

SB 659

FILED

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OF THE  
SECRETARY OF STATE CD

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2008**

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**ENROLLED**

**Senate Bill No. 659**

(BY SENATORS TOMBLIN, MR. PRESIDENT,  
PLYMALE AND KESSLER)

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[Passed March 8, 2008; to take effect July 1, 2008.]

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AN ACT to amend and reenact §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, all relating to crime victims' compensation; increasing the allowable expense for funerals, cremations and burials; and increasing the compensation to all claimants because of the death of the victim.

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

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

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

**§14-2A-3. Definitions.**

1       As used in this article, the term:

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

5       (1) A victim: *Provided*, That the term "victim" does  
6       not include a nonresident of this state where the  
7       criminally 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  
10      minor, the parents, legal guardians and siblings of the  
11      victim;

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

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

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

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

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

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

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

49 (3) Social Security, Medicare and Medicaid;

50 (4) State-required, temporary, nonoccupational  
51 disability insurance; other disability insurance;

52 (5) Workers' compensation;

53 (6) Wage continuation programs of any employer;

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

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

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

63 (c) "Criminally injurious conduct" means conduct  
64 that occurs or is attempted in this state or in any state  
65 not having a victim compensation program which by its  
66 nature poses a substantial threat of personal injury or  
67 death and is punishable by fine or imprisonment or  
68 death or would be so punishable but for the fact that  
69 the person engaging in the conduct lacked capacity to  
70 commit the crime under the laws of this state.  
71 Criminally injurious conduct also includes an act of  
72 terrorism, as defined in 18 U. S. C. §2331, committed  
73 outside of the United States against a resident of this  
74 state. Criminally injurious conduct does not include  
75 conduct arising out of the ownership, maintenance or  
76 use of a motor vehicle, except when the person  
77 engaging in the conduct intended to cause personal  
78 injury or death, or when the person engaging in the  
79 conduct committed negligent homicide, driving under  
80 the influence of alcohol, controlled substances or drugs,  
81 reckless driving or when the person leaves the scene of  
82 the accident.

83 (d) "Dependent" means an individual who received  
84 over half of his or her support from the victim. For the

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

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

106 (f)(1) "Allowable expense" means reasonable charges  
107 incurred or to be incurred for reasonably needed  
108 products, services and accommodations, including those  
109 for medical care, mental health counseling, prosthetic  
110 devices, eye glasses, dentures, rehabilitation and other  
111 remedial treatment and care.

112 (2) Allowable expense includes a total charge not in  
113 excess of seven thousand dollars for expenses in any  
114 way related to funerals, cremations and burials. It does  
115 not include that portion of a charge for a room in a  
116 hospital, clinic, convalescent home, nursing home or

117 any other institution engaged in providing nursing care  
118 and related services in excess of a reasonable and  
119 customary charge for semiprivate accommodations,  
120 unless accommodations other than semiprivate  
121 accommodations are medically required.

122 (3) Allowable expense also includes:

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

128 (B) Victim relocation costs, not to exceed one  
129 thousand dollars; and

130 (C) Reasonable travel expenses, not to exceed one  
131 thousand dollars, for a claimant to attend court  
132 proceedings that are conducted for the prosecution of  
133 the offender.

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

143 (g) "Work loss" means loss of income from work that  
144 the injured person would have performed if he or she  
145 had not been injured and expenses reasonably incurred

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

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

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

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

176 (k) "Victim" means a person who suffers personal

177 injury or death as a result of any one of the following:  
178 (1) Criminally injurious conduct; (2) the good faith  
179 effort of the person to prevent criminally injurious  
180 conduct; or (3) the good faith effort of the person to  
181 apprehend a person that the injured person has  
182 observed engaging in criminally injurious conduct or  
183 who the injured person has reasonable cause to believe  
184 has engaged in criminally injurious conduct  
185 immediately prior to the attempted apprehension.  
186 "Victim" shall also include the owner of real property  
187 damaged by the operation of a methamphetamine  
188 laboratory.

189 (l) "Contributory misconduct" means any conduct of  
190 the claimant, or of the victim through whom the  
191 claimant claims an award, that is unlawful or  
192 intentionally tortious and that, without regard to the  
193 conduct's proximity in time or space to the criminally  
194 injurious conduct, has causal relationship to the  
195 criminally injurious conduct that is the basis of the  
196 claim and shall also include the voluntary intoxication  
197 of the claimant, either by the consumption of alcohol or  
198 the use of any controlled substance when the  
199 intoxication has a causal connection or relationship to  
200 the injury sustained. The voluntary intoxication of a  
201 victim is not a defense against the estate of a deceased  
202 victim.

203 (m) "Lost scholarship" means a scholarship, academic  
204 award, stipend or other monetary scholastic assistance  
205 which had been awarded or conferred upon a victim in  
206 conjunction with a post-secondary school educational  
207 program and which the victim is unable to receive or  
208 use, in whole or in part, due to injuries received from  
209 criminally injurious conduct.

**§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  
2 this article, the judge or commissioner may not approve  
3 an award of compensation to a claimant who did not  
4 file his or her application for an award of compensation  
5 within two years after the date of the occurrence of the  
6 criminally injurious conduct that caused the injury or  
7 death for which he or she is seeking an award of  
8 compensation.

9 (b) The judge or commissioner may not approve an  
10 award of compensation if the criminally injurious  
11 conduct upon which the claim is based was not  
12 reported to a law-enforcement officer or agency within  
13 seventy-two hours after the occurrence of the conduct,  
14 unless it is determined that good cause existed for the  
15 failure to report the conduct within the 72-hour period.

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

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

27 (e) A judge or commissioner may not approve an  
28 award of compensation if the injury occurred while the

29 victim was confined in any state, county or regional jail,  
30 prison, private prison or correctional facility.

31 (f) After reaching a decision to approve an award of  
32 compensation, but prior to announcing the approval,  
33 the judge or commissioner shall require the claimant to  
34 submit current information as to collateral sources on  
35 forms prescribed by the Clerk of the Court of Claims.  
36 The judge or commissioner shall reduce an award of  
37 compensation or deny a claim for an award of  
38 compensation that is otherwise payable to a claimant to  
39 the extent that the economic loss upon which the claim  
40 is based is or will be recouped from other persons,  
41 including collateral sources, or if the reduction or  
42 denial is determined to be reasonable because of the  
43 contributory misconduct of the claimant or of a victim  
44 through whom he or she claims. If an award is reduced  
45 or a claim is denied because of the expected  
46 recoupment of all or part of the economic loss of the  
47 claimant from a collateral source, the amount of the  
48 award or the denial of the claim shall be conditioned  
49 upon the claimant's economic loss being recouped by  
50 the collateral source: *Provided*, That if it is thereafter  
51 determined that the claimant will not receive all or part  
52 of the expected recoupment, the claim shall be  
53 reopened and an award shall be approved in an amount  
54 equal to the amount of expected recoupment that it is  
55 determined the claimant will not receive from the  
56 collateral source, subject to the limitation set forth in  
57 subsection (g) of this section.

58 (g) (1) Except in the case of death, or as provided in  
59 subdivision (2) of this subsection, compensation  
60 payable to a victim and to all other claimants  
61 sustaining economic loss because of injury to that

62 victim may not exceed twenty-five thousand dollars in  
63 the aggregate. Compensation payable to all claimants  
64 because of the death of the victim may not exceed fifty  
65 thousand dollars in the aggregate.

66 (2) In the event the victim's personal injuries are so  
67 severe as to leave the victim with a disability, as  
68 defined in Section 223 of the Social Security Act, as  
69 amended, as codified in 42 U. S. C. §423, the court may  
70 award an additional amount, not to exceed one hundred  
71 thousand dollars, for special needs attributable to the  
72 injury.

73 (h) If an award of compensation of five thousand  
74 dollars or more is made to a minor, a guardian shall be  
75 appointed pursuant to the provisions of article ten,  
76 chapter forty-four of this code to manage the minor's  
77 estate.

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

*Sandy White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2008.

*Narsel Holmes*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *2<sup>th</sup>* Day of *May* ....., 2008.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 13 2008

Time 3:10pm