WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1941

ENROLLED

SENATE BILL No. III

(By Mr. Hession)

PASSED March 8, 1941

In Effect 90 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 their duties, shall take and subscribe to the oath of office of the secretary of state.

Said board shall select from its own members a president, a secretary and a treasurer. Each member shall be reimbursed for his necessary traveling expenses and the necessary expense incident to his attendance upon the business of the board, and in addition thereto the sum of ten dollars per day for each day actually spent by such member upon the business of the board. The secretary shall receive an annual salary not to exceed five hundred dollars, the amount and method of payment of which shall be fixed by said board, and in addition thereto shall receive traveling and other incidental expenses incurred in the performance of his duties.

All such expenses, per diem and compensation shall be paid out of the receipts of the board, but such allowances shall at no time exceed the receipts of the board.
The treasurer of the board shall give bond to the state of West Virginia in such sum as the board shall direct with two or more sureties or a reliable surety company approved by the board, and such bond shall be conditioned for the faithful discharge of the duties of such officer. Such bond, with approval of the board endorsed thereon, shall be deposited with the treasurer of the state of West Virginia.

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

The board may hold such other meetings as it may deem necessary and may transact any business at any such meeting. Three or more members shall comprise a quorum authorizing the board to transact the business as prescribed under this act.
The board shall have power and it shall be its duty to make and enforce all necessary rules and regulations not inconsistent with this act, for the examination and licensing of funeral directors and the general practice of funeral directing; the examination and licensing of embalmers and the general practice of embalming, and the registration and regulation of apprentices.

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

The board or any of its members or any duly authorized employee of the board shall have the authority to enter at all reasonable hours for the purpose of inspecting the premises in which the business or profession of funeral
directing is conducted or practiced, or where embalming
is practiced.

Sec. 4. For the purpose of this act, the following terms shall be construed in the following manner:

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

"Funeral directing" shall mean the business or profession of directing or supervising funerals for profit, or the business or profession of preparing dead human bodies for burial by means other than embalming, or the disposition of dead human bodies; or maintenance of a place or establishment for the preparation for disposition or for the care or disposition of dead human bodies, or the use in connection with a business of the word or term "funeral director," "undertaker," "mortician," directing; or the holding out to the public that one is a funeral director.
"Embalmer" shall mean any person engaged in, or holding himself out to be engaged in the practice of embalming, whether on his own behalf or in the employ of another, and shall include any person who shall use in connection with his name, the term "embalmer," or use any word, term, or title intending to imply or designate as an embalmer or as one engaged in embalming.

"Embalming" is the introduction into the vascular system or hollow organs of a dead human body, by arterial or by hypodermic injection, of any chemical substance, fluids, or gases used for the purpose of preservation or disinfection.

"Apprentice" shall mean any person engaged in this state in the learning of the practice of embalming or of the practice of funeral directing under the instruction and personal supervision of a duly licensed embalmer or a duly licensed funeral director, under the provisions of this chapter.

Sec. 5. After July first, one thousand nine hundred forty-one, no person shall engage in or hold himself out as engaging in the business or profession of embalming, or
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preserving in any manner dead human bodies in this state,
whether for himself or in the employ of another, unless
he holds an embalmer's license issued to him by the
board, and shall at the date of its issue have complied
with the provisions of this act.

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

No person shall be entitled to an embalmer's license
unless he is twenty-one years of age or over, a citizen of
the United States, of good moral character, shall hold a
certificate or diploma showing the completion of four
years high school course, shall be duly registered with
this board, shall have first completed a two years course
of apprenticeship under the supervision of a licensed
embalmer actively and lawfully engaged in the practice
of embalming in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment or as casual funeral directing, under which apprenticeship he shall have taken an active part in the operation of embalming not less than thirty-five dead human bodies, under supervision of licensed embalmer, and shall possess a certificate or diploma of graduation from a school of embalming which requires as a prerequisite to graduation the completion of a course of study of not less than twelve months duration, and that said school of embalming is duly approved by the board, and the applicant shall pass such examination as the board shall deem necessary to ascertain his qualifications and ability to engage in the practice of embalming: Provided, however, That any person who has been regularly and lawfully practicing as funeral director for a period of five years or more prior to the effective date of this act shall be eligible to take the required examination for an embalmer's license, without having had a four-year high school course, upon compliance with all other require-
ments as to eligibility for such examination. The board will not recognize a course of instruction in embalming obtained or apprenticeship served by any person who is not first duly registered with the board and the holder of a certificate of registration.

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

An applicant for a funeral director’s license must furnish satisfactory proof to the board that his business or profession of funeral directing is to be conducted in a fixed place or establishment equipped for the care and preparation for burial or disposition of dead human bodies. What shall be deemed “necessary equipment” shall be defined in the rules and regulations of the board, the same to be in compliance with the public health laws of the state or the rules of the state board of health of West Virginia. This shall not be so construed as to deny an applicant for a funeral director’s license such a license because he is not the owner, or part owner, of an established or proposed funeral business.
Licenses issued under the provisions of this chapter shall not be transferable or assignable.

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

On or after the passage date of this amendment no funeral home or establishment or any other place pertaining to funeral directing or the conducting of funerals
shall be established in the State of West Virginia under any name than that of the licensed holder of a West Virginia Funeral Directors' license or the licensed holders of West Virginia funeral directors' licenses under whose direction such establishment is operated; provided that every establishment shall display in all advertising the name of the licensed funeral director who is actually in charge of the establishment. All branch establishments must display the name of the funeral director who is actually in charge. At least one licensed funeral director shall supervise each main establishment and at least one licensed funeral director shall directly supervise each branch establishment.

Any person now holding a license as an embalmer or as a funeral director, or as an assistant funeral director, or as an apprenticed embalmer, shall not be required to make a new application, or submit to an examination, but shall upon the payment of the fee therefor, be entitled to a renewal of his license upon the terms and conditions as are herein provided for the renewal of licenses of those who may be licensed after the passage of this act, but
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all such persons shall be subject to every provision of this act, and such rules and regulations as the board may adopt in pursuance of this act.

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

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

The board may recognize licenses issued to embalmers or funeral directors by state boards or the proper authorities of other states; and upon presentation of such licenses may issue to the lawful holders thereof an embalmer's license or a funeral director's license as herein provided. Such reciprocal licenses shall be renewed annually upon the payment of such renewal license fees as provided for in this act.
No person shall be entitled to a reciprocal license as a funeral director or embalmer unless he shows to the satisfaction of the board that he has, in the state in which he is legally licensed, complied with requirements substantially equal to those set out in this act.

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

The examination fee for an embalmer's license shall be fifty dollars and shall be remitted at the time the application for an embalmer's license is submitted to the board.

The registration fee for apprentices shall be five dollars and shall be remitted at the time the application for registration is submitted to the board.

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

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

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

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

Any person who has been duly licensed as a funeral director or as an embalmer under the laws of this state but who fails to renew his license within one year after the expiration date for renewals may file an application for a renewal of his license, without examination, upon payment of a penalty of twenty-five dollars and the required renewal fee.
A funeral director or an embalmer whose license has lapsed one year or more shall make application to the board for a new license in compliance with the provisions of this act relating to unlicensed persons.

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

All fees collected under the provisions of this act shall be paid to the treasurer of the board and by him deposited monthly with the state treasurer. Such fees shall be used for the purpose of defraying the necessary expenses and per diem of said board in the administration of this act.

It shall be the duty of said board on or before the first Monday in July of each year to make a report in writing to the governor containing a detailed statement of the nature and amount of its receipts and the amount and manner of its expenditures; any balance of money re-
maning at the end of the year after the payment of the necessary expenses, including the salary of the secretary, the per diem, traveling expenses, and other expenses incident to the proper discharge of their duties by the members and employees of said board, shall remain in the treasury of the state in the general fund.

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

(a) The practice of fraud or deceit in obtaining or attempting to obtain a license or a certificate of registration;

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

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

(d) The board shall publish in its rules and regulations the subjects to be covered in the said examination and the standards to be attained thereon. Changes in the rules and regulations shall be published and be given due publicity at least ninety days before becoming effective;
(e) The use of misleading advertising by any licensee or applicant for a license or certificate of registration;

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

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

(i) If the applicant therefor or holder thereof knowingly permits an unlicensed person to engage in the profession or business of embalming or funeral directing under his supervision;

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

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

(1) The buying of business by the licensee, his agents, assistants, or employees, or the direct or indirect payment or offer of payment of a commission by the licensee, his agent assistants, or employees for the purpose of securing business;

(m) Gross immorality;

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

Sec. 8. No public officer, employee, physician or surgeon, or any other person having a professional relationship with the deceased, shall send, or cause to be sent, to any funeral director, undertaker, mortician or embalmer, the body of any deceased person without having first made due inquiry as to the desires of the next kin, or any persons who may be chargeable with the funeral expenses of such deceased person; and if any such kin or person can be found, his authority and direction shall be received as to the disposal of said corpse.
Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars, nor more than three hundred dollars, or imprisoned not less than ten days nor more than ninety days, or both.

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

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

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

The testimony presented and the proceedings had at such hearings shall be taken in shorthand, at the expense of the board, and preserved as records of the board. The board shall as soon thereafter as possible make its findings in determination thereof, and send a copy to each interested party.
Any person who has been refused a license for any cause or whose license has been revoked or suspended, may file with the secretary of the board, within thirty days after the decision of the board, a written notice of appeal therefrom to the circuit court of the county within which such person whose license has been refused, revoked or suspended resides. Upon the filing of such notice, the secretary of the board shall transmit to the clerk of said court, the record of such proceedings. Such court shall thereupon hear and determine such case as in other cases of appeal. The judgment of the circuit court may be reviewed upon proceedings in error in the supreme court of appeals.

No person shall engage in the profession or business of embalming or funeral directing as defined in this act unless he is duly licensed as an embalmer and/or as a funeral director within the meaning of this act, and any person who shall engage in either business or profession, or both, without having first complied with the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof in any court of competent juris-
diction shall be fined not less than fifty dollars nor more
than two hundred fifty dollars.

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

Sec. 9. No provision of this act shall apply to or inter-
fere with the duties of an officer of any local or state
board of health, who, in compliance with local or state
board of health rules, may be charged with the duty of
preparation for burial of a human body, when death was
caused by a virulent, communicable disease; nor with
the duties of an officer of a medical college, county medical
society, anatomical association or other recognized per-
son carrying out the provisions of the sections of the code
prescribing the conditions under which indigent dead
human bodies are held subject for anatomical study; nor
Sec. 10. Any person who on July first, one thousand nine hundred forty-one, has been engaged in the profession or business of funeral directing as an assistant funeral director for a continuous period of at least two years shall, by that date, register as a funeral director with the board on a form prescribed by said board, and upon the payment of a fee of fifty dollars, and examination by said board, such person shall be entitled to a license, and the board shall issue to such person a license as a funeral director; which such license shall remain in full force and effect until the first day of the year following the issuance of such license. Thereafter, such person or persons shall renew such license or licenses as herein provided for.
The Joint Committee on Enrolled Bills hereby certifies that

the foregoing bill is correctly enrolled.

C. D. M. Towr
Chairman Senate Committee

Lesl Rice
Chairman House Committee

Originated in the Senate

Takes effect 90 days from passage

Clifford Patterson
Clerk of the Senate

Clerk of the House of Delegates

Byron B. Randolph
President of the Senate

Malcolm P. Arnold
Speaker House of Delegates

The within approval this the 14th

day of March, 1941.

Matthew Neely
Governor

Filed in the office of the Secretary of State
of West Virginia, MAR 17 1941
Wm. S. O'Brien,
Secretary of State