

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 270**

BY SENATOR TAKUBO

[Passed March 02, 2023; in effect 90 days from  
passage (May 31, 2023)]



1 AN ACT 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 (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 (f) In any criminal proceeding alleging that a person violated the time requirements of this  
31 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 (g) For purposes of this section, "cremation contract" means an agreement to perform a  
34 cremation, as a "cremation" is defined in §30-6-3 of this code. A cremation contract is an  
35 agreement between a crematory and any authorized person or entity, including, but not limited to,  
36 the following persons in order of precedence:

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

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

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

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

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

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

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

53           (8) Another funeral establishment; or

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



The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

Originated in the Senate.

In effect 90 days from passage.

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within is ..... this the.....  
Day of ....., 2023.

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*Governor*