

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3062

BY DELEGATE SHOTT AND NELSON

[Introduced March 14, 2017; Referred
to the Committee on the Judiciary then 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-5
 3 and §5-3A-6, all relating to creating the state Settlement and Recovered Funds
 4 Accountability Act; repealing provision governing fees to be paid into State Treasury by
 5 the Attorney General; providing a short title; setting forth legislative findings; directing that
 6 recovered funds and assets to be deposited into the State Treasury in the General
 7 Revenue Fund; directing that recovered funds and assets be held in trust to be deposited
 8 into a special revenue account in the State Treasury; prohibiting agreements to settlement
 9 or agreement terms that are contrary to the depositing of funds in the State Treasury;
 10 establishing a special fund to be known as the Attorney General Litigation Support Fund;
 11 authorizing the deposit and expenditure of attorney fees, expenses and costs awarded to
 12 the Attorney General from the fund; requiring quarterly reporting by the Attorney General
 13 as to the disposition of matters; and requiring reporting to the State Auditor relating to
 14 contracted legal services.

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1 That §5-3-5 of the Code of West Virginia, 1931, as amended, be repealed; and that said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 the Attorney General or other officer or
7 agency of the state is essential to the public trust, and is even more critical when the Attorney
8 General or other officer of the state was a party to the action that resulted in the recovery by virtue
9 of the public office he or she holds;

10 (3) Public accountability demands the applicability of the freedom of information law,
11 article one, chapter twenty-nine-b of this code, and the open governmental proceedings law,
12 article nine-a, chapter six of this code, so that the actions of individuals or agencies who are
13 charged with the administration of funds or other assets are conducted in full view, and are open
14 to public scrutiny;

15 (4) While it may be important that, in certain circumstances, funds or assets received retain
16 their character, identity, and purpose, it is also important that the process by which funds are
17 administered be open to public scrutiny and be accountable to the public; and

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

§5-3A-3. Funds to be deposited in general revenue.

1 (a) Whenever the Attorney General or other officer or agency of the state, in accordance
2 with statutory or common law authority, is a party to or has entered his or her appearance in a
3 legal action on behalf of the State of West Virginia, including ex rel. or other type actions, and a
4 disposition of that action has resulted in the recovery of funds or assets, of any kind or nature
5 whatsoever, including, but not limited to, public funds and private funds or assets, such funds or

6 assets are public funds and shall be deposited in the State Treasury in the General Revenue
7 Fund.

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

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

22 (d) The common law, including the common law authority of any duly elected statewide
23 Constitutional officer or other officer of the state, is specifically abrogated to the extent it is
24 inconsistent with the provisions of this section.

25 (e) Notwithstanding any provision of law to the contrary, the Attorney General may not
26 expend the proceeds of judgments or settlements of any kind, or any part thereof, for the use of
27 the Office of the Attorney General in excess of the actual expenses of the Office of the Attorney
28 General pursuant to the cause or the issue settled.

§5-3A-4. 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 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.

14 (d) Notwithstanding any statute or common law to the contrary, an elected statewide
15 Constitutional officer or any other state official or agency may not file or participate as a plaintiff,
16 petitioner, party, intervening party, attorney, or amicus curiae in support of any litigation
17 challenging the Constitutionality of provisions of this article. State funds and employee time may
18 not be expended by any person or agency in support of such a challenge. If the Constitutionality
19 of this section is challenged, the Governor, President of the Senate and Speaker of the House of
20 Delegates, in their official capacities, shall be the only named respondents in that litigation.

§5-3A-5. Attorney General Litigation Support Fund.

1 (a) There is established in the State Treasury a special fund to be known as the “Attorney
2 General Litigation Support Fund.”

3 (b) The fund consists of any and all attorney fees, expenses and costs awarded to the
4 Attorney General in any cause. Attorney fees, expenses and costs awarded to the Attorney
5 General shall be deposited in the fund and shall be available for expenditure by the Attorney
6 General only upon appropriation by the Legislature in accordance with section fifty-one, article six
7 of the Constitution of West Virginia.

8 (c) All moneys collected or recovered by the Attorney General, pursuant to any cause or
9 in settlement of any cause or claim asserted by or against the people of West Virginia, the State
10 of West Virginia, or any of its departments, agencies, institutions, officers, employees, or political
11 subdivisions thereof, not specifically allocated by a court order as attorney fees, cost and
12 expenses, shall be deposited by the Attorney General in the treasury of the state to the credit of
13 the state fund, general revenue in accordance with section three of this article, unless:

14 (1) The recovery or a portion thereof was on behalf of a special fund established under
15 the provisions of this code, in which event those moneys shall be deposited in the special fund if
16 it is established in the State Treasury, or into a special fund established for that purpose in the
17 State Treasury;

18 (2) The recovery or a portion thereof was on behalf of or required to be held in a trust fund,
19 in which event those moneys shall be deposited in a special fund established in the State Treasury
20 to be held in trust;

21 (3) The recovery was on behalf of a political subdivision of the state, in which event the
22 remainder of the recovery shall be transmitted to the treasurer of such political subdivision for
23 deposit in its general fund;

24 (4) Amounts were recovered as attorney fees and expenses separate and apart from any
25 amounts, whether on an hourly or contingent fee basis, recovered by the state or the Attorney
26 General by a person not employed by the state who provided legal services in the matter as a
27 special assistant Attorney General appointed by the Attorney General for that purpose, in which
28 event, those attorney fees and expenses may not be deposited into the Treasury of the state nor
29 into the Attorney General's Litigation Support Fund, but retained by the special assistant Attorney
30 General; or

31 (5) The recovery or a portion thereof was for specifically identified persons, in which event
32 those moneys shall be deposited into a pass-through account in a banking institution designated
33 by and administered subject to conditions established by the State Treasurer to ensure the

34 accountability of the disbursement of the funds.

35 (d) The actual expenses of the Office of the Attorney General resulting from litigation or a
36 settlement shall be certified by the Attorney General to the Governor, the Auditor, the President
37 of the Senate and the Speaker of the House of Delegates.

38 (e) The Attorney General may expend moneys appropriated by the Legislature from the
39 Attorney General's Litigation Support Fund for the performance of any of the powers, functions,
40 duties, and responsibilities of the Office of the Attorney General.

41 (f) The Attorney General's Litigation Support Fund shall be placed under the management
42 or administration of the Attorney General for the purpose of performing any of the functions,
43 duties, powers, and responsibilities of the Office of the Attorney General and all moneys deposited
44 in the fund are available for appropriation to the Office of the Attorney General.

45 (g) The appropriation of these moneys may be in addition to any moneys appropriated to
46 the Office of the Attorney General from any other sources.

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

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

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

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

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

5 and

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

7 (b) In addition to, and separate from, the annual report required to be filed under section
8 four, article three of this chapter, the Attorney General shall quarterly deliver to Governor, the
9 Joint Committee on Government and Finance and State Auditor, a report of the state and
10 condition of the several causes in which the state or the Attorney General is a party and in which
11 there has been a disposition during the respective reporting period.

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

13 (1) The terms and conditions upon which the Attorney General has engaged any special
14 assistant Attorney General or any other person to perform legal services of any kind, including a
15 copy of all contracts for such legal services;

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

19 (3) The amount of judgments, settlements, costs and fees awarded by the courts to the
20 Attorney General or persons with whom he or she has contracted for legal services, including any
21 special assistant Attorney General, in cases closed or concluded during the preceding fiscal year
22 of the state; and

23 (4) A copy of all statements provided to the State Auditor during the respective reporting
24 period pursuant to subsection (d) of this section.

25 (d) In addition to, and separate from, the annual report required to be filed under section
26 four, article three of this chapter, at the conclusion of any legal proceeding for which the Attorney
27 General has contracted for legal services from a person who is neither a full-time assistant
28 Attorney General on his or her staff or other full-time state employee, the Attorney General shall
29 obtain from each such person a statement of the number of hours worked on the case, all
30 expenses incurred, the aggregate fee amount and a breakdown as to the hourly rate based on
31 hours worked divided into fee recovered, less expenses, and submit a copy of the statement to
32 the State Auditor before payment is made.

NOTE: The purpose of this bill is to establish the state Settlement and Recovered Funds Accountability Act. The bill requires the deposit of settlement moneys and recovered funds to be deposited in the general revenue. The bill additionally creates an Attorney General Litigation Fund for deposit of attorney fees and costs. The bill also requires certain reporting to be provided by the Attorney General.

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