WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

House Bill No. 2758
(By Mr. Speaker, Mr. Kiss, and Delegate Martin)

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Passed March 2, 1999
In Effect from Passage
AN ACT to amend and reenact sections three, four and twenty, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to crime victims compensation; defining terms; providing that a lost scholarship is included as an economic loss; modifying budgetary and payment process; eliminating economic loss claim payment fund and transferring funds to crime victims fund; submission of anticipated budget by legislative auditor; requiring governor to include amounts submitted in proposed budget bill and revenue estimates; and providing auditor may only review claims for sufficiency of funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


1. As used in this article, the term:
(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; and

(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 the 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, including 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; and

(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 also includes an act of terrorism, as defined in 18 U.S.C. §2331, committed outside of the United States against a resident 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 or her support from the victim. For the purpose of determining whether an individual received over half of his or her 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 or herself supplied. The term "support" includes, but is not limited to, food, shelter, clothing, medical and dental care and educa-
tion. The term "dependent" includes a child of the victim born
after his or her 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. For purposes of this
article, the term "economic loss" includes a lost scholarship as
defined in this section.

(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
four 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 or she had not been
injured and expenses reasonably incurred or to be incurred by
him or her to obtain services in lieu of those he or she would
have performed for income, reduced by any income from
substitute work actually performed or to be performed by him
or her, or by income he or she would have earned in available
appropriate substitute work that he or she 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 herself or his or her family, if he or she 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 or her dependents, not including services they would have received from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death.

(j) “Dependent’s replacement service loss” means loss reasonably incurred or to be incurred by dependents 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 or she 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) “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 the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) “Contributory misconduct” means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally 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 the intoxication has a causal connection or relationship to the injury sustained. The voluntary intoxication of a victim is not a defense against the estate of a deceased victim.
(m) "Lost scholarship" means a scholarship, academic
award, stipend or other monetary scholastic assistance which
had been awarded or conferred upon a victim in conjunction
with a postsecondary school educational program and, which
the victim is unable to receive or use, in whole or in part, due
to injuries received from criminally injurious conduct.


(a) Every person within the state who is convicted of or
pleads guilty to a misdemeanor offense, other than a traffic
offense that is not a moving violation, in any magistrate court
or circuit court, shall pay the sum of ten dollars as costs in the
case, in addition to any other court costs that the court is
required by law to impose upon the convicted person. Every
person within the state who is convicted of or pleads guilty to
a misdemeanor offense, other than a traffic offense that is not
a moving violation, in any municipal court, shall pay the sum
of eight dollars as costs in the case, in addition to any other
court costs that the court is required by law to impose upon the
convicted person. In addition to any other costs previously
specified, every person within the state who is convicted of or
pleads guilty to a violation of section two, article five, chapter
seventeen-c of this code, shall pay a fee in the amount of twenty
percent of any fine imposed under that section. This is in
addition to any other court costs required by this section or
which may be required by law.

(b) The clerk of the circuit court, magistrate court or
municipal court where the additional costs are imposed under
the provisions of subsection (a) of this section shall, on or
before the last day of each month, transmit all costs received
under this article to the state treasurer for deposit in the state
treasury to the credit of a special revenue fund to be known as
the "Crime Victims Compensation Fund". All moneys col-
clected and received under this article and paid into the state
treasury and credited to the crime victims compensation fund in
the manner prescribed in section two, article two, chapter
twelve of this code, shall be kept and maintained for the
specific purposes of this article, and may not be treated by the
auditor and treasurer as part of the general revenue of the state.
(c) Expenditure of moneys in the crime victims compensation fund is authorized from collections.

(d) Moneys in the crime victims compensation fund may be expended for:

(1) The payment of the costs of administration of this article;

(2) The payment of economic loss awards approved by the court; and

(3) The payment of attorney and witness fees, allowed pursuant to section nineteen of this article.

(e) The services of the office of the attorney general, as may be required or authorized by any of the provisions of this article, shall be rendered without charge to the fund.

(f) Any moneys in the crime victims compensation fund may be invested as provided in article six, chapter twelve of this code, with the interest income credited to the crime victims compensation fund.

(g) All funds in the special economic loss claim payment fund created under the provisions of section twenty of this article prior to the amendments made in that section enacted in the year one thousand nine hundred ninety-nine shall be transferred to the crime victims compensation fund within a reasonable time from the effective date of the amendments.

(h) All gifts that are received to be used for the purposes of this article shall be deposited into the crime victims compensation fund.


(a) The legislative auditor shall submit to the department of administration, on or before the twentieth day of November of each year, an anticipated budget for the crime victims compensation program provided in this article for the next fiscal year, which shall include:

(1) An estimate of the balance and receipts anticipated in the crime victims compensation fund;
(2) Amounts anticipated to be sufficient for the payment of all administrative expenses necessary for the administration of this article; and

(3) Amounts anticipated to be sufficient for the payment of awards, attorney fees, witness fees and other authorized fees, costs or expenses that may arise under this article during the next fiscal year.

(b) The governor shall include in his or her proposed budget bill and revenue estimates the amounts submitted by the legislative auditor under subsection (a) of this section.

(c) The clerk shall certify each authorized award and the amount of the award and make requisition upon the crime victims compensation fund to the auditor. Notwithstanding any provision of chapter twelve of this code to the contrary, the auditor shall issue a warrant to the treasurer without further examination or review of the claim if there is a sufficient unexpended balance in the crime victims compensation fund.

(d) The court may provide that payment be made to a claimant or to a third party for economic losses of the claimant and the order may provide an award for the payment for actual economic losses which are prospective as well as those which have already been incurred.
That 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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _______ approved this the 16th day of _______ 1999.

Governor