
WEST VIRGINIA CODE CHAPTER 14

WV Legislature

§14-1-1. Who may prosecute debt proceedings.

The Auditor, commissioner of finance and administration and any other officer or body authorized by law shall cause appropriate proceedings, in the manner provided for in this article, to be instituted and prosecuted to enforce payment of any debt or liability due the state.

WV Legislature

§14-1-2. Method of proceeding; jurisdiction; venue; suing in name of state.

When the proceeding is at law, it may be by motion on twenty days' notice, or by action; and whether at law or in chancery, it may be brought in any court which would have jurisdiction thereof if the proceeding were brought by an individual, or in the circuit court of the county in which the seat of government is; or, if property or a debt be attached, in the circuit court of the county where such property may be found or the person owing such debt may reside; and it may be in the name of the state though the liability is created or secured by bond or other instrument, payable to, or covenant or contract with, any public officer or other person or official body acting on behalf of the state.

§14-1-3. Parties defendant; form of judgment.

The action or motion at law may be against any person indebted or liable in any way whatever to the state, his sureties and his and their personal representatives, or any one or more of them. But a judgment against a personal representative shall only bind him to the extent to which he is accountable for assets of the estate which he represents. If several defendants be proceeded against jointly, judgments may be rendered against any one of them shown to be liable and the proceeding be dismissed as to the others, or judgments rendered in their favor, or the case continued as to them for service of process or notice or other cause. Any party dismissed for want of service or process may be subsequently sued and an unsatisfied judgment against one or more of several persons jointly liable shall not be a bar to any subsequent proceedings against the others.

§14-1-4. Expedition of proceedings.

Courts wherein cases are pending to which the state is a party may hear them before other cases and expedite the proceedings therein by such rules as to them may seem proper.

WV Legislature

§14-1-5. Form of writ of fieri facias; sale of real estate.

In a writ of fieri facias issuing out of any court of record upon a judgment or decree against any person indebted or liable to the state, or against any surety of his after the words "we command you that of the" the clerk shall insert the words "goods, chattels and real estate," and conform the subsequent part of such writ thereto. And under any writ so issued real estate may be taken and sold.

WV Legislature

§14-1-6. To whom execution directed.

An execution in favor of the state, from any court, may be directed to the sheriff of any county.

WV Legislature

§14-1-7. Order of levy.

Every writ of fieri facias issued according to the fifth section of this article shall be levied first on the goods and chattels. If the officer having such writ can find no goods and chattels liable thereto, or not a sufficiency thereof, then he shall levy it on the real estate.

WV Legislature

§14-1-8. Sale of real estate under execution -- Notice; place.

When a levy is so made upon real estate, the officer making it shall publish notice thereof and of the time and place of sale as a Class III-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The sale shall take place at the premises or at the front door of the courthouse, as the officer may deem most advisable.

WV Legislature

§14-1-9. Sale of real estate under execution -- Conduct; sale of parcels.

If the amount of the execution and all the costs and expenses be not sooner paid, such officer shall proceed on the day mentioned in the notice to sell at public auction the interest of the party against whom the execution issued, in the real estate, or so much thereof as the officer may deem sufficient; and if a part only be sold it shall be laid off in one parcel in such place and manner as the debtor or his agent may direct, or if he give no direction, as the officer may deem best.

WV Legislature

§14-1-10. Sale of real estate under execution -- Terms of sale.

The sale shall be upon six months' credit; and, if the land be not purchased for the state, the officer shall take the note of the purchaser with sureties for the payment of the purchase money to the state. Every such note shall mention on what occasion the same was taken and shall be returned to the office of the court from which the execution issued, and the clerk shall indorse thereon the date of its return. The officer and his sureties shall be liable to the state if insufficient security be taken on such bond.

§14-1-11. Sale of real estate under execution -- Conveyance.

So soon as the purchaser shall pay the purchase money, a deed shall be executed at his costs, reciting the execution, the sale and the price, and conveying the land to him The grantor in such deed may either be the sheriff himself or the deputy or other person who acted in making the sale, but such deputy or other person shall not be such grantor unless the sheriff is legally disqualified from acting. Such deed shall pass to the purchaser all the interest which the party against whom the execution issued had in the land at the date of the judgment or decree.

§14-1-12. Sale of real estate under execution -- Execution of deeds in certain cases.

When the officer and his deputy who acted in making the sale shall both have died or removed out of the state before making such deed, or fail or refuse to act, or if the term of the officer within whose term such sale was made shall have expired, the deed may be executed by any successor of such officer, or by a commissioner appointed by the circuit court of the county for that purpose, which deed shall have the same force and effect as if made by the officer who made the sale.

WV Legislature

§14-1-13. Sale of real estate under execution -- Resale on default of purchaser -- Judgment and execution on purchaser's note.

When any note taken under section ten of this article shall become due and not be paid, the officer shall sell the real estate for which such note was given, upon such notice as is provided in section eight of this article, and according to the provisions of section nine thereof, for cash, and shall credit the same upon such note. If the proceeds of sale for cash be not sufficient to pay such note so due as aforesaid, the clerk of such court shall enter in the law order book a judgment as near as may be in the form prescribed in section twenty-three, article three, chapter thirty-seven of this code, against such of the obligors therein as may then be alive. Execution may issue against them on such judgment, and such execution may be proceeded under in like manner as an execution issued on any other judgment or decree, in favor of the state, save only that the clerk shall indorse that no security is to be taken, and the officer shall govern himself accordingly and sell for cash any real estate or personal property which he may levy on under the same.

§14-1-14. Sale of real estate under execution -- Resale on default of purchaser -- Judgment against personal representatives.

Against the personal representatives of such of the obligors as may have died before judgment was entered under the preceding section, judgment may be obtained by action or motion.

WV Legislature

§14-1-15. Sale of real estate under execution -- Property unsold for want of bidders.

When return is made on any execution issued under the provisions of this article, that personal property or real estate remains unsold for want of bidders, or to that effect, the provisions of section eighteen, article four, chapter thirty- eight of this code shall be applicable.

WV Legislature

§14-1-16. Sale of real estate under execution -- Purchase of lands for state.

When land levied on under execution on behalf of the state will not sell for the amount thereof, the Auditor, or such agent as is mentioned in section nineteen of this article, may purchase such land for the state.

WV Legislature

§14-1-17. Sale of real estate under execution -- Return of execution where property encumbered.

In any case in which an officer having an execution issued under the provisions of this article shall decline levying it because of any previous conveyance, execution or encumbrance, a return shall be made setting forth the nature of such conveyance, execution or encumbrance, in whose favor and for what amount, and the office in which the conveyance or encumbrance is recorded, or from which the execution issued.

WV Legislature

§14-1-18. Settlement or dismissal of claims.

The commissioner of finance and administration, Auditor or other officer or official body having authority to collect the same may, with the advice of the Attorney General, adjust and settle upon just and equitable principles without regard to strict legal rules any account or claim, in favor of the state, which may at the time have been standing upon the books of his or its office more than five years; and, with the like advice, may dismiss any proceedings instituted by him or it.

WV Legislature

§14-1-18a. Consignment of claims to debt collector.

Any account, claim or debt that an agency of this state is not able to collect within three months after trying with due diligence to do so may be referred to the commissioner of finance and administration for consignment by the commissioner to a responsible licensed and bonded debt collection agency or similar other responsible agent for collection. The commissioner shall not handle or consign any such account, claim or debt unless he is satisfied that the referring agency has made a diligent effort to collect the debt on its own; that the account or claim is justly, properly and clearly due the state; and that the collection of any such debt would not impose an undue, unjust, unfair or unreasonable hardship or burden upon the health or general welfare of the party owing the debt. In any such case of undue, unjust, unfair or unreasonable hardship or burden, the commissioner may, in his discretion, and with the review and approval of the Attorney General, compromise, settle or dismiss the debt or claim. If he is satisfied that the aforesaid terms of and conditions for collectibility have been met, the commissioner may consign the account, claim or debt to a responsible licensed and bonded debt collection agency or similar other responsible agent for collection. In any such case, the collection agency or other agent shall stand in the place of the state as creditor and shall have the same claims, rights and remedies against the debtor as the state has, and the debtor shall have the same rights, claims, defenses and setoffs against the collection agency or other agent as he has against the state.

§14-1-18b. Regulations applicable to debt collectors.

The commissioner of finance and administration shall promulgate rules and regulations for the determination and regulation of responsible licensed and bonded debt collection agencies and other responsible agents for collection. The commissioner shall determine the collection fees to be paid to any such agency or agent, which fees shall be a percentage of the amount of the debt recovered, but the commissioner shall not under any circumstances pay any agency or agent a fee of more than fifty percent of the amount of the debt recovered.

§14-1-18c. List of eligible debt collectors; statutory limitations applicable to debt collectors.

The State Tax Commissioner shall establish and maintain a list of debt collection agencies bonded and licensed with the state. When choosing collection agencies under the provisions of sections eighteen-a and eighteen-b of this article, the commissioner of finance and administration shall select and use only those collection agencies on the State Tax Commissioner's list. In collecting debts under sections eighteen-a and eighteen-b of this article, each debt collection agency and agent shall strictly abide by the provisions of (a) sections one hundred twenty-two through one hundred twenty-nine, inclusive, of article two, chapter forty-six-a of this code; (b) sections one through five, inclusive, of article sixteen, chapter forty-seven of this code; and (c) the federal Fair Debt Collection Practices Act, being Public Law 95-109 of the United States Congress. If any debt collection agency or agent violates any provision of the aforesaid laws, the State Tax Commissioner shall remove the agency from his aforesaid list and the commissioner of finance and administration shall immediately stop his employment and use of the agency or agent.

§14-1-19. Appointment of collection agents by Auditor.

The Auditor, subject to the approval of the commissioner of finance and administration, may appoint agents to superintend the collection of those debts to or claims of the state he is by law responsible for. The Auditor may authorize them to secure payments thereof by installments or otherwise and give further credit in consideration of additional security or indemnity satisfactory to him

WV Legislature

§14-1-20. Lands of state — List by clerk.

The clerks of the county courts shall transmit to the Auditor a list of all lands in their respective counties obtained by the state, under the provisions of §14-1-16 of this code, and set forth in such list all the information which they can obtain in relation to the lands mentioned therein. For each tract of land or lot so mentioned by any clerk of the county court, he or she shall receive \$1 from the Treasury.

WV Legislature

§14-1-21. Lands of state — Registration by Auditor.

(a) The Auditor shall, in a book kept for the purpose, register all lands in the lists described in §14-1-20 of this code, describing when, how, and of whom, they were obtained, their situation, quantity and the title thereto, together with the price paid therefor by the state.

(b) The Auditor shall create an index system to reference lands purchased by the state, similar to those created and maintained by the counties of this state. The Auditor shall create a standard naming system to easily cross reference lands purchased by the state in the county indexes. The naming system, at a minimum, must include:

(1) The state agency purchasing the lands; and

(2) The county or counties where the land is located.

(c) The Auditor shall have rule-making authority relating to this index system under §29A-3-1 *et seq.* of this code. Any deed for state lands purchased after December 31, 2020, shall be recorded pursuant to the provisions of this section.

§14-1-22. Lands of state -- Sale.

The Auditor may sell, or appoint an agent to sell, any of such lands on such terms as the Auditor may think best, taking the bond of such agent, with good security, if any money is to come into his hands.

WV Legislature

§14-1-23. Lands of state -- Record of sale.

In the book kept under the provisions of section twenty-one of this article, the Auditor shall enter the time when any of the lands are disposed of, the price and terms of sale, the names of the agents and purchasers, and the amount paid into the treasury on account of the sale.

WV Legislature

§14-1-24. Compensation of Auditor's agents for collection of debts.

For the service rendered to the Auditor by any agent under the pertinent sections of this article, the Auditor shall recommend such compensation as may seem to him reasonable, not exceeding in any case fifty percent of the money actually paid into the treasury. The Governor shall authorize the payment of what may be so recommended or so much thereof as in his judgment may be proper.

WV Legislature

§14-1-25. Execution of deeds in certain cases.

Any agent selling land under the provisions of section twenty-two of this article shall, when directed, execute a deed, with the written direction of the Auditor thereto annexed conveying to the purchaser all the interest which the state may have in such land; and, where such sale is made by the Auditor in person, such deed shall be made by him

WV Legislature

§14-1-26. Reports to Legislature.

The commissioner of finance and administration and the Auditor shall biennially report to the Legislature their proceedings under this article, setting forth particularly all the agents appointed by them, and the agents' compensation, all debts collected and property purchased by them, and all arrangements made with public debtors.

WV Legislature

§14-1-27. Debts due state from sheriffs or other officers -- Sale.

The Auditor may, with the advice and consent of the Attorney General, whenever any claim or account of any kind, against a sheriff or other officer has been due for more than seven years, and the same is for any reason difficult or expensive to collect, certify a transcript of such claim or accounts to the sheriff of the county in which the officer, from whom the same is due, resided at the time his indebtedness to the state was incurred, and may authorize such sheriff to sell the same as hereinafter directed: Provided, That any claim or account, upon which judgment has been obtained and execution has been returned unsatisfied, may be sold after the expiration of five years from the time such claim or account was due, either in whole or in part as shown by the Auditor's book.

§14-1-28. Debts due state from sheriffs or other officers -- Notice of sale.

The sheriff, after having received a transcript of the account which is to be sold, shall give notice by publication as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice shall be so published within the twenty-one consecutive days next preceding the date of sale. The notice shall state that he will proceed to sell to the highest bidder the claims or accounts mentioned in such notice. Such notice shall show the name of the sheriff or other officer and his sureties, in case there is evidence of his having executed a bond, the year or years for which he was indebted to the state, upon what account such indebtedness exists, and the amount shown to be due thereon by the Auditor's books, exclusive of interest, as well as the amount appearing to be due, with interest calculated to the day of sale.

§14-1-29. Debts due state from sheriffs or other officers -- Mode and terms of sale.

The sheriff to whom such claim or account is certified under the provisions of this article shall on the first day of the term of the circuit court of his county succeeding the publication of such notice, make sale of such claim or account to the highest bidder, and, in case the amount bid therefor be less than \$100, he shall require the payment thereof in cash; and if the amount bid therefor be more than \$100, he shall require one third thereof to be paid in cash, and shall receive the notes of the purchaser for the residue in two equal installments, payable respectively in six and twelve months, with legal interest thereon until paid. Such notes shall have the names of at least two persons signed thereto as sureties, whom the prosecuting attorney of the county, by indorsement on the back of such notes, shall certify are in his opinion responsible and solvent.

§14-1-30. Debts due state from sheriffs or other officers -- Return of sale; exceptions to sale; resale.

Within ten days after making such sale, the sheriff shall return and file in the clerk's office of the circuit court of his county a report showing the name of the officer against whom the claim is, the date of sale, the date and character of the claim sold, the name of the purchaser, the amount for which sold, including cash and notes, and, in cases where notes are taken, the names of the securities thereon. Immediately after such report is filed in the clerk's office as aforesaid, the clerk shall post a notice of that fact at the front door of the courthouse and shall state therein that exceptions may be filed to such report with the clerk of the circuit court. If, before the first day of the term of the circuit court beginning after the filing of such report, any person shall file exceptions thereto and such exceptions shall be accompanied by a bond with two or more good securities, conditioned that if a resale be ordered the person who files such exceptions will at the second sale give for the claim or account a sum ten per cent greater than the amount for which it first sold and will pay all the cost of advertising and making resale, then the court may in its discretion set such sale aside and order the sheriff to make another sale, upon such terms as the court may deem proper.

§14-1-31. Debts due state from sheriffs or other officers -- Confirmation of sale; certification to Auditor.

In cases where no exceptions are filed to the report, the court shall confirm the sale, and within twenty days after such confirmation the clerk of the court shall certify to the Auditor a copy of such report and the order of confirmation.

WV Legislature

§14-1-32. Debts due state from sheriffs or other officers -- Sending purchase money and notes for debts to Auditor; collection of notes.

Within thirty days after the confirmation of said report, the sheriff shall transmit to the Auditor a certificate of deposit for the amount received by him in cash, and also any notes which may have been executed for the balance of purchase money, and in case of the failure of persons who execute such notes to pay the same when due, it shall be the duty of the Auditor to proceed to enforce the collection thereof, in the same manner that other claims due the state are recovered.

§14-1-33. Debts due state from sheriffs or other officers -- Rights of purchaser of such debts.

The purchaser of any accounts or claims so sold under the provisions of this article shall have the same right to recover that the state now has, and shall be substituted to all the rights of the state concerning the same. But in case there be any error in any account or claim sold under this article, or it shall appear that the officer, against whom the claim is, is entitled to credits which do not appear upon the account or claim, the purchaser shall not be allowed any claim against the state by reason thereof.

§14-1-34. Commissions to sheriff; payment of publication costs.

The sheriff, for performing the duties required of him by this article, shall be allowed five per cent on the first \$100 and two per cent on the residue, which commission shall be deducted from the purchase money and the balance credited on the debt due the state. The costs of publishing notice in a newspaper shall be paid out of the proceeds of such sale.

WV Legislature

§14-1-35. Transfer by defaulting officer or surety.

In any proceeding had under the provisions of this article against sheriffs or collectors and their sureties, or any, or either of them, for money due the state, any transfer, assignment or alienation of property, real or personal, or any judgment or decree obtained against or suffered by such sheriff or collector and their sureties or either of them after service upon them, respectively, of summons or notice shall be deemed fraudulent or void as to any judgment that may be thereafter rendered in favor of the state in pursuance of such summons or notice. But this section shall not apply to a bona fide purchaser of any such property, without notice.

§14-1-36. Settlement with sureties.

Whenever it shall appear to the satisfaction of the Auditor that the sureties of a defaulting assessor or sheriff will be compelled to pay the indebtedness of such defaulting officer, he may, with the advice and consent of the Attorney General, settle with such sureties by receiving the amount of the principal with interest thereon at the rate of six per cent per annum: Provided, That the sureties will pay the amount into the treasury before suit is brought.

WV Legislature

§14-1-37. United States Treasury offset program authorized; setoff of federal debts.

(a) The auditor is authorized to enter into an agreement with the Secretary of the Treasury to participate in the Treasury Offset Program pursuant to 31 U.S.C. §3716 for the collection of any debts owed to the state or to state agencies from federal payments to vendors, contractors and taxpayers. The agreement may provide for the United States to submit nontax debts owed to federal agencies for offset against state payments otherwise due and owing to taxpayers, vendors and contractors providing goods or services to the state, its departments, agencies or institutions.

(b) For purposes of this section the following words have the meanings indicated.

(1) "Federal official" means a unit or official of the federal government charged with the collection of nontax liabilities payable to the federal government and with the authority to enter into the offset agreement.

(2) "Offset agreement" is the agreement authorized by this section.

(3) "Person" means an individual, vendor, contractor, partnership, society, association, joint stock company, limited liability company, corporation, estate, receiver, trustee, assignee, and any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise, or any combination of the foregoing.

(4) "State payments" shall include tax refunds pursuant to the Tax Procedure and Administration Act, article ten, chapter eleven of this code, and vendor or contractor payments made by the state to any person including expense reimbursements to an employee of the state: Provided, That "state payments" do not include salary, wages, pension and any other type, class or amount of payment as the auditor determines to impact the health or welfare of the citizens of the state.

(c) Pursuant to the agreement authorized herein, a federal official may:

(1) Certify to the auditor the existence of a person's delinquent, nontax debt owed by the person to the federal government by providing:

(A) The name of the person;

(B) The social security number or federal tax identification number;

(C) The amount of the nontax debt; and

(D) Any other information pursuant to the agreement authorized herein;

(2) Request the auditor to withhold any state payment to which the person is entitled; and

(3) Retain a portion of the proceeds of any federal administrative setoff pursuant to 31 CSR

285.6.

(d) As required or permitted by state law, federal law or the offset agreement, the State Auditor:

(1) Shall determine if a person for whom a certification is received is due a state payment;

(2) Shall withhold a state payment that is due a person whose name has been certified by a federal official;

(3) Shall notify the person of the amount withheld in accordance with the offset agreement;

(4) Shall pay to the federal official the lesser of:

(A) The entire state payment; or

(B) The amount certified; and

(C) Pay any refund or state payment in excess of the certified amount to the person less any fee pursuant to subsection (e);

(5) May certify to a federal official a person's delinquent debt owed to the state by providing the federal official:

(A) The name of the person;

(B) The social security number or tax identification number;

(C) The amount of the debt due the state; and

(D) Any other information required by the offset agreement; and

(6) May request that the federal official withhold any federal vendor or other federal payment pursuant to the offset agreement to which the person is entitled.

(e) The auditor may, by rule, establish a reasonable administrative fee to be charged to the person for the provision of state offset of federal debt. The fee is a separate debt and may be withheld from any refund, reimbursement or other moneys held for the person. The auditor may charge the person who is the subject of federal offset of a state debt, a fee equal to the fee authorized in subsection (c).

(f) Each state agency and institution shall take all appropriate and cost-effective actions to aggressively collect its accounts receivable. Each agency and institution may participate in the Treasury Offset program of the United States under 31 U.S.C. §3716.

(g) The auditor may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer and implement this section

and the offset agreement.

(h) The auditor and the chief administrators of the various state agencies are authorized by this section to enter into interagency agreements for the purpose of protecting a person's return information as defined in section ten, article five-d, chapter eleven of this code and collecting debts, fees and penalties due the state, its departments, agencies or institutions.

WV Legislature

§14-1A-1. Purpose.

The purpose of this article is to provide for a timely and efficient mechanism for the offset of delinquent debt owed the state from payments made by the state.

WV Legislature

§14-1A-2. Definitions.

For purposes of this article, the term:

“Auditor” means the State Auditor;

“Debt” means the obligations, other than income tax obligations or local government obligations, owed to the state which a spending unit has not been able to collect within a minimum of one hundred eighty days of the date on which the obligation was created;

“Division” means the Debt Resolution Services Division, created by this article;

“Offset” means the capture and diversion of a payment due to a vendor, contractor or taxpayer from the state to satisfy an outstanding obligation owed by them to the state; and

“United States Treasury Offset Program” means the reciprocal debt collection offset program between the federal government and the State of West Virginia authorized by section thirty-seven, article one of this chapter.

§14-1A-3. Division Established.

(a) The Auditor may establish a “Debt Resolution Services Division” to be administered by the employees of his or her office, which may identify and offset state payments due to vendors, contractors, or taxpayers that owe delinquent debts to the state.

(b) The division may also administer the United States Treasury Offset Program established pursuant to section thirty-seven, article one, of this chapter, except for the portion of the program set forth in subdivision (2), subsection (j), section eleven, article ten, chapter eleven of this code, that is administered by the State Tax Commissioner: Provided, That an offset exercised against a vendor, contractor, or taxpayer pursuant to the United States Treasury Offset Program shall be made subsequent to any offset authorized pursuant to subsection (a) of this section.

(c) The division shall adopt such procedures, forms, and agreements as the Auditor considers necessary to effectuate the purposes of this article. All spending units of the state, except for the State Tax Commissioner and any other entity otherwise exempted by law, may refer delinquent debt to the division for consideration for offset and shall certify to the Auditor that all applicable due process requirements have been met. All spending units, upon request by the Auditor, shall provide the division with information related to debts owed to the state, unless such disclosure is prohibited by law. The Auditor is not required to accept the transfer of any debt from any spending unit which the Auditor finds is not qualified for offset.

(d) The Auditor shall deposit any moneys offset pursuant to this article to the account or fund of the spending unit to which the debt, if otherwise paid, would be deposited.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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 claimant's 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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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

§14-2A-1. Short title.

The act heretofore created by this article and known and cited as the "West Virginia Crime Reparation Act of 1981" shall henceforth be known and cited as the "West Virginia Crime Victims Compensation Act." Any and all funds existing under the West Virginia crime reparation act of 1981 shall continue for the purposes set forth in this article, notwithstanding the amendments to the name of the act or a redesignation of the special revenue fund in the state Treasury as herein provided.

WV Legislature

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

The Legislature finds and declares that a primary purpose of government is to provide for the safety of citizens and the inviolability of their property. To the extent that innocent citizens are victims of crime, particularly violent crime, and are without adequate redress for injury to their person or property, this primary purpose of government is defeated. The people of West Virginia are demonstrably peaceful, and, in comparison to the citizens of other states, suffer a lower crime rate. In establishing the West Virginia Crime Reparation Act of 1981, the Legislature stated its findings that the provision of governmental services to prevent crime is not wholly effective and expressed its intent to establish a system of compensation for the victims of crime which would provide a partial remedy for the failure of the state to fully achieve this primary purpose of government.

The Legislature now finds that the system of compensation established by the act as an experimental effort by the Legislature of this state on behalf of its people, after having been reviewed and perfected in its initial stages, should be continued and retained in the legislative branch of government as an expression of a moral obligation of the state to provide partial compensation to the innocent victims of crime for injury suffered to their person or property.

§14-2A-3. Definitions.

As used in this article, the term:

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

(1) A victim, except the term "victim" does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse, or minor child of a deceased victim or, if the deceased victim is a minor, the parents, legal guardians, and siblings of the victim;

(3) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim or a victim's dependent when the obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent, or a third person who is not a collateral source including, but not limited to, assignees, persons holding power of attorney or others who hold authority to make or submit claims in place of or on behalf of a victim, a dependent, or third person who is not a collateral source and if the victim, dependent, or third person who is not a collateral source is a minor or other legally incompetent person, their duly qualified fiduciary; and

(5) A person who is a secondary victim in need of mental health counseling due to the person's exposure to the crime committed whose award may not exceed \$5,000.

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

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

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

(3) Social Security, Medicare, and Medicaid;

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

(5) Workers' compensation;

(6) Wage continuation programs of an employer;

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

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

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds \$25,000.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state, or in any state not having a victim compensation program, which poses a substantial threat of personal injury or death and is punishable by fine or imprisonment. "Criminally injurious conduct" also includes criminally injurious conduct committed outside of the United States against a resident of this state. "Criminally injurious conduct" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the person engaging in the conduct intended to cause personal injury or death or committed any offense contained within §17C-5-1 of this code, driving under the influence of alcohol, controlled substances or drugs, leaving the scene of the accident, or reckless driving.

(d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of making this determination there shall be taken into account the amount of support received from the victim as compared to the entire amount of support the individual received from all sources including self-support. The term support includes, but is not limited to, food, shelter, clothing, medical and dental care, and education. The term dependent includes a child of the victim born after his or her death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss, and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependents economic loss and a dependents replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term economic loss includes a lost scholarship as defined in this section.

(f) "Allowable expense" includes the following:

(1) Reasonable charges incurred or to be incurred for reasonably needed medical care, including products, services, and accommodations related to medical and psychological care, prosthetic devices, eye glasses, dentures, rehabilitation, and other remedial treatment and care but does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or other institution engaged in providing nursing care and related services which is in excess of a reasonable and customary charge for semiprivate accommodations unless accommodations other than semiprivate accommodations are medically required;

(2) A total charge not in excess of \$10,000 for expenses in any way related to funerals, cremations, and burials;

(3) Victim relocation costs not to exceed \$4,500;

(4) Reasonable travel expenses not to exceed \$5,000 for a claimant to attend court proceedings conducted for the prosecution of the offender;

(5) Reasonable travel expenses for a claimant to return a person who is a minor or incapacitated adult who has been unlawfully removed from this state to another state or country if the removal constitutes a crime under the laws of this state which may not exceed \$2,000 for expenses to another state or \$3,000 to another country; and

(6) Reasonable travel expenses for the transportation of a victim to and from a medical facility.

(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income. "Work loss" is reduced by income from substitute work actually performed or to be performed by the injured person or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. "Work loss" includes loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim. "Work loss" also includes loss of income from work by the claimant, the victim, or the parent or legal guardian of a minor victim who must miss work to attend court proceedings conducted for the prosecution of the offender.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed for the benefit of himself or herself or his or her family if he or she had not been injured. "Replacement services loss" does not include services an injured person would have performed to generate income.

(i) "Dependents' economic loss" means loss after a victim's death of contributions or things of economic value to his or her dependents but does not include services they would have received from the victim if he or she had not suffered the fatal injury. This amount is reduced by expenses avoided by the dependent due to the victim's death.

(j) "Dependents' replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury. This amount is reduced by expenses avoided due to the victim's death, but which are not already subtracted in calculating a dependent's economic loss.

(k) "Victim" means the following:

A person who suffers personal injury or death as a result of any one of the following:

(A) Criminally injurious conduct;

(B) The good faith effort of the person to prevent criminally injurious conduct; or

(C) The good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) "Contributory misconduct" means any conduct of the claimant or of the victim through whom the claimant claims an award that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim and includes the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance, when the intoxication has a causal connection or relationship to the injury sustained.

(m) "Lost scholarship" means a scholarship, academic award, stipend, student loan, or other monetary scholastic assistance which had been awarded, conferred upon, or obtained by a victim in conjunction with a post-secondary school educational program and which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct.

§14-2A-4. Creation of crime victims compensation fund.

(a) Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any magistrate court or circuit court, shall pay the sum of \$10 as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any municipal court, shall pay the sum of \$8 as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. In addition to any other costs previously specified, every person within the state who is convicted of or pleads guilty to a violation of section two, article five, chapter seventeen-c of this code, shall pay a fee in the amount of twenty percent of any fine imposed under that section. This is in addition to any other court costs required by this section or which may be required by law.

(b) The clerk of the circuit court, magistrate court or municipal court where the additional costs are imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received under this article to the state Treasurer for deposit in the state Treasury to the credit of a special revenue fund to be known as the "Crime Victims Compensation Fund". All moneys collected and received under this article and paid into the state Treasury and credited to the Crime Victims Compensation Fund in the manner prescribed in section two, article two, chapter twelve of this code, shall be kept and maintained for the specific purposes of this article, and may not be treated by the Auditor and treasurer as part of the general revenue of the state.

(c) Expenditure of moneys in the Crime Victims Compensation Fund is authorized from collections.

(d) Moneys in the Crime Victims Compensation Fund may be expended for:

- (1) The payment of the costs of administration of this article;
- (2) The payment of economic loss awards approved by the court; and
- (3) The payment of attorney and witness fees, allowed pursuant to section nineteen of this article.

(e) The services of the office of the Attorney General, as may be required or authorized by any of the provisions of this article, shall be rendered without charge to the fund.

(f) Any moneys in the Crime Victims Compensation Fund may be invested as provided in article six, chapter twelve of this code, with the interest income credited to the Crime Victims Compensation Fund.

(g) All funds in the special economic loss claim payment fund created under the provisions of section twenty of this article prior to the amendments made in that section enacted in the

year 1999 shall be transferred to the Crime Victims Compensation Fund within a reasonable time from the effective date of the amendments.

(h) All gifts that are received to be used for the purposes of this article shall be deposited into the Crime Victims Compensation Fund.

WV Legislature

§14-2A-5. Jurisdiction.

Any commissioner of the West Virginia Legislative Claims Commission individually, or the West Virginia Legislative Claims Commission en banc, shall have jurisdiction to approve awards of compensation arising from criminally injurious conduct, in accordance with the provisions of this article, if satisfied by a preponderance of the evidence that the requirements for an award of compensation have been met.

WV Legislature

§14-2A-6. Compensation of commissioners serving under this article.

Compensation of commissioners for services performed under this article, and actual expenses incurred in the performance of duties as commissioners under this article, shall be paid out of the crime victims compensation fund.

WV Legislature

§14-2A-7

Repealed

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

WV Legislature

§14-2A-8. Commissioners' oath of office.

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

WV Legislature

§14-2A-9. Claim investigators; compensation and expenses; paralegals and support staff.

The West Virginia Legislative Claims Commission, with the approval of the President of the Senate and the Speaker of the House of Delegates, is hereby authorized to hire not more than four claim investigators to be employed within the West Virginia Legislative Claims Commission, who shall carry out the functions and duties set forth in section twelve of this article. Claim investigators shall serve at the pleasure of the President of the Senate and the Speaker of the House of Delegates and under the administrative supervision of the clerk of the West Virginia Legislative Claims Commission. The compensation of claim investigators shall be fixed by the President of the Senate and the Speaker of the House of Delegates, and such compensation, together with travel, clerical and other expenses of the clerk of the West Virginia Legislative Claims Commission relating to a claim investigator carrying out his or her duties under this article, including the cost of obtaining reports required by the investigator in investigating a claim, shall be payable from the crime victims compensation fund as appropriated for such purpose by the Legislature.

The West Virginia Legislative Claims Commission, with the approval of the President of the Senate and the Speaker of the House of Delegates, is hereby authorized to hire as support staff such paralegal or paralegals and secretary or secretaries to be employed within the West Virginia Legislative Claims Commission, necessary to carry out the functions and duties of this article. Such support staff shall serve at the will and pleasure of the West Virginia Legislative Claims Commission and under the administrative supervision of the clerk of the West Virginia Legislative Claims Commission.

§14-2A-10. Filing of application for compensation award; contents.

(a) A claim for an award of compensation shall be commenced by filing an application for an award of compensation with the clerk of the West Virginia Legislative Claims Commission. The application shall be in a form prescribed by the clerk of the West Virginia Legislative Claims Commission and shall contain the information specified in subdivisions (1) through (6) of this subsection and, to the extent possible, the information in subdivisions (7) through (10) of this subsection:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant and the relationship of the claimant to the victim;

(2) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

(3) The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

(4) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(5) A release authorizing the West Virginia Legislative Claims Commission and the claim investigator to obtain any report, document or information that relates to the determination of the claim for an award of compensation;

(6) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

(7) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;

(8) The total amount of the economic loss that the victim, a dependent or the claimant sustained or will sustain as a result of the criminally injurious conduct, without regard to the financial limitation set forth in subsection (g), section fourteen of this article;

(9) The amount of benefits or advantages that the victim, a dependent or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;

(10) Any additional relevant information that the West Virginia Legislative Claims Commission may require. The West Virginia Legislative Claims Commission may require the claimant to submit, with the application, materials to substantiate the facts that are stated in

the application.

(b) All applications for an award of compensation shall be filed within two years after the occurrence of the criminally injurious conduct that is the basis of the application. Any application so filed which contains the information specified in subdivisions (1) through (6), subsection (a) of this section may not be excluded from consideration on the basis of incomplete information specified in subdivisions (7) through (10) of said subsection if such information is completed after reasonable assistance in the completion thereof is provided under procedures established by the West Virginia Legislative Claims Commission.

(c) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or who knowingly and willfully participates, or assists in the preparation or presentation of a false or fraudulent application, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of a violation of this section shall be fined not more than \$1,000 or imprisoned 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.

§14-2A-11. Procedure for filing of application.

The clerk of the West Virginia Legislative Claims Commission shall establish a procedure for the filing, recording and processing of applications for an award of compensation.

WV Legislature

§14-2A-11a. Application when the victim is the subject of a civil abuse or neglect petition; confidentiality of records.

(a) An application for benefits on behalf of a minor child who is the subject of a civil abuse and neglect petition may be filed by a foster parent, legal guardian of the minor child, court appointed guardian ad litem, or any person or entity having legal custody of the minor child, including the agency which filed the civil abuse and neglect petition.

(b) All crime victims' compensation fund records and proceedings related to a claim filed on behalf of a minor child who is the subject of a civil abuse and neglect petition are confidential and may not be disclosed to any person who is not a necessary participant in the proceedings. Information, details, and identities of parties in the claim shall not be published, except in the form of statistical reporting, identified only by claim number, as necessary to satisfy the requirements of federal and state law.

§14-2A-12. Investigation and recommendations by claim investigator.

(a) The clerk of the West Virginia Legislative Claims Commission shall transmit a copy of the application to the claim investigator within seven days after the filing of the application.

(b) The claim investigator, upon receipt of an application for an award of compensation from the clerk of the West Virginia Legislative Claims Commission, shall investigate the claim. After completing the investigation, the claim investigator shall make a written finding of fact and recommendation concerning an award of compensation. He or she shall file with the clerk the finding of fact and recommendation and all information or documents that he or she used in his or her investigation: Provided, That the claim investigator shall not file information or documents which have been the subject of a protective order entered under the provisions of subsection (c) of this section.

(c) The claim investigator, while investigating the claim, may require the claimant to supplement the application for an award of compensation with any further information or documentary materials, including any medical report readily available, which may lead to any relevant facts aiding in the determination of whether, and the extent to which, a claimant qualifies for an award of compensation.

The claim investigator, while investigating the claim, may also require law-enforcement officers and prosecuting attorneys employed by the state or any political subdivision thereof, to provide him or her with reports, information, witness statements or other data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable him or her to determine whether, and the extent to which, a claimant qualifies for an award of compensation. The prosecuting attorney and any officer or employee of the prosecuting attorney or of the law-enforcement agency shall be immune from any civil liability that might otherwise be incurred as the result of providing such reports, information, witness statements or other data relating to the criminally injurious conduct to the claim investigator.

The claim investigator, while investigating the claim, may obtain autopsy reports including results from the Office of the State Medical Examiner to be used solely for determining eligibility for compensation awards.

Upon motion of any party, court or agency from whom such reports, information, witness statements or other data is sought, and for good cause shown, the court may make any order which justice requires to protect a witness or other person, including, but not limited to, the following: (1) That the reports, information, witness statements or other data not be made available; (2) that the reports, information, witness statements or other data may be made available only on specified terms and conditions, including a designation of time and place; (3) that the reports, information, witness statements or other data be made available only by a different method than that selected by the claim investigator; (4) that certain matters not be inquired into, or that the scope of the claim investigator's request be limited to certain matters; (5) that the reports, information, witness statements or other data be examined only

by certain persons designated by the court; (6) that the reports, information, witness statements or other data, after being sealed, be opened only by order of the court; and (7) that confidential information or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a designated manner.

However, in any case wherein the claim investigator has reason to believe that his or her investigation may interfere with or jeopardize the investigation of a crime by law-enforcement officers, or the prosecution of a case by prosecuting attorneys, he or she shall apply to the West Virginia Legislative Claims Commission, or a commissioner thereof, for an order granting leave to discontinue his or her investigation for a reasonable time in order to avoid such interference or jeopardization. When it appears to the satisfaction of the commission, or commissioner, upon application by the claim investigator or in its own discretion, that the investigation of a case by the claim investigator will interfere with or jeopardize the investigation or prosecution of a crime, the commission, or commissioner, shall issue an order granting the claim investigator leave to discontinue his or her investigation for such time as the commission, or commissioner, deems reasonable to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred and the exact nature of the conduct;

(2) If the criminally injurious conduct was reported to a law-enforcement officer or agency, the date on which the conduct was reported and the name of the person who reported the conduct; or the reasons why the conduct was not reported to a law-enforcement officer or agency; or the reasons why the conduct was not reported to a law-enforcement officer or agency within seventy-two hours after the conduct occurred;

(3) The exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct;

(4) If the claim investigator is recommending that an award be made, a specific itemization of the economic loss that was sustained by the victim, the claimant or a dependent as a result of the criminally injurious conduct;

(5) If the claim investigator is recommending that an award be made, a specific itemization of any benefits or advantages that the victim, the claimant or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct;

(6) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(7) Any information which might be a basis for a reasonable reduction or denial of a claim because of contributory misconduct of the claimant or of a victim through whom he or she claims;

(8) Any additional information that the claim investigator deems to be relevant to the evaluation of the claim.

(e) The recommendation that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether an award of compensation should be made to the claimant and the amount of the award;

(2) If the claim investigator recommends that an award not be made to the claimant, the reason for his or her decision.

(f) The claim investigator shall file his or her finding of fact and recommendation with the clerk within six months after the filing of the application: Provided, That where there is active criminal investigation or prosecution of the person or persons alleged to have committed the criminally injurious conduct which is the basis for the claimant's claim, the claim investigator shall file his or her finding of fact and recommendation within six months after the first of any final convictions or other final determinations as to innocence or guilt, or any other final disposition of criminal proceedings. In any case, an additional time period may be provided by order of any commissioner upon good cause shown.

§14-2A-13. Notice to claimant of claim investigator's recommendation; evaluation of claim by commissioner.

(a) The clerk of the West Virginia Legislative Claims Commission, upon receipt of the claim investigator's finding of fact and recommendation, shall forward a copy of the finding of fact and recommendation to the claimant with a notice informing the claimant that any response, in the form of objections or comments directed to the finding of fact and recommendation, must be filed with the clerk within thirty days of the date of the notice. After the expiration of such thirty-day period, the clerk shall assign the claim to a commissioner.

(b) The commissioner to whom the claim is assigned shall review the finding of fact and recommendation and any response submitted by the claimant and, if deemed appropriate, may request the claim investigator to comment in writing on the claimant's response. The commissioner shall, within forty-five days after assignment by the clerk, evaluate the claim without a hearing and either deny the claim or approve an award of compensation to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum award.

- (a) Except as provided in §14-2A-10(b) of this code, the commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.
- (b) The commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency or, in the case of sexual offense, the victim did not undergo a forensic medical examination, within 96 hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct or undergo a forensic medical examination within the 96-hour period: *Provided*, That reporting to a law-enforcement officer or agency or a forensic medical examination is not required if the victim is a juvenile in order for a commissioner to approve an award of compensation: *Provided, however*, That the filing of a civil abuse and neglect petition in a circuit court satisfies the reporting requirement, thereby allowing the minor child who is the subject of the petition to file an application for benefits, with the claims process to proceed in accordance with this code.
- (c) The commissioner may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.
- (d) A commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation, or reconsider a claim already approved.
- (e) A commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county, or regional jail, prison, private prison, or correctional facility.
- (f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the Clerk of the West Virginia Legislative Claims Commission. The commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: *Provided*, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened

and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g)(1) Except in the case of death, or as provided in subdivision (2) of this subsection, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim may not exceed \$35,000 in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed \$50,000 in the aggregate.

(2) In the event the victim's personal injuries are so severe as to leave the victim with a disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U. S. C. § 423, the commission may award an additional amount, not to exceed \$100,000, for special needs attributable to the injury.

(h) If an award of compensation of \$5,000 or more is made to a minor, a guardian shall be appointed pursuant to the provisions of §44-10-1 *et seq.* of this code to manage the minor's estate.

§14-2A-14a. Establishing a limitation on benefits.

All claims shall be considered closed and no longer eligible for benefits at the expiration of available benefits or 10 years after filing the claim, whichever occurs first: *Provided*, That this provision shall not apply to claimants or victims receiving benefits under §14-2A-14(g)(2) of this code.

WV Legislature

§14-2A-15. Hearings.

(a) If either the claim investigator or the claimant disagrees with the approval of an award or the denial of a claim in the summary manner set forth in the preceding sections of this article, the claim investigator or the claimant, or both, shall file with the clerk a request for hearing. Such request shall be filed within twenty-one days after notification by the commissioner of his or her decision.

(b) Upon receipt of a request for hearing, the clerk shall set a date and time for hearing, shall advise the Attorney General and the claimant of the receipt of the request and docketing of the claim, and shall request the Attorney General to commence negotiations with the claimant.

(c) During the period of negotiations and pending hearing, 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.

(d) The hearing held in accordance with this section shall be before a single commissioner to whom the claim has not been previously assigned. Hearings before a commissioner may, in the discretion of such hearing officer, be held at such locations throughout the state as will facilitate the appearance of the claimant and witnesses.

(e) The hearing shall be conducted so as to disclose all material facts and issues. The commissioner may examine or cross-examine witnesses. The commissioner may call witnesses or require evidence not produced by the parties; may stipulate the questions to be argued by the parties; and may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

(f) After the close of the hearing the commissioner shall consider the claim and shall conclude his or her determination, if possible, within thirty days.

(g) The commission shall adopt and may from time to time amend rules of procedure to govern proceedings before the commission in accordance with the provisions of this article. The rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. The rules shall permit a claimant to appear in his or her own behalf or be represented by counsel and provide for interests of the state to be represented by the Attorney General in any hearing under this section at no additional cost to the fund or the state.

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.

§14-2A-16. Evidence.

(a) There is no privilege, except the privilege arising from the attorney-client relationship, as to communications or records that are relevant to the physical, mental or emotional condition of the claimant or victim in a proceeding under this article in which that condition is an element.

(b) If the mental, physical or emotional condition of a victim or claimant is material to a claim for an award of compensation, the commission or a commissioner may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown and upon notice to the person to be examined and to the claimant and the claim investigator. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person who performs the examination or autopsy to file with the clerk of the West Virginia Legislative Claims Commission a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnosis, prognosis and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the clerk of the West Virginia Legislative Claims Commission shall furnish him or her a copy of the report. If the victim is deceased, the clerk of the West Virginia Legislative Claims Commission, on request, shall furnish the claimant a copy of the report.

(c) The commission, or a commissioner thereof, may order law-enforcement officers employed by the State or any political subdivision thereof to provide it or the claim investigator with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of compensation.

(d) The commission or a commissioner thereof, may require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports relating to the injury for which the award of compensation is claimed.

(e) The commission or a commissioner thereof, or the claim investigator, in a claim arising out of a violation of article eight-b, chapter sixty-one of this code, shall not request the victim or the claimant to supply any evidence of specific instances of the victim's activity, or reputation evidence of the victim's sexual activity, unless it involves evidence of the victim's past sexual activity with the offender, and then only to the extent that the judge, the commissioner or the claim investigator finds that the evidence is relevant to a fact at issue in the claim.

(f) Notwithstanding any provision of this code to the contrary relating to the confidentiality of juvenile records, the West Virginia Legislative Claims Commission, or a commissioner thereof, or the claim investigator shall have access to the records of juvenile proceedings which bear upon an application for compensation under this article. The West Virginia Legislative Claims Commission, or a commissioner thereof, and the claim investigator, shall,

to the extent possible, maintain the confidentiality of juvenile records.

WV Legislature

§14-2A-17. Contempt sanction not available.

If a person refuses to comply with an order under this article, or asserts a privilege, except privileges arising from the attorney-client relationship, so as to withhold or suppress evidence relevant to a claim for an award of compensation, the commission or a commissioner thereof may make any just order, including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of his or her powers and duties, the claim investigator may petition the West Virginia Legislative Claims Commission for an appropriate order, including an order authorizing the investigator to take the depositions of witnesses by oral examination or written interrogatory, but the West Virginia Legislative Claims Commission shall not find a person in contempt for refusal to submit to a mental or physical examination.

§14-2A-18. Effect of no criminal charges being filed or conviction of offender.

The commission or a commissioner thereof, may approve an award of compensation whether or not any person is convicted for committing the conduct that is the basis of the award. The filing of a criminal charge shall be a prerequisite for receipt of compensation unless it is determined that no charges were filed due to the identity of the perpetrator being unknown: Provided, That no criminal charges need be filed if: (1) The claimant is an adult at the time the conduct giving rise to the claim occurred and no criminal charges were filed for reasons other than the desire of the claimant and a law-enforcement agency confirms that the available evidence supports a finding that a crime occurred; or (2) the claimant was a juvenile at the time the conduct giving rise to the claim occurred. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction or certiorari is pending, or a rehearing or new trial has been ordered.

The commission or a commissioner thereof, shall suspend, upon a request of the claim investigator, the proceedings in any claim for an award of compensation pending disposition of a criminal prosecution that has been commenced or is imminent.

§14-2A-19. Attorney and witness fees.

(a) By separate order, the commission or a commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered and reimbursement for reasonable and necessary expenses actually incurred shall be paid from the Crime Victims Compensation Fund to the attorney representing a claimant in a proceeding under this article at the same rates as set forth in section thirteen-a, article twenty-one, chapter twenty-nine of this code. Attorney's fees and reimbursement may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards of compensation, and attorney's fees and reimbursement may be awarded whether or not an award of compensation is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section. In no event may a prosecuting attorney or assistant prosecuting attorney represent any victim seeking compensation under this article.

(b) Each witness called by the commission to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code to be paid from the Crime Victims Compensation Fund.

§14-2A-19a. Effect on physician, hospital and healthcare providers filing an assignment of benefits; tolling of the statute of limitations.

(a) As part of the order, the commission or a commissioner thereof, shall determine whether fees are due and owing for health care services rendered by a physician, hospital or other health care provider stemming from an injury received as defined under this article, and further, whether or not the physician, hospital or other health care provider has been presented an assignment of benefits, signed by the crime victim, authorizing direct payments of benefits to the health care provider. If such fees are due and owing and the health care provider has presented a valid assignment of benefits, the commission or a commissioner thereof, shall determine the amount or amounts and shall cause such reasonable fees to be paid out of the amount awarded the crime victim under this article directly to the physician, hospital or other health care provider. The requirements of this section shall be applicable to, and any such unpaid fees shall be determined and payable from, the awards made by the Legislature at regular session, 1987, and subsequently: Provided, That when a claim is filed under this section, the commission shall determine the total damages due the crime victim, and where the total damages exceed the maximum amount which may be awarded under this article, the amount paid the health care provider shall be paid in the same proportion to which the actual award bears to the total damages determined by the commission. In any case wherein an award is made which includes an amount for funeral, cremation or burial expenses, or a combination thereof, the commission shall provide for the payment directly to the provider or providers of such services, in an amount deemed proper by the commission, where such expenses are unpaid at the time of the award.

(b) If the health care provider has filed an assignment of benefits, the provider shall aid the crime victim in the development of his or her claim by providing the commission with the amount of such fees as well as the amount of any portion of the fees paid the provider by the crime victim directly or paid the provider for the crime victim by a collateral source.

(c) Whether or not a health care provider has filed an assignment of benefits, the commission shall disclose no information regarding the status of the claim to the provider: Provided, That the commission shall promptly notify the provider of the final disposition of the claim, if the provider is known to the commission.

(d) Whenever a person files a claim under this article, the statute of limitations for the collection of unpaid fees paid for such health care services shall be tolled during the pendency of the claim before the commission.

§14-2A-19b. Rates and limitations for health care services.

The commission may establish by rule or order maximum rates and service limitations for reimbursement of health care services rendered by a physician, hospital, or other health care provider. An informational copy of the maximum rates and service limitations shall be filed with the Joint Committee on Government and Finance upon adoption by the commission. Any change in the maximum rates or service limitations shall be effective sixty days after the adoption of the changes. A provider who accepts payment from the commission for a service shall accept the commission's rates as payment in full and may not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the commission for that service. A provider may not charge a claimant for any difference between the cost of a service provided to a claimant and the commission's payment for that service. To ensure service limitations are uniform and appropriate to the levels of treatment required by the claimant, the commission may review all claims for these services as necessary to ensure their medical necessity.

§14-2A-20. Budget preparation; procedure for payment of claims.

(a) The Legislative Auditor shall submit to the Department of Administration, on or before November 20, of each year, an anticipated budget for the Crime Victims Compensation Program provided in this article for the next fiscal year, which shall include:

(1) An estimate of the balance and receipts anticipated in the Crime Victims Compensation Fund;

(2) Amounts anticipated to be sufficient for the payment of all administrative expenses necessary for the administration of this article; and

(3) Amounts anticipated to be sufficient for the payment of awards, attorney fees, witness fees and other authorized fees, costs or expenses that may arise under this article during the next fiscal year.

(b) The Governor shall include in his or her proposed budget bill and revenue estimates the amounts submitted by the Legislative Auditor under subsection (a) of this section.

(c) The clerk shall certify each authorized award and the amount of the award and make requisition upon the Crime Victims Compensation Fund to the Auditor. Notwithstanding any provision of chapter twelve of this code to the contrary, the Auditor shall issue a warrant to the Treasurer without further examination or review of the claim if there is a sufficient unexpended balance in the Crime Victims Compensation Fund.

(d) The commission may provide that payment be made to a claimant or to a third party for economic losses of the claimant and the order may provide an award for the payment for actual economic losses which are prospective as well as those which have already been incurred.

§14-2A-21. Annual report of West Virginia Legislative Claims Commission.

The West Virginia Legislative Claims Commission shall prepare and transmit annually to the Governor and the Legislature a report of the activities of the West Virginia Legislative Claims Commission under this article. The report shall include the number of claims filed, the number of awards made, the amount of each award, and a statistical summary of claims and awards made and denied; the balance in the Crime Victims Compensation Fund with a listing by source and amount of the moneys that have been deposited in the fund; the amount that has been withdrawn from the fund, including separate listings of the administrative costs incurred by the West Virginia Legislative Claims Commission, compensation of commissioners and commission personnel, and the amount awarded as attorneys' fees. The report shall be transmitted to the Governor and members of the Legislature electronically. Further, the report shall be provided to the legislative librarian to be posted to the legislative website. No hard copy of the report shall be issued; however, upon request a hard copy shall be provided.

§14-2A-22. State's subrogation to claimant's rights.

If an award of compensation is made under the provisions of this article and is not reduced on account of the availability of payment by a collateral source, the state, upon the payment of the award or a part of the award, shall be subrogated to all of the claimant's rights to receive or recover benefits or advantages for economic loss for which an award of compensation was made from such source if it were a collateral source or would be a collateral source if it were readily available to the victim or claimant. The claimant may sue the offender for any damages or injuries caused by the offender's criminally injurious conduct and not compensated for by an award of compensation. The claimant may join with the Attorney General as coplaintiff in any action against the offender. All moneys that are collected by the state pursuant to its rights of subrogation as provided in this section shall be deposited in the Crime Victims Compensation Fund.

§14-2A-23. Subrogation rights of collateral source.

Subrogation rights which a collateral source may have shall not extend to a recovery from a claimant of all or any part of an award made under this article. A collateral source may not apply, in the name of a claimant or otherwise, for an award of compensation based upon injury to a claimant to whose rights the collateral source may be subrogated.

WV Legislature

§14-2A-24. Award not subject to execution or attachment; exceptions.

An award is not subject to execution, attachment, garnishment or other process, except that, upon receipt of an award by a claimant, the part of the award that is for allowable expense is not exempt from such action by a creditor to the extent that he provides products, services or accommodations the costs of which are included in the award and the part of the award that is for work loss shall not be exempt from such action to secure payment of alimony, maintenance or child support.

WV Legislature

§14-2A-25. Publicity.

(a) The clerk of the West Virginia Legislative Claims Commission shall prepare an information brochure for the benefit of the general public, outlining the rights of claimants and procedures to be followed under this article. Copies of such brochure shall be distributed to law-enforcement agencies in the state, and be made available to other interested persons.

(b) Any law-enforcement agency that investigates an offense committed in this state involving personal injury shall make reasonable efforts to provide information to the victim of the offense and his or her dependents concerning the availability of an award of compensation and advise such persons that an application for an award of compensation may be obtained from the clerk of the West Virginia Legislative Claims Commission.

§14-2A-26. Rule-making.

(a) The West Virginia Legislative Claims Commission may promulgate rules and regulations to implement the provisions of this article.

(b) The West Virginia Legislative Claims Commission shall promulgate rules and regulations to govern the award of compensation to the spouse of, person living in the same household with, parent, child, brother or sister of the offender or his or her accomplice in order to avoid an unjust benefit to or the unjust enrichment of the offender or his or her accomplice.

§14-2A-27. Application of article.

The provisions of this article shall not apply to any injury or death resulting from criminally injurious conduct which occurred on or before December 31, 1981.

WV Legislature

§14-2A-28. Retroactive effect of amendments.

Amendments made to the provisions of this article during the regular session of the Legislature in the year 1984, shall be of retroactive effect to the extent that such amended provisions shall apply to all cases pending before the West Virginia Legislative Claims Commission on the effective date of the act of the Legislature which effects such amendment.

WV Legislature

§14-2A-29. Retroactive effect of amendments.

Amendments made to the provisions of this article during the 1992 regular session of the Legislature are retroactive in effect to the extent that the amended provisions apply to all cases wherein the criminally injurious conduct occurred after December 31, 1991.

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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§14-3-1. Payment of interest by the state on contracts when final payment is delayed.

All public contracts let in accordance with article three, chapter five-a of the code or let by the state Board of Education, the University of West Virginia board of trustees, the board of directors of the state college system, state armory board or by any other board, agency or commission of the state, entered into on and after March 1, 1969, and prior to July 1, 1991, except the state road commissioner, shall contain the following paragraph:

"Within ninety days after the completion of this contract is certified by the approving authority to be complete in accordance with terms of the plans or specifications, or both where appropriate, or is accepted by the authorized spending officer as complete, or is occupied by the owner, or is dedicated for public use by the owner, whichever occurs first, the balance due the contractor herein shall be paid in full. Should such payment be delayed for more than ninety days beyond the day the completion of this contract is certified by the authorized spending officer or is accepted by the owner as complete, or is occupied by the owner, or is dedicated for public use by the owner, said contractor shall be paid interest, beginning on the ninety-first day, at the current rate, as determined by the State Tax Commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code per annum on any unpaid balance: Provided, That whenever the approving authority reasonably determines that delay in completing the contract or in accepting payment for the contract is the fault of the contractor herein, the approving authority may accept and use the commodities or printing or the project may be occupied by the owner or dedicated for public use by the owner without payment of any interest on amounts withheld past the ninety-day limit."

All public construction contracts relating to roads or bridges let by the commissioner of the Division of Highways, entered into on and after March 1, 1969, and prior to July 1, 1991, shall contain the following paragraph:

"Within one hundred fifty days after the approving authority notifies the contractor, in writing, of the final acceptance by such approving authority of the project for which this contract provides, the balance due the prime contractor shall be paid in full. Should such payment be delayed for more than one hundred fifty days beyond the date that the approving authority notifies the contractor of the final acceptance of the project in accordance with the terms of the contract and the plans and specifications thereof, said prime contractor shall be paid interest, beginning on the one hundred fifty-first day, at the current rate, as determined by the State Tax Commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code per annum on such unpaid balance: Provided, That if the prime contractor does not agree to the amount of money determined by the approving authority to be due and owing to the prime contractor and set forth on the final estimate document, and the approving authority makes an offer to pay the amount of the final estimate to the said prime contractor, then the prime contractor shall not be entitled to receive any interest on the amount set forth in said final estimate, but shall only be entitled to the payment of interest current rate, as determined by the State Tax Commissioner under the provisions of

section seventeen-a, article ten, chapter eleven of this code per annum on the amount of money finally determined to be due and owing to the said prime contractor, less the amount of the final estimate that the approving authority had originally offered to pay to the said prime contractor."

WV Legislature

§14-3-2. Approving authority.

The approving authority provided for in section one of this article shall be the contracting state board, agency or commission or its authorized spending officer; except, in the case of contracts let by the state road commissioner relating to roads and bridges, the approving authority shall be the state highway engineer.

WV Legislature

§14-3-3. Source of funds for payment of interest.

Payment of interest as provided by this article shall be made from the same appropriation or other source from which the principal debt under the contract is to be paid.

WV Legislature