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

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

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

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

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

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

(4) The deceased’s next of kin;
A court order; A public official who is charged with arranging the final disposition of an indigent deceased; or A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 other person having a professional relationship with the deceased, shall send, or cause to be sent to an embalmer, funeral director or crematory operator the body of a deceased without first inquiring the desires of the next of kin, or any person who may be chargeable with the funeral expenses of the deceased. the deceased who has designated his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive or preneed funeral contract, as defined in section two, article fourteen, chapter forty-five of this code; the surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent’s death; and, an individual previously designated by the deceased as the person with the right to control disposition of the deceased’s remains in a writing signed and notarized by the deceased: Provided, That no person may be designated to serve in such capacity for more than one nonrelative at any one time. If next of kin or person can be found, his or her authority and direction If there is no prior directive, surviving spouse, or designated person, then the authority and direction of any next of kin or person who may be chargeable with the funeral expenses of the deceased shall be used as to the disposal of the body of the deceased. The provisions of this subsection are not applicable if the remains of the decedent are subject to disposition pursuant to subsection (b) of this section.

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

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

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

(a) It is the duty of any person cremating, or causing or requesting the cremation of, the body of any dead person who died in this state, to secure a permit for the cremation from the Chief Medical Examiner, the county medical examiner or county coroner of the county wherein the death occurred. Any person who willfully fails to secure a permit for a cremation, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200. A permit for cremation shall be acted upon by the Chief Medical Examiner, the county medical examiner or the county coroner after review of the circumstances surrounding the death, as
indicated by the death certificate. The person requesting issuance
of a permit for cremation shall pay a reasonable fee, as determined
by the Chief Medical Examiner, to the county medical examiner or
coroner or to the Office of the Chief Medical Examiner, as
appropriate, for issuance of the permit.

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

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

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

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

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

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

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

(3) An individual previously designated by the deceased as the person with the right to control disposition of the deceased’s remains in a writing signed and notarized by the deceased:

Provided, That no person may be designated to serve in such capacity for more than one nonrelative at any one time;

(4) The deceased person’s next of kin;

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

(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.