WEST VIRGINIA CODE CHAPTER 30 ARTICLE 6

WV Legislature

§30-6-1. License required to practice.

The practice of preparing dead human bodies for burial or cremation and the subsequent burial or cremation thereof has serious public health and safety considerations and should only be practiced by a person who has specific training in those fields.

Therefore, the Legislature hereby finds that to protect the public interest a person must have a license, as provided in this article, to practice embalming, funeral directing and cremation and to operate a funeral establishment and crematory in the State of West Virginia.

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§30-6-2. Short title.

This article shall be known and may be cited as the "West Virginia Funeral Service Examiners Act".

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§30-6-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

“Alkaline hydrolysis” means the reduction of a dead human body to essential elements through a water-based dissolution process using alkaline chemicals, heat, agitation, and pressure to accelerate natural decomposition; the processing of hydrolyzed remains after removal from the alkaline hydrolysis vessel; placement of the processed remains in a hydrolyzed remains container; and release of the hydrolyzed remains to an appropriate party. Alkaline hydrolysis is a form of final disposition.

“Apprentice” means a person who is preparing to become a licensed funeral director or a funeral service licensee and is learning the practice of embalming, funeral directing, or cremation under the direct supervision and personal instruction of a duly licensed funeral service licensee.

“Authorized representative” means a person legally authorized or entitled to order the cremation or burial of the deceased, as established by rule. An authorized representative may include in the following order of precedence:

(a) The deceased, who has expressed his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive, or preneed funeral contract, as defined in §45-14-2 of this code;

(b) The surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent’s death;

(c) An individual previously designated by the deceased as the person with the right to control disposition of the deceased’s remains in a writing signed and notarized by the deceased: Provided, That no person may be designated to serve in such capacity for more than one nonrelative at any one time;

(d) The deceased’s next of kin;

(e) A court order;

(f) A public official who is charged with arranging the final disposition of an indigent deceased; or

(g) A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science.

“Board” means the West Virginia Board of Funeral Service Examiners.

“Certificate” means a certification by the board to be a crematory operator.

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"Courtesy card holder" means a person who only practices funeral directing periodically in West Virginia and is a licensed embalmer and funeral director in a state which borders West Virginia.

"Cremated remains" or "cremains" means all human remains, including foreign matter cremated with the human, recovered after the completion of cremation.

"Cremation" means the mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments and then further reduced by additional pulverization, burning, or re-cremating when necessary.

"Crematory" means a licensed place of business where a deceased human body is reduced to ashes and bone fragments.

"Crematory operator" means a person certified by the board to operate a crematory.

"Crematory operator in charge" means a certified crematory operator who accepts responsibility for the operation of a crematory.

"Deceased" means a dead human being for which a death certificate is required.

"Embalmer" means a person licensed to practice embalming.

"Embalming" means the practice of introducing chemical substances, fluids, or gases used for the purpose of preservation or disinfection into the vascular system or hollow organs of a dead human body by arterial or hypodermic injection for the restoration of the physical appearance of a deceased.

"Funeral" means a service, ceremony, or rites performed for the deceased with a body present.

"Funeral directing" means the business of engaging in the following:

(a) The shelter, custody, or care of a deceased;

(b) The arranging or supervising of a funeral or memorial service for a deceased; and

(c) The maintenance of a funeral establishment for the preparation, care, or disposition of a deceased.

"Funeral director" means a person licensed to practice funeral directing.

"Funeral establishment" means a licensed place of business devoted to the care, preparation, and arrangements for the transporting, embalming, funeral, burial, or other disposition of a deceased. A funeral establishment can include a licensed crematory.

"Funeral service licensee" means a person licensed after July 1, 2003, to practice embalming

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and funeral directing.

“License” means a license, which is not transferable or assignable, to:

(a) Practice embalming and funeral directing; and,

(b) Operate a crematory or a funeral establishment.

“Licensee” means a person holding a license issued under the provisions of this article.

“Licensee in charge” means a licensed embalmer and funeral director who accepts responsibility for the operation of a funeral establishment.

“Memorial service” means a service, ceremony, or rites performed for the deceased without a body present.

“Mortuary” means a licensed place of business devoted solely to the shelter, care, and embalming of the deceased.

“Person” means an individual, partnership, association, corporation, not-for-profit organization, or any other organization.

“Registration” means a registration issued by the board to be an apprentice to learn the practice of embalming, funeral directing, or cremation.

“State” means the State of West Virginia.

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§30-6-4. Board of funeral service examiners.

(a) The "West Virginia Board of Embalmers and Funeral Directors" is hereby continued and shall, after June 30, 2002, be known as the "West Virginia Board of Funeral Service Examiners". The members of the board in office on July 1, 2002 shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) Commencing with the board terms beginning July 1, 2002, the board shall consist of seven members appointed for terms of four years by the Governor, by and with the advice and consent of the Senate. Five members must be licensed embalmers and funeral directors, and one member must be a citizen member who is not licensed, certified or registered under the provisions of this article and who is not a person who performs any services related to the practice of embalming or funeral directing. Commencing with the board terms beginning July 1, 2002, the Governor shall appoint, by and with the advice and consent of the Senate, one person who operates a crematory in West Virginia which person shall replace the current board member whose term ended on June 30, 2002. The crematory operator who is appointed for the term commencing July 1, 2002, shall register and be certified, pursuant to the provisions of this article. Any crematory operator appointed thereafter shall be certified, pursuant to the provisions of this article.

(c) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than five years immediately preceding the appointment and each member must be a resident of this state during the appointment term. Each certified member must abide by the provisions of subsection (b) of this section. Board members must represent at least four different geographic regions of the state.

(d) No member may serve more than two consecutive full terms and any member having served two full terms may not be appointed for one year after completion of his or her second full term. A member shall continue to serve until his or her successor has been appointed and qualified.

(e) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(f) Any member of the board immediately and automatically forfeits his or her membership if he or she has his or her license or certificate to practice suspended or revoked by the board, is convicted of a felony under the laws of any state or the United States or becomes a nonresident of this state.

(g) The board shall annually elect one of its members as president and one of its members as secretary.

(h) Each member of the board shall receive compensation and expense reimbursement in accordance with section eleven, article one of this chapter.

§30-6-5. Powers of the board.

The board has all the powers set forth in article one of this chapter and in addition may:

(1) Sue and be sued in its official name as an agency of this state;

(2) Hire, fix the compensation of and discharge an executive director;

(3) Hire, fix the compensation of and discharge the employees necessary to enforce the provisions of this article;

(4) Set the requirements to be an inspector;

(5) Examine and determine the qualifications of any applicant for a license;

(6) Determine the qualifications of any applicant for a certificate;

(7) Set cremation procedures and requirements;

(8) Set the fees charged under the provisions of this article;

(9) Set the fines assessed under the provisions of this article;

(10) Issue, renew, deny, suspend, revoke or reinstate licenses and certificates and discipline licensees and certificate holders;

(11) Set the continuing education requirements for licensees and certificate holders;

(12) Investigate alleged violations of the provisions of this article and the rules promulgated hereunder, and orders and final decisions of the board;

(13) Conduct hearings upon charges calling for discipline of a licensee or revocation or suspension of a license;

(14) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(15) Take all other actions necessary and proper to effectuate the purposes of this article.

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§30-6-6. Rule-making authority.

(a) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the provisions of this article including, but not limited to, the following:

(1) The general practice of embalming, funeral directing and cremating, and operating a funeral establishment and crematory: *Provided*, That the board cannot require that an applicant for a license to operate a funeral establishment or crematory have either an embalmer's or funeral director's license, or a certificate to operate a crematory;

(2) The examinations administered under this article;

(3) The issuing and renewing of licenses, certificates and courtesy cards, including establishing a staggered biennial renewal schedule;

(4) The requirements for inactive licensees;

(5) The registration and regulation of apprentices;

(6) Establish a cremation procedure and crematory requirements;

(7) Establish inspection requirements for funeral establishments and crematories, including an inspection of a new facility and annual inspections of existing facilities;

(8) Establish inspector and investigator requirements;

(9) Setting the fees charged under the provisions of this article;

(10) Setting the fines assessed under the provisions of this article;

(11) Implementing requirements for continuing education for licensees;

(12) Denying, suspending, revoking, reinstating or limiting the practice of a licensee or certificate of qualification;

(13) The investigation and resolution of complaints against persons licensed, certified or registered under this article;

(14) Establish advertising standards;

(15) Establish a provisional licensee in charge authority for up to 90 days following a licensee in charge vacancy or change of control, with conditions and notice to the board;

(16) Define criteria for an "embalmer-of-record" agreement for establishments that do not embalm on-site; and

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(17) Propose any other rules necessary to effectuate the provisions of this article.

(b) All rules in effect on the effective date of this article shall remain in effect until they are withdrawn, revoked or amended.

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§30-6-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury and be used for the administration of this article. Except as may be provided in §30-1-10 of this code, the board shall retain the amounts in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the General Revenue Fund of the State Treasury.

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§30-6-8. Embalmer license requirements.

The board shall issue a license to practice embalming to an applicant who:

(a) Is free of a felony conviction bearing a rational nexus to the profession pursuant to §30-1-24 of this code;

(b) Is 18 years of age or over;

(c) Is a citizen of the United States or is eligible for employment in the United States;

(d) Has a high school diploma or its equivalent;

(e) Has completed one of the following education requirements, as evidenced by a transcript submitted to the board for evaluation:

(1)(A) Has an associate degree from an accredited college or university; or

(2) Has successfully completed at least 60 semester hours or 90 quarter hours of academic work in an accredited college or university toward a baccalaureate degree with a declared major field of study; and

(3) Has graduated from a school of mortuary science, accredited by the American Board of Funeral Service Education, Inc., which requires as a prerequisite to graduation the completion of a course of study of not less than 12 months; or

(B) Has a bachelor degree in mortuary science from an accredited college or university;

(f) Has completed a one-year apprenticeship, under the supervision of a licensed embalmer and funeral director actively and lawfully engaged in the practice of embalming and funeral directing in this state, which apprenticeship consisted of:

(1) Diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment; and

(2) The apprentice taking an active part in:

(A) The operation of embalming not less than 35 dead human bodies; and

(B) Conducting not less than 35 funeral services;

(g) Passes, with an average score of not less than 75 percent, the following examinations:

(1) The International Conference of Funeral Service Examining Boards examination at a testing site provided by the national conference, which passage is a condition precedent to taking the state law examination;

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(2) The West Virginia Laws, Rules, and Regulations Examination, administered by the International Conference of Funeral Service Examining Boards; and

(3) Any other examination required by the board; and

(h) Has paid all the appropriate fees.

A license to practice embalming issued by the board prior to July 1, 2012, shall for all purposes be considered a license issued under this section: Provided, That a person holding a license issued prior to July 1, 2012, must renew the license pursuant to the provisions of this article.

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§30-6-9. Funeral director license requirements.

(a) The board shall issue a license to practice funeral directing to an applicant who meets the following requirements:

(1) Completed a bachelor's degree from an accredited institution; and

(2) Completed a one-year apprenticeship under the supervision of a licensee in charge or an active licensed funeral director; and

(3) Has paid all the appropriate fees.

(b) The apprenticeship must consist of the following work and case experience, documented in a board-approved competency log:

(1) Diligent attention to the work in the course, or regular and steady employment, and not as a side issue to another employment;

(2) Conducting not less than 35 disposition arrangements for individuals;

(3) Conducting not less than 35 funeral and/or memorial services; and

(4) Passes with an average score of not less than 75 percent, the West Virginia Laws, Rules, and Regulations Examination.

(c) A license to practice funeral directing issued by the board prior to July 1, 2002, shall for all purposes be considered a license issued under this section: *Provided*, That a person holding a license issued prior to July 1, 2022, must renew the license pursuant to the provisions of this article.

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§30-6-10. Funeral service license requirements.

(a) Commencing July 1, 2003, the board shall issue a license to practice embalming and funeral directing, which license shall be known as a funeral service license, to an applicant who meets the following requirements:

(1) Is of good moral character;

(2) Is eighteen years of age or over;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) Holds a high school diploma or its equivalent;

(5) Has completed one of the education requirements for an embalmer's license, set out in subdivision (5), subsection (a), section eight of this article; and

(6) Has paid all the appropriate fees.

(b) A license to practice embalming and funeral directing issued by the board prior to July 1, 2003, shall for all purposes be considered a license issued under this section.

(c) A person holding a license to practice embalming and funeral directing issued prior to July 1, 2003, must after July 1, 2003, renew his or her license pursuant to the provisions of this section.

(d) After July 1, 2003, wherever the terms "license to practice embalming and funeral directing" or "embalming and funeral directing license" are used in the code, the term "funeral service license" shall apply.

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§30-6-11. Crematory operator certificate requirements.

(a) All crematory operators shall be certified by the board. The board shall issue a certificate to be a crematory operator to an applicant who meets the following requirements:

(1) Has completed a class, authorized by the board, on cremation and operating a crematory;

(2) Has paid all the appropriate fees; and

(3) Has completed such other requirements as prescribed by the board.

(b) All persons currently operating crematories shall by January 1, 2003, register with the board. By July 1, 2003, all persons currently operating crematories shall obtain a certificate to operate a crematory, pursuant to the provisions of this section.

(c) All certificates must be renewed biennially upon or before July 1.

(d) After July 1, 2003, all licensed crematories must have a certified crematory operator in charge.

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§30-6-12. Licenses or equivalent from another state; license or certificate to practice in this state.

The board may issue a license to practice embalming and funeral directing or a certificate to be a crematory operator to an applicant of good moral character who holds a valid license or its equivalent to practice from another state if the applicant demonstrates that:

(1) He or she holds a license or its equivalent to practice in another state which was granted after completion of educational requirements substantially equivalent to those required in this state;

(2) He or she holds a license or its equivalent to practice in another state which was granted after passing, in that or another state, an examination that is substantially equivalent to the examination required in this state;

(3) Reciprocal rights are provided by such other state to holders of funeral director's or embalmer's licenses granted in this state. Such reciprocal licenses may be renewed biennially upon payment of the renewal license fee;

(4) He or she is not currently being investigated by a disciplinary authority of another state, does not have charges pending against his or her license or something equivalent to practice and has never had a license or something equivalent to practice revoked;

(5) He or she has not previously failed an examination for licensure as an embalmer or funeral director in this state;

(6) He or she has paid the application fee specified by rule; and

(7) Has completed such other action as required by the board.

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§30-6-13. Courtesy cards.

(a) The board may issue biennial courtesy cards, on July 1, to licensed funeral directors and licensed embalmers in the states bordering on West Virginia, after the:

(1) Application for a courtesy card is made on a form prescribed by the board;

(2) Payment of a fee; and

(3) Adherence to such other requirements as specified by the board.

(b) A courtesy card may be issued under the following conditions:

(1) Holders of courtesy cards shall not be permitted to open or operate a place of business for the purpose of conducting funerals, embalming bodies or cremating in the State of West Virginia; and

(2) Holders of courtesy cards shall not be permitted to maintain an office or agency in this state for the purpose of conducting funerals, embalming bodies or cremating in the State of West Virginia.

(c) A violation of this section shall be sufficient cause for the board to immediately revoke or cancel the courtesy card of the violator.

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§30-6-14. License and certificate renewal; conditions of renewal.

(a) The board shall biennially on July 1, and pursuant to a staggered schedule, renew a license to practice embalming and funeral directing or a certificate to be a crematory operator to every licensee or certificate holder desiring to continue in active practice or service.

(b) The board shall charge a fee for each renewal and a late fee for nonrenewal of a license or certificate.

(c) The board shall require as a condition for the renewal of a license to practice embalming and funeral directing or a certificate to be a crematory operator that each licensee participate in continuing education.

(d) A licensed embalmer, funeral director, or funeral service licensee 65 years of age or older with at least 10 years of experience as a licensed embalmer, funeral director, or funeral service licensee is entitled to be issued, after payment of a fee, a license as an embalmer emeritus, funeral director emeritus, or funeral service licensee emeritus and is exempt from all continuing education requirements. The emeritus license shall entitle the holder to all the rights and privileges of the license previously held by the licensee. The board may not require renewal of an emeritus license more frequently than once every four years.

(e) Any person licensed to practice embalming and funeral directing or certified to be a crematory operator who does not desire to continue in active practice shall notify the board, in a manner specified by the board, and pay a fee, and shall, during such period, be listed by the board as being inactive. At such time a person desires to return to active practice, he or she must notify the board, in a manner specified by the board, and complete all the continuing education requirements.

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§30-6-15. Continuing education.

(a) 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.

(b) Compliance with the requirements of continuing education, as specified by the board, is a prerequisite for license renewal.

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§30-6-16. Inspector and inspection requirements.

(a) All inspectors employed by the board to inspect funeral establishments and crematories, pursuant to the provisions of this article, shall have a West Virginia embalmer's license and a West Virginia funeral director's license.

(b) Each inspector shall inspect a specific region, as designated by the board. Any person being employed as an inspector is prohibited from inspecting in the region in which he or she practices. If there is only one inspector, a board member, who is not from the region where the inspector practices, is authorized to inspect the facilities in the region where the inspector practices.

(c) All inspections shall be conducted in a manner so as not to interfere with the conduct of business within the funeral establishment or crematory. The board has the authority to enter, at all reasonable hours, for the purpose of inspecting the premises in which the business of embalming, funeral directing, or cremating is conducted.

(d) All of an inspector's expenses, per diem, and compensation shall be paid out of the receipts of the board, but the allowances shall at no time exceed the receipts of the board.

(e) The board is authorized to set fees for inspections: *Provided*, That there shall be no fee for a biennial inspection, based on the funeral establishment's renewal date.

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§30-6-17. Apprenticeship.

(a) After July 1, 2022, the board shall issue a registration to be an apprentice funeral service licensee to an applicant who meets the following requirements:

(1) Is free of a felony conviction bearing a rational nexus to the profession pursuant to §30-1-24 of this code;

(2) Is 18 years of age or over;

(3) Is a citizen of the United States or be eligible for employment in the United States;

(4) Has a high school diploma or its equivalent;

(5) The required 60 semester hours or 90 quarter hours of college or university credits and mortuary school can be completed prior to, during, or after the apprenticeship; and

(6) Has paid the appropriate fees.

(b) Any person that commences an apprenticeship prior to January 1, 2003, may continue to serve such apprenticeship and is not subject to the requirements set forth in this section, but is subject to board approval.

(c) The board may set the requirements for an apprenticeship, including the manner in which it shall be served and the length of time, which shall not be more than one year for a funeral service licensee and shall not be more than one year for a funeral director.

(d) No licensed funeral director or licensed embalmer shall be permitted to register or have registered more than five apprentices under his or her license at the same time.

(e) The board shall register an apprentice funeral director under §30-6-9 who is pursuing the funeral director license only.

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§30-6-18. Funeral establishment license requirements.

(a) Every funeral establishment in West Virginia shall be licensed prior to opening a funeral establishment for business to the public. The board shall issue a license to operate a funeral establishment to an applicant who meets the following requirements:

(1) The place of business has been approved by the board as having met all the requirements and qualifications to be a funeral establishment as are required by this article;

(2) Notify the board, in writing, at least 30 days before the proposed opening date, so there can be an inspection of the funeral establishment;

(3) Show proof that the funeral establishment passed the inspection;

(4) Show that the funeral establishment has employed a licensee in charge;

(5) Show that the licensee in charge meets the requirements of §30-6-19 of this code;

(6) Show that the licensee in charge will manage the funeral establishment and be responsible for all business conducted and services performed therein;

(7) Pay all the appropriate fees; and

(8) Complete such other requirements as specified by the board.

(b) All funeral establishment licenses must be renewed biennially, by a staggered schedule, upon or before July 1, and pay a renewal fee.

(c) Each funeral establishment license shall be valid for only one funeral establishment to be located at a specific street address. There shall be a separate license issued and a separate fee assessed to operate additional funeral establishments by the same applicant.

(d) A holder of a funeral establishment license that fails to pay fees for either the principal establishment or additional establishments by July 1, of the renewal year is subject to a penalty, a reinstatement fee for each establishment and the required renewal fee.

(e) The holder of a funeral establishment license who ceases to operate the funeral establishment at the location specified in the application shall, within 20 days thereafter, surrender the funeral establishment license to the board and the license shall be canceled by the board. In the event of the death of an individual who was the holder of a funeral establishment license, it shall be the duty of the holder's personal representative to surrender the funeral establishment license within one hundred twenty days of qualifying as the personal representative.

(f) If a licensee in charge ceases to be employed by a funeral establishment, then the holder of the funeral establishment license shall notify the board within 30 days of the cessation.

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Within 30 days after such notification, the holder of a funeral establishment license shall execute a new application for a funeral establishment license specifying the name of the new licensee in charge. A funeral establishment is prohibited from operating more than 60 days without a licensee in charge: *Provided*, That a funeral establishment may operate with a provisional licensee in charge for a 90-day period, as provided by §30-6-19(g) of this code.

(g) A licensee whose embalmer's or funeral director's license has been revoked or a holder of a license to operate a funeral establishment whose license to operate has been revoked shall not operate, either directly or indirectly, or hold any interest in any funeral establishment or crematory: *Provided*, That a holder of a license to operate a funeral establishment whose license to operate has been revoked is not prohibited from leasing any property owned by him or her for use as a funeral establishment, so long as the property owner does not participate in the control or profit of the funeral establishment except as lessor of the premises for a fixed rental not dependent upon earnings.

(h) Failure to comply with any of these provisions shall be grounds for revocation of a funeral establishment license.

(i) A license to operate a funeral establishment issued by the board prior to July 1, 2002, shall for all purposes be considered a license issued under this section: *Provided*, That a funeral establishment holding a license issued prior to July 1, 2002, must renew the license pursuant to this section.

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§30-6-19. Funeral establishment to be managed by a licensee in charge; license displayed.

(a) Every separate funeral establishment in this state offering the services set forth in this article shall be operated under the supervision and management of a licensee in charge who shall hold an active:

(1) Funeral service licensee's license in the State of West Virginia;

(2) Crematory operator certificate in the State of West Virginia; and

(3) Pre-Need license in the State of West Virginia if the establishment offers or sells pre-need contracts.

(b) Each separate funeral establishment in this state offering the services set forth in this article shall have its own license, which license shall be prominently displayed within the funeral establishment.

(c) All funeral establishments shall display in all advertising the name of the licensee in charge of the establishment.

(d) All funeral establishments shall prominently display within the funeral establishment the license of the licensee in charge.

(e) A licensee in charge shall supervise each separate establishment.

(f) Effective July 1, 2026, the board shall allow up to two years to complete the requirements under this section for the licensee in charge.

(g) Upon vacancy of the licensee in charge position, the board may grant provisional authority for up to 90 days to an eligible licensee to serve as licensee in charge while credentials are obtained or a new licensee in charge is designated.

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§30-6-20. Crematory license requirements.

(a) Every crematory shall be licensed in West Virginia. The board shall issue a crematory license to an applicant who meets the following requirements:

(1) The place of business has been approved by the board as having met all the requirements and qualifications to be a crematory as are required by this article;

(2) The crematory conforms with all local building codes;

(3) The crematory meets all applicable environmental standards;

(4) Notify the board, in writing, at least 30 days before the proposed opening date so there can be an inspection of the crematory;

(5) Show proof that the crematory passed the inspection;

(6) Have a certified crematory operator in charge;

(7) Pay all the appropriate fees; and

(8) Complete such other requirements as specified by the board.

(b) All crematory licenses must be renewed biennially, by a staggered schedule, upon or before July 1, and pay a renewal fee.

(c) Each crematory license shall be valid for only one crematory to be located at a specific street address. There shall be a separate license issued and a separate fee assessed to operate additional crematories by the same applicant.

(d) A holder of a crematory license that fails to pay fees for either the principal crematory or additional crematories by July 1, of the renewal year is subject to a penalty, a reinstatement fee for each crematory, and the required renewal fee.

(e) The holder of a crematory license who ceases to operate the crematory at the location specified in the application shall, within 20 days thereafter, surrender the crematory license to the board and the license shall be canceled by the board. In the event of the death of an individual who was the holder of a crematory license, it shall be the duty of the holder's personal representative to surrender the crematory license within 120 days of qualifying as the personal representative.

(f) A holder of a certificate to operate a crematory whose certificate to operate has been revoked or a holder of a crematory license whose license has been revoked shall not operate, either directly or indirectly, or hold any interest in any crematory or funeral establishment: *Provided*, That a holder of a crematory license whose license has been revoked is not prohibited from leasing any property owned by him or her for use as a crematory, so long as

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the property owner does not participate in the control or profit of the crematory except as lessor of the premises for a fixed rental not dependent upon earnings.

(g) Failure to comply with any of these provisions shall be grounds for revocation of a crematory license.

(h) All persons that operate crematories shall by January 1, 2003, register with the board. By July 1, 2003, all persons that operate crematories shall obtain a crematory license, pursuant to the provisions of this section.

(i) All crematory licenses must be renewed biennially upon or before July 1.

(j) After July 1, 2003, all licensed crematories must have a certified crematory operator in charge.

(k) If a certified crematory operator in charge ceases to be employed by a crematory, then the holder of the crematory license shall notify the board within 30 days of the cessation. Within 30 days after such notification, the holder of a crematory license shall execute a new application for a crematory license specifying the name of the new certified crematory operator in charge. A crematory is prohibited from operating more than 30 days without a certified crematory operator in charge.

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§30-6-21. Requirements for cremating.

(a) A crematory shall obtain written permission prior to cremating a dead human body. The written permission shall be obtained from persons authorized by the board as specified in rules.

(b) The written permission shall be on a standard form, prescribed by the board, and shall contain the following information:

(1) The identity of the deceased;

(2) The name of the person authorizing the cremation and the relationship, if any, to the deceased;

(3) Permission for the crematory to perform the cremation;

(4) The name of the person who will claim the cremains from the crematory; and

(5) Any other information required by the board.

(c) A crematory shall obtain a permit or authorization for cremation from the county medical examiner, the assistant county medical examiner or the county coroner of the county wherein the death occurred and do such other acts as required by section nine, article twelve, chapter sixty-one of this code: Provided, That a crematory may obtain a permit or authorization for cremation from the chief medical examiner if:

(1) The crematory is unable to obtain a permit from the county medical examiner, the assistant county medical examiner or the county coroner of the county wherein the death occurred; or

(2) The crematory has concerns following authorization by county personnel regarding the identity or cause of death of the deceased.

(d) The permit or authorization for cremation shall be on forms prescribed by the chief medical examiner. A permit or authorization for cremation may be done by facsimile.

(e) All crematories shall implement a cremation procedure. The board, by rules, shall establish the cremation procedure which shall include:

(1) An identification process for bodies;

(2) A tracking process for bodies from the time a body is delivered to a crematory through the time the cremains are claimed by the authorized person;

(3) Obtaining all the required signatures, as specified by the board, on the written permission for cremation;

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(4) Only cremating one human body at a time and prohibiting comingling of cremains;

(5) The specified time period a crematory is required to keep unclaimed cremains;

(6) How to dispose of unclaimed cremains;

(7) A record-keeping process for cremations; and

(8) Any other requirements necessary to effectuate the provisions of this article.

(f) The board shall establish requirements for:

(1) The equipment needed to complete the cremation process; and

(2) The containers needed to store the cremains.

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§30-6-22. Disposition of body of deceased person; penalty.

(a) No public officer, employee, physician or surgeon, or other person having a professional relationship with the deceased, shall send, or cause to be sent to an embalmer, funeral director or crematory operator the body of a deceased without first inquiring the desires of the deceased who has designated his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive or preneed funeral contract, as defined in section two, article fourteen, chapter forty-five of this code; the surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent's death; and, an individual previously designated by the deceased as the person with the right to control disposition of the deceased's remains in a writing signed and notarized by the deceased: Provided, That no person may be designated to serve in such capacity for more than one nonrelative at any one time. If there is no last will and testament, advance directive or preneed funeral contract, surviving spouse, or designated person, then the authority and direction of any next of kin or person who may be chargeable with the funeral expenses of the deceased shall be used as to the disposal of the body of the deceased. The provisions of this subsection are not applicable if the remains of the decedent are subject to disposition pursuant to subsection (b) of this section.

(b) Notwithstanding any provision of this code to the contrary, a United States Department of Defense Record of Emergency Data Form (DD Form 93) executed by a declarant who dies while serving in a branch of the United States Military as defined in 10 U. S. C. §1481 constitutes a valid form of declaration instrument and governs the disposition of the declarant's remains. The person named in the form as the person authorized to direct disposition of the remains may arrange for the final disposition of the declarant's last remains.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500, nor more than $1,000, or imprisoned not less than ten days nor more than ninety days, or both.

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§30-6-22a. Right of disposition; preneed contract; affidavit on disposition of remains; role of county commission; liability of funeral home.

(a) Notwithstanding section 22 of this article, a person who is 18 years of age or older and of sound mind, by entering into a preneed funeral contract, as defined in §47-14-2 of this code, may direct the location, manner and conditions of the disposition of the person's remains and the arrangements for funeral goods and services to be provided upon the person's death. The disposition directions and funeral prearrangements that are contained in a preneed funeral contract are not subject to cancellation or revision unless any resources set aside to fund the preneed funeral contract are insufficient under the terms of the preneed funeral contract to carry out the disposition directions and funeral prearrangements contained in the contract.

(b) As to any matter not addressed in a preneed funeral contract as described in subsection (a) of this section and except as provided in subsection (c) of this section, the right to control the disposition of the remains of a deceased person, the location, manner and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following, in the order named, provided that the person is 18 years or older and is of sound mind:

(1)(A) A person designated by the decedent as the person with the right to control the disposition in an affidavit executed in accordance with paragraph (B) of this subdivision; and

(B) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of his or her remains may execute an affidavit before a notary public in substantially the following form:

"I, _____, do hereby designate _____ with the right to control the disposition of my remains upon my death. I ___ have/ ____ have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided that these directions are lawful and there are sufficient resources in my estate to carry out the directions.

_____

Signed

State of _____

County of _____

I, _____, a Notary Public of said County, do certify that _____, as principal whose name is signed to the writing above bearing date on the _____ day of _____, 20____, has this day acknowledged the same before me.

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Given under my hand this _____ day of _____, 20__.

My commission expires: _____

_____

Notary Public";

(2) The surviving spouse of the decedent;

(3) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one half of the surviving children shall be vested with the rights under this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving children;

(4) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties under this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(5) The surviving brother or sister of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than the majority of surviving siblings shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving siblings;

(6) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than the majority of the surviving grandparents shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving grandparents;

(7) Adult grandchildren.

(8) The guardian of the person of the decedent at the time of the decedent's death if one had been appointed;

(9) The personal representative of the estate of the decedent;

(10) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

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(11) If the disposition of the remains of the decedent is the responsibility of the state or a political subdivision of the state, the public officer, administrator or employee responsible for arranging the final disposition of decedent's remains; or

(12) In the absence of any person under subdivisions (1) through (11) of this subsection, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the funeral director with custody of the body, after attesting in writing that a good-faith effort has been made to no avail to contact the individuals under subdivisions (1) through (11) of this subsection.

(c) A person entitled under law to the right of disposition forfeits that right, and the right is passed on to the next qualifying person as listed in subsection (b) of this section, in the following circumstances:

(1) Any person charged with murder or voluntary manslaughter in connection with the decedent's death and whose charges are known to the funeral director. However, if the charges against that person are dismissed or if the person is acquitted of the charges, the right of disposition is returned to the person;

(2) Any person who does not exercise his or her right of disposition within two days of notification of the death of decedent or within three days of decedent's death, whichever is earlier;

(3) If the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of decedent's death.

(d) Any person signing a funeral service agreement, cremation authorization form or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated or otherwise disposed of, and the party's authority to order the disposition. A funeral home has the right to rely on that funeral service agreement or authorization and shall have the authority to carry out the instructions of the person or persons the funeral home reasonably believes holds the right of disposition. The funeral home has no responsibility to independently investigate the existence of any next of kin or relative of the decedent where a means of disposition is fully set forth in a preneed funeral contract or other written directive of the deceased in accordance with this section. If there is more than one person in a class who are equal in priority and the funeral home has no knowledge of any objection by other members of that class, the funeral home may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements, if no other person in that class provides written objections to the funeral home.

(e) No funeral establishment or funeral director who relies in good faith upon the instructions of a preneed funeral contract, written directive of the deceased, or an individual claiming the right of disposition in accordance with this section shall be subject to criminal

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or civil liability or subject to disciplinary action under this section for carrying out the disposition of the remains in accordance with those instructions.

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§30-6-22b. Certification for alkaline hydrolysis of human remains.

(a) No person, funeral establishment, corporation, partnership, joint venture, voluntary organization, or other entity shall hydrolyze human remains without first obtaining a certificate from the board.

(b) Except as otherwise provided by this article, a certificate for the hydrolysis of human remains shall have the same requirements and fees as for the licensing of crematories under this article. The alkaline hydrolysis of human remains shall be conducted in compliance with all requirements for cremation.

(c) The board shall have the same powers to regulate, enforce, discipline, and inspect alkaline hydrolysis certificate holders and the practice of alkaline hydrolysis that have been granted under this article for the regulation, enforcement, discipline, and inspection of crematories and the practice of cremation.

(d) Any solid remains or residue remaining after alkaline hydrolysis shall be treated and disposed of as cremated remains under this article. Disposal of liquid waste shall be subject to all applicable health and environmental laws and regulations.

(e) Human remains shall be hydrolyzed in an alkaline hydrolysis container and may not be required to be hydrolyzed in a casket.

(f) Unless specified otherwise by the manufacturer of the equipment used for alkaline hydrolysis, human remains may be hydrolyzed without first removing a pacemaker or defibrillator. Any other potentially hazardous implanted device or material shall be handled in accordance with applicable state laws and regulations.

(g) The board shall promulgate legislative rules necessary to define the education and requirements for the certification to perform alkaline hydrolysis.

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§30-6-23. Refusal to issue or renew, suspension or revocation of license; disciplinary action.

(a) The board may refuse to renew, suspend, revoke or limit any license, certificate or registration or practice privilege of a licensee, or certificate or registration holder and may take disciplinary action against a licensee, or certificate or registration holder after a hearing. The board may refuse to issue, refuse to renew, suspend, revoke or limit any license, certificate or registration or practice privilege of a licensee, or certificate or registration holder for any of the following reasons:

(1) Fraud or deceit in obtaining or maintaining a license;

(2) Failure by any licensee, or certificate or registration holder to maintain compliance with requirements for issuance or renewal of a license, certificate or registration or to timely notify the board as required in this article;

(3) Dishonesty, fraud, professional negligence in the performance of services, or a willful departure from accepted standards and professional conduct;

(4) Violation of any provision of this article or any rule, including the violation of any professional standard or rule of professional conduct, or public health laws;

(5) Conviction of a felony or any crime of which dishonesty or fraud under the laws of the United States or this state, or conviction of any similar crime under the laws of any other state if the underlying act or omission involved would have constituted a crime under the laws of this state;

(6) Any conduct adversely affecting upon the licensee's, or certificate or registration holder's fitness to perform professional services;

(7) The use of false, misleading or unethical advertising by any licensee, or certificate or registration holder, or applicant for a license or certificate of registration;

(8) Upon satisfactory proof that a licensed embalmer, a licensed funeral director, or a certified crematory operator has taken undue advantage of his or her patrons or has committed a fraudulent act in the conduct of business;

(9) Solicitation of business by the licensee, or certificate or registration holder, or any agents, assistants or employees, whether such solicitation occurs after death or while death is impending, as specified by the board: Provided, That this subdivision does not prohibit proper advertising;

(10) If a licensee, or certificate or registration holder, knowingly permits a person not licensed, not certified, or not registered to engage in the profession of embalming, funeral directing or cremation;

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(11) If a licensee, or certificate or registration holder, knowingly permits a person not licensed, not certified, or not registered to use his or her license number or numbers for the purpose of practicing, or discharging any of the duties of, the professions of embalming, funeral directing or cremation;

(12) Employment by the licensee of persons as "cappers", "steerers" or "solicitors", or other such persons to obtain funeral or cremation business;

(13) 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, funeral establishment or crematory;

(14) The buying of business by the licensee, or certificate or registration holder, or any agents, assistants or employees, or the direct or indirect payment or offer of payment of a commission by the licensee, or certificate or registration holder, or any agent, assistants or employees, for the purpose of securing business;

(15) Gross immorality; and

(16) Chronic or persistent inebriety or addiction to alcohol, narcotics or other substance.

(b) If the board suspends, revokes, refuses to renew or limits any license, certificate or registration or practice privilege, the board shall give written notice of the action, including a statement of charges setting forth the reasons for the action, and notice of the date, time and place for a hearing. The hearing shall be held in accordance with the provisions of this article.

(c) Disciplinary action includes, but is not limited to, a reprimand, censure, probation, suspension of license, administrative fine not to exceed $1,000 per day per violation and mandatory attendance at continuing education seminars.

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§30-6-24. Complaints; investigations.

(a) Upon receipt of a written complaint filed against any licensee, or certificate or registration holder, the board shall provide a copy of the complaint to the licensee, or certificate or registration holder.

(b) The board may investigate the complaint. If the board finds upon investigation that probable cause exists that the licensee, or certificate or registration holder, has violated any provision of this article or the rules promulgated hereunder, then the board shall serve the licensee, or certificate or registration holder, with a written statement of charges and a notice specifying the date, time and place of the hearing. The hearing shall be held in accordance with the provisions of this article.

(c) In addition to other sanctions imposed, the board may require a licensee, or certificate or registration holder to pay the costs of the proceeding if the licensee, or certificate or registration holder is in violation of any provision of this article or the rules promulgated hereunder.

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§30-6-25. Hearing and judicial review.

(a) A hearing on a statement of charges shall be held in accordance with the provisions for hearing set forth in section eight, article one of this chapter and procedures specified by rule by the board.

(b) Any licensee, or certificate or registration holder, adversely affected by any decision of the board entered after a hearing, may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code and may appeal any ruling resulting from judicial review in accordance with said article.

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§30-6-26. Reinstatement.

If the board has suspended, revoked or refused to renew a license, certificate or registration, the licensee, or certificate or registration holder, shall be afforded an opportunity to demonstrate the qualifications to resume practice. The application for reinstatement shall be in writing and subject to the procedures specified by the board.

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§30-6-27. Unlawful acts.

It is unlawful for any person not licensed or certified under the provisions of this article to practice or offer to practice embalming, funeral directing or cremation, or to operate a funeral establishment or crematory in this state.

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§30-6-28. Injunctions.

When, as a result of an investigation under this article or otherwise, the board or any other interested person believes that any person: (1) Has engaged, is engaging or is about to engage in the practice of embalming, funeral directing or cremating without a license or certificate; (2) has operated, is operating or is about to operate a funeral establishment or crematory; or (3) is in violation of any of the provisions of this article, the board or any other interested person may make application to any court of competent jurisdiction for an order enjoining the acts or practices and upon a showing that the person has engaged or is about to engage in any act or practice, an injunction, restraining order or another appropriate order may be granted by the court without bond.

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§30-6-29. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person has knowingly violated the provisions of this article, the board may bring its information to the attention of the Attorney General or other appropriate law-enforcement officer who may cause appropriate criminal proceedings to be brought.

(b) Any person who knowingly violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 or confined in the county or regional jail not more than one year, or both fined and imprisoned.

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§30-6-30. Single act evidence of practice.

In any action brought or any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

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§30-6-31. Inapplicability of article.

The provisions of this article do not apply to or interfere with:

(1) 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;

(2) The duties of an officer of a medical college, county medical society, anatomical association or other recognized person carrying out his or her responsibilities of dealing with indigent dead human bodies who are held subject for anatomical study; or

(3) The customs or rites of any religious sect in the burial of its dead: Provided, That embalming shall only be performed by a licensed embalmer.

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§30-6-32.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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