WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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ENROLLED

HOUSE BILL No. 4779.

(By ## Del. Flanigan + White)

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Passed March 12, 1988

In Effect From Passage
AN ACT to amend and reenact section thirteen, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article five-b of said chapter; and to further amend said article by adding thereto a new section, designated section five-a; to amend and reenact sections two, three, five, six, nine and seventeen, article five-c of said chapter; to amend and reenact sections two and six, article five-e of said chapter; to amend and reenact sections one, two and three, article five-h of said chapter; and to further amend said article five-h by adding thereto a new section, designated section two-a, all relating to the disposition of moneys received by state director of health; report to auditor; noncompliance; establishment of health facility licensing account; expenditure of moneys; licensure fees for hospitals; accreditation reports to serve as inspections; ambulatory care facilities; ambulatory surgical facilities; nursing and personal care homes; nursing and personal care home definitions; powers, duties and rights of director; rules and regulations; licensure duration and renewal; inspections, licenses and regulations in force; definition for regulation of service providers in legally unlicensed health care facilities, enforcement, criminal penalties; license; application; regulations; revocation; assistance from department of human services; civil actions in circuit
court of Kanawha County or other counties; fire protection standards and residential board and care home definitions.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article one; section four, article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; to further amend said article by adding thereto a new section, designated section five-a; that sections two, three, five, six, nine and seventeen, article five-c; sections two and six, article five-e; and sections one, two and three, article five-h, all of chapter sixteen, be amended and reenacted; and to further amend article five-h by adding thereto a new section, designated section two-a, all to read as follows:

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

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

1. (a) The state director of health shall receive and account for all moneys required to be paid as fees for permits, licenses or registrations, pursuant to the provisions of this code, and shall pay such moneys into the state treasury monthly, on or before the tenth day of the month succeeding the month in which such moneys were received. The director of health shall, on the first day of January and the first day of July in each year, or within five days thereafter, certify to the state auditor a detailed statement of all such moneys received by him during the preceding six months. If the director of health shall fail or refuse to comply with the provisions of this section, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each offense not less than fifty dollars, nor more than two hundred dollars.

1. (b) Subject to the provisions set forth in section two, article two, chapter twelve of this code, there is established in the state treasury a separate account which shall be designated "the health facility licensing account."
account."

After the effective date of this provision, the director of health shall deposit to the health facility licensing account all health facility licensing fees.

After the first day of July, one thousand nine hundred eighty-eight, the director of health is authorized to expend the moneys deposited in the health facility licensing account in accordance with the laws of this state as is necessary to implement activities of health facility licensing. As part of the annual state budget, the Legislature shall appropriate for health facility licensure all moneys deposited in the health facilities licensing account.

Any remaining balance including accrued interest in said account at the end of any fiscal year shall not revert to the general revenue fund, but shall remain in said account, and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years. The director shall make an annual report to the Legislature on the health facility licensing account, including the previous fiscal year's expenditures and projected expenditures for the next fiscal year.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-4. License fees.

The application of any person, partnership, association, corporation, or local government unit for a license to operate a hospital or extended care facility operated in connection with a hospital, shall be accompanied by a fee to be determined by the number of beds available for patients, according to the following schedule of fees:

- Those with five beds but less than fifty beds shall pay a fee of five hundred dollars; those with fifty beds or more and less than one hundred beds shall pay a fee of seven hundred fifty dollars; those with one hundred beds or more and less than two hundred beds shall pay a fee of one thousand dollars; and those with two hundred beds or more shall pay a fee of one thousand two hundred fifty dollars. The director may annually adjust the licensure fees for inflation based upon the consumer
price index. The application of any person, partnership, association, corporation, or local governmental unit for a license to operate an ambulatory health care facility or ambulatory surgical facility shall be accompanied by a reasonable fee to be determined by the director, based on the number of patients served by the facility. No such fee shall be refunded. All licenses issued under this article shall expire on the thirtieth day of June following their issuance, shall be on a form prescribed by the state department of health, shall not be described in the application, shall be posted in a conspicuous place on the licensed premises, and may be renewed from year to year upon application, investigation and payment of the license fee, as in the case of the procurement of an original license: Provided, That any such license in effect on the thirtieth day of June of any year, for which timely application for renewal, together with payment of the proper fee, has been made to the state department of health in conformance with the provisions of this article and the rules and regulations issued thereunder, and prior to the expiration date of such license, shall continue in effect until (a) the thirtieth day of June next following the expiration date of such license, or (b) the date of the revocation or suspension of such license pursuant to the provisions of this article, or (c) the date of issuance of a new license, whichever date first occurs: Provided, however, That in the case of the transfer of ownership of a facility with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director. All fees received by the state department of health under the provisions of this article shall be deposited in accordance with section thirteen, article one of this chapter.

§16-5B-5a. Accreditation reports accepted for periodic license inspections.

Notwithstanding any other provision of this article, a periodic license inspection shall not be conducted by the state department of health for a hospital if the hospital has applied for and received an exemption from such requirement: Provided, That no exemption so granted
shall diminish the right of the state department of
health to conduct complaint inspections: Provided,
however, That no exemption so granted shall relieve a
hospital from compliance with section six-a of this
article.

The state department of health shall grant an
exemption from a periodic license inspection during the
year following accreditation if a hospital applies by
submitting evidence of its accreditation by the joint
commission on accreditation of healthcare organizations
or the American osteopathic association and submits a
complete copy of such commission's accreditation report.

If the accreditation of a hospital is for a period longer
than one year, the state department of health shall
conduct at least one license inspection of the hospital
after the first year of accreditation and before the
accreditation has expired and may conduct additional
license inspections if needed.

Accreditation reports filed with the state department
of health shall be treated as confidential in accordance
with section ten of this article.

ARTICLE 5C. NURSING, AND PERSONAL CARE HOMES AND
RESIDENTIAL BOARD AND CARE HOMES.

§16-5C-2. Definitions.

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

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

(b) The term "facility" means any nursing home,
personal care home, or residential board and care home
as defined in subdivisions (c), (d) and (e) of this section:
Provided, That the care or treatment in a household,
whether for compensation or not, of any person related
by blood or marriage, within the degree of consanguin-
ity of second cousin to the head of the household, or his
or her spouse, may not be deemed to constitute a nursing
home, personal care home or residential board and care
home within the meaning of this article. Nothing
contained in this article shall apply to hospitals, as
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defined under section one, article five-B of this chapter, or state institutions as defined under section six, article one, chapter twenty-seven or section three, article one, chapter twenty-five, all of this code, or nursing homes operated by the federal government or the state government, or institutions operated for the treatment and care of alcoholic patients, or offices of physicians, or hotels, boarding homes or other similar places that furnish to their guests only room and board, or extended care facilities operated in conjunction with a hospital;

(c) The term “nursing home” means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for three or more persons who are ill or otherwise incapacitated and in need of extensive, on-going nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation;

(d) The term “personal care home” means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four hours, to three or more persons who are dependent upon the services of others by reason of physical or mental impairment but who do not require extensive, on-going nursing care;

(e) The term “residential board and care home” means any institution, residence or place, or any part thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four hours, to no fewer than three and no more
than eight persons who are dependent upon the services
of others by reason of physical or mental impairment
but who are capable of self-preservation and do not
require nursing care;

(f) The term "nursing care" means those procedures
commonly employed in providing for the physical,
emotional and rehabilitational needs of the ill or
otherwise incapacitated which require technical skills
and knowledge beyond that which the untrained person
possesses, including, but not limited to, such procedures
as: irrigations, catheterizations, special procedure
contributing to rehabilitation, and administration of
medication by any method which involves a level of
complexity and skill in administration not possessed by
the untrained person;

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

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

(i) The term "resident" means an individual living in
a personal care home or a residential board and care
home;

(j) The term "sponsor" means the person or agency
legally responsible for the welfare and support of a
patient; or resident;

(k) The term "person" means an individual and every
form of organization, whether incorporated or unincor-
porated, including any partnership, corporation, trust,
association or political subdivision of the state.

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

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

In the administration of this article, the director shall
have the following powers, duties and rights:
(a) To enforce rules, regulations and standards for nursing homes, personal care homes, and residential board and care homes which are adopted, promulgated, amended or modified by the board of health;

(b) To exercise as sole authority all powers relating to the issuance, suspension and revocation of licenses of nursing homes, personal care homes and residential board and care homes;

(c) To enforce rules adopted, promulgated, amended or modified by the board of health governing the qualification of applicants for nursing home, personal care home, or residential board and care home licenses, including, but not limited to, educational requirements, financial requirements, personal and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of such federal funds;

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

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

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

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

(i) To offer and sponsor educational and training programs for nursing homes, personal care home, and residential board and care home administrative, management and operational personnel;

(j) To undertake survey, research and planning
projects and programs relating to administration and
operation of nursing homes, personal care homes, and
residential board and care homes, and to the health,
care, treatment and service in general of patients and
residents of such homes;

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

(l) To classify nursing homes into care categories such
as skilled nursing facilities, intermediate care facilities,
and other comparable categories under the terms of this
article if, in the opinion of the director, the best interest
of the public is served by doing so;

(m) To inspect any facility and any records main-
tained therein, subject to the provisions of section ten of
this article;

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

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

(p) To make complaint or cause proceedings to be
instituted against any person or persons for the violation
of the provisions of this article or of regulations issued
hereunder, by the board of health. Such action may be
taken by the director without the sanction of the
prosecuting attorney of the county in which proceedings
are instituted, if said officer fails or refuses to discharge
his duty. The circuit court of Kanawha County or the
circuit court of the county in which the conduct has
occurred shall have jurisdiction in all civil enforcement
actions brought under this article and may order
equitable relief without bond. In no such case shall the
director or any person acting under the director's
direction be required to give security for costs;

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

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

(s) The director shall determine which of those
requirements listed in subsection (r) will apply to
personal care homes and residential board and care
homes.
§16-5C-5. Rules and regulations; minimum standards for facilities; rating of facilities.

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

(b) The board of health shall promulgate regulations establishing minimum standards of operation of facilities including, but not limited to, the following:

1. Administrative policies, including (i) an affirmative statement of the right of access to facilities by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to patients, consistent with the right of patients to privacy, and (ii) a statement of the rights and responsibilities of patients in facilities which prescribe, as a minimum, such a statement of patients' rights as included in the United States department of health, education and welfare regulations, in force on the effective date of this article, governing participation of intermediate care facilities in the medicare and medicaid programs pursuant to titles eighteen and nineteen of the Social Security Act;

2. Minimum numbers and qualifications of personnel, including management, medical and nursing aides, orderlies and support personnel, according to the size and classification of the facility;

3. Safety requirements;

4. Sanitation requirements;

5. Protective and personal services to be provided;

6. Dietary services to be provided;

7. Maintenance of health records;
(8) Social and recreational activities to be made available; and

(9) Such other categories as the board of health determines to be appropriate to ensure patient's health, safety and welfare;

(c) The board of health shall include in its regulations detailed standards for each of the categories of standards established pursuant to subsections (b) and (d) of this section, and shall classify such standards as follows: Class I standards are standards the violation of which, the board of health determines, would present either an imminent danger to the health, safety or welfare of any patient or a substantial probability that death or serious physical harm would result; Class II standards are standards which the board of health determines have a direct or immediate relationship to the health, safety or welfare of any patient, but which do not create imminent danger; Class III standards are standards which the board of health determines have an indirect or a potential impact on the health, safety or welfare of any patient.

(d) The board of health shall establish:

(1) Standards grouped into broad general categories including but not limited to nursing services, dietetic services, medical services, the physical facility and patient rights. Standards within each category shall be assigned a numerical value based on its classification according to subsection (c) of this section to represent full compliance with the standard. The board of health shall also determine numerical values for a standard to represent an acceptable level or levels of partial but substantial compliance with the standard, if applicable.

(2) A range of values for each category based on the values for individual standards to represent full compliance and various levels of acceptable partial but substantial compliance with the category. A facility must attain an acceptable substantial level of compliance for each and every individual category to be deemed in substantial compliance with this article and the regulations promulgated hereunder.
(3) Standards for which extra numerical credit may be earned. Such extra credit shall not be used to counterbalance unacceptable levels of compliance with other standards, but may be used to raise a score where the facility is already in partial compliance.

(e) Not later than the first day of March, one thousand nine hundred eighty-nine, the board of health shall establish a system of rating facilities, as part of the licensing procedure, in accordance with the criteria established pursuant to this section. Such system shall include four rating categories entitled, from the highest to lowest, “A,” “B,” “C” and “F.” A rating of “F” shall be assigned to those facilities whose performance is not in substantial compliance with this article and regulations promulgated hereunder, and shall be the basis for issuance of a provisional license pursuant to subsection (d), section six of this article, or the limitation, suspension, revocation or denial of a license. The rating assigned to each facility shall be on the basis of its immediately prior inspection, and shall be deemed a part of the results and findings of that inspection, and shall be included on the license issued to the facility pursuant to section six of this article.

§16-5C-6. License required; application; fees; duration; renewal.

Subject to the provisions of section seventeen of this article, no person may establish, operate, maintain, offer or advertise a nursing home, personal care home, or residential board and care home within this state unless and until he obtains a valid license therefor as hereinafter provided, which license remains unsuspended, unrevoked and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in any facility, as defined in section two of this article, which is being operated without a valid license from the director. The procedure for obtaining a license shall be as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the director,
containing such information as may be necessary to show that the applicant is in compliance with the standards for nursing homes, personal care homes, or residential board and care homes as established by this article and the rules and regulations lawfully promulgated by the board of health hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address and principal occupation (i) of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant, (ii) of each officer and director of a corporate applicant, (iii) of each trustee and beneficiary of an applicant which is a trust, and (iv) where a corporation has a proprietary interest of fifty percent or more in an applicant, the name, address and principal occupation of each officer and director of such corporation;

(3) The name and address of the owner of the premises of the facility or proposed facility, if he is a different person from the applicant, and in such case, the name and address (i) of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in such owner, (ii) of each officer and director of a corporate applicant, (iii) of each trustee and beneficiary of such owner if he is a trust, and (iv) where a corporation has a proprietary interest of fifty percent or more in such owner, the name and address of each officer and director of such corporation;

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

(5) The name and address of the facility or the premises of the proposed facility;

(6) The type of institution to be operated;

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

(8) (i) An organizational plan for the facility indicat-
ing the number of persons employed or to be employed,
the positions and duties of all employees, (ii) the name
and address of the individual who is to serve as
administrator, and (iii) such evidence of compliance
with applicable laws and regulations governing zoning,
bUILDINGS, SAtETY, fire prevention and sanitation as the
director may require;

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

(10) Assurances that the nursing home was reviewed
and found to be needed under the provisions of article
two-d of this chapter.

(b) Upon receipt and review of an application for
license made pursuant to subdivision (a) of this section,
and inspection of the applicant facility pursuant to
section ten of this article, the director shall issue a
license if he finds:

(1) That an individual applicant, and every partner,
trustee, officer, director and controlling person of an
applicant which is not an individual, be a person
responsible and suitable to operate or to direct or
participate in the operation of a facility by virtue of
financial capacity, appropriate business or professional
experience, a record of compliance with lawful orders
of the department (if any) and lack of revocation of a
license during the previous five years;

(2) That the facility be under the supervision of an
administrator who is qualified by training and expe-
rience: Provided, That every facility classified as a
nursing home shall have an administrator licensed
pursuant to the provisions of article twenty-five, chapter
thirty of this code; and

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

Any license granted by the director shall state the
maximum bed capacity for which it is granted, the date
the license was issued, the expiration date, and the rating assigned to the facility pursuant to section five of this article. Such licenses shall be issued for a period not to exceed fifteen months for nursing homes and for a period of not to exceed one year for personal care homes and residential board and care homes: Provided, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the state department of health in conformance with the provisions of this article and the rules and regulations issued thereunder, and prior to the expiration date of such license, shall continue in effect until (a) one year following the expiration date of such license, or (b) the date of the revocation or suspension of such license pursuant to the provisions of this article, or (c) the date of issuance of a new license, whichever date first occurs. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable: Provided, however, That in the case of the transfer of ownership of a facility with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director. Every license shall be posted in a conspicuous place in the facility for which it is issued so as to be accessible to and in plain view of all patients and visitors of the facility.

(c) An original license shall be renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee, and contingent upon evidence of compliance with the provisions of this article and regulations promulgated by the board of health hereunder. Any such application for renewal of a license shall include a report by the licensee in such form and containing such information as shall be prescribed by the director, including the following:

(1) A balance sheet of the facility as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation and similar accounts;
(2) A statement of operations of the facility for such licensing term, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

(3) A statement of any changes in the name, address, management or ownership information on file with the director. All holders of facility licenses as of the effective date of this article shall include, in the first application for renewal filed thereafter, such information as is required for initial applicants under the provisions of subsection (a) of this section.

(d) In the case of an application for a renewal license, if all requirements of section five of this article are not met, the director may in his discretion issue a provisional license, provided that care given in the facility is adequate to patient needs and the facility has demonstrated improvement and evidences potential for substantial compliance within the term of said license: Provided, That a provisional renewal may not be issued for a period greater than one year, shall not be renewed, and that no such license shall be issued to any facility with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article;

(e) A nonrefundable application fee in the amount of one hundred dollars for an original nursing home license or fifty dollars for an original personal care facility or residential board and care home license shall be paid at the time application is made for such license. Direct costs of initial licensure inspections or inspections for changes in licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of eight dollars per year per bed for nursing homes, and four dollars per bed per year for personal care homes, and two dollars per bed per year for residential board and care homes, except the annual rate per bed may be assessed for licenses issued for less than one year. The director may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license shall be deter-
mined by the director. All such license fees shall be due and payable to the director, annually, and in such manner set forth in the rules and regulations promulgated by the board of health. Such fee and application shall be submitted to the director who shall retain both the application and fee pending final action on the application. All fees received by the director under the provisions of this article shall be deposited in accordance with section thirteen, article one of this chapter.

§16-5C-9. Inspections.

The director and any duly designated employee or agent thereof shall have the right to enter upon and into the premises of any facility for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as a nursing home or personal care home without a license. If such entry is refused by the owner or person in charge of any such facility, the director shall apply to the circuit court of the county in which the facility is located or the circuit court of Kanawha County for a warrant authorizing inspection, and such court shall issue an appropriate warrant if it finds good cause for inspection.

The director, by the director's authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to section six of this article, and shall conduct periodic unannounced inspections thereafter, to determine compliance by the facility with applicable statutes and regulations promulgated thereunder. The state fire marshal, by his employees or authorized agents, shall make all fire, safety and like inspections: Provided, That in facilities with less than four beds, where all residents are capable of self-preservation, the state fire marshal shall not require sprinkler systems if such facilities conform with alternative fire safety measures as adopted by the state fire commission. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article.

§16-5C-17. Licenses and regulations in force.
All licenses for nursing homes and personal care homes which are in force on the first day of July, one thousand nine hundred eighty-eight, shall continue in full force and effect during the period for which issued unless sooner revoked as provided in this article.

All regulations in effect on the first day of July, one thousand nine hundred eighty-eight, which were adopted by the board relating to licensing nursing homes or personal care homes, shall remain in full force and effect until altered, amended or repealed by the board of health.

ARTICLE 5E. REGISTRATION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE FACILITIES.

§16-5E-2. Definitions.

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

(a) The term “consumer” means an individual who is provided services, whether or not for a fee, by a service provider, but consumer does not include a person receiving services provided by another who is related to him or her or the spouse thereof by blood or marriage, within the degree of consanguinity of second cousin;

(b) The term “director” means the director of the West Virginia state department of health or his designee;

(c) The term “nursing care” means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations; catheterization; special procedures contributing to rehabilitation; and administration of medication by any method prescribed by a physician which involves a level of complexity and skill in administration not possessed by the untrained person;

(d) The term “personal assistance” means personal services, including, but not limited to, the following:
Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or physical or mental impairment of the resident;

(c) The term “service provider” means the individual administratively responsible for providing to consumers for a period of more than twenty-four hours, whether for compensation or not, services of personal assistance for one or two consumers.

§16-5E-6. Enforcement; criminal penalties.

(a) Any service provider who fails to register with the director shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars or more than twenty-five hundred dollars or imprisoned in the county jail not less than ten days, or more than thirty days; Provided, That prior to the first day of July, one thousand nine hundred eighty-nine, no such penalty shall be imposed upon a service provider until thirty days after notice by certified mail by the director to such service provider at the requirements of this article.

(b) Any person who interferes with or impedes in any way the lawful enforcement of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars or more than twenty-five hundred dollars or imprisoned in the county jail not less than ten days, or more than thirty: Provided, That prior to the first day of July, one thousand nine hundred eighty-nine, no such penalty shall be imposed upon a service provider until thirty days after notice by certified mail by the director to such service provider at the requirements of this article.

(c) The director may in his discretion bring an action to enforce compliance with the provisions of this article.

(d) The circuit court of Kanawha County or the circuit court of the county in which the conduct occurred shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.
§16-5H-1. Definitions.

(a) The term "residential board and care home" means any residence or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations, personal assistance and supervision, for a period of more than twenty-four hours, to three to eight persons who are not related to the owner or manager by blood or marriage, within the degree of consanguinity of second cousin, and who are dependant upon the services of others by reason of physical or mental impairment, but who do not require nursing services and who are capable of self-preservation.

(b) The term "self-preservation" means that a person is, at least, capable of removing his or her physical self from situations involving imminent danger, such as fire.

§16-5H-2. License from director of health; application; regulations; revocation, assistance from department of human services.

No residential board and care home shall be established, maintained or operated unless a license therefor shall be first obtained from the director of health. The application for such license shall contain such data and facts as the director may reasonably require. The director may promulgate reasonable regulations for the operation of such facilities, and to carry out the requirements of this article, in accordance with the requirements of article three, chapter twenty-nine-a of this code. The director shall have the authority to investigate and inspect any such facility and may revoke the license of any such facility for good cause after notice and hearing. The department of human services shall cooperate with and assist the director of health in carrying out any requirements of this section, upon request of the director.

§16-5H-2A. Fire Protection.

Each residential board and care home shall install an
automatic fire sprinkler system which meets the
requirements of the national fire code standard thirteen-
d as adopted by the state fire commission: Provided,
That such systems shall not be required in homes with
four or less clients in residence where all such clients
all capable of self-preservation and the home conforms
with the alternative fire safety measures adopted by the
state fire commission for such homes. The requirements
of this section shall not be effective until the first day
of July, one thousand nine hundred and ninety.

§16-5H-3. Enforcement; criminal penalties; injunction.

(a) Whoever establishes, maintains or operates, or is
engaged in establishing, maintaining or operating a
residential board and care home without a license
granted under section two of this article, or who
prevents, interferes with or impedes in any way the
lawful enforcement of this article shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
punished for the first offense by a fine of not more than
one hundred dollars, or by imprisonment in the county
jail for a period of not more than ninety days, or by both
such fine and imprisonment, at the discretion of the
court. For each subsequent offense, the fine may be
increased to not more than two hundred fifty dollars,
with imprisonment in the county jail for a period of not
more than ninety days, or both such fine and imprison-
ment, at the discretion of the court. Each day of a
continuing violation after conviction shall be considered
a separate offense. No person shall be subject to
criminal liability under this section for establishing,
operation or maintaining a residential board and care
home without a license until the first day of January,
one thousand nine hundred eighty-nine: Provided, That
any person who files a complete license application with
the director for a residential board and care home
before the first day of January, one thousand nine
hundred eighty-nine, shall not be subject to any criminal
liability for establishing, operating or maintaining such
a home without a license until the first day of July, one
case one thousand nine hundred eighty-nine.

(b) The director may in his discretion bring an action
to enforce compliance with this article or any rule, regulation or order hereunder, whenever it shall appear to the director that any person has engaged in, or is engaging in, an act or practice in violation of this article, or any rule, regulation or order hereunder, or whenever it shall appear to the director that any person has aided, abetted or caused, or is aiding, abetting or causing such an act or practice: Provided, That no action to close such a home for operating without a license shall be taken until after the first day of January, one thousand nine hundred eighty-nine: Provided, however, That any person who files a complete application with the director for a residential board and care home before the first day of January, one thousand nine hundred eighty-nine, shall be permitted to operate such a home without a license until the first day of July, one thousand nine hundred eighty-nine. Upon application by the director, the circuit court of the county in which the conduct has occurred or the circuit court of Kanawha County shall have jurisdiction to grant, without bond, a permanent or temporary injunction, decree or restraining order.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within 28th day of , 1988.

Governor