

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 377

BY SENATOR FERNS

[Introduced January 25, 2016;

Referred to the Committee on Health and Human
Resources; and then to the Committee on the Judiciary.]

1 A BILL to amend and reenact §9-5-9 and §9-5-18 of the Code of West Virginia, 1931, as amended,
 2 all relating to liability of spouses or relatives for support; defining terms; requiring financial
 3 information; setting amount to be paid for indigent funeral service expenses; limiting
 4 number of indigent funeral services to be paid by the department in any state fiscal year;
 5 and redefining funeral service expenses to mean expenses for cremation unless
 6 objectionable pursuant to decedent’s religion or otherwise prohibited by federal law, state
 7 law or regulation.

Be it enacted by the Legislature of West Virginia:

1 That § 9-5-9 and § 9-5-18 of the Code of West Virginia, 1931, as amended, be amended
 2 and reenacted, all to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-9. Liability of spouse or relatives for support.

1 The relatives of an indigent person, who are of sufficient ability, shall be liable to support
 2 such person in the manner required by the Department of ~~welfare~~ Health and Human Resources
 3 and to pay the expenses of ~~burial~~ funeral services when he or she dies, in the following order:

- 4 (1) The spouse.
- 5 (~~1~~) (2) The children.
- 6 (~~2~~) (3) The father.
- 7 (~~3~~) (4) The brothers and sisters.
- 8 (~~4~~) (5) The mother.

9 The ~~commissioner~~ department may proceed by motion in the circuit court of the county in
 10 which the indigent person may be, against one or more of the relatives liable.

11 If a relative so liable does not reside in this state and has no estate or debts due him or
 12 her within the state by means of which the liability can be enforced against him or her, the other
 13 relatives shall be liable as provided by this section, but a relative shall not be compelled to receive
 14 the indigent person in his or her own home.

15 If it appears that a relative liable for the support of an indigent person is unable wholly to
 16 support him or her, but is able to contribute toward his or her support, the court may assess upon
 17 the relative the proportion which he or she shall be required to contribute either to the past
 18 expense incurred by the department ~~of welfare~~ or to the future support. The court may assess the
 19 residue upon the relatives in the order of their liability.

20 Payment with interest and costs may be enforced by execution.

**§9-5-18. Funeral service expenses for indigent persons; filing of affidavit and other
financial information to certify indigency; penalties for false swearing; payment by
~~division~~ department.**

1 (a) The Department of Health and Human Resources shall pay no more than \$1,000 for
 2 ~~reasonable~~ funeral service expenses for indigent persons. ~~in an amount not to exceed \$1,250~~

3 (b) For purposes of this section, the indigency of a deceased person, heir or heirs-at-law
 4 is determined by the filing of an affidavit with the department, in a form provided by and
 5 determined in accordance with the income guidelines as set forth by the department, as well as
 6 any other supporting financial information including, but not limited to, bank statements and
 7 income tax information of the deceased person, heir or heirs-at-law required by the department.

8 The affidavit shall be: (1) Signed by the heir or heirs-at-law ~~which states~~ and state that the estate
 9 of the deceased person is pecuniarily unable to pay the costs associated with a funeral and that
 10 the sole or combined assets of the heir or heirs-at-law are not sufficient to pay for the funeral
 11 expenses of the deceased person; or (2) signed by the county coroner or the county health officer,
 12 the attending physician or other person signing the death certificate or the state medical examiner
 13 stating that the deceased person has no heirs or that heirs have not been located after a
 14 reasonable search and that the deceased person had no estate or the estate is pecuniarily unable
 15 to pay the costs associated with a funeral.

16 (c) Payment shall be made by the department to the person or persons who have furnished
 17 the services and supplies for the indigent person=s funeral service expenses or to the persons

18 who have advanced payment for same, as the department may determine, pursuant to
 19 appropriations for expenditures made by the Legislature for such purpose: Provided, That, under
 20 no circumstances may the department pay for more than two thousand indigent funeral services
 21 in any state fiscal year.

22 (d) For purposes of this section, ~~reasonable~~ “funeral service expenses” means expenses
 23 for cremation services provided by a funeral director for the disposition of human remains:
 24 Provided, That, no cremation may be made of the decedent if objectionable pursuant to
 25 decedent’s religion or otherwise prohibited by federal law, state law or regulation, in which case,
 26 alternate funeral service expenses shall be substituted.

27 (e) For purposes of this section, “spouse” means the person to whom the decedent was
 28 legally married at the time of decedent’s death and who survived the decedent.

29 ~~(e)~~ (f) Any person who knowingly swears falsely in an affidavit required by this section
 30 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000
 31 or confined in ~~the county or regional~~ jail for a period of not more than six months, or both.

NOTE: The purpose of this bill is to amend current code to: (1) Add the spouse of an indigent person as a possible individual who may be liable for the funeral service expenses of the indigent person; (2) reduce the maximum amount of what the DHHR pays for funeral service expenses from \$1,250.00 to \$1,000.00; (3) require certain financial information be provided regarding the deceased, heirs or heirs-at-law in order for a determination to be made regarding whether assets of the deceased and/or heirs or heirs-at-law are sufficient to pay the funeral service expenses of the indigent person; (4) limit the Department’s obligation to only pay for 2,000 indigent funeral services in any state fiscal year; and, (5) limit or redefine funeral service expenses to mean expenses for cremation unless objectionable pursuant to decedent’s religion or otherwise prohibited by federal law, state law or regulation.

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