

E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

H. B. 3082

(BY DELEGATE MOORE)

(Originating in the Committee on the Judiciary)
[February 24, 2011]

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

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-3. Definitions.

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

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

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

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

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

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

23 ~~(2)~~ (4) The deceased's next of kin;

24 ~~(3)~~ (5) A court order;

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

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

30 (c) "Board" means the West Virginia board of funeral
31 service examiners.

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

34 (e) "Courtesy card holder" means a person who only
35 practices funeral directing periodically in West Virginia and
36 is a licensed embalmer and funeral director in a state which
37 borders West Virginia.

38 (f) “Cremated remains” or “cremains” means all human
39 remains, including foreign matter cremated with the human,
40 recovered after the completion of cremation.

41 (g) “Cremation” means the mechanical or thermal
42 process whereby a dead human body is reduced to ashes and
43 bone fragments and then further reduced by additional
44 pulverization, burning or recremating when necessary.

45 (h) “Crematory” means a licensed place of business
46 where a deceased human body is reduced to ashes and bone
47 fragments and includes a crematory that stands alone or is
48 part of or associated with a funeral establishment.

49 (i) “Crematory operator” means a person certified by the
50 board to operate a crematory.

51 (j) “Crematory operator in charge” means a certified
52 crematory operator who accepts responsibility for the
53 operation of a crematory.

54 (k) “Deceased” means a dead human being for which a
55 death certificate is required.

56 (l) “Embalmer” means a person licensed to practice
57 embalming.

58 (m) “Embalming” means the practice of introducing
59 chemical substances, fluids or gases used for the purpose of

60 preservation or disinfection into the vascular system or
61 hollow organs of a dead human body by arterial or
62 hypodermic injection for the restoration of the physical
63 appearance of a deceased.

64 (n) “Funeral” means a service, ceremony or rites
65 performed for the deceased with a body present.

66 (o) “Funeral directing” means the business of engaging
67 in the following:

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

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

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

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

75 (p) “Funeral director” means a person licensed to practice
76 funeral directing.

77 (q) “Funeral establishment” means a licensed place of
78 business devoted to: The care, preparation and arrangements
79 for the transporting, embalming, funeral, burial or other
80 disposition of a deceased. A funeral establishment can
81 include a licensed crematory.

82 (r) “Funeral service licensee” means a person licensed
83 after July 1, 2003, to practice embalming and funeral
84 directing.

85 (s) “License” means a license, which is not transferable
86 or assignable, to:

87 (1) Practice embalming and funeral directing;

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

89 (t) “Licensee” means a person holding a license issued
90 under the provisions of this article.

91 (u) “Licensee in charge” means a licensed embalmer and
92 funeral director who accepts responsibility for the operation
93 of a funeral establishment.

94 (v) “Memorial service” means a service, ceremony or
95 rites performed for the deceased without a body present.

96 (w) “Mortuary” means a licensed place of business
97 devoted solely to the shelter, care and embalming of the
98 deceased.

99 (x) “Person” means an individual, partnership,
100 association, corporation, not-for-profit organization or any
101 other organization.

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

105 (z) “State” means the State of West Virginia.

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

1 (a) No public officer, employee, physician or surgeon, or
 2 any other person having a professional relationship with the
 3 deceased, ~~shall~~ may send, or cause to be sent to ~~any~~ an
 4 embalmer, funeral director or crematory operator the body of
 5 ~~any~~ a deceased without first inquiring the desires of the
 6 deceased by virtue of a last will and testament, advance
 7 directive or preneed funeral contract; the surviving spouse,
 8 if he or she cohabitated with the deceased at the time of
 9 death; a person previously designated in a signed notarized
 10 writing by the deceased to make such a decision: *Provided,*
 11 That no person may be designated to serve in such capacity
 12 for more than one nonrelative at any one time, the next of
 13 kin, or any persons who may be chargeable with the funeral
 14 expenses of the deceased. ~~If any next of kin or person can be~~
 15 ~~found, his or her~~ If there is no prior directive, designated
 16 individual or surviving spouse, then the authority and
 17 direction of any next of kin or persons who may be
 18 chargeable with the funeral expenses of the deceased shall be
 19 used as to the disposal of the body of the deceased. The
 20 provisions of this subsection are not applicable if the remains

21 of the decedent are subject to disposition pursuant to
22 subsection (b) of this section.

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

33 ~~(b)~~(c) Any person who violates the provisions of this
34 section is guilty of a misdemeanor and, upon conviction
35 thereof, shall be fined not less than \$500, nor more than
36 \$1,000, or ~~imprisoned~~ confined in jail not less than ten days
37 nor more than ninety days, or both fined and confined.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

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

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

3 who died in this state, to secure a permit for the cremation
4 from the chief medical examiner, the county medical
5 examiner or county coroner of the county wherein the death
6 occurred. Any person who willfully fails to secure a permit
7 for a cremation, is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not less than \$200. A
9 permit for cremation shall be acted upon by the chief medical
10 examiner, the county medical examiner or the county coroner
11 after review of the circumstances surrounding the death, as
12 indicated by the death certificate. The person requesting
13 issuance of a permit for cremation shall pay a reasonable fee,
14 as determined by the chief medical examiner, to the county
15 medical examiner or coroner or to the office of the chief
16 medical examiner, as appropriate, for issuance of the permit.

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

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

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

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

43 (f) For purposes of this section, "cremation contract"
44 means an agreement to perform a cremation, as a
45 "cremation" is defined in subsection (g), section three, article
46 six, chapter thirty of this code. A cremation contract is an

47 agreement between a crematory and any authorized person or
48 entity, including, but not limited to, the following persons in
49 order of precedence:

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

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

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

59 ~~(2)~~ (4) The deceased person's next of kin;

60 ~~(3)~~ (5) A public official charged with arranging the final
61 disposition of an indigent deceased person or an unclaimed
62 corpse;

63 ~~(4)~~ (6) A representative of an institution who is charged
64 with arranging the final disposition of a deceased who
65 donated his or her body to science;

66 ~~(5)~~ (7) A public officer required by statute to arrange the
67 final disposition of a deceased person;

- 68 ~~(6)~~ (8) Another funeral establishment; or
- 69 ~~(7)~~ (9) An executor, administrator or other personal
- 70 representative of the deceased.