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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2027**

(By Delegate Boggs)

Passed March 10, 2007

In Effect Ninety Days from Passage

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HB

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H. B. 2027

(BY DELEGATE BOGGS)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §14-2A-3 of the Code of West Virginia, 1931, as amended, relating to the crime victims compensation program; allowing awards under the crime victims compensation program to be made to victims of identity theft; and definitions.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 of the Code of West Virginia, 1931, 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 claim an
4 award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally
7 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 minor, the
10 parents, legal guardians and siblings of the victim;

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

16 (4) A person who is authorized to act on behalf of a
17 victim, dependent or a third person who is not a collateral
18 source, including, but not limited to, assignees, persons
19 holding power of attorney or other persons who hold
20 authority to make or submit claims in place of or on behalf of
21 a victim, a dependent or third person who is not a collateral
22 source; and, in the event that the victim, dependent or third
23 person who is not a collateral source is a minor or other
24 legally incompetent person, the duly qualified fiduciary of
25 the minor; and

26 (5) A person who is a secondary victim in need of mental
27 health counseling due to the person's exposure to the crime
28 committed. An award to a secondary victim may not exceed
29 one thousand dollars.

30 (6) A person who owns real property damaged by the
31 operation of a methamphetamine laboratory without the
32 knowledge or consent of the owner of the real property.

33 (7) An individual who had his or her personal identifying
34 information used without authorization by another to obtain
35 credit, goods, services, money or property, and did not use or
36 possess the credit, goods, services, money or property
37 obtained by the identity theft, and filed a police report in that
38 regard.

39 (b) "Collateral source" means a source of benefits or
40 advantages for economic loss otherwise compensable that the
41 victim or claimant has received, or that is readily available to
42 him or her, from any of the following sources:

43 (1) The offender, including any restitution received from
44 the offender pursuant to an order by a court of law sentencing
45 the offender or placing him or her on probation following a
46 conviction in a criminal case arising from the criminally
47 injurious act for which a claim for compensation is made;

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

51 (3) Social Security, Medicare and Medicaid;

52 (4) State-required, temporary, nonoccupational disability
53 insurance; other disability insurance;

54 (5) Workers' compensation;

55 (6) Wage continuation programs of any employer;

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

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

61 (9) That portion of the proceeds of all contracts of
62 insurance payable to the claimant on account of the death of
63 the victim which exceeds twenty-five thousand dollars.

64 (c) "Criminally injurious conduct" means conduct that
65 occurs or is attempted in this state or in any state not having
66 a victim compensation program which by its nature poses a
67 substantial threat of personal injury or death and is
68 punishable by fine or imprisonment or death or would be so

69 punishable but for the fact that the person engaging in the
70 conduct lacked capacity to commit the crime under the laws
71 of this state. Criminally injurious conduct also includes an
72 act of terrorism, as defined in 18 U.S.C. §2331, committed
73 outside of the United States against a resident of this state.
74 Criminally injurious conduct does not include conduct arising
75 out of the ownership, maintenance or use of a motor vehicle,
76 except when the person engaging in the conduct intended to
77 cause personal injury or death, or when the person engaging
78 in the conduct committed negligent homicide, driving under
79 the influence of alcohol, controlled substances or drugs,
80 reckless driving, or when the person leaves the scene of the
81 accident.

82 (d) "Dependent" means an individual who received over
83 half of his or her support from the victim. For the purpose of
84 determining whether an individual received over half of his
85 or her support from the victim, there shall be taken into
86 account the amount of support received from the victim as
87 compared to the entire amount of support which the
88 individual received from all sources, including support which
89 the individual himself or herself supplied. The term
90 "support" includes, but is not limited to, food, shelter,
91 clothing, medical and dental care and education. The term
92 "dependent" includes a child of the victim born after his or
93 her death.

94 (c) "Economic loss" means economic detriment
95 consisting only of allowable expense, work loss and
96 replacement services loss. If criminally injurious conduct
97 causes death, economic loss includes a dependent's economic
98 loss and a dependent's replacement services loss.
99 Noneconomic detriment is not economic loss; however,
100 economic loss may be caused by pain and suffering or
101 physical impairment. For purposes of this article, the term
102 "economic loss" includes a lost scholarship as defined in this
103 section.

104 (f)(1) "Allowable expense" means reasonable charges
105 incurred or to be incurred for reasonably needed products,

106 services and accommodations, including those for medical
107 care, mental health counseling, prosthetic devices, eye
108 glasses, dentures, rehabilitation and other remedial treatment
109 and care.

110 (2) Allowable expense includes a total charge not in
111 excess of six thousand dollars for expenses in any way
112 related to funeral, cremation and burial. It does not include
113 that portion of a charge for a room in a hospital, clinic,
114 convalescent home, nursing home or any other institution
115 engaged in providing nursing care and related services in
116 excess of a reasonable and customary charge for semiprivate
117 accommodations, unless accommodations other than
118 semiprivate accommodations are medically required.

119 (3) Allowable expense also includes:

120 (A) A charge, not to exceed five thousand dollars, for
121 cleanup of real property damaged by a methamphetamine
122 laboratory, or a charge, not to exceed one thousand dollars,
123 for any other crime scene cleanup;

124 (B) Victim relocation costs, not to exceed one thousand
125 dollars; and

126 (C) Reasonable travel expenses, not to exceed one
127 thousand dollars, for a claimant to attend court proceedings
128 that are conducted for the prosecution of the offender.

129 (D) Reasonable travel expenses for a claimant to return
130 a person who is a minor or incapacitated adult who has been
131 unlawfully removed from this state to another state or
132 country, if such removal constitutes a crime under the laws of
133 this state. Reasonable travel expenses to another state for
134 such purpose may not exceed two thousand dollars and
135 reasonable travel expenses for such purpose to another
136 county may not exceed three thousand dollars.

137 (g) "Work loss" means loss of income from work that the
138 injured person would have performed if he or she had not
139 been injured and expenses reasonably incurred or to be

140 incurred by him or her to obtain services in lieu of those he
141 or she would have performed for income, reduced by any
142 income from substitute work actually performed or to be
143 performed by him or her, or by income he or she would have
144 earned in available appropriate substitute work that he or she
145 was capable of performing but unreasonably failed to
146 undertake. "Work loss" also includes loss of income from
147 work by the parent or legal guardian of a minor victim who
148 must miss work to take care of the minor victim.

149 (h) "Replacement services loss" means expenses
150 reasonably incurred or to be incurred in obtaining ordinary
151 and necessary services in lieu of those the injured person
152 would have performed, not for income but for the benefit of
153 himself or herself or his or her family, if he or she had not
154 been injured.

155 (i) "Dependent's economic loss" means loss after a
156 victim's death of contributions or things of economic value to
157 his or her dependents, not including services they would have
158 received from the victim if he or she had not suffered the
159 fatal injury, less expenses of the dependents avoided by
160 reason of the victim's death.

161 (j) "Dependent's replacement service loss" means loss
162 reasonably incurred or to be incurred by dependents after a
163 victim's death in obtaining ordinary and necessary services in
164 lieu of those the victim would have performed for their
165 benefit if he or she had not suffered the fatal injury, less
166 expenses of the dependents avoided by reason of the victim's
167 death and not subtracted in calculating dependent's economic
168 loss.

169 (k) "Victim" means a person who suffers personal injury
170 or death as a result of any one of the following: (1)
171 Criminally injurious conduct; (2) the good faith effort of the
172 person to prevent criminally injurious conduct; or (3) the
173 good faith effort of the person to apprehend a person that the
174 injured person has observed engaging in criminally injurious
175 conduct, or who the injured person has reasonable cause to
176 believe has engaged in criminally injurious conduct

177 immediately prior to the attempted apprehension. "Victim"
178 shall also include the owner of real property damaged by the
179 operation of a methamphetamine laboratory.

180 (l) "Contributory misconduct" means any conduct of the
181 claimant, or of the victim through whom the claimant claims
182 an award, that is unlawful or intentionally tortious and that,
183 without regard to the conduct's proximity in time or space to
184 the criminally injurious conduct, has causal relationship to
185 the criminally injurious conduct that is the basis of the claim
186 and shall also include the voluntary intoxication of the
187 claimant, either by the consumption of alcohol or the use of
188 any controlled substance when the intoxication has a causal
189 connection or relationship to the injury sustained. The
190 voluntary intoxication of a victim is not a defense against the
191 estate of a deceased victim.

192 (m) "Lost scholarship" means a scholarship, academic
193 award, stipend or other monetary scholastic assistance which
194 had been awarded or conferred upon a victim in conjunction
195 with a postsecondary school educational program and, which
196 the victim is unable to receive or use, in whole or in part, due
197 to injuries received from criminally injurious conduct of the
198 offender.

199 (n) "Personal identifying information" means an
200 individual's name, address, telephone number, driver's
201 license number, social security number, place of
202 employment, employee identification number, mother's
203 maiden name, demand deposit account number, savings
204 account number or credit card number.

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



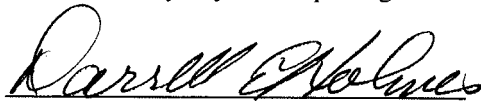
Chairman Senate Committee



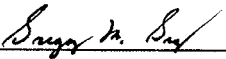
Chairman House Committee

Originating in the House.

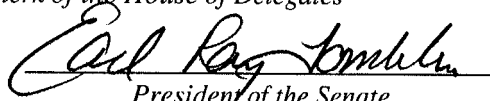
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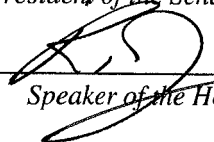
Clerk of the Senate



Clerk of the House of Delegates

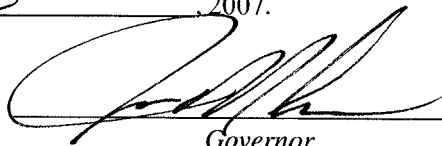


President of the Senate



Speaker of the House of Delegates

The within is approved this the 23rd
day of March, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2007

Time

~~2:45 pm~~

2:01 pm

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