

SB 566 S

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 566

(By Senator Kessler, et al)

PASSED March 11, 2006

In Effect 90 days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 566

(BY SENATORS KESSLER, CHAFIN, DEMPSEY, FANNING,
FOSTER, HUNTER, JENKINS, MINARD, OLIVERIO, WHITE,
BARNES, CARUTH, MCKENZIE AND WEEKS)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §14-2A-3 and §14-2A-19a of the Code of West Virginia, 1931, as amended, all relating to increasing the maximum payment for crime scene cleanup costs involving real property damaged by a methamphetamine laboratory; redefining claimant to include as a victim the owner of real property damaged by a methamphetamine laboratory; amending exclusions for motor vehicle claims to include instances in which a third party leaves the scene of the accident; redefining work loss to include the loss of income from work by a parent or guardian of a minor child who was the victim of a crime; redefining allowable expense to include reasonable travel expenses for out-of-state travel to return a minor or incapacitated adult who has been unlawfully taken from the state; specifying the maximum amounts for such travel expenses; imposing certain duties and restrictions on health care providers that file an assignment of benefits with the court; and tolling of statute of

limitations to collect unpaid medical bills until the claim is processed by the court.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 and §14-2A-19a 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: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally
7 injurious 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 are
14 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, depend-
23 ent or third person who is not a collateral source is a minor

24 or other legally incompetent person, the duly qualified
25 fiduciary of the minor; and

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

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 disabil-
48 ity 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 twenty-five thousand dollars.

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 nature
62 poses a substantial threat of personal injury or death and
63 is punishable by fine or imprisonment or death or would
64 be so punishable but for the fact that the person engaging
65 in the conduct lacked capacity to commit the crime under
66 the laws of this state. Criminally injurious conduct also
67 includes an act of terrorism, as defined in 18 U. S. C.
68 §2331, committed outside of the United States against a
69 resident of this state. Criminally injurious conduct does
70 not include conduct arising out of the ownership, mainte-
71 nance or use of a motor vehicle, except when the person
72 engaging in the conduct intended to cause personal injury
73 or death, or when the person engaging in the conduct
74 committed negligent homicide, driving under the influence
75 of alcohol, controlled substances or drugs, reckless driving,
76 or when 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 six thousand dollars for expenses in any way
106 related to funeral, cremation and burial. It does not
107 include that portion of a charge for a room in a hospital,
108 clinic, convalescent home, nursing home or any other
109 institution engaged in providing nursing care and related
110 services in excess of a reasonable and customary charge
111 for 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 five thousand dollars, for
116 cleanup of real property damaged by a methamphetamine
117 laboratory, or a charge, not to exceed one thousand
118 dollars, for any other crime scene cleanup;

119 (B) Victim relocation costs, not to exceed one thousand
120 dollars; and

121 (C) Reasonable travel expenses, not to exceed one
122 thousand dollars, for a claimant to attend court proceed-
123 ings that are conducted for the prosecution of the offender.

124 (D) Reasonable travel expenses for a claimant to return
125 a person who is a minor or incapacitated adult who has
126 been unlawfully removed from this state to another state

127 or country, if such removal constitutes a crime under the
128 laws of this state. Reasonable travel expenses to another
129 state for such purpose may not exceed two thousand
130 dollars and reasonable travel expenses for such purpose to
131 another county may not exceed three thousand dollars.

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

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

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

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

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

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

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 that
183 is the basis of the claim and shall also include the volun-
184 tary intoxication of the claimant, either by the consump-
185 tion of alcohol or the use of any controlled substance when
186 the intoxication has a causal connection or relationship to
187 the injury sustained. The voluntary intoxication of a
188 victim is not a defense against the estate of a deceased
189 victim.

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

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

1 (a) As part of the order, the court, or a judge or commis-
2 sioner thereof, shall determine whether fees are due and
3 owing for health care services rendered by a physician,
4 hospital or other health care provider stemming from an
5 injury received as defined under this article, and further,
6 whether or not the physician, hospital or other health care
7 provider has been presented an assignment of benefits,
8 signed by the crime victim, authorizing direct payments of
9 benefits to the health care provider. If such fees are due
10 and owing and the health care provider has presented a
11 valid assignment of benefits, the court, or a judge or
12 commissioner thereof, shall determine the amount or
13 amounts and shall cause such reasonable fees to be paid
14 out of the amount awarded the crime victim under this
15 article directly to the physician, hospital or other health
16 care provider. The requirements of this section shall be
17 applicable to, and any such unpaid fees shall be deter-
18 mined and payable from, the awards made by the Legisla-
19 ture at regular session, one thousand nine hundred
20 eighty-seven, and subsequently: *Provided*, That when a
21 claim is filed under this section, the court shall determine
22 the total damages due the crime victim, and where the
23 total damages exceed the maximum amount which may be
24 awarded under this article, the amount paid the health
25 care provider shall be paid in the same proportion to
26 which the actual award bears to the total damages deter-
27 mined by the court. In any case wherein an award is made
28 which includes an amount for funeral, cremation or burial
29 expenses, or a combination thereof, the court shall provide
30 for the payment directly to the provider or providers of
31 such services, in an amount deemed proper by the court,
32 where such expenses are unpaid at the time of the award.

33 (b) If the health care provider has filed an assignment of
34 benefits, the provider shall aid the crime victim in the

35 development of his or her claim by providing the court
36 with the amount of such fees as well as the amount of any
37 portion of the fees paid the provider by the crime victim
38 directly or paid the provider for the crime victim by a
39 collateral source.

40 (c) Whether or not a health care provider has filed an
41 assignment of benefits, the court shall disclose no informa-
42 tion regarding the status of the claim to the provider:
43 *Provided*, That the court shall promptly notify the pro-
44 vider of the final disposition of the claim, if the provider
45 is known to the court.

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

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

C. Randy White
.....
Chairman Senate Committee

W. Brerly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David Johnson
.....
Clerk of the Senate

Gregory M. Sawyer
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Robert A. Witt
.....
Speaker House of Delegates

The within *is approved* this the *5th*
Day of *April*, 2006.

Paul Madsen
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 27 2006

Time 9:15hr