

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4024

FISCAL
NOTE

BY DELEGATES SUMMERS, ELLINGTON, HOUSEHOLDER,

SOBONYA, ATKINSON, DEAN, HOLLEN, BUTLER AND

ESPINOSA

[Introduced January 11, 2018; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to repeal §9-5-18 of the Code of West Virginia, 1931; and to amend and reenact §9-5-9 of
 2 said code, all relating generally to direct cremation or direct burial expenses for indigent
 3 persons; decreasing the amount the Department of Health and Human Resources may
 4 pay for cremation or burial from \$1,250 to \$1,000; making certain relatives of the indigent
 5 person liable for direct cremation or direct burial expenses; authorizing the Department of
 6 Health and Human Resources to recover direct cremation or direct burial expenses from
 7 relatives liable for those costs; requiring affidavits be signed and filed making direct
 8 cremation the preferred method and providing an exception; defining terms; and
 9 establishing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-9. Direct cremation or direct burial expenses for indigent persons.

1 (a) For purposes of this section:

2 “Direct burial” means the removal of the remains from the place of death; casket for the
 3 deceased and transportation to a West Virginia cemetery.

4 “Direct cremation” includes the removal of the remains from the place of death; container;
 5 and crematory fees.

6 “Spouse” means the person to whom the decedent was legally married or not legally
 7 separated at the time of the decedent’s death and who survived the decedent.

8 (b) The Department of Health and Human Resources may pay no more than \$1,000 for
 9 direct cremation or direct burial for indigent persons.

10 (c) Prior to paying for direct cremation or direct burial, the department shall determine the
 11 financial assets of a deceased person and whether or not the deceased’s estate or any of his or
 12 her relatives who are liable for the direct cremation or direct burial expenses pursuant to
 13 subsection (d) of this section is financially able to pay, alone or in conjunction, for the direct
 14 cremation or direct burial expenses. The Department of Health and Human Resources shall

15 require that an affidavit be filed with the department, in a form provided by and determined in
16 accordance with the income guidelines as set forth by the department, as well as any other
17 supporting financial information the department may require, including, but not limited to, bank
18 statements and income tax information of the deceased person and the relatives of the deceased
19 person who are liable for the direct cremation or direct burial expenses pursuant to section nine
20 of this article. The affidavit must be:

21 (1) Signed by the heir or heirs-at-law and state that the estate of the deceased person is
22 unable to pay the costs associated with direct cremation or direct burial and that the sole or
23 combined assets of the heir or heirs-at-law are not sufficient to pay for the direct cremation or
24 direct burial of the deceased person; or

25 (2) Signed by the county coroner or the county health officer, the attending physician or
26 other person signing the death certificate or the state medical examiner stating that the deceased
27 person has no heirs or that heirs have not been located after a reasonable search and that the
28 deceased person had no estate or the estate is pecuniarily unable to pay the costs associated
29 with direct cremation or direct burial.

30 (d) The relatives of an indigent person, who are of sufficient ability, shall be liable to pay
31 the direct cremation or direct burial expenses in the following order:

32 (1) The spouse.

33 (2) The children.

34 (3) The father and the mother.

35 (4) The brothers and sisters.

36 (e) The Department of Health and Human Resources may proceed by motion in the circuit
37 court of the county in which the indigent person may be, against one or more of the relatives
38 liable.

39 (f) If a relative so liable does not reside in this state and has no estate or debts due him or
40 her within the state by means of which the liability can be enforced against him or her, the other

41 relatives shall be liable as provided by this section.

42 (g) The liability of the relative of an indigent person for funeral service expenses is limited
 43 to the amount paid by the Department of Health and Human Resources.

44 (h) Payment shall be made by the Department of Health and Human Resources to a West
 45 Virginia licensed funeral home, as the department may determine, pursuant to appropriations for
 46 expenditures made by the Legislature.

47 (i) Direct cremation is preferred. A direct cremation may not be made of the decedent if
 48 objectionable pursuant to decedent's religion or otherwise prohibited by federal law, state law or
 49 regulation, in which case, alternate funeral service expenses shall be substituted.

50 (j) A person who knowingly swears falsely in an affidavit required by this section shall be
 51 guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or
 52 confined in jail for a period of not more than six months, or both fined and confined.

**~~§9-5-18. Funeral expenses for indigent persons; filing of affidavit to certify indigency;
 penalties for false swearing; payment by division. Repealed.~~**

1 [Repealed.]

NOTE: The purpose of this bill is to rewrite and change the direct cremation and direct burial expenses for indigent persons. The bill decreases the amount the Department of Health and Human Resources may pay for cremation or burial from \$1,250 to \$1,000. The bill makes certain relatives of the indigent person liable for direct cremation or direct burial expenses. The bill authorizes the Department of Health and Human Resources to recover direct cremation or direct burial expenses from relatives liable for those costs. The bill requires affidavits be signed and filed. The bill makes direct cremation the preferred method and provides an exception. The bill defines terms. The bill establishes a criminal penalty.

§9-5-18 is repealed.

§9-5-9 has been completely rewritten; therefore, it has been completely underscored.

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