

**H. B. 3082**

(By Delegate Moore)

[Introduced February 9, 2011; referred to the  
Committee on the Judiciary.]

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, all relating to professions and occupations; board of funeral service examiners; definitions; specifically including 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; crimes and their punishment; postmortem examinations; permits required for cremation; criminal penalties; and establishing an order of precedence among persons as to 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.**

1 **§30-6-3. Definitions.**

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

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

10 (b) "Authorized representative" means a person legally  
11 authorized or entitled to order the cremation of the deceased, as  
12 established by rule. An authorized representative may include the  
13 following and shall be considered in the following order of  
14 precedence:

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

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

20 (3) A person previously designated in writing by the deceased  
21 to make such decision; provided that no person may be designated to  
22 serve in such capacity for more than one nonrelative at any one  
23 time;

24 ~~(2)~~ (4) The deceased's next of kin;

25 ~~(3)~~ (5) A court order;

26 ~~(4)~~ (6) A public official who is charged with arranging the

1 final disposition of an indigent deceased; or

2       ~~(5)~~ (7) A representative of an institution who is charged with  
3 arranging the final disposition of a deceased who donated his or  
4 her body to science.

5       (c) "Board" means the West Virginia board of funeral service  
6 examiners.

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

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

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

16       (g) "Cremation" means the mechanical or thermal process  
17 whereby a dead human body is reduced to ashes and bone fragments  
18 and then further reduced by additional pulverization, burning or  
19 re-cremating when necessary.

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

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

26       (j) "Crematory operator in charge" means a certified crematory

1 operator who accepts responsibility for the operation of a  
2 crematory.

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

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

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

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

13 (o) "Funeral directing" means the business of engaging in the  
14 following:

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

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

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

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

22 (p) "Funeral director" means a person licensed to practice  
23 funeral directing.

24 (q) "Funeral establishment" means a licensed place of business  
25 devoted to: The care, preparation and arrangements for the  
26 transporting, embalming, funeral, burial or other disposition of a

1 deceased. A funeral establishment can include a licensed  
2 crematory.

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

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

7 (1) Practice embalming and funeral directing;

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

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

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

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

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

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

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

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

24 **§30-6-22. Disposition of body of deceased person; penalty.**

25 (a) No public officer, employee, physician or surgeon, or any  
26 other person having a professional relationship with the deceased,

1 ~~shall~~ may send, or cause to be sent, to any embalmer, funeral  
 2 director or crematory operator the body of any deceased without  
 3 first inquiring the desires of the deceased by virtue of a last  
 4 will and testament, advance directive or preened funeral contract,  
 5 a person previously designated in writing by the deceased to make  
 6 such decision, the surviving spouse, the next of kin, or any  
 7 persons who may be chargeable with the funeral expenses of the  
 8 deceased. ~~If any next of kin or person can be found, his or her~~  
 9 If there is no prior directive, designated individual or surviving  
 10 spouse, then the authority and direction of any next of kin or  
 11 persons who may be chargeable with the funeral expenses of the  
 12 deceased shall be used as to the disposal of the body of the  
 13 deceased.

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

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

20 **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

21 **§61-12-9. Permits required for cremation; fee.**

22 (a) It is the duty of any person cremating, or causing or  
 23 requesting the cremation of, the body of any dead person who died  
 24 in this state, to secure a permit for the cremation from the chief  
 25 medical examiner, the county medical examiner or county coroner of  
 26 the county wherein the death occurred. Any person who willfully

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

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

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

26 (d) Any person convicted of a violation of the provisions of

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

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

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

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

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

21 (3) A person previously designated in writing by the deceased  
 22 to make that decision: Provided, That a person may not be  
 23 designated to serve in that capacity for more than one nonrelative  
 24 at any one time;

25 ~~(2)~~ (4) The deceased person's next of kin;

26 ~~(3)~~ (5) A public official charged with arranging the final

1 disposition of an indigent deceased person or an unclaimed corpse;  
2       ~~(4)~~ (6) A representative of an institution who is charged with  
3 arranging the final disposition of a deceased who donated his or  
4 her body to science;  
5       ~~(5)~~ (7) A public officer required by statute to arrange the  
6 final disposition of a deceased person;  
7       ~~(6)~~ (8) Another funeral establishment; or  
8       ~~(7)~~ (9) An executor, administrator or other personal  
9 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.