

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

FILED

1987 JUN -1 AM 11:20

SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AGENCY: Department of Health TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 32

TITLE OF RULE BEING AMENDED: Vital Statistics

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

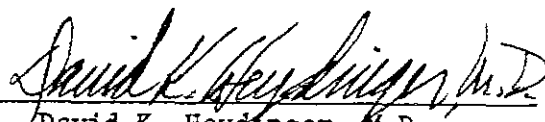
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 761

SECTION 64-2-16(5)(3), PASSED ON May 13, 1987

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: 6-1-87


David K. Heydinger, M.D.
Director of Health

SECRETARY OF STATE
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PROMULGATION HISTORY ABSTRACT

AGENCY: Department of Health

RULE TITLE Vital Statistics

SERIES # 32

RULE TYPE: Legislative

NEW RULE: _____; AMENDMENT OF EXISTING RULE: X

SECTION(S) AMENDED: Subsection 11.1(a)(4) is added.

DATE FILED PROPOSED RULE OR AMENDMENTS FOR PUBLIC HEARING: 10-17-86

DATE(S) OF PUBLIC HEARING: 11-17-86

For Interpretive, Procedural or Exempt Rules ONLY

DATE AGENCY ADOPTED RULE FILED: _____

DATE EFFECTIVE: _____

For Legislative Rules ONLY

DATE AGENCY APPROVED RULE FILED: 12-9-86

DATE OF ACTION BY L.R.M.R.C. : Approved 12-9-86, Amended _____

Approve Part _____, Reject _____

MODIFIED TO MEET L.R.M.R.C. COMMENTS; yes X, no _____

BILL OF AUTHORIZATION # 761, PASSED ON 5-13-87

AMENDED BY THE LEGISLATURE, yes _____, no X

FINAL FILING ON 6-1-87

EFFECTIVE ON 6-1-87

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DATE RULE OR AMENDMENT FILED AS AN EMERGENCY RULE: _____

TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

Vital Statistics

Series 32

1987

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WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

Vital Statistics

64 CSR 32

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TITLE 64

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WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

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Series 32

SECRETARY OF STATE

Title: Vital Statistics

Section 1. General

1.1. Scope - These legislative rules are revised to complement the revised vital statistics law which became effective July 1, 1969.

1.2. Authority - These legislative rules are issued under the authority of Chapter 16-1, Article 5, Section 3 of the West Virginia Code of 1931, as amended.

1.3. Filing Date - June 1, 1987.

1.4. Effective Date - June 1, 1987.

1.5. Supersession and Repeal of Former Regulations - This rule supersedes and repeals Vital Statistics, West Virginia Department of Health Legislative Rules, Series 32, 1983.

Section 2. Registration Districts - The state is hereby divided into registration districts as follows: Each county shall constitute a primary registration district for births, deaths, fetal deaths, marriages, and divorces and annulments of marriage. When deemed in the best interests of registration, the state board of health may establish state hospitals or other public institutions as special registration districts.

Section 3. Local Registration Officers - The state registrar shall appoint a local registrar of vital statistics for the registration of births and deaths in each registration district in the state. Each person so appointed shall receive a commission setting forth the area for which he is responsible for promoting and supervising vital registration. Each person so appointed shall formally inform the state registrar of his acceptance of the appointment in writing.

3.1. Deputy Local Registrars of Vital Statistics - Each person appointed as a local registrar shall immediately submit to the state registrar the name of the person or persons who are to act as his deputy local registrars. If such nominee is approved by the state registrar, he shall be authorized to perform all duties as provided in Section 16-5-8 of the West Virginia Code, under the supervision of the local registrar. Each person so appointed shall notify the state registrar of his acceptance in writing.

3.2. Subregistrars of Vital Statistics - When it appears necessary for the convenience of the people in any district, the local registrar is authorized, with the approval of the state registrar, to appoint one or more suitable persons to act as subregistrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated. Each subregistrar shall note on each certificate, over his signature, the date of filing and shall forward all certificates to the local

registrar of the district by the 10th and 25th days of each month or more frequently when directed to do so by the local registrar. Each subregistrar shall be subject to the supervision and control of the state registrar and may be removed by him for neglect or failure to perform his duty in accordance with the provisions of the vital statistics law and the regulations of the state board of health. He shall be subject to the same penalties for neglect of duty as the local registrar.

3.3. Duties of Local Registration Officers - Each local registration officer shall serve as the agent of the state registrar in the district where he is appointed. He shall, therefore, familiarize himself with the statutes, regulations and instructions so that he may promote and stimulate complete and accurate registration. He shall maintain lists of hospitals, funeral directors, physicians and midwives. He shall supply blank forms of certificates to such persons as require them. Each official shall examine certificates as they are submitted for registration to determine whether they have been prepared in accordance with the provisions of the statutes, regulations and instructions of the state registrar.

When any certificate submitted for registration is unsatisfactory, it shall be the duty of the registrar to notify the person responsible for the registration of its defects and to secure a complete and correct registration. Each registrar shall note over his signature the date each certificate of birth, death and fetal death is filed with him.

Each shipment of certificates transmitted to the state registrar shall be accompanied by a transmittal form provided for that purpose.

3.4. Absence, Illness, or Disability of Local Registrar - As soon as advised of the absence, illness, or disability of the local registrar, the deputy local registrar shall immediately assume and be liable for all duties and responsibilities of the local registrar. In so doing his first official act shall be to advise the state registrar that he has assumed such responsibilities. Conversely, he shall notify the state registrar when the local registrar again assumes his normal responsibilities.

Section 4. Supplies and Forms

4.1. State Registrar - The state registrar shall prepare and supply all blanks and forms to be used in registering, recording and preserving data of vital statistics or in otherwise carrying out the purpose of the statutes governing vital statistics. He shall prepare and issue such detailed instructions concerning use of all forms and supplies as may be required to secure the uniform observance of the statutes and the maintenance of an adequate system for the collection, registration, and preservation of data of vital statistics throughout the state.

4.2. Local Registration Officers - Local registrars, deputy local registrars and subregistrars of vital statistics shall maintain an adequate supply of all forms and blanks furnished by the state registrar in order to furnish required forms and blanks to all persons obligated to report data on vital events within their jurisdiction.

4.3. Forms Property of State Division of Vital Statistics - All forms, certificates and reports are the property of the state division of vital statistics and shall be surrendered to the state registrar, or his accredited representative, upon demand. The forms supplied for reporting vital events shall be used for official purposes as provided for by law, regulations and instructions of the state registrar. No forms shall be used in the reporting of or making copies of vital records except those furnished by the state registrar.

Section 5. Certificate Forms and Reports

5.1. Preparation of Certificates and Reports - All certificates and records provided for in the statutes governing vital statistics shall be prepared on a typewriter with a black ribbon whenever possible, or shall be written legibly in dark, unfading ink. All signatures required shall be entered in dark, unfading ink. No certificate shall be complete and correct and acceptable for filing:

(a) That does not have the name typed under any illegible signature for positive identification purposes;

(b) That does not supply all items of information called for thereon or satisfactorily accounts for their omission;

(c) That contains alterations or erasures;

(d) That does not contain genuine signatures;

(e) That is marked "copy" or "duplicate";

(f) That is a carbon copy;

(g) That is prepared on an improper form;

(h) That contains obviously improper or inconsistent data;

(i) That contains any data relative to the putative father of an illegitimate child without his written consent, or unless paternity has been determined by a court of competent jurisdiction;

(j) That contains an indefinite cause of death denoting only symptoms of disease or conditions resulting from disease;

(k) That is not prepared in conformity with these regulations or instructions issued by the state registrar.

5.2. Foundling Registration - Whoever assumes custody of a living infant of unknown parentage shall, on a blank certificate of live birth, report the required facts. The certificate shall be plainly marked "foundling registration" in the top margin and data required will be determined by approximation. Parentage data shall be left blank and the certification of the attendant shall be amended to read "signature of custodian," indicating title, if any.

Section 6. Correction and Amendment

6.1. Application

(a) To correct or amend a birth certificate, application shall be made by one of the parents, the guardian or the legal representative of the child, or, if the person whose certificate is involved is of legal age or over, by the person himself.

(b) To correct or amend a report of fetal death, application shall be made by one of the parents, or, for items of a medical nature, by the physician, the coroner, the medical examiner, or the local health officer.

(c) To correct or amend a death certificate, application shall be made by the surviving spouse, the next of kin or the funeral director. Corrections or amendments to the medical certification of cause of death shall be requested by the attending physician, the medical examiner, the coroner, or the local health officer. The funeral director shall request any amendments to the date, place and method of disposal.

(d) To correct or amend reports of marriage or divorce, a certification must be received from the county clerk or clerk of circuit court maintaining the permanent record from which the report was prepared stating that such record has been amended.

(e) Within the first 60 days after the filing of a certificate, the state registrar may obtain missing or corrected data by personal call, telephone or query form from the reporting source responsible for filing the certificate. Information so obtained by the state registrar shall not be deemed an amendment or correction.

6.2. Correction of Errors During First Year - Correction of obvious errors, transposition of letters in words of common knowledge, or omissions, may be made by the state registrar within the first year after the date of the event, either upon his own observation, upon query, or upon request of a person with a direct and tangible interest in the record. When such additions or minor corrections are made by the state registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change, shall be made in the margin of the record in such a way as not to become a part of the record. The certificate is not to be marked amended.

All other corrections or amendments occurring during the first year, unless covered elsewhere in these regulations or in the law, shall be supported by an affidavit setting forth the identity of the incorrect record; the incorrect data as it is listed on such record; the correct data as it should appear; and one piece of documentary evidence supporting the correction or amendment. Records corrected or amended by this procedure shall be marked "amended."

6.3. Correction After First Year - Applications for corrections or amendments made after the registrant's first birthday, unless covered elsewhere in these regulations or in the law, shall be supported by an affidavit setting forth the identity of the incorrect record; the incorrect data as it is listed on such record; the correct data as it should appear; and one

or more items of documentary evidence established at least five years prior to the date the correction or amendment is requested or prior to the registrant's seventh birthday. The state registrar may determine a priority of best evidence and may, at his discretion, require additional documentary evidence to support the requested correction.

6.4. Change of Given Names - Until the registrant's first birthday, given names may be added or changed upon written request of both parents; or of the mother in the case of a child born out of wedlock or the death or incapacity of the father; or of the father in the case of the incapacity or death of the mother; or of the guardian in the case of the death or incapacity of both parents. This procedure may be employed to change a given name only once. However, until the registrant's seventh birthday the given name, for a child whose birth was reported without a given name, may be added based upon an affidavit signed by both parents; by the mother in the case of a child born out of wedlock or the death or incapacity of the father; by the father in the case of the death or incapacity of the mother; or by the guardian in the case of the death or incapacity of both parents. Such certificate is not to be considered as amended. After the seventh birthday one or more pieces of documentary evidence must be submitted to substantiate the name being added.

6.5. Medical Items - All items of a medical nature may be amended only upon request of those responsible for completion of the entries involved, e.g., attending physician; hospital administrator; coroner; medical examiner; local health officer. The physician, coroner, medical examiner, or local health officer may by affidavit amend the cause of death within 90 days following the date of death or fetal death he certified unless a certified copy has been issued of the death or fetal death certificate. Any amendment after a certified copy has been issued, or after 90 days following death or fetal death, can be made only by court order. Provided, however, that the cause of death may be amended at any point upon submission of a report of autopsy findings.

6.6. Legal Change of Name - For a legal change of name a certified copy of the court order changing the name must be presented to the state registrar.

All information regarding the change of name shall be placed in an envelope and sealed following the change of name. Such envelope shall be placed in a file maintained for that purpose.

6.7. Correction of Same Item More Than Once - Once a correction of an entry is made on a vital record, that entry shall not be corrected again unless (1) it can be shown that the first correction was made through mistake; or, (2) upon receipt of an order from a court of competent jurisdiction.

6.8. Methods of Correcting or Amending Certificates

(a) A new name authorized by court order shall be recorded by drawing a single line through the name appearing on the certificate and inserting immediately above it or to the side of it the new name. In addition, there shall be inserted on the certificate or in a separate file a statement that the name was changed by court order and the date and place of such order. The word "amended" shall be written in the top margin of the certificate.

Certificates on which given names are added within seven years after birth shall not be considered as amended.

(b) In all other cases, corrections or amendments shall be made by drawing a single line through the incorrect item, if listed, and inserting the correct or missing data immediately above it or to the side of it, or by completing the blank item, as the case may be. In all cases where a line must be drawn through an original entry, it must not obliterate the original entry. In addition, there shall be inserted on the certificate or in a separate file a statement identifying the affidavit and documentary evidence used as proof of the correct facts, the date the correction was made and the initials of the person making the change. As required by law or regulation, the work "amended" shall be written in the top margin of the certificate. In every case where the work "amended" is required to appear on the certificate, it shall appear on all copies issued of such certificates.

Section 7. New Certificates of Birth Following Adoption, Legitimation and Paternity Determination

7.1. Adoption - A new certificate of birth may be prepared by the state registrar for a child born in West Virginia and subsequently adopted through the courts of West Virginia, the several states of the United States, or in a foreign nation. The standard birth certificate form in current use at the time of adoption shall be used for the preparation of the new certificate.

An adoption report or certified copy of an adoption decree must be in the possession of the state registrar. The necessary data to locate the original record and data concerning the adoptive parents shall be on a form furnished by the state registrar. Comparable forms issued by other states shall be acceptable.

7.2. Legitimations and Determinations of Paternity - If the natural parents of a child shall marry after the birth of a child, a new certificate of birth may be prepared by the state registrar for a child born in West Virginia provided that the name of another man is not shown as the father on the original certificate. If another man is so listed, a new certificate may be prepared only if a determination of paternity shall be ordered by a court of competent jurisdiction. The standard birth certificate forms in current use at the time of legitimation or of paternity determination shall be used for the preparation of the new certificate.

An affidavit of paternity and signed by the natural parents and a certified copy of the parents' marriage record or a paternity determination report form, duly certified by the clerk of court, must be in the possession of the state registrar together with a request that a new certificate be prepared. The necessary data to locate the original record and data concerning the natural father shall be furnished the state registrar on a form provided by him. Comparable forms issued by other states shall be acceptable.

7.3. New Certificates - The new certificate to be established shall show thereon the new name of the child together with the names and personal particulars of the adoptive parents or of the natural father in the proper items. The date and place of birth shall be transcribed from the original birth certificate and the name of the attendant shall be entered on the new certificate by typewriter. The birth number assigned to the new birth certificate

shall be the same number as that on the original birth certificate. The new birth certificate shall show the original filing date.

7.4. Original Certificate to be Sealed - After preparation of the new certificate, the original certificate and the evidence upon which it was based are to be sealed and placed in a special file. Such sealed file shall not be subject to inspection except upon order of a court of competent jurisdiction and further excepting that the state registrar may inspect such information for purposes of properly administering the vital statistics program.

Section 8. Delayed Birth Registration

8.1. Definitions and Forms - Delayed birth registration means the registration of a person's non-recorded birth one or more years after the date of birth.

The registration of a birth after the statutory time prescribed for filing but within one year from the date of birth shall be considered a "late birth registration" and shall be registered on the standard form of live birth certificate. Such registration shall not be considered a "delayed registration."

All birth registrations occurring more than one year from the date of birth are to be registered on a special "delayed birth certificate" form adopted by the state registrar.

8.2. Late Birth Registration - A late birth registration shall be signed by the physician or person who attended the birth; or if the birth occurred in a hospital, the hospital administrator, or his designated representative, may sign the certificate; or if the physician or other person who attended the birth is not available, and it did not occur in a hospital, it may be signed by one of the parents, provided that a notarized statement is attached to the certificate outlining the reason why the certificate cannot be signed by the attendant. The state registrar may require the presentation of additional evidence in support of the facts of birth or an explanation for the delay in filing in any case where there appears to him reason to question the adequacy of the registration.

8.3. Application - Any person born in West Virginia and whose birth is not recorded, or his parent, guardian, next of kin, or other older person having personal knowledge of the facts of birth, may file an application for a delayed certificate of birth, subject to the procedures and requirements established by these regulations and instructions issued by the state registrar.

Each such application shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if such person is 16 years of age or over and is competent to sign and swear to the accuracy of the facts stated therein; if not, the application shall be signed and sworn to by one of the parents, the guardian, the next of kin, or other older person having personal knowledge of the facts of birth.

8.4. Facts to be Established - The minimum facts which must be established concerning a delayed registration of birth shall be the following:

(a) The full name of the person at the time of birth, except that the delayed certificate may reflect a name established by adoption or legitimation when such evidence is submitted;

(b) The date of birth and place of birth;

(c) The full maiden name of the mother and her birthplace;

(d) The full name of the father and his birthplace; except that if the mother was not married to the father of the child at the time of birth, or during the ten months preceding such birth, the name of the father shall not be entered on the delayed certificate unless the child has been adopted or legitimated or parentage has been determined by a court of competent jurisdiction or there has been an acknowledgment of paternity by both parents.

8.5. Documentary Evidence - To be acceptable for filing, the birth facts entered on a delayed birth certificate filed within seven years after the date of birth shall be supported by at least two pieces of documentary evidence, each from independent sources, only one of which may be an affidavit of personal knowledge. Facts of parentage need be supported by only one document which may be one of the documents above. Documents presented shall be in the form of the original record, a duly certified copy thereof, or a certification statement from the custodian of the record or document.

For a delayed birth certificate filed more than seven years after the date of birth, the date of birth must be supported by at least three pieces of documentary evidence, and the place of birth must be supported by at least two pieces of documentary evidence. The same document may be used in support of the date of birth and place of birth. Each document must be from an independent source and only one may be an affidavit of personal knowledge. Facts of parentage need be supported by only one document which may be one of the documents above. Documents presented shall be in the form of the original record, a duly certified copy thereof, or a certification statement from the custodian of the record or document.

All documents submitted in evidence, other than an affidavit of personal knowledge, must have been executed at least five years prior to the date of application or have been established prior to the applicant's seventh birthday. The state registrar may establish a priority of best evidence.

An affidavit of personal knowledge, to be acceptable, must be prepared and signed before an official authorized to administer oaths by one of the parents, the next of kin, or any other older person. In all cases the affiant must be at least ten years older than the applicant and have personal knowledge of the facts of birth.

8.6. Abstraction and Certification by State Registrar - The state registrar or his designated representative shall abstract on the delayed birth certificate a description of each document submitted in support of the delayed birth registration, including the title or description of the document; the name and address of the affiant, if the document is an affidavit of personal knowledge, or of the custodian if the document is a record or a certified copy or a certification statement; the date of the original filing of the document being abstracted; and the information regarding the birth and/or parentage contained

in the document. All documents submitted in support of the delayed birth registration shall be returned to the applicant after review.

The state registrar or his authorized agent shall, by his signature, certify that no prior birth certificate is on file for the person whose birth is to be recorded; that he has reviewed the evidence submitted to establish the facts of birth; and that the summary or abstract of the evidence appearing on the delayed birth certificate accurately reflects the nature and character of the document.

8.7. Cancellation After One Year - Applications not completed within one year may be cancelled at the discretion of the state registrar. Upon cancellation, the state registrar shall return to the applicant all documents that have been submitted.

Section 9. Procedures for Filing Death Certificates

9.1. A Proper and Complete Medical Certification of Cause of Death-Defined - A complete and properly executed medical certification of cause of death shall mean the entry of a definite medical diagnosis of cause of death by a physician, coroner, medical examiner or local health officer. This may be variously:

(a) Entry of the clinical findings of the physician who attended the deceased for the illness or condition that resulted in death;

(b) Entry of tentative clinical findings that may or may not be supported by the gross findings of an autopsy, or;

(c) Entry of autopsy findings where necessary to establish a definite medical diagnosis of cause of death.

In cases where an autopsy is to be performed, it shall not be necessary to defer the entry of the cause of death pending a full report of microscopic and toxicological studies.

In any case where the autopsy findings significantly change the medical diagnosis of cause of death, a supplemental report of the cause of death shall be made by the physician, coroner, medical examiner or local health officer to the registrar as soon as the findings are available.

(As examples: If it is clear that a patient dies of "cancer of the stomach," do not defer reporting the cause while a determination of the histological types is being carried out. Similarly, if it is clear that a death is from "influenza," do not delay the medical certification while laboratory test is being carried out to determine the strain.)

9.2. Responsibility of the Attending Physician - When a patient shall die, the physician in charge of the patient's care for the illness or condition causing death shall be responsible for executing and signing the medical certification of cause of death as follows:

(a) If the physician is present at or immediately after the death, he shall execute and sign the medical certification of cause of death on the death

certificate blank prescribed by the state registrar as presented to him by the funeral director;

(b) In any case where an autopsy is scheduled and the physician wishes to await its gross findings to confirm a tentative clinical finding, he shall give the funeral director notice that he attended the patient and when he expects to have the medical data necessary for the certification of cause of death. If the provisions of Section 9.1 of this regulation cannot be adhered to, he shall indicate that the cause is "pending" and sign the certification. Immediately after the medical data necessary for determining the cause of death have been made known, the physician, shall, over his signature, forward the cause of death to the registrar;

(c) If the physician is unable to establish the cause of death or if a death is within the jurisdiction of the coroner, medical examiner or local health officer, he shall immediately report the case to the medical examiner, coroner or local health officer and advise the funeral director of this fact. If the medical examiner, coroner, or local health officer does not assume jurisdiction, the physician shall sign the medical certification;

(d) An associate physician who relieves the attending physician while he is on vacation or otherwise temporarily unavailable, may certify to the cause of death in any case where he has access to the medical history of the case, provided that he views the deceased at or after death occurs and the death is from natural causes. In all other cases in which a physician is unavailable, the funeral director shall contact the medical examiner, coroner or local health officer;

(e) When the attending physician shall have given the person in charge of an institution authorization in writing, the person in charge of such institution, or his designated representative, may prepare the medical certification of cause of death in cases where all pertinent aspects of the medical history are a part of the official hospital records and the death is due to natural causes. In such instances, the signature shall be that of a physician.

9.3. Responsibility of the Hospital or Institution - When a patient shall die in a hospital or other institution, and the death is not under the jurisdiction of the coroner, medical examiner or local health officer, the person in charge of such institution, or his designated representative, shall, where feasible and where the cause of death is known, aid in the preparation of the death certificate as follows:

(a) Place the full name of the deceased on the death certificate blank and obtain from the attending physician the medical certification of cause of death;

(b) If authorized in writing by the attending physician, the person in charge, or his designated representative, may prepare the medical certification of cause of death in cases where all pertinent aspects of the medical history are a part of the official hospital records and the death is due to natural causes. The signature shall be that of a physician;

(c) Present the partially completed death certificate identified by the name and the completed medical certification to the funeral director;

(d) In the case of long-term residence by a patient in a state or federal institution, a death certificate including personal particulars of the deceased may be prepared for presentation to the funeral director.

9.4. Responsibility of the Coroner or Medical Examiner - When the coroner or medical examiner assumes jurisdiction in a death (under authority of chapter sixty-one, article twelve of the West Virginia Code) the coroner or medical examiner shall be responsible for executing and signing the medical certification of cause of death as follows:

(a) The coroner or medical examiner shall, at the time of releasing a body to a funeral director or person acting as such, or as soon as practicable thereafter, execute and sign the medical certification of cause of death on the death certificate blank prescribed by the state registrar;

(b) In any case where an autopsy is scheduled and the coroner or medical examiner wishes to await its gross findings to confirm a tentative clinical finding, he shall give the funeral director notice as to when he expects to have the medical data necessary for the certification of cause of death. If the provisions of Section 9.1 of these regulations cannot be adhered to, he shall indicate that the cause is "pending," and sign the certification. Immediately after the medical data necessary for determining the cause of death have been made known, the coroner or medical examiner shall, over his signature, forward the cause of death to the registrar upon a blank prescribed by the state registrar;

(c) In any case where a death has been referred to the coroner or medical examiner because a physician in attendance is deceased or physically incapacitated and there was no associate physician, the coroner or medical examiner shall prepare and file the medical certification of cause of death.

9.5. Responsibility of the Funeral Director - Each funeral director who has been authorized to take custody of a dead human body shall exercise the following responsibilities with respect to the preparation and filing of the death certificate:

(a) When he arrives to take custody of the body, he first shall ascertain whether an attending physician, coroner, medical examiner or local health officer has established the cause of death as follows:

(1) If a physician was present at or after the death, he shall obtain the medical certification of cause of death from such physician if the death is from natural causes. An associate physician or person in charge of a hospital or other institution may prepare the medical certification as outlined in Section 9.1 of these regulations;

(2) If a physician attended the deceased, but did not complete the medical certification of cause of death, the funeral director shall immediately contact such physician in person, or by telephone, to be certain that he was the attending physician and to ascertain whether the physician is to assume responsibility for the medical certification, or to refer the case to the coroner, medical examiner or local health officer;

(3) When a coroner, medical examiner or local health officer assumes jurisdiction, or when the physician in attendance is incapacitated, the funeral director shall obtain the signed medical certification of cause of death from the coroner, medical examiner or local health officer.

(b) The personal history of the deceased and the facts of death shall be obtained from the best source possible. This source may be variously: a member of the immediate family of the deceased who possesses the necessary information; a hospital records custodian whose records contain the necessary information; or the coroner, medical examiner or local health officer having jurisdiction over the case. The signature and address of the informant shall be entered on the death certificate. The facts required as to the manner, place and time of disposal of the body, or its removal from the state, shall be entered over the signature of the funeral director or person acting as such. He personally shall sign the certificate and print or type the name of his firm.

(c) Except as outlined in Section 10.5 of these regulations, a satisfactory death certificate shall be filed with the local registrar in the county where death occurred or a dead body is found prior to final disposal of the body or its removal from the state, and within three days from the date of death or date the body is found. However, in cases where a completed medical certification is not available when the funeral director takes possession of a body, he shall not move the body from the place of death until so authorized by the coroner, medical examiner or local health officer, or until the attending physician has advised him that death is from natural causes and the physician is able to prepare the medical certification of cause of death. In every case, the removal of a dead human body from the county of death is unlawful unless notice is given the local registrar by telephone or in person. Such notice shall consist of the name of the deceased; date and place of death; and the name of the attending physician or of the medical examiner, coroner or local health officer, as the case may be, and if the body is to be removed, the destination within the state.

Section 10. Permits Governing the Disposal or Transportation of Dead Human Bodies

10.1. Burial-Transit Permits

(a) The body of any person whose death occurs in West Virginia, or whose body shall be found dead therein, of a dead fetus of 20 weeks gestation or more shall not be:

(1) Interred, deposited in a vault, cremated or otherwise disposed of;

(2) Held more than three days after death, or after the finding of the body, unless a burial-transit permit on a form prescribed by the state registrar has been issued by the local registrar of the county where death or fetal death occurred, or the body was found.

(b) The body of any person whose death occurs in West Virginia, or whose body shall be found dead therein, or a dead fetus of 20 weeks gestation or more shall not be removed from the county where death occurred or the body found except under provision of Sections 10.4 and 10.5 of these regulations.

(c) No dead human body shall be transported into, through, or outside of West Virginia without a proper burial-transit permit, with the exception of those cases authorized in Sections 10.4 and 10.5 of these regulations.

10.2. When a Permit Shall Be Issued - No burial-transit permit shall be issued until a proper certificate of death or fetal death is filed except as provided in Sections 10.4 and 10.5 of these regulations.

10.3. When a Death or Fetal Death Certificate is Properly Filed - A certificate of death or fetal death shall be considered properly filed:

(a) When all items thereon have been answered in the manner prescribed by the state registrar; and

(b) When the local registrar has accepted the certificate of filing.

10.4. Conditions Under Which Bodies May Be Moved Temporarily - Local registrars may authorize the temporary removal of a dead human body or fetus from a county under the following conditions:

(a) A licensed funeral director or his agent has custody of the body;

(b) The funeral director has contacted the attending physician and been informed that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death or fetal death, but that circumstances prevent him from doing so at that time;

(c) The case comes within the jurisdiction of a coroner, medical examiner or local health officer and the funeral director has contacted the coroner, medical examiner or local health officer and received authorization to remove the body;

(d) The body shall not be removed from the State of West Virginia;

(e) The funeral director agrees to file a death certificate within 72 hours of the death or fetal death, or prior to its disposal or removal from the state, whichever occurs first.

In each such case it shall be unlawful for a funeral director to remove a body from the county where death occurred, or a body was found, until he has given the local registrar notification of: Name of the decedent; age; sex; date and place of death; cause of death, if known; name and address of the funeral director; and the place to which he is going to temporarily remove the body.

10.5. Emergency and Hardship Cases

(a) Under the conditions of Section 16-5-23 of the West Virginia Code, the following situations are declared to be proper reasons for emergency extensions of time periods for filing a completed death certificate and the issuance of a burial-transit permit:

(1) The physician in attendance, the coroner, the medical examiner, or the local health officer has been consulted and he is not able to complete the

certification of cause of death immediately, but has advised the funeral director that there is no medical or legal reason why the body should not be removed from the place of death or discovery of the body;

(2) Personal data concerning the deceased is temporarily unavailable;

(3) Circumstances necessitate immediate removal of the body to another area of the State.

(b) If one or more of the above situations exist and the conditions of paragraph (c) of Section 9.5 of these regulations have been complied with by the funeral director, the local registrar or a designated deputy local registrar or a subregistrar may authorize the temporary removal of the body. In such case, the funeral director shall file a death certificate form completed with as many known details as possible within seventy-two (72) hours, or prior to disposal or removal of the body from the state, whichever shall occur first.

(c) Such incomplete certificate shall be replaced by the funeral director with a completed death or fetal death certificate as soon as the missing data becomes known or the medical certification is obtained. The form originally furnished to the registrar must be replaced by a complete certificate with a signed medical certification within ten (10) days even though the cause of death may be "pending."

10.6. Retention of Incomplete Death Certificate - A death certificate received by a local registrar which contains a signed medical certification of cause of death, but the cause is not complete by reason of a pending inquest, investigation or autopsy may be retained not more than thirty (30) days if the cause of death has not been determined. In no case shall a certificate be retained longer than one month, since gross findings generally are sufficient to provide the certification of cause of death. There should be no necessity to retain the death certificate pending the detailed report of microscopic and toxicological studies, as this information may be added by the state registrar by a supplemental report if it later is determined pertinent to the cause of death. If the cause of death is completed by the presentation of a second certificate, then the original, incomplete certificate should be destroyed. The completed death certificate should be processed as a current certificate and should be forwarded to the state registrar. If the cause of death is completed by a properly signed query form or other statement, the cause of death information may be added to the incomplete death certificate. The completed death certificate is processed as a current certificate and forwarded to the state registrar.

Should a certified copy of the certificate be required for legal purposes, the physician, coroner, medical examiner or local health officer who has not completed the cause of death should be required to do so, or enter the cause as "pending" and the certificate forwarded to the state registrar with a completed application for a certified copy.

10.7. Disinterment Permits

(a) A body shall not be disinterred for removal or transportation without a properly executed disinterment permit, unless disinterment is ordered by a court of competent jurisdiction. Such disinterment permit is to be obtained

from the local registrar in the district where the body is buried. To obtain the permit a properly prepared application for disinterment, on a form prescribed by the state registrar, shall be submitted to the local registrar.

(b) The disinterment permit is to be issued in quadruplicate. One copy shall be retained by the funeral director, embalmer or other person acting on their behalf to whom the permit is issued; one copy filed with the sexton or person in charge of the cemetery in which disinterment is to be made; one copy to be used during transportation and filed with the sexton or person in charge of the cemetery of reinterment; and, one copy to be sent to the state registrar.

(c) All disinterment permits shall be void after the expiration of thirty (30) days from the date of issue.

(d) The disinterment and removal must be under the direction of a licensed funeral director and in accordance with the rules governing the transportation of the dead. The casket in which a disintered body is contained shall not be opened at any time, except by court order, or under instructions of a legally qualified coroner or medical examiner who is also a physician. The funeral director authorized to conduct a disinterment shall be held personally responsible for the enforcement of these requirements.

(e) A disinterment permit shall not be required if a body is to be disinterred and reinterred in the same cemetery; however, the sexton or other person in charge of the cemetery shall establish a record relative to the facts of disinterment and reinterment within the cemetery.

(f) A body kept in a receiving vault for more than thirty (30) days shall be regarded as a disinterment upon its removal.

(g) A separate permit shall be secured in respect to each body to be disinterred, except that under special conditions the state board of health of the State of West Virginia may make special provisions for the mass removal of a number of bodies from a cemetery or burial ground.

10.8. Duties of Transportation Companies - A transportation company shall accept a dead human body for shipment only when it is accompanied by a properly completed burial-transit permit.

Section 11. Disclosure of Data; Certified Copies

11.1. Disclosure of Data

(a) The state registrar shall permit the inspection of a record, or issue a certified copy of a record, or part thereof, only when he is satisfied that the applicant therefor is a person or entity having a direct and tangible interest in the content of the record and that the information contained therein is necessary for the determination of a personal or property right.

(1) In the case of birth records, the registrant, a member of his immediate family, his guardian, or their respective legal representatives shall be considered to have a direct and tangible interest. In the case of a death or fetal death record, a surviving relative, or his legal representative shall be

considered to have a direct and tangible interest. In the case of marriage and divorce records, the parties married, their adult children or their legal representatives shall be considered to have a direct and tangible interest.

(2) For the purpose of securing and obtaining certified copies of vital records, the term "legal representative" shall include an attorney, physician, funeral director, insurance company, or an authorized agency acting in behalf of the registrant or his family.

(3) For the purposes of securing and obtaining data from vital records, the natural parents of adopted children, in the absence of a court order, and commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

(4) In the case of birth records of a child born out of wedlock, the child, the mother or the legal father, as identified pursuant to the procedures set forth in West Virginia Code §48A-6-1 et seq. and §16-5-17 and in Section 7.2 of this regulation, shall be considered to have a direct and tangible interest. Providing a complete certified copy of a birth certificate in these circumstances, including information identifying the mother and the legal father, if any, is not a prohibited disclosure within the meaning of West Virginia Code §16-5-26(c).

(b) The state registrar may permit use of data on vital statistics records for research purposes, subject to conditions the state registrar may impose to insure that the use of the data is limited to such research purposes.

(c) The state registrar may disclose data from vital statistics records to federal, state, county or municipal agencies of government which request such data in the conduct of their official duties: Except that information on vital statistics records indicating a birth occurred out-of-wedlock may not be disclosed unless it can be shown that the information is needed to secure some benefit or privilege for the registrant and that the welfare of the registrant will not be compromised. Also such information may be made available for the official purposes of federal, state, county and municipal agencies charged by law with the duty of detecting or prosecuting crime, preserving the internal security of the United States, or for the determination of citizenship.

(d) Whenever it shall be deemed necessary to establish an applicant's right to information from vital statistics records, the state registrar shall require written application, identification of the applicant, or a sworn statement.

11.2. Certified Copies - Under the provisions of Section 16-5-27 of the Code of West Virginia and this regulation, certified copies of vital statistics certificates may be prepared and issued by the state registrar.

(a) Full and complete certified copies of vital records may be made by mechanical, electronic or other reproductive processes, except that the medical and health data on birth and fetal death certificates, other than the cause of fetal death, shall not be included except by court order.

(b) When a certified copy is issued, each certification shall contain a statement certifying that the facts are the true facts recorded in the issuing

office; the date issued; the name of the issuing office; the registrar's signature or an authorized facsimile thereof; and the seal of the issuing office.

(c) Confidential verifications of the facts contained in vital statistics records may be furnished by the state registrar to any federal, state, county or municipal government agency or other agency representing the interest of the registrant. Such confidential verifications shall be on forms prescribed and furnished by the state registrar or on comparable forms furnished by the requesting agency and acceptable to the state registrar; or, the state registrar may authorize the verification of such data in other ways when it shall prove in the best interests of the state division of vital statistics.

(d) No data shall be furnished from records for research purposes until the state registrar has prepared in writing the conditions under which the records may be used and received an agreement signed by a responsible agent of the research organization agreeing to meet with, and conform to, such conditions.

11.3. Fees - The fee to be charged by the state registrar shall be one dollar for each certified copy of a vital statistics record, or for a search of the files when no record is found.

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H. B. 2576

(By Delegate Knight)
(Introduced February 4, 1987; referred to the
Committee on Health and Human Resources then
the Judiciary)

10. A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section designated section
13 sixteen (five) (three), relating to authorizing the state
14 board of health to promulgate legislative rules relating to
15 vital statistics.

16. Be it enacted by the Legislature of West Virginia:

17 That article two, chapter sixty-two of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 sixteen (five) (three), to read as follows:

21 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
22 LEGISLATIVE RULES.

23 §64-2-16(5)(3). State board of health.

24 The legislative rules filed in the state register on the
25 ninth day of December, one thousand nine hundred eighty-six,
26 modified by the state board of health to meet the objections of

2576

1 the legislative rule-making review committee and refiled in the
2 state register on the twenty-third day of December, one thousand
3 nine hundred eighty-six, relating to the state board of health
4 (vital statistics) are authorized.

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6 NOTE: The purpose of this bill is to authorize the State
7 Board of Health to promulgate legislative rules governing vital
8 statistics.

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10 This section is new; therefore, strike-throughs and
11 underscoring have been omitted.

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Senate Bill No. 337
(By Senator Tucker)

[Introduced February 4, 1987; referred to the Committee
on HEALTH AND HUMAN RESOURCES ; then to the
Committee on THE JUDICIARY .]

10 A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section designated section
13 sixteen (five) (three), relating to authorizing the state
14 board of health to promulgate legislative rules relating to
15 vital statistics..

16 Be it enacted by the Legislature of West Virginia:

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7 Board of Health to promulgate legislative rules governing vital
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