

COMMITTEE SUBSTITUTE

FOR

H. B. 4118

(BY DELEGATE MOORE)

(Originating in the Committee on the Judiciary)
[February 24, 2012]

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, generally relating to cremation; definition of persons authorized to order cremation; inquiry about deceased's desires; individuals authorized to express desires of the deceased; definition of person authorized to agree to a cremation contract; and establishing an order of precedence among persons as to cremation and 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 in 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,
16 as defined in section two, article fourteen, chapter forty-five
17 of this code;

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

21 (3) An individual previously designated by the deceased as
22 the 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;

27 ~~(3)~~ (5) A court order;

28 ~~(4)~~ (6) A public official who is charged with arranging
29 the final disposition of an indigent deceased; or

30 ~~(5)~~ (7) A representative of an institution who is charged
31 with arranging the final disposition of a deceased who
32 donated his or her body to science.

33 (c) “Board” means the West Virginia Board of Funeral
34 Service Examiners.

35 (d) “Certificate” means a certification by the board to be
36 a crematory operator.

37 (e) “Courtesy card holder” means a person who only
38 practices funeral directing periodically in West Virginia and
39 is a licensed embalmer and funeral director in a state which
40 borders West Virginia.

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

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

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

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

54 (j) “Crematory operator in charge” means a certified
55 crematory operator who accepts responsibility for the
56 operation of a crematory.

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

59 (l) “Embalmer” means a person licensed to practice
60 embalming.

61 (m) “Embalming” means the practice of introducing
62 chemical substances, fluids or gases used for the purpose of
63 preservation or disinfection into the vascular system or
64 hollow organs of a dead human body by arterial or
65 hypodermic injection for the restoration of the physical
66 appearance of a deceased.

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

69 (o) “Funeral directing” means the business of engaging in
70 the following:

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

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

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

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

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

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

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

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

90 (1) Practice embalming and funeral directing;

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

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

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

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

99 (w) “Mortuary” means a licensed place of business
100 devoted solely to the shelter, care and embalming of the
101 deceased.

102 (x) “Person” means an individual, partnership,
103 association, corporation, not-for-profit organization or any
104 other organization.

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

108 (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 other person having a professional relationship with the
3 deceased, shall send, or cause to be sent to an embalmer,
4 funeral director or crematory operator the body of a deceased
5 without first inquiring the desires of ~~the next of kin; or any~~
6 ~~person who may be chargeable with the funeral expenses of~~
7 the deceased. the deceased who has designated his or her
8 wishes regarding the disposal of their remains through a last
9 will and testament, an advance directive or preneed funeral
10 contract, as defined in section two, article fourteen, chapter
11 forty-five of this code; the surviving spouse of the deceased,
12 unless a petition to dissolve the marriage was pending at the
13 time of decedent's death; and, an individual previously
14 designated by the deceased as the person with the right to
15 control disposition of the deceased's remains in a writing
16 signed and notarized by the deceased: *Provided, That no*
17 person may be designated to serve in such capacity for more
18 than one nonrelative at any one time. ~~If next of kin or person~~

19 ~~can be found, his or her authority and direction~~ If there is no
20 prior directive, surviving spouse, or designated person, then
21 the authority and direction of any next of kin or person who
22 may be chargeable with the funeral expenses of the deceased
23 shall be used as to the disposal of the body of the deceased.
24 The provisions of this subsection are not applicable if the
25 remains of the decedent are subject to disposition pursuant to
26 subsection (b) of this section.

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

36 (c) Any person who violates the provisions of this section
37 is guilty of a misdemeanor and, upon conviction thereof, shall

38 be fined not less than \$500, nor more than \$1,000, or
39 imprisoned not less than ten days nor more than ninety days,
40 or both.

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 who
3 died in this state, to secure a permit for the cremation from
4 the Chief Medical Examiner, the county medical examiner or
5 county coroner of the county wherein the death occurred.
6 Any person who willfully fails to secure a permit for a
7 cremation, is guilty of a misdemeanor and, upon conviction
8 thereof, shall be fined not less than \$200. A permit for
9 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 (e) In any criminal proceeding alleging that a person
38 violated the time requirements of this section, it is a defense
39 to the charge that a delay beyond the time periods provided
40 for in this section were caused by circumstances wholly
41 outside the control of the defendant.

42 (f) For purposes of this section, “cremation contract”
43 means an agreement to perform a cremation, as a “cremation”
44 is defined in subsection (g), section three, article six, chapter
45 thirty of this code. A cremation contract is an agreement
46 between a crematory and any authorized person or entity,
47 including, but not limited to, the following persons in order
48 of precedence:

49 (1) The deceased, who has expressed his or her wishes
50 regarding the disposal of their remains through a last will and
51 testament, an advance directive or preneed funeral contract,

52 as defined in section two, article fourteen, chapter forty-five
53 of this code;

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

57 (3) An individual previously designated by the deceased
58 as the person with the right to control disposition of the
59 deceased's remains in a writing signed and notarized by the
60 deceased: *Provided, That no person may be designated to*
61 serve in such capacity for more than one nonrelative at any
62 one time;

63 ~~(2)~~ (4) The deceased person's next of kin;

64 ~~(3)~~ (5) A public official charged with arranging the final
65 disposition of an indigent deceased person or an unclaimed
66 corpse;

67 ~~(4)~~ (6) A representative of an institution who is charged
68 with arranging the final disposition of a deceased who
69 donated his or her body to science;

- 70 ~~(5)~~ (7) A public officer required by statute to arrange the
71 final disposition of a deceased person;
- 72 ~~(6)~~ (8) Another funeral establishment; or
- 73 ~~(7)~~ (9) An executor, administrator or other personal
74 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.