

FILED

2005 APR 18 P 5: 46

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 3219

(By Delegates Amores, Webster, Caputo, Brown,
Hatfield & Marshall)



Passed April 6, 2005

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 3219

(BY DELEGATES AMORES, WEBSTER, CAPUTO, BROWN,
HATFIELD & MARSHALL)

[Passed April 6, 2005; in effect ninety days from passage.]

AN ACT to amend §14-2A-3 of the Code of West Virginia, 1931, as amended, relating to compensation awards to victims of crimes, patient; amending the definition of claimant so as to include persons who are assignees of a crime victim, hold power of attorney with respect to the crime victim, or otherwise have been authorized to act on a victim's behalf.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§14-2A-3. Definitions.

1 As used in this article, the term:

- 2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who claim an
4 award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally injuri-
7 ous act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim; or in the event that the deceased victim is a minor, the
10 parents, legal guardians and siblings of the victim;

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

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

25 (5) A person who is a secondary victim in need of mental
26 health counseling due to the person's exposure to the crime
27 committed. An award to a secondary victim may not exceed one
28 thousand dollars.

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

33 (1) The offender, including any restitution received from
34 the offender pursuant to an order by a court of law sentencing
35 the offender or placing him or her on probation following a

36 conviction in a criminal case arising from the criminally
37 injurious act for which a claim for compensation is made;

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

41 (3) Social security, medicare and medicaid;

42 (4) State-required, temporary, nonoccupational disability
43 insurance; other disability insurance;

44 (5) Workers' compensation;

45 (6) Wage continuation programs of any employer;

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

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

51 (9) That portion of the proceeds of all contracts of insur-
52 ance payable to the claimant on account of the death of the
53 victim which exceeds twenty-five thousand dollars.

54 (c) "Criminally injurious conduct" means conduct that
55 occurs or is attempted in this state or in any state not having a
56 victim compensation program which by its nature poses a
57 substantial threat of personal injury or death and is punishable
58 by fine or imprisonment or death or would be so punishable but
59 for the fact that the person engaging in the conduct lacked
60 capacity to commit the crime under the laws of this state.
61 Criminally injurious conduct also includes an act of terrorism,
62 as defined in 18 U.S.C. §2331, committed outside of the United
63 States against a resident of this state. Criminally injurious

64 conduct does not include conduct arising out of the ownership,
65 maintenance or use of a motor vehicle, except when the person
66 engaging in the conduct intended to cause personal injury or
67 death, or except when the person engaging in the conduct
68 committed negligent homicide, driving under the influence of
69 alcohol, controlled substances or drugs or reckless driving.

70 (d) "Dependent" means an individual who received over
71 half of his or her support from the victim. For the purpose of
72 determining whether an individual received over half of his or
73 her support from the victim, there shall be taken into account
74 the amount of support received from the victim as compared to
75 the entire amount of support which the individual received from
76 all sources, including support which the individual himself or
77 herself supplied. The term "support" includes, but is not limited
78 to, food, shelter, clothing, medical and dental care and educa-
79 tion. The term "dependent" includes a child of the victim born
80 after his or her death.

81 (e) "Economic loss" means economic detriment consisting
82 only of allowable expense, work loss and replacement services
83 loss. If criminally injurious conduct causes death, economic
84 loss includes a dependent's economic loss and a dependent's
85 replacement services loss. Noneconomic detriment is not
86 economic loss; however, economic loss may be caused by pain
87 and suffering or physical impairment. For purposes of this
88 article, the term "economic loss" includes a lost scholarship as
89 defined in this section.

90 (f)(1) "Allowable expense" means reasonable charges
91 incurred or to be incurred for reasonably needed products,
92 services and accommodations, including those for medical care,
93 mental health counseling, prosthetic devices, eye glasses,
94 dentures, rehabilitation and other remedial treatment and care.

95 (2) Allowable expense includes a total charge not in excess
96 of six thousand dollars for expenses in any way related to
97 funeral, cremation and burial. It does not include that portion of
98 a charge for a room in a hospital, clinic, convalescent home,
99 nursing home or any other institution engaged in providing
100 nursing care and related services in excess of a reasonable and
101 customary charge for semiprivate accommodations, unless
102 accommodations other than semiprivate accommodations are
103 medically required.

104 (3) Allowable expense also includes:

105 (A) A charge, not to exceed one thousand dollars, for crime
106 scene cleanup;

107 (B) Victim relocation costs, not to exceed one thousand
108 dollars; and

109 (C) Reasonable travel expenses, not to exceed one thousand
110 dollars, for a claimant to attend court proceedings that are
111 conducted for the prosecution of the offender.

112 (g) "Work loss" means loss of income from work that the
113 injured person would have performed if he or she had not been
114 injured and expenses reasonably incurred or to be incurred by
115 him or her to obtain services in lieu of those he or she would
116 have performed for income, reduced by any income from
117 substitute work actually performed or to be performed by him
118 or her, or by income he or she would have earned in available
119 appropriate substitute work that he or she was capable of
120 performing but unreasonably failed to undertake.

121 (h) "Replacement services loss" means expenses reasonably
122 incurred or to be incurred in obtaining ordinary and necessary
123 services in lieu of those the injured person would have per-
124 formed, not for income but for the benefit of himself or herself
125 or his or her family, if he or she had not been injured.

126 (i) “Dependent’s economic loss” means loss after a victim’s
127 death of contributions or things of economic value to his or her
128 dependents, not including services they would have received
129 from the victim if he or she had not suffered the fatal injury,
130 less expenses of the dependents avoided by reason of the
131 victim’s death.

132 (j) “Dependent’s replacement service loss” means loss
133 reasonably incurred or to be incurred by dependents after a
134 victim’s death in obtaining ordinary and necessary services in
135 lieu of those the victim would have performed for their benefit
136 if he or she had not suffered the fatal injury, less expenses of
137 the dependents avoided by reason of the victim’s death and not
138 subtracted in calculating dependent’s economic loss.


139 (k) “Victim” means a person who suffers personal injury or
140 death as a result of any one of the following: (1) Criminally
141 injurious conduct; (2) the good faith effort of the person to
142 prevent criminally injurious conduct; or (3) the good faith effort
143 of the person to apprehend a person that the injured person has
144 observed engaging in criminally injurious conduct or who the
145 injured person has reasonable cause to believe has engaged in
146 criminally injurious conduct immediately prior to the attempted
147 apprehension.

148 (l) “Contributory misconduct” means any conduct of the
149 claimant, or of the victim through whom the claimant claims an
150 award, that is unlawful or intentionally tortious and that,
151 without regard to the conduct’s proximity in time or space to
152 the criminally injurious conduct, has causal relationship to the
153 criminally injurious conduct that is the basis of the claim and
154 shall also include the voluntary intoxication of the claimant,
155 either by the consumption of alcohol or the use of any con-
156 trolled substance when the intoxication has a causal connection
157 or relationship to the injury sustained. The voluntary intoxica-

158 tion of a victim is not a defense against the estate of a deceased
159 victim.

160 (m) "Lost scholarship" means a scholarship, academic
161 award, stipend or other monetary scholastic assistance which
162 had been awarded or conferred upon a victim in conjunction
163 with a postsecondary school educational program and, which
164 the victim is unable to receive or use, in whole or in part, due
165 to injuries received from criminally injurious conduct.

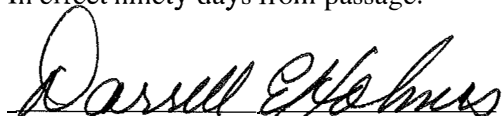
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

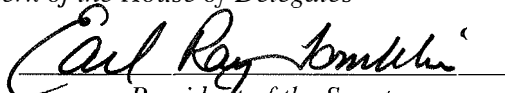

Chairman House Committee

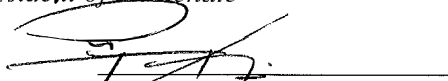
Originating in the House.

In effect ninety days from passage.

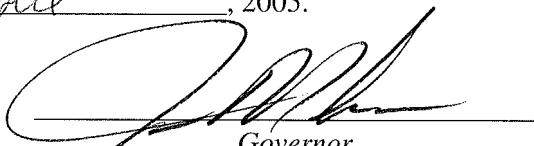

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 18th
day of April, 2005.


Governor

PRESENTED TO THE
GOVERNOR

Date 4/12/05

Time 3:10 pm