

1 **ENGROSSED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 3082**

5
6 (By Delegate Moore)

7 (Originating in the Committee on the Judiciary)

8
9 [February 24, 2011]

10

11 A BILL to amend and reenact §30-6-3 and §30-6-22 of the Code of
12 West Virginia, 1931, as amended; and to amend and reenact §61-
13 12-9 of said code, all relating to professions and
14 occupations; board of funeral service examiners; definitions;
15 specifically including the surviving spouse and a designated
16 individual previously chosen by the deceased as a person who
17 may designate the manner of disposition of a deceased person's
18 body; crimes and their punishment; postmortem examinations;
19 permits required for cremation; criminal penalties; and
20 establishing an order of precedence among persons as to
21 disposition of remains.

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

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

26 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

28 **§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 the
12 following and shall be considered in the following order of
13 precedence:

14 (1) The deceased person prior to his or her death through a
15 last will and testament, advance directive or preneed funeral
16 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, That no
21 person may be designated to serve in such capacity for more than
22 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 the
26 final disposition of an indigent deceased; or

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

1 her body to science.

2 (c) "Board" means the West Virginia board of funeral service
3 examiners.

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

6 (e) "Courtesy card holder" means a person who only practices
7 funeral directing periodically in West Virginia and is a licensed
8 embalmer and funeral director in a state which borders West
9 Virginia.

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

13 (g) "Cremation" means the mechanical or thermal process
14 whereby a dead human body is reduced to ashes and bone fragments
15 and then further reduced by additional pulverization, burning or
16 recremating when necessary.

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

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

23 (j) "Crematory operator in charge" means a certified crematory
24 operator who accepts responsibility for the operation of a
25 crematory.

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

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

1 (m) "Embalming" means the practice of introducing chemical
2 substances, fluids or gases used for the purpose of preservation or
3 disinfection into the vascular system or hollow organs of a dead
4 human body by arterial or hypodermic injection for the restoration
5 of the physical appearance of a deceased.

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

8 (o) "Funeral directing" means the business of engaging in the
9 following:

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

11 (2) The preparation of a deceased for burial or other
12 disposition;

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

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

17 (p) "Funeral director" means a person licensed to practice
18 funeral directing.

19 (q) "Funeral establishment" means a licensed place of business
20 devoted to: The care, preparation and arrangements for the
21 transporting, embalming, funeral, burial or other disposition of a
22 deceased. A funeral establishment can include a licensed
23 crematory.

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

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

28 (1) Practice embalming and funeral directing;

(2) Operate a crematory or a funeral establishment.

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

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

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

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

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

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

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

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

(a) No public officer, employee, physician or surgeon, or any other person having a professional relationship with the deceased, shall may send, or cause to be sent to ~~any~~ an embalmer, funeral director or crematory operator the body of ~~any~~ a deceased without first inquiring the desires of the deceased by virtue of a last will and testament, advance directive or preneed funeral contract; the surviving spouse, if he or she cohabitated with the deceased at the time of death; a person previously designated in a signed notarized writing by the deceased to make such a decision: Provided, That no person may be designated to serve in such capacity for more than one nonrelative at any one time, the next of

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

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

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

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

25 **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

26 **§61-12-9. Permits required for cremation; fee.**

27 (a) It is the duty of any person cremating, or causing or
28 requesting the cremation of, the body of any dead person who died

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

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

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

1 (d) Any person convicted of a violation of the provisions of
2 subsection (b) or (c) of this section shall be fined not less than
3 \$1,000 nor more than \$5,000 or confined in ~~the county or regional~~
4 jail for a period not to exceed six months, or both fined and
5 confined.

6 (e) In any criminal proceeding alleging that a person violated
7 the time requirements of this section, it is a defense to the
8 charge that a delay beyond the time periods provided for in this
9 section were caused by circumstances wholly outside the control of
10 the defendant.

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

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

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

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

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

27 ~~(3)~~ (5) A public official charged with arranging the final
28 disposition of an indigent deceased person or an unclaimed corpse;

1 ~~(4)~~ (6) A representative of an institution who is charged with
2 arranging the final disposition of a deceased who donated his or
3 her body to science;

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

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

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