

HB 4552

FILED
2014 MAR 31 P 8:09
OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4552

(By Delegates Hunt, Sponaugle, Wells and Manypenny)



Passed March 8, 2014

In effect ninety days from passage.

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H. B. 4552

(BY DELEGATES HUNT, SPONAUGLE, WELLS AND MANYPENNY)

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §14-2-1, §14-2-8, §14-2-13, §14-2-13a, §14-2-16, §14-2-25 and §14-2-28 of the code of West Virginia, 1931, as amended, all relating to the court of claims; clarifying purpose of article; authorizing additional days of judges reimbursement; revising court jurisdiction; revising process for innocent persons who have been wrongly convicted to file a claim; authorizing hiring expert witness by court; abolishing advisory determination procedure; and clarifying actions of Court not subject to judicial review.

Be it enacted by the Legislature of West Virginia:

That §14-2-1, §14-2-8, §14-2-13, §14-2-13a, §14-2-16, §14-2-25 and §14-2-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-1. Purpose.

1 The purpose of this article is to provide a simple and
2 impartial method for the consideration of claims against the state
3 that because of the provisions of section thirty-five, article VI of
4 the Constitution of the State, and of statutory restrictions,
5 inhibitions or limitations, cannot be determined in the regular
6 courts of the state; and to provide for proceedings in which the
7 state has a special interest.

§14-2-8. Compensation of judges; expenses.

1 Each judge of the court shall receive \$210 for each day
2 actually served and expenses incurred in the performance of his
3 or her duties paid at the same per diem rate as members of the
4 Legislature: *Provided*, That the chief judge shall receive an
5 additional \$50 for each day actually served. In addition to the
6 expense per diem, each judge may, when using his or her own
7 vehicle, be reimbursed for mileage at the mileage rate equal to
8 the amount paid by the travel management office of the
9 Department of Administration. The number of days served by
10 each judge shall not exceed one hundred twenty in any fiscal
11 year, except by authority of the Joint Committee on Government
12 and Finance: *Provided*, That in computing the number of days
13 served, days utilized solely for the exercise of duties assigned to
14 judges and commissioners by the provisions of article two-a of
15 this chapter shall be disregarded. For the purpose of this section,
16 time served shall include time spent in the hearing of claims, in
17 the consideration of the record, in the preparation of opinions
18 and in necessary travel.

§14-2-13. Jurisdiction of the court.

1 The jurisdiction of the court, except for the claims excluded
2 by section fourteen, shall extend to the following matters:

3 (1) Claims and demands, liquidated and unliquidated, ex
4 contractu and ex delicto, against the state or any of its agencies,
5 which the state as a sovereign commonwealth should in equity
6 and good conscience discharge and pay; and

7 (2) Claims and demands, liquidated and unliquidated, ex
8 contractu and ex delicto, which may be asserted in the nature of
9 set-off or counterclaim on the part of the state or any state
10 agency.

**§14-2-13a. Claims for unjust arrest and imprisonment or
conviction and imprisonment.**

1 (a) *Legislative intent* — The Legislature finds and declares
2 that innocent persons who have been wrongly convicted of
3 crimes and subsequently imprisoned and innocent persons
4 wrongly arrested, charged with a crime or imprisoned, who have
5 subsequently been released when another person was arrested,
6 prosecuted and convicted of the same criminal offense have been
7 frustrated in seeking legal redress due to a variety of substantive
8 and technical obstacles in the law and that affected persons
9 should have an available avenue of redress over and above the
10 existing tort remedies. Therefore, the Legislature intends by
11 enactment of the provisions of this section that those innocent
12 persons who can demonstrate that they were wrongly arrested
13 and imprisoned or unjustly convicted and imprisoned are able to
14 seek damages against the state for loss of liberty.

15 (b) *Notice of Claim* — The claimant's notice of claim shall
16 state facts in sufficient detail to permit the court to find that a
17 claimant is likely to succeed at a trial on the merits. If the court
18 finds in its discretion after reviewing a claim that the claimant
19 has failed to allege sufficient facts upon which relief can be
20 granted, the court may dismiss the claim, either on its own
21 motion or by a motion of the state.

22 (c) *Burden of Proof* — A claimant shall demonstrate by clear
23 and convincing evidence that they were unjustly arrested and

24 imprisoned or unjustly convicted and imprisoned, and the court
25 shall, in the interest of justice, give due consideration to
26 difficulties of proof caused by the passage of time, the death or
27 unavailability of witnesses, the destruction of evidence or other
28 factors not caused by such persons or those acting on their
29 behalf. Specifically, the following shall be proven by clear and
30 convincing evidence:

31 (1) (A) The claimant has been convicted of one or more
32 felonies or misdemeanors against the state and subsequently
33 sentenced to a term of confinement, and has served all or any
34 part of the sentence; or

35 (B) The claimant has been arrested and confined, and
36 charged by warrant, information, or any other accusatory
37 instrument for one or more felonies or misdemeanors, and that
38 the charges were dismissed against the claimant; when another
39 person was subsequently charged, arrested, and convicted of the
40 same felony or felonies, or misdemeanors, or;

41 (2) (A) Another person was subsequently charged, arrested
42 and convicted of the same felony or felonies or misdemeanors;

43 (B) The claimant has been pardoned upon the ground of
44 innocence of the crime or crimes for which the claimant was
45 sentenced and which are the grounds for the complaint; or

46 (C) The claimant's judgment of conviction was reversed or
47 vacated, and the accusatory instrument dismissed or, if a new
48 trial was ordered, either the claimant was found not guilty at the
49 new trial or the claimant was not retried and the accusatory
50 instrument dismissed; and

51 (3) The claimant did not by his or her own conduct cause or
52 bring about his or her conviction.

53 (d) *Type of Relief Granted and the Claimant's Burden to*
54 *Prove Damages* — If the court finds that the claimant is entitled

55 to a judgment, the court shall award damages in a sum of money
56 as the court determines will fairly and reasonably compensate
57 the claimant based upon the sufficiency of the claimant's proof
58 at trial. Whether the damages fairly and reasonably compensate
59 the claimant will depend upon the unique facts and
60 circumstances of each claim. The claimant shall bear the
61 ultimate burden of proving all damages associated with the
62 claimant's claim.

§14-2-16. Regular procedure.

1 The regular procedure for the consideration of claims shall
2 be substantially as follows:

3 (1) The claimant shall give notice to the clerk that he or she
4 desires to maintain a claim. Notice shall be in writing and shall
5 be in sufficient detail to identify the claimant, the circumstances
6 giving rise to the claim, and the state agency concerned, if any.
7 The claimant shall not otherwise be held to any formal
8 requirement of notice.

9 (2) The clerk shall transmit a copy of the notice to the state
10 agency concerned. The state agency may deny the claim, or may
11 request a postponement of proceedings to permit negotiations
12 with the claimant. If the court finds that a claim is prima facie
13 within its jurisdiction, it shall order the claim to be placed upon
14 its regular docket for hearing.

15 (3) During the period of negotiations and pending hearing,
16 the state agency, represented by the Attorney General, shall, if
17 possible, reach an agreement with the claimant regarding the
18 facts upon which the claim is based so as to avoid the necessity
19 for the introduction of evidence at the hearing. If the parties are
20 unable to agree upon the facts an attempt shall be made to
21 stipulate the questions of fact in issue.

22 (4) The court shall so conduct the hearing as to disclose all
23 material facts and issues of liability and may examine or

24 cross-examine witnesses. The court may call witnesses or require
25 evidence not produced by the parties; the court may call expert
26 witnesses and compensate those experts for their services in an
27 amount not to exceed \$3,500 per expert; the court may stipulate
28 the questions to be argued by the parties; and the court may
29 continue the hearing until some subsequent time to permit a
30 more complete presentation of the claim.

31 (5) After the close of the hearing the court shall consider the
32 claim and shall conclude its determination, if possible, within
33 sixty days.

§14-2-25. Reports of the court.

1 The clerk shall be the official reporter of the court. He or she
2 shall collect and edit the approved claims, awards and
3 statements, shall prepare them for submission to the Legislature
4 in the form of an annual report and shall prepare them for
5 publication.

6 Claims and awards shall be separately classified as follows:

7 (1) Approved claims and awards not satisfied but referred to
8 the Legislature for final consideration and appropriation.

9 (2) Approved claims and awards satisfied by payments out
10 of regular appropriations.

11 (3) Approved claims and awards satisfied by payment out of
12 a special appropriation made by the Legislature to pay claims
13 arising during the fiscal year.

14 (4) Claims rejected by the court with the reasons therefor.

15 The court may include any other information or
16 recommendations pertaining to the performance of its duties.

17 The court shall transmit its annual report to the presiding
18 officer of each house of the Legislature, and a copy shall be

19 made available to any member of the Legislature upon request
20 therefor. The reports of the court shall be published biennially by
21 the clerk as a public document. The biennial report shall be filed
22 with the clerk of each house of the Legislature, the Governor and
23 the Attorney General.

§14-2-28. Award as condition precedent to appropriation.

1 (a) It is the policy of the Legislature to make no
2 appropriation to pay any claims against the state, cognizable by
3 the court, unless the claim has first been passed upon by the
4 court.

5 (b) Because a decision of the court is a recommendation to
6 the Legislature based upon a finding of moral obligation, and the
7 enactment process of passage of legislation authorizing
8 payments of claims recommended by the court is at legislative
9 discretion, no right of appeal exists to findings and award
10 recommendations of the court of claims and they are not subject
11 to judicial review.

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

Danny Woods
 Chairman, House Committee

[Signature]
 Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect ninety days from passage.

Suzanne S. Soy
 Clerk of the House of Delegates

Joseph M. Minard
 Clerk of the Senate

[Signature]
 Speaker of the House of Delegates

[Signature]
 President of the Senate

The within ~~is~~ is approved this the 31st
 day of March, 2014.

Carl Ray Tomblin
 Governor

PRESENTED TO THE GOVERNOR

MAR 28 2011

Time 10:45 AM