

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4009

BY DELEGATES ROHRBACH, ANDERSON, COWLES,
PHILLIPS, KELLY, JENNINGS, ATKINSON, HARSHBARGER,
ELLINGTON, LANE AND MAYNARD

[Passed March 10, 2018; in effect July 1, 2018.]

1 AN ACT to repeal §5-3-5 of the Code of West Virginia, 1931, as amended; and to amend said
2 code by adding thereto a new article, designated §5-3A-1, §5-3A-2, §5-3A-3, §5-3A-4, §5-
3 3A-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 to be deposited into the State Treasury in the General
6 Revenue Fund of the state, and providing exceptions; directing that certain recovered
7 funds and assets be held in trust to be deposited into a special revenue account in the
8 State 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 monies
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 attorney
15 fees, expenses and costs awarded to the Attorney General from the fund; prohibiting
16 agreements to settlement or agreement terms that are contrary to the provisions of law;
17 requiring reporting by the Attorney General to report annually as to the receipts and
18 expenditures of the funds and the disposition of causes; and repealing provisions requiring
19 the Attorney General to deposit all fees received for representing the state into the General
20 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.

[Repealed.]

**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 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) Monies recovered or received by the state pursuant to §46A-7-101 *et seq.* of this code,
32 in which event the monies 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 monies 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 section three-a, article three of this chapter, then such attorney
46 fees and expenses 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 monies 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 monies 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 monies in excess of \$7 million from the balance remaining in the Consumer
16 Protection Recovery Fund.

17 (2) The monies in 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 46-A of this code.

21 (c) Any monies received by the Attorney General for the specific purpose of consumer
22 restitution or refunds shall be placed in a separate special revenue fund by the State Treasurer,
23 to 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 monies 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.

29 (d) Upon the effective date of this section, the Consumer Protection Fund, heretofore
30 created in the State Treasury and administered by the Attorney General, is terminated and closed
31 and any balance remaining in the fund shall be transferred to the Consumer Protection Recovery
32 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.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect July 1, 2018.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2018.

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Governor