

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4009

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

[Introduced January 12, 2018; 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-
 3 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 exceptions; directing that certain recovered funds and
 7 assets be held in trust to be deposited into a special revenue account in the State
 8 Treasury; prohibiting agreements to settlement or agreement terms that are contrary to
 9 the depositing of funds in the State Treasury; requiring quarterly transfer of funds from the
 10 Consumer Protection Recovery Fund into the General Revenue Fund; authorizing the
 11 deposit and expenditure of attorney fees, expenses and costs awarded to the Attorney
 12 General from the fund; prohibiting agreements to settlement or agreement terms that are
 13 contrary to the provisions of law; requiring quarterly reporting by the Attorney General as
 14 to the disposition of matters; and repealing provisions governing the disposition of certain
 15 fees of the Attorney General taxed as costs in legal proceedings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ATTORNEY GENERAL.

§5-3-5. Fees to be paid into State Treasury.

1 [Repealed.]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 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 on behalf of, the state is essential
7 to 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 §5-3A-3(d) of this code, when the Attorney General or other
2 officer or agency of the state, in accordance with statutory or common law authority, is a party to
3 or has entered his or her appearance in a legal action on behalf of the State of West Virginia,
4 including ex rel. or other type actions, and a disposition of that action has resulted in the recovery
5 of funds or assets to the state, of any kind or nature whatsoever, including, but not limited to,
6 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 §5-3A-3(d) of this code, when the Attorney General or other
9 officer or agency of the state, in accordance with statutory or common law authority, is a party to
10 or has entered his or her appearance in a legal action on behalf of the State of West Virginia,
11 including ex rel. or other type actions, and a disposition of that action has resulted in the recovery

12 of funds or assets to be held in trust by the state, through court action or otherwise, to administer
13 the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public
14 purposes, those funds shall be deposited in a special revenue account or trust fund established
15 in the State Treasury. The Attorney General or other officer or agency of the state or a person,
16 organization, or entity created by the Attorney General or other officer or agency of the state are
17 prohibited from administering trust funds or assets for charitable, eleemosynary, benevolent,
18 educational, or similar public purposes except as is thereafter provided by appropriation or
19 statutory authorization.

20 (c) No assets or funds deposited in an account in the State Treasury pursuant to §5-3A-
21 3(a) or §5-3A-3(b) of this code shall be disbursed without a specific legislative appropriation of
22 the deposited funds by the Legislature.

23 (d) With respect to funds or assets collected or recovered under §5-3A-3(a) or §5-3A-3(b)
24 of this code, the following shall apply and not be deposited in the General Revenue Fund of the
25 state:

26 (1) Moneys recovered or received by the state as a result of a civil action filed by the
27 Attorney General pursuant to §46A-7-1, et seq. of this code, in which case, the moneys shall be
28 deposited in the Consumer Protection Recovery Fund in accordance with, and otherwise comply
29 with, §5-3A-4 of this code;

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

33 (3) If, as part of a recovery under §5-3A-3(a) or §5-3A-3(b) of this code, attorney fees,
34 expenses and costs are specifically awarded to the Attorney General, those moneys 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 §47-18-1, et seq. of this code, then such award of attorney

38 fees, expenses, and costs shall be deposited in the Attorney General's Antitrust Enforcement
39 Fund and shall be available for expenditure: *Provided, however,* That should the specifically
40 awarded attorney fees and costs be owed to a special assistant Attorney General appointed by
41 the Attorney General pursuant to §5-3-3a of this code, then such attorney fees and expenses
42 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 moneys need to be retained by
7 the Attorney General's office.

8 (b) Except as required under §5-3A-4(c) of this code, any moneys recovered or received
9 by the state as a result of a civil action filed by the Attorney General pursuant to §46A-7-1, *et seq.*
10 of this code, shall be deposited in a separate special revenue fund by the State Treasurer, to be
11 known as the Consumer Protection Recovery Fund, which is hereby created in the State Treasury
12 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 \$4 million from the balance remaining in the Consumer
16 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 §46A-1-1, *et seq.* 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,
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 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 §5-3A-3 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 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 §5-3A-3 of
13 this code.

§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 §5-3-4
9 of this code, the Attorney General shall quarterly deliver to the Governor, the Joint Committee on
10 Government and Finance and the State Auditor a report of the causes described in §5-3A-3 of
11 this code in which there has been a disposition, and any extra-judicial settlements obtained,
12 during the respective reporting period and summary of the disposition, including amounts or
13 assets recovered by the state.
14 (c) The report required by §5-3A-6(b) of this code 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.

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.