WEST VIRGINIA CODE CHAPTER 14 ARTICLE 2B

WV Legislature

§14-2B-1. Short title.

This article shall be known and may be cited as the "West Virginia Crime Profits Act".

WV Legislature

§14-2B-2. Legislative findings; purpose and intent.

The Legislature finds and declares that it is a violation of the public policy of this state to permit a person who commits a crime to thereafter gain a monetary profit from the commission of that crime. Consequently, the Legislature finds that when a person convicted of a crime later profits as a result of the commission of that crime, such profits should be used to compensate those crime victims who were damaged as a result of the commission of the crime, as well as the taxpayers who paid for the prosecution or incarceration of the defendant, or both.

WV Legislature

§14-2B-3. Definitions.

As used in this article:

(a) "Crime" means any offense designated by the provisions of this code as a felony or misdemeanor.

(b) "Crime profits" means:

(1) Any property obtained through or income generated from the commission of a crime of which the defendant was convicted;

(2) Any property obtained by or income generated from the sale, conversion or exchange of proceeds of a crime, including any gain realized by such sale, conversion or exchange; or

(3) Any property which the defendant obtained or income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, the crime, as well as any property obtained by or income generated from the sale, conversion or exchange of such property and any gain realized by such sale, conversion or exchange.

(c) "Crime victim" means the victim of the offense or the personal representative of a crime victim.

(d) "Defendant" means a person charged with a crime or convicted of a crime after trial, by entry of a plea of guilty or by entry of a plea of nolo contendere in any court in this state. The term "defendant" shall also include any person found by a court of record to be not criminally responsible for the commission of a crime by reason of mental illness, mental retardation or addiction.

(e) "Court" means the circuit court of the county wherein the defendant is charged with or was prosecuted for the commission of the crime.

(f) "Personal representative" means an attorney-in-fact or legal guardian of a living person or the executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status of the estate of a deceased person.

(g) "Prosecutor" means the prosecuting attorney of the county in which the defendant is charged with or was prosecuted for the commission of the crime.

(h) "Contract" means any agreement, whether reduced to writing or not, in which any person, firm, corporation, partnership, association or other legal entity contracts for, pays or agrees to pay, any crime profits to a defendant or to a defendant's personal representative.

WV Legislature

§14-2B-4. Notice of contract with defendant; payment over of crime profits to prosecutor; placing of crime profits into escrow account.

(a) Every person, firm, corporation, partnership, association or other legal entity which knowingly contracts for, pays or agrees to pay, any crime profits, as defined in section three of this article, to a defendant shall submit a copy of such contract to the prosecutor and pay over to the prosecutor any moneys which would otherwise, by the terms of such contract, be owing to the defendant. The prosecutor shall deposit such moneys in an interest bearing escrow account and shall thereafter disburse such moneys only in accordance with the provisions of this article.

(b) Every defendant who contracts for, receives or agrees to receive, any crime profits, as defined in section three of this article, from any person, firm, corporation, partnership, association or other legal entity, shall submit a copy of such contract to the prosecutor and pay over to the prosecutor any moneys which would otherwise, by the terms of such contract, be owing to the defendant. The prosecutor shall deposit such moneys in an interest bearing escrow account and shall thereafter disburse such moneys only in accordance with the provisions of this article.

WV Legislature

§14-2B-5. Prosecutor to commence action to distribute profits from crime; joinder of parties; statute of limitations; issues to be determined in action.

(a) The prosecutor shall, within six months of the receipt of any contract or moneys, bring an action in interpleader in accordance with the West Virginia rules of civil procedure for trial courts of record to determine the distribution of any crime profits which have been received or may be received in the future by the defendant. The prosecutor shall join the defendant, any instrumentality of the state or political subdivision thereof which has expended or likely will expend taxpayer funds as a result of the commission of the crime, including, without limitation, funds to prosecute or incarcerate the defendant, all known crime victims, the crime victim's compensation fund and any person, firm, corporation, partnership, association or other legal entity which has paid, or agreed to pay, any crime profits to the defendant, as parties to the action.

(b) Notwithstanding any other provision of this code with respect to the timely bringing of an action, the prosecutor shall have the right to bring a civil action authorized by this section within three years after the prosecutor first receives notice pursuant to section four of this article. If, but for the provisions of this section, any party would be barred from bringing an action due to the expiration of the applicable statute of limitations, said party may not recover damages against the defendant in excess of the value of the crime profits allotted to said party by the court in accordance with the provisions of this article.

(c) A crime victim, the defendant or any instrumentality of the state or political subdivision thereof which has expended or will likely expend taxpayer funds as the result of the commission of the crime may bring a writ of mandamus to compel the prosecutor to bring an interpleader action as authorized by this section. Any applicable statute of limitations shall be tolled during the pendency of such writ.

(d) Any party to the interpleader action may demand a trial by jury on the issues of entitlement to and the amount of damages arising from any claim of any instrumentality of the state or political subdivision thereof or of any crime victim, except that such claims that have already been reduced to judgment in any other civil action by a court of competent jurisdiction shall be conclusively presumed to have been established: Provided, That no jury trial shall be permitted on subrogation claims of the crime victim's compensation fund.

(e) The court may, upon motion of any party or upon its own motion, consolidate with the interpleader action any other pending civil actions by crime victims against the defendant when the basis for such other action is the same crime which has or may result in the generating of crime profits.

WV Legislature

§14-2B-6. Authority of prosecutor to make payments from escrow account for the necessary expenses of protection of moneys paid into the escrow account; payment of moneys to defendant when charges dismissed prior to filing of interpleader action.

(a) The prosecutor may in his or her discretion, and without court approval, make such payments from the escrow account to such parties as may be necessary to preserve or maintain the moneys paid into the escrow account, provided the prosecutor finds that such payments would be in the best interests of any affected instrumentality of the state or political subdivision thereof or of the crime victims and would not be contrary to public policy.

(b) If, at any time prior to the filing of an interpleader action as authorized by this article, the charges against the defendant are dismissed or the defendant is acquitted of such charges in circumstances other than a finding by a court of record that the defendant is not criminally responsible for the commission of a crime by reason of mental illness, mental retardation or addiction, the prosecutor shall immediately pay over to such defendant all moneys, including accrued interest, in the escrow account established on behalf of such defendant.

WV Legislature

§14-2B-7. Prosecutor to distribute funds as ordered by court; court to order distribution of funds.

(a) Except as otherwise provided in this article, the prosecutor shall distribute funds which are or may later be deposited in the escrow account only in accordance with this section.

(b) The court or jury before which the interpleader action authorized by this article is pending shall decide all claims, except such claims that have already been reduced to judgment by a court of competent jurisdiction which shall be conclusively presumed to have been established, to such crime profits as have already been or may later be due and owing to the defendant as a result of the contract and shall thereafter order the prosecutor to distribute such moneys as are in the escrow account, or as may be later paid to the defendant pursuant to the contract, in accordance with the provisions of this section. If no escrow account has been established at the time of the court's entry of judgment, the court shall provide in its final order for the distribution of any future crime profits and shall provide that any such funds be paid directly to such persons and in such proportions as the court may direct. If an escrow account is established, the court shall distribute the moneys in the escrow account and shall provide that any future funds, if any, be paid directly to such persons and in such proportions as the court may direct. If an escrow account is established and the court also finds that it is likely that future crime profits will accrue to the defendant, the court in its discretion may provide for the continuance of the escrow account and for such further hearings as may be necessary or may provide that any future funds be paid directly to such persons and in such proportions as the court may direct.

(c) Upon the dismissal of charges against the defendant or upon the acquittal of the defendant in circumstances other than a finding by a court of record that the defendant is not criminally responsible for the commission of a crime by reason of mental illness, mental retardation or addiction, the court shall order the prosecutor to immediately pay over to such defendant the moneys, including accrued interest, in the escrow account established on behalf of such defendant.

(d) Upon a showing by any defendant that three years have elapsed since the prosecutor first received notice pursuant to section four of this article and that no actions are pending against such defendant pursuant to this article, the court shall order the prosecutor to immediately pay over to such defendant or his legal representative the moneys, including accrued interest, in the escrow account.

(e) Upon a showing by the defendant that moneys in the escrow account shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such defendant, including the appeals process, the court shall order the prosecutor to pay over such moneys as are reasonable and necessary to pay for such legal representation: Provided, That if the defendant at any time during such criminal proceedings has been represented by court-appointed counsel, the court shall first order that Public Defender Services be reimbursed for any funds expended on behalf of the defendant.

WV Legislature

§14-2B-8. Priorities of claims to moneys in escrow account.

(a) The court, in ordering relief pursuant to this article, shall distribute the moneys in the escrow account and moneys which may later be payable under the contract, in the following priority:

(1) Payments authorized by the court for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such defendant;

(2) Reasonable attorneys fees and expenses incurred by the prosecutor in bringing the interpleader action;

(3) Civil judgments of the victims of the crime, judgments awarded to any crime victim pursuant to the interpleader action authorized by this article and subrogation claims of the crime victim's compensation fund;

(4) Unpaid criminal fines owed to the state by the defendant as a result of the defendant's conviction for any crime;

(5) Expenses incurred by any other instrumentality of the state or political subdivision thereof as a result of the commission of the crime, including, without limitation, any county or regional jail or penitentiary in which the defendant was incarcerated: Provided, That for the purposes of this subdivision, the term "instrumentality of the state or political subdivision thereof" shall not include the crime victim's compensation fund; and

(6) The defendant.

(b) No payment shall be made out of the escrow account where such payment would be in derogation of claims, either presented or pending, entitled to a higher priority under this subdivision. If insufficient moneys exist to pay all claims entitled to equal priority, the court shall equitably allot such moneys as are available among the several claimants. Notwithstanding any provision in this article to the contrary, when the court considers other civil judgments rendered against the defendant for any crime victim for the purposes of equitably allotting moneys, the court shall review such judgment and shall consider for allotment only that portion of the civil judgment which relates to the crime which produced the crime profits.

(c) Moneys in the escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in this subdivision.

WV Legislature

§14-2B-9. Acts to defeat intent of article void as against public policy.

Any action taken by any defendant, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this article shall be null and void as against the public policy of this state.

WV Legislature

§14-2B-10. Consent to jurisdiction.

A person who commits a crime in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article. A person, firm, corporation, partnership, association or other legal entity which knowingly contracts for, pays or agrees to pay any profit to a defendant who commits a crime in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article. For purposes of this section, service of process may be perfected in accordance with the West Virginia rules of civil procedure for trial courts of record.

WV Legislature

§14-2B-11. Failure of defendant or person, firm, corporation, partnership, association or other legal entity contracting with defendant to provide notice to prosecutor or pay over moneys to prosecutor as required by this article; civil penalty of treble damages.

Notwithstanding any provision of this article to the contrary, if any defendant or any person, firm, corporation, partnership, association or other legal entity which knowingly contracts for, pays, or agrees to pay to a defendant, any crime profits, as defined in section one of this article, fails to submit a copy of such contract to the prosecutor of the county in which the defendant is charged with or is being prosecuted or was prosecuted for the commission of the crime, or fails to pay over to the prosecutor any moneys which would otherwise, by the terms of such contract, be owing to the defendant, such defendant or such person, firm, corporation, partnership, association or other legal entity shall be civilly liable in the interpleader action authorized by this article for treble damages to each party in whose favor judgment is entered.

WV Legislature