### **WEST VIRGINIA LEGISLATURE**

**REGULAR SESSION, 1992** 

## NROLLED

Committee Substitute for SENATE BILL NO. 152

(By Senator

PASSED March 6, 1992
In Effect 90 days from Passage

SECRETARY OF STATE **DEFICE OF MEST VIRGINIA** 

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#### ENROLLED

#### COMMITTEE SUBSTITUTE

FOR.

#### Senate Bill No. 152

(Senator Spears, original sponsor)

[Passed March 6, 1992; in effect ninety days from passage.]

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; 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 or imposing certain fees; and increasing fines for criminal penalties.

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 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 director 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
- 21 and the board shall determine the duties and fix the
- 22 compensation of such executive director, 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 for the purpose of examin-46 ing applicants for licenses, such meeting or meetings 47 to be held at such time and place as the board shall determine. The time and place of such meeting shall 48 49 be announced by publication in three daily news-50 papers of general circulation in different locations in 51 the state, and publication to be once a week for two 52 consecutive weeks immediately preceding each such 53 meeting.

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

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

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

78 The board may conduct annually a school of instruc-79 tion to apprise funeral directors and embalmers of the 80 most recent scientific knowledge and developments affecting their profession. Qualified lecturers and demonstrators may be employed by the board for this purpose. The board shall give notice of the time and place at which such school will be held for all licensed funeral directors and embalmers, and it shall be the duty of every licensed funeral director and embalmer to attend at least one such school or other approved program, every three years: *Provided*, That the location of any school of continuing education shall accommodate the geographic diversity of the embalmers and funeral directors of this state. Compliance with the requirements of continuing education is a prerequisite for license renewal.

94 Hours of continuing education may be obtained by 95 attending and participating in board-approved pro-96 grams, meetings, seminars or activities. It is the 97 responsibility of each licensee to finance his or her 98 costs of continuing education.

The board, any of its members or any duly autho-100 rized employee of the board shall have the authority 101 to enter at all reasonable hours for the purpose of 102 inspecting the premises in which the business or 103 profession of funeral directing is conducted or prac-104 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.

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) Holds an associate degree from an accredited college or university or has successfully completed not less than sixty semester hours or ninety quarter hours of academic work in an accredited college or university toward a baccalaureate degree with a declared major field of study, as evidenced by a transcript submitted for evaluation prior to beginning a one-year course of apprenticeship as described in subdivision (6) of this section and prior to obtaining a diploma of graduation from a school of mortuary science as described in subdivision (7) of this section;
- 34 (6) Has completed a one-year course of apprentice-35 ship under the supervision of a licensed embalmer 36 actively and lawfully engaged in the practice of 37 embalming in this state, such apprenticeship to consist 38 of diligent attention to the work in the course of 39 regular and steady employment and not as a side issue 40 to another employment, and under which said appren-41 ticeship he shall have taken an active part in the 42 operation of embalming not less than thirty-five dead 43 human bodies, under the supervision of a licensed 44 embalmer;
- 45 (7) Possesses a diploma of graduation from a school 46 of mortuary science which requires as a prerequisite 47 to graduation the completion of a course of study not 48 less than twelve months' duration, and which said 49 school of mortuary science must be one accredited by 50 the American board of funeral service education, inc., 51 and duly approved by the board; and

- 52 (8) Passes with an average score of not less than seventy-five percent the national conference of funeral services examination at a testing site provided 55 by the national conference, passes with a score of not 56 less than seventy-five percent the state law examination administered by the board and passes such further examination as the board may deem necessary 59 to ascertain his qualification and ability to engage in 60 the practice of embalming. Successfully passing the 61 national conference of funeral services examination is 62 a condition precedent to taking the state law examination administered by the board. The board shall offer 64 the state law examination at least twice each year.
- 65 The board shall issue licenses separately to 66 embalmers and to funeral directors.
- 67 An applicant for a funeral director's license must 68 furnish satisfactory proof to the board that his business or profession of funeral directing is to be con-70 ducted in a fixed place or establishment equipped for 71 the care and preparation for burial or disposition of 72 dead human bodies. What shall be deemed "necessary 73 equipment" shall be defined in the rules and regula-74 tions of the board, the same to be in compliance with 75 the public health laws of the state or the rules of the state board of health of West Virginia. This shall not 77 be so construed as to deny an applicant for a funeral 78 director's license such a license because he is not the owner, or part owner, of an establishment or proposed 80 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:
- 85 (1) Holds an embalmer's license issued by this board;
- 86 (2) Has been duly registered with the board as an 87 apprentice;
- 88 (3) Has served not less than a one-year apprentice-89 ship under the personal supervision of a licensed 90 funeral director-embalmer actively and lawfully

91 engaged in the business or profession of funeral 92 directing and embalming in this state, such appren-93 ticeship to consist of diligent attention to the work in 94 the course of regular and steady employment and not 95 as a side issue to another employment including taking 96 an active part in conducting not less than thirty-five 97 funeral services. For the purpose of this section, 98 "regular and steady employment" means a forty hour 99 week or a longer period of time set at the discretion 100 of the person 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.

117 Any person now holding a license as an embalmer 118 or funeral director shall not be required to make a 119 new application, or submit to an examination, but 120 shall, upon the payment of the fee therefor, be entitled 121 to a renewal of his license upon the terms and 122conditions herein provided for the renewal of licenses 123 of those who may be licensed after the effective date 124 of this article, but all such persons shall be subject to 125 every provision of this article, and such rules and 126 regulations as the board may adopt in pursuance of 127 this article.

128 No person shall be registered as an apprentice 129 funeral director or apprentice embalmer unless he is 130 eighteen years of age, or over, a citizen of the United

- 132 the holder of a high school diploma or its equivalent,
- 133 and holds an associate degree from an accredited
- 134 college or university or has successfully completed not
- 135 less than sixty semester hours or ninety quarter hours
- 136 of academic work in an accredited college or univer-
- 137 sity toward a baccalaureate degree with a declared
- 138 major field of study.
- 139 The board may issue annual nonrenewable courtesy
- 140 cards to licensed funeral directors and licensed
- 141 embalmers of the states bordering on West Virginia,
- 142 upon application for same made on form prescribed by
- 143 the board. The annual fee for such courtesy cards shall
- 144 be fifty dollars and said fee shall be paid at the time
- 145 application is made therefor. Applications for said
- 146 courtesy cards shall be approved by the board before
- 147 the same may be issued, and said courtesy cards shall
- 148 be issued under the following conditions: Holders of
- 149 courtesy cards shall not be permitted to open or
- 150 operate a place of business for the purpose of conduct-
- 151 ing funerals or embalming bodies in the state of West
- 150 The functions of constanting sources in the state of west
- 152 Virginia, nor shall they be permitted to maintain an
- 153 office or agency in this state. A violation of this section
- 154 shall be sufficient cause for the board to revoke or
- 155 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 remit-
- 3 ted at the time the application for a funeral director's
- 4 license is submitted to the board.
- 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 certif-
- 12 icates shall be the first day of July of each calendar 13 year.

14 The annual renewal fee for embalmer's license is 15 thirty dollars; the annual renewal fee for a funeral 16 director's license is thirty dollars; the annual renewal 17 fee for an apprentice embalmer's license is twenty-18 five dollars; the annual renewal fee for an apprentice 19 funeral director's license is twenty-five dollars; and 20 each shall be paid on or before the first day of July of 21 each calendar year.

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Any person who has been duly licensed as a funeral 23 director or as an embalmer under the laws of this 24 state, but who fails to renew his license within thirty days after the expiration date for renewals, may file 26 an application for a renewal of his license, without 27 examination, upon payment of a penalty of fifty dollars, a reinstatement fee of fifty dollars and the required renewal fee.

Any person who has been duly licensed as a funeral 31 director or as an embalmer under the laws of this 32 state, but who fails to renew his license within sixty 33 days after the expiration date for renewals, may file 34 an application for a renewal of his license, without 35 examination, upon payment of a penalty of one 36 hundred dollars, a reinstatement fee of one hundred 37 dollars and the required renewal fee.

A funeral director or an embalmer whose license 39 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 registered as an 43 apprentice embalmer or apprentice funeral director and fails to renew his registration within thirty days 45 after the expiration date for renewals may file an 46 application for such renewal upon payment of a penalty of fifty dollars, a reinstatement fee of fifty 48 dollars and the required renewal fee. Otherwise, after the said period of thirty days, his registration will 50 automatically be canceled.

51 All fees and other moneys received by the board 52 pursuant to the provisions of this article shall be kept 53 in a separate fund and expended solely for the pur-

- 54 poses of this article. After the expenditures for a fiscal
- 55 year, of the remaining moneys accrued and set aside
- 56 for that fiscal year, all sums in excess of twenty
- 57 thousand dollars in the separate fund shall revert to
- 58 the general fund of the state. The compensation
- 59 provided by this article and all expenses incurred the
- 60 payment of which is authorized under this article shall
- 61 be paid from this separate fund. No compensation or 62 expense incurred under this article shall be a charge
- 63 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 1 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
  - next of kin, or any persons who may be chargeable
  - with the funeral expenses of such deceased person;
  - and if any such kin or person can be found, his 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,
- 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 of such hearing to the applicant, together with a statement of the charges against him, by mailing the same to the last-known address of such person.

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

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 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 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/ 50 or as a funeral director within the meaning of this 51 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 conviction thereof in any court of competent jurisdiction, shall be fined not less than two hundred dollars or nor DEH. 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 dollars, nor more than one thousand dollars. 61

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
- and have supervision of the work of
- 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

year and the renewal date for any such license shall 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 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 separate funeral establishment shall have its own license, which license shall be prominently displayed 43 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 46 funeral establishment at the same or different loca-47 tion. A funeral establishment that fails to pay fees for 48 either the principal establishment or additional estab-49 lishment by the first day of July of each calendar year 50 is subject to a penalty of fifty dollars and a reinstate-51 ment fee of fifty dollars for each establishment and 52 the required renewal fee.

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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 one hundred twenty days of qualifying as such personal representa-64 tive. 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 71 establishment license may execute a new application 72 for a funeral establishment license signed by the

73 applicant and by the licensed funeral director who 74 shall be in charge of and responsible for all transactions conducted and services performed within the 76 funeral establishment. Failure to comply with any of 77 these provisions shall be grounds for revocation of a 78 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.

The board may recognize licenses issued to funeral 2 directors or embalmers from other states, and, upon presentation of such license, may, upon the payment 4 of the sum of sixty dollars to the director of the board. 5 issue to the lawful holder thereof, the funeral direc-6 tor's or embalmer's license provided for in this article: Provided, That such recognition shall not be extended 8 to funeral directors or embalmers holding licenses 9 from other states unless reciprocal rights are provided 10 by such other states to holders of funeral director's or 11 embalmer's licenses granted in this state. Such recip-12 rocal licenses may be renewed annually upon payment 13 of the renewal license fee as provided for in section six 14 for license holders residing in this state. No person is 15 entitled to a reciprocal license as a funeral director or 16 embalmer unless he furnishes proof that he has, in the 17 state in which he is regularly licensed, complied with 18 requirements substantially equal to those set out in 19 this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.
Chairman Senate Committee
Chairman House Committee
Originated in the Senate.
In effect ninety days from passage.  August Clerk of the Senate
Clerk of the House of Delegates
President of the Senate  Speaker House of Delegates
The within W. Appured. this the
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PRESENTED TO THE

GOVERNO

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