

1                                   **ENROLLED**

2                                   **COMMITTEE SUBSTITUTE**

3                                   **FOR**

4                                   **H. B. 4552**

5                    (By Delegates Hunt, Sponaugle, Wells and Manypenny)

6  
7                    [Passed March 8, 2014; in effect ninety days from passage.]

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10            AN ACT to amend and reenact §14-2-1, §14-2-8, §14-2-13, §14-2-13a,  
11                       §14-2-16, §14-2-25 and §14-2-28 of the code of West Virginia,  
12                       1931, as amended, all relating to the court of claims;  
13                       clarifying purpose of article; authorizing additional days of  
14                       judges reimbursement; revising court jurisdiction; revising  
15                       process for innocent persons who have been wrongly convicted  
16                       to file a claim; authorizing hiring expert witness by court;  
17                       abolishing advisory determination procedure; and clarifying  
18                       actions of Court not subject to judicial review.

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

20                       That §14-2-1, §14-2-8, §14-2-13, §14-2-13a, §14-2-16, §14-2-25  
21                       and §14-2-28 of the Code of West Virginia, 1931, as amended, be  
22                       amended and reenacted to read as follows:

23                       **ARTICLE 2.   CLAIMS AGAINST THE STATE.**

1     **§14-2-1. Purpose.**

2             The purpose of this article is to provide a simple and  
3 impartial method for the consideration of claims against the state  
4 that because of the provisions of section thirty-five, article VI  
5 of the Constitution of the State, and of statutory restrictions,  
6 inhibitions or limitations, cannot be determined in the regular  
7 courts of the state; and to provide for proceedings in which the  
8 state has a special interest.

9     **§14-2-8. Compensation of judges; expenses.**

10            Each judge of the court shall receive \$210 for each day  
11 actually served and expenses incurred in the performance of his or  
12 her duties paid at the same per diem rate as members of the  
13 Legislature: *Provided*, That the chief judge shall receive an  
14 additional \$50 for each day actually served. In addition to the  
15 expense per diem, each judge may, when using his or her own  
16 vehicle, be reimbursed for mileage at the mileage rate equal to the  
17 amount paid by the travel management office of the Department of  
18 Administration. The number of days served by each judge shall not  
19 exceed one hundred twenty in any fiscal year, except by authority  
20 of the Joint Committee on Government and Finance: *Provided*, That in  
21 computing the number of days served, days utilized solely for the  
22 exercise of duties assigned to judges and commissioners by the  
23 provisions of article two-a of this chapter shall be disregarded.  
24 For the purpose of this section, time served shall include time

1 spent in the hearing of claims, in the consideration of the record,  
2 in the preparation of opinions and in necessary travel.

3 **§14-2-13. Jurisdiction of the court.**

4 The jurisdiction of the court, except for the claims excluded  
5 by section fourteen, shall extend to the following matters:

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

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

14  
15 **§14-2-13a. Claims for unjust arrest and imprisonment or**  
16 **conviction and imprisonment.**

17 (a) *Legislative intent* -- The Legislature finds and declares  
18 that innocent persons who have been wrongly convicted of crimes and  
19 subsequently imprisoned and innocent persons wrongly arrested,  
20 charged with a crime or imprisoned, who have subsequently been  
21 released when another person was arrested, prosecuted and convicted  
22 of the same criminal offense have been frustrated in seeking legal  
23 redress due to a variety of substantive and technical obstacles in  
24 the law and that affected persons should have an available avenue

1 of redress over and above the existing tort remedies. Therefore,  
2 the Legislature intends by enactment of the provisions of this  
3 section that those innocent persons who can demonstrate that they  
4 were wrongly arrested and imprisoned or unjustly convicted and  
5 imprisoned are able to seek damages against the state for loss of  
6 liberty.

7 (b) *Notice of Claim* -- The claimant's notice of claim shall  
8 state facts in sufficient detail to permit the court to find that  
9 a claimant is likely to succeed at a trial on the merits. If the  
10 court finds in its discretion after reviewing a claim that the  
11 claimant has failed to allege sufficient facts upon which relief  
12 can be granted, the court may dismiss the claim, either on its own  
13 motion or by a motion of the state.

14 (c) *Burden of Proof* -- A claimant shall demonstrate by clear  
15 and convincing evidence that they were unjustly arrested and  
16 imprisoned or unjustly convicted and imprisoned, and the court  
17 shall, in the interest of justice, give due consideration to  
18 difficulties of proof caused by the passage of time, the death or  
19 unavailability of witnesses, the destruction of evidence or other  
20 factors not caused by such persons or those acting on their behalf.  
21 Specifically, the following shall be proven by clear and convincing  
22 evidence:

23 (1) (A) The claimant has been convicted of one or more  
24 felonies or misdemeanors against the state and subsequently

1 sentenced to a term of confinement, and has served all or any part  
2 of the sentence; or

3 (B) The claimant has been arrested and confined, and charged  
4 by warrant, information, or any other accusatory instrument for one  
5 or more felonies or misdemeanors, and that the charges were  
6 dismissed against the claimant; when another person was  
7 subsequently charged, arrested, and convicted of the same felony or  
8 felonies, or misdemeanors, or;

9 (2) (A) Another person was subsequently charged, arrested and  
10 convicted of the same felony or felonies or misdemeanors;

11 (B) The claimant has been pardoned upon the ground of  
12 innocence of the crime or crimes for which the claimant was  
13 sentenced and which are the grounds for the complaint; or

14 (C) The claimant's judgment of conviction was reversed or  
15 vacated, and the accusatory instrument dismissed or, if a new trial  
16 was ordered, either the claimant was found not guilty at the new  
17 trial or the claimant was not retried and the accusatory instrument  
18 dismissed; and

19 (3) The claimant did not by his or her own conduct cause or  
20 bring about his or her conviction.

21  
22 (d) *Type of Relief Granted and the Claimant's Burden to Prove*  
23 *Damages* -- If the court finds that the claimant is entitled to a  
24 judgment, the court shall award damages in a sum of money as the

1 court determines will fairly and reasonably compensate the claimant  
2 based upon the sufficiency of the claimant's proof at trial.  
3 Whether the damages fairly and reasonably compensate the claimant  
4 will depend upon the unique facts and circumstances of each claim.  
5 The claimant shall bear the ultimate burden of proving all damages  
6 associated with the claimant's claim.

7 **§14-2-16. Regular procedure.**

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

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

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

22 (3) During the period of negotiations and pending hearing, the  
23 state agency, represented by the Attorney General, shall, if  
24 possible, reach an agreement with the claimant regarding the facts

1 upon which the claim is based so as to avoid the necessity for the  
2 introduction of evidence at the hearing. If the parties are unable  
3 to agree upon the facts an attempt shall be made to stipulate the  
4 questions of fact in issue.

5 (4) The court shall so conduct the hearing as to disclose all  
6 material facts and issues of liability and may examine or  
7 cross-examine witnesses. The court may call witnesses or require  
8 evidence not produced by the parties; the court may call expert  
9 witnesses and compensate those experts for their services in an  
10 amount not to exceed \$3,500 per expert; the court may stipulate the  
11 questions to be argued by the parties; and the court may continue  
12 the hearing until some subsequent time to permit a more complete  
13 presentation of the claim.

14 (5) After the close of the hearing the court shall consider  
15 the claim and shall conclude its determination, if possible, within  
16 sixty days.

17 **§14-2-25. Reports of the court.**

18 The clerk shall be the official reporter of the court. He or  
19 she shall collect and edit the approved claims, awards and  
20 statements, shall prepare them for submission to the Legislature in  
21 the form of an annual report and shall prepare them for  
22 publication.

23 Claims and awards shall be separately classified as follows:

24 (1) Approved claims and awards not satisfied but referred to

1 the Legislature for final consideration and appropriation.

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

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

7 (4) Claims rejected by the court with the reasons therefor.

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9 The court may include any other information or recommendations  
10 pertaining to the performance of its duties.

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

18 **§14-2-28. Award as condition precedent to appropriation.**

19 (a) It is the policy of the Legislature to make no  
20 appropriation to pay any claims against the state, cognizable by  
21 the court, unless the claim has first been passed upon by the  
22 court.

23 (b) Because a decision of the court is a recommendation to the  
24 Legislature based upon a finding of moral obligation, and the



1 enactment process of passage of legislation authorizing payments of  
2 claims recommended by the court is at legislative discretion, no  
3 right of appeal exists to findings and award recommendations of the  
4 court of claims and they are not subject to judicial review.

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