

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 294**

BY SENATOR TARR

[Introduced January 10, 2020; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to repeal §5-3-5 of the Code of West Virginia, 1931, as amended; and to amend said code  
 2 by adding thereto a new article, designated §5-3A-1, §5-3A-2, §5-3A-3, §5-3A-4, §5-3A-  
 3 5, and §5-3A-6, all relating to creating the State Settlement and Recovered Funds  
 4 Accountability Act; providing a short title; setting forth legislative findings; directing that  
 5 recovered funds and assets be deposited into the State Treasury in the General Revenue  
 6 Fund of the state, and providing exceptions; directing that certain recovered funds and  
 7 assets be held in trust to be deposited into a special revenue account in the State  
 8 Treasury; requiring legislative appropriation of those funds and assets; creating two  
 9 special revenue funds in the State Treasury, known as the Consumer Protection Recovery  
 10 Fund and the Consumer Protection Restitution Fund; requiring annual transfer of moneys  
 11 exceeding \$7 million in the Consumer Protection Recovery Fund to the General Revenue  
 12 Fund; providing for disbursement of funds from the Consumer Protection Recovery Fund;  
 13 requiring transfer of funds from the Consumer Protection Restitution Fund into the  
 14 Consumer Protection Recovery Fund; authorizing the deposit and expenditure of  
 15 attorney's fees, expenses, and costs awarded to the Attorney General from the fund;  
 16 prohibiting agreements to settlement or agreement terms that are contrary to the  
 17 provisions of law; requiring reporting by the Attorney General to report annually as to the  
 18 receipts and expenditures of the funds and the disposition of causes; and repealing  
 19 provisions requiring the Attorney General to deposit all fees received for representing the  
 20 state into the General Revenue Fund.

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

**ARTICLE 3. ATTORNEY GENERAL.**

**§5-3-5. Fees to be paid into State Treasury.**

1 [Repealed.]

**ARTICLE 3. A STATE SETTLEMENT AND RECOVERED FUNDS ACCOUNTABILITY  
 ACT.**

**§5-3A-1. Short title.**

1           This article may be known and cited as the State Settlement and Recovered Funds  
2 Accountability Act.

**§5-3A-2. Legislative findings.**

1           The Legislature hereby finds and declares that:

2           (1) Public accountability for funds or other assets recovered in a legal action or settlement  
3 by or on behalf of the general public, the state or its officers, agencies or political subdivisions is  
4 appropriate and required, whether the character of the assets or funds recovered is public or  
5 private;

6           (2) Accountability for assets or funds recovered by, or behalf of, the state is essential to  
7 the public trust;

8           (3) While it may be important that in certain circumstances funds or assets received retain  
9 their character, identity, and purpose, it is also important that the process by which funds are  
10 administered be open to public scrutiny and accountability to the public; and

11           (4) The power to appropriate funds for public purposes is solely within the purview of the  
12 legislative branch of government, and the Legislature, as a steward of the budgetary process,  
13 shall take steps to assure that settlements are handled in a manner that assures maximum  
14 accountability to the citizens of the state and their duly elected legislative representatives.

**§5-3A-3. Funds to be deposited in State Treasury subject to appropriation; exceptions.**

1           (a) Unless excepted under subsection (d) of this section, when the Attorney General or  
2 other officer or agency of the state, in accordance with statutory or common law authority, is a  
3 party to or has entered his or her appearance in a legal action on behalf of the State of West  
4 Virginia, including ex rel. or other type actions, or participated in a claim that resulted in an extra-  
5 judicial settlement, and a disposition of that action or claim has resulted in the recovery of funds  
6 or assets to the state, of any kind or nature whatsoever, including, but not limited to, public funds  
7 and private funds or assets, the funds or assets awarded to the state are public funds and shall

8 be deposited in the State Treasury in the General Revenue Fund. Nothing in this subsection shall  
9 be construed to apply to equitable relief that is obtained and directly related to any action or claim  
10 referenced in this subsection.

11 (b) Unless excepted under subsection (d) of this section, when the Attorney General or  
12 other officer or agency of the state, in accordance with statutory or common law authority, is a  
13 party to or has entered his or her appearance in a legal action on behalf of the State of West  
14 Virginia, including ex rel. or other type actions or participated in a claim that resulted in an extra-  
15 judicial settlement and a disposition of that action or claim has resulted in the recovery of funds  
16 or assets to be held in trust by the state, through court action or otherwise, to administer the trust  
17 funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes,  
18 those funds shall be deposited in a special revenue account or trust fund established in the State  
19 Treasury. The Attorney General or other officer or agency of the state or a person, organization,  
20 or entity created by the Attorney General or other officer or agency of the state are prohibited from  
21 administering trust funds or assets for charitable, eleemosynary, benevolent, educational, or  
22 similar public purposes except as is thereafter provided by appropriation or statutory  
23 authorization. Nothing in this subsection shall be construed to apply to equitable relief that is  
24 obtained and directly related to any action or claim referenced in this subsection.

25 (c) Assets or funds deposited in an account in the State Treasury pursuant to subsection  
26 (a) or (b) of this section shall not be disbursed without a specific legislative appropriation of the  
27 deposited funds by the Legislature.

28 (d) With respect to funds or assets collected or recovered under subsections (a) or (b) of  
29 this section, the following shall apply and not be deposited in the General Revenue Fund of the  
30 state:

31 (1) Moneys recovered or received by the state pursuant to §46A-7-101 et seq. of this code,  
32 in which event the moneys shall be deposited in the Consumer Protection Recovery Fund in  
33 accordance with, and otherwise comply with, §5-3A-4 of this code;

34 (2) The recovery was on behalf of a political subdivision of the state and the funds or  
35 assets were specifically awarded to the political subdivision, in which event the recovery shall be  
36 transmitted to the Treasurer of such political subdivision for deposit in its general fund;

37 (3) If, as part of a recovery under subsections (a) or (b) of this section, attorney fees,  
38 expenses, and costs are specifically awarded to the Attorney General, those moneys shall be  
39 deposited in the Attorney General's General Administrative Fund and shall be available for  
40 expenditure by the Attorney General: *Provided*, That should the matter involve an action brought  
41 by the Attorney General pursuant to §47-18-1 *et seq.* of this code, then such award of attorney  
42 fees, expenses, and costs shall be deposited in the Attorney General's Antitrust Enforcement  
43 Fund and shall be available for expenditure: *Provided, however*, That should the specifically  
44 awarded attorney fees and costs be owed to a Special Assistant Attorney General appointed by  
45 the Attorney General pursuant to §5-3-3a of this code, then such attorney fees and expenses  
46 shall be paid to the Special Assistant Attorney General; or

47 (4) Civil asset forfeiture proceedings; or

48 (5) Fines and civil penalties.

**§5-3A-4. Retention of operational moneys by Attorney General.**

1 (a) Legislative findings and purpose. - The Legislature finds and recognizes that the  
2 Attorney General bears the responsibility to investigate, research, prepare pleadings, and, if  
3 appropriate, bring action on behalf of the state, its agencies and its citizens. These litigation  
4 responsibilities include employing attorneys, investigators, support staff, and other administrative  
5 costs and expenses in performance of the Attorney General's duties. In order to effectively and  
6 efficiently perform litigation responsibilities, certain operational moneys need to be retained by  
7 the Attorney General's office.

8 (b) Except as required under subsection (c) of this section, any moneys recovered or  
9 received by the state as a result of a civil action filed by the Attorney General pursuant to §46A-  
10 7-1 *et seq.* of this code, shall be deposited in a separate Special Revenue Fund by the State

11 Treasurer, to be known as the Consumer Protection Recovery Fund, which is hereby created in  
12 the State Treasury and to be administered by the Attorney General as follows:

13 (1) The Attorney General shall transfer, upon the expiration of each fiscal year, from the  
14 Consumer Protection Recovery Fund into the General Revenue Fund of the state, any  
15 unencumbered moneys that are related to the settlement of opioid litigation matters and excluding  
16 those moneys related to the payment of agency expenses, in excess of \$7 million from the  
17 balance remaining in the Consumer Protection Recovery Fund. Unless otherwise directed by the  
18 Legislature, 80 percent of all funds remaining in the Consumer Protection Recovery Fund shall  
19 be allocated for the prevention of substance use disorder in West Virginia. The remaining 20  
20 percent shall be allocated for other programs. The money shall be used to fund prevention  
21 programs which shall include, but will not be limited to, evidence-based programs conducted by  
22 law enforcement; corrections; lock down detoxification programs; lock down programs lasting  
23 longer than six months; programs that accomplish sobriety or a drug-free lifestyle two years post  
24 admission of a lock down program; long acting reversible contraceptive; early childhood school  
25 based intervention designed to decrease truancy, increase reading and math scores, and  
26 increase the rate of academic improvement. The term evidence-based means research study  
27 outcomes have been published in a peer-reviewed journal. State funds received from opioid  
28 settlements shall be used to fund only those programs that are well supported or supported by  
29 research evidence. Those programs that are promising, where the evidence fails to demonstrate  
30 effect, are a concerning practice, or are not able to be rated shall not be funded with state dollars.  
31 These programs must be rated by a reputable, national clearing house.

32 (2) The moneys in the Consumer Protection Recovery Fund shall be used by the Attorney  
33 General for the direct and indirect administrative, investigative, compliance, enforcement, or  
34 litigation costs and services incurred for consumer protection purposes in accordance with the  
35 provisions of chapter 46-A of this code.

36 (c) Any moneys received by the Attorney General for the specific purpose of consumer

37 restitution or refunds shall be placed in a separate Special Revenue Fund by the State Treasurer,  
38 to be known as the Consumer Protection Restitution Fund, which is hereby created in the State  
39 Treasury under the administration of the Attorney General. All moneys placed in the Consumer  
40 Protection Restitution Fund shall be paid out to the specific consumers for whom recovery was  
41 made: *Provided*, That when the Attorney General is unable to locate a consumer, for purposes of  
42 payment of restitution or refund, within one year of the date of receipt of any such restitution, said  
43 funds shall be transferred to the Consumer Protection Recovery Fund.

44 (d) Upon the effective date of this section, the Consumer Protection Fund, heretofore  
45 created in the State Treasury and administered by the Attorney General, is terminated and closed  
46 and any balance remaining in the fund shall be transferred to the Consumer Protection Recovery  
47 Fund for expenditure pursuant to subsection (b) of this section.

**§5-3A-5. Preparation and enforceability of orders.**

1 (a) In the preparation of a settlement agreement, conciliation agreement, memorandum of  
2 understanding, or other type of agreement setting forth a disposition that will result in the recovery  
3 of funds or assets by the state, the Attorney General, or other officer or agency of the state who  
4 is a party to or has entered his or her appearance in the action on behalf of the State of West  
5 Virginia, may not agree to any terms contrary to the provisions of §5-3A-3 or §5-3A-4 of this code.

6 (b) In the preparation of a judgment order that will result in the recovery of funds or assets  
7 by the state, the Attorney General, or other officer or agency of the state who is a party to or has  
8 entered his or her appearance in the action on behalf of the State of West Virginia, shall advise  
9 the court of the provisions of this section and of the provisions of §5-3A-3 or §5-3A-4 of this code.

10 (c) In the event of an extra-judicial settlement that would result in the recovery of funds or  
11 assets by the state, the Attorney General, or other officer or agency of the state acting on behalf  
12 of the State of West Virginia, may not agree to any terms contrary to the provisions of sections  
13 three or four of this article.

**§5-3A-6. Reporting and accountability.**

1           (a) For purposes of this section, the Attorney General shall, on or before August 15 of  
2 each year, deliver to the Governor, the Joint Committee on Government and Finance, and the  
3 State Auditor, a report providing an accounting of receipts and expenditures for each fund  
4 administered by the Attorney General during the next preceding fiscal year.

5           (b) In addition to, and separate from, the annual report required to be filed under §5-3-4  
6 of this code, the Attorney General shall, on or before January 15 of each year, deliver to the  
7 Governor, the Joint Committee on Government and Finance, and the State Auditor, a report of  
8 the causes described in §5-3A-3 of this code, in which there has been a disposition, and any  
9 extra-judicial settlements obtained, and summary of, the disposition, including amounts or assets  
10 recovered by the state during the next preceding calendar year.

11           (c) The report required by subsection (b) of this section shall also include:

12           (1) Amounts paid to any Special Assistant Attorney General or other persons under  
13 contract with the Attorney General to perform legal services, for representing the state or a public  
14 officer or employee of the state; and

15           (2) The amount of judgments, settlements, costs, and fees awarded by the courts to the  
16 Attorney General or to the state, including its officers or agencies, in which the Attorney General  
17 has served as counsel on behalf of the state.

NOTE: The purpose of this bill requires the deposit of settlement moneys and recovered funds to be deposited in the general revenue.

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