WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

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ENROLLED

HOUSE BILL No. 2776

(By Delegates Douglas and Compton )

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Passed __________________________ April 12, __________________________ 1997

In Effect __________________________ Ninety Days From __________________________ Passage
ENROLLED

H. B. 2776

(By Delegates Douglas and Compton)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and eighteen, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine-a; to amend said chapter by adding thereto a new article, designated article five-d; to amend and reenact sections one, two, three, five and six, article five-e of said chapter; to further amend said article by adding thereto a new section, designated section one-a; and to amend and reenact article five-h of said chapter, all relating to the licensure of nursing homes, personal care homes and residential board and care homes; requiring the registration of and authorizing the inspection of legally unlicensed health care homes; stating the purposes; defining terms; specifying the powers and duties of the director of the division of health; authorizing administrative and inspection staff; authorizing the proposal of legislative rules and requiring rules establishing minimum standards of operation; requiring licenses; establishing fees; requiring cost disclosure and surety for residents’ funds; investigating complaints; inspecting and reporting of inspections; requiring plans of correction; assessing penalties and attorneys’ costs and using funds derived therefrom; providing the opportunity for hearings; limiting suspending and revoking licenses; banning admissions; continuing disciplinary proceedings; closing homes and transferring
residents; appointing temporary management; assessing interest; collecting assessments; allowing administrative appeals and judicial review; providing legal counsel; specifying unlawful acts; providing for civil and criminal penalties, injunctions and private rights of action; making available inspection reports and records; making a registry of service providers available to the public; continuing licenses and rules; and establishing requirements for accounting for residents' personal funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. NURSING HOMES.

§16-5C-1. Purpose.

It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective and financially efficient care and treatment of persons who are convalescing or whose physical or mental condition requires them to receive a degree of nursing or related health care greater than that necessary for well individuals. Such care and treatment require a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental
nursing homes it is the policy of this state to encourage,
17 promote and require the maintenance of nursing homes so
18 as to ensure protection of the rights and dignity of those
19 using the services of such facilities.

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

§16-5C-2. Definitions.

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

3 (a) "Deficiency" means a nursing home's failure to
4 meet the requirements specified in article five-c, chapter
5 sixteen of this code and rules promulgated thereunder.

6 (b) "Director" means the secretary of the
7 department of health and human resources or his or her
8 designee.

9 (c) "Household" means a private home or residence
10 which is separate from or unattached to a nursing home.

11 (d) "Immediate jeopardy" means a situation in
12 which the nursing home's noncompliance with one or
13 more of the provisions of this article or rules promulgated
14 thereunder has caused or is likely to cause serious harm,
15 impairment or death to a resident.

16 (e) "Nursing home" or "facility" means any
17 institution, residence or place, or any part or unit thereof,
18 however named, in this state which is advertised, offered,
19 maintained or operated by the ownership or management,
20 whether for a consideration or not, for the express or
21 implied purpose of providing accommodations and care,
22 for a period of more than twenty-four hours, for four or
23 more persons who are ill or otherwise incapacitated and in
24 need of extensive, ongoing nursing care due to physical or
25 mental impairment or which provides services for the
26 rehabilitation of persons who are convalescing from illness
27 or incapacitation.

28 The care or treatment in a household, whether for
29 compensation or not, of any person related by blood or
marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article. Nothing contained in this article applies to nursing homes operated by the federal government; or extended care facilities operated in conjunction with a hospital; 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 to homes or asylums operated by fraternal orders pursuant to article three, chapter thirty-five of this code.

(f) "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 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) "Resident" means an individual living in a nursing home.

(h) "Review organization" means any committee or organization engaging in peer review or quality assurance, including, but not limited to, a medical audit committee, a health insurance review committee, a professional health service plan review committee or organization, a dental review committee, a physician's advisory committee, a podiatry advisory committee, a nursing advisory committee, any committee or organization established pursuant to a medical assistance program, any committee or organization established or required under state or federal statutes, rules or regulations, and any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of residents for the purposes of: (1) Evaluating and improving the quality of health care rendered; (2) reducing morbidity or mortality;
or (3) establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care.

(i) “Sponsor” means the person or agency legally responsible for the welfare and support of a resident.

(j) “Person” means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state.

(k) “Substantial compliance” means a level of compliance with the rules such that no deficiencies exist or such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

The director may define in the rules 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 and standards promulgated hereunder for nursing homes;

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

(c) To enforce rules promulgated hereunder governing the qualification of applicants for nursing 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 division of health by the Legislature;
(f) To receive and disburse for purposes authorized
by this article, any funds that may come to the division of
health by gift, grant, donation, bequest or devise,
according to the terms thereof, as well as funds derived
from the division 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 for clinical, administrative,
management and operational personnel;

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

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

(l) To inspect any nursing home and any records
maintained therein that are necessary to determine
compliance with licensure laws or medicare or medicaid
certification, subject to the provisions of section ten of this
article;

(m) 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
rules issued hereunder;

(n) 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 for an order compelling
compliance;

(o) 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 rules issued
hereunder. Such action may be taken by the director
without the sanction of the prosecuting attorney of the
county in which proceedings are instituted, if the officer
fails or refuses to discharge his or her duty. The circuit
court of the county in which the conduct has occurred or,
if emergency circumstances require, the circuit court of
Kanawha County shall have jurisdiction in all civil
enforcement actions brought under this article and may
order equitable relief without bond. In no such case may
the director or any person acting under the director's
direction be required to give security for costs;

(p) 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;

(q) To submit an annual report to the governor, the
Legislature and the public sixty days before the governor
is required to submit an annual budget report to the
Legislature. 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 effect the rights, health or welfare of residents
of nursing homes. The annual report shall include a list
of all nursing homes in the state, whether such homes are
proprietary or nonproprietary; the name of the owner or
owners; the total number of beds; the number of private
and semiprivate rooms; the costs per diem for private
residents; the number of full-time employees and their
professions; recreational programs; services and programs
available as well as the costs thereof; and whether or not
those nursing homes listed accept medicare and medicaid
residents. The report shall also contain the department's
recommendations as to changes in law or policy which it
§16-SC-4. Administrative and inspection staff.

The director may, at such time or times as he or she may deem necessary, employ such administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the department shall be members of the state civil service system and surveyors shall be trained to perform their assigned duties. Such inspectors and other employees as may be duly designated by the director shall act as the director’s representatives and, under the direction of the director, shall enforce the provisions of this article and all duly promulgated regulations and, in the discharge of official duties, shall have the right of entry into any place maintained as a nursing home.

§16-5C-5. Rules; minimum standards for nursing homes.

(a) All rules shall be proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The director shall recommend the adoption, amendment or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this article.

(b) The director shall recommend rules establishing minimum standards of operation of nursing homes including, but not limited to, the following:

(1) Administrative policies, including: (A) An affirmative statement of the right of access to nursing
homes by members of recognized community
organizations and community legal services programs
whose purposes include rendering assistance without
charge to residents, consistent with the right of residents to
privacy; and (B) a statement of the rights and
responsibilities of residents in nursing homes which
prescribe, as a minimum, such a statement of
residents’ rights as included in the United States
department of health and human services regulations, in
force on the effective date of this article, governing
participation of nursing homes in the medicare and
medicaid programs pursuant to titles eighteen and
nineteen of the Social Security Act;

(2) Minimum numbers of administrators, medical
directors, nurses, aides and other personnel according to
the occupancy of the facility;

(3) Qualifications of facility's administrators, medical
directors, nurses, aides, and other personnel;

(4) Safety requirements;

(5) Sanitation requirements;

(6) Personal services to be provided;

(7) Dietary services to be provided;

(8) Medical records;

(9) Social and recreational activities to be made
available;

(10) Pharmacy services;

(11) Nursing services;

(12) Medical services;

(13) Physical facility;

(14) Resident rights; and

(15) Admission, transfer and discharge rights.
§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 within this state unless and until he or she 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 nursing home, 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 is 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, as established by this article and the rules lawfully promulgated 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: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of an applicant which is a trust; and (D) where a corporation has a proprietary interest of twenty-five percent or more in an applicant, the name, address and principal occupation of each officer and director of the corporation;
3. The name and address of the owner of the premises of the nursing home or proposed nursing home, if he or she is a different person from the applicant, and in such case, the name and address: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the owner; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of the owner if it is a trust; and (D) where a
corporation has a proprietary interest of twenty-five percent or more in the owner, the name and address of each officer and director of the corporation;

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

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

(6) A description of the nursing home to be operated;

(7) The bed quota of the nursing home as determined by the health care cost review authority;

(8) (A) An organizational plan for the nursing home indicating the number of persons employed or to be employed and the positions and duties of all employees; (B) the name and address of the individual who is to serve as administrator; and (C) such evidence of compliance with applicable laws, and rules governing zoning, buildings, safety, fire prevention and sanitation as the director may require;

(9) A listing of other states in which the applicant owns, operates or manages a nursing home or long term care facility;

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

(11) Assurances that the nursing home is in compliance with 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 nursing home pursuant to section ten of this article, the director shall issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director and controlling person of an
applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a nursing home 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 or consistent poor performance in other states;

(2) That the facility is under the supervision of an administrator who is 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 may be established by rule 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 and the expiration date. Such licenses shall be issued for a period not to exceed fifteen months for nursing homes: Provided, That any license in effect for which timely application for renewal, together with payment of the proper fee has been made to the director in conformance with the provisions of this article and the rules issued thereunder, and prior to the expiration date of the license, shall continue in effect until: (A) Six months following the expiration date of the license; or (B) the date of the revocation or suspension of the 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 is not transferable or assignable: Provided, however, That in the case of the transfer of ownership of a facility with an unexpired license, the application by the proposed new owner shall be filed with the director no later than thirty days before the proposed date of transfer. Upon receipt of proof of the transfer of ownership, the application shall have the effect of a license for three months. The director shall issue or deny a license within three months of the receipt of the proof of the transfer of ownership. Every license shall be posted in
a conspicuous place in the nursing home for which it is issued so as to be accessible to and in plain view of all residents of and visitors to the nursing home.

(c) A license is 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 rules promulgated hereunder. Any 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 nursing home 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 nursing home as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

(3) If a nursing home is in compliance with the requirements of the health care facility financial disclosure act, as provided in article five-f, chapter sixteen of this code, it will be considered to have met the requirements established in subdivisions (1) and (2) of this subsection.

(4) 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 at his or her discretion issue a provisional license, provided that care given in the nursing home is adequate for resident needs and the nursing home has demonstrated improvement and evidences
potential for substantial compliance within the term of the license: Provided, That a provisional license may not be issued for a period greater than six months, may not be renewed, and may not be issued to any nursing home that is a poor performer.

(e) A nonrefundable application fee in the amount of two hundred dollars for an original nursing home license shall be paid at the time application is made for the 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 fifteen dollars per bed per year for nursing homes, except the annual rate per bed may be assessed for licenses issued for less than fifteen months. Annually, the director may adjust the licensure fees for inflation based upon the increase in the consumer price index during the last twelve months. All such license fees shall be due and payable to the director, annually, and in the manner set forth in the rules promulgated hereunder. The 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-7. Cost disclosure; surety for resident funds.

(a) Each nursing home shall disclose in writing to all residents at the time of admission a complete and accurate list of all costs which may be incurred by them; and shall notify the residents thirty days in advance of changes in costs. The nursing home shall make available copies of the list in the nursing home’s business office for inspection. Residents may not be liable for any cost not so disclosed.

(b) If the nursing home handles any money for residents within the facility, the licensee or his or her authorized representative shall either: (1) Give a bond; or (2) obtain and maintain commercial insurance with a
company licensed in this state in an amount consistent
with this subsection and with the surety as the director
shall approve. The bond or insurance shall be upon
condition that the licensee shall hold separately and in
trust all residents' funds deposited with the licensee, shall
administer the funds on behalf of the resident in the
manner directed by the depositor, shall render a true and
complete account to the depositor and the director when
requested, and at least quarterly to the resident, and upon
termination of the deposit, shall account for all funds
received, expended, and held on hand. The licensee shall
file a bond or obtain insurance in a sum at least one and
twenty-five one-hundredths the average amount of funds
deposited with the nursing home during the nursing
home's previous fiscal year.

This insurance policy shall specifically designate the
resident as the beneficiary or payee reimbursement of lost
funds. Regardless of the type of coverage established by
the facility, the facility shall reimburse, within thirty days,
the resident for any losses directly and seek
reimbursement through the bond or insurance itself.
Whenever the director determines that the amount of any
bond or insurance required pursuant to this subsection is
insufficient to adequately protect the money of residents
which is being handled, or whenever the amount of any
such bond or insurance is impaired by any recovery
against the bond or insurance, the director may require the
licensee to file an additional bond or insurance in such
amount as necessary to adequately protect the money of
residents being handled.

The provisions of this subsection do not apply if the
licensee handles less than thirty-five dollars per resident
per month in the aggregate.

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

The director shall establish rules for prompt
investigation of all complaints of alleged violations by
nursing homes of applicable requirements of state law or
rules, except for such complaints that the director
determines are willfully intended to harass a licensee or
are without any reasonable basis. Such procedures shall
include provisions for ensuring the confidentiality of the complainant and for promptly informing the complainant and the nursing home involved of the results of the investigation.

If, after its investigation, the director determines that the complaint has merit, the director shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy.

No nursing home may discharge or in any manner discriminate against any resident, legal representative or employee for the reason that the resident, legal representative or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any nursing home constitutes ground for the suspension or revocation of the license of the nursing home as provided in section eleven of this article. Any type of discriminatory treatment of a resident, legal representative or employee by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within one hundred twenty days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the nursing home in retaliation for such complaint or action.

§16-5C-9. Inspections.

(a) The director and any duly designated employee or agent shall have the right to enter upon and into the premises of any nursing home at any time 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 without a license. If entry is refused by the owner or person in charge of the nursing home, the director may apply to the circuit court of the county in which the nursing home is located or the circuit court of Kanawha County for a warrant authorizing inspection to conduct the following inspections:

(1) An initial inspection prior to the issuance of a license pursuant to section six of this article;
(2) A license inspection for a nursing home, which shall be conducted at least once every fifteen months, if the nursing home has not applied for and received an exemption from the requirement as provided for in this section;

(3) 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 nursing home with applicable rules promulgated thereunder. All facilities shall comply with regulations of the state fire commission. The state fire marshal, by his employees or authorized agents, shall make all fire, safety and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article. If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and serious threat to a consumer's health or safety exists, the director may invoke any remedies available pursuant to section eleven of this article. Any nursing home aggrieved by a determination or assessment made pursuant to this section, shall have the right to an administrative appeal as set forth in section twelve of this article;

(4) A complaint inspection based on a complaint received by the director. If, after investigation of a complaint, the director determines that the complaint is substantiated, the director may invoke any applicable remedies available pursuant to section eleven of this article.

§16-5C-9a. Exemptions.

(a) The director may grant an exemption from a license inspection if a nursing home was found to be in substantial compliance with the provisions of this chapter at its most recent inspection and there have been no substantiated complaints thereafter. The director may not grant more than one exemption in any two-year period.
(b) The director may grant an exemption to the extent allowable by federal law from a standard survey, only if the nursing home was found to be in substantial compliance with certification participation requirements at its previous standard survey and there have been no substantiated complaints thereafter.

(c) The director may grant an exemption from periodic license inspections if a nursing home receives accreditation by an accrediting body approved by the director and submits a complete copy of the accreditation report. The accrediting body shall identify quality of care measures that assure continued quality care of residents. The director may not grant more than one exemption in any two-year period.

(d) If a complaint is substantiated, the director has the authority to immediately remove the exemption.

§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to section nine of this article shall be in writing and filed with the director, and shall list all deficiencies in the nursing home’s compliance with the provisions of this article and the rules adopted hereunder. The director shall send a copy of such report to the nursing home and shall specify a time within which the nursing home shall submit a plan for correction of such deficiencies. The plan shall be approved, rejected or modified by the director. The surveyors or the nursing home shall allow audio taping of the exit conference with the expense to be paid by the requesting party.

(b) With regard to a nursing home with deficiencies and upon its failure to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article: Provided, That any action by the director shall be stayed until
federal proceedings arising from the same deficiencies are concluded.

(c) Nothing in this section may be construed to prohibit the director from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, the violation of the rule jeopardizes the health or safety of residents, or where the violation of the rule is the second or subsequent such violation occurring during a period of twelve full months.

(d) Civil penalties assessed against nursing homes shall not be less than fifty nor more than eight thousand dollars: Provided, That the director may not assess a penalty under state licensure for the same deficiency or violation cited under federal law and may not assess a penalty against a nursing home if the nursing home corrects the deficiency within twenty days of receipt of written notice of the deficiency unless it is a repeat deficiency or the nursing home is a poor performer.

(e) In determining whether to assess a penalty, and the amount of penalty to be assessed, the director shall consider:

(1) How serious the noncompliance is in relation to direct resident care and safety;

(2) The number of residents the noncompliance is likely to affect;

(3) Whether the noncompliance was noncompliance during a previous inspection;

(4) The opportunity the nursing home has had to correct the noncompliance; and

(5) Any additional factors that may be relevant.

(f) The range of civil penalties shall be as follows:

(1) For a deficiency which presents immediate jeopardy to the health, safety or welfare of one or more residents, the director may impose a civil penalty of not
less than three thousand nor more than eight thousand dollars;

(2) For a deficiency which actually harms one or more residents, the director may impose a civil penalty of not less than one thousand nor more than three thousand dollars;

(3) For a deficiency which has the potential to harm one or more residents, the director may impose a civil penalty of not less than fifty nor more than one thousand dollars;

(4) For a repeated deficiency, the director may impose a civil penalty of up to one hundred fifty percent of the penalties provided in subdivisions (1), (2) and (3) of this subsection; and

(5) If no plan of correction is submitted as established in this rule, a penalty may be assessed in the amount of one hundred dollars a day unless a reasonable explanation has been provided and accepted by the director.

(g) The director shall assess a civil penalty of not more than one thousand dollars against an individual who willfully and knowingly certifies a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment. The director shall impose a civil penalty of not more than five thousand dollars against an individual who willfully and knowingly causes another individual to certify a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment.

(h) The director shall assess a civil penalty of not more than two thousand dollars against any individual who notifies, or causes to be notified, a nursing home of the time or date on which an inspection is scheduled to be conducted under this article or under titles eighteen or nineteen of the federal Social Security Act.

(i) If the director assesses a penalty under this section, the director shall cause delivery of notice of such
penalty by personal service or by certified mail. Said
notice shall state the amount of the penalty, the action or
circumstance for which the penalty is assessed, the
requirement that the action or circumstance violates, and
the basis upon which the director assessed the penalty and
selected the amount of the penalty.

(j) The director shall, in a civil judicial proceeding,
recover any unpaid assessment which has not been
contested under section twelve of this article within thirty
days of receipt of notice of such assessment, or which has
been affirmed under the provisions of that section and not
appealed within thirty days of receipt of the director's final
order, or which has been affirmed on judicial review, as
provided in section thirteen of this article. All money
collected by assessments of civil penalties or interest shall
be paid into a special resident benefit account and shall be
applied by the director for: (1) The protection of the
health or property of facility residents; (2) long term care
educational activities; (3) the costs arising from the
relocation of residents to other nursing homes when no
other funds are available; and (4) in an emergency
situation in which there are no other funds available, the
operation of a facility pending correction of deficiencies
or closure.

(k) The opportunity for a hearing on an action taken
under this section shall be as provided in section twelve of
this article.

§16-5C-11. License limitation, suspension, revocation; con­
tinuation of disciplinary proceedings; closure,
transfer of residents, appointment of temporary
management; assessment of interest; collection
of assessments; promulgation of rules to
conform with federal requirements; hearings.

(a) The director may reduce the bed quota of the
nursing home or impose a ban on new admissions, where
he or she finds upon inspection of the nursing home that
the licensee is not providing adequate care under the
nursing home's existing bed quota, and that reduction in
quota or ban on new admissions, or both, would place the
licensee in a position to render adequate care. A
reduction in bed quota or a ban on new admissions, or both, may remain in effect until the nursing home is determined by the director to be in substantial compliance with the rules. In addition, the director shall determine that the facility has the management capability to ensure continued substantial compliance with all applicable requirements. The director shall evaluate the continuation of the admissions ban or reduction in bed quota on a continuing basis, and may make a partial lifting of the admissions ban or reduction in bed quota consistent with the purposes of this section. If the residents of the facility are in immediate jeopardy of their health, safety, welfare or rights, the director may seek an order to transfer residents out of the nursing home as provided for in subsection (e) of this section. Any notice to a licensee of reduction in bed quota or a ban on new admissions shall include the terms of such order, the reasons therefor, and a date set for compliance.

(b) The director may suspend or revoke a license issued under this article or take other action as set forth in this section, if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) Whenever a license is limited, suspended or revoked pursuant to this section or the director imposes other action set forth in this section, the director shall file a complaint stating facts constituting a ground or grounds for such limitation, suspension or revocation or other action. Upon the filing of the complaint, the director shall notify the licensee in writing of the filing of the complaint within twenty days of exit conference, enclosing a copy of the complaint, and shall advise the licensee of the availability of a hearing pursuant to section twelve of this article. Such notice and copy of the complaint shall be served on such licensee by certified mail, return receipt requested.

(d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director, or the withdrawal of an
application for a license after it has been filed with the
director, may not deprive the director of the director's
authority to institute or continue a disciplinary
proceeding, or a proceeding for the denial of a license
application, against the licensee or applicant upon any
ground provided by law or to enter an order denying the
license application or suspending or revoking the license
or otherwise taking disciplinary action on any such
ground.

(e) In addition to other remedies provided in this
article, upon petition from the director, a circuit court in
the county in which a facility is located, or in Kanawha
County if emergency circumstances occur, may
determine that a nursing home’s deficiencies under this
article, or under titles eighteen or nineteen of the federal
Social Security Act, if applicable, constitute an emergency
immediately jeopardizing the health, safety, welfare or
rights of its residents, and issue an order to:

(1) Close the nursing home;
(2) Transfer residents in the nursing home to other
nursing homes; or
(3) Appoint temporary management to oversee the
operation of the facility and to assure the health, safety,
welfare and rights of the facility’s residents, where there is
a need for temporary management while:

(A) There is an orderly closure of the facility, or
(B) Improvements are made in order to bring the
nursing home into compliance with all the applicable
requirements of this article and, if applicable, titles
eighteen and nineteen of the federal Social Security Act.

If the director petitions a circuit court for the closure
of a nursing home, the transfer of residents, or the
appointment of temporary management, the circuit court
shall hold a hearing no later than seven days thereafter, at
which time the director and the licensee or operator of the
facility may participate and present evidence. The burden
of proof is on the director.
A circuit court may divest the licensee or operator of possession and control of a nursing home in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the nursing home, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home or to repair or improve the nursing home so as to return it to compliance with applicable requirements, and the power to receive, conserve and expend funds, including medicare, medicaid and other payments on behalf of the licensee or operator of the nursing home. Priority shall be given to expenditures for current direct resident care or the transfer of residents. Expenditures other than normal operating expenses totaling more than twenty thousand dollars shall be approved by the circuit court.

The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home which existed or originated prior to his or her appointment and is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the nursing home during his or her temporary management. All compensation and per diem costs of the temporary manager shall be paid by the nursing home. The costs for the temporary manager for any thirty-day period may not exceed the seventy-fifth percentile of the allowable administrators salary as reported on the most recent cost report for the nursing home’s peer group as determined by the director. The temporary manager shall bill the nursing home for compensation and per diem costs. Within fifteen days of receipt of the bill, the nursing home shall pay the bill or contest the costs for which it was billed to the court. Such costs shall be recoverable through recoupment from future reimbursement from the state medicaid agency in the same fashion as a benefits overpayment.
The temporary management shall promptly employ at least one person who is licensed as a nursing home administrator in West Virginia.

A temporary management established for the purpose of making improvements in order to bring a nursing home into compliance with applicable requirements may not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the nursing home shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the nursing home.

(f) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per annum beginning thirty days after receipt of notice of such assessment or thirty days after receipt of the director's final order following a hearing, whichever is later. All such assessments against a nursing home that are unpaid shall be added to the nursing home's licensure fee and may be filed as a lien against the property of the licensee or operator of the nursing home. Funds received from such assessments shall be deposited as funds received in section ten of this article.

(g) The director may propose additional rules and emergency rules that expand the power of the director in excess of that provided in this article to the extent required to comply with federal requirements, but any such rules shall expand the power of the director to the minimum extent required by federal requirements. Such rules are subject to the provisions of article three, chapter twenty-nine-a of this code.
(h) The opportunity for a hearing on an action by the director taken under this section shall be as provided in section twelve of this article.

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

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article shall have the opportunity to request an informal and formal hearing at which the licensee or applicant may contest such order as contrary to law or unwarranted by the facts or both. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing and the administrative procedures in connection with any formal hearing.

The director may impose the following prior to or during the pendency of a hearing:

(1) A reduction in the bed quota pursuant to section eleven of this article;

(2) Transfer of residents and a ban on new admissions pursuant to section eleven of this article.

(b) Informal hearings shall be held within twenty working days of the director’s receipt of timely request for appeal, unless the licensee or applicant aggrieved by the order consents to a postponement or continuance. In no event may the informal hearing occur more than thirty business days after the director receives timely request for appeal. At the informal hearing, neither the licensee or applicant nor the director may be represented by an attorney. Within ten days of the conclusion of the informal hearing, the director shall issue an informal hearing order, including a basis for the decision.

(c) If the applicant or licensee requested a formal hearing only, the director and the licensee shall proceed in accordance with the provisions of the department of health rules of procedure for contested case hearings and declaratory rulings. If the applicant or licensee also requested an informal hearing and if the order is not favorable to the applicant or licensee, the director shall
notify the administrative hearing examiner of the request for an appeal within five business days of issuing the informal hearing order.

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

(a) Legal counsel and services for the director in all administrative hearings may be provided by the attorney general or a staff attorney and all proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general, or his or her assistants, or an attorney employed by the director in proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

(b) The governor may appoint counsel for the director, who shall perform such legal services in representing the interests of residents in nursing homes in matters under the jurisdiction of the director as the governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the governor.

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

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a nursing home without a license granted under section six 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 or regional 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 or regional jail for a period of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.
(b) The director may in his or her discretion bring an action to enforce compliance with this article or any rule 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 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. Upon application by the director, the circuit court of the county in which the conduct has occurred or is occurring, or if emergency circumstances occur, the circuit court of Kanawha County, shall have jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.

Whenever the director shall have refused to grant or renew a license, or shall have revoked a license required by law to operate or conduct a nursing home, or shall have ordered a person to refrain from conduct violating the rules of the director, and the person deeming himself or herself aggrieved by such refusal or revocation or order shall have appealed the action of the director, the court may, during pendency of such appeal, issue a restraining order or injunction upon proof that the operation of the nursing home or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the nursing home. Should a person who is refused a license or the renewal of a license to operate or conduct a nursing home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the director, fail to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a nursing home without a license as required by law, or has continued to violate the rules of the director.

(c) Any nursing home that deprives a resident of any right or benefit created or established for the well-being of this resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of such deprivation. Upon a finding
that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of such deprivation, and unless there is a finding that the nursing home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for such injury. In addition, where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies may not be required prior to commencement of suit hereunder.

The amount of damages recovered by a resident, in an action brought pursuant to this section, shall be exempt for purposes of determining initial or continuing eligibility for medical assistance under article four, chapter nine of this code, and may neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available under said article.

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

(d) The penalties and remedies provided in this section are cumulative and shall be in addition to all other penalties and remedies provided by law.

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

The director shall make available for public inspection and at a nominal cost provide copies of all inspections and other reports of nursing homes filed with or issued by the director. Nothing contained in this section may be construed or deemed to allow the public disclosure of confidential medical, social, personal or financial records of any resident. The director shall adopt
such rules as may be necessary to give effect to the
provisions of this section and to preserve the
confidentiality of medical, social, personal or financial
records of residents.

§16-SC-17. Licenses and rules in force.

All licenses for nursing homes which are in force on
the first day of July, one thousand nine hundred ninety-
five, shall continue in full force and effect during the
period for which issued unless sooner revoked as provided
in this article.

All rules in effect on the first day of July, one
thousand nine hundred ninety-five, which were adopted
by the director relating to licensing nursing homes shall
remain in full force and effect until altered, amended or
repealed by the director.

§16-SC-18. Separate accounts for residents’ personal funds;
consent for use; records; penalties.

(a) Each nursing home subject to the provisions of
this article shall hold in a separate account and in trust
each resident’s personal funds deposited with the nursing
home.

(b) No person may use or cause to be used for any
purpose the personal funds of any resident admitted to
any such nursing home unless consent for the use thereof
has been obtained from the resident or from a committee
or guardian or relative.

(c) Each nursing home shall maintain a true and
complete record of all receipts for any disbursements
from the personal funds account of each resident in the
nursing home, including the purpose and payee of each
disbursement, and shall render a true account of such
record to the resident or his or her representative upon
demand and upon termination of the resident’s stay in the
nursing home.

(d) Any person or corporation who violates any
subsection of this section is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not more than one
thousand dollars, or imprisoned in jail not more than one year, or both fined and imprisoned.

(e) Reports provided to review organizations are confidential unless inaccessibility of information interferes with the director’s ability to perform his or her oversight function as mandated by federal regulations and this section.

ARTICLE 5D. PERSONAL CARE HOMES.

§16-5D-1. Purpose.

It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental personal care homes it is the policy of this state to encourage, promote and require the maintenance of personal care homes so as to ensure protection of the rights and dignity of those using the services of personal care homes.

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

§16-5D-2. Definitions.

As used in this article, unless a different meaning appears from the context:
(a) "Deficiency" means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

(b) "Department" means the state department of health and human resources;

(c) "Director" means the secretary of the department of health and human resources or his or her designee;

(d) "Division" means the bureau for public health of the state department of health and human resources;

(e) "Limited and intermittent nursing care" means direct hands on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than ninety consecutive days per episode. This care may only be provided when the need for such care meets these factors: (1) The resident requests to remain in the personal care home; (2) the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for such care is the result of a medical pathology or a result of the normal aging process. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules proposed by the secretary for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(f) "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 which involves a level of complexity and skill in administration not possessed by the untrained person;

(g) "Person" means an individual and every form of organization, whether incorporated or unincorporated,
including any partnership, corporation, trust, association or political subdivision of the state;

(h) "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;

(i) "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 and supervision, for a period of more than twenty-four hours, to four or more persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: Provided, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the personal care home has a backup power generator: Provided, however, 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 consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a personal care home within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under section one, article five-b of this chapter; or state institutions, as defined under section three, article one, chapter twenty-five of this code or section six, article one, chapter twenty-seven of this code; or personal care homes operated by the federal government or the state; 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 to homes or asylums operated by fraternal orders pursuant to article three, chapter thirty-five of this code;
(j) "Resident" means an individual living in a personal care home for the purpose of receiving personal assistance or limited and intermittent nursing services from the home;

(k) "Secretary" means the secretary of the state department of health and human resources or his or her designee; and

(l) "Substantial compliance" means a level of compliance with the rules such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

The secretary may define in rules any term used herein which is not expressly defined.

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

In the administration of this article, the director has the following powers, duties and rights:

(a) To enforce rules and standards for personal care homes; which are adopted, promulgated, amended or modified by the secretary;

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

(c) To enforce rules adopted, promulgated, amended or modified by the secretary governing the qualification of applicants for personal 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 federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated for the division by the Legislature;
(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from the division'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 personal care homes' administrative, management and operational personnel;

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

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

(l) To inspect any personal care home and any records maintained therein, subject to the provisions of section ten of this article;

(m) 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 rules issued hereunder, by the secretary;

(n) 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;

(o) To make complaint or cause proceedings to be instituted against any person for the violation of the provisions of this article or of rules issued hereunder, by the secretary. Such action may be taken by the director without the sanction of the prosecuting attorney of the county in which proceedings are instituted, if the prosecuting attorney fails or refuses to discharge his or her 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 may the director or any person acting under the director’s direction be required to give security for costs;

(p) 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; and

(q) To submit an annual report to the governor, the Legislature and the public. The report shall describe the personal care home licensing and investigatory activities of the division during the year, and the nature and status of other activities of the division, 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 residents of personal care homes. The annual report shall include a list of all personal care homes in the state and such of the following information as the director determines to apply: Whether the homes are proprietary or nonproprietary; the classification of each 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 residents; the number of full-time employees and their professions; recreational programs; services and programs available as well as the costs thereof; and whether or not those personal care homes listed accept medicare and medicaid residents. The report shall also contain the division’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 residents of personal care homes in the state.

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

The director may, as he or she determines necessary, employ administrative employees, inspectors or other persons as may be necessary to properly carry out the provisions of this article. All employees of the division shall be members of the state civil service system. Such inspectors and other employees as may be duly designated by the director shall act as the director's representatives and, under the direction of the director, shall enforce the provisions of this article and all duly promulgated rules of the secretary and, in the discharge of official duties, shall have the right of entry into any place maintained as a personal care home at any time.

§16-5D-5. Rules; minimum standards for personal care homes.

(a) All rules shall be approved by the secretary and proposed in the manner provided by the provisions of article three, chapter twenty-nine-a of this code. The secretary shall adopt, amend or repeal such rules 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 secretary shall propose rules establishing minimum standards of operation of personal care homes including, but not limited to, the following:

(1) Administrative policies, including: (A) An affirmative statement of the right of access to personal care homes by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (B) a statement of the rights and responsibilities of residents;
(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 personal care home;

(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;

(9) Physical facilities;

(10) Requirements related to provision of limited and intermittent nursing; and

(11) Such other categories as the secretary determines to be appropriate to ensure resident's health, safety and welfare.

(c) The secretary shall include in rules 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: (1) Class I standards are standards the violation of which, as the secretary determines, would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result; (2) Class II standards are standards which the secretary determines have a direct or immediate relationship to the health, safety or welfare of any resident, but which do not create imminent danger; (3) Class III standards are standards which the secretary determines have an indirect or a potential impact on the health, safety or welfare of any resident.

(d) A personal care home must attain substantial compliance with standards established pursuant to section
five of this article, and such other requirements for a license as may be established by rule under this article.

§16-5D-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 personal care home within this state unless and until he or she obtains a valid license therefor as provided in this article, 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 personal care home, 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 personal care homes as established by this article and the rules lawfully promulgated by the secretary 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:
(A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of an applicant which is a trust; and (D) where a corporation has a proprietary interest of twenty-five percent or more in an applicant, the name, address and principal occupation of each officer and director of the corporation;

(3) The name and address of the owner of the premises of the personal care home or proposed personal care home, if he or she is a different person from the applicant, and in such case, the name and address: (A) Of
(4) Where the applicant is the lessee or the assignee of the personal care home or the premises of the proposed personal care home, a signed copy of the lease and any assignment thereof;

(5) The name and address of the personal care home or the premises of the proposed personal care home;

(6) The proposed bed quota of the personal care home and the proposed bed quota of each unit thereof;

(7) (A) An organizational plan for the personal care home indicating the number of persons employed or to be employed, the positions and duties of all employees; (B) the name and address of the individual who is to serve as administrator; and (C) such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention and sanitation as the director may require; and

(8) Such additional information as the director may require.

(b) Upon receipt and review of an application for license made pursuant to subsection (a) of this section, and inspection of the applicant personal care home pursuant to section ten of this article, the director shall issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director and controlling person of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a personal care home 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 personal care home is under the
supervision of an administrator who is qualified by
training and experience; or

(3) That the personal care home is in substantial
compliance with standards established pursuant to section
five of this article, and such other requirements for a
license as the secretary may establish by rule under this
article.

The director may deny an initial or renewal license if
the information provided in an application or report is
known by the applicant to be false, or the applicant fails to
report required information, or for any other reason
permitted by law or rules promulgated pursuant to 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, and the expiration date. Licenses shall
be issued for a period not to exceed one year for personal
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
division of health in conformance with the provisions of
this article and the rules issued thereunder, and prior to the
expiration date of the license, shall continue in effect until:
(A) One year following the expiration date of the license;
or (B) the date of the revocation or suspension of the
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 is not
transferable or assignable: Provided, however, That in the
case of the transfer of ownership of a personal care home
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
personal care home for which it is issued so as to be
accessible to and in plain view of all residents and visitors of the personal care home.

(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 rules promulgated by the secretary hereunder; the application shall be accompanied by the information required in subdivisions (1), (2) and (3) of this subsection.

1. A balance sheet of the personal care home 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 personal care home as of the end of its fiscal year, 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.

(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 or her discretion issue a provisional license, provided that care given in the personal care home is adequate for resident needs and the personal care home has demonstrated improvement and evidences potential for substantial compliance within the term of the license: Provided, That a provisional renewal may not be issued for a period greater than one year, may not be renewed, and may not be issued to any personal care home 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 sixty-five dollars for an original personal care home license shall be paid at the time application is made for the license. An average cost of all direct costs for the initial
licensure for the preceding ten facilities based on the size
of the facility’s 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 six
dollars per bed per year for personal 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 determined by the director. All license
fees shall be due and payable to the director, annually, and
in the manner set forth in the rules promulgated by the
secretary. The 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.

§16-5D-7. Cost disclosure; surety for residents’funds.

(a) Each personal care home shall disclose in writing
to all prospective residents a complete and accurate list of
all costs which may be incurred by them. Residents are
not liable for any cost not so disclosed.

(b) If the personal care home handles any money for
residents within the personal care home, the licensee or his
or her authorized representative shall give a bond in an
amount consistent with this subsection and with such
surety as the director shall approve. The bond shall be
upon condition that the licensee shall hold separately and
in trust all residents’funds deposited with the licensee,
shall administer the funds on behalf of the resident in the
manner directed by the depositor, shall render a true and
complete account to the depositor and the director when
requested, and at least quarterly to the resident, and upon
termination of the deposit, shall account for all funds
received, expended, and held on hand. The licensee shall
file a bond in a sum to be fixed by the director based
upon the magnitude of the operations of the applicant, but
which sum may not be less than two thousand five hundred dollars.

Every person injured as a result of any improper or unlawful handling of the money of a resident of a personal care home may bring an action in a proper court on the bond required to be posted by the licensee pursuant to this subsection for the amount of damage suffered as a result thereof to the extent covered by the bond. Whenever the director determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any bond is impaired by any recovery against the bond, the director may require the licensee to file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

The provisions of this subsection do not apply if the licensee handles less than twenty-five dollars per resident and less than five hundred dollars for all residents in any month.

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

The secretary shall establish by rule procedures for prompt investigation of all complaints of alleged violations by personal care homes of applicable requirements of state law or rules, except for such complaints that the director determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures shall include provisions for ensuring the confidentiality of the complainant and of any other person so named in the complaint, and for promptly informing the complainant and the personal care home involved of the results of the investigation.

If, after its investigation, the director determines that the complaint has merit, the director shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy under this article.

No personal care home may discharge or in any manner discriminate against any resident or employee for
the reason that the resident or employee has filed a
complaint or participated in any proceeding specified in
this article. Violation of this prohibition by any personal
care home constitutes ground for the suspension or
revocation of the license of the personal care home as
provided in section eleven of this article. Any type of
discriminatory treatment of a resident or employee by
whom, or upon whose behalf, a complaint has been
submitted to the director, or any proceeding instituted
under this article, within one hundred twenty days of the
filing of the complaint or the institution of the action, shall
raise a rebuttable presumption that the action was taken by
the personal care home in retaliation for the complaint or
action.

§16-5D-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 personal care home at any time 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 personal care home without a license. If
entry is refused by the owner or person in charge of the
personal care home, the director shall apply to the circuit
court of the county in which the personal care home is
located or the circuit court of Kanawha County for an
order authorizing inspection, and the court shall issue an
appropriate order if it finds good cause.

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 personal care
home with applicable statutes and rules promulgated
thereunder. All personal care homes shall comply with
rules of the state fire commission. The state fire marshal,
by his or her employees or authorized agents, shall make
all fire, safety and like inspections. The director may
provide for such other inspections as the director may
deem necessary to carry out the intent and purpose of this
article. If after investigating a complaint, the director
determines that the complaint is substantiated and that an
immediate and serious threat to a resident’s health or
safety exists, the director may invoke any remedies
available pursuant to section eleven of this article. Any
personal care home aggrieved by a determination or
assessment made pursuant to this section shall have the
right to an administrative appeal as set forth in section
twelve of this article.

§16-5D-10. Reports of inspections; plans of correction;
assessment of penalties and use of funds derived
therefrom; hearings.

(a) Reports of all inspections made pursuant to
section nine of this article shall be in writing and filed with
the director, and shall list all deficiencies in the personal
care home’s compliance with the provisions of this article
and the rules adopted by the secretary hereunder. The
director shall send a copy of the report to the personal
care home by certified mail, return receipt requested, and
shall specify a time within which the personal care home
shall submit a plan for correction of deficiencies, which
plan shall be approved, rejected or modified by the
director. The surveyors shall allow audio taping of the
exit conference for licensure inspections with all costs
directly associated with the taping to be paid by the
personal care home provided that an original tape is
provided to surveyors at the end of taping.

(b) Upon a personal care home’s failure to submit a
plan of correction which is approved by the director, or to
correct any deficiency within the time specified in an
approved plan of correction, the director may assess civil
penalties as hereinafter provided or may initiate any other
legal or disciplinary action as provided by this article.

(c) Nothing in this section may be construed to
prohibit the director from enforcing a rule,
administratively or in court, without first affording formal
opportunity to make correction under this section, where,
in the opinion of the director, the violation of the rule
jeopardizes the health or safety of residents or where the
violation of the rule is the second or subsequent violation occurring during a period of twelve full months.

(d) Civil penalties assessed against personal care homes shall be classified according to the nature of the violation as defined in subsection (c), section five of this article and rules promulgated thereunder by the secretary, as follows: For each violation of a Class I standard, a civil penalty of not less than fifty nor more than five hundred dollars shall be imposed; for each violation of a Class II standard, a civil penalty of not less than twenty-five nor more than fifty dollars shall be imposed; for each violation of a Class III standard, a civil penalty of not less than ten nor more than twenty-five dollars shall be imposed. Each day a violation continues, after the date of citation, shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.

(e) The director shall assess a civil penalty not to exceed two thousand dollars against any individual who notifies, or causes to be notified, a personal care home of the time or date on which an inspection is scheduled to be conducted under this article.

(f) If the director assesses a penalty under this section, the director shall cause delivery of notice of the penalty by personal service or by certified mail. The notice shall state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the director assessed the penalty and selected the amount of the penalty.

(g) The director shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under section twelve of this article within thirty days of receipt of notice of the assessment, or which has been affirmed under the provisions of that section and not appealed within thirty days of receipt of the director's final order, or which has been affirmed on judicial review, as provided in section thirteen of this article. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be
applied by the director only for the protection of the health or property of residents of personal care homes operated within the state that the director finds to be deficient, including payment for the costs of relocation of residents to other facilities, operation of a personal care home pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on an action taken under this section shall be as provided in section twelve of this article. In addition to any other rights of appeal conferred upon a personal care home pursuant to this section, a personal care home shall have the right to request a hearing and seek judicial review pursuant to sections twelve and thirteen of this article to contest the citing by the director of a deficiency on an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.

§16-5D-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.

(a) The director shall by order, impose a ban on the admission of residents or reduce the bed quota of the personal care home, or any combination thereof, where he or she finds upon inspection of the personal care home that the licensee is not providing adequate care under the personal care home’s existing bed quota, and that reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee in a position to render adequate care. Any notice to a licensee of reduction in quota or ban on new admissions shall include the terms of the order, the reasons therefore, and the date set for compliance.

(b) The director may suspend or revoke a license issued under this article if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.
(c) Whenever a license is limited, suspended or revoked pursuant to this section, the director shall file an administrative complaint stating facts constituting a ground or grounds for the limitation, suspension or revocation. Upon the filing of the administrative complaint, the director shall notify the licensee in writing of the filing of the administrative complaint, enclosing a copy of the complaint, and shall advise the licensee of the availability of a hearing pursuant to section twelve of this article. The notice and copy of the administrative complaint shall be served on the licensee by certified mail, return receipt requested.

(d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

(e) In addition to other remedies provided in this article, upon petition from the director, the circuit court of the county in which the conduct has occurred or is occurring, or the circuit court of Kanawha County, may determine that a personal care home's deficiencies under this article constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents, and issue an order to:

1. Close the personal care home;
2. Transfer residents in the personal care home to other facilities; or
3. Appoint temporary management to oversee the operation of the personal care home and to assure the health, safety, welfare and rights of the personal care
home's residents, where there is a need for temporary management while:

(A) There is an orderly closure of the personal care home; or

(B) Improvements are made in order to bring the personal care home into compliance with all the applicable requirements of this article.

If the director petitions a circuit court for the closure of a personal care home, the transfer of residents, or the appointment of a temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the director and the licensee or operator of the personal care home may participate and present evidence.

A circuit court may divest the licensee or operator of possession and control of a personal care home in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the personal care home, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the personal care home or to repair or improve the personal care home so as to return it to compliance with applicable requirements, and the power to receive, conserve and expend funds, including payments on behalf of the licensee or operator of the personal care home. Priority shall be given to expenditures for current direct resident care or the transfer of residents.

The person charged with temporary management:

(i) Shall be an officer of the court; (ii) shall be paid by the licensee; (iii) is not liable for conditions at the personal care home which existed or originated prior to his or her appointment; (iv) is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the personal care home during his or her temporary management.
No person may impede the operation of temporary management. There shall be an automatic stay for a ninety-day period subsequent to the establishment of temporary management of any action that would interfere with the functioning of the personal care home, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital accounts, foreclosures, evictions and repossessions of equipment used in the personal care home.

A temporary management established for the purpose of making improvements in order to bring a personal care home into compliance with applicable requirements may not be terminated until the court has determined that the personal care home has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the personal care home shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the personal care home.

(f) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per annum beginning thirty days after receipt of notice of the assessment or thirty days after receipt of the director’s final order following a hearing, whichever is later. All assessments against a personal care home that are unpaid shall be added to the personal care home’s licensure fee and may be filed as a lien against the property of the licensee or operator of the personal care home. Funds received from assessments shall be deposited as funds received as provided in section ten of this article.
(g) The secretary shall have the power to promulgate emergency rules that expand the power of the director in excess of that provided in this article to the extent required to comply with federal requirements, but any such rules shall expand the power of the director to the minimum extent required by federal requirements. The rules are subject to the provisions of article three, chapter twenty-nine-a of this code.

(h) The opportunity for a hearing on an action by the director taken under this section shall be as provided in section twelve of this article.

§16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article shall, upon timely written request, have the opportunity for a hearing by the director at which he or she may contest the order as contrary to law or unwarranted by the facts or both. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with the hearing. The licensee or applicant may also request an informal meeting with the director before the hearing.

Following the hearing the director shall make and enter a written order either dismissing the complaint or taking such action as is authorized in this article. The written order of the director shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of the order and accompanying findings and conclusions shall be served upon the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the director suspends a personal care home’s license, it shall also specify the conditions giving rise to the suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of the license. If the director revokes a license, the director may stay the effective date of revocation by not more than ninety days upon a
showing that the delay is necessary to assure appropriate placement of residents. The order of the director shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section thirteen of this article.

(b) In addition to all other powers granted by this chapter, the director may hold the case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid either suspension or revocation. In such a case, the director shall enter an order accordingly and so notify the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the licensee meets the requirements of the order, the director shall enter an order showing satisfactory compliance and dismissing the complaint and shall so notify the licensee and the licensee's attorney of record, if any, by certified mail, return receipt requested.


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

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

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

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

(b) The governor may appoint counsel for the
director, who shall perform such legal services in
representing the interests of residents in personal care
homes in matters under the jurisdiction of the director as
the governor shall direct. It shall be the duty of such
counsel to appear for the residents in all cases where they
are not represented by counsel. The compensation of such
counsel shall be fixed by the governor.

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

(a) Whoever advertises, announces, establishes or
maintains, or is engaged in establishing or maintaining a
personal care home without a license granted under
section six 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 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 jail for a period of not more
than ninety days, or both such fine and imprisonment at
the discretion of the court. Each day of a continuing
violation after conviction shall be considered a separate
offense.

(b) The director may in his or her discretion bring an
action to enforce compliance with this article or any rule,
or order hereunder, whenever it appears 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 or order
hereunder, or whenever it appears to the director that any
person has aided, abetted or caused, or is aiding, abetting
or causing such an act or practice. Upon application by
the director, the circuit court of the county in which the
conduct has occurred or is occurring shall have
jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.

Whenever the director refuses to grant or renew a license, or revokes a license required by law to operate or conduct a personal care home, or orders a person to refrain from conduct violating the rules of the secretary, and the person deeming himself aggrieved by the refusal, revocation or order appeals the action of the director, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the personal care home or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the personal care home. Should a person who is refused a license or the renewal of a license to operate or conduct a personal care home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the secretary, fail to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a personal care home without a license as required by law, or has continued to violate the rules of the secretary.

(c) Any personal care home that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of the deprivation, and unless there is a finding that the personal care home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for the injury. In addition, where the deprivation of any right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of
relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies may not be required prior to commencement of suit hereunder.

The amount of damages recovered by a resident, in an action brought pursuant to this section, are exempt for purposes of determining initial or continuing eligibility for medical assistance under article four, chapter nine of this code, and may neither be taken into consideration nor required to be applied toward the payment or partial payment of the cost of medical care or services available under said article.

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

(d) The penalties and remedies provided in this section are cumulative and shall be in addition to all other penalties and remedies provided by law.

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

The director shall make available for public inspection and at a nominal cost provide copies of all inspections and other reports of personal care homes filed with or issued by the director. Nothing contained in this section may be construed or deemed to allow the public disclosure of confidential medical, social, personal or financial records of any resident. The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary to give effect to the provisions of this section and to preserve the confidentiality of medical, social, personal or financial records of residents.

§16-5D-17. Licenses and rules in force.

(a) All licenses for personal care homes which are in force on the first day of July, one thousand nine hundred ninety-seven, shall continue in full force and effect during
§16-5D-18. Separate accounts for residents’ personal funds; consent for use; records; penalties.

(a) Each personal care home subject to the provisions of this article shall hold in a separate account and in trust each resident’s personal funds deposited with the personal care home.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any personal care home unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each personal care home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the personal care home, including the purpose and payee of each disbursement, and shall render a true account of the record to the resident or his or her representative upon demand and upon termination of the resident’s stay in the personal care home.

(d) Any person or corporation who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in jail not more than one year, or both fined and imprisoned.

ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.

§16-5E-1. Purpose.

It is the policy of this state to encourage the availability of appropriate noninstitutional surroundings
for the elderly and for the care of persons in need limited
and intermittent of nursing care or personal assistance.
The registration of providers of services to such residents
in unlicensed homes will help to identify where the
services are available and to ensure that individuals in
unlicensed homes are receiving care appropriate to their
needs.

§16-5E-1a. Powers, rights and duties of the director.

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

(a) To promulgate and enforce rules governing
complaint investigations within the homes of legally
unlicensed health care providers registered under this
article. Such rules shall include the minimum health,
safety and welfare standards in the following areas:

(1) Physical environment;
(2) Nutrition;
(3) Requirements related to limited and intermittent
nursing care;
(4) Medication administration;
(5) Protective and personal services to be provided;
(6) Treatment;
(7) Such other categories as the director determines
to be appropriate to ensure residents’ health, safety and
welfare.

(b) To exercise as sole authority all powers relating
to issuance, suspension and revocation of registration of
legally unlicensed homes providing health care;

(c) To issue directed plans of correction for
deficiencies identified during complaint investigations;

(d) To order closure of any home for failure to
comply with a directed plan of corrections;

(e) To take all actions required under the provisions
of sections three, four, five, and six of this article; and
(f) To deny registration to any operator of a legally unlicensed home who is listed on the state abuse registry.

§16-5E-2. Definitions.

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

(a) “Director” means the secretary of the department of health and human resources or his or her designee.

(b) “Limited and intermittent nursing care” means direct hands on nursing care of an individual who needs no more than two hours of nursing care per day for a period of no longer than ninety consecutive days per episode, which may only be provided when the need for such care meets the following factors: (1) The resident requests to remain in the home; (2) the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for such care is the result of a medical pathology or a result of normal aging process. Limited and intermittent nursing care shall be provided under the supervision of a registered professional nurse and in accordance with rules promulgated by the director.

(c) “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) “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.
(e) "Resident" means an individual who is provided services, whether or not for a fee, by a service provider, but resident 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 the second cousin. Residents, who are incapable of self-preservation, shall be housed only on a ground floor level of the home with direct egress to the outside. A registered unlicensed health care home shall:

(1) Provide residents at the time of admission with the name, address and telephone number of the offices of health facility licensure and certification, the state long-term care ombudsman, and adult protective services, all within the department of health and human resources; and

(2) advise residents both orally and in writing of their right to file a complaint with the aforementioned entities.

(f) "Self-preservation" means that a person is at least capable of removing him or her self from situations involving imminent danger, such as fire.

(g) "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 to three residents and who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: Provided, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the home has a backup power generator.

§16-5E-3. Registration of service providers required; form of registration; information to be provided.

(a) Service providers shall register with the director. No fee may be charged for registration. Registration information shall be provided on a registration form or may be verbally communicated to the director for placement by the director on the form, but no provision of information may be deemed to meet the registration requirement until the signature of the service provider is recorded on the registration form.
Information required for registration shall include the following:

1. Name, address and telephone number of the service provider;
2. Address and telephone numbers where services are provided to residents and the number of residents provided service;
3. The services, such as nursing care or personal assistance, provided to residents; and
4. Other information required by rules promulgated by the director.

The director may deny registration if the information provided in an application is known by the applicant to be false or the applicant fails to report required information.

A legally unlicensed provider may operate no more than one legally unlicensed home.

§16-SE-5. Inspections; right of entry.

The director may employ inspectors to enforce the provisions of this article. These inspectors shall have the right of entry into any place where services are provided by a service provider, to determine the number of residents therein and the adequacy of services being provided to them. The director may obtain a search warrant to inspect those premises that the director has reason to believe are being used to provide services. The inspectors shall have access to all parts of the home and grounds, including, but not limited to, all areas of all buildings on the grounds of a home, food supplies, resident medications and resident medical records. Inspectors shall also be permitted to conduct private interviews with all residents and staff of a home.

If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and serious threat to a resident’s health or safety exists, the director may petition the circuit court for an injunction, order of abatement or other appropriate
action or proceeding to: (1) Close the home; (2) transfer residents in the home to other facilities; or (3) appoint temporary management to oversee the operation of the home to assure the health, safety, welfare and rights of the home’s residents where there is a need for temporary management to ensure compliance with the court’s order. Any home aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in section twelve, article five-c of this chapter.

§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 jail not less than ten days, or more than thirty days after notice by certified mail by the director to such service provider of 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 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 may be imposed upon a service provider until thirty days after notice by certified mail by the director to the service provider at the requirements of this article.

(c) If after investigating a complaint, the director determines that the home is housing more than three residents, the director shall assess a civil penalty of fifty dollars per day per the number of residents exceeding three. Each day the violation continues, after the date of citation shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.
(d) The director may in his or her discretion bring an action to enforce compliance with the provisions of this article.

(e) 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. Purpose.

It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self-preservation and are not bedfast, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary and voluntary residential board and care homes it is the policy of this state to encourage, promote and require the maintenance of residential board and care homes so as to ensure protection of the rights and dignity of those using the services of such residential board and care homes.

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


As used in this article, unless a different meaning appears from the context:
(a) "Deficiency" means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

(b) "Department" means the state department of health and human resources;

(c) "Director" means the secretary of the department of health and human resources or his or her designee;

(d) "Division" means the division of health of the state department of health and human resources;

(e) "Limited and intermittent nursing care" means direct hands on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than ninety consecutive days per episode which may only be provided when the need for such care meets these factors: (1) The resident requests to remain in the residential board and care home; (2) the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for such care is the result of a medical pathology or a result of the normal aging process. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules promulgated by the secretary;

(f) "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 which involves a level of complexity and skill in administration not possessed by the untrained person;

(g) "Person" means an individual and every form of organization, whether incorporated or unincorporated,
including any partnership, corporation, trust, association
or political subdivision of the state;

(h) "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;

(i) "Resident" means an individual living in a
residential board and care home for the purpose of
receiving personal assistance or limited and intermittent
nursing services from the home;

(j) "Residential board and care home" means any
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, personal
assistance and supervision, for a period of more than
twenty-four hours, to four or more persons who are
dependent upon the services of others by reason of
physical or mental impairment or who may require limited
and intermittent nursing care but who are capable of, as
certified in consultation with a licensed health care
professional, and are not bedfast, including those
individuals who qualify for and are receiving services
coordinated by a licensed hospice: Provided, That
services utilizing equipment which requires auxiliary
electrical power in the event of a power failure may not be
used unless the residential board and care home has a
backup power generator: Provided, however, 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 consanguinity of second
cousin to the head of the household, or his or her spouse,
may not be deemed to constitute a residential board and
care home within the meaning of this article. Nothing
contained in this article applies to hospitals, as defined
under section one, article five-b of this chapter; or state
institutions, as defined under section three, article one,
chapter twenty-five of this code or section six, article one,
chapter twenty-seven of this code; or residential board and

care homes operated by the federal government or the

state; 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 to homes or asylums

operated by fraternal orders pursuant to article three,

chapter thirty-five of this code;

(k) "Secretary" means the secretary of the state
department of health and human resources or his or her
designee;

(l) "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; and

(m) "Substantial compliance" means a level of
compliance with the rules such that identified deficiencies
pose no greater risk to resident health or safety than the
potential for causing minimal harm.

The secretary may define in rules any term used
herein which is not expressly defined.


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

(a) To enforce rules and standards for residential
board and care homes which are adopted, promulgated,
amended or modified by the secretary;

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

(c) To enforce rules adopted, promulgated, amended
or modified by the secretary governing the qualification
of applicants for 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 federal funds;

e) To receive and disburse for authorized purposes any moneys appropriated for the division by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from the division'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 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 residential board and care homes' administrative, management and operational personnel;

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

(k) To assess civil penalties for violations of residential board and care home standards, in accordance with section ten of this article;

(l) To inspect any residential board and care home and any records maintained therein, subject to the provisions of section ten of this article;

(m) 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 rules issued hereunder, by the secretary;
(n) 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;

(o) 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 rules issued hereunder, by the secretary. Such action may be taken by the director without the sanction of the prosecuting attorney of the county in which proceedings are instituted, if the officer fails or refuses to discharge his or her 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 may the director or any person acting under the director's direction be required to give security for costs;

(p) 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; and

(q) To submit a report to the governor, the Legislature and the public, on or before the first day of December, one thousand nine hundred ninety-seven, and annually thereafter. The report shall describe the residential board and care home licensing and investigatory activities of the division during the year, and the nature and status of other activities of the division, 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 residents of residential board and care homes. The annual report shall include a list of all residential board and care homes in the state and such of the following information as the director determines to apply: Whether the homes are proprietary or
nonproprietary, the classification of each home; the name
of the owner or owners; the total number of beds; the
number of private and semiprivate rooms; the costs per
diem for private residents; the number of full-time
employees and their professions; recreational programs;
services and programs available as well as the costs thereof,
and whether or not those residential board and care homes
listed accept medicare and medicaid residents. The report
shall also contain the division’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 residents of residential board and care homes in
the state.

§16-SH-4. Administrative and inspection staff.

The director may, at such time or times as he or she
may deem necessary, employ such administrative
employees, inspectors, or other persons as may be
necessary to properly carry out the provisions of this
article. All employees of the division shall be members of
the state civil service system. Such inspectors and other
employees as may be duly designated by the director shall
act as the director’s representatives and, under the
direction of the director, shall enforce the provisions of
this article and all duly promulgated rules of the secretary
and, in the discharge of official duties, shall have the right
of entry into any place maintained as a residential board
and care home.

§16-SH-5. Rules; minimum standards for residential board
and care homes.

(a) All rules shall be approved by the secretary and
promulgated in the manner provided by the provisions of
article three, chapter twenty-nine-a of this code. The
secretary shall adopt, amend or repeal such rules 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 secretary shall promulgate rules establishing minimum standards of operation of residential board and care homes including, but not limited to, the following:

(1) Administrative policies, including: (A) An affirmative statement of the right of access to residential board and care homes by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (B) a statement of the rights and responsibilities of residents;

(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 residential board and care home;

(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;

(9) Physical facilities;

(10) Requirements related to limited and intermittent nursing care; and

(11) Such other categories as the secretary determines to be appropriate to ensure resident's health, safety and welfare.

(c) The secretary shall include in rules 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 secretary determines, would present either an imminent
danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result; Class II standards are standards which the secretary determines have a direct or immediate relationship to the health, safety or welfare of any resident, but which do not create imminent danger; Class III standards are standards which the secretary determines have an indirect or a potential impact on the health, safety or welfare of any resident.

(d) A residential board and care home shall attain substantial compliance with standards established pursuant to section five of this article, and such other requirements for a license as may be established by rule under this article.

§16-5H-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 residential board and care home within this state unless and until he or she 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 residential board and care home, 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 residential board and care homes as established by this article and the rules lawfully promulgated by the secretary 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: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of an applicant which is a trust; and (D) where a corporation has a proprietary interest of twenty-five 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 residential board and care home or proposed residential board and care home, if he or she is a different person from the applicant, and in such case, the name and address: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in such owner; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of such owner if he or she is a trust; and (D) where a corporation has a proprietary interest of twenty-five 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 residential board and care home or the premises of the proposed residential board and care home, a signed copy of the lease and any assignment thereof;

(5) The name and address of the residential board and care home or the premises of the proposed residential board and care home;

(6) The proposed bed quota of the residential board and care home and the proposed bed quota of each unit thereof;

(7) (A) An organizational plan for the residential board and care home indicating the number of persons employed or to be employed, the positions and duties of all employees; (B) the name and address of the individual who is to serve as administrator; and (C) such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention and sanitation as the director may require; and
(8) Such additional information as the director may require.

(b) Upon receipt and review of an application for license made pursuant to subsection (a) of this section, and inspection of the applicant residential board and care home pursuant to section ten of this article, the director shall issue a license if he or she finds:

(1) That an individual applicant, and any partner, trustee, officer, director and controlling person of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a residential board and care home 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 residential board and care home be under the supervision of an administrator who is qualified by training and experience; or

(3) That the residential board and care home is in substantial compliance with standards established pursuant to section five of this article, and such other requirements for a license as the secretary may establish by rule under this article.

The director may deny an initial or renewal license if the information provided in an application or report is known by the applicant to be false or the applicant fails to report required information.

Any license granted by the director shall state the maximum bed capacity for which it is granted, the date the license was issued, and the expiration date. Such licenses shall be issued for a period not to exceed one year for 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 division of health in conformance with the provisions of this article and the rules 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 is not transferable or assignable: Provided, however, That in the case of the

transfer of ownership of a residential board and care home 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 displayed in a conspicuous place in the residential board and care home for which it is issued so as to be accessible to and in plain view of all residents and visitors of the residential board and care home.

(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 rules promulgated by the secretary hereunder. The application shall be accompanied by the information required in subdivisions (1),(2) and (3) of this subsection.

(1) A balance sheet of the residential board and care home 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 residential board and care home as of the end of its fiscal year, 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.

(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 or her discretion issue a provisional license, provided that care given in the
residential board and care home is adequate for resident needs and the residential board and care home 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, may not be renewed, and may not be issued to any residential board and care home 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 sixty-five dollars for an original residential board and care home license shall be paid at the time application is made for such license. The average cost of all direct costs for the initial licensure inspections of all such homes for the preceding ten facilities 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 four 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 determined 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 promulgated by the secretary. 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.

§16-5H-7. Cost disclosure; surety for residents’ funds.

(a) Each residential board and care home shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them. Residents are not liable for any cost not so disclosed.

(b) If the residential board and care home handles any money for residents within the residential board and
care home, the licensee or his or her authorized representative shall give a bond in an amount consistent with this subsection and with such surety as the director shall approve. Such bond shall be upon condition that the licensee shall hold separately and in trust all residents' funds deposited with the licensee, shall administer the funds on behalf of the resident in the manner directed by the depositor, shall render a true and complete account to the depositor and the director when requested, and at least quarterly to the resident, and upon termination of the deposit, shall account for all funds received, expended, and held on hand. The licensee shall file a bond in a sum to be fixed by the director based upon the magnitude of the operations of the applicant, but which sum may not be less than two thousand five hundred dollars.

(c) Every person injured as a result of any improper or unlawful handling of the money of a resident of a residential board and care home may bring an action in a proper court on the bond required to be posted by the licensee pursuant to this subsection for the amount of damage suffered as a result thereof to the extent covered by the bond. Whenever the director determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any such bond is impaired by any recovery against the bond, the director may require the licensee to file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

(d) The provisions of this subsection do not apply if the licensee handles less than twenty-five dollars per resident and less than five hundred dollars for all residents in any month.

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

The secretary shall establish by rule procedures for prompt investigation of all complaints of alleged violations by residential board and care homes of applicable requirements of state law or rules, except for such complaints that the director determines are willfully
intended to harass a licensee or are without any reasonable basis. Such procedures shall include provisions for ensuring the confidentiality of the complainant and of any other person so named in the complaint, and for promptly informing the complainant and the residential board and care home involved of the results of the investigation.

If, after its investigation, the director determines that the complaint has merit, the director shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy under this article.

No residential board and care home may discharge or in any manner discriminate against any resident or employee for the reason that such resident or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any residential board and care home constitutes ground for the suspension or revocation of the license of the residential board and care home as provided in section eleven of this article. Any type of discriminatory treatment of a resident by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within one hundred twenty days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the residential board and care home in retaliation for such complaint or action.

§16-5H-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 residential board and care home 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 residential board and care home without a license. If such entry is refused by the owner or person in charge of any such residential board and care home, the director shall apply to the circuit court of the county in which the residential board and care home is located or the circuit court of Kanawha County for an order
authorizing inspection, and such court shall issue an appropriate order if it finds good cause.

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 residential board and care home with applicable statutes and rules promulgated thereunder. All residential board and care homes shall comply with rules of the state fire commission. The state fire marshal, by his or her employees or authorized agents, shall make all fire, safety and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article. If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and serious threat to a consumer’s health or safety exists, the director may invoke any remedies available pursuant to section eleven of this article. Any residential board and care home aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in section twelve of this article.

§16-5H-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to section nine of this article shall be in writing and filed with the director, and shall list all deficiencies in the residential board and care home’s compliance with the provisions of this article and the rules adopted by the secretary hereunder. The director shall send a copy of such report to the residential board and care home by certified mail, return receipt requested, and shall specify a time within which the residential board and care home shall submit a plan for correction of such deficiencies, which plan shall be approved, rejected or modified by the director. The surveyors shall allow audio taping of the exit conference for both licensure and certification inspections with all
costs directly associated with such taping to be paid by the residential board and care home provided that an original tape is provided to surveyors at the end of taping.

(b) Upon a residential board and care home's failure to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article.

(c) Nothing in this section may be construed to prohibit the director from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, the violation of such rule jeopardizes the health or safety of residents or where the violation of such rule is the second or subsequent such violation occurring during a period of twelve full months.

(d) Civil penalties assessed against residential board and care homes shall be classified according to the nature of the violation as defined in subsection (c), section five of this article and rules promulgated thereunder by the secretary, as follows: For each violation of a Class I standard, a civil penalty of not less than fifty nor more than five hundred dollars shall be imposed; for each violation of a Class II standard, a civil penalty of not less than twenty-five nor more than fifty dollars shall be imposed; for each violation of a Class III standard, a civil penalty of not less than ten nor more than twenty-five dollars shall be imposed. Each day a violation continues, after the date of citation, shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.

(e) The director shall assess a civil penalty not to exceed two thousand dollars against any individual who notifies, or causes to be notified, a residential board and care home of the time or date on which an inspection is scheduled to be conducted under this article.
(f) If the director assesses a penalty under this section, the director shall cause delivery of notice of such penalty by personal service or by certified mail. Said notice shall state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the director assessed the penalty and selected the amount of the penalty.

(g) The director shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under section twelve of this article within thirty days of receipt of notice of such assessment, or which has been affirmed under the provisions of that section and not appealed within thirty days of receipt of the director's final order, or which has been affirmed on judicial review, as provided in section thirteen of this article. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the director only for the protection of the health or property of residents of residential board and care homes operated within the state that the director finds to be deficient, including payment for the costs of relocation of residents to other facilities, operation of a residential board and care home pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on an action taken under this section shall be as provided in section twelve of this article. In addition to any other rights of appeal conferred upon a residential board and care home pursuant to this section, a residential board and care home shall have the right to request a hearing and seek judicial review pursuant to sections twelve and thirteen of this article to contest the citing by the director of a deficiency on an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.

§16-5H-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appoint-
(a) The director shall by order, impose a ban on the admission of residents or reduce the bed quota of the residential board and care home, or any combination thereof, where he or she finds upon inspection of the residential board and care home that the licensee is not providing adequate care under the residential board and care home’s existing quota, and that, reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee in a position to render adequate care. Any notice to a licensee of reduction in quota or ban on admissions shall include the terms of such order, the reasons therefor, and the date set for compliance.

(b) The director may suspend or revoke a license issued under this article if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) Whenever a license is limited, suspended or revoked pursuant to this section, the director shall file an administrative complaint stating facts constituting a ground or grounds for such limitation, suspension or revocation. Upon the filing of the administrative complaint, the director shall notify the licensee in writing of the filing of the administrative complaint, enclosing a copy of the administrative complaint, and shall advise the licensee of the availability of a hearing pursuant to section twelve of this article. Such notice and copy of the complaint shall be served on such licensee by certified mail, return receipt requested.

(d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director’s authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any
ground provided by law or to enter an order denying the license application or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

(e) In addition to other remedies provided in this article, upon petition from the director, the circuit court of the county in which the conduct has occurred or is occurring, or the circuit court of Kanawha County, may determine that a residential board and care home’s deficiencies under this article constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents, and issue an order to:

(1) Close the residential board and care home;

(2) Transfer residents in the residential board and care home to other facilities; or

(3) Appoint temporary management to oversee the operation of the residential board and care home and to assure the health, safety, welfare and rights of the residential board and care home’s residents, where there is a need for temporary management while:

(A) There is an orderly closure of the residential board and care home; or

(B) Improvements are made in order to bring the residential board and care home into compliance with all the applicable requirements of this article.

If the director petitions a circuit court for the closure of a residential board and care home, the transfer of residents, or the appointment of temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the director and the licensee or operator of the residential board and care home may participate and present evidence.

A circuit court may divest the licensee or operator of possession and control of a residential board and care home in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to
direct all acts necessary or appropriate to conserve the
property and promote the health, safety, welfare and rights
of the residents of the residential board and care home,
including, but not limited to, the replacement of
management and staff, the hiring of consultants, the
making of any necessary expenditures to close the
residential board and care home or to repair or improve
the residential board and care home so as to return it to
compliance with applicable requirements, and the power to
receive, conserve and expend funds, including payments
on behalf of the licensee or operator of the residential
board and care home. Priority shall be given to
expenditures for current direct resident care or the transfer
of residents.

The person charged with temporary management
shall be an officer of the court, shall be paid by the
residential board and care home when resources are
available, is not liable for conditions at the residential
board and care home which existed or originated prior to
his or her appointment, and is not personally liable,
except for his or her own gross negligence and intentional
acts which result in injuries to persons or damage to
property at the residential board and care home during his
or her temporary management.

No person may impede the operation of a temporary
management. There shall be an automatic stay for a
ninety-day period subsequent to the establishment of a
temporary management of any action that would interfere
with the functioning of the residential board and care
home, including, but not limited to, cancellation of
insurance policies, termination of utility services,
attachments to working capital accounts, foreclosures,
evictions and repossessions of equipment used in the
residential board and care home.

A temporary management established for the
purpose of making improvements in order to bring a
residential board and care home into compliance with
applicable requirements may not be terminated until the
court has determined that the residential board and care
home has the management capability to ensure continued
compliance with all applicable requirements, except if the
court has not made such determination within six months
of the establishment of the temporary management, the
temporary management terminates by operation of law at
that time, and the residential board and care home shall be
closed. After the termination of the temporary
management, the person who was responsible for the
temporary management shall make an accounting to the
court, and after deducting from receipts the costs of the
temporary management, expenditures and civil penalties
and interest no longer subject to appeal, in that order, any
excess shall be paid to the licensee or operator of the
residential board and care home.

(f) The assessments for penalties and for costs of
actions taken under this article shall have interest assessed
at five percent per annum beginning thirty days after
receipt of notice of such assessment or thirty days after
receipt of the director’s final order following a hearing,
whichever is later. All such assessments against a
residential board and care home that are unpaid shall be
added to the residential board and care home’s licensure
fee and may be filed as a lien against the property of the
licensee or operator of the residential board and care
home. Funds received from such assessments shall be
deposited as funds received, as provided, in section ten of
this article.

(g) The secretary shall have the power to promulgate
emergency rules that expand the power of the director in
excess of that provided in this article to the extent required
to comply with federal requirements, but any such rules
shall expand the power of the director to the minimum
extent required by federal requirements. Such rules are
subject to the provisions of article three, chapter
twenty-nine-a of this code.

(h) The opportunity for a hearing on an action by
the director taken under this section shall be as provided
in section twelve of this article.

§16-5H-12. Administrative appeals for civil assessments,
license limitation, suspension or revocation.
(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article shall, upon timely written request, have the opportunity for a hearing by the director at which he or she may contest such order as contrary to law or unwarranted by the facts or both. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing and the administrative procedures in connection with such hearing. Such licensee or applicant may also request an informal meeting with the director before such hearing.

Following such hearing the director shall make and enter a written order either dismissing the complaint or taking such action as is authorized in this article. The written order of the director shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the director suspends a residential board and care home’s license, it shall also specify the conditions giving rise to such suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of the license. If the director revokes a license, the director may stay the effective date of revocation by not more than ninety days upon a showing that such delay is necessary to assure appropriate placement of residents. The order of the director shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section thirteen of this article.

(b) In addition to all other powers granted by this chapter, the director may hold the case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid either suspension or revocation. In such a case, the director shall enter an order accordingly and so notify the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the licensee meets the requirements of such order, the director shall enter an order showing
satisfactory compliance and dismissing the complaint and shall so notify the licensee and the licensee’s attorney of record, if any, by certified mail, return receipt requested.


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

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

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

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

(b) The governor may appoint counsel for the director, who shall perform such legal services in representing the interests of residents in residential board and care homes in matters under the jurisdiction of the director as the governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the governor.

§16-5H-15. Unlawful acts; penalties; injunctions; private right of action.
(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a residential board and care home without a license granted under section six 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 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 jail for a period of not more than ninety days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The director may in his or her discretion bring an action to enforce compliance with this article or any rule, 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, 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. Upon application by the director, the circuit court of the county in which the conduct has occurred or is occurring, or if emergency circumstances occur, the circuit court of Kanawha County, shall have jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.

Whenever the director shall have refused to grant or renew a license, or shall have revoked a license required by law to operate or conduct a residential board and care home, or shall have ordered a person to refrain from conduct violating the rules of the secretary, and the person deeming himself or herself aggrieved by such refusal or revocation or order shall have appealed the action of the director, the court may, during pendency of such appeal, issue a restraining order or injunction upon proof that the operation of the residential board and care home or its
failure to comply with the order of the director adversely affects the well-being or safety of the residents of the residential board and care home. Should a person who is refused a license or the renewal of a license to operate or conduct a residential board and care home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the secretary, fail to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a residential board and care home without a license as required by law, or has continued to violate the rules of the secretary.

(c) Any residential board and care home that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of such deprivation. Upon a finding that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of such deprivation, and unless there is a finding that the residential board and care home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate such resident for such injury. In addition, where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies is not required prior to commencement of suit hereunder.

The amount of damages recovered by a resident, in an action brought pursuant to this section, shall be exempt for purposes of determining initial or continuing eligibility for medical assistance under article four, chapter nine of this code, and shall neither be taken into
83 consideration nor required to be applied toward the
84 payment or part payment of the cost of medical care or
85 services available under said article.

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

90 (d) The penalties and remedies provided in this
91 section are cumulative and shall be in addition to all other
92 penalties and remedies provided by law.

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

1 The director shall make available for public
2 inspection and at a nominal cost provide copies of all
3 inspections and other reports of residential board and care
4 homes filed with or issued by the director. Nothing
5 contained in this section may be construed or deemed to
6 allow the public disclosure of confidential medical, social,
7 personal or financial records of any resident. The
8 secretary shall propose rules for legislative approval in
9 accordance with the provisions of article three, chapter
10 twenty-nine-a of this code as may be necessary to give
11 effect to the provisions of this section and to preserve the
12 confidentiality of medical, social, personal or financial
13 records of residents.

§16-5H-17. Licenses and rules in force.

1 All licenses for residential board and care homes
2 which are in force on the first day of July, one thousand
3 nine hundred ninety-seven, shall continue in full force and
4 effect during the period for which issued unless sooner
5 revoked as provided in this article.

6 All rules in effect on the first day of July, one
7 thousand nine hundred ninety-seven, which were adopted
8 by the secretary relating to licensing residential board and
9 care homes, shall remain in full force and effect until
10 altered, amended or repealed by the secretary.

§16-5H-18. Separate accounts for residents’ personal funds;
1 consent for use; records; penalties.
(a) Each residential board and care home subject to the provisions of this article shall hold in a separate account and in trust each resident’s personal funds deposited with the residential board and care home.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any such residential board and care home unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each residential board and care home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the residential board and care home, including the purpose and payee of each disbursement, and shall render a true account of such record to the resident or his or her representative upon demand and upon termination of the resident’s stay in the residential board and care home.

(d) Any person or corporation who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in jail not more than one year, or both fined and imprisoned.
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.

Take effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 7th day of May, 1997.

Governor
PRESENTED TO THE
GOVERNOR
Date 5/1/97
Time 3:00 PM