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**WEST VIRGINIA HOUSE OF DELEGATES**

HB 2148

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 2148**

(By Mr. Speaker, Mr. Kiss, and Delegates Michael and Martin)

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[Passed March 27, 1997; in effect from passage.]

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AN ACT to amend and reenact sections three, four and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to compensation awards to victims of crimes; including restitution as a collateral source of income; increasing the amount awarded for death expenses; including acts of terrorism in definition of criminally injurious conduct; allowing compensation fund moneys to be deposited in the state consolidated investment account; and increasing the maximum award amounts for economic loss and death of the victim.

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

That sections three, four and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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

**§14-2A-3. Definitions.**

As used in this article, the term:

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

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

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

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

(4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of the minor.

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

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

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

(3) Social security, medicare and medicaid;

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

(5) Workers' compensation;

(6) Wage continuation programs of any employer;

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

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

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

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

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

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment.

(f) "Allowable expense" means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.

Allowable expense includes a total charge not in excess of four thousand dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her, or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake.

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

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

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

(k) "Victim" means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct, or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

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

#### **§14-2A-4. Creation of crime victims compensation fund.**

(a) Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any magistrate court or circuit court, shall pay the sum of ten dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any municipal court, shall pay the sum of eight dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. In addition to any other costs previously specified, every person within the state who is convicted of or pleads guilty to a violation of section two, article five, chapter seventeen-c of this code, shall pay a fee in the amount of twenty percent of any fine imposed under said section. This shall be in addition to any other court costs required by this section or which may be required by law.

(b) The clerk of the circuit court, magistrate court or municipal court wherein the additional costs are imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "Crime Victims Compensation Fund", which is hereby created. All moneys heretofore collected and received under the prior enactment or reenactments of this article and deposited or to be deposited in the "Crime Victims Reparation Fund" are hereby transferred to the crime victims compensation fund, and the treasurer shall deposit the moneys in the state treasury. All moneys collected and received under this article and paid into the state treasury and credited to the crime victims compensation fund in the manner prescribed in section two, article two, chapter twelve of this code, shall be kept and maintained for the specific purposes of this article, and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(c) Moneys in the crime victims compensation fund shall be available for the payment of the costs of administration of this article in accordance with the budget of the court approved therefor: *Provided*, That the services of the office of the attorney general, as may be required or authorized by any of the provisions of this article, shall be rendered without charge to the fund.

(d) Any moneys in the crime victims compensation fund may be deposited in the West Virginia consolidated investment fund with the West Virginia state board of investments as established in article one of chapter twelve of this code, with the interest income a proper credit to the crimes victims compensation fund.

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

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

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

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

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

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

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

(g) Except in the case of death, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim may not exceed twenty-five thousand dollars in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed thirty-five thousand dollars in the aggregate.

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

PRESENTED TO THE  
GOVERNOR  
Date 3/27/97  
Time 4:20pm

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

Kandy Schoonover  
Chairman Senate Committee

Nick Frantoni  
Chairman House Committee

Originating in the House.

Takes effect from passage.

Barrel Roberts  
Clerk of the Senate

Gregory M. Gray  
Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

[Signature]  
Speaker of the House of Delegates

The within is approved this the 27th  
day of March, 1997.

[Signature]  
Governor