

HB 2580

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

HOUSE BILL No. 2580

(By Delegates Rouse & Trump)



Passed March 8, 1995

In Effect 90 Days From Passage



ENROLLED

H. B. 2580

(BY DELEGATES ROWE AND TRUMP)

[Passed March 8, 1995; in effect ninety days from passage.]

AN ACT to amend chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating to the distribution of moneys received as a result of the commission of a crime; and providing treble civil damages for the violation thereof.

Be it enacted by the Legislature of West Virginia:

That chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-b, to read as follows:

ARTICLE 2B. DISTRIBUTION OF CRIME PROFITS.

§14-2B-1. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Crime Profits Act".

§14-2B-2. Legislative findings; purpose and intent.

1 The Legislature finds and declares that it is a violation
2 of the public policy of this state to permit a person who
3 commits a crime to thereafter gain a monetary profit from
4 the commission of that crime. Consequently, the Legis-
5 lature finds that when a person convicted of a crime later
6 profits as a result of the commission of that crime, that

7 such profits should be used to compensate those crime
8 victims who were damaged as a result of the commission
9 of the crime, as well as the taxpayers who paid for the
10 prosecution or incarceration of the defendant, or both.

§14-2B-3. Definitions.

1 As used in this article:

2 (a) "Crime" means any offense designated by the
3 provisions of this code as a felony or misdemeanor.

4 (b) "Crime profits" means:

5 (1) Any property obtained through or income
6 generated from the commission of a crime of which the
7 defendant was convicted;

8 (2) Any property obtained by or income generated
9 from the sale, conversion or exchange of proceeds of a
10 crime, including any gain realized by such sale,
11 conversion or exchange; or

12 (3) Any property which the defendant obtained or
13 income generated as a result of having committed the
14 crime, including any assets obtained through the use of
15 unique knowledge obtained during the commission of, or
16 in preparation for the commission of, the crime, as well as
17 any property obtained by or income generated from the
18 sale, conversion or exchange of such property and any
19 gain realized by such sale, conversion or exchange.

20 (c) "Crime victim" means the victim of the offense or
21 the personal representative of a crime victim.

22 (d) "Defendant" means a person charged with a crime
23 or convicted of a crime after trial, by entry of a plea of
24 guilty or by entry of a plea of *nolo contendere* in any
25 court in this state. The term "defendant" shall also include
26 any person found by a court of record to be not
27 criminally responsible for the commission of a crime by
28 reason of mental illness, mental retardation or addiction.

29 (e) "Court" means the circuit court of the county
30 wherein the defendant is charged with or was prosecuted
31 for the commission of the crime.

32 (f) "Personal representative" means an attorney-in-fact
33 or legal guardian of a living person or the executor,
34 administrator, successor personal representative, special
35 administrator and persons who perform substantially the
36 same function under the law governing their status of the
37 estate of a deceased person.

38 (g) "Prosecutor" means the prosecuting attorney of
39 the county in which the defendant is charged with or was
40 prosecuted for the commission of the crime.

41 (h) "Contract" means any agreement, whether reduced
42 to writing or not, in which any person, firm, corporation,
43 partnership, association or other legal entity contracts for,
44 pays or agrees to pay, any crime profits to a defendant or
45 to a defendant's personal representative.

**§14-2B-4. Notice of contract with defendant; payment over of
crime profits to prosecutor; placing of crime
profits into escrow account.**

1 (a) Every person, firm, corporation, partnership,
2 association or other legal entity which knowingly contracts
3 for, pays or agrees to pay, any crime profits, as defined in
4 section three of this article, to a defendant shall submit a
5 copy of such contract to the prosecutor and pay over to
6 the prosecutor any moneys which would otherwise, by the
7 terms of such contract, be owing to the defendant. The
8 prosecutor shall deposit such moneys in an interest
9 bearing escrow account and shall thereafter disburse such
10 moneys only in accordance with the provisions of this
11 article.

12 (b) Every defendant who contracts for, receives or
13 agrees to receive, any crime profits, as defined in section
14 three of this article, from any person, firm, corporation,
15 partnership, association or other legal entity, shall submit a
16 copy of such contract to the prosecutor and pay over to
17 the prosecutor any moneys which would otherwise, by the
18 terms of such contract, be owing to the defendant. The
19 prosecutor shall deposit such moneys in an interest
20 bearing escrow account and shall thereafter disburse such
21 moneys only in accordance with the provisions of this
22 article.

§14-2B-5. Prosecutor to commence action to distribute profits from crime; joinder of parties; statute of limitations; issues to be determined in action.

1 (a) The prosecutor shall, within six months of the
2 receipt of any contract or moneys, bring an action in
3 interpleader in accordance with the West Virginia rules of
4 civil procedure for trial courts of record to determine the
5 distribution of any crime profits which have been received
6 or may be received in the future by the defendant. The
7 prosecutor shall join the defendant, any instrumentality of
8 the state or political subdivision thereof which has
9 expended or likely will expend taxpayer funds as a result
10 of the commission of the crime, including, without
11 limitation, funds to prosecute or incarcerate the defendant,
12 all known crime victims, the crime victim's compensation
13 fund and any person, firm, corporation, partnership,
14 association or other legal entity which has paid, or agreed
15 to pay, any crime profits to the defendant, as parties to the
16 action.

17 (b) Notwithstanding any other provision of this code
18 with respect to the timely bringing of an action, the
19 prosecutor shall have the right to bring a civil action
20 authorized by this section within three years after the
21 prosecutor first receives notice pursuant to section four of
22 this article. If, but for the provisions of this section, any
23 party would be barred from bringing an action due to the
24 expiration of the applicable statute of limitations, said
25 party may not recover damages against the defendant in
26 excess of the value of the crime profits allotted to said
27 party by the court in accordance with the provisions of
28 this article.

29 (c) A crime victim, the defendant or any instrument-
30 ality of the state or political subdivision thereof which has
31 expended or will likely expend taxpayer funds as the
32 result of the commission of the crime may bring a writ of
33 mandamus to compel the prosecutor to bring an
34 interpleader action as authorized by this section. Any
35 applicable statute of limitations shall be tolled during the
36 pendency of such writ.

37 (d) Any party to the interpleader action may demand

38 a trial by jury on the issues of entitlement to and the
39 amount of damages arising from any claim of any
40 instrumentality of the state or political subdivision thereof
41 or of any crime victim, except that such claims that have
42 already been reduced to judgment in any other civil action
43 by a court of competent jurisdiction shall be conclusively
44 presumed to have been established: *Provided*, That no
45 jury trial shall be permitted on subrogation claims of the
46 crime victim's compensation fund.

47 (e) The court may, upon motion of any party or upon
48 its own motion, consolidate with the interpleader action
49 any other pending civil actions by crime victims against
50 the defendant when the basis for such other action is the
51 same crime which has or may result in the generating of
52 crime profits.

**§14-2B-6. Authority of prosecutor to make payments from
escrow account for the necessary expenses of
protection of moneys paid into the escrow
account; payment of moneys to defendant when
charges dismissed prior to filing of interpleader
action.**

1 (a) The prosecutor may in his or her discretion, and
2 without court approval, make such payments from the
3 escrow account to such parties as may be necessary to
4 preserve or maintain the moneys paid into the escrow
5 account, provided the prosecutor finds that such payments
6 would be in the best interests of any affected instrument-
7 ality of the state or political subdivision thereof or of the
8 crime victims and would not be contrary to public policy.

9 (b) If, at any time prior to the filing of an interpleader
10 action as authorized by this article, the charges against the
11 defendant are dismissed or the defendant is acquitted of
12 such charges in circumstances other than a finding by a
13 court of record that the defendant is not criminally
14 responsible for the commission of a crime by reason of
15 mental illness, mental retardation or addiction, the
16 prosecutor shall immediately pay over to such defendant
17 all moneys, including accrued interest, in the escrow
18 account established on behalf of such defendant.

**§14-2B-7. Prosecutor to distribute funds as ordered by court;
court to order distribution of funds.**

1 (a) Except as otherwise provided in this article, the
2 prosecutor shall distribute funds which are or may later be
3 deposited in the escrow account only in accordance with
4 this section.

5 (b) The court or jury before which the interpleader
6 action authorized by this article is pending shall decide all
7 claims, except such claims that have already been reduced
8 to judgment by a court of competent jurisdiction which
9 shall be conclusively presumed to have been established,
10 to such crime profits as have already been or may later be
11 due and owing to the defendant as a result of the contract
12 and shall thereafter order the prosecutor to distribute such
13 moneys as are in the escrow account, or as may be later
14 paid to the defendant pursuant to the contract, in
15 accordance with the provisions of this section. If no
16 escrow account has been established at the time of the
17 court's entry of judgment, the court shall provide in its
18 final order for the distribution of any future crime profits
19 and shall provide that any such funds be paid directly to
20 such persons and in such proportions as the court may
21 direct. If an escrow account is established the court shall
22 distribute the moneys in the escrow account and shall
23 provide that any future funds, if any, be paid directly to
24 such persons and in such proportions as the court may
25 direct. If an escrow account is established and the court
26 also finds that it is likely that future crime profits will
27 accrue to the defendant, the court in its discretion may
28 provide for the continuance of the escrow account and for
29 such further hearings as may be necessary or may provide
30 that any future funds be paid directly to such persons and
31 in such proportions as the court may direct.

32 (c) Upon the dismissal of charges against the de-
33 fendant or upon the acquittal of the defendant in
34 circumstances other than a finding by a court of record
35 that the defendant is not criminally responsible for the
36 commission of a crime by reason of mental illness, mental
37 retardation or addiction, the court shall order the prose-
38 cutor to immediately pay over to such defendant the

39 moneys, including accrued interest, in the escrow account
40 established on behalf of such defendant.

41 (d) Upon a showing by any defendant that three years
42 have elapsed since the prosecutor first received notice
43 pursuant to section four of this article and that no actions
44 are pending against such defendant pursuant to this article,
45 the court shall order the prosecutor to immediately pay
46 over to such defendant or his legal representative, the
47 moneys, including accrued interest, in the escrow account.

48 (e) Upon a showing by the defendant that moneys in
49 the escrow account shall be used for the exclusive purpose
50 of retaining legal representation at any stage of the
51 criminal proceedings against such defendant, including
52 the appeals process, the court shall order the prosecutor to
53 pay over such moneys as are reasonable and necessary to
54 pay for such legal representation: *Provided*, That if the
55 defendant at any time during such criminal proceedings
56 has been represented by court-appointed counsel, the
57 court shall first order that public defender services be
58 reimbursed for any funds expended on behalf of the
59 defendant.

§14-2B-8. Priorities of claims to moneys in escrow account.

1 (a) The court, in ordering relief pursuant to this article,
2 shall distribute the moneys in the escrow account and
3 moneys which may later be payable under the contract, in
4 the following priority:

5 (1) Payments authorized by the court for the exclu-
6 sive purpose of retaining legal representation at any stage
7 of the criminal proceedings against such defendant;

8 (2) Reasonable attorneys fees and expenses incurred
9 by the prosecutor in bringing the interpleader action;

10 (3) Civil judgments of the victims of the crime,
11 judgments awarded to any crime victim pursuant to the
12 interpleader action authorized by this article and
13 subrogation claims of the crime victim's compensation
14 fund;

15 (4) Unpaid criminal fines owed to the state by the

16 defendant as a result of the defendant's conviction for any
17 crime;

18 (5) Expenses incurred by any other instrumentality of
19 the state or political subdivision thereof as a result of the
20 commission of the crime, including, without limitation,
21 any county or regional jail or penitentiary in which the
22 defendant was incarcerated: *Provided*, That for the
23 purposes of this subdivision the term "instrumentality of
24 the state or political subdivision thereof" shall not include
25 the crime victim's compensation fund; and

26 (6) The defendant.

27 (b) No payment shall be made out of the escrow
28 account where such payment would be in derogation of
29 claims, either presented or pending, entitled to a higher
30 priority under this subdivision. If insufficient moneys
31 exist to pay all claims entitled to equal priority, the court
32 shall equitably allot such moneys as are available among
33 the several claimants. Notwithstanding any provision in
34 this article to the contrary, when the court considers other
35 civil judgments rendered against the defendant for any
36 crime victim for the purposes of equitably allotting
37 moneys, the court shall review such judgment and shall
38 consider for allotment only that portion of the civil
39 judgment which relates to the crime which produced the
40 crime profits.

41 (c) Moneys in the escrow account shall not be subject
42 to execution, levy, attachment or lien except in accordance
43 with the priority of claims established in this subdivision.

§14-2B-9. Acts to defeat intent of article void as against public policy.

1 Any action taken by any defendant, whether by way
2 of execution of a power of attorney, creation of corporate
3 entities or otherwise, to defeat the purpose of this article
4 shall be null and void as against the public policy of this
5 state.

§14-2B-10. Consent to jurisdiction.

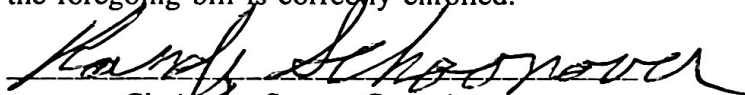
1 A person who commits a crime in this state submits to

2 the jurisdiction of the courts of this state for a proceeding
3 brought under this article. A person, firm, corporation,
4 partnership, association or other legal entity which know-
5 ingly contracts for, pays or agrees to pay any profit to a
6 defendant who commits a crime in this state submits to the
7 jurisdiction of the courts of this state for a proceeding
8 brought under this article. For purposes of this section,
9 service of process may be perfected in accordance with the
10 West Virginia rules of civil procedure for trial courts of
11 record.

**§14-2B-11. Failure of defendant or person, firm, corporation,
partnership, association or other legal entity
contracting with defendant to provide notice to
prosecutor or pay over moneys to prosecutor as
required by this article; civil penalty of treble
damages.**

1 Notwithstanding any provision of this article to the
2 contrary, if any defendant or any person, firm, cor-
3 poration, partnership, association or other legal entity
4 which knowingly contracts for, pays, or agrees to pay to a
5 defendant, any crime profits, as defined in section one of
6 this article, fails to submit a copy of such contract to the
7 prosecutor of the county in which the defendant is
8 charged with or is being prosecuted or was prosecuted for
9 the commission of the crime, or fails to pay over to the
10 prosecutor any moneys which would otherwise, by the
11 terms of such contract, be owing to the defendant, such
12 defendant or such person, firm, corporation, partnership,
13 association or other legal entity shall be civilly liable in the
14 interpleader action authorized by this article for treble
15 damages to each party in whose favor judgment is entered.

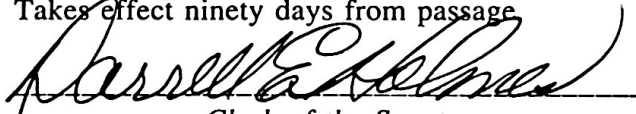
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

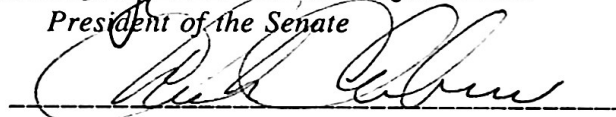
Originating in the House.

Takes effect ninety days from passage



Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 17th
day of March 1995.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/16/95

Time 4:45 pm