

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2447**

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATES

SHOTT, SUMMERS, OVERINGTON, G. FOSTER, HOLLEN,

SOBONYA AND O'NEAL

[Passed April 8, 2017; in effect ninety days from passage.]



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

*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1 That §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended, be repealed;  
2 that §14-2A-7 of said code be repealed; that §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-2-7, §14-  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 “Commission” means the West Virginia Legislative Claims Commission established by  
3 section four of this article.

4 “Claim” means a claim authorized to be heard by the commission in accordance with this  
5 article.

6 “Approved claim” means a claim found by the commission to be one that should be paid  
7 under the provisions of this article.

8 “Award” means the amount recommended by the commission to be paid in satisfaction of  
9 an approved claim.

10 “Clerk” means the clerk of the West Virginia Legislative Claims Commission.

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

**§14-2-4. Court of Claims to be continued and renamed the West Virginia Legislative Claims  
Commission; appointment and terms of commissioners; vacancies.**

1 The “Court of Claims” is hereby renamed the West Virginia Legislative Claims  
2 Commission. It shall consist of three commissioners, to be appointed by the President of the  
3 Senate and the Speaker of the House of Delegates, one of whom shall be appointed presiding

4 commissioner. The judges of the Court of Claims sitting on the effective date of the amendments  
5 to this article enacted during the 2017 Regular Session of the Legislature will continue their  
6 existing terms as commissioners. Each appointment to the commission shall be made from a list  
7 of three qualified nominees furnished by the Board of Governors of the West Virginia State Bar.  
8 The President of the Senate and the Speaker of the House of Delegates may jointly terminate the  
9 appointment of any commissioner appointed under this section at any time.

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

**§14-2-4a. Interim commissioners.**

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

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

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

13 (d) An interim commissioner:

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

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

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

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

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

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

1 The President of the Senate and the Speaker of the House of Delegates may appoint a  
2 clerk, chief deputy clerk and deputy clerks. The salaries of the clerk, the chief deputy clerk and  
3 the deputy clerks shall be fixed by the Joint Committee on Government and Finance, and shall  
4 be paid out of the regular appropriation for the commission. The clerk shall have custody of and  
5 maintain all records and proceedings of the commission, shall attend meetings and hearings of  
6 the 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 President of the Senate and the Speaker of the House of Delegates may employ other  
10 persons whose services are necessary to the orderly transaction of the business of the  
11 commission and fix their compensation.

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

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

**§14-2-8. Compensation of commissioners; expenses.**

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

**§14-2-9. Oath of office.**

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

**§14-2-10. Qualifications of commissioners.**

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

**§14-2-12. General powers of the commission.**

1           The commission shall, in accordance with this article, consider claims which, but for the  
2 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 commission approving a claim and  
5 recommending an award, unless the claim is: (1) Made under an existing appropriation, in  
6 accordance with section nineteen of this article; or (2) a claim under a special appropriation, as  
7 provided in section twenty of this article. The commission shall consider claims in accordance  
8 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 commission, each claim shall  
11 be considered by the commission as a whole, or by a commissioner sitting individually, and if,  
12 after consideration, the commission finds that a claim is just and proper, it shall so determine and  
13 shall file with the clerk a brief statement of its reasons. A claim so filed shall be an approved claim.  
14 The commission shall also determine the amount that should be paid to the claimant, and shall  
15 itemize this amount as an award, with the reasons therefor, in its statement filed with the clerk. In  
16 determining the amount of a claim, interest shall not be allowed unless the claim is based upon a  
17 contract which specifically provides for the payment of interest.

**§14-2-13. Jurisdiction of the commission.**

1           The jurisdiction of the commission, except for the claims excluded by section fourteen,  
2 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 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 commission shall adopt and may from time to time amend rules of procedure, in  
2 accordance with the provisions of this article, governing proceedings before the commission.

3 Rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims.

4 Rules shall permit a claimant to appear in his or her own behalf or be represented by counsel.

5           Discovery may be used in a case pending before the commission in the same manner that  
6 discovery is conducted pursuant to the Rules of Civil Procedure for trial courts of record, Rules  
7 26 through 36. The commission may compel discovery and impose sanctions for a failure to make  
8 discovery, in the same manner as a court is authorized to do under the provisions of Rule 37 of  
9 the Rules of Civil Procedure for trial courts of record: *Provided*, That the commission shall not find  
10 a person in contempt for failure to comply with an order compelling discovery.

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

19           Under its rules, the commission shall not be bound by the usual common law or statutory  
20 rules of evidence. The commission may accept and weigh, in accordance with its evidential value,  
21 any information that will assist the commission in determining the factual 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 commission finds that a claim is prima facie within its jurisdiction, it shall  
9 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 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 commission may call  
17 witnesses or require evidence not produced by the parties; the 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 commission may stipulate the questions to be argued by the parties; and the  
20 commission may continue the hearing until some subsequent time to permit a more complete  
21 presentation of the claim.

22 (5) After the close of the hearing the 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 \$3,000.
- 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 commission and file the same  
10 with the clerk. The commission shall consider the claim informally upon the record submitted. If  
11 the commission determines that the claim should be entered as an approved claim and an award  
12 made, it shall so order and shall file its statement with the clerk. If the commission finds that the  
13 record is inadequate, or that the claim should not be paid, it shall reject the claim. The rejection  
14 of a claim under this section shall not bar its resubmission under the 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 \$1,000.

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.

**§14-2-19. 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 commission, may be  
3 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  
13 commission. If the commission finds that the claimant should be paid, it shall certify the approved

14 claim and award to the head of the appropriate state agency, the State Auditor and to the  
15 Governor. The Governor may thereupon instruct the Auditor to issue his or her warrant in payment  
16 of the award and to charge the amount thereof to the proper appropriation. The Auditor shall  
17 forthwith notify the state agency that the claim has been paid. Such an expenditure shall not be  
18 subject to further review by the Auditor upon any matter determined and certified by the  
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 commission. The clerk shall  
8 certify each approved claim and award, and requisition relating thereto, to the Auditor. The Auditor  
9 thereupon shall issue his or her warrant to the Treasurer in favor of the claimant. The Auditor shall  
10 issue his or her warrant without further examination or review of the claim except for the question  
11 of a sufficient unexpended balance in the appropriation.

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

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

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

**§14-2-22. Compulsory process.**

1 In all hearings and proceedings before the commission, the evidence and testimony of  
2 witnesses and the production of documentary evidence may be required. Subpoenas may be  
3 issued by the commission for appearance at any designated place of hearing. In case of  
4 disobedience to a subpoena or other process, the commission may invoke the aid of any circuit  
5 court in requiring the evidence and testimony of witnesses, and the production of books, papers  
6 and documents. Upon proper showing, the circuit court shall issue an order requiring witnesses  
7 to appear before the West Virginia Legislative Claims Commission; produce books, papers and  
8 other evidence; and give testimony touching the matter in question. A person failing to obey the  
9 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 commission to the  
3 Legislature for appropriation. The clerk may certify supplementary lists to the Governor to include  
4 subsequent awards made by the commission. The Governor shall include all awards so certified  
5 in his or her proposed budget bill transmitted to the Legislature. Any other provision of this article  
6 or of law to the contrary notwithstanding, the clerk shall not certify any award which has been  
7 previously certified.

**§14-2-24. Records to be preserved.**

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

**§14-2-25. Reports of the commission.**

1           The clerk shall be the official reporter of the commission. He or she shall collect and edit  
2           the approved claims, awards and statements, shall prepare them for submission to the Legislature  
3           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 commission with the reasons therefor.

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

13          The commission shall transmit its annual report to the presiding officer of each house of  
14          the Legislature, and a copy shall be made available to any member of the Legislature upon  
15          request therefor. The reports of the commission shall be published biennially by the clerk as a

16 public document. The biennial report shall be filed with the clerk of each house of the Legislature,  
17 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 confined for not more than one year, or both, in the discretion of such court.  
6 If the convicted person is a state officer or employee, he or she shall, in addition, forfeit his or her  
7 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 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 commission, unless the claim has first been passed upon by the  
3 commission.

4 (b) Because a decision of the commission is a recommendation to the Legislature based  
5 upon a finding of moral obligation, and the enactment process of passage of legislation  
6 authorizing payments of claims recommended by the commission is at legislative discretion, no  
7 right of appeal exists to findings and award recommendations of the West Virginia Legislative  
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 commissioner of the West Virginia Legislative Claims Commission individually, or the  
2 West Virginia Legislative Claims Commission en banc, shall have jurisdiction to approve awards



3 of compensation arising from criminally injurious conduct, in accordance with the provisions of  
4 this article, if satisfied by a preponderance of the evidence that the requirements for an award of  
5 compensation have been met.

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

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

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

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

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

19 Claims Commission and under the administrative supervision of the clerk of the West Virginia  
20 Legislative 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 West Virginia Legislative Claims Commission. The  
3 application shall be in a form prescribed by the clerk of the West Virginia Legislative 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 West Virginia Legislative Claims Commission and the claim  
17 investigator to obtain any report, document or information that relates to the determination of the  
18 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 West Virginia Legislative Claims  
33 Commission may require. The West Virginia Legislative Claims Commission may require the  
34 claimant to submit, with the application, materials to substantiate the facts that are stated in the  
35 application.

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

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

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

1           The clerk of the West Virginia Legislative Claims Commission shall establish a procedure  
2 for 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 West Virginia Legislative Claims Commission shall transmit a copy of  
2 the 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 West Virginia Legislative Claims Commission, shall investigate the claim.  
5 After 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 West  
45 Virginia Legislative Claims Commission, or a 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 commission, or commissioner, upon  
48 application by the claim investigator or in its own discretion, that the investigation of a case by the

49 claim investigator will interfere with or jeopardize the investigation or prosecution of a crime, the  
50 commission, or commissioner, shall issue an order granting the claim investigator leave to  
51 discontinue his or her investigation for such time as the commission, or commissioner, deems  
52 reasonable to avoid such interference or jeopardization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) The clerk of the West Virginia Legislative 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 commissioner.

7 (b) The commissioner to whom the claim is assigned shall review the finding of fact and  
8 recommendation and any response submitted by the claimant and, if deemed appropriate, may

9 request the claim investigator to comment in writing on the claimant's response. The  
10 commissioner shall, within forty-five days after assignment by the clerk, evaluate the claim without  
11 a hearing and either deny the claim or approve an award of compensation to the claimant.

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

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

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

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

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

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



22 (f) After reaching a decision to approve an award of compensation, but prior to announcing  
23 the approval, the commissioner shall require the claimant to submit current information as to  
24 collateral sources on forms prescribed by the Clerk of the West Virginia Legislative Claims  
25 Commission. The commissioner shall reduce an award of compensation or deny a claim for an  
26 award of compensation that is otherwise payable to a claimant to the extent that the economic  
27 loss upon which the claim is based is or will be recouped from other persons, including collateral  
28 sources, or if the reduction or denial is determined to be reasonable because of the contributory  
29 misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced  
30 or a claim is denied because of the expected recoupment of all or part of the economic loss of the  
31 claimant from a collateral source, the amount of the award or the denial of the claim shall be  
32 conditioned upon the claimant's economic loss being recouped by the collateral source: *Provided,*  
33 That if it is thereafter determined that the claimant will not receive all or part of the expected  
34 recoupment, the claim shall be reopened and an award shall be approved in an amount equal to  
35 the amount of expected recoupment that it is determined the claimant will not receive from the  
36 collateral source, subject to the limitation set forth in subsection (g) of this section.

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

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

45 (h) If an award of compensation of \$5,000 or more is made to a minor, a guardian shall be  
46 appointed pursuant to the provisions of article ten, chapter forty-four of this code to manage the  
47 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 commissioner of his or her  
5 decision.

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

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

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

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

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

25 (g) The commission shall adopt and may from time to time amend rules of procedure to  
26 govern proceedings before the commission in accordance with the provisions of this article. The  
27 rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims.  
28 The rules shall permit a claimant to appear in his or her own behalf or be represented by counsel  
29 and provide for interests of the state to be represented by the Attorney General in any hearing  
30 under this section at no additional cost to the fund or the state.

31 Under its rules, the commission shall not be bound by the usual common law or statutory  
32 rules of evidence. The commission may accept and weigh, in accordance with its evidential value,  
33 any information that will assist the commission in determining the factual 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 commission or a commissioner may order the victim or  
6 claimant to submit to a mental or physical examination by a physician or psychologist, and may  
7 order an autopsy of a deceased victim. The order may be made for good cause shown and upon  
8 notice to the person to be examined and to the claimant and the claim investigator. The order  
9 shall specify the time, place, manner, conditions and scope of the examination or autopsy and  
10 the person by whom it is to be made, and shall require the person who performs the examination  
11 or autopsy to file with the clerk of the West Virginia Legislative Claims Commission a detailed  
12 written report of the examination or autopsy. The report shall set out the findings, including the  
13 results of all tests made, diagnosis, prognosis and other conclusions and reports of earlier  
14 examinations of the same conditions. On request of the person examined, the clerk of the West  
15 Virginia Legislative Claims Commission shall furnish him or her a copy of the report. If the victim

16 is deceased, the clerk of the West Virginia Legislative Claims Commission, on request, shall  
17 furnish the claimant a copy of the report.

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

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

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

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

4 make any just order, including denial of the claim, but shall not find the person in contempt. If  
5 necessary to carry out any of his or her powers and duties, the claim investigator may petition the  
6 West Virginia Legislative 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 West Virginia Legislative 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 commission or a commissioner thereof, may approve an award of compensation  
2 whether or not any person is convicted for committing the conduct that is the basis of the award.  
3 The filing of a criminal charge shall be a prerequisite for receipt of compensation unless it is  
4 determined that no charges were filed due to the identity of the perpetrator being unknown:  
5 *Provided*, That no criminal charges need be filed if: (1) The claimant is an adult at the time the  
6 conduct giving rise to the claim occurred and no criminal charges were filed for reasons other  
7 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 commission or a commissioner thereof, shall suspend, upon a request of the claim  
14 investigator, the proceedings in any claim for an award of compensation pending disposition of a  
15 criminal prosecution that has been commenced or is imminent.

**§14-2A-19. Attorney and witness fees.**

1 (a) By separate order, the commission or a commissioner thereof, shall determine and  
2 award reasonable attorney's fees, commensurate with services rendered and reimbursement for  
3 reasonable and necessary expenses actually incurred shall be paid from the Crime Victims

4 Compensation Fund to the attorney representing a claimant in a proceeding under this article at  
5 the same rates as set forth in section thirteen-a, article twenty-one, chapter twenty-nine of this  
6 code. Attorney's fees and reimbursement may be denied upon a finding that the claim or appeal  
7 is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards of  
8 compensation, and attorney's fees and reimbursement may be awarded whether or not an award  
9 of compensation is approved. An attorney shall not contract for or receive any larger sum than  
10 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 commission to appear in a hearing on a claim for an award  
13 of compensation shall receive compensation and expenses in an amount equal to that received  
14 by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this  
15 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 commission or a commissioner thereof, shall determine  
2 whether fees are due and owing for health care services rendered by a physician, hospital or  
3 other health care provider stemming from an injury received as defined under this article, and  
4 further, whether or not the physician, hospital or other health care provider has been presented  
5 an assignment of benefits, signed by the crime victim, authorizing direct payments of benefits to  
6 the health care provider. If such fees are due and owing and the health care provider has  
7 presented a valid assignment of benefits, the commission or a commissioner thereof, shall  
8 determine the amount or amounts and shall cause such reasonable fees to be paid out of the  
9 amount awarded the crime victim under this article directly to the physician, hospital or other  
10 health care provider. The requirements of this section shall be applicable to, and any such unpaid  
11 fees shall be determined and payable from, the awards made by the Legislature at regular  
12 session, 1987, and subsequently: *Provided*, That when a claim is filed under this section, the

13 commission shall determine the total damages due the crime victim, and where the total damages  
14 exceed the maximum amount which may be awarded under this article, the amount paid the  
15 health care provider shall be paid in the same proportion to which the actual award bears to the  
16 total damages determined by the commission. In any case wherein an award is made which  
17 includes an amount for funeral, cremation or burial expenses, or a combination thereof, the  
18 commission shall provide for the payment directly to the provider or providers of such services, in  
19 an amount deemed proper by the commission, where such expenses are unpaid at the time of  
20 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 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  
26 commission shall disclose no information regarding the status of the claim to the provider:  
27 *Provided*, That the commission shall promptly notify the provider of the final disposition of the  
28 claim, if the provider is known to the 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 commission.

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

1 The commission may establish by rule or order maximum rates and service limitations for  
2 reimbursement of health care services rendered by a physician, hospital, or other health care  
3 provider. An informational copy of the maximum rates and service limitations shall be filed with  
4 the Joint Committee on Government and Finance upon adoption by the commission. Any change  
5 in the maximum rates or service limitations shall be effective sixty days after the adoption of the  
6 changes. A provider who accepts payment from the commission for a service shall accept the

7 commission's rates as payment in full and may not accept any payment on account of the service  
8 from any other source if the total of payments accepted would exceed the maximum rate set by  
9 the commission for that service. A provider may not charge a claimant for any difference between  
10 the cost of a service provided to a claimant and the commission's payment for that service. To  
11 ensure service limitations are uniform and appropriate to the levels of treatment required by the  
12 claimant, the commission may review all claims for these services as necessary to ensure their  
13 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 commission may provide that payment be made to a claimant or to a third party  
19 for economic losses of the claimant and the order may provide an award for the payment for  
20 actual economic losses which are prospective as well as those which have already been incurred.

**§14-2A-21. Annual report of West Virginia Legislative Claims Commission.**

1 The West Virginia Legislative Claims Commission shall prepare and transmit annually to  
2 the Governor and the Legislature a report of the activities of the West Virginia Legislative 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 West Virginia Legislative Claims Commission, compensation of commissioners and commission  
9 personnel, the amount awarded as attorneys' fees.

**§14-2A-25. Publicity.**

1 (a) The clerk of the West Virginia Legislative Claims Commission shall prepare an  
2 information brochure for the benefit of the general public, outlining the rights of claimants and  
3 procedures to be followed under this article. Copies of such brochure shall be distributed to law-  
4 enforcement 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 West Virginia Legislative Claims Commission.

**§14-2A-26. Rule-making.**

1 (a) The West Virginia Legislative Claims Commission may promulgate rules and  
2 regulations to implement the provisions of this article.

3           (b) The West Virginia Legislative Claims Commission shall promulgate rules and  
4 regulations to govern the award of compensation to the spouse of, person living in the same  
5 household with, parent, child, brother or sister of the offender or his or her accomplice in order to  
6 avoid an unjust 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 1984, shall be of retroactive effect to the extent that such amended  
3 provisions shall apply to all cases pending before the West Virginia Legislative Claims  
4 Commission on the effective date of the act of the Legislature which effects such amendment.

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

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2017.

.....  
*Governor*