

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

Form #3 □

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Aug 10 3 15 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

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.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 18, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No) Board of Embalmers and Funeral Directors

179 Summers Street, Suite 305

Charleston, WV 25301

558-0302

LEGISLATIVE RULE TITLE: Funeral Goods Sales

1. Authorizing statute(s) citation 30-6-1 et. seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 3, 2000

b. What other notice, including advertising, did you give of the hearing?
All current licensees and registrants were notified via newsletter which was mailed July 1, 2000. Additional organizations were notified via letter mailed June 26, 2000. See attached list.

c. Date of Public Hearing(s) or Public Comment Period ended:
4:00 p.m. August 1, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received 2

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 18, 2000

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Sherri Douglass, Executive Director

179 Summers Street, Suite 305, Charleston, WV 25301

304-558-0302, Fax 304-558-0660

boeafd@mailcity.com

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

The following persons or groups were notified about the proposed rules, the comment period, and how they could receive copies.

American Association of Retired Persons
American Funeral Consultants
Association for Death Education and Counseling
Better Business Bureau
Cemetery Association (WV)
Cremation Association of North America
WV Department of Health and Human Resource, Medical Examiner and Bureau
for Public Health
WV Department of Health and Human Resource, Vital Registration Office
Federal Trade Commission
Funeral Ethics Association
Hospice Foundation of America, Washington, DC
International Cemetery and Funeral Association
International Conference of Funeral Service Examining Boards
National Funeral Directors Association
National Funeral Directors and Morticians Association
National Selected Morticians
Preferred Funeral Directors International
Pre-Need Associates
Attorney General's Office, Preneed Division
Regulatory Support Services
The American Board of Funeral Service Education
The International Order of the Golden Rule
The National Association of Colleges of Mortuary Science, Inc.
The University of Mortuary Science Education Association
West Virginia Funeral Directors Association
All WV Funeral Establishments
All Licensed Funeral Directors and Embalmers
All Registered Apprentice Funeral Directors and Apprentice Embalmers
All Current Courtesy Card Holders

□
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
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

It is predicted that there will be no increased expense to this agency, as the board already employs an inspector. Additional personnel will not be necessary at this time.

3. Objectives of These Rules:

Establish requirements (similar to FTC) for disclosure of fees, which do not cover these particular funeral businesses. Establish advertising requirements & continuing education procedures. Establish fees for processing documents. Establish inspection standards

Rule Title: Funeral Goods Sales

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. 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 or registrants, as the basic requirements are not costly in nature.

C. Economic Impact on Citizens/Public at Large.

Misc. fees for copies of documents and shipping would cost the public minimally, should the public be the requesting party. Many materials are available via Internet if the public chose not to purchase hard copies.

Date: August 18, 2000

Signature of Agency Head or Authorized Representative:



FILED

AUG 18 3 12 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

6CSR2

TITLE 6
LEGISLATIVE RULE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS

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. For purposes of these rules, 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 are not permitted to 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," "funeral merchandise stores," 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. A funeral goods provider is prohibited from the selling or conducting of funeral services, the preparation of dead human bodies for final disposition, and the transportation of dead human bodies.

§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.

4.2.5. The General Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.

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.

4.3.4. The Casket Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.

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.

4.4.3. The Outer Burial Container Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.

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.

4.5.2. The Statement of Goods Selected shall be maintained by the funeral establishment for a minimum of one year after it expires.

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.

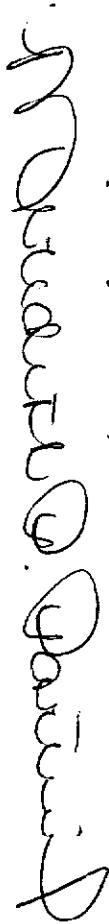
13.2. One-quarter of required continuing education credits may be obtained through audio or video media. Such programs must be approved in advance, as established in section 13.1. of these rules. The board may require the licensee to demonstrate new knowledge of material learned through such media by examination or other means of testing.

Public Comments
Title 6, Series 2

Reg. #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
§ 2.3	Definition of Funeral Establishment	To regulate retail sellers and third party seller of funeral merchandise.	Whereas it is clear that the Board intends for retail and third party sellers to be licensed as funeral homes, they are not licensed as funeral homes because they have their own set of laws. It is confusing to the public, licensees, and these regulants to use the word "funeral establishment" throughout Series 2. It is particularly confusing when the cemetery that sells funeral merchandise is called a funeral home to the public.	Please clarify for the public and all regulants that retail sellers and third party sellers are clearly differentiated from the traditional licensed funeral home and contract services both in the services they offer and also in their scope of practice as regulated by this Board. Please refer to them as retail funeral merchandise stores or something similar in these regulations.
§4.3.1 and §4.4.1	Disclosures for the Casket Price List and the Outburial Container Price List.	Public Protection	Whereas §§ 4.7.1 and 4.7.2 covers protective features and product warranties, would a disclosure to this effect not be important for the consumer's knowledge?	Please consider requiring that the following disclosure be placed on the Casket and Outburial Container Price Lists for these entities: "The only warranty on the casket or outer burial container, or both, sold by _____ (name of the seller) is the express written warranty if any, granted by the manufacturer. This business, by law, cannot make any warranty, express or implied, with respect to the casket or outer burial container or both."

Reg. #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
NA	Record Retention	NA	I am unable to determine the record keeping requirements for these businesses.	Please consider requiring that price lists be kept a minimum of one year after they expire. Please consider a requirement that Itemized Statements of Funeral Goods also be retained for a minimum of one year.
Generic	All pertinent requirement from Series 1 that are also repeated in Series 2	NA	Duplicate Comments	Please consider my comments to Series 1 incorporated by reference to Series 2 as applicable.

Respectfully Submitted,



Meredith P. Partridge
Regulatory Support Services, Inc.



STATE OF WEST VIRGINIA
Board of Embalmers and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301
304-558-0302
FAX 304-558-0660

August 17, 2000

Meredith Partridge
Regulatory Support Services
PO Box 83
Manakin-Sabot, VA 23103

Dear Ms. Partridge:

On August 16, 2000, the Board reviewed your written comments on the proposed legislative rules regarding each of the proposed rules: §6-1-1 et seq., §6-2-1 et seq., §6-3-1 et seq., and §6-4-1 et seq. Based upon those comments, the Board made several amendments.

Please find enclosed Response, which highlights the amendments.

The Board believes that this amendment satisfies many of your concerns and found your comments to be very helpful. The Board appreciates your input and has attempted to take into consideration all points of view in their pursuit of regulations that meet the Board's duty to protect the public and enforce related regulations.

Sincerely,

Sherri Douglass, MSW
Executive Director

Response to Regulatory Support Services

The Board has attempted to incorporate many of your concerns through various amendments. We appreciate all of the good suggestions for changes. Please note that some recommendations for change were not possible or practical at this time. I would like to address as many of those as possible.

§6-1-4.2. Regarding the one year extension of the apprenticeship, the board believes that your recommendation still does not eliminate the subjectiveness of which you speak. Much of what we do can be subjective. It would be difficult to list all the possible reasons for which an apprentice could receive an extension, as each individual situation may vary. We believe that board members are intelligent enough and have enough work experience to know what would be considered "good cause" just as a good employer would know what constitutes an excused absence.

§6-1-10.1. The board did not choose to address this issue at this time, as it did not understand the concern.

§6-1-11.4 - 11.6. Regarding the capitalization of certain words, words in the middle of a sentence are not to be capitalized. This is standard for our state laws.

§6-2-2.3. and §6-3-2.3. The board attempted to clarify the definition. Please see below.

§6-2-4.3.1 and 4.4.1. and §6-3-1 et seq. Regarding the warranty disclaimer, the board has been informed by the Office of the Attorney General that such a statement, as you suggest, is not legal in our state as it violates implied warranty laws. Therefore, we would not attempt to supercede an existing law which is out of our bounds of jurisdiction.

§6-3-1 et seq. Regarding the inclusion of price lists for urns, urn vaults, and cremation caskets, the board will address those matters in future rules. We realize that these changes are not going to happen over night and this will be a process which will last for a few years. The board will continue to consider this suggestion in future proposed rules.

§6-3-1 et seq. Regarding the inclusion of Statement of Goods and Services, this is irrelevant as Series One of the proposed legislative rules addresses this. And crematories would be required to not only follow the regulations in Series Three, but also regulations in Series One.

§6-4-1 et seq. Regarding a toll free phone number. While the board sees this as a well-intentioned idea, the funding at this time does not provide for such a number. We will consider it for the future.

§6-4-2.10 and 3.6.1. Regarding due process, the board believes that the proposed procedures do not interfere or burden the licensee's right to due process. Additionally, the use of the word "may" will remain because the process is one that is not black and white, step-by-step. Many things can happen during the course of an investigation and circumstances of a case will vary with each case. Therefore, to attempt to put all cases into a "cookie cutter" form would be difficult. There must be some leeway for the board throughout the process to provide for various options for resolution.

Please note the following: "~~Strikethroughs~~" suggest deletion of language
"~~Highlights~~" suggest new language

Amendments Response to Regulatory Support Services Title 6, Series 1

§6-1-2. Definitions.

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

§6-1-3. Licensing Examination.

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

3.1.1 A certified copy of a birth certificate establishing the applicant's age at ~~eighteen (18)~~ or over,

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

3.1.2. One of the following:

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

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

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

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

§6-1-5. Control of Dead Bodies.

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

- a. promotes respect for and preserves the dignity of the dead human body;
- b. shields the body from being viewed from outside of the vehicle;
- c. has ample enclosed area to accommodate an ambulance cot, aircraft ambulance stretcher, casket, alternative container, or cremation container, in a horizontal position;
- d. is so designed to permit loading and unloading of the body without excessive tilting of the casket, or other container which holds the body;
- e. if used for the transportation of more than one body at one time, the vehicle or aircraft must be designed so that a body or container does not rest directly on top of another body or container, and that each body or container is secured in such a manner as to prevent the body or container from excessive movement within the vehicle.

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

a. Public transportation. ~~When a dead human body is transported by public transportation, it must be properly embalmed and encased in a casket or alternative container and an appropriate outside shipping container. A body which is transported by means of public transportation must be properly prepared in accordance with the regulations or policies of the transportation carrier.~~

b. Private transportation. ~~When transportation is by any private vehicle or aircraft, the outside shipping container may be omitted if the body is encased in a casket or alternative container. The casket, or alternative container, and the outside container may both be omitted and, in such case, the body shall be wrapped in a sheet that is impervious to liquids and offensive odors, covered in such a manner that the body cannot be viewed.~~

5.6.6. Embalming required. ~~A dead human body that is being transported by public transportation or will not reach its destination within seventy-two (72) hours following death must be properly embalmed. Refrigeration is not considered a form of preservation or disinfection and does not alter the seventy-two hour requirement.~~

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

§6-1-6. Health Requirements.

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

§6-1-8. Price Disclosure.

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

8.2. **Required Records.** The following documents shall be maintained by the funeral establishment for a minimum of one year after expiration: General Price List, Casket Price List, Outer Burial Container Price List, Statement of Goods and Services.

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

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

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

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

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

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

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

11.6. **Arrangements conference.** A funeral director, licensed by this state, shall be responsible for and supervise any arrangements conference conducted within the state. A registered apprentice funeral director may be present and participate in the arrangements conference under the general supervision of a licensed funeral director.

11.7. "Direct supervision" means the physical presence and oversight of an activity by a licensed funeral director or embalmer.

11.8. "General supervision" means the general oversight or overall responsibility for an activity by a licensed funeral director or licensed embalmer. General supervision does not require the physical presence of the licensed funeral director or licensed embalmer.

§6-1-16. Fees.

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

16.4.2. Missed scheduled appointments with inspector, in which the inspector must return to the funeral establishment on a date other than the date of the original appointment. This fee will only be charged if it is determined that the inspector was not at fault for the missed appointment. If a funeral establishment owner or operator contacts the inspector or the board office prior to the scheduled appointment with a reasonable reason for his inability to be present for the appointment and can provide written documentation supporting his reason, the fee shall not be charged. 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.

Amendments
Response to Regulatory Support Services
Title 6, Series 2

§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 .

2.3. Funeral Establishment. ~~For purposes of these rules,~~ 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 sells only funeral goods for compensation. For the purposes of these rules, funeral establishments ~~defined in this rule do not~~ are not permitted to 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," ~~"funeral merchandise stores,"~~ or "third party sellers" and shall be permitted only to offer funeral goods for sale.

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. ~~A funeral goods provider is prohibited from the selling or conducting of funeral services, the preparation of dead human bodies for final disposition, and the transportation of dead human bodies.~~

§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.

~~4.2.5. The General Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

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.

~~4.3.4. The Casket Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

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.

~~4.4.3. The Outer Burial Container Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

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.

~~4.5.2. The Statement of Goods Selected shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

Amendments
Response to Regulatory Support Services
Title 6, Series 3

§6-3-2. **Definitions.** For the purposes of this rule, crematories are considered funeral establishments and the provisions of 6CSR1, series 1, article 1 of chapter 6 of the West Virginia Board of Embalmers and Funeral Directors shall apply, in addition to the provisions of 6CSR3, series 3, article 1 of chapter 6.

2.3. Funeral establishment. For purposes of this rule, means a place of business maintained and operated by a person, partnership, association, corporation or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as that are primarily incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the ~~embalming or cremation, funeral, transportation, burial or other disposition~~ of dead human bodies, and includes ~~"trade service," "trade embalmer," mortuary service,"~~ or any related term which designates activities relating to the shelter, care, custody and preparation of a deceased human body. ~~These funeral establishments, while primarily operating as crematories, may also embalm, make arrangements, financial and otherwise, for funeral services, transportation, burial or other disposition of dead human bodies, provided that all requirements for such additional activities are followed, including those provisions set forth in 6CSR1, series 1, article 1 of chapter 6.~~

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. If the preparation of dead human bodies by embalming or cremation is done at the main establishment and the main establishment is within 60 miles of the branch facility, then the equipment for such preparation of dead human bodies is not required at the branch facility.

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



**West
Virginia
Cemetery & Funeral Association**

RECEIVED
JUL 29 2000

July 28, 2000

Sherri Douglas, Executive Director
WV BOARD OF EMBALMERS & FUNERAL DIRECTORS
179 Summers Street, Suite 305
Charleston, WV 25301

Dear Ms. Douglas,

Thank you for giving us the opportunity to review the Proposed Rules under Chapter 30 of the West Virginia Statutes. Listed below please find our observations and comments relating to specific portions of the proposed rules:

A. Proposed 6CSR: General Provisions, Section 6-1-9-(9.2.3)

This rule creates new advertising requirements that are over-reaching and unnecessary. This information is readily available through the Secretary of State's Office, as are all other businesses operating in the State of West Virginia. We feel this proposed requirement singles out our industry and offers no benefits to our client families.

C. Proposed 6CSR2: Funeral Goods Sales, Section 6-2-2 (2.3)

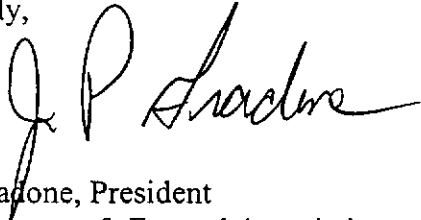
This creates a new definition for funeral establishments, which attempts to circumvent current law. It is obvious this language is a far-reaching attempt to broaden the Board's regulatory authority. This is also true for the funeral establishment's definition under Proposed Title 6, Series 3 (Crematory Requirements), Section 6-3-2 (2.3). Under these proposed rules, the definition of funeral establishment has been altered to fit each different entity. Therefore, the definition of funeral establishment is unclear and inconsistent with the original intent of the statute.

Section 6-2-2 (2.7)

As you know, cemeteries are regulated under Chapter 35. Therefore, we feel that the last sentence of this Paragraph, "*It shall not include cemetery lots, markers, . . .*", should be deleted and cemetery exemption should be noted in it's place.

We hope you will give serious consideration to our concerns, and feel free to contact our association for further discussion. We look forward to working with you in this endeavor.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. P. Gradone". The signature is written in black ink and is positioned above the typed name.

J. P. Gradone, President
WV Cemetery & Funeral Association

CC: John Attili, President
WV Funeral Directors Association



STATE OF WEST VIRGINIA
Board of Embalmers and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301
304-558-0302
FAX 304-558-0660

August 17, 2000

West Virginia Cemetery and Funeral Association
JP Gradone, President
2210 Washington Street, East
Charleston, WV 25311

Dear Mr. Gradone:

The Board reviewed your written comments on August 16, 2000 on the proposed legislative rules regarding funeral establishments, specifically §6-1-9 and §6-2-2.

Please find enclosed Response addressing each concern outlined in your written comments dated July 28, 2000.

The Board appreciates your input and attempted to take into consideration all points of view in their pursuit of regulations that meet the Board's duty to protect the public and enforce related regulations.

Sincerely,

Sherri Douglass, MSW
Executive Director

Response to West Virginia Cemetery and Funeral Association

Regarding Concern A:

The Board's Legislative Committee included a new section 9.2.3.a. and b. which require any funeral establishment to disclose ownership in any advertisement. It has been the history of funeral service that funeral establishments were owned locally by families who lived and worked in the community. The name of the funeral home clearly shouted out who the owner was. Now, as with many businesses, the concept of family-owned businesses is becoming a thing of the past. And, while the newly-purchased funeral home might maintain the same name it has had for the last 50 years, it certainly is not owned by the former owner. And while the funeral home may continue to provide excellent service to the community, the consumer still believes he or she is dealing with the former owner.

The purchasing of existing businesses is a reflection of the economics of our nation. Companies are becoming larger and are merging together to pool resources. Small businesses simply don't exist to the extent that they did in years past. This is not to say that corporate-owned businesses or larger businesses are a bad thing, whether small domestic corporations or large multi-million dollar businesses. Expansion of business certainly has strengthened our economy. And, this proposed amendment is not targeted only to those large franchise businesses. A proprietorship may be purchased by another competing business or proprietorship. Or, a new funeral home may open its doors in the community.

However, consumers are not aware that they are no longer purchasing goods and services from their neighbor or their high school buddy. At least when Walmart builds a new store, consumers are obviously aware that it is part of a chain. Consumers are not aware that funeral establishments are becoming a part of that "chain" system. They are not aware that the financial atmosphere in the funeral industry has changed the way they are owned and operated.

It is the board's belief that a consumer should have the basic right of knowing where their money is going. The culture of our state is one that thrives on a sense of honesty and pride. West Virginians, by our nature, are trusting people. This is a part of who we are as human beings. It is a deception to our residents if they don't have the knowledge of ownership.

Regarding Concern C, part 1:

While WVCFA would like to believe that these rules are an attempt to circumvent current law, Attorney General Legal Counsel had stated during a recent board meeting that the definition of funeral establishment contained in the statute is a broad enough definition to allow the regulation of funeral goods sales and crematories. The board is simply attempting to lay a foundation to such regulation, to provide for more specific requirements of each of these types of funeral establishments.

Funeral establishments can vary greatly. Some provide a full range of products and services. Some simply provide the funeral service. Some only provide embalming or preparation of bodies. Some sell only funeral goods. And still others only offer cremation services. Regardless of what aspect of the funeral industry that these businesses cater to, they are still all offering products and services "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."

Many other regulatory boards have variations of their licenses. For instance, the Board of Pharmacy has mail-order pharmacies and regular pharmacies. The Board of Social Work Examiners has levels of

licensing including the temporary license, the basic license, the graduate level license, the certified level, and the clinical level. These are all variations of the same license. Each license denotes what "type" of practice can take place. Obviously the basic social work license would not permit a person to practice clinical social work; only the clinical license would allow this. Likewise, a mail order pharmacy offers different services than a regular pharmacy.

To say that funeral goods sales and crematories are not types of funeral establishments is simply an attempt to keep cemeteries, in general, from stricter regulation. In comparison to funeral establishments, cemeteries are much less regulated. However, cemeteries and other businesses are attempting to sell goods and services which are directly related to the funeral industry and thus would fall under the board's jurisdiction.

By definition in §30-6-4, 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."

To say that the selling of caskets and other related items is not "incident to the...burial or other disposition of dead human bodies" is ludicrous. Most people are buried in a casket or, if cremated, inurned in a container. And to say that cremation services are not "incident to the...other disposition of dead human bodies" is also illogical. A human body can be disposed of in only a handful of ways, those being body donation, burial of the body intact, and cremation of the body. Most states that regulate cremation consider the cremation process itself to be final disposition. In fact, our International Conference of Funeral Service Examining Boards offer model law which defines the cremation process itself as "final disposition."

Regarding Concern C, part 2:

It is not the intent of this board to regulate cemeteries in regard to selling of cemetery items, such as lots, markers, etc. However, to completely exempt cemeteries from these rules would do an injustice to the consumer. As stated previously, many other businesses are starting to sell funeral related goods. Cemeteries just happen to be one such business; they sell caskets and other such items. There are "casket stores" beginning to open for business as well. It is the belief of the board that it shouldn't matter who is selling these items, only that the consumer must be protected utilizing consistent guidelines, and that all entities should be required to follow the same rules if they sell the same products and/or services. Traditional funeral homes are already regulated, in regard to selling of funeral goods, such as caskets and outer burial containers, both by the Federal Trade Commission and this board. However, other businesses selling these same items are not regulated. Consumers should be able to compare apples to apples, and when one industry can sell goods with no regulation while another industry selling the exact same goods is regulated, the consumer loses out.

The cemetery industry may say they are already regulated, and the board does not disagree with this. The funeral industry is also regulated. All businesses are regulated to an extent. Traditional funeral homes are certainly regulated heavily and necessarily. However, the current regulations do not provide protection to the consumer who purchases funeral goods from cemeteries or casket stores. The same rules must apply to all. Therefore, to provide exemption to cemeteries would not provide consumer protection.

FILED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Dec 28 3 29 PM '00

Agency: Board of Embalmers and Funeral Directors
Subject: Funeral Goods Sales, 6 CSR 2
Date: November 25, 2000
Staff Counsel: Rita A. Pauley

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

PERTINENT DATES

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

ABSTRACT

The proposed rule is new. Its stated purpose is to regulate the retail sale of funeral goods such as caskets and urns by business that do not handle dead human bodies or provide funeral services. The Board sees a need for this rule in order to protect the public and to eliminate an anti-competitive atmosphere between regulated and unregulated sale of funeral goods.

This rule provides definitions and establishes the general operating provisions of the Board. It requires price disclosures, creates advertising and solicitation restrictions and sets forth the duties and responsibilities of a funeral goods provider.

Assuming that the Board has the authority to regulate these businesses the provisions of this rule should be included in 6 CSR 1 or all funeral establishments should be covered by this rule and the sales provisions of Series 1 should be deleted.

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

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule. The rule applies to funeral establishments that sell only funeral goods.

Section 2 is the definition section. It changes the statutory definition of "funeral establishment" for the purpose of this rule to make it apply only to business that sell only funeral goods. These business are not allowed to sell funeral services or prepare dead human bodies for burial or cremation nor are they allowed to transport bodies. The definition is inconsistent with the statute. West Virginia Code §30-6-4 defines "funeral establishment" as

...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."

It may be that this broad language is sufficient to grant general regulatory authority over retail sale of funeral goods to the Board. If so, it is unnecessary to go from the general to the specific by way of this rule. Clearly, it is improper to make specific changes to the statutory definition for purposes of one rule.

"Registrant" is defined as a person who holds a certificate of registration issued by the Board but it does not say who or what the registration is for.

Section 3 provides that licensees, registrants, their agents and employees will report any information of a possible crime to law enforcement and that they will not conceal evidence of a crime.

Section 4 sets forth the requirements for price disclosure. There are very specific requirements for the price list including the 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. Five disclosures dealing with consumers rights must also be on the price list. The price list must be given to anyone requesting it. There are similar requirements for the Casket Price List and the Outer Burial Price List.

A statement of goods selected must be prepared for the consumer at the conclusion of the sale listing each item to be purchased, the cost per item, any cash advanced toward the purchase, total cost of purchases and final cost after deducting cash advances or deposits. The statement must also contain several disclosures. Prices of funeral goods offered for retail sale must be provided if requested over the telephone.

Employees and agents of funeral establishments are prohibited from making false or misleading statements about protective features of their products and product warranties. This section requires employees and agents of funeral establishments to tell consumers that the price charged for an item is not the establishments cost if any of the employees or agents keeps a rebate, commission or trade or volume discount.

Section 5 deals with advertising and solicitation. Licensees, their agents and employees "registrants" and apprentices are prohibited from engaging in any type of false, misleading, untrue or deceptive advertising. There is no size limit on printed advertising. Licensees, their agents and employees "registrants" and apprentices are prohibited from soliciting business or having someone else solicit business for them. Nor may they offer or accept, directly or indirectly, kickbacks or bribes.

West Virginia Code §30-6-5 requires all advertising to contain the name of the licensed funeral director who is actually in charge of the funeral home, establishment or any other places pertaining to funeral directing or conducting funerals. The rule carries this requirement one step further by setting forth identifying requirements for corporations, LLC's, limited partnerships, LLP's, sole proprietorships and general partnerships. The larger business entities that are required to register with the Secretary of State's

Office must include in the advertisement the trade name or the business as it appears on the organizing documents, the name of the business as it appears on the license or certificate of registration issued by the Board, the location and or mailing address of the business and the name of the licensed or registered person in charge. Sole proprietorships and general partnerships must include in the advertisement the DBA division or subsidiary name as it appears on the tax commission business registration form, the name of the business as it appears on the license or certificate of registration issued by the Board the location and or mailing address of the business and the name of the licensed or registered person in charge and identify the owner of the business.

This section allows funeral establishments to advertise casket prices and other funeral goods. It requires the advertisement to contain at least one casket this is considered the least expensive of the models offered for sale. A sample of any stock that is advertised must be kept in stock for at least 30 days after the advertisement has been published. The establishment must be able to meet all requests for the items advertised for a period of not less than 30 days without increasing the advertised price.

Section 6 provides for confidentiality of information relating to the domestic life in any home where they be called upon to provide services. This of course does not prohibit releasing information to any person lawfully entitled to receive the information.

Section 7 provides that each funeral establishment, as defined in this rule, must have a registered funeral goods provider in charge of the day-to-day operations. There is no requirement in this rule or in 6 CSR 1 that anyone register with the Board.

Section 8 deals with inspections. In as much as the particular funeral establishments covered by this rule are retail stores, it is unclear why there is a need to inspect them. The inspection covers the public areas including restrooms, the price lists and the casket labels required in section 9 of this rule.

Section 9 specifies the equipment necessary for a retail sales operation under this rule. It requires that caskets have a permanent adhesive label containing the manufacture's name, material

composition of the casket (wood or metal), gauge of metal and the type of materials used on the exterior.

Section 10 states that the penalties and grounds for disciplinary action set forth in W.Va. Code §30-1-1 et seq. and §30-6-1 et seq. will be followed by the Board.

Section 11 contains the fees miscellaneous fee provisions. This section also provides that after the initial inspection an inspection fee of \$200 will be charged for each inspection conducted. The fee will also be charged for missed appointments with the inspector unless the registrant shows good cause for missing the appointment. The Board has established a \$5.00 fee for copies of the authorizing statute and the Board's rule. The Board does not have the authority to provide a copy of its rules. By statute only the Secretary of State is authorized to provide copies of rules and charge for the service.

Section 12 provides that all inquiries relating to any aspect of licensing requirements must be submitted to the Board in writing. However, this rule does not require licesnure.

Section 13 sets forth the requirements for continuing education. All continuing education programs must be approved by the Board prior to being presented and they must be relevant to the practice of mortuary science. One forth of the required continuing education credits may be obtained through audio or video media. The Board may test a licensee on his or her knowledge of the material covered by the audio or video tapes. There is no similar provision for testing if the licensee obtained credits by attending a program approved by the Board. This section does not provide such pertinent information as why continuing education is required for retail sales, how many credits are required, how long the reporting period is or whether there is any waiver?

AUTHORITY

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

(i) On or before the first day of July, two thousand, the board shall propose for legislative promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code rules necessary to effectuate the purpose of this article including, but not limited to, the subjects to be covered in the examinations and the standards to be attained for licensure; requirements for continuing education, including authorizing continuing education credits through audio or video recordings; and a procedure for the investigation and resolution of complaints against persons licensed under this article.

ANALYSIS

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

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

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

No.

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

Yes. This rule is inconsistent with some of the provisions in 6 CSR 1.

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

No.

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

No.

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

Yes.

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

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.