

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1941



ENROLLED

HOUSE BILL No. 218

(By Mr. Thomas)



PASSED march 6 1941

In Effect from Passage

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AN ACT to amend article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by repealing sections one through five, inclusive, and enacting sections one through twenty-eight, inclusive; and to repeal section three, article three, chapter twelve, thereof, all relating to claims and proceedings against the state, its officers and agencies.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter twelve be repealed; and that sections one through five, inclusive, be repealed and sections one through twenty-eight, inclusive, be enacted of article two, chapter fourteen, all of the official code of West Virginia, one thousand nine hundred thirty-one, so as to read as follows:

Article 2. Claims Against the State.

Section 1. *Purpose.*—The purpose of this article is to
2 provide a simple and expeditious method for the consid-
3 eration of claims against the state that because of the
4 provisions of section thirty-five, article six of the consti-
5 tution of the state and the statutory restrictions, inhibi-
6 tions or limitations cannot be determined in a court of
7 law or equity; and to provide for proceedings in which
8 the state has a special interest.

Sec. 2. *Definitions.*—For the purposes of this article:
2 “Court” means the state court of claims established
3 by section 4 of this article.

4 “Claim” means a claim authorized by the court in
5 accordance with this article.

6 “Approved claim” means a claim found by the court
7 to be one that should be paid under the provisions of
8 this article.

9 “Award” means the amount recommended by the court
10 to be paid in satisfaction of an approved claim.

11 “Clerk” means the clerk of the court of claims.

12 “State agency” means a state department, board, com-

mission, institution, or other administrative agency of
the state government.

Sec. 3. *Proceedings Against State Officers.*—The following proceedings shall be brought and prosecuted only in the circuit court of Kanawha County:

1. Any suit in which the governor, any other state officer, or a state agency is made a party defendant, except as garnishee or suggestee.

2. Any suit attempting to enjoin or otherwise suspend or affect a judgment or decree on behalf of the state obtained in any circuit court.

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.

Sec. 4. *Court of Claims.*—There is hereby created a “State Court of Claims” which shall be a special instrumentality of the legislature for the purpose of considering claims against the state, which because of the provisions of section thirty-five, article six of the constitution of the state and of statutory restrictions, inhibi-

7 tions or limitations cannot be heard in a court of law or
8 equity, and recommending the disposition thereof to the
9 legislature. The court shall not be invested with or exer-
10 cise the judicial power of the state in the sense of article
11 eight of the constitution of the state. A determination
12 made by the court shall not be subjected to appeal to or
13 review by a court of law or equity created by or pursuant
14 to article eight of the constitution.

15 The court shall consist of three judges who shall be ap-
16 pointed by the governor with the advice and consent of
17 the senate. The terms of judges shall be six years, except
18 that the first membership of the court shall be appointed
19 as follows: one judge for two years; one judge for four
20 years; and one judge for six years. As these appointments
21 expire, all appointments shall be for six-year terms. Not
22 more than two of the judges shall be members of the same
23 political party. An appointment to fill a vacancy shall be
24 for the unexpired term. The court shall each year elect
25 one of its members as presiding judge.

26 The governor shall appoint three persons as alternate
27 judges. Whenever a regular judge is unable to serve

28 or is disqualified, the governor shall designate an alternate
29 judge to serve in the place and stead of the regular
30 judge. Alternate judges shall be appointed for six-year
31 terms except that the first alternates appointed shall be
32 designated to serve for two-, four-, and six-year terms
33 as in the case of regular judges. Not more than two
34 alternate judges shall belong to the same political party.
35 The provisions of sections eight to ten, inclusive, of
36 this article with respect to judges shall apply with equal
37 effect to alternates.

Sec. 5. *Court Clerk.*—The secretary of state shall be
2 *ex officio* clerk of the court. He shall perform the duties
3 of clerk without additional compensation. The clerk
4 shall have custody of all records and proceedings of the
5 court, shall attend meetings and hearings of court, shall
6 administer oaths and affirmations, and shall issue all
7 official summons, orders, statements and awards. The
8 secretary of state may, with the approval of the court,
9 designate one of the regular employees of his office as
10 deputy clerk. The clerk may delegate his duties under

11 this article to the deputy but the clerk shall be responsible
12 for all official acts.

Sec. 6. *Terms of Court.*—The court shall hold at least
2 four regular terms each year, on the second Monday in
3 January, April, July and October. If, however, one
4 week prior to the date of a regular term, no claims
5 are ready for hearing or consideration, the clerk, with
6 the approval of the presiding judge, shall notify the
7 members that the court will not be convened. So far
8 as possible, the court shall not adjourn a regular term
9 until all claims then upon its docket and ready for hear-
10 ing or other consideration have been disposed of.

11 Special terms or meetings may be called by the clerk
12 at the request of the presiding judge whenever the
13 number of claims awaiting consideration, or any other
14 pressing matter of official business makes such a term
15 advisable.

Sec. 7. *Meeting Place of Court.*—The regular meeting
2 place of the court shall be the offices of the secretary
3 of state at the state capitol. When deemed advisable in
4 order to facilitate the full hearing of claims arising

5 elsewhere in the state, the court may convene at any
6 county seat.

Sec. 8. *Compensation of Members.*—Each judge of the
2 court shall receive fifteen dollars for each day ac-
3 tually served, and actual expenses incurred in the per-
4 formance of his duties.

5 Requisition for traveling expenses shall be accom-
6 panied by a sworn and itemized statement which shall
7 be filed with the auditor and preserved as a public record.
8 For the purposes of this section days served shall in-
9 clude time spent in the hearing of claims, in the consid-
10 eration of the record, and in the preparation of opinions.
11 In no case, however, shall a judge receive compensation
12 for more than one hundred fifty days' service in any fiscal
13 year.

Sec. 9. *Oath of Office.*—A judge shall, before entering
2 upon the duties of his office, take and subscribe to the
3 oath prescribed by article four, section five of the consti-
4 tution of the state. The oath shall be filed with the
5 clerk.

Sec. 10. *Qualifications of Judges.*—A judge shall not

2 be a state officer or a state employee except in his capacity
3 as a member of the court. A member shall receive no
4 other compensation from the state.

5 A judge shall not hear or participate in the considera-
6 tion of a claim in which he is personally interested.
7 Whenever a member is thus disqualified the clerk shall
8 notify the governor, and thereupon the governor shall
9 assign an alternate to act during such disqualification.
10 Whenever a judge is unable to attend and serve for any
11 reason, the governor shall, when so notified by the clerk,
12 assign an alternate to act in the absence of the regular
13 judge.

Sec. 11. *Attorney-General to Represent State.*—The
2 attorney-general shall represent the interests of the
3 state in all claims coming before the court.

Sec. 12. *General Powers of the Court.*—The court shall,
2 in accordance with this article, consider claims which,
3 but for the constitutional immunity of the state from
4 suit, or of some statutory restrictions, inhibitions or lim-
5 itations, could be maintained in the regular courts of the
6 state. But no liability shall be imposed upon the state or

7 any of its agencies by a determination of the court of
8 claims approving a claim and recommending an award, un-
9 less the legislature has previously made an appropriation
10 for the payment of a claim subject only to the determina-
11 of the court. The court shall consider claims in accordance
12 with sections sixteen to twenty, inclusive, of this article.
13 Except as is otherwise provided in this article, a claim
14 shall be instituted by the filing of notice with the clerk.
15 Each claim shall be considered by three judges. If after
16 consideration the court finds that a claim is just and
17 proper, it shall so determine and shall file with the clerk
18 a brief statement of its reasons. If the determination of
19 the court is not unanimous, the reasons of the dissenting
20 judge shall be separately stated. A claim so filed shall
21 be an approved claim. The court shall also determine
22 the amount that should be paid to the claimant, and shall
23 itemize this amount as an award, with the reasons therefor
24 in its statement filed with the clerk. In determining
25 the amount of a claim, interest shall not be allowed unless
26 the claim is based upon a contract which specifically
27 provides for the payment of interest.

Sec. 13. *The Jurisdiction of the Court.*—The jurisdic-

tion of the board, 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.

2. Claims and demands, liquidated and unliquidated,
ex contractu and ex delicto, which may be asserted in
the nature of set-off or counter claim on the part of the
state or any of its agencies.

3. The legal or equitable status, or both, of any claim
referred to the court by the head of a state agency for
an advisory determination.

Sec. 14. *Claims Excluded.*—The jurisdiction of the

court 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 injury to or death of an inmate of a state penal
institution.

8 3. Arising out of the care of treatment of a person in
9 a state institution.

10 4. For a disability or death benefit under chapter
11 twenty-three of this code.

12 5. For unemployment compensation under chapter
13 twenty-one (A) of this code.

14 6. For relief or public assistance under chapter nine
15 of this code.

16 7. With respect to which a proceeding may be main-
17 tained by or on behalf of the claimant in the courts of
18 the state.

Sec. 15. Rules of Practice and Procedure.—The court
2 shall adopt and may from time to time amend rules of
3 procedure, in accordance with the provisions of this
4 article, governing proceedings before the court. Rules
5 shall be designed to assure a simple, expeditious and
6 inexpensive consideration of claims.

7 The court shall also adopt and may from time to time
8 amend rules pertaining to persons appearing as repre-
9 sentatives of claimants. Rules shall permit a claimant
10 to appear in his own behalf, or to present his claim

11 through a qualified representative. A representative
12 shall be a person who, as further defined by the rules
13 of the court, is competent to present and protect the
14 interests of the claimant.

15 Under its rules, the court shall not be bound by the
16 usual common law or statutory rules of evidence. The
17 court may accept and weigh in accordance with its eviden-
18 tial value any information that will assist the court in
19 determining the factual basis of the claim.

Sec. 16. *Regular Procedure.*—The regular procedure for
2 the consideration of claims shall be substantially as
3 follows:

4 1. The claimant shall give notice to the clerk that he
5 desires to maintain a claim. Notice shall be in writing
6 and shall be in sufficient detail to identify the claimant,
7 the circumstances giving rise to the claim, and the state
8 agency concerned, if any. The claimant shall not other-
9 wise be held to any formal requirement of notice.

10 2. The clerk shall transmit a copy of the notice to the
11 state agency concerned. The state agency may deny
12 the claim, or may request a postponement of proceedings

13 to permit negotiations with the claimant. If the court
14 finds that a claim is *prima facie* within its jurisdiction,
15 it shall order the claim to be placed upon its regular
16 docket for hearing.

17 3. During a period of negotiations and pending hearing,
18 the state agency and the attorney-general's office shall,
19 if possible, reach an agreement with the claimant regard-
20 ing the facts upon which the claim is based so as to
21 avoid the necessity for the introduction of evidence at
22 the hearing. If the parties are unable to agree upon the
23 facts, an attempt shall be made to stipulate the questions
24 of fact in issue.

25 4. The court shall so conduct the hearing as to disclose
26 all material facts and issues of liability. Any judge may
27 examine or cross-examine witnesses. The court may
28 call witnesses or require evidence not produced by the
29 parties; may stipulate the questions to be argued by the
30 parties; and may continue the hearing until some subse-
31 quent time to permit a more complete presentation of
32 the claim.

33 5. After the close of the hearing the court shall consider

34 the claim and shall conclude its determination, if possible,
35 within thirty days.

Sec. 17. *Shortened Procedure.*—The shortened proce-
2 dure authorized by this section shall apply only to a
3 claim possessing all of the following characteristics:

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

6 2. The state agency concerned concurs in the claim.

7 3. The amount claimed does not exceed one thousand
8 dollars.

9 4. The claim has been approved by the attorney-general
10 as one that, in view of the purposes of this article, should
11 be paid.

12 The state agency concerned shall prepare the record
13 of the claim consisting of all papers, stipulations and
14 evidential documents required by the rules of the court.
15 The record shall be filed with the clerk. The court shall
16 consider the claim informally upon the record submitted.
17 If the court determines that the claim should be entered
18 as an approved claim and an award made, it shall so
19 order and shall file its statement with the clerk. If the

20 court finds that the record is inadequate, or that the
21 claim should not be paid, it shall reject the claim. The
22 rejection of a claim under this section shall not bar its
23 resubmission under the regular procedure.

Sec. 18. *Advisory Determination Procedure.*—The gov-
2 ernor or the head of a state agency may refer to the
3 court for an advisory determination the question of the
4 legal or equitable status, or both, of a claim against the
5 state or one of its agencies. This procedure shall apply
6 only to such claims as are within the jurisdiction of the
7 court. The procedure shall be substantially as follows:

8 1. There shall be filed with the clerk the record of the
9 claim including a full statement of the facts, the conten-
10 tions of claimant, and such other materials as the rules
11 of the court may require. The record shall submit specific
12 questions for the court's consideration.

13 2. The clerk shall examine the record submitted and
14 if he finds that it is adequate under the rules, he shall
15 place the claim on a special docket. If he finds the record
16 inadequate he shall refer it back to the officer submitting

17 it with the request that the necessary additions or changes
18 be made.

19 3. When the claim is reached on the special docket,
20 the court shall prepare a brief opinion for the information
21 and guidance of the officer. The claim shall be considered
22 informally and without hearing. A claimant shall not
23 be entitled to appear in connection with the consider-
24 ation of the claim.

25 4. The opinion shall be filed with the clerk. A copy
26 shall be transmitted to the officer who referred the claim.

27 An advisory determination shall not bar the subsequent
28 consideration of the same claim if properly submitted by,
29 or on behalf of, the claimant. Such subsequent consid-
30 eration, if undertaken, shall be *de novo*.

Sec. 19. *Claims Under Existing Appropriations.*—A claim
2 arising under an appropriation made by the legislature
3 during the fiscal year to which the appropriation applies,
4 and falling within the jurisdiction of the court may be
5 submitted by:

6 1. A claimant whose claim has been rejected by the
7 state agency concerned or by the state auditor.

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

10 3. The state auditor in order to obtain a full hearing
11 and consideration of the merits.

12 The regular procedure, so far as applicable, shall govern
13 the consideration of the claim by the board. If the court
14 finds that the claimant should be paid, it shall certify
15 the approved claim and award to the head of the state
16 agency, the state auditor, and the governor. The governor
17 may thereupon instruct the auditor to issue his warrant
18 in payment of the award and to charge the amount
19 thereof to the proper appropriation. The auditor shall
20 forthwith notify the state agency that the claim has been
21 paid. Such an expenditure shall not be subject to further
22 review by the auditor upon any matter determined and
23 verified by the court.

24 *Sec. 20. Claims Under Special Appropriations.—When-*
2 ever the legislature makes an appropriation for the pay-
3 ment of claims against the state, then accrued or arising
4 during the ensuing biennium, determination of claims
5 and the payment thereof may be made in accordance

6 with this section. But this section shall apply only if
7 the legislature in making its appropriation specifically
8 so provides.

9 The claim shall be considered and determined by the
10 regular or shortened procedure, as the case may be, and
11 the amount of the award shall be fixed by the court. The
12 clerk shall certify each approved claim and award to
13 the governor. The clerk shall issue his requisition to
14 the auditor who shall issue his warrant to the treasurer
15 in favor of the claimant. The auditor shall issue his
16 warrant without further examination or review of the
17 claim except for the question of a sufficient unexpended
18 balance in the appropriation.

Sec. 21. *Limitations of Time.*—The court shall not take
2 jurisdiction over a claim unless the claim is filed within
3 five years after the claim might have been presented to
4 such court. If, however, the claimant was for any reason
5 disabled from maintaining the claim, the jurisdiction of
6 the court shall continue for two years after the removal of
7 the disability. With respect to a claim arising prior to the
8 adoption of this article, the limitation of this section shall

9 run from the effective date of this article: *Provided, how-*
10 *ever,* That no such claim as shall have arisen prior to the
11 effective date of this article shall be barred by any lim-
12 itation of time imposed by any other statutory provision
13 if the claimant shall prove to the satisfaction of the court
14 that he has been prevented or restricted from presenting
15 or prosecuting such claim for good cause, or by any other
16 statutory restriction or limitation.

Sec. 22. *Compulsory Process.*—In all hearings and
2 proceedings before the court, the evidence of witnesses
3 and the production of documentary evidence may be
4 required. Summons may be issued by the court for
5 appearance at any designated place of hearing. In case
6 of disobedience to a summons or other process, the court
7 may invoke the aid of any circuit court in requiring the
8 evidence and testimony of witnesses, and the production
9 of books, papers, and documents. Upon proper showing,
10 the circuit court shall issue an order requiring witnesses
11 to appear before the court of claims; produce books,
12 papers and other evidence; and give testimony touching
13 the matter in question. A person failing to obey the order

14 may be punished by the circuit court as for contempt.

Sec. 23. *Inclusion of Awards in Budget.*—The clerk
2 shall certify to the director of the budget on or before
3 the twentieth day of November of each year next preced-
4 ing the year in which the legislature meets in regular
5 session, a list of all awards recommended by the court
6 to the legislature for appropriation. The clerk may certify
7 supplementary lists to the board of public works to
8 include subsequent awards made by the court. The board
9 of public works shall include all awards so certified in
10 its proposed budget bill transmitted to the legislature.

Sec. 24. *Records to be Preserved.*—The record of each
2 claim considered by the court, including all documents,
3 papers, briefs, transcripts of testimony and other mate-
4 rials, shall be preserved by the clerk and shall be made
5 available to the legislature or any committee thereof for
6 the reexamination of the claim.

Sec. 25. *Reports of the Court.*—The clerk shall be the
2 official reporter of the court. He shall collect and edit
3 the approved claims, awards and statements and shall

4 prepare them for publication and submission to the legis-
5 lature in the form of a biennial report.

6 Claims and awards shall be separately classified as
7 follows:

8 1. Approved claims and awards not satisfied but referred
9 to the legislature for final consideration and appropriation.

10 2. Approved claims and awards satisfied by payments
11 out of regular appropriations for the biennium.

12 3. Approved claims and awards satisfied by payment
13 out of a special appropriation made by the legislature
14 to pay claims arising during the biennium.

15 4. Claims rejected by the court with the reasons
16 therefor.

17 5. Advisory determinations made at the request of the
18 governor or the head of a state agency.

19 The court may include any other information or recom-
20 mendations pertaining to the performance of its duties.

21 The court shall transmit its biennial report to the
22 governor who shall transmit a copy thereof to the presid-
23 ing officer of each house of the legislature. The biennial

24 reports of the board shall be published by the clerk as
25 a public document.

Sec. 26. *Fraudulent Claims*.—A person who knowingly
2 and willfully presents or attempts to present a false or
3 fraudulent claim, or a state officer who knowingly and
4 willfully participates or assists in the preparation or
5 presentation of a false or fraudulent claim shall be guilty
6 of a misdemeanor. A person convicted, in a court of
7 competent jurisdiction, of violation of this section shall
8 be fined not more than one thousand dollars or imprisoned
9 for not more than one year, or both, in the discretion of
10 such court. If the convicted person is a state officer he
11 shall, in addition, forfeit his office.

Sec. 27. *Repealer*.—Section three, article three, chapter
2 twelve, of the official code, one thousand nine hundred
3 thirty-one is hereby repealed. Any other provision of law
4 in conflict with the provisions of this act is hereby
5 repealed.

Sec. 28. *Provisions Severable*.—If any part of this act is
2 held unconstitutional, the decision shall not affect any
3 portion of the act which remains. The remaining portions

4 shall be in full force and effect as if the portion declared
5 unconstitutional had never been a part of the act.

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

C. H. McKeown

Chairman Senate Committee

Leon Rice

Chairman House Committee

Originated in the House of Delegates

Takes effect from passage.

J
Clerk of the Senate

ORRIS
Clerk of the House of Delegates

Bryant Randolph

President of the Senate

Malcolm R. Arnold

Speaker House of Delegates

The within approved this the 14th
day of March, 1941.

Matthew M. Neely

Governor.

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Filed in the office of the Secretary of State
of West Virginia. MAR 17 1941

Wm. S. O'BRIEN,
Secretary of State