

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4640

FISCAL  
NOTE

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HICKS, ATKINSON, RODIGHIERO, TOMBLIN AND PYLES

[Introduced January 31, 2020; Referred  
to the Committee on Health and Human Resources  
then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §5-3A-1, §5-3A-2 and §5-3A-3, all relating to creating the Foster Care Support  
3 Fund; directing that certain funds recovered in legal actions seeking damages from a drug  
4 manufacturer, drug distributor, pharmacy, pharmacist, physician or other person  
5 contributing to the proliferation of the unnecessary use of opioids in West Virginia be  
6 deposited into the Foster Care Support Fund; addressing preparation and enforceability  
7 of orders; requiring notice to court; and providing fund to be administered by the Secretary  
8 of the Department of Health and Human Resources.

*Be it enacted by the Legislature of West Virginia:*

### **ARTICLE 3A. OPIOID SETTLEMENT FUNDS.**

#### **§5-3A-1. Funds to be deposited in State Treasury for benefit of foster care.**

1 When the Attorney General or other officer or agency of the state, in accordance with  
2 statutory or common law authority, is a party to or has entered his or her appearance in a legal  
3 action seeking damages from a drug manufacturer, drug distributor, pharmacy, pharmacist  
4 physician or other person contributing to the proliferation of the unnecessary use of opioids in  
5 West Virginia, on behalf of the State of West Virginia, including *ex rel.* or other type actions, and  
6 a disposition of that action has resulted in the recovery of funds or assets to the state, such funds  
7 or assets awarded to the state are public funds and 25 percent of the total amount due shall be  
8 deposited in the Foster Care Support Fund to be administered by the Secretary of the Department  
9 of Health and Human Resources.

#### **§5-3A-2. 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 under §5-3A-1 of this code, the Attorney General, or other officer  
4 or agency of the state who is a party to or has entered his or her appearance in the action on  
5 behalf of the State of West Virginia, may not agree to any terms contrary with the provisions of

6 §5-3A-1 of this code.

7 (b) In the preparation of a judgment order that will result in the recovery of funds or assets  
8 by the state, the Attorney General, or other officer or agency of the state who is a party to or has  
9 entered his or her appearance in the action on behalf of the State of West Virginia, shall advise  
10 the court of the provisions of this section and of the provisions of §5-3A-1 of this code.

11 (c) In the event of an extra-judicial settlement that would result in the recovery of funds or  
12 assets by the state, the Attorney General, or other officer or agency of the state acting on behalf  
13 of the State of West Virginia may not agree to any terms contrary to the provisions of §5-3A-1 of  
14 this code.

**§5-3A-3. Foster Care Support Fund.**

1 The Foster Care Support Fund is created in the State Treasury. It shall be administered  
2 by the Secretary of the Department of Health and Human Resources to support the department's  
3 foster care program. All moneys collected under §5-3A-1 of this code shall be deposited in the  
4 special account in the State Treasury named the Foster Care Support Fund. Expenditures from  
5 the fund shall be for the purposes set forth in this section and are not authorized from collections  
6 but are to be made only in accordance with appropriation by the Legislature and in accordance  
7 with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the provisions of §11B-  
8 2-1 et seq. of this code.

NOTE: The purpose of this bill is to establish the Foster Care Support Fund. The bill requires the deposit of certain settlement moneys and recovered funds to be deposited in the Foster Care Support Fund which is to be administered by the Secretary of the Department of Health and Human Resources to support the department's foster care program.

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