

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #2

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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: 2

TITLE OF RULE BEING PROPOSED: Funeral Goods Sales


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.

 - President  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.60 w/out referenced materials  
\$11.60 w/referenced materials

## **SUMMARY OF PROPOSED RULE**

### **Title 6**

### **Legislative Rules**

### **Series 2**

### **Funeral Goods Sales**

This rule introduces a new series entitled "Funeral Goods Sales." The rule focuses solely on those businesses which funeral goods or merchandise, but do not offer for sale funeral services or prepare dead human bodies for disposition. These businesses would be considered a type of funeral establishment. The rule provides definitions of many terms and establishes general provisions for Board operation. The rule establishes evidence of crime standards. The rule introduces price disclosure standards and rules for misrepresentations. The rule creates advertising and solicitation restrictions. The rule provides for confidentiality. The rule outlines the duties and responsibilities of the funeral goods provider. The rule establishes inspection criteria and minimum necessary equipment for such facilities. The rule establishes 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**

#### **Funeral Goods Sales**

Title 6, Series 2, Funeral Goods Sales, is a new series. Since the Board's legislative rules were last updated in June 1994, many changes have taken place in the funeral business. New businesses, often termed 'casket sellers' or 'third party sellers' have emerged in West Virginia. These types of businesses are sometimes affiliated with florists and cemeteries, and others are businesses which stand alone.

A national trend, many states have updated their regulations regarding these types of businesses, which were previously unregulated at the state and federal levels. In West Virginia, these businesses are specifically regulated only in the Preneed Article (§47-14-1 et. seq.), which only addresses sales that are completed prior to death; this article does not address sales taking place after death. The Federal Trade Commission is considering including these businesses under the Funeral Rule; however, the Funeral Rule is still under review and may not address this area for a few more years. Furthermore, the Federal Trade Commission has not historically regulated the funeral business closely, particularly in our state.

The regulations in West Virginia currently make it difficult to apply existing requirements to these types of funeral businesses because there is no preparation of dead human bodies or selling of funeral services. Current requirements would be too restrictive. Furthermore, existing state and federal law create an anti-competitive atmosphere because funeral goods sales are not regulated unless the business also sells funeral services. Therefore, it is necessary to introduce new regulations designed specifically for funeral goods sales so that the Board can effectively regulate the funeral business in order to protect the public.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Funeral Goods Sales

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
<b>ESTIMATED TOTAL COST</b>	0	0	0	0	0
<b>PERSONAL SERVICES</b>	0	0	0	0	0
<b>CURRENT EXPENSE</b>	0	0	0	0	0
<b>REPAIRS &amp; ALTERATIONS</b>	0	0	0	0	0
<b>EQUIPMENT</b>	0	0	0	0	0
<b>OTHER</b>	0	0	0	0	0

2. Explanation of Above Estimates:

It is predicted that there will be 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 businesses which sell funeral goods, including disclosure of certain fees to consumers and prevention of misrepresentation of funeral goods' qualities. To establish minimum requirements for advertisements of funeral goods and supervision of the

Rule Title: Funeral Goods Sales

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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 there will be little or no economic impact on this agency, amounting to less than \$500 in revenue.

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

It is predicted that there will be little or no impact on licensees, as the basic requirements are not costly in nature.

C. Economic Impact on Citizens/Public at Large.

There should be no economic impact on citizens at large, as the requirements should not impact overall cost of crematory services.

Date: June 29, 2000

Signature of Agency Head or Authorized Representative:

Sherril Douglass, Exec. Dir.

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TITLE 6  
LEGISLATIVE RULE  
BOARD OF EMBALMERS AND FUNERAL DIRECTORS OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 2  
FUNERAL GOODS SALES

**§6-2-1. General.**

- 1.1 Scope. - This rule relates to the licensing of funeral establishments which conduct funeral goods sales only and do not offer for sale funeral services.
- 1.2 Authority. - WV Code §30-6-3.
- 1.3 Filing Date. -
- 1.4 Effective Date. -

**§6-2-2. Definitions.** For purposes of these legislative rules, the following terms shall be construed in the following manner, and shall elaborate on definitions contained in ~~section 4, article 6 of chapter 30~~.

2.1. **Arrangements conference.** Includes the time spent with the next-of-kin, or other duly authorized or legally responsible person, choosing funeral goods which shall be later used in a funeral service or disposition of a dead human body.

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

2.3. **Funeral Establishment.** Means a place of business maintained and operated by a person, partnership, association, corporation, or other organization, located in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and sell only funeral goods for compensation. For the purposes of this rule, funeral establishments defined in this rule do not sell or conduct funeral services or prepare dead human bodies for final disposition, or transport dead human bodies. These funeral establishments are commonly known as "retail sellers" or "third party sellers" and shall be permitted only to offer funeral goods for sale.

2.3.1. **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.

2.3.2. **Main funeral establishment.** Means a primary funeral establishment.

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

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

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

**2.7 Funeral Goods.** Means the goods or merchandise which are specifically sold or offered for sale directly to the public for use in connection with funeral services or final disposition, including but not limited to caskets, outer burial containers, alternative containers, cremation containers, urns, acknowledgment cards, register books, memory folders, prayer cards, and clothing. It shall not include cemetery lots, markers, memorials, permanently constructed vaults, concrete lawn crypts, or monuments.

**2.8 Funeral Goods Provider.** Means any person, other than a licensed funeral director or a registered funeral director apprentice, engaged, or holding himself out as engaged in the business of selling or offering to sell funeral goods to the public and shall not use in connection with his name or business the words "funeral director," "undertaker," "mortician," or any other word, term, or title to imply or designate him as a funeral director, undertaker, or mortician.

**§6-2-3. Evidence of Crime.**

**3.1. 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.

**3.2. 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.

**§6-2-4. Price Disclosure.**

**4.1. General Price and Information List for funeral establishments that sell only funeral goods.** Funeral establishments shall comply with the following requirements, unless otherwise regulated by the current Federal Trade Commission, Trade Regulation Rule for Funeral Industry Practices, 16CFR Part 453:

**4.2. General Price List.**

**4.2.1.** Maintain a type written or printed General Price List that contains the following information:

- a. The caption: "General Price List;"
- b. The effective date of the General Price List (otherwise known as the "GPL");
- c. Itemized list of all various funeral goods offered for sale, including exact prices or price ranges, from least expensive to most expensive;
- d. Name of the funeral establishment, the majority stock holder's name, the licensed funeral goods provider in charge, full location and mailing address, and telephone number; and
- e. Five disclosures, which include:
  1. The consumer's right to select only the goods desired;
  2. The consumer's right to use alternative containers, if the funeral establishment sells alternative containers;
  3. Basic non-declinable service fees for such things as delivery of goods express shipping, etc. or other service charges. You must disclose this as a separate charge or disclose this as a charge included in the price of the goods;

4. The availability of a separate Casket Price List, if the funeral establishment sells caskets; and

5. The availability of a separate Outer Burial Container Price List, if the funeral establishment sells outer burial containers.

4.2.2. The General Price List shall be given to keep to anyone that asks for it, or inquires about the goods offered for sale, in a face-to-face meeting with a representative from the funeral establishment. Telephone inquiries are not considered face-to-face meetings.

4.2.3. During a telephone inquiry about the goods offered for sale, the funeral goods provider or his representative must inform the caller that the General Price List exists and that it is available at the funeral establishment. The funeral establishment is not required to mail the GPL to the caller.

4.2.4. The funeral establishment shall not charge for the General Price List.

#### **4.3. Casket Price List.**

4.3.1. Maintain a type written or printed Casket Price List, if casket or alternative caskets are offered for sale, that contains the following information:

a. The caption: "Casket and Alternative Price List." If the funeral establishment does not offer for sale alternative containers, it may read "Casket Price List;"

b. The effective date of the Casket Price List, (otherwise known as the "CPL");

c. Name of the funeral establishment; and

d. The retail price of each casket and alternative container offered for sale that does not require special ordering, with enough information to identify it, such as the gauge of metal or type of wood, the exterior trim, and interior fabric, manufacturer name, or model number. A photograph or model number alone is not sufficient. Special ordering means purchasing of a casket or container that is not part of the regular offerings to customers.

4.3.2. The Casket Price List shall be made available for review to anyone who, in a face-to-face meeting, asks about caskets or alternative containers offered for sale or inquires about prices. The CPL must be given to the consumer prior to showing these items to the consumer. Individual price cards placed on the caskets or alternative containers can be utilized, but only in addition to the CPL.

4.3.3. If a consumer discusses the option of purchasing an alternative container, it must be disclosed, verbally or in writing, to the consumer that state or local law does not require an alternative casket for direct cremation, in which no formal viewing or visitation will take place with the body present.

#### **4.4. Outer Burial Container Price List.**

4.4.1. Maintain a type written or printed Outer Burial Container Price List, if outer burial containers are offered for sale, that contains the following information:

a. The caption: "Outer Burial Container Price List;"

- b. The effective date of the Outer Burial Container Price List (otherwise known as the "OBCPL");
- c. Name of the funeral establishment; and
- d. The retail price of each outer burial container offered for sale that does not require special ordering, with enough information to identify it. A photograph or model number alone is not sufficient. Special ordering means purchasing of an outer burial container that is not part of regular offerings to customers.
- e. The following disclosure:

"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."

4.4.2. The Outer Burial Container Price List shall be made available for review to anyone who, in a face-to-face meeting, asks about outer burial containers offered for sale or inquires about prices. The OBCPL must be given to the consumer prior to showing these items to the consumer. Individual price cards placed on the outer burial containers can be utilized, but only in addition to the OBCPL.

#### 4.5. Statement of Goods Selected.

4.5.1. Provide a State of Goods Selected to the consumer at the end of discussion of proposed purchase(s), which contains the following information:

- a. Itemized list of good(s) to be purchased;
- b. The cost(s) of each good to be purchased;
- c. Any cash advances for cash advance goods or deposits to be made toward purchase(s);
- d. Total cost of purchase(s);
- e. Final total cost after deduction of cash advances or deposits; and
- f. The following disclosures:
  - 1. For legal requirements, "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." The reasons must then be written somewhere on the Statement, if any requirements exist.
  - 2. For cash advance items, "We charge you for our services in obtaining the following cash advance items below:" The cash advance items must then be listed, if any exist.

#### 4.6. Telephone Price Disclosures.

4.6.1. Accurate information regarding goods offered for sale must be given to the consumer who telephones the funeral establishment inquiring about the goods and prices. This information must be taken directly from the current General Price List, Casket Price List, and Outer Burial Container Price List.

4.6.2. A funeral establishment, or any of its employees or agents, can not require a caller disclose his name, address, or telephone number and can not require the caller to come to the funeral establishment to get price information.

4.6.3. A funeral establishment is not required to respond to telephone inquiries after normal business hours. However, if the funeral establishment practice is to sell goods during non-business hours for at-need situations, then telephone inquiries must be answered.

4.6.4. A funeral establishment's employee or agent is permitted to take a message if working on another sale. However, the consumer must be called back immediately thereafter.

**4.7. Other Misrepresentations.**

4.7.1. Protective Features. A funeral establishment, or any of its employees or agents, cannot tell consumers that funeral goods, including but not limited to caskets and vaults, have protective features that will protect the body from gravesite substances if not true.

4.7.2. Product Warranties. A funeral establishment, or any of its employees or agents, must provide warranty information to consumers inquiring of or purchasing funeral goods. The consumer should be told that the claims made in the warranty are those of the manufacturer and not by the funeral establishment.

4.7.3. Cash Advance Items. A funeral establishment, or any of its employees or agents, must inform the consumer that the price of the cash advance item is not the same as the funeral establishment's cost, if the funeral establishment, or any of its employees or agents, receives and keeps a rebate, commission, or trade or volume discount. This is to be disclosed on the Statement of Goods Selected.

**§6-2-5. Advertising and solicitation, applicable to all persons licensed or registered by this board.**

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

5.2. No licensee, registrant, 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.

5.2.1. 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.

5.2.2. No licensee, registrant, 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, registrant, 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.

5.2.3. 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 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 issued by this

board, the location and/or mailing address of the business, and the name of the registered person in charge. The advertisement must identify the person in charge by placing the term "funeral goods provider in charge" or other similar term after the name of the 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.

b. Sole proprietorships, general partnerships. For these licensees, 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 issued by this board, the location and/or mailing address of the business, and the name of the registered person in charge. The advertisement must identify the person in charge by placing the term "funeral goods provider in charge" or other similar term after the name of the 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.

5.2.4. The advertisement may include a description of the types of funeral goods sold as well as general information pertaining to his or her business. The following are additional requirements:

a. A funeral establishment may advertise casket prices and other funeral goods. These items 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.

#### **§6-2-6. Confidentiality.**

6.1. **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.

6.2. **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~~

#### **§6-2-7. Supervision Required Registrant.**

7.1 **Registered funeral goods provider in charge.** Each funeral establishment shall have a funeral goods provider in charge who is responsible for the day-to-day operation of the establishment. The funeral goods provider shall be a full time employee of the funeral establishment.

7.2. **Branch funeral establishment.** A funeral goods provider shall directly supervise the activities of a branch funeral establishment at all times the business is open to the public.

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

7.4 **Arrangements conference.** A funeral goods provider shall be responsible for and supervise any arrangements conference, as defined in this rule, conducted within the state.

**§6-2-8. Inspections.**

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

8.2 **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.

8.3. **Areas of inspections.** 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, applicable to funeral establishments selling only funeral goods, shall include but not be limited to:

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

8.3.2. Materials as specified in sections 4 and 5 of these rules;

8.3.3. Other necessary equipment, materials, and records, as provided for in section 9 of these rules;

8.4 All funeral establishments shall maintain all necessary equipment, as established in section 9 of these rules, 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.

**§6-2-9. 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.

9.1 **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.

**§6-2-10. Penalties.** Any violation of this rule constitutes grounds for the refusal to renew a license or certificate 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

**§6-2-11. Fees.**

**11.1. Miscellaneous fees.**

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

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

a. 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 two of title six legislative rules during the initial yearly inspection.

b. 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.

11.1.3. ~~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.

11.1.4. 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.

11.1.5. All other materials that must be re-printed and are not included in ~~section 11 of these rules~~ will carry a cost of \$.30 per page plus shipping and handling.

**§6-2-12. Correspondence with Board.**

12.1. 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.

**§6-2-13. Continuing Education.**

13.1. 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 11.1.3. of these rules. On-going programs that are presented as needed must be approved each calendar year.

13.2. 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 13.1. 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.

RECEIVED JAN 19 2000

2904

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 (b) (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

<p>(3) a description of the services and container (where applicable), included in each price;</p>	<p>specified by paragraph (b)(2)(i) of this section; and</p>	<p>“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.</p>
<p>(D) The price range for the immediate burials offered by the funeral provider, together with:</p>	<p>(B) Either of the following:</p>	
<p>(1) a separate price for an immediate burial where the purchaser provides the casket;</p>	<p>(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</p>	
<p>(2) separate prices for each immediate burial offered including a casket or alternative container; and</p>	<p>(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and</p>	<p>(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.</p>
<p>(3) a description of the services and container (where applicable) included in that price;</p>	<p>(C) Either of the following:</p>	<p>(5) <u>Statement of Funeral Goods and Services Selected</u></p>
<p>(E) Transfer of remains to funeral home;</p>	<p>(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</p>	<p>(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:</p>
<p>(F) Embalming;</p>		<p>(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;</p>
<p>(G) Other preparation of the body;</p>		<p>(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</p>
<p>(H) Use of facilities and staff for viewing;</p>		<p>(C) The total cost of the goods and services selected.</p>
<p>(I) Use of facilities and staff for funeral ceremony;</p>		<p>(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.</p>
<p>(J) Use of facilities and staff for memorial service;</p>		<p>(6) <u>Other Pricing Methods</u></p>
<p>(K) Use of equipment and staff for graveside service;</p>		<p>Funeral providers may give persons</p>
<p>(L) Hearse; and</p>		
<p>(M) Limousine.</p> <p>(iii) Include on the price list, in any order, the following information:</p> <p>(A) Either of the following:</p> <p>(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</p> <p>(2) The prices of individual caskets, disclosed in the manner</p>		

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