

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4118**

5
6 (By Delegate Moore)

7 [Passed March 10, 2012; in effect ninety days from passage.]

8
9 AN ACT to amend and reenact §30-6-3 and §30-6-22 of the Code of
10 West Virginia, 1931, as amended; to amend said code by adding
11 thereto a new section designated §30-6-22a; and to amend and
12 reenact §61-12-9 of said code, all relating to cremation,
13 preneed funeral contracts and disposition of remains
14 generally; adding a definition of persons authorized to order
15 cremation; clarifying required inquiry about deceased's
16 desires; prioritizing individuals authorized to express
17 desires of the deceased; clarifying funeral directors
18 responsibilities; establishing the right to control the
19 disposition of the remains of a deceased person; determining
20 who has that right; setting forth how that right may be
21 forfeited; adding a definition of person authorized to agree
22 to a cremation contract; and establishing an order of
23 precedence among persons as to cremation and disposition of
24 remains.

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

26 That §30-6-3 and §30-6-22 of the Code of West Virginia,

1 1931, as amended, be amended and reenacted; that said code be
2 amended by adding thereto a new section designated §30-6-22a; and
3 that §61-12-9 of said code be amended and reenacted, all to read as
4 follows:

5 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

7 **§30-6-3. Definitions.**

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

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

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

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

25 (2) The surviving spouse of the deceased, unless a petition to

1 dissolve the marriage was pending at the time of decedent's death;

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

7 (4) The deceased's next of kin;

8 (5) A court order;

9 (6) A public official who is charged with arranging the final
10 disposition of an indigent deceased; or

11 (7) A representative of an institution who is charged with
12 arranging the final disposition of a deceased who donated his or
13 her body to science.

14 (c) "Board" means the West Virginia Board of Funeral Service
15 Examiners.

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

18 (e) "Courtesy card holder" means a person who only practices
19 funeral directing periodically in West Virginia and is a licensed
20 embalmer and funeral director in a state which borders West
21 Virginia.

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

25 (g) "Cremation" means the mechanical or thermal process
26 whereby a dead human body is reduced to ashes and bone fragments

1 and then further reduced by additional pulverization, burning or
2 cremating when necessary.

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

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

9 (j) "Crematory operator in charge" means a certified crematory
10 operator who accepts responsibility for the operation of a
11 crematory.

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

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

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

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

22 (o) "Funeral directing" means the business of engaging in the
23 following:

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

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

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

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

5 (p) "Funeral director" means a person licensed to practice
6 funeral directing.

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

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

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

16 (1) Practice embalming and funeral directing;

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

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

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

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

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

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

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

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

7 **§30-6-22. Disposition of body of deceased person; penalty.**

8 (a) No public officer, employee, physician or surgeon, or
9 other person having a professional relationship with the deceased,
10 shall send, or cause to be sent to an embalmer, funeral director or
11 crematory operator the body of a deceased without first inquiring
12 the desires of the deceased who has designated his or her wishes
13 regarding the disposal of their remains through a last will and
14 testament, an advance directive or preneed funeral contract, as
15 defined in section two, article fourteen, chapter forty-five of
16 this code; the surviving spouse of the deceased, unless a petition
17 to dissolve the marriage was pending at the time of decedent's
18 death; and, an individual previously designated by the deceased as
19 the person with the right to control disposition of the deceased's
20 remains in a writing signed and notarized by the deceased:
21 *Provided*, That no person may be designated to serve in such
22 capacity for more than one nonrelative at any one time. If there
23 is no last will and testament, advance directive or preneed funeral
24 contract, surviving spouse, or designated person, then the
25 authority and direction of any next of kin or person who may be
26 chargeable with the funeral expenses of the deceased shall be used

1 as to the disposal of the body of the deceased. The provisions of
2 this subsection are not applicable if the remains of the decedent
3 are subject to disposition pursuant to subsection (b) of this
4 section.

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

14 (c) 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 not
17 less than ten days nor more than ninety days, or both.

18 **§30-6-22a. Right of disposition; preneed contract; affidavit on**
19 **disposition of remains; role of county commission; liability**
20 **of funeral home.**

21 (a) Notwithstanding section twenty-two of this article, a
22 person who is eighteen years of age or older and of sound mind, by
23 entering into a preneed funeral contract, as defined in section
24 two, article fourteen, chapter forty-seven of this code, may direct
25 the location, manner and conditions of the disposition of the

1 person's remains and the arrangements for funeral goods and
2 services to be provided upon the person's death. The disposition
3 directions and funeral prearrangements that are contained in a
4 preneed funeral contract are not subject to cancellation to
5 revision unless any resources set aside to fund the preneed funeral
6 contract are insufficient under the terms of the preneed funeral
7 contract to carry out the disposition directions and funeral
8 prearrangements contained in the contract.

9 (b) As to any matter not addressed in a preneed funeral
10 contract as described in subsection (a) of this section and except
11 as provided in subsection (c) of this section, the right to control
12 the disposition of the remains of a deceased person, the location,
13 manner and conditions of disposition, and arrangements for funeral
14 goods and services to be provided vests in the following, in the
15 order named, provided that the person is eighteen years or older
16 and is of sound mind:

17 (1) (A) A person designated by the decedent as the person with
18 the right to control the disposition in an affidavit executed in
19 accordance with paragraph (B) of this subdivision; and

20 (B) A person who is eighteen years of age or older and of
21 sound mind wishing to authorize another person to control the
22 disposition of his or her remains may execute an affidavit before
23 a notary public in substantially the following form:

24 "I, _____, do hereby designate _____
25 with the right to control the disposition of my remains upon my
26 death. I ___ have/ ___ have not attached specific directions

1 concerning the disposition of my remains with which the designee
2 shall substantially comply, provided that these directions are
3 lawful and there are sufficient resources in my estate to carry out
4 the directions.

5 _____
6 Signed

7 State of _____

8 County of _____

9 I, _____, a Notary Public of said County,
10 do certify that _____, as principal
11 whose name is signed to the writing above bearing date on the
12 _____ day of _____, 20____, has this day acknowledged the same
13 before me.

14 Given under my hand this _____ day of _____, 20__.

15 My commission expires: _____

16 _____
17 Notary Public";

18 (2) The surviving spouse of the decedent;

19 (3) The sole surviving child of the decedent or, if there is
20 more than one child of the decedent, the majority of the surviving
21 children. However, less than one half of the surviving children
22 shall be vested with the rights under this section if they have
23 used reasonable efforts to notify all other surviving children of
24 their instructions and are not aware of any opposition to those
25 instructions on the part of more than one half of all surviving
26 children;

27 (4) The surviving parent or parents of the decedent. If one

1 of the surviving parents is absent, the remaining parent shall be
2 vested with the rights and duties under this section after
3 reasonable efforts have been unsuccessful in locating the absent
4 surviving parent;

5 (5) The surviving brother or sister of the decedent or, if
6 there is more than one sibling of the decedent, the majority of the
7 surviving siblings. However, less than the majority of surviving
8 siblings shall be vested with the rights and duties under this
9 section if they have used reasonable efforts to notify all other
10 surviving siblings of their instructions and are not aware of any
11 opposition to those instructions on the part of more than one half
12 of all surviving siblings;

13 (6) The surviving grandparent of the decedent or, if there is
14 more than one surviving grandparent, the majority of the
15 grandparents. However, less than the majority of the surviving
16 grandparents shall be vested with the rights and duties under this
17 section if they have used reasonable efforts to notify all other
18 surviving grandparents of their instructions and are not aware of
19 any opposition to those instructions on the part of more than one
20 half of all surviving grandparents;

21 (7) The guardian of the person of the decedent at the time of
22 the decedent's death if one had been appointed;

23 (8) The personal representative of the estate of the decedent;

24 (9) The person in the classes of the next degree of kinship,
25 in descending order, under the laws of descent and distribution to
26 inherit the estate of the decedent. If there is more than one

1 person of the same degree, any person of that degree may exercise
2 the right of disposition;

3 (10) If the disposition of the remains of the decedent is the
4 responsibility of the state or a political subdivision of the
5 state, the public officer, administrator or employee responsible
6 for arranging the final disposition of decedent's remains; or

7 (11) In the absence of any person under subdivisions (1)
8 through (10) of this subsection, any other person willing to assume
9 the responsibilities to act and arrange the final disposition of
10 the decedent's remains, including the funeral director with custody
11 of the body, after attesting in writing that a good-faith effort
12 has been made to no avail to contact the individuals under
13 subdivisions (1) through (10) of this subsection.

14 (c) A person entitled under law to the right of disposition
15 forfeits that right, and the right is passed on to the next
16 qualifying person as listed in subsection (b) of this section, in
17 the following circumstances:

18 (1) Any person charged with murder or voluntary manslaughter
19 in connection with the decedent's death and whose charges are known
20 to the funeral director. However, if the charges against that
21 person are dismissed or if the person is acquitted of the charges,
22 the right of disposition is returned to the person;

23 (2) Any person who does not exercise his or her right of
24 disposition within two days of notification of the death of
25 decedent or within three days of decedent's death, whichever is
26 earlier;

1 (3) If the person and the decedent are spouses and a petition
2 to dissolve the marriage was pending at the time of decedent's
3 death.

4 (d) Any person signing a funeral service agreement, cremation
5 authorization form or any other authorization for disposition shall
6 be deemed to warrant the truthfulness of any facts set forth
7 therein, including the identity of the decedent whose remains are
8 to be buried, cremated or otherwise disposed of, and the party's
9 authority to order the disposition. A funeral home has the right
10 to rely on that funeral service agreement or authorization and
11 shall have the authority to carry out the instructions of the
12 person or persons the funeral home reasonably believes holds the
13 right of disposition. The funeral home has no responsibility to
14 independently investigate the existence of any next of kin or
15 relative of the decedent where a means of disposition is fully set
16 forth in a preneed funeral contract or other written directive of
17 the deceased in accordance with this section. If there is more
18 than one person in a class who are equal in priority and the
19 funeral home has no knowledge of any objection by other members of
20 that class, the funeral home may rely on and act according to the
21 instructions of the first person in the class to make funeral and
22 disposition arrangements, if no other person in that class provides
23 written objections to the funeral home.

24 (e) No funeral establishment or funeral director who relies in
25 good faith upon the instructions of a preneed funeral contract,
26 written directive of the deceased, or an individual claiming the

1 right of disposition in accordance with this section shall be
2 subject to criminal or civil liability or subject to disciplinary
3 action under this section for carrying out the disposition of the
4 remains in accordance with those instructions.

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

6 **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

7 **§61-12-9. Permits required for cremation; fee.**

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

23 (b) Any person operating a crematory who does not perform a
24 cremation pursuant to the terms of a cremation contract, or
25 pursuant to the order of a court of competent jurisdiction, within

1 the time contractually agreed upon, or, if the cremation contract
2 does not specify a time period, within twenty-one days of receipt
3 of the deceased person's remains by the crematory, whichever time
4 is less, is guilty of a misdemeanor.

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

13 (d) Any person convicted of a violation of the provisions of
14 subsection (b) or (c) of this section shall be fined not less than
15 \$1,000 nor more than \$5,000 or confined in jail for a period not to
16 exceed six months, or both.

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

22 (f) For purposes of this section, "cremation contract" means
23 an agreement to perform a cremation, as a "cremation" is defined in
24 subsection (g), section three, article six, chapter thirty of this
25 code. A cremation contract is an agreement between a crematory and
26 any authorized person or entity, including, but not limited to, the

1 following persons in order of precedence:

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

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

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

14 (4) The deceased person's next of kin;

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

17 (6) A representative of an institution who is charged with
18 arranging the final disposition of a deceased who donated his or
19 her body to science;

20 (7) A public officer required by statute to arrange the final
21 disposition of a deceased person;

22 (8) Another funeral establishment; or

23 (9) An executor, administrator or other personal
24 representative of the deceased.