Committee Substitute for House Bill 2447

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATES
SHOTT, SUMMERS, OVERINGTON, G. FOSTER, HOLLEN,
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[Passed April 8, 2017; in effect ninety days from passage.]
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[Passed April 8, 2017; in effect ninety days from passage.]
AN ACT to repeal §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended; to repeal §14-2A-7 of said code; to amend and reenact §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-2-7, §14-2-8, §14-2-9, §14-2-10, §14-2-11, §14-2-12, §14-2-13, §14-2-14, §14-2-15, §14-2-16, §14-2-17, §14-2-19, §14-2-20, §14-2-21, §14-2-22, §14-2-23, §14-2-24, §14-2-25, §14-2-26, §14-2-27 and §14-2-28 of said code; to amend said code by adding thereto a new section, designated §14-2-17a; and to amend and reenact §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16, §14-2A-17, 14-2A-18, §14-2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-2A-25, §14-2A-26 and §14-2A-28 of said code, all relating to certain claims against the state generally; renaming the West Virginia Court of Claims the West Virginia Legislative Claims Commission; renaming judges commissioners; clarifying the length of the existing terms for the current commissioners; clarifying that commissioners are not judicial officers; modifying definitions; providing explicit power of removal of commissioners to the President of the Senate and the Speaker of the House of Delegates; providing authority to the President of the Senate and the Speaker of the House of Delegates for the hiring of a clerk, chief deputy clerk, deputy clerks, claim investigators, and support staff and setting salaries for said positions; authorizing the President of the Senate and Speaker of the House to permit commissioners serve more than one hundred twenty days in any fiscal year; increasing the monetary limit for agency agreed to claims from $1,000 to $3,000; and updating and modifying and clarifying procedures and practices of the commission.

Be it enacted by the Legislature of West Virginia:

§14-2-28 of said code be amended and reenacted; that said code be amended by adding thereto
a new section, designated §14-2-17a; and that §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-
of said code be amended and reenacted all to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.

1 For the purpose of this article:
2 "Commission" means the West Virginia Legislative Claims Commission established by
3 section four of this article.
4 "Claim" means a claim authorized to be heard by the commission in accordance with this
5 article.
6 "Approved claim" means a claim found by the commission to be one that should be paid
7 under the provisions of this article.
8 "Award" means the amount recommended by the commission to be paid in satisfaction of
9 an approved claim.
10 "Clerk" means the clerk of the West Virginia Legislative Claims Commission.
11 "State agency" means a state department, board, commission, institution, or other
12 administrative agency of state government: Provided, That a "state agency" shall not be
13 considered to include county commissions, county boards of education, municipalities, or any
14 other political or local subdivision of the state regardless of any state aid that might be provided.

§14-2-4. Court of Claims to be continued and renamed the West Virginia Legislative Claims
Commission; appointment and terms of commissioners; vacancies.
1 The "Court of Claims" is hereby renamed the West Virginia Legislative Claims
2 Commission. It shall consist of three commissioners, to be appointed by the President of the
3 Senate and the Speaker of the House of Delegates, one of whom shall be appointed presiding
commissioner. The judges of the Court of Claims sitting on the effective date of the amendments
to this article enacted during the 2017 Regular Session of the Legislature will continue their
existing terms as commissioners. Each appointment to the commission shall be made from a list
of three qualified nominees furnished by the Board of Governors of the West Virginia State Bar.
The President of the Senate and the Speaker of the House of Delegates may jointly terminate the
appointment of any commissioner appointed under this section at any time.

The terms of the commissioners shall be six years. Not more than two of the
commissioners shall be of the same political party. An appointment to fill a vacancy shall be for
the unexpired term.

§14-2-4a. Interim commissioners.

(a) If at any time two or more of the commissioners appointed under section four of this
article are temporarily unable, due to illness or other incapacity, to perform their responsibilities
the President of the Senate and the Speaker of the House of Delegates may appoint one or two
interim commissioners to serve under the conditions specified in this section.

(b) Appointments made under this section are temporary. An interim commissioner serves
under this section until the commissioner for whom the interim commissioner is temporarily
replacing can resume his or her duties. In no event may the interim commissioner serve for more
than three months unless reappointed.

(c) Appointments made under this section shall be made from a list furnished to the
President of the Senate and the Speaker of the House of Delegates by the Board of Governors
of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall
annually, on or before January 15, submit a list of twenty qualified nominees.

(d) An interim commissioner:

(1) Is entitled to the same compensation and expense reimbursement a commissioner is
entitled to under the provisions of section eight of this article;

(2) Shall take the oath of office as required in section nine of this article;
(3) Has all the authority given to a commissioner under this article; and

(4) Is required to possess the qualifications required of a commissioner in section ten of this article.

(e) The President of the Senate and the Speaker of the House of Delegates may jointly terminate the appointment of any interim commissioner appointed under this section at any time.

§14-2-5. Commission clerk and other personnel.

The President of the Senate and the Speaker of the House of Delegates may appoint a clerk, chief deputy clerk and deputy clerks. The salaries of the clerk, the chief deputy clerk and the deputy clerks shall be fixed by the Joint Committee on Government and Finance, and shall be paid out of the regular appropriation for the commission. The clerk shall have custody of and maintain all records and proceedings of the commission, shall attend meetings and hearings of the commission, shall administer oaths and affirmations and shall issue all official summonses, subpoenas, orders, statements and awards. The chief deputy clerk or another deputy clerk shall act in the place and stead of the clerk in the clerk’s absence.

The President of the Senate and the Speaker of the House of Delegates may employ other persons whose services are necessary to the orderly transaction of the business of the commission and fix their compensation.

§14-2-7. Meeting place of the commission.

The regular meeting place of the commission shall be at the State Capitol, and the Joint Committee on Government and Finance shall provide adequate quarters therefor. In order to facilitate the full hearing of claims arising elsewhere in the state, the commission may convene at any county seat or other location in the state, including a correctional institution: Provided, That the commission will make reasonable efforts to meet in appropriate public or private buildings in keeping with the dignity and decorum of the State.
§14-2-8. Compensation of commissioners; expenses.

Each commissioner shall receive $210 for each day actually served and expenses incurred in the performance of his or her duties paid at the same per diem rate as members of the Legislature: Provided, That the presiding commissioner shall receive an additional $50 for each day actually served. In addition to the expense per diem, each commissioner may, when using his or her own vehicle, be reimbursed for mileage. The number of days served by each commissioner shall not exceed one hundred twenty in any fiscal year, except by authority of the President of the Senate and the Speaker of the House of Delegates: Provided, That in computing the number of days served, days utilized solely for the exercise of duties assigned to commissioners by this article and the provisions of article two-a of this chapter shall be disregarded. For the purpose of this section, time served shall include time spent in the hearing of claims, in the consideration of the record, in the preparation of opinions and in necessary travel.


Each commissioner shall before entering upon the duties of his or her office, take and subscribe to the oath prescribed by section 5, article IV of the Constitution of the State. The oath shall be filed with the clerk.

§14-2-10. Qualifications of commissioners.

Each commissioner appointed to the West Virginia Legislative Claims Commission shall be an attorney at law, licensed to practice in this state, and shall have been so licensed to practice law for a period of not less than ten years prior to his or her appointment as commissioner. A commissioner shall not be an officer or an employee of any branch of state government, except in his or her capacity as a member of the commission and shall receive no other compensation from the state or any of its political subdivisions. A commissioner shall not hear or participate in the consideration of any claim in which he or she is interested personally, either directly or indirectly.
§14-2-11. Attorney General to represent state.

Unless expressly exempted in the code, the Attorney General shall represent the interests of the State in all claims coming before the commission.


The commission shall, in accordance with this article, consider claims which, but for the Constitutional immunity of the state from suit, or for some statutory restrictions, inhibitions or limitations, could be maintained in the regular courts of the state. No liability shall be imposed upon the state or any state agency by a determination of the commission approving a claim and recommending an award, unless the claim is: (1) Made under an existing appropriation, in accordance with section nineteen of this article; or (2) a claim under a special appropriation, as provided in section twenty of this article. The commission shall consider claims in accordance with the provisions of this article.

Except as is otherwise provided in this article, a claim shall be instituted by the filing of notice with the clerk. In accordance with rules promulgated by the commission, each claim shall be considered by the commission as a whole, or by a commissioner sitting individually, and if, after consideration, the commission finds that a claim is just and proper, it shall so determine and shall file with the clerk a brief statement of its reasons. A claim so filed shall be an approved claim. The commission shall also determine the amount that should be paid to the claimant, and shall itemize this amount as an award, with the reasons therefor, in its statement filed with the clerk. In determining the amount of a claim, interest shall not be allowed unless the claim is based upon a contract which specifically provides for the payment of interest.


The jurisdiction of the commission, except for the claims excluded by section fourteen, shall extend to the following matters:
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(1) Claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against
the state or any of its agencies, which the state as a sovereign commonwealth should in equity
and good conscience discharge and pay; and

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


The jurisdiction of the commission shall not extend to any claim:

1. For loss, damage, or destruction of property or for injury or death incurred by a member
of the militia or National Guard when in the service of the state.

2. For a disability or death benefit under chapter twenty-three of this code.

3. For unemployment compensation under chapter twenty-one-a of this code.

4. For relief or public assistance under chapter nine of this code.

5. With respect to which a proceeding may be maintained against the state, by or on behalf
of the claimant in the courts of the state.


The commission shall adopt and may from time to time amend rules of procedure, in
accordance with the provisions of this article, governing proceedings before the commission.
Rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims.
Rules shall permit a claimant to appear in his or her own behalf or be represented by counsel.
Discovery may be used in a case pending before the commission in the same manner that
discovery is conducted pursuant to the Rules of Civil Procedure for trial courts of record, Rules
26 through 36. The commission may compel discovery and impose sanctions for a failure to make
discovery, in the same manner as a court is authorized to do under the provisions of Rule 37 of
the Rules of Civil Procedure for trial courts of record: Provided, That the commission shall not find
a person in contempt for failure to comply with an order compelling discovery.
The commission, upon its own motion or upon motion of a party, may strike a pleading, motion or other paper which: (1) Is not well-grounded in fact; (2) is not warranted by existing law, or is not based on a good faith argument for the extension, modification, or reversal of existing law; or (3) is interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in costs. An order striking a pleading, motion, or paper may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Under its rules, the commission shall not be bound by the usual common law or statutory rules of evidence. The commission may accept and weigh, in accordance with its evidential value, any information that will assist the commission in determining the factual basis of a claim.

§14-2-16. Regular procedure.

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

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

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

(3) During the period of negotiations and pending hearing, the state agency, represented by the Attorney General, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts an attempt shall be made to stipulate the questions of fact in issue.
(4) The commission shall so conduct the hearing as to disclose all material facts and issues of liability and may examine or cross-examine witnesses. The commission may call witnesses or require evidence not produced by the parties; the commission may call expert witnesses and compensate those experts for their services in an amount not to exceed $3,500 per expert; the commission may stipulate the questions to be argued by the parties; and the commission may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

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

§14-2-17. Shortened procedure.

The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

1. The claim does not arise under an appropriation for the current fiscal year.
2. The state agency concerned concurs in the claim.
3. The amount claimed does not exceed $3,000.
4. The claim has been approved by the Attorney General as one that, in view of the purposes of this article, should be paid.

The state agency concerned shall prepare the record of the claim consisting of all papers, stipulations and evidential documents required by the rules of the commission and file the same with the clerk. The commission shall consider the claim informally upon the record submitted. If the commission determines that the claim should be entered as an approved claim and an award made, it shall so order and shall file its statement with the clerk. If the commission finds that the record is inadequate, or that the claim should not be paid, it shall reject the claim. The rejection of a claim under this section shall not bar its resubmission under the regular procedure.
§14-2-17a. Shortened procedure for road condition claims.

Notwithstanding the regular and shortened procedures provided for in sections sixteen and seventeen of this article, there shall be a shortened procedure for road condition claims. The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

1. The claim does not arise under an appropriation for the current fiscal year.
2. The claim alleges that a condition on the state's highways or roads caused property damage.
3. The Division of Highways concurs in the claim.
4. The amount claimed does not exceed $1,000.

The Division of Highways shall prepare a stipulation concerning the claim and file it with the clerk. The commission shall order the claim approved and shall file its statement with the clerk.


A claim arising under an appropriation made by the Legislature during the fiscal year to which the appropriation applies, and falling within the jurisdiction of the commission, may be submitted by:

1. A claimant whose claim has been rejected by the state agency concerned or by the State Auditor.
2. The head of the state agency concerned in order to obtain a determination of the matters in issue.
3. The State Auditor in order to obtain a full hearing and consideration of the merits.

When such submittal is made, the clerk shall give a copy of the submittal to the Joint Committee on Government and Finance. If the Joint Committee on Government and Finance shall so direct, the clerk shall place such claim on its docket. Upon its placement on the docket, the regular procedure, so far as applicable, shall govern the consideration of the claim by the commission. If the commission finds that the claimant should be paid, it shall certify the approved
claim and award to the head of the appropriate state agency, the State Auditor and to the
Governor. The Governor may thereupon instruct the Auditor to issue his or her warrant in payment
of the award and to charge the amount thereof to the proper appropriation. The Auditor shall
forthwith notify the state agency that the claim has been paid. Such an expenditure shall not be
subject to further review by the Auditor upon any matter determined and certified by the
commission.

§14-2-20. Claims under special appropriations.

Whenever the Legislature makes an appropriation for the payment of claims against the
state, then accrued or arising during the ensuing fiscal year, the determination of claims and the
payment thereof may be made in accordance with this section. However, this section shall apply
only if the Legislature in making its appropriation specifically so provides and only after specific
direction to hear the claim is given by the Joint Committee on Government and Finance.

The claim shall be considered and determined by the regular or shortened procedure, as
the case may be, and the amount of the award shall be fixed by the commission. The clerk shall
certify each approved claim and award, and requisition relating thereto, to the Auditor. The Auditor
thereupon shall issue his or her warrant to the Treasurer in favor of the claimant. The Auditor shall
issue his or her warrant without further examination or review of the claim except for the question
of a sufficient unexpended balance in the appropriation.


The commission shall not take jurisdiction of any claim, whether accruing before or after
the effective date of this article (July 1, 1967), unless notice of such claim be filed with the clerk
within such period of limitation as would be applicable under the pertinent provisions of the Code
of West Virginia, 1931, as amended, if the claim were against a private person, firm or corporation
and the Constitutional immunity of the state from suit were not involved and such period of
limitation may not be waived or extended. The foregoing provision shall not be held to limit or
restrict the right of any person, firm or corporation who or which had a claim against the state or any state agency, pending before the Attorney General on the effective date of this article (July 1, 1967), from presenting such claim to the West Virginia Legislative Claims Commission, nor shall it limit or restrict the right to file such a claim which was, on the effective date of this article (July 1, 1967), pending in any court of record as a legal claim and which, after such date was or may be adjudicated in such court to be invalid as a claim against the state because of the Constitutional immunity of the state from suit.


In all hearings and proceedings before the commission, the evidence and testimony of witnesses and the production of documentary evidence may be required. Subpoenas may be issued by the commission for appearance at any designated place of hearing. In case of disobedience to a subpoena or other process, the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses, and the production of books, papers and documents. Upon proper showing, the circuit court shall issue an order requiring witnesses to appear before the West Virginia Legislative Claims Commission; produce books, papers and other evidence; and give testimony touching the matter in question. A person failing to obey the order may be punished by the circuit court as for contempt.

§14-2-23. Inclusion of awards in budget.

The clerk shall certify to the department of finance and administration, on or before November 20, of each year, a list of all awards recommended by the commission to the Legislature for appropriation. The clerk may certify supplementary lists to the Governor to include subsequent awards made by the commission. The Governor shall include all awards so certified in his or her proposed budget bill transmitted to the Legislature. Any other provision of this article or of law to the contrary notwithstanding, the clerk shall not certify any award which has been previously certified.
§14-2-24. Records to be preserved.

1 The record of each claim considered by the commission, including all documents, papers, briefs, transcripts of testimony and other materials, shall be preserved by the clerk for a period of ten years from the date of entry of the commission’s last order and shall be made available to the Legislature or any committee thereof for the reexamination of the claim. When any such documents, papers, briefs, transcripts and other materials have been so preserved by the clerk for such ten-year period, the same shall be transferred to the state records administrator for preservation or disposition in accordance with the provisions of article eight, chapter five-a of this code without cost, either to the commission or the Legislature.

§14-2-25. Reports of the commission.

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

Claims and awards shall be separately classified as follows:

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

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

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

(4) Claims rejected by the commission with the reasons therefor.

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

The commission shall transmit its annual report to the presiding officer of each house of the Legislature, and a copy shall be made available to any member of the Legislature upon request therefor. The reports of the commission shall be published biennially by the clerk as a
public document. The biennial report shall be filed with the clerk of each house of the Legislature, the Governor and the Attorney General.


A person who knowingly and willfully presents or attempts to present a false or fraudulent claim, or a state officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent claim, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of violation of this section shall be fined not more than $1,000 or confined for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he or she shall, in addition, forfeit his or her office or position of employment, as the case may be.


Any final determination against the claimant on any claim presented as provided in this article shall forever bar any further claim in the commission arising out of the rejected claim.

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

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

(b) Because a decision of the commission is a recommendation to the Legislature based upon a finding of moral obligation, and the enactment process of passage of legislation authorizing payments of claims recommended by the commission is at legislative discretion, no right of appeal exists to findings and award recommendations of the West Virginia Legislative Claims Commission and they are not subject to judicial review.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


Any commissioner of the West Virginia Legislative Claims Commission individually, or the West Virginia Legislative Claims Commission en banc, shall have jurisdiction to approve awards
of compensation arising from criminally injurious conduct, in accordance with the provisions of
this article, if satisfied by a preponderance of the evidence that the requirements for an award of
compensation have been met.

§14-2A-6. Compensation of commissioners serving under this article.

Compensation of commissioners for services performed under this article, and actual
expenses incurred in the performance of duties as commissioners under this article, shall be paid
out of the crime victims compensation fund.

§14-2A-9. Claim investigators; compensation and expenses; paralegals and support staff.

The West Virginia Legislative Claims Commission, with the approval of the President of
the Senate and the Speaker of the House of Delegates, is hereby authorized to hire not more
than four claim investigators to be employed within the West Virginia Legislative Claims
Commission, who shall carry out the functions and duties set forth in section twelve of this article.
Claim investigators shall serve at the pleasure of the President of the Senate and the Speaker of
the House of Delegates and under the administrative supervision of the clerk of the West Virginia
Legislative Claims Commission. The compensation of claim investigators shall be fixed by the
President of the Senate and the Speaker of the House of Delegates, and such compensation,
together with travel, clerical and other expenses of the clerk of the West Virginia Legislative
Claims Commission relating to a claim investigator carrying out his or her duties under this article,
including the cost of obtaining reports required by the investigator in investigating a claim, shall
be payable from the crime victims compensation fund as appropriated for such purpose by the
Legislature.

The West Virginia Legislative Claims Commission, with the approval of the President of
the Senate and the Speaker of the House of Delegates, is hereby authorized to hire as support
staff such paralegal or paralegals and secretary or secretaries to be employed within the West
Virginia Legislative Claims Commission, necessary to carry out the functions and duties of this
article. Such support staff shall serve at the will and pleasure of the West Virginia Legislative
Claims Commission and under the administrative supervision of the clerk of the West Virginia Legislative Claims Commission.

§14-2A-10. Filing of application for compensation award; contents.

(a) A claim for an award of compensation shall be commenced by filing an application for an award of compensation with the clerk of the West Virginia Legislative Claims Commission. The application shall be in a form prescribed by the clerk of the West Virginia Legislative Claims Commission and shall contain the information specified in subdivisions (1) through (6) of this subsection and, to the extent possible, the information in subdivisions (7) through (10) of this subsection:

1. The name and address of the victim of the criminally injurious conduct, the name and address of the claimant and the relationship of the claimant to the victim;

2. The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

3. The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

4. Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

5. A release authorizing the West Virginia Legislative Claims Commission and the claim investigator to obtain any report, document or information that relates to the determination of the claim for an award of compensation;

6. If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

7. The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or
similar institution where the victim received medical treatment for the injuries, and whether the
victim died as a result of the injuries;

(8) The total amount of the economic loss that the victim, a dependent or the claimant
sustained or will sustain as a result of the criminally injurious conduct, without regard to the
financial limitation set forth in subsection (g), section fourteen of this article;

(9) The amount of benefits or advantages that the victim, a dependent or other claimant
has received or is entitled to receive from any collateral source for economic loss that resulted
from the criminally injurious conduct, and the name of each collateral source;

(10) Any additional relevant information that the West Virginia Legislative Claims
Commission may require. The West Virginia Legislative Claims Commission may require the
claimant to submit, with the application, materials to substantiate the facts that are stated in the
application.

(b) All applications for an award of compensation shall be filed within two years after the
occurrence of the criminally injurious conduct that is the basis of the application. Any application
so filed which contains the information specified in subdivisions (1) through (6), subsection (a) of
this section may not be excluded from consideration on the basis of incomplete information
specified in subdivisions (7) through (10) of said subsection if such information is completed after
reasonable assistance in the completion thereof is provided under procedures established by the
West Virginia Legislative Claims Commission.

(c) A person who knowingly and willfully presents or attempts to present a false or
fraudulent application, or who knowingly and willfully participates, or assists in the preparation or
presentation of a false or fraudulent application, shall be guilty of a misdemeanor. A person
convicted, in a court of competent jurisdiction, of a violation of this section shall be fined not more
than $1,000 or imprisoned for not more than one year, or both, in the discretion of such court. If
the convicted person is a state officer or employee, he or she shall, in addition, forfeit his or her
office or position of employment, as the case may be.

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The clerk of the West Virginia Legislative Claims Commission shall establish a procedure for the filing, recording and processing of applications for an award of compensation.

§14-2A-12. Investigation and recommendations by claim investigator.

(a) The clerk of the West Virginia Legislative Claims Commission shall transmit a copy of the application to the claim investigator within seven days after the filing of the application.

(b) The claim investigator, upon receipt of an application for an award of compensation from the clerk of the West Virginia Legislative Claims Commission, shall investigate the claim. After completing the investigation, the claim investigator shall make a written finding of fact and recommendation concerning an award of compensation. He or she shall file with the clerk the finding of fact and recommendation and all information or documents that he or she used in his or her investigation: Provided, That the claim investigator shall not file information or documents which have been the subject of a protective order entered under the provisions of subsection (c) of this section.

(c) The claim investigator, while investigating the claim, may require the claimant to supplement the application for an award of compensation with any further information or documentary materials, including any medical report readily available, which may lead to any relevant facts aiding in the determination of whether, and the extent to which, a claimant qualifies for an award of compensation.

The claim investigator, while investigating the claim, may also require law-enforcement officers and prosecuting attorneys employed by the state or any political subdivision thereof, to provide him or her with reports, information, witness statements or other data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable him or her to determine whether, and the extent to which, a claimant qualifies for an award of compensation. The prosecuting attorney and any officer or employee of the prosecuting attorney or of the law-enforcement agency shall be immune from any civil liability that might otherwise be incurred as
the result of providing such reports, information, witness statements or other data relating to the

25 criminally injurious conduct to the claim investigator.

26 The claim investigator, while investigating the claim, may obtain autopsy reports including
27 results from the Office of the State Medical Examiner to be used solely for determining eligibility
28 for compensation awards.

29 Upon motion of any party, court or agency from whom such reports, information, witness
30 statements or other data is sought, and for good cause shown, the court may make any order
31 which justice requires to protect a witness or other person, including, but not limited to, the
32 following: (1) That the reports, information, witness statements or other data not be made
33 available; (2) that the reports, information, witness statements or other data may be made
34 available only on specified terms and conditions, including a designation of time and place; (3)
35 that the reports, information, witness statements or other data be made available only by a
36 different method than that selected by the claim investigator; (4) that certain matters not be
37 inquired into, or that the scope of the claim investigator's request be limited to certain matters; (5)
38 that the reports, information, witness statements or other data be examined only by certain
39 persons designated by the court; (6) that the reports, information, witness statements or other
40 data, after being sealed, be opened only by order of the court; and (7) that confidential information
41 or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a
42 designated manner.

43 However, in any case wherein the claim investigator has reason to believe that his or her
44 investigation may interfere with or jeopardize the investigation of a crime by law-enforcement
45 officers, or the prosecution of a case by prosecuting attorneys, he or she shall apply to the West
46 Virginia Legislative Claims Commission, or a commissioner thereof, for an order granting leave
47 to discontinue his or her investigation for a reasonable time in order to avoid such interference or
48 jeopardization. When it appears to the satisfaction of the commission, or commissioner, upon
49 application by the claim investigator or in its own discretion, that the investigation of a case by the
claim investigator will interfere with or jeopardize the investigation or prosecution of a crime, the
commission, or commissioner, shall issue an order granting the claim investigator leave to
discontinue his or her investigation for such time as the commission, or commissioner, deems
reasonable to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the claim investigator pursuant to subsection (b) of
this section shall contain the following:

   (1) Whether the criminally injurious conduct that is the basis for the application did occur,
the date on which the conduct occurred and the exact nature of the conduct;

   (2) If the criminally injurious conduct was reported to a law-enforcement officer or agency,
the date on which the conduct was reported and the name of the person who reported the conduct;
or the reasons why the conduct was not reported to a law-enforcement officer or agency; or the
reasons why the conduct was not reported to a law-enforcement officer or agency within seventy-
two hours after the conduct occurred;

   (3) The exact nature of the injuries that the victim sustained as a result of the criminally
injurious conduct;

   (4) If the claim investigator is recommending that an award be made, a specific itemization
of the economic loss that was sustained by the victim, the claimant or a dependent as a result of
the criminally injurious conduct;

   (5) If the claim investigator is recommending that an award be made, a specific itemization
of any benefits or advantages that the victim, the claimant or a dependent has received or is
entitled to receive from any collateral source for economic loss that resulted from the conduct;

   (6) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or
is similarly related to an accomplice of the offender who committed the criminally injurious
conduct;

   (7) Any information which might be a basis for a reasonable reduction or denial of a claim
because of contributory misconduct of the claimant or of a victim through whom he or she claims;
(8) Any additional information that the claim investigator deems to be relevant to the evaluation of the claim.

(e) The recommendation that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether an award of compensation should be made to the claimant and the amount of the award;

(2) If the claim investigator recommends that an award not be made to the claimant, the reason for his or her decision.

(f) The claim investigator shall file his or her finding of fact and recommendation with the clerk within six months after the filing of the application: Provided, That where there is active criminal investigation or prosecution of the person or persons alleged to have committed the criminally injurious conduct which is the basis for the claimant's claim, the claim investigator shall file his or her finding of fact and recommendation within six months after the first of any final convictions or other final determinations as to innocence or guilt, or any other final disposition of criminal proceedings. In any case, an additional time period may be provided by order of any commissioner upon good cause shown.


(a) The clerk of the West Virginia Legislative Claims Commission, upon receipt of the claim investigator's finding of fact and recommendation, shall forward a copy of the finding of fact and recommendation to the claimant with a notice informing the claimant that any response, in the form of objections or comments directed to the finding of fact and recommendation, must be filed with the clerk within thirty days of the date of the notice. After the expiration of such thirty-day period, the clerk shall assign the claim to a commissioner.

(b) The commissioner to whom the claim is assigned shall review the finding of fact and recommendation and any response submitted by the claimant and, if deemed appropriate, may
request the claim investigator to comment in writing on the claimant's response. The commissioner shall, within forty-five days after assignment by the clerk, evaluate the claim without a hearing and either deny the claim or approve an award of compensation to the claimant.

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

(a) Except as provided in subsection (b), section ten of this article, the commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

(b) The commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency or, in the case of sexual offense, the claimant did not undergo a forensic medical examination, within ninety-six hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct or undergo a forensic medical examination within the 96-hour period: Provided, That no reporting to a law-enforcement officer or agency or a forensic medical examination is required if the claimant is a juvenile in order for a commissioner to approve an award of compensation.

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

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

(e) A commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county or regional jail, prison, private prison or correctional facility.
(f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the Clerk of the West Virginia Legislative Claims Commission. The commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: Provided, that if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

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

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

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

(a) If either the claim investigator or the claimant disagrees with the approval of an award or the denial of a claim in the summary manner set forth in the preceding sections of this article, the claim investigator or the claimant, or both, shall file with the clerk a request for hearing. Such request shall be filed within twenty-one days after notification by the commissioner of his or her decision.

(b) Upon receipt of a request for hearing, the clerk shall set a date and time for hearing, shall advise the Attorney General and the claimant of the receipt of the request and docketing of the claim, and shall request the Attorney General to commence negotiations with the claimant.

(c) During the period of negotiations and pending hearing, the Attorney General, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts, an attempt shall be made to stipulate the questions of fact in issue.

(d) The hearing held in accordance with this section shall be before a single commissioner to whom the claim has not been previously assigned. Hearings before a commissioner may, in the discretion of such hearing officer, be held at such locations throughout the state as will facilitate the appearance of the claimant and witnesses.

(e) The hearing shall be conducted so as to disclose all material facts and issues. The commissioner may examine or cross-examine witnesses. The commissioner may call witnesses or require evidence not produced by the parties; may stipulate the questions to be argued by the parties; and may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

(f) After the close of the hearing the commissioner shall consider the claim and shall conclude his or her determination, if possible, within thirty days.
(g) The commission shall adopt and may from time to time amend rules of procedure to
govern proceedings before the commission in accordance with the provisions of this article. The
rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims.
The rules shall permit a claimant to appear in his or her own behalf or be represented by counsel
and provide for interests of the state to be represented by the Attorney General in any hearing
under this section at no additional cost to the fund or the state.

Under its rules, the commission shall not be bound by the usual common law or statutory
rules of evidence. The commission may accept and weigh, in accordance with its evidential value,
any information that will assist the commission in determining the factual basis of a claim.


(a) There is no privilege, except the privilege arising from the attorney-client relationship,
as to communications or records that are relevant to the physical, mental or emotional condition
of the claimant or victim in a proceeding under this article in which that condition is an element.

(b) If the mental, physical or emotional condition of a victim or claimant is material to a
claim for an award of compensation, the commission or a commissioner may order the victim or
claimant to submit to a mental or physical examination by a physician or psychologist, and may
order an autopsy of a deceased victim. The order may be made for good cause shown and upon
notice to the person to be examined and to the claimant and the claim investigator. The order
shall specify the time, place, manner, conditions and scope of the examination or autopsy and
the person by whom it is to be made, and shall require the person who performs the examination
or autopsy to file with the clerk of the West Virginia Legislative Claims Commission a detailed
written report of the examination or autopsy. The report shall set out the findings, including the
results of all tests made, diagnosis, prognosis and other conclusions and reports of earlier
examinations of the same conditions. On request of the person examined, the clerk of the West
Virginia Legislative Claims Commission shall furnish him or her a copy of the report. If the victim
is deceased, the clerk of the West Virginia Legislative Claims Commission, on request, shall furnish the claimant a copy of the report.

(c) The commission, or a commissioner thereof, may order law-enforcement officers employed by the State or any political subdivision thereof to provide it or the claim investigator with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of compensation.

(d) The commission or a commissioner thereof, may require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports relating to the injury for which the award of compensation is claimed.

(e) The commission or a commissioner thereof, or the claim investigator, in a claim arising out of a violation of article eight-b, chapter sixty-one of this code, shall not request the victim or the claimant to supply any evidence of specific instances of the victim's activity, or reputation evidence of the victim's sexual activity, unless it involves evidence of the victim's past sexual activity with the offender, and then only to the extent that the judge, the commissioner or the claim investigator finds that the evidence is relevant to a fact at issue in the claim.

(f) Notwithstanding any provision of this code to the contrary relating to the confidentiality of juvenile records, the West Virginia Legislative Claims Commission, or a commissioner thereof, or the claim investigator shall have access to the records of juvenile proceedings which bear upon an application for compensation under this article. The West Virginia Legislative Claims Commission, or a commissioner thereof, and the claim investigator, shall, to the extent possible, maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.

If a person refuses to comply with an order under this article, or asserts a privilege, except privileges arising from the attorney-client relationship, so as to withhold or suppress evidence relevant to a claim for an award of compensation, the commission or a commissioner thereof may
make any just order, including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of his or her powers and duties, the claim investigator may petition the West Virginia Legislative Claims Commission for an appropriate order, including an order authorizing the investigator to take the depositions of witnesses by oral examination or written interrogatory, but the West Virginia Legislative Claims Commission shall not find a person in contempt for refusal to submit to a mental or physical examination.

§14-2A-18. Effect of no criminal charges being filed or conviction of offender.

The commission or a commissioner thereof, may approve an award of compensation whether or not any person is convicted for committing the conduct that is the basis of the award. The filing of a criminal charge shall be a prerequisite for receipt of compensation unless it is determined that no charges were filed due to the identity of the perpetrator being unknown: Provided, That no criminal charges need be filed if: (1) The claimant is an adult at the time the conduct giving rise to the claim occurred and no criminal charges were filed for reasons other than the desire of the claimant and a law-enforcement agency confirms that the available evidence supports a finding that a crime occurred; or (2) the claimant was a juvenile at the time the conduct giving rise to the claim occurred. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction or certiorari is pending, or a rehearing or new trial has been ordered.

The commission or a commissioner thereof, shall suspend, upon a request of the claim investigator, the proceedings in any claim for an award of compensation pending disposition of a criminal prosecution that has been commenced or is imminent.


(a) By separate order, the commission or a commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered and reimbursement for reasonable and necessary expenses actually incurred shall be paid from the Crime Victims
Compensation Fund to the attorney representing a claimant in a proceeding under this article at the same rates as set forth in section thirteen-a, article twenty-one, chapter twenty-nine of this code. Attorney's fees and reimbursement may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards of compensation, and attorney's fees and reimbursement may be awarded whether or not an award of compensation is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section. In no event may a prosecuting attorney or assistant prosecuting attorney represent any victim seeking compensation under this article.

(b) Each witness called by the commission to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code to be paid from the Crime Victims Compensation Fund.

§14-2A-19a. Effect on physician, hospital and healthcare providers filing an assignment of benefits; tolling of the statute of limitations.

(a) As part of the order, the commission or a commissioner thereof, shall determine whether fees are due and owing for health care services rendered by a physician, hospital or other health care provider stemming from an injury received as defined under this article, and further, whether or not the physician, hospital or other health care provider has been presented an assignment of benefits, signed by the crime victim, authorizing direct payments of benefits to the health care provider. If such fees are due and owing and the health care provider has presented a valid assignment of benefits, the commission or a commissioner thereof, shall determine the amount or amounts and shall cause such reasonable fees to be paid out of the amount awarded the crime victim under this article directly to the physician, hospital or other health care provider. The requirements of this section shall be applicable to, and any such unpaid fees shall be determined and payable from, the awards made by the Legislature at regular session, 1987, and subsequently: Provided, That when a claim is filed under this section, the
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commission shall determine the total damages due the crime victim, and where the total damages exceed the maximum amount which may be awarded under this article, the amount paid the health care provider shall be paid in the same proportion to which the actual award bears to the total damages determined by the commission. In any case wherein an award is made which includes an amount for funeral, cremation or burial expenses, or a combination thereof, the commission shall provide for the payment directly to the provider or providers of such services, in an amount deemed proper by the commission, where such expenses are unpaid at the time of the award.

(b) If the health care provider has filed an assignment of benefits, the provider shall aid the crime victim in the development of his or her claim by providing the commission with the amount of such fees as well as the amount of any portion of the fees paid the provider by the crime victim directly or paid the provider for the crime victim by a collateral source.

(c) Whether or not a health care provider has filed an assignment of benefits, the commission shall disclose no information regarding the status of the claim to the provider: Provided. That the commission shall promptly notify the provider of the final disposition of the claim, if the provider is known to the commission.

(d) Whenever a person files a claim under this article, the statute of limitations for the collection of unpaid fees paid for such health care services shall be tolled during the pendency of the claim before the commission.

§14-2A-19b. Rates and limitations for health care services.

The commission may establish by rule or order maximum rates and service limitations for reimbursement of health care services rendered by a physician, hospital, or other health care provider. An informational copy of the maximum rates and service limitations shall be filed with the Joint Committee on Government and Finance upon adoption by the commission. Any change in the maximum rates or service limitations shall be effective sixty days after the adoption of the changes. A provider who accepts payment from the commission for a service shall accept the
commission's rates as payment in full and may not accept any payment on account of the service
from any other source if the total of payments accepted would exceed the maximum rate set by
the commission for that service. A provider may not charge a claimant for any difference between
the cost of a service provided to a claimant and the commission's payment for that service. To
ensure service limitations are uniform and appropriate to the levels of treatment required by the
claimant, the commission may review all claims for these services as necessary to ensure their
medical necessity.


(a) The Legislative Auditor shall submit to the Department of Administration, on or before
November 20, of each year, an anticipated budget for the Crime Victims Compensation Program
provided in this article for the next fiscal year, which shall include:

(1) An estimate of the balance and receipts anticipated in the Crime Victims Compensation
Fund;

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

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

(b) The Governor shall include in his or her proposed budget bill and revenue estimates
the amounts submitted by the Legislative Auditor under subsection (a) of this section.

(c) The clerk shall certify each authorized award and the amount of the award and make
requisition upon the Crime Victims Compensation Fund to the Auditor. Notwithstanding any
provision of chapter twelve of this code to the contrary, the Auditor shall issue a warrant to the
Treasurer without further examination or review of the claim if there is a sufficient unexpended
balance in the Crime Victims Compensation Fund.
(d) The commission may provide that payment be made to a claimant or to a third party for economic losses of the claimant and the order may provide an award for the payment for actual economic losses which are prospective as well as those which have already been incurred.


The West Virginia Legislative Claims Commission shall prepare and transmit annually to the Governor and the Legislature a report of the activities of the West Virginia Legislative Claims Commission under this article. The report shall include the number of claims filed, the number of awards made and the amount of each award, and a statistical summary of claims and awards made and denied; the balance in the Crime Victims Compensation Fund with a listing by source and amount of the moneys that have been deposited in the fund; the amount that has been withdrawn from the fund, including separate listings of the administrative costs incurred by the West Virginia Legislative Claims Commission, compensation of commissioners and commission personnel, the amount awarded as attorneys' fees.


(a) The clerk of the West Virginia Legislative Claims Commission shall prepare an information brochure for the benefit of the general public, outlining the rights of claimants and procedures to be followed under this article. Copies of such brochure shall be distributed to law-enforcement agencies in the state, and be made available to other interested persons.

(b) Any law-enforcement agency that investigates an offense committed in this state involving personal injury shall make reasonable efforts to provide information to the victim of the offense and his or her dependents concerning the availability of an award of compensation and advise such persons that an application for an award of compensation may be obtained from the clerk of the West Virginia Legislative Claims Commission.


(a) The West Virginia Legislative Claims Commission may promulgate rules and regulations to implement the provisions of this article.
(b) The West Virginia Legislative Claims Commission shall promulgate rules and regulations to govern the award of compensation to the spouse of, person living in the same household with, parent, child, brother or sister of the offender or his or her accomplice in order to avoid an unjust benefit to or the unjust enrichment of the offender or his or her accomplice.


Amendments made to the provisions of this article during the regular session of the Legislature in the year 1984, shall be of retroactive effect to the extent that such amended provisions shall apply to all cases pending before the West Virginia Legislative Claims Commission on the effective date of the act of the Legislature which effects such amendment.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 25th day of April, 2017.

Governor