

HB 2758

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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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H. B. 2758

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

[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.

§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.

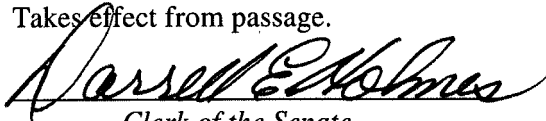
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

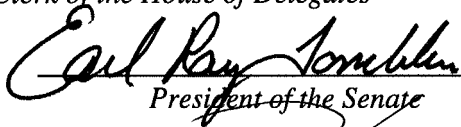

Chairman House Committee

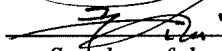
Originating in the House.

Takes effect from passage.

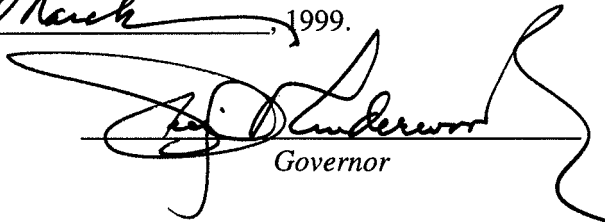

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 16th
day of March, 1999.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/10/99

Time

9:43 am