WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED

Committee Substitute for
SENATE BILL NO. 455

(By Senator)

PASSED April 7, 1989
In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 455
(By Senator Tucker, Mr. President (By Request),
Original sponsor)

[Passed April 7, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying the term claimant when granting awards to minors; compensating West Virginia citizens who are victimized in states without compensation programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


1 As used in this article, the term:

2 (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: Provided, That 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 in the event that 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 of a dependent of a victim, which 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; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of such minor.

(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, from any of the following sources:

(1) The offender, except any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him 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 any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;

(3) Social security, medicare and medicaid;

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

(5) Workers' compensation;

(6) Wage continuation programs of any 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;

(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 twenty-five thousand dollars.

(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 by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, or reckless driving.

(d) "Dependent" means an individual who received over half of his support from the victim. For the purpose of determining whether an individual received over half of his support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself supplied. 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 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 dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment.

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

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

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

(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, not for income but for the benefit of himself or his family, if he had not been injured.

(i) "Dependent's economic loss" means loss after a victim's death of contributions or things of economic
value to his dependents, not including services they
would have received from the victim if he had not
suffered the fatal injury, less expenses of the depend-
ents avoided by reason of the victim's death.

(j) "Dependent's replacement service loss" means
loss reasonably incurred or to be incurred by depend-
ents 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 had not suffered
the fatal injury, less expenses of the dependents
avoided by reason of the victim's death and not
subtracted in calculating dependent's economic loss.

(k) "Noneconomic detriment" means sorrow, mental
anguish, and solace which may include society, com-
panionship, comfort, guidance, kindly offices and
advice.

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

(m) "Contributory misconduct" means any conduct
of the claimant, or of the victim through whom the
claimant claims an award, that is unlawful or inten-
tionally tortious and that, without regard to the
conduct's proximity in time or space to the criminally
injurious conduct has causal relationship to the
criminally injurious conduct that is the basis of the
claim and shall also include the voluntary intoxication
of the claimant, either by the consumption of alcohol
or the use of any controlled substance when such
intoxication has a causal connection or relationship to
the injury sustained. The voluntary intoxication of a
victim shall not be a defense against the estate of a
deceased victim.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Judd C. Wilson  
Clerk of the Senate

Donald L. Kelly  
Clerk of the House of Delegates

Randall T.บาเรe  
President of the Senate

Robert G. Mitchell  
Speaker House of Delegates

The within has been approved this the 25th day of April, 1989.  
Gaston Caperton  
Governor