

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 270

BY SENATOR TAKUBO

[Originating in the Committee on Government
Organization; reported on January 25, 2023]

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

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
3 Chief Medical Examiner, the county medical examiner, or county coroner of the county wherein
4 the death occurred. Any person, excluding those persons set forth in subsection (d) of this section,
5 who willfully fails to secure a permit for a cremation, is guilty of a misdemeanor and, upon
6 conviction thereof, shall be fined not less than \$200. A permit for cremation shall be acted upon
7 by the Chief Medical Examiner, the county medical examiner, or the county coroner after review
8 of the circumstances surrounding the death, as indicated by the death certificate. The person
9 requesting issuance of a permit for cremation shall pay a reasonable fee, as determined by the
10 Chief Medical Examiner, to the county medical examiner or coroner, or to the Office of the Chief
11 Medical Examiner, as 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 21 days of receipt of the deceased person's remains by the crematory, whichever time is
16 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
19 court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation
20 contract does not specify a time period, within 35 days of receipt of the deceased person's
21 remains 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
23 of a decedent who donated his or her body to science is 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
29 not 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
34 a 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
51 a 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.