

No. 455

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED
Committee Substitute for
SENATE BILL NO. 455

(By Senator Tucker M. Rescent)



PASSED April 7 1989
In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 455

(BY SENATOR TUCKER, MR. PRESIDENT (BY REQUEST),
Original sponsor)

[Passed April 7, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying the term claimant when granting awards to minors; compensating West Virginia citizens who are victimized in states without compensation programs.

Be it enacted by the Legislature of West Virginia:

That section three, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who
4 claim an award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does
6 not include a nonresident of this state where the
7 criminally injurious act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim; or in the event that the deceased victim is a
10 minor, the parents, legal guardians and siblings of the
11 victim;

12 (3) A third person other than a collateral source who
13 legally assumes or voluntarily pays the obligations of
14 a victim, or of a dependent of a victim, which obliga-
15 tions are incurred as a result of the criminally injuri-
16 ous conduct that is the subject of the claim;

17 (4) A person who is authorized to act on behalf of a
18 victim, dependent or a third person who is not a
19 collateral source; and, in the event that the victim,
20 dependent or third person who is not a collateral
21 source is a minor or other legally incompetent person,
22 the duly qualified fiduciary of such minor.

23 (b) "Collateral source" means a source of benefits or
24 advantages for economic loss otherwise compensable
25 that the victim or claimant has received, or that is
26 readily available to him, from any of the following
27 sources:

28 (1) The offender, except any restitution received
29 from the offender pursuant to an order by a court of
30 law sentencing the offender or placing him on proba-
31 tion following a conviction in a criminal case arising
32 from the criminally injurious act for which a claim for
33 compensation is made;

34 (2) The government of the United States or any of its
35 agencies, a state or any of its political subdivisions, or
36 an instrumentality of two or more states;

37 (3) Social security, medicare and medicaid;

38 (4) State-required, temporary, nonoccupational
39 disability insurance; other disability insurance;

40 (5) Workers' compensation;

41 (6) Wage continuation programs of any employer;

42 (7) Proceeds of a contract of insurance payable to the
43 victim or claimant for loss that was sustained because
44 of the criminally injurious conduct;

45 (8) A contract providing prepaid hospital and other
46 health care services or benefits for disability;

47 (9) That portion of the proceeds of all contracts of
48 insurance payable to the claimant on account of the
49 death of the victim which exceeds twenty-five thou-
50 sand dollars.

51 (c) "Criminally injurious conduct" means conduct
52 that occurs or is attempted in this state or in any state
53 not having a victim compensation program which by
54 its nature poses a substantial threat of personal injury
55 or death, and is punishable by fine or imprisonment or
56 death, or would be so punishable but for the fact that
57 the person engaging in the conduct lacked capacity to
58 commit the crime under the laws of this state. Crim-
59 inally injurious conduct does not include conduct
60 arising out of the ownership, maintenance or use of a
61 motor vehicle, except when the person engaging in the
62 conduct intended to cause personal injury or death, or
63 except when the person engaging in the conduct
64 committed negligent homicide, driving under the
65 influence of alcohol, controlled substances or drugs, or
66 reckless driving.

67 (d) "Dependent" means an individual who received
68 over half of his support from the victim. For the
69 purpose of determining whether an individual
70 received over half of his support from the victim,
71 there shall be taken into account the amount of
72 support received from the victim as compared to the
73 entire amount of support which the individual
74 received from all sources, including support which the
75 individual himself supplied. The term "support"
76 includes, but is not limited to, food, shelter, clothing,
77 medical and dental care and education. The term
78 "dependent" includes a child of the victim born after
79 his death.

80 (e) "Economic loss" means economic detriment
81 consisting only of allowable expense, work loss and

82 replacement services loss. If criminally injurious
83 conduct causes death, economic loss includes a depend-
84 ent's economic loss and a dependent's replacement
85 services loss. Noneconomic detriment is not economic
86 loss; however, economic loss may be caused by pain
87 and suffering or physical impairment.

88 (f) "Allowable expense" means reasonable charges
89 incurred or to be incurred for reasonably needed
90 products, services and accommodations, including
91 those for medical care, prosthetic devices, eye glasses,
92 dentures, rehabilitation and other remedial treatment
93 and care.

94 Allowable expense includes a total charge not in
95 excess of three thousand dollars for expenses in any
96 way related to funeral, cremation and burial. It does
97 not include that portion of a charge for a room in a
98 hospital, clinic, convalescent home, nursing home or
99 any other institution engaged in providing nursing
100 care and related services in excess of a reasonable and
101 customary charge for semiprivate accommodations,
102 unless accommodations other than semiprivate accom-
103 modations are medically required.

104 (g) "Work loss" means loss of income from work that
105 the injured person would have performed if he had
106 not been injured and expenses reasonably incurred or
107 to be incurred by him to obtain services in lieu of
108 those he would have performed for income, reduced
109 by any income from substitute work actually per-
110 formed or to be performed by him, or by income he
111 would have earned in available appropriate substitute
112 work that he was capable of performing but unreason-
113 ably failed to undertake.

114 (h) "Replacement services loss" means expenses
115 reasonably incurred or to be incurred in obtaining
116 ordinary and necessary services in lieu of those the
117 injured person would have performed, not for income
118 but for the benefit of himself or his family, if he had
119 not been injured.

120 (i) "Dependent's economic loss" means loss after a
121 victim's death of contributions or things of economic

122 value to his dependents, not including services they
123 would have received from the victim if he had not
124 suffered the fatal injury, less expenses of the depend-
125 ents avoided by reason of the victim's death.

126 (j) "Dependent's replacement service loss" means
127 loss reasonably incurred or to be incurred by depend-
128 ents after a victim's death in obtaining ordinary and
129 necessary services in lieu of those the victim would
130 have performed for their benefit if he had not suffered
131 the fatal injury, less expenses of the dependents
132 avoided by reason of the victim's death and not
133 subtracted in calculating dependent's economic loss.

134 (k) "Noneconomic detriment" means sorrow, mental
135 anguish, and solace which may include society, com-
136 panionship, comfort, guidance, kindly offices and
137 advice.

138 (l) "Victim" means a person who suffers personal
139 injury or death as a result of any one of the following:
140 (1) Criminally injurious conduct; (2) the good faith
141 effort of the person to prevent criminally injurious
142 conduct; or (3) the good faith effort of the person to
143 apprehend a person that the injured person has
144 observed engaging in criminally injurious conduct, or
145 who such injured person has reasonable cause to
146 believe has engaged in such criminally injurious
147 conduct immediately prior to the attempted
148 apprehension.

149 (m) "Contributory misconduct" means any conduct
150 of the claimant, or of the victim through whom the
151 claimant claims an award, that is unlawful or inten-
152 tionally tortious and that, without regard to the
153 conduct's proximity in time or space to the criminally
154 injurious conduct has causal relationship to the
155 criminally injurious conduct that is the basis of the
156 claim and shall also include the voluntary intoxication
157 of the claimant, either by the consumption of alcohol
158 or the use of any controlled substance when such
159 intoxication has a causal connection or relationship to
160 the injury sustained. The voluntary intoxication of a
161 victim shall not be a defense against the estate of a
162 deceased victim.


The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

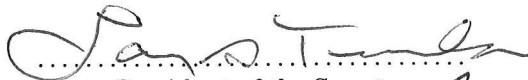

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

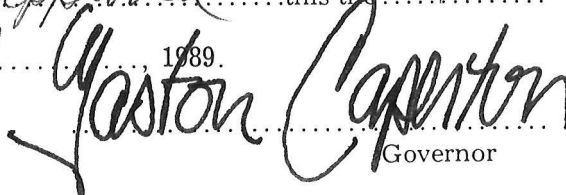

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within *is approved* this the *24th*
day of *April* 1989.


Governor

PRESENTED TO THE
GOVERNOR

Date 4/14/89

Time 5:15