

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2447

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATES,
SHOTT, SUMMERS, OVERINGTON, FOSTER, G., HOLLEN
AND SOBONYA

[Introduced February 15, 2017; Referred to the
Committee on the Judiciary.]

1 A BILL to repeal §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended; to repeal
2 §14-2A-7 of said code; to amend and reenact §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-
3 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-
4 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,
5 §14-2-26, §14-2-27 and §14-2-28 of said code; to amend said code by adding thereto a
6 new section, designated §14-2-17a; and to amend and reenact §14-2A-5, §14-2A-6, §14-
7 2A-9, §14-2A-10, §14-2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16,
8 §14-2A-17, §14-2A-18, §14-2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-
9 2A-25, §14-2A-26 and §14-2A-28 of said code, all relating to renaming the Court of Claims
10 the state Claims Commission; renaming judges commissioners; modifying definitions;
11 providing explicit powers of removal of commissioners; providing authority to the Joint
12 Committee on Government and Finance for the hiring of a clerk, chief deputy clerk, and
13 deputy clerks; and establishing a shortened procedure for certain road condition claims.

Be it enacted by the Legislature of West Virginia:

1 That §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended, be repealed;
2 that §14-2A-7 of said code be repealed; that §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-2-7, §14-
3 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,
4 §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
5 §14-2-28 of said code be amended and reenacted; that said code be amended by adding thereto
6 a new section, designated §14-2-17a; and that §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-
7 2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16, §14-2A-17, §14-2A-18, §14-
8 2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-2A-25, §14-2A-26 and §14-2A-28
9 of said code be amended and reenacted all to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-3. Definitions.

1 For the purpose of this article:

2 ~~"Court" means the state Court of Claims established by section four of this article.~~

3 "Commission" means the State Claims Commission established by section four of this
4 article.

5 "Claim" means a claim authorized to be heard by the ~~court~~ commission in accordance with
6 this article.

7 "Approved claim" means a claim found by the ~~court~~ commission to be one that should be
8 paid under the provisions of this article.

9 "Award" means the amount recommended by the ~~court~~ commission to be paid in
10 satisfaction of an approved claim.

11 "Clerk" means the clerk of the ~~Court of Claims~~ State Claims Commission.

12 "State agency" means a state department, board, commission, institution, or other
13 administrative agency of state government: *Provided*, That a "state agency" shall not be
14 considered to include county ~~courts~~ commissions, county boards of education, municipalities, or
15 any other political or local subdivision of the state regardless of any state aid that might be
16 provided.

§14-2-4. Creation of Court of Claims Court of Claims to be continued and renamed the state
Claims Commission; appointment and terms of judges commissioners; vacancies.

1 The "Court of Claims" is hereby ~~created~~ renamed the State Claims Commission. It shall
2 consist of three ~~judges~~ commissioners, to be appointed by the President of the Senate and the
3 Speaker of the House of Delegates, by and with the advice and consent of the Senate, one of
4 whom shall be appointed presiding ~~judge~~ commissioner. The judges of the Court of Claims will
5 continue their existing terms as commissioners. Each appointment to the ~~court~~ commission shall
6 be made from a list of three qualified nominees furnished by the Board of Governors of the West
7 Virginia State Bar. The President of the Senate and the Speaker of the House of Delegates may
8 jointly terminate the appointment of any commissioner appointed under this section at any time.

9 The terms of the ~~judges of this court~~ commissioners shall be six years. ~~except that the first~~

10 ~~members of the court commission shall be appointed as follows: One judge for two years, one~~
11 ~~judge for four years and one judge for six years. As these appointments expire, all appointments~~
12 ~~shall be for six year terms~~ Not more than two of the judges commissioners shall be of the same
13 political party. An appointment to fill a vacancy shall be for the unexpired term.

§14-2-4a. Interim judges commissioners.

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

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

10 (c) Appointments made under this section shall be made from a list furnished to the
11 President of the Senate and the Speaker of the House of Delegates by the board of Governors of
12 the West Virginia State Bar. The board of Governors of the West Virginia State Bar shall annually,
13 on or before January 15, submit a list of twenty qualified nominees. ~~In two thousand four, the list~~
14 ~~shall be submitted before April 1~~

15 (d) An interim judge commissioner:

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

18 (2) Shall take the oath of office as required in section nine of this article;

19 (3) Has all the authority given to a judge commissioner under this article; and

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

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

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

1 ~~The court~~ The Joint Committee on Government and Finance may appoint a clerk, chief
2 deputy clerk and deputy clerks. The salaries of the clerk, the chief deputy clerk and the deputy
3 clerks shall be fixed by the Joint Committee on Government and Finance, and shall be paid out
4 of the regular appropriation for the ~~court~~ commission. The clerk shall have custody of and maintain
5 all records and proceedings of the ~~court~~ commission, shall attend meetings and hearings of the
6 ~~court~~ commission, shall administer oaths and affirmations and shall issue all official summonses,
7 subpoenas, orders, statements and awards. The chief deputy clerk or another deputy clerk shall
8 act in the place and stead of the clerk in the clerk's absence.

9 The Joint Committee on Government and Finance may employ other persons whose
10 services are necessary to the orderly transaction of the business of the ~~court~~ commission and fix
11 their compensation.

§14-2-6. ~~Terms of court.~~

1 ~~The court shall hold at least two regular terms each year, on the second Monday in April~~
2 ~~and September. So far as possible, the court shall not adjourn a regular term until all claims then~~
3 ~~upon its docket and ready for hearing or other consideration have been disposed of.~~

4 ~~Special terms or meetings may be called by the clerk at the request of the court whenever~~
5 ~~the number of claims awaiting consideration, or any other pressing matter of official business,~~
6 ~~make such a term advisable.~~

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

1 The regular meeting place of the ~~court~~ commission shall be at the State Capitol, and the
2 Joint Committee on Government and Finance shall provide adequate quarters therefor. ~~When~~
3 ~~deemed advisable,~~ In order to facilitate the full hearing of claims arising elsewhere in the state,

4 the ~~court~~ commission may convene at any county seat or other location in the state, including a
5 correctional institution: *Provided*, That the ~~court~~ commission will make reasonable efforts to meet
6 in appropriate public or private buildings in keeping with the dignity and decorum of the state.

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

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

§14-2-9. Oath of office.

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

§14-2-10. Qualifications of ~~judges~~ commissioners.

1 Each ~~judge~~ commissioner appointed to the ~~Court of Claims~~ State Claims Commission
2 shall be an attorney at law, licensed to practice in this state, and shall have been so licensed to
3 practice law for a period of not less than ten years prior to his or her appointment as ~~judge~~
4 commissioner. A ~~judge~~ commissioner shall not be an officer or an employee of any branch of

5 state government, except in his or her capacity as a member of the ~~court~~ commission and shall
6 receive no other compensation from the state or any of its political subdivisions. A judge
7 commissioner shall not hear or participate in the consideration of any claim in which he or she is
8 interested personally, either directly or indirectly.

§14-2-11. Attorney general to represent state.

1 Unless expressly exempted in the code, the Attorney General shall represent the interests
2 of the state in all claims coming before the ~~court~~ commission.

§14-2-12. General powers of the ~~court~~ commission.

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

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

§14-2-13. Jurisdiction of the ~~court~~ commission.

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

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

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

§14-2-14. Claims excluded.

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

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

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

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

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

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

§14-2-15. Rules of practice and procedure.

1 The ~~court~~ commission shall adopt and may from time to time amend rules of procedure,
2 in accordance with the provisions of this article, governing proceedings before the ~~court~~
3 commission. Rules shall be designed to assure a simple, expeditious and inexpensive
4 consideration of claims. Rules shall permit a claimant to appear in his or her own behalf or be
5 represented by counsel.

6 Discovery may be used in a case pending before the ~~court~~ commission in the same
7 manner that discovery is conducted pursuant to the rules of civil procedure for trial courts of
8 record, rules 26 through 36. The ~~court~~ commission may compel discovery and impose sanctions

9 for a failure to make discovery, in the same manner as a court is authorized to do under the
10 provisions of rule 37 of the rules of civil procedure for trial courts of record: *Provided*, That the
11 ~~Court of Claims~~ commission shall not find a person in contempt for failure to comply with an order
12 compelling discovery.

13 The ~~court~~ commission, upon its own motion or upon motion of a party, may strike a
14 pleading, motion or other paper which: (1) Is not well-grounded in fact; (2) is not warranted by
15 existing law, or is not based on a good faith argument for the extension, modification, or reversal
16 of existing law; or (3) is interposed for any improper purpose, such as to harass or to cause
17 unnecessary delay or needless increase in costs. An order striking a pleading, motion, or paper
18 may include an order to pay to the other party or parties the amount of the reasonable expenses
19 incurred because of the filing of the pleading, motion, or other paper, including a reasonable
20 attorney's fee.

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

§14-2-16. Regular procedure.

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

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

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

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

15 (4) The ~~court~~ commission shall so conduct the hearing as to disclose all material facts and
16 issues of liability and may examine or cross-examine witnesses. The ~~court~~ commission may call
17 witnesses or require evidence not produced by the parties; the ~~court~~ commission may call expert
18 witnesses and compensate those experts for their services in an amount not to exceed \$3,500
19 per expert; the ~~court~~ commission may stipulate the questions to be argued by the parties; and the
20 ~~court~~ commission may continue the hearing until some subsequent time to permit a more
21 complete presentation of the claim.

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

§14-2-17. Shortened procedure.

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

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

8 The state agency concerned shall prepare the record of the claim consisting of all papers,
9 stipulations and evidential documents required by the rules of the ~~court~~ commission and file the
10 same with the clerk. The ~~court~~ commission shall consider the claim informally upon the record
11 submitted. If the ~~court~~ commission determines that the claim should be entered as an approved

12 claim and an award made, it shall so order and shall file its statement with the clerk. If the ~~court~~
13 commission finds that the record is inadequate, or that the claim should not be paid, it shall reject
14 the claim. The rejection of a claim under this section shall not bar its resubmission under the
15 regular procedure.

§14-2-17a. Shortened procedure for road condition claims.

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

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

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

§14-2-18. Advisory determination procedure.

1 ~~The Governor or the head of a state agency may refer to the court for an advisory~~
2 ~~determination the question of the legal or equitable status, or both, of a claim against the state or~~
3 ~~a state agency. This procedure shall apply only to such claims as are within the jurisdiction of the~~
4 ~~court. The procedure shall be substantially as follows:~~

- 5 ~~1. There shall be filed with the clerk the record of the claim, including a full statement of~~
6 ~~the facts, the contentions of the claimant and such other materials as the rules of the court may~~
7 ~~require. The record shall submit specific questions for the court's consideration.~~
8 ~~2. The clerk shall examine the record submitted. If he or she finds that it is adequate under~~
9 ~~the rules, he or she shall give a copy of all materials submitted to the Joint Committee on~~

10 ~~Government and Finance. If the Joint Committee on Government and Finance shall so direct, the~~
11 ~~clerk shall place the claim on a special docket. If the clerk finds the record inadequate, he or she~~
12 ~~shall refer it back to the officer submitting it with the request that the necessary additions or~~
13 ~~changes be made.~~

14 ~~3. When a claim is reached on the special docket, the court shall prepare a brief opinion~~
15 ~~for the information and guidance of the officer. The claim shall be considered informally and~~
16 ~~without hearing. A claimant shall not be entitled to appear in connection with the consideration of~~
17 ~~the claim.~~

18 ~~4. The opinion shall be filed with the clerk. A copy shall be transmitted to the officer who~~
19 ~~referred the claim.~~

20 ~~An advisory determination shall not bar the subsequent consideration of the same claim if~~
21 ~~properly submitted by, or on behalf of, the claimant. Such subsequent consideration, if~~
22 ~~undertaken, shall be de novo.~~

§14-2-19. Claims under existing appropriations.

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

4 1. A claimant whose claim has been rejected by the state agency concerned or by the
5 State Auditor.

6 2. The head of the state agency concerned in order to obtain a determination of the matters
7 in issue.

8 3. The State Auditor in order to obtain a full hearing and consideration of the merits.

9 When such submittal is made, the clerk shall give a copy of the submittal to the Joint
10 Committee on Government and Finance. If the Joint Committee on Government and Finance shall
11 so direct, the clerk shall place such claim on its docket. Upon its placement on the docket, the
12 regular procedure, so far as applicable, shall govern the consideration of the claim by the ~~court~~

13 commission. If the ~~court~~ commission finds that the claimant should be paid, it shall certify the
14 approved claim and award to the head of the appropriate state agency, the State Auditor and to
15 the Governor. The Governor may thereupon instruct the Auditor to issue his or her warrant in
16 payment of the award and to charge the amount thereof to the proper appropriation. The Auditor
17 shall forthwith notify the state agency that the claim has been paid. Such an expenditure shall not
18 be subject to further review by the Auditor upon any matter determined and certified by the ~~court~~
19 commission.

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

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

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

§14-2-21. Periods of limitation made applicable.

1 The ~~court~~ commission shall not take jurisdiction of any claim, whether accruing before or
2 after the effective date of this article (July 1, 1967), unless notice of such claim be filed with the
3 clerk within such period of limitation as would be applicable under the pertinent provisions of the
4 Code of West Virginia, 1931, as amended, if the claim were against a private person, firm or
5 corporation and the Constitutional immunity of the state from suit were not involved and such
6 period of limitation may not be waived or extended. The foregoing provision shall not be held to

7 limit or restrict the right of any person, firm or corporation who or which had a claim against the
8 state or any state agency, pending before the Attorney General on the effective date of this article
9 (July 1, 1967), from presenting such claim to the Court of Claims, nor shall it limit or restrict the
10 right to file such a claim which was, on the effective date of this article (July 1, 1967), pending in
11 any court of record as a legal claim and which, after such date was or may be adjudicated in such
12 court to be invalid as a claim against the state because of the Constitutional immunity of the state
13 from suit.

§14-2-22. Compulsory process.

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

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

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

§14-2-24. Records to be preserved.

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

§14-2-25. Reports of the court.

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

4 Claims and awards shall be separately classified as follows:

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

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

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

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

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

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

§14-2-26. Fraudulent claims.

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

§14-2-27. Conclusiveness of determination.

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

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

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

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

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-5. Jurisdiction.

1 Any ~~judge~~ commissioner of the ~~Court of Claims~~ State Claims Commission individually, or
2 the ~~Court of Claims~~ State Claims Commission en banc, ~~or any Court of Claims commissioner~~
3 ~~appointed pursuant to section six of this article~~, shall have jurisdiction to approve awards of
4 compensation arising from criminally injurious conduct, in accordance with the provisions of this

5 article, if satisfied by a preponderance of the evidence that the requirements for an award of
6 compensation have been met.

**§14-2A-6. ~~Appointment and Compensation of commissioners and judges serving under
this article.~~**

1 ~~(a) The Court of Claims with the approval of the President of the Senate and the Speaker~~
2 ~~of the House of Delegates, may appoint Court of Claims commissioners to hear claims for awards~~
3 ~~of compensation and to approve awards of compensation pursuant to the provisions of this article.~~
4 ~~Each commissioner shall serve at the pleasure of the Court of Claims and under the supervision~~
5 ~~of the judges of the Court of Claims.~~

6 ~~(b) The Court of Claims shall fix the compensation of the Court of Claims commissioners~~
7 ~~in an amount not exceeding the compensation for judges of the Court of Claims Compensation of~~
8 ~~judges and commissioners for services performed under this article, and actual expenses incurred~~
9 ~~in the performance of duties as judges and commissioners under this article, shall be paid out of~~
10 ~~the crime victims compensation fund.~~

11 ~~(c) The limitation period of one hundred days in section eight, article two of this chapter~~
12 ~~pertaining to time served by the judges of the Court of Claims shall not apply to the provisions of~~
13 ~~this article.~~

§14-2A-7. ~~Qualifications of commissioners.~~

1 ~~Each commissioner appointed by the Court of Claims shall be an attorney at law, licensed~~
2 ~~to practice in this state, and shall have been so licensed to practice law for a period of not less~~
3 ~~than three years prior to his or her appointment as commissioner. A commissioner shall not be~~
4 ~~an officer or an employee of any branch of state government, except in his or her capacity as~~
5 ~~commissioner of the court. A commissioner shall not hear or participate in the consideration of~~
6 ~~any claim in which he or she is interested personally, either directly or indirectly. When practicable,~~
7 ~~the commissioners should be selected from different congressional districts and be geographically~~
8 ~~located, with reference to their counties of residence, to facilitate the appearance of claimants~~

9 ~~and witnesses at hearings held pursuant to this article.~~

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

1 ~~The Court of Claims~~ State Claims Commission, with the approval of the Joint Committee
2 on Government and Finance, is hereby authorized to hire not more than four claim investigators
3 to be employed within the ~~Office of the clerk of the State~~ Claims Commission, who shall carry out
4 the functions and duties set forth in section twelve of this article. Claim investigators shall serve
5 at the pleasure of the ~~Court of Claims~~ Joint Committee on Government and Finance and under
6 the administrative supervision of the Clerk of the Court of Claims. The compensation of claim
7 investigators shall be fixed by the ~~court~~ Joint Committee on Government and Finance, and such
8 compensation, together with travel, clerical and other expenses of the Clerk of the ~~Court of Claims~~
9 State Claims Commission relating to a claim investigator carrying out his or her duties under this
10 article, including the cost of obtaining reports required by the investigator in investigating a claim,
11 shall be payable from the crime victims compensation fund as appropriated for such purpose by
12 the Legislature.

13 ~~The Court of Claims~~ State Claims Commission, with the approval of the Joint Committee
14 on Government and Finance, is hereby authorized to hire as support staff such paralegal or
15 paralegals and secretary or secretaries to be employed within the ~~Office of the Clerk of the Court~~
16 ~~of Claims~~ State Claims Commission, necessary to carry out the functions and duties of this article.
17 Such support staff shall serve at the will and pleasure of the ~~Court of Claims~~ State Claims
18 Commission and under the administrative supervision of the Clerk of the ~~Court of Claims~~ State
19 Claims Commission.

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

1 (a) A claim for an award of compensation shall be commenced by filing an application for
2 an award of compensation with the clerk of the ~~Court of Claims~~ State Claims Commission. The
3 application shall be in a form prescribed by the clerk of the ~~Court of Claims~~ State Claims
4 Commission and shall contain the information specified in subdivisions (1) through (6) of this

5 subsection and, to the extent possible, the information in subdivisions (7) through (10) of this
6 subsection:

7 (1) The name and address of the victim of the criminally injurious conduct, the name and
8 address of the claimant and the relationship of the claimant to the victim;

9 (2) The nature of the criminally injurious conduct that is the basis for the claim and the
10 date on which the conduct occurred;

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

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

16 (5) A release authorizing the ~~Court of Claims, the Court of Claims commissioners~~ State
17 Claims Commission and the claim investigator to obtain any report, document or information that
18 relates to the determination of the claim for an award of compensation;

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

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

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

29 (9) The amount of benefits or advantages that the victim, a dependent or other claimant
30 has received or is entitled to receive from any collateral source for economic loss that resulted

31 from the criminally injurious conduct, and the name of each collateral source;

32 (10) Any additional relevant information that the ~~Court of Claims~~ State Claims Commission
33 may require. The ~~Court of Claims~~ State Claims Commission may require the claimant to submit,
34 with the application, materials to substantiate the facts that are stated in the application.

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

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

§14-2A-11. Procedure for filing of application.

1 The clerk of the ~~Court of Claims~~ State Claims Commission shall establish a procedure for
2 the filing, recording and processing of applications for an award of compensation.

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

1 (a) The clerk of the ~~Court of Claims~~ State Claims Commission shall transmit a copy of the
2 application to the claim investigator within seven days after the filing of the application.

3 (b) The claim investigator, upon receipt of an application for an award of compensation
4 from the clerk of the ~~Court of Claims~~ State Claims Commission, shall investigate the claim. After

5 completing the investigation, the claim investigator shall make a written finding of fact and
6 recommendation concerning an award of compensation. He or she shall file with the clerk the
7 finding of fact and recommendation and all information or documents that he or she used in his
8 or her investigation: *Provided*, That the claim investigator shall not file information or documents
9 which have been the subject of a protective order entered under the provisions of subsection (c)
10 of this section.

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

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

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

28 Upon motion of any party, court or agency from whom such reports, information, witness
29 statements or other data is sought, and for good cause shown, the court may make any order
30 which justice requires to protect a witness or other person, including, but not limited to, the

31 following: (1) That the reports, information, witness statements or other data not be made
32 available; (2) that the reports, information, witness statements or other data may be made
33 available only on specified terms and conditions, including a designation of time and place; (3)
34 that the reports, information, witness statements or other data be made available only by a
35 different method than that selected by the claim investigator; (4) that certain matters not be
36 inquired into, or that the scope of the claim investigator's request be limited to certain matters; (5)
37 that the reports, information, witness statements or other data be examined only by certain
38 persons designated by the court; (6) that the reports, information, witness statements or other
39 data, after being sealed, be opened only by order of the court; and (7) that confidential information
40 or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a
41 designated manner.

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

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

56 (1) Whether the criminally injurious conduct that is the basis for the application did occur,

57 the date on which the conduct occurred and the exact nature of the conduct;

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

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

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

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

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

74 (7) Any information which might be a basis for a reasonable reduction or denial of a claim
75 because of contributory misconduct of the claimant or of a victim through whom he or she claims;

76 (8) Any additional information that the claim investigator deems to be relevant to the
77 evaluation of the claim.

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

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

82 (2) If the claim investigator recommends that an award not be made to the claimant, the

83 reason for his or her decision.

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

**§14-2A-13. Notice to claimant of claim investigator's recommendation; evaluation of claim
by ~~judge or~~ commissioner.**

1 (a) The clerk of the ~~Court of Claims~~ State Claims Commission, upon receipt of the claim
2 investigator's finding of fact and recommendation, shall forward a copy of the finding of fact and
3 recommendation to the claimant with a notice informing the claimant that any response, in the
4 form of objections or comments directed to the finding of fact and recommendation, must be filed
5 with the clerk within thirty days of the date of the notice. After the expiration of such thirty-day
6 period, the clerk shall assign the claim to a ~~judge or~~ commissioner. ~~of the court.~~

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

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

1 (a) Except as provided in subsection (b), section ten of this article, the ~~judge or~~
2 commissioner may not approve an award of compensation to a claimant who did not file his or

3 her application for an award of compensation within two years after the date of the occurrence of
4 the criminally injurious conduct that caused the injury or death for which he or she is seeking an
5 award of compensation.

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

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

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

21 (e) A ~~judge or~~ commissioner may not approve an award of compensation if the injury
22 occurred while the victim was confined in any state, county or regional jail, prison, private prison
23 or correctional facility.

24 (f) After reaching a decision to approve an award of compensation, but prior to announcing
25 the approval, the ~~judge or~~ commissioner shall require the claimant to submit current information
26 as to collateral sources on forms prescribed by the Clerk of the ~~Court of Claims~~ State Claims
27 Commission. The ~~judge or~~ commissioner shall reduce an award of compensation or deny a claim
28 for an award of compensation that is otherwise payable to a claimant to the extent that the

29 economic loss upon which the claim is based is or will be recouped from other persons, including
30 collateral sources, or if the reduction or denial is determined to be reasonable because of the
31 contributory misconduct of the claimant or of a victim through whom he or she claims. If an award
32 is reduced or a claim is denied because of the expected recoupment of all or part of the economic
33 loss of the claimant from a collateral source, the amount of the award or the denial of the claim
34 shall be conditioned upon the claimant's economic loss being recouped by the collateral source:
35 *Provided*, That if it is thereafter determined that the claimant will not receive all or part of the
36 expected recoupment, the claim shall be reopened and an award shall be approved in an amount
37 equal to the amount of expected recoupment that it is determined the claimant will not receive
38 from the collateral source, subject to the limitation set forth in subsection (g) of this section.

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

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

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

§14-2A-15. Hearings.

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

5 or her decision.

6 (b) Upon receipt of a request for hearing, the clerk shall ~~place the claim upon the regular~~
7 ~~docket of the court~~ set a date and time for hearing, shall advise the Attorney General and the
8 claimant of the receipt of the request and docketing of the claim, and shall request the Attorney
9 General to commence negotiations with the claimant.

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

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

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

24 (f) After the close of the hearing the ~~judge or~~ commissioner shall consider the claim and
25 shall conclude his or her determination, if possible, within thirty days.

26 (g) The ~~court~~ commission shall adopt and may from time to time amend rules of procedure
27 to govern proceedings before the ~~court~~ commission in accordance with the provisions of this
28 article. The rules shall be designed to assure a simple, expeditious and inexpensive consideration
29 of claims. The rules shall permit a claimant to appear in his or her own behalf or be represented
30 by counsel and provide for interests of the state to be represented by the Attorney General in any

31 hearing under this section at no additional cost to the fund or the state.

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

§14-2A-16. Evidence.

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

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

18 (c) The ~~court, or a judge~~ commission, or a commissioner thereof, may order law-
19 enforcement officers employed by the state or any political subdivision thereof to provide it or the
20 claim investigator with copies of any information or data gathered in the investigation of the

21 criminally injurious conduct that is the basis of any claim to enable it to determine whether, and
22 the extent to which, a claimant qualifies for an award of compensation.

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

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

33 (f) Notwithstanding any provision of this code to the contrary relating to the confidentiality
34 of juvenile records, the ~~Court of Claims~~ State Claims Commission, ~~a judge~~ or a commissioner
35 thereof, or the claim investigator shall have access to the records of juvenile proceedings which
36 bear upon an application for compensation under this article. The ~~Court of Claims~~ State Claims
37 Commission, ~~a judge~~ or a commissioner thereof, and the claim investigator, shall, to the extent
38 possible, maintain the confidentiality of juvenile records.

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

1 If a person refuses to comply with an order under this article, or asserts a privilege, except
2 privileges arising from the attorney-client relationship, so as to withhold or suppress evidence
3 relevant to a claim for an award of compensation, the ~~court, judge~~ commission or a commissioner
4 may make any just order, including denial of the claim, but shall not find the person in contempt.
5 If necessary to carry out any of his or her powers and duties, the claim investigator may petition
6 the ~~Court of Claims~~ State Claims Commission for an appropriate order, including an order
7 authorizing the investigator to take the depositions of witnesses by oral examination or written

8 interrogatory, but the ~~Court of Claims~~ State Claims Commission shall not find a person in
9 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.

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

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

§14-2A-19. Attorney and witness fees.

1 (a) By separate order, the ~~court, or a judge~~ commission or a commissioner thereof, shall
2 determine and award reasonable attorney's fees, commensurate with services rendered and
3 reimbursement for reasonable and necessary expenses actually incurred shall be paid from the
4 Crime Victims Compensation Fund to the attorney representing a claimant in a proceeding under
5 this article at the same rates as set forth in section thirteen-a, article twenty-one, chapter twenty-
6 nine of this code. Attorney's fees and reimbursement may be denied upon a finding that the claim
7 or appeal is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards

8 of compensation, and attorney's fees and reimbursement may be awarded whether or not an
9 award of compensation is approved. An attorney shall not contract for or receive any larger sum
10 than the amount allowed under this section. In no event may a prosecuting attorney or assistant
11 prosecuting attorney represent any victim seeking compensation under this article.

12 (b) Each witness called by the ~~court~~ commission to appear in a hearing on a claim for an
13 award of compensation shall receive compensation and expenses in an amount equal to that
14 received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine
15 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.**

1 (a) As part of the order, the ~~court, or a judge~~ commission or a commissioner thereof, shall
2 determine whether fees are due and owing for health care services rendered by a physician,
3 hospital or other health care provider stemming from an injury received as defined under this
4 article, and further, whether or not the physician, hospital or other health care provider has been
5 presented an assignment of benefits, signed by the crime victim, authorizing direct payments of
6 benefits to the health care provider. If such fees are due and owing and the health care provider
7 has presented a valid assignment of benefits, the ~~court, or a judge~~ commission or a commissioner
8 thereof, shall determine the amount or amounts and shall cause such reasonable fees to be paid
9 out of the amount awarded the crime victim under this article directly to the physician, hospital or
10 other health care provider. The requirements of this section shall be applicable to, and any such
11 unpaid fees shall be determined and payable from, the awards made by the Legislature at regular
12 session, one thousand nine hundred eighty-seven, and subsequently: *Provided*, That when a
13 claim is filed under this section, the ~~court~~ commission shall determine the total damages due the
14 crime victim, and where the total damages exceed the maximum amount which may be awarded
15 under this article, the amount paid the health care provider shall be paid in the same proportion
16 to which the actual award bears to the total damages determined by the ~~court~~ commission. In any

17 case wherein an award is made which includes an amount for funeral, cremation or burial
18 expenses, or a combination thereof, the ~~court~~ commission shall provide for the payment directly
19 to the provider or providers of such services, in an amount deemed proper by the ~~court~~
20 commission, where such expenses are unpaid at the time of the award.

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

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

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

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

1 The ~~court~~ commission may establish by ~~court~~ rule or ~~court~~ order maximum rates and
2 service limitations for reimbursement of health care services rendered by a physician, hospital, or
3 other health care provider. An informational copy of the maximum rates and service limitations
4 shall be filed with the Joint Committee on Government and Finance upon adoption by the ~~court~~
5 commission. Any change in the maximum rates or service limitations shall be effective sixty days
6 after the adoption of the changes. A provider who accepts payment from the ~~court~~ commission
7 for a service shall accept the ~~court's~~ commission's rates as payment in full and may not accept
8 any payment on account of the service from any other source if the total of payments accepted
9 would exceed the maximum rate set by the ~~court~~ commission for that service. A provider may not
10 charge a claimant for any difference between the cost of a service provided to a claimant and the

11 ~~court's~~ commission's payment for that service. To ensure service limitations are uniform and
12 appropriate to the levels of treatment required by the claimant, the ~~court~~ commission may review
13 all claims for these services as necessary to ensure their medical necessity.

§14-2A-20. Budget preparation; procedure for payment of claims.

1 (a) The Legislative Auditor shall submit to the Department of Administration, on or before
2 November 20, of each year, an anticipated budget for the crime victims compensation program
3 provided in this article for the next fiscal year, which shall include:

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

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

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

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

13 (c) The clerk shall certify each authorized award and the amount of the award and make
14 requisition upon the Crime Victims Compensation Fund to the Auditor. Notwithstanding any
15 provision of chapter twelve of this code to the contrary, the Auditor shall issue a warrant to the
16 Treasurer without further examination or review of the claim if there is a sufficient unexpended
17 balance in the Crime Victims Compensation Fund.

18 (d) The ~~court~~ commission may provide that payment be made to a claimant or to a third
19 party for economic losses of the claimant and the order may provide an award for the payment
20 for actual economic losses which are prospective as well as those which have already been
21 incurred.

§14-2A-21. Annual report of ~~Court of Claims~~ State Claims Commission.

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

§14-2A-25. Publicity.

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

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

§14-2A-26. Rules and regulations.

1 (a) The ~~Court of Claims~~ State Claims Commission may promulgate rules and regulations
2 to implement the provisions of this article.

3 (b) The ~~Court of Claims~~ State Claims Commission shall promulgate rules and regulations
4 to govern the award of compensation to the spouse of, person living in the same household with,
5 parent, child, brother or sister of the offender or his or her accomplice in order to avoid an unjust
6 benefit to or the unjust enrichment of the offender or his or her accomplice.

§14-2A-28. Retroactive effect of amendments.

1 Amendments made to the provisions of this article during the regular session of the
2 Legislature in the year one thousand nine hundred eighty-four, shall be of retroactive effect to the
3 extent that such amended provisions shall apply to all cases pending before the ~~Court of Claims~~
4 State Claims Commission on the effective date of the act of the Legislature which effects such
5 amendment.

NOTE: The purpose of this bill is to rename the Court of Claims the state Claims Commission, rename judges commissioners; modify definitions; provide explicit powers for the removal of commissioners; provide authority to the Joint Committee on Government and Finance for the hiring of a clerk, chief deputy clerk, and deputy clerks; and establish a shortened procedure for certain road condition claims.

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