

SB 451

FILED

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WEST VIRGINIA LEGISLATURE OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009**



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 451

(SENATORS KESSLER, SNYDER, D. FACEMYER
AND WHITE, *original sponsors*)

[Passed April 11, 2009; to take effect July 1, 2009.]

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AN ACT to amend and reenact §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, all relating generally to compensation awards to victims of crimes; expanding the definition of “criminally injurious conduct”; increasing allowable victim relocation costs; allowing payment for reasonable travel expenses for the transportation of a victim to or from a medical facility; increasing the amount that may be paid to a victim and to all other claimants sustaining economic loss because of injury to that victim; and removing the provision that prohibits the voluntary intoxication of a victim from being a defense against the estate of a deceased victim.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, 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
4 an award of compensation under this article:

5 (1) A victim, except the term "victim" does not include
6 a nonresident of this state where the criminally injurious
7 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,
10 the parents, legal guardians and siblings of the victim;

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

16 (4) A person who is authorized to act on behalf of a
17 victim, dependent or a third person who is not a collateral
18 source, including, but not limited to, assignees, persons
19 holding power of attorney or other persons who hold
20 authority to make or submit claims in place of or on behalf
21 of a victim, a dependent or third person who is not a
22 collateral source; and, in the event that the victim, de-
23 pendent or third person who is not a collateral source is a
24 minor or other legally incompetent person, the duly
25 qualified fiduciary of the minor;

26 (5) A person who is a secondary victim in need of mental
27 health counseling due to the person's exposure to the
28 crime committed. An award to a secondary victim may
29 not exceed \$1,000; and

30 (6) A person who owns real property damaged by the
31 operation of a methamphetamine laboratory without the
32 knowledge or consent of the owner of the real property.

33 (b) "Collateral source" means a source of benefits or
34 advantages for economic loss otherwise compensable that
35 the victim or claimant has received, or that is readily
36 available to him or her, from any of the following sources:

37 (1) The offender, including any restitution received from
38 the offender pursuant to an order by a court of law
39 sentencing the offender or placing him or her on probation
40 following a conviction in a criminal case arising from the
41 criminally injurious act for which a claim for compensa-
42 tion is made;

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

46 (3) Social Security, Medicare and Medicaid;

47 (4) State-required, temporary, nonoccupational disabili-
48 ty insurance; other disability insurance;

49 (5) Workers' compensation;

50 (6) Wage continuation programs of any employer;

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

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

56 (9) That portion of the proceeds of all contracts of
57 insurance payable to the claimant on account of the death
58 of the victim which exceeds \$25,000.

59 (c) "Criminally injurious conduct" means conduct that
60 occurs or is attempted in this state or in any state not

61 having a victim compensation program which by its
62 nature poses a substantial threat of personal injury or
63 death and is punishable by fine or imprisonment or death
64 or would be so punishable but for the fact that the person
65 engaging in the conduct lacked capacity to commit the
66 crime under the laws of this state. Criminally injurious
67 conduct also includes criminally injurious conduct com-
68 mitted outside of the United States against a resident of
69 this state. Criminally injurious conduct does not include
70 conduct arising out of the ownership, maintenance or use
71 of a motor vehicle, except when the person engaging in the
72 conduct intended to cause personal injury or death, or
73 when the person engaging in the conduct committed
74 negligent homicide, driving under the influence of alcohol,
75 controlled substances or drugs, reckless driving or when
76 the person leaves the scene of the accident.

77 (d) "Dependent" means an individual who received over
78 half of his or her support from the victim. For the purpose
79 of determining whether an individual received over half of
80 his or her support from the victim, there shall be taken
81 into account the amount of support received from the
82 victim as compared to the entire amount of support which
83 the individual received from all sources, including support
84 which the individual himself or herself supplied. The term
85 "support" includes, but is not limited to, food, shelter,
86 clothing, medical and dental care and education. The term
87 "dependent" includes a child of the victim born after his
88 or her death.

89 (e) "Economic loss" means economic detriment consist-
90 ing only of allowable expense, work loss and replacement
91 services loss. If criminally injurious conduct causes death,
92 economic loss includes a dependent's economic loss and a
93 dependent's replacement services loss. Noneconomic
94 detriment is not economic loss; however, economic loss
95 may be caused by pain and suffering or physical impair-

96 ment. For purposes of this article, the term “economic
97 loss” includes a lost scholarship as defined in this section.

98 (f) (1) “Allowable expense” means reasonable charges
99 incurred or to be incurred for reasonably needed products,
100 services and accommodations, including those for medical
101 care, mental health counseling, prosthetic devices, eye
102 glasses, dentures, rehabilitation and other remedial
103 treatment and care.

104 (2) Allowable expense includes a total charge not in
105 excess of \$7,000 for expenses in any way related to
106 funerals, cremations and burials. It does not include that
107 portion of a charge for a room in a hospital, clinic, conva-
108 lescent home, nursing home or any other institution
109 engaged in providing nursing care and related services in
110 excess of a reasonable and customary charge for
111 semiprivate accommodations, unless accommodations
112 other than semiprivate accommodations are medically
113 required.

114 (3) Allowable expense also includes:

115 (A) A charge, not to exceed \$5,000, for cleanup of real
116 property damaged by a methamphetamine laboratory or
117 a charge, not to exceed \$1,000, for any other crime scene
118 cleanup;

119 (B) Victim relocation costs, not to exceed \$2,000;

120 (C) Reasonable travel expenses, not to exceed \$1,000, for
121 a claimant to attend court proceedings that are conducted
122 for the prosecution of the offender;

123 (D) Reasonable travel expenses for a claimant to return
124 a person who is a minor or incapacitated adult who has
125 been unlawfully removed from this state to another state
126 or country, if the removal constitutes a crime under the
127 laws of this state. Reasonable travel expenses to another
128 state for that purpose may not exceed \$2,000 and reason-

129 able travel expenses for that purpose to another county
130 may not exceed \$3,000; and

131 (E) Reasonable travel expenses for the transportation of
132 a victim to and from a medical facility.

133 (g) "Work loss" means loss of income from work that the
134 injured person would have performed if he or she had not
135 been injured and expenses reasonably incurred or to be
136 incurred by him or her to obtain services in lieu of those he
137 or she would have performed for income, reduced by any
138 income from substitute work actually performed or to be
139 performed by him or her or by income he or she would
140 have earned in available appropriate substitute work that
141 he or she was capable of performing but unreasonably
142 failed to undertake. "Work loss" also includes loss of
143 income from work by the parent or legal guardian of a
144 minor victim who must miss work to take care of the
145 minor victim.

146 (h) "Replacement services loss" means expenses reason-
147 ably incurred or to be incurred in obtaining ordinary and
148 necessary services in lieu of those the injured person would
149 have performed, not for income but for the benefit of
150 himself or herself or his or her family, if he or she had not
151 been injured.

152 (i) "Dependent's economic loss" means loss after a
153 victim's death of contributions or things of economic value
154 to his or her dependents, not including services they would
155 have received from the victim if he or she had not suffered
156 the fatal injury, less expenses of the dependents avoided
157 by reason of the victim's death.

158 (j) "Dependent's replacement service loss" means loss
159 reasonably incurred or to be incurred by dependents after
160 a victim's death in obtaining ordinary and necessary
161 services in lieu of those the victim would have performed
162 for their benefit if he or she had not suffered the fatal
163 injury, less expenses of the dependents avoided by reason

164 of the victim's death and not subtracted in calculating
165 dependent's economic loss.

166 (k) "Victim" means a person who suffers personal injury
167 or death as a result of any one of the following: (1) Crimi-
168 nally injurious conduct; (2) the good faith effort of the
169 person to prevent criminally injurious conduct; or (3) the
170 good faith effort of the person to apprehend a person that
171 the injured person has observed engaging in criminally
172 injurious conduct or who the injured person has reason-
173 able cause to believe has engaged in criminally injurious
174 conduct immediately prior to the attempted apprehension.
175 "Victim" includes the owner of real property damaged by
176 the operation of a methamphetamine laboratory.

177 (l) "Contributory misconduct" means any conduct of the
178 claimant, or of the victim through whom the claimant
179 claims an award, that is unlawful or intentionally tortious
180 and that, without regard to the conduct's proximity in
181 time or space to the criminally injurious conduct, has
182 causal relationship to the criminally injurious conduct
183 that is the basis of the claim and shall also include the
184 voluntary intoxication of the claimant, either by the
185 consumption of alcohol or the use of any controlled
186 substance when the intoxication has a causal connection
187 or relationship to the injury sustained.

188 (m) "Lost scholarship" means a scholarship, academic
189 award, stipend or other monetary scholastic assistance
190 which had been awarded or conferred upon a victim in
191 conjunction with a post-secondary school educational
192 program and which the victim is unable to receive or use,
193 in whole or in part, due to injuries received from crimi-
194 nally injurious conduct.

**§14-2A-14. Grounds for denial of claim or reduction of awards;
maximum awards.**

1 (a) Except as provided in subsection (b), section ten of
2 this article, the judge or commissioner may not approve an

3 award of compensation to a claimant who did not file his
4 or her application for an award of compensation within
5 two years after the date of the occurrence of the criminally
6 injurious conduct that caused the injury or death for
7 which he or she is seeking an award of compensation.

8 (b) The judge or commissioner may not approve an
9 award of compensation if the criminally injurious conduct
10 upon which the claim is based was not reported to a
11 law-enforcement officer or agency within seventy-two
12 hours after the occurrence of the conduct, unless it is
13 determined that good cause existed for the failure to
14 report the conduct within the 72-hour period.

15 (c) The judge or commissioner may not approve an
16 award of compensation to a claimant who is the offender
17 or an accomplice of the offender who committed the
18 criminally injurious conduct, nor to any claimant if the
19 award would unjustly benefit the offender or his or her
20 accomplice.

21 (d) A judge or commissioner, upon a finding that the
22 claimant or victim has not fully cooperated with appropri-
23 ate law-enforcement agencies or the claim investigator,
24 may deny a claim, reduce an award of compensation or
25 reconsider a claim already approved.

26 (e) A judge or commissioner may not approve an award
27 of compensation if the injury occurred while the victim
28 was confined in any state, county or regional jail, prison,
29 private prison or correctional facility.

30 (f) After reaching a decision to approve an award of
31 compensation, but prior to announcing the approval, the
32 judge or commissioner shall require the claimant to submit
33 current information as to collateral sources on forms
34 prescribed by the Clerk of the Court of Claims. The judge
35 or commissioner shall reduce an award of compensation or
36 deny a claim for an award of compensation that is other-

37 wise payable to a claimant to the extent that the economic
38 loss upon which the claim is based is or will be recouped
39 from other persons, including collateral sources, or if the
40 reduction or denial is determined to be reasonable because
41 of the contributory misconduct of the claimant or of a
42 victim through whom he or she claims. If an award is
43 reduced or a claim is denied because of the expected
44 recoupment of all or part of the economic loss of the
45 claimant from a collateral source, the amount of the award
46 or the denial of the claim shall be conditioned upon the
47 claimant's economic loss being recouped by the collateral
48 source: *Provided*, That if it is thereafter determined that
49 the claimant will not receive all or part of the expected
50 recoupment, the claim shall be reopened and an award
51 shall be approved in an amount equal to the amount of
52 expected recoupment that it is determined the claimant
53 will not receive from the collateral source, subject to the
54 limitation set forth in subsection (g) of this section.

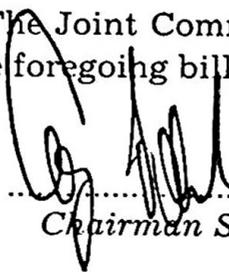
55 (g) (1) Except in the case of death, or as provided in
56 subdivision (2) of this subsection, compensation payable to
57 a victim and to all other claimants sustaining economic
58 loss because of injury to that victim may not exceed
59 \$35,000 in the aggregate. Compensation payable to all
60 claimants because of the death of the victim may not
61 exceed \$50,000 in the aggregate.

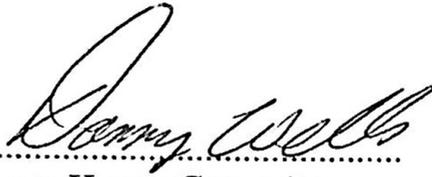
62 (2) In the event the victim's personal injuries are so
63 severe as to leave the victim with a disability, as defined
64 in Section 223 of the Social Security Act, as amended, as
65 codified in 42 U. S. C. §423, the court may award an
66 additional amount, not to exceed \$100,000, for special
67 needs attributable to the injury.

68 (h) If an award of compensation of \$5,000 or more is
69 made to a minor, a guardian shall be appointed pursuant
70 to the provisions of article ten, chapter forty-four of this
71 code to manage the minor's estate.

Enr. Com. Sub. for S. B. No. 451] 10

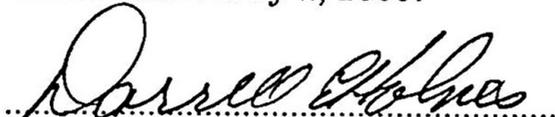
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

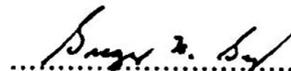

.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 2009.


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Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 7th
Day of May, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 6 2009

Time 11:05 AM