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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

ENROLLED

SENATE BILL NO. 533

(By Senator Humphreys)

PASSED March 8, 1991

In Effect July 1, 1991 Passage

ENROLLED
Senate Bill No. 533
(BY SENATOR HUMPHREYS)

[Passed March 8, 1991; to take 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
- 2 duties, shall take and subscribe to the oath of office

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3 prescribed by the secretary of state.

4 Said board shall select from its own members a
5 president, a secretary and a treasurer. Each member
6 shall be reimbursed for his traveling expenses, inci-
7 dent to his attendance upon the business of the board,
8 and in addition thereto, the sum of fifty dollars per
9 day for each day actually spent by such member upon
10 the business of the board. The secretary shall receive
11 an annual salary of not to exceed one thousand dollars,
12 the amount and payment of which shall be fixed by
13 said board, and in addition thereto shall receive
14 traveling and other incidental expenses incurred in
15 the performance of his duties.

16 The board may employ an executive secretary and
17 such clerks, inspectors and assistants as it shall deem
18 necessary to discharge the duties imposed by the
19 provisions of this article and duly promulgated rules
20 and regulations of the board and to effect its purposes,
21 and the board shall determine the duties and fix the
22 compensation of such executive secretary, clerks,
23 inspectors and assistants, subject to the general laws of
24 the state. Any inspector employed by the board shall
25 have either a West Virginia embalmer's license or a
26 West Virginia funeral director's license. Any inspec-
27 tion shall be conducted in such a manner so as not to
28 interfere with the conduct of business within the
29 funeral establishment, and the inspector shall be
30 absolutely prohibited from examining any books and
31 records of the funeral establishment.

32 All such expenses, per diem and compensation shall
33 be paid out of the receipts of the board, but such
34 allowances shall at no time exceed the receipts of the
35 board.

36 The treasurer of the board shall give bond to the
37 state of West Virginia in such sum as the board shall
38 direct with two or more sureties or a reliable surety
39 company approved by the board, and such bond shall
40 be conditioned for the faithful discharge of the duties
41 of such officer. Such bond, with approval of the board
42 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

83 and demonstrators may be employed by the board for
84 this purpose. The board shall give notice of the time
85 and place at which such school will be held for all
86 licensed funeral directors and embalmers, and it shall
87 be the duty of every licensed funeral director and
88 embalmer to attend at least one such school once a
89 year for a total of three hours of instruction.

90 The board, any of its members or any duly autho-
91 rized employee of the board shall have the authority
92 to enter at all reasonable hours for the purpose of
93 inspecting the premises in which the business or
94 profession of funeral directing is conducted or prac-
95 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.**

1 No person shall engage in or hold himself out as
2 engaging in, or discharge any of the duties of the
3 business or profession of embalming, or preserving in
4 any manner dead human bodies in this state, whether
5 for himself or in the employ of another, unless he
6 holds an embalmer's license issued to him by the
7 board, and shall at the date of its issuance have
8 complied with the provisions of this article.

9 No person shall engage in, or hold himself out as
10 engaging in, or discharge any of the duties of the
11 business or profession of funeral directing in this state,
12 unless he holds a funeral director's license issued to
13 him by the board, and shall at the date of its issuance
14 have complied with the provisions of this article, or
15 conduct a funeral unless he be a licensed funeral
16 director.

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

19 (1) Is eighteen years of age or over;

20 (2) A citizen of the United States;

21 (3) Of good moral character and temperate habits;

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

23 (5) Has had not less than sixty hours' credit of
24 educational training in an accredited university or
25 college, such credit shall be in such subjects only as
26 are recognized in the university or college where
27 taken, as credit toward a baccalaureate degree with
28 not more than one third of those hours in elective
29 subjects and the remaining two thirds in classroom
30 credits in liberal arts, business administration, social
31 sciences or natural or physical sciences: *Provided*, That
32 credits received from schools of embalming or mortu-
33 ary science may not be used towards the sixty hours'
34 credit requirement in this subsection.

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

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

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

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

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

75 Licenses issued under the provisions of this article
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
84 funeral director-embalmer actively and lawfully
85 engaged in the business or profession of funeral
86 directing and embalming in this state, such appren-
87 ticeship to consist of diligent attention to the work in
88 the course of regular and steady employment and not
89 as a side issue to another employment. For the
90 purpose of this section employment means a forty
91 hour week or such longer period of time set at the
92 discretion of the funeral director-embalmer by whom
93 he is employed.

94 All funeral homes or establishments or any other
95 places pertaining to funeral directing or the conduct-
96 ing of funerals, shall display in all advertising the
97 name of the licensed funeral director who is actually
98 in charge of the establishment. All branch establish-
99 ments must display the name of the funeral director

100 who is actually in charge. At least one licensed funeral
101 director shall supervise each main establishment and
102 at least one licensed funeral director shall directly
103 supervise each branch establishment when profes-
104 sional services are performed at the branch
105 establishment.

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

110 Any person now holding a license as an embalmer,
111 funeral director, or assistant funeral director, shall not
112 be required to make a new application, or submit to an
113 examination, but shall, upon the payment of the fee
114 therefor, be entitled to a renewal of his license upon
115 the terms and conditions herein provided for the
116 renewal of licenses of those who may be licensed after
117 the effective date of this article, but all such persons
118 shall be subject to every provision of this article, and
119 such rules and regulations as the board may adopt in
120 pursuance of this article.

121 No person shall be registered as an apprentice
122 funeral director or apprentice embalmer unless he is
123 eighteen years of age, or over, a citizen of the United
124 States, of good moral character and temperate habits,
125 and the holder of a high school diploma or its
126 equivalent.

127 The board may issue annual nonrenewable courtesy
128 cards to licensed funeral directors and licensed
129 embalmers of the states bordering on West Virginia,
130 upon application for same made on a form prescribed
131 by the board. The annual fee for such courtesy cards
132 shall be one hundred dollars and said fee shall be paid
133 at the time application is made therefor. Applications
134 for said courtesy cards shall be approved by the board
135 before the same may be issued, and said courtesy
136 cards shall be issued under the following conditions:
137 Holders of courtesy cards shall not be permitted to
138 open or operate a place of business for the purpose of
139 conducting funerals or embalming bodies in the state

140 of West Virginia, nor shall they be permitted to
141 maintain an office or agency in this state. A violation
142 of this section shall be sufficient cause for the board to
143 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
2 shall be one hundred fifty dollars and shall be remitted at the time the application for a funeral director's
3 license is submitted to the board.
4

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

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

14 The annual renewal fee for an embalmer's license,
15 funeral director's license, or assistant funeral director's license shall be twenty-five dollars and the
16 annual renewal fee for apprentice registration shall be
17 fifteen dollars and each shall be paid on or before the
18 first day of July of each calendar year.
19

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

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

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

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

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

54 All fees and other moneys received by the board
55 pursuant to the provisions of this article shall be kept
56 in a separate fund and expended solely for the pur-
57 poses of this article. After expenditures for the fiscal
58 year, of the remaining moneys, all sums in excess of
59 ten thousand dollars in the separate fund shall revert
60 to the general fund of the state. The compensation
61 provided by this article and all expenses incurred the
62 payment of which is authorized under this article shall
63 be paid from this separate fund. No compensation or
64 expense incurred under this article shall be a charge
65 against the general funds of the state.

**§30-6-8. Duty of public officers, physicians, etc., as to
disposition of body of deceased person; pen-
alty 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.**

1 No public officer, employee, physician or surgeon, or
2 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-

42 mit to the clerk of said court, the record of such
43 proceedings. Such court shall thereupon hear and
44 determine such case as in other cases of appeal. The
45 judgment of the circuit court may be reviewed upon
46 proceedings in error in the supreme court of appeals.

47 No person shall engage in the profession or business
48 of embalming or funeral directing as defined in this
49 article unless he is duly licensed as an embalmer and/
50 or as a funeral director within the meaning of this
51 article, and any person who shall engage in either
52 business or profession, or both, without having first
53 complied with the provisions of this article, or who
54 shall violate any other provisions of this article, shall
55 be deemed guilty of a misdemeanor, and, upon conviction
56 thereof in any court of competent jurisdiction,
57 shall be fined not less than two hundred dollars or
58 more than four hundred dollars for the first offense.
59 Upon conviction of a second or subsequent offense, the
60 violator shall be fined not less than five hundred
61 dollars, nor more than one thousand dollars.

62 The sanitary preparation of dead human bodies for
63 burial and the burial thereof is a public necessity, and
64 it has direct relation to the health, welfare and
65 convenience to the public, and the Legislature of this
66 state hereby finds, determines and declares that this
67 article is necessary for the immediate preservation of
68 the public peace, welfare, health and safety.

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

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

7 An application for a license to operate a funeral
8 establishment shall be in writing and verified on a
9 form provided by the board and shall be accompanied
10 by a fee as herein provided, and upon receipt of the

11 same, the board shall forthwith issue or renew a
12 license to operate a funeral establishment. Such
13 application to operate a funeral establishment shall be
14 made by any person, partnership, association, corpora-
15 tion, organization or fiduciary having controlling
16 interest in such funeral establishment.

17 Such application shall be signed by the applicant and
18 by the individual who is duly licensed as a funeral
19 director, and who shall be in charge and responsible
20 for all transactions conducted and services performed
21 therein. If such funeral establishment is owned by a
22 person who is not licensed as a funeral director or by
23 a partnership, association, corporation or other organi-
24 zation, then such owner shall have in his or its employ
25 and place in charge of such establishment a person
26 who is duly licensed as a funeral director, who shall
27 manage, conduct and have supervision of the work or
28 business of such establishment and be responsible
29 therefor.

30 A license to operate a funeral establishment shall
31 expire on the thirtieth day of June of each calendar
32 year and the renewal date for any such license shall
33 be the first day of July of each calendar year.

34 Each funeral establishment license shall be valid
35 only for one funeral establishment to be located at a
36 specific street address or location; the fee to operate
37 the principal establishment shall be one hundred
38 twenty-five dollars per year and the fee to operate
39 each additional funeral establishment by the same
40 applicant shall be seventy-five dollars per year. Each
41 separate funeral establishment shall have its own
42 license, which license shall be prominently displayed
43 within the funeral establishment. No additional license
44 fee shall be charged if during any given year it shall
45 be necessary to reapply for a license to operate a
46 funeral establishment at the same or different loca-
47 tion. A funeral establishment that fails to pay fees for
48 either a main establishment or branch establishment
49 by the date required by this article is subject to a
50 penalty of fifty dollars for each establishment.

51 The holder of any funeral establishment license who
52 ceases to operate the funeral establishment at the
53 location specified in the application shall, within
54 twenty days thereafter, surrender the funeral estab-
55 lishment license to the board and such license shall be
56 canceled by the board, except that in the event of the
57 death of an individual who was the holder of a funeral
58 establishment license, it shall be the duty of such
59 holder's personal representative to surrender such
60 funeral establishment license within thirty days of
61 qualifying as such personal representative. It shall be
62 the duty of any holder of a funeral establishment
63 license, pursuant to this section, to notify the board
64 within thirty days if for any reason the licensed
65 funeral director whose name is signed to the applica-
66 tion for the issuance thereof, ceases to be employed by
67 such funeral establishment. Within thirty days after
68 such notification, such holder of a funeral establish-
69 ment license may execute a new application for a
70 funeral establishment license signed by the applicant
71 and by the licensed funeral director who shall be in
72 charge of and responsible for all transactions con-
73 ducted and services performed within the funeral
74 establishment. Failure to comply with any of these
75 provisions shall be grounds for revocation of a funeral
76 establishment license.

77 A licensee whose embalmer's license, funeral direc-
78 tor's license or license to operate a funeral establish-
79 ment has been revoked under this article shall not
80 operate, either directly or indirectly, or hold any
81 interest in any funeral establishment. Nothing herein
82 contained shall prohibit a licensee whose license has
83 been revoked from leasing any property owned by
84 him or them for use as a funeral establishment so long
85 as he or they do not participate in the control or profit
86 of such funeral establishment otherwise than as a
87 lessor of the premises for a fixed rental not dependent
88 upon earnings.

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

1 The board may recognize licenses issued to funeral
2 directors or embalmers from other states, and, upon
3 presentation of such license, may, upon the payment

4 of the sum of one hundred dollars to the secretary of
5 the board, issue to the lawful holder thereof, the
6 funeral director's or embalmer's license provided for
7 in this article: *Provided*, That such recognition shall
8 not be extended to funeral directors or embalmers
9 holding licenses from other states unless reciprocal
10 rights are provided by such other states to holders of
11 funeral director's or embalmer's licenses granted in
12 this state. Such reciprocal licenses may be renewed
13 annually upon payment of the renewal license fee as
14 provided for in section six for license holders residing
15 in this state. No person is entitled to a reciprocal
16 license as a funeral director or embalmer unless he
17 furnishes proof that he has, in the state in which he
18 is regularly licensed, complied with requirements
19 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 Heck
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1991.

Harrell E. Adams
Clerk of the Senate

Donald G. Kopp
Clerk of the House of Delegates

Neill Brantley
President of the Senate

Robert C. Cline
Speaker House of Delegates

The within is deapproved this the 27th
day of March, 1991.

Yaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/14/91

Time 4:10 pm