

1 **H. B. 2011**

2
3 (By Delegates Guthrie, T. Campbell and Moore)
4 [Introduced January 12, 2011; referred to the
5 Committee on the Judiciary then Finance.]
6

7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend and reenact §14-2A-3 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §33-6-31 of said
12 code, all relating to use of the Crime Victims Fund to fill-in
13 a portion of the property damage deductible for victims of the
14 negligence of an uninsured driver; and reduction of the
15 deductible.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §14-2A-3 of the Code of West Virginia, 1931, as amended
18 be amended and reenacted; and that §33-6-31 of said code be amended
19 and reenacted, all to read as follows:

20 **CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.**

21 **ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.**

22 **§14-2A-3. Definitions.**

23 As used in this article, the term:

24 (a) "Claimant" means any of the following persons, whether

1 residents or nonresidents of this state, who claim an award of
2 compensation under this article:

3 (1) A victim, except the term "victim" does not include a
4 nonresident of this state where the criminally injurious act did
5 not occur in this state;

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

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

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

23 (5) A person who is a secondary victim in need of mental
24 health counseling due to the person's exposure to the crime

1 committed. An award to a secondary victim may not exceed \$1,000;
2 and

3 (6) A person who owns real property damaged by the operation
4 of a methamphetamine laboratory without the knowledge or consent of
5 the owner of the real property.

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

10 (1) The offender, including any restitution received from the
11 offender pursuant to an order by a court of law sentencing the
12 offender or placing him or her on probation following a conviction
13 in a criminal case arising from the criminally injurious act for
14 which a claim for compensation is made;

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

18 (3) Social Security, Medicare and Medicaid;

19 (4) State-required, temporary, nonoccupational disability
20 insurance; other disability insurance;

21 (5) Workers' compensation;

22 (6) Wage continuation programs of any employer;

23 (7) Proceeds of a contract of insurance payable to the victim
24 or claimant for loss that was sustained because of the criminally

1 injurious conduct;

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

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

7 (c) "Criminally injurious conduct" means conduct that occurs
8 or is attempted in this state or in any state not having a victim
9 compensation program which by its nature poses a substantial threat
10 of personal injury or death and is punishable by fine or
11 imprisonment or death or would be so punishable but for the fact
12 that the person engaging in the conduct lacked capacity to commit
13 the crime under the laws of this state. Criminally injurious
14 conduct also includes criminally injurious conduct committed
15 outside of the United States against a resident of this state.
16 Criminally injurious conduct does not include conduct arising out
17 of the ownership, maintenance or use of a motor vehicle, except
18 when the person engaging in the conduct intended to cause personal
19 injury or death, or when the person engaging in the conduct
20 committed negligent homicide, driving under the influence of
21 alcohol, controlled substances or drugs, reckless driving or when
22 the person leaves the scene of the accident or when the person
23 involved in the accident is ruled to be negligent and is driving as
24 an uninsured motorist.

1 (d) "Dependent" means an individual who received over half of
2 his or her support from the victim. For the purpose of determining
3 whether an individual received over half of his or her support from
4 the victim, there shall be taken into account the amount of support
5 received from the victim as compared to the entire amount of
6 support which the individual received from all sources, including
7 support which the individual himself or herself supplied. The term
8 "support" includes, but is not limited to, food, shelter, clothing,
9 medical and dental care and education. The term "dependent"
10 includes a child of the victim born after his or her death.

11 (e) "Economic loss" means economic detriment consisting only
12 of allowable expense, work loss and replacement services loss. If
13 criminally injurious conduct causes death, economic loss includes
14 a dependent's economic loss and a dependent's replacement services
15 loss. Noneconomic detriment is not economic loss; however,
16 economic loss may be caused by pain and suffering or physical
17 impairment. For purposes of this article, the term "economic loss"
18 includes a lost scholarship as defined in this section.

19 (f) (1) "Allowable expense" means reasonable charges incurred
20 or to be incurred for reasonably needed products, services and
21 accommodations, including those for medical care, mental health
22 counseling, prosthetic devices, eye glasses, dentures,
23 rehabilitation and other remedial treatment and care.

24 (2) Allowable expense includes a total charge not in excess of

1 \$7,000 for expenses in any way related to funerals, cremations and
2 burials. It does not include that portion of a charge for a room
3 in a hospital, clinic, convalescent home, nursing home or any other
4 institution engaged in providing nursing care and related services
5 in excess of a reasonable and customary charge for semiprivate
6 accommodations, unless accommodations other than semiprivate
7 accommodations are medically required.

8 (3) Allowable expense also includes:

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

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

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

16 (D) Reasonable travel expenses for a claimant to return a
17 person who is a minor or incapacitated adult who has been
18 unlawfully removed from this state to another state or country, if
19 the removal constitutes a crime under the laws of this state.

20 Reasonable travel expenses to another state for that purpose may
21 not exceed \$2,000 and reasonable travel expenses for that purpose
22 to another county may not exceed \$3,000; and

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

1 (4) Allowable expense includes a total charge not in excess of
2 \$250 of property damage resulting from the negligence of an
3 uninsured motorist.

4 (g) "Work loss" means loss of income from work that the
5 injured person would have performed if he or she had not been
6 injured and expenses reasonably incurred or to be incurred by him
7 or her to obtain services in lieu of those he or she would have
8 performed for income, reduced by any income from substitute work
9 actually performed or to be performed by him or her or by income he
10 or she would have earned in available appropriate substitute work
11 that he or she was capable of performing but unreasonably failed to
12 undertake. "Work loss" also includes loss of income from work by
13 the parent or legal guardian of a minor victim who must miss work
14 to take care of the minor victim.

15 (h) "Replacement services loss" means expenses reasonably
16 incurred or to be incurred in obtaining ordinary and necessary
17 services in lieu of those the injured person would have performed,
18 not for income but for the benefit of himself or herself or his or
19 her family, if he or she had not been injured.

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

1 (j) "Dependent's replacement service loss" means loss
2 reasonably incurred or to be incurred by dependents after a
3 victim's death in obtaining ordinary and necessary services in lieu
4 of those the victim would have performed for their benefit if he or
5 she had not suffered the fatal injury, less expenses of the
6 dependents avoided by reason of the victim's death and not
7 subtracted in calculating dependent's economic loss.

8 (k) "Victim" means a person who suffers personal injury or
9 death as a result of any one of the following: (1) Criminally
10 injurious conduct; (2) the good faith effort of the person to
11 prevent criminally injurious conduct; or (3) the good faith effort
12 of the person to apprehend a person that the injured person has
13 observed engaging in criminally injurious conduct or who the
14 injured person has reasonable cause to believe has engaged in
15 criminally injurious conduct immediately prior to the attempted
16 apprehension. "Victim" includes the owner of real property damaged
17 by the operation of a methamphetamine laboratory.

18 (1) "Contributory misconduct" means any conduct of the
19 claimant, or of the victim through whom the claimant claims an
20 award, that is unlawful or intentionally tortious and that, without
21 regard to the conduct's proximity in time or space to the
22 criminally injurious conduct, has causal relationship to the
23 criminally injurious conduct that is the basis of the claim and
24 shall also include the voluntary intoxication of the claimant,

1 either by the consumption of alcohol or the use of any controlled
2 substance when the intoxication has a causal connection or
3 relationship to the injury sustained.

4 (m) "Lost scholarship" means a scholarship, academic award,
5 stipend or other monetary scholastic assistance which had been
6 awarded or conferred upon a victim in conjunction with a post-
7 secondary school educational program and which the victim is unable
8 to receive or use, in whole or in part, due to injuries received
9 from criminally injurious conduct.

10 **CHAPTER 33. INSURANCE.**

11 **ARTICLE 6. THE INSURANCE POLICY.**

12 **§33-6-31. Motor vehicle policy; omnibus clause; uninsured and**
13 **underinsured motorists' coverage; conditions for**
14 **recovery under endorsement; rights and liabilities**
15 **of insurer.**

16 (a) No policy or contract of bodily injury liability
17 insurance, or of property damage liability insurance, covering
18 liability arising from the ownership, maintenance or use of any
19 motor vehicle, shall be issued or delivered in this state to the
20 owner of such vehicle, or shall be issued or delivered by any
21 insurer licensed in this state upon any motor vehicle for which a
22 certificate of title has been issued by the Division of Motor
23 Vehicles of this state, unless it shall contain a provision
24 insuring the named insured and any other person, except a bailee

1 for hire and any persons specifically excluded by any restrictive
2 endorsement attached to the policy, responsible for the use of or
3 using the motor vehicle with the consent, expressed or implied, of
4 the named insured or his or her spouse against liability for death
5 or bodily injury sustained or loss or damage occasioned within the
6 coverage of the policy or contract as a result of negligence in the
7 operation or use of such vehicle by the named insured or by such
8 person: *Provided*, That in any such automobile liability insurance
9 policy or contract, or endorsement thereto, if coverage resulting
10 from the use of a nonowned automobile is conditioned upon the
11 consent of the owner of such motor vehicle, the word "owner" shall
12 be construed to include the custodian of such nonowned motor
13 vehicles. Notwithstanding any other provision of this code, if the
14 owner of a policy receives a notice of cancellation pursuant to
15 article six-a of this chapter and the reason for the cancellation
16 is a violation of law by a person insured under the policy, said
17 owner may by restrictive endorsement specifically exclude the
18 person who violated the law and the restrictive endorsement shall
19 be effective in regard to the total liability coverage provided
20 under the policy, including coverage provided pursuant to the
21 mandatory liability requirements of section two, article four,
22 chapter seventeen-d of this code, but nothing in such restrictive
23 endorsement shall be construed to abrogate the "family purpose
24 doctrine".

1 (b) Nor shall any such policy or contract be so issued or
2 delivered unless it shall contain an endorsement or provisions
3 undertaking to pay the insured all sums which he or she shall be
4 legally entitled to recover as damages from the owner or operator
5 of an uninsured motor vehicle, within limits which shall be no less
6 than the requirements of section two, article four, chapter
7 seventeen-d of this code, as amended from time to time: *Provided,*
8 That such policy or contract shall provide an option to the insured
9 with appropriately adjusted premiums to pay the insured all sums
10 which he or she shall be legally entitled to recover as damages
11 from the owner or operator of an uninsured motor vehicle up to an
12 amount of \$100,000 because of bodily injury to or death of one
13 person in any one accident and, subject to said limit for one
14 person, in the amount of \$300,000 because of bodily injury to or
15 death of two or more persons in any one accident and in the amount
16 of \$50,000 because of injury to or destruction of property of
17 others in any one accident: *Provided, however,* That such
18 endorsement or provisions may exclude the first ~~three hundred~~
19 ~~dollars~~ \$50 of property damage resulting from the negligence of an
20 uninsured motorist: *Provided further,* That such policy or contract
21 shall provide an option to the insured with appropriately adjusted
22 premiums to pay the insured all sums which he shall legally be
23 entitled to recover as damages from the owner or operator of an
24 uninsured or underinsured motor vehicle up to an amount not less

1 than limits of bodily injury liability insurance and property
2 damage liability insurance purchased by the insured without setoff
3 against the insured's policy or any other policy. Regardless of
4 whether motor vehicle coverage is offered and provided to an
5 insured through a multiple vehicle insurance policy or contract, or
6 in separate single vehicle insurance policies or contracts, no
7 insurer or insurance company providing a bargained for discount for
8 multiple motor vehicles with respect to underinsured motor vehicle
9 coverage shall be treated differently from any other insurer or
10 insurance company utilizing a single insurance policy or contract
11 for multiple covered vehicles for purposes of determining the total
12 amount of coverage available to an insured. "Underinsured motor
13 vehicle" means a motor vehicle with respect to the ownership,
14 operation or use of which there is liability insurance applicable
15 at the time of the accident, but the limits of that insurance are
16 either: (i) Less than limits the insured carried for underinsured
17 motorists' coverage; or (ii) has been reduced by payments to others
18 injured in the accident to limits less than limits the insured
19 carried for underinsured motorists' coverage. No sums payable as
20 a result of underinsured motorists' coverage shall be reduced by
21 payments made under the insured's policy or any other policy.

22 (c) As used in this section, the term "bodily injury" shall
23 include death resulting therefrom and the term "named insured"
24 shall mean the person named as such in the declarations of the

1 policy or contract and shall also include such person's spouse if
2 a resident of the same household and the term "insured" shall mean
3 the named insured and, while resident of the same household, the
4 spouse of any such named insured and relatives of either, while in
5 a motor vehicle or otherwise, and any person, except a bailee for
6 hire, who uses, with the consent, expressed or implied, of the
7 named insured, the motor vehicle to which the policy applies or the
8 personal representative of any of the above; and the term
9 "uninsured motor vehicle" shall mean a motor vehicle as to which
10 there is no: (i) Bodily injury liability insurance and property
11 damage liability insurance both in the amounts specified by section
12 two, article four, chapter seventeen-d of this code, as amended
13 from time to time; or (ii) there is such insurance, but the
14 insurance company writing the same denies coverage thereunder; or
15 (iii) there is no certificate of self-insurance issued in
16 accordance with the provisions of said section. A motor vehicle
17 shall be deemed to be uninsured if the owner or operator thereof be
18 unknown: *Provided*, That recovery under the endorsement or
19 provisions shall be subject to the conditions hereinafter set
20 forth.

21 (d) Any insured intending to rely on the coverage required by
22 subsection (b) of this section shall, if any action be instituted
23 against the owner or operator of an uninsured or underinsured motor
24 vehicle, cause a copy of the summons and a copy of the complaint to

1 be served upon the insurance company issuing the policy, in the
2 manner prescribed by law, as though such insurance company were a
3 named party defendant; such company shall thereafter have the right
4 to file pleadings and to take other action allowable by law in the
5 name of the owner, or operator, or both, of the uninsured or
6 underinsured motor vehicle or in its own name.

7 Nothing in this subsection shall prevent such owner or
8 operator from employing counsel of his or her own choice and taking
9 any action in his or her own interest in connection with such
10 proceeding.

11 (e) If the owner or operator of any motor vehicle which causes
12 bodily injury or property damage to the insured be unknown, the
13 insured, or someone in his or her behalf, in order for the insured
14 to recover under the uninsured motorist endorsement or provision,
15 shall:

16 (i) Within twenty-four hours after the insured discover, and
17 being physically able to report the occurrence of such accident,
18 the insured, or someone in his or her behalf, shall report the
19 accident to a police, peace or to a judicial officer, unless the
20 accident shall already have been investigated by a police officer;

21 (ii) Notify the insurance company, within sixty days after
22 such accident, that the insured or his or her legal representative
23 has a cause or causes of action arising out of such accident for
24 damages against a person or persons whose identity is unknown and

1 setting forth the facts in support thereof; and, upon written
2 request of the insurance company communicated to the insured not
3 later than five days after receipt of such statement, shall make
4 available for inspection the motor vehicle which the insured was
5 occupying at the time of the accident; and

6 (iii) Upon trial establish that the motor vehicle, which
7 caused the bodily injury or property damage, whose operator is
8 unknown, was a "hit and run" motor vehicle, meaning a motor vehicle
9 which causes damage to the property of the insured arising out of
10 physical contact of such motor vehicle therewith, or which causes
11 bodily injury to the insured arising out of physical contact of
12 such motor vehicle with the insured or with a motor vehicle which
13 the insured was occupying at the time of the accident. If the
14 owner or operator of any motor vehicle causing bodily injury or
15 property damage be unknown, an action may be instituted against the
16 unknown defendant as "John Doe", in the county in which the
17 accident took place or in any other county in which such action
18 would be proper under the provisions of article one, chapter
19 fifty-six of this code; service of process may be made by delivery
20 of a copy of the complaint and summons or other pleadings to the
21 clerk of the court in which the action is brought, and service upon
22 the insurance company issuing the policy shall be made as
23 prescribed by law as though such insurance company were a party
24 defendant. The insurance company shall have the right to file

1 pleadings and take other action allowable by law in the name of
2 John Doe.

3 (f) An insurer paying a claim under the endorsement or
4 provisions required by subsection (b) of this section shall be
5 subrogated to the rights of the insured to whom such claim was paid
6 against the person causing such injury, death or damage to the
7 extent that payment was made. The bringing of an action against
8 the unknown owner or operator as John Doe or the conclusion of such
9 an action shall not constitute a bar to the insured, if the
10 identity of the owner or operator who caused the injury or damages
11 complained of, becomes known, from bringing an action against the
12 owner or operator theretofore proceeded against as John Doe. Any
13 recovery against such owner or operator shall be paid to the
14 insurance company to the extent that such insurance company shall
15 have paid the insured in the action brought against such owner or
16 operator as John Doe, except that such insurance company shall pay
17 its proportionate part of any reasonable costs and expenses
18 incurred in connection therewith, including reasonable attorney's
19 fees. Nothing in an endorsement or provision made under this
20 subsection, nor any other provision of law, shall operate to
21 prevent the joining, in an action against John Doe, of the owner or
22 operator of the motor vehicle causing injury as a party defendant,
23 and such joinder is hereby specifically authorized.

24 (g) No such endorsement or provisions shall contain any

1 provision requiring arbitration of any claim arising under any such
2 endorsement or provision, nor may anything be required of the
3 insured except the establishment of legal liability, nor shall the
4 insured be restricted or prevented in any manner from employing
5 legal counsel or instituting legal proceedings.

6 (h) The provisions of subsections (a) and (b) of this section
7 shall not apply to any policy of insurance to the extent that it
8 covers the liability of an employer to his or her employees under
9 any workers' compensation law.

10 (i) The commissioner of insurance shall formulate and require
11 the use of standard policy provisions for the insurance required by
12 this section, but use of such standard policy provisions may be
13 waived by the commissioner in the circumstances set forth in
14 section ten of this article.

15 (j) A motor vehicle shall be deemed to be uninsured within the
16 meaning of this section, if there has been a valid bodily injury or
17 property damage liability policy issued upon such vehicle, but
18 which policy is uncollectible, in whole or in part, by reason of
19 the insurance company issuing such policy upon such vehicle being
20 insolvent or having been placed in receivership. The right of
21 subrogation granted insurers under the provisions of subsection (f)
22 of this section shall not apply as against any person or persons
23 who is or becomes an uninsured motorist for the reasons set forth
24 in this subsection.

1 (k) Nothing contained herein shall prevent any insurer from
2 also offering benefits and limits other than those prescribed
3 herein, nor shall this section be construed as preventing any
4 insurer from incorporating in such terms, conditions and exclusions
5 as may be consistent with the premium charged.

6 (l) The Insurance Commissioner shall review on an annual basis
7 the rate structure for uninsured and underinsured motorists'
8 coverage as set forth in subsection (b) of this section and shall
9 report to the Legislature on said rate structure on or before
10 January 15, 1983, and on or before ~~the fifteenth day of~~ January 15
11 of each of the next two succeeding years.

NOTE: The purpose of this bill is to use the Crime Victims Fund to fill-in a portion of the property damage deductible for victims of the negligence of an uninsured driver.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.