

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4024**

BY DELEGATES SUMMERS, ELLINGTON, HOUSEHOLDER,

SOBONYA, ATKINSON, DEAN, HOLLEN AND BUTLER

[Originating in the Committee on Finance;

February 7, 2018.]



1 A BILL to repeal §9-5-18 of the Code of West Virginia, 1931, as amended; and to amend and  
2 reenact §9-5-9 of said code, all relating generally to direct cremation or direct burial  
3 expenses for indigent persons; decreasing the maximum amount paid by the Department  
4 of Health and Human Resources for indigent burial or cremation; making certain relatives  
5 of the indigent person liable for direct cremation or direct burial expenses; authorizing the  
6 Department of Health and Human Resources to recover direct cremation or direct burial  
7 expenses from relatives liable for those costs; requiring affidavits be signed and filed;  
8 requiring direct cremation in certain circumstances; defining terms; and establishing a  
9 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 the 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 and who survived  
7 the decedent: *Provided*, That a petition for divorce had not been filed by either the decedent or  
8 the spouse prior to the decedent’s death.

9 (b) The Department of Health and Human Resources shall pay for direct cremation or  
10 direct burial for indigent persons in an amount not to exceed the actual cost of the direct cremation  
11 or direct burial service provided, or \$1000 whichever is less.

12 (c) Prior to paying for direct cremation or direct burial, the department shall determine the  
13 financial assets of a deceased person and whether or not the deceased’s estate or any of his or  
14 her relatives who are liable for the direct cremation or direct burial expenses pursuant to

15 subsection (d) of this section is financially able to pay, alone or in conjunction, for the direct  
16 cremation or direct burial expenses. The Department of Health and Human Resources shall  
17 require that an affidavit be filed with the department, in a form provided by and determined in  
18 accordance with the income guidelines as set forth by the department, as well as any other  
19 supporting financial information the department may require, including, but not limited to, bank  
20 statements and income tax information of the deceased person and the relatives of the deceased  
21 person who are liable for the direct cremation or direct burial expenses pursuant to section nine  
22 of this article. The affidavit must be:

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

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

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

34 (1) The spouse.

35 (2) The children.

36 (3) The parents.

37 (4) The brothers and sisters.

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

41 (f) If a relative so liable does not reside in this state and has no estate or debts due him or  
42 her within the state by means of which the liability can be enforced against him or her, the other  
43 relatives shall be liable as provided by this section.

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

46 (h) Payment for direct burials or direct cremations for indigents shall be made by the  
47 Department of Health and Human Resources to the West Virginia funeral director licensed  
48 pursuant to §30-6-9 of this code or a crematory operator certificated pursuant to §30-6-11 of this  
49 code that provided the direct burial or direct cremation, as the department may determine,  
50 pursuant to appropriations for expenditures made by the Legislature. Nothing in this section shall  
51 prohibit a family from holding a memorial service for the indigent person: *Provided*, That payment  
52 under this section is limited to direct burial and direct cremation and may not include payment for  
53 a memorial service.

54 (i) In the event that no family members can be found, or refuse to participate, an application  
55 for payment of direct cremation or direct burial for indigent persons may be submitted to the  
56 Department of Health and Human Resources by the provider of such services.

57 (j) A direct cremation may not be made of the decedent if objectionable pursuant to  
58 decedent's religion or otherwise prohibited by federal law, state law or regulation, in which case,  
59 alternate funeral service expenses shall be substituted. In the absence of a religious objection or  
60 prohibition by federal law, state law or regulation, an indigent for which payment under this section  
61 is authorized shall be cremated.

62 (k) A person who knowingly swears falsely in an affidavit required by this section shall be  
63 guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or  
64 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.]