

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 288

BY SENATORS GAUNCH, MAYNARD, BOSO, CLEMENTS,
JEFFRIES, MARONEY, PALUMBO, SMITH, TAKUBO, WELD,
AND CLINE

[Originating in the Committee on Government
Organization;

Reported on February 9, 2018]

1 A BILL to repeal §30-6-22a, §30-6-23, §30-6-24, §30-6-25, §30-6-26, §30-6-27, §30-6-28, §30-6-
2 29, §30-6-30, and §30-6-31 of the Code of West Virginia, 1931, as amended; and to
3 amend and reenact §30-6-1, §30-6-2, §30-6-3, §30-6-4, §30-6-5, §30-6-6, §30-6-7, §30-
4 6-8, §30-6-9, §30-6-10, §30-6-11, §30-6-12, §30-6-13, §30-6-14, §30-6-15, §30-6-16,
5 §30-6-17, §30-6-18, §30-6-19, §30-6-20, §30-6-21, and §30-6-22 of said code, all relating
6 to regulation of cremation, embalming, and funeral service directing; defining terms;
7 terminating the Board of Funeral Service Examiners; transferring the functions of the
8 board to the Secretary of State; specifying timeline and duties for the transfer of functions
9 and property; providing special provisions and authority to Secretary of State to facilitate
10 transfer; providing rule-making authority for Secretary of State; continuing existing rules
11 previously promulgated by the board; authorizing Secretary of State to request repeal of
12 rules previously promulgated by the board; establishing timeline for promulgation of rules
13 by Secretary of State in 2018; authorizing the promulgation of emergency rules; creating
14 special revenue account; eliminating special revenue account utilized by Board of Funeral
15 Service Examiners and transferring funds; providing for the transfer of assets and liabilities
16 to new account; providing for periodic sweep of funds into General Revenue Fund;
17 eliminating outdated and obsolete language; authorizing Secretary of State to grant
18 funeral service license; updating requirements for funeral service license; reclassifying
19 certificate to operate crematory as license; authorizing Secretary of State to grant license
20 to operate crematory; updating requirements for license to operate crematory; updating
21 language related to license reciprocity and courtesy card holders to give authority to
22 Secretary of State; authorizing Secretary of State to enter into reciprocity agreements;
23 authorizing Secretary of State to issue registration to be an apprentice; updating
24 requirements for licensure of funeral establishments; authorizing Secretary of State to
25 issue funeral establishment license; updating requirements for licensure of crematories;
26 authorizing Secretary of State to issue crematory license; modifying requirements for

27 inspectors and inspections; authorizing Secretary of State to appoint inspectors; updating
28 requirements for renewal of licenses, courtesy cards, and registrations; eliminating
29 requirement for Board of Funeral Service Examiners to provide continuing education;
30 modifying order of persons authorized to give written permission for cremation; updating
31 language concerning preneed affidavit; requiring Secretary of State to refuse to issue
32 license, renewal, or registration if certain requirements not met; authorizing Secretary of
33 State to take action against licensee, registrant, or applicant under certain circumstances;
34 requiring Secretary of State establish means for public to submit complaints; requiring
35 Secretary of State to investigate all complaints received; setting procedures for
36 investigations; specifying powers and procedures for conducting hearings and rendering
37 disposition of contested cases; granting the authority to suspend or revoke an
38 authorization to practice without a prior hearing under certain circumstances; setting
39 burden of proof; providing right of appeal from determination of Secretary of State;
40 authorizing informal disposition; making violations of article a criminal act; establishing
41 criminal penalties; authorizing Secretary of State or interested person to seek injunctions
42 for violations of article; providing for referral of criminal matters to appropriate authorities;
43 permitting criminal actions to be brought by Attorney General, United States Attorney, or
44 local prosecuting attorney; providing that single act is evidence of violation; providing for
45 certain inapplicability of article; and correcting references and updating terms throughout.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. ~~BOARD OF FUNERAL SERVICE EXAMINERS~~ AND CREMATORY
LICENSURE.**

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

1 The practice of preparing dead human bodies for burial or cremation and the subsequent
2 burial or cremation thereof has serious public health and safety considerations and should only

3 be practiced by a person who has specific training in those fields.

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

§30-6-2. Short title Definitions.

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

3 “Apprentice” means a person who is preparing to become a funeral services licensee and
4 is learning the practice of embalming, funeral directing, or cremation under the direct supervision
5 and personal instruction of a funeral services license holder.

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

7 “Cremains” means all human remains, including foreign matter cremated with the human,
8 recovered after the completion of cremation.

9 “Cremation” means the mechanical or thermal process whereby a dead human body is
10 reduced to ashes and bone fragments and then further reduced by additional pulverization or
11 recremating when necessary.

12 “Crematory” means a licensed place of business where a deceased human body is
13 reduced to ashes and bone fragments and includes a crematory that stands alone or is part of or
14 associated with a funeral establishment.

15 “Crematory operator” means a person licensed by the secretary to operate a crematory.

16 “Crematory operator in charge” means a licensed crematory operator who accepts
17 responsibility for the operation of a crematory.

18 “Deceased” means a dead human being for which a death certificate is required.

19 “Embalming” means the practice of introducing chemical substances, fluids, or gases used
20 for the purpose of preservation or disinfection into the vascular system or hollow organs of a dead

21 human body by arterial or hypodermic injection for the restoration of the physical appearance of
22 a deceased.

23 “Funeral” means a service, ceremony, or rites performed for the deceased with a body
24 present.

25 “Funeral directing” means the business of engaging in the following:

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

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

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

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

31 “Funeral director” means a person licensed to practice funeral directing.

32 “Funeral establishment” means a licensed place of business devoted to: The care,
33 preparation, and arrangements for the transporting, embalming, funeral, burial, or other
34 disposition of a deceased. A funeral establishment can include a licensed crematory.

35 “Funeral service licensee” means a person licensed to practice embalming and funeral
36 directing.

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

38 (1) Practice embalming and funeral directing; or

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

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

41 “Licensee in charge” means the holder of a funeral services license who accepts
42 responsibility for the operation of a funeral establishment.

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

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

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

§30-6-3. Definitions Termination of West Virginia Board of Funeral Service Examiners;
transfer of functions and responsibilities to Secretary of State.

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

3 ~~(a) “Apprentice” means a person who is preparing to become a licensed funeral director~~
4 ~~and embalmer and is learning the practice of embalming, funeral directing or cremation under the~~
5 ~~direct supervision and personal instruction of a duly licensed embalmer or funeral director.~~

6 ~~(b) “Authorized representative” means a person legally authorized or entitled to order the~~
7 ~~cremation of the deceased, as established by rule. An authorized representative may include in~~
8 ~~the following order of precedence:~~

9 ~~(1) The deceased, who has expressed his or her wishes regarding the disposal of their~~
10 ~~remains through a last will and testament, an advance directive or preneed funeral contract, as~~
11 ~~defined in section two, article fourteen, chapter forty five of this code;~~

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

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

18 ~~(4) The deceased’s next of kin;~~

19 ~~(5) A court order;~~

20 ~~(6) A public official who is charged with arranging the final disposition of an indigent~~
21 ~~deceased; or~~

22 ~~(7) A representative of an institution who is charged with arranging the final disposition of~~

23 ~~a deceased who donated his or her body to science.~~

24 ~~(c) "Board" means the West Virginia Board of Funeral Service Examiners.~~

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

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

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

31 ~~(g) "Cremation" means the mechanical or thermal process whereby a dead human body~~
32 ~~is reduced to ashes and bone fragments and then further reduced by additional pulverization,~~
33 ~~burning or reinterment when necessary.~~

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

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

38 ~~(j) "Crematory operator in charge" means a certified crematory operator who accepts~~
39 ~~responsibility for the operation of a crematory.~~

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

41 ~~(l) "Embalmer" means a person licensed to practice embalming.~~

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

46 ~~(n) "Funeral" means a service, ceremony or rites performed for the deceased with a body~~
47 ~~present.~~

48 ~~(o) "Funeral directing" means the business of engaging in the following:~~

- 49 ~~(1) The shelter, custody or care of a deceased;~~
50 ~~(2) The preparation of a deceased for burial or other disposition;~~
51 ~~(3) The arranging or supervising of a funeral or memorial service for a deceased; and~~
52 ~~(4) The maintenance of a funeral establishment for the preparation, care or disposition of~~
53 ~~a deceased.~~

54 ~~(p) "Funeral director" means a person licensed to practice funeral directing.~~

55 ~~(q) "Funeral establishment" means a licensed place of business devoted to: the care,~~
56 ~~preparation and arrangements for the transporting, embalming, funeral, burial or other disposition~~
57 ~~of a deceased. A funeral establishment can include a licensed crematory.~~

58 ~~(r) "Funeral service licensee" means a person licensed after July 1, 2003, to practice~~
59 ~~embalming and funeral directing.~~

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

61 ~~(1) Practice embalming and funeral directing;~~

62 ~~(2) Operate a crematory or a funeral establishment.~~

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

64 ~~(u) "Licensee in charge" means a licensed embalmer and funeral director who accepts~~
65 ~~responsibility for the operation of a funeral establishment.~~

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

68 ~~(w) "Mortuary" means a licensed place of business devoted solely to the shelter, care and~~
69 ~~embalming of the deceased.~~

70 ~~(x) "Person" means an individual, partnership, association, corporation, not-for-profit~~
71 ~~organization or any other organization.~~

72 ~~(y) "Registration" means a registration issued by the board to be an apprentice to learn~~
73 ~~the practice of embalming, funeral directing or cremation.~~

74 ~~(z) "State" means the State of West Virginia.~~

75 (a) The West Virginia Board of Funeral Service Examiners, previously established under
76 this article, shall terminate on June 30, 2018. Any license, certificate, or registration issued by that
77 board prior to July 1, 2018 shall remain in effect for the period specified at the time the license,
78 certificate, or registration was issued.

79 (b) Prior to July 1, 2018, the board may continue to receive applications for licenses,
80 certificates, and registrations and for renewal of the same as previously required by law. The
81 board and its staff shall continue to act on those applications and, up until the date of termination,
82 issue licenses, certificates, and registrations to applicants providing complete and sufficient
83 applications, as appropriate.

84 (c) Upon the effective date of the enactment of amendments to this section during the
85 2018 regular session of the Legislature, and prior to the termination of the board, complaints
86 alleging unprofessional conduct against any licensee, certificate holder, or registrant shall be
87 submitted to the Secretary of State for investigation.

88 (d) Prior to July 1, 2018, the board and its staff shall take all reasonable and necessary
89 measures to terminate the board's existing contracts and leases effective June 30, 2018, under
90 the terms of those contracts, or, in coordination with the Secretary of State, arrange for the transfer
91 of those contracts and leases to the Secretary of State. The board and its staff shall arrange for
92 all records, data, equipment, and other tangible property owned by the board to be transferred to
93 the Secretary of State prior to July 1, 2018.

94 (e) On July 1, 2018, the Secretary of State shall assume all powers, functions, and duties
95 of the former board, as detailed in this article.

96 (f) All licenses, certificates, or registrations issued by the board after the effective date of
97 the amendment of this section in the 2018 regular session of the Legislature, but prior to the
98 termination of the board, shall be valid if signed both by the executive director of the board and
99 by any member of the board or, in the absence of any available member of the board, by the
100 Secretary of State.

101 (1) If, due to resignation or retirement of its staff, the board is unable to complete the
102 review of applications for renewal of licenses or other authorizations to practice by June 30, 2018,
103 as provided under this article, the Secretary of State may grant temporary authorizations to
104 applicants to continue to practice for up to 60 days while the applications are reviewed by the
105 secretary.

106 (2) If, due to resignation or retirement of the board's staff, and in the absence of any
107 members of the board, the board ceases to fulfill its statutory functions, the Secretary of State
108 may ask the State Auditor to find that no spending officer exists to authorize expenditures from
109 fund 8504, known as the Funeral Service Examiners Operating Fund. If the State Auditor makes
110 this finding in writing, the Secretary of State shall then be authorized to expend money from that
111 fund to carry out the requirements of this article until there is a transfer of moneys to the new
112 special revenue account created pursuant to §30-6-5 of this code.

113 (g) The Secretary of State shall educate members of the public concerning the transfer of
114 responsibilities from the Board of Funeral Service Examiners to the Secretary of State, including
115 the manner in which complaints alleging violations of this article or misconduct by licensees under
116 this article may be submitted to the Secretary of State.

§30-6-4. Board of funeral service examiners Rule-making authority; carryover of existing rules; authorization for emergency rules.

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

6 ~~(b) Commencing with the board terms beginning July 1, 2002, the board shall consist of~~
7 ~~seven members appointed for terms of four years by the Governor, by and with the advice and~~
8 ~~consent of the Senate. Five members must be licensed embalmers and funeral directors, and one~~

9 ~~member must be a citizen member who is not licensed, certified or registered under the provisions~~
10 ~~of this article and who is not a person who performs any services related to the practice of~~
11 ~~embalming or funeral directing. Commencing with the board terms beginning July 1, 2002, the~~
12 ~~Governor shall appoint, by and with the advice and consent of the Senate, one person who~~
13 ~~operates a crematory in West Virginia which person shall replace the current board member~~
14 ~~whose term ended on June 30, 2002. The crematory operator who is appointed for the term~~
15 ~~commencing July 1, 2002, shall register and be certified, pursuant to the provisions of this article.~~
16 ~~Any crematory operator appointed thereafter shall be certified, pursuant to the provisions of this~~
17 ~~article.~~

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

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

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

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

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

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

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

40 (1) The general practice of embalming, funeral directing, and cremating, and operating a
41 funeral establishment and crematory;

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

44 (3) The requirements for inactive licensees;

45 (4) The registration and regulation of apprentices;

46 (5) Establish a cremation procedure and crematory requirements;

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

49 (7) Establish inspector and investigator requirements;

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

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

52 (10) Setting requirements for continuing education for licensees;

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

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

57 (13) Establish advertising standards; and

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

59 (b) All rules promulgated by the West Virginia Board of Funeral Service Examiners and in
60 effect on the effective date of the amendments to this article enacted during the 2018 regular

61 session of the Legislature shall remain in effect and may be applied or enforced by the Secretary
62 of State until the secretary proposes new rules to supersede the rules currently in effect: *Provided,*
63 That these rules shall expire on July 1, 2021, if not superseded sooner. The secretary is
64 authorized to request the repeal, pursuant to the provisions of §29A-3-1a(b) of this code, of any
65 rules previously promulgated by the West Virginia Board of Funeral Service Examiners.

66 (c) If the Secretary of State chooses during the 2018 calendar year to propose rules for
67 legislative approval to supersede or update the rules previously promulgated by the West Virginia
68 Board of Funeral Service Examiners, the secretary may initiate the rule-making process with a
69 notice of proposed rulemaking as provided within §29A-3-5 of this code prior to October 1, 2018,
70 and, notwithstanding the time limit specified in §29A-3-12(a) of this code, the Legislative Rule-
71 Making Review Committee shall consider and review the rules for approval for introduction in the
72 2019 regular session of the Legislature. If the secretary proposes a rule for legislative approval
73 pursuant to this section, the secretary is also authorized to promulgate a corresponding
74 emergency rule pursuant to the provisions of §29A-3-15 of this code.

§30-6-5. Powers of the board Fees; special revenue account; administrative fines.

1 ~~The board has all the powers set forth in article one of this chapter and in addition may:~~
2 ~~(1) Sue and be sued in its official name as an agency of this state;~~
3 ~~(2) Hire, fix the compensation of and discharge an executive director;~~
4 ~~(3) Hire, fix the compensation of and discharge the employees necessary to enforce the~~
5 ~~provisions of this article;~~
6 ~~(4) Set the requirements to be an inspector;~~
7 ~~(5) Examine and determine the qualifications of any applicant for a license;~~
8 ~~(6) Determine the qualifications of any applicant for a certificate;~~
9 ~~(7) Set cremation procedures and requirements;~~
10 ~~(8) Set the fees charged under the provisions of this article;~~
11 ~~(9) Set the fines assessed under the provisions of this article;~~

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

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

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

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

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

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

22 (a) There is hereby created a new special revenue account in the State Treasury to be
23 known as the Funeral Services Licensing Fund. All fees and other moneys, except fines, received
24 by the Secretary of State under the provisions of this article shall be deposited in this fund. The
25 Secretary of State is authorized to expend moneys of the fund from collections to carry out the
26 provisions of this article. No compensation or expense incurred under this article is a charge
27 against the General Revenue Fund.

28 (b) The Funeral Services Examiners Operating Fund, fund 8504, shall terminate on June
29 30, 2018, and any moneys in the fund at that time shall be transferred to the Funeral Services
30 Licensing Fund. Any outstanding debts or liabilities that exist at the time of the termination of the
31 Funeral Service Examiners Operating Fund shall carry over to be debts or liabilities of the Funeral
32 Services Licensing Fund.

33 (c) Any amounts received as administrative fines imposed pursuant to this article shall be
34 deposited into the General Revenue Fund.

35 (d) On June 30, 2019, and each year thereafter, any amounts in the Funeral Services
36 Licensing Fund over \$250,000 shall revert to the General Revenue Fund.

§30-6-6. Rule-making authority Funeral service license requirements.

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

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

8 ~~(2) The examinations administered under this article;~~

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

11 ~~(4) The requirements for inactive licensees;~~

12 ~~(5) The registration and regulation of apprentices;~~

13 ~~(6) Establish a cremation procedure and crematory requirements;~~

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

16 ~~(8) Establish inspector and investigator requirements;~~

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

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

19 ~~(11) Implementing requirements for continuing education for licensees;~~

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

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

24 ~~(14) Establish advertising standards; and~~

25 ~~(15) Propose any other rules necessary to effectuate the provisions of this article.~~

26 ~~(b) All rules in effect on the effective date of this article shall remain in effect until they are~~

27 ~~withdrawn, revoked or amended.~~

28 The Secretary of State shall issue a license to practice embalming and funeral directing,
29 which license shall be known as a funeral service license, to an applicant who meets the following
30 requirements:

31 (1) Is of good moral character;

32 (2) Is 18 years of age or older;

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

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

35 (5) Has completed one of the following education requirements, as evidenced by a
36 transcript submitted to the secretary for evaluation:

37 (A) (i) Has an associate's degree from an accredited college or university, or has
38 successfully completed at least 60 semester hours or 90 quarter hours of academic work in an
39 accredited college or university toward a baccalaureate degree with a declared major field of
40 study; and

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

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

45 (6) Has completed an apprenticeship established by the Secretary of State pursuant to
46 §30-6-9 of this code; and

47 (7) Has paid all the appropriate fees.

§30-6-7. Fees; ~~special revenue account; administrative fines~~ Crematory operator license requirements.

1 ~~(a) All fees and other moneys, except administrative fines, received by the board shall be~~
2 ~~deposited in a separate special revenue fund in the state Treasury and be used for the~~
3 ~~administration of this article. Except as may be provided in section eleven, article one of this~~

4 ~~chapter, the board shall retain the amounts in the special revenue account from year to year. No~~
5 ~~compensation or expense incurred under this article is a charge against the General Revenue~~
6 ~~Fund.~~

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

9 In order to operate a crematory lawfully in this state, the operator must be licensed by the
10 Secretary of State. The secretary shall issue a license to be a crematory operator to an applicant
11 who meets the following requirements:

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

14 (2) Has paid all the appropriate fees; and

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

§30-6-8. Embalmer license requirements Licenses or equivalent from another state;
courtesy cards.

1 ~~(a) The board shall issue a license to practice embalming to an applicant who:~~

2 ~~(1) Is of good moral character;~~

3 ~~(2) Is eighteen years of age or over;~~

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

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

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

8 ~~(A) (i) Has an associate degree from an accredited college or university; or~~

9 ~~(ii) Has successfully completed at least sixty semester hours or ninety quarter hours of~~
10 ~~academic work in an accredited college or university toward a baccalaureate degree with a~~
11 ~~declared major field of study; and (iii) Has graduated from a school of mortuary science,~~
12 ~~accredited by the American Board of Funeral Service Education, Inc., which requires as a~~

13 prerequisite to graduation the completion of a course of study of not less than twelve months; or

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

15 (6) Has completed a one-year apprenticeship, under the supervision of a licensed

16 embalmer and funeral director actively and lawfully engaged in the practice of embalming and

17 funeral directing in this state, which apprenticeship consisted of:

18 (A) Diligent attention to the work in the course of regular and steady employment and not

19 as a side issue to another employment; and

20 (B) The apprentice taking an active part in:

21 (i) The operation of embalming not less than thirty-five dead human bodies; and

22 (ii) Conducting not less than thirty-five funeral services;

23 (7) Passes, with an average score of not less than seventy-five percent, the following

24 examinations:

25 (A) The National Conference of Funeral Services examination at a testing site provided

26 by the national conference, which passage is a condition precedent to taking the state law

27 examination;

28 (B) The state law examination administered by the board, which examination must be

29 offered at least twice each year; and

30 (C) Any other examination required by the board; and

31 (8) Has paid all the appropriate fees.

32 (b) A license to practice embalming issued by the board prior to July 1, 2012, shall for all

33 purposes be considered a license issued under this section: *Provided*, That a person holding a

34 license issued prior to July 1, 2012, must renew the license pursuant to the provisions of this

35 article.

36 (a) The secretary shall issue a funeral service license or a license to be a crematory

37 operator to an applicant of good moral character who holds a valid license or its equivalent to

38 practice from another state if the applicant demonstrates that:

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

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

45 (3) Reciprocal rights are provided by such other state to holders of funeral services
46 licenses granted in this state;

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

50 (5) He or she has not previously failed an examination for funeral service license in this
51 state;

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

53 (7) He or she has completed such other action as required by rules promulgated by the
54 secretary.

55 (b) The Secretary of State may enter into reciprocal agreements with funeral services and
56 crematory licensing authorities in other states for the mutual recognition of licenses between
57 states.

58 (c) The secretary may issue courtesy cards, on July 1, to funeral services license holders
59 in the states bordering on West Virginia:

60 (1) A courtesy card may only be issued after the:

61 (A) Application for a courtesy card is made on a form prescribed by the secretary;

62 (B) Payment of a fee; and

63 (C) Adherence to such other requirements as specified by the secretary by rule;

64 (2) A courtesy card may only be issued under the following conditions:

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

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

71 (3) A violation of §30-6-8(c)(2) of this code shall be sufficient cause for the secretary to
72 immediately revoke or cancel the courtesy card of the violator.

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

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

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

4 ~~(2) Has paid all the appropriate fees.~~

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

9 (a) The Secretary of State shall issue a registration to be an apprentice to a funeral
10 services licensee to an applicant who meets the following requirements:

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

12 (2) Is 18 years of age or older;

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

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

15 (5) Has completed one of the education requirements for a funeral service licensee as set
16 out in §30-6-6(5) of this code;

17 (6) Is not attending school and will not be attending school during the apprenticeship

18 period; and

19 (7) Has paid the appropriate fees.

20 (b) The secretary may set the requirements for an apprenticeship, including the manner
21 in which it shall be served and the length of time, which shall not be more than one year.

22 (c) No funeral services licensee shall be permitted to register or have registered more than
23 five apprentices under his or her license at the same time.

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

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

4 ~~(1) Is of good moral character;~~

5 ~~(2) Is eighteen years of age or over;~~

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

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

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

10 ~~(6) Has paid all the appropriate fees.~~

11 ~~(b) A license to practice embalming and funeral directing issued by the board prior to July~~
12 ~~1, 2003, shall for all purposes be considered a license issued under this section.~~

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

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

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

22 (1) The place of business has been approved by the secretary as having met all the
23 requirements and qualifications to be a funeral establishment as are required by this article and
24 legislative rules promulgated pursuant thereto;

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

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

28 (4) Show that the funeral establishment employs a licensee in charge;

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

31 (6) Pay all the appropriate fees; and

32 (7) Complete such other requirements as specified by the secretary.

33 (b) Every separate funeral establishment shall be operated under the supervision and
34 management of a licensee in charge. Each funeral establishment shall display in all advertising
35 the name of the licensee in charge of the establishment. All funeral establishments shall
36 prominently display within the funeral establishment the license of the licensee in charge.

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

41 (d) The holder of a funeral establishment license who ceases to operate the funeral
42 establishment at the location specified in the application shall, within 20 days thereafter, surrender
43 the funeral establishment license to the secretary, and the license shall be canceled by the
44 secretary. In the event of the death of an individual who was the holder of a funeral establishment

45 license, it shall be the duty of the holder's personal representative to surrender the funeral
46 establishment license within 120 days of qualifying as the personal representative.

47 (e) If a licensee in charge ceases to be employed by a funeral establishment, then the
48 holder of the funeral establishment license shall notify the secretary within 30 days of the
49 cessation. Within 30 days after such notification, the holder of a funeral establishment license
50 shall execute a new application for a funeral establishment license specifying the name of the
51 new licensee in charge. A funeral establishment is prohibited from operating more than 30 days
52 without a licensee in charge.

53 (f) A licensee whose funeral service license has been revoked or a holder of a license to
54 operate a funeral establishment whose license to operate has been revoked shall not operate,
55 either directly or indirectly, or hold any interest in any funeral establishment or crematory:
56 Provided, That a holder of a license to operate a funeral establishment whose license to operate
57 has been revoked is not prohibited from leasing any property owned by him or her for use as a
58 funeral establishment, so long as the property owner does not participate in the control or profit
59 of the funeral establishment except as lessor of the premises for a fixed rental not dependent
60 upon earnings.

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

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

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

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

5 ~~(2) Has paid all the appropriate fees; and~~

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

7 ~~(b) All persons currently operating crematories shall by January 1, 2003, register with the~~

8 ~~board. By July 1, 2003, all persons currently operating crematories shall obtain a certificate to~~
9 ~~operate a crematory, pursuant to the provisions of this section.~~

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

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

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

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

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

18 (3) The crematory meets all applicable environmental standards;

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

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

22 (6) Have a licensed crematory operator in charge;

23 (7) Pay all the appropriate fees; and

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

25 (b) Every separate crematory shall be operated under the supervision and management
26 of a licensee in charge. Each crematory shall display in all advertising the name of the licensee
27 in charge of the establishment. All crematories shall prominently display within the funeral
28 establishment the license of the licensee in charge.

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

33 (d) The holder of a crematory license who ceases to operate the crematory at the location

34 specified in the application shall, within 20 days thereafter, surrender the crematory license to the
35 secretary, and the license shall be canceled by the secretary. In the event of the death of an
36 individual who was the holder of a crematory license, it shall be the duty of the holder's personal
37 representative to surrender the crematory license within 120 days of qualifying as the personal
38 representative.

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

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

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

~~§30-6-12. Licenses or equivalent from another state; license or certificate to practice in this~~
state Inspector and inspection requirements.

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

4 ~~(1) He or she holds a license or its equivalent to practice in another state which was~~

5 ~~granted after completion of educational requirements substantially equivalent to those required in~~
6 ~~this state;~~

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

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

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

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

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

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

20 (a) The secretary shall appoint one or more persons to serve as inspectors of funeral
21 establishments and crematories.

22 (b) Each inspector shall inspect a specific region, as designated by the secretary. Any
23 person being employed as an inspector is prohibited from inspecting in the region in which he or
24 she practices.

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

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

31 received pursuant to this article.

32 (e) The secretary is authorized to set fees for inspections: *Provided*, That there shall be
33 no fee for an annual inspection.

§30-6-13. ~~Courtesy cards~~ License and courtesy card renewal; conditions of renewal.

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

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

4 ~~(2) Payment of a fee; and~~

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

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

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

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

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

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

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

20 (c) The secretary shall require as a condition for the renewal of a funeral service license
21 or a license to be a crematory operator that each licensee participate in continuing education.

22 (1) The secretary shall establish continuing education requirements for each licensee to

23 complete during a license period. The secretary shall propose rules for legislative approval in
24 accordance with the provisions of §29A-3-1 et seq. of this code to specify the amount and types
25 of education to be completed and the manner in which licensees and education providers may
26 apply for approval of courses offered.

27 (2) Hours of continuing education may be obtained by attending and participating in
28 programs, meetings, seminars, or activities approved by the secretary. It is the responsibility of
29 each licensee to finance his or her costs of continuing education.

30 (3) Any holder of a funeral services license 65 years or older with at least 10 years'
31 experience is entitled to be issued, after payment of a fee, a funeral service license emeritus and
32 is exempt from all continuing education requirements. The emeritus license shall entitle the holder
33 to all the rights and privileges of the license previously held by the licensee.

34 (d) Any person holding a funeral service license or licensed to be a crematory operator
35 who does not desire to continue in active practice shall notify the secretary, in a manner specified
36 by the secretary, and pay a fee, and shall, during such period, be listed by the secretary as being
37 inactive. At such time a person desires to return to active practice, he or she must notify the
38 secretary, in a manner specified by the secretary, and complete all the continuing education
39 requirements.

40 (e) All funeral establishment licenses must be renewed biennially, by a staggered
41 schedule, upon or before July 1, and the holder must pay a renewal fee. A holder of a funeral
42 establishment license that fails to pay fees for either the principal establishment or additional
43 establishments by July 1 of the renewal year is subject to a penalty, a reinstatement fee for each
44 establishment, and the required renewal fee.

45 (f) All crematory licenses must be renewed biennially, by a staggered schedule, upon or
46 before July 1, and the holder must pay a renewal fee. A holder of a crematory license that fails to
47 pay fees for either the principal establishment or additional establishments by July 1 of the renewal
48 year is subject to a penalty, a reinstatement fee for each establishment, and the required renewal

49 fee.

50 (g) Any courtesy card issued pursuant to this article must be renewed annually.

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

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

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

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

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

20 (a) A crematory shall obtain written permission prior to cremating a dead human body.
21 The written permission shall be obtained from persons in the following order of precedence:

22 (1) The deceased, who has expressed his or her wishes regarding the disposal of his or

23 her remains through a last will and testament, an advance directive, or preneed funeral contract,
24 as defined in §47-14-2 of this code;

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

29 (3) The surviving spouse of the deceased, unless a petition to dissolve the marriage was
30 pending at the time of the decedent's death;

31 (4) The deceased's next of kin;

32 (5) A court order;

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

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

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

39 (1) The identity of the deceased;

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

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

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

44 (5) Any other information required by the secretary.

45 (c) A crematory shall obtain a permit or authorization for cremation from the county medical
46 examiner, the assistant county medical examiner, or the county coroner of the county wherein the
47 death occurred and do such other acts as required by §61-12-9 of this code: *Provided, That a*
48 crematory may obtain a permit or authorization for cremation from the chief medical examiner if:

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

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

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

56 (e) All crematories shall implement a cremation procedure. The secretary shall, by rule,
57 establish the minimum standards for the cremation procedure, which shall include:

58 (1) An identification process for bodies;

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

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

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

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

65 (6) How to dispose of unclaimed cremains;

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

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

68 (f) The secretary shall establish requirements for:

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

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

**§30-6-15. Continuing education Right of disposition; preneed contract; affidavit on
disposition of remains; role of county commission; liability of funeral home.**

1 ~~(a) The board shall conduct annually a school of instruction to apprise funeral directors~~
2 ~~and embalmers of the most recent scientific knowledge and developments affecting their~~

~~3 profession. This school shall qualify as continuing education and shall fulfill as many continuing
4 education required hours as the board specifies. Qualified lecturers and demonstrators may be
5 employed by the board for this purpose. The board shall give notice of the time and place at which
6 the school will be held for all licensed funeral directors and embalmers: *Provided*, That the location
7 of any school of continuing education shall accommodate the geographic diversity of the
8 embalmers and funeral directors of this state.~~

~~9 (b) Hours of continuing education may be obtained by attending and participating in board-
10 approved programs, meetings, seminars or activities. It is the responsibility of each licensee to
11 finance his or her costs of continuing education.~~

~~12 (c) Compliance with the requirements of continuing education, as specified by the board,
13 is a prerequisite for license renewal.~~

14 (a) Notwithstanding §30-6-14 of this code, a person who is 18 years of age or older and
15 of sound mind, by entering into a preneed funeral contract, as defined in §47-14-2 of this code,
16 may direct the location, manner, and conditions of the disposition of the person's remains and the
17 arrangements for funeral goods and services to be provided upon the person's death. The
18 disposition directions and funeral prearrangements that are contained in a preneed funeral
19 contract are not subject to cancellation to revision unless any resources set aside to fund the
20 preneed funeral contract are insufficient under the terms of the preneed funeral contract to carry
21 out the disposition directions and funeral prearrangements contained in the contract.

22 (b) As to any matter not addressed in a preneed funeral contract as described in §30-6-
23 15(a) of this code and except as provided in §30-6-15(c) of this code, the right to control the
24 disposition of the remains of a deceased person, the location, manner, and conditions of
25 disposition, and arrangements for funeral goods and services to be provided vests in the following,
26 in the order named, provided that the person is 18 years or older and is of sound mind:

27 (1) A person designated by the decedent as the person with the right to control the
28 disposition in an affidavit executed by a person who is 18 years of age or older and of sound mind

29 before a notary public in substantially the following form:

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

35 _____

36 Signed

37 State of _____

38 County of _____

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

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

44 My commission expires: _____

45 _____

46 Notary Public”;

47 (2) The surviving spouse of the decedent;

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

53 (4) The surviving parent or parents of the decedent. If one of the surviving parents is
54 absent, the remaining parent shall be vested with the rights and duties under this section after

55 reasonable efforts have been unsuccessful in locating the absent surviving parent;

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

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

67 (7) The guardian of the decedent at the time of the decedent's death if one had been
68 appointed;

69 (8) The personal representative of the estate of the decedent;

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

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

76 (11) In the absence of any person under §30-6-15(b)(1) through §30-6-15(b)(10) of this
77 code, any other person willing to assume the responsibilities to act and arrange the final
78 disposition of the decedent's remains, including the funeral director with custody of the body, after
79 attesting in writing that a good faith effort has been made to no avail to contact the individuals
80 under §30-6-15(b)(1) through §30-6-15(b)(10) of this code.

81 (c) A person entitled under law to the right of disposition forfeits that right, and the right is
82 passed on to the next qualifying person as listed in §30-6-15(b) of this code, in the following
83 circumstances:

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

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

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

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

105 (e) No funeral establishment or funeral director who relies in good faith upon the
106 instructions of a preneed funeral contract, written directive of the deceased, or an individual

107 claiming the right of disposition in accordance with this section shall be subject to criminal or civil
108 liability or subject to disciplinary action under this section for carrying out the disposition of the
109 remains in accordance with those instructions.

§30-6-16. Inspector and inspection requirements—Review of applications by Secretary of State; refusal to issue or renew; suspension or revocation of license; disciplinary action.

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

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

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

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

15 ~~(e) The board is authorized to set fees for inspections: *Provided*, That there shall be no~~
16 ~~fee for an annual inspection.~~

17 (a) The secretary shall refuse to issue or renew a license or registration if the applicant
18 fails to satisfy any of the requirements set forth for licensure, certification, or registration in this
19 article.

20 (b) The secretary may refuse to issue, refuse to renew, suspend, revoke or limit any

21 license, registration or practice privilege of a licensee or registration holder for any of the following
22 reasons:

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

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

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

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

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

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

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

38 (8) Upon satisfactory proof that a funeral services licensee, or a licensed crematory
39 operator has taken undue advantage of his or her patrons or has committed a fraudulent act in
40 the conduct of business;

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

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

47 directing, or cremation;

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

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

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

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

62 (15) Gross immorality; and

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

§30-6-17. Apprenticeship-Written complaint procedure; notice; requirement to investigate.

1 ~~(a) After January 1, 2003, the board shall issue a registration to be an apprentice funeral~~
2 ~~director or apprentice embalmer to an applicant who meets the following requirements:~~

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

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

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

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

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

9 ~~(6) Is not attending school and will not be attending school during the apprenticeship~~
10 ~~period; and~~

11 ~~(7) Has paid the appropriate fees.~~

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

15 ~~(c) The board may set the requirements for an apprenticeship, including the manner in~~
16 ~~which it shall be served and the length of time, which shall not be more than one year.~~

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

19 (a) The Secretary of State shall establish a means for members of the public to submit
20 complaints concerning persons or establishments licensed or certified by the Secretary of State
21 pursuant to the provisions of this article. Those means shall include, but not be limited to,
22 electronic, written, and telephonic means.

23 (b) Upon receipt of a written complaint filed against any licensee, or certificate or
24 registration holder, the secretary shall provide a copy of the complaint to the licensee, or certificate
25 or registration holder, who shall be given a reasonable opportunity to submit a written response
26 to the allegations. Prior to a determination that probable cause exists, the secretary may withhold
27 the name of the complaining party.

28 (c) The secretary shall investigate the complaint and may initiate the investigation without
29 waiting until receiving a response from the party identified in the complaint. If the secretary finds
30 upon investigation that probable cause exists that the licensee, or certificate or registration holder,
31 has violated any provision of this article or the rules promulgated hereunder, then the secretary
32 shall serve the licensee or registration holder, with a written statement of charges and a notice
33 specifying the date, time, and place of the hearing.

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

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

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

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

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

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

10 ~~(5) Show that the licensee in charge is a licensed funeral director;~~

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

13 ~~(7) Pay all the appropriate fees; and~~

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

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

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

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

23 ~~(e) The holder of a funeral establishment license who ceases to operate the funeral~~
24 ~~establishment at the location specified in the application shall, within twenty days thereafter,~~
25 ~~surrender the funeral establishment license to the board and the license shall be canceled by the~~
26 ~~board. In the event of the death of an individual who was the holder of a funeral establishment~~

27 ~~license, it shall be the duty of the holder's personal representative to surrender the funeral~~
28 ~~establishment license within one hundred twenty days of qualifying as the personal~~
29 ~~representative.~~

30 ~~(f) If a licensee in charge ceases to be employed by a funeral establishment, then the~~
31 ~~holder of the funeral establishment license shall notify the board within thirty days of the cessation.~~
32 ~~Within thirty days after such notification, the holder of a funeral establishment license shall~~
33 ~~execute a new application for a funeral establishment license specifying the name of the new~~
34 ~~licensee in charge. A funeral establishment is prohibited from operating more than thirty days~~
35 ~~without a licensee in charge.~~

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

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

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

50 (a) The Secretary of State shall afford any applicant an opportunity to be heard in person
51 or by counsel when a determination is made to deny, revoke, or suspend an applicant's license
52 or application for license, including a renewal of a license. The applicant has 15 days from the

53 date of receiving written notice of the Secretary of State's adverse determination to request a
54 hearing on the matter of denial, suspension, or revocation. The action of the Secretary of State in
55 granting, renewing, or in refusing to grant or to renew a license is subject to review by the Circuit
56 Court of Kanawha County or other court of competent jurisdiction.

57 (b) If the secretary proposes to suspend, revoke, limit, take other disciplinary action, or
58 refuse to renew any license, certificate, or registration, the secretary shall give written notice of
59 the action, including a statement of charges setting forth the reasons for the action, and notice of
60 the date, time, and place for a hearing.

61 (c) The secretary may, without first holding a hearing, act under the following
62 circumstances:

63 (1) The secretary is authorized to suspend or revoke a certificate, license, registration, or
64 authority to practice prior to a hearing if the person's continuation in practice constitutes an
65 immediate danger to the public; or

66 (2) After due diligence, if the secretary cannot locate a person licensed under the
67 provisions of this chapter within 60 days of a complaint being filed against the licensee, then the
68 secretary may suspend the license, certificate, registration or authority of the person without
69 holding a hearing. If, after additional due diligence and 30 days after the suspension of the
70 person's license, certificate, registration, or authority, the secretary still cannot locate the person
71 licensed under the provisions of this article, then the secretary may revoke the license, certificate,
72 registration, or authority of the person without holding a hearing.

73 (d) The secretary shall have authority to issue subpoenas for the attendance of witnesses
74 and the production of records and tangible evidence, administer oaths, and preside at hearings,
75 and to employ, or contract for, an administrative hearing examiner to carry out these functions on
76 the secretary's behalf.

77 (e) A hearing on a statement of charges shall be held in accordance with the provisions
78 for hearing set forth in §29A-5-1 et seq. of this code and procedures specified by rule by the

79 secretary.

80 (f) No sanction may be imposed against a licensee and no license may be revoked,
81 suspended, or subject to sanction unless the secretary finds by a preponderance of evidence,
82 after hearing or by consent of the licensee, that the licensee has engaged in conduct prohibited
83 by the provisions of this article.

84 (g) Following a hearing, the Secretary of State shall issue his or her decision, which shall
85 be in writing and shall set forth the reasons for the decision.

86 (h) Disciplinary action includes, but is not limited to, a reprimand, censure, probation,
87 suspension of license, administrative fine not to exceed \$1,000 per day per violation, and
88 mandatory attendance at continuing education seminars. In addition to other sanctions imposed,
89 the secretary may require a licensee, or certificate or registration holder to pay the costs of the
90 proceeding if the licensee, or certificate or registration holder is in violation of any provision of this
91 article or the rules promulgated hereunder.

92 (i) Any licensee, or certificate or registration holder, adversely affected by any decision of
93 the secretary entered after a hearing, may obtain judicial review of the decision in accordance
94 with §29A-5-4 of this code and may appeal any ruling resulting from judicial review in accordance
95 with §29A-5-4 of this code.

96 (j) Pursuant to the provisions of §29A-5-1 of this code, the secretary may enter into
97 informal disposition of any contested case or investigation by stipulation, agreed settlement,
98 consent order, or default. Further, the secretary may suspend a final determination and place a
99 licensee on probation if the secretary has found the licensee to be in violation of standards of
100 practice or provisions of this article.

101 (k) If the secretary has suspended, revoked, or refused to renew a license, certificate, or
102 registration, the licensee, or certificate or registration holder, shall be afforded an opportunity to
103 demonstrate the qualifications to resume practice. The application for reinstatement shall be in
104 writing and subject to the procedures specified by the secretary by rule.

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

Unlawful acts.

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

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

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

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

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

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

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

~~§30-6-20. Crematory license requirements Injunction; criminal proceedings.~~

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

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

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

6 ~~(3) The crematory meets all applicable environmental standards;~~

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

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

10 ~~(6) Have a certified crematory operator in charge;~~

11 ~~(7) Pay all the appropriate fees; and~~

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

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

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

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

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

27 ~~(f) A holder of a certificate to operate a crematory whose certificate to operate has been~~
28 ~~revoked or a holder of a crematory license whose license has been revoked shall not operate,~~
29 ~~either directly or indirectly, or hold any interest in any crematory or funeral establishment:~~
30 ~~*Provided*, That a holder of a crematory license whose license has been revoked is not prohibited~~
31 ~~from leasing any property owned by him or her for use as a crematory, so long as the property~~
32 ~~owner does not participate in the control or profit of the crematory except as lessor of the premises~~

33 ~~for a fixed rental not dependent upon earnings.~~

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

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

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

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

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

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

57 (b) When, as a result of an investigation under this article or otherwise, the secretary has
58 reason to believe that a person has knowingly violated the provisions of this article, the secretary

59 may bring its information to the attention of the Attorney General, United States Attorney, local
60 prosecuting attorney, or other appropriate law-enforcement officer. Appropriate criminal
61 proceedings may thereafter be instituted by the Attorney General, in coordination with the local
62 prosecuting attorney, the United States Attorney, or the law-enforcement officer.

§30-6-21. Requirements for cremating Single act evidence of practice.

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

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

6 ~~(1) The identity of the deceased;~~

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

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

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

11 ~~(5) Any other information required by the board.~~

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

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

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

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

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

26 ~~(1) An identification process for bodies;~~

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

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

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

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

33 ~~(6) How to dispose of unclaimed cremains;~~

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

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

36 ~~(f) The board shall establish requirements for:~~

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

38 ~~(2) The containers needed to store the cremains.~~

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

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

1 ~~(a) No public officer, employee, physician or surgeon, or other person having a~~
2 ~~professional relationship with the deceased, shall send, or cause to be sent to an embalmer,~~
3 ~~funeral director or crematory operator the body of a deceased without first inquiring the desires of~~
4 ~~the deceased who has designated his or her wishes regarding the disposal of their remains~~
5 ~~through a last will and testament, an advance directive or preneed funeral contract, as defined in~~

6 ~~section two, article fourteen, chapter forty-five of this code; the surviving spouse of the deceased,~~
7 ~~unless a petition to dissolve the marriage was pending at the time of decedent's death; and, an~~
8 ~~individual previously designated by the deceased as the person with the right to control disposition~~
9 ~~of the deceased's remains in a writing signed and notarized by the deceased: *Provided*, That no~~
10 ~~person may be designated to serve in such capacity for more than one nonrelative at any one~~
11 ~~time. If there is no last will and testament, advance directive or preneed funeral contract, surviving~~
12 ~~spouse, or designated person, then the authority and direction of any next of kin or person who~~
13 ~~may be chargeable with the funeral expenses of the deceased shall be used as to the disposal of~~
14 ~~the body of the deceased. The provisions of this subsection are not applicable if the remains of~~
15 ~~the decedent are subject to disposition pursuant to subsection (b) of this section.~~

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

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

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

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

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

32 (3) The customs or rites of any religious sect in the burial of its dead: *Provided*, That
33 embalming shall only be performed by a funeral services license holder.

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

1 [Repealed.]

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

1 [Repealed.]

§30-6-24. Complaints; investigations.

1 [Repealed.]

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

1 [Repealed.]

§30-6-26. Reinstatement.

1 [Repealed.]

§30-6-27. Unlawful acts.

1 [Repealed.]

§30-6-28. Injunctions.

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

§30-6-31. Inapplicability of article.

1 [Repealed.]

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.