

1 **H. B. 4118**

2
3 (By Delegate Moore)

4 [Introduced January 18, 2012; referred to the
5 Committee on the Judiciary.]

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

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

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

1 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

3 **§30-6-3. Definitions.**

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

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

12 (b) "Authorized representative" means a person legally
13 authorized or entitled to order the cremation of the deceased, as
14 established by rule. An authorized representative may include the
15 following and shall be considered in the following order of
16 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

1 person may be designated to serve in such capacity for more than
2 one nonrelative at any one time;

3 ~~(2)~~ (4) The deceased's next of kin;

4 ~~(3)~~ (5) A court order;

5 ~~(4)~~ (6) A public official who is charged with arranging the
6 final disposition of an indigent deceased; or

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

10 © "Board" means the West Virginia board of funeral service
11 examiners.

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

14 (e) "Courtesy card holder" means a person who only practices
15 funeral directing periodically in West Virginia and is a licensed
16 embalmer and funeral director in a state which borders West
17 Virginia.

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

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

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

5 (I) "Crematory operator" means a person certified by the board
6 to operate a crematory.

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

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

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

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

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

20 (o) "Funeral directing" means the business of engaging in the
21 following:

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

23 (2) The preparation of a deceased for burial or other
24 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 ® "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.

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

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

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

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

9 **§30-6-22. Disposition of body of deceased person; penalty.**

10 (a) No public officer, employee, physician or surgeon, or any
11 other person having a professional relationship with the deceased,
12 ~~shall~~ may send, or cause to be sent to ~~any~~ an embalmer, funeral
13 director or crematory operator the body of ~~any~~ a deceased without
14 first inquiring the desires of the deceased by virtue of a last
15 will and testament, advance directive or preened funeral contract;
16 the surviving spouse, if he or she cohabitated with the deceased at
17 the time of death; a person previously designated in a signed
18 notarized writing by the deceased to make such a decision:
19 Provided, That no person may be designated to serve in such
20 capacity for more than one nonrelative at any one time, the next of
21 kin, or any persons who may be chargeable with the funeral expenses
22 of the deceased. ~~If any next of kin or person can be found, his or~~
23 ~~her~~ If there is no prior directive, designated individual or
24 surviving spouse, then the authority and direction of any next of

1 kin or persons who may be chargeable with the funeral expenses of
 2 the deceased shall be used as to the disposal of the body of the
 3 deceased. The provisions of this subsection are not applicable if
 4 the remains of the decedent are subject to disposition pursuant to
 5 subsection (b) of this section.

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

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

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

21 **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

22 **§61-12-9. Permits required for cremation; fee.**

23 (a) It is the duty of any person cremating, or causing or
 24 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 © 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,

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

5 (d) Any person convicted of a violation of the provisions of
6 subsection (b) or © of this section shall be fined not less than
7 \$1,000 nor more than \$5,000 or confined in ~~the county or regional~~
8 jail for a period not to exceed six months, or both fined and
9 confined.

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

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

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

24 (2) The surviving spouse if he or she cohabited with the

1 deceased at the time of death;

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

6 ~~(2)~~ (4) The deceased person's next of kin;

7 ~~(3)~~ (5) A public official charged with arranging the final
 8 disposition of an indigent deceased person or an unclaimed corpse;

9 ~~(4)~~ (6) A representative of an institution who is charged with
 10 arranging the final disposition of a deceased who donated his or
 11 her body to science;

12 ~~(5)~~ (7) A public officer required by statute to arrange the
 13 final disposition of a deceased person;

14 ~~(6)~~ (8) Another funeral establishment; or

15 ~~(7)~~ (9) An executor, administrator or other personal
 16 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.