WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED
Committee Substitute for
SENATE BILL NO. 152

(By Senator Spears)

PASSED March 6, 1992
In Effect 90 days from Passage

SECRETARY OF STATE
OFFICE OF WEST VIRGINIA
1992 APR 1 PM 4:40
RECEIVED
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
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 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 director 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 director, 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 inspection 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 treasurer of the state of West Virginia.

The board shall hold not less than two meetings during each calendar year for the purpose of examining applicants for licenses, such meeting or meetings 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 such meetings. Four or more members shall comprise a quorum authorizing the board to transact such business as is prescribed under this article.

The board shall have the 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 embalmers and the general practice of embalming and the registration and regulation of apprentices; the licensing and general operation of funeral establishments, except that no rules and regulations 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 may conduct annually a school of instruction to apprise funeral directors and embalmers of the 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.

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

The board, 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.

§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
court 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) 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 univers-
ity 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;

(6) Has completed a one-year course of apprentice-
ship 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 appren-
ticeship he shall have taken an active part in the
operation of embalming not less than thirty-five dead
human bodies, under the supervision of a licensed
embalmer;

(7) Possesses a diploma of graduation from a school
of mortuary science 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 mortuary science must be one accredited by
the American board of funeral service education, inc.,
and duly approved by the board; and
(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 by the national conference, passes with a score of not less than seventy-five percent the state law examination administered by the board and passes such further examination as the board may deem necessary to ascertain his qualification and ability to engage in the practice of embalming. Successfully passing the national conference of funeral services examination is a condition precedent to taking the state law examination administered by the board. The board shall offer the state law examination at least twice each year.

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 appren-
ticeship 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 including taking
an active part in conducting not less than thirty-five
funeral services. For the purpose of this section,
“regular and steady employment” means a forty hour
week or a longer period of time set at the discretion
of the person by whom he is employed.

All funeral homes or establishments or any other
places pertaining to funeral directing or the conduct-
ing of funerals, shall display in all advertising the
name of the licensed funeral director who is actually
in charge of the establishment. All branch establish-
ments 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 profes-
sional 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
or 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, the holder of a high school diploma or its equivalent, and 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.

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 fifty 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.

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.

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.

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

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 thirty 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, a reinstatement fee of fifty dollars and the required renewal fee.

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 sixty 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 one hundred dollars, a reinstatement fee of one hundred 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 registered as an apprentice embalmer or apprentice funeral director and fails to renew his registration within thirty days after the expiration date for renewals may file an application for such renewal upon payment of a penalty of fifty dollars, a reinstatement fee of fifty dollars and the required renewal fee. Otherwise, after the said period of thirty 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 pur-
poses of this article. After the expenditures for a fiscal
year, of the remaining moneys accrued and set aside
for that fiscal year, all sums in excess of twenty
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
with the deceased, shall send, or cause to be sent, to
any funeral director, undertaker, mortician or
embalmer, the body of any deceased person without
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
authority and direction shall be received as to the
disposal of said corpse.

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

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

No order refusing, suspending or revoking a license
shall be made until after a public hearing conducted
by the board.
At least twenty days prior to the date of hearing, the 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.

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

Any person who has been refused a license for any cause or whose license has been revoked or suspended, may file with the secretary of the board, within thirty days after the decision of the board, a written notice of appeal therefrom to the circuit court of the county within which such person whose license has been refused, revoked or suspended resides. Upon the filing of such notice, the secretary of the board shall transmit 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 conviction thereof in any court of competent jurisdiction, shall be fined not less than two hundred dollars nor 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.

1 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 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, partnership, association, corporation, organization or fiduciary having controlling interest in such funeral establishment.

3 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.

4 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 the principal establishment or additional establishment by the first day of July of each calendar year is subject to a penalty of fifty dollars and a reinstatement fee of fifty dollars for each establishment and the required renewal fee.

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 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 transac-
tions 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 direc-
tor's license or license to operate a funeral establish-
ment 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
directors or embalmers from other states, and, upon
presentation of such license, may, upon the payment
of the sum of sixty dollars to the director of the board,
issue to the lawful holder thereof, the funeral direc-
tor'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 recip-
rocal 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 15th day of April, 1992.

Governor