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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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SECRETARY OF STATE

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January 08, 2003

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Sherri Douglass
Funeral Service Examiners, WV Board of
179 Summers St. Suite 305
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **General Provisions, 6CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Funeral Examiners

Subject: General Provisions, 6CSR1

PERTINENT DATES

Filed for public comment: April 29, 2002
Public comment period ended: June 12, 2002
Filed following public comment period: June 26, 2002
Filed LRMRC: June 26, 2002
Filed as emergency: April 29, 2002

Fiscal Impact: See Fiscal Note (attached)

ABSTRACT

Brief Summary

- Allows funeral homes to establish policies relating to viewing of unembalmed bodies.
- Eases current advertising standard to accommodate the sale of funeral merchandise.
- Allows funeral homes to build separate embalming facilities, in order to remove possible hazards from their public buildings.
- Clarifies areas subject to inspection.
- Changes licenses to a 2 year license.
- Allows continuing education providers to become approved providers without submitting applications for single programs.
- Provides a procedure for issuing an inactive license.
- Outlines inspector and investigator requirements.
- Requires procedures for identifying dead human bodies and cremated remains.
- Requires written permission to cremate.
- Establishes a procedure for handling unclaimed bodies and cremated remains.
- Establishes who has the right of disposition.
- Requires a procedure for releasing cremated remains.

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Section Summary

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 2 defines terms.

- Defines the terms: "Board"; "Embalming facility"; "Funeral Service Licensee"; "Authorized representative"; "Preparation room"

Section 3 relates to licensing the examination for applicants of a funeral director license and an embalmer license.

- The new rule proposes changes the License requirements relating to a mortuary science degree.

Section 4 relates to apprenticeships.

- New provision relating to denying registration to an applicant who has not completed the required educational curriculum.

Section 5 relates to control of dead bodies.

- Sets for the standards for securing, viewing, disposal, and various funeral industry practices relating to "dead bodies."

Section 9 relates to advertising.

- Sets forth new changes in price vs. services advertising and industry advertising.

Section 12 relates to inspections.

- The new rule adds "embalming facility" to the list of locations subject to inspection and sets forth certain practices for inspectors and investigators.

Section 13 relates to necessary equipment.

- Sets forth standards for preparation room pursuant to subsection 13.1.7(b) and 13.2 of this section and restricts future construction of an embalming facility.

Section 15 relates to penalties.

- The new rule strikes out that "a person denied a license or registration" is entitled to a hearing on the action denying the license, pursuant to procedural rule 6CSR4.
- It also provides that the Board may fine a licensee or registrant for violation of W. Va Code §§30-1-1 et. seq. or 30-6-1 et. seq. or this rule, one thousand dollars (\$1000) per violation, and take further disciplinary if the licensee or registrant fails to pay any fines.

Section 16 relates to fees.

- Sets for fee practices and amounts for inspections, license renewals, late fees, etc.

Section 18 relates to continuing education.

- The Rule sets for new provisions for applications to present or sponsor multiple programs.

Section 19 relating to biennial licenses and registrations is new.

- The New Rule sets forth procedures for renewal of licenses, courtesy cards, funeral establishments, probationary licenses and procedures for late renewal and lapsed

Section 20 relating to inactive licenses is new.

- Establishes standards and conditions in order that the Board may grant inactive licenses to funeral directors or embalmers, which temporarily waives compliance of any continuing education requirement.

Section 21 relating to inspector and investigator requirements is new.

- Sets forth employment and evaluation practices for the positions of inspector and investigator. shall be exempt and at-will positions.
- An investigator applicant shall meet the following requirements to be considered for employment:

Graduation from an accredited four-year college or university in a related field and two (2) years full-time or equivalent part-time employment in law enforcement or other government policing agency; or Six (6) years full-time or equivalent part-time employment in law enforcement or other government policing agency.

Section 22 relating to identifying dead human bodies is new.

- Establishes requirements that a funeral establishment shall develop, implement, and maintain a written procedure for identification of a dead human body or cremated remains and reporting practices related thereto.

Section 23 relating to permission to cremate, disclosure for unclaimed cremated remains and removing objects from bodies is new.

- The rule sets for certain industry practices relating to the treatment and disposal of cremated remains.
- The funeral establishment shall get written authorization from the authorized representative; and, get a permit for cremation.
- A funeral establishment shall, in writing, disclose to the authorized representative during the arrangement conference that unclaimed cremated remains may be buried in a common grave and may not be recoverable in their entirety or at all, if exhumed at a later date.

Section 24 relating to authorized representatives; right to control and duty of disposition is new.

- Sets forth the standards for self determination of final disposition; authorized representative practices; and an order of authority in the decision making process of final disposition of the deceased.

Section 25 relating to the storage and disposal of unclaimed human remains is new.

- Sets forth the standards by which a funeral establishment may embalm an unclaimed dead human body. under the following circumstances:
- Sets for Provisions for unclaimed cremated remains.

Section 26 relating to the release of cremated remains is new.

- Sets forth standards relating to 1.)the remains shall be released according to the instructions given on the written authorization to cremate; 2.)shipping of cremated remains; and 3.)dispute over release or disposition of cremated remain.

Section 27 relating to record-keeping practices is new.

- Requires that every funeral establishment shall create and maintain on its premises an accurate record of every funeral and preparation of a dead human body and sets the standards for such records. Specific standards are given for dead bodies and/or cremated remains.

AUTHORITY

Statutory authority: W.Va. Code, §30-6-3, which provides, in part, as follows:

... (h) The board shall have the power and it shall be its duty to make and enforce all necessary rules, not inconsistent with this article, for the examination and licensing of

funeral directors and the general practice of funeral directing; the examination and licensing of embalmers and the general practice of embalming and the registration and regulation of apprentices; and the licensing and general operation of funeral establishments, except that no rules issued by the board shall require that an applicant for a license to operate a funeral establishment shall be required to have either an embalmer's or funeral director's license...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes

VIII. OTHER

Certain technical changes are recommended.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: General Provisions

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Funeral Service Examiners

Address: 179 Summers Street, Suite 305
Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$24000		\$101000	\$125000	\$126000
PERSONAL SERVICES	\$23000		\$53000	\$76000	\$76000
CURRENT EXPENSE	\$1000		\$48000	\$49000	\$50000
REPAIRS & ALTERATIONS	\$1000		>\$200	\$1000	\$2000
EQUIPMENT	\$4000		>\$500	\$4000	\$2000
OTHER	\$0		\$0	\$0	\$0

2. Explanation of Above Estimates:

It is anticipated that computer upgrades and purchases will be necessary as equipment dates to 1997 now. It is also anticipated that there will be an increased workload for inspectors and other personnel as a result of the changes. This agency would like to send employees to training conferences, something that has not been fiscally-possible for

3. Objectives of These Rules:

To provide better consumer protection through more stringent inspections and thorough investigations. To educate consumers and licensees. To provide better tools and procedures to licensees as a means of protecting the public.

Rule Title: General Provisions

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

This is a non-appropriated Special Revenue Account which receives no funding from the state. Our revenue is generated through licensing fees and other fees we collect.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: There will be a slight economic impact on the licensees. Individuals will pay on average \$10 more per year per license. Businesses will pay on average \$30-\$50 more per year per license.

C. Economic Impact on Citizens/Public at Large.

There should be little or no impact on the public. Funeral businesses may seek to offset the fee increase by raising their prices. This should not have any real negative economic impact, if the price increase is divided equally among customers over a 2-year period.

Date: June 26, 2002

Signature of Agency Head or Authorized Representative:

Sherryl Douglas