

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

JUL 3 8 55 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Board of Embalmers and Funeral Directors TITLE NUMBER: 6

RULE TYPE: Legislative CITE AUTHORITY: 30-6-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: General Provisions (this is repeal and replace)

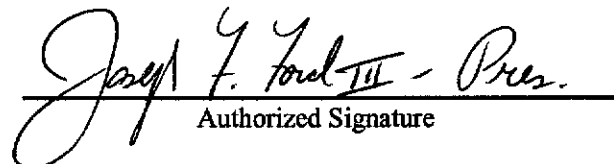
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 1, 2000 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

179 Summers Street

Suite 305

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.80 w/out referenced material
\$16.40 w/referenced material

SUMMARY OF PROPOSED RULE

Title 6

Legislative Rules

Series 1

General Provisions

This rule repeals and replaces the current Series 1, entitled "Rules of the West Virginia Board of Embalmers and Funeral Directors." The rule provides definitions of many terms and establishes general provisions for Board operation. The rule clarifies licensing examination criteria and apprenticeship requirements. The rule creates standards for the transportation of dead human bodies, including the obtaining of appropriate permits. The rule retains current health safety requirements and evidence of crime standards. The rule amends advertising and solicitation restrictions. The rule expands confidentiality. The rule preserves the duties and responsibilities of funeral directors and embalmers and maintains inspection criteria. The rule establishes minimum necessary equipment for embalming and funeral directing. The rule maintains courtesy card qualifications and requirements, as well as penalties for violations of the rule. The rule introduces miscellaneous fees and establishes basic continuing education requirements.

STATEMENT OF CIRCUMSTANCES

Title 6

Legislative Rules

Series 1

General Provisions

Title 6, Series 1, General Provisions, currently entitled "Rules of the West Virginia Board of Embalmers and Funeral Directors," went into effect June 12, 1994. Since that time the practice of funeral service has evolved and encompasses a much more variety of activities. As families become more mobile and move away from their childhood communities, dead human bodies are being shipped more through public transportation to be interned in family cemeteries within the childhood communities, an area addressed in the proposed rule.

Furthermore, with the advent of 'retail funeral goods sales,' advertisement restrictions have been anti-competitive in the past. It is necessary to establish advertising requirements that are not anti-competitive in nature.

Additionally, inspections of funeral establishments have shown that there is a need for basic equipment standards to provide safe embalming facilities for employees. Many facilities have not received routine maintenance or updating in many years. Also, there is a national trend toward more stringent educational standards for funeral service practitioners, as a response to the ever changing environment of the funeral business.

Finally, there is a need to implement basic fees for the processing of documents and other materials so that licensee fee revenue can be utilized for the enforcement of state law, as intended. Therefore, it is necessary to update the regulations so that this agency can effectively regulate the practice of funeral service in order to protect the public.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: General Provisions

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Embalmers and Funeral Directors

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	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

It is predicted that there will be little or no increased expense to this agency, as the board already has an inspector. So additional personnel will not be necessary at this time.

3. Objectives of These Rules:

To establish minimum requirements for equipment and transportation of dead human bodies, as well as public viewing. To clarify educational standards and establish continuing education procedures. To delete hearing procedures and propose a separate rule titled Series 4. To establish minimal fees for processing

Rule Title: General Provisions

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

There will be no impact on General Revenue, as this agency is self-sustaining and receives no appropriations. It is predicted that the misc. fees will cover the costs of printing those materials and will provide the agency with a maximum of \$2550.00, which will be utilized for covering the costs of printing and shipping materials.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

It is predicted that the misc. fees will have minimum impact as they are generally one-time fees. Pertaining to the basic equipment requirements, the majority of funeral establishments already meet these requirements and would pass inspection.

C. Economic Impact on Citizens/Public at Large.

Misc. fees for copies of documents and shipping of documents would cost the public minimally. Many of the materials are also available via the Internet if the public did not wish to purchase hard copies from this agency.

Date: June 29, 2000

Signature of Agency Head or Authorized Representative:

Shirley Douglass, Exec. Dir.

FILED

6CSR1

TITLE 6
LEGISLATIVE RULE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS

JUL 3 8 55 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 1
GENERAL PROVISIONS

§6-1-1. General.

1.1 Scope. - This rule relates to the licensing and conduct of embalmers and funeral directors and funeral establishments.

1.2 Authority. - WV Code §30-6-3.

1.3 Filing Date. -

1.4 Effective Date. -

1.5 Repeal of Former Rule. - This rule repeals and replaces Title 6 Legislative Rules, Board of Embalmers and Funeral Directors, Series 1, Rules of the West Virginia Board of Embalmers and Funeral Directors, 6 CSR 1, filed June 12, 1994.

§6-1-2. Definitions.

2.1. Arrangements conference. Includes the time spent with the next-of-kin, or other duly authorized or legally responsible person, planning for the funeral and/or final disposition of a dead human body.

2.2. Board. Means the West Virginia Board of Embalmers and Funeral Directors.

2.3. Embalming. The introduction into the vascular system or hollow organs of a dead human body, by arterial or by hypodermic injection, of any chemical substance, fluids, or gases used for the purpose of preservation and includes the disinfection, preservation and/or restoration of a dead human body.

2.4. Funeral establishment. For purposes of this rule, means a place of business maintained and operated by a person, partnership, association, corporation or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming or cremation, funeral, transportation, burial or other disposition of dead human bodies, and includes "trade service," "trade embalmer," "mortuary service," or any related term which designates activities relating to the shelter, care, custody and preparation of a deceased human body.

2.4.1 Branch funeral establishment. Means a funeral establishment which is owned one-hundred percent by, operated by, is a subsidiary of, or otherwise financially connected or controlled by a licensed main funeral establishment. If the preparation of dead human bodies by embalming or cremation is done at the main establishment and the main establishment is within 60 miles of the branch facility, then the equipment for such preparation of dead human bodies is not required at the branch facility.

2.4.2 Main funeral establishment. Means a primary funeral establishment.

2.4.3 A "trade service" or "mortuary service" means a funeral establishment devoted strictly to the preparation and embalming of dead human bodies, and which may also include the financial arrangements for said embalming and transportation of dead human bodies. A trade service or mortuary service does not offer to the public funeral services, either in the funeral establishment, in religious facilities, or at graveside.

2.5. Funeral service. Includes the religious, fraternal or civil ceremony performed with the body present at a funeral home, church or other public place and also includes the committal or other dedication ceremony at a cemetery or other place of final disposition.

2.6. Professional services. Includes embalming, funeral services and the arrangements conference.

2.7 Person. Means a person, partnership, association, corporation or other organization.

2.8 Registrant. Means a person who holds a certificate of registration issued by this board.

2.9 Licensee. Means a person who holds a license or courtesy card issued by this board.

§6-1-3. Licensing Examination.

3.1 An applicant for the state licensing examination shall remit the appropriate fees for examination and shall supply the Board with the following documentation:

3.1.1 A certified copy of a birth certificate establishing the applicant's age at twenty-one (21) years or over;

3.1.2. Two (2) letters from persons who have known the applicant for a minimum of five (5) years preceding application, who are not related to the applicant, and can attest to the applicant's moral character and temperate habits;

3.1.3. One of the following:

a. A certified transcript which shows successful completion of an associate degree or sixty (60) semester hours or ninety (90) quarter hours of college credit toward a baccalaureate degree, to be completed by a dean of academic affairs or an equivalent officer of an accredited college or university which offers an associate degree or a baccalaureate degree, and a certified transcript from an approved school of mortuary science which shows successful completion of at least 12 months of study in mortuary science ; or

b. A certified transcript which shows successful completion of a bachelor's degree from an approved school of mortuary science for which at least 12 months of study is specifically in mortuary science and equivalent to a diploma program, and for which at least sixty (60) semester hours or ninety (90) quarter hours are in liberal arts.

3.1.4. A certificate of completion of the apprenticeship program as outlined in ~~Section 4 of these rules~~; and

3.1.5. A certificate issued by the International Conference of Funeral Service Examining Boards showing a passing score of its' examination of not less than seventy-five percent (75%).

3.2. Examinations. The state licensing examination shall be prepared and graded by the International Conference of Funeral Service Examining Boards. A passing grade for the examination shall be a score of not less than seventy-five percent (75%).

3.3. Subjects. The state licensing examination shall include the following subjects:

3.3.1. State laws governing the conduct and responsibilities of embalmers and funeral directors.

3.3.2. State laws governing the preneed sale of funeral services and merchandise;

3.3.3. The Rules of the Board;

3.3.4. State laws governing sales tax;

3.3.5. The Federal Occupational Safety and Health Act;

3.3.6. The Americans with Disabilities Act;

3.3.7. The Federal Trade Commission, Funeral Industry Practices Rule.

3.4. Monitoring of examinations. Employees or members of the Board may monitor examinations, provided that they have no relatives or employees sitting for the examination.

3.5. Inspection of examinations. The Board shall allow any individual who fails an examination to inspect his or her examination.

§6-1-4. Apprenticeship.

4.1. The apprenticeship for an embalmer license and for a funeral director's license shall be served simultaneously.

4.2. The apprenticeship program is of one (1) year's duration and consists of full-time employment under the direct supervision of an embalmer and funeral director licensed by this state and actively practicing within this state. For purposes of this rule, a full-time employee is an employee working a minimum of forty (40) hours per week in a licensed funeral establishment. The apprentice has five (5) years within which to complete the apprenticeship, to graduate from mortuary science school, and successfully complete all examinations. The Board will allow one (1) additional year of apprenticeship status upon a written application which shows good cause.

4.3. During the course of apprenticeship an apprentice shall meet the following requirements:

4.3.1. Under the direct supervision of a licensed embalmer, he or she shall assist in the operation or embalming not less than thirty-five (35) dead human bodies.

4.3.2. Under the direct supervision of a licensed funeral director, he or she shall assist in the conduct of not less than thirty-five (35) funeral services.

4.4. During the course of the apprenticeship program, the Board may require the submission of progress reports, on forms prepared by the Board and revised as needed.

§6-1-5. Control of Dead Bodies.

5.1. Authority to assume control. No licensee, licensee's agent, assistants or employees shall assume control of any dead body without first gaining permission from the legally authorized person, or a medical examiner, health officer or other public official lawfully entitled to give the permission.

5.2. Responsibility to honor instructions. A licensee or licensee's agents, assistants or employees who have assumed control of a dead body shall honor all instructions, from persons who have given the control, as to matters relating to the handling of the body, including all steps in preparation; autopsy; embalming; cremation; viewing; photographing; clothing; casket; box or vault; cremation; time, place and type of ceremonies; and burial or other customary disposal, insofar as considerations of public health, legal requirements and customary respectful handling of the dead will permit.

5.3. Authority to embalm or cremate. No licensee or licensee's agents, assistants or employees shall authorize the embalming or cremation of, or embalm or cremate any body without first gaining permission from the legally authorized person entitled to give permission, or in the event services are being rendered by virtue of reference from another funeral establishment, from a representative of the funeral establishment.

5.4. Exception. Hazard to public health. If a question exists to whether the condition of a body may pose a hazard to public health which would be eliminated by embalming, written certification of the condition along with a request that the body be embalmed must be obtained from a public health officer prior to embalming. The embalmer must inform the legally authorized person, other than the public health officer of this certification prior to embalming.

5.5. Responsibility for fees. Failure to gain authority for embalming or cremation. No person or persons entitled to give permission to embalm a body pursuant to Sections 5.3 and 5.4 of this rule, is responsible for the payment of any fee in connection with an unauthorized embalming or cremation.

5.6. Transportation of dead human bodies.

5.6.1. Transit permit. A burial-transit permit, shall be obtained in accordance with WV Code §16-5-21.

5.6.2. Possession of permit. Until the time of final disposition, the burial-transit permit shall be in possession of the person in physical or legal custody of the body, or attached to the transportation container which holds the body. At final disposition, the permit shall be filed, in accordance with WV Code §16-5-21.

5.6.3. Death outside of West Virginia. A burial-transit permit shall be obtained from the state in which the death occurred, and shall be in accordance with WV Code §16-5-21.

5.6.4. Public transportation. A dead human body may be transported by means of public transportation provided that the body must be properly embalmed and encased in an appropriate container, or by any private vehicle or aircraft that meets the following standards:

- a. promotes respect for and preserves the dignity of the dead human body;
- b. shields the body from being viewed from outside of the vehicle ;

c. has ample enclosed area to accommodate an ambulance cot, aircraft ambulance stretcher, casket, alternative container, or cremation container, in a horizontal position;

d. is so designed to permit loading and unloading of the body without excessive tilting of the casket, or other container which holds the body;

e. if used for the transportation of more than one body at one time, the vehicle or aircraft must be designed so that a body or container does not rest directly on top of another body or container, and that each body or container is secured in such a manner as to prevent the body or container from excessive movement within the vehicle.

5.6.5. Transportation procedures. When a dead human body is transported by public transportation, it must be properly embalmed and enclosed in a casket or alternative container and an appropriate outside shipping container. When transportation is by any private vehicle or aircraft, the outside shipping container may be omitted or the casket or alternative container and the outside container may both be omitted and, in such case, the body shall be wrapped in a sheet that is impervious to liquids, covered in such a manner that the body cannot be viewed.

5.6.6. Embalming required. A dead human body that is being transported by public transportation or will not reach its destination with seventy-two hours following death must be properly embalmed. Refrigeration is not considered a form of preservation or disinfection and does not alter the seventy-two hour requirement.

5.6.7. A dead human body transported via public transportation or private vehicle must be placed in a carrying container adequate to prevent the seepage of fluids and escape of offensive odors.

§6-1-6. Health Requirements.

6.1. Statutes and rules and regulations. A licensee and the licensee's agents, assistants and employees shall comply with all federal and state laws and rules and regulations related to health.

6.2. Bodies of individuals affected with infections or contagious diseases. A licensee shall closely and personally supervise bodies affected with infections or contagious diseases. The bodies shall be encased in airtight burial pouches, transfer cases or sealed caskets when transported within the state. Transportation of the bodies across the borders of this State, whether they are transported into or out of this State, shall require, in addition to the foregoing requirement; embalming, treatment and disinfection of the body cavities and orifices.

6.3. An embalmer or funeral director shall handle body fluids, discarded sharps used in the preparation of bodies for burial, or biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation in a manner which complies with the provisions of Infectious Medical Waste, 64 CSR 56 for generators of infectious medical waste, as defined in that rule, specifically, Subsections 5.1; 5.2, except for 5.2.8 and 5.3; all of Section 6; Subsection 7.4; all of Section 8; and Subsections 12.1, 12.2, and 12.9 as though the body fluids, sharps and biological or biologically-contaminated waste materials were infectious medical waste and the embalming or funeral establishment were a small quantity generator of infectious medical waste as defined in Infectious Medical Waste, 64 CSR 56, except that any references to the secretary shall be taken as references to the Executive Director of the West Virginia Board of Embalmers and Funeral Directors.

6.4 An embalmer or funeral director shall treat body fluids, sharps, and biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation as required by Section 10 of Infectious Medical Waste, 64 CSR 56, or shall arrange for treatment and disposition of the body fluids, sharps or biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation by a treatment facility appropriately licensed or otherwise authorized by the agency having lawful jurisdiction.

6.5 An embalmer or funeral director shall utilize a lawful and licensed transporter or infectious medical waste for the transport of body fluids, sharps, biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation to a treatment facility or may transport the waste themselves, according to the provisions of Infectious Medical Waste, 64 CSR 56, regarding the transport of infectious medical waste by small quantity generators.

6.6 Viewing, public or otherwise, of unembalmed bodies. An embalmer shall provide a written disclosure to individuals who wish to view an unembalmed body. This disclosure shall contain relevant information pertaining to the potential spread of infectious or contagious disease or other possible hazards. The embalmer shall thoroughly discuss these risks with the individual wishing to view the body and may require the legally authorized person or other individuals who will view an unembalmed body to sign a statement which releases the embalmer and his employer from any liability, only after discussing the potential hazards.

§6-1-7. Evidence of Crime.

7.1. Embalming, removal and/or cremation. No licensee, or a licensee's agents, assistants or employees shall embalm, remove or cremate a body when they have information of or suspect a crime or intentional violence in connection with the cause of death, until permission is obtained from a medical examiner or other qualified official.

7.2. Information of crime. A licensee or registrant, or a licensee's or registrant's agents, assistants or employees who have obtained information of a possible crime shall immediately communicate that information to a proper law enforcement officer.

7.3. Concealment of crime. No licensee or registrant, or a licensee's or registrant's agents, assistants or employees shall knowingly do any act that would conceal evidence of a crime.

7.4. Use of certain materials in embalming. No licensee, or licensee's agents, assistants or employees shall use any fluid or compound which contains arsenic, lead, mercury, copper, zinc, silver, antimony or chloral or any poisonous alkaloid in the embalming of a body.

§6-1-8. Price Disclosure.

8.1. General Price and Information List. All funeral establishments shall comply with the current Federal Trade Commission, Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453.

§6-1-9. Advertising and solicitation, applicable to all persons licensed or registered by this board.

9.1. All advertising shall comply with the requirements set forth in article six (6) of chapter thirty (30) of W. Va. Code.

9.2. No licensee, registrant, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall use or sponsor the use of any false, misleading, untrue or deceptive advertising in any manner whatsoever.

9.2.1. If the words "Free," "Without Charge" or other words with similar connotations have the effect of misleading the public, then their use will be considered false and misleading by the Board.

9.2.2. No licensee, registrant, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall solicit business or shall offer any inducement, pecuniary or otherwise for employing solicitors, agents, canvassers or other persons for the purpose of securing or attempting to secure business. Such persons shall not call upon, visit, telephone, write or cause, directly or indirectly, advertising literature to be sent to a sick or dying person as would tend to be considered non-general, selective or soliciting advertisements. No licensee, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall offer or accept bribes or kickbacks, direct or indirect.

9.2.3. All advertising copy, such as newspaper, radio, television, bill-boards, church bulletins, school publications, trade journals, stationery, contracts and other similar periodical publications have no limit as to size providing the advertising is not in any way false, misleading, untrue or deceptive. The contents of the advertising must meet the follow requirements:

a. Corporations, limited liability companies, limited partnerships, limited liability partnerships. For these licensees or registrants required to register with the secretary of state, the advertisement must contain the trade name of the business as it appears on the organizing documents filed with the secretary of state, the name of the business as it appears on the license or certificate of registration issued by this board, the location and/or mailing address of the business, and the name of the licensed or registered person in charge. The advertisement must identify the person in charge by placing the term "licensee-in-charge" or "funeral director in charge" or other similar term after the name of the licensee or registrant in charge. This does not prohibit the inclusion of other employees of the business; however, their titles must also appear on the advertisement. If the name of the owner of the business is different than the trade name of the funeral establishment, the owner's name must also appear on all advertisements. The advertisement must identify the owner by placing the term "owner," or other similar term after the owner's name. The term "owner" is construed to mean the name of the corporation, limited liability company, limited partnership, or limited liability partnership.

b. Sole proprietorships, general partnerships. For these licensees or registrants, the advertisement must contain the DBA division or subsidiary name as it appears on the tax commission business registration form WV/BUS-APP, the name of the business as it appears on the license or certificate of registration issued by this board, the location and/or mailing address of the business, and the name of the licensed or registered person in charge. The advertisement must identify the person in charge by placing the term "licensee-in-charge" or "funeral director in charge" or other similar term after the name of the licensee or registrant in charge. This does not prohibit the inclusion of other employees of the business; however, their titles must also appear on the advertisement. If the owner's name, as it appears on the tax commission business registration form WV/BUS-APP, is different than that of the name of the business, as it appears on

the funeral establishment license, the owner's name must also appear on the advertisements. The advertisement must identify the owner by placing the term "owner," or other similar term after the owner's name. The term "owner" is construed to mean the name of the sole proprietor or the names of the partners.

9.2.4. The advertisement may include a description of the service facilities of the advertiser as well as general information pertaining to his or her business. The following are additional requirements:

a. A funeral establishment may advertise the total cost of various adult services, however the advertisement must contain at least the total cost of the minimum adult service, which is construed to mean the cost of the casket and all necessary items for a complete funeral service. The cemetery costs, opening grave costs, vault costs or excess mileage costs are not considered to be necessary to constitute a complete funeral. If not advertising the total cost of adult services, casket prices and other funeral goods can be listed separately; however, the advertisement must contain at least one casket that is considered the least expensive of the models sold by the funeral establishment.

b. Any funeral establishment advertising any merchandise used in connection with his or her business shall carry in his stock a sample of the merchandise for a period of not less than thirty (30) days after advertisement publication and must be able to meet any and all demands for such items, with no increase in price, for the stated period of not less than thirty (30) days; and

c. The terms "advertise" and "advertising" as used in this rule include the use of radio, television, billboards, stationery, contracts, price lists, calendars, fans and novelty advertising, or any other advertising method or medium.

§6-1-10. Confidentiality.

10.1. Preserving confidentiality. No licensee or registrant, or a licensee's or registrant's agents, assistants or employees shall divulge any confidential or private information relating to the domestic life in any home wherein they may be called upon to serve. This prohibition, however, shall not prevent divulging information to any person lawfully entitled or properly authorized to receive the information.

10.2. Exception. Should any form of child abuse, child neglect, or elder abuse be suspected or divulged, the proper authorities shall be notified, including but not limited to local office of the West Virginia Department of Health and Human Resources and local law enforcement. Failure to do so will result in disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W.Va. Code.

§6-1-11. Supervision Required of Licensee and Registrant.

11.1. Licensed funeral director in charge. Each licensed funeral establishment shall have a licensed funeral director in charge of and responsible for the day-to-day operation of the establishment. The funeral director shall be a full time employee of the funeral establishment.

11.2. Branch funeral establishment. A licensed funeral director shall directly supervise the activities of a branch establishment at all times that professional services are being rendered at the branch.

11.3. Absence in excess of thirty (30) days. A licensed funeral establishment shall not go without the supervision of a licensed funeral director in charge for a continuous period in excess of thirty (30) days.

11.4. Funeral Directing. A funeral director, licensed by this state, shall be responsible for and directly supervise any funeral service conducted for compensation within the state.

11.5. Embalming and cremation. An embalmer, licensed by this state, shall be present at and directly supervise any embalming operation performed within the state. Only licensed embalmers or registered apprentice embalmers may embalm dead human bodies. A funeral director, licensed by this state, shall be present at and directly supervise an cremation of a dead human body within the state.

11.6. Arrangements conference. A funeral director, licensed by this state, shall be responsible for and supervise any arrangements conference conducted within the state.

§6-1-12. Inspections.

12.1. Right of inspection. The Board, any of its members or any duly authorized inspector, has the right to enter, without prior notice, any licensed funeral establishment, during normal business hours, for the purpose of inspecting the establishment.

12.2 Compliance. The holder of a funeral establishment license shall correct any violations found during an

inspection. The severity of the violation will dictate the time allotted for correction and is at the discretion of the inspector.

12.3. Areas of inspections, applicable to funeral establishments. The Board shall produce an inspection report to use as a guide while inspecting an establishment, a copy of which will be left with the establishment at the conclusion of the inspection and a copy which will be filed in the office of the Board. Areas of inspections shall include but not be limited to:

12.3.1. Public areas, including restrooms, lounges, parlors, casket display rooms and individual caskets, offices and chapels;

12.3.2. Non-public areas, including preparation or embalming rooms, refrigeration facilities, holding areas, crematories and dressing rooms;

12.3.3. Materials as specified in sections 8 and 9 of these rules;

12.3.4. Medical waste disposal procedure and documents;

12.3.5. Other necessary equipment, materials, and records, as provided for in section 13 of these rules;

12.4 All funeral establishments shall maintain all necessary equipment, as established in section 13 of this rule, and materials in a clean, safe, and sanitary condition. All such equipment and materials shall be in good repair and are subject to inspection. The building in which the funeral establishment is located shall also be in good repair and maintained in a clean, safe, and sanitary condition and is subject to inspection.

§6-1-13. Necessary Equipment. Failure to comply with the following requirements shall result in disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W. Va. Code, if not corrected within the allotted time designated by the inspector or any other duly authorized representative of the board.

13.1. A main funeral establishment shall have the equipment for the conduct of embalming and funeral directing, and shall comply with Occupational Safety and Health Administration's regulations as outlined in 29CFR1900 et seq., and includes but is not limited to:

13.1.1. Embalming and preparation room facilities along with all necessary equipment, in compliance with all state and federal laws and rules, located in each funeral establishment; existing funeral establishments, at the time of effective date of these rules, shall have installed the following equipment and materials by July 1, 2002. New applicants shall have installed such equipment and materials prior to issuance of license:

a. sanitary flooring;

b. all instruments and appliances used in the embalming of a dead human body shall be thoroughly cleansed and sterilized by boiling or immersion for ten minutes in a one percent solution of chlorinated soda or an equivalent disinfectant immediately at the conclusion of each individual case;

c. running hot and cold water with a lavatory sink for personal hygiene;

d. exhaust fan and intake vent, permanent installed and operable with the capacity to change the air in the room four times each hour;

e. sanitary plumbing connected with sewer, cesspool, septic tank, or other department of health and human resources approved system;

f. porcelain, stainless steel, metal-lined or fiber-glass operating table;

g. all opening windows and outside doors shall be adequately screened and shielded from outside viewing;

h. all hydro-aspirators shall be equipped with at least one air breaker;

i. containers for refuse, trash and soiled linens shall be adequately covered or sealed at all times;

j. first aid kit and eyewash;

k. the embalming or preparation room shall be strictly private. A "private" sign shall be posted on the door(s) entering the embalming room. No one shall be allowed therein while the body is being embalmed except licensed

embalmers, registered apprentices, and other authorized persons and officials in discharge of their duties. The embalming room shall not be open to the general public;

l. all waste materials, refuse, used bandages, and cotton shall be destroyed by reducing to ashes by incineration, or shall be removed by a licensed medical waste dispenser;

m. every person, while engaged in actually embalming a dead human body, shall be attired in a clean smock or gown covering the person from the neck to below the knees and shall, while so engaged, wear impervious rubber gloves;

n. All bodies in the preparation shall be treated with proper care and dignity and shall be properly covered at all times; and

13.1.2. Restroom facilities in compliance with all federal, state, and local health requirements.

13.1.3. Chapel or other separate room for conducting funeral services.

13.1.4. Office space for making arrangements.

13.1.5. If caskets are displayed at the funeral establishment, there will be a separate room set aside for this purpose.

13.1.6. Exception. If a main or branch funeral establishment operates solely as a trade service or mortuary service, a chapel is not required. If the trade service or mortuary service does not serve the public directly, public restroom facilities and office space are not required.

13.2 A branch funeral establishment shall have, at minimum the equipment for the conduct of funeral directing and shall have restroom facilities in compliance with all federal, state, and local health requirements. A branch establishment must meet requirements as established in section 2.4.1. of these rules, as it relates to embalming room facilities. If the branch funeral establishment has embalming room facilities, it shall comply with section 13.1.1. of these rules.

13.3 Caskets. If a funeral establishment stores in its building or offers for sale caskets to the public, the establishment shall comply with the following requirements: each casket on display, in storage, awaiting pick up or delivery to a customer or a customer's representative, or being utilized during a service shall have a permanent adhesive label which contains: manufacturer's name; type of materials the casket is made of, such as type of wood, metal, etc.; gauge of metal; and type of materials used on the exterior.

§6-1-14. Courtesy Card.

14.1. Requirements. The applicant shall:

14.1.1. Certify residency of a state which borders West Virginia;

14.1.2. Certify licensure status as a funeral director and embalmer in his state of residence, on a form supplied by the board;

14.1.3. Complete an application, supplied by the Board; and

14.1.4. Pay any and all statutory fees.

14.2. Privileges. A courtesy card holder may conduct funerals, for an out-of-state funeral establishment, within the boundaries of the state of West Virginia.

14.3. Responsibilities. A courtesy card holder shall obey all the laws of the state of West Virginia and this rule. He or she shall not open or operate a place of business for the purpose of conducting funerals, embalmings, cremations, or selling of funeral goods. He or she shall not maintain an office or agency in this state. Further, he or she may not be employed by, nor contracted by, a funeral establishment licensed by this state as a licensed embalmer or funeral director.

14.4. The violation of this section will result in the immediate revocation or cancellation of the courtesy card of the violator issued by this Board.

§6-1-15. Penalties.

15.1. Any violation of this rule constitutes grounds for the refusal to renew a license or constitutes grounds for the suspension or revocation, or other disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W. Va. Code, of any license or certificate issued under the provisions of article six (6) of chapter thirty (30) of W. Va. Code.

§6-1-16. Fees.

16.1. Study Packets for state examination. \$25.00. Applicant will be informed of the availability at time of request for registration. The applicant shall not be required to purchase a packet; however, upon request and payment of fee, a study packet will be promptly mailed to applicant.

16.2. Apprentice Handbook. \$50.00. This handbook is free only with the Initial apprentice registration. Subsequent handbooks must be purchased at the above cost.

16.3. Lost or stolen licenses, certificates of registration or courtesy cards. \$25.00 for each re-issuance.

16.4. Inspections. A \$200.00 inspection fee will be charged for the following:

16.4.1. Each additional inspection for funeral establishments found to be out of compliance with the provisions of article 6 of chapter 30 of W. Va. Code and series one of title six legislative rules during the initial yearly inspection.

16.4.2. Missed scheduled appointments with inspector, in which the inspector must return to the funeral establishment on a date other than the date of the original appointment. This fee will only be charged if it is determined that the inspector was not at fault for the missed appointment or the appointment was rescheduled at least one week prior to the date of inspection. This fee is designed to cover the cost of the inspector's expenses.

16.5. Continuing Education Approvals. \$50.00 for each program application submitted for approval within 45 days of the first date of the program, which requires expedient approval. Any application submitted more than 45 days prior to the first date of the program will not carry this charge.

16.6. Chapter 30-6 and related rules. \$5.00 for one copy of each plus shipping and handling. All copies of other state or federal laws will carry a charge of \$.30 per page plus shipping and handling. For materials that are pre-printed by another organization, only shipping and handling charges will apply.

16.7. All other materials that must be re-printed and are not included of these rules will carry a cost of \$.30 per page plus shipping and handling.

16.8. Reciprocal Funeral Director License and Embalmer License. Application processing fee of \$25.00, in addition to statutory fees.

§6-1-17. Correspondence with Board.

17.1. Response to inquiries. To avoid inconsistency, all inquiries relating to any facet of licensing requirements shall be directed, in writing, to the full Board through its Executive Director. If any employee or member of the Board is asked to provide information or interpretations, he or she shall refrain from responding, but shall reduce the inquiry to written form and direct it to the full Board through its Executive Director.

§6-1-18. Continuing Education.

18.1. All continuing education programs must be approved by the board prior to the first presentation date of the program and be relevant to the practice of mortuary science. Sponsors of such programs are responsible for submitting applications for approval. Fees for such approvals are established in section 16.5 of these rules. On-going programs that are presented as needed must be approved each calendar year.

18.2. One-quarter of required continuing education credits may be obtained through audio or video media. Such programs must be approved in advance, as established in section 18.1. of these rules. The board may require the licensee to demonstrate new knowledge of material learned through such media by examination or other means of testing.

Referenced Material and Related Laws

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

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

There is hereby created a state board to be known and designated as the "West Virginia board of embalmers and funeral directors," which shall consist of seven members, who shall be appointed by the governor, by and with the advice and consent of the Senate, six of whom shall be licensed embalmers and practicing funeral directors with a minimum of five consecutive years' experience in West Virginia immediately preceding their appointment; the seventh member shall be a lay member as provided in section four-a, article one of this chapter.

§30-6-2. Terms of members; former board of embalming examiners to cease and files to be delivered to new board.

Immediately after the effective date of this article, the governor shall appoint one member of said board for a term of one year, one for a term of two years, one for a term of three years and three for a term of four years and thereafter shall appoint said members for a term of four years beginning on the first day of July. Upon the organization of the board created by this article the state board of embalming examiners shall cease to exist. The funds, records and files of said board shall be delivered to the board created hereunder, which shall have all the powers and privileges of the state board of embalming examiners, as well as the powers and privileges conferred by this article.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

Members of said board, before entering upon their duties, shall take and subscribe to the oath of office prescribed by the secretary of state.

Said board shall select from its own members a president, a secretary and a treasurer. Each member shall be reimbursed for his traveling expenses, incident to his attendance upon the business of the board, and in addition thereto, the sum of fifty dollars per day for each day actually spent by such member upon the business of the board. The secretary shall receive an annual salary of not to exceed one thousand dollars, the amount and payment of which shall be fixed by said board, and in addition thereto shall receive traveling and other incidental expenses incurred in the performance of his duties.

The board may employ an executive director and such clerks, inspectors and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this article and duly promulgated rules and regulations of the board and to effect its purposes, and the board shall determine the duties and fix the compensation of such executive director, clerks, inspectors and assistants, subject to the general laws of the state. Any inspector employed by the board shall have either a West Virginia embalmer's license or a West Virginia funeral director's license. Any inspection shall be conducted in such a manner so as not to interfere with the conduct of business within the funeral establishment, and the inspector shall be absolutely prohibited from examining any books and records of the funeral establishment.

All such expenses, per diem and compensation shall be paid out of the receipts of the board, but such allowances shall at no time exceed the receipts of the board.

The treasurer of the board shall give bond to the state of West Virginia in such sum as the board shall direct with two or more sureties or a reliable surety company approved by the board, and such bond shall be conditioned for the faithful discharge of the duties of such officer. Such bond, with approval of the board endorsed thereon, shall be deposited with the treasurer of the state of West Virginia.

The board shall hold not less than two meetings during each calendar year for the purpose of examining applicants for licenses, such meeting or meetings to be held at such time and place as the board shall determine. The time and place of such meeting shall be announced by publication in three daily newspapers of general circulation in different locations in the state, and publication to be once a week for two consecutive weeks immediately preceding each such meeting.

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

The board shall have the power and it shall be its duty to make and enforce all necessary rules and regulations, 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; the licensing and general operation of funeral establishments, except that no rules and regulations 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.

The board shall publish in its rules and regulations the subjects to be covered in the said examinations and the standards to be attained thereon. Changes in the rules and regulations shall be published and shall be given due

publicity at least ninety days before becoming effective.

The board may conduct annually a school of instruction to apprise funeral directors and embalmers of the most recent scientific knowledge and developments affecting their profession. Qualified lecturers and demonstrators may be employed by the board for this purpose. The board shall give notice of the time and place at which such school will be held for all licensed funeral directors and embalmers, and it shall be the duty of every licensed funeral director and embalmer to attend at least one such school or other approved program, every three years: **Provided,** That the location of any school of continuing education shall accommodate the geographic diversity of the embalmers and funeral directors of this state. Compliance with the requirements of continuing education is a prerequisite for license renewal.

Hours of continuing education may be obtained by attending and participating in board-approved programs, meetings, seminars or activities. It is the responsibility of each licensee to finance his or her costs of continuing education.

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

§30-6-4. Definitions.

For the purpose of this article, the following terms shall be construed in the following manner:

"Funeral director" shall mean any person engaged, or holding himself out as engaged, in the business of funeral directing as herein defined, and shall use in connection with his name or business the words or terms "funeral director," "undertaker," "mortician," or any other word, term, or title to imply or designate him as a funeral director, undertaker, or mortician.

"Funeral directing" shall mean the business or profession of directing or supervising funerals for profit by any person, partnership, association, corporation, or other organization, or the business or profession of preparing dead human bodies for burial by means other than embalming by any person, partnership, association, corporation, or other organization, or the disposition of dead human bodies by any person, partnership, association, corporation, or other organization, or maintenance of a place or establishment for the preparation for disposition or for the care or disposition of dead human bodies by any person, partnership, association, corporation, or other organization, or the use in connection with a business of the word or term "funeral director," "undertaker," "mortician," by any person, partnership, association, corporation, or other organization, directing or the holding out to the public that one is a funeral director by any person, partnership, association, corporation, or other organization.

A "funeral establishment" is a place of business maintained and operated by a person, partnership, association, corporation, or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming, funeral, transportation, burial or other disposition of dead human bodies.

"Embalmer" shall mean any person engaged in, or holding himself out to be engaged in, the practice of embalming, whether on his own behalf or in the employ of another, and shall include any person who shall use in connection with his name, the term "embalmer," or use any word, term, or title intending to imply or designate him as an embalmer or as one engaged in embalming.

"Embalming" is the introduction into the vascular system or hollow organs of a dead human body, by arterial or by hypodermic injection, of any chemical substance, fluids, or gases used for the purpose of preservation or disinfection.

"Apprentice" shall mean any person engaged in this state in the learning of the practice of embalming or of the practice of funeral directing under the instruction and personal supervision of a duly licensed embalmer or a duly licensed funeral director, under the provisions of this chapter.

§30-6-5. Embalmers and funeral directors to be licensed; qualifications and requirements for license; advertising; renewal of license; registration as apprentice; courtesy cards.

No person shall engage in or hold himself out as engaging in, or discharge any of the duties of the business or profession of embalming, or preserving in any manner dead human bodies in this state, whether for himself or in the employ of another, unless he holds an embalmer's license issued to him by the board, and shall at the date of its issuance have complied with the provisions of this article.

No person shall engage in, or hold himself out as engaging in, or discharge any of the duties of the business or profession of funeral directing in this state, unless he holds a funeral director's license issued to him by the board, and shall at the date of its issuance have complied with the provisions of this article, or conduct a funeral unless he be a licensed funeral director.

No person shall be entitled to an embalmer's license unless he:

- (1) Is eighteen years of age or over;

(2) A citizen of the United States;
(3) Of good moral character and temperate habits;
(4) Holds a high school diploma or its equivalent;
(5) Holds an associate degree from an accredited college or university or has successfully completed not less than sixty semester hours or ninety quarter hours of academic work in an accredited college or university toward a baccalaureate degree with a declared major field of study, as evidenced by a transcript submitted for evaluation prior to beginning a one-year course of apprenticeship as described in subdivision (6) of this section and prior to obtaining a diploma of graduation from a school of mortuary science as described in subdivision (7) of this section;

(6) Has completed a one-year course of apprenticeship under the supervision of a licensed embalmer actively and lawfully engaged in the practice of embalming in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment, and under which said apprenticeship he shall have taken an active part in the operation of embalming not less than thirty-five dead human bodies, under the supervision of a licensed embalmer;

(7) Possesses a diploma of graduation from a school of mortuary science which requires as a prerequisite to graduation the completion of a course of study not less than twelve months' duration, and which said school of mortuary science must be one accredited by the American board of funeral service education, inc., and duly approved by the board; and

(8) Passes with an average score of not less than seventy-five percent the national conference of funeral services examination at a testing site provided by the national conference, passes with a score of not less than seventy-five percent the state law examination administered by the board and passes such further examination as the board may deem necessary to ascertain his qualification and ability to engage in the practice of embalming. Successfully passing the national conference of funeral services examination is a condition precedent to taking the state law examination administered by the board. The board shall offer the state law examination at least twice each year.

The board shall issue licenses separately to embalmers and to funeral directors.

An applicant for a funeral director's license must furnish satisfactory proof to the board that his business or profession of funeral directing is to be conducted in a fixed place or establishment equipped for the care and preparation for burial or disposition of dead human bodies. What shall be deemed "necessary equipment" shall be defined in the rules and regulations of the board, the same to be in compliance with the public health laws of the state or the rules of the state board of health of West Virginia. This shall not be so construed as to deny an applicant for a funeral director's license such a license because he is not the owner, or part owner, of an establishment or proposed funeral business.

Licenses issued under the provisions of this article shall not be transferable or assignable.

No person shall be eligible to receive a license as a funeral director unless he:

(1) Holds an embalmer's license issued by this board;
(2) Has been duly registered with the board as an apprentice;
(3) Has served not less than a one-year apprenticeship under the personal supervision of a licensed funeral director-embalmer actively and lawfully engaged in the business or profession of funeral directing and embalming in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment including taking an active part in conducting not less than thirty-five funeral services. For the purpose of this section, "regular and steady employment" means a forty-hour week or a longer period of time set at the discretion of the person by whom he is employed.

All funeral homes or establishments or any other places pertaining to funeral directing or the conducting of funerals shall display in all advertising the name of the licensed funeral director who is actually in charge of the establishment. All branch establishments must display the name of the funeral director who is actually in charge. At least one licensed funeral director shall supervise each main establishment and at least one licensed funeral director shall directly supervise each branch establishment when professional services are performed at the branch establishment.

No licensed funeral director or licensed embalmer shall be permitted to register or have registered more than five apprentices under his license at the same time.

Any person now holding a license as an embalmer or funeral director shall not be required to make a new application, or submit to an examination, but shall, upon the payment of the fee therefor, be entitled to a renewal of his license upon the terms and conditions herein provided for the renewal of licenses of those who may be licensed after the effective date of this article, but all such persons shall be subject to every provision of this article, and such rules and regulations as the board may adopt in pursuance of this article.

No person shall be registered as an apprentice funeral director or apprentice embalmer unless he is eighteen years of age, or over, a citizen of the United States, of good moral character and temperate habits, the holder of a high school diploma or its equivalent, and holds an associate degree from an accredited college or university or has successfully completed not less than sixty semester hours or ninety quarter hours of academic

work in an accredited college or university toward a baccalaureate degree with a declared major field of study.

The board may issue annual nonrenewable courtesy cards to licensed funeral directors and licensed embalmers of the states bordering on West Virginia, upon application for same made on form prescribed by the board. The annual fee for such courtesy cards shall be fifty dollars and said fee shall be paid at the time application is made therefor. Applications for said courtesy cards shall be approved by the board before the same may be issued, and said courtesy cards shall be issued under the following conditions: Holders of courtesy cards shall not be permitted to open or operate a place of business for the purpose of conducting funerals or embalming bodies in the state of West Virginia, nor shall they be permitted to maintain an office or agency in this state. A violation of this section shall be sufficient cause for the board to revoke or cancel the courtesy card of the violator.

§30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.

The examination fee for a funeral director's license shall be one hundred fifty dollars and shall be remitted at the time the application for a funeral director's license is submitted to the board.

The examination fee for an embalmer's license shall be one hundred fifty dollars and shall be remitted at the time the application for an embalmer's license is submitted to the board.

All the licenses and certificates of registration shall expire on the thirtieth day of June of each calendar year and the renewal date for all licenses and certificates shall be the first day of July of each calendar year.

The annual renewal fee for embalmer's license is thirty dollars; the annual renewal fee for a funeral director's license is thirty dollars; the annual renewal fee for an apprentice embalmer's license is twenty-five dollars; the annual renewal fee for an apprentice funeral director's license is twenty-five dollars; and each shall be paid on or before the first day of July of each calendar year.

Any person who has been duly licensed as a funeral director or as an embalmer under the laws of this state, but who fails to renew his license within thirty days after the expiration date for renewals, may file an application for a renewal of his license, without examination, upon payment of a penalty of fifty dollars, a reinstatement fee of fifty dollars and the required renewal fee.

Any person who has been duly licensed as a funeral director or as an embalmer under the laws of this state, but who fails to renew his license within sixty days after the expiration date for renewals, may file an application for a renewal of his license, without examination, upon payment of a penalty of one hundred dollars, a reinstatement fee of one hundred dollars and the required renewal fee.

A funeral director or an embalmer whose license has lapsed one year or more shall make application to the board for a new license in compliance with the provisions of this article relating to unlicensed persons.

Any person who has been duly registered as an apprentice embalmer or apprentice funeral director and fails to renew his registration within thirty days after the expiration date for renewals may file an application for such renewal upon payment of a penalty of fifty dollars, a reinstatement fee of fifty dollars and the required renewal fee. Otherwise, after the said period of thirty days, his registration will automatically be canceled.

All fees and other moneys received by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purposes of this article. After the expenditures for a fiscal year, of the remaining moneys accrued and set aside for that fiscal year, all sums in excess of twenty thousand dollars in the separate fund shall revert to the general fund of the state. The compensation provided by this article and all expenses incurred, the payment of which is authorized under this article, shall be paid from this separate fund. No compensation or expense incurred under this article shall be a charge against the general funds of the state.

§30-6-7. Refusal to grant or renew; suspension or revocation of license or certificate of registration.

The board may either refuse to issue, or may refuse to renew, or may suspend, or may revoke any embalmer's license or funeral director's license, or embalmer's or funeral director's certificate of registration issued by it for any one or combination of the following causes:

(a) The practice of fraud or deceit in obtaining or attempting to obtain a license or a certificate of registration;

(b) Conviction of a felony as shown by a certified copy of the record of the court of conviction;

(c) Violation of any of the provisions of this article or the public health laws of this state;

(d) The use of false, misleading or unethical advertising by any licensee or applicant for a license or certificate of registration;

(e) Upon satisfactory proof that a licensed embalmer or a licensed funeral director has taken undue advantage of his patrons or has committed a fraudulent act in the conduct of his business;

(f) Solicitation of business by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or while death is impending: **Provided**, That this shall not be deemed to prohibit proper advertising;

(g) If the applicant therefor or holder thereof knowingly permits an unlicensed person to engage in the profession or business of embalming or funeral directing under his supervision; or if any holder of an embalmer's

license or funeral director's license issued hereunder knowingly permits any unlicensed person to use his license number or numbers for the purpose of practicing, or discharging any of the duties of, the professions of embalming or funeral directing;

(h) Employment by the licensee of persons as "cappers," "steerers" or "solicitors," or other such persons to obtain funeral directing business;

(i) Employment directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director;

(j) The buying of business by the licensee, his agents, assistants, or employees or the direct or indirect payment or offer of payment of a commission by the licensee, his agent, assistants, or employees, for the purpose of securing business;

(k) Gross immorality;

(l) If the applicant therefor or holder thereof has been guilty of habitual drunkenness or is addicted to the use of morphine, cocaine or other habit-forming drugs.

§30-6-8. Duty of public officers, physicians, etc., as to disposition of body of deceased person; penalty for violation of section; hearings on refusing, suspending or revoking licenses; appeals from decisions of board; penalty for engaging in business without license; purpose of article.

No public officer, employee, physician or surgeon, or any other person having a professional relationship with the deceased, shall send, or cause to be sent, to any funeral director, undertaker, mortician or embalmer, the body of any deceased person without having first made due inquiry as to the desires of the next of kin, or any persons who may be chargeable with the funeral expenses of such deceased person; and if any such kin or person can be found, his authority and direction shall be received as to the disposal of said corpse.

Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars, nor more than one thousand dollars, or imprisoned not less than ten days nor more than ninety days, or both.

The board may make investigations, subpoena witnesses, administer oaths and conduct hearings.

No order refusing, suspending or revoking a license shall be made until after a public hearing conducted by the board.

At least twenty days prior to the date of hearing, the board shall send a written notice of the time and place of such hearing to the applicant, together with a statement of the charges against him, by mailing the same to the last-known address of such person.

The testimony presented and the proceedings had at such hearings shall be taken in shorthand, at the expense of the board, and preserved as records of the board. The board shall as soon thereafter as possible make its findings in determination thereof, and send a copy to each interested party.

Any person who has been refused a license for any cause or whose license has been revoked or suspended may file with the secretary of the board, within thirty days after the decision of the board, a written notice of appeal therefrom to the circuit court of the county within which such person whose license has been refused, revoked or suspended resides. Upon the filing of such notice, the secretary of the board shall transmit to the clerk of said court the record of such proceedings. Such court shall thereupon hear and determine such case as in other cases of appeal. The judgment of the circuit court may be reviewed upon proceedings in error in the supreme court of appeals.

No person shall engage in the profession or business of embalming or funeral directing as defined in this article unless he is duly licensed as an embalmer and/or as a funeral director within the meaning of this article, and any person who shall engage in either business or profession, or both, without having first complied with the provisions of this article, or who shall violate any other provisions of this article, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined not less than two hundred dollars nor more than four hundred dollars for the first offense. Upon conviction of a second or subsequent offense, the violator shall be fined not less than five hundred dollars nor more than one thousand dollars.

The sanitary preparation of dead human bodies for burial and the burial thereof is a public necessity, and it has direct relation to the health, welfare and convenience to the public, and the Legislature of this state hereby finds, determines and declares that this article is necessary for the immediate preservation of the public peace, welfare, health and safety.

§30-6-9. Article not to apply to or interfere with duties of state board of health, officers of medical colleges, medical societies, etc., or rites of religious sects.

No provision of this article shall apply to or interfere with the duties of an officer of any local or state board of health, who, in compliance with local or state board of health rules, may be charged with the duty of preparation for burial of a human body, when death was caused by a virulent, communicable disease; nor with the

duties of an officer of a medical college, county medical society, anatomical association or other recognized person carrying out the provisions of the sections of the code prescribing the conditions under which indigent dead human bodies are held subject for anatomical study; nor with the customs or rites of any religious sect in the burial of its dead.

§30-6-10. Licensing of assistant funeral director as funeral director.

Any person who on July first, one thousand nine hundred forty-one, has been engaged in the profession or business of funeral directing as an assistant funeral director for a continuous period of at least two years shall, by that date, register as a funeral director with the board on a form prescribed by said board, and upon the payment of a fee of fifty dollars, and examination by said board, such person shall be entitled to a license, and the board shall issue to such person a license as a funeral director; which such license shall remain in full force and effect until the first day of the year following the issuance of such license. Thereafter, such person or persons shall renew such license or licenses as herein provided for.

§30-6-11. Apprenticeship.

The board may by its rules and regulations, provide for the manner in which an apprenticeship shall be served and the length of time thereof, which shall not be more than one year.

§30-6-12. Words in masculine gender; definition of "board."

In the interpretation of this article, words in the masculine gender include the feminine and neuter genders. Whenever the word "board" is used in this article, it shall be construed to mean and refer to the "board of embalmers and funeral directors of West Virginia."

§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

On or before the first day of July, one thousand nine hundred sixty-nine, every funeral establishment operating in West Virginia shall obtain a license for the succeeding fiscal year beginning the first day of July, one thousand nine hundred sixty-nine, as provided for in this section.

An application for a license to operate a funeral establishment shall be in writing and verified on a form provided by the board and shall be accompanied by a fee as herein provided, and upon receipt of the same, the board shall forthwith issue or renew a license to operate a funeral establishment. Such application to operate a funeral establishment shall be made by any person, partnership, association, corporation, organization or fiduciary having controlling interest in such funeral establishment.

Such application shall be signed by the applicant and by the individual who is duly licensed as a funeral director, and who shall be in charge and responsible for all transactions conducted and services performed therein. If such funeral establishment is owned by a person who is not licensed as a funeral director or by a partnership, association, corporation or other organization, then such owner shall have in his or its employ and place in charge of such establishment a person who is duly licensed as a funeral director, who shall manage, conduct and have supervision of the work or business of such establishment and be responsible therefor.

A license to operate a funeral establishment shall expire on the thirtieth day of June of each calendar year and the renewal date for any such license shall be the first day of July of each calendar year.

Each funeral establishment license shall be valid only for one funeral establishment to be located at a specific street address or location; the fee to operate the principal establishment shall be one hundred twenty-five dollars per year and the fee to operate each additional funeral establishment by the same applicant shall be seventy-five dollars per year. Each separate funeral establishment shall have its own license, which license shall be prominently displayed within the funeral establishment. No additional license fee shall be charged if during any given year it shall be necessary to reapply for a license to operate a funeral establishment at the same or different location. A funeral establishment that fails to pay fees for either the principal establishment or additional establishment by the first day of July of each calendar year is subject to a penalty of fifty dollars and a reinstatement fee of fifty dollars for each establishment and the required renewal fee.

The holder of any funeral establishment license who ceases to operate the funeral establishment at the location specified in the application shall, within twenty days thereafter, surrender the funeral establishment license to the board and such license shall be canceled by the board, except that in the event of the death of an individual who was the holder of a funeral establishment license, it shall be the duty of such holder's personal representative to surrender such funeral establishment license within one hundred twenty days of qualifying as such personal representative. It shall be the duty of any holder of a funeral establishment license, pursuant to this section, to notify the board within thirty days if for any reason the licensed funeral director whose name is signed to the application for the issuance thereof, ceases to be employed by such funeral establishment. Within thirty days after such notification, such holder of a funeral establishment license may execute a new application for a funeral

establishment license signed by the applicant and by the licensed funeral director who shall be in charge of and responsible for all transactions conducted and services performed within the funeral establishment. Failure to comply with any of these provisions shall be grounds for revocation of a funeral establishment license.

A licensee whose embalmer's license, funeral director's license or license to operate a funeral establishment has been revoked under this article shall not operate, either directly or indirectly, or hold any interest in any funeral establishment. Nothing herein contained shall prohibit a licensee whose license has been revoked from leasing any property owned by him or them for use as a funeral establishment so long as he or they do not participate in the control or profit of such funeral establishment otherwise than as a lessor of the premises for a fixed rental not dependent upon earnings.

§30-6-14. Suspension or revocation of license to operate funeral establishment.

After notice and hearing given and held as notices and hearings are required to be given and held under the provisions of section eight of this article, the board may revoke or suspend any license to operate a funeral establishment issued under section thirteen of this article, for any one or combination of the following causes:

- (a) The practice of fraud or deceit or misrepresentation in obtaining or attempting to obtain a funeral establishment license;
- (b) Conviction of a felony as shown by a certified copy of the record of the court of conviction;
- (c) Violation of any of the provisions of this article or rules and regulations of the board;
- (d) The use of false, misleading or unethical advertising by any holder of a funeral establishment license;
- (e) Upon satisfactory proof that a holder of a funeral establishment license has taken undue advantage of his patrons or has committed a fraudulent act in the conduct of his or its business;
- (f) Solicitation of business by the holder of a funeral establishment license, his agents, assistants or employees: **Provided**, That this shall not be deemed to prohibit proper advertising;
- (g) If the holder of a funeral establishment license knowingly permits an unlicensed person to engage in the profession or business of embalming or funeral directing under his or its supervision;
- (h) Employment by the holder of a funeral establishment license of persons as "cappers," "steerers" or "solicitors," or other such persons to obtain funeral directing business;
- (i) Employment by the holder of a funeral establishment license directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;
- (j) The buying of business by the holder of a funeral establishment license, his or its agents, assistants, or employees or the direct or indirect payment or offer of payment of a commission by the licensee, his or its agent, assistants, or employees, for the purpose of securing business;
- (k) Gross immorality.

Any decision of the board suspending or revoking a license to operate a funeral establishment shall be subject to judicial review in the same manner as a decision to suspend or revoke a funeral director's license or embalmer's license is subject to judicial review under the provisions of section eight of this article, and the written notice of appeal specified in said section eight shall be filed with the circuit court of the county in which such funeral establishment is located.

§30-6-15. Injunction proceedings.

The board may bring legal proceedings to enjoin a person, partnership, association, corporation or other organization violating the provisions of this article or any rule or regulation of the board from practicing the science of embalming or conducting the business of funeral directing or operating a funeral establishment, as may be the case, until such person, partnership, association, corporation, or other organization complies with the requirements of this article and the rules and regulations of the board.

§30-6-16. Reciprocity in licensing of embalmers and funeral directors.

The board may recognize licenses issued to funeral directors or embalmers from other states, and, upon presentation of such license, may, upon the payment of the sum of sixty dollars to the director of the board, issue to the lawful holder thereof, the funeral director's or embalmer's license provided for in this article: **Provided**, That such recognition shall not be extended to funeral directors or embalmers holding licenses from other states unless reciprocal rights are provided by such other states to holders of funeral director's or embalmer's licenses granted in this state. Such reciprocal licenses may be renewed annually upon payment of the renewal license fee as provided for in section six for license holders residing in this state. No person is entitled to a reciprocal license as a funeral director or embalmer unless he furnishes proof that he has, in the state in which he is regularly licensed, complied with requirements substantially equal to those set out in this article.

§30-6-17. Special emeritus license for embalmers and funeral directors.

Notwithstanding any other provision of this article, the board shall establish a special emeritus license for any licensed embalmer or funeral director sixty-five or older. After becoming sixty-five years of age with at least ten years experience as a licensed embalmer or licensed funeral director, a licensed embalmer or funeral director is entitled to be issued a license as an embalmer emeritus or funeral director emeritus. The emeritus license shall entitle the holder to all the rights and privileges of the license previously held by the licensee, except that a licensee emeritus shall be exempt from all continuing education requirements set forth in section three of this article.

The annual license fee for an embalmer emeritus or funeral director emeritus shall be no more than that required of a licensed embalmer or licensed funeral director.

The Committee on Government Organization moves to amend the bill on page two, after the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

1 ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

2 §30-6-3. Oath of members of board; officers; salary and
3 expenses; bond of treasurer; meetings; powers and duties;
4 notice; rules; school of instruction; inspection.

5 (a) Members of said board, before entering upon their
6 duties, shall take and subscribe to the oath of office prescribed
7 by the secretary of state.

8 (b) Said board shall select from its own members a
9 president, a secretary and a treasurer. Each member shall be
10 reimbursed for his or her traveling expenses, incident to his or
11 her attendance upon the business of the board, and in addition
12 thereto, the sum of fifty dollars per day for each day actually
13 spent by ~~such~~ the member upon the business of the board. The
14 secretary shall receive an annual salary of not to exceed one
15 thousand dollars, the amount and payment of which shall be fixed
16 by ~~said~~ the board, and in addition thereto shall receive
17 traveling and other incidental expenses incurred in the
18 performance of his or her duties.

1 (c) The board may employ an executive director and such
2 clerks, inspectors and assistants as it shall ~~deem~~ consider
3 necessary to discharge the duties imposed by the provisions of
4 this article and duly promulgated rules ~~and regulations~~ of the
5 board and to effect its purposes, and the board shall determine
6 the duties and fix the compensation of ~~such~~ the executive
7 director, clerks, inspectors and assistants, subject to the
8 general laws of the state. Any inspector employed by the board
9 shall have either a West Virginia embalmer's license or a West
10 Virginia funeral director's license. Any inspection shall be
11 conducted in ~~such~~ a manner so as not to interfere with the
12 conduct of business within the funeral establishment, and the
13 inspector shall be absolutely prohibited from examining any books
14 and records of the funeral establishment.

15 (d) All ~~such~~ the expenses, per diem and compensation shall
16 be paid out of the receipts of the board, but ~~such~~ the allowances
17 shall at no time exceed the receipts of the board.

18 (e) The treasurer of the board shall give bond to the state
19 of West Virginia in ~~such~~ the sum as the board shall direct with
20 two or more sureties or a reliable surety company approved by the
21 board and ~~such~~ the bond shall be conditioned for the faithful
22 discharge of the duties of ~~such~~ the officer. ~~Such~~ The bond, with

1 approval of the board endorsed thereon, shall be deposited with
2 the treasurer of the state of West Virginia.

3 (f) The board shall hold not less than two meetings during
4 each calendar year for the purpose of examining applicants for
5 licenses, ~~such~~ the meeting or meetings to be held at ~~such~~ a time
6 and place as the board shall determine. The time and place of
7 ~~such~~ the meeting shall be announced by publication in three daily
8 newspapers of general circulation in different locations in the
9 state and publication to be once a week for two consecutive weeks
10 immediately preceding each ~~such~~ meeting.

11 (g) The board may hold such other meetings as it may deem
12 consider necessary and may transact any business at ~~such~~ the
13 meetings. Four or more members shall comprise a quorum
14 authorizing the board to transact such business as is prescribed
15 under this article.

16 (h) The board shall have the power and it shall be its duty
17 to make and enforce all necessary rules, ~~and regulations~~ not
18 inconsistent with this article, for the examination and licensing
19 of funeral directors and the general practice of funeral
20 directing; the examination and licensing of embalmers and the
21 general practice of embalming and the registration and regulation
22 of apprentices; and the licensing and general operation of

1 funeral establishments, except that no rules and regulations
2 issued by the board shall require that an applicant for a license
3 to operate a funeral establishment shall be required to have
4 either an embalmer's or funeral director's license.

* 5 (i) On or before the first day of July, two thousand, the
6 board shall publish in its rules and regulations propose for
7 legislative promulgation in accordance with the provisions of
8 article three, chapter twenty-nine-a of this code rules necessary
9 to effectuate the purposed of this article including but not
10 limited to the subjects to be covered in the said examinations
11 and the standards to be attained thereon for licensure;
12 requirements for continuing education, including authorizing
13 continuing education credits through audio or video recordings;
14 and a procedure for the investigation and resolution of
15 complaints against persons licensed under this article. Changes
16 in the rules and regulations shall be published and shall be
17 given due publicity at least ninety days before becoming
18 effective.

19 (j) The board may conduct annually a school of instruction
20 to apprise funeral directors and embalmers of the most recent
21 scientific knowledge and developments affecting their profession.
22 Qualified lecturers and demonstrators may be employed by the

1 board for this purpose. The board shall give notice of the time
2 and place at which ~~such~~ the school will be held for all licensed
3 funeral directors and embalmers and it shall be the duty of every
4 licensed funeral director and embalmer to attend at least one
5 such school or other approved program every three years:
6 *Provided*, That the location of any school of continuing education
7 shall accommodate the geographic diversity of the embalmers and
8 funeral directors of this state. Compliance with the
9 requirements of continuing education is a prerequisite for
10 license renewal.

11 (k) Hours of continuing education may be obtained by
12 attending and participating in board-approved programs, meetings,
13 seminars or activities. It is the responsibility of each licensee
14 to finance his or her costs of continuing education.

15 (l) The board, any of its members or any duly authorized
16 employee of the board shall have the authority to enter at all
17 reasonable hours for the purpose of inspecting the premises in
18 which the business or profession of funeral directing is
19 conducted or practiced or where embalming is practiced.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§§30-1-1. Application of article.

Unless otherwise specifically provided, every board of examination or registration referred to in this chapter shall conform to the requirements prescribed in the following sections of this article.

§§30-1-1a. Legislative findings and declaration.

The Legislature hereby finds and declares that as a matter of public policy the practice of the professions referred to in this chapter is a privilege and is not a natural right of individuals. The fundamental purpose of licensure and registration is to protect the public, and any license, registration, certificate or other authorization to practice issued pursuant to this chapter is a revocable privilege.

§§30-1-2. Oath.

Every person appointed as a member of any board referred to in this article, before proceeding to exercise the authority or discharge the duties of the office, shall take the oath prescribed by section 5 of article IV of the state constitution, and shall file the certificate thereof with the secretary of state.

§§30-1-2a. Required orientation session.

- (a) After the first day of April and not later than the thirty-first day of July of each year, the auditor shall provide at least one orientation session on relevant state law and rules governing state boards and commissions. All state agencies shall cooperate with and assist in providing the orientation session if the auditor requests.
- (b) After the effective date of this section, all chairs or chief financial officers of state boards and commissions newly created by the Legislature shall attend an orientation session designed to inform the state boards and commissions of the duties and requirements imposed on state boards and commissions by state law and rules. The chair or chief financial officer of the newly created board or commission shall attend an orientation session at the earliest possible date following the creation of the board or commission.
- (c) Topics for the orientation session may include, but are not limited to: The official conduct of members, state budgeting and financial procedures, purchasing requirements, open meetings requirements, ethics, rule-making procedures, records management, annual reports and any other topics the auditor determines to be essential in the fulfillment of the duties of the members of state boards and commissions.
- (d) The orientation session shall be open to any member of new or existing boards and commissions and each board or commission may approve expense reimbursement for the attendance of one or more of its members. The chair or chief financial officer of each existing board or commission shall attend an orientation session within two years following the effective date of this section.
- (e) No later than the tenth day of August of each year, the auditor shall provide to the chairs of the joint standing committee on government operations a list of the names of board or commission members attending, together with the names of the boards and commissions represented, the orientation session or sessions offered by the auditor since the previous April first.
- (f) The auditor may charge a registration fee for the orientation session to cover the cost of providing the orientation session. The fee may be paid from funds available to a board or commission.
- (g) Notwithstanding the member's normal rate of compensation for serving on a board, a member attending the orientation session may be reimbursed for necessary and actual expenses, as long as the member attends the complete orientation session.
- (h) Ex officio members who are elected or appointed state officers or employees, and members of boards or commissions that have purely advisory functions with respect to a department or agency

of the state, are exempt from the requirements of this section.

§§30-1-3. Officers.

- (a) Every board referred to in this chapter shall elect annually from its members a president and a secretary who shall hold their offices for one year, but shall continue to hold their offices until their successors are elected. However, the state board of law examiners, the state board of examiners for nurses and the state board of dental examiners may each elect a secretary from outside their membership.
- (b) The officers of the boards referred to in this chapter shall register annually with the governor, the secretary of administration, the legislative auditor and the secretary of state.

§§30-1-4. Official seal; rules and regulations.

Every such board shall adopt an official seal which shall be affixed to all licenses or certificates of registration issued by it, and shall make such rules and regulations, not inconsistent with law, as are necessary to regulate its proceedings and to carry out the purposes and enforce the provisions of this chapter applicable to such board.

§§30-1-4a. Lay members of professional boards.

- (a) Notwithstanding any provisions of this code to the contrary, the governor shall appoint at least one lay person to represent the interests of the public on every health professional licensing board which is referred to in this chapter. If the total number of members on any of these boards after the appointment of one lay person is an even number, one additional lay person shall be appointed. Lay members shall serve in addition to any other members otherwise provided for by law or rule. Lay members shall be at least eighteen years of age, shall be of good moral character, and shall be competent to represent and safeguard the interests of the public. Each lay member is empowered to participate in and vote on all transactions and business of the board, committee or group to which he or she is appointed.
- (b) Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an odd number of lay additions to the board shall serve for a term ending in an odd-numbered year on the date in that year on which terms of the professional members expire. Of the members first appointed, each shall serve for a term ending in the year one thousand nine hundred seventy-nine, and the successor to each of the first members shall serve for a term equal in length to the terms of the other professional members of the board.
- (c) Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an even number of lay additions to the board shall serve for a term ending in an even-numbered year on the date in that year on which terms of the professional members expire. Of the members first appointed, each shall serve for a term ending in the year one thousand nine hundred seventy-eight, and the successor to each of the first members shall serve for a term equal in length to the terms of the other professional members of the board.

§§30-1-5. Meetings; quorum; investigatory powers; duties.

- (a) Every board referred to in this chapter shall hold at least one meeting each year, at such time and place as it may prescribe by rule, for the examination of applicants who desire to practice their respective professions or occupations in this state and to transact any other business which may legally come before it. The board may hold additional meetings as may be necessary, which shall be called by the secretary at the direction of the president or upon the written request of any three members. A majority of the members of the board constitutes a quorum for the transaction of its business. The board is authorized to compel the attendance of witnesses, to issue subpoenas, to conduct investigations and hire an investigator, and to take testimony and other evidence concerning any matter within its jurisdiction. The president and secretary of the board are authorized to administer oaths for these purposes.
- (b) Every board referred to in this chapter has a duty to investigate and resolve complaints which it

receives and shall do so in a timely manner. Every board shall provide public access to the record of the disposition of the complaints which it receives, in accordance with the provisions of chapter twenty-nine-b of this code. Every board has a duty to report violations of individual practice acts contained in this chapter to the board by which the individual may be licensed, and shall do so in a timely manner upon receiving notice of such violations. Every person licensed or registered by a board has a duty to report to the board which licenses or registers him or her a known or observed violation of the practice act or the board's rules by any other person licensed or registered by the same board, and shall do so in a timely manner. Law-enforcement agencies or their personnel and courts shall report in a timely manner to the appropriate board any violations of individual practice acts by any individual.

(c) Whenever a board referred to in this chapter obtains information that a person subject to its authority has engaged in, is engaging in, or is about to engage in any act which constitutes or will constitute a violation of the provisions of this chapter which are administered and enforced by that board, it may apply to the circuit court for an order enjoining the act. Upon a showing that the person has engaged, is engaging, or is about to engage in any such act, the court shall order an injunction, restraining order or other order as the court may deem appropriate.

§§30-1-6. Application for license or registration; examination fee.

(a) Every applicant for license or registration under the provisions of this chapter shall apply for such license or registration in writing to the proper board and shall transmit with his or her application an examination fee which the board is authorized to charge for an examination or investigation into the applicant's qualifications to practice.

(b) Each board referred to in this chapter is authorized to establish by rule a deadline for application for examination which shall be no less than ten nor more than ninety days prior to the date of the examination.

(c) Boards may set by rule fees relating to the licensing or registering of individuals, which shall be sufficient to enable the boards to carry out effectively their responsibilities of licensure or registration and discipline of individuals subject to their authority: *Provided*, That when any board proposes to promulgate a rule regarding fees for licensing or registration, that board shall notify its membership of the proposed rule by mailing a copy of the proposed rule to the membership at the time that the proposed rule is filed with the secretary of state for publication in the state register in accordance with section five, article three, chapter twenty-nine-a of this code.

(d) In addition to any other information required, the applicant's social security number shall be recorded on the application.

§§30-1-7. Contents of license or certificate of registration.

Every license or certificate of registration issued by each board shall bear a serial number, the full name of the applicant, the date of issuance, and the seal of the board. It shall be signed by the board's president and secretary or executive secretary. No license or certificate of registration granted or issued under the provisions of this chapter may be assigned.

§§30-1-7a. Continuing education.

Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required and reporting periods.

§§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

(a) Every board referred to in this chapter is authorized to suspend or revoke the license of any person who has been convicted of a felony or who has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards

of professional conduct. Where any person has been so convicted of a felony or has been found to have engaged in such conduct, practices or acts, every board referred to in this chapter is further authorized to enter into consent decrees, to reprimand, to enter into probation orders, to levy fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination. Each board is also authorized to assess administrative costs. Any costs which are assessed shall be placed in the special account of the board, and any fine which is levied shall be deposited in the state treasury's general revenue fund. For purposes of this section, the word "felony" means a felony or crime punishable as a felony under the laws of this state, any other state, or the United States. Every board referred to in this chapter is authorized to promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(b) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority. However, this does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the individual's continuation in practice constitutes an immediate danger to the public.

(c) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder thereof and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one, article two, chapter fifty-six of this code, at least thirty days prior to the hearing, and he or she may appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may deem advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority, and suspension or revocation shall take from the person all rights and privileges acquired thereby.

(d) Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(e) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection shall be in accordance with the provisions for hearings which are set forth in this section.

(f) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript thereof retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.

(g) All proceedings under the provisions of this section are subject to review by the supreme court of appeals.

§§30-1-9. Review by circuit court and supreme court of board's refusal to issue; suspension or revocation of license or registration.

A person, not an applicant for or holder of a license to practice law, who has been refused a license or registration for any cause other than failure to pass the examination given by the board, or whose certificate, license, registration or authority has been suspended or revoked, may, within thirty days after the decision of the board, present his petition in writing to the circuit court of the county in which such person resides, or to the judge of such court in vacation, praying for the review and reversal of such decision. Before presenting his petition to the court or judge, the petitioner shall

mail copies thereof to the president and secretary, respectively, of the board. Upon receipt of such copy the secretary shall forthwith transmit to the clerk of such court the record of the proceeding before the board. The court or judge shall fix a time for the review of said proceeding at his earliest convenience. Notice in writing of the time and place of such hearing shall be given to the president and secretary of the board at least ten days before the date set therefor. The court or judge shall, without a jury, hear and determine the case upon the record of the proceedings before the board. The court or judge may enter an order affirming, revising or reversing the decision of the board if it appears that the decision was clearly wrong. Prior to the entry of such order, no order shall be made or entered by the court to stay or supersede any suspension, revocation or cancellation of any such certificate, license, registration or authority. The judgment of the circuit court may be reviewed upon appeal in the supreme court of appeals.

§§30-1-10. Disposition of money fines; legislative audit.

(a) The secretary of every board referred to in this chapter shall receive and account for all money which it derives pursuant to the provisions of this chapter which are applicable to it. With the exception of money received as fines, each board shall pay all money which is collected into a separate special fund of the state treasury which has been established for each board. This money shall be used exclusively by each board for purposes of administration and enforcement of its duties pursuant to this chapter. Any money received as fines shall be deposited into the general revenue fund of the state treasury. When the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board or ten thousand dollars, whichever is greater, the excess amount shall be transferred by the state treasurer to the state general revenue fund.

(b) Every licensing board which is authorized by the provisions of this chapter shall be subject to audit by the office of the legislative auditor.

§§30-1-11. Compensation of members; expenses.

Each member of every board which is referred to in this chapter shall receive compensation and expense reimbursement which shall not exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

§§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to governor and Legislature; public access.

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register of the board shall be open to public inspection at all reasonable times, and the books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.

(b) On or before the first day of January of each year in which the Legislature meets in regular session, the board shall submit to the governor and to the Legislature a report of its transactions for the preceding two years, an itemized statement of its receipts and disbursements for that period, a full list of the names of all persons licensed or registered by it during that period, statistical reports by county of practice, by specialty if appropriate to the particular profession, and a list of any complaints which were filed against persons licensed by the board, including any action taken by the board regarding those complaints. The report shall be certified by the president and the secretary of the board, and a copy of the report shall be filed with the secretary of state.

(c) To promote public access, the secretary of every board shall ensure that the address and telephone number of the board are included every year in the state government listings of the Charleston area

telephone directory. Every board shall regularly evaluate the feasibility of adopting additional methods of providing public access, including, but not limited to, listings in additional telephone directories, toll-free telephone numbers, facsimile and computer-based communications.

§§30-1-13. Roster of licensed or registered practitioners.

The secretary of every such board shall also prepare and maintain a complete roster of the names, social security numbers and office addresses of all persons licensed, or registered, and practicing in this state the profession or occupation to which such board relates, arranged alphabetically by name and also by the counties in which their offices are situated. The board may call for and require a registration whenever it deems it necessary or expedient to secure an accurate roster.

§§30-1-14. Remission of certain fees.

Every board of examination or registration referred to in this chapter is hereby authorized, under such rules and regulations as may be adopted by each board, to remit all annual license or annual registration fees required to be paid by any licensee or registrant under its supervision during such time as such licensee or registrant is serving with the armed forces of the United States of America, and to retain the name of such licensee or registrant in good standing on the roster of said board during said time.

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

The office of the executive secretary of the health professional licensing boards is hereby created. The health profession licensing boards shall include those boards provided for in articles two-a, four, five, six, seven, seven-a, eight, ten, fourteen, sixteen, seventeen, twenty, twenty-one, twenty-five and twenty-six of chapter thirty of this code. Notwithstanding any other provision of this code to the contrary the office space personnel, records and like business affairs of the health profession licensing boards shall be within the office of the executive secretary of the health profession licensing boards. The secretaries of each of the health profession licensing boards shall coordinate purchasing, record keeping, personnel, use of reporters and like matters under the executive secretary in order to achieve the most efficient and economical fulfillment of their functions. The executive secretary shall be appointed by the director of health and shall report to the director. The executive secretary shall keep the fiscal records and accounts of each of the boards. The executive secretary shall keep the director informed as to the needs of each of the boards. The executive secretary shall coordinate the activities and efforts of the boards with the activities of the health resources advisory council and shall see that the needs for health manpower perceived by the boards are communicated to the health resources advisory council. The executive secretary shall keep any statistics and information on health professions, collected by or for the boards and shall make such statistics and information available to the health resources advisory council to aid it in carrying out its responsibilities.

§§30-1-16. Liability limitations of peer review committees and professional standards review committees.

No member of a peer review committee or a professional standards review committee of a state or local professional organization, including, but not limited to, committees established to review the practices of doctors of chiropractic, doctors of veterinary medicine, doctors of medicine, doctors of dentistry, attorneys at law, real estate brokers, architects, professional engineers, certified public accountants, public accountants or registered nurses shall be deemed liable to any person for any action taken or recommendation made within the scope of the functions of the committee, if the committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter as to which such action is taken or recommendation is made.

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RECEIVED JAN 19 2000

H. B. 4062

(By Delegates Douglas, Varner, Kuhn, Perdue, Caputo, Modesitt and Willison)

erdue,

[Introduced January 18, 2000; referred to the Committee on Government Organization.]

A BILL to amend and reenact sections two-a, eight and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of professional licensing boards; orientation session; requiring legislative rules for complaint procedures; and filing of annual reports.

Be it enacted by the Legislature of the West Virginia:

That sections two-a, eight and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

§30-1-2a. Required orientation session.

(a) After the first day of April and not later than the ~~thirty-first~~ first day of ~~July~~ December of each year, the auditor shall provide at least one orientation session on relevant state

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1 law and rules governing state boards and commissions. All state
2 agencies shall cooperate with and assist in providing the
3 orientation session if the auditor requests.

4 (b) After the effective date of this section, all chairs or
5 chief financial officers of state boards and commissions newly
6 created by the Legislature shall attend an orientation session
7 designed to inform the state boards and commissions of the duties
8 and requirements imposed on state boards and commissions by state
9 law and rules. The chair or chief financial officer of the newly
10 created board or commission shall attend an orientation session at
11 the earliest possible date following the creation of the board or
12 commission.

13 (c) The orientation session shall include a minimum of thirty
14 minutes of instructional time dedicated to the statutory duty of
15 boards to investigate and resolve complaints, including procedures
16 for investigations, administrative hearings and remedies, due
17 process protections, and the duty to provide public access to
18 records of the disposition of complaints, as set forth in section
19 five of this article.

20 (c) (d) Topics for the orientation session may include, but
21 are not limited to: The official conduct of members, state
22 budgeting and financial procedures, purchasing requirements, open
23 meetings requirements, ethics, rule-making procedures, records

1 management, annual reports and any other topics the auditor
2 determines to be essential in the fulfillment of the duties of the
3 members of state boards and commissions.

4 ~~(d)~~ (e) The orientation session shall be open to any member of
5 new or existing boards and commissions and each board or commission
6 may approve expense reimbursement for the attendance of one or more
7 of its members. The chair or chief financial officer of each
8 existing board or commission shall attend an orientation session
9 within two years following the effective date of this section.

10 ~~(e)~~ (f) No later than the ~~tenth~~ thirty-first day of August
11 December of each year, the auditor shall provide to the chairs of
12 the joint standing committee on government operations a list of the
13 names of board or commission members attending, together with the
14 names of the boards and commissions represented, the orientation
15 session or sessions offered by the auditor since during the
16 previous ~~April first year~~.

17 ~~(f)~~ (g) The auditor may charge a registration fee for the
18 orientation session to cover the cost of providing the orientation
19 session. The fee may be paid from funds available to a board or
20 commission.

1 ~~(g)~~ (h) Notwithstanding the member's normal rate of
2 compensation for serving on a board, a member attending the
3 orientation session may be reimbursed for necessary and actual

1 expenses, as long as the member attends the complete orientation
2 session.

3 ~~(h)~~ (i) Ex officio members who are elected or appointed state
4 officers or employees, and members of boards or commissions that
5 have purely advisory functions with respect to a department or
6 agency of the state, are exempt from the requirements of this
7 section.

8 §30-1-8. Denial, suspension or revocation of a license or
9 registration; probation; proceedings; effect of suspension or
10 revocation; transcript; report; judicial review.

11 (a) Every board referred to in this chapter is authorized to
12 suspend or revoke the license of any person who has been convicted
13 of a felony or who has been found to have engaged in conduct,
14 practices or acts constituting professional negligence or a willful
15 departure from accepted standards of professional conduct. Where
16 any person has been so convicted of a felony or has been found to
17 have engaged in such conduct, practices or acts, every board
18 referred to in this chapter is further authorized to enter into
19 consent decrees, to reprimand, to enter into probation orders, to
20 levy fines not to exceed one thousand dollars per day per
21 violation, or any of these, singly or in combination. Each board
22 is also authorized to assess administrative costs. Any costs which
23 are assessed shall be placed in the special account of the board,

1 and any fine which is levied shall be deposited in the state
2 treasury's general revenue fund. For purposes of this section, the
3 word "felony" means a felony or crime punishable as a felony under
4 the laws of this state, any other state, or the United States.

5 Every board referred to in this chapter is authorized to promulgate
6 rules in accordance with the provisions of chapter twenty-nine-a of
7 this code to delineate conduct, practices or acts which, in the
8 judgment of the board, constitute professional negligence, a
9 willful departure from accepted standards of professional conduct
10 or which may render an individual unqualified or unfit for
11 licensure, registration or other authorization to practice.

12 (b) Notwithstanding any other provision of law to the
13 contrary, no certificate, license, registration or authority issued
14 under the provisions of this chapter may be suspended or revoked
15 without a prior hearing before the board or court which issued the
16 certificate, license, registration or authority. However, this
17 does not apply in cases where a board is authorized to suspend or
18 revoke a certificate, license, registration or authority prior to
19 a hearing if the individual's continuation in practice constitutes
20 an immediate danger to the public.

(c) In all proceedings before a board or court for the
suspension or revocation of any certificate, license, registration
or authority issued under the provisions of this chapter, a

1 statement of the charges against the holder thereof and a notice of
2 the time and place of hearing shall be served upon the person as a
3 notice is served under section one, article two, chapter fifty-six
4 of this code, at least thirty days prior to the hearing, and he or
5 she may appear with witnesses and be heard in person, by counsel,
6 or both. The board may take oral or written proof, for or against
7 the accused, as it may deem advisable. If upon hearing the board
8 finds that the charges are true, it may suspend or revoke the
9 certificate, license, registration or authority, and suspension or
10 revocation shall take from the person all rights and privileges
11 acquired thereby.

12 (d) Pursuant to the provisions of section one, article five,
13 chapter twenty-nine-a of this code, informal disposition may also
14 be made by the board of any contested case by stipulation, agreed
15 settlement, consent order or default. Further, the board may
16 suspend its decision and place a licensee found by the board to be
17 in violation of the applicable practice on probation.

18 (e) Any person denied a license, certificate, registration or
19 authority who believes the denial was in violation of this article
20 or the article under which the license, certificate, registration
21 or authority is authorized shall be entitled to a hearing on the
22 action denying the license, certificate, registration or authority.
23 Hearings under this subsection shall be in accordance with the

1 provisions for hearings which are set forth in this section.

2 (f) A stenographic report of each proceeding on the denial,
3 suspension or revocation of a certificate, license, registration or
4 authority shall be made at the expense of the board and a
5 transcript thereof retained in its files. The board shall make a
6 written report of its findings, which shall constitute part of the
7 record.

8 (g) All proceedings under the provisions of this section are
9 subject to review by the supreme court of appeals.

10 (h) On or before the first day of July, two thousand, every
11 board referred to in this chapter shall propose rules for
12 legislative approval in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code, which shall specify a
14 procedure for the investigation and resolution of all complaints
15 against persons licensed under this chapter.

16 §30-1-12. Record of proceedings; register of applicants; certified
17 copies of records prima facie evidence; report to governor and
18 Legislature; public access.

19 (a) The secretary of every board shall keep a record of its
20 proceedings and a register of all applicants for license or
21 registration, showing for each the date of his or her application,
22 his or her name, age, educational and other qualifications, place
23 of residence, whether an examination was required, whether the

1 applicant was rejected or a certificate of license or registration
2 granted, the date of this action, the license or registration
3 number, all renewals of the license or registration, if required,
4 and any suspension or revocation thereof. The books and register
5 of the board shall be open to public inspection at all reasonable
6 times, and the books and register, or a copy of any part thereof,
7 certified by the secretary and attested by the seal of the board,
8 shall be prima facie evidence of all matters recorded therein.

9 (b) On or before the first day of January of each year in
10 which the Legislature meets in regular session, the board shall
11 submit to the governor and to the Legislature a report of its
12 transactions for the preceding two years, an itemized statement of
13 its receipts and disbursements for that period, a full list of the
14 names of all persons licensed or registered by it during that
15 period, statistical reports by county of practice, by specialty if
16 appropriate to the particular profession, and a list of any
17 complaints which were filed against persons licensed by the board,
18 including any action taken by the board regarding those complaints.
19 The report shall be certified by the president and the secretary of
20 the board, and a copy of the report shall be filed with the
21 secretary of state and with the legislative librarian.

22 (c) To promote public access, the secretary of every board
23 shall ensure that the address and telephone number of the board are

1 included every year in the state government listings of the
 2 Charleston area telephone directory. Every board shall regularly
 3 evaluate the feasibility of adopting additional methods of
 4 providing public access, including, but not limited to, listings in
 5 additional telephone directories, toll-free telephone numbers,
 6 facsimile and computer-based communications.

1 Note: The purpose of this bill is to require professional
 2 licensing boards to receive training, to propose legislative rules
 3 for complaint procedures and to file copies of annual reports with
 4 the legislative librarian.
 5

6 ~~Strike-throughs indicate language that would be stricken from the~~
 7 ~~present law, and underscoring indicates new language that would be~~
 8 ~~added.~~
 9

10 This bill is recommended by the Joint Committee on Government
 11 Organization for passage during the regular 2000 legislative
 12 session.

1 indicators, minimal standards of acceptance, advanced training and
2 certification and continuing education: Provided, That such
3 standards and requirements for practice may not be construed to
4 alter or affect in any way the standards and requirements for
5 licensing as set forth elsewhere in this article;

6 (7) Conduct its proceedings in accordance with
7 provisions of article nine-a, chapter six of this code; and

8 (8) Employ, direct and define the duties of
9 administrative clerical support staff.

0 (f) After having conducted a preliminary
1 ~~performance review regulatory board evaluation~~ through its joint
2 committee on government operations, pursuant to article ten,
3 chapter four of this code, the Legislature hereby finds and
4 declares that the board of social work examiners be continued and
5 reestablished. Accordingly, notwithstanding the provisions of said
6 article, the board of social work examiners shall continue to exist
7 until the first day of July, two thousand five.

Note: The purpose of this bill is to establish a sunset review
process for professional licensing boards.

Section five-b, article ten of chapter four is new; therefore,
strikethroughs and underlines have been omitted.

This bill is recommended by the Joint Committee on Government
Organization, for passage during the regular 2000 legislative
session.

Part 453 — Funeral Industry Practices Revised Rule

Section:

453.1 Definitions.

453.2 Price disclosures.

453.3 Misrepresentations.

453.4 Required purchase of funeral goods or funeral services.

453.5 Services provided without prior approval.

453.6 Retention of documents.

453.7 Comprehension of disclosures.

453.8 Declaration of intent.

453.9 State exemptions.

Authority: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

§ 453.1 Definitions

(a) Alternative container An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) Cash advance item A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) Casket A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) Commission "Commission" refers to the Federal Trade Commission.

(e) Cremation "Cremation" is a heating process which incinerates human remains.

(f) Crematory A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) Direct cremation A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(h) Funeral goods "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) Funeral provider A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) Funeral services "Funeral services" are any services which may be used to: (1) care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) Immediate burial An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) Memorial service A "memorial service" is a ceremony commemorating the deceased without the body present.

(m) Funeral ceremony A "funeral ceremony" is a service commemorating the deceased with the body present.

(n) Outer burial container An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) Person A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) Services of funeral director and staff The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§ 453.2 Price Disclosures

(a) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) Preventive Requirements

To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) Telephone Price Disclosure

Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) Casket Price List

(i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer Burial Container Price List

(i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon

beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) General Price List

(i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(1) the prices of funeral goods or funeral services;

(2) the overall type of funeral service or disposition; or

(3) specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere.

Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to

embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required by paragraph (b)(4)(i)(A) of this section must contain at least the following information:

(1) The name, address, and telephone number of the funeral provider's place of business;

(2) A caption describing the list as a "general price list"; and

(3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with:

(1) a separate price for a direct cremation where the purchaser provides the container;

(2) separate prices for each direct cremation offered including an alternative container; and

(3) a description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with:

(1) a separate price for an immediate burial where the purchaser provides the casket;

(2) separate prices for each immediate burial offered including a casket or alternative container; and

(3) a description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities and staff for viewing;

(I) Use of facilities and staff for funeral ceremony;

(J) Use of facilities and staff for memorial service;

(K) Use of equipment and staff for graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner

specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(2) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase

"and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.

(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) Statement of Funeral Goods and Services Selected

(i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) Other Pricing Methods

Funeral providers may give persons

any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations

(a) Embalming Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) Preventive requirements

To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

(A) direct cremation;

B) immediate burial; or

(C) a closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right

to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) Casket for Cremation Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket is required for direct cremations.

(2) Preventive Requirements

To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) Outer Burial Container Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws

or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) Preventive Requirement

To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements."

The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) General Provisions on Legal and Cemetery Requirements

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) Preventive Requirements

To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral

providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provisions on Preservative and Protective Value Claims

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) Cash Advance Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) Preventive Requirements

To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with

the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Required Purchase of Funeral Goods or Funeral Services.

(a) Casket for Cremation Provisions

(1) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) Preventive Requirement

To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) Other Required Purchases of Funeral Goods or Funeral Services

(1) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) services of funeral director and staff, permitted by

§ 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

(2) Preventive Requirements

(i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4)(ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services Provided Without Prior Approval

(a) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) Preventive Requirement

To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of Documents

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b)(2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of Disclosures

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)-(4), any statement or information that alters or contradicts the information required by this Part to be included in those lists.

§ 453.8 Declaration of Intent

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State Exemptions

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule;

then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

By direction of the Commission.

Donald S. Clark
Secretary

**TITLE 64
LEGISLATIVE RULE
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 56
INFECTIOUS MEDICAL WASTE**

§64-56-1. General.

1.1. Scope. -- This legislative rule establishes requirements regarding the generation, handling, storage, transportation, treatment and disposal of infectious medical waste.

1.2. Authority. -- W. Va. Code §§20-5J-6(a) and 22-18-7(d). Related - W. Va. Code §§20-5J-1 et seq., 20-5K-1 et seq., and 22-18-1 et seq.

1.3. Filing Date. -- April 29, 1999.

1.4. Effective Date. -- July 1, 1999.

1.5. Preamble.

It is the intent of the department of health and human resources to provide effective controls for the management of infectious medical waste to ensure the protection of public health, safety and welfare and the environment, consistent with legislative policy stated in W. Va. Code §20-5J-2.

§64-56-2. Applicability; Exemptions; Enforcement.

2.1. Applicability.

This rule applies to: any person who generates, handles, stores, transports, treats or disposes of infectious medical waste, or who proposes to do so, except as specified in Section 2.2 of this rule.

2.2. Exemptions.

2.2.a. Individual households in which infectious medical waste is generated by a member of the household during self health care

or by the provision of health care services within the residence shall be exempt from the requirements of this rule, except that the householder shall place sharps in a container with a high degree of puncture resistance prior to discarding them.

2.2.b. Ambulance or rescue services shall be exempt from the requirements of this rule, except that all infectious medical waste generated in an ambulance or rescue vehicle shall be packaged as required by Section 6.2 of this rule and delivered to a permitted infectious medical waste management facility.

2.3. Enforcement.

This rule is enforced by the secretary of the state department of health and human resources.

§64-56-3. Definitions.

3.1. Animal Carcasses, Body Parts, Bedding and Related Wastes means contaminated animal carcasses, body parts, and bedding of animals that are known to have been exposed to infectious agents during research, production of biologicals, testing of pharmaceuticals, or for any other reason.

3.2. Blood and Blood Products. -- Liquid waste human blood and blood products in a free-flowing or unabsorbed state.

3.3. Commercial Infectious Medical Waste Facility. -- Any infectious medical waste management facility at which thirty-five per cent (35%) or more by weight of the total infectious medical waste stored, treated, or disposed of by

said facility in any calendar year is generated off-site.

3.4. Cultures and Stocks of Microorganisms and Biologicals. -- Discarded cultures, stocks, specimens, vaccines and associated items likely to have been contaminated by an infectious agent, discarded etiologic agents, and wastes from the production of biologicals and antibiotics likely to have been contaminated by an infectious agent.

3.5. Disposal. -- The discharge, deposit, injection, dumping, spilling, leaking or placing of any infectious medical waste into or on any land or water so that such infectious medical waste, or any constituent thereof, may be emitted into the air, discharged into any waters, including groundwater, or otherwise enter into the environment. (See Section 5.7 of this rule.)

3.6. Generator. -- Any person whose act or process produces infectious medical waste.

3.7. Hospital. -- An institution which is primarily engaged in providing to patients in the institution, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons or services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

3.8. Infectious Agent. -- Any organism such as a virus or a bacteria that is in such quantity that it is capable of being communicated by invasion of and multiplication in body tissues and capable of causing disease or adverse health impact in humans.

3.9. Infectious Medical Waste. --

3.9.a. Infectious medical waste is medical waste which is capable of producing an infectious disease. Medical waste shall be considered capable of producing an infectious disease if it has been, or is likely to have been, contaminated by an organism likely to be pathogenic to healthy humans, if such organism is not routinely and

freely available in the community, and such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease.

3.9.b. For the purposes of this rule, infectious medical waste includes the following materials:

3.9.b.1. Cultures and stock of microorganisms and biologicals;

3.9.b.2. Blood and blood products;

3.9.b.3. Pathological wastes;

3.9.b.4. Sharps;

3.9.b.5. Animal carcasses, body parts, bedding and related wastes;

3.9.b.6. Isolation wastes;

3.9.b.7. Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of any infectious medical waste; and

3.9.b.8. Waste contaminated by or mixed with infectious medical waste.

3.9.c. For the purposes of this rule, infectious medical waste does not include the following materials:

3.9.c.1. Human remains and body parts being used or examined for medical purposes which are under the control of a licensed physician or dentist and are not abandoned materials;

3.9.c.2. Human remains lawfully interred in a cemetery or in preparation by a licensed mortician for interment or cremation;

3.9.c.3. Used personal hygiene products, such as diapers, facial tissues and sanitary napkins;

3.9.c.4. Gauze and dressing material, containing small amounts of blood or other body secretions with no free flowing or unabsorbed liquid;

3.9.c.5. Hair, nails, and extracted teeth;

3.9.c.6. Waste generated by veterinary hospitals, except for waste meeting the criteria found in Sections 3.9.b.1, 3.9.b.4, or 3.9.b.5 of this rule; and

3.9.c.7. Medical tubing and devices with a signed and dated certification by the facility which states: "I hereby certify under penalty of law that this waste has not been contaminated with infectious medical waste, as defined in Infectious Medical Waste, 64 CSR 56."

3.9.d. Infectious medical waste contaminated with radioactive waste is considered to be radioactive waste and is subject to State and federal law and regulation as radioactive waste.

3.9.e. Infectious medical waste contaminated with hazardous chemical waste is considered to be hazardous chemical waste and is subject to State and federal law and regulation as hazardous chemical waste.

3.10. Infectious Medical Waste Management Facility. -- An infectious medical waste facility which generates, handles, processes, stores, treats or disposes of infectious medical waste, including all land and structures, other appurtenances, and improvements thereon, used for infectious medical waste.

3.11. Isolation Wastes. -- Wastes generated from the care of a patient who has or is suspected of having any disease listed as Class IV in "Classification of Etiologic Agents on the Basis of Hazard," published by the United States Centers for Disease Control.

3.12. Manifest. -- The form used for identifying the quantity, composition, and the origin, routing, and destination of infectious

medical waste during its transportation from the point of generation to the point of off-site treatment or disposal.

3.13. Medical Waste. -- Infectious and noninfectious solid waste generated in the course of the diagnosis, treatment or immunization of human beings or animals, or in research pertaining thereto, or in the production or testing of biologicals. The term "medical waste" does not include low-level radioactive waste, any hazardous waste identified or listed under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6921 et seq., as amended, or any household waste as defined in the regulations promulgated pursuant to Subtitle C of that Act.

3.14. Non-commercial Infectious Medical Waste Facility. -- Any infectious medical waste facility at which less than thirty-five per cent (35%) by weight of the total infectious medical waste stored, treated or disposed of by said facility in any calendar year is generated off-site.

3.15. Noninfectious Medical Waste. -- Any medical waste not capable of producing an infectious disease or infectious medical waste which has been rendered noninfectious. Noninfectious medical waste is considered solid waste for purposes of this rule.

3.16. Off-Site. -- A facility or area for the collection, storage, transfer, processing, treatment, or disposal of infectious medical waste which is not on the generator's site, or a facility or area that receives infectious medical waste for storage or treatment that has not been generated on-site at that facility or area.

3.17. On-Site. -- The same or geographically contiguous property which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way controlled by said person and to which the public does not have

access, is also considered on-site property. Hospitals with more than one (1) facility located in the same county shall be considered one (1) site.

3.18. Pathological Waste. -- Human pathological wastes, including tissues, organs, body parts, and containers of body fluids, exclusive of those fixed in formaldehyde or another fixative.

3.19. Person. -- Individual, partnership, corporation, society, association, government body or other legal entity.

3.20. Secretary. -- The secretary of the department of health and human resources or his or her designee.

3.21. Sharps. -- Discarded articles that may cause punctures or cuts and that have been used in animal or human patient care or treatment, or in pharmacies or medical, research or industrial laboratories, including, but not limited to, hypodermic needles, syringes with attached needles, scalpel blades, lancets and broken glassware.

3.22. Small Quantity Generator. -- Any generator of infectious medical waste who generates fifty (50) pounds or less during a one (1) month period.

3.23. Storage. -- The containment of infectious medical waste on a temporary basis. Storage shall not constitute disposal of the waste. The containment of infectious medical waste during off-site transport is considered to be a form of storage.

3.24. Subtitle C. -- Subtitle C of the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6921 et seq., as amended.

3.25. Transport. -- The movement of infectious medical waste from one location to another, except for on-site movement of infectious medical waste.

3.26. Transporter. -- A person engaged in the

off-site transportation of infectious medical waste.

3.27. Transport Vehicle. -- A motor vehicle, aircraft, boat, barge or rail car used for the transportation of cargo by any mode. Each cargo-carrying body shall be considered a separate transport vehicle.

3.28. Treatment. -- Any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any infectious medical waste so as to render such waste noninfectious.

§64-56-4. Permit Application and Approval Procedures for Non-Commercial Infectious Medical Waste Facilities.

4.1. This section applies only to non-commercial infectious medical waste facilities. No person may own, construct, modify or operate an infectious medical waste management facility, nor shall any person store, transport, treat or dispose of any infectious medical waste without first obtaining a permit from the secretary, unless exempted by Sections 2.1, 2.2 or 4.17 of this rule.

4.2. No person shall begin physical construction of a new non-commercial infectious medical waste management facility without having received a permit.

4.3. The owner of a non-commercial infectious medical waste management facility shall be responsible for insuring that the facility has a permit.

4.4. The owner of an infectious medical waste facility shall provide public notice of intent to apply for a permit.

4.4.a. Public notice shall be given by the following methods:

4.4.a.1. By mailing a copy of a notice to those persons whose names are included on a mailing list, maintained by the department of health and human resources, of people wishing to

be notified of such requests; and

4.4.a.2. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

4.5. The applicant for a permit for a non-commercial infectious medical waste facility shall maintain a public participation file. This file shall contain a summary of all comments and responses received during the pre-application public notification phase by the facility. This file shall be submitted to the secretary by the applicant with the application.

4.6. An application for a permit shall be submitted to the secretary in duplicate on forms prescribed by the secretary and shall include the following:

4.6.a. The name, mailing address, and location of the facility, using latitude and longitude to the nearest second, for which the application is submitted;

4.6.b. The name, address, telephone number and fax numbers of the owner of the facility, and if the owner is an individual or a partnership, the social security number or numbers of the owner or partners;

4.6.c. The name, address, telephone number and fax numbers of the manager of the facility, if different from the owner; and if the manager is an individual or partnership different from the owner, the social security number or numbers of the individual or partners;

4.6.d. Two copies of the proposed infectious medical waste management plan as required by Section 5 of this rule;

4.6.e. A copy of the public participation file; and

4.6.f. Information needed to demonstrate that the facility will be operated in compliance

with this rule.

4.7. For new non-commercial infectious medical waste management facilities, the application shall be accompanied by two (2) copies of a topographic map showing the facility and the area one thousand (1,000) feet around the facility site, which clearly shows the following:

4.7.a. The map scale and date;

4.7.b. Land uses (e.g., residential, commercial, agricultural, recreational);

4.7.c. The orientation of the map (north arrow);

4.7.d. The legal boundaries of the facility with the latitude and longitude to the nearest second for the site;

4.7.e. Access control (fences, gates); and

4.7.f. Buildings to be used for treatment, storage, and disposal operations and other structures (e.g. recreation areas, run-off control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities).

4.8. The secretary shall not begin the evaluation of a permit before receiving a complete application, as determined by the secretary. Within thirty (30) days of the secretary's receipt of a permit application, the completeness of the application shall be judged independently of the status of any other permit application or permit for the same facility or activity.

4.9. The secretary shall not issue a permit before receiving a complete application.

4.10. The secretary shall have the authority to request supplemental information needed to demonstrate that the facility will be operated in compliance with this rule.

4.11. When the secretary determines an application for a new non-commercial infectious

medical waste facility or a major change to an existing facility to be complete, he or she shall instruct the applicant or permittee to give public notice.

4.11.a. Public comment shall be conducted in accordance with the following guidelines:

4.11.b. Public notice shall be given by the following methods:

4.11.b.1. By mailing a copy of a notice to those persons whose names are included on a mailing list, maintained by the department of health and human resources, of people wishing to be notified of such requests; and

4.11.b.2. By publishing the public notice as a Class II legal advertisement in a qualified newspaper, as defined in W. Va. Code §59-3-1, serving the county where the facility will be located. That legal advertisement shall also be placed in newspapers of adjacent counties when a proposed facility is within two (2) miles of a county line. The cost of the publication will be the responsibility of the applicant who shall send a certification of publication to the secretary within twenty (20) days after publication; and

4.11.b.3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

4.11.c. All public notices issued shall contain the following information:

4.11.c.1. The name and address of the office processing the permit action for which notice is being given;

4.11.c.2. The name and address of the permittee or permit applicant, and if different, of the facility or activity regulated by the permit;

4.11.c.3. A description of the

activities covered in the application, including the type of technology that will be used to treat infectious medical waste, the types, amounts, and origins of infectious medical waste to be handled, site improvements, and infectious medical waste handling methods;

4.11.c.4. The name, address, and telephone and fax numbers of a person from whom interested persons may obtain further information;

4.11.c.4.A. The availability of the application shall include, but not be limited to, copies placed at the courthouse of the county in which the facility is to be located, the city or town hall of any municipal government within two (2) miles of the proposed location of the facility, and the primary public library in the county.

4.11.c.4.B. Copies of the application shall be available from the secretary at no cost.

4.11.c.5. A general description of the location of the proposed permit area including streams;

4.11.c.6. A clear and accurate location map. A map of a scale and detail found in the West Virginia official state highway map is the minimum standard for acceptance. The map size shall be at a minimum two (2) inches by two (2) inches. Longitude and latitude lines and a north arrow shall be indicated on the map, and such lines will cross at or near the center of the proposed permit area;

4.11.c.7. A reference to the date of previous public notices relating to the permit;

4.11.c.8. That any interested person may submit a written comment on the application, and that such comments shall include a concise statement of the nature of the issues raised;

4.11.c.9. That any interested person may submit a written request for a public hearing, and that such request shall include a concise

statement of the nature of the issues raised; and

4.11.c.10. That the secretary shall conduct a public hearing within forty-five (45) days in the county where the proposed facility is to be located whenever he or she receives a request.

4.11.d. If any data, information or arguments submitted during the public comment period raise substantial new questions concerning the proposed major change or new facility, the secretary shall:

4.11.d.1. Request additional information from the applicant; and

4.11.d.1.A. Reopen or extend the public comment period for thirty (30) days to give interested persons an opportunity to comment on the information or argument submitted; or

4.11.d.1.B. Require a public hearing.

4.11.e. In the event a public hearing is held:

4.11.e.1. Public notice of the hearing shall be given by the secretary at least thirty (30) days before the hearing;

4.11.e.2. A transcript of the hearing shall be available to the public from the secretary;

4.11.e.3. At the hearing, any person may make oral comments and submit written statements and data concerning the proposed major changes or new facility. Reasonable limits may be set on the time allowed for oral statements, and the written statements shall be submitted to the secretary no later than ten (10) days after the close of the hearing; and

4.11.e.4. The secretary shall act on the permit application within thirty (30) days after the date for the submission of written statements to the secretary.

4.11.f. In the event a public comment period is held, the secretary shall act on the permit application within thirty (30) days after the close of the comment period.

4.12. Permits shall be renewed annually prior to expiration. An application for permit renewal shall be submitted forty-five (45) days prior to the expiration date of the previous permit.

4.13. An application for an original or renewal permit shall be accompanied by a non-refundable application fee according to the schedule shown in Table 64-56A found at the end of this rule.

4.14. A permit shall be issued if the facility is, or in the case of a projected facility, is planned to be, in compliance with the applicable provisions of this rule and has submitted the application fee.

4.15. The secretary may refuse to grant or renew a permit if an applicant or permittee has attempted to obtain a permit by means of fraud, deceit or material misrepresentation or public comment reveals a situation which would endanger public health.

4.16. A permittee shall submit an application for approval of a major change in the permittee's infectious medical waste management plan before implementing the change. Minor changes in the infectious medical waste plan may be made without notifying the secretary and shall be included in the next application for permit renewal. All major changes shall be approved prior to implementation: Provided, That no prior approval is necessary in the case of a hospital which may in an emergency make an immediate change in its plan necessary to protect the safety and care of patients, employees or the public. In such an event, the hospital shall notify the secretary immediately followed by written notification within fifteen (15) days. An application for approval of any change in the plan which is beyond the control of the permittee shall be submitted within fifteen (15) days of its occurrence. A major change consists of any of the

following:

4.16.a. Installing a new unit for the treatment of infectious medical waste or replacing existing units not including improvements, as determined by the secretary, or repairs to existing units;

4.16.b. Changing the location of treatment; or

4.16.c. Permanently increasing the volume of infectious medical waste by at least twenty percent (20%), if the amount of the increase is fifty (50) pounds or more.

4.17. Small quantity generators who generate infectious medical waste in the provision of health care services in their own office are not required to obtain a permit. Small quantity generators shall keep their infectious medical waste management plan on file and shall make a copy available to the secretary on request.

4.18. Permits issued by the secretary for a non-commercial infectious waste facility are not transferable or assignable and shall automatically become invalid upon a change of ownership or upon suspension or revocation. An existing large quantity generator that changes ownership, however, may continue to operate under the previous owner's permit conditions until such time as the secretary can process the new permit application required by this section, provided the new owner sends the secretary a letter in which the new owner:

4.18.a. Advises the secretary of such change of ownership including any management changes; and

4.18.b. Agrees to be bound by the conditions and policies established in the infectious medical waste management plan for that facility by the previous owner until such time as a new management plan can be approved by the secretary.

§64-56-5. Infectious Medical Waste

Management Plan.

5.1. All infectious medical waste management facilities shall develop an infectious medical waste management plan.

5.2. The infectious medical waste management plan shall set forth policies and procedures for managing infectious medical waste which are consistent with this rule and shall include, at a minimum, the following:

5.2.a. A projection of the weight of the infectious medical waste which will be generated monthly;

5.2.b. A description of infectious and noninfectious medical waste handling, storage, separation and volume-reduction procedures;

5.2.c. The methods which will be used to treat the infectious medical waste;

5.2.d. Transportation method;

5.2.e. Manifest systems and labeling;

5.2.f. Disposal methods consistent with Section 10.4 of this rule;

5.2.g. The name, address, telephone and fax numbers and public service commission or other permit or license number of any infectious medical waste transporter, if applicable;

5.2.h. Training procedures, including an outline of training programs, and procedures for the certification of personnel involved in the treatment of infectious medical waste;

5.2.i. The name, address, telephone and fax numbers of the person responsible for infectious medical waste management at the generator or the facility, and the name, address, telephone and fax numbers of an alternate person to contact in the event the manager is not available;

5.2.j. Policies requiring that no infectious

medical waste will be knowingly transported or knowingly received by the generator or facility without being packaged and labeled in accordance with this rule;

5.2.k. Contingency plans for effective action to minimize damage from any interruption in treatment, storage or disposal of infectious medical waste;

5.2.l. A description of the procedures used to:

5.2.l.1. Prevent hazards in loading and unloading operations;

5.2.l.2. Prevent run-off from infectious medical waste handling areas to other areas of the facility or environment;

5.2.l.3. Prevent contamination of water supplies;

5.2.l.4. Mitigate effects of equipment failure and power outages; and

5.2.l.5. Prevent exposure of personnel to infectious medical waste;

5.2.m. Procedures for continuity of operations during a change of ownership;

5.2.n. Any other information pertinent to the evaluation of compliance with this rule.

5.3. Infectious medical waste management facilities which are willing to accept infectious medical waste generated off-site for treatment shall also include the following in their infectious medical waste management plan:

5.3.a. Procedures for receiving off-site infectious medical waste which are consistent with this rule;

5.3.b. A statement as to whether the facility plans to receive from off-site more than thirty-five (35) percent by weight of the total amount of infectious medical waste treated at the

facility;

5.3.c. A statement that the facility will not knowingly accept any infectious medical waste which is not properly packaged and labeled in accordance with Section 6 of this rule;

5.3.d. Procedures for keeping records in accordance with Section 13 of this rule;

5.3.e. Procedures for returning manifests to the generator after treatment of the infectious medical waste;

5.3.f. Procedures for reporting to the secretary as required by this rule; and

5.3.g. Procedures to be followed for closure of the facility including, but not limited to, notification of all facilities using the treatment service thirty (30) days prior to closure.

5.4. The secretary may grant a period of no more than one (1) year from the date of issuance of final applicable United States Environmental Protection Agency rules relating to medical waste incineration standards for an infectious medical waste management facility which has been granted a waiver under Section 10.2.g of this rule to develop a proposal to modify or upgrade its treatment process to comply with this rule. The plan for modification or upgrading shall be considered to be part of the facility's infectious medical waste management plan.

5.5. The infectious medical waste management plan shall comply with this rule.

5.6. Infectious medical waste management facilities shall operate in compliance with their infectious medical waste management plan as approved by the secretary.

5.7. Disposal of untreated infectious medical waste in this State is prohibited.

§64-56-6. Packaging and Labeling.

6.1. General.

6.1.a. The generator of infectious medical waste shall be responsible for ensuring that the packaging and labeling of infectious medical waste is in compliance with this rule and any other applicable state or federal laws or regulations.

6.1.b. Contractors or other agents may provide services to the generator, including packaging and labeling of infectious medical waste: Provided, however, That no contract or other relationship shall relieve the generator of the responsibility for packaging and labeling the infectious medical waste as required by this rule. Nothing in this section shall be construed to prevent or limit any cause of action by a generator against any other party for any reasons for which the law gives a remedy.

6.1.c. No person shall knowingly accept for transportation, storage, treatment or disposal any infectious medical waste that is not packaged and labeled in accordance with this rule. Contractors or other agents may package or repackage infectious medical waste to comply with this rule, if the packaging or repackaging is performed prior to transportation off-site or storage on-site. Proper repackaging of infectious medical waste that has spilled during transportation is required prior to further transportation.

6.2. Packaging.

6.2.a. All infectious medical waste shall be packaged as required by this rule prior to storage, treatment, or transport.

6.2.b. Infectious medical waste shall be contained and sealed on-site in leak-proof plastic bags capable of passing the American Society for Testing and Materials drop weight test (ASTM-D-959-80) using one hundred twenty-five (125) pounds, or in three (3) mil plastic bags or containers with equivalent containment properties. Free liquids shall be contained in break-resistant, tightly stoppered containers. Heavier materials shall be supported in double-walled corrugated fiberboard boxes or equivalent rigid containers.

6.2.c. Sharps shall be collected at the point of generation in rigid, leak-proof and puncture-resistant containers clearly marked as infectious medical waste. Containers shall be compatible with selected treatment processes to preclude contact with waste materials, and sealed before handling. Sharps containers shall not be completely filled.

6.2.c.1. If the sharps are to be stored or treated off-site, the containers shall be placed inside a plastic bag as specified in Section 6.2.b of this rule. Prior to storage, the plastic bags shall be bound at the gathered open end with tape or another closing device that prevents leakage of liquids.

6.2.c.2. Sharps which are rendered noninfectious and encapsulated in a solid state on-site may be discarded as solid waste. The encapsulated container shall be labeled in accordance with Section 6.3.b of this rule.

6.2.d. All bags containing infectious medical waste shall be red in color except that infectious medical waste that is to be steam treated shall be contained in orange bags and marked with autoclave tape or other heat-activated ink which will indicate whether or not the appropriate temperature, as required by this rule, has been reached. Both red and orange bags shall be imprinted with the international biohazard symbol and the words "infectious medical waste" or "biomedical waste" or "biohazard" or "regulated medical waste" if treatment is to occur off-site. Waste contained in red bags shall be considered infectious medical waste and managed as infectious medical waste. Waste contained in orange bags shall be managed as infectious medical waste prior to steam treatment and as solid waste after steam treatment, but shall not be removed from the orange bags.

6.2.e. In addition to other packaging, all infectious medical waste which is to be transported off-site shall also be packaged in double-wall corrugated fiberboard boxes or equivalent rigid containers. The boxes or containers shall be leak-resistant or lined with a tear-resistant leak-

proof plastic bag.

6.2.f. Reusable containers shall be leak-proof and vermin-proof, shall have tight-fitting covers, and shall be kept clean and in good repair. Reusable containers shall be thoroughly washed and disinfected if they are contaminated by or come in contact with improperly contained medical waste items, unless the surfaces of the containers have been protected from contamination by disposable liners, bags or other devices. Such disposable liners, bags or other devices shall be removed and handled as infectious medical waste. Red or orange bags may not be enclosed in bags of different colors.

6.2.g. Disinfection of the container shall be accomplished by one of the following methods:

6.2.g.1. Immersion in hot water at a temperature of at least one hundred and eighty degrees Fahrenheit (180° F) for a minimum of thirty (30) seconds;

6.2.g.2. Exposure to a chemical sanitizer by immersion in one of the following for a minimum of thirty (30) seconds: hypochlorite solution of one hundred parts per million (100 ppm) available chlorine; iodoform solution of twenty-five parts per million (25 ppm) available iodine; or quaternary ammonium solution of two hundred parts per million (200 ppm) active agent; or

6.2.g.3. Swabbing or rinsing the container with a chemical sanitizer double the strength specified in Section 6.2.g.2 of this rule or a chemical with equivalent sanitizing capabilities.

6.2.h. Employers shall direct employees packaging infectious medical waste to use personnel protection equipment and shall provide training in its use.

6.3. Labeling Requirements.

6.3.a. Infectious medical waste to be transported off-site shall be labeled prior to being stored on-site or transported off-site. The label

shall be securely attached to the outer layer of packaging and shall be clearly legible. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the label, and the label shall be at least three (3) inches by five (5) inches in size. The following information shall be included on the label:

6.3.a.1. The name, address, business telephone and fax numbers of the generator;

6.3.a.2. The words "infectious medical waste" or "biomedical waste" or "biohazard" or "regulated medical waste";

6.3.a.3. The name, address, business telephone and fax numbers of all transporters, treatment facilities, or other persons to whose control the infectious medical waste is being transferred and the permit numbers of transporters, if applicable; and

6.3.a.4. The date on which the infectious medical waste was packaged.

6.3.b. Recognizable treated noninfectious medical waste shall be labeled prior to being transported off-site. Treated medical waste that will pass through a screen with a one-half inch (½") grid shall be considered not recognizable. The label shall be sized and attached in the manner required by Section 6.3.a of this rule for infectious medical waste. The following information shall be included on the label:

6.3.b.1. The name, address and business telephone and fax numbers of the generator;

6.3.b.2. The name, address, and business telephone and fax numbers of the facility at which the waste was rendered noninfectious;

6.3.b.3. The weight of the treated noninfectious medical waste and the method of treatment;

6.3.b.4. A signed and dated

certification by the facility at which the waste was rendered noninfectious which states: "I hereby certify under penalty of law that this waste has been rendered noninfectious in accordance with procedures required by Infectious Medical Waste, 64 CSR 56."

§64-56-7. Management of Spills of Infectious Medical Waste.

7.1. All infectious medical waste management facilities shall keep a spill containment and cleanup kit within the vicinity of any area where infectious medical waste is managed on a bulk storage basis. The location of the kit shall provide for rapid and efficient cleanup of spills anywhere within the area. All vehicles transporting infectious medical waste shall carry a spill containment and cleanup kit in the vehicle whenever infectious medical waste is conveyed.

7.1.a. The kit shall contain an amount of absorbent material sufficient to have a rated capacity of one (1) gallon of liquid for every cubic foot of infectious medical waste that is normally managed in the area for which the kit is provided or of ten (10) gallons, whichever is less.

7.1.b. The kit shall contain one (1) gallon of hospital grade disinfectant in a sprayer capable of dispersing its charge in a mist or in a stream at a distance. The disinfectant shall be hospital-grade and effective against myco bacteria.

7.1.c. The kit shall contain enough red plastic bags to enclose one hundred and fifty percent (150%) of the maximum quantity stored or transported. The bags shall meet the American Society for Testing and Materials drop weight test (ASTM-D-959-80) using one hundred twenty-five (125) pounds or shall be three (3) mils thick or the equivalent and shall be accompanied by sealing tape or devices and labels or tags. These bags shall be large enough to enclose any box or other container normally used for infectious medical waste management by that facility or carried by a transport vehicle.

7.1.d. The kit shall contain two (2) new sets of overalls, gloves, boots, caps, and devices to protect the eyes and respiratory tract, and tape for sealing wrists and ankles. The overalls, boots and caps shall be oversized or fitted to the infectious medical waste workers or transporters, and shall be made of materials impermeable to liquids. Boots may be of thick rubber and gloves shall be of heavy neoprene or equivalent material. Boots, gloves and breathing devices may be reused if disinfected between uses.

7.1.e. The kit shall contain an adequate first aid kit and one hundred (100) yards of boundary marking tape.

7.2. Immediately following a spill of infectious medical waste or its discovery, all individuals present shall leave the area until any aerosol settles.

7.3. The cleanup crew shall implement the following procedures for cleaning up a spill:

7.3.a. Put on cleanup outfits as described in Section 7.1.4 of this rule and secure the spill area from entry by unauthorized persons;

7.3.b. Spray all broken containers of infectious medical waste with disinfectant;

7.3.c. Place broken containers and spillage in the packing bags in the kit;

7.3.d. Disinfect and take other steps necessary to clean up the area;

7.3.e. Clean and disinfect non-disposable items and clothing;

7.3.f. Remove cleanup outfits and place disposable items in a cleanup bag; and

7.3.g. Take prompt steps to initiate procedures for the replenishment of the containment and cleanup kit.

7.4. When a spill involves a single container of infectious medical waste with a weight of less

than fifty (50) lbs. and a volume of spilled liquid of less than one (1) quart, the individual responsible for the cleanup may elect to use dress and procedures other than those required by Section 7.1.d of this rule. Any proposed alternate procedures for small quantity spills shall be specified in the infectious medical waste management plan and shall provide protection to the health of workers and the public equivalent to that provided by the procedures specified in Section 7.2 of this rule.

§64-56-8. Storage of Infectious Medical Waste.

8.1. This section is applicable to the storage of infectious medical waste at any time after packaging (sealing) for transport, including time spent during transportation and at all treatment and disposal sites or facilities.

8.2. Infectious medical waste other than sharps shall not be stored for more than thirty (30) days prior to transportation to an infectious medical waste management facility, even if refrigerated: Provided, that the total amount of storage time, including transportation to an infectious medical waste management facility, shall not exceed forty-five (45) days. Facilities that treat infectious medical waste on-site shall not store the infectious medical waste more than thirty (30) days.

8.3. Infectious medical waste shall be stored in a specifically designated area located at or near the treatment site, or at the pickup point if it is to be transported off-site for treatment.

8.4. The manner of storage shall maintain the integrity of the containers; prevent the leakage of waste from the container; provide protection from water, rain and wind, and maintain the waste in a non-putrescent state.

8.5. All storage areas shall be constructed of materials which are durable, easily cleanable, impermeable to liquids, and vermin-proof.

8.6. Carpets and floor coverings with open seams in which water may be entrapped shall not

be used in storage areas. All floor drains shall discharge directly to a sanitary sewage disposal system which is in compliance with Sewage System Rules, 64 CSR 9 or other containment system which prevents any spilled materials from reaching the environment.

8.7. All storage areas shall be kept clean and in good repair.

8.8. All storage areas shall have access control that limits access to those persons specifically designated to manage infectious medical waste. The areas shall be posted prominently with the international biohazard symbol and with warning signs located adjacent to the exterior of entry doors, gates or lids which indicate the use of the area for storage of infectious medical waste and that entry to unauthorized persons is denied.

8.9. Infectious medical waste shall not be placed in chutes at any time.

8.10. Compaction of infectious medical waste or subjecting infectious medical waste to violent mechanical action is prohibited unless as a part of a specific treatment process approved by the secretary.

§64-56-9. Transportation.

9.1. This section applies to all transportation of infectious medical waste over roads or highways within West Virginia, regardless of point of origin or intended disposal, except as specified in Sections 9.2 and 9.3 of this rule.

9.2. A small quantity generator may transport his or her infectious medical waste to a permitted infectious medical waste management facility, or may arrange for transport by his or her employee as follows:

9.2.a. An employee who transports the infectious medical waste shall be trained in the proper handling of infectious medical waste as required by this rule; and

9.2.b. The infectious medical waste shall

be delivered within forty-five (45) days of its generation, or

9.2.c. Via the U.S. postal service, if the requirements set by that agency are met.

9.3. A generator that transfers infectious medical waste on-site shall be exempt from Sections 9.9, 9.10, 9.11 and 9.12 of this rule: Provided, That:

9.3.a. On-site transfer of infectious medical waste is covered in the infectious medical waste management plan; and

9.3.b. No off-site infectious medical waste is knowingly and routinely accepted for on-site transfer.

9.4. No person shall knowingly receive for transportation any infectious medical waste that is not packaged and labeled in accordance with Section 6 of this rule.

9.5. A transporter shall deliver infectious medical waste in West Virginia only to a permitted infectious medical waste management facility. Transporters of infectious medical waste out of state shall transport it to a facility permitted by the receiving jurisdiction.

9.6. All vehicles transporting infectious medical waste shall be prominently identified while transporting the infectious medical waste with the following, except for vehicles used as specified in Sections 9.2 and 9.3 of this rule:

9.6.a. The international biohazard symbol;

9.6.b. The words "infectious medical waste", or "biomedical waste", or "biohazard" or "regulated medical waste";

9.6.c. The number of the transporter's permit issued by the secretary; and

9.6.d. If applicable, a placard in accordance with United States Department of

Transportation requirements. Removable signs are acceptable.

9.7. Vehicles that transport infectious medical waste:

9.7.a. Shall include a cargo-carrying portion that shall be closed and secured except when loading or unloading infectious medical waste to prevent unauthorized access and exposure to wind and precipitation;

9.7.b. Shall be designed and constructed so as to contain any spillage;

9.7.c. Shall be cleaned and disinfected following leakage or spills as provided in Section 6.2.g.3 of this rule;

9.7.d. Shall be cleaned and disinfected prior to using the conveyance for any other purpose as provided in Section 6.2.g.3 of this rule; and

9.7.e. Shall not be used to transport food, foodstuffs, food additives, food containers or any substances to be ingested by people or animals or applied to food or feed simultaneously with the transport of infectious medical waste.

9.7.f. Separate, removable cargo-carrying containers are acceptable and if used, Sections 9.7.a through 9.7.e of this rule shall apply to the containers in lieu of the entire vehicle.

9.8. All vehicles transporting infectious medical waste shall carry a spill containment and cleanup kit as required by Section 7 of this rule in the vehicle whenever infectious medical waste is conveyed. Spills of infectious medical waste during transportation shall be managed as required by Sections 7.2 and 7.3 of this rule. Any spill of fifty (50) pounds or more shall be reported as soon as possible to the employer and the secretary. Direct physical contact of the transport vehicle or equipment with infectious medical waste shall be considered and managed as a spill.

9.9. No person shall transport infectious

medical waste in West Virginia for another who does not possess a permit issued by the secretary, and, if applicable, valid authority issued by the public service commission. Permits issued by the secretary shall not be transferable or assignable and shall automatically become invalid upon a change of ownership or upon suspension or revocation.

9.10. An application for a permit to transport infectious medical waste shall be made in writing to the secretary on a form prescribed by the secretary. The application form shall be signed by the applicant or his or her authorized representative. The application shall contain at a minimum the following:

9.10.a. The applicant's name;

9.10.b. The business address and telephone and fax numbers of the applicant, including both headquarters and local office;

9.10.c. The make, model and license number of each vehicle to be used to transport infectious medical waste within West Virginia;

9.10.d. The counties and cities in West Virginia in which the transporter will operate;

9.10.e. The name of any person or firm other than reported in Section 9.10.1 of this rule that is associated with the applicant or any other name under which that person or firm does business;

9.10.f. The name of any other person or firm using any of the same vehicles and operators;

9.10.g. The name and telephone and fax numbers of a person who may be contacted in the event of an accident or spill;

9.10.h. Verification that the applicant has established a program of and is providing training for employees involved in the transportation of infectious medical waste as required by this rule; and

9.10.i. Designation of the treatment facilities to be used.

9.11. The application shall be accompanied by a fee per transport vehicle according to the fee schedule shown in Table 64-56A found at the end of this rule. An application for renewal shall be submitted with the fee forty-five (45) days prior to the expiration date of an existing permit.

9.12. Once the application has been approved by the secretary, and upon verification that the applicant has been duly authorized by the public service commission, if applicable, a permit shall be issued to the applicant. All transport vehicles shall display the decal provided by the public service commission as required by the commission.

9.13. Upon request, the transporter shall provide the secretary with information needed for the investigation of the handling of particular infectious medical waste including, but not limited to, the names, addresses and telephone and fax numbers of transporters from or to whom the transporter has received or transferred infectious medical waste and infectious medical waste management facilities and generators with which the transporter has a contract or agreement for services.

9.14. All infectious medical waste transport vehicles shall be subject to inspection by the secretary without prior notice to evaluate compliance with this rule.

§64-56-10. Methods of Treatment.

10.1. General.

10.1.a. All infectious medical waste shall be treated by one of the following methods:

10.1.a.1. Incineration as described in Section 10.2 of this rule;

10.1.a.2. Steam treatment as described in Section 10.3 of this rule;

10.1.a.3. Discharge to a sanitary sewer as described in Section 10.4 of this rule; or

10.1.a.4. Any other alternative method approved in writing and permitted by the secretary according to the provisions of Section 10.5 of this rule.

10.1.b. The residue or ash remaining after the treatment of infectious medical waste in accordance with this rule becomes noninfectious medical waste and may be disposed of in the same manner as ash from solid waste incineration and as provided in subdivision 10.2.5 of this rule.

10.2. Incineration.

10.2.a. All owners and operators of infectious medical waste incinerators are required to comply with applicable State laws and with rules of the West Virginia Air Pollution Control Commission.

10.2.b. Whenever infectious medical waste is introduced into an incinerator, all the waste shall be subjected to a burn temperature of not less than one thousand four hundred degrees Fahrenheit (1400° F) for a period not less than one (1) hour. Gases generated by the combustion shall be subjected to a temperature of not less than one thousand eight hundred degrees Fahrenheit (1800° F) for a period of one (1) second or more.

10.2.c. An incinerator used for treatment of infectious medical waste shall have interlocks or other process control devices to prevent feeding of the incinerator until the conditions specified in Section 10.2.b of this rule can be achieved. In the event low temperatures occur, facilities shall have automatic auxiliary burners which are capable, excluding the heat content of the waste, of independently maintaining the secondary chamber temperature at the minimum of one thousand eight hundred degrees Fahrenheit (1800° F).

10.2.d. There shall be continuous monitoring and recording of primary and secondary chamber temperatures. Monitoring data shall be maintained for a period of three (3)

years.

10.2.e. All combustible waste shall be converted by the incineration process into ash that is not recognizably in its pre-incineration form. Incinerator ash shall be tested at least quarterly, using a commingled random sample, for total organic carbon content, and annually for lead, mercury, cadmium, and other heavy metals. A maximum of five percent (5%) fixed carbon shall be permitted (minimum ninety-five percent (95%) burnout).

10.2.f. Two (2) years following the effective date of this rule, all individuals who operate infectious medical waste incinerators shall be registered with the secretary. The secretary shall issue a registration number to individuals who complete a course of study approved by the secretary; obtain a passing score on a written examination; and pay the fee shown in Table 64-56A found at the end of this rule.

10.2.g. Facilities with incinerators in operation at the time this rule becomes effective may apply to the secretary for a waiver to Sections 10.2.b through 10.2.d of this rule. The waiver, if granted, shall be in effect for a maximum of two (2) years after issuance of applicable final Environmental Protection Agency rules relating to medical waste incineration and shall be contingent upon submission of plans to upgrade the facility so as to be in full compliance with Sections 10.2.b through 10.2.d of this rule. The plans shall be submitted as part of the infectious medical waste facility management plan required in Section 5 of this rule and shall be subject to approval by the secretary.

10.3. Steam Treatment.

10.3.a. A steam treatment process for infectious medical waste shall at all times maintain:

10.3.a.1. A temperature of not less than two hundred and fifty degrees Fahrenheit (250° F) for ninety (90) minutes at fifteen (15) pounds per square inch of gauge pressure; or

10.3.a.2. A temperature of two hundred and seventy-two degrees Fahrenheit (272° F) for forty-five (45) minutes at twenty-seven (27) pounds per square inch; or

10.3.a.3. A temperature of two hundred and fifty degrees Fahrenheit (250° F) for twenty-eight (28) minutes at eighty (80) pounds per square inch; or

10.3.a.4. A temperature of two hundred and seventy degrees Fahrenheit (270° F) for sixteen (16) minutes at eighty (80) pounds per square inch; or

10.3.a.5. A temperature of two hundred and seventy degrees Fahrenheit (270° F) for thirty (30) minutes at thirty-two (32) pounds per square inch; or

10.3.a.6. Other combinations of operational temperatures, pressure and time approved by the secretary. Other combinations may be approved if the installed equipment has been proved to achieve a reliable kill of all infectious microorganisms in infectious medical waste at design capacity. Complete and thorough testing of such other combinations of temperature and pressure shall be fully documented, including tests of the capacity to kill *Bacillus stearothermophilus*. Longer steam treatment times are required when a load contains a large quantity of liquid.

10.3.b. Each package of infectious medical waste to be treated with steam shall have a tape attached that will indicate if the steam treatment temperature has been reached. The infectious medical waste shall not be considered satisfactorily treated if the indicator does not indicate that the treatment temperature was reached during the process. Each package shall also be labeled according to the requirements of Section 6.3.b of this rule after treatment if recognizable.

10.3.c. Steam treatment units shall be evaluated under full loading for effectiveness with spores of *Bacillus stearothermophilus* no less than

once per every forty (40) hours of operation.

10.3.d. A log shall be kept at each steam treatment unit that is complete for the preceding three (3) year period. The log shall record:

10.3.d.1. The date, time and operator of each usage;

10.3.d.2. The type and approximate amount of waste treated;

10.3.d.3. The post-treatment reading of the temperature sensitive tape;

10.3.d.4. The dates and results of calibration; and

10.3.d.5. The results of the testing required by Section 10.3.3 of this rule.

Where multiple steam treatment units are used, a working log can be maintained at each unit and such logs periodically consolidated at a central location. The consolidated logs shall be retained for three (3) years and be available for review.

10.4. Sanitary Sewer.

Liquid infectious medical waste may be discharged to a sanitary sewer through a drainage fixture of a size and type adequate to discharge the waste in a sanitary manner to a sewer system approved by the department according to Sewage System Rules, 64 CSR 9. The use of a grinder to reduce infectious solid matter to a size or consistency which can be discharged to a sewer is prohibited.

10.5. Alternative Methods.

10.5.a. The secretary may approve an alternative method of treatment not described in this rule if the secretary determines that the proposed process will render infectious medical waste noninfectious and will provide protection to the health and safety of the public and workers at least the equivalent to the methods found at

Sections 10.2, 10.3 or 10.4 of this rule.

10.5.b. The secretary may issue provisional approval to any alternate method until an appropriate trial period can validate performance. Alternate methods employing disinfection must have the disinfectant registered for that purpose in accordance with the federal Insecticide, Fungicide, and Rodenticide Act as amended. If the process fails to provide adequate treatment when operated according to manufacturer's instructions, the provisional approval shall be revoked.

10.5.c. In addition to complying with other sections of this rule, an application for approval of an alternate method shall include:

10.5.c.1. A listing of the classes and amounts of infectious medical waste the method could be employed to treat;

10.5.c.2. A copy of the detailed plans for the device used in the method;

10.5.c.3. A written summary of the proper operation of the method and device;

10.5.c.4. A copy of the operation and maintenance manual for the process or device;

10.5.c.5. Copies of approval and denial letters from other states where the process has been evaluated; and

10.5.c.6. A copy of an evaluation report provided by a testing laboratory independent of the applicant using a testing protocol approved by the secretary confirming the efficacy of the treatment process and that the process does not produce a hazardous waste, discharge or air emission.

10.5.c.7. To evaluate alternative treatment technologies, the secretary shall use the procedures outlined in the following referenced manual that is incorporated in this rule: State and Territorial Association on Alternate Treatment Technologies, Technical Assistance Manual: State

Regulatory Oversight of Medical Waste Treatment Technologies.

10.5.c.8. A non refundable alternative technology evaluation fee shall be submitted with the application in accordance with Table 64-56A at the end of this rule.

§64-56-11. Commercial Infectious Medical Waste Management Facilities.

11.1. This section of this rule applies only to commercial infectious medical waste management facilities.

11.2. A commercial infectious medical waste management facility may not utilize incineration technology in any form, including the manufacture or burning of refuse-derived fuel in any form.

11.3. A commercial infectious medical waste management facility shall have effective controls for the management of infectious medical waste to ensure the protection of public health, safety, welfare and the environment.

11.4. The secretary shall conduct an investigation of the infectious medical waste stream in the region affected by the proposed facility and determine that programs have been established to minimize and reduce the infectious medical waste stream the facility will serve prior to issuing a permit. The secretary may issue a permit only if he or she makes a specific finding that as to the medical waste stream the proposed facility will be consistent with the legislative findings and purpose stated in W. Va. Code §20-5J-2.

11.5. No person may establish, construct, operate, maintain, or allow the use of property for a commercial infectious medical waste management facility within:

11.5.a. The one-hundred (100) year flood plain;

11.5.b. Five hundred (500) feet of a

dwelling, measured from the edge of the boundary of the facility, unless written permission is received from the owner of the dwelling;

11.5.c. An area where the secretary has determined, after consultation with relevant state and federal agencies, that the facility will be in violation of applicable state or federal laws or regulations concerning:

11.5.c.1. Wetlands;

11.5.c.2. Any endangered or threatened species of animal or plant;

11.5.c.3. Surface water;

11.5.c.4. Groundwater quality; or

11.5.c.5. The emission of any air contaminant.

11.6. A proposed infectious medical waste management facility shall provide evidence of financial capability suitable to the scope of the facility to the secretary.

11.6.a. Prior to the issuance of a permit to operate a commercial infectious medical waste treatment facility, the intended operator shall obtain a performance bond payable to the Secretary in an amount established by the Secretary equal to the projected cost of operating the facility for sixty (60) days at full capacity.

11.6.a.1. The performance bond shall be paid to the secretary upon:

11.6.a.1.A. Closure of the facility, including voluntary closure and closure as a result of permit revocation or suspension, unless thirty (30) days before closure the operator has notified the secretary of closure and before closure has provided the secretary with certified mail receipts of its mailing of notices of closure to all its customers thirty (30) days before closure: Provided, That a performance bond payment made under this subparagraph shall be returned by the secretary upon verification that the operator

provided the notices as required; or

11.6.a.1.B. Improper closure of the facility requiring corrective expenditures by the secretary.

11.6.a.2. A bond payment may be used by the secretary to correct an improper closure and to continue operation of a facility until its customers can be properly notified of the pending closure.

11.7. No person may own, construct, modify or operate a commercial infectious medical waste facility, nor may any person store, transport, treat or dispose of any infectious medical waste without first obtaining a permit from the secretary.

11.8. The owner of an infectious medical waste facility is responsible for insuring that the facility has a permit.

11.9. Pre-siting Notices.

11.9.a. In order to obtain approval to locate a commercial infectious medical waste facility, not under permit to operate as of April 12, 1997, an applicant shall, in accordance with W. Va. Code §20-5K-3, Procedure for Public Participation, file a pre-siting notice with the secretary, the division of environmental protection and the county commission or commissions and the local solid waste authority or authorities of the county or counties in which the facility is to be located. Such notice shall be available for public review, and shall include:

11.9.a.1. A description of the location at which the proposed facility may be sited;

11.9.a.2. Information concerning the anticipated size of the proposed facility;

11.9.a.3. An estimate of the volume, type, and origin of the infectious medical waste to be handled at the proposed facility;

11.9.a.4. A United States Geological Survey (USGS) topographic map showing the

location and anticipated boundaries of each site being considered for the proposed facility;

11.9.a.5. A description of the technology that is to be used in the treatment of infectious medical waste;

11.9.a.6. The name, address and telephone and fax numbers of the owner or applicant of the proposed facility;

11.9.a.7. The name, address and telephone and fax numbers of the operator of the proposed facility, if different from the owner or applicant; and

11.9.a.8. Other information that the secretary may require.

11.9.b. The secretary shall mail a copy of the pre-siting notice to those persons whose names are included on a mailing list, maintained by the department of health and human resources, of people wishing to be notified of such pre-siting notices.

11.10. Permit Application Requirements. An application for a permit shall be submitted to the secretary in duplicate on forms prescribed by the secretary, and unless otherwise specified in this rule, shall include the following:

11.10.a. The name, mailing address, and location of the facility for which the application is submitted;

11.10.b. The name, address and telephone and fax numbers of the owner of the facility, and if the owner is an individual or a partnership, the social security number or numbers of the owner or partners;

11.10.c. The name, address and telephone and fax numbers of the manager of the facility, if different from the owner; and if the manager is an individual or partnership different from the owner, the social security number or numbers of the individual or partners;

11.10.d. A proposed infectious medical waste management plan as required by Section 5 of this rule. The infectious medical waste management plan shall be incorporated into the permit as part of the permit conditions;

11.10.e. A description of the legal documents upon which the applicant bases his or her legal right to enter and conduct operations on the facility permit area and whether that right is the subject of pending court litigation;

11.10.f. All application documents related to engineering and design plans and specifications as compiled, signed, and sealed by a professional engineer who is registered to practice in West Virginia;

11.10.g. Appropriate legible exhibits, including maps, figures, photographs, and tables, of appropriate scale to show all required details necessary to clarify information or conclusions;

11.10.h. Documentation of arrangements for permitted facilities to receive all treated waste and wastewater;

11.10.i. A treatment technology plan in accordance with the provisions of Section 10.3 through 10.5 of this rule;

11.10.j. Financial assurance in the form of a collateral bond, an escrow account or a letter of credit equal to the proposed cost of the project;

11.10.k. A proposed design and a general discussion of the proposed operating procedures;

11.10.l. A notarized signature of the owner or principal officer verifying that the information contained in the application is true and correct to the best of that individual's knowledge and belief;

11.10.m. A review of land use zoning in the area with particular attention given to areas where zoning variances will be required, where agricultural impact statements may be required, or where flood plain, river corridors, or wetlands are

designated;

11.10.n. A description of the present land use within two (2) miles of the permit area. The description shall include, but not be limited to:

11.10.n.1. Impacts upon transportation facilities;

11.10.n.2. Impacts upon public and private water supplies;

11.10.n.3. Impact upon land use patterns;

11.10.n.4. Impacts upon agricultural, commercial and residential real estate values;

11.10.n.5. Impacts upon wildlife;

11.10.n.6. Impacts upon endangered or threatened species of animals or plants;

11.10.n.7. Impacts upon aesthetics;

11.10.n.8. Impacts upon socioeconomic conditions;

11.10.n.9. Impacts to water resources;

11.10.n.10. Impacts on sewage collection and treatment systems;

11.10.n.11. Impacts on local emergency response crews and firefighters;

11.10.n.12. Impacts upon known recreational, historical, archaeological, or environmentally unique areas; and

11.10.n.13. Other impacts as determined by the secretary.

11.10.o. A large-scale map with a minimum scale of one (1) inch equal to two hundred (200) feet and a maximum contour interval of ten (10) feet, or a 7.5 minute topographic map, showing the location of all of

the following that occur either within the site boundaries or within two thousand five hundred (2,500) feet of the site;

11.10.o.1. Water supply wells;

11.10.o.2. Springs;

11.10.o.3. Wetlands (e.g., swamps, bogs, marshes);

11.10.o.4. Streams and drainages;

11.10.o.5. Public water supplies;

11.10.o.6. Other bodies of water;

11.10.o.7. Underground or surface mines;

11.10.o.8. Water quality monitoring points;

11.10.o.9. Occupied dwellings;

11.10.o.10. Roads;

11.10.o.11. Public buildings;

11.10.o.12. Sinkholes;

11.10.o.13. Property boundaries, including site property;

11.10.o.14. Current owners of record both surface and subsurface;

11.10.o.15. Easements or rights-of-way; and

11.10.o.16. One hundred (100) year flood plain boundary;

11.10.p. A description of present and proposed transportation routes and access roads, including any weight restrictions;

11.10.q. A description of buildings, treatment units, roads, and other structures to be

constructed in conjunction with the facility, including the size of the construction and the number of miles of road to be constructed;

11.10.r. A description of emissions and discharges, such as dust, odors, gases, leachate, surface water runoff and collected groundwater associated with facility preparation, construction, operation and during and after closure of the facility; and

11.10.s. A non-refundable application fee according to the schedule shown in Table 64-56A at the end of this rule.

11.11. Modifications.

11.11.a. When a permit is modified, only the conditions subject to modification are reopened. All other conditions of the permit remain in effect for the duration of the permit.

11.11.b. The secretary may require additional information and, in the case of a major modification, may require submission of a new permit application.

11.11.c. Minor Modifications.

11.11.c.1. Modifications, except for major modifications as listed in this section, in the infectious medical waste plan may be made without notifying the secretary and shall be included in the next application for permit renewal.

11.11.c.2. Permits may be modified by the secretary at any time except for major modifications as listed in this section. Minor modifications do not require the completion of the public notice procedures.

11.11.d. Major Modifications. A permittee shall submit an application for approval of a major modification before implementing the change. All major modifications shall be approved prior to implementation and require the opportunity for a public hearing as required by this rule unless an emergency is declared by the

secretary. For the purpose of this section a major modification means:

11.11.d.1. The capacity of the commercial infectious medical waste facility will be increased over the permitted capacity by more than ten percent (10%);

11.11.d.2. The performance or operation of the surface water control system will be significantly affected;

11.11.d.3. A decrease in the quality or quantity of data from any environmental monitoring system will occur;

11.11.d.4. The amount or type of financial assurance will change;

11.11.d.5. The facility boundary will be significantly changed;

11.11.d.6. Authorization is being sought to construct an additional structure;

11.11.d.7. Different permitted facilities are being considered to receive treated waste or wastewater; or

11.11.d.8. Installing a new unit for the treatment of infectious medical waste or replacing existing treatment units not to include repair or improvements to existing units;

11.11.d.9. Changing the location of treatment;

11.11.d.10. Any other action that the secretary determines may present substantial endangerment to public health, safety or the environment; and

11.11.d.11. Other similar modifications as determined by the secretary.

11.11.d.12. Major modifications to an initial application for a new commercial infectious medical waste facility require the applicant to undergo a new pre-siting process as

described in Sections 11.9. through 11.12 of this rule.

11.11.d.13. Permit renewals that contain major modifications shall be treated as major modifications.

11.12. Permit Suspension or Revocation.

11.12.a. Suspension. A commercial infectious medical waste facility permit may be suspended by order of the secretary for any of the following reasons:

11.12.a.1. Violation of, or failure to adhere to, W. Va. Code §20-5J-1 et seq., this rule, the terms and conditions of the permit, or any order of the secretary issued thereunder;

11.12.a.2. Interference with a representative of the secretary in the performance of his or her duties; or

11.12.a.3. Discovery of failure in the application or during the permit issuance process to fully disclose all significant facts or the permittee's misrepresentation of any significant fact at any time.

11.12.b. Revocation. A commercial infectious medical waste facility permit may be revoked by order of the secretary for any of the following reasons;

11.12.b.1. An attempt by an applicant or permittee to obtain or renew a permit by means of fraud, deceit or material misrepresentation;

11.12.b.2. Any deficiency at the facility constituting an imminent pollution, health, or safety hazard;

11.12.b.3. Persistent violation of W.Va. Code §20-5J-1 et seq., this rule, permit terms and conditions, or orders issued by the secretary under that Code Article or this rule;

11.12.b.4. Discovery of failure in the application, or during the permit issuance process,

to fully disclose all significant facts or the permittee's misrepresentation of any significant fact at any time;

11.12.b.5. Failure to maintain proper bonding; if for any reason a permittee fails to maintain proper bonding, the secretary shall issue a cease and desist order and revoke the permit and the permittee shall become fully liable for the amount of the bond; or

11.12.b.6. Any cause which would require disqualification pursuant to this rule from receiving a permit upon original application.

11.12.c. Effect of Permit Suspension or Revocation.

11.12.c.1. Suspension. All infectious medical waste processing, treatment, storing or transfer activities and the receipt of any infectious medical waste at the facility shall cease immediately upon receipt of an order of suspension. Activities at the facility may recommence only after expiration of the order of suspension or upon revocation of that order by the issuing authority.

11.12.c.2. Revocation. All infectious medical waste processing, treatment, storing or transfer activities and the receipt of any infectious medical waste at the facility shall cease immediately upon receipt of an order of revocation. The facility owner shall submit either an application for a permit to close the facility or an application for a new commercial infectious medical waste facility permit within the time specified in the order of revocation.

11.12.c.3. Environmental Monitoring and Control. Environmental monitoring and control activities specified in an order of suspension or revocation shall continue at the commercial infectious medical waste facility for the duration of such order or until the authority that issued that order approves the cessation of such activities.

11.15. Transfer of Facility.

11.15.a. Permits issued by the secretary are not transferable or assignable and shall automatically become invalid upon a change of ownership or upon suspension or revocation. An existing commercial facility that changes ownership may, however, continue to operate under the previous owner's permit conditions until such time as the secretary can process the new permit application required by this section, provided the new owner sends the secretary a letter in which the new owner:

11.15.a.1. Advises the secretary of such change of ownership including any management changes; and

11.15.a.2. Agrees to be bound by the conditions and policies established in the infectious medical waste management plan for that facility by the previous owner until such time as a new management plan can be approved by the secretary.

11.16. Application Review. Within thirty (30) days of receipt of a permit application, compliance schedule, closure plan, or major modification application, the secretary shall determine whether such application, schedule, or plan is complete and shall notify the applicant of his or her determination in writing. If the secretary determines that such application, schedule, plan or modification is not complete, the notification shall advise the applicant of the deficiencies that require remedy.

11.16.a. The secretary may not begin the evaluation of a permit before receiving a complete application, including any supplemental information requested.

11.16.b. The secretary may not issue a permit before receiving a complete application.

11.16.c. The secretary shall request formal comments from the county commission of the county in which the facility is proposed to be located and from any municipal government within two (2) miles of the proposed location, with any negative response to such application

from any commission or municipal government to be considered by the secretary and specific findings made as to the concerns raised by such responses.

11.17. Public Participation. When the secretary determines an application for a new facility to be complete, he or she shall conduct a public hearing in the county where the proposed facility is to be located.

11.17.a. When the secretary determines an application for a major modification to be complete, he or she shall instruct the applicant or permittee to give public notice. The secretary shall conduct a public hearing in the county where the proposed facility is to be located whenever he or she receives a request.

11.17.a.1. Public hearings shall be conducted in accordance with the following guidelines:

11.17.a.2. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public comment will be accepted during those thirty (30) days.

11.17.a.3. Public notice shall be given by the following methods;

11.17.a.3.A. By mailing a copy of a notice to those persons whose names are included on a mailing list, maintained by the department of health and human resources, of people wishing to be notified of such requests; and

11.17.a.3.B. By the applicant publishing the public notice as a Class II legal advertisement in a qualified newspaper, as defined in W. Va. Code §59-3-1, serving the county where the facility will be located. The secretary shall also require that legal advertisement be placed in newspapers of adjacent counties when a proposed facility is within two (2) miles of a county line. The cost of the publication will be the responsibility of the applicant who shall send a certification of publication to the secretary within

twenty (20) days after publication; and

11.17.a.3.C. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

11.17.a.4. All public notices issued shall contain the following information:

11.17.a.4.A. The name and address of the office processing the permit action for which notice is being given;

11.17.a.4.B. The name and address of the permittee or permit applicant, and if different, of the facility or activity regulated by the permit;

11.17.a.4.C. A description of the activities covered in the application, including the type of commercial infectious medical waste facility, the types, amounts, and origins of infectious medical wastes to be handled, site improvements, and infectious medical waste handling methods;

11.17.a.4.D. The name, address and telephone and fax numbers of a person from whom interested persons may obtain further information, including copies of the application;

11.17.a.4.D.1. The availability of the application shall include, but not be limited to, copies placed at the courthouse of the county in which the facility is to be located, the city or town hall of any municipal government within two (2) miles of the proposed location of the facility and all public libraries in the county.

11.17.a.4.D.2. Copies of the application shall be available from the secretary at no cost.

11.17.a.4.E. A brief description of the comment procedures and the date, time and place of the hearing, and other procedures by

which the public may participate in the final permit decision;

11.17.a.4.F. A general description of the location of proposed permit area including streams;

11.17.a.4.G. A clear and accurate location map. A map of a scale and detail found in the West Virginia official state highway map is the minimum standard for acceptance. The map size shall be at a minimum two (2) inches by two (2) inches. Longitude and latitude lines and a north arrow shall be indicated on the map, and such lines will cross at or near the center of the proposed permit area;

11.17.a.4.H. A reference to the date of previous public notices relating to the permit;

11.17.a.4.I. For major modifications, the public notice shall state:

11.17.a.4.I.1. That any interested person may submit written comment on the application, and that such comments shall include a concise statement of the nature of the issues raised;

11.17.a.4.I.2. That any interested person may request a public hearing, and that such request shall include a concise statement of the nature of the issues raised; and

11.17.a.4.I.3. That the secretary shall conduct a public hearing in the county where the proposed facility is to be located whenever he or she receives a request.

11.17.a.5. An official transcript of the hearing shall be available to the public from the secretary.

11.17.a.6. Any person may submit oral or written statements and data concerning the proposed facility. Reasonable limits may be set on the time allowed for oral statements, and the written statements shall be

submitted no later than ten (10) days after the close of public hearings.

11.17.a.7. If any data, information or arguments submitted during the public comment period raise substantial new questions concerning the proposed facility, the secretary shall:

11.17.a.7.A. Reopen or extend the public comment period to give interested persons an opportunity to comment on the information or argument submitted; or

11.17.a.7.B. Require an additional public hearing.

11.17.a.8. The applicant for a permit for a commercial infectious medical waste management facility shall maintain a public participation file. This file shall contain all the written comments received during the public comment period, copies of minutes of all meetings held by the applicant and a copy of the applicant's written response to all written comment letters received during the written response period. This file shall be submitted to the secretary by the applicant at the end of the comment period.

11.17.a.9. Based on comments received at the public hearing or upon written recommendations received, the secretary may within thirty (30) days after the close of the public comment period, require the person who submitted the application to furnish additional information regarding the impact the siting of the proposed facility may have upon wetlands, endangered or threatened species of plants and animals, surface waters, underground waters, air quality, and other matters as determined by the comments received.

11.18. Permit Decision and Effective Date of Permit.

11.18.a. Within thirty (30) days of the close of the public comment period on an application for a new facility, or major modification of an existing permit, the secretary

shall respond in writing to the comments received.

11.18.b. After comments have been responded to, the secretary shall issue a final permit decision. The secretary shall provide written notification of his or her decision to the applicant and to each person who has submitted written comments or requested notice of the final permit decision. For the purposes of this section, a "final permit decision" means the final decision of the secretary to grant, deny, revoke and reissue, or terminate a permit.

11.18.c. In the case of an application for a new facility, the secretary shall grant or deny the application as filed and as made available to the public pursuant to the provisions of this section. The secretary shall provide the reasons therefor in his or her written notification to the applicant. This notification shall also include reference to the procedures for appealing the final permit decision.

11.18.d. The secretary may refuse to grant a permit for any of the following reasons:

11.18.d.1. If an applicant or permittee has attempted to obtain or renew a permit by means of fraud, deceit or material misrepresentation;

11.18.d.2. Discovery of failure in the application or during the permit issuance process to fully disclose all significant facts or the permittee's misrepresentation of any significant fact at any time;

11.18.d.3. The secretary determines, based on comments and recommendations received, that the facility is incompatible with existing or proposed land use patterns, including, but not limited to: transportation facilities; public water supplies; water resources; agricultural, commercial and residential real estate values; aesthetics; socioeconomic conditions generally; or if it endangers public health, safety or well being.

11.18.e. A final permit decision shall become effective not less than thirty (30) days

after the date of notice of the decision, unless an earlier date is requested by the applicant and agreed upon by the secretary.

11.19. A retailer of sharps to be used by individuals in their own medical treatment may establish a small commercial infectious medical waste management facility to be used solely for the treatment of sharps sold by and returned to the retailer for treatment. Such small commercial infectious medical waste management facility shall apply for and obtain a permit according to the provisions of Section 4 of this rule. In addition to the requirements of Section 4, the application shall include a letter describing the location and estimated volume of sharps to be treated and a certified letter from an approved solid waste disposal facility agreeing to accept the treated wastes. Such small commercial infectious medical waste management facility shall comply with Sections 6 and 10 of this rule, and may be exempted by the secretary from the requirements of Sections 11.9 through 11.18 of this rule.

§64-56-12. Requirements Related to Manifests.

12.1. Except as specified in Section 12.9 of this rule, the generator of infectious medical waste that is to be transported off-site for storage or treatment shall initiate a four-part manifest which is available from or approved by the secretary. Copy three (3) of the manifest shall be retained by the generator after acceptance by the transporter. Copy two (2) of the manifest shall be retained by the transporter after acceptance by the treatment facility. Copy one (1) of the manifest shall be retained by the treatment facility: The treatment facility shall forward the original to the generator as required by Section 12.8 of this rule. A transporter who commingles loads shall initiate a new manifest as a generator. He or she shall submit the first copy of the original manifest back to the actual generator after receiving the first copy of the manifest for the commingled infectious medical waste from the treatment facility, along with a photocopy of the commingled load manifest.

12.2. If the generator does not receive the

completed manifest from the treatment facility within fifty (50) days after the date the medical waste was accepted by the transporter, the generator shall report this fact to the secretary.

12.3. A transporter shall not accept infectious medical waste from a generator unless the waste is accompanied by a manifest with the generator portion completed, signed, and dated by the generator.

12.4. A transporter shall in the presence of the generator or, in the event of multiple transporters, in the presence of the previous transporter, complete the transporter portion of the manifest, including a handwritten acceptance signature and date of acceptance, and shall immediately give a signed copy of the manifest to the generator or previous transporter, with any discrepancies in manifest information noted on the manifest copy.

12.5. An infectious medical waste management facility shall not accept more than fifty (50) pounds of infectious medical waste from a generator per month or any quantity of infectious medical waste from a transporter unless it is accompanied by a properly completed manifest.

12.6. An infectious medical waste management facility shall, in the presence of the generator or transporter, complete the appropriate transport or storage, treatment or disposal facility portion of the manifest, including a handwritten acceptance signature and date of acceptance, and immediately give a signed copy of the manifest to the generator or transporter, with any discrepancies in manifest information noted on the manifest copy.

12.7. The infectious medical waste treatment facility shall record on the manifest the date on which the shipment was received and accepted by the facility.

12.8. The infectious medical waste treatment facility shall keep one (1) copy of the completed manifest as part of the facility operating record and shall forward the original to the generator

within seven (7) days after treatment.

12.9. Small quantity generators who elect to transport their own infectious medical waste are not required to use a manifest.

12.10. In instances when an infectious medical waste management facility accepts less than fifty (50) pounds of infectious medical waste from a small quantity generator, the facility shall maintain a log of such receipts which includes, at a minimum, the following:

12.10.a. The name and address of the generator;

12.10.b. The weight of the waste received;

12.10.c. The date of receipt of the waste; and

12.10.d. The signature of the person receiving the waste.

12.11. Manifests and logs shall be retained by all parties for a period of not less than three (3) years. The period of retention of records is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the secretary. These records shall be available for inspection by the secretary upon request.

12.12. Nothing in this rule shall prevent any hospital or other facility which receives infectious medical waste from any small quantity generator, including any ambulance company, from requiring a completed manifest as more fully described in Sections 12.1 through 12.5 of this rule.

§64-56-13. Record Keeping and Reporting.

13.1. All pertinent records required by this rule shall be retained for a period of not less than three (3) years.

13.2. The period of retention established in Section 13.1 of this rule shall extend

automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the secretary.

13.3. All records shall be made available for inspection and or duplication by the secretary or his or her duly authorized representative upon request.

13.4. All generators, except small quantity generators and those listed in Section 2 of this rule, commercial storage and transfer facilities and treatment facilities shall submit a report annually covering the preceding calendar year to the secretary in a format specified by the secretary by the twentieth day of January and additional reports at such times the secretary judges necessary setting out the quantity of waste generated during a particular time period and the disposition of the infectious medical waste. Transporters shall submit these reports on a quarterly basis.

§64-56-14. Inspections; Right of Entry; Sampling; Reports and Analyses; Subpoenas.

Inspections and other monitoring activities are required to be conducted according to the provisions of W. Va. Code §§22-18-13 and 20-5J-7 which are outlined in this section.

14.1. Upon the presentation of proper credentials and at reasonable times, the secretary has the authority to enter any building, property, premises, place, vehicle or permitted facility where infectious medical waste is or has been generated, handled, treated, stored, transported or disposed of for the purpose of promptly investigating any person's compliance with the provisions of relevant State law, this rule or permits issued under this rule.

14.2. The secretary is required to make periodic inspections of every permitted facility as necessary to effectively implement and enforce the requirements of relevant State law, this rule or permits issued in accordance with this rule. After an inspection is made, a report is to be prepared and filed with the secretary. A copy of the

inspection report is required to be promptly furnished to the person in charge of the building, property, premises, place, vehicle or facility. All inspection reports are available to the public in accordance with the provisions of W. Va. Code §§29B-1-1 et seq.

14.3. Whenever the secretary has cause to believe that any person is in violation of any provision of relevant State law, this rule, any condition of a permit issued by the secretary, or any order issued under this rule, he or she is required to immediately order an inspection of the building, property, premises, place, vehicle or permitted facility at which the alleged violation is occurring.

14.4. Upon presentation of proper credentials and at reasonable times, the secretary has the authority to enter any establishment, building, property, premises, vehicle or other place maintained by any person where infectious medical waste is being or has been generated, transported, stored, treated or disposed of to inspect and take samples of wastes and the contents of any containers or labeling for such wastes. A receipt describing such samples, and, if requested, a portion of such sample equal in volume or weight to the portion retained is to be given to the owner, operator or agent in charge prior to the sample being taken from the premises. The secretary is required to provide a copy of any analysis to the owner, operator or agent in charge promptly.

14.5. Upon presentation of proper credentials and at reasonable times, the secretary is to be given access to all records relating to the generation, transportation, storage, treatment or disposal of infectious medical waste in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste. The secretary is to be furnished with copies of all such records or given the records for the purpose of making copies. If the secretary, upon inspection, investigation or through other means, observes or learns of a violation or probable violation of relevant State law or this rule, he or she is authorized to issue

subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses and to compel the production of any books, papers, documents, manifests and other physical evidence pertinent to such investigation or inspection.

§64-56-15. Enforcement Orders; Related Hearings; Permit Reinstatement.

Enforcement orders and related hearings are required to be conducted according to the provisions of W. Va. Code §§22-18-15, 20-5J-8 and 29A-5-1 et seq. as outlined in Sections 15.1 and 15.2 of this rule.

15.1. If the secretary, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this rule or relevant State law or of any order or permit issued under this rule or such law by the secretary, he or she may:

15.1.a. Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: orders suspending, modifying or revoking permits, orders requiring a person to take remedial action, or cease and desist orders;

15.1.b. Seek an injunction in accordance with W. Va. Code §20-5J-9(b);

15.1.c. Institute a civil action in accordance with W. Va. Code §20-5J-9(a); or

15.1.d. Request the attorney general or the prosecuting attorney of the county in which the alleged violation occurred to bring a criminal action in accordance with W. Va. Code § 22-18-16.

15.2. Any person issued a cease and desist order may file a notice of request for reconsideration with the secretary not more than seven (7) days from the issuance of such order and shall have a hearing before the secretary

contesting the terms and conditions of such order within ten (10) days of the filing of such notice of a request for reconsideration. The hearing is conducted as required by State law and Section 19 of this rule. The filing of a notice of request for reconsideration shall not stay or suspend the execution or enforcement of such cease and desist order.

15.3. Any person whose permit issued under this rule has been suspended or revoked may, at any time, make application for reinstatement of the permit. After receipt of a written request, including a signed statement by the applicant that in his or her opinion the conditions causing the suspension of the permit have been corrected, the secretary shall make an inspection or investigation of the applicant's operation. If the applicant complies with the provisions of this rule, the permit shall be reinstated.

15.4. The secretary may suspend or revoke a permit if the permit has been obtained by means of fraud, deceit or material misrepresentation.

§64-56-16. Criminal Penalties.

Criminal penalties are applied according to the provisions of W. Va. Code §20-18-16 as described in this Section.

16.1. If any person knowingly: (1) transports any infectious medical waste identified or listed under this rule to a facility which does not have a permit required by this rule; or (2) treats, stores or disposes of any such infectious medical waste either (A) without having obtained a permit required by this rule or (B) in knowing violation of a material condition or requirement of such permit, he or she is guilty of a felony, and, upon conviction thereof, is required to be fined not to exceed fifty thousand dollars (\$50,000) for each day of violation or to be confined in the penitentiary not less than one (1) nor more than two (2) years, or to receive both such fine and imprisonment or, in the discretion of the court, be confined in jail not more than one (1) year in addition to the above fine

16.2. If any person knowingly: (1) makes any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with this rule; or (2) generates, stores, treats, transports, disposes of or otherwise handles any infectious medical waste identified or listed under this rule and who knowingly destroys, alters or conceals any record required to be maintained under this rule, he or she is guilty of a misdemeanor, and, upon conviction thereof, is required to be fined not to exceed twenty-five thousand dollars (\$25,000), or sentenced to imprisonment for a period not to exceed one (1) year, or both fined and sentenced to imprisonment for each violation.

16.3. Any person convicted of a second or subsequent violation of Sections 16.1 and 16.2 of this rule, is guilty of a felony, and, upon such conviction, shall be confined in the penitentiary not less than one (1) nor more than three (3) years, or fined not more than fifty thousand dollars (\$50,000) for each day of violation, or both such fine and imprisonment.

16.4. Any person who knowingly transports, treats, stores or disposes of any infectious medical waste identified or listed pursuant to this rule in violation of Section 16.1 of this rule, or having applied for a permit pursuant to this rule and knowingly fails to include in a permit application any material information required pursuant to this rule and who thereby exhibits an unjustified and inexcusable disregard for human life or the safety of others and thereby places another person in imminent danger of death or serious bodily injury, is guilty of a felony, and, upon conviction thereof, is required to be fined not more than two hundred fifty thousand dollars (\$250,000) or imprisoned not less than one (1) year not more than four (4) years or to receive both such fine and imprisonment.

16.5. As used in Section 16.4 of this rule, the term "serious bodily injury" means:

16.5.a. Bodily injury which involves a substantial risk of

death;

16.5.b. Unconsciousness;

16.5.c. Extreme physical pain;

16.5.d. Protracted and obvious disfigurement; or

16.5.e. Protracted loss or impairment of the function of a bodily member, organ or mental faculty.

§64-56-17. Civil Penalties.

Civil penalties are to be assessed according to the provisions of W. Va. Code §§22-18-17 and 20-5J-9 which are outlined in this section.

17.1. Any person who violates any provision of this rule or an order issued pursuant to this rule is subject to a civil administrative penalty, to be levied by the secretary, of not more than seventy-five hundred dollars (\$7,500) for each day of such violation, not to exceed a maximum of twenty-five thousand dollars (\$25,000).

17.2. In assessing any such penalty, the secretary is required to take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors, such as: (1) the severity of serious physical harm most likely to result, and if applicable, that did result, from the violation; (2) the extent to which the provisions of this rule were violated; and (3) any previous violations committed by the alleged violator. No assessment is to be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service.

17.2.a. The notice is required to include a reference to the section of the statute, rule, regulation, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the

alleged violator's right to an informal hearing.

17.2.b. The alleged violator has twenty (20) calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the secretary is required to inform the alleged violator of the time and place of the hearing. The secretary may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the secretary concerning the assessment of a civil administrative penalty.

17.2.c. Within thirty (30) days following the informal hearing, the secretary is required to issue and furnish to the violator a written decision, and the reasons therefore, concerning the assessment of a civil penalty.

17.2.d. Within thirty (30) days after notification of the secretary's decision, the alleged violator may request a formal hearing in accordance with the provisions of W. Va. Code §§22-18-20 and Section 19 of this rule.

17.3. The authority to levy an administrative penalty is in addition to all other enforcement provisions of State law or this rule and the payment of any assessment is not deemed to affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, that no combination of assessments against a violator under this rule are to exceed twenty-five thousand dollars (\$25,000) per day of each such violation: Provided however, that any violation for which the violator has paid a civil administrative penalty assessed under this section may not be the subject of a separate civil penalty action under State law to the extent of the amount of the civil administrative penalty paid.

17.4. No assessment levied pursuant to Section 17.1 of this rule is due and payable until the procedures for review of such assessment as set out herein and in State law have been complet-

ed.

17.5. Any person who violates any provision of this rule, or order issued pursuant to this rule is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day of such violation, which penalty is to be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

17.6. The secretary may seek an injunction, or may institute a civil action against any person in violation of any provisions of this rule, or order issued pursuant to this rule. In seeking an injunction, it is not necessary for the secretary to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this rule have not been exhausted or invoked against the person or persons against whom such relief is sought.

§64-56-18. Imminent and Substantial Hazards; Orders; Penalties; Hearings.

18.1. Notwithstanding any provision of this rule to the contrary, the secretary, upon receipt of information, or upon observation or discovery that the handling, storage, transportation, treatment or disposal of any infectious medical waste may present an imminent and substantial endangerment to public health, safety or the environment, has the authority to:

18.1.a. Request the attorney general or the appropriate prosecuting attorney to commence an action in the circuit court of the county in which the hazardous condition exists to immediately restrain any person contributing to such handling, storage, transportation, treatment or disposal to stop such handling, storage, transportation, treatment or disposal or to take such other action as may be necessary; or

18.1.b. Take other action under this section including, but not limited to issuing such orders as may be necessary to protect public health and the environment.

18.2. Any person who willfully violates, or fails or refuses to comply with, any order of the secretary under Section 18.1 of this rule may, in an action brought in the appropriate circuit court to enforce such orders, be fined not more than five thousand dollars (\$5,000) for each day in which such violation occurs or such failure to comply continues.

§64-56-19. Administrative Due Process.

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

§64-56-20. Severability.

The provisions of this rule are severable. If any provision of this rule is held invalid, the remaining provisions shall remain in effect.

TABLE 64-56A

**ANNUAL INFECTIOUS MEDICAL WASTE MANAGEMENT
FACILITY PERMIT AND OPERATOR REGISTRATION FEES**

<u>Type of Facility</u>	<u>Fee</u>
A. Hospitals (Non-Commercial Treatment Facilities)	
1 to 50 Beds	\$ 500.00
51 to 149 Beds	1,750.00
150 or More Beds	2,500.00
B. Commercial Infectious Medical Waste Management Facility	5,000.00
Small Commercial Infectious Medical Waste Management Facility for Sharps Only (As provided for in Section 11.19 of this rule)	150.00
C. Transportation Vehicles (Each)	250.00
D. Commercial Storage and Transfer Facility	250.00
E. Other (Generating more than 50 pounds per month)	
1. Health Care Professionals	250.00
2. Independent Dialysis Centers	250.00
3. Independent Laboratories	250.00
4. Independent Rural Clinics	250.00
5. Nursing Homes	250.00
6. Other Long Term Care Facilities	250.00
7. Outpatient Surgery Centers	250.00
F. Incinerator Operator Registration	25.00
G. Alternative treatment evaluation fee	500.00

ARTICLE 5. VITAL STATISTICS.

§§16-5-1. Definitions.

As used in this article:

a. "Dead body" means a lifeless human body or parts of such body or bones thereof from the state of which it reasonably may be concluded that death recently occurred.

b. "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, such death being indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles.

c. "Filing" means the presentation of a certificate, report or other record provided for in this article, of a birth, death, fetal death, adoption, marriage, divorce or annulment, for registration by the division of vital statistics of the state department of health.

d. "Final disposition" means the burial, interment, cremation or other disposition of a dead body or fetus.

e. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care to two or more unrelated individuals or to which persons are committed by law.

f. "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

g. "Physician" means a person authorized or licensed to practice medicine pursuant to article three or article fourteen, chapter thirty of this code.

h. "Registration" means the acceptance by the division of vital statistics, and the incorporation in its official records, of certificates, reports, or other records provided for in this article, of births, deaths, fetal deaths, adoptions, marriages, divorces and annulments.

i. "System of vital statistics" means the registration, collection, preservation, amendment, certification of vital statistics records and activities related thereto, including, but not restricted to, the tabulation, analysis and publication of statistical data derived from such records.

j. "Vital statistics" means records of birth, death, fetal death, marriage, divorce, annulment and data related thereto.

k. "Local registrar" means the person appointed by the state registrar of vital statistics for a county or other district to perform the vital statistics functions specified to be performed in and for such county or other district.

l. "Deputy local registrar" means a person appointed by and working under the supervision of a local registrar in the discharge of the vital statistics functions specified to be performed in and for the county or other district of such local registrar.

m. "Subregistrar" means a person appointed, with the approval of the state registrar of vital statistics, by and working under the supervision of a local registrar in the discharge of the vital statistics functions specified to be performed in and for the county or other district of such local registrar.

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

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

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

The state board of health is authorized to adopt, amend and repeal rules and regulations for the purpose of carrying out the specific provisions of this article.

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

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

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

(a) The state registrar of vital statistics shall:

- (1) Administer and enforce the provisions of this article and all other applicable laws of this state and all lawful rules and regulations adopted and promulgated thereunder;
- (2) Direct and supervise the statewide system of vital statistics and the operation of the division of vital statistics, and act as custodian of its records;
- (3) Direct, supervise and control the activities of local registrars and the activities of public officers in relation to the operation of the vital statistics system and provide them with the postage necessary for them to carry out their duties under this article;
- (4) Prescribe, provide and distribute, subject to the rules and regulations promulgated by the board of health, all forms necessary to carry out the provisions of this article and of the rules and regulations adopted and promulgated thereunder;
- (5) Prepare and publish annual reports of vital statistics of this state, and such other reports as may be required by the director of the state health department; and
- (6) Offer voluntary paternity establishment services.

(b) The state registrar of vital statistics may delegate such functions and duties as are hereby vested in him or her to officers and employees of the division of vital statistics and to local registrars as the state registrar may deem necessary or expedient.

(c) The state registrar, either personally or by a duly delegated representative, shall have authority to investigate cases of irregularity or violation of law arising under the provisions of this article, and all local registrars, deputy local registrars and subregistrars shall aid him or her, upon request, in such investigations. When he or she shall deem it necessary, he or she shall report cases of violation of any of the provisions of this article to the prosecuting attorney of the county, with a statement of the facts and circumstances. When any such case is reported to him or her by the state registrar, the prosecuting attorney shall forthwith initiate and promptly prosecute the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the state registrar, the attorney general shall assist in the enforcement of the provisions of this article.

§§16-5-6. Registration districts.

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

§§16-5-7. Appointment and removal of local registrars, deputy local registrars, and subregistrars.

- a. The state registrar of vital statistics shall appoint a local registrar and the local registrar may appoint one or more deputy local registrars of vital statistics for each registration district.
- b. When it appears necessary for the convenience of the people in any district the local registrar may, with the approval of the state registrar, appoint one or more persons to act as subregistrars.
- c. The state registrar may remove a local registrar, a deputy local registrar, or a local subregistrar for reasonable cause.

§§16-5-8. Duties of local registrars, deputy registrars and subregistrars.

a. A local registrar, with respect to his registration district, shall:

(1) Administer and enforce the provisions of this article and all instructions, rules and regulations adopted and promulgated pursuant thereto.

(2) Require that certificates be completed and filed in accordance with provisions of this article and the rules and regulations adopted and promulgated pursuant thereto.

(3) Transmit, on the first and fifteenth day of each month or as soon as possible thereafter, the certificates, reports or other returns filed with him to the state registrar of vital statistics, or transmit the same more frequently when directed to do so by the state registrar.

(4) Maintain such records, make such reports and perform such other duties as may be required by the state registrar of vital statistics.

b. In accordance with rules and regulations adopted and promulgated pursuant to this article, the deputy local registrar shall perform the duties of the local registrar in the absence or incapacity of such local registrar and shall perform such other duties as may be prescribed.

c. Subregistrars shall perform such duties as may be prescribed by rules and regulations adopted and promulgated pursuant to this article.

§§16-5-9. Compensation of local registrars.

a. Each local registrar shall be paid the sum of one dollar for each certificate of birth, death, or fetal death registered by him and transmitted to the state registrar of vital statistics in accordance with the rules and regulations adopted and promulgated pursuant to this article.

b. If no birth, death or fetal death is registered by him during any calendar month, the local registrar shall report that fact to the state registrar of vital statistics and be paid the sum of one dollar for such report.

c. No compensation shall be paid under this section to any full-time employee of any state or local governmental unit or body. Where such employee is designated to serve, and serves, as a local registrar, the compensation provided by this section shall be paid to the governmental unit or body by which such local registrar is employed.

§§16-5-10. Payment of fees to local registrars.

The state registrar of vital statistics shall certify at the end of each quarter of the calendar year, to the county courts of the several counties, the number of births, fetal deaths and deaths properly registered with the names of the local registrars and the amounts due each. All amounts payable to a local registrar under the provisions of this section shall be paid by the treasurer of the county in which the registration district is located, upon the order of the county court of such county issued upon such certification by the state registrar of vital statistics. Where a local registrar is a full-time employee of any state or local governmental unit or body, the state registrar shall so state in his certification, and, in such case, the county court shall make payment, pursuant to section nine of this article, to the governmental unit or body by which such registrar is employed.

§§16-5-11. Form of certificates, etc.

a. In order to promote and maintain uniformity in the system of vital statistics, the forms of certificates, reports and other returns required by this article, or by rules and regulations adopted and promulgated thereunder, shall include as a minimum (in addition to the items required by the laws of this state) the items recommended by the federal agency responsible for national vital statistics, subject to the approval of, and to modification by, the state board of health.

b. Each certificate, report and form required to be filed under this article shall have entered upon its face the date of registration, duly attested.

§§16-5-12. Birth registration generally.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the local registrar of the district in which the birth occurs within seven days after such birth and shall be registered by such registrar if it has been completed and filed in accordance with this section.

When a birth occurs in a moving conveyance, a birth certificate shall be filed in the district in which the child is first removed from the conveyance. When a birth occurs in a district other than where the mother resides, a birth certificate shall be filed in the district in which the child is born and in the district in which the mother resides.

(b) When a birth occurs in an institution, the person in charge of the institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required for the certificate and file it with the local registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required for the certificate within five days after the birth.

(c) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

- (1) The physician in attendance at or immediately after the birth, or in the absence of such a person,
- (2) Any other person in attendance at or immediately after the birth, or in the absence of such a person,
- (3) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(d) If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(e) If the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and of the person to be named as the father unless a determination of paternity has been made by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(f) Either of the parents of the child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit its filing within the seven days prescribed above.

(g) In order that each county may have a complete record of the births occurring in said county, the local registrar shall transmit each month to the county clerk of his county the copies of the certificates of all births occurring in said county, from which copies the clerk shall compile a record of such births and shall enter the same in a systematic and orderly way in a well-bound register of births, which said register shall be a public record: **Provided**, That such copies and register shall not state that any child was either legitimate or illegitimate. The form of said register of births shall be prescribed by the state registrar of vital statistics.

(h) On and after the first day of November, one thousand nine hundred ninety, in addition to the personal data furnished for the certificate of birth issued for a live birth in accordance with the provisions of this section, a person whose name is to appear on such certificate of birth as a parent shall contemporaneously furnish to the person preparing and filing the certificate of birth the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be filed with the local registrar of the district in which the birth occurs within seven days after such birth, and the local registrar shall transmit such number or numbers to the state registrar of vital statistics in the same manner as other personal data is transmitted to the state registrar.

§§16-5-12a. Registration of infants born with specified birth defects; requiring physician or midwife to check for defects; registration of minors with previously undiagnosed birth defects; form for reporting birth defects to be provided by and filed with registrar of vital statistics; confidentiality; exceptions; parental consent to subsequent reporting to various agencies; form for hearing impairment to be provided by and filed with commission on hearing impaired; definitions; registration of infants born with hearing impairments or risk of hearing impairment; registration of minors with previously undiagnosed hearing impairments.

(a) When a live birth occurs, the physician or midwife in attendance at, or present immediately after, the birth shall examine the infant for any of the following birth defects:

- (1) Anencephaly;

- (2) Spina bifida;
- (3) Hydrocephaly;
- (4) Cleft palate;
- (5) Total cleft lip;
- (6) Esophageal atresia and atenosis;
- (7) Rectal and anal atresia;
- (8) Hypospadias;
- (9) Reduction and deformity - upper limb;
- 10) Reduction and deformity - lower limb;
- (11) Congenital dislocation of the hip;
- (12) Down's syndrome;
- (13) Visual impairments; and
- (14) Others as may be requested by the director of health.

(b) If any such impairment is found in an infant, and/or if such impairment is found in any subsequent examination of any minor which has not been previously diagnosed, the examining physician, midwife or other health care provider licensed under chapter thirty of the code shall within thirty days of the examination make a report of the diagnosis to the state registrar of vital statistics on forms provided by the state registrar of vital statistics. The report shall include the name of the child, the name or names of the parents or parent or guardian and a description of the impairment.

(c) The information received by the state registrar pursuant to this section pertaining to the identity of the persons named shall be kept confidential: **Provided**, That if consent of the parents, or if only one of the parents exists, of the parent, or of the guardian is obtained, the registrar may provide such information to the division of health, the division of human resources, the department of education, the division of vocational rehabilitation, and the school for the deaf and the blind so that such information can be utilized to provide assistance or services for the benefit of the child.

(d) The commission on the hearing impaired as provided for in section one, article fourteen, chapter five of this code shall develop and provide a form, to every physician or midwife attending a birth or providing medical care to a newborn infant, which assists the physician or midwife in collecting information from the infant's family about the infant's potential for a hearing impairment. The form shall identify an infant with a hearing impairment or at risk of developing a hearing impairment. For purposes of this section, an infant with a hearing impairment is a child at birth with a significant hearing loss which prevents the acquisition of speech and language through normal channels. An infant at risk of being hearing impaired is a child at birth who is at a higher risk than normal of being hearing impaired due to one or more of the following factors present at birth:

- (1) Family history of a congenital hearing loss;
- (2) Rubella or virus during pregnancy;
- (3) Congenital ear, nose or throat anomalies;
- (4) Below normal birth weight;
- (5) Abnormal level of jaundice;
- (6) Anoxia or apnea; and
- (7) A low APGAR score derived from the evaluation of the infant's color, muscle tone, reflexes, pulse rate and respiration.

(e) If any such hearing impairment or risk of hearing impairment is found in an infant, and/or if such impairment or risk of hearing impairment is found in any subsequent examination of any minor which has not been previously diagnosed, the examining physician, midwife shall within thirty days of the examination make a report of the diagnosis to the commission on the hearing impaired on the forms provided by the commission on the hearing impaired. The report shall include the name of the child, the name or names of the parents or parent or guardian and a description of the hearing impairment or of the risk of hearing impairment.

§§16-5-12b. Notation on birth records of missing children.

Upon receiving a report of the disappearance of any child born in this state, the state registrar shall indicate in a clear and conspicuous manner in the child's birth record that the child has been reported as missing, including the title and location of the law-enforcement agency providing the report. Upon receiving a request for any birth records containing a report of the disappearance of any child, the state registrar shall immediately notify the local law-enforcement agency which provided the missing child report. The state registrar shall transmit any relevant information concerning the applicant's identity, address and other pertinent data immediately to the relevant local law-enforcement agency. The state registrar shall retain the original written request until notified of the missing child's recovery or the child attains the age of eighteen. Upon notification that any missing child has been recovered, the state registrar shall remove the report of the disappearance from the child's birth record. The provisions of this section shall be implemented by the first day of July, one thousand nine hundred ninety-three.

§§16-5-13. Infants of unknown parentage; foundling registration.

a. Whoever assumes the custody of a living infant of unknown parentage shall report, on a form and in the manner prescribed by the state registrar of vital statistics, within seven days of the date of such assumption of custody, to the local registrar of the district in which the child was found, the following information:

- (1) The date and place of finding;
- (2) Sex, color or race and approximate age of child;
- (3) Name and address of the persons with whom or the institution with which the child has been placed for care; and
- (4) Other data required by rules and regulations adopted and promulgated pursuant to this article.

b. The place where the child was found shall be entered as the place of birth and the date of birth shall be determined by approximation.

c. A report registered under this section shall constitute the certificate of birth for the infant.

d. If the child is identified and a certificate of birth is found or obtained, any report registered under this section shall be sealed and filed and may be opened only by order of a court of record of competent jurisdiction or as may be provided by lawful rule and regulation adopted and promulgated pursuant to this article.

§§16-5-14. Delayed registration of births.

(a) When the birth of a person born in this state has not been registered within the time period provided in section twelve of this article, a certificate may be filed in accordance with a legislative rule promulgated by the state board of health in accordance with the provisions of chapter twenty-nine-a of this code. Such certificate shall be registered subject to such evidentiary requirements as the state board of health shall by rule prescribe to substantiate the alleged facts of birth.

(b) Certificates of birth registered one year or more after the date of occurrence shall be marked "Delayed" and shall show on their face the date of the delayed registration.

(c) A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

(d) (1) When an applicant does not submit the minimum documentation required in the rules for delayed registration or when the state registrar of vital statistics finds reason to question the validity or adequacy of the certificate or the documentary evidence, the state registrar of vital statistics shall not register the delayed certificate and shall advise the applicant in writing of the reasons for this action.

(2) The state board of health may by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code provide for the dismissal of an application which is not actively prosecuted.

(e) On and after the first day of November, one thousand nine hundred ninety, in addition to the required documentation and other data furnished in an application for a delayed registration of

birth in accordance with the provisions of this section, a person whose name is to appear on the certificate of birth as a parent shall contemporaneously furnish with the application the social security account number (or numbers, if the parent has more than one such number) issued to the parent.

§§16-5-15. Judicial procedure to establish facts of birth.

(a) If a delayed certificate of birth is refused under the provisions of section fourteen of this article, a petition may be filed in the circuit court of the county in which the petitioner resides or in the circuit court of Kanawha County for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(b) Such petition shall allege:

(1) That the person for whom a delayed registration of birth is sought was born in this state;

(2) That no record of birth of such person can be found in the office of the state or the local custodian of birth records;

(3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with section fourteen of this article and of any rules and regulations adopted and promulgated thereunder;

(4) That the state registrar of vital statistics has refused to register a delayed certificate of birth; and

(5) Such other allegations as may be required by the court.

(c) The petition shall be accompanied by a copy of the statement of reasons of the registration official made in accordance with subsection (d)(1), section fourteen of this article and by all documentary evidence which was submitted to the registration official in support of such registration.

(d) The court shall fix a time and place for hearing the petition and shall require that the petitioner give the registration official who refused to register the petitioner's delayed certificate of birth not less than twenty days' notice of said hearing. Such official, or his authorized representative, may appear and testify in the proceeding.

(e) If the court finds from the evidence presented that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage, and such other findings as the case may require and shall issue an order setting forth the information required under the provisions of this article to establish a record of birth. This order shall include the birth date to be registered, a summary statement of the evidence presented, and the date of the court's action.

(f) The clerk of the court shall forward each such order to the state registrar of vital statistics not later than the tenth day of the calendar month following the month in which it was entered. Such order shall be registered by the state registrar of vital statistics and shall constitute the record of birth, from which copies may be issued in accordance with the provisions of this article.

(g) Any judgment shall be final unless reversed, vacated or modified on appeal, and any appeal shall be sought in the manner and within the time provided by law for appeals in other civil cases.

(h) On and after the first day of November, one thousand nine hundred ninety, in addition to the evidence presented to establish a record of birth in accordance with the provisions of this section, a person whose name is to appear on the delayed certificate of birth as a parent shall furnish to the clerk of the circuit court the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be forwarded to the state registrar of vital statistics along with the order establishing a record of birth, as provided for in subsection (f) of this section.

§§16-5-16. Court reports of adoption.

(a) In conformance with the provisions of section ten, article four, chapter forty-eight of this code, any court in this state entering an order of adoption shall require the preparation by the clerk of the court of a certificate of adoption on a form prescribed and furnished by the state registrar of vital statistics. Such certificate shall include the factual information described in section ten, article four, chapter forty-eight of this code; shall provide such additional information as may be required under legislative rules duly adopted pursuant to this article to establish a new certificate of birth of the person adopted; shall identify the order of adoption; and

shall be certified by the clerk of court.

(b) Information in the possession of the petitioner necessary to prepare the certificate of adoption shall be pleaded in the petition for adoption or shall be furnished to the clerk of the court by the petitioner for adoption at the time the petition is filed. Any social or welfare agency or other person concerned with the adoption shall supply the petitioner with such information in the possession of such agency or person as may be necessary to complete the certificate.

(c) Whenever an adoption order or decree is amended or vacated, the clerk of the court shall prepare a certificate thereof, which shall include such facts as are necessary to identify the original adoption certificate and the facts amended in the adoption order or decree which are required to properly amend the birth record.

(d) Not later than the tenth day of each calendar month, the clerk of the court shall forward to the state registrar of vital statistics a report of all orders or decrees of adoption and of annulments or amendments thereof, entered in the preceding month, together with such related certificates and reports as may be required under the provisions of this article.

(e) When the state registrar of vital statistics shall receive a record of adoption or of an annulment or an amendment of an order or decree of adoption from a court for a person born outside of this state, such record shall be forwarded to the appropriate registration authority in the state of birth.

(f) On and after the first day of November, one thousand nine hundred ninety, in addition to the information pleaded or furnished in accordance with the provisions of subsection (b) of this section, each person whose name is to appear on the certificate of adoption as a parent, whether as an adoptive parent or as a natural parent who joins in the adoption without relinquishing parental rights, shall furnish to the clerk of the circuit court the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be forwarded to the state registrar of vital statistics along with the certificate of adoption, as provided for in subsection (d) of this section.

§§16-5-17. Court reports of determination of paternity.

(a) Whenever a judgment has been entered determining the paternity of a child, the clerk of the court shall prepare a certificate on a form prescribed and furnished by the state registrar of vital statistics. The certificate shall include such facts as are necessary to locate and identify the certificate of birth of the person whose paternity is determined; shall provide information necessary to establish a new certificate of birth of the person whose paternity is determined; and shall identify the action and be certified by the clerk of court.

(b) Not later than the tenth day of each calendar month, the clerk of the court shall forward to the state registrar of vital statistics certificates of paternity entered in the preceding month, together with such related reports as the state registrar of vital statistics shall require.

(c) On and after the first day of November, one thousand nine hundred ninety, in addition to providing the information necessary to establish a new certificate of birth of the person whose paternity has been determined, in accordance with the provisions of subsection (a) of this section, a person whose name is to appear on the certificate of paternity as a parent shall furnish to the clerk of the circuit court the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be forwarded to the state registrar of vital statistics along with the certificate of paternity, as provided for in subsection (b) of this section.

§§16-5-18. New certificate of birth following adoption, legitimation, or determination of paternity.

a. The state registrar of vital statistics shall establish a new certificate of birth for a person born in this state, when he receives either of the following:

(1) A certificate of adoption as provided in section sixteen of this article or a certified copy of an order or decree of adoption together with all information necessary to identify the original certificate of birth and to establish a new certificate of birth.

(2) A request that a new certificate be established, together with such evidence as is required by statute or duly adopted rule and regulation showing that such person has been legitimated, or that a court of competent jurisdiction has determined the paternity of such a person.

b. When a new certificate of birth is established, the actual place and date of birth, if known, shall be shown. It shall be substituted for the original certificate of birth and thereafter the original certificate and the evidence of adoption, paternity, or legitimation shall not be subject to inspection except upon order of a court of competent jurisdiction. Upon receipt of notice of the vacation of an adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction.

c. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed certificate of birth shall be filed with the state registrar of vital statistics as provided in section fourteen or section fifteen of this article, before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed certificate shall not be required.

d. When a new certificate of birth is established by the state registrar of vital statistics, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this state shall be sealed from inspection or forwarded to the state registrar of vital statistics, as he shall direct.

§§16-5-18a. Record of foreign birth in adoption cases.

When it appears from a certificate of adoption, transmitted to the state registrar of vital statistics as provided for in section sixteen of this article, that the child was born outside of the United States or its territories, then upon submission to the state registrar of vital statistics of evidence as to the child's birthdate and birthplace provided by the original birth certificate, or a certified copy, extract, or translation thereof or by any other essentially equivalent document including, but not limited to, the records of the United States immigration and naturalization service or of the United State's department of state, the state registrar of vital statistics shall make and file a new birth certificate for the child. The new birth certificate shall include the actual place and date of birth, the child's name and parentage as ordered in the decree of adoption and any other necessary facts as required by the state registrar.

§§16-5-18b. Limitation on use of social security numbers.

A social security account number obtained in accordance with the provisions of this article with respect to the filing of: (1) A certificate of birth; (2) an application for a delayed registration of birth; (3) a judicial order establishing a record of birth; (4) an adoption order or decree; or (5) a certificate of paternity shall not be transmitted to a clerk of the county commission. Such social security account number shall not appear upon the public record of the register of births or upon any certificate of birth registration issued by the state registrar, local registrar, county clerk or other issuing authority, if any. Such social security account numbers shall be made available by the state registrar to the child support enforcement division created by chapter forty-eight-a upon the request of the division, to be used solely in connection with the enforcement of child support orders.

§§16-5-19. Death registration.

(a) A death certificate for each death which occurs in this state shall be filed with the local registrar of the registration district in which the death occurs within three days after such death, and prior to removal of the body from the state, and shall be registered by such registrar if it has been completed and filed in accordance with this section: *Provided, That*

(1) If the place of death is unknown, a death certificate shall be filed in the registration district in which a dead body is found within three days after the finding;

(2) If death occurs in a moving conveyance, a death certificate shall be filed in the registration district in which the dead body is first removed from such conveyance; and

(3) If the death occurs in a district other than where the deceased resided, a death certificate shall

be filed in the registration district in which the death occurred and in the district in which the deceased resided.

(b) The funeral director or person acting for him who first assumes custody of a dead body shall file the death certificate. He shall obtain the necessary personal data from the next of kin or the best qualified person or source available. The funeral director or person acting for him shall obtain the medical certification of the cause of death from the person responsible for making such certification. The personal data obtained shall include the deceased person's social security number or numbers. The social security account number of an individual who has died shall be placed in the records relating to the death and shall be recorded on the death certificate. A record of the social security number or numbers shall be filed with the local registrar of the district in which the deceased person resided within seven days after the death, and the local registrar shall transmit such number or numbers to the state registrar of vital statistics in the same manner as other personal data is transmitted to the state registrar.

(c) The medical certification shall be completed and signed within twenty-four hours after death by the physician in charge of the patient's care for the illness or condition which results in death except when inquiry is required pursuant to chapter sixty-one, article twelve or other applicable provisions of this code.

(d) When death occurs without medical attendance and inquiry is not required pursuant to chapter sixty-one, article twelve or other applicable provisions of this code, the local health officer shall investigate the cause of death and complete and sign the medical certification within twenty-four hours after receiving notice of the death.

(e) When death occurs in a manner subject to investigation, the coroner or other officer or official charged with the legal duty of making such investigation shall investigate the cause of death and shall complete and sign the medical certification within twenty-four hours after making determination of the cause of death.

(f) In order that each county may have a complete record of the deaths occurring in said county, the local registrar shall transmit each month to the county clerk of his county a copy of the certificates of all deaths occurring in said county, and if any person shall die in a county other than that county within the state in which such person last resided prior to death, then the state registrar shall, if possible, also furnish a copy of such death certificate to the clerk of the county commission of the county wherein such person last resided, from which copies the clerk shall compile a record of such deaths and shall enter the same in a systematic and orderly way in a well-bound register of deaths for that county, which such register shall be a public record. The form of said death register shall be prescribed by the state registrar of vital statistics.

§§16-5-20. Fetal death registration.

a. A fetal death certificate for each fetal death which occurs in this state after a gestation period of twenty completed weeks shall be filed with the local registrar of the registration district in which the delivery occurs within three days after such delivery and prior to removal of the fetus from the state, and shall be registered with such registrar if it has been completed and filed in accordance with this section: **Provided, That**

(1) If the place of fetal death is unknown, a fetal death certificate shall be filed in the registration district in which a dead fetus is found within three days after the finding; and

(2) If a fetal death occurs in a moving conveyance, a fetal death certificate shall be filed in the registration district in which the fetus is first removed from such conveyance.

b. The funeral director or person acting for him who first assumes custody of a fetus shall file the fetal death certificate. In the absence of such a person, the physician or other person in attendance at or after the delivery shall file the certificate of fetal death. The person filing such certificate shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification of the cause of death from the person responsible for making such certification.

c. The medical certification shall be completed and signed within twenty-four hours after delivery by the physician in attendance at or after delivery except when inquiry is required by

chapter sixty-one, article twelve or other applicable provision of this code.

d. When a fetal death occurs without medical attendance for the mother at or after delivery and an inquiry is not required by chapter sixty-one, article twelve or other applicable provision of this code, the local health officer shall investigate the cause of fetal death and shall complete and sign the medical certification within twenty-four hours after receiving notice of the delivery.

e. When the coroner or other officer or official charged with the legal duty of making such investigation shall investigate a fetal death as required by chapter sixty-one, article twelve or other applicable provision of this code, he shall complete and sign the medical certification within twenty-four hours after making determination of the cause of such fetal death.

§§16-5-21. Burial, transit and disinterment and reinterment permits.

a. The funeral director or person acting for him who first assumes custody of a dead body or of a fetus which has died after a gestation period of twenty completed weeks shall obtain a burial or transit permit prior to final disposition or removal from the state of the body or fetus and within seventy-two hours after death.

b. Such burial or transit permit shall be issued by the local registrar of the district where the certificate of death or fetal death is filed in accordance with the requirements of section nineteen or section twenty of this article.

c. A burial or transit permit issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

d. A permit for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus except as authorized by rule and regulation or otherwise provided by law or by order of a court having jurisdiction with respect thereto. Such permit shall be issued by the local registrar to a licensed funeral director, embalmer, or other persons acting on their behalf, upon proper application.

e. The form and contents of burial, transit and disinterment and reinterment permits shall be prescribed by the state registrar of vital statistics in conformance with the provisions of subdivision (4), subsection a, section five of this article.

§§16-5-22. No burial without permit; duty of custodian or funeral director.

No person in charge of any premises on which interment or other disposition of dead bodies is made shall inter or permit the interment or other disposition of any such body unless it is accompanied by a burial, transit or reinterment permit except as otherwise provided by order of a court having jurisdiction with respect thereto. Such person shall endorse upon the permit the date of interment or other disposition over his signature and shall return the permit, so endorsed, to the local registrar of the registration district within which the interment or other disposition of the body is made. Such return shall be made within ten days from the date of interment or other disposition. The person endorsing the permit shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, which record shall contain the name of the deceased person, place of death, date of burial or disposal, name and address of the funeral director or person acting for him, and such other information as may be required by rule and regulation duly adopted pursuant to this article. Such record shall at all times be open to official inspection: **Provided,** That when a body is interred or otherwise disposed of in a cemetery, burial ground, or other premises having no person in charge, the funeral director or person acting for him and making or supervising such interment or disposition shall indorse upon the burial, transit or reinterment permit, the date of interment or disposition over his signature and shall write across the face of the permit "No person in charge" and shall file the endorsed permit with the local registrar of the registration district in which interment or other disposition is made within ten days of such interment or other disposition.

§§16-5-23. Extension of time for filing death certificates, etc.

a. The state board of health shall, by rule and regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this article, provide for the extension of the

periods prescribed in sections nineteen, twenty and twenty-one of this article for the filing of death certificates, fetal death certificates, medical certifications of the cause of death, and for the obtaining of burial or transit permits, in cases in which compliance with the applicable prescribed period would result in undue hardship.

b. Rules and regulations of the state board of health shall provide for the issuance of a burial or transit permit under section twenty-one of this article prior to the filing of a certificate of death or fetal death upon conditions designed to assure compliance with the purposes of this article in cases in which compliance with the requirement that the certificate be filed prior to the issuance of the permit would result in undue hardship.

§§16-5-24. Correction and amendment of vital records.

(a) A certificate or record registered pursuant to this article may be amended only in accordance with the provisions of this article and rules and regulations duly adopted thereunder.

(b) A certificate that is amended under this section shall be marked "amended," except as hereinafter provided in this subsection and in subsection (d) of this section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The state board of health shall prescribe by rule and regulation the conditions under which additions or minor corrections shall be made to birth certificates within one year after the date of birth without the certificate being considered or marked as amended. The state board of health shall also prescribe by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code a simplified procedure for the correction of any certificate or record registered pursuant to this article which is deficient in any particular, including, but not limited to, the omission or misspelling of a first name, and such rule and regulation shall specify when and under what circumstances a certificate or record so corrected shall be considered or marked as amended.

(c) Upon receipt of a certified copy of a court order of a court of competent jurisdiction changing the name of a person born in this state, which order was made and entered in a proceeding brought for that purpose, and upon request of such person or his parent, guardian, or legal representative, the state registrar of vital statistics shall amend the certificate of birth to reflect the new name.

(d) Upon request, and upon receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents, the state registrar of vital statistics shall amend the certificate of birth to show such paternity if paternity is not shown on the birth certificate. Upon request of both of the parents, the surname of the child shall be changed on the certificate to that of the father. Such certificate shall not be marked "amended."

(e) When a certificate is amended under this section, the state registrar of vital statistics shall report the amendment to the custodian of any permanent local records and such record shall be amended accordingly.

(f) On and after the first day of November, one thousand nine hundred ninety, in addition to providing the information necessary to amend a certificate or record in accordance with the provisions of this section, a person whose name is to appear on the amended certificate as a parent shall furnish to the person receiving the information the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be forwarded to the state registrar of vital statistics along with the information required for the amended certificate.

§§16-5-25. Reproduction of records.

To preserve original documents, the state registrar of vital statistics is hereby authorized to prepare typewritten, photographic, or other reproductions of original records and files in his office. Such reproductions when certified by him shall be accepted as the original record.

§§16-5-26. Disclosure of records.

a. To protect the integrity of vital statistics records, to insure their proper use, and to insure the

efficient and proper operation of the vital statistics system, it shall be unlawful for any person to permit inspection of confidential information or to disclose confidential information contained in vital statistics records, or to copy or issue a copy of all or part of any such confidential information, except as authorized by law or by order of a court having jurisdiction with respect thereto or by rule and regulation duly adopted under the provisions of this article.

b. The state board of health may by rule and regulation authorize the disclosure of confidential data contained in vital statistics records for statistical research purposes.

c. Information in vital statistics records indicating that a birth occurred out of wedlock shall not be disclosed except as provided by rule and regulation duly adopted or upon order of a court having jurisdiction with respect thereto.

d. Appeals from decisions of the custodians of permanent local records refusing to disclose confidential information, or to permit inspection of or copying of confidential information under the authority of this section and rules and regulations issued hereunder shall be made to the state registrar of vital statistics, whose decisions shall be binding upon the local custodians of permanent local records.

§§16-5-27. Copies of data from vital records.

In accordance with section twenty-five of this article and the rules and regulations adopted pursuant thereto:

a. The state registrar of vital statistics shall upon request issue a certified copy of all or any part of any certificate or record in his custody. Each copy issued shall show the date of registration, and copies issued from records marked "delayed," "amended," or "court order" shall be similarly marked and shall show the effective date of the delayed registration, amendment or court order.

b. A certified copy of a certificate or any part thereof, issued in accordance with subdivision a of this section, shall be considered for all purposes the same as the original, and shall be prima facie evidence of the facts therein stated.

c. The national office of vital statistics may be furnished such copies of or data from state vital statistics records as it may require for national statistics: **Provided**, That the state shall be reimbursed for the cost of furnishing such data: **Provided, however**, That such data shall not be used for other than statistical purposes by the national office of vital statistics unless so authorized by the state board of health.

d. Federal, state, local and other public or private agencies may, upon request, be furnished copies of or data from state vital statistics for statistical purposes upon such terms or conditions as may be prescribed by the state board of health.

e. No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a certificate of birth, death, or fetal death, except as authorized by this article, or by rules and regulations duly adopted thereunder: **Provided**, That the foregoing provisions of this subdivision shall not be construed as in any way prohibiting or infringing upon the right and duty of a county clerk to furnish a certified copy of any records in his lawful custody.

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

(a) The state director of the department of health shall prescribe the fees, if any, to be charged and collected by the state registrar of vital statistics, for certified copies of certificates or records, not to exceed five dollars per copy, or for a search of the files or records when no copy is made: **Provided**, That the state registrar shall, upon request of any parent or guardian, supply without fee a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment: **Provided, however**, That the state registrar may furnish certified copies of birth and death records to the state welfare department, and to organized charities, free of charge, when such certificates are needed in presenting claims to the federal government, or to the state department of welfare, and an accurate record shall be made of all such certificates so furnished.

(b) After the first day of July, one thousand nine hundred eighty-two, and subject to the provisions set forth in section two, article two, chapter twelve of this code, there is established in

the state treasury a separate account which shall be designated "the vital statistics account." The director of health shall promptly deposit two fifths of all fees received under the provisions of this section to the vital statistics account. The director of health shall promptly deposit three fifths of all fees received under the provisions of this section to the general revenue fund account. The director of health is authorized to expend the moneys deposited in the vital statistics account in accordance with the laws of this state as is necessary to implement this article. The Legislature shall appropriate all moneys in the vital statistics account as part of the annual state budget beginning with the fiscal year one thousand nine hundred eighty-three --eighty-four. The director shall make an annual report to the Legislature on the vital statistics account, including the previous fiscal year's expenditures and projected expenditures for the next fiscal year.

§§16-5-29. Persons required to keep records.

- a. Every person in charge of an institution as defined in this article shall keep a record concerning each person admitted to or confined in such institution containing such information as is required by the standard certificate of birth, death, and fetal death forms issued under the provisions of this article. The record shall be made at the time of admission from information provided by such person, but when it cannot be so obtained, the same shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.
- b. When a dead human body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, name and address of the person to whom the body is released, and date of removal from the institution or if finally disposed of by the institution, the date, place, and manner of disposition.
- c. A funeral director, embalmer or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other form required by this article, shall keep a record which shall identify the body, and such information pertaining to his receipt, removal and delivery of such body as may be prescribed by rules and regulations duly adopted by the state board of health.
- d. Records maintained under this section shall be retained for a period of not less than three years and shall be made available for inspection by the state registrar of vital statistics or his representative upon request.

§§16-5-30. Duty to furnish information relative to vital events.

Any person having knowledge of any fact required to be recorded under the provisions of this article or any rules and regulations duly adopted thereunder, or knowledge of which by the state registrar of vital statistics is necessary to effectuate the purposes of this article, shall furnish information of such fact to the state registrar of vital statistics upon request.

§§16-5-31. Penalties.

- a. (1) Any person who wilfully and knowingly makes any false statement in a report, record, or certificate required to be filed under this article, or in an application for an amendment thereof or who wilfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record or certificate, or amendment thereof; or
- (2) Any person who without lawful authority and with the intent to deceive, makes, alters, amends or mutilates any record, report, or certificate required to be filed under this article, or any certified copy of such record, report, or certificate; or
- (3) Any person who wilfully and knowingly uses or attempts to use, or furnishes or attempts to furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy thereof so made, altered, amended, or mutilated; or
- (4) Any person who with the intention to deceive wilfully uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which related to the birth of another person; or

(5) Any person who wilfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person to whom the record of birth relates, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

b. (1) Any person who knowingly transports or accepts for transportation, interment or other disposition a dead body without an accompanying permit as provided in this article; or

(2) Any person who refuses to provide information required by this article; or

(3) Any person who wilfully neglects or violates any of the provisions of this article or refuses to perform any of the duties imposed upon him by this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

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

To the end that an efficient and uniform system of registration of marriage, divorce and annulment of marriage shall be established in this state, the state registrar of vital statistics shall provide for the registration of each marriage, divorce and annulment of marriage which shall occur in this state. In so doing, the state director of health subject to rules and regulations promulgated by the board of health shall have the authority and duty to:

a. Install a statewide system of registering, indexing, and preserving records of marriage, divorce and annulment of marriage.

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

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

§§16-5-33. Registration of marriages.

All marriages taking place within the state shall be registered with the state registrar of vital statistics in the following manner:

a. On or before the tenth day of each month, the county clerk of each county shall forward to the state registrar a report of all marriage records made by him during the previous month, in such form and setting forth such information as may be prescribed by rule and regulation duly adopted pursuant to this article.

b. The state registrar shall preserve and index all records thus received and shall upon request issue a certified copy of the same, which shall be prima facie evidence in all courts in the state of the facts stated therein.

§§16-5-34. Registration of divorces and annulments of marriages.

a. The clerk of every court of record having jurisdiction of actions for divorce or annulment of marriage shall monthly make and deliver to the state registrar of vital statistics a report on a form prescribed by the state registrar of vital statistics, listing all of the divorces or annulments of marriages granted by such court during the preceding calendar month, showing insofar as such information appears in the complaint or final order or decree:

(1) The names and ages of the parties to the action,

(2) The date and place of the marriage thereby terminated,

(3) The names of said parties' children under the age of eighteen years,

(4) The date of the final order or decree:

Provided, That in counties where the court is not in continuous session these reports shall be forwarded within ten days following the close of the term of the court.

b. The state registrar shall search his files of reports of divorce and annulment of marriage upon receipt of written request and a fee of one dollar. If the record is found, he shall verify the facts of the divorce or annulment of marriage in writing to the applicant and shall notify the applicant of

the place where the original record is found.

c. Failure of the clerk of the court to comply with the provisions of subsection a hereof shall in no way affect the validity of any final judgment, order or decree of divorce or annulment of marriage.

§§16-5-35. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.