

FILED

2009 APR 30 PM 4: 48

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2009



**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**House Bill No. 2407**

(By Delegates Perry, Boggs, Morgan, Ellem and Webster)



Passed April 8, 2009

In Effect Ninety Days from Passage

HB 2407  
late BH

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**FOR**

**H. B. 2407**

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**(BY DELEGATES PERRY, BOGGS, MORGAN, ELLEM AND WEBSTER)**

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**[Passed April 8, 2009; in effect ninety days from passage.]**

**AN ACT to amend and reenact §25-1-3a and §25-1-3b of the Code of West Virginia, 1931, as amended, all relating to trustee accounts and funds; providing for disposition of certain earnings and personal property of inmates; authorizing uses of moneys in the inmate benefit fund.**

*Be it enacted by the Legislature of West Virginia:*

That §25-1-3a and §25-1-3b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND  
CORRECTIONS MANAGEMENT.**

**§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.**

1 (a) The Commissioner of Corrections is authorized to  
2 establish at each institution under his or her jurisdiction a  
3 "Trustee Fund". The warden or administrator of each  
4 institution shall receive and take charge of the money and  
5 personal property, as defined by policy, of all inmates in his  
6 or her institution and all money or personal property, as  
7 defined by policy, sent to the inmates or earned by the  
8 inmates as compensation for work performed while they are  
9 domiciled there. The warden or administrator shall credit the  
10 money and earnings to the inmate entitled to it and shall keep  
11 an accurate account of all the money and personal property  
12 so received, which account is subject to examination by the  
13 Commissioner of Corrections. The warden or administrator  
14 shall deposit the moneys in one or more responsible banks in  
15 accounts to be designated a "Trustee Fund".

16 (b) For all inmates, except those serving life without  
17 mercy and those the warden determines are likely to serve the  
18 remainder of their natural lives in the custody of the Division  
19 of Corrections due to their age and the length of their  
20 sentences, the warden or administrator shall keep in an  
21 account at least ten percent of all money earned during the  
22 inmate's incarceration and pay the money to the inmate at the  
23 time of the inmate's release. The warden may authorize the  
24 inmate to withdraw money from his or her mandatory savings  
25 for the purpose of preparing the inmate for reentry into  
26 society.

27 (c) The Commissioner of Corrections may direct that  
28 offenders who work in community work programs, including  
29 work release inmates who have obtained employment, make  
30 reimbursement to the state toward the cost of his or her  
31 incarceration.

32 (d)(1) Prior to ordering an incarcerated offender to make  
33 reimbursement toward the costs of his or her incarceration,

34 the commissioner, or his or her designee, shall consider the  
35 following:

36 (A) The offender's ability to pay;

37 (B) The nature and extent of the offender's  
38 responsibilities to his or her dependents, if any;

39 (C) The length of probable incarceration under the court's  
40 sentence; and

41 (D) The effect, if any, that reimbursement might have on  
42 the offender's rehabilitation.

43 (2) No order of reimbursement entered pursuant to this  
44 section may exceed \$500 per month unless the offender gives  
45 his or her express consent.

46 (3) The Commissioner of Corrections shall, prior to the  
47 beginning of each fiscal year, prepare a report that details the  
48 average cost per inmate incurred by the division for the care  
49 and supervision of those individuals in his or her custody.

50 (e) The chief executive officer of any correctional  
51 institution, on request of an inmate, may expend up to one  
52 half of the money earned by the inmate on behalf of the  
53 family of the inmate if the ten percent mandatory savings has  
54 first been set aside and other fees owed by the inmate have  
55 been paid. The remainder of the money earned, after  
56 deducting amounts expended as authorized, shall be  
57 accumulated to the credit of the inmate and be paid to the  
58 inmate at times as may be prescribed by rules. The funds so  
59 accumulated on behalf of inmates shall be held by the chief  
60 executive officer of each institution under a bond approved  
61 by the Attorney General.

62 (f) The warden or administrator shall deliver to the  
63 inmate at the time he or she leaves the institution, or as soon  
64 as practicable after departure, all personal property, moneys  
65 and earnings then credited to the inmate, or in case of the  
66 death of the inmate before authorized release from the  
67 institution, the warden or administrator shall deliver the  
68 property to the inmate's personal representative. In case a  
69 conservator is appointed for the inmate while he or she is  
70 domiciled at the institution, the warden or administrator shall  
71 deliver to the conservator, upon proper demand, all moneys  
72 and personal property belonging to the inmate that are in the  
73 custody of the warden or administrator.

74 (g) If any money is credited to a former inmate after  
75 remittance of the sum of money as provided in subsection (f),  
76 the Commissioner shall notify the former inmate within thirty  
77 days of receipt of the money. The former inmate will be  
78 afforded the opportunity to collect the money if he or she  
79 pays the cost of the transaction. If the former inmate does  
80 not claim the money within thirty days of receiving the notice  
81 and the sum of money is less than \$10, the Commissioner  
82 may place the money into the inmate benefit fund.

**§25-1-3b. Inmate benefit funds.**

1 (a) The Commissioner of Corrections shall establish an  
2 inmate benefit fund for each of the institutions under his or  
3 her jurisdiction. The inmate benefit fund is a fund held by  
4 the institutions for the benefit and welfare of inmates  
5 incarcerated in state correctional facilities and for the benefit  
6 of victims.

7 (b) There is continued a special revenue account in the  
8 State Treasury for each inmate benefit fund established by  
9 the commissioner. Moneys received by an institution for  
10 deposit in an inmate benefit fund shall be deposited with the

11 State Treasurer to be credited to the special revenue account  
12 created for the institution's inmate benefit fund. Moneys in  
13 a special revenue account established for an inmate benefit  
14 fund may be expended by the institution for the purposes set  
15 forth in this section. Moneys to be deposited into an inmate  
16 benefit fund consist of:

17 (1) All profit from the exchange or commissary operation  
18 and if the commissary is operated by a vendor, whether a  
19 public or private entity, the profit is the negotiated  
20 commission paid to the Division of Corrections by the  
21 vendor;

22 (2) All net proceeds from vending machines used for  
23 inmate visitation;

24 (3) All proceeds from contracted inmate telephone  
25 commissions;

26 (4) Any funds that may be assigned by inmates or  
27 donated to the institution by the general public or an inmate  
28 service organization on behalf of all inmates;

29 (5) Any funds confiscated considered contraband; and

30 (6) Any unexpended balances in individual inmate trustee  
31 funds if designated by the inmate upon his or her discharge  
32 from the institution.

33 (c) The inmate benefit fund may only be used for the  
34 following purposes at correctional facilities:

35 (1) Open-house visitation functions or other nonroutine  
36 inmate functions;

37 (2) Holiday functions which may include decorations and  
38 gifts for children of inmates;

39 (3) Cable television service;

40 (4) Rental of video cassettes;

41 (5) Payment of video license;

42 (6) Recreational supplies, equipment or area surfacing;

43 (7) Reimbursement of employee wages for overtime  
44 incurred during open-house visitations and holiday functions;

45 (8) Postsecondary education classes;

46 (9) Reimbursement of a pro rata share of inmate work  
47 compensation;

48 (10) Household equipment and supplies in day rooms or  
49 units as approved by chief executive officers of institutions,  
50 excluding supplies used in the daily maintenance and  
51 sanitation of the unit;

52 (11) Christmas or other holidays gift certificates for each  
53 inmate to be used at the exchange or commissary;

54 (12) Any expense associated with the operation of the  
55 fund;

56 (13) Expenditures necessary to properly operate an  
57 automated inmate family and victim information notification  
58 system;

59 (14) Any expense for improvement of the facility which  
60 will benefit the inmate population that is not otherwise  
61 funded;

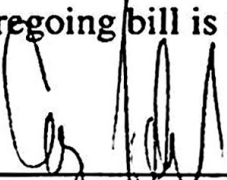
62 (15) Any expense related to the installation, operation  
63 and maintenance of the inmate telephone system; and

64 (16) For restitution of any negative balance on any  
65 inmate's trustee account for inmate medical copay, legal and  
66 ancillary related postage, and photocopy fees that are due the  
67 State of West Virginia, if the balance is uncollectible from an  
68 inmate after one calendar year from an inmate's release on  
69 parole or discharge date.

70 (d) The institution shall compile a monthly report that  
71 specifically documents inmate benefit fund receipts and  
72 expenditures and a yearly report for the previous fiscal year  
73 by September 1 of each year and submit the reports to the  
74 commissioner.



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

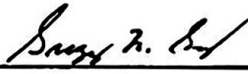
  
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Chairman Senate Committee

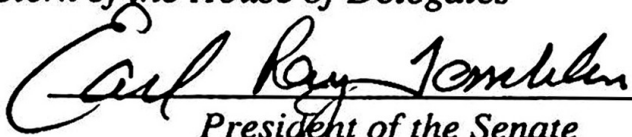
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

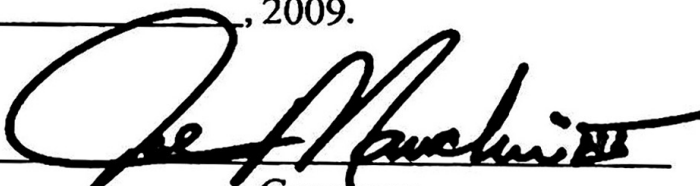
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is approved this the 30<sup>th</sup>  
day of April, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

APR 28 2009

Time 2:11 Pm