

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4075

BY DELEGATE J. JEFFRIES

[Introduced January 09, 2020; Referred to the
Committee on Government Organization]

1 A BILL to amend and reenact §30-6-23 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §47-14-10 of said code, all relating to allowing a funeral service
 3 licensee only to solicit business whether such solicitation occurs after death or while death
 4 is pending and to solicit business by telephone call or visit to a personal residence.

Be it enacted by the Legislature of West Virginia:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-23. Refusal to issue or renew, suspension or revocation of license; disciplinary action.

1 (a) The board may refuse to renew, suspend, revoke, or limit any license, certificate, or
 2 registration or practice privilege of a licensee, or certificate or registration holder, and may take
 3 disciplinary action against a licensee, or certificate or registration holder, after a hearing. The
 4 board may refuse to issue, refuse to renew, suspend, revoke, or limit any license, certificate, or
 5 registration or practice privilege of a licensee, or certificate or registration holder for any of the
 6 following reasons:

7 (1) Fraud or deceit in obtaining or maintaining a license;

8 (2) Failure by any licensee, or certificate or registration holder to maintain compliance with
 9 requirements for issuance or renewal of a license, certificate, or registration, or to timely notify the
 10 board as required in this article;

11 (3) Dishonesty, fraud, professional negligence in the performance of services, or a willful
 12 departure from accepted standards and professional conduct;

13 (4) Violation of any provision of this article or any rule, including the violation of any
 14 professional standard or rule of professional conduct, or public health laws;

15 (5) Conviction of a felony or any crime of which dishonesty or fraud under the laws of the
 16 United States or this state, or conviction of any similar crime under the laws of any other state if

17 the underlying act or omission involved would have constituted a crime under the laws of this
18 state;

19 (6) Any conduct adversely affecting upon the licensees, or certificate or registration
20 holders fitness to perform professional services;

21 (7) The use of false, misleading, or unethical advertising by any licensee, or certificate or
22 registration holder, or applicant for a license or certificate of registration;

23 (8) Upon satisfactory proof that a licensed embalmer, a licensed funeral director, or a
24 certified crematory operator has taken undue advantage of his or her patrons or has committed a
25 fraudulent act in the conduct of business;

26 (9) Solicitation of business by the funeral service licensee, ~~or certificate or registration~~
27 ~~holder, or any agents, assistants or employees~~ whether such solicitation occurs after death or
28 while death is impending, as specified by the board: *Provided*, That this subdivision does not
29 prohibit proper advertising;

30 (10) If a licensee, or certificate or registration holder, knowingly permits a person not
31 licensed, not certified, or not registered to engage in the profession of embalming, funeral
32 directing, or cremation;

33 (11) If a licensee, or certificate or registration holder, knowingly permits a person not
34 licensed, not certified, or not registered to use his or her license number or numbers for the
35 purpose of practicing, or discharging any of the duties of, the professions of embalming, funeral
36 directing, or cremation;

37 (12) Employment by the licensee of persons as cappers, steerers or solicitors, or other
38 such persons to obtain funeral or cremation business;

39 (13) Employment, directly or indirectly, of any apprentice, agent, assistant, embalmer,
40 employee, or other person, on part or full time, or on commission, for the purpose of calling upon
41 individuals or institutions by whose influence dead human bodies may be turned over to a
42 particular funeral director, funeral establishment, or crematory;

43 (14) The buying of business by the licensee, or certificate or registration holder, or any
44 agents, assistants, or employees, or the direct or indirect payment or offer of payment of a
45 commission by the licensee, or certificate or registration holder, or any agent, assistants, or
46 employees, for the purpose of securing business;

47 (15) Gross immorality; and

48 (16) Chronic or persistent inebriety or addiction to alcohol, narcotics, or other substance.

49 (b) If the board suspends, revokes, refuses to renew, or limits any license, certificate, or
50 registration or practice privilege, the board shall give written notice of the action, including a
51 statement of charges setting forth the reasons for the action, and notice of the date, time, and
52 place for a hearing. The hearing shall be held in accordance with the provisions of this article.

53 (c) Disciplinary action includes, but is not limited to, a reprimand, censure, probation,
54 suspension of license, administrative fine not to exceed \$1,000 per day per violation, and
55 mandatory attendance at continuing education seminars.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 14. PRENEED FUNERAL CONTRACTS.

§47-14-10. Solicitation.

1 (a) Any contract seller or agent or employee or person acting in behalf of any such person
2 may not:

3 (1) Directly or indirectly call upon individuals or persons in hospitals, rest homes, nursing
4 homes, or similar institutions for the purpose of soliciting preneed funeral contracts or making
5 funeral or final disposition arrangements without first having been specifically requested by such
6 person to do so;

7 (2) Directly or indirectly employ any agent, assistant, employee, independent contracting
8 person, or any other person to call upon individuals or persons in hospitals, rest homes, nursing
9 homes, or similar institutions for the purpose of soliciting preneed funeral contracts or making

10 funeral or final disposition arrangements without first having been specifically requested by such
11 person to do so;

12 (3) Solicit relatives of persons whose death is apparently pending or whose death has
13 recently occurred for the purpose of providing funeral services, final disposition, burial or funeral
14 goods for such person;

15 (4) Solicit or accept or pay any consideration for recommending or causing a dead human
16 body to be provided funeral services and funeral and burial goods by specific persons or the
17 services of a specific crematory, mausoleum, or cemetery except where such arrangement is the
18 subject of a preneed funeral contract;

19 (5) Except by a funeral service licensee solicit by telephone call or by visit to a personal
20 residence, unless such solicitation has been previously requested by the person solicited or by a
21 family member residing at such residence.

22 (b) Notwithstanding any other provision of law to the contrary, nothing in this article shall
23 be construed to restrict the right of a person to lawfully advertise, to use direct mail or otherwise
24 communicate in a manner not within the above prohibition of solicitation or to solicit the business
25 of anyone responding to such communication or otherwise initiating discussion of the goods or
26 services being offered.

27 (c) Nothing herein shall be construed to prohibit general advertising.

28 (d) Anyone making a personal or written solicitation for a preneed funeral contract shall,
29 at the very first instance, divulge the real reason for the contract or solicitation.

30 (e) The division may promulgate legislative rules regulating the solicitation of preneed
31 contracts by certificate holders or registrants to protect the public from solicitation practices which
32 utilize undue influence or which take undue advantage of a persons ignorance or emotional
33 vulnerability.

NOTE: The purpose of this bill is to allow a funeral service licensee to solicit business whether after death or while death is impending and to solicit by telephone call or by visit to a personal residence.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.