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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

HOUSE BILL No. 4711

(By Delegates Roop and Ashley)



Passed March 7, 1992

In Effect Ninety Days From Passage

ENROLLED
H. B. 4711

(By DELEGATES ROOP AND ASHLEY)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, four and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-nine, all relating to the crime victims compensation fund; defining terms; increasing fees which are added to court costs; creation of crime victims compensation fund; payment of moneys into and out of the fund; services to be provided by the office of the attorney general; grounds for denial of claims and reductions of awards; eliminating awards for noneconomic loss; and providing a retroactive effective date.

Be it enacted by the Legislature of West Virginia:

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

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

§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: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally
7 injurious act did not occur in this state;

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

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

17 (4) A person who is authorized to act on behalf of a
18 victim, dependent or a third person who is not a
19 collateral source; and, in the event that the victim,
20 dependent or third person who is not a collateral source
21 is a minor or other legally incompetent person, the duly
22 qualified fiduciary of the minor.

23 (b) "Collateral source" means a source of benefits or
24 advantages for economic loss otherwise compensable
25 that the victim or claimant has received, or that is
26 readily available to him, from any of the following
27 sources:

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

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

37 (3) Social security, medicare and medicaid;

38 (4) State-required, temporary, nonoccupational dis-
39 ability insurance; other disability insurance;

40 (5) Workers' compensation;

41 (6) Wage continuation programs of any employer;

42 (7) Proceeds of a contract of insurance payable to the
43 victim or claimant for loss that was sustained because
44 of the criminally injurious conduct;

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

47 (9) That portion of the proceeds of all contracts of
48 insurance payable to the claimant on account of the
49 death of the victim which exceeds twenty-five thousand
50 dollars.

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

67 (d) "Dependent" means an individual who received
68 over half of his or her support from the victim. For the
69 purpose of determining whether an individual received
70 over half of his or her support from the victim, there
71 shall be taken into account the amount of support
72 received from the victim as compared to the entire
73 amount of support which the individual received from
74 all sources, including support which the individual
75 himself or herself supplied. The term "support" in-
76 cludes, but is not limited to, food, shelter, clothing,
77 medical and dental care and education. The term
78 "dependent" includes a child of the victim born after his

79 or her death.

80 (e) "Economic loss" means economic detriment consist-
81 ing only of allowable expense, work loss and replace-
82 ment services loss. If criminally injurious conduct
83 causes death, economic loss includes a dependent's
84 economic loss and a dependent's replacement services
85 loss. Noneconomic detriment is not economic loss;
86 however, economic loss may be caused by pain and
87 suffering or physical impairment.

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

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

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

114 (h) "Replacement services loss" means expenses
115 reasonably incurred or to be incurred in obtaining
116 ordinary and necessary services in lieu of those the
117 injured person would have performed, not for income
118 but for the benefit of himself or herself or his or her

119 family, if he or she had not been injured.

120 (i) “Dependent’s economic loss” means loss after a
121 victim’s death of contributions or things of economic
122 value to his or her dependents, not including services
123 they would have received from the victim if he or she
124 had not suffered the fatal injury, less expenses of the
125 dependents avoided by reason of the victim’s death.

126 (j) “Dependent’s replacement service loss” means loss
127 reasonably incurred or to be incurred by dependents
128 after a victim’s death in obtaining ordinary and
129 necessary services in lieu of those the victim would have
130 performed for their benefit if he or she had not suffered
131 the fatal injury, less expenses of the dependents avoided
132 by reason of the victim’s death and not subtracted in
133 calculating dependent’s economic loss.

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

144 (l) “Contributory misconduct” means any conduct of
145 the claimant, or of the victim through whom the
146 claimant claims an award, that is unlawful or intention-
147 ally tortious and that, without regard to the conduct’s
148 proximity in time or space to the criminally injurious
149 conduct has causal relationship to the criminally
150 injurious conduct that is the basis of the claim and shall
151 also include the voluntary intoxication of the claimant,
152 either by the consumption of alcohol or the use of any
153 controlled substance when the intoxication has a causal
154 connection or relationship to the injury sustained. The
155 voluntary intoxication of a victim is not a defense
156 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, in any magistrate court or circuit court, shall
5 pay the sum of ten dollars as costs in the case, in
6 addition to any other court costs that the court is
7 required by law to impose upon the convicted person.
8 Every person within the state who is convicted of or
9 pleads guilty to a misdemeanor or felony offense, other
10 than a traffic offense that is not a moving violation, in
11 any municipal court, shall pay the sum of eight dollars
12 as costs in the case, in addition to any other court costs
13 that the court is required by law to impose upon the
14 convicted person. In addition to any other costs pre-
15 viously specified, every person within the state who is
16 convicted of or pleads guilty to a violation of section two,
17 article five, chapter seventeen-c, shall pay a fee in the
18 amount of twenty percent of any fine imposed under
19 said section two. This shall be in addition to any other
20 court cost required by this section or which may be
21 required by law.

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

43 (c) Moneys in the crime victims compensation fund
44 shall be available for the payment of the costs of
45 administration of this article in accordance with the
46 budget of the court approved therefor: *Provided*, That
47 the services of the office of the attorney general, as may
48 be required or authorized by any of the provisions of this
49 article, shall be rendered without charge to the fund.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

1 (a) Except as provided in subsection (b), section ten
2 of this article, the judge or commissioner shall not
3 approve an award of compensation to a claimant who
4 did not file his application for an award of compensation
5 within two years after the date of the occurrence of the
6 criminally injurious conduct that caused the injury or
7 death for which he or she is seeking an award of
8 compensation.

9 (b) The judge or commissioner shall not approve an
10 award of compensation if the criminally injurious
11 conduct upon which the claim is based was not reported
12 to a law-enforcement officer or agency within seventy-
13 two hours after the occurrence of the conduct, unless it
14 is determined that good cause existed for the failure to
15 report the conduct within the seventy-two hour period.

16 (c) The judge or commissioner shall not approve an
17 award of compensation to a claimant who is the offender
18 or an accomplice of the offender who committed the
19 criminally injurious conduct, nor to any claimant if the
20 award would unjustly benefit the offender or his or her
21 accomplice.

22 (d) A judge or commissioner, upon a finding that the
23 claimant or victim has not fully cooperated with
24 appropriate law-enforcement agencies, or the claim
25 investigator, may deny a claim, reduce an award of
26 compensation, or reconsider a claim already approved.

27 (e) A judge or commissioner shall not approve an
28 award of compensation if the injury occurred while the
29 victim was confined in any state, county or city jail,
30 prison, private prison or correctional facility.

31 (f) After reaching a decision to approve an award of
32 compensation, but prior to announcing the approval, the
33 judge or commissioner shall require the claimant to
34 submit current information as to collateral sources on
35 forms prescribed by the clerk of the court of claims. The
36 judge or commissioner shall reduce an award of
37 compensation or deny a claim for an award of compen-
38 sation that is otherwise payable to a claimant to the
39 extent that the economic loss upon which the claim is
40 based is or will be recouped from other persons,
41 including collateral sources, or if the reduction or denial
42 is determined to be reasonable because of the contrib-
43 utory misconduct of the claimant or of a victim through
44 whom he or she claims. If an award is reduced or a
45 claim is denied because of the expected recoupment of
46 all or part of the economic loss of the claimant from a
47 collateral source, the amount of the award or the denial
48 of the claim shall be conditioned upon the claimant's
49 economic loss being recouped by the collateral source:
50 *Provided*, That if it is thereafter determined that the
51 claimant will not receive all or part of the expected
52 recoupment, the claim shall be reopened and an award
53 shall be approved in an amount equal to the amount of
54 expected recoupment that it is determined the claimant
55 will not receive from the collateral source, subject to the
56 limitation set forth in subsection (g) of this section.

57 (g) Except in the case of death, compensation payable
58 to a victim and to all other claimants sustaining
59 economic loss because of injury to that victim shall not
60 exceed twenty thousand dollars in the aggregate.
61 Compensation payable to all claimants because of the
62 death of the victim shall not exceed thirty thousand
63 dollars in the aggregate.

64 (h) If an award of compensation of five thousand
65 dollars or more is made to a minor, a guardian shall be
66 appointed pursuant to the provisions of article ten,
67 chapter forty-four of this code to manage the minor's
68 estate.

§14-2A-29. Retroactive effect of amendments.

1 Amendments made to the provisions of this article

2 during the regular session of the Legislature in the year
3 one thousand nine hundred ninety-two, are retroactive
4 in effect to the extent that the amended provisions apply
5 to all cases wherein the criminally injurious conduct
6 occurred after the thirty-first day of December, one
7 thousand nine hundred ninety-one.

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

Samuel DeLoach

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Paula E. Adams

Clerk of the Senate

Donald J. Kopp

Clerk of the House of Delegates

Kullback

President of the Senate

Robert C. Bell

Speaker of the House of Delegates

The within is approved this the 31st day of March, 1992.

Yastin Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/92

Time 2:45 pm