

1 **H. B. 4544**

2
3 (By Delegates Poore, Moore, McCuskey,
4 Marshall, Lawrence, Barrett, Young, Manypenny,
5 Longstreth and Ambler)
6

7 [Introduced February 14, 2014; referred to the
8 Committee on Government Organization then the Judiciary.]
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10 A BILL to amend and reenact §30-6-23 of the Code of West Virginia,
11 1931, as amended, relating to the Board of Funeral Service
12 Examiners; requiring the board to post notice on its website
13 of any disciplinary action resulting in sanctions against a
14 licensee within seven days of the disciplinary action; and
15 requiring publication in the obituary section of the nearest
16 daily circulation newspaper until the notice is posted on the
17 board's website.

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

19 That §30-6-23 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted to read as follows:

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

22 **§30-6-23. Refusal to issue or renew, suspension or revocation of**
23 **license; disciplinary action.**

24 (a) The board may refuse to renew, suspend, revoke or limit
25 any license, certificate or registration or practice privilege of

1 a licensee, or certificate or registration holder and may take
2 disciplinary action against a licensee, or certificate or
3 registration holder after a hearing. The board may refuse to
4 issue, refuse to renew, suspend, revoke or limit any license,
5 certificate or registration or practice privilege of a licensee, or
6 certificate or registration holder for any of the following
7 reasons:

8 (1) Fraud or deceit in obtaining or maintaining a license;

9 (2) Failure by any licensee, or certificate or registration
10 holder to maintain compliance with requirements for issuance or
11 renewal of a license, certificate or registration or to timely
12 notify the board as required in this article;

13 (3) Dishonesty, fraud, professional negligence in the
14 performance of services, or a willful departure from accepted
15 standards and professional conduct;

16 (4) Violation of any provision of this article or any rule,
17 including the violation of any professional standard or rule of
18 professional conduct, or public health laws;

19 (5) Conviction of a felony or any crime of which dishonesty or
20 fraud under the laws of the United States or this state, or
21 conviction of any similar crime under the laws of any other state
22 if the underlying act or omission involved would have constituted
23 a crime under the laws of this state;

24 (6) Any conduct adversely affecting upon the licensee's, or

1 certificate or registration holder's fitness to perform
2 professional services;

3 (7) The use of false, misleading or unethical advertising by
4 any licensee, or certificate or registration holder, or applicant
5 for a license or certificate of registration;

6 (8) Upon satisfactory proof that a licensed embalmer, a
7 licensed funeral director, or a certified crematory operator has
8 taken undue advantage of his or her patrons or has committed a
9 fraudulent act in the conduct of business;

10 (9) Solicitation of business by the licensee, or certificate
11 or registration holder, or any agents, assistants or employees,
12 whether such solicitation occurs after death or while death is
13 impending, as specified by the board: *Provided*, That this
14 subdivision does not prohibit proper advertising;

15 (10) If a licensee, or certificate or registration holder,
16 knowingly permits a person not licensed, not certified, or not
17 registered to engage in the profession of embalming, funeral
18 directing or cremation;

19 (11) If a licensee, or certificate or registration holder,
20 knowingly permits a person not licensed, not certified, or not
21 registered to use his or her license number or numbers for the
22 purpose of practicing, or discharging any of the duties of, the
23 professions of embalming, funeral directing or cremation;

24 (12) Employment by the licensee of persons as "cappers",

1 "steerers" or "solicitors", or other such persons to obtain funeral
2 or cremation business;

3 (13) Employment, directly or indirectly, of any apprentice,
4 agent, assistant, embalmer, employee or other person, on part or
5 full time, or on commission, for the purpose of calling upon
6 individuals or institutions by whose influence dead human bodies
7 may be turned over to a particular funeral director, funeral
8 establishment or crematory;

9 (14) The buying of business by the licensee, or certificate or
10 registration holder, or any agents, assistants or employees, or the
11 direct or indirect payment or offer of payment of a commission by
12 the licensee, or certificate or registration holder, or any agent,
13 assistants or employees, for the purpose of securing business;

14 (15) Gross immorality; and

15 (16) Chronic or persistent inebriety or addiction to alcohol,
16 narcotics or other substance.

17 (b) If the board suspends, revokes, refuses to renew or limits
18 any license, certificate or registration or practice privilege, the
19 board shall give written notice of the action, including a
20 statement of charges setting forth the reasons for the action, and
21 notice of the date, time and place for a hearing. The hearing
22 shall be held in accordance with the provisions of this article.

23 (c) Disciplinary action includes, but is not limited to, a
24 reprimand, censure, probation, suspension of license,

1 administrative fine not to exceed \$1,000 per day per violation and
2 mandatory attendance at continuing education seminars. Upon any
3 disciplinary action resulting in sanctions for a violation of the
4 provisions of this article, the board shall post notice of its
5 action against the licensee on the board's website within seven
6 days of the action and shall retain notice of the action on the
7 website for not less than ninety days. The notice shall include the
8 nature of the disciplinary action, the licensee's name and the
9 funeral establishment where the licensee practices. Until notice
10 is posted on the board's website, the board shall run an
11 advertisement providing notice of the disciplinary action in the
12 obituary section of the daily circulation newspaper located nearest
13 to the address of the funeral establishment where the licensee
14 practices.

NOTE: The purpose of this bill is to require the Board of Funeral Service Examiners to post notice on its website of any disciplinary action resulting in sanctions against a licensee within seven days of the disciplinary action. The bill also requires the board to publish notice of the disciplinary action in the obituary section of the nearest daily circulation newspaper until the disciplinary notice is posted on the board's website.

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