

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Introduced**

## **Senate Bill 270**

By Senator Takubo

[Introduced January 17, 2023; referred  
to the Committee on Government Organization]

1 A BILL to amend and reenact §61-12-9 o the Code of West Virginia, 1931, as amended, relating to  
2 adding an exemption to the permit requirement.

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

**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 requesting the cremation of, the  
2 body of any dead person who died in this state, to secure a permit for the cremation from the Chief  
3 Medical Examiner, the county medical examiner or county coroner of the county wherein the death  
4 occurred. Any person, excluding those persons set forth in subsection (d), who willfully fails to  
5 secure a permit for a cremation, is guilty of a misdemeanor and, upon conviction thereof, shall be  
6 fined not less than \$200. A permit for cremation shall be acted upon by the Chief Medical  
7 Examiner, the county medical examiner or the county coroner after review of the circumstances  
8 surrounding the death, as indicated by the death certificate. The person requesting issuance of a  
9 permit for cremation shall pay a reasonable fee, as determined by the Chief Medical Examiner, to  
10 the county medical examiner or coroner or to the Office of the Chief Medical Examiner, as  
11 appropriate, for issuance of the permit.

12 (b) Any person operating a crematory who does not perform a cremation pursuant to the  
13 terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within  
14 the time contractually agreed upon, or, if the cremation contract does not specify a time period,  
15 within twenty-one days of receipt of the deceased person's remains by the crematory, whichever  
16 time is less, is guilty of a misdemeanor.

17 (c) Any person operating a crematory who fails to deliver the cremated remains of a  
18 deceased person, pursuant to the terms of a cremation contract, or pursuant to the order of a court  
19 of competent jurisdiction, within the time contractually agreed upon, or, if the cremation contract  
20 does not specify a time period, within thirty-five days of receipt of the deceased person's remains  
21 by the crematory, whichever time is less, is guilty of a misdemeanor.

22 (d) Any representative of an institution who is charged with arranging the final disposition of  
23 a decedent who donated his or her body to science are exempt from the provisions of this section:  
24 Provided, That all representatives charged with arranging the final disposition of a decedent who  
25 donated his or her body to science shall make the Office of Chief Medical Examiner aware of any  
26 foul play regarding the decedent prior to any final disposition.

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

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

33 (f) (g) For purposes of this section, "cremation contract" means an agreement to perform a  
34 cremation, as a "cremation" is defined in subsection (g), ~~section three, article six, chapter thirty~~  
35 §30-6-3 of this code. A cremation contract is an agreement between a crematory and any  
36 authorized person or entity, including, but not limited to, the following persons in order of  
37 precedence:

38 (1) The deceased, who has expressed his or her wishes regarding the disposal of their  
39 remains through a last will and testament, an advance directive or preneed funeral contract, as  
40 defined in ~~section two, article fourteen, chapter forty five~~ §47-14-2 of this code;

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

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

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

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

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

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

54 (8) Another funeral establishment; or

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

NOTE: The purpose of this bill is to provide an exemption to the required permit for representatives of intuitions charged with arranging final disposition of a decedent who donated his or her body to science. The bill provides that prior to final disposition if the representative is aware of any foul play this must be reported to the Office of the Chief Medical Examiner.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.