

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 3082**

4  
5 (By Delegate Moore)

6 (Originating in the Committee on the Judiciary)

7  
8 [February 24, 2011]

9  
10 A BILL to amend and reenact §30-6-3 and §30-6-22 of the Code of  
11 West Virginia, 1931, as amended; and to amend and reenact §61-  
12 12-9 of said code, all relating to professions and  
13 occupations; board of funeral service examiners; definitions;  
14 specifically including the surviving spouse and a designated  
15 individual previously chosen by the deceased as a person who  
16 may designate the manner of disposition of a deceased person's  
17 body; crimes and their punishment; postmortem examinations;  
18 permits required for cremation; criminal penalties; and  
19 establishing an order of precedence among persons as to  
20 disposition of remains.

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

22 That §30-6-3 and §30-6-22 of the Code of West Virginia, 1931,  
23 as amended, be amended and reenacted; and that §61-12-9 of said  
24 code be amended and reenacted, all to read as follows:

25 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

27 **§30-6-3. Definitions.**

28 As used in this article, the following words and terms have

1 the following meanings, unless the context clearly indicates  
2 otherwise:

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

8 (b) "Authorized representative" means a person legally  
9 authorized or entitled to order the cremation of the deceased, as  
10 established by rule. An authorized representative may include the  
11 following and shall be considered in the following order of  
12 precedence:

13 (1) The deceased person prior to his or her death through a  
14 last will and testament, advance directive or preneed funeral  
15 contract;

16 (2) The surviving spouse if he or she cohabited with the  
17 deceased at the time of death;

18 (3) A person previously designated in a signed notarized  
19 writing by the deceased to make such a decision; *Provided, That no*  
20 person may be designated to serve in such capacity for more than  
21 one nonrelative at any one time;

22 ~~(2)~~ (4) The deceased's next of kin;

23 ~~(3)~~ (5) A court order;

24 ~~(4)~~ (6) A public official who is charged with arranging the  
25 final disposition of an indigent deceased; or

26 ~~(5)~~ (7) A representative of an institution who is charged with  
27 arranging the final disposition of a deceased who donated his or  
28 her body to science.

1 (c) "Board" means the West Virginia board of funeral service  
2 examiners.

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

5 (e) "Courtesy card holder" means a person who only practices  
6 funeral directing periodically in West Virginia and is a licensed  
7 embalmer and funeral director in a state which borders West  
8 Virginia.

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

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

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

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

22 (j) "Crematory operator in charge" means a certified crematory  
23 operator who accepts responsibility for the operation of a  
24 crematory.

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

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

28 (m) "Embalming" means the practice of introducing chemical

1 substances, fluids or gases used for the purpose of preservation or  
2 disinfection into the vascular system or hollow organs of a dead  
3 human body by arterial or hypodermic injection for the restoration  
4 of the physical appearance of a deceased.

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

7 (o) "Funeral directing" means the business of engaging in the  
8 following:

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

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

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

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

16 (p) "Funeral director" means a person licensed to practice  
17 funeral directing.

18 (q) "Funeral establishment" means a licensed place of business  
19 devoted to: The care, preparation and arrangements for the  
20 transporting, embalming, funeral, burial or other disposition of a  
21 deceased. A funeral establishment can include a licensed  
22 crematory.

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

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

27 (1) Practice embalming and funeral directing;

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

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

3 (u) "Licensee in charge" means a licensed embalmer and funeral  
4 director who accepts responsibility for the operation of a funeral  
5 establishment.

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

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

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

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

15 (z) "State" means the State of West Virginia.

16 **§30-6-22. Disposition of body of deceased person; penalty.**

17 (a) No public officer, employee, physician or surgeon, or any  
18 other person having a professional relationship with the deceased,  
19 ~~shall~~ may send, or cause to be sent, to any embalmer, funeral  
20 director or crematory operator the body of any deceased without  
21 first inquiring the desires of the deceased by virtue of a last  
22 will and testament, advance directive or preened funeral contract;  
23 the surviving spouse, if he or she cohabitated with the deceased at  
24 the time of death; a person previously designated in a signed  
25 notarized writing by the deceased to make such a decision;  
26 Provided, That no person may be designated to serve in such  
27 capacity for more than one nonrelative at any one time, the next of  
28 kin, or any persons who may be chargeable with the funeral expenses

1 of the deceased. ~~If any next of kin or person can be found, his or~~  
2 ~~her~~ If there is no prior directive, designated individual or  
3 surviving  
4 spouse, then the authority and direction of any next of kin or  
5 persons who may be chargeable with the funeral expenses of the  
6 deceased shall be used as to the disposal of the body of the  
7 deceased.

8 (b) Any person who violates the provisions of this section is  
9 guilty of a misdemeanor and, upon conviction thereof, shall be  
10 fined not less than \$500, nor more than \$1,000, or ~~imprisoned~~  
11 confined in jail not less than ten days nor more than ninety days,  
12 or both fined and confined.

13 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

14 **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

15 **§61-12-9. Permits required for cremation; fee.**

16 (a) It is the duty of any person cremating, or causing or  
17 requesting the cremation of, the body of any dead person who died  
18 in this state, to secure a permit for the cremation from the chief  
19 medical examiner, the county medical examiner or county coroner of  
20 the county wherein the death occurred. Any person who willfully  
21 fails to secure a permit for a cremation, is guilty of a  
22 misdemeanor and, upon conviction thereof, shall be fined not less  
23 than \$200. A permit for cremation shall be acted upon by the chief  
24 medical examiner, the county medical examiner or the county coroner  
25 after review of the circumstances surrounding the death, as  
26 indicated by the death certificate. The person requesting issuance  
27 of a permit for cremation shall pay a reasonable fee, as determined  
28 by the chief medical examiner, to the county medical examiner or

1 coroner or to the office of the chief medical examiner, as  
2 appropriate, for issuance of the permit.

3 (b) Any person operating a crematory who does not perform a  
4 cremation pursuant to the terms of a cremation contract, or  
5 pursuant to the order of a court of competent jurisdiction, within  
6 the time contractually agreed upon, or, if the cremation contract  
7 does not specify a time period, within twenty-one days of receipt  
8 of the deceased person's remains by the crematory, whichever time  
9 is less, is guilty of a misdemeanor.

10 (c) Any person operating a crematory who fails to deliver the  
11 cremated remains of a deceased person, pursuant to the terms of a  
12 cremation contract, or pursuant to the order of a court of  
13 competent jurisdiction, within the time contractually agreed upon,  
14 or, if the cremation contract does not specify a time period,  
15 within thirty-five days of receipt of the deceased person's remains  
16 by the crematory, whichever time is less, is guilty of a  
17 misdemeanor.

18 (d) Any person convicted of a violation of the provisions of  
19 subsection (b) or (c) of this section shall be fined not less than  
20 \$1,000 nor more than \$5,000 or confined in ~~the county or regional~~  
21 jail for a period not to exceed six months, or both fined and  
22 confined.

23 (e) In any criminal proceeding alleging that a person violated  
24 the time requirements of this section, it is a defense to the  
25 charge that a delay beyond the time periods provided for in this  
26 section were caused by circumstances wholly outside the control of  
27 the defendant.

28 (f) For purposes of this section, "cremation contract" means

1 an agreement to perform a cremation, as a "cremation" is defined in  
2 subsection (g), section three, article six, chapter thirty of this  
3 code. A cremation contract is an agreement between a crematory and  
4 any authorized person or entity, including, but not limited to, the  
5 following persons in order of precedence:

6 (1) The deceased person, prior to his or her death through a  
7 last will and testament, advance directive or preneed funeral  
8 contract;

9 (2) The surviving spouse if he or she cohabited with the  
10 deceased at the time of death;

11 (3) A person previously designated in a signed notarized  
12 writing by the deceased to make such a decision; *Provided, That no*  
13 person may be designated to serve in such capacity for more than  
14 one nonrelative at any one time;

15 ~~(2)~~ (4) The deceased person's next of kin;

16 ~~(3)~~ (5) A public official charged with arranging the final  
17 disposition of an indigent deceased person or an unclaimed corpse;

18 ~~(4)~~ (6) A representative of an institution who is charged with  
19 arranging the final disposition of a deceased who donated his or  
20 her body to science;

21 ~~(5)~~ (7) A public officer required by statute to arrange the  
22 final disposition of a deceased person;

23 ~~(6)~~ (8) Another funeral establishment; or

24 ~~(7)~~ (9) An executor, administrator or other personal  
25 representative of the deceased.