

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

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ENROLLED

SENATE BILL NO. 332

(By Mr. Jackson)

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PASSED March 11, 1967

In Effect July 1, 1967 Passage

FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 3-21-67

# 332

**ENROLLED**  
**Senate Bill No. 332**

(By MR. JACKSON)

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[Passed March 11, 1967; in effect July 1, 1967.]

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AN ACT to repeal sections one, three, four, five, six, seven, eight, nine, ten, eleven and twelve, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article two by adding thereto twenty-eight new sections, designated sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, creating a court of claims; providing a legislative purpose and definition; providing for a clerk and other employees thereof;

the terms and meeting place of said court, the compensation, oath and qualifications of the judges thereof; providing the general powers and jurisdiction of the court; establishing exclusions to the jurisdiction; providing for the rules of practice and procedure; establishing a regular procedure, shortened procedure, and advisory determination procedure; providing for claims under existing appropriations and special appropriations; establishing a period of limitation; providing for compulsory process, inclusion of awards in the budget, records to be preserved, and for the reports of the court; prohibiting fraudulent claims and providing a penalty and forfeiture upon conviction thereof; providing for the conclusiveness of the court's determination; specifying policy concerning awards; providing for representation of the state by the attorney general; and providing a severability clause.

*Be it enacted by the Legislature of West Virginia:*

That sections one, three, four, five, six, seven, eight, nine, ten, eleven and twelve, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and to amend said article two by adding

thereto twenty-eight new sections designated sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, to read as follows:

## **ARTICLE 2. CLAIMS AGAINST THE STATE.**

### **§14-2-1. Purpose.**

The purpose of this article is to provide a simple and  
2 expeditious method for the consideration of claims against  
3 the state that because of the provisions of section thirty-  
4 five, article six of the constitution of the state, and of  
5 statutory restrictions, inhibitions or limitations, cannot  
6 be determined in the regular courts of the state; and to  
7 provide for proceedings in which the state has a special  
8 interest.

### **§14-2-3. Definitions.**

For the purpose of this article:

2 "Court" means the state court of claims established by  
3 section three of this article.  
4 "Claim" means a claim authorized to be heard by the  
5 court in accordance with this article.

6 "Approved claim" means a claim found by the court to  
7 be one that should be paid under the provisions of this  
8 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-  
13 mission, institution, or other administrative agency of  
14 state government: *Provided*, That a "state agency" shall  
15 not be considered to include county courts, county boards  
16 of education, municipalities, or any other political or local  
17 subdivision of the state regardless of any state aid that  
18 might be provided.

**§14-2-4. Creation of court of claims; appointment and terms of  
judges.**

The "Court of Claims" is hereby created. It shall consist  
2 of three judges, to be appointed by the president of the  
3 Senate and the speaker of the House of Delegates, by and  
4 with the advice and consent of the Senate, one of whom  
5 shall be appointed presiding judge. Each appointment to  
6 the court shall be made from a list of three qualified

7 nominees furnished by the board of governors of the West  
8 Virginia state bar.

9 The terms of the judges of this court shall be six years,  
10 except that the first members of the court shall be ap-  
11 pointed as follows: One judge for two years, one judge  
12 for four years and one judge for six years. As these ap-  
13 pointments expire, all appointments shall be for six-year  
14 terms. Not more than two of the judges shall be of the  
15 same political party. An appointment to fill the vacancy  
16 shall be for the unexpired term.

**§14-2-5. Court clerk and other personnel.**

The court shall have the authority to appoint a clerk.  
2 The clerk's salary shall be fixed by the joint committee on  
3 government and finance, and shall be paid out of the regu-  
4 lar appropriation for the court. The clerk shall have  
5 custody of all records and proceedings of the court, shall  
6 attend meetings and hearings of the court, shall admin-  
7 ister oaths and affirmations, and shall issue all official  
8 summonses, subpoenas, orders, statements and awards.

9 The joint committee on government and finance may  
10 employ other persons whose services shall be necessary

- 11 to the orderly transaction of the business of the court, and
- 12 fix their compensation.

**§14-2-6. Terms of court.**

The court shall hold at least two regular terms each  
2 year, on the second Monday in April and September. So  
3 far as possible, the court shall not adjourn a regular term  
4 until all claims then upon its docket and ready for hearing  
5 or other consideration have been disposed of.

6 Special terms or meetings may be called by the clerk  
7 at the request of the court whenever the number of claims  
8 awaiting consideration, or any other pressing matter of  
9 official business, make such a term advisable.

**§14-2-7. Meeting place of the court.**

The regular meeting place of the court shall be at the  
2 state capitol, and the joint committee on government and  
3 finance shall provide adequate quarters therefor. When  
4 deemed advisable, in order to facilitate the full hearing  
5 of claims arising elsewhere in the state, the court may  
6 convene at any county seat.

**§14-2-8. Compensation of judges; expenses.**

Each judge of the court shall receive seventy-five dol-  
2 lars for each day actually served, and actual expenses

3 incurred in the performance of his duties. The number of  
4 days served by each judge shall not exceed one hundred  
5 in any fiscal year, except by authority of the joint com-  
6 mittee on government and finance. Requisitions for com-  
7 pensation and expenses shall be accompanied by sworn  
8 and itemized statements, which shall be filed with the  
9 auditor and preserved as public records. For the purpose  
10 of this section, time served shall include time spent in the  
11 hearing of claims, in the consideration of the record, in  
12 the preparation of opinions, and in necessary travel.

**§14-2-9. Oath of office.**

Each judge shall before entering upon the duties of his  
2 office, take and subscribe to the oath prescribed by article  
3 four, section five of the constitution of the state. The oath  
4 shall be filed with the clerk.

**§14-2-10. Qualifications of judges.**

Each judge appointed to the court of claims shall be an  
2 attorney at law, licensed to practice in this state, and  
3 shall have been so licensed to practice law for a period of  
4 not less than ten years prior to his appointment as judge.  
5 A judge shall not be an officer or an employee of any

6 branch of state government, except in his capacity as a  
7 member of the court and shall receive no other compensa-  
8 tion from the state or any of its political subdivisions. A  
9 judge shall not hear or participate in the consideration of  
10 any claim in which he is interested personally, either di-  
11 rectly or indirectly.

**§14-2-11. Attorney general to represent state.**

The attorney general shall represent the interests of the  
2 state in all claims coming before the court.

**§14-2-12. General powers of the court.**

The court shall, in accordance with this article, consider  
2 claims which, but for the constitutional immunity of the  
3 state from suit, or for some statutory restrictions, inhibi-  
4 tions or limitations, could be maintained in the regular  
5 courts of the state. No liability shall be imposed upon the  
6 state or any state agency by a determination of the court  
7 of claims approving a claim and recommending an award,  
8 unless the claim is (1) made under an existing appropria-  
9 tion, in accordance with section nineteen of this article,  
10 or (2) a claim under a special appropriation, as provided

11 in section twenty of this article. The court shall consider  
12 claims in accordance with the provisions 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 the court and 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. A claim so filed shall be  
19 an approved claim. The court shall also determine the  
20 amount that should be paid to the claimant, and shall  
21 itemize this amount as an award, with the reasons there-  
22 for, in its statement filed with the clerk. In determining  
23 the amount of a claim, interest shall not be allowed unless  
24 the claim is based upon a contract which specifically pro-  
25 vides for the payment of interest.

**§14-2-13. Jurisdiction of the court.**

The jurisdiction of the court, except for the claims ex-  
2 cluded by section fourteen, shall extend to the following  
3 matters:

- 4 1. Claims and demands, liquidated and unliquidated,  
5 ex contractu and ex delicto, against the state or any of its

6 agencies, which the state as a sovereign commonwealth  
7 should in equity and good conscience discharge and pay.

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

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

**§14-2-14. Claims excluded.**

The jurisdiction of the court shall not extend to any  
2 claim:

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

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

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

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

12 5. With respect to which a proceeding may be main-  
13 tained against the state, by or on behalf of the claimant  
14 in the courts of the state.

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

The court shall adopt and may from time to time amend  
2 rules of procedure, in accordance with the provisions of  
3 this article, governing proceedings before the court. Rules  
4 shall be designed to assure a simple, expeditious and in-  
5 expensive consideration of claims. Rules shall permit a  
6 claimant to appear in his own behalf or be represented by  
7 counsel.

8 Under its rules, the court shall not be bound by the  
9 usual common law or statutory rules of evidence. The  
10 court may accept and weigh, in accordance with its evi-  
11 dential value, any information that will assist the court  
12 in determining the factual basis of a claim.

**§14-2-16. Regular procedure.**

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

3 1. The claimant shall give notice to the clerk that he  
4 desires to maintain a claim. Notice shall be in writing and

5 shall be in sufficient detail to identify the claimant, the  
6 circumstances giving rise to the claim, and the state  
7 agency concerned, if any. The claimant shall not other-  
8 wise be held to any formal requirement of notice.

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

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

24 4. The court shall so conduct the hearing as to disclose  
25 all material facts and issues of liability and may examine

26 or cross-examine witnesses. The court may call witnesses  
27 or require evidence not produced by the parties; may  
28 stipulate the questions to be argued by the parties; and  
29 may continue the hearing until some subsequent time to  
30 permit a more complete presentation of the claim.

31 5. After the close of the hearing the court shall con-  
32 sider the claim and shall conclude its determination, if  
33 possible, within thirty days.

**§14-2-17. Shortened procedure.**

The shortened procedure authorized by this section shall

2 apply only to a claim possessing all of the following char-  
3 acteristics:

4 1. The claim does not arise under an appropriation for  
5 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 gen-  
10 eral as one that, in view of the purposes of this article,  
11 should be paid.

12 The state agency concerned shall prepare the record of  
13 the claim consisting of all papers, stipulations and eviden-  
14 tial documents required by the rules of the court and file  
15 the same with the clerk. The court shall consider the  
16 claim informally upon the record submitted. If the court  
17 determines that the claim should be entered as an ap-  
18 proved claim and an award made, it shall so order and  
19 shall file its statement with the clerk. If the court finds  
20 that the record is inadequate, or that the claim should not  
21 be paid, it shall reject the claim. The rejection of a claim  
22 under this section shall not bar its resubmission under the  
23 regular procedure.

**§14-2-18. Advisory determination procedure.**

The governor or the head of a state agency may refer  
2 to the court for an advisory determination the question  
3 of the legal or equitable status, or both, of a claim against  
4 the state or a state agency. This procedure shall apply  
5 only to such claims as are within the jurisdiction of the  
6 court. The procedure shall be substantially as follows:

7 1. There shall be filed with the clerk, the record of the  
8 claim including a full statement of the facts, the conten-

9 tions of the claimant, and such other materials as the rules  
10 of the court may require. The record shall submit specific  
11 questions for the court's consideration.

12 2. The clerk shall examine the record submitted and  
13 if he finds that it is adequate under the rules, he shall  
14 place the claim on a special docket. If he finds the record  
15 inadequate, he shall refer it back to the officer submitting  
16 it with the request that the necessary additions or changes  
17 be made.

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

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

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

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

A claim arising under an appropriation made by the  
2 Legislature during the fiscal year to which the appropria-  
3 tion applies, and falling within the jurisdiction of the  
4 court, may be submitted by:

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

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

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

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

21 further review by the auditor upon any matter deter-  
22 mined and certified by the court.

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

Whenever the Legislature makes an appropriation for  
2 the payment of claims against the state, then accrued or  
3 arising during the ensuing fiscal year, the determination  
4 of claims and the payment thereof may be made in ac-  
5 cordance with this section. However, this section shall  
6 apply only if the Legislature in making its appropriation  
7 specifically so provides.

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

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

The court shall not take jurisdiction of any claim, whether accruing before or after the effective date of this article, unless notice of such claim be filed with the clerk within such period of limitation as would be applicable under article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, 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; but the foregoing provision shall not be held to limit or restrict the right of any person, firm or corporation who or which has a claim against the state or any state agency, pending before the attorney general on the effective date of this article, from presenting such claim to the court of claims, nor shall it limit or restrict the right to file such a claim as may be, on the effective day of this article, pending in any court of record as a legal claim and which, after such date, 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 court, the evidence and testimony of witnesses and the production of documentary evidence may be required. Subpoenas may be issued by the court for appearance at any designated place of hearing. In case of disobedience to a subpoena or other process, the court 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 court of claims; 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 director of the budget, on or before the twentieth day of November of each year, a list of all awards recommended by the court to the Legislature for appropriation. The clerk may certify supplementary lists to the board of public works to include sub-

6 sequent awards made by the court. The board of public  
7 works shall include all awards so certified in its proposed  
8 budget bill transmitted to the Legislature.

**§14-2-24. Records to be preserved.**

The record of each claim considered by the court, in-  
2 cluding all documents, papers, briefs, transcripts of testi-  
3 mony and other materials, shall be preserved by the clerk  
4 and shall be made available to the Legislature or any  
5 committee thereof for the reexamination of the claim.

**§14-2-25. Reports of the court.**

The clerk shall be the official reporter of the court. He  
2 shall collect and edit the approved claims, awards and  
3 statements, and shall prepare them for publication and  
4 submission to the Legislature in the form of an annual  
5 report.

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

- 8 1. Approved claims and awards not satisfied but re-  
9 ferred to the Legislature for final consideration and ap-  
10 propriation.

11 2. Approved claims and awards satisfied by payments  
12 out of regular appropriations.

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

16 4. Claims rejected by the court with the reasons there-  
17 for.

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

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

22 The court shall transmit its annual report to the pre-  
23 siding officer of each house of the Legislature. The an-  
24 nual reports of the court shall be published by the clerk  
25 as a public document.

**§14-2-26. Fraudulent claims.**

A person who knowingly and wilfully presents or at-  
2 tempts to present a false or fraudulent claim, or a state  
3 officer or employee who knowingly and wilfully partici-  
4 pates or assists in the preparation or presentation of a  
5 false or fraudulent claim, shall be guilty of a misde-

6 meanor. A person convicted, in a court of competent  
7 jurisdiction, of violation of this section shall be fined not  
8 more than one thousand dollars or imprisoned for not  
9 more than one year, or both, in the discretion of such  
10 court. If the convicted person is a state officer or em-  
11 ployee, he shall, in addition, forfeit his office or position  
12 of employment, as the case may be.

**§14-2-27. Conclusiveness of determination.**

Any final determination against the claimant on any  
2 claim presented as provided in this article shall forever  
3 bar any further claim in the court arising out of the re-  
4 jected claim.

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

It is the policy of the Legislature to make no appropria-  
2 tion to pay any claims against the state, cognizable by the  
3 court, unless the claim has first been passed upon by the  
4 court.

**§14-2-29. Severability.**

If any provisions of this article or the application there-  
2 of to any person or circumstance be held invalid, such  
3 invalidity shall not affect other provisions or applications

4 of the article which can be given effect without the in-  
5 valid provision or application, and to this end the pro-  
6 visions of this article are declared to be severable.

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

*William Tompor*  
Chairman Senate Committee

*Clayton C Davidson*  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1967.

*Howard Myers*  
Clerk of the Senate

*C. Blankenship*  
Clerk of the House of Delegates

*Howard Carson*  
President of the Senate

*N. Laban White*  
Speaker House of Delegates

The within *approved* this the *21*  
day of *March*, 1967.

*Huey C. Smith*  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/21/67

Time 2:20 PM