

SB742

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**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2002*

**ENROLLED**

**SENATE BILL NO.** 742

(By Senator Wootton, et al )

**PASSED** March 9, 2002

**In Effect** 90 days from **Passage**

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WEST VIRGINIA  
SECRETARY OF STATE

## ENROLLED

### Senate Bill No. 742

(BY SENATORS WOOTON, BURNETTE, CALDWELL, HUNTER,  
KESSLER, MITCHELL, REDD, ROSS, ROWE AND SNYDER)

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[Passed March 9, 2002; in effect ninety days from passage.]

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AN ACT to amend and reenact article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend section nine, article twelve, chapter sixty-one of said code, all relating to recodifying and restating the law relating to embalmers, funeral directors and crematories; creating the misdemeanor offense of failing to cremate pursuant to the terms of a cremation contract or pursuant to the order of a court of competent jurisdiction and establishing the penalties therefor; and creating the misdemeanor offense of failing to deliver the cremated remains of a deceased person pursuant to the terms of a cremation contract or pursuant to the order of a court of competent jurisdiction and establishing the penalties therefor.

*Be it enacted by the Legislature of West Virginia:*

That article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nine, article twelve, chapter sixty-one of said code be amended and reenacted, all to read as follows:

**CHAPTER 30. PROFESSIONS AND OCCUPATION.**

**ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.**

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

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

6 Therefore, the legislature hereby finds that to protect the  
7 public interest a person must have a license, as provided in  
8 this article, to practice embalming, funeral directing and  
9 cremation and to operate a funeral establishment and  
10 crematory in the state of West Virginia.

**§30-6-2. Short title.**

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

**§30-6-3. Definitions.**

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

4 (a) "Apprentice" means a person who is preparing to  
5 become a licensed funeral director and embalmer and is  
6 learning the practice of embalming, funeral directing or  
7 cremation under the direct supervision and personal  
8 instruction of a duly licensed embalmer or funeral direc-  
9 tor.

10 (b) "Authorized representative" means a person legally  
11 authorized or entitled to order the cremation of the

12 deceased, as established by rule. An authorized represen-  
13 tative may include the following:

14 (1) The deceased;

15 (2) The deceased's next of kin;

16 (3) A court order;

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

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

22 (c) "Board" means the West Virginia board of funeral  
23 service examiners.

24 (d) "Certificate" means a certification by the board to be  
25 a crematory operator.

26 (e) "Courtesy card holder" means a person who only  
27 practices funeral directing periodically in West Virginia  
28 and is a licensed embalmer and funeral director in a state  
29 which borders West Virginia.

30 (f) "Cremated remains" or "cremains" means all human  
31 remains, including foreign matter cremated with the  
32 human, recovered after the completion of cremation.

33 (g) "Cremation" means the mechanical or thermal  
34 process whereby a dead human body is reduced to ashes  
35 and bone fragments and then further reduced by addi-  
36 tional pulverization, burning or recremating when neces-  
37 sary.

38 (h) "Crematory" means a licensed place of business  
39 where a deceased human body is reduced to ashes and  
40 bone fragments and includes a crematory that stands alone  
41 or is part of or associated with a funeral establishment.

42 (i) "Crematory operator" means a person certified by the  
43 board to operate a crematory.

44 (j) "Crematory operator in charge" means a certified  
45 crematory operator who accepts responsibility for the  
46 operation of a crematory.

47 (k) "Deceased" means a dead human being for which a  
48 death certificate is required.

49 (l) "Embalmer" means a person licensed to practice  
50 embalming.

51 (m) "Embalming" means the practice of introducing  
52 chemical substances, fluids or gases used for the purpose  
53 of preservation or disinfection into the vascular system or  
54 hollow organs of a dead human body by arterial or hypo-  
55 dermic injection for the restoration of the physical appear-  
56 ance of a deceased.

57 (n) "Funeral" means a service, ceremony or rites per-  
58 formed for the deceased with a body present.

59 (o) "Funeral directing" means the business of engaging  
60 in the following:

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

62 (2) The preparation of a deceased for burial or other  
63 disposition;

64 (3) The arranging or supervising of a funeral or memorial  
65 service for a deceased; and

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

68 (p) "Funeral director" means a person licensed to  
69 practice funeral directing.

70 (q) "Funeral establishment" means a licensed place of  
71 business devoted to: the care, preparation and arrange-  
72 ments for the transporting, embalming, funeral, burial or  
73 other disposition of a deceased. A funeral establishment  
74 can include a licensed crematory.

75 (r) "Funeral service licensee" means a person licensed  
76 after the first day of July, two thousand three, to practice  
77 embalming and funeral directing.

78 (s) "License" means a license, which is not transferable  
79 or assignable, to:

80 (1) Practice embalming and funeral directing;

81 (2) Operate a crematory or a funeral establishment.

82 (t) "Licensee" means a person holding a license issued  
83 under the provisions of this article.

84 (u) "Licensee in charge" means a licensed embalmer and  
85 funeral director who accepts responsibility for the opera-  
86 tion of a funeral establishment.

87 (v) "Memorial service" means a service, ceremony or  
88 rites performed for the deceased without a body present.

89 (w) "Mortuary" means a licensed place of business  
90 devoted solely to the shelter, care and embalming of the  
91 deceased.

92 (x) "Person" means an individual, partnership, associa-  
93 tion, corporation, not-for-profit organization or any other  
94 organization.

95 (y) "Registration" means a registration issued by the  
96 board to be an apprentice to learn the practice of embalm-  
97 ing, funeral directing or cremation.

98 (z) "State" means the state of West Virginia.

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

1 (a) The "West Virginia Board of Embalmers and Funeral  
2 Directors" is hereby continued and shall, after the thirti-  
3 eth day of June, two thousand two, be known as the "West  
4 Virginia Board of Funeral Service Examiners". The  
5 members of the board in office on the first day of July, two  
6 thousand two shall, unless sooner removed, continue to

7 serve until their respective terms expire and until their  
8 successors have been appointed and qualified.

9 (b) Commencing with the board terms beginning the first  
10 day of July, two thousand two, the board shall consist of  
11 seven members appointed for terms of four years by the  
12 governor, by and with the advice and consent of the  
13 Senate. Five members must be licensed embalmers and  
14 funeral directors, and one member must be a citizen  
15 member who is not licensed, certified or registered under  
16 the provisions of this article and who is not a person who  
17 performs any services related to the practice of embalming  
18 or funeral directing. Commencing with the board terms  
19 beginning the first day of July, two thousand two, the  
20 governor shall appoint, by and with the advice and consent  
21 of the Senate, one person who operates a crematory in  
22 West Virginia which person shall replace the current board  
23 member whose term ended on the thirtieth day of June,  
24 two thousand two. The crematory operator who is ap-  
25 pointed for the term commencing the first day of July, two  
26 thousand two, shall register and be certified, pursuant to  
27 the provisions of this article. Any crematory operator  
28 appointed thereafter shall be certified, pursuant to the  
29 provisions of this article.

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

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

44 (e) The governor may remove any member from the  
45 board for neglect of duty, incompetency or official miscon-  
46 duct.

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

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

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

**§30-6-5. Powers of the board.**

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

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

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

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

10 (4) Set the requirements to be an inspector;

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

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

15 (7) Set cremation procedures and requirements;



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

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

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

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

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

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

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

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

**§30-6-6. Rule-making authority.**

1 (a) The board shall propose rules for legislative approval  
2 in accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code to implement the provisions of  
4 this article including, but not limited to, the following:

5 (1) The general practice of embalming, funeral directing  
6 and cremating, and operating a funeral establishment and  
7 crematory: *Provided*, That the board cannot require that  
8 an applicant for a license to operate a funeral establish-  
9 ment or crematory have either an embalmer's or funeral  
10 director's license, or a certificate to operate a crematory.

11 (2) The examinations administered under this article;

- 12 (3) The issuing and renewing of licenses, certificates and  
13 courtesy cards, including establishing a staggered biennial  
14 renewal schedule;
- 15 (4) The requirements for inactive licensees;
- 16 (5) The registration and regulation of apprentices;
- 17 (6) Establish a cremation procedure and crematory  
18 requirements;
- 19 (7) Establish inspection requirements for funeral estab-  
20 lishments and crematories, including an inspection of a  
21 new facility and annual inspections of existing facilities.
- 22 (8) Establish inspector and investigator requirements;
- 23 (9) Setting the fees charged under the provisions of this  
24 article;
- 25 (10) Setting the fines assessed under the provisions of  
26 this article;
- 27 (11) Implementing requirements for continuing educa-  
28 tion for licensees;
- 29 (12) Denying, suspending, revoking, reinstating or  
30 limiting the practice of a licensee or certificate of qualifi-  
31 cation;
- 32 (13) The investigation and resolution of complaints  
33 against persons licensed, certified or registered under this  
34 article;
- 35 (14) Establish advertising standards; and
- 36 (15) Propose any other rules necessary to effectuate the  
37 provisions of this article.
- 38 (b) All rules in effect on the effective date of this article  
39 shall remain in effect until they are withdrawn, revoked or  
40 amended.

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

1 (a) All fees and other moneys, except administrative  
2 fines, received by the board shall be deposited in a sepa-  
3 rate special revenue fund in the state treasury and be used  
4 for the administration of this article. Except as may be  
5 provided in section eleven, article one of this chapter, the  
6 board shall retain the amounts in the special revenue  
7 account from year to year. No compensation or expense  
8 incurred under this article is a charge against the general  
9 revenue fund.

10 (b) Any amounts received as administrative fines im-  
11 posed pursuant to this article shall be deposited into the  
12 general revenue fund of the state treasury.

**§30-6-8. Embalmer license requirements.**

1 (a) The board shall issue a license to practice embalming  
2 to an applicant who meets the following requirements:

3 (1) Is of good moral character;

4 (2) Is eighteen years of age or over;

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

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

8 (5) Has completed one of the following education  
9 requirements:

10 (A) Holds an associate degree from an accredited college  
11 or university or has successfully completed not less than  
12 sixty semester hours or ninety quarter hours of academic  
13 work in an accredited college or university toward a  
14 baccalaureate degree with a declared major field of study,  
15 as evidenced by a transcript submitted for evaluation prior  
16 to beginning a one-year course of apprenticeship and prior  
17 to obtaining a diploma of graduation from a school of  
18 mortuary science; has completed a one-year course of  
19 apprenticeship under the supervision of a licensed em-  
20 balmer and funeral director actively and lawfully engaged

21 in the practice of embalming and funeral directing in this  
22 state, such apprenticeship to consist of diligent attention  
23 to the work in the course of regular and steady employ-  
24 ment and not as a side issue to another employment, and  
25 under which the apprentice shall have taken an active part  
26 in the operation of embalming not less than thirty-five  
27 dead human bodies and an active part in conducting not  
28 less than thirty-five funeral services; and possesses a  
29 diploma of graduation from a school of mortuary science  
30 which requires as a prerequisite to graduation the comple-  
31 tion of a course of study not less than twelve months'  
32 duration, and which said school of mortuary science must  
33 be one accredited by the American board of funeral service  
34 education, inc., and duly approved by the board; or

35 (B) Holds a bachelor degree in mortuary science from an  
36 accredited college or university as evidenced by a tran-  
37 script submitted for evaluation prior to beginning a one-  
38 year course of apprenticeship; and has completed a one-  
39 year course of apprenticeship under the supervision of a  
40 licensed embalmer and funeral director actively and  
41 lawfully engaged in the practice of embalming and funeral  
42 directing in this state, such apprenticeship to consist of  
43 diligent attention to the work in the course of regular and  
44 steady employment and not as a side issue to another  
45 employment, and under which the apprentice shall have  
46 taken an active part in the operation of embalming not less  
47 than thirty-five dead human bodies and an active part in  
48 conducting not less than thirty-five funeral services;

49 (6) Passes with an average score of not less than seventy-  
50 five percent the national conference of funeral services  
51 examination at a testing site provided by the national  
52 conference, passes with a score of not less than seventy-  
53 five percent the state law examination administered by the  
54 board and passes such further examination as the board  
55 may deem necessary to ascertain qualification and ability  
56 to engage in the practice of embalming. Successfully  
57 passing the national conference of funeral services exami-

58 nation is a condition precedent to taking the state law  
59 examination administered by the board. The board shall  
60 offer the state law examination at least twice each year;  
61 and

62 (7) Has paid all the appropriate fees.

63 (b) A license to practice embalming issued by the board  
64 prior to the first day of July, two thousand two, shall for  
65 all purposes be considered a license issued under this  
66 section: *Provided*, That a person holding a license issued  
67 prior to the first day of July, two thousand two, must  
68 renew the license pursuant to the provisions of this article.

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

1 (a) The board shall issue a license to practice funeral  
2 directing to an applicant who meets the following require-  
3 ments:

4 (1) Holds an embalmer's license issued by the board; and

5 (2) Has paid all the appropriate fees.

6 (b) A license to practice funeral directing issued by the  
7 board prior to the first day of July, two thousand two,  
8 shall for all purposes be considered a license issued under  
9 this section: *Provided*, That a person holding a license  
10 issued prior to the first day of July, two thousand two,  
11 must renew the license pursuant to the provisions of this  
12 article.

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

1 (a) Commencing the first day of July, two thousand  
2 three, the board shall issue a license to practice embalming  
3 and funeral directing, which license shall be known as a  
4 funeral service license, to an applicant who meets the  
5 following requirements:

6 (1) Is of good moral character;

7 (2) Is eighteen years of age or over;

- 8 (3) Is a citizen of the United States or is eligible for  
9 employment in the United States;
- 10 (4) Holds a high school diploma or its equivalent;
- 11 (5) Has completed one of the education requirements for  
12 an embalmer's license, set out in subdivision five, subsec-  
13 tion (a) section eight of this article; and
- 14 (6) Has paid all the appropriate fees.
- 15 (b) A license to practice embalming and funeral directing  
16 issued by the board prior to the first day of July, two  
17 thousand three, shall for all purposes be considered a  
18 license issued under this section.
- 19 (c) A person holding a license to practice embalming and  
20 funeral directing issued prior to the first day of July, two  
21 thousand three, must after the first day of July, two  
22 thousand three, renew his or her license pursuant to the  
23 provisions of this section.
- 24 (d) After the first day of July, two thousand three, where  
25 ever the terms "license to practice embalming and funeral  
26 directing" or "embalming and funeral directing license"  
27 are used in the code, the term "funeral service license"  
28 shall apply.

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

- 1 (a) All crematory operators shall be certified by the  
2 board. The board shall issue a certificate to be a crema-  
3 tory operator to an applicant who meets the following  
4 requirements:
- 5 (1) Has completed a class, authorized by the board, on  
6 cremation and operating a crematory;
- 7 (2) Has paid all the appropriate fees; and
- 8 (3) Has completed such other requirements as prescribed  
9 by the board.

10 (b) All persons currently operating crematories shall by  
11 the first day of January, two thousand three, register with  
12 the board. By the first day of July, two thousand three, all  
13 persons currently operating crematories shall obtain a  
14 certificate to operate a crematory, pursuant to the provi-  
15 sions of this section.

16 (c) All certificates must be renewed biennially upon or  
17 before the first day of July.

18 (d) After the first day of July, two thousand three, all  
19 licensed crematories must have a certified crematory  
20 operator in charge.

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

1 The board may issue a license to practice embalming and  
2 funeral directing or a certificate to be a crematory opera-  
3 tor to an applicant of good moral character who holds a  
4 valid license or its equivalent to practice from another  
5 state if the applicant demonstrates that:

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

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

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

19 (4) He or she is not currently being investigated by a  
20 disciplinary authority of another state, does not have  
21 charges pending against his or her license or something

22 equivalent to practice and has never had a license or  
23 something equivalent to practice revoked;

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

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

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

**§30-6-13. Courtesy cards.**

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

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

7 (2) Payment of a fee; and

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

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

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

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

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



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

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

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

8 (c) The board shall require as a condition for the renewal  
9 of a license to practice embalming and funeral directing or  
10 a certificate to be a crematory operator that each licensee  
11 participate in continuing education: *Provided*, That any  
12 licensed embalmer or funeral director sixty-five years or  
13 older with at least ten years experience as a licensed  
14 embalmer or licensed funeral director, is entitled to be  
15 issued, after payment of a fee, a license as an embalmer  
16 emeritus or funeral director emeritus and is exempt from  
17 all continuing education requirements. The emeritus  
18 license shall entitle the holder to all the rights and privi-  
19 leges of the license previously held by the licensee.

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

**§30-6-15. Continuing education.**

1 (a) The board shall conduct annually a school of instruc-  
2 tion to apprise funeral directors and embalmers of the  
3 most recent scientific knowledge and developments  
4 affecting their profession. This school shall qualify as  
5 continuing education and shall fulfill as many continuing

6 education required hours as the board specifies. Qualified  
7 lecturers and demonstrators may be employed by the  
8 board for this purpose. The board shall give notice of the  
9 time and place at which the school will be held for all  
10 licensed funeral directors and embalmers: *Provided*, That  
11 the location of any school of continuing education shall  
12 accommodate the geographic diversity of the embalmers  
13 and funeral directors of this state.

14 (b) Hours of continuing education may be obtained by  
15 attending and participating in board-approved programs,  
16 meetings, seminars or activities. It is the responsibility of  
17 each licensee to finance his or her costs of continuing  
18 education.

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

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

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

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

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

19 (d) All of an inspector's expenses, per diem and compen-  
20 sation shall be paid out of the receipts of the board, but  
21 the allowances shall at no time exceed the receipts of the  
22 board.

23 (e) The board is authorized to set fees for inspections:  
24 *Provided*, That there shall be no fee for an annual inspec-  
25 tion.

**§30-6-17. Apprenticeship.**

1 (a) After the first day of January, two thousand three,  
2 the board shall issue a registration to be an apprentice  
3 funeral director or apprentice embalmer to an applicant  
4 who meets the following requirements:

5 (1) Is of good moral character and temperate habits;

6 (2) Is eighteen years of age, or over;

7 (3) A citizen of the United States or be eligible for  
8 employment in the United States;

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

10 (5) Has completed one of the education requirements for  
11 an embalmer's license, as set out in subsection (5), section  
12 eight of this article;

13 (6) Is not attending school and will not be attending  
14 school during the apprenticeship period; and

15 (7) Has paid the appropriate fees.

16 (b) Any person that commences an apprenticeship prior  
17 to the first day of January, two thousand three, may  
18 continue to serve such apprenticeship and is not subject to  
19 the requirements set forth in this section, but is subject to  
20 board approval.

21 (c) The board may set the requirements for an appren-  
22 ticeship, including the manner in which it shall be served  
23 and the length of time, which shall not be more than one  
24 year.

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

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

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

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

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

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

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

16 (5) Show that the licensee in charge is a licensed funeral  
17 director;

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

21 (7) Pay all the appropriate fees; and

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

24 (b) All funeral establishment licenses must be renewed  
25 biennially, by a staggered schedule, upon or before the  
26 first day of July and pay a renewal fee.

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

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

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

47 (f) If a licensee in charge ceases to be employed by a  
48 funeral establishment, then the holder of the funeral  
49 establishment license shall notify the board within thirty  
50 days of the cessation. Within thirty days after such  
51 notification, the holder of a funeral establishment license  
52 shall execute a new application for a funeral establishment  
53 license specifying the name of the new licensee in charge.  
54 A funeral establishment is prohibited from operating more  
55 than thirty days without a licensee in charge.

56 (g) A licensee whose embalmer's or funeral director's  
57 license has been revoked or a holder of a license to operate  
58 a funeral establishment whose license to operate has been  
59 revoked shall not operate, either directly or indirectly, or  
60 hold any interest in any funeral establishment or crema-  
61 tory: *Provided*, That a holder of a license to operate a  
62 funeral establishment whose license to operate has been

63 revoked is not prohibited from leasing any property owned  
64 by him or her for use as a funeral establishment, so long as  
65 the property owner does not participate in the control or  
66 profit of the funeral establishment except as lessor of the  
67 premises for a fixed rental not dependent upon earnings.

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

71 (i) A license to operate a funeral establishment issued by  
72 the board prior to the first day of July, two thousand two,  
73 shall for all purposes be considered a license issued under  
74 this section: *Provided*, That a funeral establishment  
75 holding a license issued prior to the first day of July, two  
76 thousand two, must renew the license pursuant to this  
77 section.

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

1 (a) Every separate funeral establishment in this state  
2 offering the services set forth in this article shall be  
3 operated under the supervision and management of a  
4 licensee in charge who is licensed as a funeral director in  
5 this state.

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

10 (c) All funeral establishments shall display in all adver-  
11 tising the name of the licensee in charge of the establish-  
12 ment.

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

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

**§30-6-20. Crematory license requirements.**

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

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

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

8 (3) The crematory meets all applicable environmental  
9 standards;

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

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

14 (6) Have a certified crematory operator in charge;

15 (7) Pay all the appropriate fees; and

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

18 (b) All crematory licenses must be renewed biennially, by  
19 a staggered schedule, upon or before the first day of July  
20 and pay a renewal fee.

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

26 (d) A holder of a crematory license that fails to pay fees  
27 for either the principal crematory or additional cremato-  
28 ries by the first day of July of the renewal year is subject  
29 to a penalty, a reinstatement fee for each crematory and  
30 the required renewal fee.

31 (e) The holder of a crematory license who ceases to  
32 operate the crematory at the location specified in the  
33 application shall, within twenty days thereafter, surrender  
34 the crematory license to the board and the license shall be  
35 canceled by the board. In the event of the death of an  
36 individual who was the holder of a crematory license, it  
37 shall be the duty of the holder's personal representative to  
38 surrender the crematory license within one hundred  
39 twenty days of qualifying as the personal representative.

40 (f) A holder of a certificate to operate a crematory whose  
41 certificate to operate has been revoked or a holder of a  
42 crematory license whose license has been revoked shall not  
43 operate, either directly or indirectly, or hold any interest  
44 in any crematory or funeral establishment: *Provided*, That  
45 a holder of a crematory license whose license has been  
46 revoked is not prohibited from leasing any property owned  
47 by him or her for use as a crematory, so long as the prop-  
48 erty owner does not participate in the control or profit of  
49 the crematory except as lessor of the premises for a fixed  
50 rental not dependent upon earnings.

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

53 (h) All persons that operate crematories shall by the first  
54 day of January, two thousand three, register with the  
55 board. By the first day of July, two thousand three, all  
56 persons that operate crematories shall obtain a crematory  
57 license, pursuant to the provisions of this section.

58 (i) All crematory licenses must be renewed biennially  
59 upon or before the first day of July.

60 (j) After the first day of July, two thousand three, all  
61 licensed crematories must have a certified crematory  
62 operator in charge.

63 (k) If a certified crematory operator in charge ceases to  
64 be employed by a crematory, then the holder of the  
65 crematory license shall notify the board within thirty days



66 of the cessation. Within thirty days after such notification,  
67 the holder of a crematory license shall execute a new  
68 application for a crematory license specifying the name of  
69 the new certified crematory operator in charge. A crema-  
70 tory is prohibited from operating more than thirty days  
71 without a certified crematory operator in charge.

**§30-6-21. Requirements for cremating.**

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

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

8 (1) The identity of the deceased;

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

11 (3) Permission for the crematory to perform the crema-  
12 tion;

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

15 (5) Any other information required by the board.

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

24 (1) The crematory is unable to obtain a permit from the  
25 county medical examiner, the assistant county medical

26 examiner or the county coroner of the county wherein the  
27 death occurred; or

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

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

34 (e) All crematories shall implement a cremation proce-  
35 dure. The board, by rules, shall establish the cremation  
36 procedure which shall include:

37 (1) An identification process for bodies;

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

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

43 (4) Only cremating one human body at a time and  
44 prohibiting co-mingling of cremains;

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

47 (6) How to dispose of unclaimed cremains;

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

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

51 (f) The board shall establish requirements for:

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

54 (2) The containers needed to store the cremains.

1 **§30-6-22. Disposition of body of deceased person; penalty.**

2 (a) No public officer, employee, physician or surgeon, or  
3 any other person having a professional relationship with  
4 the deceased, shall send, or cause to be sent, to any em-  
5 balmer, funeral director or crematory operator the body of  
6 any deceased without first inquiring the desires of the next  
7 of kin, or any persons who may be chargeable with the  
8 funeral expenses of the deceased. If any next of kin or  
9 person can be found, his or her authority and direction  
10 shall be used as to the disposal of the body of the deceased.

11 (b) Any person who violates the provisions of this section  
12 is guilty of a misdemeanor and, upon conviction thereof,  
13 shall be fined not less than five hundred dollars, nor more  
14 than one thousand dollars, or imprisoned not less than ten  
15 days nor more than ninety days, or both.

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

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

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

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

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

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

21 (5) Conviction of a felony or any crime of which dishon-  
22 esty or fraud under the laws of the United States or this  
23 state, or conviction of any similar crime under the laws of  
24 any other state if the underlying act or omission involved  
25 would have constituted a crime under the laws of this  
26 state;

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

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

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

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

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

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

52 (12) Employment by the licensee of persons as “cappers”,  
53 “steerers” or “solicitors”, or other such persons to obtain  
54 funeral or cremation business;

55 (13) Employment, directly or indirectly, of any appren-  
56 tice, agent, assistant, embalmer, employee or other person,  
57 on part or full time, or on commission, for the purpose of  
58 calling upon individuals or institutions by whose influence  
59 dead human bodies may be turned over to a particular  
60 funeral director, funeral establishment or crematory;

61 (14) The buying of business by the licensee, or certificate  
62 or registration holder, or any agents, assistants or employ-  
63 ees, or the direct or indirect payment or offer of payment  
64 of a commission by the licensee, or certificate or registra-  
65 tion holder, or any agent, assistants or employees, for the  
66 purpose of securing business;

67 (15) Gross immorality; and

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

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

77 (c) Disciplinary action includes, but is not limited to, a  
78 reprimand, censure, probation, suspension of license,  
79 administrative fine not to exceed one thousand dollars per  
80 day per violation and mandatory attendance at continuing  
81 education seminars.

#### **§30-6-24. Complaints; investigations.**

1 (a) Upon receipt of a written complaint filed against any  
2 licensee, or certificate or registration holder, the board

3 shall provide a copy of the complaint to the licensee, or  
4 certificate or registration holder.

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

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

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

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

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

#### **§30-6-26. Reinstatement.**

1 If the board has suspended, revoked or refused to renew  
2 a license, certificate or registration, the licensee, or  
3 certificate or registration holder, shall be afforded an  
4 opportunity to demonstrate the qualifications to resume  
5 practice. The application for reinstatement shall be in

6 writing and subject to the procedures specified by the  
7 board.

**§30-6-27. Unlawful acts.**

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

**§30-6-28. Injunctions.**

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

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

1 (a) When, as a result of an investigation under this  
2 article or otherwise, the board has reason to believe that a  
3 person has knowingly violated the provisions of this  
4 article, the board may bring its information to the atten-  
5 tion of the attorney general or other appropriate  
6 law-enforcement officer who may cause appropriate  
7 criminal proceedings to be brought.

8 (b) Any person who knowingly violates any provision of  
9 this article is guilty of a misdemeanor and, upon convic-  
10 tion thereof, shall be fined not more than two thousand  
11 five hundred dollars or confined in the county or regional  
12 jail not more than one year, or both fined and imprisoned.

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

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

**§30-6-31. Inapplicability of article.**

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

3 (1) The duties of an officer of any local or state board of  
4 health who, in compliance with local or state board of  
5 health rules, may be charged with the duty of preparation  
6 for burial of a human body when death was caused by a  
7 virulent, communicable disease;

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

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

**§30-6-32. Termination date.**

1 The board shall terminate on the first day of July, two  
2 thousand seven, pursuant to the provisions of article ten,  
3 chapter four of this code.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.****ARTICLE 12. POSTMORTEM EXAMINATIONS.****§61-12-9. Permits required for cremation; fee.**

1 (a) It is the duty of any person cremating, or causing or  
2 requesting the cremation of, the body of any dead person



3 who died in this state, to secure a permit for the cremation  
4 from the chief medical examiner, the county medical  
5 examiner or county coroner of the county wherein the  
6 death occurred. Any person who willfully fails to secure  
7 a permit for a cremation, is guilty of a misdemeanor and,  
8 upon conviction thereof, shall be fined not less than two  
9 hundred dollars. A permit for cremation shall be acted  
10 upon by the chief medical examiner, the county medical  
11 examiner or the county coroner after review of the circum-  
12 stances surrounding the death, as indicated by the death  
13 certificate. The person requesting issuance of a permit for  
14 cremation shall pay a reasonable fee, as determined by the  
15 chief medical examiner, to the county medical examiner or  
16 coroner or to the office of the chief medical examiner, as  
17 appropriate, for issuance of the permit.

18 (b) Any person operating a crematory who does not  
19 perform a cremation pursuant to the terms of a cremation  
20 contract, or pursuant to the order of a court of competent  
21 jurisdiction, within the time contractually agreed upon, or,  
22 if the cremation contract does not specify a time period,  
23 within twenty-one days of receipt of the deceased person's  
24 remains by the crematory, whichever time is less, is guilty  
25 of a misdemeanor.

26 (c) Any person operating a crematory who fails to deliver  
27 the cremated remains of a deceased person, pursuant to  
28 the terms of a cremation contract, or pursuant to the order  
29 of a court of competent jurisdiction, within the time  
30 contractually agreed upon, or, if the cremation contract  
31 does not specify a time period, within thirty-five days of  
32 receipt of the deceased person's remains by the crematory,  
33 whichever time is less, is guilty of a misdemeanor.

34 (d) Any person convicted of a violation of the provisions  
35 of subsection (b) or (c) of this section shall be fined not less  
36 than one thousand dollars nor more than five thousand  
37 dollars or confined in the county or regional jail for a  
38 period not to exceed six months, or both.

39 (e) In any criminal proceeding alleging that a person  
40 violated the time requirements of this section, it is a  
41 defense to the charge that a delay beyond the time periods  
42 provided for in this section were caused by circumstances  
43 wholly outside the control of the defendant.

44 (f) For purposes of this section, "cremation contract"  
45 means an agreement to perform a cremation, as a "crema-  
46 tion" is defined in subsection (g), section three, article six,  
47 chapter thirty of this code. A cremation contract is an  
48 agreement between a crematory and any authorized person  
49 or entity, including, but not limited to:

50 (1) The deceased person, prior to his or her death;

51 (2) The deceased person's next of kin;

52 (3) A public official charged with arranging the final  
53 disposition of an indigent deceased person or an unclaimed  
54 corpse;

55 (4) A representative of an institution who is charged with  
56 arranging the final disposition of a deceased who donated  
57 his or her body to science;

58 (5) A public officer required by statute to arrange the  
59 final disposition of a deceased person;

60 (6) Another funeral establishment; or

61 (7) An executor, administrator or other personal repre-  
62 sentative of the deceased.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 3rd  
Day of April, 2002.

*[Signature]*  
.....  
Governor

PROCEEDINGS

CONFERENCE

Date: 3/25/02

Time: 11:40am