

Senate Bill No. 514

(By Senators Carmichael and Cole)

[Introduced February 7, 2014; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §14-2A-3 of the Code of West Virginia,
1931, as amended, relating to eliminating the eligibility of
the cleanup of real property damaged by a methamphetamine
laboratory as an allowable compensation award pursuant to the
West Virginia Crime Victims Compensation Act.

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.

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 (1) A victim, except the term "victim" does not include a
2 nonresident of this state where the criminally injurious act did
3 not occur in this state;

4 (2) A dependent, spouse or minor child of a deceased victim
5 or, if the deceased victim is a minor, the parents, legal guardians
6 and siblings of the victim;

7 (3) A third person, other than a collateral source, who
8 legally assumes or voluntarily pays the obligations of a victim or
9 a victim's dependent when the obligations are incurred as a result
10 of the criminally injurious conduct that is the subject of the
11 claim;

12 (4) A person who is authorized to act on behalf of a victim,
13 dependent or a third person who is not a collateral source
14 including, but not limited to, assignees, persons holding power of
15 attorney or others who hold authority to make or submit claims in
16 place of or on behalf of a victim, a dependent or third person who
17 is not a collateral source and if the victim, dependent or third
18 person who is not a collateral source is a minor or other legally
19 incompetent person, their duly qualified fiduciary;

20 (5) A person who is a secondary victim in need of mental
21 health counseling due to the person's exposure to the crime
22 committed whose award may not exceed \$1,000; and

23 (6) A person who owns real property damaged by the operation
24 of a methamphetamine laboratory without the knowledge or consent of

1 the owner of the real property.

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

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

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

14 (3) Social Security, Medicare and Medicaid;

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

17 (5) Workers' compensation;

18 (6) Wage continuation programs of an employer;

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

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

24 (9) That portion of the proceeds of all contracts of insurance

1 payable to the claimant on account of the death of the victim which
2 exceeds \$25,000.

3 (c) "Criminally injurious conduct" means conduct that occurs
4 or is attempted in this state, or in any state not having a victim
5 compensation program, which poses a substantial threat of personal
6 injury or death and is punishable by fine, imprisonment or death or
7 would be so punishable but for a finding by a court of competent
8 jurisdiction that the person committing the crime lacked capacity.
9 Criminally injurious conduct also includes criminally injurious
10 conduct committed outside of the United States against a resident
11 of this state. Criminally injurious conduct does not include
12 conduct arising out of the ownership, maintenance or use of a motor
13 vehicle unless the person engaging in the conduct intended to cause
14 personal injury or death or committed negligent homicide, driving
15 under the influence of alcohol, controlled substances or drugs,
16 leaving the scene of the accident or reckless driving.

17 (d) "Dependent" means an individual who received over half of
18 his or her support from the victim. For the purpose of making this
19 determination there shall be taken into account the amount of
20 support received from the victim as compared to the entire amount
21 of support the individual received from all sources including
22 self-support. The term "support" includes, but is not limited to,
23 food, shelter, clothing, medical and dental care and education.
24 The term "dependent" includes a child of the victim born after his

1 or her death.

2 (e) "Economic loss" means economic detriment consisting only
3 of allowable expense, work loss and replacement services loss. If
4 criminally injurious conduct causes death, economic loss includes
5 a dependent's economic loss and a dependent's replacement services
6 loss. Noneconomic detriment is not economic loss, however, economic
7 loss may be caused by pain and suffering or physical impairment.
8 For purposes of this article, the term "economic loss" includes a
9 lost scholarship as defined in this section.

10 (f) "Allowable expense" includes the following:

11 (1) Reasonable charges incurred or to be incurred for
12 reasonably needed products, services and accommodations including
13 those for medical care, mental health counseling, prosthetic
14 devices, eye glasses, dentures, rehabilitation and other remedial
15 treatment and care but does not include that portion of a charge
16 for a room in a hospital, clinic, convalescent home, nursing home
17 or other institution engaged in providing nursing care and related
18 services which is in excess of a reasonable and customary charge
19 for semiprivate accommodations unless accommodations other than
20 semiprivate accommodations are medically required;

21 (2) A total charge not in excess of \$10,000 for expenses in
22 any way related to funerals, cremations and burials;

23 (3) (A) ~~A charge, not to exceed \$10,000, for cleanup of real~~
24 ~~property damaged by a methamphetamine laboratory or a charge not to~~

1 exceed \$1,000 for ~~any other~~ a crime scene cleanup;

2 (B) Cleanup of real property damaged by a methamphetamine
3 laboratory is not an allowable expense under this section.

4 (4) Victim relocation costs not to exceed \$2,000;

5 (5) Reasonable travel expenses not to exceed \$1,000 for a
6 claimant to attend court proceedings conducted for the prosecution
7 of the offender;

8 (6) Reasonable travel expenses for a claimant to return a
9 person who is a minor or incapacitated adult who has been
10 unlawfully removed from this state to another state or country if
11 the removal constitutes a crime under the laws of this state which
12 may not exceed \$2,000 for expenses to another state or \$3,000 to
13 another country; and

14 (7) Reasonable travel expenses for the transportation of a
15 victim to and from a medical facility.

16 (g) "Work loss" means loss of income from work that the
17 injured person would have performed if he or she had not been
18 injured and expenses reasonably incurred or to be incurred by him
19 or her to obtain services in lieu of those he or she would have
20 performed for income. "Work loss" is reduced by income from
21 substitute work actually performed or to be performed by him or her
22 or by income he or she would have earned in available appropriate
23 substitute work that he or she was capable of performing but
24 unreasonably failed to undertake. "Work loss" also includes loss

1 of income from work by the parent or legal guardian of a minor
2 victim who must miss work to take care of the minor victim.

3 (h) "Replacement services loss" means expenses reasonably
4 incurred or to be incurred in obtaining ordinary and necessary
5 services in lieu of those the injured person would have performed
6 for the benefit of himself or herself or his or her family if he or
7 she had not been injured. "Replacement services loss" does not
8 include services an injured person would have performed to generate
9 income.

10 (I) "Dependent's economic loss" means loss after a victim's
11 death of contributions or things of economic value to his or her
12 dependents but does not include services they would have received
13 from the victim if he or she had not suffered the fatal injury.
14 This amount is reduced by expenses avoided by the dependent due to
15 the victim's death.

16 (j) "Dependent's replacement service loss" means loss
17 reasonably incurred or to be incurred by dependents after a
18 victim's death in obtaining ordinary and necessary services in lieu
19 of those the victim would have performed for their benefit if he or
20 she had not suffered the fatal injury. This amount is reduced by
21 expenses avoided due to the victim's death but which are not
22 already subtracted in calculating a dependent's economic loss.

23 (k) "Victim" means the following:

24 (1) A person who suffers personal injury or death as a result

1 of any one of the following:

2 (A) Criminally injurious conduct;

3 (B) The good faith effort of the person to prevent criminally
4 injurious conduct; or

5 (C) The good faith effort of the person to apprehend a person
6 that the injured person has observed engaging in criminally
7 injurious conduct or who the injured person has reasonable cause to
8 believe has engaged in criminally injurious conduct immediately
9 prior to the attempted apprehension.

10 (2) The owner of real property damaged by the operation of a
11 methamphetamine laboratory which operation was without his or her
12 knowledge or consent.

13 (1) "Contributory misconduct" means any conduct of the
14 claimant or of the victim through whom the claimant claims an award
15 that is unlawful or intentionally tortious and that, without regard
16 to the conduct's proximity in time or space to the criminally
17 injurious conduct, has a causal relationship to the criminally
18 injurious conduct that is the basis of the claim and includes the
19 voluntary intoxication of the claimant, either by the consumption
20 of alcohol or the use of any controlled substance, when the
21 intoxication has a causal connection or relationship to the injury
22 sustained.

23 (m) "Lost scholarship" means a scholarship, academic award,
24 stipend or other monetary scholastic assistance which had been

1 awarded or conferred upon a victim in conjunction with a
2 post-secondary school educational program and which the victim is
3 unable to receive or use, in whole or in part, due to injuries
4 received from criminally injurious conduct.

NOTE: The purpose of this bill is to eliminate the eligibility of the cleanup of real property damaged by a methamphetamine laboratory as an allowable compensation award pursuant to the West Virginia Crime Victims Compensation Act.

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