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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2007

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**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2027**

(By Delegate Boggs)

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Passed March 10, 2007

In Effect Ninety Days from Passage

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HB

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COMMITTEE SUBSTITUTE OFFICE WEST VIRGINIA  
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FOR

# H. B. 2027

(BY DELEGATE BOGGS)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §14-2A-3 of the Code of West Virginia, 1931, as amended, relating to the crime victims compensation program; allowing awards under the crime victims compensation program to be made to victims of identity theft; and definitions.

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

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

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

### **§14-2A-3. Definitions.**

1 As used in this article, the term:

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

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

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

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

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

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

30 (6) A person who owns real property damaged by the  
31 operation of a methamphetamine laboratory without the  
32 knowledge or consent of the owner of the real property.

33 (7) An individual who had his or her personal identifying  
34 information used without authorization by another to obtain  
35 credit, goods, services, money or property, and did not use or  
36 possess the credit, goods, services, money or property  
37 obtained by the identity theft, and filed a police report in that  
38 regard.

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

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

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

51 (3) Social Security, Medicare and Medicaid;

52 (4) State-required, temporary, nonoccupational disability  
53 insurance; other disability insurance;

54 (5) Workers' compensation;

55 (6) Wage continuation programs of any employer;

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

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

61 (9) That portion of the proceeds of all contracts of  
62 insurance payable to the claimant on account of the death of  
63 the victim which exceeds twenty-five thousand dollars.

64 (c) "Criminally injurious conduct" means conduct that  
65 occurs or is attempted in this state or in any state not having  
66 a victim compensation program which by its nature poses a  
67 substantial threat of personal injury or death and is  
68 punishable by fine or imprisonment or death or would be so

69 punishable but for the fact that the person engaging in the  
70 conduct lacked capacity to commit the crime under the laws  
71 of this state. Criminally injurious conduct also includes an  
72 act of terrorism, as defined in 18 U.S.C. §2331, committed  
73 outside of the United States against a resident of this state.  
74 Criminally injurious conduct does not include conduct arising  
75 out of the ownership, maintenance or use of a motor vehicle,  
76 except when the person engaging in the conduct intended to  
77 cause personal injury or death, or when the person engaging  
78 in the conduct committed negligent homicide, driving under  
79 the influence of alcohol, controlled substances or drugs,  
80 reckless driving, or when the person leaves the scene of the  
81 accident.

82 (d) "Dependent" means an individual who received over  
83 half of his or her support from the victim. For the purpose of  
84 determining whether an individual received over half of his  
85 or her support from the victim, there shall be taken into  
86 account the amount of support received from the victim as  
87 compared to the entire amount of support which the  
88 individual received from all sources, including support which  
89 the individual himself or herself supplied. The term  
90 "support" includes, but is not limited to, food, shelter,  
91 clothing, medical and dental care and education. The term  
92 "dependent" includes a child of the victim born after his or  
93 her death.

94 (c) "Economic loss" means economic detriment  
95 consisting only of allowable expense, work loss and  
96 replacement services loss. If criminally injurious conduct  
97 causes death, economic loss includes a dependent's economic  
98 loss and a dependent's replacement services loss.  
99 Noneconomic detriment is not economic loss; however,  
100 economic loss may be caused by pain and suffering or  
101 physical impairment. For purposes of this article, the term  
102 "economic loss" includes a lost scholarship as defined in this  
103 section.

104 (f)(1) "Allowable expense" means reasonable charges  
105 incurred or to be incurred for reasonably needed products,

106 services and accommodations, including those for medical  
107 care, mental health counseling, prosthetic devices, eye  
108 glasses, dentures, rehabilitation and other remedial treatment  
109 and care.

110 (2) Allowable expense includes a total charge not in  
111 excess of six thousand dollars for expenses in any way  
112 related to funeral, cremation and burial. It does not include  
113 that portion of a charge for a room in a hospital, clinic,  
114 convalescent home, nursing home or any other institution  
115 engaged in providing nursing care and related services in  
116 excess of a reasonable and customary charge for semiprivate  
117 accommodations, unless accommodations other than  
118 semiprivate accommodations are medically required.

119 (3) Allowable expense also includes:

120 (A) A charge, not to exceed five thousand dollars, for  
121 cleanup of real property damaged by a methamphetamine  
122 laboratory, or a charge, not to exceed one thousand dollars,  
123 for any other crime scene cleanup;

124 (B) Victim relocation costs, not to exceed one thousand  
125 dollars; and

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

129 (D) Reasonable travel expenses for a claimant to return  
130 a person who is a minor or incapacitated adult who has been  
131 unlawfully removed from this state to another state or  
132 country, if such removal constitutes a crime under the laws of  
133 this state. Reasonable travel expenses to another state for  
134 such purpose may not exceed two thousand dollars and  
135 reasonable travel expenses for such purpose to another  
136 county may not exceed three thousand dollars.

137 (g) "Work loss" means loss of income from work that the  
138 injured person would have performed if he or she had not  
139 been injured and expenses reasonably incurred or to be

140 incurred by him or her to obtain services in lieu of those he  
141 or she would have performed for income, reduced by any  
142 income from substitute work actually performed or to be  
143 performed by him or her, or by income he or she would have  
144 earned in available appropriate substitute work that he or she  
145 was capable of performing but unreasonably failed to  
146 undertake. "Work loss" also includes loss of income from  
147 work by the parent or legal guardian of a minor victim who  
148 must miss work to take care of the minor victim.

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

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

161 (j) "Dependent's replacement service loss" means loss  
162 reasonably incurred or to be incurred by dependents after a  
163 victim's death in obtaining ordinary and necessary services in  
164 lieu of those the victim would have performed for their  
165 benefit if he or she had not suffered the fatal injury, less  
166 expenses of the dependents avoided by reason of the victim's  
167 death and not subtracted in calculating dependent's economic  
168 loss.

169 (k) "Victim" means a person who suffers personal injury  
170 or death as a result of any one of the following: (1)  
171 Criminally injurious conduct; (2) the good faith effort of the  
172 person to prevent criminally injurious conduct; or (3) the  
173 good faith effort of the person to apprehend a person that the  
174 injured person has observed engaging in criminally injurious  
175 conduct, or who the injured person has reasonable cause to  
176 believe has engaged in criminally injurious conduct

177 immediately prior to the attempted apprehension. "Victim"  
178 shall also include the owner of real property damaged by the  
179 operation of a methamphetamine laboratory.

180 (l) "Contributory misconduct" means any conduct of the  
181 claimant, or of the victim through whom the claimant claims  
182 an award, that is unlawful or intentionally tortious and that,  
183 without regard to the conduct's proximity in time or space to  
184 the criminally injurious conduct, has causal relationship to  
185 the criminally injurious conduct that is the basis of the claim  
186 and shall also include the voluntary intoxication of the  
187 claimant, either by the consumption of alcohol or the use of  
188 any controlled substance when the intoxication has a causal  
189 connection or relationship to the injury sustained. The  
190 voluntary intoxication of a victim is not a defense against the  
191 estate of a deceased victim.

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

199 (n) "Personal identifying information" means an  
200 individual's name, address, telephone number, driver's  
201 license number, social security number, place of  
202 employment, employee identification number, mother's  
203 maiden name, demand deposit account number, savings  
204 account number or credit card number.

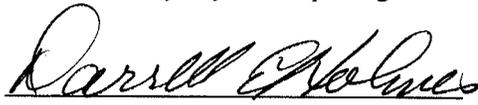
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

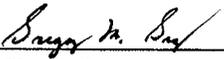
  
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Chairman Senate Committee

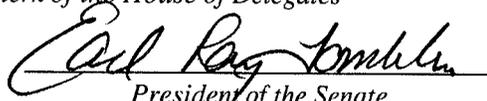
  
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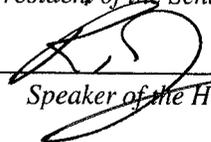
Originating in the House.

In effect ninety days from passage.

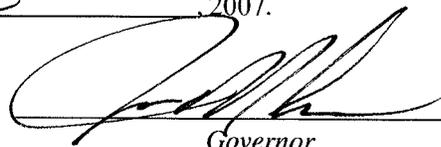
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 23rd  
day of March, 2007.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 18 2007

Time 2:45 pm  
2:01 pm  
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