalent thereof, before
26 he is issued a certificate: *Provided*, That any member of a
27 rescue unit organized and engaged in providing ambulance
28 service prior to the first day of January, one thousand
29 nine hundred seventy-five, which is operated by a rescue
30 squad, fire department, police department, county or
31 municipality of this state, who on that date is certified
32 by the respective county health officer of the county
33 wherein such unit is based, or, if there is no county health
34 officer, by the county commission or governing body of
35 the jurisdiction wherein such unit is based, that he is
36 adequately trained and is capable of performing the ser-
37 vice required of an emergency medical service attendant
38 shall be issued an original emergency medical service
39 attendant certificate by the director upon his submitting
40 proper application for such certificate. The state board
41 may promulgate rules for emergency medical service
42 attendants which exceed this minimum training require-
43 ment.

44 Any person desiring certification as an emergency
45 medical service attendant shall apply to the director
46 using forms and procedures prescribed by the director.
47 Upon receipt of such application, the director shall
48 determine if the applicant meets the requirements for
49 certification and examine the applicant as, in his dis-
50 cretion, is necessary to make such determination. If it
51 is determined that the applicant meets all of the require-
52 ments, the director shall issue an emergency medical
53 service attendant certificate to the applicant. Emergency
54 medical service attendant certificates issued by the direc-
55 tor shall be valid for two years from the date of their is-
56 suance unless sooner suspended or revoked by the di-
57 rector. Certificates may be renewed for additional two-
58 year periods after examination of the certificate holder
59 and determination by the director that such holder meets
60 the requirements established for emergency medical ser-
61 vice attendants: *Provided*, That if any county health
62 officer of any county, or, if there is no county health

63 officer, the county commission or governing body of the
64 jurisdiction concludes that any area of that jurisdiction
65 has not been afforded the necessary training or equip-
66 ment to implement this section, then this section shall
67 not apply.

68 The director may issue a temporary emergency medical
69 service attendant certificate to an applicant, with or with-
70 out examination of the applicant, when it finds such is-
71 suance to be in the public interest. Unless sooner sus-
72 pended or revoked, a temporary certificate shall be valid
73 initially for a period not exceeding one hundred twenty
74 days and it shall not be renewed thereafter unless it be
75 in the public interest: *Provided*, That the expiration
76 date of any such temporary certificate issued shall be
77 extended until the holder of such certificate is afforded
78 at least one opportunity to take an emergency medical
79 care attendant training course within the general area
80 where he serves as an emergency medical service atten-
81 dant, but the expiration date shall not be extended for
82 any longer period of time or for any other reason.

83 There shall be no fee or other payment required of an
84 applicant for original certification as an emergency medi-
85 cal service attendant, renewal of such certificate or of an
86 applicant for temporary certification as an emergency
87 medical service attendant.

§16-4C-5. Suspension or revocation of certificate or temporary certificate.

1 (a) The director may at any time upon his own motion,
2 and shall, upon the verified written complaint of any
3 person, conduct an investigation to determine whether
4 there are any grounds for the suspension or revocation of
5 a certificate or temporary certificate issued under the
6 provisions of this article.

7 (b) The director shall suspend or revoke any certificate
8 or temporary certificate when he finds the holder thereof
9 has:

10 (1) Obtained a certificate or temporary certificate by
11 means of fraud or deceit; or

12 (2) Been incompetent, grossly negligent, or guilty of
13 other malpractice as defined by the state board by rules
14 and regulations; or

15 (3) Failed or refused to comply with the provisions of
16 this article or any reasonable rule and regulation promul-
17 gated by the state board hereunder or any order or final
18 decision of the director.

19 (c) The director shall also suspend or revoke any
20 certificate or temporary certificate if he finds the existence
21 of any grounds which would justify the denial of an
22 application for such license or temporary permit if appli-
23 cation were then being made for it.

**§16.4C-6. Notice of refusal, suspension or revocation of certi-
ficate; appeals to director; judicial review.**

1 An application for an original emergency medical ser-
2 vice attendant certificate, for the renewal of an emergency
3 medical service attendant certificate or for a temporary
4 emergency medical service attendant certificate, shall be
5 acted upon by the director and the director's certificate
6 delivered or mailed, or a copy of any order of the director
7 denying any such application delivered or mailed to the
8 applicant, by the director within fifteen days after the
9 date upon which such application was received from the
10 applicant.

11 Whenever the director shall refuse to issue an emer-
12 gency medical service attendant certificate or a temporary
13 emergency medical service attendant certificate, or shall
14 suspend or revoke an emergency medical service attendant
15 certificate, or a temporary emergency medical service at-
16 tendant certificate, he shall make and enter an order to
17 that effect, which order shall specify the reasons for
18 such denial, suspension or revocation, and shall cause a
19 copy of such order to be served in person or by certified
20 mail, return receipt requested, on the applicant or cer-
21 tificate holder, as the case may be.

22 Whenever a certificate is suspended or revoked, the
23 director shall in the order of suspension or revocation
24 direct the holder thereof to return his certificate to the
25 director. It shall be the duty of such certificate holder to

26 comply with any such order following expiration of the
27 period provided for an appeal to the director.

28 Any applicant or certificate holder, as the case may be,
29 adversely affected by an order made and entered by the
30 director may appeal to the director for an order vacating
31 or modifying such order or for such order as the director
32 should have entered. The person so appealing shall be
33 known as the appellant. An appeal shall be perfected by
34 filing a notice of appeal with the director within ten days
35 after the date upon which the appellant received the copy
36 of such order. Said notice of appeal shall be in such form
37 and contain such information as may be prescribed by the
38 director, but in all cases shall contain a description of any
39 order appealed from and the grounds for said appeal. The
40 filing of the notice of appeal shall operate to automatically
41 stay or suspend execution of any order which is the subject
42 matter of said appeal. All of the pertinent provisions of
43 article five, chapter twenty-nine-a of this code shall apply
44 to and govern the hearing on appeal and the adminis-
45 trative procedures in connection with and following such
46 hearing, with like effect as if the provisions of said article
47 five were set forth in extenso herein.

48 The director shall set a hearing date which shall be
49 not less than ten days after he received the notice of
50 appeal unless there is a postponement or continuance. The
51 director may postpone or continue any hearing on his own
52 motion, or for good cause shown upon the application of
53 the appellant. The appellant shall be given notice of said
54 hearing in person or by certified mail, return receipt
55 requested. Any such hearing shall be held in Charleston,
56 Kanawha county, West Virginia, unless another place is
57 specified by the director.

58 After such hearing and consideration of all of the testi-
59 mony, evidence and record in the case, the director shall
60 make and enter an order affirming, modifying or vacating
61 his initial order or shall make and enter any new order.
62 Such order shall be accompanied by findings of fact and
63 conclusions of law as specified in section three, article
64 five, chapter twenty-nine-a of this code, and a copy of
65 such order and accompanying findings and conclusions

66 shall be served upon the appellant, in person or by
67 certified mail, return receipt requested. The order of the
68 director shall be final unless vacated or modified upon
69 judicial review thereof.

70 Any appellant adversely affected by a final order made
71 and entered by the director is entitled to judicial review
72 thereof. All of the pertinent provisions of section four,
73 article five, chapter twenty-nine-a of this code shall apply
74 to and govern such review with like effect as if the provi-
75 sions of said section four were set forth in extenso herein.
76 The judgment of the circuit court shall be final unless
77 reversed, vacated or modified on appeal to the supreme
78 court of appeals in accordance with the provisions of
79 section one, article six, chapter twenty-nine-a of this
80 code.

§16-4C-9. Violations; criminal penalties.

1 Any person who operates an ambulance or who provides
2 ambulance service not in compliance with the provisions
3 of this article or the rules promulgated by the state board
4 of health pursuant to this article, or who operates an
5 ambulance with uncertified emergency medical service
6 attendants aboard when not lawfully permitted to do so
7 shall be guilty of a misdemeanor, and, upon conviction
8 thereof, shall be fined not less than one hundred dollars
9 nor more than three hundred dollars, or imprisoned in
10 the county jail not more than one month, or both fined
11 and imprisoned.

§16-4C-10. Actions to enjoin violations; injunctive relief.

1 Whenever it appears to the director that any person
2 has been or is violating or is about to violate any pro-
3 visions of this article or any final order of the director,
4 the director may apply in the name of the state, to the
5 circuit court of the county in which the violation or
6 violations or any part thereof has occurred, is occurring
7 or is about to occur, for an injunction against such person
8 and any other persons who have been, are or are about
9 to be, involved in, or in any way participating in, any
10 practices, acts or omissions, so in violation, enjoining
11 such person or persons from any such violation or viola-

12 tions. Such application may be made and prosecuted
13 to conclusion whether or not any such violation or viola-
14 tions have resulted or shall result in prosecution or con-
15 viction under the provisions of section eight of this
16 article.

17 Upon application by the director, the circuit courts of
18 this state may by mandatory or prohibitory injunction
19 compel compliance with the provisions of this article and
20 all final orders of the state board.

21 The court may issue a temporary injunction in any
22 case pending a decision on the merits of any application
23 filed.

24 The judgment of the circuit court upon any applica-
25 tion permitted by the provisions of this section shall be
26 final unless reversed, vacated or modified on appeal to
27 the supreme court of appeals. Any such appeal shall be
28 sought in the manner and within the time provided by
29 law for appeals from circuit courts in other civil cases.

ARTICLE 4D. EMERGENCY MEDICAL SERVICES ACT.

§16-4D-3. Definitions.

1 For the purposes of this article:

2 (a) The term "director" shall mean the director of
3 health;

4 (b) The term "council" shall mean the emergency
5 medical services advisory council created pursuant to
6 article four-c of this chapter;

7 (c) The term "emergency medical services" shall
8 mean all services which are included in and made a
9 part of the emergency medical services plan as herein
10 provided for and shall include attending, caring for and
11 giving life-saving or life-preserving treatment to a pa-
12 tient transported in an ambulance; and

13 (d) The term "patient" means any sick, injured,
14 wounded, or otherwise incapacitated person or an ex-
15 pectant mother who needs medical, hospital or clinical
16 services under existing or imminent emergency situa-
17 tions.

§16-4D-4. Office of emergency medical services created; staffing.

1 There is hereby created within state government under
2 the director of the department of health an office to be
3 known as the office of emergency medical services.

4 The director may employ such technical, clerical,
5 stenographic and other personnel as may be necessary
6 to carry out the purposes of this article. Such personnel
7 may be paid from funds appropriated therefor or from
8 such other funds as may be made available for carrying
9 out the purposes of this article.

ARTICLE 5. VITAL STATISTICS.

§16-5-2. Vital statistics; statewide system; supervision by the director of health; offices, etc.

1 The director of the department of health shall have
2 general supervision over the system of vital statistics,
3 which shall be under the immediate supervision of the
4 state registrar of vital statistics. The director shall pro-
5 vide for such clerical and other assistants as may be
6 necessary for the purposes of this article. Suitable
7 offices shall be provided at the seat of state government
8 and such offices shall be properly equipped with a fire-
9 proof vault and filing cases for the permanent and safe
10 preservation of all official records made, maintained, or
11 filed under the provisions of this article.

§16-5-3. Rules and regulations of state board of health.

1 The state board of health is authorized to adopt,
2 amend and repeal rules and regulations for the pur-
3 pose of carrying out the specific provisions of this
4 article.

§16-5-4. Appointment of state registrar of vital statistics.

1 The state director of the department of health shall
2 appoint and prescribe the qualifications of the state
3 registrar of vital statistics.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.

1 a. The state registrar of vital statistics shall:

2 (1) Administer and enforce the provisions of this arti-
3 cle and all other applicable laws of this state and all
4 lawful rules and regulations adopted and promulgated
5 thereunder;

6 (2) Direct and supervise the statewide system of vital
7 statistics and the operation of the division of vital sta-
8 tistics, and act as custodian of its records;

9 (3) Direct, supervise and control the activities of
10 local registrars and the activities of public officers in
11 relation to the operation of the vital statistics system
12 and provide them with the postage necessary for them
13 to carry out their duties under this article;

14 (4) Prescribe, provide and distribute, subject to the
15 rules and regulations promulgated by the board of health,
16 all forms necessary to carry out the provisions of this
17 article and of the rules and regulations adopted and
18 promulgated thereunder; and

19 (5) Prepare and publish annual reports of vital sta-
20 tistics of this state, and such other reports as may be
21 required by the director of the state health department.

22 b. The state registrar of vital statistics may delegate
23 such functions and duties as are hereby vested in him
24 to officers and employees of the division of vital sta-
25 tistics and to local registrars as the state registrar may
26 deem necessary or expedient.

27 c. The state registrar, either personally or by a duly
28 delegated representative, shall have authority to inves-
29 tigate cases of irregularity or violation of law arising
30 under the provisions of this article, and all local regis-
31 trars, deputy local registrars, and subregistrars shall
32 aid him, upon request, in such investigations. When he
33 shall deem it necessary, he shall report cases of viola-
34 tion of any of the provisions of this article to the prose-
35 cuting attorney of the county, with a statement of the
36 facts and circumstances. When any such case is reported
37 to him by the state registrar, the prosecuting attorney
38 shall forthwith initiate and promptly prosecute the
39 necessary court proceedings against the person or corpo-
40 ration responsible for the alleged violation of law. Upon

- 41 request of the state registrar, the attorney general shall
- 42 assist in the enforcement of the provisions of this article.

§16-5-6. Registration districts.

- 1 For the purposes of this article, subject to the rules
- 2 and regulations promulgated by the state board of
- 3 health, the director of the state health department may
- 4 establish registration districts throughout the state. The
- 5 director may eliminate, or change the boundaries of,
- 6 any district and may consolidate two or more districts
- 7 or subdivide any district to facilitate registration.

§16-5-28. Fees for copies and searches.

- 1 a. The state director of the department of health
- 2 shall prescribe the fees, if any, to be charged and col-
- 3 lected by the state registrar of vital statistics for certi-
- 4 fied copies of certificates or records, not to exceed two
- 5 dollars per copy, or for a search of the files or records
- 6 when no copy is made: *Provided*, That the state regis-
- 7 trar shall, upon request of any parent or guardian, supply
- 8 without fee a certificate limited to a statement as to the
- 9 date of birth of any child when the same shall be neces-
- 10 sary for admission to school, or for the purpose of
- 11 securing employment: *Provided, however*, That the state
- 12 registrar may furnish certified copies of birth and death
- 13 records to the state welfare department, and to organized
- 14 charities, free of charge, when such certificates are need-
- 15 ed in presenting claims to the federal government, or
- 16 to the state department of welfare, and an accurate
- 17 record shall be made of all such certificates so furnished.
- 18 b. Fees collected under this section by the state regis-
- 19 trar of vital statistics shall be deposited to the state
- 20 general fund.

§16-5-32. Uniform system of registration of marriage, divorce and annulment of marriage.

- 1 To the end that an efficient and uniform system of
- 2 registration of marriage, divorce and annulment of mar-
- 3 riage shall be established in this state, the state regis-
- 4 trar of vital statistics shall provide for the registration
- 5 of each marriage, divorce, and annulment of marriage

6 which shall occur in this state. In so doing, the state
7 director of health subject to rules and regulations pro-
8 mulgated by the board of health shall have the authority
9 and duty to:

10 a. Install a statewide system of registering, indexing,
11 and preserving records of marriage, divorce and annul-
12 ment of marriage.

13 b. Make and amend necessary rules and regulations,
14 give instructions, and prescribe and furnish forms, for
15 collecting, transcribing, compiling and preserving records
16 and statistics of marriage, divorce and annulment of
17 marriage.

18 c. Make and publish a statistical report of marriage,
19 divorce and annulment of marriage in this state.

ARTICLE 5A. CANCER CONTROL.

§16-5A-1. Cancer control.

1 The director of the state department of health shall
2 execute and administer the provisions of this article
3 relating to the diagnosis, treatment and care of persons
4 suffering from cancer. The director shall have authority
5 to direct, control, govern and provide for the manage-
6 ment of any state institution for the care and treatment
7 of cancer patients which may hereafter be created by law.

§16-5A-2. Educational program.

1 The director shall formulate and put into effect through-
2 out the state an educational program for the purpose of
3 preventing cancer and of aiding in its early diagnosis,
4 and for the purpose of giving information to hospitals
5 and cancer patients concerning the proper treatment. In
6 furtherance of this program, the director may assist and
7 cooperate with any state or national organization con-
8 ducting an educational program for the prevention of
9 cancer.

§16-5A-3. Establishment of clinics.

1 The director shall have authority to prescribe stan-
2 dard minimum requirements for the organization, equip-
3 ment and conduct of cancer units or clinics in general
4 hospitals of the state. The director shall establish and

5 maintain, or aid in the establishment and maintenance
6 of, a sufficient number of cancer diagnostic and treat-
7 ment clinics meeting such requirements, so located that
8 they are within reasonable traveling distance of any
9 citizen of the state in need of treatment. In the establish-
10 ment and operation of such clinics and in the fixing of
11 such minimum requirements, the director shall consult
12 and cooperate with the West Virginia state medical
13 association.

14 In order to determine the progress of the disease and
15 the success of the treatment being used, the director
16 shall insofar as practicable provide a method for follow-
17 ing up each case and bringing the patient back to the
18 clinic at frequent intervals.

§16-5A-4. Tissue diagnostic service.

1 The director shall furnish, within the limits of available
2 funds, free tissue diagnostic service to all needy patients.
3 In providing this service the director may use either the
4 state-owned laboratory in the department of health, or
5 privately owned laboratories approved by the department.

§16-5A-5. Care of needy patients.

1 The board of health shall prescribe rules and regula-
2 tions specifying to what extent and on what terms and
3 conditions needy cancer patients may receive financial
4 aid for the diagnosis and treatment of cancer in any
5 approved hospital in this state. The director is authorized
6 to furnish aid, within the limits of available funds, to such
7 patients and shall have the power to administer such aid
8 in any manner which in his judgment will afford the
9 greatest benefit to cancer patients throughout the state.

10 In determining whether a particular patient is entitled
11 to such assistance the director may call upon the depart-
12 ment of welfare for such investigation as may be re-
13 quired. In order to receive such aid, however, the patient
14 need not qualify for public assistance as administered by
15 the department of welfare.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**§16-5B-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.**

1 No person, partnership, association, corporation, or any
2 local governmental unit or any division, department,
3 board or agency thereof shall establish, conduct, or main-
4 tain in the state of West Virginia any ambulatory health
5 care facility, ambulatory surgical facility, freestanding
6 or operated in connection with a hospital, hospital or ex-
7 tended care facility operated in connection with a hos-
8 pital, without first obtaining a license therefor in the
9 manner hereinafter provided: *Provided*, That only one
10 license shall be required for any person, partnership,
11 association, corporation or any local governmental unit
12 or any division, department, board or agency thereof
13 who operates any combination of an ambulatory health
14 care facility, ambulatory surgical facility, hospital, ex-
15 tended care facility operated in connection with a hos-
16 pital, or more than one thereof, at the same location.
17 Ambulatory health care facilities, ambulatory surgical
18 facilities, hospitals, or extended care facilities operated
19 in connection with a hospital operated by the federal
20 government or the state government shall be exempt
21 from the provisions of this article.

22 A hospital or extended care facility operated in con-
23 nection with a hospital, within the meaning of this
24 article, shall mean any institution, place, building, or
25 agency in which an accommodation of five or more beds
26 is maintained, furnished, or offered for the hospitaliza-
27 tion of the sick or injured: *Provided*, That nothing con-
28 tained in this article shall apply to nursing homes, rest
29 homes, personal care facilities, homes for the aged, ex-
30 tended care facilities not operated in connection with a
31 hospital, boarding homes, homes for the infirm or chroni-
32 cally ill, convalescent homes, hotels or other similar
33 places that furnish to their guests only board and room, or
34 either of them: *Provided, however*, That the hospitaliza-
35 tion, care or treatment in a household, whether for com-
36 pensation or not, of any person related by blood or mar-

37 riage, within the degree of consanguinity of second cousin
38 to the head of the household, or his or her spouse, shall not
39 be deemed to constitute the premises a hospital or ex-
40 tended care facility operated in connection with a hos-
41 pital, within the meaning of this article.

42 An "ambulatory health care facility" shall include any
43 facility which provides health care or mental health
44 care to noninstitutionalized persons on an outpatient
45 basis. This definition does not include the legally
46 authorized practice of medicine by any one or more
47 persons in the private office of any health care provider.

48 "Ambulatory surgical facility" means a facility which
49 provides surgical treatment to patients not requiring
50 hospitalization. This definition does not include the le-
51 gally authorized practice of surgery by any one or more
52 persons in the private office of any health care provider.

53 Nothing in this article or the rules and regulations
54 adopted pursuant to the provisions of this article shall
55 be construed to authorize the licensure, supervision, regu-
56 lation or control in any manner of (1) private offices of
57 physicians, dentists or other practitioners of the healing
58 arts; (2) dispensaries and first aid stations located within
59 business or industrial establishments maintained solely
60 for the use of employees: *Provided*, That such facility
61 does not contain inpatient or resident beds for patients
62 or employees who generally remain in the facility for
63 more than twenty-four hours.

64 Nothing in this article shall authorize any person, part-
65 nership, association, corporation, or any local govern-
66 mental unit or any division, department, board or agency
67 thereof to engage in any manner in the practice of medi-
68 cine, as defined by law. This article shall not be con-
69 strued to restrict or modify any statute pertaining to the
70 placement or adoption of children.

**§16-5B-2. Hospitals and institutions to obtain license; qualifi-
cations of applicant.**

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 ambulatory health care facility, ambulatory
5 surgical facility, hospital or extended care facility
6 operated in connection with a hospital, or open an am-
7 bulatory health care facility, ambulatory surgical
8 facility, a hospital or extended care facility operated in
9 connection with a hospital, unless such operation shall
10 have been approved and regularly licensed by the
11 state as hereinafter provided. Licenses shall be issued
12 for a particular number by type of beds and/or type of
13 services. Any change in the number by type of bed
14 and/or type of services shall require the issuance of a
15 new license.

16 Before a license shall be issued under this article, the
17 person applying, if an individual, shall submit evidence
18 satisfactory to the state department of health that he is
19 not less than eighteen years of age, of reputable and
20 responsible character, and otherwise qualified. In the
21 event the applicant is an association, corporation or gov-
22 ernmental unit, like evidence shall be submitted as to
23 the members thereof and the persons in charge.

24 Every applicant shall, in addition, submit satisfactory
25 evidence of his ability to comply with the minimum
26 standards and with all rules and regulations lawfully
27 promulgated.

§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 or extended care facility operated
4 in connection with a hospital, shall be accompanied
5 by a fee to be determined by the number of beds
6 available for patients, according to the following schedule
7 of fees: Those with five beds but less than fifty beds shall
8 pay a fee of twenty dollars; those with fifty beds or more
9 and less than one hundred beds shall pay a fee of thirty
10 dollars; those with one hundred beds or more and less
11 than two hundred beds shall pay a fee of forty dollars;
12 and those with two hundred beds or more shall pay a fee
13 of fifty dollars. The application of any person, partner-
14 ship, association, corporation, or local governmental unit

15 for a license to operate an ambulatory health care facility
16 or ambulatory surgical facility shall be accompanied by a
17 reasonable fee to be determined by the director, based on
18 the number of patients served by the facility. No such
19 fee shall be refunded. All licenses issued under this article
20 shall expire on the thirtieth day of June following their
21 issuance, shall be on a form prescribed by the state
22 department of health, shall not be transferable or assign-
23 able, shall be issued only for the premises named and
24 described in the application, shall be posted in a con-
25 spicuous place on the licensed premises, and may be
26 renewed from year to year upon application, investiga-
27 tion, and payment of the license fee, as in the case of the
28 procurement of an original license: *Provided*, That any
29 such license in effect on the thirtieth day of June of any
30 year, for which timely application for renewal, together
31 with payment of the proper fee, has been made to the
32 state department of health in conformance with the pro-
33 visions of this article and the rules and regulations issued
34 thereunder, and prior to the expiration date of such li-
35 cense, shall continue in effect until (a) the thirtieth day
36 of June next following the expiration date of such license,
37 or (b) the date of the revocation or suspension of such
38 license pursuant to the provisions of this article, or (c)
39 the date of issuance of a new license, whichever date first
40 occurs. All fees received by the state department of health
41 under the provisions of this article shall be paid into the
42 state treasury general revenue fund.

**§16-5B.6. State director of health to issue licenses; suspension
or revocation.**

1 The state director of health is hereby authorized to
2 issue licenses for the operation of ambulatory health care
3 facilities, ambulatory surgical facilities, hospitals or ex-
4 tended care facilities operated in connection with hos-
5 pitals, which are found to comply with the provisions of
6 this article and with all regulations lawfully promulgated
7 by the department.

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

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

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

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

18 (4) Operation of beds or services not specified in the
19 license.

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

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

37 All of the pertinent provisions of article five, chapter
38 twenty-nine-a of this code shall apply to and govern any
39 hearing authorized and required by the provisions of
40 this article and the administrative procedure in connec-
41 tion with and following any such hearing, with like ef-
42 fect as if the provisions of said article five were set forth
43 in extenso in this section.

**§16-5B-8. State department of health to establish standards;
director enforces.**

1 The board of health shall have the power to promul-
2 gate rules and regulations and the director shall have
3 the power to enforce such rules and regulations, as the
4 board of health may establish, not in conflict with any

5 provision of this article, as it finds necessary, or in the
6 public interest, in order to protect patients in institu-
7 tions required to be licensed under this article from det-
8 rimental practices and conditions, or to insure adequate
9 provision for their accommodations and care. No rule
10 or regulation or standard of the board shall be adopted
11 or enforced which would have the effect of denying a
12 license to a hospital or other institution required to be
13 licensed hereunder, solely by reason of the school or sys-
14 tem of practice employed or permitted to be employed by
15 physicians therein: *Provided, That* such school or system
16 of practice is recognized by the laws of this state.

§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 an ambulatory health care facility,
5 ambulatory surgical facility, a hospital, or extended care
6 facility operated in connection with a hospital, without
7 first obtaining a license therefor as herein provided, or
8 violating any provision of this article or any rule or reg-
9 ulation lawfully promulgated thereunder, shall be guilty
10 of a misdemeanor, and, upon conviction thereof, shall be
11 punished for the first offense by a fine of not more than
12 one hundred dollars, or by imprisonment in the county
13 jail for a period of not more than ninety days, or by both
14 such fine and imprisonment, in the discretion of the
15 court. For each subsequent offense the fine may be in-
16 creased to not more than five hundred dollars, with im-
17 prisonment in the county jail for a period of not more
18 than ninety days, or both such fine and imprisonment,
19 in the discretion of the court. Each day of a continuing
20 violation after conviction shall be considered a separate
21 offense.

§16-5B-12. Injunction; severability.

1 Notwithstanding the existence or pursuit of any other
2 remedy, the director may, in the manner provided by
3 law, maintain an action in the name of the state for an
4 injunction 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 ambulatory health care facility, am-
9 bulatory surgical facility, hospital or extended care fa-
10 cility operated in connection with a hospital without
11 first obtaining a license therefor in the manner herein-
12 before provided.

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

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.

§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 the
3 effective care and treatment of persons who are con-
4 valescing or whose physical or mental condition requires
5 them to receive a degree of nursing or related health care
6 greater than that necessary for well individuals, but not
7 so acute as to require hospitalization. Such care and
8 treatment requires a living environment for such persons
9 which, to the extent practicable, will approximate a nor-
10 mal home environment. To this end, the guiding principle
11 for administration of the laws of the state is that such
12 persons shall be encouraged and assisted in securing ne-
13 cessary care and treatment in noninstitutional surround-
14 ings. In recognition that for many such persons effective
15 care and treatment can only be secured from proprietary,
16 voluntary and governmental nursing homes or personal
17 care 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 or
20 personal care so as to insure protection of the rights and
21 dignity of those using the services of such facilities.

22 The provisions of this article are hereby declared to be
23 remedial and shall be liberally construed to effectuate its
24 purposes and intents.

§16-5C-2. Definitions.

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

3 (a) The term "director" means the director of the West
4 Virginia state department of health or his designee;

5 (b) The term "facility" means any nursing home or
6 personal care home as defined in subdivisions (c) and (d)
7 of this section: *Provided*, That the care or treatment in a
8 household, whether for compensation or not, of any per-
9 son related by blood or marriage, within the degree of
10 consanguinity of second cousin to the head of the house-
11 hold, or his or her spouse, may not be deemed to con-
12 stitute a nursing home or personal care home within the
13 meaning of this article. Nothing contained in this article
14 shall apply to hospitals, as defined under section one,
15 article five-b of this chapter, or state institutions as
16 defined under section six, article one, chapter twenty-
17 seven or section three, article one, chapter twenty-five,
18 all of this code, or institutions operated for the treatment
19 and care of alcoholic patients, or offices of physicians, or
20 hotels, boarding homes or other similar places that furnish
21 to their guests only board and room, or extended care
22 facilities operated in conjunction with a hospital;

23 (c) The term "nursing home" means any institution,
24 residence or place, or any part or unit thereof, however
25 named, in this state which is advertised, offered, main-
26 tained or operated by the ownership or management,
27 whether for a consideration or not, for the express or
28 implied purpose of providing accommodations and care,
29 for a period of more than twenty-four hours, for three or
30 more persons who are ill or otherwise incapacitated and
31 in need of nursing care due to physical or mental im-
32 pairment, or which provides services for the rehabilitation
33 of persons who are convalescing from illness or incapaci-
34 tation;

35 (d) The term "personal care home" means any institu-
36 tion, residence or place, or any part or unit thereof, how-
37 ever named, in this state which is advertised, offered,
38 maintained or operated by the ownership or management,
39 whether for a consideration or not, for the express or
40 implied purpose of providing accommodations and per-
41 sonal assistance, for a period of more than twenty-four
42 hours, to six or more persons who are dependent upon the

43 services of others by reason of physical or mental impair-
44 ment but who do not require nursing care;

45 (e) The term "nursing care" means those procedures
46 commonly employed in providing for the physical,
47 emotional and rehabilitational needs of the ill or other-
48 wise incapacitated which require technical skills and
49 knowledge beyond that which the untrained person
50 possesses, including, but not limited to, such procedures
51 as: Irrigations, catheterizations, application of dressings;
52 supervision of special diets; objective observation of
53 changes in patient condition as a means of analyzing and
54 determining nursing care required and the need for
55 further medical diagnosis and treatment; special pro-
56 cedures contributing to rehabilitation; administration of
57 medication by any method ordered by a physician such
58 as hypodermically, rectally, or orally; and carrying out
59 other treatments prescribed by a physician which involve
60 a like level of complexity and skill in administration;

61 (f) The term "personal assistance" means personal
62 services, including, but not limited to, the following: Help
63 in walking, bathing, dressing, feeding, or getting in or
64 out of bed, or supervision required because of the age of
65 mental impairment of the patient;

66 (g) The term "mental impairment" excludes mental
67 illness and mental retardation as defined in sections two
68 and three, article one, chapter twenty-seven of this code;

69 (h) The term "patient" means an individual under care
70 in a nursing home or personal care home;

71 (i) The term "sponsor" means the person or agency
72 legally responsible for the welfare and support of a
73 patient;

74 (j) The term "person" means an individual and every
75 form of organization, whether incorporated or unin-
76 corporated, including any partnership, corporation, trust,
77 association, or political subdivision of the state.

78 The director may define in regulations any term used
79 herein which is not expressly defined.

§16-5C-3. Powers, duties and rights of director.

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

3 (a) To enforce regulations and standards for nursing
4 homes adopted, promulgated, amended or modified by
5 the board of health;

6 (b) To exercise as sole authority all powers relating to
7 the issuance, suspension and revocation of licenses of
8 nursing homes;

9 (c) To enforce rules adopted, promulgated, amended
10 or modified by the board of health governing the qualifi-
11 cation of applicants for nursing home licenses including,
12 but not limited to, educational requirements, financial
13 requirements, personal and ethical requirements;

14 (d) To receive and disburse federal funds and to take
15 whatever action not contrary to law as may be proper
16 and necessary to comply with the requirements and con-
17 ditions for the receipt of such federal funds;

18 (e) To receive and disburse for authorized purposes
19 any moneys appropriated to the department of health by
20 the Legislature;

21 (f) To receive and disburse for purposes authorized by
22 this article, any funds that may come to the department
23 of health by gift, grant, donation, bequest or devise,
24 according to the terms thereof, as well as funds derived
25 from the department of health's operation, or otherwise;

26 (g) To make contracts, and to execute all instruments
27 necessary or convenient in carrying out the director's
28 functions and duties; and all such contracts, agreements
29 and instruments shall be executed by the director;

30 (h) To appoint officers, agents, employees and other
31 personnel and fix their compensation;

32 (i) To offer and sponsor educational and training
33 programs for nursing home and personal care home ad-
34 ministrative, management and operational personnel;

35 (j) To undertake survey, research and planning projects
36 and programs relating to administration and operation
37 of nursing homes and personal care homes, and to the

38 health, care, treatment and service in general of patients
39 of such homes;

40 (k) To assess civil penalties for violations of facility
41 standards, in accordance with section ten of this article;

42 (l) To classify nursing homes into care cate-
43 gories such as skilled nursing facilities, intermediate
44 care facilities, and other comparable categories un-
45 der the terms of this article if, in the opinion of
46 the director, the best interest of the public is served by
47 so doing;

48 (m) To inspect any facility and any records maintained
49 therein, subject to the provisions of section ten of this
50 article;

51 (n) To establish and implement procedures, including
52 informal conferences, investigations and hearings, subject
53 to applicable provisions of article three, chapter twenty-
54 nine-a of this code, and to enforce compliance with the
55 provisions of this article and with regulations issued here-
56 under, by the board of health;

57 (o) To subpoena witnesses and documents, administer
58 oaths and affirmations, and to examine witnesses under
59 oath for the conduct of any investigation or hearing. Upon
60 failure of a person without lawful excuse to obey a
61 subpoena or to give testimony and upon reasonable notice
62 to all persons affected thereby, the director may apply
63 to the circuit court of the county in which the hearing
64 is to be held for an order compelling compliance;

65 (p) To make complaint or cause proceedings to be
66 instituted against any person or persons for the violation
67 of the provisions of this article or of regulations issued
68 hereunder, by the board of health. Such action may be
69 taken by the director without the sanction of the prosecut-
70 ing attorney of the county in which proceedings are
71 instituted, if said officer fails or refuses to discharge his
72 duty. In no such case shall the director or any person act-
73 ing under the director's direction be required to give
74 security for costs;

75 (q) To delegate authority to the director's employees
76 and agents to perform all functions of the director except
77 the making of final decisions in adjudications; and

78 (r) To submit a report to the governor, the Legislature
79 and the public, on or before the first day of December,
80 one thousand nine hundred seventy-eight, and annually
81 thereafter. The report shall describe the licensing and
82 investigatory activities of the department during the
83 year, and the nature and status of other activities of the
84 department, and may include comment on the acts,
85 policies, practices or procedures of any public or private
86 agency that affect the rights, health or welfare of patients
87 or residents of nursing homes and personal care homes.
88 The annual report shall include a list of all nursing homes
89 and personal care homes in the state; whether such homes
90 are proprietary or nonproprietary; the classification of
91 each such home; the name of the owner or owners; the
92 total number of beds, the number of private and semi-
93 private rooms; the costs per diem for private patients;
94 the number of full-time employees and their professions;
95 recreational programs; services and programs available
96 as well as the costs thereof, the rating assigned to the
97 home by the department pursuant to section five of this
98 article, and whether or not those nursing homes listed
99 accept medicare and medicaid patients. The report shall
100 also contain the department's recommendations as to
101 changes in law or policy which it deems necessary or
102 appropriate for the protection of the rights, health or wel-
103 fare of patients of nursing homes and personal care homes
104 in the state.

§16-5C-4. Administrative and inspection staff.

1 The director may, at such time or times as he may
2 deem necessary, employ such administrative employees,
3 inspectors, or other persons as may be necessary to
4 properly carry out the provisions of this article. All
5 employees of the department shall be members of the
6 state civil service system. Such inspectors and other
7 employees as may be duly designated by the director
8 shall act as the director's representatives and, under the
9 direction of the director, shall enforce the provisions of
10 this article and all duly promulgated regulations of the
11 board of health and, in the discharge of official duties, shall
12 have the right of entry into any place maintained as a
13 nursing home or personal care home.

§16-5C-5. Rules and regulations; minimum standards for facilities; rating of facilities.

1 (a) All rules and regulations shall be approved by the
2 board of health and promulgated in the manner provided
3 by the provisions of article three, chapter twenty-nine-a
4 of this code. The board of health shall adopt, amend, or
5 repeal such rules and regulations as may be necessary
6 or proper to carry out the purposes and intent of this
7 article and to enable the director to exercise the powers
8 and perform the duties conferred upon the director by
9 this article.

10 (b) The board of health shall promulgate regulations
11 establishing minimum standards for categories of opera-
12 tion of facilities including, but not limited to, the follow-
13 ing:

14 (1) Administrative policies, including (i) an affirmative
15 statement of the right of access to facilities by members
16 of recognized community organizations and community
17 legal services programs whose purposes include rendering
18 assistance without charge to patients, consistent with
19 the right of patients to privacy, and (ii) a statement of
20 the rights and responsibilities of patients in facilities
21 which prescribes, as a minimum, such a statement of
22 patients' rights as included in the United States depart-
23 ment of health, education and welfare regulations, in
24 force on the effective date of this article, governing
25 participation of intermediate care facilities in the medi-
26 care and medicaid programs pursuant to titles eighteen
27 and nineteen of the Social Security Act;

28 (2) Minimum numbers and qualifications of personnel,
29 including management, medical and nursing, aides,
30 orderlies and support personnel, according to the size
31 and classification of the facility;

32 (3) Safety requirements;

33 (4) Sanitation requirements;

34 (5) Protective and personal services to be provided;

35 (6) Dietary services to be provided;

36 (7) Maintenance of health records;

37 (8) Social and recreational activities to be made avail-
38 able; and

39 (9) Such other categories as the board of health deter-
40 mines to be appropriate to ensure patient's health, safety
41 and welfare.

42 (c) The board of health shall include in its regulations
43 detailed standards for each of the categories established
44 pursuant to subsection (b) of this section, and shall
45 classify such standards as follows: Class I standards are
46 standards the violation of which, the board of health
47 determines, would present either an imminent danger
48 to the health, safety or welfare of any patient or a sub-
49 stantial probability that death or serious physical harm
50 would result; Class II standards are standards which the
51 board of health determines have a direct or immediate
52 relationship to the health, safety or welfare of any patient,
53 but which do not create imminent danger; Class III
54 standards are standards which the board of health deter-
55 mines have an indirect or a potential impact on the health,
56 safety or welfare of any patient.

57 (d) The board of health shall assign a range of
58 numerical values to each standard, based on its classifi-
59 cation pursuant to subsection (c) of this section, represent-
60 ing compliance with the standard, lack of compliance, as
61 well as performance significantly exceeding such standard.
62 The board of health shall determine, for each category
63 established pursuant to subsection (b) of this section, the
64 minimum number of accumulated value points which con-
65 stitutes an acceptable level of compliance with the overall
66 standards of such category, and a facility must accumulate
67 such established number for each and every category to
68 be deemed in substantial compliance with this article.

69 (e) Not later than the first day of March, one thousand
70 nine hundred seventy-eight, the board of health shall
71 establish a system of rating facilities, as part of the
72 licensing procedure, in accordance with the criteria
73 established pursuant to this section. Such system shall
74 include four rating categories entitled, from highest to
75 lowest, "A", "B", "C" and "F". A rating of "F" shall be
76 assigned to those facilities whose performance is not in
77 substantial compliance with this article and regulations

78 promulgated hereunder, and shall be the basis for is-
 79 suance of a provisional license pursuant to subsection
 80 (d), section six of this article, or the limitation, suspension,
 81 revocation or denial of a license. The rating assigned to
 82 to each facility shall be on the basis of its immediately
 83 prior inspection, and shall be deemed a part of the results
 84 and findings of that inspection, and shall be included on
 85 the license issued to the facility pursuant to section six
 86 of this article.

**§16-5C-6. License required; application; fees; duration; re-
 newal.**

1 Subject to the provisions of section seventeen of this
 2 article, no person may establish, operate, maintain, offer
 3 or advertise a nursing home or personal care home within
 4 this state unless and until he obtains a valid license there-
 5 for as hereinafter provided, which license remains un-
 6 suspended, unrevoked and unexpired. No public official
 7 or employee may place any person in, or recommend
 8 that any person be placed in, or directly or indirectly
 9 cause any person to be placed in any facility, as defined
 10 in section two of this article, which is being operated
 11 without a valid license from the director. The procedure
 12 for obtaining a license shall be as follows:

13 (a) The applicant shall submit an application to the
 14 director on a form to be prescribed by the director, con-
 15 taining such information as may be necessary to show
 16 that the applicant is in compliance with the standards for
 17 nursing homes or personal care homes as established by
 18 this article and the rules and regulations lawfully promul-
 19 gated by the board of health hereunder. The application
 20 and any exhibits thereto shall provide the following in-
 21 formation:

22 (1) The name and address of the applicant;

23 (2) The name, address and principal occupation (i) of
 24 each person who, as a stockholder or otherwise, has a
 25 proprietary interest of ten percent or more in the appli-
 26 cant, (ii) of each officer and director of a corporate ap-
 27 plicant, and (iii) of each trustee and beneficiary of an
 28 applicant which is a trust; and (iv) where a corporation

29 has a proprietary interest of fifty percent or more in an
30 applicant, the name, address and principal occupation of
31 each officer and director of such corporation;

32 (3) The name and address of the owner of the
33 premises or the facility or proposed facility, if he is
34 a different person from the applicant; and in such
35 case, the name and address (i) of each person who,
36 as a stockholder or otherwise, has a proprietary in-
37 terest of ten percent or more in such owner, (ii) of
38 each officer and director of a corporate applicant, and
39 (iii) of each trustee and beneficiary of such owner if he is
40 a trust; and (iv) where a corporation has a proprietary
41 interest of fifty percent or more in such owner, the name
42 and address of each officer and director of such corpora-
43 tion;

44 (4) Where the applicant is the lessee or the assignee
45 of the facility or the premises of the proposed facility,
46 a signed copy of the lease and any assignment thereof;

47 (5) The name and address of the facility or the prem-
48 ises of the proposed facility;

49 (6) The type of institution to be operated;

50 (7) The proposed bed quota of the facility and the
51 proposed bed quota of each unit thereof;

52 (8) (i) An organizational plan for the facility indi-
53 cating the number of persons employed or to be employed,
54 the positions and duties of all employees; (ii) the name
55 and address of the individual who is to serve as adminis-
56 trator; and (iii) such evidence of compliance with appli-
57 cable laws and regulations governing zoning, buildings,
58 safety, fire prevention, and sanitation as the director may
59 require;

60 (9) Such additional information as the director may
61 require; and

62 (10) Assurances that the nursing home was reviewed
63 and found to be needed by the state health planning and
64 development agency.

65 (b) Upon receipt and review of an application for
66 license made pursuant to subsection (b) of this section,

67 and inspection of the applicant facility pursuant to section
68 ten of this article, the director shall issue a license if he
69 finds:

70 (1) That an individual applicant, and every partner,
71 trustee, officer, director and controlling person of an
72 applicant which is not an individual, be a person respon-
73 sible and suitable to operate or to direct or participate in
74 the operation of a facility by virtue of financial capacity,
75 appropriate business or professional experience, a record
76 of compliance with lawful orders of the department (if
77 any) and lack of revocation of a license during the previ-
78 ous five years;

79 (2) That the facility be under the supervision of an
80 administrator who is qualified by training and experience:
81 *Provided*, That every facility classified as a nursing home
82 shall have an administrator licensed pursuant to the pro-
83 visions of article twenty-five, chapter thirty of this code;
84 and

85 (3) That the facility is in substantial compliance with
86 standards established pursuant to section five of this
87 article, and such other requirements for a license as the
88 board of health may establish by regulation under this
89 article.

90 Any license granted by the director shall state the
91 maximum bed capacity for which it is granted, the date
92 the license was issued, the expiration date, and the rating
93 assigned to the facility pursuant to section five of this
94 article. Such licenses shall be issued for a period of one
95 year: *Provided*, That during the twelve-month period
96 following the effective date of this article, the director
97 may issue licenses or renewals for periods of less than
98 one year in order to distribute the expiration dates of
99 such licenses throughout the calendar year, and fees for
100 such licenses shall be prorated on the basis of the portion
101 of a year for which they are issued. Each license shall
102 be issued only for the premises and persons named in the
103 application and shall not be transferable or assignable:
104 *Provided*, however, That in the case of the transfer of
105 ownership of a facility with an unexpired license, the
106 application of the new owner for a license shall have the

107 effect of a license for a period of three months when
108 filed with the director. Every license shall be posted in
109 a conspicuous place in the facility for which it is issued
110 so as to be accessible to and in plain view of all patients
111 and visitors of the facility.

112 (c) An original license shall be renewable, conditioned
113 upon the licensee filing timely application for the exten-
114 sion of the term of the license accompanied by the fee,
115 and contingent upon evidence of compliance with the pro-
116 visions of this article and regulations promulgated by the
117 board of health hereunder. Any such application for re-
118 newal of a license shall include a report by the licensee in
119 such form and containing such information as shall be
120 prescribed by the director, including the following:

121 (1) A balance sheet of the facility as of the end of the
122 licensing term, setting forth assets and liabilities at such
123 date, including all capital, surplus, reserve, depreciation
124 and similar accounts;

125 (2) A statement of operations of the facility for such
126 licensing term, setting forth all revenues, expenses, taxes,
127 extraordinary items and other credits or charges; and

128 (3) A statement of any changes in the name, address,
129 management or ownership information on file with the
130 director.

131 All holders of facility licenses as of the effective date of
132 this article shall include, in the first application for renew-
133 al filed thereafter, such information as is required for ini-
134 tial applicants under the provisions of subsection (a) of
135 this section.

136 (d) In the case of an application for a renewal license, if
137 all requirements of section five of this article are not met,
138 the director may in his discretion issue a provisional li-
139 cense, provided that care given in the facility is adequate
140 to patient needs and the facility has demonstrated im-
141 provement and evidences potential for substantial com-
142 pliance within the term of said license: *Provided*, That a
143 provisional renewal may not be issued for a period greater
144 than one year, shall not be renewed, and that no such
145 license shall be issued to any facility with uncorrected

146 violations of any Class I standard, as defined in subsec-
147 tion (c), section five of this article.

148 (e) A nonrefundable application fee in the amount of
149 one hundred dollars for an original nursing home license
150 or fifty dollars for an original personal care facility license
151 shall be paid at the time application is made for such
152 license. The license fee for renewal of a license shall
153 be four dollars per bed for nursing homes and two dollars
154 per bed for personal care homes. The bed capacity for
155 the holder of each license shall be determined by the
156 director. All such license fees shall be due and payable
157 to the director, annually, and in such manner as set forth
158 in the rules and regulations promulgated by the board
159 of health. Such fee and application shall be submitted
160 to the director who shall retain both the application
161 and fee pending final action on the application. There-
162 after, upon order of the auditor of the state, all such
163 fees shall be transmitted to the state treasurer to be
164 deposited to the credit of the general revenue fund.

§16-5C-7. Cost disclosure; surety for patient funds.

1 (a) Each nursing home and personal care home shall
2 disclose in writing to all prospective patients a complete
3 and accurate list of all costs which may be incurred by
4 them; and such facility shall display or cause to be dis-
5 played copies of such list in conspicuous places therein.
6 Patients may not be liable for any cost not so disclosed.

7 (b) If the facility handles any money for patients within
8 the facility, the licensee or his authorized representative
9 shall give a bond in an amount consistent with this sub-
10 section and with such surety as the director shall approve.
11 Such bond shall be upon condition that the licensee shall
12 hold separately and in trust all patients' funds deposited
13 with the licensee, shall administer the funds on behalf of
14 the patient in the manner directed by the depositor, shall
15 render a true and complete account to the depositor and
16 the director when requested, and at least quarterly to the
17 patient, and upon termination of the deposit, shall ac-
18 count for all funds received, expended, and held on hand.
19 The licensee shall file a bond in a sum to be fixed by the
20 director based upon the magnitude of the operations of

21 the applicant, but which sum may not be less than two
22 thousand five hundred dollars.

23 Every person injured as a result of any improper or
24 unlawful handling of the money of a patient of a facility
25 may bring an action in a proper court on the bond re-
26 quired to be posted by the licensee pursuant to this sub-
27 section for the amount of damage suffered as a result there-
28 of to the extent covered by the bond. Whenever the di-
29 rector determines that the amount of any bond which is
30 filed pursuant to this subsection is insufficient to adequately
31 protect the money of patients which is being handled,
32 or whenever the amount of any such bond is impaired
33 by any recovery against the bond, the director may re-
34 quire the licensee to file an additional bond in such
35 amount as necessary to adequately protect the money of
36 patients being handled.

37 The provisions of this subsection may not apply if the
38 licensee handles less than twenty-five dollars per patient
39 and less than five hundred dollars for all patients in any
40 month.

§16-5C-8. Investigation of complaints.

1 The board of health shall establish by regulation pro-
2 cedures for prompt investigation of all complaints of
3 alleged violations by nursing homes or personal care
4 homes of applicable requirements of state law or regula-
5 tions, except for such complaints that the director deter-
6 mines are willfully intended to harass a licensee or are
7 without any reasonable basis. Such procedures shall in-
8 clude provisions for ensuring the confidentiality of the
9 complainant and of any other person so named in the
10 complaint, and for promptly informing the complainant
11 and the facility involved of the results of the investigation.

12 If, after its investigation, the director determines that
13 the complaint has merit, the director shall take appro-
14 priate disciplinary action and shall advise any injured
15 party of the possibility of a civil remedy under this
16 article.

17 No facility may discharge or in any manner discriminate
18 against any patient or employee for the reason that such
19 patient or employee has filed a complaint or participated

20 in any proceeding specified in this article. Violation of
 21 this prohibition by any facility constitutes ground for the
 22 suspension or revocation of the license of the facility as
 23 provided in section eleven of this article. Any type of
 24 discriminatory treatment of a patient by whom, or upon
 25 whose behalf, a complaint has been submitted to the di-
 26 rector, or any proceeding instituted under this article,
 27 within one hundred twenty days of the filing of the com-
 28 plaint or the institution of such action, shall raise a
 29 rebuttable presumption that such action was taken by
 30 the facility in retaliation for such complaint or action.

§16-5C-9. Inspections.

1 The director and any duly designated employee or agent
 2 thereof shall have the right to enter upon and into the
 3 premises of any facility for which a license has been is-
 4 sued, for which an application for license has been filed
 5 with the director, or which the director has reason to
 6 believe is being operated or maintained as a nursing
 7 home or personal care home without a license. If such
 8 entry is refused by the owner or person in charge of
 9 any such facility, the director shall apply to the circuit
 10 court of the county in which the facility is located for a
 11 warrant authorizing inspection, and such court shall issue
 12 an appropriate warrant if it finds good cause for inspec-
 13 tion.

14 The director, by the director's authorized employees or
 15 agents, shall conduct at least one inspection prior to is-
 16 suance of a license pursuant to section six of this article,
 17 and shall conduct at least one unannounced inspection an-
 18 nually thereafter, to determine compliance by the facility
 19 with applicable statutes and regulations promulgated
 20 thereunder. The state fire marshal, by his employees or
 21 authorized agents, shall make all fire, safety and like in-
 22 spections. The director may provide for such other inspec-
 23 tions as the director may deem necessary to carry out the
 24 intent and purpose of this article.

**§16-5C-10. Reports of inspections; plans of correction; assess-
 ment of penalties for failure to correct viola-
 tions.**

1 (a) Reports of all inspections made pursuant to section

2 nine of this article shall be in writing and filed with the
3 director, and shall list all deficiencies in the facility's com-
4 pliance with the provisions of this article and the regula-
5 tions adopted by the board of health hereunder. The di-
6 rector shall send a copy of such report to the facility and
7 shall specify a time within which the facility shall submit
8 a plan for correction of such deficiencies, which plan shall
9 be approved, rejected or modified by the director.

10 (b) Upon failure by a facility with deficiencies to submit
11 a plan of correction which is approved by the director, or
12 to correct any deficiency within the time specified in
13 an approved plan of correction, the director may assess
14 civil penalties as hereinafter provided or may initiate
15 any other legal or disciplinary action as provided by this
16 article.

17 Nothing in this section shall be construed to prohibit
18 the director from enforcing a regulation, administratively
19 or in court, without first affording formal opportunity to
20 make correction under this section, where, in the opinion
21 of the director, the violation of such regulation jeopardizes
22 the health or safety of patients or where the violation of
23 such regulation is the second or subsequent such violation
24 occurring during a period of twelve full months.

25 Civil penalties assessed shall be classified according to
26 the nature of the violation as defined in subsection (c),
27 section five of this article and regulations promulgated
28 thereunder by the board of health, as follows: For each
29 violation of a Class I standard, a civil penalty of not less
30 than one hundred nor more than one thousand dollars
31 shall be imposed; for each violation of a Class II standard,
32 a civil penalty of not less than fifty nor more than one
33 hundred dollars shall be imposed; for each violation of a
34 Class III standard, a civil penalty of not less than twenty-
35 five nor more than fifty dollars shall be imposed. Each day
36 a violation continues, after the date by which correction
37 was required under an approved plan of correction or, if
38 an approved plan of correction is not submitted, the date
39 on which such plan was due, shall constitute a separate
40 violation.

41 The director shall, in a civil judicial proceeding, recover
42 any unpaid assessment which has not been contested

43 under section twelve of this article, or which has been
44 affirmed under the provisions of that section and not ap-
45 pealed, or which has been affirmed on judicial review, as
46 provided in section thirteen of this article. All money col-
47 lected by assessments of civil penalties shall be paid into
48 the general revenue fund.

**§16-5C-11. License limitation, suspension, revocation; continu-
ation of disciplinary proceedings.**

1 (a) The director shall by order reclassify a facility, or
2 reduce the bed quota of the facility, or both, where he
3 finds upon inspection of the facility that the licensee is not
4 providing adequate care under the facility's existing
5 classification or quota, and that reclassification, reduction
6 in quota or both would place the licensee in a position to
7 render adequate care. Any notice to a licensee of reclassi-
8 fication, reduction in quota or both shall include the terms
9 of such order, the reasons therefor, and the date set for
10 compliance.

11 (b) The director may suspend or revoke a license is-
12 sued under this article if he finds upon inspection that
13 there has been a substantial failure to comply with the
14 provisions of this article or the standards or regulations
15 promulgated pursuant hereto.

16 (c) Whenever a license is limited, suspended or re-
17 voked pursuant to this section, the director shall file a
18 complaint stating facts constituting a ground or grounds
19 for such limitation, suspension or revocation. Upon the
20 filing of the complaint, the director shall notify the li-
21 censee in writing of the filing of the complaint, enclosing
22 a copy of the complaint, and shall advise the licensee of
23 the availability of a hearing pursuant to section twelve
24 of this article. Such notice and copy of the complaint
25 shall be served on such licensee by certified mail, return
26 receipt requested.

27 (d) The suspension, expiration, forfeiture or cancella-
28 tion by operation of law or order of the director of a license
29 issued by the director, or the withdrawal of an applica-
30 tion for a license after it has been filed with the director,
31 may not deprive the director of the director's authority

32 to institute or continue a disciplinary proceeding, or a
33 proceeding for the denial of a license application, against
34 the licensee or applicant upon any ground provided by
35 law or to enter an order denying the license application
36 or suspending or revoking the license or otherwise taking
37 disciplinary action on any such ground.

**§16-5C-12. Administrative appeals for facility ratings, civil
assessments, license limitation, suspension or
revocation.**

1 (a) Any licensee or applicant aggrieved by an order
2 issued pursuant to sections five, six, ten or eleven of this
3 article shall, upon timely written request, have the op-
4 portunity for a hearing by the director at which he may
5 contest such order as contrary to law or unwarranted by
6 the facts or both. All of the pertinent provisions of article
7 five, chapter twenty-nine-a of this code shall apply to
8 and govern such hearing and the administrative proce-
9 dures in connection with such hearing.

10 Following such hearing the director shall make and
11 enter a written order either dismissing the complaint or
12 taking such action as is authorized in this article. The
13 written order of the director shall be accompanied by
14 findings of fact and conclusions of law as specified in
15 section three, article five, chapter twenty-nine-a of this
16 code, and a copy of such order and accompanying find-
17 ings and conclusions shall be served upon the licensee
18 and his attorney of record, if any, by certified mail, re-
19 turn receipt requested. If the director suspends a facility's
20 license, it shall also specify the conditions giving rise to
21 such suspension, to be corrected by the licensee during
22 the period of suspension in order to entitle the licensee
23 to reinstatement of his license. If the director revokes
24 a license, the director may stay the effective date of
25 revocation by not more than ninety days upon a showing
26 that such delay is necessary to assure appropriate place-
27 ment of patients. The order of the director shall be
28 final unless vacated or modified upon judicial review
29 thereof in accordance with the provisions of section thir-
30 teen of this article.

31 (b) In addition to all other powers granted by this
 32 chapter, the director may hold the case under advise-
 33 ment and make a recommendation as to requirements
 34 to be met by said licensee in order to avoid either sus-
 35 pension or revocation. In such a case, the director shall
 36 enter an order accordingly and so notify the licensee
 37 and his attorney of record, if any, by certified mail, return
 38 receipt requested. If the licensee meets the requirements
 39 of such order, the director shall enter an order showing
 40 satisfactory compliance and dismissing the complaint and
 41 shall so notify the licensee and his attorney of record,
 42 if any, by certified mail, return receipt requested.

§16-5C-13. Judicial review.

1 Any licensee adversely affected by an order of the di-
 2 rector rendered after a hearing held in accordance with
 3 the provisions of section twelve of this article is entitled
 4 to judicial review thereof. All of the pertinent provisions
 5 of section four, article five, chapter twenty-nine-a of this
 6 code shall apply to and govern with like effect as if the
 7 provisions of said section four were set forth in extenso
 8 in this section.

9 The judgment of the circuit court shall be final unless
 10 reversed, vacated or modified on appeal to the supreme
 11 court of appeals in accordance with the provisions of
 12 section one, article six, chapter twenty-nine-a of this code.

§16-5C-14. Legal counsel and services for the director.

1 (a) Legal counsel and services for the director in all
 2 administrative hearings and all proceedings in any circuit
 3 court and the supreme court of appeals shall be provided
 4 by the attorney general or his assistants, in proceedings
 5 in any circuit court by the prosecuting attorney of the
 6 county as well, all without additional compensation.

7 (b) The governor may appoint counsel for the director,
 8 who shall perform such legal services in representing
 9 the interests of patients in nursing homes and personal
 10 care homes in matters under the jurisdiction of the
 11 director as the governor shall direct. It shall be the duty
 12 of such counsel to appear for the patients in all cases

13 where they are not represented by counsel. The com-
14 pensation of such counsel shall be fixed by the governor.

**§16-5C-15. Unlawful acts; penalties; injunctions; private right
of action.**

1 (a) Whoever advertises, announces, establishes or
2 maintains, or is engaged in establishing or maintaining
3 a nursing home or personal care home without a license
4 ganted under section six of this article, or who prevents,
5 interferes with or impedes in any way the lawful enforce-
6 ment of this article shall be guilty of a misdemeanor,
7 and, upon conviction thereof, shall be punished for the
8 first offense by a fine of not more than one hundred dol-
9 lars, or by imprisonment in the county jail for a period
10 of not more than ninety days, or by both such fine and
11 imprisonment, at the discretion of the court. For each
12 subsequent offense, the fine may be increased to not more
13 than two hundred fifty dollars, with imprisonment in
14 the county jail for a period of not more than ninety days,
15 or both such fine and imprisonment at the discretion of
16 the court. Each day of a continuing violation after con-
17 viction shall be considered a separate offense.

18 (b) The director may in his discretion bring an action
19 to enforce compliance with this act or any rule, regula-
20 tion, or order hereunder, whenever it shall appear to
21 the director that any person has engaged in, or is en-
22 gaging in, an act or practice in violation of this article
23 or any rule, regulation or order hereunder, or whenever
24 it shall appear to the director that any person has aided,
25 abetted, or caused, or is aiding, abetting or causing such
26 an act or practice. Upon application by the director, the
27 circuit court of the county in which the conduct has oc-
28 curred or is occurring shall have jurisdiction to grant
29 without bond a permanent or temporary injunction, de-
30 cree or restraining order.

31 Whenever the director shall have refused to grant or
32 renew a license, or shall have revoked a license required
33 by law to operate or conduct a nursing home or personal
34 care home, or shall have ordered a person to refrain from
35 conduct violating the rules and regulations of the board

36 of health, and the person deeming himself aggrieved by
37 such refusal or revocation or order shall have appealed
38 the action of the director, the court may, during pen-
39 dency of such appeal, issue a restraining order or injunc-
40 tion upon proof that the operation of the facility or its
41 failure to comply with the order of the director adversely
42 affects the well-being or safety of the patients of the
43 facility. Should a person who is refused a license or the
44 renewal of a license to operate or conduct a nursing
45 home or personal care home or whose license to operate
46 is revoked or who has been ordered to refrain from con-
47 duct or activity which violates the rules and regulations
48 of the board of health, fail to appeal or should such
49 appeal be decided favorably to the director, then the
50 court shall issue a permanent injunction upon proof that
51 the person is operating or conducting a nursing home or
52 personal care home without a license as required by law,
53 or has continued to violate the rules and regulations of
54 the board of health.

55 (c) Any facility that deprives a patient of any right
56 or benefit created or established for the well-being of
57 the patient by the terms of any contract, by any state
58 statute or regulation, or by any applicable federal statute
59 or regulation, shall be liable to said patient for injuries
60 suffered as a result of such deprivation. Upon a finding
61 that a patient has been deprived of such a right or bene-
62 fit, and that the patient has been injured as a result of
63 such deprivation, and unless there is a finding that the
64 facility exercised all care reasonably necessary to pre-
65 vent and limit the deprivation and injury to the patient,
66 compensatory damages shall be assessed in an amount
67 sufficient to compensate such patient for such injury.
68 In addition, where the deprivation of any such right or
69 benefit is found to have been willful or in reckless dis-
70 regard of the lawful rights of the patient, punitive dam-
71 ages may be assessed. A patient may also maintain an
72 action pursuant to this section for any other type of
73 relief, including injunctive and declaratory relief, per-
74 mitted by law. Exhaustion of any available administra-
75 tive remedies shall not be required prior to commence-
76 ment of suit hereunder.

77 The amount of damages recovered by a patient, in an
78 action brought pursuant to this section, shall be exempt
79 for purposes of determining initial or continuing eligi-
80 bility for medical assistance under article four, chapter
81 nine of this code, and shall neither be taken into con-
82 sideration nor required to be applied toward the pay-
83 ment or part payment of the cost of medical care or
84 services available under said article.

85 Any waiver by a patient or his legal representative of
86 the right to commence an action under this section,
87 whether oral or in writing, shall be null and void as
88 contrary to public policy.

89 (d) The penalties and remedies provided in this sec-
90 tion are cumulative and shall be in addition to all other
91 penalties and remedies provided by law.

§16-5C-16. Availability of reports and records.

1 The director shall make available for public inspection
2 and at a nominal cost provide copies of all inspection
3 and other reports of facilities filed with or issued by the
4 director. Nothing contained in this section may be con-
5 strued or deemed to allow the public disclosure of con-
6 fidential medical, social, personal or financial records of
7 any patient. The board of health shall adopt such reg-
8 ulations as may be necessary to give effect to the provi-
9 sions of this section and to preserve the confidentiality of
10 medical, social, personal or financial records of patients.

§16-5C-17. Licenses and regulations in force on effective date of article.

1 All licenses for nursing homes and personal care
2 homes which are in force upon the effective date of this
3 article shall continue in full force and effect during the
4 period for which issued unless sooner revoked as pro-
5 vided in this article.

6 All regulations in effect on the effective date of this
7 article, which were adopted by the board relating to
8 licensing nursing homes or personal care homes, shall
9 remain in full force and effect until altered, amended, or
10 repealed by the board of health.

ARTICLE 6. HOTELS AND RESTAURANTS.

§16-6-2. Regulations by state board of health; enforcement of orders and laws respecting pure food.

1 The West Virginia board of health shall make such
2 rules and regulations, not inconsistent with law, as in
3 their judgment are necessary to carry out the provisions
4 of this article. The director of the state department of
5 health shall enforce any orders made by the board of
6 health and any laws of the state respecting pure food,
7 so far as they relate to hotels and restaurants.

§16-6-4. Application for inspection of hotel or restaurant; temporary permit; certificate of inspection; fee.

1 Every person, firm or corporation proposing to operate
2 a hotel or restaurant shall apply to the director of health
3 for an inspection and certificate thereof, and said in-
4 spector shall inspect the premises described in such ap-
5 plication as soon thereafter as may be practicable but
6 if it be impracticable to do so within ten days after
7 receiving such application, said director may issue to
8 such applicant a temporary permit which shall be valid
9 until a regular inspection is made. Only one certificate or
10 permit shall be issued where a hotel and restaurant are
11 combined and operated in the same building and under
12 the same management. Each certificate or permit shall
13 expire on the thirtieth day of June next following its
14 issuance, and no hotel or restaurant shall be maintained
15 and operated in this state without the certificate of
16 inspection thereof as herein prescribed, which certificate
17 shall be posted in the main public room of such hotel or
18 restaurant, and shall show the date of each inspection
19 and the notations relating thereto by the director of
20 health. No such certificate shall be transferable. The
21 fee for such inspection and certificate or permit shall be,
22 for a hotel, two dollars, and twenty-five cents additional
23 for each bedroom in excess of seven; and for a restaurant,
24 two dollars, and twenty-five cents additional for each
25 five chairs or stools, or spaces where persons are fed, in
26 excess of ten, but no fee shall exceed ten dollars. Such
27 director shall, on the first of each month, pay into the state
28 treasury all fees collected for inspections during the pre-

29 ceding month. Every certificate of inspection or permit
30 under this article shall be made and issued in duplicate.

§16-6-5. Form and content of application for inspection; payment of fee.

1 The applicant for inspection of a hotel or restaurant
2 shall file with the department of health a written application, in form to be prescribed by the director of
3 health, which shall set forth the name and address of
4 the owner of the building or property to be occupied,
5 and of the agent of any such owner; the name and address
6 of the lessee and manager, if any, of the hotel or restaurant; the location of such hotel or restaurant and a full
7 description of the building or property to be occupied
8 and such other matters as may be required by the
9 director of health. The fee for inspection shall be paid
10 to the director of health when the application is filed
11 by him.

§16-6-7. Certificate or permit prerequisite to license.

1 No license to keep a hotel or restaurant, or certificate for such license, shall hereafter be authorized or
2 issued unless there be first filed, in the county commission
3 to which application therefor is made, a certificate of
4 inspection or permit, granted by the director of health,
5 as provided in this article. Every such license shall bear
6 on its face a reference to such certificate of inspection or
7 permit.

§16-6-8. Annual inspection of hotels and restaurants; powers and duties of director of health.

1 The director of health shall inspect or cause to be inspected, at least once annually, every hotel and restaurant
2 in the state. For that purpose he, or any person designated
3 by him, shall have the right of entry and access at any
4 reasonable time to inspect kitchens where food is prepared, pantry and storage rooms pertaining thereto,
5 dining rooms, lunch counters, and every place where
6 articles pertaining to the serving of the public are kept
7 or prepared. The said director shall prohibit the use of
8 any article not in keeping with cleanliness and good
9 sanitary conditions. He shall also have the right to enter

12 any and all parts of a hotel at all reasonable hours to
13 make such inspection, and every person in the manage-
14 ment or control thereof shall afford free access to every
15 part of the hotel and render all assistance necessary to
16 enable the director to make full, thorough and complete
17 examination thereof, but the privacy of any guest in any
18 room occupied by him shall not be invaded without his
19 consent.

**§16-6-9. Alterations and changes by owner; penalty for refusal
or failure to make.**

1 Whenever, upon such inspection, it shall be found that
2 any such hotel or restaurant is not equipped, or oper-
3 ated, in the manner and under the conditions re-
4 quired by the provisions of this article, the director of
5 health shall notify the owner, manager or agent in charge
6 of such hotel or restaurant of such changes or alterations
7 as, in the judgment of the director, may be necessary to
8 effect a complete compliance with said provisions. Such
9 owner, manager or agent shall thereupon make such
10 alterations or changes as may be necessary to put such
11 buildings and premises in a condition, and operate it in
12 a manner, that will fully comply with the requirements
13 of this article: *Provided*, That due time after receiving
14 such notice shall be allowed for conforming to the re-
15 quirements thereof, which time shall be specified in the
16 notice. Should the changes or alterations directed by
17 such notice not be made in the time specified therein, the
18 said director shall proceed against the person or persons
19 in default in any court having jurisdiction to enforce
20 the provisions of this article against him or them. Every
21 person, firm or corporation which shall fail or refuse
22 to comply with the provisions of this section shall be
23 guilty of a misdemeanor, and, upon conviction thereof,
24 shall be fined five dollars for each and every day such
25 failure or refusal may continue. If such failure or re-
26 fusals shall continue for thirty days after the time speci-
27 fied in the notice from the director for conforming to
28 the requirements thereof, the director may proceed in the
29 circuit court of the county wherein such hotel or restau-
30 rant is located, for an order closing it. After such order is

31 issued, the building or property shall not again be used
32 as a hotel or restaurant until a certificate or permit
33 therefor shall have been issued by the director, and any
34 disobedience of such order may be punished as other
35 contempts of court. Reasonable notice shall be given of
36 the application for such order.

§16-6-10. Notices by director of health.

1 All notices given under this article shall be in writing
2 and shall either be delivered in person or sent by regis-
3 tered mail.

§16-6-24. Prosecution.

1 The prosecuting attorney of each county in this state
2 is hereby authorized and required, upon complaint under
3 oath of the director of health, or other person or persons,
4 to prosecute to termination before any court of competent
5 jurisdiction, in the name of the state, a proper action or
6 proceeding against any person or persons violating the
7 provisions of this article.

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-3. Inspection and analysis of foods and drugs; certificate of result as prima facie evidence in prosecution.

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

17 specimen shall be sealed and properly prepared for ship-
18 ment to the person who shall make the analysis here-
19 inafter provided for. No whole or less than a whole
20 package taken and prepared for shipment shall be opened
21 before it has been received by the analyst aforesaid.

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

ARTICLE 14. BARBERS AND BEAUTICIANS.

§16-14-1. Barbers and beauticians; licensure.

1 (a) There is hereby vested in the state department of
2 health, jurisdiction over barbers and beauticians, except
3 as otherwise specifically provided in this code.

4 (b) The director of health or a designee shall be re-
5 sponsible for the enforcement of all laws, rules and regu-
6 lations pertaining to sanitary conditions of barbering
7 and beauty shops.

8 (c) The director or a designee shall provide administra-
9 tive support to the board of barbers and beauticians as
10 may be appropriate and reasonable.

11 (d) The director of health shall appoint not more than
12 six inspectors, who shall be licensed barbers and beauti-
13 cians of this state, as herein provided, and it shall be their
14 duty to make frequent inspections of all barber and beauty
15 shops, and all schools of barbering and beauty culture in
16 this state, and to report all violations to the director of
17 health. The salaries and allowances for expenses of such
18 inspectors shall be that fixed and allowed by the director
19 of health.

§16-14-3. Powers and duties of board of health; director; inspectors.

1 The board of health shall promulgate rules and regula-
2 tions pertaining to the sanitary conditions of barbering and
3 beauty shops, licensure, and qualifications of barbers,
4 beauticians and manicurists, and curricula and standards
5 of instruction for schools of barbering and beauty culture.
6 The enforcement of all rules and regulations promulgated
7 by board of health shall be under the supervision and
8 direction of the director.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. DEFINITIONS; WORDS AND PHRASES DEFINED.

§27-1-6. State hospital.

1 "State hospital" means any hospital, center or institu-
2 tion, or part thereof, established, maintained and oper-
3 ated by the department of health, or by the department
4 of health in conjunction with a political subdivision of
5 the state, to provide inpatient or outpatient care and
6 treatment for the mentally ill, mentally retarded or
7 addicted.

§27-1-9. Mental health facility.

1 "Mental health facility" means any inpatient, resi-
2 dential or outpatient facility for the care and treatment
3 of the mentally ill, mentally retarded or addicted, which
4 is operated, or licensed to operate, by the department of
5 health and shall include state hospitals as defined in
6 section six of this article. The term shall also include
7 veterans administration hospitals.

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-1. State hospitals and other facilities; transfer of control and property from department of mental health to department of health; civil service coverage.

1 The state hospitals heretofore established at Weston,
2 Spencer, Huntington, Barboursville, Lakin, Guthrie,
3 Roney's Point, St. Marys and Lewisburg shall be continued
4 and known respectively as the Weston Hospital, Spencer
5 Hospital, Huntington Hospital, Barboursville Hospital,

6 Lakin Hospital, Guthrie Center, Roney's Point Center,
7 Colin Anderson Center and the Greenbrier School for Re-
8 tarded Children. Said state hospitals and centers shall be
9 managed, directed and controlled by the department of
10 health. Any person employed by the department of mental
11 health who on the effective date of this article is a classified
12 civil service employee shall, within the limits contained in
13 section two, article six of chapter twenty-nine of this code,
14 remain in the civil service system as a covered employee.
15 The director of the department of health is hereby autho-
16 rized to bring said hospitals into structural compliance
17 with appropriate fire and health standards. All references
18 in this code or elsewhere in law to the "West Virginia
19 training school" shall be taken and construed to mean and
20 refer to the "Colin Anderson Center."

21 The control of the property, records, and financial and
22 other affairs of state mental hospitals and other state
23 mental health facilities is hereby transferred from the
24 department of mental health to the department of health.
25 As the chief executive officer, the director of health
26 shall, in respect to the control and management of such
27 state hospitals and other state mental health facilities,
28 perform the same duties and functions as were hereto-
29 fore exercised or performed by the department of mental
30 health. The title to all property of such state hospitals
31 and other state facilities is hereby transferred to and
32 vested in the department of health.

33 Notwithstanding any other provisions of this code to
34 the contrary, whenever in this code there is a reference
35 to the department of mental health, it shall be construed
36 to mean and shall be a reference to the director of the
37 department of health.

§27-2-3. Rules as to patients.

1 The director of health shall implement rules and regu-
2 lations as promulgated by the board of health in regard to
3 the admission of patients to mental health facilities, the
4 care, maintenance and treatment of inpatients, residents
5 and outpatients of such facilities and the release, trial
6 visit and discharge of patients therefrom.

7 No patient under eighteen years of age in any state
8 hospital shall be housed in any area also occupied by
9 any patient over eighteen years of age. Any patient
10 adjudged by the chief medical officer to have a likelihood
11 of seriously harming others shall be confined in a secure
12 area of a health facility.

§27-2-4. Forms for committing patients; other records.

1 The director of health shall have authority to prepare,
2 prescribe and have printed forms to be used for com-
3 mitment to and discharge from the state hospitals.

§27-2-5. Reports by superintendents; records of director of health.

1 The superintendent of each state hospital shall furnish
2 to the director of health such information as he may re-
3 quire concerning admissions, discharges, deaths and other
4 matters. From this and other information available to
5 the director of health, he shall keep such records as are
6 necessary to enable him to have current information con-
7 cerning the extent of mental illness in the state. The
8 names of individuals shall not be accessible to anyone
9 except by permission of the director of health or by
10 order of a judge of a court of record.

§27-2-6. Moneys received by state hospitals and facilities.

1 All moneys and funds belonging to the state which
2 shall come into the possession or under the control of
3 the superintendent or other officer of a state hospital or
4 facility under the control of the department of health
5 shall be paid to the director or his designee twice a
6 month, on or before the first and fifteenth of every month,
7 but not more than twenty days from the time such
8 moneys or funds were received under such rules and reg-
9 ulations as the director shall prescribe. The director or his
10 designee shall pay such moneys and funds into the state
11 treasury immediately in the manner provided in article
12 two, chapter twelve of this code.

ARTICLE 2A. MENTAL HEALTH—MENTAL RETARDATION CENTERS.

§27-2A-1. Comprehensive community mental health-mental retardation centers; establishment, operation and location; access to treatment.

1 (a) The director of health is authorized and directed
 2 to establish, maintain and operate comprehensive com-
 3 munity mental health centers and comprehensive mental
 4 retardation facilities, at such locations within the
 5 state as may be determined by the director in accordance
 6 with the state's comprehensive mental health plan
 7 and the state's comprehensive mental retardation plan.
 8 Such facilities may be integrated with a general
 9 health care or other facility or remain separate as
 10 the board of health may by rules and regulations
 11 prescribe: *Provided*, That nothing contained herein shall
 12 be construed to allow the department of health to as-
 13 sume the operation of comprehensive regional mental
 14 health centers or comprehensive mental retardation
 15 facilities which have been heretofore established
 16 according to law and which, as of the effec-
 17 tive date of this article, are being operated by local non-
 18 profit organizations.

19 (b) Any new mental health centers and comprehen-
 20 sive mental retardation facilities herein provided
 21 for may be operated and controlled by the department
 22 of health or operated, maintained and controlled by
 23 local nonprofit organizations and licensed according
 24 to rules and regulations promulgated by the board
 25 of health. All comprehensive regional mental health
 26 and mental retardation facilities licensed in the state
 27 shall:

28 (1) Have a written plan for the provision of diagnostic,
 29 treatment, supportive and aftercare services, and written
 30 policies and procedures for implementing these services;

31 (2) Have sufficient employees appropriately qualified
 32 to provide these services;

33 (3) Maintain accurate medical and other records for
 34 all patients receiving services;

35 (4) Render outpatient services in the aftercare of any
36 patient discharged from an inpatient hospital, consistent
37 with the needs of the individual. No person who can be
38 be treated as an outpatient at a community mental health
39 center shall be admitted involuntarily into a state hospital.

40 (5) Have a chief administrative officer directly re-
41 sponsible to a legally constituted board of directors of a
42 comprehensive mental health or mental retardation
43 facility operated by a local nonprofit organization, or to
44 the director of the department of health if the comprehen-
45 sive mental health or mental retardation center or facility
46 is operated by the department of health; and

47 (6) Have a written plan for the referral of patients
48 for evaluation and treatment for services not provided.

49 The state's share of costs of operating such facilities
50 may be provided from funds appropriated for this pur-
51 pose within the budget of the department of health. The
52 director shall administer these funds among all com-
53 prehensive mental health and mental retardation facili-
54 ties as may be required to best provide comprehensive
55 community mental health care and services to the citizens
56 of the state.

57 After the first day of July, but not later than the first
58 day of August of each year, the chief administrative officer
59 of each comprehensive regional mental health center and
60 mental retardation facility shall submit a report to the
61 director of the department of health and to the legislative
62 auditor containing a listing of:

63 (1) All funds received by the center or facility;

64 (2) All funds expended by the center or facility;

65 (3) All funds obligated by the center or facility;

66 (4) All services provided by the center or facility;

67 (5) The number of persons served by the center or
68 facility; and

69 (6) Other information as the board of health shall by
70 regulation prescribe.

ARTICLE 3. CONFIDENTIAL PATIENT INFORMATION.

§27-3-1. Definition of confidential information; disclosure.

1 (a) Communications and information obtained in the
2 course of treatment or evaluation of any client or patient
3 shall be deemed to be "confidential information" and
4 shall include the fact that a person is or has been a client
5 or patient, information transmitted by a patient or client
6 or family thereof for purposes relating to diagnosis or
7 treatment, information transmitted by persons participat-
8 ing in the accomplishment of the objectives of diagnosis
9 or treatment, all diagnoses or opinions formed regarding
10 a client's or patient's physical, mental or emotional condi-
11 tion; any advice, instructions, or prescriptions issued in
12 the course of diagnosis or treatment, and any record or
13 characterization of the matters hereinbefore described. It
14 does not include information which does not identify a
15 client or patient, information from which a person ac-
16 quainted with a client or patient would not recognize such
17 client or patient, and uncoded information from which
18 there is no possible means to identify a client or patient.

19 (b) Confidential information may be disclosed:

20 (1) In a proceeding under section four, article five of
21 this chapter to disclose the results of an involuntary
22 examination made pursuant to sections two, three, or
23 four, article five of this chapter;

24 (2) In a proceeding under article six-a of this chapter to
25 disclose the results of an involuntary examination made
26 pursuant thereto;

27 (3) Pursuant to an order of any court based upon a
28 finding that said information is sufficiently relevant to a
29 proceeding before the court to outweigh the importance
30 of maintaining the confidentiality established by this sec-
31 tion;

32 (4) To protect against a clear and substantial danger of
33 imminent injury by a patient or client to himself or an-
34 other; and

35 (5) For treatment or internal review purposes, to staff
36 of the mental health facility where the patient is being

37 cared for or to other health professionals involved in
38 treatment of the patient.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

1 The chief medical officer of a mental health facility,
2 subject to the availability of suitable accommodations
3 and to the rules and regulations promulgated by the
4 board of health, shall admit for diagnosis, care and
5 treatment any individual:

6 (a) Over eighteen years of age who is mentally ill,
7 mentally retarded or addicted or who has manifested
8 symptoms of mental illness, mental retardation or addic-
9 tion and who makes application for hospitalization; or

10 (b) Under eighteen years of age who is mentally ill,
11 mentally retarded or addicted or who has manifested
12 symptoms of mental illness, mental retardation or addic-
13 tion and there is application for hospitalization therefor
14 in his behalf (1) by the parents of such person, or (2) if
15 only one parent is living, then by such parent, or (3) if
16 the parents are living separate and apart, by the parent
17 who has the custody of such person, or (4) if there is
18 a guardian who has custody of such person, then by such
19 guardian. Such admission shall be conditioned upon the
20 consent of the prospective patient if he is twelve years of
21 age or over.

22 (c) No person under eighteen years of age shall be
23 admitted under this section to any state hospital unless
24 said person has first been reviewed and evaluated by
25 a local mental health facility and recommended for ad-
26 mission.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-3. Custody for medical examination.

1 When any person, health officer, caseworker or law-
2 enforcement officer has reason to believe that an indi-
3 vidual is mentally ill, mentally retarded or addicted and
4 because of his mental illness, mental retardation or ad-
5 diction is likely to cause serious harm to himself or

6 others if allowed to remain at liberty while awaiting an
7 examination and certification by a physician, or physicians,
8 as the case may be, pursuant to section two of this article,
9 such person, health officer, caseworker or law-enforce-
10 ment officer may make application under oath to the
11 circuit court or mental hygiene commissioner of the county
12 of which the individual is a resident or to the circuit
13 court or mental hygiene commissioner of the county
14 where he may be found, giving such information and
15 stating such facts therein as may be required, upon the
16 form provided by the department of health and the
17 circuit court or mental hygiene commissioner shall there-
18 upon enter an order for the individual named in such ap-
19 plication to be taken into custody and detained, but not
20 incarcerated in a jail or penal institution, for the purpose
21 of an examination by at least one physician to take place
22 within fourteen hours after the individual is taken into
23 custody. Not later than fourteen hours after the indi-
24 vidual is taken into custody, the individual shall be re-
25 leased from custody, unless proceedings have been insti-
26 tuted pursuant to section two of this article.

§27-5-7. Hospitalization by agency of the United States.

1 If an individual ordered to be hospitalized pursuant to
2 section four of this article is eligible for hospital care
3 or treatment by any agency of the United States, then,
4 upon receipt of a certificate from such agency showing
5 that facilities are available and that the individual is
6 eligible for care or treatment therein, the circuit court
7 or mental hygiene commissioner may order him to be
8 placed in the custody of such agency for hospitalization.
9 When any such individual is admitted pursuant to the
10 order of such circuit court or mental hygiene commissioner
11 to any hospital or institution established, maintained or
12 operated by any agency of the United States within or
13 without the state, he shall be subject to the rules and
14 regulations of such agency. The chief officer of any
15 hospital or institution operated by such agency and in
16 which the individual is so hospitalized shall, with respect
17 to such individual, be vested with the same powers as
18 the chief medical officers of mental health facilities or
19 the director of health within this state with respect to

20 detention, custody, transfer, conditional release or dis-
21 charge of patients. Jurisdiction is retained in the ap-
22 propriate circuit court or mental hygiene commissioner
23 of this state at any time to inquire into the mental
24 condition of an individual so hospitalized, and to deter-
25 mine the necessity for continuance of his hospitalization,
26 and every order of hospitalization issued pursuant to this
27 section is so conditioned.

§27-5-9. Rights of patients.

1 (a) No person shall be deprived of any civil right
2 solely by reason of his receipt of services for mental ill-
3 ness, mental retardation or addiction, nor shall the receipt
4 of such services modify or vary any civil right of such
5 person, including, but not limited to, civil service status
6 and appointment, the right to register for and to vote at
7 elections, the right to acquire and to dispose of property,
8 the right to execute instruments or rights relating to the
9 granting, forfeiture or denial of a license, permit, privilege
10 or benefit pursuant to any law, but a person who has
11 been adjudged incompetent pursuant to article eleven of
12 this chapter and who has not been restored to legal com-
13 petency may be deprived of such rights. Involuntary
14 commitment pursuant to this article shall not of itself
15 relieve the patient of legal capacity.

16 (b) Each patient of a mental health facility receiving
17 services therefrom shall receive care and treatment that
18 is suited to his needs and administered in a skillful, safe
19 and humane manner with full respect for his dignity and
20 personal integrity.

21 (c) Every patient shall have the following rights re-
22 gardless of adjudication of incompetency:

23 (1) Treatment by trained personnel;

24 (2) Careful and periodic psychiatric reevaluation no
25 less frequently than once every three months;

26 (3) Periodic physical examination by a physician no
27 less frequently than once every six months; and

28 (4) Treatment based on appropriate examination and
29 diagnosis by a staff member operating within the scope of
30 his professional license.

31 (d) The chief medical officer shall cause to be developed
 32 within the clinical record of each patient a written treat-
 33 ment plan based on initial medical and psychiatric ex-
 34 amination not later than seven days after he is admitted
 35 for treatment. The treatment plan shall be updated
 36 periodically, consistent with reevaluation of the patient.
 37 Failure to accord the patient the requisite periodic exam-
 38 inations or treatment plan and reevaluations shall entitle
 39 the patient to release.

40 (e) A clinical record shall be maintained at a mental
 41 health facility for each patient treated by the facility.
 42 The record shall contain information on all matters re-
 43 lating to the admission, legal status, care and treatment
 44 of the patient and shall include all pertinent documents
 45 relating to the patient. Specifically, the record shall con-
 46 tain results of periodic examinations, individualized
 47 treatment programs, evaluations and reevaluations, orders
 48 for treatment, orders for application for mechanical re-
 49 straint and accident reports, all signed by the personnel
 50 involved.

51 A patient's clinical record shall be confidential and shall
 52 not be released by the department of health or its
 53 facilities or employees to any person or agency outside
 54 of the department except as follows:

55 (1) Pursuant to an order of a court of record.

56 (2) To the attorney of the patient, whether or not in
 57 connection with pending judicial proceedings.

58 (3) With the written consent of the patient or of some-
 59 one authorized to act on the patient's behalf and of the
 60 director to:

61 (i) Physicians and providers of health, social
 62 or welfare services involved in caring for or reha-
 63 bilitating the patient, such information to be kept
 64 confidential and used solely for the benefit of the
 65 patient.

66 (ii) Agencies requiring information necessary to make
 67 payments to or on behalf of the patient pursuant to con-
 68 tract or in accordance with law. Only such information

69 shall be released to third-party payers as is required to
70 certify that covered services have been provided.

71 (iii) Other persons who have obtained such consent.

72 No patient record, or part thereof, obtained by any
73 agency or individual shall be released in whole or in part
74 to any other individual or agency, unless authorized by
75 the written consent of the patient or his legal representa-
76 tive.

77 (f) Every patient, upon his admission to a hospital and
78 at any other reasonable time, shall be given a copy of the
79 rights afforded by this section.

80 (g) The board of health shall promulgate rules and
81 regulations to protect the personal rights of patients
82 not inconsistent with this section.

**ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CON-
VICTED OF A CRIME.**

**§27-6A-1. Determination of competency of defendant to stand
trial and of criminal responsibility; examination;
commitment.**

1 (a) Whenever a court of record believes that a de-
2 fendant in a felony case or a defendant in a misdemeanor
3 case in which an indictment has been returned may be
4 incompetent to stand trial or is not criminally re-
5 sponsible by reason of mental illness, mental retarda-
6 tion or addiction, it may at any stage of the pro-
7 ceedings after the return of an indictment or the issu-
8 ance of a warrant against the defendant, order an exam-
9 ination of such defendant to be conducted by one
10 or more psychiatrists, or a psychiatrist and a psy-
11 chologist.

12 (b) After the examination described in subsection
13 (a) of this section, the court of record may order that
14 the person be admitted to a mental health facility desig-
15 nated by the director of health for a period not to exceed
16 twenty days for observation and further examination
17 if the court has reason to believe that such further
18 observation and examination are necessary in order to
19 determine whether mental illness, mental retardation
20 or addiction have so affected a person that he is not

21 competent to stand trial or not criminally responsible
22 for the crime or crimes with which he has been charged.
23 If, before the expiration of such twenty-day period, the
24 examining physician believes that observation for more
25 than twenty days is necessary, he shall make a written
26 request to the court of record for an extension of the
27 twenty-day period specifying the reason or reasons for
28 which such further observation is necessary. Upon the
29 receipt of such request, the court of record may by
30 order extend said observation period, but in no event
31 shall the period exceed forty days from the date of
32 the initial court order of observation.

33 (c) At the conclusion of each examination or observa-
34 tion period provided for herein, the examining psychia-
35 trists, or psychiatrist and psychologist, shall forthwith
36 give to the court of record a written signed report of
37 their findings on the issue of competence to stand trial
38 or criminal responsibility. Such report shall contain
39 an opinion, supported by clinical findings, as to whether
40 the defendant is in need of care and treatment.

41 (d) Within five days after the receipt of the report on
42 the issue of competency to stand trial, or if no observa-
43 tion pursuant to subsection (b) of this section has been
44 ordered, within five days after the report on said issue
45 following an examination under subsection (a) of this
46 section, the court of record shall make a finding on the
47 issue of whether the defendant is competent for trial.
48 A finding of incompetence for trial shall require proof
49 by a preponderance of the evidence. Notice of such
50 findings shall be sent to the prosecuting attorney, the
51 defendant and his counsel. If the court of record orders
52 or if the defendant or his counsel on his behalf within
53 a reasonable time requests a hearing on such findings, a
54 hearing in accordance with section two of this article
55 shall be held by the court of record within ten days
56 of the date such finding or such request has been made.

57 (e) After a conviction and prior to sentencing, the
58 court of record may order a psychiatric or other
59 clinical examination and, after such examination, may
60 further order a period of observation in a mental health

61 facility designated by the director of health. Such a
62 period of observation or examination shall not exceed
63 forty days.

64 If after hearing conducted pursuant to the procedures
65 prescribed in subsection (c), section four, article five
66 of this chapter, the court of record makes the findings
67 specified in section four, article five of this chapter or
68 finds that the convicted individual would benefit from
69 treatment in a mental health facility, the court may
70 enter an order of commitment in accord with section
71 four, article five for treatment in a mental health facility
72 designated by the director of health.

73 (f) In like manner, in accordance with procedures
74 set forth in subsections (a), (b) and (c) of this section,
75 a juvenile court may order a psychiatric examination
76 or a period of observation for an alleged delinquent or
77 neglected juvenile in a mental health facility to aid the
78 court in its disposition. The period of observation shall
79 not exceed forty days.

**ARTICLE 7. RELEASE, DISCHARGE AND READMISSION OF
PATIENTS; ESCAPEES.**

§27-7-5. Return of escapees; veterans.

1 If any person confined in a mental health facility,
2 pursuant to article five or six-a of this chapter, escapes
3 therefrom, the chief medical officer thereof may issue a
4 notice, giving the name and description of the person
5 escaping and requesting the patient's apprehension and
6 return to the mental health facility. The chief medical
7 officer may issue an order directed to the sheriff of the
8 county in which the patient is a resident, commanding
9 him to take into custody and transport such escaped
10 person back to the mental health facility, which order
11 the sheriff may execute in any part of the state. If
12 such person goes to another state, the chief medical
13 officer may notify the director of health and the director
14 may take such action as he may deem proper for the
15 return of such person to the mental health facility.

16 If any veteran duly committed to a veterans' hospital
17 or other veterans' institution, either within or without
18 the state, escapes therefrom and any person makes com-

19 plaint, under oath, to the clerk of the circuit court
20 of the county from which such veteran was so com-
21 mitted upon the order of the circuit court, giving
22 such information and stating such facts therein as may
23 be required, or if any veteran duly committed to a vet-
24 erans' hospital or other veterans' institution, either within
25 or without the state, escapes therefrom and the chief
26 medical officer of such hospital or institution issues a
27 notice to the clerk of the circuit court of the county
28 from which such veteran was so committed upon the
29 order of the circuit court, giving the name and descrip-
30 tion of such veteran and requesting his apprehension
31 and return to such hospital or institution, the circuit
32 court upon receipt of such complaint or of such notice,
33 may issue an order directed to the sheriff of the county
34 from which the veteran was so committed commanding
35 him to take into custody and transport such veteran
36 back to such hospital or institution, which order the
37 sheriff may execute in any part of the state.

38 The sheriff or other person taking any person into
39 custody under this section shall be paid such compensa-
40 tion as is provided for like services in other cases.

41 A person who is taken into custody under this section
42 may be detained, but not incarcerated in a jail or penal
43 institution, for a period not in excess of fourteen hours,
44 pending return to the appropriate mental health facility.

ARTICLE 8. MAINTENANCE OF MENTALLY ILL OR MENTALLY RETARDED PATIENTS.

§27-8-1. Maintenance of patients; patient assets; reimburse- ment procedures.

1 The cost of the maintenance of patients admitted to
2 the state hospitals shall be paid out of funds appro-
3 priated for the department, but the state hospitals, through
4 the director of health, shall have a right of reimbursement,
5 for all or any part of such maintenance from each patient
6 or from the committee or guardian of the estate of the
7 patient, or the estate of the patient if deceased, or if
8 that be insufficient, then from the patient's husband or
9 wife, or if the patient be an unemancipated child, the
10 father and mother, or any of them. If such a relative so

11 liable does not reside in this state and has no estate or
12 debts due him within the state by means of which the
13 liability can be enforced against him, the other relatives
14 shall be liable as provided by this section. In exercising
15 this right of reimbursement, the director of health may,
16 whenever it is deemed just and expedient to do so,
17 exonerate any person chargeable with such maintenance
18 from the payment thereof in whole or in part, if the di-
19 rector finds that such person is unable to pay or that pay-
20 ment would work an undue hardship on him or on those
21 dependent upon him.

22 There shall be no discrimination on the part of the state
23 hospitals as to food, care, protection, treatment or re-
24 habilitation, between patients who pay for their main-
25 tenance and those who are unable to do so.

26 It shall be the responsibility of the director of health
27 as provided by rules promulgated by the board of health
28 to determine the ability of the patient or of his relative
29 to pay for his maintenance: *Provided*, That any such
30 determination shall be in writing and shall be considered
31 an "order" under the provisions of chapter twenty-nine-a
32 of this code: *Provided, however*, That any such deter-
33 mination shall be subject to review upon application of
34 any such patient, relative or personal representative in
35 the manner provided in chapter twenty-nine-a of this
36 code.

**§27-8-2a. Local mental health programs—Approval; credits to
amount due to state under section two, article
eight, chapter twenty-seven.**

1 Any county commission which elects to establish a local
2 mental health program and has a completed comprehen-
3 sive program ready for implementation, which is approved
4 in advance by the state director of health, shall be allowed
5 to deduct from its annual debt for the maintenance of
6 resident patients in state mental institutions, as set forth
7 in section two of this article, an amount equal to the sum
8 annually budgeted by said county commission for the es-
9 tablishment and maintenance of said approved local men-
10 tal health program.

11 Any county commission which desires to establish a
12 local mental health program may make application for
13 approval of such program to the director of health on
14 forms to be provided by the director and in accordance
15 with procedures and standards which have been estab-
16 lished by the director.

17 On or before the fifteenth day of January of each year
18 the director of the department of health shall certify to
19 the auditor a statement of the amount budgeted by each
20 county commission for the establishment, operation and
21 maintenance of a local mental health program. The audi-
22 tor shall deduct such certified sums from the amount
23 determined to be due the state of West Virginia, as pro-
24 vided in section two: *Provided, That* on or before the
25 fifth day of July of each year, each county commission
26 which has established an approved local mental health
27 program shall certify to the director a detailed statement
28 of its expenditures made for such local programs on a
29 form to be provided by the director and the director
30 shall have authority to delete or refuse to approve any
31 expenditures made by any county commission which were
32 not made in accordance with the approved comprehen-
33 sive plan for that county: *Provided, however, That* any
34 sums budgeted by a county commission and credited by
35 the auditor as hereinabove provided which are not ac-
36 tually expended by the county commission for the estab-
37 lishment of a local mental health program by the end of
38 the fiscal year for which it was budgeted shall be charged
39 as a debt against the county due the state for the main-
40 tenance of its patients. The director, after determining
41 the amount of such debt, if any, shall immediately certify
42 the same to the auditor, who shall add said sum to the
43 amount determined to be due the state, as provided in
44 section two of this article, for the current year.

§27-8-3. Care of patients in boarding homes.

1 The director of health may, upon the recommendation
2 of the superintendent of the state hospital, provide care
3 in a suitable boarding home for any patient in a state
4 hospital, if the condition of the patient is such that his
5 and the public welfare will not be prejudiced thereby. A

6 patient in a boarding home shall be deemed to be a
7 patient of the state hospital from which he was removed
8 and shall, on the approval of the superintendent, be
9 placed under the supervision of a psychiatric social
10 worker employed by the state hospital. All patients
11 in such homes shall be visited at least once every three
12 months and if upon the visitation they are found to be
13 abused, neglected or improperly cared for, they shall be
14 returned to the state hospital or placed in a better board-
15 ing home. The cost of the boarding home care shall be
16 paid by the state hospital from which he was removed.

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License from director of health; regulations.

1 No hospital, center or institution, or part thereof, to
2 provide inpatient, outpatient or other service designed
3 to contribute to the care and treatment of the mentally
4 ill or mentally retarded, or prevention of such disorders,
5 shall be established, maintained or operated by any politi-
6 cal subdivision or by any person, persons, association or
7 corporation unless a license therefor shall be first ob-
8 tained from the director of health. The application for
9 such license shall be accompanied by a plan of the
10 premises to be occupied, and such other data and facts
11 as the director may require. He may make such terms
12 and regulations in regard to the conduct of such hospital,
13 center or institution, or part thereof, as he may think
14 proper and necessary. He, or any person authorized by
15 him, shall have authority to investigate and inspect such
16 hospital, center or institution, or part thereof; and the
17 director of health may revoke the license of any such
18 hospital, center or institution, or part thereof, for good
19 cause after reasonable notice to the superintendent or
20 other person in charge thereof.

ARTICLE 14. INTERSTATE COMPACT ON MENTAL HEALTH.

§27-14-2. Compact administrator.

1 The director of health shall be the compact adminis-
2 trator and, acting jointly with like officers of other party
3 states, shall have power to promulgate rules and regu-
4 lations to carry out more effectively the terms of the

5 compact. The compact administrator is hereby autho-
 6 rized, empowered and directed to cooperate with all de-
 7 partments, agencies and officers of and in the government
 8 of this state and its subdivisions in facilitating the proper
 9 administration of the compact or of any supplementary
 10 agreement or agreements entered into by this state
 11 thereunder.

**ARTICLE 15. INTERSTATE COMPACT ON THE MENTALLY DIS-
 ORDERED OFFENDER.**

§27-15-2. Who may enter into contracts under compact.

1 The governor, the state commissioner of public institu-
 2 tions, the state board of education, the state board of
 3 vocational education, the division of vocational rehabili-
 4 tation, the state commission on higher education, the
 5 West Virginia board of regents, the state department
 6 of welfare, the department of public safety, the state
 7 department of health and the West Virginia board of
 8 probation and parole may negotiate and enter into con-
 9 tracts on behalf of this state pursuant to Article III of
 10 the compact and may perform such contracts: *Provided,*
 11 That no funds, personnel, facilities, equipment, supplies
 12 or materials shall be pledged for, committed or used
 13 on account of any such contract, unless legally available
 14 therefor.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL
 STATE BOARDS OF EXAMINATION OR REGIS-
 TRATION REFERRED TO IN CHAPTER.**

§30-1-4a. Lay members of health profession boards.

1 Notwithstanding any provisions of this code to the
 2 contrary, the governor shall appoint at least one lay
 3 person to represent the interests of the public on every
 4 health professional licensing board, enumerated in sec-
 5 tion fifteen of this article. If the total number of
 6 members on any of such boards after the appoint-
 7 ment of one such lay person is an even number,
 8 one additional lay person shall be appointed. Said lay
 9 members shall serve in addition to any other mem-
 10 bers otherwise provided for by law or regulation. Such

11 lay members shall be of the age of eighteen years
12 or over, of good moral character, and competent to
13 represent and safeguard the interests of the public.
14 The lay member is empowered to participate in and
15 vote on all transactions and business of the board,
16 committee or group to which he is appointed.

17 Any person whose addition to a board as a lay member
18 under the provisions of this section results in the addition
19 of an odd number of lay additions to the board, shall
20 serve for a term ending in an odd-numbered year
21 on the date in that year on which terms of the pro-
22 fessional members expire; of such members first ap-
23 pointed, each shall serve for a term ending on such
24 date in the year one thousand nine hundred seventy-nine,
25 and the successor to each such person shall serve for a
26 term equal in length to the terms of the other professional
27 members of the board. Any person whose addition to a
28 board as a lay member under the provisions of this sec-
29 tion results in the addition of an even number of lay
30 additions to the board, shall serve for a term ending in
31 an even-numbered year on the date in that year on which
32 terms of the professional members expire; of such mem-
33 bers first appointed, each shall serve for a term ending
34 on such date in the year one thousand nine hundred
35 seventy-eight, and the successor to each such person
36 shall serve for a term equal in length to the terms of
37 the other professional members of the board.

**§30-1-15. Office of executive secretary of the health profession
licensing boards; appointment of executive secre-
tary; duties.**

1 The office of the executive secretary of the health
2 profession licensing boards is hereby created. The health
3 profession licensing boards shall include those boards
4 provided for in articles two-a, four, five, six, seven,
5 seven-a, eight, ten, fourteen, sixteen, seventeen, twenty,
6 twenty-one, twenty-five and twenty-six of chapter thirty
7 of this code. Notwithstanding any other provision of
8 this code to the contrary, the office space, personnel, rec-
9 ords and like business affairs of the health profession
10 licensing boards shall be within the office of the execu-

11 tive secretary of the health profession licensing boards.
 12 The secretaries of each of the health profession licensing
 13 boards shall coordinate purchasing, record keeping, per-
 14 sonnel, use of reporters and like matters under the
 15 executive secretary in order to achieve the most efficient
 16 and economical fulfillment of their functions. The
 17 executive secretary shall be appointed by the director
 18 of health and shall report to the director. The execu-
 19 tive secretary shall keep the fiscal records and accounts
 20 of each of the boards. The executive secretary shall
 21 keep the director informed as to the needs of each of
 22 the boards. The executive secretary shall coordinate
 23 the activities and efforts of the boards with the activities
 24 of the health resources advisory council and shall see
 25 that the needs for health manpower perceived by the
 26 boards are communicated to the health resources ad-
 27 visory council. The executive secretary shall keep any
 28 statistics and information on health professions, collected
 29 by or for the boards and shall make such statistics and
 30 information available to the health resources advisory
 31 council to aid it in carrying out its responsibilities.

ARTICLE 3B. MOBILE INTENSIVE CARE PARAMEDICS.

§30-3B-2. Definition of mobile intensive care paramedics.

1 As used in this article, "mobile intensive care para-
 2 medics" means personnel who have been specially
 3 trained in emergency care in a training program certified
 4 and supervised by the West Virginia state department
 5 of health and who are certified by the West Virginia
 6 medical licensing board as qualified to render the ser-
 7 vices enumerated in this article.

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-1. Board of embalmers and funeral directors created; membership.

1 There is hereby created a state board to be known and
 2 designated as the "West Virginia board of embalmers
 3 and funeral directors," which shall consist of seven mem-
 4 bers, who shall be appointed by the governor, by and
 5 with the advice and consent of the Senate, six of whom

6 shall be licensed embalmers and practicing funeral direc-
7 tors with a minimum of five consecutive years' experi-
8 ence in West Virginia immediately preceding their ap-
9 pointment; the seventh member shall be a lay member
10 as provided in section four-a, article one of this chapter.

**§30-6-3. Oath of members of board; officers; salary and ex-
penses; bond of treasurer; meetings; powers and
duties; notice; rules and regulations; school of in-
struction; inspection.**

1 Members of said board, before entering upon their
2 duties, shall take and subscribe to the oath of office pre-
3 scribed by the secretary of state.

4 Said board shall select from its own members a presi-
5 dent, a secretary and a treasurer. Each member shall
6 be reimbursed for his traveling expenses, incident to
7 this attendance upon the business of the board, and in
8 addition thereto, the sum of fifty dollars per day for
9 each day actually spent by such member upon the busi-
10 ness of the board. The secretary shall receive an annual
11 salary of not to exceed one thousand dollars, the amount
12 and payment of which shall be fixed by said board, and
13 in addition thereto shall receive traveling and other inci-
14 dental expenses incurred in the performance of his
15 duties.

16 The board may employ an executive secretary and
17 such clerks, inspectors and assistants as it shall deem
18 necessary to discharge the duties imposed by the pro-
19 visions of this article and duly promulgated rules and
20 regulations of the board and to effect its purposes, and
21 the board shall determine the duties and fix the com-
22 pensation of such executive secretary, clerks, inspectors
23 and assistants, subject to the general laws of the state.
24 Any inspector employed by the board shall have either
25 a West Virginia embalmer's license or a West Virginia
26 funeral director's license. Any inspection shall be con-
27 ducted in such a manner so as not to interfere with the
28 conduct of business within the funeral establishment, and
29 the inspector shall be absolutely prohibited from examin-
30 ing any books and records of the funeral establishment.

31 All such expenses, per diem and compensation shall
32 be paid out of the receipts of the board, but such allow-
33 ances shall at no time exceed the receipts of the board.

34 The treasurer of the board shall give bond to the state
35 of West Virginia in such sum as the board shall direct
36 with two or more sureties or a reliable surety company
37 approved by the board, and such bond shall be condi-
38 tioned for the faithful discharge of the duties of such
39 officer. Such bond, with approval of the board endorsed
40 thereon, shall be deposited with the treasurer of the
41 state of West Virginia.

42 The board shall hold not less than two meetings during
43 each calendar year, one during the month of April and
44 one during the month of November for the purpose of
45 examining applicants for licenses, such meeting or meet-
46 ings to be held at such time and place as the board shall
47 determine. The time and place of such meeting shall be
48 announced by publication in three daily newspapers of
49 general circulation in different locations in the state, and
50 publication to be once a week for two consecutive weeks
51 immediately preceding each such meeting.

52 The board may hold such other meetings as it may
53 deem necessary and may transact any business at such
54 meetings. Three or more members shall comprise a
55 quorum authorizing the board to transact such business
56 as is prescribed under this article.

57 The board shall have the power and it shall be its
58 duty to make and enforce all necessary rules and regula-
59 tions, not inconsistent with this article, for the examina-
60 tion and licensing of funeral directors, and the general
61 practice of funeral directing; the examination and licens-
62 ing of embalmers and the general practice of embalming
63 and the registration and regulation of apprentices; the
64 licensing and general operation of funeral establishments,
65 except that no rules and regulations issued by the board
66 shall require that an applicant for a license to operate
67 a funeral establishment shall be required to have either
68 an embalmer's or funeral director's license.

69 The board shall publish in its rules and regulations

70 the subjects to be covered in the said examinations and
71 the standards to be attained thereon. Changes in the
72 rules and regulations shall be published and shall be
73 given due publicity at least ninety days before becoming
74 effective.

75 The board shall conduct annually a school of instruc-
76 tions to apprise funeral directors and embalmers of the
77 most recent scientific knowledge and developments affect-
78 ing their profession. Qualified lecturers and demonstra-
79 tors may be employed by the board for this purpose. The
80 board shall give notice of the time and place at which
81 such school will be held for all licensed funeral directors
82 and embalmers, and it shall be the duty of every licensed
83 funeral director and embalmer to attend at least one such
84 school in every three years.

85 The board, any of its members or any duly authorized
86 employee of the board shall have the authority to enter
87 at all reasonable hours for the purpose of inspecting the
88 premises in which the business or profession of funeral
89 directing is conducted or practiced or where embalming
90 is practiced.

ARTICLE 17. SANITARIANS.

§30-17-2. Board of sanitarians.

1 There is hereby established a state board for the ex-
2 amination and registration of professional sanitarians, to
3 be known as the "West Virginia board of sanitarians."
4 The board shall consist of four professional sanitarians,
5 to be appointed by the governor, by and with the advice
6 and consent of the Senate, at least one of whom shall be
7 employed in the field of industrial sanitation. Each pro-
8 fessional member shall have been engaged in active
9 practice as a professional sanitarian in this state for at
10 least five years prior to his appointment, and, except in
11 the case of the original members of the board, shall have
12 been registered in this state as a professional sanitarian
13 as provided in this article. On or before the first day
14 of July, one thousand nine hundred fifty-seven, the
15 governor shall name the four original appointive members
16 for terms of one, two, three and four years, respectively,

17 beginning on that date. Thereafter, each appointment
 18 shall be for a term of four years, except that an ap-
 19 pointment to fill a vacancy shall be for the unexpired
 20 term.

21 All expenses of the board shall be paid solely from
 22 registration fees and renewal fees collected as provided
 23 in this article.

ARTICLE 25. NURSING HOME ADMINISTRATOR.

§30-25-1. Definitions.

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

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

6 (2) The term "nursing home administrator" means
 7 an individual responsible for planning, organizing, di-
 8 recting and controlling a nursing home, or who in fact
 9 performs such functions, whether or not such indi-
 10 vidual has an ownership interest in the nursing home
 11 and whether or not such functions are shared with one
 12 or more other persons.

13 (3) The term "board" shall mean the West Virginia
 14 nursing home administrators licensing board created by
 15 this article.

16 (4) The term "person" or "applicant" shall mean an
 17 individual.

§30-25-2. West Virginia nursing home administrators licensing board; creation; appointment, qualification, term, etc., of members; vacancies; meetings, quorum; chairman; salaries and expenses.

1 There is hereby created a state board to be known
 2 and designated as the "West Virginia nursing home ad-
 3 ministrators licensing board" which shall consist of seven
 4 members, all of whom except a lay member, as provided
 5 for in section four-a, article one, chapter sixteen of this
 6 code, shall be appointed by the governor, by and with
 7 the advice and consent of the Senate. One of the members
 8 shall be a member of the medical profession whose prac-

9 tice involves gerontology, one member shall be a licensed
10 pharmacist, one member shall be a registered nurse with
11 experience in the care of elderly patients, one member
12 shall be a person with experience or education in the
13 field of aging, and two such members shall be persons
14 who have been engaged in the management of an operat-
15 ing nursing home for four years immediately prior to the
16 date of appointment, who shall hereinafter be referred
17 to as nursing home administrators. The seventh member
18 shall be a lay member. No member of the board, other
19 than the two nursing home administrators, shall have any
20 direct or indirect financial or pecuniary interest in any
21 nursing home in this state. Of the original board members
22 appointed, the one who is a registered nurse shall serve
23 for one year, the one who has experience or education in
24 the field of aging shall serve for two years, the one who
25 is a member of the medical profession shall serve for
26 three years, the one who is a licensed pharmacist shall
27 serve for four years, one of the two nursing home admin-
28 istrators shall serve for five years, and the other nursing
29 home administrator shall serve for six years. All sub-
30 sequent appointments shall be for six years, except, that
31 in case of a vacancy, the appointee shall be appointed for
32 the remainder of the unexpired term. Any vacancy shall
33 be filled by appointment of the governor, by and with the
34 advice and consent of the Senate, from the same group as
35 was represented by the outgoing member. All members of
36 the board, unless sooner removed, shall continue to serve
37 until their respective terms expire and until their succes-
38 sors are appointed and have qualified.

§30-25-3. Administrator's license required.

1 After the effective date of this article, no person shall
2 be or act as a nursing home administrator, except as
3 provided in section nine hereof, unless he is a holder
4 of a currently valid license or provisional license issued
5 pursuant to this article.

§30-25-4. Qualifications for license; exceptions; application; fees.

1 (a) To be eligible for a license as a nursing home
2 administrator a person must:

3 (1) Be of good moral character;

4 (2) Possess such qualifications and meet such reason-
5 able standards as the board may prescribe pursuant to
6 subsection (a), section seven of this article;

7 (3) Pass the examination prescribed by the board in
8 the subject of nursing home administration; and

9 (4) Have sufficient knowledge and soundness of judg-
10 ment to be able to adequately discharge the functions of
11 a nursing home administrator.

12 (b) Any person who holds a license or certificate as
13 a nursing home administrator issued by any other state,
14 the requirements for which license or certificate are
15 found by the board to be at least as great as those pro-
16 vided in this article may be granted a license without
17 examination if he meets all of the other requirements
18 for licensing in this state.

19 (c) Any applicant for any such license shall submit
20 an application therefor at such time, in such manner,
21 on such forms and containing such information as the
22 board may, from time to time, by reasonable rules and
23 regulations prescribe and pay to the board a license
24 fee of one hundred dollars, which fee shall be returned
25 to the applicant if he is denied a license.

**§30-25.5. Issuance of license; renewal of license; renewal fee;
display of license.**

1 Whenever the board finds that an applicant meets all
2 of the requirements of this article for a license as a nurs-
3 ing home administrator, it shall forthwith issue to him
4 such license; otherwise the board shall deny the same.
5 The license shall be valid for a period ending on June
6 thirty next ensuing and may be renewed without ex-
7 amination upon application for renewal on a form pre-
8 scribed by the board and payment to the board of a
9 renewal fee of fifty dollars: *Provided*, That the board
10 may deny an application for renewal for any reason
11 which would justify the denial of the original application
12 for a license. The board shall prescribe the form of li-
13 censes and each such license shall be conspicuously dis-

14 played by the licensee at the nursing home which he
15 administers.

§30-25-6. Emergency permit.

1 If a licensed nursing home administrator dies or is un-
2 able to continue as such for an unexpected cause, the
3 owner, governing body or other appropriate authority
4 in charge of the nursing home involved may designate
5 an acting administrator to whom the board may imme-
6 diately issue an emergency permit if it finds such ap-
7 pointment will not endanger the safety of the occupants
8 of such nursing home. Such emergency permit shall be
9 valid for a period determined by the board not to exceed
10 six months and shall not be renewed. The fee for an
11 emergency permit shall be fifty dollars.

§30-25-7. Powers and duties of board.

- 1 (a) The board shall:
 - 2 (1) Examine applicants and determine their eligibility
3 for a license or emergency permit as a nursing home
4 administrator;
 - 5 (2) Prepare, conduct and grade an apt and proper
6 examination of applicants for a license and determine
7 the satisfactory passing score thereon;
 - 8 (3) Promulgate reasonable rules and regulations im-
9 plementing the provisions of this article and the powers
10 and duties conferred upon the board hereby, all of which
11 reasonable rules and regulations shall be promulgated
12 in accordance with the provisions of article three, chapter
13 twenty-nine-a of this code;
 - 14 (4) Issue, renew, deny, suspend or revoke licenses and
15 emergency permits in accordance with the provisions of
16 this article and, in accordance with the administrative
17 procedures hereinafter provided, may review, affirm,
18 reverse, vacate or modify its order with respect to any
19 such denial, suspension or revocation;
 - 20 (5) Develop, impose and enforce standards which
21 must be met by individuals in order to receive a license
22 as a nursing home administrator, which standards shall
23 be designed to insure that nursing home administrators

24 will be individuals who are of good character and are
25 otherwise suitable, and who, by training or experience
26 in the field of institutional administration, are qualified
27 to serve as nursing home administrators;

28 (6) Employ, direct, discharge and define the duties of
29 personnel necessary to effectuate the provisions of this
30 article;

31 (7) Keep accurate and complete records of its pro-
32 ceedings, certify the same as may be appropriate, and
33 prepare, from time to time, a list showing the names and
34 addresses of all licensees;

35 (8) Approve courses of study or training in the field of
36 nursing home administration which sufficiently meet
37 education and training requirements for nursing home
38 administrators established by this article;

39 (9) Conduct a course of study or training of the type
40 referred to in subdivision (8) of this subsection if such
41 courses are not otherwise reasonably available to resi-
42 dents of this state; and

43 (10) Take such other action as may be reasonably
44 necessary or appropriate to effectuate the provisions of
45 this article.

46 (b) All moneys paid to the board shall be accepted
47 by a person designated by the board and deposited by
48 him with the treasurer of the state and credited to an
49 account to be known as the "West Virginia nursing home
50 administrators licensing board fund." Reimbursement of
51 all reasonable and necessary costs and expenses actually
52 incurred by members, and by the board in the adminis-
53 tration of this article shall be paid from such fund.

§30-25-8. Suspension or revocation of license or emergency permit.

1 (a) The board may at any time upon its own motion
2 and shall upon the verified written complaint of any
3 person, conduct an investigation to determine whether
4 there are any grounds for the suspension or revocation
5 of a license or emergency permit issued under the pro-
6 visions of this article.

7 (b) The board shall suspend or revoke any license or
8 emergency permit when it finds the holder thereof has:

9 (1) Obtained a license or emergency permit by means
10 of fraud or deceit; or

11 (2) Failed or refused to comply with the provisions
12 of this article, article five-c, chapter sixteen, or any rea-
13 sonable rule and regulation promulgated by the board or
14 any order or final decision of the board.

15 (c) The board shall also suspend or revoke any license
16 or emergency permit if it finds the existence of any
17 ground which would justify the denial of an application
18 for such license or permit if application were then being
19 made for it.

§30-25-9. Procedure for hearings.

1 (a) Whenever the board shall deny an application for
2 any original or renewal license or deny an application
3 for an emergency permit or shall suspend or revoke any
4 license or emergency permit, it shall make and enter an
5 order to that effect and serve a copy thereof on the ap-
6 plicant or licensee, as the case may be, by certified mail,
7 return receipt requested. Such order shall state the
8 grounds for the action taken and shall require that any
9 license or emergency permit suspended or revoked
10 thereby shall be returned to the board by the holder
11 within twenty days after receipt of said order.

12 (b) Any person adversely affected by any such order
13 shall be entitled to a hearing thereon (as to all issues not
14 excluded from the definition of a "contested case" set
15 forth in article one, chapter twenty-nine-a of this code)
16 if, within twenty days after receipt of a copy thereof, he
17 files with the board a written demand for such hearing.
18 A demand for hearing shall operate automatically to
19 stay or suspend the execution of any order suspending
20 or revoking a license or emergency permit or denying an
21 application for a renewal license. The board may require
22 the person demanding such hearing to give reasonable
23 security for the costs thereof and if such person does
24 not substantially prevail at such hearing such costs shall

25 be assessed against him and may be collected by an action
26 at law or other proper remedy.

27 (c) Upon receipt of a written demand for such hearing,
28 the board shall set a time and place therefor not less
29 than ten and not more than thirty days thereafter. Any
30 scheduled hearing may be continued by the board upon
31 its own motion or for good cause shown by the person
32 demanding the hearing.

33 (d) All of the pertinent provisions of article five,
34 chapter twenty-nine-a of this code shall apply to and
35 govern the hearing and the administrative procedures in
36 connection with and following such hearing, with like
37 effect as if the provisions of said article five were set
38 forth in this subsection.

39 (e) Any such hearing shall be conducted by a quorum
40 of the board. For the purpose of conducting any such
41 hearing any member of the board shall have the power
42 and authority to issue subpoenas and subpoenas duces
43 tecum which shall be issued and served within the time,
44 for the fees and shall be enforced, as specified in section
45 one, article five of said chapter twenty-nine-a.

46 (f) At any such hearing the person who demanded
47 the same may represent himself or be represented by an
48 attorney-at-law admitted to practice before any circuit
49 court of this state. Upon request by the board, it shall be
50 represented at any such hearing by the attorney general
51 or his assistants without additional compensation.

52 (g) After any such hearing and consideration of all
53 of the testimony, evidence and record in the case, the
54 board shall render its decision in writing. The written
55 decision of the board shall be accompanied by findings
56 of fact and conclusions of law as specified in section three,
57 article five, chapter twenty-nine-a of this code, and a
58 copy of such decision and accompanying findings and
59 conclusions shall be served by certified mail, return receipt
60 requested, upon the person demanding such hearing and
61 his attorney of record, if any.

62 (h) The decision of the board shall be final unless
63 reversed, vacated or modified upon judicial review thereof

64 in accordance with the provisions of section ten of this
65 article.

**§30-25-10. Judicial review; appeal to supreme court of appeals;
legal representation for board.**

1 Any person adversely affected by a decision of the
2 board rendered after a hearing held in accordance with
3 the provisions of section nine of this article shall be
4 entitled to judicial review thereof. All of the pertinent
5 provisions of section four, article five, chapter twenty-
6 nine-a of this code shall apply to and govern such
7 judicial review with like effect as if the provisions of
8 said section four were set forth in this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this code.

13 Legal counsel and services for the board in all appeal
14 proceedings in any circuit court and the supreme court of
15 appeals shall be provided by the attorney general or his
16 assistants and in any circuit court by the prosecuting
17 attorney of the county as well, all without additional com-
18 pensation.

§30-25-11. Severability.

1 If any provision of this article or the application there-
2 of to any person or circumstance is held unconstitutional
3 or invalid, such unconstitutionality or invalidity shall not
4 affect other provisions or applications of the article, and
5 to this end the provisions of this article are declared
6 to be severable.

ARTICLE 26. HEARING-AID DEALERS AND FITTERS.

§30-26-1. Definitions.

1 Unless the context clearly requires otherwise, as used
2 in this article:

3 (1) "Advertise," and any of its variants, means and
4 includes the use of a newspaper, magazine, or other
5 publication, book, notice, circular, pamphlet, letter, hand-
6 bill, poster, bill, sign, placard, card, label, tag, window
7 display, store sign, radio, television announcement or
8 any other means or methods now or hereinafter employed

9 to bring to the attention of the public the practice of
10 fitting or dealing in hearing aids.

11 (2) "Board" means the West Virginia board of hearing-
12 aid dealers.

13 (3) "Department" means the state department of
14 health and when appropriate shall include the state di-
15 rector of health.

16 (4) "Hearing aid" means any wearable device or in-
17 strument or any combination thereof, designed for, rep-
18 resented as or offered for sale for the purpose of aiding,
19 improving or compensating for defective or impaired
20 human hearing and shall include earmolds, parts, at-
21 tachments or other accessories thereto, but excluding
22 batteries and cords.

23 (5) "Hearing-aid dealer" and "hearing-aid fitter"
24 means any person engaged in the practice of dealing in
25 or fitting of hearing aids.

26 (6) "License" means any license issued under the
27 provisions of this article and shall include a temporary
28 license. "Licensee" means any person holding any such
29 license.

30 (7) "Person" means and includes any individual, part-
31 nership, trust, association, corporation or other like or-
32 ganization, or any combination thereof.

33 (8) "Practice of dealing in or fitting of hearing aids"
34 means and includes:

35 (a) The measurement or other testing of human hear-
36 ing by means of an audiometer, or by any other means;

37 (b) The selection, adaptation, fitting or sale of hearing
38 aids by a person for the use of another person; or

39 (c) The making of impressions for earmolds.

40 (9) "Sell" or "sale" or any variant thereof, means
41 any transfer of title or of the right of use by lease, bail-
42 ment or any other contract, but shall not include trans-
43 actions between distributors, dealers or licensees where
44 the item transferred is intended for sale.

45 (10) "Trainee" means any person training to become
46 a licensed hearing-aid dealer or fitter.

§30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

1 (a) Except as provided in subsections (b), (c) and
2 (d) hereof no person shall, on or after the effective date
3 of this article, engage in the practice of dealing in or
4 fitting of hearing aids, either as a hearing-aid dealer,
5 fitter or as a trainee, nor shall any person advertise or
6 assume any such practice, without first being licensed
7 or otherwise qualified under the provisions of this ar-
8 ticle.

9 (b) If the applicant is a partnership, trust, association,
10 corporation or other like organization, the application,
11 in addition to such other information as the board may
12 require, shall be accompanied by an application for a
13 license for each person, whether owner or employee, of
14 such applicant who serves in the capacity of a hearing-
15 aid dealer or fitter, or shall contain a statement that such
16 applications for all such persons are submitted sepa-
17 rately. No partnership, trust, association, corporation or
18 other like organization shall permit any unlicensed per-
19 son to sell hearing aids or to engage in the practice of
20 dealing in or fitting of hearing aids.

21 (c) This article is not intended to prevent any person
22 who is not licensed under this article from engaging in
23 the practice of measuring human hearing for the purpose
24 of selection of hearing aids, provided such person or or-
25 ganization employing such person does not sell hearing
26 aids or accessories thereto, except in the case of ear-
27 molds to be used only for the purpose of audiologic evalu-
28 ation.

29 (d) Any person who is licensed to practice medicine
30 in this state or any person holding a degree in audiology
31 may sell hearing aids or accessories thereto without ob-
32 taining a license under this article.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

1 There is hereby created the West Virginia board of
2 hearing-aid dealers, which shall be composed of five

3 members to be appointed by the governor, by and with
4 the advice and consent of the Senate. The members of
5 the board shall be residents of this state. One member
6 shall be a person licensed to practice medicine in this
7 state and one member shall hold a degree in audiology
8 from an accredited college or university. The remaining
9 three members shall be persons having no less than
10 five years' experience as hearing-aid dealers or fitters and
11 shall hold a valid license under the provisions of this
12 article, except that the hearing-aid dealers or fitters to
13 be first appointed to the board shall obtain a license under
14 the provisions of this article within six months following
15 their appointment to the board.

16 The term of office of each member of the board shall
17 be four years, excepting that as to the members first ap-
18 pointed to the board, one shall be appointed for two
19 years; two shall be appointed for three years; and two
20 shall be appointed for four years. A board member shall
21 serve until his successor has been duly appointed and
22 qualified and any vacancy in the office of a member shall
23 be filled by appointment for the unexpired term of such
24 member. Any member of the board shall be eligible for
25 reappointment.

26 The board shall, annually at its meeting first succeeding
27 July one, elect from its own members a chairman and
28 vice-chairman.

29 Each member of the board shall receive for each day
30 actually engaged in the duties of his office, a per diem
31 salary of fifty dollars and shall be reimbursed for all
32 reasonable and necessary expenses actually incurred in
33 the performance of his duties as a member of such board.
34 All fees and other moneys collected by the board, pur-
35 suant to the provisions of this article, shall be kept in a
36 separate fund and shall be expended solely for the
37 purposes of this article. The compensation for the mem-
38 bers of the board and all expenses incurred under this
39 article shall be paid from this special fund and no such
40 compensation or expenses shall be paid from the general
41 revenue fund of this state. All disbursements of funds

42 necessary to carry out the provisions of this article shall
43 be so disbursed only upon the authority of the board.

44 The board is hereby empowered, with the assistance
45 of the department to generally supervise, regulate and
46 control the practice of dealing in or fitting of hearing
47 aids in this state, and in so doing, shall administer quali-
48 fying examinations in accordance with the provisions of
49 this article to test the knowledge and proficiency of all
50 prospective licensees or trainees.

51 The board may purchase and maintain or rent audio-
52 metric equipment and other facilities necessary to carry
53 out the examination of applicants as provided in this
54 article and may purchase such other equipment and
55 supplies and employ such persons as it deems appropriate
56 to carry out the provisions of this article.

57 The board shall promulgate reasonable rules and regu-
58 lations in accordance with and subject to the provisions
59 of chapter twenty-nine-a of this code:

60 (a) For the proper performance of its duties;

61 (b) To define and prescribe the ethical practice of
62 dealing in or fitting of hearing aids for the safety, pro-
63 tection and welfare of the public;

64 (c) To govern the time, place and manner of conduct-
65 ing the examinations required by this article and the
66 standard, scope and subject of such examinations, which
67 examinations shall, as a minimum, conform with the
68 standards, scope and subjects set forth in section six of
69 this article and manner and form in which applications
70 for such examinations shall be filed;

71 (d) To establish procedures for determining whether
72 persons holding similar valid licenses from other states
73 or jurisdictions shall be required to take and successfully
74 pass the appropriate qualifying examination as a condi-
75 tion for such licensing in this state.

§30-26-4. Powers and duties of the state department of health.

1 The administrative work of the board shall be per-
2 formed by and in the state department of health. The

3 department shall keep full and complete records of all
4 of the proceedings of the board and of its accounts,
5 which said records and accounts shall be open to public
6 inspection at all reasonable times. The department is
7 hereby authorized to assist in the supervision and ad-
8 ministration of the qualifying examinations authorized
9 and required by this article, to maintain for the board
10 a register or record of persons who apply for a license
11 or a temporary trainee permit as well as a register or
12 record of the name and last-known business address of
13 all persons to whom a license or trainee permit is issued
14 pursuant to this article.

15 At the direction and request of the board the depart-
16 ment shall conduct periodic inspections of the establish-
17 ment and facilities of persons who are licensed to engage
18 in the practice of dealing in or fitting of hearing aids and
19 shall report its findings and the results of such inspec-
20 tions to the board.

21 When requested by the board, the department may
22 assist the board generally in carrying out any of the
23 powers and duties granted to the board, but none of the
24 cost incidental to such assistance, powers, functions and
25 duties given to the department pursuant to this article
26 shall be borne from any of the appropriations made to
27 the department, but shall be borne by the board and to
28 this extent the department shall be entitled to reimburse-
29 ment from the funds of the board.

**§30-26-5. Application for licenses; qualifications of applicants;
fees; duties of the board with respect thereto.**

1 Each person desiring to obtain a license from the board
2 to engage in the practice of dealing in or fitting of hearing
3 aids shall make application to the board. The application
4 shall be made in such manner and form as prescribed
5 by the board and shall be accompanied by a fee of fifty
6 dollars. The application shall state under oath that the
7 applicant:

8 (1) Intends to maintain a permanent office or place
9 of business in this state or that the applicant has at the
10 time of application a permanent office or place of busi-
11 ness in another state within a reasonable commuting

12 distance from this state. The board shall determine and
13 prescribe by regulation the term "reasonable distance"
14 as used herein;

15 (2) Is a person of good moral character and that he
16 has never been convicted of nor is presently under in-
17 dictment for a crime involving moral turpitude;

18 (3) Is eighteen years of age or older;

19 (4) Has an education equivalent to a four-year course
20 in an accredited high school; and

21 (5) Is free of chronic infectious or contagious dis-
22 eases.

23 Any person who fails to meet any of the standards
24 set forth in the next preceding paragraph shall not be
25 eligible or qualified to take the examination nor shall
26 any such person be eligible or qualified to engage in the
27 practice of dealing in or fitting of hearing aids.

28 The board, after first determining that the applicant
29 is qualified and eligible in every respect to take the
30 examination, shall notify the applicant that he has ful-
31 filled all of the qualifications and eligibility require-
32 ments as required by this section and shall advise him
33 of the date, time and place for him to appear to be ex-
34 amined as required by the provisions of this article and
35 the regulations promulgated by the board pursuant to this
36 article.

37 The board, with the aid and assistance of the depart-
38 ment, shall give at least one annual examination of the
39 type required by this article and may give such addi-
40 tional examinations, at such times and places, as the board
41 and the department may deem proper, giving consider-
42 ation to the number of applications.

§30-26-6. Standards, scope and subject of examination.

1 The board by rules and regulations shall determine and
2 set minimum standards to be met in the qualifying ex-
3 amination provided for in this article, which examina-
4 tion shall be designed to demonstrate the applicant's
5 technical competency and other qualifications by:

- 6 (1) A test of knowledge in the following areas as they
7 pertain to the fitting and sale of hearing aids:
 - 8 (a) Basic physics of sound;
 - 9 (b) The anatomy and physiology of the ear; and
 - 10 (c) The function of hearing aids.
- 11 (2) Practical tests of proficiency in the following
12 techniques as they pertain to the fitting of hearing aids:
 - 13 (a) Pure tone audiometry, including air conduction
14 testing;
 - 15 (b) Live voice or recorded voice speech audiometry,
16 including speech reception threshold testing and speech
17 discrimination testing; and
 - 18 (c) Masking when indicated and effective masking.
- 19 (3) Evidence of:
 - 20 (a) Ability to counsel the person or family who will
21 receive the hearing aid relative to the care and use of
22 the instrument;
 - 23 (b) Knowledge regarding the medical and rehabili-
24 tative facilities for hearing-handicapped children and
25 adults in the area being served;
 - 26 (c) Knowledge and understanding of the grounds for
27 revocation, suspension, or probation of a license as out-
28 lined in this article; and
 - 29 (d) Knowledge and understanding of criminal of-
30 fenses as outlined in this article.

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

- 1 (a) Any person who has taken the examination shall
2 be notified by the board within thirty days following
3 such examination as to whether he has satisfactorily
4 passed the examination. If such person has failed to pass
5 the examination, he shall be notified of the reasons for
6 such failure and the particular portions of the examina-
7 tion which he failed to pass. Such person shall also be
8 advised of his right to take the examination in the
9 future.

10 If such applicant has satisfactorily passed the exami-
11 nation, he shall be advised of that fact by the board
12 and, upon payment of twenty dollars, the board shall
13 register the applicant as a licensee and shall issue a
14 license to such applicant. Such license shall remain in
15 effect for a period of one year from the date of its issu-
16 ance.

17 (b) Within six months following the effective date
18 of this article, any applicant for a license who has been
19 engaged in the practice of dealing in or fitting of hearing
20 aids in this state for a period of three years immediately
21 prior to such effective date, shall be so registered and
22 issued a license without being required to undergo or
23 take the examination required by this article: *Provided*,
24 That such person meets all other requirements of this
25 article and the rules and regulations promulgated pur-
26 suant thereto. All of the fees which such prospective
27 licensee would be otherwise required to pay shall be
28 paid by such prospective licensee in the same manner
29 and to the same extent as if such prospective licensee
30 had not so engaged in such practice in this state for such
31 three-year period.

32 (c) The issuance of a license by the board must have
33 the concurrence of a majority of its members.

§30-26-8. Posting of license required; duplicate copies.

1 Each person who holds a hearing-aid dealer's or fitter's
2 license and engages in the practice of dealing in the fitting
3 of hearing aids shall display such license in a conspicu-
4 ous place in his office or place of business at all times.
5 Each person who maintains more than one office or place
6 of business shall post a duplicate copy of the license
7 at each location. The board shall issue duplicate copies
8 of a license upon receipt of a properly completed applica-
9 tion and payment of one dollar for each copy requested.

§30-26-9. Renewal of license.

1 A person who is engaged in the practice of dealing in
2 or fitting of hearing aids shall annually pay to the board
3 a fee of forty dollars for a renewal of his license. A
4 thirty-day period shall be allowed after expiration of a

5 license during which any such license may be renewed
6 on payment of a fee of forty-five dollars to the board.
7 After the expiration of such thirty-day period, the board
8 may renew such license upon the payment of fifty dollars
9 to the board. No person who applies for renewal, whose
10 license was suspended for failure to renew, shall be re-
11 quired to submit to any examination as a condition of
12 renewal if application is made within two years following
13 the date such license was so suspended.

**§30-26-10. Notification of change of address of licensee re-
quired.**

1 Every licensee under the provisions of this article shall
2 notify the board in writing of the address of each place
3 where he is, or intends to be, engaged in the practice
4 of dealing in or fitting of hearing aids. The board shall
5 cause to be kept a record of each place of business of
6 every such licensee. Any notice required to be given by
7 the board or the department to any such licensee shall
8 be given by mailing the same to him at the address shown
9 upon such records.

§30-26-11. Reciprocity.

1 Whenever the board determines that another state or
2 jurisdiction has requirements for the licensing of persons
3 to engage in the practice of dealing in or fitting of
4 hearing aids, which requirements meet the minimum
5 requirements and standards set forth in this article and
6 the rules and regulations promulgated pursuant to this
7 article, the board may, in the manner prescribed by its
8 rules and regulations, issue a license without the exami-
9 nation required by this article, to any person holding a
10 license in such other state or jurisdiction, upon applica-
11 tion, providing such prospective licensee meets all of the
12 requirements set forth in this article and the rules and
13 regulations of the board with respect thereto. All of the
14 fees which such prospective licensee would be otherwise
15 required to pay, shall be paid by such prospective licensee
16 in the same manner and to the same extent as if such
17 prospective licensee were not qualified to engage in such
18 other state or jurisdiction.

§30-26-12. Temporary trainee permits.

1 A person who meets all of the qualifications and
2 requirements set forth in subdivision (2), section five of
3 this article may obtain a temporary trainee permit upon
4 application to the board. All such applications for a
5 temporary trainee permit shall be made in the manner
6 and form prescribed in the rules and regulations of the
7 board.

8 Upon receiving an application for a temporary trainee
9 permit as prescribed in this section, accompanied by a fee
10 of twenty-five dollars, the board shall issue such permit
11 which shall entitle the applicant trainee to engage in the
12 practice of dealing in or fitting of hearing aids for a
13 period of one year under the supervision and control of a
14 licensee, such licensee to be responsible for the super-
15 vision, training and control of such trainee.

16 If a person holding a temporary trainee permit under
17 this section has not successfully passed the licensing
18 examination within one year from the date of issuance of
19 such permit, the permit may be renewed or reissued
20 under such conditions as the board may require in its
21 rules and regulations for an additional one-year period
22 upon the payment of a fee of fifty dollars. No such tem-
23 porary trainee permit shall be reissued, renewed or
24 extended more than once.

**§30-26-13. Refusal to issue, suspension or revocation of license
or trainee permit; false and deceptive advertising.**

1 (a) The board may refuse to issue or renew, or may
2 suspend or revoke any license or trainee permit for any
3 one, or any combination of the following causes: Viola-
4 tion of a rule or regulation governing the ethical practice
5 of dealing in or fitting of hearing aids promulgated by
6 the board under the authority granted by this article;
7 conviction of a felony, as shown by a certified copy of the
8 record of the court wherein such conviction was had
9 after such conviction has become final; the obtaining of
10 or the attempt to obtain a license, money or any other
11 thing of value, by fraudulent misrepresentation; mal-
12 practice; continued practice of dealing in or fitting of

13 hearing aids by a person knowingly having a chronic
14 infectious or contagious disease; habitual drunkenness or
15 addiction to the use of a controlled substance as defined
16 in chapter sixty-a of this code; advertising, practicing or
17 attempting to practice under a name other than one's
18 own; advertising by means of or selling by the use of
19 knowingly false or deceptive statements.

20 (b) False and deceptive advertisement shall constitute
21 unethical practice and the board, by rules and regulations
22 may regulate and prescribe acts considered by it to be
23 false and deceptive advertisement.

24 The rules and regulations promulgated pursuant to this
25 subsection shall include prohibitions against (1) advertis-
26 ing a particular model or type of hearing aid for sale
27 when purchasers or prospective purchasers responding to
28 the advertisement cannot purchase the advertised model
29 or type, where it is established that the purpose of the
30 advertisement is to obtain prospects for the sale of a
31 different model or type than that advertised, (2) repre-
32 senting that the service or advice of a person licensed to
33 practice medicine will be used or made available in the
34 selection, fitting, adjustment, maintenance or repair of
35 hearing aids when that is not true, or using the words
36 "doctor," "clinic" or similar words, abbreviations or sym-
37 bols which tend to connote the medical profession when
38 such use is not accurate, and (3) advertising a manu-
39 facturer's product or using a manufacturer's name or
40 trademark which implies a relationship with the manu-
41 facturer that does not exist or using the words "audiolo-
42 gist," "state licensed clinic," "state registered," "state
43 certified," or "state approved" or any other term, abbre-
44 viation or symbol when it would falsely give the impres-
45 sion that service is being provided by persons holding a
46 degree in audiology or trained in clinical audiology, or
47 that licensee's service has been recommended by the
48 state when such is not the case.

49 (c) The refusal to issue or renew a license or trainee
50 permit or the suspension or revocation of a license or
51 trainee permit by the board must have the concurrence
52 of a majority of the members of the board.

§30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

1 (a) Every licensee engaged in the practice of dealing in
2 or fitting of hearing aids shall, prior to the sale or the
3 fitting of a hearing aid intended to be worn or used by any
4 person, first ascertain whether such person has within
5 the next preceding six months been examined for the
6 defective or impaired hearing condition sought to be
7 relieved by an otolaryngologist or other duly licensed
8 physician. If such person has been so examined, the
9 licensee shall, prior to the sale or fitting of such hearing
10 aid, determine the recommendations and consult with
11 such otolaryngologist or physician. If such person has
12 not been so examined, the licensee shall not proceed
13 to the sale or fitting of a hearing aid until after such
14 person has been so examined.

15 (b) Prior to the sale of a hearing aid, every licensee
16 shall be required to advise in writing, in the manner
17 and form prescribed by the board, the person to whom
18 he intends to sell or fit with such hearing aid that such
19 person's best interest would be served by consulting an
20 otolaryngologist or other physician specializing in dis-
21 eases of the ear, or any other physician duly licensed to
22 practice medicine in this state, if any of the following
23 conditions are found upon examination of such person:

24 (1) Visible congenital or traumatic deformity of the
25 ear;

26 (2) History of active ear discharge within the pre-
27 vious ninety days;

28 (3) History of a sudden or rapidly progressive hearing
29 loss within the previous ninety days;

30 (4) Acute or chronic dizziness;

31 (5) Unilateral hearing loss of sudden or recent onset
32 within the previous ninety days; or

33 (6) Significant air-bone gap.

34 (c) A copy of any writing or form required to be
35 given to a prospective purchaser or other person by the
36 terms of this section shall be retained in the records of

37 the licensee for a period of seven years following the
38 issuance of each writing.

§30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required.

1 Any person who practices the fitting and sale of hear-
2 ing aids shall deliver to each person supplied with a
3 hearing aid a receipt which shall contain his signature
4 and show his business address and the number of his
5 license, together with specifications as to the make and
6 model of the hearing aid furnished, and shall contain
7 the full terms of the sale. If a hearing aid which has
8 been previously sold at retail is sold, the receipt shall
9 be clearly marked as "used" or "reconditioned" which-
10 ever is applicable, with terms of guarantee, if any.

11 Such receipt shall be in the manner and form as pre-
12 scribed by the board in its rules and regulations. Such
13 rules and regulations shall prescribe the type and size
14 of print to be used in such receipt and the receipt shall
15 set forth such additional information as the board may
16 prescribe. A copy of such receipt shall be retained in
17 the records of the licensee for a period of seven years
18 following the issuance of such receipt.

§30-26-16. Hearing procedures; judicial review.

1 Any person, including a person who brings a complaint
2 against a licensee or trainee before the board, adversely
3 affected by any decision, ruling or order of the board
4 shall be entitled to a hearing before the board. The hear-
5 ing may be held by the board or a majority thereof either
6 in the county wherein the licensee, trainee, prospective
7 licensee or prospective trainee resides or may be held
8 in the county wherein the person adversely affected re-
9 sides or may be so held in some other county as the
10 board may direct. All of the pertinent provisions of
11 article five, chapter twenty-nine-a of this code shall apply
12 to any hearing held by the board and the administrative
13 procedures in connection with and following such hear-
14 ing shall apply with like effect as if the provisions of
15 said article five were set forth in extenso in this section.
16 For the purpose of conducting such hearing the board

17 shall have the power and authority to issue subpoenas
18 and subpoenas duces tecum in accordance with the pro-
19 visions of section one, article five, chapter twenty-nine-a.
20 Any such hearing shall be held within thirty days after
21 the date upon which a request therefor was made. All
22 requests for hearings shall be made in writing to the
23 board by certified or registered mail, return receipt re-
24 quested. The board may postpone or continue any hear-
25 ing on its own motion or upon application for good cause
26 shown.

27 Any person, including a person who brings a complaint
28 against a licensee or trainee before the board, who may
29 be adversely affected by any ruling or order made or
30 entered by the board following a hearing, shall be entitled
31 to judicial review of such order, in accordance with the
32 provisions of section four, article five, chapter twenty-
33 nine-a of this code and the provisions of said section four
34 shall apply to and govern such appeal with like effect
35 as if the provisions of said section four were set forth in
36 extenso in this section and the provisions of article six
37 of said chapter twenty-nine-a shall apply with respect
38 to appeals to the supreme court of appeals in the same
39 manner.

§30-26-17. Prohibited acts and practices.

1 Any of the following acts are hereby prohibited and
2 shall be punishable under section eighteen of this article
3 and shall also constitute unethical practice and no person
4 shall:

5 (1) Sell, barter or offer to sell or barter a license
6 issued pursuant to this article.

7 (2) Purchase or procure by barter any such license
8 with intent to use it as evidence of the holder's qualifica-
9 tions to engage in the practice of dealing in or fitting of
10 hearing aids.

11 (3) Alter materially a license issued pursuant to this
12 article.

13 (4) Use or attempt to use as a valid license any license

14 which has been purchased, fraudulently obtained,
15 counterfeited or materially altered.

16 (5) Willfully make any false statement in an applica-
17 tion for license or for renewal thereof.

18 (6) Advertise for the mail-order sale of hearing aids
19 in any advertising medium or sell hearing aids by mail
20 to any person other than distributors, dealers or those
21 excluded from the provisions of this article.

§30-26-18. Offenses and penalties.

1 Any person who shall engage in the practice of dealing
2 in or fitting of hearing aids without qualifying to do so
3 under the provisions of this article or any person who
4 commits any of the acts prohibited under the provisions
5 of section seventeen of this article shall be guilty of a
6 misdemeanor, and, upon conviction for the first offense,
7 shall be fined not less than one hundred dollars nor more
8 than five hundred dollars or imprisoned in the county jail
9 for not more than six months, or be subject to both such
10 fine and imprisonment, and for the second or any sub-
11 sequent offense, shall be fined not less than five hundred
12 dollars nor more than one thousand dollars or imprisoned
13 in the county jail for not less than thirty days nor more
14 than one year or be subject to both such fine and im-
15 prisonment. Each sale made in violation of this article
16 shall constitute a separate offense. Magistrates shall have
17 concurrent jurisdiction with circuit courts for the en-
18 forcement of this article.

§30-26-19. Injunction.

1 Notwithstanding the existence of any other remedy,
2 the board may, in the manner provided by law, maintain
3 an action for an injunction against any person to restrain
4 or prevent the practice of dealing in or fitting of hearing
5 aids when such person repeatedly refuses to obtain a
6 license therefor and continues such practice without first
7 obtaining a license therefor in the manner hereinbefore
8 provided, and an action for an injunction may be main-
9 tained for any continued and repeated violation of any
10 of the provisions of this article and the rules and regu-
11 lations promulgated pursuant thereto.

§30-26-20. Construction and severability.

1 The provisions of this article and the regulations
2 promulgated thereunder shall be liberally construed so as
3 to carry into effect its purposes and to protect the health,
4 safety and welfare of the public.

5 If any provision of this article or the application thereof
6 to any person or circumstance shall be held invalid, the
7 remainder of the article and the application of such
8 provision to other persons or circumstances shall not be
9 affected thereby.

ARTICLE 27. BOARD OF BARBERS AND BEAUTICIANS.

§30-27-1. Board of barbers and beauticians; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.

1 (a) The state committee of barbers and beauticians,
2 heretofore established, is continued as the board of bar-
3 bers and beauticians, and all members of the committee,
4 serving for a term which has not expired on the effective
5 date of this article, shall continue to serve the terms for
6 which they were appointed. The board shall consist of
7 four professional members to be appointed by the gov-
8 ernor, by and with the advice and consent of the Senate,
9 and one lay member to be appointed in accordance with
10 the provisions of section four-a, article one of this chap-
11 ter. Of the four professional members, one shall be an
12 employing barber, one an employee barber, one an em-
13 ploying beautician and one an employee beautician. Each
14 professional member of the board shall have been en-
15 gaged within this state in the practice of barbering or
16 beauty culture, as the case may be, for a period of eight
17 years immediately prior to his appointment, and no
18 more than two of the four professional members may
19 belong to the same political party.

20 (b) On or before the thirtieth day of June of each
21 year the governor shall appoint one member of the board
22 to serve for a term of four years, to begin on the first
23 day of July. No professional member of the board may
24 serve for more than two complete terms.

25 (c) The board shall designate one of its members as
26 chairperson.

27 (d) Each member of the board shall receive as com-
28 pensation a per diem of twenty-five dollars for each day
29 of attendance at board sessions, but such compensation
30 for each member shall not exceed the sum of five hun-
31 dred dollars in any calendar year. Each member shall
32 be reimbursed for actual and necessary expenses incurred
33 in the performance of duty, upon presentation of an
34 itemized sworn statement thereof.

35 (e) The board shall examine all applicants for licen-
36 sure and shall issue licenses to those entitled thereto and
37 collect examination and licensure fees, in accordance with
38 regulations promulgated by the board of health pursuant
39 to article fourteen, chapter sixteen of this code.

40 (f) It shall be unlawful for any person to practice or
41 offer to practice barbering, beauty culture or manicuring
42 in this state without first obtaining a license for such
43 purposes from the board of barbers and beauticians.

§30-27-2. Revocation of license for violation.

1 For violation of any regulation promulgated by the
2 board of health, the board of barbers and beauticians
3 may cancel and revoke the license issued such violator,
4 and may refuse to renew or reissue the same.

**§30-27-3. Qualifications of applicants; fees; examinations; li-
censure.**

1 An applicant for licensure as a barber, beautician or
2 manicurist shall present satisfactory evidence that he or
3 she is at least eighteen years of age, of good moral char-
4 acter and temperate habits, has completed at least the
5 eighth grade of school, or the equivalent thereof, and
6 has been graduated from a school of barbering or beauty
7 culture approved by the state board of barbers and beau-
8 ticians, or in the case of a manicurist has successfully
9 completed an approved course in manicuring in such a
10 school, and shall transmit with his application an exam-
11 ination fee of twenty dollars. The examination shall be
12 of such character as to determine the qualifications and

13 fitness of the applicant to practice barbering, beauty
14 culture or manicuring as defined by this article, and shall
15 cover such subjects germane to the inquiry as the board
16 may deem proper. If an applicant for licensure as a
17 barber or beautician successfully passes such examina-
18 tion and is otherwise duly qualified, as required by this
19 section, the board shall license the applicant as a duly
20 qualified junior barber or beautician, for which license,
21 or renewal thereof, the fee shall be five dollars. Upon
22 proof that the holder of such a license has served as a
23 junior barber or beautician for a period of not less than
24 twelve months from the original date of such license,
25 accompanied by a certificate of health from a duly licensed
26 physician, the board shall issue to the applicant a license
27 authorizing the applicant to practice barbering or beauty
28 culture in this state. Any person who is able to furnish
29 satisfactory proof that he has practiced barbering or
30 beauty culture for at least twelve months prior to exam-
31 ination and any applicant for license as a manicurist,
32 may be licensed as a duly qualified barber, beautician or
33 manicurist immediately after he has passed the exam-
34 ination. The board shall charge ten dollars for the issu-
35 ance or renewal of a license.

36 Any person who meets the requirements of this sec-
37 tion as to age, character and health, who is a graduate
38 of a recognized school of barbering or beauty culture in
39 another state, or has successfully completed an approved
40 course in manicuring in such a school, and who holds a
41 current license as a registered barber, beautician or mani-
42 curist in another state, may file with the board an appli-
43 cation for licensure without examination, together with
44 a fee of twenty dollars. If in the opinion of the board
45 such applicant has had a prescribed course of instruction
46 in barbering, beauty culture or manicuring equivalent
47 to that required in this state at the time such course was
48 completed, or is otherwise properly qualified, the board
49 may without examination issue to such applicant a license
50 as a duly qualified barber, beautician or manicurist.

§30-27-4. Renewal of license; fee; penalty for late renewal; withdrawal from active practice.

1 Every licensed barber, beautician or manicurist who de-
2 sires to continue in active practice or service shall,
3 annually upon or before the first day of January, renew
4 his license and pay an annual renewal fee of ten dollars.
5 For any renewal which is more than thirty days late, a
6 penalty of two dollars shall be added to the regular
7 renewal fee. Every licensed barber, beautician or mani-
8 curist who does not desire to continue in active practice,
9 shall notify the board in writing, and shall during such
10 period, be listed by the board as being inactive, and shall
11 not be required to renew his license until such time as he
12 shall again become active, and during such inactive
13 period he or she shall not be liable for any renewal fees.

§30-27-5. Student's permit; qualifications; fee.

1 All students, before entering upon their studies in
2 approved schools of barbering or beauty culture in this
3 state, shall apply for and receive a student's permit from
4 the board. The application shall be upon forms provided
5 by the board and shall include a health certificate from a
6 duly licensed physician. An applicant for licensure as a
7 student shall present satisfactory evidence that he or she
8 is at least seventeen years of age, of good moral character
9 and temperate habits, and has completed at least the
10 eighth grade of school or the equivalent thereof. Upon
11 receipt of a fee of five dollars, the board shall license each
12 qualified applicant as a student barber, beautician or
13 manicurist and shall issue the appropriate student's per-
14 mit, which shall be good during the prescribed period of
15 study for such student. A student may perform any or all
16 acts constituting barbering, beauty culture or manicuring
17 in a school of barbering or beauty culture under the
18 immediate supervision of a registered instructor, but not
19 otherwise.

§30-27-6. Display of license.

1 Every person practicing barbering, beauty culture or
2 manicuring and every student and junior barber and
3 beautician shall display his license or renewal thereof in

4 a conspicuous place in the shop wherein he practices or is
5 employed and whenever required shall exhibit such
6 license to the state board of barbers and beauticians or its
7 authorized representative.

§30-27-7. Shop to be managed by licensed barbers and beauticians; number of junior barbers or beauticians permitted; restrictions as to other businesses; signs; advertising of prices prohibited.

1 Every barber or beauty shop in this state shall be
2 operated under the supervision and management of a
3 barber or beautician who is licensed as such in this state.
4 Each barbershop in this state may employ at least one
5 junior barber therein. However, in shops regularly em-
6 ploying more than three licensed barbers only one such
7 junior barber may be employed for every three such
8 licensed barbers, but in no event can more than three
9 such junior barbers be employed in any one barbershop,
10 and each beauty shop shall have the right to employ one
11 junior beautician for each licensed beautician therein. No
12 business or trade other than that of barbering shall be
13 conducted in a barbershop and no business or trade
14 other than beauty culture shall be conducted in a beauty
15 shop, except the display or sale, or both, commodities or
16 other articles used in connection with barbering or beau-
17 ty culture, and no such barber or beauty shop shall be
18 operated in a store, dwelling house, or other building or
19 space used for any purpose other than barbering or beau-
20 ty culture unless such barber or beauty shop is separated
21 by stationary partitions extended from floor to ceiling:
22 *Provided*, That nothing in this article shall be construed
23 as prohibiting a barbershop from carrying on the business
24 of shoe shining or manicuring or both shoe shining and
25 manicuring. A suitable sign shall be displayed at the
26 main entrance of all barber and beauty shops, plainly
27 indicating the business conducted therein: *Provided, how-*
28 *ever*, That no sign shall be displayed outside any barber
29 or beauty shop or inside the same, so as to be clearly
30 visible from the outside and for the ostensible purpose
31 of attracting trade, which in any way advertises the
32 prices to be charged in such barber or beauty shop for
33 services to be therein performed.

§30-27-8. License to own or operate schools of barbering or beauty culture; application for license; qualifications; inspection; license fee; rates and regulations; suspension, etc., of license; qualifications and registration of instructors; registration fees; administrative procedures.

1 No person, firm or corporation, whether public or pri-
2 vate, and whether organized for profit or not, shall own
3 or operate a school of barbering or beauty culture in this
4 state without first obtaining a license so to do from the
5 board. The application for such license shall be made in
6 writing on forms prescribed and furnished by the board
7 and shall be signed and verified by the applicant. The
8 applicant shall, in addition to such other information as
9 may be reasonably required by the board, furnish evi-
10 dence that (a) the applicant is professionally competent
11 and financially responsible, (b) adequate physical facili-
12 ties will be available for the school, and (c) persons
13 teaching or instructing therein are registered by the
14 board as duly qualified instructors. If an applicant desires
15 to own or operate more than one school of barbering or
16 beauty culture, a separate application shall be made and
17 a separate license shall be issued for each.

18 All applicants for a license to own or operate a school of
19 barbering or beauty culture shall permit an inspection of
20 such proposed school by the inspectors appointed pur-
21 suant to subsection (d) of section one of article fourteen
22 of chapter sixteen of this code to determine whether it is
23 properly fitted and equipped for instruction in barbering
24 or beauty culture. The board of health shall promulgate
25 reasonable rules and regulations to implement and make
26 effective the powers, duties and responsibilities vested in
27 such board in connection with the licensing of schools of
28 barbering and beauty culture. If the applicant has met
29 all of the standards and qualifications prescribed herein
30 by the board of health and has complied with the rules
31 and regulations pertaining to the issuance of the license
32 applied for, the board shall issue such license to the appli-
33 cant. Thereafter, the board may suspend, revoke or refuse
34 to renew the license of a school whenever it fails to meet

35 the minimum standards and qualifications required for
36 the issuance of an original license. The director of health
37 or his designees shall administer and enforce such actions
38 of the board.

39 The license fee for each school of barbering and for
40 each school of beauty culture shall be twenty-five dollars
41 annually, to be paid in such manner as the board may
42 prescribe, on or before January first of each year. The
43 license shall be permanently displayed in the school, and
44 a suitable sign shall be kept on the front of the school
45 which shall plainly indicate that a school of barbering or
46 beauty culture is operated therein.

47 The board of health shall make reasonable rules and
48 regulations prescribing the standards and requirements
49 to be met by applicants for registration as duly qualified
50 instructors in schools of barbering or beauty culture.
51 Such rules and regulations may provide for the issuance
52 of certificates for instructors, including temporary certifi-
53 cates, and shall prescribe minimum qualifications as
54 to age, education and training for applicants for such
55 certificates. Each registered instructor in barbering and
56 beauty culture shall pay an initial registration fee of five
57 dollars, and shall renew his certificate annually and pay
58 a renewal fee of five dollars on or before the first day of
59 January of each year. An expired certificate may be
60 reinstated only upon the payment of all lapsed renewal
61 fees, unless such instructor shall have notified the board
62 that he or she desires to be placed on an inactive status
63 during which time he or she shall not be liable for any
64 renewal fees. The applicant for reinstatement shall also
65 be required to meet the qualifications for registration in
66 effect at the time application for reinstatement is made.

67 Recognizing that all of the provisions of chapter
68 twenty-nine-a of this code are fully applicable to any and
69 all administrative procedures, and the right of judicial
70 review, in connection with the provisions of this article,
71 but also recognizing that the question has been raised as
72 to whether rules and regulations adopted under the pro-
73 visions of this section must be promulgated in accordance

74 with the provisions of said chapter twenty-nine-a, it is
 75 hereby expressly provided that all such rules and regula-
 76 tions shall be promulgated in compliance with the pro-
 77 visions of said chapter twenty-nine-a.

§30-27-9. Health certificate and photograph required.

1 No person shall practice barbering, beauty culture or
 2 manicuring, or serve as a student or junior barber or
 3 beautician in this state while having an infectious, con-
 4 tagious or communicable disease. No person shall be li-
 5 censed as a barber, beautician, manicurist or student until
 6 he or she shall have obtained a certificate of health from
 7 a licensed physician under article three of this chapter
 8 certifying such person to be free of all infectious, con-
 9 tagious and communicable diseases. Such certificate shall
 10 be filed with the state board of barbers and beauticians
 11 within ten days after the examination of the person is
 12 made by the physician and a photograph of the applicant
 13 must accompany the application with such certificate.
 14 The certificate shall be in such form as the board may
 15 prescribe. The board shall be empowered to compel any
 16 registered barber, beautician, manicurist, student, or
 17 junior barber or beautician, to submit to a physical ex-
 18 amination and file a certificate of health at any reason-
 19 able time.

§30-27-10. Requirements to operate shops and schools; sanitary rules and regulations.

1 It shall be unlawful for any person, firm or corporation
 2 to own or operate a beauty shop or barbershop, or a school
 3 of beauty culture or barbering, or to act as a barber,
 4 beautician or manicurist, unless:

5 (a) Such beauty shop, barbershop, or school of beauty
 6 culture or barbering shall before opening its place of
 7 business to the public, have been approved by the board
 8 as having met all the requirements and qualifications for
 9 such places of business as are required by this article
 10 and for this purpose. It shall be the duty of the owner
 11 or operator of each such beauty shop, barbershop, or
 12 school of beauty culture or barbering to notify the board,
 13 in writing, at least ten days before the proposed opening

14 date of such shop or school, whereupon it shall become
15 the duty of the board, through the inspectors herein
16 provided for, to inspect such shop or school. Upon given
17 notice of the opening of any such shop or school, the
18 owner or operator thereof shall pay to the board an
19 inspection fee of twenty-five dollars. In the event the
20 shop or school fails to meet the requirements of this
21 article, and is not approved, the inspection fee shall be
22 returned to the person paying same. Any shop or school
23 meeting the prescribed requirements shall be granted
24 a license permitting it to do business as such. If, how-
25 ever, after the lapse of ten days after the giving of such
26 notice of opening to the board, an inspection is not made
27 or such certificate of opening has not been granted or
28 refused, the owner or operator of such shop or school
29 may open provisionally subject to later inspection to all
30 other provisions, rules and regulations provided for in
31 this article;

32 (b) All such shops and schools, and bathrooms, toilets
33 and adjoining rooms used in connection therewith, are
34 kept clean, sanitary, well-lighted and ventilated at all
35 times. The use of chunk alum, powder puffs and styptic
36 pencils in any such shop is prohibited;

37 (c) Each barber, beautician, manicurist, instructor,
38 junior barber and beautician, and student, shall thor-
39 oughly cleanse his or her hands with soap and water im-
40 mediately before serving any patron;

41 (d) Each patron is served with clean, freshly laun-
42 dered linen which is kept in a closed cabinet used for
43 that purpose alone. All linens, immediately after being
44 used, shall be placed in a receptacle used for that purpose
45 alone.

46 The board of health shall prescribe such other rules
47 and regulations in regard to sanitation and cleanliness
48 in such shops and schools as it may deem proper and
49 necessary. The director of health or inspectors desig-
50 nated pursuant to subsection (d) of section one of article
51 fourteen of chapter sixteen of the code shall have the
52 power to enforce compliance therewith. Such rules and

53 regulations shall be kept posted in a conspicuous place
54 in each shop or school.

**§30-27-11. Grounds for cancellation of, or refusal to issue or
renew, license.**

1 The board may refuse to issue a license of resignation
2 to any applicant, or may refuse to renew, or may sus-
3 pend or revoke the same for any holder thereof, for any
4 of the following causes: (1) Conviction of the commis-
5 sion of a felony, as shown by a certified copy of the rec-
6 ord of the court of conviction; (2) obtaining or attempting
7 to obtain a license to practice barbering or beauty cul-
8 ture in this state by false pretenses, fraudulent misrepres-
9 sentation, or bribery by the use of money or other con-
10 sideration; (3) gross incompetency; (4) the continued
11 practice of barbering or beauty culture by a person know-
12 ing himself or herself to be afflicted with a contagious
13 or infectious disease; (5) the use knowingly of any false
14 or deceptive statements in advertising; (6) habitual
15 drunkenness or habitual addiction to the use of morphine,
16 cocaine or other habit-forming drugs; (7) conviction for
17 the illegal sale of any intoxicating beverage, as shown
18 by a certified copy of the record of the court of conviction;
19 (8) violation of any of the sanitary rules and regulations
20 prescribed by the board of health.

**§30-27-12. Violation to constitute misdemeanor; penalty; con-
current jurisdiction; injunction.**

1 Any violation of the provisions of this article or of the
2 rules and regulations of the board of health when promul-
3 gated by it as set out in section three, article fourteen,
4 chapter sixteen of this code, shall constitute a mis-
5 demeanor, punishable, upon conviction, by a fine of not
6 less than ten dollars, nor more than one hundred dollars,
7 or by imprisonment in the county jail for not more than
8 sixty days, or by both such fine and imprisonment. Magis-
9 trates shall have concurrent jurisdiction with circuit
10 courts for the enforcement of the provisions of this article
11 and the rules and regulations of the board of health.

12 Notwithstanding the existence or pursuit of any other
13 remedy, the director of health or board of barbers and

14 beauticians may, in the manner provided by law, maintain
15 an action in the name of the state for an injunction against
16 any person, partnership, association or corporation to
17 restrain or prevent the establishment, conduct, manage-
18 ment, or operation of any barbershop, beauty shop, school
19 of barbering or beauty culture, or related agency, when
20 such person, partnership, association, or corporation, re-
21 peatedly refuses to obtain registration or license therefor
22 and continues the practice or teaching of barbering or
23 beauty culture without first obtaining registration or a
24 license therefor in the manner hereinbefore provided.

§30-27-13. Chapter thirty, article one, applicable to board.

1 Unless otherwise specifically provided herein, the provi-
2 sions of article one, chapter thirty of the code of West
3 Virginia shall apply to the state board of barbers and
4 beauticians.

§30-27-14. Collections and expenditures; disposition of funds.

1 All money collected under the provisions of this article
2 shall be deposited in the state treasury as provided by
3 law, and shall be credited to the board of barbers and
4 beauticians in a special fund to be known as the "barbers
5 and beauticians special fund." All money in such fund
6 shall be expended only for the administration and en-
7 forcement of the provisions of this article, except that at
8 the end of each fiscal year there shall be transferred from
9 this fund to the general revenue fund of the state ten
10 percent of all money collected by the board during the
11 year.

§30-27-15. Validity of certificates of registration and rules issued by board of barbers and beauticians.

1 Any certificate of registration issued prior to the effec-
2 tive date of this article by the committee of barbers and
3 beauticians shall be valid as a license under the provisions
4 of this article, except as modified by the board of barbers
5 and beauticians; and all rules and regulations issued by
6 the committee of barbers and beauticians prior to the
7 effective date of this article shall remain in effect unless
8 modified in accordance with the provisions of article four-
9 teen, chapter sixteen of this code.

§30-27-16. Separability; conflicting acts repealed.

1 The various provisions of this article shall be considered
 2 as separable and several, and should any of the provisions
 3 or parts thereof be construed or held to be unconstitu-
 4 tional, or for any other reason invalid the remaining
 5 provisions of this article shall not be thereby affected. All
 6 acts and parts of acts in conflict with the provisions of
 7 this article, or any part thereof, are hereby repealed. Any
 8 ordinances of any municipalities in this state now in effect
 9 and having for their purposes the regulation of the prac-
 10 tice of barbering or beauty culture, which are in conflict
 11 with the provisions of this article, or any part thereof,
 12 shall be null and void and of no effect on and after the
 13 date this article goes into effect.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 12. POST-MORTEM EXAMINATIONS.****§61-12-3. Office of medical examinations established; appointment, duties, etc., of chief medical examiner; assistants and employees.**

1 The office of medical examinations is hereby estab-
 2 lished, to be operated under the control and supervision
 3 of the director of the department of health. Such office
 4 shall be directed by a chief medical examiner, who shall
 5 be appointed by the director. The chief medical exam-
 6 iner may employ assistants, pathologists, toxicologists,
 7 laboratory technicians, regional medical examiners and
 8 other staff members as the director may specify.

9 All persons employed by the chief medical examiner
 10 shall be responsible to him and may be discharged by
 11 him for any reasonable cause. The chief medical ex-
 12 aminer shall specify the qualifications required for each
 13 position in the office of medical examinations, and each
 14 position shall be subject to such rules and regulations
 15 as the chief medical examiner may prescribe.

16 The chief medical examiner shall be a physician li-
 17 censed to practice medicine in West Virginia, who is a
 18 diplomate or eligible for certification by the American
 19 board of pathology or the American osteopathic board
 20 of pathology. The salary of the chief medical examiner

21 and the salaries of all assistants and employees of the
22 office of medical examinations shall be fixed by the Legis-
23 lature from funds appropriated for that purpose. The
24 chief medical examiner shall take such oath and provide
25 such bond as may be required by law. Within the dis-
26 cretion of the department, the chief medical examiner
27 and his assistants shall lecture or instruct in the
28 field of legal medicine and other related subjects to the
29 West Virginia University or Marshall University School
30 of Medicine, the department of public safety, other law-
31 enforcement agencies, and other interested groups.

§61-12-4. Central office and laboratory.

1 The office of medical examinations shall establish and
2 maintain a central office and a laboratory having ade-
3 quate professional and technical personnel and medical
4 and scientific facilities for the performance of the duties
5 imposed by this article. The central laboratory and office
6 shall be maintained in connection with the facilities of
7 the West Virginia University school of medicine, and
8 the director is hereby empowered to contract for the use
9 of such facilities.

§61-12-5. Certain salaries and expenses paid by state.

1 The salaries of the chief medical examiner, and the
2 technical and clerical personnel in the central office and
3 laboratory, the expenses of maintaining the central office
4 and laboratory, the cost of pathological, bacteriological
5 and toxicological services rendered by others than the
6 chief medical examiner and his assistants, and of the
7 personnel of the central office and laboratory, shall be
8 paid by the state out of funds appropriated for that pur-
9 pose.

**§61-12-6. Chief medical examiner may obtain additional ser-
vices and facilities.**

1 Subject to the approval of the director, the chief med-
2 ical examiner may, in order to provide facilities for in-
3 vestigating the cause of death as authorized in this article,
4 employ and pay qualified pathologists and toxicologists
5 to make autopsies and such pathological and chemical
6 studies and investigations as he may deem necessary,

7 and he may arrange for the use of existing laboratory
 8 facilities for such purposes whenever these are avail-
 9 able. The director may prepare a list of approved path-
 10 ologists available for this work in the several counties
 11 or sections of the state, and in such case the chief medical
 12 examiner may call upon such pathologists where they
 13 are available for services in case of need.

§61-12-7. Medical examiners.

1 The chief medical examiner shall appoint for each
 2 county in the state a medical examiner to serve for a
 3 term of three years. A medical examiner shall turn over
 4 and deliver to his successor in office all of the papers,
 5 reports and records of his said office. Medical examiners
 6 shall be qualified physicians, licensed to practice medi-
 7 cine in West Virginia.

8 Any vacancy in the office of medical examiner shall
 9 be filled by the chief medical examiner. One person may
 10 be appointed to serve as medical examiner for more than
 11 one county, and the medical examiner need not be a
 12 resident of the county which he serves. When it be-
 13 comes necessary, because of illness, absence, need, or
 14 personal interest, the chief medical examiner shall have
 15 the power to appoint any other qualified physician in
 16 the county in which a death is to be investigated, to act
 17 as assistant medical examiner for such county.

§61-12-14. County coroners; appointment, oath, etc.; duties; fees.

1 It shall be the duty of the county commission of every
 2 county, from time to time, to appoint a coroner for such
 3 county, who shall hold his office during the pleasure of
 4 such commission and shall take the oath of office pre-
 5 scribed for other county officers. The county coroners
 6 shall hereafter perform such duties as may be assigned
 7 to them under the rules and regulations promulgated
 8 by the board of health, and shall be paid such fees or
 9 amounts for such services as may be fixed by the chief
 10 medical examiner.

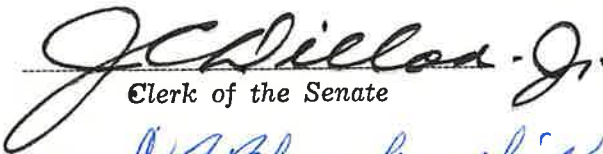
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee


Chairman House Committee

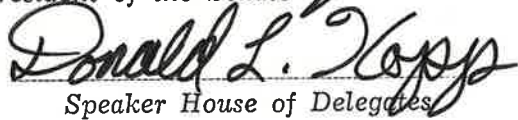
Originated in the Senate.

To take effect July 1, 1977.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 25
day of April, 1977.


Governor



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APR 21 2 27 PM '77

OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 25, 1977
Time 3:30 p.m.

RECEIVED

77 APR 27 P 4: 36

OFFICE
SECY. OF STATE