

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **ENGROSSED**

#### **Committee Substitute**

**for**

#### **House Bill 4380**

(BY DELEGATES ELLINGTON, SUMMERS, ROHRBACH  
AND STANSBURY)

[Originating in Committee on Finance,  
February 24, 2016.]



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 certain expenses of an indigent person;  
3 requiring spouse to be liable for funeral expenses of an indigent person; eliminating liability  
4 of certain persons for support of an indigent person; defining terms; limiting liability of  
5 certain persons for funeral expenses of an indigent person; reducing the maximum amount  
6 the department of health and human resources may pay for funeral expenses for indigent  
7 persons; authorizing department to require certain financial information; requiring certain  
8 sworn statements regarding ability to pay for funeral services for an indigent person;  
9 limiting the total number of indigent funeral services that may be paid for by the department  
10 of health and human resources per year; and requiring cremation under certain  
11 circumstances.

*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 relatives for support.**

1 (a) The relatives of an indigent person, who are of sufficient ability, shall be liable to  
2 ~~support such person in the manner required by the Department of welfare and to pay for~~ the  
3 ~~expenses of burial when he dies~~ any funeral services provided for the indigent person and paid  
4 for by the department, in the following order:

- 5 (1) The spouse.
- 6 ~~(1)~~ (2) The children.
- 7 ~~(2)~~ (3) The father.
- 8 ~~(3)~~ (4) The brothers and sisters.
- 9 ~~(4)~~ (5) The mother.

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

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

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

21           ~~Payment with interest and costs may be enforced by execution.~~

22           **(d)** The liability of the relative of an indigent person for funeral service expenses created  
23 by this section is limited to the amount paid by the department pursuant to the provisions of section  
24 eighteen of this article.

25           **(e)** For purposes of this section, "spouse" means the person to whom the decedent was  
26 legally married or not legally separated at the time of the decedent's death and who survived the  
27 decedent.

**§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~~ may pay no more than \$1,000  
2 for ~~reasonable~~ funeral service expenses for indigent persons who are cremated, and \$1,250 for  
3 those who are buried. ~~in an amount not to exceed \$1,250~~

4           **(b)** ~~For purposes of this section,~~ Prior to paying for funeral services, the department shall  
5 determine the indigency of a deceased person, ~~is determined by the filing of~~ and whether or not

6 the deceased's estate or any of his or her relatives who are liable for the funeral service expenses  
7 pursuant to section nine of this article is financially able to pay, alone or in conjunction, for the  
8 funeral service expenses. The department shall require that an affidavit be filed with the  
9 department, in a form provided by and determined in accordance with the income guidelines as  
10 set forth by the department, as well as any other supporting financial information the department  
11 may require, including, but not limited to, bank statements and income tax information of the  
12 deceased person and the relatives of the deceased person who are liable for the funeral service  
13 expenses pursuant to section nine of this article. The affidavit must be: (1) Signed by the ~~heir or~~  
14 ~~heirs-at-law which states~~ relatives liable for the funeral service expenses and state that the estate  
15 of the deceased person is pecuniarily unable to pay the ~~costs associated with a funeral,~~ funeral  
16 service expenses and that the sole or combined assets of the relatives liable for the funeral service  
17 expenses are not sufficient to pay for the funeral service expenses; or (2) signed by the county  
18 coroner or the county health officer, the attending physician or other person signing the death  
19 certificate or the state medical examiner stating that the deceased person has no heirs or that  
20 heirs have not been located after a reasonable search and that the deceased person had no  
21 estate or the estate is pecuniarily unable to pay the costs associated with a funeral.

22 (c) Payment shall be made by the department to the person or persons who have furnished  
23 the services and supplies for the indigent persons funeral service expenses or to the persons who  
24 have advanced payment for same, as the department may determine, pursuant to appropriations  
25 for expenditures made by the Legislature for such purpose: Provided, That, the department may  
26 not pay for more than two thousand indigent funeral services in any fiscal year.

27 (d) For purposes of this section, ~~reasonable~~ "funeral service expenses" means expenses  
28 for cremation services provided by a funeral director for the disposition of human remains:  
29 Provided, That, funeral service expense may also include an alternative funeral service if the  
30 family member otherwise responsible for reimbursement pursuant to subsection (a), section nine  
31 of this article if he or she had not been deemed indigent determines that cremation would have

32 been objectionable to the decedent because of his or her religion or is otherwise prohibited by  
33 federal or state law or regulation.

34 (e) For purposes of this section, "alternate funeral expenses" means expenses for services  
35 provided by a funeral director for the disposition of human remains other than by cremation and  
36 expenses for interment by a perpetual care cemetery as these terms are defined in section one,  
37 article five-a, chapter thirty-five of the code.

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