

# 4426

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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# ENROLLED

HOUSE BILL No. 4426

(By Mr. Del Minard & Bradley)

— ● —

Passed March 10, 1988

In Effect July 1, 1988 ~~Passage~~

**ENROLLED**  
**H. B. 4426**

(By DELEGATES MINARD and BRADLEY)

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[Passed March 10, 1988; in effect July 1, 1988.]

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AN ACT to amend and reenact sections twenty-three and twenty- four, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, four and nineteen-a, article two-a of said chapter, all relating generally to authority, powers and duties of the court of claims; the certification of certain claims to the Legislature and clarifying that claims previously rejected by the Legislature need not be so certified; the disposition of records of the court which are more than ten years old; the authority of the court with respect to crime victims reparations; clarifying the definition of the term "contributory misconduct" with respect thereto; increasing certain costs to be collected in magistrate courts and circuit courts in certain cases; clarifying that services of the attorney-general in representing the interest of the state with respect to crime victims reparation claims are to be rendered without charge to court or the Legislature; clarifying that payments may be made directly to certain health care providers irrespective of whether a valid assignment of benefits has been made; and permitting the direct payments to certain providers of funeral and other expenses in certain cases and increasing the allowable award for such purposes to three thousand dollars.

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

That sections twenty-three and twenty-four, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three, four and nineteen-a, article two-a of said chapter, as amended, be amended and reenacted, all to read as follows:

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

**§14-2-23. Inclusion of awards in budget.**

1 The clerk shall certify to the department of finance  
2 and administration, on or before the twentieth day of  
3 November of each year, a list of all awards recom-  
4 mended by the court to the Legislature for appropria-  
5 tion. The clerk may certify supplementary lists to the  
6 governor to include subsequent awards made by the  
7 court. The governor shall include all awards so certified  
8 in his proposed budget bill transmitted to the Legisla-  
9 ture. Any other provision of this article or of law to the  
10 contrary notwithstanding, the clerk shall not certify any  
11 award which has been previously certified.

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

1 The record of each claim considered by the court,  
2 including all documents, papers, briefs, transcripts of  
3 testimony and other materials, shall be preserved by the  
4 clerk for a period of ten years from the date of entry  
5 of the court's last order and shall be made available to  
6 the Legislature or any committee thereof for the  
7 reexamination of the claim. When any such documents,  
8 papers, briefs, transcripts and other materials have  
9 been so preserved by the clerk for such ten year period,  
10 the same shall be transferred to the state records  
11 administrator for preservation or disposition in accor-  
12 dance with the provisions of article eight, chapter five  
13 of this code without cost, either to the court or the  
14 Legislature.

**ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIME.**

**§14-2A-3. Definitions.**

1 As used in this article, the term:

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

5 (1) A victim;

6 (2) A dependent, spouse or minor child of a deceased  
7 victim; or in the event that the deceased victim is a  
8 minor, the parents, legal guardians and siblings of the  
9 victim;

10 (3) A third person other than a collateral source who  
11 legally assumes or voluntarily pays the obligations of a  
12 victim, or of a dependent of a victim, which obligations  
13 are incurred as a result of the criminally injurious  
14 conduct that is the subject of the claim;

15 (4) A person who is authorized to act on behalf of a  
16 victim, dependent or a third person who is not a  
17 collateral source.

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

23 (1) The offender, except any restitution received from  
24 the offender pursuant to an order by a court of law  
25 sentencing the offender or placing him on probation  
26 following a conviction in a criminal case arising from  
27 the criminally injurious act for which a claim for  
28 compensation is made;

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

32 (3) Social security, medicare and medicaid;

33 (4) State-required, temporary, nonoccupational dis-  
34 ability insurance; other disability insurance;

35 (5) Workers' compensation;

36 (6) Wage continuation programs of any employer;

37 (7) Proceeds of a contract of insurance payable to the

38 victim or claimant for loss that was sustained because  
39 of the criminally injurious conduct;

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

42 (9) That portion of the proceeds of all contracts of  
43 insurance payable to the claimant on account of the  
44 death of the victim which exceeds twenty-five thousand  
45 dollars.

46 (c) "Criminally injurious conduct" means conduct that  
47 occurs or is attempted in this state which by its nature  
48 poses a substantial threat of personal injury or death,  
49 and is punishable by fine or imprisonment or death, or  
50 would be so punishable but for the fact that the person  
51 engaging in the conduct lacked capacity to commit the  
52 crime under the laws of this state. Criminally injurious  
53 conduct does not include conduct arising out of the  
54 ownership, maintenance or use of a motor vehicle,  
55 except when the person engaging in the conduct  
56 intended to cause personal injury or death, or except  
57 when the person engaging in the conduct committed  
58 negligent homicide, driving under the influence of  
59 alcohol, controlled substances or drugs, or reckless  
60 driving.

61 (d) "Dependent" means an individual who received  
62 over half of his support from the victim. For the purpose  
63 of determining whether an individual received over half  
64 of his support from the victim, there shall be taken into  
65 account the amount of support received from the victim  
66 as compared to the entire amount of support which the  
67 individual received from all sources, including support  
68 which the individual himself supplied. The term  
69 "support" includes, but is not limited to, food, shelter,  
70 clothing, medical and dental care and education. The  
71 term "dependent" includes a child of the victim born  
72 after his death.

73 (e) "Economic loss" means economic detriment con-  
74 sisting only of allowable expense, work loss and  
75 replacement services loss. If criminally injurious  
76 conduct causes death, economic loss includes a depend-  
77 ent's economic loss and a dependent's replacement

78 services loss. Noneconomic detriment is not economic  
79 loss; however, economic loss may be caused by pain and  
80 suffering or physical impairment.

81 (f) "Allowable expense" means reasonable charges  
82 incurred or to be incurred for reasonably needed  
83 products, services and accommodations, including those  
84 for medical care, prosthetic devices, eye glasses,  
85 dentures, rehabilitation and other remedial treatment  
86 and care.

87 Allowable expense includes a total charge not in  
88 excess of three thousand dollars for expenses in any way  
89 related to funeral, cremation and burial. It does not  
90 include that portion of a charge for a room in a hospital,  
91 clinic, convalescent home, nursing home or any other  
92 institution engaged in providing nursing care and  
93 related services in excess of a reasonable and customary  
94 charge for semiprivate accommodations, unless accom-  
95 modations other than semiprivate accommodations are  
96 medically required.

97 (g) "Work loss" means loss of income from work that  
98 the injured person would have performed if he had not  
99 been injured and expenses reasonably incurred or to be  
100 incurred by him to obtain services in lieu of those he  
101 would have performed for income, reduced by any  
102 income from substitute work actually performed or to  
103 be performed by him, or by income he would have  
104 earned in available appropriate substitute work that he  
105 was capable of performing but unreasonably failed to  
106 undertake.

107 (h) "Replacement services loss" means expenses  
108 reasonably incurred or to be incurred in obtaining  
109 ordinary and necessary services in lieu of those the  
110 injured person would have performed, not for income  
111 but for the benefit of himself or his family, if he had  
112 not been injured.

113 (i) "Dependent's economic loss" means loss after a  
114 victim's death of contributions or things of economic  
115 value to his dependents, not including services they  
116 would have received from the victim if he had not  
117 suffered the fatal injury, less expenses of the dependents

118 avoided by reason of the victim's death.

119 (j) "Dependent's replacement service loss" means loss  
120 reasonably incurred or to be incurred by dependents  
121 after a victim's death in obtaining ordinary and  
122 necessary services in lieu of those the victim would have  
123 performed for their benefit if he had not suffered the  
124 fatal injury, less expenses of the dependents avoided by  
125 reason of the victim's death and not subtracted in  
126 calculating dependent's economic loss.

127 (k) "Noneconomic detriment" means sorrow, mental  
128 anguish, and solace which may include society, compan-  
129 ionship, comfort, guidance, kindly offices and advice.

130 (l) "Victim" means a person who suffers personal  
131 injury or death as a result of any one of the following:  
132 (1) Criminally injurious conduct; (2) the good faith effort  
133 of the person to prevent criminally injurious conduct; or  
134 (3) the good faith effort of the person to apprehend a  
135 person that the injured person has observed engaging  
136 in criminally injurious conduct, or who such injured  
137 person has reasonable cause to believe has engaged in  
138 such criminally injurious conduct immediately prior to  
139 the attempted apprehension.

140 (m) "Contributory misconduct" means any conduct of  
141 the claimant, or of the victim through whom the  
142 claimant claims an award, that is unlawful or intention-  
143 ally tortious and that, without regard to the conduct's  
144 proximity in time or space to the criminally injurious  
145 conduct has causal relationship to the criminally  
146 injurious conduct that is the basis of the claim and shall  
147 also include the voluntary intoxication of the claimant,  
148 either by the consumption of alcohol or the use of any  
149 controlled substance when such intoxication has a causal  
150 connection or relationship to the injury sustained. The  
151 voluntary intoxication of a victim shall not be a defense  
152 against the estate of a deceased victim.

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

1 (a) Every person within the state who is convicted of  
2 or pleads guilty to a misdemeanor or felony offense,  
3 other than a traffic offense that is not a moving

4 violation, shall pay the sum of three dollars as costs in  
5 the case, in addition to any other court costs that the  
6 court is required by law to impose upon such convicted  
7 person. In addition to the three dollar sums required to  
8 be collected as costs under the provisions of this  
9 subsection, there shall be collected from every person so  
10 convicted in any magistrate court and circuit court (and  
11 excluding municipal courts) the sum of one dollar which  
12 shall be in addition to any other court cost required by  
13 this section or which may be required by law.

14 (b) The clerk of the circuit court, magistrate court or  
15 municipal court wherein such additional costs are  
16 imposed under the provisions of subsection (a) of this  
17 section shall, on or before the last day of each month,  
18 transmit all such costs received under this article to the  
19 state treasurer for deposit in the state treasury to the  
20 credit of a special revenue fund to be known as the  
21 "Crime Victims Compensation Fund," which is hereby  
22 created. All moneys heretofore collected and received  
23 under the prior enactment or reenactments of this  
24 article and deposited or to be deposited in the "Crime  
25 Victims Reparation Fund" are hereby transferred to the  
26 crime victims compensation fund, and the treasurer  
27 shall so deposit such moneys in the state treasury. All  
28 moneys collected and received under this article and  
29 paid into the state treasury and credited to the crime  
30 victims compensation fund in the manner prescribed in  
31 section two, article two, chapter twelve of this code, shall  
32 be kept and maintained for the specific purposes of this  
33 article, and shall not be treated by the auditor and  
34 treasurer as part of the general revenue of the state.

35 (c) Moneys in the crime victims compensation fund  
36 shall be available for the payment of the costs of  
37 administration of this article in accordance with the  
38 budget of the court approved therefor: *Provided*, That  
39 the services of the office of the attorney general, as may  
40 be required or authorized by any of the provisions of this  
41 article, shall be rendered without charge to the fund.

**§14-2A-19a. Physician, hospital and other health care expenses.**



1 As part of the order, the court, or a judge or  
2 commissioner thereof, shall determine whether fees are  
3 due and owing for health care services rendered by a  
4 physician, hospital or other health care provider  
5 stemming from an injury received as defined under this  
6 article, and further, whether or not the physician,  
7 hospital or other health care provider has been pres-  
8 ented an assignment of benefits, signed by the crime  
9 victim, authorizing direct payments of benefits to the  
10 health care provider. If such fees are due and owing and  
11 the health care provider has presented a valid assign-  
12 ment of benefits, the court, or a judge or commissioner  
13 thereof, shall determine the amount or amounts and  
14 shall cause such reasonable fees to be paid out of the  
15 amount awarded the crime victim under this article  
16 directly to the physician, hospital or other health care  
17 provider. The requirements of this section shall be  
18 applicable to, and any such unpaid fees shall be  
19 determined and payable from, the awards made by the  
20 Legislature at regular session, one thousand nine  
21 hundred eighty-seven, and subsequently: *Provided*, That  
22 when a claim is filed under this section, the court shall  
23 determine the total damages due the crime victim, and  
24 where the total damages exceed the maximum amount  
25 which may be awarded under this article, the amount  
26 paid the health care provider shall be paid in the same  
27 proportion to which the actual award bears to the total  
28 damages determined by the court. In any case wherein  
29 an award is made which includes an amount for funeral,  
30 cremation or burial expenses, or a combination thereof,  
31 the court shall provide for the payment directly to the  
32 provider or providers of such services, in an amount  
33 deemed proper by the court, where such expenses are  
34 unpaid at the time of the award.

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

*Bruce C. Chelmin*  
Chairman Senate Committee

*Bernard V. Kelly*  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1988.

*Joseph C. Stille*  
Clerk of the Senate

*Donald L. Vapp*  
Clerk of the House of Delegates

*Sam Tankership*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

The within *approved* this the *30th*  
*Frank*  
day of \_\_\_\_\_, 1988.

*Archie Frank*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/88

Time 4:25 p.m.

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE