

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1953



ENROLLED

HOUSE BILL No. 487
Originating in the Committee.
(By Mr. on Finance)



PASSED March 14 1953

In Effect immediately after Passage



487

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House Bill No. 487

(Originating in the Committee on Finance)

[Passed March 14, 1953; in effect ninety days from passage.]

AN ACT to amend and reenact article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to claims and proceedings against the state, its officers and agencies, and providing for the attorney general to process and make recommendations upon such claims.

Be it enacted by the Legislature of West Virginia:

That article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Purpose.*—The purpose of this article is to
2 provide a simple and expeditious method for the con-
3 sideration of claims against the state that because of the
4 provisions of section thirty-five, article six of the Constitu-
5 tion of the state, and of statutory restrictions, inhibitions

6 or limitations, cannot be determined in a court of law
7 or equity; and to provide for proceedings in which the
8 state has a special interest.

Sec. 2. *Proceedings Against State Officers.*—The follow-
2 ing proceedings shall be brought and prosecuted only in
3 the circuit court of Kanawha county:

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

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

10 This section shall apply only to such proceedings as are
11 not prohibited by the constitutional immunity of the
12 state from suit under section thirty-five, article six of
13 the constitution of the state.

Sec. 3. *Authority of Attorney General Respecting*
2 *Claims.*—The attorney general is hereby authorized to act
3 as a special instrumentality of the Legislature for the
4 purpose of considering claims against the state, which
5 because of the provisions of section thirty-five, article

6 six of the Constitution of the state, and of statutory re-
7 strictions, inhibitions or limitations, cannot be heard in
8 a court of law or equity, and recommending the disposi-
9 tion thereof to the Legislature. Nothing in this article
10 is to be construed as an attempt to invest the attorney
11 general with judicial power in the sense of article eight
12 of the Constitution of this state. A determination made
13 by the attorney general shall not be subject to review by
14 a court of law or equity created by or pursuant to article
15 eight of the Constitution. The attorney general shall,
16 in accordance with this article, consider claims which,
17 but for the constitutional immunity of the state from suit,
18 or of some statutory restrictions, inhibitions or limita-
19 tions, could be maintained in the regular courts of the
20 state. No liability shall be imposed upon the state or any
21 of its agencies by a determination of the attorney general
22 under the provisions of this article, unless the Legisla-
23 ture has previously made an appropriation for the pay-
24 ment of the claim, subject only to the determination of
25 the attorney general.

26 Except as otherwise provided in this article, a claim

27 shall be instituted by the filing of notice with the attorney
28 general. The attorney general may hold hearings, at
29 which witnesses may be examined and law respecting
30 the claim presented. If, after consideration, the attorney
31 general finds that a claim is just and proper, he shall so
32 determine and shall state in writing his reasons therefor.
33 The attorney general shall also determine the amount
34 that should be paid to the claimant and shall itemize
35 this amount as an award, with the reasons therefor.

36 In determining the amount of the claim, interest shall
37 not be allowed unless the claim is based upon a contract
38 which specifically provides for the payment of interest.

Sec. 4. *The Jurisdiction of the Attorney General.*—The

2 jurisdiction of the attorney general, under the provisions
3 of this article, except for the claims excluded below, shall
4 extend to the following matters:

5 1. Claims and demands, liquidated and unliquidated,
6 ex contractu and ex delicto, against the state or any of
7 its agencies, which the state as a sovereign commonwealth
8 should in equity and good conscience discharge and pay.

9 2. Claims and demands, liquidated and unliquidated,

10 ex contractu and ex delicto, which may be asserted in the
11 nature of set-off or counterclaim on the part of the state
12 or any of its agencies.

13 3. The legal or equitable status, or both, of any claim
14 referred to the attorney general by the head of a state
15 agency for advisory determination.

Sec. 5. *Claims Excluded.*—The jurisdiction of the at-
2 torney general shall not extend to any claim:

3 1. For loss, damage, or destruction of property or for
4 injury or death incurred by a member of the militia
5 or national guard when in the service of the state.

6 2. For injury to or death of an inmate of a state penal
7 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. 6. *Rules of Procedure.*—The attorney general may
2 adopt rules to govern proceedings before him under the
3 provisions of this article, which rules shall be designed
4 to assure a simple, expeditious and inexpensive considera-
5 tion of claims.

6 Under the rules promulgated, the attorney general
7 shall not be bound by the common law or statutory rules
8 of evidence, but may accept and weigh in accordance with
9 its evidential value, any information that will assist him
10 in determining the factual basis of the claim.

Sec. 7. *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 attorney general,
5 may be 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 to
9 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 If the attorney general finds that the claimant should
13 be paid, he shall certify the approved claim and award
14 to the head of the state agency, the state auditor and the
15 governor. The governor may thereupon instruct the
16 auditor to issue his warrant in payment of the award and
17 to charge the amount thereof to the proper appropriation.
18 The auditor shall forthwith notify the state agency that
19 the claim has been paid. Such an expenditure shall not
20 be subject to further review by the auditor upon any mat-
21 ter determined and verified by the attorney general.

*Sec. 8. 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 and
5 the payment thereof may be made in accordance with this
6 section. But this section shall apply only if the Legislature
7 in making its appropriation specifically so provides.

8 The claim shall be considered and determined by the
9 attorney general and the amount of the award fixed in
10 the manner hereinbefore provided. The attorney general
11 shall issue his requisition to the auditor who shall issue
12 his warrant to the treasurer in favor of the claimant. The
13 auditor shall issue his warrant without further examina-
14 tion or review of the claim except for the question of a
15 sufficient unexpended balance in the appropriation.

Sec. 9. *Inclusion of Awards in Budget.*—The attorney
2 general shall certify to the director of the budget on or
3 before the twentieth day of November of each year next
4 preceding the year in which the Legislature meets in regu-
5 lar session, a list of all awards recommended by the attor-
6 ney general to the Legislature for appropriation. The at-
7 torney general may certify supplementary lists to the
8 board of public works to include subsequent awards made
9 by the attorney general. The board of public works shall
10 include all awards so certified in its proposed budget bill
11 transmitted to the Legislature.

Sec. 10. *Records to Be Preserved.*—The record of each
2 claim considered by the attorney general, including all

3 documents, papers, briefs, transcripts of testimony and
4 other materials, shall be preserved by him and shall be
5 made available to the Legislature or any committee there-
6 of for the re-examination of the claim.

Sec. 11. *Fraudulent Claims.*—A person who knowingly
2 and wilfully presents or attempts to present a false or
3 fraudulent claim, or a state officer who knowingly and
4 wilfully participates or assists in the preparation of pre-
5 sentation of a false or fraudulent claim, shall be guilty of
6 a misdemeanor. A person convicted, in a court of com-
7 petent jurisdiction, of violation of this section shall be
8 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.

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

Wm Kinley
Chairman Senate Committee

C. H. Hamblen
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Howard Myers
Clerk of the Senate

J. R. Cliff
Clerk of the House of Delegates

Ralph Bean
President of the Senate

W. E. Flannery
Speaker House of Delegates

The within approved this the 20th day of March, 1953.

William C. Mansel
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF VIRGINIA **MAR 20 1953**

D. PITT O'BRIEN,
SECRETARY OF STATE