

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4118**

4
5 (By Delegate Moore)

6 (Originating in the Committee on the Judiciary)

7
8 [February 24, 2012]

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, generally relating to cremation;
13 definition of persons authorized to order cremation; inquiry
14 about deceased's desires; individuals authorized to express
15 desires of the deceased; definition of person authorized to
16 agree to a cremation contract; and establishing an order of
17 precedence among persons as to cremation and disposition of
18 remains.

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

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

23 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

25 **§30-6-3. Definitions.**

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

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

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

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

18 (2) The surviving spouse of the deceased, unless a petition
19 to dissolve the marriage was pending at the time of decedent's
20 death;

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

26 ~~(2)~~ (4) The deceased's next of kin;

1 ~~(3)~~ (5) A court order;

2 ~~(4)~~ (6) A public official who is charged with arranging the
3 final disposition of an indigent deceased; or

4 ~~(5)~~ (7) A representative of an institution who is charged with
5 arranging the final disposition of a deceased who donated his or
6 her body to science.

7 (c) "Board" means the West Virginia Board of Funeral Service
8 Examiners.

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

11 (e) "Courtesy card holder" means a person who only practices
12 funeral directing periodically in West Virginia and is a licensed
13 embalmer and funeral director in a state which borders West
14 Virginia.

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

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

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

26 (i) "Crematory operator" means a person certified by the board

1 to operate a crematory.

2 (j) "Crematory operator in charge" means a certified crematory
3 operator who accepts responsibility for the operation of a
4 crematory.

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

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

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

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

15 (o) "Funeral directing" means the business of engaging in the
16 following:

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

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

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

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

24 (p) "Funeral director" means a person licensed to practice
25 funeral directing.

26 (q) "Funeral establishment" means a licensed place of business

1 devoted to: the care, preparation and arrangements for the
2 transporting, embalming, funeral, burial or other disposition of a
3 deceased. A funeral establishment can include a licensed
4 crematory.

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

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

9 (1) Practice embalming and funeral directing;

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

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

13 (u) "Licensee in charge" means a licensed embalmer and funeral
14 director who accepts responsibility for the operation of a funeral
15 establishment.

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

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

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

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

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

26 **§30-6-22. Disposition of body of deceased person; penalty.**

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

26 (b) Notwithstanding any provision of this code to the

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

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

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

1 indicated by the death certificate. The person requesting issuance
2 of a permit for cremation shall pay a reasonable fee, as determined
3 by the Chief Medical Examiner, to the county medical examiner or
4 coroner or to the Office of the Chief Medical Examiner, as
5 appropriate, for issuance of the permit.

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

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

21 (d) Any person convicted of a violation of the provisions of
22 subsection (b) or (c) of this section shall be fined not less than
23 \$1,000 nor more than \$5,000 or confined in ~~the county or regional~~
24 jail for a period not to exceed six months, or both.

25 (e) In any criminal proceeding alleging that a person violated
26 the time requirements of this section, it is a defense to the

1 charge that a delay beyond the time periods provided for in this
2 section were caused by circumstances wholly outside the control of
3 the defendant.

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

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

15 (2) The surviving spouse of the deceased, unless a petition
16 to dissolve the marriage was pending at the time of decedent's
17 death;

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

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

24 ~~(3)~~ (5) A public official charged with arranging the final
25 disposition of an indigent deceased person or an unclaimed corpse;

26 ~~(4)~~ (6) A representative of an institution who is charged with

1 arranging the final disposition of a deceased who donated his or
2 her body to science;

3 ~~(5)~~ (7) A public officer required by statute to arrange the
4 final disposition of a deceased person;

5 ~~(6)~~ (8) Another funeral establishment; or

6 ~~(7)~~ (9) An executor, administrator or other personal
7 representative of the deceased.

NOTE: The purpose of this bill is to specifically include 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.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.