

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 cremating 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;

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

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

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

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

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

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

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

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

17 **§30-6-22. Disposition of body of deceased person; penalty.**

18 (a) No public officer, employee, physician or surgeon, or any  
19 other person having a professional relationship with the deceased,  
20 ~~shall~~ may send, or cause to be sent to ~~any~~ an embalmer, funeral  
21 director or crematory operator the body of ~~any~~ a deceased without  
22 first inquiring the desires of the deceased by virtue of a last  
23 will and testament, advance directive or preened funeral contract;  
24 the surviving spouse, if he or she cohabitated with the deceased at  
25 the time of death; a person previously designated in a signed  
26 notarized writing by the deceased to make such a decision:  
27 Provided, That no person may be designated to serve in such  
28 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.