

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

Form #2

Do Not Mark In This Box

FILED

JUL 3 8 56 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Legislative CITE AUTHORITY: 30-6-3(i), 30-6-14, 30-1-8(h)

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: 4

TITLE OF RULE BEING PROPOSED: Complaint and Hearing Procedures

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.

Joseph F. Ford III - President
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

att. 20 w/out referenced material
att. 20 w/ referenced material

SUMMARY OF PROPOSED RULE

Title 6

Legislative Rules

Series

Complaint and Hearing Procedures

This rule introduces a new series entitled "Complaint and Hearing Procedures." The rules focuses on the procedures for the investigation and resolution of complaints.

The rule prescribes necessary information for the initiation of an investigation. The rule provides the Board authority to establish a complaint committee, to obtain subpoenas, to depose witnesses, and to collect evidence. The rule establishes a standard procedure for investigations, as well as public hearing procedures.

STATEMENT OF CIRCUMSTANCES

Title 6

Legislative Rules

Series 4

Complaint and Hearing Procedures

Title 6, Series 4, Complaint and Hearing Procedures, is a new series. During the 2000 Legislative Session, two bills passed which required the introduction of complaint procedures, those being Senate Bill 22 and House Bill 4062. The hearing procedures in this proposed rules were derived from the hearing procedures which are currently found in 6CSR1 of the board's legislative rules, the same rules which are proposed to be repealed and replaced.

Standard procedures are necessary for consistent investigation and resolution of complaints, and provides the Board and its representatives a guide for appropriate conduct during the course of an investigation, which in turn protects the licensee's privileges and rights and affords due process.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Complaint and Hearing Procedures

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 proposed procedures are generally being utilized at this time.

3. Objectives of These Rules:

To establish complaint and hearing procedures for purposes of resolving complaints in an organized and consistent manner, as required by statute.

Rule Title: Complaint and Hearing Procedures

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 no economic impact on this agency.

- B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:
It is predicted that there will be little or no impact on organizations as these procedures are for the resolution of complaints against licensees.

- C. Economic Impact on Citizens/Public at Large.
There should be no economic impact on citizens at large, as it will not cost the complainant to follow through with the complaint process. The agency typically pays for witness and complainant expenses related to the resolution of the complaint.

Date: June 29, 2000

Signature of Agency Head or Authorized Representative:

Shemi Douglass

FILED

6CSR1

JUL 3 8 56 AM '08

TITLE 6
LEGISLATIVE RULE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 4
COMPLAINT AND HEARING PROCEDURES

§6-4-1. General.

1.1 Scope. - This rule relates to the complaint and hearing procedures for all licensees and registrants.

1.2 Authority. - WV Code §30-6-3(i), §30-1-8(h), §30-6-8 and §30-6-14.

1.3 Filing Date. -

1.4 Effective Date. -

§6-4-2. Complaint Procedures.

2.1. Any individual may make a complaint to the board concerning a licensee or registrant.

2.2. The board may accept an anonymous complaint if the information provided is adequate to begin an investigation.

2.3. The board shall accept a complaint in writing, by phone or in person. The board may provide a form for the purpose of submitting a written complaint, but shall accept a complaint if the information includes:

2.3.1. the alleged violation which prompted the complaint;

2.3.2. the name and address of the individual against whom the complaint is lodged;

2.3.3. the date or dates the incident or incidents occurred; and

2.3.4. the name or names of witnesses to the incident or incidents.

2.4. All complaints shall be referred to the Executive Director, Investigator, or counsel for the Board, who shall act as a representative for the board. A complaint committee shall be established to review such matters. This committee shall consist of two board members, with each member serving on the committee for two (2) years.

2.5. The board shall maintain a complaint log which records the receipt of each complaint, and the nature and the disposition of the complaint. The board shall also maintain a separate file on each complaint received, and each file shall have a number assigned it.

2.6. Upon receipt of complaint or on its own initiative, the representative for the board shall, within five (5) business days, issue an acknowledgement of the complaint to the complainant and shall initiate an investigation into the conduct which is occurring or has occurred which violates W.Va. Code §30-6-1 et seq. or

rules governing funeral service practitioners. The complaint committee may employ the services of consultants or other employees necessary to assist the representative for the board in an investigation.

2.6.1. The representative for the board shall issue subpoenas to gather necessary facts and evidence to determine validity of the allegations contained in the complaint. The representative shall have the authority to institute proceedings in the courts of this state to enforce its subpoenas for the production of documents and witnesses and its orders and to restrain and enjoin violations of W.Va. Code §30-6-1 et seq., or rules governing funeral service practitioners.

2.6.2. The board shall provide copies of complaint forms and other available evidence to the licensee or registrant against whom a complaint is filed within ten (10) days of receipt of complaint. The licensee shall respond within fourteen (14) days of such notification, to the allegations contained in the complaint, by making an appointment with the representative for the board to meet in person or by preparing a written statement and returning it to the board.

a. Exception. The board may use its discretion regarding the notification of complaint to the licensee or registrant if such notification would result in possible tampering of evidence. However, once such evidence is collected by the representative for the board, the licensee or registrant must be notified, pursuant to §6-4-2.6.2..

2.6.3 The representative for the board may depose witnesses, take sworn statements, and collect other evidence.

2.6.4 The representative for the board may require a criminal history records check. The licensee or registrant under investigation shall furnish to the board a full set of fingerprints for purposes of conducting a criminal history check. Records will be checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the licensee's or registrant's state of residence, and the United States Federal Bureau of Investigation.

2.6.5. The representative for the board shall evaluate the complaint, licensee response and other investigative information to determine if a violation of law has occurred and to determine the need for additional investigation. The representative shall have the authority to enter any funeral establishment to review documents related to the complaint and to interview any individual during the course of an investigation. Subpoenas duces tecum to compel the production of documents may be issued by the representative for the board. The subpoenas shall be issued pursuant to W.Va. Code §29A-5-1(b).

2.7. Upon completion of investigation, the representative for the board shall present investigative information in a report to the complaint committee. The report shall contain a statement of allegations, a statement of facts, and an analysis of the complaint. The analysis shall consist of a description of the conduct of the licensee or registrant, the records reviewed, and a statement of findings and recommendations. If probable cause for further action is not identified, the representative may make a recommendation that a complaint be dismissed. All investigative information shall be provided to the committee for review for any case recommended for dismissal due to lack of probable cause. The committee may approve dismissal of the case or direct the representative for the board to proceed with further investigation if the committee believes further investigation is necessary.

2.8. Upon completion of investigation and investigative information has been reviewed by the complaint committee and probable cause is established, the committee may negotiate terms of a consent agreement with a licensee or recommend to the board that the case be set for hearing.

2.9. The complaint committee shall review the terms of a consent agreement and all investigative information. The committee may then approve the consent agreement, request revisions to the consent agreement

or reject the consent agreement.

2.10. If the licensee or registrant contests the allegations and refuses to enter into a consent agreement, the committee may recommend to the board that the case be set for hearing. All hearings shall be in accordance with Chapter 29A of W.Va. Code.

2.11. Members of the complaint committee shall be disqualified from the formal hearing process if the case has been presented to the committee prior to the formal hearing.

2.12. All powers of the board, the complaint committee, and its representatives may be exercised to investigate a matter, even if a hearing or disciplinary action does not result from the investigative findings.

§6-4-3. Public Hearing Procedures.

3.1. Definitions.

3.1.1. **Charged Party.** For the purposes of this rule, the term "charged party" means an individual who holds a license or holds a certificate of registration issued by the Board and who has been charged by the Board as described in these rules.

3.1.2. **Demanding Party.** For the purpose of this rule, the term "demanding party" means an individual who has been denied a license or a certificate of registration by the Board and who, as a result, demands that a hearing be held before the Board on the issue of denial, suspension, or revocation.

3.2. Hearing Procedures.

3.2.1. Any person denied a license or certificate of registration, or had a license or certificate of registration suspended or revoked by the Board who believes the denial, suspension or revocation was a violation of W.Va. Code §30-1-1 et seq and/or 30-6-1 et seq. is entitled to a hearing on the action denying the license.

3.2.2. Any person who desires a hearing for the reason described in ~~subsection 3.2.1 of this section~~ must present a written demand for a hearing to the Board.

3.2.3. When the president of the Board or his or her authorized designee is presented with a demand for a hearing, he or she shall schedule a hearing within forty-five (45) days of receipt by him or her of the written demand, unless a hearing is postponed to a later date by mutual agreement.

3.2.4. Charges may be instituted against any licensee or registrant, by the Board when reasonable cause exists for believing that the licensee or registrant, may have engaged in conduct or be in such condition that the license should be suspended, revoked or otherwise disciplined for one or more of the grounds set forth in W.Va. Code §30-6-1 et seq. or this rule. Charges may be based upon information received by a verified written complaint filed with the Board and further information gathered by the Board in the process of investigating the complaint. Charges may also be based upon information received solely through investigative activities undertaken by the Board.

3.2.5. Charges instituted against a licensee or registrant as described in ~~subsection~~ 3.2.4 of this section shall be set forth in a Complaint and Notice of Hearing issued in the name of the Board as the agency of the State regulating the practice of Embalming, cremation, Funeral Directing and selling of funeral goods. The Complaint and Notice of Hearing shall designate the Board as the "Complainant", and shall designate the Licensee, or Registrant involved in the proceeding as the "Respondent"; shall set out the substance of each offense charged

with sufficient particularity to reasonably apprise the Respondent of the nature, time and place of the conduct or condition complained of; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

3.2.6. Upon receipt of a demand for a hearing described in ~~subsection 3.2.1 and 3.2.2 of this section~~, the president or his or her designee shall provide the demanding party with a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of embalming, cremation, funeral directing and selling of funeral goods. The Complaint and Notice of Hearing shall designate the demanding party as the "Complainant" and shall designate the Board as the "Respondent"; shall set out the substance of each and every reason that the Board has denied the demanding party a license with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

3.2.7. The Board may amend the charges set forth in a Complaint and Notice of Hearing as it considers proper.

3.2.8. A Complaint and Notice of Hearing shall be served upon the demanding or charged party at least thirty (30) days prior to the date of the hearing.

3.2.9. Upon written motion received by the Board no later than thirty (30) days prior to the date of the hearing, a more definite statement of the matters charged or the reasons stated for denial, suspension or revocation of licensure shall be provided to the demanding or charged party or his or her counsel, at least fifteen (15) days prior to the hearing date.

3.2.10. Hearings shall be conducted as follows:

a. Any party to a hearing has the right to be represented by an attorney-at-law, duly qualified to practice law in the State of West Virginia.

b. The Board shall be represented by the West Virginia Attorney General's Office at no additional compensation.

c. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing. Furthermore, the rules of evidence as applied in civil cases in the circuit courts of this State shall be followed. However, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

d. The rules of privilege recognized by the law of this State shall be followed.

e. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

f. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as considered appropriate by the Board or its designated hearing examiner; and, when appropriate, may cross-examine witnesses called by the Board in support of the charges or in defense of its decision to deny licensure.

g. The hearing shall be held at such time and place as is designated by the Board, but no hearing shall be

conducted unless and until at least thirty (30) days written notice thereof has been served upon the charged or demanding party and/or his or her attorney in person; or if he or she cannot be found, by delivering the notice at his or her usual place of abode, and giving information of its purport, to the party's spouse, or to any other person found there who is a member of his or her family and above the age of sixteen years; or if neither the spouse nor any such person can be found there, and he or she cannot be found, by leaving the notice posted at the front door of such place of abode; or if he or she does not reside in this State, the notice may be served by the publication thereof once a week for three successive weeks in a newspaper published in this State; or the notice may be served by registered or certified mail to the licensee's last known address as filed with the Board.

h. The hearing shall be open to the general public.

i. Members of the Board and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters: Provided, that no member of the Board who testifies at the hearing shall thereafter participate in the deliberations or decisions of the Board with respect to the case in which he or she testified.

j. The hearing may be conducted by one or more Board members or by a hearing examiner appointed by the Board.

k. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleading, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing shall be made and a transcript thereof maintained in the Board's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

l. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

m. Where a hearing is held upon the instance of the Board after charges have been brought against a licensee or registrant pursuant to subsections 3.2.4 and 3.2.5 of this section, the Board has the burden of proof and shall present its evidence and/or testimony in support of the charges first.

n. Where a hearing is held upon demand under the provision of subsections 3.2.1, 3.2.2, 3.2.3, and 3.2.5 of this section, the demanding party has the burden of proof and is therefore be required to present his or her evidence first.

o. Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 3.2.10.(m) of this section, the Respondent or charged party has the right to submit his or her evidence in defense.

p. Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 3.2.10.(n) of this section, the Board has the right to submit its evidence in defense.

q. The Board may call witnesses to testify in support of its decision to deny licensure or in support of the charges instituted against a licensee; may present other evidence to support its position; and, may cross-examine witnesses called by the demanding party or charged party in support of his or her position.

r. All parties have the right to offer opening and closing arguments, not to exceed ten (10) minutes for each presentation.

s. Hearings held by the Board as a result of charges instituted against a licensee or registrant may be

continued or adjourned to a later date or a different place by the Board or its designee by appropriate notice to all parties.

t. Motion for a continuance of a hearing may be granted upon a showing of good cause. Motions for continuance must be in writing and received in the office of the Board no later than seven (7) days prior to the hearing date. In determining whether good cause exists, the Board will consider the ability of the party requesting the continuance to proceed effectively without a continuance. The Board shall deny a motion for a continuance filed less than seven (7) days from the date of hearing unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of hearing may be ruled on by the Executive Director or Assistant Executive Director of the Board or designated hearing examiner. All other motions for continuance shall be ruled on by the Board member(s) or the hearing examiner presiding over the hearing.

u. All motions related to a case set for hearing before the Board, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Board at least ten (10) days before the hearing. Prehearing motions shall be heard at a prehearing conference or at the hearing prior to the commencement of testimony. The Board member(s) or the hearing examiner presiding at the hearing shall hear the motions and the response from the non-moving party and shall rule on the motions accordingly.

3.3. Transcript of Testimony and Evidence.

3.3.1. All testimony, evidence, arguments and ruling on the admissibility of testimony and evidence shall be recorded by stenographic notes and characters or by mechanical means.

3.3.2. All recorded materials shall be transcribed. The Board has the responsibility to make arrangement for the transcription of the recorded testimony and evidence.

3.3.3. Upon the motion of the Board or any party assigning error or omission in any part of any transcript, the Board or its appointed hearing examiner shall settle all differences arising as to whether the transcript truly discloses what occurred and shall revise the transcript as appropriate so as to make it conform to the truth.

3.3.4. A transcript of the hearing shall be provided to all members of the Board for review.

3.4. Submission of Proposed Findings of Fact and Conclusions of Law. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Board or its duly appointed hearing examiner.

3.5. Hearing Examiner.

3.5.1. The Board may appoint a hearing examiner who may subpoena witnesses and documents, administer oaths and affirmations, examine witnesses under oath, rule on evidentiary matters, hold conferences for the settlement or simplification of issues by consent of the parties, cause to be prepared a record of the hearing so that the Board is able to discharge its functions and otherwise conduct hearings as provided herein.

3.5.2. Hearing examiners appointed by the Board are not authorized or empowered to grant, suspend, revoke or otherwise discipline any licensee or registrant.

3.5.3. The hearing examiner shall prepare recommended findings of fact and conclusions of the law for submission to the Board. The Board may adopt, modify or reject the findings of fact and conclusions of law.

3.6. Conferences; Informal Disposition of Cases.

3.6.1. At any time prior to the hearing or thereafter, the Board, its designee or its duly appointed hearing examiner may hold conferences for the following purposes:

- a. To dispose of procedural requests, prehearing motions or similar matters;
- b. To simplify or settle issues by consent of the parties; or
- c. To provide for the informal disposition of cases by stipulation or agreement.

3.6.2. The Board or its appointed hearing examiner may cause the conferences to be held on its own motion or by the request of a party.

3.6.3. The Board may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into the stipulations and/or agreements without conference.

3.7. **Dispositions.** Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this State.

3.8. Subpoenas.

3.8.1. Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Board, its Executive Director, Assistant Executive Director, and by the hearing examiner appointed by the Board. The subpoenas shall be issued pursuant to W.Va. Code §29A-5-1(b).

3.8.2. Written requests by a party for the issuance of subpoenas or subpoenas duces tecum as provided in ~~subsection 3.8.1~~ of this section must be received by the Board no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas or subpoenas duces tecum shall see that they are properly served in accordance with W.Va. Code §29A-5-1(b).

3.9. Orders.

3.9.1. Any final order entered by the Board following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W.Va. Code §29-5-3 and ~~§30-1-8(d)~~. The orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law.

3.9.2. The findings of fact and conclusions of law must be approved by a majority of the Board either by a poll or vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Board shall be served upon the demanding or charged party and/or his attorney of record, if any, within five (5) days after entry by the Board by personal service or by registered or certified mail.

3.10. **Appeals.** An appeal from any final order entered in accordance with these rules shall comply with the provisions of W.Va. Code §29A-5-4.

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

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

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

4062

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and any fine which is levied shall be deposited in the state
2 treasury's general revenue fund. For purposes of this section, the
3 word "felony" means a felony or crime punishable as a felony under
4 the laws of this state, any other state, or the United States.
5 Every board referred to in this chapter is authorized to promulgate
6 rules in accordance with the provisions of chapter twenty-nine-a of
7 this code to delineate conduct, practices or acts which, in the
8 judgment of the board, constitute professional negligence, a
9 willful departure from accepted standards of professional conduct
10 or which may render an individual unqualified or unfit for
11 licensure, registration or other authorization to practice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5. CONTESTED CASES.

§§29A-5-1. Notice required; hearing; subpoenas; witness fees, etc.; depositions; records.

(a) In any contested case all parties shall be afforded an opportunity for hearing after at least ten days' written notice. The notice shall contain the date, time and place of the hearing and a short and plain statement of the matters asserted. If the agency is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished. An opportunity shall be afforded all parties to present evidence and argument with respect to the matters and issues involved. The required notice must be given as specified in section two, article seven of this chapter. All of the testimony and evidence at any such hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. The agency shall prepare an official record, which shall include reported testimony and exhibits in each contested case, and all agency staff memoranda and data used in consideration of the case, but it shall not be necessary to transcribe the reported testimony unless required for purposes of rehearing or judicial review. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default. Each agency shall adopt appropriate rules of procedure for hearing in contested cases.

(b) For the purpose of conducting a hearing in any contested case, any agency which now has or may be hereafter expressly granted by statute the power to issue subpoenas or subpoenas duces tecum or any member of the body which comprises such agency may exercise such power in the name of the agency. Any such agency or any member of the body which comprises any such agency may exercise such power in the name of the agency for any party upon request. Under no circumstances shall this chapter be construed as granting the power to issue subpoenas or subpoenas duces tecum to any agency or to any member of the body of any agency which does not now by statute expressly have such power. When such power exists, the provisions of this section shall apply. Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by any person over eighteen years of age or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail. All subpoenas and subpoenas duces tecum shall be issued in the name of the agency, as aforesaid, but any party requesting their issuance must see that they are properly served. Service of subpoenas and subpoenas duces tecum issued at the instance of the agency shall be the responsibility of the agency. Any person who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state; and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state. All such fees shall be paid by the agency if the subpoena or subpoena duces tecum were issued, without the request of an interested party, at the instance of the agency. All such fees related to any subpoena or subpoena duces tecum issued at the instance of an interested party shall be paid by the party who asks that such subpoena or subpoena duces tecum be issued. All requests by interested parties for subpoenas and subpoenas duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees. Any such agency may compel the attendance of witnesses and the production of books, records or papers in response to such subpoenas and subpoenas duces tecum. Upon motion made promptly and in any event before the time specified in a subpoena duces tecum for compliance therewith, the circuit court of the county in which the hearing is to be held, or the circuit court in which the subpoena duces tecum was served, or the judge of either such court in vacation, may grant any relief with respect to such subpoena duces tecum which either such court, under the West Virginia Rules of Civil Procedure for Trial Courts of Record, could grant, and for any of the same reasons, with respect to a subpoena duces tecum issued from either such court. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by such agency or any member of the body

which comprises such agency, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein. Witnesses at such hearings shall testify under oath or affirmation.

(c) Evidentiary depositions may be taken and read as in civil actions in the circuit courts of this state.

(d) All hearings shall be conducted in an impartial manner. The agency, any member of the body which comprises the agency, or any hearing examiner or other person permitted by statute to hold any such hearing for such agency, and duly authorized by such agency so to do, shall have the power to: (1) Administer oaths and affirmations, (2) rule upon offers of proof and receive relevant evidence, (3) regulate the course of the hearing, (4) hold conferences for the settlement or simplification of the issues by consent of the parties, (5) dispose of procedural requests or similar matters, and (6) take any other action authorized by a rule adopted by the agency in accordance with the provisions of article three of this chapter.

(e) Except where otherwise provided by statute, the hearing in any contested case shall be held in the county selected by the agency.

(f) Notwithstanding the provisions of subparagraph (a) of this section, upon request to the agency from any party to the hearing all reported testimony and evidence at such hearing shall be transcribed, and a copy thereof furnished to such party at his expense. The agency shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence, and such transcription shall be accomplished with all dispatch.

§§29A-5-2. Rules of evidence; taking notice of facts; correction of transcript.

(a) In contested cases irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall be bound by the rules of privilege recognized by law. Objections to evidentiary offers shall be noted in the record. Any party to any such hearing may vouch the record as to any excluded testimony or other evidence.

(b) All evidence, including papers, records, agency staff memoranda and documents in the possession of the agency, of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(c) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

(d) Agencies may take notice of judicially cognizable facts. All parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(e) Upon motion in writing served by any party as notice may be served pursuant to section two, article seven of this chapter and therein assigning error or omission in any part of any transcript of the proceedings had and testimony taken at any such hearing, the agency shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated by the agency, so as to make it conform to the whole truth.

§§29A-5-3. Orders or decisions.

Every final order or decision rendered by any agency in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. Prior to the rendering of any final order or decision, any party may propose findings of fact and conclusions of law. If proposed, all other parties shall be given an opportunity to except to such proposed findings and conclusions, and the final order or decision shall include a ruling on each proposed finding.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of the order or decision and accompanying findings and conclusions shall be served upon each party and his attorney of record, if any, in person or by registered or certified mail.

§§29A-5-4. Judicial review of contested cases.

(a) Any party adversely affected by a final order or decision in a contested case is entitled to judicial review thereof under this chapter, but nothing in this chapter shall be deemed to prevent other means of review, redress or relief provided by law.

(b) Proceedings for review shall be instituted by filing a petition, at the election of the petitioner, in either the circuit court of Kanawha County, West Virginia or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within thirty days after the date upon which such party received notice of the final order or decision of the agency. A copy of the petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to effect any such appeal.

(c) The filing of the petition shall not stay enforcement of the agency order or decision or act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at any time after the filing of his petition, may apply to such circuit court for a stay of or supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or supersedeas upon such terms as it deems proper.

(d) Within fifteen days after receipt of a copy of the petition by the agency, or within such further time as the court may allow, the agency shall transmit to such circuit court the original or a certified copy of the entire record of the proceeding under review, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the agency, all agency staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceeding, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of the party requesting same, a copy of such record. In the event the complete record is not filed with the court within the time provided for in this section, the appellant may apply to the court to have the case docketed, and the court shall order such record filed.

(e) Appeals taken on questions of law, fact or both, shall be heard upon assignments of error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued. The court or judge shall fix a date and time for the hearing on the petition, but such hearing, unless by agreement of the parties, shall not be held sooner than ten days after the filing of the petition, and notice of such date and time shall be forthwith given to the agency.

(f) The review shall be conducted by the court without a jury and shall be upon the record made before the agency, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedures; or
- (4) Affected by other error of law; or

- (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record;
or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (h) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of this state in accordance with the provisions of section one, article six of this chapter.

§§29A-5-5. Exceptions.

The provisions of this article shall not apply to the workers' compensation fund, the bureau of employment programs, the state tax commissioner, the state road commissioner, the state road commission, and the teachers' retirement board.