

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 3062

BY DELEGATES SHOTT AND NELSON

[Originating in the Committee on Finance;

March 24, 2017]

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-5
3 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 to be deposited into the state treasury in the general revenue
6 fund of the state, and exceptions; directing that certain recovered funds and assets be
7 held in trust to be deposited into a special revenue account in the State Treasury;
8 prohibiting agreements to settlement or agreement terms that are contrary to the
9 depositing of funds in the State Treasury; establishing a special fund to be known as the
10 Consumer Protection Recovery Fund; requiring quarterly transfer of funds from the to the
11 general revenue fund; authorizing the deposit and expenditure of attorney fees, expenses
12 and costs awarded to the Attorney General from the fund; prohibiting agreements to
13 settlement or agreement terms that are contrary to the provisions of law; requiring
14 quarterly reporting by the Attorney General as to the disposition of matters; requiring
15 reporting to the State Auditor relating to contracted legal services; and repealing
16 provisions governing the disposition of certain fees of the Attorney General taxed as costs
17 in legal proceedings.

Be it enacted by the Legislature of West Virginia:

1 That §5-3-5 of the Code of West Virginia, 1931, as amended, be repealed; and that said
2 code be amended by adding thereto a new article, designated §5-3A-1, §5-3A-2, §5-3A-3, §5-3A-
3 4, §5-3A-5 and §5-3A-6, all to read as follows:

ARTICLE 3A. 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 (a) 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 be accountable 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, and a disposition of that action has resulted in the
5 recovery of funds or assets to the state, of any kind or nature whatsoever, including, but not limited
6 to, public funds and private funds or assets, such funds or assets awarded to the state are public
7 funds and shall be deposited in the State Treasury in the General Revenue Fund.

8 (b) Unless excepted under subsection (d) of this section, when the Attorney General or
9 other officer or agency of the state, in accordance with statutory or common law authority, is a
10 party to or has entered his or her appearance in a legal action on behalf of the State of West
11 Virginia, including ex rel. or other type actions, and a disposition of that action has resulted in the
12 recovery of funds or assets to be held in trust by the state, through court action or otherwise, to
13 administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or
14 similar public purposes, those funds shall be deposited in a special revenue account or trust fund
15 established in the State Treasury. The Attorney General or other officer or agency of the state or
16 a person, organization, or entity created by the Attorney General or other officer or agency of the
17 state are prohibited from administering trust funds or assets for charitable, eleemosynary,
18 benevolent, educational, or similar public purposes except as is thereafter provided by
19 appropriation or statutory authorization.

20 (c) No assets or funds deposited in an account in the State Treasury pursuant to
21 subsection (a) or (b) of this section shall be disbursed without a specific legislative appropriation
22 of the deposited funds by the Legislature.

23 (d) With respect to funds or assets collected or recovered under subsections (a) or (b) of
24 this section, the following shall apply and not be deposited in the general revenue fund of the
25 state:

26 (1) The monies were recovered or received by the state as a result of a civil action filed
27 by the attorney general pursuant to article seven, chapter forty-six-a of this code, in which case,
28 the monies shall be deposited in the Consumer Protection Recovery Fund in accordance with,
29 and otherwise comply with, section four of this article;

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

33 (3) If, as part of a recovery under subsections (a) or (b) of this section, attorney fees,
34 expenses and costs are specifically awarded to the Attorney General, those monies shall be
35 deposited in the Attorney General's General Administrative fund and shall be available for
36 expenditure by the Attorney General: *Provided*, That should the matter involve an action brought
37 by the Attorney General pursuant to article eighteen, chapter forty-seven of this code, then such
38 award of attorney fees, expenses, and costs shall be deposited in the Attorney General's Antitrust
39 Enforcement Fund and shall be available for expenditure: *Provided, however*, That should the
40 specifically awarded attorney fees and costs be owed to a special assistant Attorney General
41 appointed by the Attorney General pursuant to section three-a, article three of this chapter, then
42 such attorney fees and expenses shall be paid to the special assistant Attorney General.

§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 monies need to be retained by the
7 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 article
10 seven, chapter forty-six-a, 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 administered by the Attorney General as follows:

13 (1) The Attorney General shall transfer, on a quarterly basis each fiscal year, from the
14 Consumer Protection Recovery Fund into the general revenue fund of the state, any

15 unencumbered moneys in excess of six million dollars from the balance remaining in the
16 Consumer Protection Recovery Fund.

17 (2) The moneys of the Consumer Protection Recovery Fund shall be used by the Attorney
18 General for the direct and indirect administrative, investigative, compliance, enforcement, or
19 litigation costs and services incurred for consumer protection purposes in accordance with the
20 provisions of chapter forty-six-a of this code.

21 (c) Any moneys received by the Attorney General for the specific purposes of consumer
22 restitution or refunds shall be placed in a separate special revenue fund by the state treasurer, to
23 be known as the Consumer Protection Restitution Fund, which is hereby created in the state
24 treasury under the administration of the Attorney General. All moneys placed in the Consumer
25 Protection Restitution Fund shall be paid out to the specific consumers for whom recovery was
26 made: *Provided*, That when the Attorney General is unable to locate a consumer, for purposes of
27 payment of restitution or refund, within one year of the date of receipt of any such restitution, said
28 funds shall be transferred to the Consumer Protection Recovery Fund.

§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 with the provisions of section three of this article.

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 section three of this article.

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 section three
13 of this article.

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

1 (a) For purposes of this section, the following quarterly reporting periods and filing
2 deadlines apply:

3 (1) Quarter 1 report due April 15, for reporting period January 1, through March 31;

4 (2) Quarter 2 report due July 15, for reporting period April 1 through June 30;

5 (3) Quarter 3 report due October 15, for reporting period July 1 through September 30;

6 and

7 (4) Quarter 4 report due January 15, for reporting period October 1 through December 31.

8 (b) In addition to, and separate from, the annual report required to be filed under section
9 four, article three of this chapter, the Attorney General shall quarterly deliver to Governor, the
10 Joint Committee on Government and Finance and the State Auditor a report of the causes
11 described in section three of this article in which there has been a disposition, and any extra-
12 judicial settlements obtained, during the respective reporting period and summary of the
13 disposition, including amounts or assets recovered by the state.

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

15 (1) Amounts paid to any special assistant Attorney General, or other persons under
16 contract with the Attorney General to perform legal services, for representing the state or a public
17 officer or employee of the state; and

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