WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1991

ENROLLED

SENATE BILL NO. 533

(By Senator Humphreys)

PASSED March 8, 1991
In Effect July 1, 1991
AN ACT to amend and reenact sections three, five, six, eight, thirteen and sixteen, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to embalmers and funeral directors; requiring continuing education yearly; further defining educational qualifications and requirements for license and work hours for apprentices; stating when a branch establishment is to be supervised by a funeral director; increasing fees for courtesy cards, examinations and licenses; increasing fines for criminal penalties; and increasing reciprocal license fee.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, eight, thirteen and sixteen, 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:

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, inci-
dent to his attendance upon the business of the board,
and in addition thereto, the sum of fifty dollars per
day for each day actually spent by such member upon
the business of the board. 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 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 Virginia embalmer's license or a
West Virginia funeral director's license. Any inspec-
tion shall be conducted in such a manner so as not to
interfere with the conduct of business within the
funeral establishment, and the inspector 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, 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 trea-
43 surer of the state of West Virginia.

44 The board shall hold not less than two meetings
45 during each calendar year, one during the month of
46 April and one during the month of November, for the
47 purpose of examining applicants for licenses, such
48 meeting or meetings to be held at such time and place
49 as the board shall determine. The time and place of
50 such meeting shall be announced by publication in
51 three daily newspapers of general circulation in
52 different locations in the state, and publication to be
53 once a week for two consecutive weeks immediately
54 preceding each such meeting.

55 The board may hold such other meetings as it may
56 deem necessary and may transact any business at such
57 meetings. Three or more members shall comprise a
58 quorum authorizing the board to transact such busi-
59 ness as is prescribed under this article.

60 The board shall have the power and it shall be its
61 duty to make and enforce all necessary rules and
62 regulations, not inconsistent with this article, for the
63 examination and licensing of funeral directors, and the
64 general practice of funeral directing; the examination
65 and licensing of embalmers and the general practice of
66 embalming and the registration and regulation of
67 apprentices; the licensing and general operation of
68 funeral establishments, except that no rules and
69 regulations issued by the board shall require that an
70 applicant for a license to operate a funeral establish-
71 ment shall be required to have either an embalmer's
72 or funeral director's license.

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

79 The board shall conduct annually a school of instruc-
80 tions to apprise funeral directors and embalmers of
81 the most recent scientific knowledge and develop-
82 ments 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 licensed funeral director and
embalmer to attend at least one such school once a
year for a total of three hours of instruction.

The board, any of its members or any duly autho-
rized 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 prac-
ticed or where embalming is practiced.

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

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.

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
conduct a funeral unless he be a licensed funeral
director.

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

(1) Is eighteen years of age or over;
(2) A citizen of the United States;
(3) Of good moral character and temperate habits;
(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 college, such credit shall be in such subjects only as are recognized in the university or college where taken, as credit toward a baccalaureate degree with not more than one third of those hours in elective subjects and the remaining two thirds in classroom credits in liberal arts, business administration, social sciences or natural or physical sciences: Provided, That credits received from schools of embalming or mortuary science may not be used towards the sixty hours' credit requirement in this subsection.

(6) Has completed a one-year 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, 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 supervision of a licensed embalmer;

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

(8) Passes such examinations as the board deems necessary to ascertain his qualification and ability to engage in the practice of embalming which shall include the national conference of funeral services examination by a score of not less than seventy-five percent; the funeral service examination by a score of not less than seventy percent; and the state examination by a score of not less than seventy percent.

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-embalmer actively and lawfully engaged in the business or profession of funeral directing and 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. For the purpose of this section employment means a forty hour week or such longer period of time set at the discretion of the funeral director-embalmer by whom he is employed.

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 when professional services are performed at the branch establishment.

No licensed funeral director or licensed embalmer shall be permitted to register or have registered more than five apprentices under his 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 therefor, 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 effective date 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 eighteen 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 a form prescribed by the board. The annual fee for such courtesy cards shall be one hundred 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.

§30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.

1 The examination fee for a funeral director’s license shall be one hundred fifty dollars and shall be remitted at the time the application for a funeral director’s license is submitted to the board.

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

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

4 The annual renewal fee for an embalmer’s license, funeral director’s license, or assistant funeral director’s license shall be twenty-five dollars and the annual renewal fee for apprentice registration shall be fifteen dollars and each shall be paid on or before the first day of July of each calendar year.

5 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 fifty dollars and the required renewal fee.

6 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 fifty 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 article 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 renewal may file an application for renewal of his license upon payment of a penalty of fifty dollars and the required renewal fee. Otherwise, after the said period of ninety days, his license will automatically be canceled.

Any person who has been duly registered as an apprentice embalmer or apprentice funeral director and fails to renew his registration within ninety days after the expiration date for renewals may file an application for such renewal upon payment of a penalty of fifty dollars and the required renewal fee. Otherwise, after the said period of ninety days, his registration will automatically be canceled.

All fees and other moneys received by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purposes of this article. After expenditures for the fiscal year, of the remaining moneys, all sums in excess of ten thousand dollars in the separate fund shall revert to the general fund of the state. The compensation provided by this article and all expenses incurred the payment of which is authorized under this article shall be paid from this separate fund. No compensation or expense incurred under this article shall be a charge against the general funds of the state.

§30-6-8. Duty of public officers, physicians, etc., as to disposition of body of deceased person; penalty for violation of section; hearings on refusing, suspending, or revoking licenses; appeals from decisions of board; penalty for engaging in business without license; purpose of article.

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

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

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

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

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

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

34 Any person who has been refused a license for any
35 cause or whose license has been revoked or suspended,
36 may file with the secretary of the board, within thirty
37 days after the decision of the board, a written notice
38 of appeal therefrom to the circuit court of the county
39 within which such person whose license has been
40 refused, revoked or suspended resides. Upon the filing
41 of such notice, the secretary of the board shall trans-
mit 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
article unless he is duly licensed as an embalmer and/
or as a funeral director within the meaning of this
article, and any person who shall engage in either
business or profession, or both, without having first
complied with the provisions of this article, or who
shall violate any other provisions of this article, shall
be deemed guilty of a misdemeanor, and, upon convic-
tion thereof in any court of competent jurisdiction,
shall be fined not less than two hundred dollars or
more than four hundred dollars for the first offense.
Upon conviction of a second or subsequent offense, the
violator shall be fined not less than five hundred
dollars, nor more than one thousand 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
article is necessary for the immediate preservation of
the public peace, welfare, health and safety.

§30-6-13. License required to operate funeral establishment;
application and qualifications for license;
renewal; fee; manager.

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

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, partnership, 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 transactions 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, association, 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 one hundred twenty-five dollars per year and the fee to operate each additional funeral establishment by the same applicant shall be seventy-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. A funeral establishment that fails to pay fees for either a main establishment or branch establishment by the date required by this article is subject to a penalty of fifty dollars for each establishment.
13

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 canceled 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 license 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 applicant and by the licensed funeral director who shall be in charge of and responsible for all transactions conducted and services performed within the funeral establishment. Failure to comply with any of these provisions shall be grounds for revocation of a funeral establishment 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.

§30-6-16. Reciprocity in licensing of embalmers and funeral directors.

1. 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 one hundred 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, 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.

Homer F.leck
Chairman Senate Committee

Ernest C. Maxe
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1991.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 

day of , 1991.

Governor