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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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January 08, 2003

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

TO: Joe Manchin, Secretary of State, State Register

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

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Crematory Requirements, 6CSR2**

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

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Funeral Examiners

Subject: Crematory Requirements, 6CSR2

PERTINENT DATES

Filed for public comment: June 26, 2002

Public comment period ended: July 26, 2002

Filed following public comment period: July 26, 2002

Filed LRMRC: July 26, 2002

Filed as emergency: NA

Fiscal Impact: This is a non-appropriated Special Revenue Account which receives no funding from the state. Revenue is generated through licensing fees and other fees. There will be an impact on the entities being regulated, as they will be required to pay a licensing fee, generally ranging from \$120 to \$350 every 2 years for a biennial license.

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ABSTRACTBrief Summary

- The proposed rule is a response to the passage of Senate Bill 742, on March 9, 2002. That bill gave power to the Board to promulgate rules relating to the regulating of crematory practices in West Virginia. The rule is in compliance with the statutory authority granted.

Section Summary

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

Section 2 Defines Terms.

- This section defines various terms necessary for this rule.

Section 3 Prohibited Acts.

- This section prohibits a crematory to operate as a funeral home, unless licensed to also operate as a funeral home.

Section 4 Crematory Operator Requirements.

- This section outlines course curriculum for persons wishing to register as crematory operators.

Section 5 Control of Dead Bodies ;Section 6 Health Requirements; and Section 7 Evidence of Crime.

- These sections designate the right of disposition and handling of dead human bodies in reference to health issues and criminal evidence matters.

Section 8 Price Lists.

- This section requires price lists and prohibits misrepresentations of products, similar to funeral home requirements.

Section 9 Advertising.

- This section outlines advertising and solicitation limitations.

Section 10 Confidentiality.

- This section defines the responsibilities of confidentiality among service providers and client families.

Section 11 Supervision.

- This section requires a crematory to have a certified crematory operator for day to day operations.

Section 12 Necessary Equipment.

- This section would require certain types of equipment. Additionally, it requires that the equipment be maintained in operable condition and be subject to annual inspections.

Section 13 Permission to Cremate, Disclosure for Unclaimed Cremated Remains, Removing Objects from Body.

- This section requires written permission to cremate from the person who has the right of disposition.

Section 14 Identification of a Dead Human Body; Section 15 Cremation Procedures; Section 16 Release of Cremated Remains; Section 17 Storage and Disposal of Unclaimed Cremated Remains; Section 18 Record Keeping Practices .

- These sections set forth procedures for the cremation process, identifying bodies and cremated remains, releasing cremated remains, handling unclaimed cremated remains and record-keeping practices.

Section 19 Inspections.

- This section sets forth procedures for inspection and inspection reports by the Board.

Section 20 Fees; Section 21 Correspondence with the Board; Section 22 Biennial Licenses and Registrations; Section 23 Authorized Representative; Section 24 Penalties.

- These sections contain general provisions for license application and renewal, reinstatement, fees and penalties for violation of the rule.

AUTHORITY

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

(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provision of this article including, but not limited to, the following:

(1) The general practice of embalming, funeral directing and cremating, and operating a funeral establishment and crematory....

ANALYSIS

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

No

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

Yes

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

No

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

Yes

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

Yes

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

No

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

Yes

VIII. OTHER

Technical changes are recommended.