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2012 MAR 30 PM 4: 14

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2012



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4118**

(By Delegate Moore)



Passed March 10, 2012

To Take Effect Ninety Days From Passage

HB 4118

**E N R O L L E D**

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COMMITTEE SUBSTITUTE

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

FOR

**H. B. 4118**

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(BY DELEGATE MOORE)

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[Passed March 10, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §30-6-3 and §30-6-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section designated §30-6-22a; and to amend and reenact §61-12-9 of said code, all relating to cremation, preneed funeral contracts and disposition of remains generally; adding a definition of persons authorized to order cremation; clarifying required inquiry about deceased's desires; prioritizing individuals authorized to express desires of the deceased; clarifying funeral directors' responsibilities; establishing the right to control the disposition of the remains of a deceased person; determining who has that right; setting forth how that right may be forfeited; adding a definition of person authorized to agree to a cremation contract; and establishing an order of precedence among persons as to cremation and disposition of remains.

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

That §30-6-3 and §30-6-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended

by adding thereto a new section designated §30-6-22a; and that §61-12-9 of said code be amended and reenacted, all to read as follows:

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

**ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.**

**§30-6-3. Definitions.**

1 As used in this article, the following words and terms  
2 have the following meanings, unless the context clearly  
3 indicates otherwise:

4 (a) "Apprentice" means a person who is preparing to  
5 become a licensed funeral director and embalmer and is  
6 learning the practice of embalming, funeral directing or  
7 cremation under the direct supervision and personal  
8 instruction of a duly licensed embalmer or funeral director.

9 (b) "Authorized representative" means a person legally  
10 authorized or entitled to order the cremation of the deceased,  
11 as established by rule. An authorized representative may  
12 include in the following order of precedence:

13 (1) The deceased, who has expressed his or her wishes  
14 regarding the disposal of their remains through a last will and  
15 testament, an advance directive or preneed funeral contract,  
16 as defined in section two, article fourteen, chapter forty-five  
17 of this code;

18 (2) The surviving spouse of the deceased, unless a  
19 petition to dissolve the marriage was pending at the time of  
20 decedent's death;

21 (3) An individual previously designated by the deceased  
22 as the person with the right to control disposition of the

23 deceased's remains in a writing signed and notarized by the  
24 deceased: *Provided*, That no person may be designated to  
25 serve in such capacity for more than one nonrelative at any  
26 one time;

27 (4) The deceased's next of kin;

28 (5) A court order;

29 (6) A public official who is charged with arranging the  
30 final disposition of an indigent deceased; or

31 (7) A representative of an institution who is charged with  
32 arranging the final disposition of a deceased who donated his  
33 or her body to science.

34 (c) "Board" means the West Virginia Board of Funeral  
35 Service Examiners.

36 (d) "Certificate" means a certification by the board to be  
37 a crematory operator.

38 (e) "Courtesy card holder" means a person who only  
39 practices funeral directing periodically in West Virginia and  
40 is a licensed embalmer and funeral director in a state which  
41 borders West Virginia.

42 (f) "Cremated remains" or "cremains" means all human  
43 remains, including foreign matter cremated with the human,  
44 recovered after the completion of cremation.

45 (g) "Cremation" means the mechanical or thermal process  
46 whereby a dead human body is reduced to ashes and bone  
47 fragments and then further reduced by additional  
48 pulverization, burning or re-cremating when necessary.

49 (h) "Crematory" means a licensed place of business  
50 where a deceased human body is reduced to ashes and bone  
51 fragments and includes a crematory that stands alone or is  
52 part of or associated with a funeral establishment.

53 (i) "Crematory operator" means a person certified by the  
54 board to operate a crematory.

55 (j) "Crematory operator in charge" means a certified  
56 crematory operator who accepts responsibility for the  
57 operation of a crematory.

58 (k) "Deceased" means a dead human being for which a  
59 death certificate is required.

60 (l) "Embalmer" means a person licensed to practice  
61 embalming.

62 (m) "Embalming" means the practice of introducing  
63 chemical substances, fluids or gases used for the purpose of  
64 preservation or disinfection into the vascular system or  
65 hollow organs of a dead human body by arterial or  
66 hypodermic injection for the restoration of the physical  
67 appearance of a deceased.

68 (n) "Funeral" means a service, ceremony or rites  
69 performed for the deceased with a body present.

70 (o) "Funeral directing" means the business of engaging in  
71 the following:

72 (1) The shelter, custody or care of a deceased;

73 (2) The preparation of a deceased for burial or other  
74 disposition;

75 (3) The arranging or supervising of a funeral or memorial  
76 service for a deceased; and

77 (4) The maintenance of a funeral establishment for the  
78 preparation, care or disposition of a deceased.

79 (p) “Funeral director” means a person licensed to practice  
80 funeral directing.

81 (q) “Funeral establishment” means a licensed place of  
82 business devoted to: the care, preparation and arrangements  
83 for the transporting, embalming, funeral, burial or other  
84 disposition of a deceased. A funeral establishment can  
85 include a licensed crematory.

86 (r) “Funeral service licensee” means a person licensed  
87 after July 1, 2003, to practice embalming and funeral  
88 directing.

89 (s) “License” means a license, which is not transferable  
90 or assignable, to:

91 (1) Practice embalming and funeral directing;

92 (2) Operate a crematory or a funeral establishment.

93 (t) “Licensee” means a person holding a license issued  
94 under the provisions of this article.

95 (u) “Licensee in charge” means a licensed embalmer and  
96 funeral director who accepts responsibility for the operation  
97 of a funeral establishment.

98 (v) “Memorial service” means a service, ceremony or  
99 rites performed for the deceased without a body present.

100 (w) "Mortuary" means a licensed place of business  
101 devoted solely to the shelter, care and embalming of the  
102 deceased.

103 (x) "Person" means an individual, partnership,  
104 association, corporation, not-for-profit organization or any  
105 other organization.

106 (y) "Registration" means a registration issued by the  
107 board to be an apprentice to learn the practice of embalming,  
108 funeral directing or cremation.

109 (z) "State" means the State of West Virginia.

**§30-6-22. Disposition of body of deceased person; penalty.**

1 (a) No public officer, employee, physician or surgeon, or  
2 other person having a professional relationship with the  
3 deceased, shall send, or cause to be sent to an embalmer,  
4 funeral director or crematory operator the body of a deceased  
5 without first inquiring the desires of the deceased who has  
6 designated his or her wishes regarding the disposal of their  
7 remains through a last will and testament, an advance  
8 directive or preneed funeral contract, as defined in section  
9 two, article fourteen, chapter forty-five of this code; the  
10 surviving spouse of the deceased, unless a petition to dissolve  
11 the marriage was pending at the time of decedent's death;  
12 and, an individual previously designated by the deceased as  
13 the person with the right to control disposition of the  
14 deceased's remains in a writing signed and notarized by the  
15 deceased: *Provided*, That no person may be designated to  
16 serve in such capacity for more than one nonrelative at any  
17 one time. If there is no last will and testament, advance  
18 directive or preneed funeral contract, surviving spouse, or  
19 designated person, then the authority and direction of any  
20 next of kin or person who may be chargeable with the funeral

21 expenses of the deceased shall be used as to the disposal of  
22 the body of the deceased. The provisions of this subsection  
23 are not applicable if the remains of the decedent are subject  
24 to disposition pursuant to subsection (b) of this section.

25 (b) Notwithstanding any provision of this code to the  
26 contrary, a United States Department of Defense Record of  
27 Emergency Data Form (DD Form 93) executed by a declarant  
28 who dies while serving in a branch of the United States  
29 Military as defined in 10 U. S. C. §1481 constitutes a valid  
30 form of declaration instrument and governs the disposition of  
31 the declarant's remains. The person named in the form as the  
32 person authorized to direct disposition of the remains may  
33 arrange for the final disposition of the declarant's last  
34 remains.

35 (c) Any person who violates the provisions of this section  
36 is guilty of a misdemeanor and, upon conviction thereof, shall  
37 be fined not less than \$500, nor more than \$1,000, or  
38 imprisoned not less than ten days nor more than ninety days,  
39 or both.

**§30-6-22a. Right of disposition; preneed contract; affidavit on  
disposition of remains; role of county commission;  
liability of funeral home.**

1 (a) Notwithstanding section twenty-two of this article, a  
2 person who is eighteen years of age or older and of sound  
3 mind, by entering into a preneed funeral contract, as defined  
4 in section two, article fourteen, chapter forty-seven of this  
5 code, may direct the location, manner and conditions of the  
6 disposition of the person's remains and the arrangements for  
7 funeral goods and services to be provided upon the person's  
8 death. The disposition directions and funeral prearrangements  
9 that are contained in a preneed funeral contract are not  
10 subject to cancellation to revision unless any resources set

11 aside to fund the preneed funeral contract are insufficient  
12 under the terms of the preneed funeral contract to carry out  
13 the disposition directions and funeral prearrangements  
14 contained in the contract.

15 (b) As to any matter not addressed in a preneed funeral  
16 contract as described in subsection (a) of this section and  
17 except as provided in subsection (c) of this section, the right  
18 to control the disposition of the remains of a deceased person,  
19 the location, manner and conditions of disposition, and  
20 arrangements for funeral goods and services to be provided  
21 vests in the following, in the order named, provided that the  
22 person is eighteen years or older and is of sound mind:

23 (1)(A) A person designated by the decedent as the person  
24 with the right to control the disposition in an affidavit  
25 executed in accordance with paragraph (B) of this  
26 subdivision; and

27 (B) A person who is eighteen years of age or older and of  
28 sound mind wishing to authorize another person to control  
29 the disposition of his or her remains may execute an affidavit  
30 before a notary public in substantially the following form:

31 "I, \_\_\_\_\_, do hereby designate  
32 \_\_\_\_\_ with the right to control the  
33 disposition of my remains upon my death. I \_\_\_ have/ \_\_\_  
34 have not attached specific directions concerning the  
35 disposition of my remains with which the designee shall  
36 substantially comply, provided that these directions are  
37 lawful and there are sufficient resources in my estate to carry  
38 out the directions.

39

40 Signed

41 State of \_\_\_\_\_

42 County of \_\_\_\_\_

43 I, \_\_\_\_\_, a Notary Public of said  
44 County, do certify that \_\_\_\_\_, as  
45 principal whose name is signed to the writing above bearing  
46 date on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has this day  
47 acknowledged the same before me.

48 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

49 My commission expires: \_\_\_\_\_

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Notary Public”;

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(2) The surviving spouse of the decedent;

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(3) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one half of the surviving children shall be vested with the rights under this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving children;

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(4) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties under this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

66 (5) The surviving brother or sister of the decedent or, if  
67 there is more than one sibling of the decedent, the majority of  
68 the surviving siblings. However, less than the majority of  
69 surviving siblings shall be vested with the rights and duties  
70 under this section if they have used reasonable efforts to  
71 notify all other surviving siblings of their instructions and are  
72 not aware of any opposition to those instructions on the part  
73 of more than one half of all surviving siblings;

74 (6) The surviving grandparent of the decedent or, if there  
75 is more than one surviving grandparent, the majority of the  
76 grandparents. However, less than the majority of the  
77 surviving grandparents shall be vested with the rights and  
78 duties under this section if they have used reasonable efforts  
79 to notify all other surviving grandparents of their instructions  
80 and are not aware of any opposition to those instructions on  
81 the part of more than one half of all surviving grandparents;

82 (7) The guardian of the person of the decedent at the time  
83 of the decedent's death if one had been appointed;

84 (8) The personal representative of the estate of the  
85 decedent;

86 (9) The person in the classes of the next degree of  
87 kinship, in descending order, under the laws of descent and  
88 distribution to inherit the estate of the decedent. If there is  
89 more than one person of the same degree, any person of that  
90 degree may exercise the right of disposition;

91 (10) If the disposition of the remains of the decedent is  
92 the responsibility of the state or a political subdivision of the  
93 state, the public officer, administrator or employee  
94 responsible for arranging the final disposition of decedent's  
95 remains; or

96 (11) In the absence of any person under subdivisions (1)  
97 through (10) of this subsection, any other person willing to  
98 assume the responsibilities to act and arrange the final  
99 disposition of the decedent's remains, including the funeral  
100 director with custody of the body, after attesting in writing  
101 that a good-faith effort has been made to no avail to contact  
102 the individuals under subdivisions (1) through (10) of this  
103 subsection.

104 (c) A person entitled under law to the right of disposition  
105 forfeits that right, and the right is passed on to the next  
106 qualifying person as listed in subsection (b) of this section, in  
107 the following circumstances:

108 (1) Any person charged with murder or voluntary  
109 manslaughter in connection with the decedent's death and  
110 whose charges are known to the funeral director. However,  
111 if the charges against that person are dismissed or if the  
112 person is acquitted of the charges, the right of disposition is  
113 returned to the person;

114 (2) Any person who does not exercise his or her right of  
115 disposition within two days of notification of the death of  
116 decedent or within three days of decedent's death, whichever  
117 is earlier;

118 (3) If the person and the decedent are spouses and a  
119 petition to dissolve the marriage was pending at the time of  
120 decedent's death.

121 (d) Any person signing a funeral service agreement,  
122 cremation authorization form or any other authorization for  
123 disposition shall be deemed to warrant the truthfulness of any  
124 facts set forth therein, including the identity of the decedent  
125 whose remains are to be buried, cremated or otherwise  
126 disposed of, and the party's authority to order the disposition.

127 A funeral home has the right to rely on that funeral service  
128 agreement or authorization and shall have the authority to  
129 carry out the instructions of the person or persons the funeral  
130 home reasonably believes holds the right of disposition. The  
131 funeral home has no responsibility to independently  
132 investigate the existence of any next of kin or relative of the  
133 decedent where a means of disposition is fully set forth in a  
134 preneed funeral contract or other written directive of the  
135 deceased in accordance with this section. If there is more  
136 than one person in a class who are equal in priority and the  
137 funeral home has no knowledge of any objection by other  
138 members of that class, the funeral home may rely on and act  
139 according to the instructions of the first person in the class to  
140 make funeral and disposition arrangements, if no other person  
141 in that class provides written objections to the funeral home.

142 (e) No funeral establishment or funeral director who  
143 relies in good faith upon the instructions of a preneed funeral  
144 contract, written directive of the deceased, or an individual  
145 claiming the right of disposition in accordance with this  
146 section shall be subject to criminal or civil liability or subject  
147 to disciplinary action under this section for carrying out the  
148 disposition of the remains in accordance with those  
149 instructions.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

#### **§61-12-9. Permits required for cremation; fee.**

1 (a) It is the duty of any person cremating, or causing or  
2 requesting the cremation of, the body of any dead person who  
3 died in this state, to secure a permit for the cremation from  
4 the Chief Medical Examiner, the county medical examiner or  
5 county coroner of the county wherein the death occurred.

6 Any person who willfully fails to secure a permit for a  
7 cremation, is guilty of a misdemeanor and, upon conviction  
8 thereof, shall be fined not less than \$200. A permit for  
9 cremation shall be acted upon by the Chief Medical  
10 Examiner, the county medical examiner or the county coroner  
11 after review of the circumstances surrounding the death, as  
12 indicated by the death certificate. The person requesting  
13 issuance of a permit for cremation shall pay a reasonable fee,  
14 as determined by the Chief Medical Examiner, to the county  
15 medical examiner or coroner or to the Office of the Chief  
16 Medical Examiner, as appropriate, for issuance of the permit.

17 (b) Any person operating a crematory who does not  
18 perform a cremation pursuant to the terms of a cremation  
19 contract, or pursuant to the order of a court of competent  
20 jurisdiction, within the time contractually agreed upon, or, if  
21 the cremation contract does not specify a time period, within  
22 twenty-one days of receipt of the deceased person's remains  
23 by the crematory, whichever time is less, is guilty of a  
24 misdemeanor.

25 (c) Any person operating a crematory who fails to deliver  
26 the cremated remains of a deceased person, pursuant to the  
27 terms of a cremation contract, or pursuant to the order of a  
28 court of competent jurisdiction, within the time contractually  
29 agreed upon, or, if the cremation contract does not specify a  
30 time period, within thirty-five days of receipt of the deceased  
31 person's remains by the crematory, whichever time is less, is  
32 guilty of a misdemeanor.

33 (d) Any person convicted of a violation of the provisions  
34 of subsection (b) or (c) of this section shall be fined not less  
35 than \$1,000 nor more than \$5,000 or confined in jail for a  
36 period not to exceed six months, or both.

37 (e) In any criminal proceeding alleging that a person  
38 violated the time requirements of this section, it is a defense  
39 to the charge that a delay beyond the time periods provided  
40 for in this section were caused by circumstances wholly  
41 outside the control of the defendant.

42 (f) For purposes of this section, "cremation contract"  
43 means an agreement to perform a cremation, as a "cremation"  
44 is defined in subsection (g), section three, article six, chapter  
45 thirty of this code. A cremation contract is an agreement  
46 between a crematory and any authorized person or entity,  
47 including, but not limited to, the following persons in order  
48 of precedence:

49 (1) The deceased, who has expressed his or her wishes  
50 regarding the disposal of their remains through a last will and  
51 testament, an advance directive or preneed funeral contract,  
52 as defined in section two, article fourteen, chapter forty-five  
53 of this code;

54 (2) The surviving spouse of the deceased, unless a  
55 petition to dissolve the marriage was pending at the time of  
56 decedent's death;

57 (3) An individual previously designated by the deceased  
58 as the person with the right to control disposition of the  
59 deceased's remains in a writing signed and notarized by the  
60 deceased: *Provided*, That no person may be designated to  
61 serve in such capacity for more than one nonrelative at any  
62 one time;

63 (4) The deceased person's next of kin;

64 (5) A public official charged with arranging the final  
65 disposition of an indigent deceased person or an unclaimed  
66 corpse;

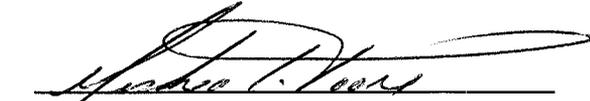
67 (6) A representative of an institution who is charged with  
68 arranging the final disposition of a deceased who donated his  
69 or her body to science;

70 (7) A public officer required by statute to arrange the  
71 final disposition of a deceased person;

72 (8) Another funeral establishment; or

73 (9) An executor, administrator or other personal  
74 representative of the deceased.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman, House Committee

  
\_\_\_\_\_  
Chairman, Senate Committee

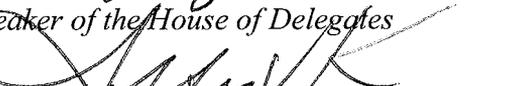
Originating in the House.

To take effect ninety days from passage.

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

The within 10 copies this the 30<sup>th</sup>  
day of March 2012.

  
\_\_\_\_\_  
Governor

FILED  
2012 MAR 30 PM 4: 14  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

PRESENTED TO THE GOVERNOR

MAR 23 2012

Time 3:35 pm