

Rec., May 22

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ENROLLED BILL

(EXTRAORDINARY SESSION, 1933)

House Bill No. 32

(By Mr. Wells)

Passed May 18, 1933

In Effect ninety days from Passage

Originated in the... Takes effect... ninety days from... passage

Clerk of the House of Delegates.

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James L. Smith
Chairman House Committee.

James L. Smith
Chairman Senate Committee.

ENROLLED BILL

(Com. Sub. for H. B. No. 32)

[Passed May 18, 1933; in effect ninety days from passage.]

AN ACT to repeal sections one to nine, both inclusive, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, and to reenact said article to read as follows, all relating to the examination, licensing and registration of persons, both individuals and corporations, engaging in the care, preparation and disposition of the bodies of deceased persons.

Be it enacted by the Legislature of West Virginia:

That article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, be repealed and that said article be reenacted to read as follows:

Section 1. There is hereby created a state board to be known 2 and designated as the "West Virginia board of embalmers and 3 funeral directors," which shall consist of six members, who

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4 shall be appointed by the governor by and with the advice and
5 consent of the senate, all of whom must be licensed embalmers and
6 practicing funeral directors with a minimum of five consecu-
7 tive years' experience in West Virginia immediately preceding
8 their appointment.

Sec. 2. Immediately after the effective date of this act, the
2 governor shall appoint one member of said board for a term of
3 one year, one for a term of two years, one for a term of three
4 years and three for a term of four years and thereafter shall ap-
5 point said members for a term of four years beginning on the
6 first day of July. Upon the organization of the board created by
7 this act the state board of embalming examiners shall cease to
8 exist. The funds, records and files of said board shall be de-
9 livered to the board created hereunder, which shall have all the
10 powers and privileges of the state board of embalming ex-
11 aminers, as well as the powers and privileges conferred by this
12 act.

Sec. 3. Members of said board, before entering upon their
2 duties, shall take and subscribe to the oath of office provided for
3 state officers, which shall be filed in the office of the secretary of
4 state.

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5 Said board shall select from its own members a president, secre-
6 tary and treasurer; adopt, promulgate and enforce such rules
7 and regulations for the transaction of its business and the
8 management of its affairs, the betterment and promotion of the
9 educational standards of the profession of embalming and the
10 standards of service and practice to be followed in the profes-
11 sion of embalming and funeral directing in the state of West
12 Virginia as it may deem expedient and consistent with the
13 laws of the state of West Virginia. Each member shall be re-
14 imbursed for his necessary traveling expenses and the necessary
15 expense incident to his attendance upon the business of the
16 board, and in addition thereto the sum of ten dollars per day
17 for each day actually spent by such member upon the business
18 of the board. The secretary shall receive an annual salary not
19 to exceed three hundred dollars, the amount and method of
20 payment of which shall be fixed by said board, and in addition
21 thereto shall receive his necessary traveling and other inci-
22 dental expenses incurred in the performance of his duties. All
23 such expenses, per diem and compensation shall be paid out of
24 the receipts of the board, but such allowances shall at no time
24-a exceed the receipts of the board.

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Wm. A. Hyatt

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25 The board shall from time to time adopt and promulgate such
26 rules, regulations and by-laws for its government and for the
27 enforcement of the provisions of this act as may be necessary
28 and as are consistent with the laws of this state.

29 The board shall fix the qualifications of applicants for license
30 by said board for embalmers, funeral directors and assistant
31 funeral directors, and the standard and scope of qualifications
32 for licenses. No person shall be eligible for examination for em-
33 balmer until he shows to the satisfaction of the board that he
34 has completed the course in an approved and accredited school
35 of embalming and prior thereto had credits of not less than four
36 years of work in a high school approved by the board, and, in
37 addition, two years' training as an apprentice under an em-
38 balmer duly licensed in this state, and also show to the satisfac-
39 tion of the board that he has actually embalmed not less than
40 thirty-five dead human bodies. The fee for examination for
41 license as an embalmer or as a funeral director shall be fifty
42 dollars; for assistant funeral director, five dollars; for renewal
43 of license as embalmer, two dollars; for renewal of license as
44 funeral director and assistant funeral director, three dollars.

45 The treasurer of the board shall give bond to the state of

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46 West Virginia in such sum as the board shall direct with two
47 or more sureties or a reliable surety company approved by the
48 board, and such bond shall be conditioned for the faithful dis-
49 charge of the duties of such officer. Such bond, with approval
50 of the board endorsed thereon, shall be deposited with the treas-
51 urer of the state of West Virginia.

Sec. 4. Said board shall hold not less than one meeting an-
2 nually for the purpose of examining applicants for licenses,
3 such meeting or meetings to be held at such time and place as the
4 board may determine. The time and place of each such meeting
5 shall be given by publication in three daily newspapers of gen-
6 eral circulation in different locations in the state, said publica-
7 tion to be once a week for two consecutive weeks immediately
8 preceding each such meeting.

9 The board may hold such other meetings as it may deem nec-
10 essary and may transact any business at any such meeting. Three
11 or more members shall comprise a quorum authorizing the board
12 to transact the business prescribed under this act.

Sec. 5. For the purposes of this act, the term "embalming"
2 shall be construed to mean the preservation and disinfection,
3 or attempted preservation and disinfection, of the dead human

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4 body by application of chemicals externally, or internally, or
5 both. The term "funeral directing" or "funeral director" as
6 used in this act shall be construed to mean the business or pro-
7 fession of directing or supervising funerals for profit, or the
8 business or profession of preparing dead human bodies for
9 burial by means other than embalming, or the disposition of dead
10 human bodies, or the use in connection with a business of the
11 word or term "funeral director," "undertaker," "mortician"
12 or any other word or term from which can be implied the busi-
13 ness of funeral directing, or the holding out to the public that
14 one is a funeral director.

Sec. 6. Any person desiring to engage in the profession or
2 business of embalming or funeral directing or both as defined
3 in this act, shall make such application, be required to show such
4 preliminary requisites and shall take such examinations as shall
5 be deemed necessary by the board in its rules and regulations.
6 Should the board find that the applicant possesses the neces-
7 sary qualifications prescribed in this act or in the rules and regu-
8 lations of the board, and should the applicant pass the examina-
9 tions in the subjects prescribed by the board in its rules and
10 regulations, the board shall register the applicant as a duly

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11 licensed embalmer or a duly licensed funeral director or
12 assistant funeral director, as the case may be, and thereupon the
13 board shall issue to such applicant the license applied for by
14 him, said license to be in full force and effect until the regular
15 renewal date for other licenses, at which time said license shall
16 be renewed as provided for in this act and in the rules and regu-
17 lations of the board.

18 No person shall carry on the business or profession or dis-
19 charge any of the duties of embalming or funeral directing as
20 defined in this act unless there has been issued to him a license
21 in full force and effect at the time, permitting him to carry on
22 each or both classes of business, and unless he shall have other-
23 wise complied with the provisions of this act. Such license or
24 licenses shall be signed by the president and the secretary of the
25 board, to which license shall be affixed the seal of said board and
26 such license or licenses shall be nontransferable and nonnego-
27 tiable. Such license shall be registered by the holder or owner
28 with the state department of health.

29 Any funeral director who has more than one place of busi-
30 ness within the state, or the owner or operator of any establish-
31 ment in which the business or profession of funeral directing

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32 is conducted, shall be required to obtain a license as funeral
33 director for each such establishment.

34 Any person now holding a license granted by this state to
35 carry on the profession of embalming shall not be required to
36 make a new application, or submit to an examination, but shall,
37 upon the payment of the fee therefor, be entitled to a renewal
38 of his license upon the same terms and conditions as are herein
39 provided for the renewal of licenses of those who may be
40 licensed after the passage of this act, but all such persons shall
41 be subject to every other provision of this act and such rules
42 and regulations as the board may adopt in pursuance of this
43 act.

44 The board may recognize licenses issued to embalmers or
45 funeral directors by state boards of embalming and state health
46 authorities of other states; and upon presentation of such licen-
47 ses may issue, to the lawful holders thereof the embalmer's,
48 funeral director's or assistant funeral director's license herein
49 provided for. Such reciprocal license shall be renewed annually
50 upon the payment of such renewal fee as may be fixed by the
51 board upon the same terms and conditions as provided herein
52 and the rules and regulations of the said board for renewal. No

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53 person shall be entitled to a reciprocal license as a funeral
54 director, assistant funeral director or embalmer unless he shows
55 to the satisfaction of the board that he has, in the state in which
56 he is legally licensed, complied with requirements substantially
57 equal to those set out in this act.

Sec. 7. The board may refuse to grant, may suspend or re-
2 voke any license granted to any person for any of the following
3 reasons: (a) If the applicant therefor or holder thereof ob-
4 tained said license by fraud or misrepresentation either in the
5 application for said license or in passing the examination there-
6 for; (b) If the applicant therefor or holder thereof has know-
7 ingly violated any rule or regulation of the board adopted in
8 pursuance to the provisions of this act; (c) If the applicant
9 therefor or holder thereof has been convicted of a felony or
10 crime involving moral turpitude; (d) If the applicant therefor
11 or holder thereof has been guilty of willfully violating any sec-
12 tion of this act or any rule or regulation of the board, or any
13 rule or regulation of the state, district or local board of health
14 governing the disposition of dead human bodies.

15 No hearing to suspend, revoke or cancel any license shall be
16 taken by the board until the holder thereof has been furnished

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A. H. Reynolds
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17 with a statement of the charges against him and notice of the
18 time and place of hearing thereof, the furnishing of such notice
19 and the charges to be given said holder at least thirty days prior
20 to the date of hearing. If, upon such hearing, the board finds the
21 charges true, it may revoke or suspend the license of the ac-
22 cused person. A stenographic report of each proceeding to
23 revoke or suspend a license shall be made at the expense of the
24 board and a transcript thereof kept in its files.

25 Any person who has been refused a license for any cause other
26 than failure to pass the examination or whose license has been
27 revoked or suspended, may file with the secretary of the board,
28 within thirty days after the decision of the board, a written
29 notice of appeal therefrom to the circuit court of the county
30 within which such person whose license has been revoked or
31 suspended resides. Upon the filing of such notice, the secretary
32 of the board shall transmit to the clerk of such court, the record
33 of such proceedings. Such court shall thereupon hear and de-
34 termine such case as in other cases of appeal. The judgment of
35 the circuit court may be reviewed upon proceedings in error
36 in the supreme court of appeals.

37 No person shall engage in the profession or business of em-

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38 balming or funeral directing as defined in this act unless he is
39 duly licensed as an embalmer and/or as a funeral director within
40 the meaning of this act, and any person who shall engage in
41 either business or profession, or both, without having first com-
42 plied with the provisions of this act shall be guilty of a misde-
43 meanor and upon conviction thereof in any court of competent
44 jurisdiction shall be fined not less than fifty dollars nor more
45 than two hundred fifty dollars.

Sec. 8. All fees collected under the provisions of this act shall be
2 paid to the treasurer of the board and by him deposited monthly
3 with the state treasurer. Such fees shall be used for the purpose
4 of defraying the necessary expenses and per diem of said board
5 in the administration of this act. It shall be the duty of said
6 board on or before the first Monday of July of each year, to make
7 a report in writing to the governor containing a detailed state-
8 ment of the nature and amount of its receipts and the amount
9 and manner of its expenditures; any balance of money remain-
10 ing at the end of the year after payment of the necessary ex-
11 penses, including the salary of the secretary, the per diem,
12 traveling expenses, and other expenses incident to the proper
13 discharge of their duties by the members and employees of said

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14 board, shall remain in the treasury of the state in the general
15 fund.

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

Sec. 10. Any person, who at the time of the passage of this
2 act is actively engaged in the profession or business of funeral
3 directing shall, within sixty days after the passage of this act,
4 register as such funeral director with the board on a form pre-
5 scribed by said board, and upon the payment of a fee of fifty
6 dollars, such person a license shall be entitled to, and the board
7 shall issue to such person a license as a funeral director; which

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8 such license shall remain in full force and effect until the first
9 day of the year following the issuance of such license. There-
10 after such person or persons shall renew such license or licenses
11 as herein provided for.

Sec. 11. The board may, by its rules and regulations, provide
2 for the manner in which an apprenticeship shall be served and
3 the length of time thereof, which shall not be less than two
4 years.

Sec. 12. If any provision of this act shall be held to be un-
2 constitutional, invalid or unenforceable, such unconstitutional,
3 invalid or unenforceable provision shall be considered severable
4 from the remainder of this act, although contained in sections
5 containing other provisions, and the fact that said provision
6 shall be held to be unconstitutional, invalid or unenforceable
7 shall in no wise affect any other provisions of this act although
8 contained in the same section, the legislature hereby declaring
9 that all sections of this act or parts thereof are independent sec-
10 tions and parts of sections and that it would have passed the
11 remaining sections and parts of sections of said act and each
12 provision thereof notwithstanding the unconstitutionality, in-
13 validity or unenforceability of any other portion thereof.

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Chairman Senate Committee.

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Sec. 13. In the interpretation of this act, words in the masculine gender include the feminine and neuter genders. Whenever the word "board" is used in this act, it shall be construed to mean and refer to the "board of embalmers and funeral directors of West Virginia."

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James L. Smith
Chairman Senate Committee.

B. M. Hiner
Speaker of the House of Delegates.

Wm. Hall
Clerk of the House of Delegates.

B. M. Matthews
President of the Senate.

Charles Arndt
Clerk of the Senate.

James L. Smith
Chairman House Committee.

The within is.....

this.....day of....., 1933.

.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. **MAY 29 1933**
Wm. S. O'BRIEN,
Secretary of State