

HB 2758

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STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



# ENROLLED

## House Bill No. 2758

(By Mr. Speaker, Mr. Kiss, and Delegate Martin)



Passed March 2, 1999

In Effect from Passage

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WEST VIRGINIA LEGISLATURE

**ENROLLED**  
**H. B. 2758**

(BY MR. SPEAKER, MR. KISS, AND DELEGATE MARTIN)

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[Passed March 2, 1999; in effect from passage.]

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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.**

**§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 claim an  
4 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 injuri-  
7 ous 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 minor, the  
10 parents, legal guardians and siblings of the victim;

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

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

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

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

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

33 (3) Social security, medicare and medicaid;

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

36 (5) Workers' compensation;

37 (6) Wage continuation programs of any employer;

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

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

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

46 (c) "Criminally injurious conduct" means conduct that  
47 occurs or is attempted in this state or in any state not having a  
48 victim compensation program which by its nature poses a  
49 substantial threat of personal injury or death, and is punishable  
50 by fine or imprisonment or death, or would be so punishable but  
51 for the fact that the person engaging in the conduct lacked  
52 capacity to commit the crime under the laws of this state.  
53 Criminally injurious conduct also includes an act of terrorism,  
54 as defined in 18 U.S.C. §2331, committed outside of the United  
55 States against a resident of this state. Criminally injurious  
56 conduct does not include conduct arising out of the ownership,  
57 maintenance or use of a motor vehicle, except when the person  
58 engaging in the conduct intended to cause personal injury or  
59 death, or except when the person engaging in the conduct  
60 committed negligent homicide, driving under the influence of  
61 alcohol, controlled substances or drugs, or reckless driving.

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

71 tion. The term "dependent" includes a child of the victim born  
72 after his or her death.

73 (e) "Economic loss" means economic detriment consisting  
74 only of allowable expense, work loss and replacement services  
75 loss. If criminally injurious conduct causes death, economic  
76 loss includes a dependent's economic loss and a dependent's  
77 replacement services loss. Noneconomic detriment is not  
78 economic loss; however, economic loss may be caused by pain  
79 and suffering or physical impairment. For purposes of this  
80 article, the term "economic loss" includes a lost scholarship as  
81 defined in this section.

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

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

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

105 (h) "Replacement services loss" means expenses reasonably  
106 incurred or to be incurred in obtaining ordinary and necessary

107 services in lieu of those the injured person would have per-  
108 formed, not for income but for the benefit of himself or herself  
109 or his or her family, if he or she had not been injured.

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

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

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

132 (l) "Contributory misconduct" means any conduct of the  
133 claimant, or of the victim through whom the claimant claims an  
134 award, that is unlawful or intentionally tortious and that,  
135 without regard to the conduct's proximity in time or space to  
136 the criminally injurious conduct, has causal relationship to the  
137 criminally injurious conduct that is the basis of the claim and  
138 shall also include the voluntary intoxication of the claimant,  
139 either by the consumption of alcohol or the use of any con-  
140 trolled substance when the intoxication has a causal connection  
141 or relationship to the injury sustained. The voluntary intoxica-  
142 tion of a victim is not a defense against the estate of a deceased  
143 victim.

144 (m) "Lost scholarship" means a scholarship, academic  
145 award, stipend or other monetary scholastic assistance which  
146 had been awarded or conferred upon a victim in conjunction  
147 with a postsecondary school educational program and, which  
148 the victim is unable to receive or use, in whole or in part, due  
149 to injuries received from criminally injurious conduct.

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

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

19 (b) The clerk of the circuit court, magistrate court or  
20 municipal court where the additional costs are imposed under  
21 the provisions of subsection (a) of this section shall, on or  
22 before the last day of each month, transmit all costs received  
23 under this article to the state treasurer for deposit in the state  
24 treasury to the credit of a special revenue fund to be known as  
25 the "Crime Victims Compensation Fund". All moneys col-  
26 lected and received under this article and paid into the state  
27 treasury and credited to the crime victims compensation fund in  
28 the manner prescribed in section two, article two, chapter  
29 twelve of this code, shall be kept and maintained for the  
30 specific purposes of this article, and may not be treated by the  
31 auditor and treasurer as part of the general revenue of the state.

32 (c) Expenditure of moneys in the crime victims compensa-  
33 tion fund is authorized from collections.

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

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

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

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

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

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

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

55 (h) All gifts that are received to be used for the purposes of  
56 this article shall be deposited into the crime victims compensa-  
57 tion fund.

**§14-2A-20. Budget preparation; procedure for payment of claims.**

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

6 (1) An estimate of the balance and receipts anticipated in  
7 the crime victims compensation fund;

8       (2) Amounts anticipated to be sufficient for the payment of  
9 all administrative expenses necessary for the administration of  
10 this article; and

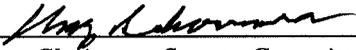
11       (3) Amounts anticipated to be sufficient for the payment of  
12 awards, attorney fees, witness fees and other authorized fees,  
13 costs or expenses that may arise under this article during the  
14 next fiscal year.

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

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

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

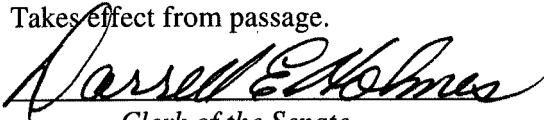
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

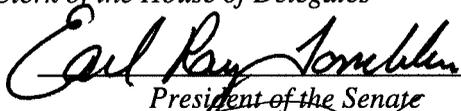
  
Chairman House Committee

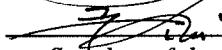
Originating in the House.

Takes effect from passage.

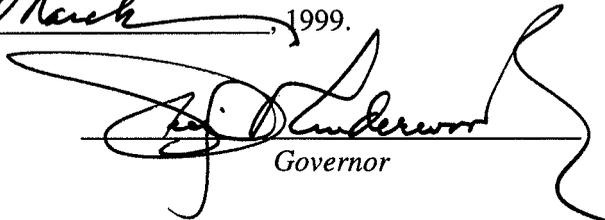
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 16<sup>th</sup>  
day of March, 1999.

  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/10/99

Time

9:43 am