

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951

ENROLLED

SENATE BILL NO. 196

(By Mr. Messrs - McKinley & Stump)

PASSED March 9, 1951

In Effect Forty days from Passage



ENROLLED

Senate Bill No. 196

(By MESSRS. MCKINLEY and STEMPLER)

[Passed March 9, 1951; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, five, six, seven, eight and eleven, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation, appointment, organization, meetings, duties, salary and expenses, and authority of the board of embalmers and funeral directors, and the examination, licensing, registration and business operations of funeral directors and embalmers.

Be it enacted by the Legislature of West Virginia:

That sections one, three, five, six, seven, eight and eleven, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Board of Embalmers and Funeral Direct-*

2 ors.—There is hereby created a state board to be known
3 and designated as the “West Virginia Board of Embalmers
4 and Funeral Directors”, which shall consist of seven
5 members, who shall be appointed by the governor by and
6 with the advice and consent of the senate, six of whom
7 must be licensed embalmers and practicing funeral di-
8 rectors with a minimum of five consecutive years experi-
9 ence in West Virginia immediately preceding their ap-
10 pointment; the seventh member shall be the state health
11 director of the State of West Virginia, who shall by virtue
12 of his office as such state health director become auto-
13 matically a member of this board for the period during
14 which he holds the office of state health director.

Sec. 3. *Oath; Officers of Board; Salary and Expenses;*
2 *Bond of Treasurer; Meetings of Board; Power, Duties of*
3 *Board; Notice; Rules and Regulations; School of Instruc-*
4 *tion; Inspection.*—Members of said board, before enter-
5 ing upon their duties, shall take and subscribe to the oath
6 of office prescribed by the secretary of state.
7 Said board shall select from its own members a presi-
8 dent, a secretary, and a treasurer. Each member shall

9 be reimbursed for his traveling expenses, incident to his
10 attendance upon the business of the board, and in ad-
11 dition thereto, the sum of fifteen dollars per day for each
12 day actually spent by such member upon the business of
13 the board; except that the state health director shall re-
14 ceive only such compensation as he is entitled to receive
15 for his services as state health director, together with
16 actual and necessary traveling expenses while engaged
17 upon the business or in attendance of the board, with such
18 compensation and expenses to be payable from the funds
19 of the state health department. The secretary shall re-
20 ceive an annual salary of not to exceed one thousand
21 dollars, the amount and payment of which shall be fixed
22 by said board, and in addition thereto shall receive
23 traveling and other incidental expenses incurred in the
24 performance of his duties.

25 All such expenses, per diem and compensation shall be
26 paid out of the receipts of the board, except such ex-
27 penses and compensation as may be payable to the state
28 health director, but such allowances shall at no time
29 exceed the receipts of the board.

30 The treasurer of the board shall give bond to the State
31 of West Virginia in such sum as the board shall direct
32 with two or more sureties or a reliable surety company
33 approved by the board, and such bond shall be condi-
34 tioned for the faithful discharge of the duties of such
35 officer. Such bond, with approval of the board endorsed
36 thereon, shall be deposited with the treasurer of the
37 State of West Virginia.

38 The board shall hold not less than two meetings during
39 each calendar year, one during the month of April and
40 one during the month of November for the purpose of ex-
41 amining applicants for licenses, such meeting or meetings
42 to be held at such time and place as the board shall de-
43 termine. The time and place of such meeting shall be
44 announced by publication in three daily newspapers of
45 general circulation in different locations of the state, and
46 publication to be once a week for two consecutive weeks
47 immediately preceding each such meeting.

48 The board may hold such other meetings as it may
49 deem necessary and may transact any business at any
50 such meeting. Three or more members shall comprise

51 a quorum authorizing the board to transact such busi-
52 ness as is prescribed under this article.

53 The board shall have power and it shall be its duty
54 to make and enforce all necessary rules and regulations,
55 not inconsistent with this article, for the examination
56 and licensing of funeral directors, and the general prac-
57 tice of funeral directing; the examination and licensing
58 of embalmers and the general practice of embalming
59 and the registration and regulation of apprentices.

60 The board shall publish in its rules and regulations the
61 subjects to be covered in the said examinations and the
62 standards to be attained thereon. Changes in the rules
63 and regulations shall be published and shall be given
64 due publicity at least ninety days before becoming ef-
65 fective.

66 The board shall conduct annually a school of instruc-
67 tion to apprise funeral directors and embalmers of the
68 most recent scientific knowledge and developments af-
69 fecting their profession. Qualified lecturers and demon-
70 strators may be employed by the board for this pur-
71 pose. The board shall give notice of the time and place

72 at which such school will be held for all licensed funeral
73 directors and embalmers, and it shall be the duty of every
74 licensed funeral director and embalmer to attend at least
75 one such school in every three years.

76 The board or any of its members or any duly author-
77 ized employee of the board shall have the authority to
78 enter at all reasonable hours for the purpose of inspect-
79 ing the premises in which the business or profession of
80 funeral directing is conducted or practiced or where
81 embalming is practiced.

Sec. 5. *Embalmers and Funeral Directors to be Li-*
2 *censed; Qualifications and Requirements for License;*
3 *Advertising; Renewal of License; Registration as Ap-*
4 *prentice; Courtesy Cards.*—After July first, one thousand
5 nine hundred fifty-one, no person shall engage in or hold
6 himself out as engaging in, or discharge any of the duties
7 of the business or profession of embalming, or preserv-
8 ing in any manner dead human bodies in this state,
9 whether for himself or in the employ of another, unless
10 he holds an embalmer's license issued to him by the
11 board, and shall at the date of its issuance have com-
12 plied with the provisions of this article.

13 After July first, one thousand nine hundred fifty-one,
14 no person shall engage in, or hold himself out as en-
15 gaging in, or discharge any of the duties of the business
16 or profession of funeral directing in this state, unless he
17 holds a funeral director's license issued to him by the
18 board, and shall at the date of its issuance have complied
19 with the provisions of this article, or conduct a funeral
20 unless he be a licensed funeral director or a duly regis-
21 tered apprentice.

22 No person shall be entitled to an embalmer's license
23 unless he

- 24 (1) Is twenty-one years of age or over;
- 25 (2) A citizen of the United States;
- 26 (3) Of good moral character and temperate habits;
- 27 (4) Holds a diploma showing the completion of a
28 four-year high school course;
- 29 (5) Has had not less than sixty hours credit of resi-
30 dent educational training in an accredited university or
31 college, such credit shall be in such subjects only as are
32 recognized in the university or college where taken, as
33 credit toward a baccalaureate degree;

34 (6) Has completed a one year course of apprentice-
35 ship under the supervision of a licensed embalmer ac-
36 tively and lawfully engaged in the practice of embalm-
37 ing in this state, such apprenticeship to consist of diligent
38 attention to the work in the course of regular and steady
39 employment and not as a side issue to another employ-
40 ment, and under which said apprenticeship he shall have
41 taken an active part in the operation of embalming not
42 less than twenty-five dead human bodies, under the
43 supervision of a licensed embalmer;

44 (7) Possesses a diploma of graduation from a school
45 of embalming which requires as a prerequisite to gradua-
46 tion the completion of a course of study of not less than
47 twelve months duration, and which said school of em-
48 balming must be one duly approved by the board;

49 (8) Passes such examination as the board shall deem
50 necessary to ascertain his qualification and ability to
51 engage in the practice of embalming: *Provided, however,*
52 That any apprentice embalmer duly registered as such
53 with the board on or before July first, one thousand nine
54 hundred fifty-one, may be eligible to take the required

55 examination for an embalmer's license without having
56 had the sixty hours resident educational training in a
57 university or college heretofore mentioned, upon com-
58 pliance with all the other requirements, prerequisite to
59 the same, including the two years apprenticeship.

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

62 An applicant for a funeral director's license must
63 furnish satisfactory proof to the board that his business
64 or profession of funeral directing is to be conducted in
65 a fixed place or establishment equipped for the care and
66 preparation for burial or disposition of dead human
67 bodies. What shall be deemed "necessary equipment"
68 shall be defined in the rules and regulations of the board,
69 the same to be in compliance with the public health
70 laws of the state or the rules of the state board of health
71 of West Virginia. This shall not be so construed as to
72 deny an applicant for a funeral director's license such a
73 license because he is not the owner, or part owner, of an
74 establishment or proposed funeral business.

75 Licenses issued under the provisions of this chapter
76 shall not be transferable or assignable.

77 No person shall be eligible to receive a license as a
78 funeral director unless he

79 (1) Holds an embalmer's license issued by this board;

80 (2) Has been duly registered with the board as an
81 apprentice;

82 (3) Has served not less than a one-year apprentice-
83 ship under the personal supervision of a licensed funeral
84 director actively and lawfully engaged in the business or
85 profession of funeral directing in this state, such ap-
86 prenticeship to consist of diligent attention to the work
87 in the course of regular and steady employment and
88 not as a side issue to another employment: *Provided,*
89 *however,* That any apprentice funeral director twenty-
90 one years of age, or older, who is duly registered with
91 the board as such apprentice on or before July first, one
92 thousand nine hundred fifty-one, and who has served
93 his two years apprenticeship may be eligible to take
94 the required examination for a funeral director's license,
95 without having first obtained an embalmer's license,
96 upon compliance with all other requirements as to eligi-
97 bility for such examination.

98 All funeral homes or establishments or any other
99 places pertaining to funeral directing or the conducting
100 of funerals, shall display in all advertising the name of
101 the licensed funeral director who is actually in charge
102 of the establishment. All branch establishments must
103 display the name of the funeral director who is actually
104 in charge. At least one licensed funeral director shall
105 supervise each main establishment and at least one li-
106 censed funeral director shall directly supervise each
107 branch establishment.

108 No licensed funeral director or licensed embalmer
109 shall be permitted to register or have registered more
110 than five apprentices under his said license at the same
111 time.

112 Any person now holding a license as an embalmer,
113 funeral director, or assistant funeral director, shall not
114 be required to make a new application, or submit to an
115 examination, but shall, upon the payment of the fee
116 therefor, be entitled to a renewal of his license upon the
117 terms and conditions herein provided for the renewal of
118 licenses of those who may be licensed after the passage

119 of this article, but all such persons shall be subject to
120 every provision of this article, and such rules and regu-
121 lations as the board may adopt in pursuance of this
122 article.

123 On and after July first, one thousand nine hundred
124 fifty-one, no person shall be registered as an apprentice
125 funeral director or apprentice embalmer unless he is
126 eighteen years of age, or over, a citizen of the United
127 States, a resident of West Virginia one year prior to
128 registration, of good moral character and temperate
129 habits, and the holder of a diploma showing the comple-
130 tion of a four year high school course, and shall have
131 completed not less than sixty hours credit of resident
132 educational training in an accredited university or col-
133 lege.

134 The board may issue annual non-renewable courtesy
135 cards to licensed funeral directors and licensed embalm-
136 ers of the states bordering on West Virginia, upon ap-
137 plication for same made on form prescribed by the board.
138 The annual fee for such courtesy cards shall be ten dol-
139 lars and said fee shall be paid at the time application is

140 made therefor. Applications for said courtesy cards
141 shall be approved by the board before the same may
142 be issued, and said courtesy cards shall be issued under
143 the following conditions: Holders of courtesy cards shall
144 not be permitted to open or operate a place of business
145 for the purpose of conducting funerals or embalming
146 bodies in the State of West Virginia, nor shall they be
147 permitted to maintain an office or agency in this state.
148 A violation of this section shall be sufficient cause for
149 the board to revoke or cancel the courtesy card of the
150 violator.

Sec. 6. *Examination, Registration and Renewal Fees;*

2 *Disposition of Fees; Report to Governor.*—The examina-
3 tion fee for a funeral director's license shall be fifty dol-
4 lars and shall be remitted at the time the application for
5 a funeral director's license is submitted to the board.

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

10 All the licenses and certificates of registration shall

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

14 The annual renewal fee for embalmer's license, funeral
15 director's license, assistant funeral director's license, or
16 apprentice registration shall be five dollars and shall be
17 paid on or before the first day of July of each calendar
18 year.

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

26 Any person who has been duly licensed as a funeral
27 director or as an embalmer under the laws of this state
28 but who fails to renew his license within one year after
29 the expiration date for renewals, may file an application
30 for a renewal of his license, without examination, upon
31 payment of a penalty of twenty-five dollars and the re-
32 quired renewal fee.

33 A funeral director or an embalmer whose license has
34 lapsed one year or more shall make application to the
35 board for a new license in compliance with the provisions
36 of this article relating to unlicensed persons.

37 Any person who has been duly licensed as an assistant
38 funeral director and fails to renew his license within
39 ninety days after the expiration date for renewal may
40 file an application for renewal of his license upon pay-
41 ment of a penalty of ten dollars and the required renewal
42 fee. Otherwise, after the said period of ninety days, his
43 license will automatically be canceled.

44 Any person who has been duly registered as an appren-
45 tice embalmer or apprentice funeral director and fails
46 to renew his registration within ninety days after the
47 expiration date for renewals may file an application for
48 such renewal upon payment of a penalty of two dollars
49 and the required renewal fee. Otherwise, after the said
50 period of ninety days, his registration will automatically
51 be canceled.

52 All fees collected under the provisions of this article
53 shall be paid to the treasurer of the board and by him

54 deposited monthly with the state treasurer. Such fees
55 shall be used for the purpose of defraying the necessary
56 expenses and per diem of said board in the administra-
57 tion of this article. It shall be the duty of said board on
58 or before the first Monday in July of each year to make
59 a report in writing to the governor containing a detailed
60 statement of the nature and amount of its receipts and
61 the amount and manner of its expenditures; any balance
62 of money remaining at the end of the year after the
63 payment of the necessary expenses, including the salary
64 of the secretary, and per diem, traveling expenses, and
65 other expenses incident to the proper discharge of their
66 duties by the members and employees of said board,
67 shall remain in the treasury of the state in the general
68 fund.

Sec. 7. *Refusal to Grant or Renew; Suspension or Revo-*
2 *cation of License or Certificate of Registration.*—The
3 board may either refuse to issue, or may refuse to renew,
4 or may suspend, or may revoke any license, or certificate
5 of registration issued by it for any one or combination of
6 the following causes:

7 (a) The practice of fraud or deceit in obtaining or
8 attempting to obtain a license or a certificate of registra-
9 tion;

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

12 (c) Violation of any of the provisions of this article
13 or the public health laws of this state.

14 (d) The use of false, misleading or unethical advertis-
15 ing by any licensee or applicant for a license or certificate
16 of registration.

17 (e) 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 (g) 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, That*
24 this shall not be deemed to prohibit proper advertising.

25 (h) 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

28 under his supervision; or if any holder of an embalmer's
29 license or funeral director's license issued hereunder
30 knowingly permits any unlicensed person to use his li-
31 cense number or numbers for the purpose of practicing,
32 or discharging any of the duties of, the professions of
33 embalming or funeral directing;

34 (i) Employment by the licensees of persons known as
35 "cappers", "steerers" or "solicitors", or other such persons
36 to obtain funeral directing business;

37 (j) Employment directly or indirectly of any appren-
38 tice, agent, assistant, embalmer, employee, or other per-
39 son, on part or full time, or on commission, for the purpose
40 of calling upon individuals or institutions by whose in-
41 fluence dead human bodies may be turned over to a
42 particular funeral director;

43 (k) The buying of business by the licensee, his agents,
44 assistants, or employees or the direct or indirect payment
45 or offer of payment of a commission by the licensee, his
46 agent, assistants, or employees, for the purpose of securing
47 business;

48 (l) Gross immorality;

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

Sec. 8. *Duty of Public Officers, Physicians, etc., as to*
2 *Disposition of Body of Deceased Person; Penalty for Vio-*
3 *lation of Section; Hearings on Refusing, Suspending, or*
4 *Revoking Licenses; Appeals from Decision of Board;*
5 *Penalty for Engaging in Business Without License; Pur-*
6 *pose of Article.*—No public officer, employees, physicians,
7 or surgeon, or any other person having a professional
8 relationship with the deceased, shall send, or cause to be
9 sent, to any funeral director, undertaker, mortician or
10 embalmer, the body of any deceased person without hav-
11 ing first made due inquiry as to the desires of the next
12 of kin, or any persons who may be chargeable with the
13 funeral expenses of such deceased person; and if any such
14 kin or person can be found, his authority and direction
15 shall be received as to the disposal of said corpse.

16 Any person who shall violate the provisions of this
17 section shall be deemed guilty of a misdemeanor and upon
18 conviction, shall be fined not less than fifty dollars, nor

19 more than three hundred dollars, or imprisoned not less
20 than ten days nor more than ninety days, or both.

21 The board may make investigations, subpoena wit-
22 nesses, administer oaths, and conduct hearings.

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

26 At least twenty days prior to the date of hearing, the
27 board shall send a written notice of the time and place
28 of such hearing to the applicant, together with a state-
29 ment of the charges against him, by mailing the same
30 to the last known address of such person.

31 The testimony presented and the proceedings had at
32 such hearings shall be taken in shorthand, at the expense
33 of the board, and preserved as records of the board. The
34 board shall as soon thereafter as possible make its find-
35 ings in determination thereof, and send a copy to each
36 interested party.

37 Any person who has been refused a license for any
38 cause or whose license has been revoked or suspended,
39 may file with the secretary of the board, within thirty

40 days after the decision of the board, a written notice of
41 appeal therefrom to the circuit court of the county
42 within which such person whose license had been refused,
43 revoked or suspended resides. Upon the filing of such
44 notice, the secretary of the board shall transmit to the
45 clerk of said court, the record of such proceedings. Such
46 court shall thereupon hear and determine such case as
47 in other cases of appeal. The judgment of the circuit court
48 may be reviewed upon proceedings in error in the su-
49 preme court of appeals.

50 No person shall engage in the profession or business
51 of embalming or funeral directing as defined in this
52 article unless he is duly licensed as an embalmer and/or
53 as a funeral director within the meaning of this article,
54 and any person who shall engage in either business or
55 profession, or both, without having first complied with
56 the provisions of this article, or who shall violate any
57 other provisions of this article, shall be deemed guilty
58 of a misdemeanor, and, upon conviction, thereof in any
59 court of competent jurisdiction, shall be fined not less
60 than two hundred dollars or more than four hundred

61 dollars for the first offense. Upon conviction of a second
62 or subsequent offense, the violator shall be fined not less
63 than five hundred dollars, nor more than one thousand
64 dollars.

65 The sanitary preparation of dead human bodies for
66 burial and the burial thereof is a public necessity, and it
67 has direct relation to the health, welfare and convenience
68 to the public, and the legislature of this state hereby
69 finds, determines and declares that this article is neces-
70 sary for the immediate preservation of the public peace,
71 welfare, health and safety.

Sec. 11. *Apprenticeship.*—The board may, by its rules
2 and regulations, provide for the manner in which an
3 apprenticeship shall be served and the length of time
4 thereof, which shall not be more than one year.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Robert C. Byrd
Chairman Senate Committee

James M. Lipp
Chairman House Committee

Originated in the Senate.

Takes effect *Forty days from* passage.

Howard Taylor
Clerk of the Senate

J. R. Aliff
Clerk of the House of Delegates

Samuel R. Houston
President of the Senate

W. E. Lamm
Speaker House of Delegates

The within *approved* this the *16th*
day of *March*, 1951.

Chas. L. Patterson
Governor.



FILED IN THE OFFICE OF THE SECRETARY OF STATE
of West Virginia **MAR 16 1951**
D. PITT O'BRIEN,
SECRETARY OF STATE