WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED
SENATE BILL NO. __76__

(By Mr. __Hedrick__)

PASSED __March 3__, 1969

In Effect __Ninety days from Passage__

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE __3-14-69__
AN ACT to amend and reenact sections three, four, five and seven, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections thirteen, fourteen, fifteen and sixteen, relating to embalmers and funeral directors and the West Virginia board of embalmers and funeral directors; providing for an executive secretary, clerks, inspectors and assistants for said board; providing certain definitions; relating to the licensing of embalmers and funeral directors and the registration of apprentice funeral directors and apprentice embalmers; relating to certain fees; requiring the licensing of funeral establishments; specifying the methods, procedures and qualifications for licensing
of a funeral establishment; relating to the issuance, cancellation, suspension or revocation of funeral establishment licenses; providing for administrative procedures and judicial review in connection with the suspension or revocation of a funeral establishment license; providing for injunctive relief; and providing for the licensing of embalmers and funeral directors on the basis of reciprocity.

**Be it enacted by the Legislature of West Virginia:**

That sections three, four, five and seven, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections thirteen, fourteen, fifteen and sixteen, all to read as follows:

**ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.**

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

1 Members of said board, before entering upon their duties, shall take and subscribe to the oath of office prescribed by 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 traveling expenses, incident to his attendance upon the business of the board, and in addition thereto, the sum of fifteen dollars per day for each day actually spent by such member upon the business of the board; except that the state health director shall receive only such compensation as he is entitled to receive for his services as state health director, together with actual and necessary traveling expenses while engaged upon the business or in attendance of the board, with such compensation and expenses to be payable from the funds of the state health department. The secretary shall receive an annual salary of not to exceed one thousand dollars, the amount and 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.

The board may employ an executive secretary and such clerks, inspectors and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this
article and the duly promulgated rules and regulations of
the board and to effect its purposes, and the board shall
determine the duties and fix the compensation of such
executive secretary, clerks, inspectors and assistants,
subject to the general laws of the state. Any inspector
employed by the board shall have either a West Vir-
ginia embalmer's license or a West Virginia funeral di-
rector's license. Any inspection shall be conducted in
such a manner so as not to interfere with the conduct of
business within the funeral establishment, and the in-
spector shall be absolutely prohibited from examining
any books and records of the funeral establishment.

All such expenses, per diem and compensation shall be
paid out of the receipts of the board, except such expenses
and compensation as may be payable to the state health
director, 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 condi-
tioned 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 two meetings during
each calendar year, one during the month of April and
one during the month of November for the purpose of
examining applicants for licenses, such meeting or meet-
ings 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 such business
as is prescribed under this article.

The board shall have power and it shall be its duty to
make and enforce all necessary rules and regulations, not
inconsistent with this article, for the examination and
licensing of funeral directors, and the general practice of
funeral directing; the examination and licensing of em-
balmers and the general practice of embalming and the
registration and regulation of apprentices; the licensing of
funeral establishments and the general operation of
funeral establishments, except that no rules and regula-
tions issued by the board shall require that an applicant
for a license to operate a funeral establishment shall be
required to have either an embalmer's or funeral director's
license.

The board shall publish in its rules and regulations the
subjects to be covered in the said examinations and the
standards to be attained thereon. Changes in the rules
and regulations shall be published and shall be given due
publicity at least ninety days before becoming effective.

The board shall conduct annually a school of instruc-
tions to apprise funeral directors and embalmers of the
most recent scientific knowledge and developments affect-
ting their profession. Qualified lecturers and demon-
strators 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 licensed funeral director and 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.

§30-6-4. Definitions.

For the purpose of this article, 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, term, 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 by any person, partnership, association, corporation, or other organization, or the business or profession of preparing dead human bodies for burial by means other than embalming by any person, partnership, association, corporation, or other organization, or the disposition of dead human bodies by any person, partnership, association, corporation, or other organization, or maintenance of a place or establishment for the preparation for disposition or for the care or disposition of dead human bodies by any person, partnership, association, corporation, or other organization, or the use in connection with a business of the word or term “funeral director,” “undertaker,” “mortician,” by any person, partnership, association, corporation, or other organization, directing or the holding out to the public that one is a funeral director by any person, partnership, association, corporation, or other organization.

A “funeral establishment” is a place of business maintained and operated by a person, partnership, association,
corporation, or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming, funeral, transportation, burial or other disposition of dead human bodies.

"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 him 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.

§30-6-5. Embalmers and funeral directors to be licensed; qualifications and requirements for license; advertising; renewal of license; registration as apprentice; courtesy cards.

1 No person shall engage in or hold himself out as engaging in, or discharge any of the duties of the business or profession of embalming, or 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 issuance have complied with the provisions of this article.

2 No person shall engage in, or hold himself out as engaging in, or discharge any of the duties of 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 its issuance
have complied with the provisions of this article, or con-
duct a funeral unless he be a licensed funeral di-
rector.

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

(1) Is twenty-one years of age or over;

(2) A citizen of the United States;

(3) Of good moral character and temperate hab-
its;

(4) Holds a high school diploma or its equivalent;

(5) Has had not less than sixty hours' credit of
educational training in an accredited university or col-
lege, such credit shall be in such subjects only as are
recognized in the university or college where taken, as
credit toward a baccalaureate degree;

(6) Has completed a one-year course of apprentice-
ship under the supervision of a licensed embalmer ac-
tively 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 employ-
ment, and under which said apprenticeship he shall have
taken an active part in the operation of embalming not
less than twenty-five dead human bodies, under the su-
ervision of a licensed embalmer;

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

(8) Passes such examination as the board shall deem
necessary to ascertain his qualification and ability to
engage in the practice of embalming: *Provided, however,*
That any apprentice embalmer duly registered as such
with the board on or before July first, one thousand nine
hundred fifty-one, may be eligible to take the required
examination for an embalmer's license without having
had the六十 hours resident educational training in a
university or college heretofore mentioned, upon com-
pliance with all the other requirements, prerequisite to
the same, including the two years' apprenticeship.

The board shall issue licenses separately to embalmers
and 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 establishment or proposed funeral business.

Licenses issued under the provisions of this article shall not be transferable or assignable.

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

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

(2) Has been duly registered with the board as an apprentice;
(3) Has served not less than a one-year 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: Provided, however, That any apprentice funeral director twenty-one years of age, or older, who is duly registered with the board as such apprentice on or before July first, one thousand nine hundred fifty-one, and who has served his two years' apprenticeship may be eligible to take the required examination for a funeral director's license, without having first obtained an embalmer's license, upon compliance with all other requirements as to eligibility for such examination.

All funeral homes or establishments or any other places pertaining to funeral directing or the conducting of funerals, 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.

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

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

No person shall be registered as an apprentice funeral director or apprentice embalmer unless he is eigh-
teen years of age, or over, a citizen of the United States, of good moral character and temperate habits, and the holder of a high school diploma or its equivalent.

The board may issue annual nonrenewable courtesy cards to licensed funeral directors and licensed embalmers of the states bordering on West Virginia, upon application for same made on form prescribed by the board. The annual fee for such courtesy cards shall be twenty-five dollars and said fee shall be paid at the time application is made therefor. Applications for said courtesy cards shall be approved by the board before the same may be issued, and said courtesy cards shall be issued under the following conditions: Holders of courtesy cards shall not be permitted to open or operate a place of business for the purpose of conducting funerals or embalming bodies in the state of West Virginia, nor shall they be permitted to maintain an office or agency in this state. A violation of this section shall be sufficient cause for the board to revoke or cancel the courtesy card of the violator.
§30-6-7. Refusal to grant or renew; suspension or revocation of license or certificate of registration.

The board may either refuse to issue, or may refuse to renew, or may suspend, or may revoke any embalmer's license or funeral director's license, or embalmer's or funeral director's 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 article or the public health laws of this state;

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

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

(g) 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; or if any holder of an embalmer's license or funeral director's license issued hereunder knowingly permits any unlicensed person to use his license number or numbers for the purpose of practicing, or discharging any of the duties of, the professions of embalming or funeral directing;

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

(i) 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;
(j) 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;

(k) Gross immorality;

(l) 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.

§30-6-13. Funeral establishment; license; requirements; fee; manager.

1 On or before July one, one thousand nine hundred sixty-nine, every funeral establishment operating in West Virginia shall obtain a license for the succeeding fiscal year beginning July one, one thousand nine hundred sixty-nine, as provided for in this section.

2 An application for a license to operate a funeral establishment shall be in writing and verified on a form provided by the board and shall be accompanied by a fee as herein provided, and upon receipt of the same, the
board shall forthwith issue or renew a license to operate
a funeral establishment. Such application to operate a
funeral establishment shall be made by any person, part-
nership, association, corporation, organization, or fiduciary
having controlling interest in such funeral establishment.
Such application shall be signed by the applicant and by
the individual who is duly licensed as a funeral director,
and who shall be in charge and responsible for all trans-
actions conducted and services performed therein. If such
funeral establishment is owned by a person who is not
licensed as a funeral director or by a partnership, asso-
ciation, corporation, or other organization, then such
owner shall have in his or its employ and place in charge
of such establishment, a person who is duly licensed as
a funeral director, who shall manage, conduct and have
supervision of the work or business of such establishment
and be responsible therefor.
A license to operate a funeral establishment shall expire
on the thirtieth day of June of each calendar year and
the renewal date for any such license shall be the first
day of July of each calendar year.
Each funeral establishment license shall be valid only for one funeral establishment to be located at a specific street address or location; the fee to operate the principal establishment shall be fifty dollars per year and the fee to operate each additional funeral establishment by the same applicant shall be thirty-five dollars per year. Each separate funeral establishment shall have its own license, which license shall be prominently displayed within the funeral establishment. No additional license fee shall be charged if during any given year it shall be necessary to reapply for a license to operate a funeral establishment at the same or different location.

The holder of any funeral establishment license who ceases to operate the funeral establishment at the location specified in the application shall, within twenty days thereafter, surrender the funeral establishment license to the board and such license shall be cancelled by the board, except that in the event of the death of an individual who was the holder of a funeral establishment license, it shall be the duty of such holder's personal representative to surrender such funeral establishment li-
cense within thirty days of qualifying as such personal
representative. It shall be the duty of any holder of a
funeral establishment license, pursuant to this section,
to notify the board within thirty days if for any reason
the licensed funeral director whose name is signed to
the application for the issuance thereof, ceases to be
employed by such funeral establishment. Within thirty
days after such notification, such holder of a funeral
establishment license may execute a new application
for a funeral establishment license signed by the ap-
plicant and by the licensed funeral director who shall
be in charge of and responsible for all transactions con-
ducted and services performed within the funeral es-
tablishment. Failure to comply with any of these provi-
sions shall be grounds for revocation of a funeral estab-
lishment license.

A licensee whose embalmer's license, funeral director's
license or license to operate a funeral establishment has
been revoked under this article shall not operate, either
directly or indirectly, or hold any interest in any funeral
establishment. Nothing herein contained shall prohibit
a licensee whose license has been revoked from leasing any property owned by him or them for use as a funeral establishment so long as he or they do not participate in the control or profit of such funeral establishment otherwise than as a lessor of the premises for a fixed rental not dependent upon earnings.

§30-6-14. Suspension or revocation of license to operate a funeral establishment.

1. After notice and hearing given and held as notices and hearings are required to be given and held under the provisions of section eight of this article, the board may revoke or suspend any license to operate a funeral establishment issued under section thirteen of this article, for any one or combination of the following causes:

(a) The practice of fraud or deceit or misrepresentation in obtaining or attempting to obtain a funeral establishment license;

(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 article or rules and regulations of the board;
(d) The use of false, misleading or unethical advertising by any holder of a funeral establishment license;

(e) Upon satisfactory proof that a holder of a funeral establishment license has taken undue advantage of his patrons or has committed a fraudulent act in the conduct of his or its business;

(f) Solicitation of business by the holder of a funeral establishment license, his agents, assistants or employees:

Provided, That this shall not be deemed to prohibit proper advertising;

(g) If the holder of a funeral establishment license knowingly permits an unlicensed person to engage in the profession or business of embalming or funeral directing under his or its supervision;

(h) Employment by the holder of a funeral establishment license of persons as "cappers," "steerers" or "solicitors," or other such persons to obtain funeral directing business;

(i) Employment by the holder of a funeral establishment license 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 in-
fluence dead human bodies may be turned over to a par-
ticular funeral establishment;

(j) The buying of business by the holder of a funeral
establishment license, his or its agents, assistants, or em-
ployees or the direct or indirect payment or offer of pay-
ment of a commission by the licensee, his or its agent,
assistants, or employees, for the purpose of securing
business;

(k) Gross immorality.

Any decision of the board suspending or revoking a
license to operate a funeral establishment shall be subject
to judicial review in the same manner as a decision to sus-
pend or revoke a funeral director's license or embalmer's
license is subject to judicial review under the provisions of
section eight of this article, and the written notice of ap-
peal specified in said section eight shall be filed with the
circuit court of the county in which such funeral estab-
ishment is located.
§30-6-15. Injunction proceedings.

The board may bring legal proceedings to enjoin a person, partnership, association, corporation or other organization violating the provisions of this article or any rule or regulation of the board from practicing the science of embalming or conducting the business of funeral directing or operating a funeral establishment, as may be the case, until such person, partnership, association, corporation, or other organization complies with the requirements of this article and the rules and regulations of the board.

§30-6-16. Reciprocity; embalmers and funeral directors.

The board may recognize licenses issued to funeral directors or embalmers from other states, and, upon presentation of such license, may, upon the payment of the sum of twenty-five dollars to the secretary of the board, issue to the lawful holder thereof, the funeral director's or embalmer's license provided for in this article: Provided, however, That such recognition shall not be extended to funeral directors or embalmers holding licenses from other states unless reciprocal rights are provided
by such other states to holders of funeral director's or embalmer's licenses granted in this state. Such reciprocal licenses may be renewed annually upon payment of the renewal license fee as provided for in section six for license holders residing in this state. No person is entitled to a reciprocal license as a funeral director or embalmer unless he furnishes proof that he has, in the state in which he is regularly licensed, complied with requirements substantially equal to those set out in this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompkins
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

J. Howard Meyns
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Lloyd Boren
President of the Senate

Lieut. Gen. Branch
Speaker House of Delegates

The within is approved this the 12th day of March, 1969.

Archibald Yancey
Governor
PRESENTED TO THE GOVERNOR

Date 3/7/69
Time 2:30 p.m.

RECEIVED

Mar 14 8 27 AM '69

OFFICE OF SECRETARY OF STATE
STATE OF WEST VIRGINIA