

**Senate Bill No. 587**

(By Senator Foster)

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[Introduced February 14, 2012; referred to the Committee on  
Government Organization; and then to the Committee on the  
Judiciary.]

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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,

1 as amended, be amended and reenacted; and that §61-12-9 of said  
2 code be amended and reenacted, all to read as follows:

3                   **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

5 **§30-6-3. Definitions.**

6           As used in this article, the following words and terms have  
7 the following meanings, unless the context clearly indicates  
8 otherwise:

9           (a) "Apprentice" means a person who is preparing to become a  
10 licensed funeral director and embalmer and is learning the practice  
11 of embalming, funeral directing or cremation under the direct  
12 supervision and personal instruction of a duly licensed embalmer or  
13 funeral director.

14           (b) "Authorized representative" means a person legally  
15 authorized or entitled to order the cremation of the deceased, as  
16 established by rule. An authorized representative may include the  
17 following and shall be considered in the following order of  
18 precedence:

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

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

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

5        ~~(2)~~ (4) The deceased's next of kin;

6        ~~(3)~~ (5) A court order;

7        ~~(4)~~ (6) A public official who is charged with arranging the  
8 final disposition of an indigent deceased; or

9        ~~(5)~~ (7) A representative of an institution who is charged with  
10 arranging the final disposition of a deceased who donated his or  
11 her body to science.

12        (c) "Board" means the West Virginia board of funeral service  
13 examiners.

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

16        (e) "Courtesy card holder" means a person who only practices  
17 funeral directing periodically in West Virginia and is a licensed  
18 embalmer and funeral director in a state which borders West  
19 Virginia.

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

23        (g) "Cremation" means the mechanical or thermal process

1 whereby a dead human body is reduced to ashes and bone fragments  
2 and then further reduced by additional pulverization, burning or  
3 cremating when necessary.

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

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

10 (j) "Crematory operator in charge" means a certified crematory  
11 operator who accepts responsibility for the operation of a  
12 crematory.

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

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

16 (m) "Embalming" means the practice of introducing chemical  
17 substances, fluids or gases used for the purpose of preservation or  
18 disinfection into the vascular system or hollow organs of a dead  
19 human body by arterial or hypodermic injection for the restoration  
20 of the physical appearance of a deceased.

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

23 (o) "Funeral directing" means the business of engaging in the

1 following:

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

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

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

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

9 (p) "Funeral director" means a person licensed to practice  
10 funeral directing.

11 (q) "Funeral establishment" means a licensed place of business  
12 devoted to: The care, preparation and arrangements for the  
13 transporting, embalming, funeral, burial or other disposition of a  
14 deceased. A funeral establishment can include a licensed  
15 crematory.

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

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

20 (1) Practice embalming and funeral directing;

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

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

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

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

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

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

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

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

14 **§30-6-22. Disposition of body of deceased person; penalty.**

15 (a) No public officer, employee, physician or surgeon, or any  
16 other person having a professional relationship with the deceased,  
17 ~~shall~~ may send, or cause to be sent to ~~any~~ an embalmer, funeral  
18 director or crematory operator the body of ~~any~~ a deceased without  
19 first inquiring the desires of the deceased by virtue of a last  
20 will and testament, advance directive or preened funeral contract;  
21 the surviving spouse, if he or she cohabitated with the deceased at  
22 the time of death; a person previously designated in a signed  
23 notarized writing by the deceased to make such a decision:

1 Provided, That no person may be designated to serve in such  
2 capacity for more than one nonrelative at any one time, the next of  
3 kin, or any persons who may be chargeable with the funeral expenses  
4 of the deceased. ~~If any next of kin or person can be found, his or~~  
5 ~~her~~ If there is no prior directive, designated individual or  
6 surviving spouse, then the authority and direction of any next of  
7 kin or persons who may be chargeable with the funeral expenses of  
8 the deceased shall be used as to the disposal of the body of the  
9 deceased. The provisions of this subsection are not applicable if  
10 the remains of the decedent are subject to disposition pursuant to  
11 subsection (b) of this section.

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

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

1 confined in jail not less than ten days nor more than ninety days,  
2 or both fined and confined.

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

4 **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

5 **§61-12-9. Permits required for cremation; fee.**

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

21 (b) Any person operating a crematory who does not perform a  
22 cremation pursuant to the terms of a cremation contract, or  
23 pursuant to the order of a court of competent jurisdiction, within



1 the time contractually agreed upon, or, if the cremation contract  
2 does not specify a time period, within twenty-one days of receipt  
3 of the deceased person's remains by the crematory, whichever time  
4 is less, is guilty of a misdemeanor.

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

13 (d) Any person convicted of a violation of the provisions of  
14 subsection (b) or (c) of this section shall be fined not less than  
15 \$1,000 nor more than \$5,000 or confined in ~~the county or regional~~  
16 jail for a period not to exceed six months, or both fined and  
17 confined.

18 (e) In any criminal proceeding alleging that a person violated  
19 the time requirements of this section, it is a defense to the  
20 charge that a delay beyond the time periods provided for in this  
21 section were caused by circumstances wholly outside the control of  
22 the defendant.

23 (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

1       ~~(7)~~ (9) An executor, administrator or other personal  
2 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.