

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1941

ENROLLED

SENATE BILL No. ///

(By Mr. Hession.....)

PASSED March 8..... 1941

In Effect 90 days from..... Passage



Senate Bill No. 111

(BY MR. HUSSION)

[Passed March 8, 1941; in effect ninety days from passage.]

AN ACT to amend and reenact sections three to ten, both inclusive, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-nine, acts of the Legislature, one thousand nine hundred thirty-three, all relating to the examination, licensing and registration of persons engaged in the care, preparation or disposition of bodies of deceased persons, and providing penalties for the violation therefor.

Be it enacted by the Legislature of West Virginia:

That sections three to ten, both inclusive, article six, chapter thirty of the code of West Virginia, one thousand nine hundred

thirty-one, as amended by chapter forty-nine, acts of the Legislature, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 3. Members of said board, before entering upon
2 their duties, shall take and subscribe to the oath of office
3 of the secretary of state.

4 Said board shall select from its own members a presi-
5 dent, a secretary and a treasurer. Each member shall be
6 reimbursed for his necessary traveling expenses and the
7 necessary expense incident to his attendance upon the
8 business of the board, and in addition thereto the sum of
9 ten dollars per day for each day actually spent by such
10 member upon the business of the board. The secretary
11 shall receive an annual salary not to exceed five hundred
12 dollars, the amount and method of payment of which shall
13 be fixed by said board, and in addition thereto shall re-
14 ceive traveling and other incidental expenses incurred in
15 the performance of his duties.

16 All such expenses, per diem and compensation shall be
17 paid out of the receipts of the board, but such allowances
18 shall at no time exceed the receipts of the board.

19 The treasurer of the board shall give bond to the state
20 of West Virginia in such sum as the board shall direct
21 with two or more sureties or a reliable surety company
22 approved by the board, and such bond shall be conditioned
23 for the faithful discharge of the duties of such officer. Such
24 bond, with approval of the board endorsed thereon, shall
25 be deposited with the treasurer of the state of West Vir-
26 ginia.

27 The board shall hold not less than one meeting annually
28 for the purpose of examining applicants for licenses, such
29 meeting or meetings to be held at such time and place as
30 the board shall determine. The time and place of such
31 meeting shall be announced by publication in three daily
32 newspapers of general circulation in different locations in
33 the state, and publication to be once a week for two con-
34 secutive weeks immediately preceding each such meeting.

35 The board may hold such other meetings as it may deem
36 necessary and may transact any business at any such
37 meeting. Three or more members shall comprise a
38 quorum authorizing the board to transact the business as
39 prescribed under this act.

40 The board shall have power and it shall be its duty to
41 make and enforce all necessary rules and regulations not
42 inconsistent with this act, for the examination and
43 licensing of funeral directors and the general practice of
44 funeral directing; the examination and licensing of em-
45 balmers and the general practice of embalming, and the
46 registration and regulation of apprentices.

47 The board shall conduct annually a school of instruction
48 to apprise funeral directors and embalmers of the most
49 recent scientific knowledge and developments affecting
50 their profession. Qualified lecturers and demonstrators
51 may be employed by the board for this purpose. The
52 board shall give notice of the time and place at which
53 such school will be held for all licensed funeral directors
54 and embalmers, and it shall be the duty of every funeral
55 director or embalmer to attend at least one such school
56 in every three years.

57 The board or any of its members or any duly authorized
58 employee of the board shall have the authority to enter
59 at all reasonable hours for the purpose of inspecting the
60 premises in which the business or profession of funeral

61 directing is conducted or practiced, or where embalming
62 is practiced.

Sec. 4. For the purpose of this act, the following terms

2 shall be construed in the following manner:

3 "Funeral Director" shall mean any person engaged, or
4 holding himself out as engaged in the business of funeral
5 directing as herein defined, and shall use in connection
6 with his name or business the words or terms "funeral
7 director," "undertaker," "mortician," or any other word or
8 title to imply or designate him as a funeral director, under-
9 taker, or mortician.

10 "Funeral directing" shall mean the business or profes-
11 sion of directing or supervising funerals for profit, or the
12 business or profession of preparing dead human bodies for
13 burial by means other than embalming, or the disposition
14 of dead human bodies; or maintenance of a place or estab-
15 lishment for the preparation for disposition or for the care
16 or disposition of dead human bodies, or the use in connec-
17 tion with a business of the word or term "funeral di-
18 rector," "undertaker," "mortician," directing; or the hold-
19 ing out to the public that one is a funeral director.

20 “Embalmer” shall mean any person engaged in, or hold-
21 ing himself out to be engaged in the practice of embalm-
22 ing, whether on his own behalf or in the employ of
23 another, and shall include any person who shall use in
24 connection with his name, the term “embalmer,” or use
25 any word, term, or title intending to imply or designate as
26 an embalmer or as one engaged in embalming.

27 “Embalming” is the introduction into the vascular
28 system or hollow organs of a dead human body, by arterial
29 or by hypodermic injection, of any chemical substance,
30 fluids, or gases used for the purpose of preservation or
31 disinfection.

32 “Apprentice” shall mean any person engaged in this
33 state in the learning of the practice of embalming or of the
34 practice of funeral directing under the instruction and
35 personal supervision of a duly licensed embalmer or a
36 duly licensed funeral director, under the provisions of this
37 chapter.

Sec. 5. After July first, one thousand nine hundred
2 forty-one, no person shall engage in or hold himself out as
3 engaging in the business or profession of embalming, or

4 preserving in any manner dead human bodies in this state,
5 whether for himself or in the employ of another, unless
6 he holds an embalmer's license issued to him by the
7 board, and shall at the date of its issue have complied
8 with the provisions of this act.

9 After July first, one thousand nine hundred forty-one,
10 no person shall engage in or hold himself out as engaging
11 in the business or profession of funeral directing in this
12 state, unless he holds a funeral director's license issued to
13 him by the board, and shall at the date of issuance have
14 complied with the provisions of this act, or conduct a
15 funeral unless he be a licensed funeral director or a duly
16 registered apprentice.

17 No person shall be entitled to an embalmer's license
18 unless he is twenty-one years of age or over, a citizen of
19 the United States, of good moral character, shall hold a
20 certificate or diploma showing the completion of four
21 years high school course, shall be duly registered with
22 this board, shall have first completed a two years course
23 of apprenticeship under the supervision of a licensed
24 embalmer actively and lawfully engaged in the practice

25 of embalming in this state, such apprenticeship to consist
26 of diligent attention to the work in the course of regular
27 and steady employment and not as a side issue to another
28 employment or as casual funeral directing, under which
29 apprenticeship he shall have taken an active part in the
30 operation of embalming not less than thirty-five dead
31 human bodies, under supervision of licensed embalmer,
32 and shall possess a certificate or diploma of graduation
33 from a school of embalming which requires as a pre-
34 requisite to graduation the completion of a course of study
35 of not less than twelve months duration, and that said
36 school of embalming is duly approved by the board, and
37 the applicant shall pass such examination as the board
38 shall deem necessary to ascertain his qualifications and
39 ability to engage in the practice of embalming: *Provided,*
40 *however,* That any person who has been regularly and
41 lawfully practicing as funeral director for a period of five
42 years or more prior to the effective date of this act shall
43 be eligible to take the required examination for an em-
44 balmer's license, without having had a four-year high
45 school course, upon compliance with all other require-

46 ments as to eligibility for such examination. The board
47 will not recognize a course of instruction in embalming
48 obtained or apprenticeship served by any person who is
49 not first duly registered with the board and the holder of
50 a certificate of registration.

51 The board shall issue licenses separately to embalmers
52 and licenses separately to funeral directors.

53 An applicant for a funeral director's license must
54 furnish satisfactory proof to the board that his business or
55 profession of funeral directing is to be conducted in a
56 fixed place or establishment equipped for the care and
57 preparation for burial or disposition of dead human
58 bodies. What shall be deemed "necessary equipment"
59 shall be defined in the rules and regulations of the board,
60 the same to be in compliance with the public health laws
61 of the state or the rules of the state board of health of
62 West Virginia. This shall not be so construed as to deny
63 an applicant for a funeral director's license such a license
64 because he is not the owner, or part owner, of an estab-
65 lished or proposed funeral business.

66 Licenses issued under the provisions of this chapter
67 shall not be transferable or assignable.

68 No person shall receive a license as a funeral director
69 until he has been found by the board to be twenty-one
70 years of age or over, a citizen of the United States, of
71 good moral character and temperate habits. An applicant
72 shall hold a certificate or diploma showing the completion
73 of a four-year high school course, must have been duly
74 registered with the board as an apprentice and served not
75 less than two years apprenticeship under the personal
76 supervision of a licensed funeral director actively and
77 lawfully engaged in the business or profession of funeral
78 directing in this state, such apprenticeship to consist of
78a diligent attention to the work in the course of
79 regular and steady employment and not as a side issue
80 to another employment. The board will not recognize
81 any apprenticeship served by any person who is not first
82 duly registered with the board as an apprentice funeral
83 director.

84 On or after the passage date of this amendment no
85 funeral home or establishment or any other place pertain-
86 ing to funeral directing or the conducting of funerals

87 shall be established in the State of West Virginia under
88 any name than that of the licensed holder of a West Vir-
89 ginia Funeral Directors' license or the licensed holders
90 of West Virginia funeral directors' licenses under whose
91 direction such establishment is operated; provided that
92 every establishment shall display in all advertising the
93 name of the licensed funeral director who is actually in
94 charge of the establishment. All branch establishments
95 must display the name of the funeral director who is
96 actually in charge. At least one licensed funeral director
97 shall supervise each main establishment and at least one
98 licensed funeral director shall directly supervise each
99 branch establishment.

100 Any person now holding a license as an embalmer or as
101 a funeral director, or as an assistant funeral director,
102 or as an apprenticed embalmer, shall not be required to
103 make a new application, or submit to an examination, but
104 shall upon the payment of the fee therefor, be entitled to
105 a renewal of his license upon the terms and conditions as
106 are herein provided for the renewal of licenses of those
107 who may be licensed after the passage of this act, but

108 all such persons shall be subject to every provision of
109 this act, and such rules and regulations as the board may
110 adopt in pursuance of this act.

111 Any person now holding a certificate of registration as
112 an apprentice shall be given full credit for his compliance
113 to July first, one thousand nine hundred forty-one.

114 On and after July first, one thousand nine hundred
115 forty-one, no person shall be registered as an apprentice
116 until he has been found by the board to be eighteen years
117 of age or over, a resident of West Virginia, of good moral
118 character and temperate habits, and the holder of a
119 certificate or diploma showing the completion of a four
120 years high school course.

121 The board may recognize licenses issued to embalmers
122 or funeral directors by state boards or the proper au-
123 thorities of other states; and upon presentation of such
124 licenses may issue to the lawful holders thereof an em-
125 balmer's license or a funeral director's license as herein
126 provided. Such reciprocal licenses shall be renewed
127 annually upon the payment of such renewal license fees
128 as provided for in this act.

129 No person shall be entitled to a reciprocal license as a
130 funeral director or embalmer unless he shows to the satis-
131 faction of the board that he has, in the state in which he
132 is legally licensed, complied with requirements sub-
133 stantially equal to those set out in this act.

Sec. 6. The examination fee for a funeral director's
2 license shall be fifty dollars and shall be remitted at the
3 time the application for a funeral director's license is
4 submitted to the board.

5 The examination fee for an embalmer's license shall be
6 fifty dollars and shall be remitted at the time the appli-
7 cation for an embalmer's license is submitted to the
8 board.

9 The registration fee for apprentices shall be five dollars
10 and shall be remitted at the time the application for regis-
11 tration is submitted to the board.

12 All licenses shall expire on the thirtieth day of June of
13 each calendar year and the renewal date for all licenses
14 shall be the first day of July of each calendar year.

15 The annual renewal fee for an embalmer's license shall
16 be five dollars and shall be paid on or before the first day
17 of July of each calendar year.

18 The annual renewal fee for a funeral director's license
19 shall be five dollars and shall be paid on or before the
20 first day of July of each calendar year.

21 The annual renewal fee for an assistant funeral direc-
22 tor's license shall be five dollars and shall be paid on or
23 before the first day of July of each calendar year.

24 Any person who has been duly licensed as a funeral
25 director or as an embalmer under the laws of this state
26 but who fails to renew his license within ninety days
27 after the expiration date for renewals may file an applica-
28 tion for a renewal of his license, without examination,
29 upon payment of a penalty of ten dollars and the required
30 renewal fee.

31 Any person who has been duly licensed as a funeral di-
32 rector or as an embalmer under the laws of this state but
33 who fails to renew his license within one year after the
34 expiration date for renewals may file an application for a
35 renewal of his license, without examination, upon pay-
36 ment of a penalty of twenty-five dollars and the required
37 renewal fee.

38 A funeral director or an embalmer whose license has
39 lapsed one year or more shall make application to the
40 board for a new license in compliance with the provisions
41 of this act relating to unlicensed persons.

42 Any person who has been duly licensed as an assistant
43 funeral director and fails to renew his license within
44 ninety days after the expiration date for renewals may
45 file an application for renewal of his license upon payment
46 of a penalty of two dollars and the required renewal fee.
47 Otherwise, after the said period of ninety days, his license
48 will automatically be cancelled.

49 All fees collected under the provisions of this act shall
50 be paid to the treasurer of the board and by him deposited
51 monthly with the state treasurer. Such fees shall be used
52 for the purpose of defraying the necessary expenses and
53 per diem of said board in the administration of this act.
54 It shall be the duty of said board on or before the first
55 Monday in July of each year to make a report in writing
56 to the governor containing a detailed statement of the
57 nature and amount of its receipts and the amount and
58 manner of its expenditures; any balance of money re-

59 maning at the end of the year after the payment of the
60 necessary expenses, including the salary of the secretary,
61 the per diem, traveling expenses, and other expenses inci-
62 dent to the proper discharge of their duties by the mem-
63 bers and employees of said board, shall remain in the
64 treasury of the state in the general fund.

Sec. 7. The board may either refuse to issue, or may
2 refuse to renew or may suspend, or may revoke any
2a license, or certificate of registration issued by it for any
3 one or combination of the following causes:

4 (a) The practice of fraud or deceit in obtaining or at-
5 tempting to obtain a license or a certificate of registration;

6 (b) Conviction of a felony as shown by a certified copy
7 of the record of the court of conviction;

8 (c) Violation of any of the provisions of this act or
9 the public health laws of this state;

10 (d) The board shall publish in its rules and regulations
11 the subjects to be covered in the said examination and the
12 standards to be attained thereon. Changes in the rules
13 and regulations shall be published and be given due pub-
14 licity at least ninety days before becoming effective;

15 (e) The use of misleading advertising by any licensee
16 or applicant for a license or certificate of registration;

17 (g) Upon satisfactory proof that a licensed embalmer
18 or a licensed funeral director has taken undue advantage
19 of his patrons or has committed a fraudulent act in the
20 conduct of his business;

21 (h) Solicitation of business by the licensee, his agents,
22 assistants or employees, whether such solicitation occurs
23 after death or while death is impending; provided, this
24 shall not be deemed to prohibit proper advertising;

25 (i) If the applicant therefor or holder thereof know-
26 ingly permits an unlicensed person to engage in the pro-
27 fession or business of embalming or funeral directing un-
28 der his supervision;

29 (j) Employment by the licensee of persons known as
30 "cappers", "steerers" or "solicitors", or other such per-
31 sons to obtain funeral directing business;

32 (k) Employment directly or indirectly of any appren-
33 tice, agent, assistant, embalmer, employee or other per-
34 son, on part or full time, or on commission, for the pur-
35 pose of calling upon individuals or institutions by whose

36 influence dead human bodies may be turned over to a
37 particular funeral director;

38 (l) The buying of business by the licensee, his agents,
39 assistants, or employees, or the direct or indirect payment
40 or offer of payment of a commission by the licensee, his
41 agent assistants, or employees for the purpose of securing
42 business;

43 (m) Gross immorality;

44 (n) If the applicant therefor or holder thereof has been
45 guilty of habitual drunkenness or is addicted to the use of
46 morphine, cocaine or other habit forming drugs.

Sec. 8. No public officer, employee, physician or sur-
2 geon, or any other person having a professional relation-
3 ship with the deceased, shall send, or cause to be sent, to
4 any funeral director, undertaker, mortician or embalmer,
5 the body of any deceased person without having first
6 made due inquiry as to the desires of the next kin, or
7 any persons who may be chargeable with the funeral ex-
8 penses of such deceased person; and if any such kin or
9 person can be found, his authority and direction shall be
10 received as to the disposal of said corpse.

11 Any person who shall violate the provisions of this
12 section shall be deemed guilty of a misdemeanor and upon
13 conviction shall be fined not less than twenty-five dollars,
14 nor more than three hundred dollars, or imprisoned not
15 less than ten days nor more than ninety days, or both.

16 The board may make investigations, subpoena witnesses,
17 administer oaths, and conduct hearings.

18 No order refusing, suspending, or revoking a license
19 shall be made until after a public hearing conducted by
20 the board.

21 At least twenty days prior to the date of hearing, the
22 board shall send a written notice of the time and place of
23 such hearing to the applicant, together with a written
24 statement of the charges against him, by mailing the same
25 to the last known address of such person.

26 The testimony presented and the proceedings had at
27 such hearings shall be taken in shorthand, at the expense
28 of the board, and preserved as records of the board. The
29 board shall as soon thereafter as possible make its findings
30 in determination thereof, and send a copy to each inter-
31 ested party.

32 Any person who has been refused a license for any
33 cause or whose license has been revoked or suspended,
34 may file with the secretary of the board, within thirty
35 days after the decision of the board, a written notice of
36 appeal therefrom to the circuit court of the county within
37 which such person whose license has been refused, re-
38 voked or suspended resides. Upon the filing of such notice,
39 the secretary of the board shall transmit to the clerk of
40 said court, the record of such proceedings. Such court
41 shall thereupon hear and determine such case as in other
42 cases of appeal. The judgment of the circuit court may be
43 reviewed upon proceedings in error in the supreme court
44 of appeals.

45 No person shall engage in the profession or business
46 of embalming or funeral directing as defined in this act
47 unless he is duly licensed as an embalmer and/or as a
48 funeral director within the meaning of this act, and any
49 person who shall engage in either business or profes-
50 sion, or both, without having first complied with the pro-
51 visions of this act, shall be guilty of a misdemeanor and
52 upon conviction thereof in any court of competent juris-

53 diction shall be fined not less than fifty dollars nor more
54 than two hundred fifty dollars.

55 The sanitary preparation of dead human bodies for
56 burial and the burial thereof is a public necessity, and it
57 has direct relation to the health, welfare and convenience
58 to the public, and the Legislature of this state hereby
59 finds, determines and declares that this act is necessary
60 for the immediate preservation of the public peace, wel-
61 fare, health and safety.

Sec. 9. No provision of this act shall apply to or inter-
2 fere with the duties of an officer of any local or state
3 board of health, who, in compliance with local or state
4 board of health rules, may be charged with the duty of
5 preparation for burial of a human body, when death was
6 caused by a virulent, communicable disease; nor with
7 the duties of an officer of a medical college, county medical
8 society, anatomical association or other recognized per-
9 son carrying out the provisions of the sections of the code
10 prescribing the conditions under which indigent dead
11 human bodies are held subject for anatomical study; nor

12 with the customs or rites of any religious sect in the burial
13 of its dead.

Sec. 10. Any person who on July first, one thousand
2 nine hundred forty-one, has been engaged in the pro-
3 fession or business of funeral directing as an assistant
4 funeral director for a continuous period of at least two
5 years shall, by that date, register as a funeral director
6 with the board on a form prescribed by said board, and
7 upon the payment of a fee of fifty dollars, and examina-
8 tion by said board, such person shall be entitled to a
9 license, and the board shall issue to such person a license
10 as a funeral director; which such license shall remain in
11 full force and effect until the first day of the year follow-
12 ing the issuance of such license. Thereafter, such person
13 or persons shall renew such license or licenses as herein
14 provided for.

The Joint Committee on Enrolled Bills hereby certifies that

the foregoing bill is correctly enrolled.

E. H. McE. Kown

Chairman Senate Committee

Leon Rice

Chairman House Committee

Originated in the

Senate

Takes effect 90 days from passage

Chale Watkins

Clerk of the Senate

Joseph

Clerk of the House of Delegates

Byron B. Randolph

President of the Senate

Malcolm R. Arnold

Speaker House of Delegates

The within approval this the 14,

day of March, 1941.

Matthew M. Neely

Governor.

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Filed in the office of the Secretary of State
of West Virginia. MAR 17 1941

Wm. S. O'BRIEN,

Secretary of State