



FILED

FEB 13 10 57 AM '01

WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Building 1, Room MB-49  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610  
(304) 347-4840  
(304) 347-4919 FAX

email: tanders@mail.wvnet.edu

Senator Mike Ross, Cochair  
Delegate Virginia Mahan, Cochair  
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel  
Rita Pauley, Associate Counsel  
Teri Anderson, Administrative Assistant

February 11, 2001

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

TO: Ken Hechler, Secretary of State, State Register

TO: Sherri Douglass  
Embalmers and Funeral Directors, Board of  
179 Summers St., Suite 305  
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

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

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

1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed
  - (b) as modified by the agency

\_\_\_\_\_ ✓
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
 

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

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

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.
 

\_\_\_\_\_

FILED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Dec 28 3 29 PM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**Agency:** Board of Embalmers and Funeral Directors  
**Subject:** General Provisions, 6 CSR 1  
**Date:** November 25, 2000  
**Staff Counsel:** Rita A. Pauley

---

PERTINENT DATES

Filed for public comment: July 3, 2000  
Public comment period ended: August 1, 2000  
Filed following public comment period: August 18, 2000  
Filed LRMRC: August 18, 2000  
Filed as emergency: N/A

**Fiscal Impact:** The Board anticipates collecting \$2550 or less in fees. This will offset the costs associated with conducting inspections, office expenses, processing continuing education forms and other duties.

ABSTRACT

The proposed rule repeals and replaces a current rule. This rule establishes the guidelines for licensure of embalmers, funeral directors and funeral establishments. It covers such things as the licensing examination, apprenticeship program, transportation and health standards, provision of services, advertising, confidentiality and continuing education.

Significant changes have been made to the advertisement section to enable licensees to be more competitive. The section on inspections was added to enforce basic equipment, health and safety standards. In addition, basic fees were included in the rule to cover statutorily authorized expenses.

The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is the definition section. "Funeral establishment" is one of the more important definitions. It is defined as a place of business "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." It includes persons who provide a single service such as "trade embalmer", "mortuary service" or any related term which designates activities relating to the shelter, care, custody and preparation of dead human body.

Section 3 contains the licensing examination requirements. An applicant for licensure must provide documentation that he or she is at least 18 years old, an associate degree or completed two years of a bachelor's program and 12 months of study in mortuary science or bachelors's degree in mortuary science or completion of an approved apprenticeship program. In addition to the educational requirements, the applicant must also pass the International Conference of Funeral Service Examining Boards test.

Section 4 sets forth the requirements of the apprenticeship program. The program requires the apprentice to be employed full time and receive on the job training from a licensed embalmer and funeral director. The apprentice also must graduate from mortuary science school and complete the required examinations. The program must be completed within in five years.

Section 5 covers the control of dead bodies. Licensee's and their employees are not allowed to take control of a body without obtaining the permission of a person legally authorized to release the body. Bodies may not be embalmed or cremated without permission. A public health official may certify that public health hazzard may exist and request in writing that a body be embalmed. If a licensee or his or her employees fail to obtain permission to embalm or cremate a body the decadents family or

other responsible persons are not liable for the cost of the services rendered.

A burial-transit permit is required in order to move dead bodies. The permit must be held by the person in physical or legal custody of the body or attached to the transportation container. After final disposition of the body the permit must be filed in accordance with the provisions of W. Va. Code §16-5-21. Dead bodies must be transported in a manner that promotes respect for the preserver's dignity of the body. It must be shielded from view; there must be room for the cot, stretcher or container and excessive movement or tilting must be avoided. If the body will not reach its destination within seventy-two hours it must be embalmed.

Section 6 provides that licensees, their agents and employees are required to follow all applicable federal and state laws, rules and regulations related to health. This includes handling, treatment and disinfection of bodies with infectious or contagious diseases and proper waste disposal.

Section 7 specifies that licensees, their agents and employees will report any information of a possible crime; will not conceal evidence of a crime; and that if a crime is suspected the body will not be embalmed or cremated without the permission of a medical examiner or other official.

Section 8 requires price disclosure. All funeral establishments must comply with the Federal Trade Commission's Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453. This would appear to include any business that sold caskets, urns and other items used in connection with funerals. They must also maintain price lists for at least one year after the prices have expired.

Section 9 deals with advertising and solicitation. All funeral establishments are required to comply with the Federal Trade Commission's Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453. Licensees, their agents and employees "registrants" and apprentices are prohibited from engaging in any type of false, misleading, untrue or deceptive advertising. There is no size limit on printed advertising. Licensees, their agents and employees "registrants" and apprentices are prohibited from

soliciting business or having someone else solicit business for them. Nor may they offer or accept, directly or indirectly, kickbacks or bribes.

West Virginia Code §30-6-5 requires all advertising to contain the name of the licensed funeral director who is actually in charge of the funeral home, establishment or any other places pertaining to funeral directing or conducting funerals. The rule carries this requirement one step further by setting forth identifying requirements for corporations, LLC's, limited partnerships, LLP's, sole proprietorships and general partnerships. The larger business entities that are required to register with the Secretary of State's Office must include in the advertisement the trade name or the business as it appears on the organizing documents, the name of the business as it appears on the license or certificate of registration issued by the Board, the location and or mailing address of the business and the name of the licensed or registered person in charge. Sole proprietorships and general partnerships must include in the advertisement the DBA division or subsidiary name as it appears on the tax commission business registration form, the name of the business as it appears on the license or certificate of registration issued by the Board the location and or mailing address of the business and the name of the licensed or registered person in charge and identify the owner of the business.

A funeral establishment may advertise the total cost of various adult services. The ad must contain at least the total cost of the minimum adult service including the cost of the casket and all necessary items for a complete funeral service. The costs of interment are not considered part of this package.

Section 10 provides for confidentiality of information relating to the domestic life in any home where they be called upon to provide services. This of course does not prohibit releasing information to any person lawfully entitled to receive the information.

Section 11 requires that each licensed funeral establishment have a licensed funeral director in charge of and responsible for the day-to-day operation of the establishment. In as much as it is the stated intention of the Board to regulate the single service providers including those that only sell caskets, urns and other such items this requirement appears to prohibit retail sale of

these items unless a licensed funeral director is at least managing the store.

This requirement is contrary to W.Va. Code §30-6-3(h) which provides in pertinent part "The board shall have the power and it shall be its duty to make and enforce all necessary rules . . . . for the examination and licensing of funeral directors . . . . and the licensing and general operation of funeral establishments, except that no rules issued by the board shall require that an applicant for a license to operate a funeral establishment shall be required to have either an embalmer's or funeral director's license." This section needs to be rewritten to comply with the statute.

Section 12 sets forth the requirements for inspections. The Board's members and its inspector are authorized to inspect any licensed funeral establishment during normal business hours. An inspection report form produced by the Board will be used as a guide for conducting inspections. A completed copy of the report will be left at the establishment and a copy filed with the Board. The licensee is responsible for correcting any problems found during the inspection. The person conducting the inspection will determine how long the licensee has to correct problems based upon the severity of the violations. The inspection will cover both the public and non-public areas of the establishment. The areas of inspection includes such things as proper equipment, record keeping, medical waste disposal procedure and documents, public restrooms, parlors, casket display rooms, individual caskets and offices.

Section 13 lists the necessary equipment for embalming and preparation rooms. Funeral establishments that prepare and embalm bodies must comply with the Occupational Safety and health Administration's requirements found in 29 CFR 1900 et seq. Certain portions of this section need to be revised to comply with W.Va. Code §30-6-3(h).

Section 14 authorizes the issuance of courtesy cards to funeral directors and embalmers in neighboring states. This allows the card holder to conduct funerals for an out-of-state funeral establishment within West Virginia.

Section 15 states that the penalties and grounds for disciplinary action set forth in W.Va. Code §30-1-1 et seq. and §30-6-1 et seq. will be followed by the Board.

Section 16 contains the fees to be charged for licensure and license renewals. These fees are set by statute. This section also provides that after the initial inspection an inspection fee of \$200 will be charged for each inspection conducted. The fee will also be charged for missed appointments with the inspector unless the licensee can show good cause for missing the appointment. The Board has established a \$5.00 fee for copies of the authorizing statute and the Board's rule. The Board does not have the authority to provide a copy of its rules. By statute only the Secretary of State is authorized to provide copies of rules and charge for the service.

Section 17 provides that all inquiries relating to any aspect of licensing requirements must be submitted to the Board in writing.

Section 18 sets forth the requirements for continuing education. All continuing education programs must be approved by the Board prior to being presented and they must be relevant to the practice of mortuary science. One fourth of the required continuing education credits may be obtained through audio or video media. The Board may test a licensee on his or her knowledge of the material covered by the audio or video tapes. There is no similar provision for testing if the licensee obtained credits by attending a program approved by the Board. This section does not provide such pertinent information as how many credits are required, how long the reporting period is or whether there is any waiver?

---

#### AUTHORITY

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

- (i) On or before the first day of July, two thousand, the board shall propose for legislative promulgation in accordance with

the provisions of article three, chapter twenty-nine-a of this code rules necessary to effectuate the purpose of this article including, but not limited to, the subjects to be covered in the examinations and the standards to be attained for licensure; requirements for continuing education, including authorizing continuing education credits through audio or video recordings; and a procedure for the investigation and resolution of complaints against persons licensed under this article.

---

ANALYSIS

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

It is possible that the Board lacks the clear authority to regulate persons who are engaged only in the retail sale of caskets, urns, guest books, cards and other material.

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

Yes.

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

No.

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

Yes.

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

Yes.

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

Yes.

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

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.