WEST VIRGINIA CODE CHAPTER 14 ARTICLE 2

WV Legislature

§14-2-1. Purpose.

The purpose of this article is to provide a simple and impartial method for the consideration of claims against the state that because of the provisions of section thirty-five, article VI of the Constitution of the State, and of statutory restrictions, inhibitions or limitations, cannot be determined in the regular courts of the state; and to provide for proceedings in which the state has a special interest.

WV Legislature

§14-2-2. Venue for certain suits and actions.

(a) Any suit, action, or proceeding in which the state, the Governor, any other state officer, or a state agency is made a party defendant, or any suit attempting to enjoin or otherwise suspend or affect a judgment or decree on behalf of the state obtained in any circuit court, may be brought and prosecuted in the circuit court of any county wherein the plaintiff or petitioner who is appearing in the action or proceeding resides, or where the cause of action arose; or, alternatively, in the circuit court of Kanawha County.

(b) Any proceeding for injunctive or mandamus relief involving the taking, title, or collection for or prevention of damage to real property may be brought and presented in the circuit court of the county in which the real property affected is situate.

(c) This section shall apply only to such proceedings as are not prohibited by the Constitutional immunity of the state from suit under section thirty-five, article six of the Constitution of the State.

WV Legislature

§14-2-2a. Venue for suits and actions involving state institutions of higher education.

(a) Notwithstanding the provisions of §14-2-2 of this code, any civil action in which the governing board of any state institution of higher education, any state institution of higher education, or any department or office of any of those entities, or any officer, employee, agent, intern or resident of any of those entities, acting within the scope of his or her employment, is made a party defendant, shall be brought in the circuit court of any county wherein the cause of action arose, unless otherwise agreed by the parties.

(b) The exclusive venue provisions of this section are not applicable to:

(1) An action involving an entity or person named in subsection (a) of this section as garnishee or suggestee; and

(2) A proceeding for injunctive or mandamus relief involving the taking, title, or collection for or prevention of damage to real property, and where general laws or court rules provide that proper venue is in the county in which the real property affected is situate.

(c) This section applies only to proceedings not prohibited by the constitutional immunity of the state from suit under section thirty-five, article VI of the Constitution of the State.

WV Legislature

§14-2-3. Definitions.

For the purpose of this article:

"Commission" means the West Virginia Legislative Claims Commission established by section four of this article.

"Claim" means a claim authorized to be heard by the commission in accordance with this article.

"Approved claim" means a claim found by the commission to be one that should be paid under the provisions of this article.

"Award" means the amount recommended by the commission to be paid in satisfaction of an approved claim.

"Clerk" means the clerk of the West Virginia Legislative Claims Commission.

"State agency" means a state department, board, commission, institution, or other administrative agency of state government: Provided, That a "state agency" shall not be considered to include county commissions, county boards of education, municipalities, or any other political or local subdivision of the state regardless of any state aid that might be provided.

WV Legislature

§14-2-4. Court of Claims to be continued and renamed the West Virginia Legislative Claims Commission; appointment and terms of commissioners; vacancies.

The "Court of Claims" is hereby renamed the West Virginia Legislative Claims Commission. It shall consist of three commissioners, to be appointed by the President of the Senate and the Speaker of the House of Delegates, one of whom shall be appointed presiding commissioner. The judges of the Court of Claims sitting on the effective date of the amendments to this article enacted during the 2017 Regular Session of the Legislature will continue their existing terms as commissioners. Each appointment to the commission shall be made from a list of three qualified nominees furnished by the Board of Governors of the West Virginia State Bar. The President of the Senate and the Speaker of the House of Delegates may jointly terminate the appointment of any commissioner appointed under this section at any time.

The terms of the commissioners shall be six years. Not more than two of the commissioners shall be of the same political party. An appointment to fill a vacancy shall be for the unexpired term.

WV Legislature

§14-2-4a. Interim commissioners.

(a) If at any time two or more of the commissioners appointed under section four of this article are temporarily unable, due to illness or other incapacity, to perform their responsibilities the President of the Senate and the Speaker of the House of Delegates may appoint one or two interim commissioners to serve under the conditions specified in this section.

(b) Appointments made under this section are temporary. An interim commissioner serves under this section until the commissioner for whom the interim commissioner is temporarily replacing can resume his or her duties. In no event may the interim commissioner serve for more than three months unless reappointed.

(c) Appointments made under this section shall be made from a list furnished to the President of the Senate and the Speaker of the House of Delegates by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall annually, on or before January 15, submit a list of twenty qualified nominees.

(d) An interim commissioner:

(1) Is entitled to the same compensation and expense reimbursement a commissioner is entitled to under the provisions of section eight of this article;

(2) Shall take the oath of office as required in section nine of this article;

(3) Has all the authority given to a commissioner under this article; and

(4) Is required to possess the qualifications required of a commissioner in section ten of this article.

(e) The President of the Senate and the Speaker of the House of Delegates may jointly terminate the appointment of any interim commissioner appointed under this section at any time.

WV Legislature

§14-2-5. Commission clerk and other personnel.

The President of the Senate and the Speaker of the House of Delegates may appoint a clerk, chief deputy clerk and deputy clerks. The salaries of the clerk, the chief deputy clerk and the deputy clerks shall be fixed by the Joint Committee on Government and Finance, and shall be paid out of the regular appropriation for the commission. The clerk shall have custody of and maintain all records and proceedings of the commission, shall attend meetings and hearings of the commission, shall administer oaths and affirmations and shall issue all official summonses, subpoenas, orders, statements and awards. The chief deputy clerk or another deputy clerk shall act in the place and stead of the clerk in the clerk's absence.

The President of the Senate and the Speaker of the House of Delegates may employ other persons whose services are necessary to the orderly transaction of the business of the commission and fix their compensation.

WV Legislature

§14-2-6

Repealed

Acts, 2017 Reg. Sess., Ch. 29.

WV Legislature

§14-2-7. Meeting place of the commission.

The regular meeting place of the commission shall be at the State Capitol, and the Joint Committee on Government and Finance shall provide adequate quarters therefor. In order to facilitate the full hearing of claims arising elsewhere in the state, the commission may convene at any county seat or other location in the state, including a correctional institution: Provided, That the commission will make reasonable efforts to meet in appropriate public or private buildings in keeping with the dignity and decorum of the State.

WV Legislature

§14-2-8. Compensation of commissioners; expenses.

Each commissioner shall receive $210 for each day actually served and expenses incurred in the performance of his or her duties paid at the same per diem rate as members of the Legislature: Provided, That the presiding commissioner shall receive an additional $50 for each day actually served. In addition to the expense per diem, each commissioner may, when using his or her own vehicle, be reimbursed for mileage. The number of days served by each commissioner shall not exceed one hundred twenty in any fiscal year, except by authority of the President of the Senate and the Speaker of the House of Delegates: Provided, That in computing the number of days served, days utilized solely for the exercise of duties assigned to commissioners by this article and the provisions of article two-a of this chapter shall be disregarded. For the purpose of this section, time served shall include time spent in the hearing of claims, in the consideration of the record, in the preparation of opinions and in necessary travel.

WV Legislature

§14-2-9. Oath of office.

Each commissioner shall before entering upon the duties of his or her office, take and subscribe to the oath prescribed by section 5, article IV of the Constitution of the State. The oath shall be filed with the clerk.

WV Legislature

§14-2-10. Qualifications of commissioners.

Each commissioner appointed to the West Virginia Legislative Claims Commission shall be an attorney at law, licensed to practice in this state, and shall have been so licensed to practice law for a period of not less than ten years prior to his or her appointment as commissioner. A commissioner shall not be an officer or an employee of any branch of state government, except in his or her capacity as a member of the commission and shall receive no other compensation from the state or any of its political subdivisions. A commissioner shall not hear or participate in the consideration of any claim in which he or she is interested personally, either directly or indirectly.

WV Legislature

§14-2-11. Attorney General to represent state.

Unless expressly exempted in the code, the Attorney General shall represent the interests of the State in all claims coming before the commission.

WV Legislature

§14-2-12. General powers of the commission.

The commission shall, in accordance with this article, consider claims which, but for the Constitutional immunity of the state from suit, or for some statutory restrictions, inhibitions or limitations, could be maintained in the regular courts of the state. No liability shall be imposed upon the state or any state agency by a determination of the commission approving a claim and recommending an award, unless the claim is: (1) Made under an existing appropriation, in accordance with section nineteen of this article; or (2) a claim under a special appropriation, as provided in section twenty of this article. The commission shall consider claims in accordance with the provisions of this article.

Except as is otherwise provided in this article, a claim shall be instituted by the filing of notice with the clerk. In accordance with rules promulgated by the commission, each claim shall be considered by the commission as a whole, or by a commissioner sitting individually, and if, after consideration, the commission finds that a claim is just and proper, it shall so determine and shall file with the clerk a brief statement of its reasons. A claim so filed shall be an approved claim. The commission shall also determine the amount that should be paid to the claimant, and shall itemize this amount as an award, with the reasons therefor, in its statement filed with the clerk. In determining the amount of a claim, interest shall not be allowed unless the claim is based upon a contract which specifically provides for the payment of interest.

WV Legislature

§14-2-13. Jurisdiction of the commission.

The jurisdiction of the commission, except for the claims excluded by section fourteen, shall extend to the following matters:

(1) Claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state or any of its agencies, which the state as a sovereign commonwealth should in equity and good conscience discharge and pay; and

(2) Claims and demands, liquidated and unliquidated, ex contractu and ex delicto, which may be asserted in the nature of set-off or counterclaim on the part of the state or any state agency.

WV Legislature

§14-2-13a. Claims for unjust arrest and imprisonment or conviction and imprisonment.

(a) *Legislative intent.* — The Legislature finds and declares that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned and innocent persons wrongly arrested, charged with a crime, or imprisoned, who have subsequently been released when another person was arrested, prosecuted, and convicted of the same criminal offense have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that affected persons should have an available avenue of redress over and above the existing tort remedies. Therefore, the Legislature intends by enactment of the provisions of this section that those innocent persons who can demonstrate that they were wrongly arrested and imprisoned or unjustly convicted and imprisoned are able to seek damages against the state for loss of liberty.

(b) *Notice of claim.* — The claimants notice of claim shall state facts in sufficient detail to permit the court to find that a claimant is likely to succeed at a trial on the merits. If the court finds in its discretion after reviewing a claim that the claimant has failed to allege sufficient facts upon which relief can be granted, the court may dismiss the claim, either on its own motion or by a motion of the state. Any claimant filing a claim under this article shall file his or her claim within two years of the date of the final order vacating the claimant's conviction, a pardon was granted, or the dismissal of the accusatory instrument.

(c) *Burden of proof.* — A claimant shall demonstrate by clear and convincing evidence that they were unjustly arrested and imprisoned or unjustly convicted and imprisoned, and the court shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by such persons or those acting on their behalf. Specifically, the following shall be proven by clear and convincing evidence:

(1)(A) The claimant has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of confinement, and has served all or any part of the sentence; or

(B) The claimant has been arrested and confined, and charged by warrant, information, or any other accusatory instrument for one or more felonies or misdemeanors, and that the charges were dismissed against the claimant; and

(2)(A) The claimant has been pardoned upon the ground of innocence of the crime or crimes for which the claimant was sentenced and which are the grounds for the complaint; or

(B) The claimant's judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed.

(d) *Type of relief granted and the claimant's burden to prove damages.* — If the court finds

that the claimant is entitled to a judgment, the court shall award damages in a sum of money as the court determines will fairly and reasonably compensate the claimant based upon the sufficiency of the claimant's proof at trial. The damages shall depend upon the unique facts and circumstances of each claim. The claimant shall bear the ultimate burden of proving all damages associated with the claimant's claim.

WV Legislature

§14-2-14. Claims excluded.

The jurisdiction of the commission shall not extend to any claim:

1. For loss, damage, or destruction of property or for injury or death incurred by a member of the militia or National Guard when in the service of the state.

2. For a disability or death benefit under chapter twenty-three of this code.

3. For unemployment compensation under chapter twenty-one-a of this code.

4. For relief or public assistance under chapter nine of this code.

5. With respect to which a proceeding may be maintained against the state, by or on behalf of the claimant in the courts of the state.

WV Legislature

§14-2-15. Rules of practice and procedure.

The commission shall adopt and may from time to time amend rules of procedure, in accordance with the provisions of this article, governing proceedings before the commission. Rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. Rules shall permit a claimant to appear in his or her own behalf or be represented by counsel.

Discovery may be used in a case pending before the commission in the same manner that discovery is conducted pursuant to the Rules of Civil Procedure for trial courts of record, Rules 26 through 36. The commission may compel discovery and impose sanctions for a failure to make discovery, in the same manner as a court is authorized to do under the provisions of Rule 37 of the Rules of Civil Procedure for trial courts of record: Provided, That the commission shall not find a person in contempt for failure to comply with an order compelling discovery.

The commission, upon its own motion or upon motion of a party, may strike a pleading, motion or other paper which: (1) Is not well-grounded in fact; (2) is not warranted by existing law, or is not based on a good faith argument for the extension, modification, or reversal of existing law; or (3) is interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in costs. An order striking a pleading, motion, or paper may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.

Under its rules, the commission shall not be bound by the usual common law or statutory rules of evidence. The commission may accept and weigh, in accordance with its evidential value, any information that will assist the commission in determining the factual basis of a claim.

WV Legislature

§14-2-16. Regular procedure.

The regular procedure for the consideration of claims shall be substantially as follows:

(1) The claimant shall give notice to the clerk that he or she desires to maintain a claim. Notice shall be in writing and shall be in sufficient detail to identify the claimant, the circumstances giving rise to the claim, and the state agency concerned, if any. The claimant shall not otherwise be held to any formal requirement of notice.

(2) The clerk shall transmit a copy of the notice to the state agency concerned. The state agency may deny the claim, or may request a postponement of proceedings to permit negotiations with the claimant. If the commission finds that a claim is prima facie within its jurisdiction, it shall order the claim to be placed upon its regular docket for hearing.

(3) During the period of negotiations and pending hearing, the state agency, represented by the Attorney General, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts an attempt shall be made to stipulate the questions of fact in issue.

(4) The commission shall so conduct the hearing as to disclose all material facts and issues of liability and may examine or cross-examine witnesses. The commission may call witnesses or require evidence not produced by the parties; the commission may call expert witnesses and compensate those experts for their services in an amount not to exceed $3,500 per expert; the commission may stipulate the questions to be argued by the parties; and the commission may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

(5) After the close of the hearing the commission shall consider the claim and shall conclude its determination, if possible, within sixty days.

WV Legislature

§14-2-17. Shortened procedure.

The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

1. The claim does not arise under an appropriation for the current fiscal year.

2. The state agency concerned concurs in the claim.

3. The amount claimed does not exceed $3,000.

4. The claim has been approved by the Attorney General as one that, in view of the purposes of this article, should be paid.

The state agency concerned shall prepare the record of the claim consisting of all papers, stipulations and evidential documents required by the rules of the commission and file the same with the clerk. The commission shall consider the claim informally upon the record submitted. If the commission determines that the claim should be entered as an approved claim and an award made, it shall so order and shall file its statement with the clerk. If the commission finds that the record is inadequate, or that the claim should not be paid, it shall reject the claim. The rejection of a claim under this section shall not bar its resubmission under the regular procedure.

WV Legislature

§14-2-17a. Shortened procedure for road condition claims.

(a) Notwithstanding the regular and shortened procedures provided for in §14-2-16 and §14-2-17 of this code, there shall be a shortened procedure for road condition claims. The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

(1) The claim does not arise under an appropriation for the current fiscal year.

(2) The claim alleges that a condition on the state's highways or roads caused property damage.

(3) The Division of Highways concurs in the claim and informs the clerk that it will stipulate to the entire amount of the claims or to a specific amount of the claim.

(4) The stipulated amount claimed does not exceed $3,000.

(b) The clerk shall prepare a stipulation concerning the claim to be approved by the commission. When approved by the commission the clerk shall mail a release to the claimant and inform the claimant that once the release is signed and returned to the commission, the clerk will notify the Division of Highways that the executed release has been received. Upon receipt from the clerk of confirmation that an executed release has been received from the claimant, the Division of Highways shall certify each approved claim and award, and requisition relating thereto, to the State Auditor. The State Auditor thereupon shall issue his or her warrant to the Treasurer in favor of the claimant. The State Auditor shall issue his or her warrant without further examination or review of the claim except for the question of a sufficient unexpended balance in the appropriation.

WV Legislature

§14-2-18

Repealed

Acts, 2017 Reg. Sess., Ch. 29.

WV Legislature

§14-2-19. Claims under existing appropriations.

A claim arising under an appropriation made by the Legislature during the fiscal year to which the appropriation applies, and falling within the jurisdiction of the commission, may be submitted by:

1. A claimant whose claim has been rejected by the state agency concerned or by the State Auditor.

2. The head of the state agency concerned in order to obtain a determination of the matters in issue.

3. The State Auditor in order to obtain a full hearing and consideration of the merits.

When such submittal is made, the clerk shall give a copy of the submittal to the Joint Committee on Government and Finance. If the Joint Committee on Government and Finance shall so direct, the clerk shall place such claim on its docket. Upon its placement on the docket, the regular procedure, so far as applicable, shall govern the consideration of the claim by the commission. If the commission finds that the claimant should be paid, it shall certify the approved claim and award to the head of the appropriate state agency, the State Auditor and to the Governor. The Governor may thereupon instruct the Auditor to issue his or her warrant in payment of the award and to charge the amount thereof to the proper appropriation. The Auditor shall forthwith notify the state agency that the claim has been paid. Such an expenditure shall not be subject to further review by the Auditor upon any matter determined and certified by the commission.

WV Legislature

§14-2-20. Claims under special appropriations.

Whenever the Legislature makes an appropriation for the payment of claims against the state, then accrued or arising during the ensuing fiscal year, the determination of claims and the payment thereof may be made in accordance with this section. However, this section shall apply only if the Legislature in making its appropriation specifically so provides and only after specific direction to hear the claim is given by the Joint Committee on Government and Finance.

The claim shall be considered and determined by the regular or shortened procedure, as the case may be, and the amount of the award shall be fixed by the commission. The clerk shall certify each approved claim and award, and requisition relating thereto, to the Auditor. The Auditor thereupon shall issue his or her warrant to the Treasurer in favor of the claimant. The Auditor shall issue his or her warrant without further examination or review of the claim except for the question of a sufficient unexpended balance in the appropriation.

WV Legislature

§14-2-21. Periods of limitation made applicable.

The commission shall not take jurisdiction of any claim, whether accruing before or after the effective date of this article (July 1, 1967), unless notice of such claim be filed with the clerk within such period of limitation as would be applicable under the pertinent provisions of the Code of West Virginia, 1931, as amended, if the claim were against a private person, firm or corporation and the Constitutional immunity of the state from suit were not involved and such period of limitation may not be waived or extended. The foregoing provision shall not be held to limit or restrict the right of any person, firm or corporation who or which had a claim against the state or any state agency, pending before the Attorney General on the effective date of this article (July 1, 1967), from presenting such claim to the West Virginia Legislative Claims Commission, nor shall it limit or restrict the right to file such a claim which was, on the effective date of this article (July 1, 1967), pending in any court of record as a legal claim and which, after such date was or may be adjudicated in such court to be invalid as a claim against the state because of the Constitutional immunity of the state from suit.

WV Legislature

§14-2-22. Compulsory process.

In all hearings and proceedings before the commission, the evidence and testimony of witnesses and the production of documentary evidence may be required. Subpoenas may be issued by the commission for appearance at any designated place of hearing. In case of disobedience to a subpoena or other process, the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses, and the production of books, papers and documents. Upon proper showing, the circuit court shall issue an order requiring witnesses to appear before the West Virginia Legislative Claims Commission; produce books, papers and other evidence; and give testimony touching the matter in question. A person failing to obey the order may be punished by the circuit court as for contempt.

WV Legislature

§14-2-23. Inclusion of awards in budget.

The clerk shall certify to the department of finance and administration, on or before November 20, of each year, a list of all awards recommended by the commission to the Legislature for appropriation. The clerk may certify supplementary lists to the Governor to include subsequent awards made by the commission. The Governor shall include all awards so certified in his or her proposed budget bill transmitted to the Legislature. Any other provision of this article or of law to the contrary notwithstanding, the clerk shall not certify any award which has been previously certified.

WV Legislature

§14-2-24. Records to be preserved.

The record of each claim considered by the commission, including all documents, papers, briefs, transcripts of testimony and other materials, shall be preserved by the clerk for a period of ten years from the date of entry of the commission's last order and shall be made available to the Legislature or any committee thereof for the reexamination of the claim. When any such documents, papers, briefs, transcripts and other materials have been so preserved by the clerk for such ten-year period, the same shall be transferred to the state records administrator for preservation or disposition in accordance with the provisions of article eight, chapter five-a of this code without cost, either to the commission or the Legislature.

WV Legislature

§14-2-25. Reports of the commission.

The clerk shall be the official reporter of the commission. He or she shall collect and edit the approved claims, awards and statements, shall prepare them for submission to the Legislature in the form of an annual report and shall prepare them for publication.

Claims and awards shall be separately classified as follows:

(1) Approved claims and awards not satisfied but referred to the Legislature for final consideration and appropriation.

(2) Approved claims and awards satisfied by payments out of regular appropriations.

(3) Approved claims and awards satisfied by payment out of a special appropriation made by the Legislature to pay claims arising during the fiscal year.

(4) Claims rejected by the commission with the reasons therefor.

The commission may include any other information or recommendations pertaining to the performance of its duties.

The commission shall transmit its annual report to the presiding officer of each house of the Legislature, and a copy shall be made available to any member of the Legislature upon request therefor. The reports of the commission shall be published biennially by the clerk as a public document. The biennial report shall be filed with the clerk of each house of the Legislature, the Governor and the Attorney General.

WV Legislature

§14-2-26. Fraudulent claims.

A person who knowingly and willfully presents or attempts to present a false or fraudulent claim, or a state officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent claim, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of violation of this section shall be fined not more than $1,000 or confined for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he or she shall, in addition, forfeit his or her office or position of employment, as the case may be.

WV Legislature

§14-2-27. Conclusiveness of determination.

Any final determination against the claimant on any claim presented as provided in this article shall forever bar any further claim in the commission arising out of the rejected claim.

WV Legislature

§14-2-28. Award as condition precedent to appropriation.

(a) It is the policy of the Legislature to make no appropriation to pay any claims against the state, cognizable by the commission, unless the claim has first been passed upon by the commission.

(b) Because a decision of the commission is a recommendation to the Legislature based upon a finding of moral obligation, and the enactment process of passage of legislation authorizing payments of claims recommended by the commission is at legislative discretion, no right of appeal exists to findings and award recommendations of the West Virginia Legislative Claims Commission and they are not subject to judicial review.

WV Legislature

§14-2-29. Severability.

If any provision of this article or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

WV Legislature