WEST virginia legislature

2021 regular session

Introduced

Senate Bill 33

By Senator Tarr

[Introduced February 10, 2021; referred  
to the Committee on the Judiciary; and then to the Committee on Finance]

A BILL to repeal §5-3-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-3A-1, §5-3A-2, §5-3A-3, §5-3A-4, §5-3A-5, and §5-3A-6, all relating to creating the State Settlement and Recovered Funds Accountability Act; providing a short title; setting forth legislative findings; directing that recovered funds and assets be deposited into the State Treasury in the General Revenue Fund of the state, and providing exceptions; directing that certain recovered funds and assets be held in trust to be deposited into a special revenue account in the State Treasury; requiring legislative appropriation of those funds and assets; creating two special revenue funds in the State Treasury, known as the Consumer Protection Recovery Fund and the Consumer Protection Restitution Fund; requiring annual transfer of moneys exceeding $7 million in the Consumer Protection Recovery Fund to the General Revenue Fund; providing for disbursement of funds from the Consumer Protection Recovery Fund; requiring transfer of funds from the Consumer Protection Restitution Fund into the Consumer Protection Recovery Fund; authorizing the deposit and expenditure of attorneys’ fees, expenses, and costs awarded to the Attorney General from the fund; prohibiting agreements to settlement or agreement terms that are contrary to the provisions of law; requiring annual reporting by the Attorney General as to the receipts and expenditures of the funds and the disposition of causes; and repealing provisions requiring the Attorney General to deposit all fees received for representing the state into the General 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[Repealed.]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 3. A STATE SETTLEMENT AND RECOVERED FUNDS ACCOUNTABILITY ACT.**

§5-3A-1. Short title.

This article may be known and cited as the State Settlement and Recovered Funds Accountability Act.

§5-3A-2. Legislative findings.

The Legislature hereby finds and declares that:

(1) Public accountability for funds or other assets recovered in a legal action or settlement by or on behalf of the general public, the state or its officers, agencies or political subdivisions is appropriate and required, whether the character of the assets or funds recovered is public or private;

(2) Accountability for assets or funds recovered by, or behalf of, the state is essential to the public trust;

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

(4) The power to appropriate funds for public purposes is solely within the purview of the legislative branch of government, and the Legislature, as a steward of the budgetary process, shall take steps to assure that settlements are handled in a manner that assures maximum 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.

(a) Unless excepted under subsection (d) of this section, when the Attorney General or other officer or agency of the state, in accordance with statutory or common law authority, is a party to or has entered his or her appearance in a legal action on behalf of the State of West Virginia, including ex rel. or other type actions, or participated in a claim that resulted in an extra-judicial settlement, and a disposition of that action or claim has resulted in the recovery of funds or assets to the state, of any kind or nature whatsoever, including, but not limited to, public funds and private funds or assets, the funds or assets awarded to the state are public funds and shall be deposited in the State Treasury in the General Revenue Fund. Nothing in this subsection shall be construed to apply to equitable relief that is obtained and directly related to any action or claim referenced in this subsection.

(b) Unless excepted under subsection (d) of this section, when the Attorney General or other officer or agency of the state, in accordance with statutory or common law authority, is a party to or has entered his or her appearance in a legal action on behalf of the State of West Virginia, including ex rel. or other type actions or participated in a claim that resulted in an extra-judicial settlement and a disposition of that action or claim has resulted in the recovery of funds or assets to be held in trust by the state, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes, those funds shall be deposited in a special revenue account or trust fund established in the State Treasury. The Attorney General or other officer or agency of the state or a person, organization, or entity created by the Attorney General or other officer or agency of the state are prohibited from administering trust funds or assets for charitable, eleemosynary, benevolent, educational, or similar public purposes except as is thereafter provided by appropriation or statutory authorization. Nothing in this subsection shall be construed to apply to equitable relief that is obtained and directly related to any action or claim referenced in this subsection.

(c) Assets or funds deposited in an account in the State Treasury pursuant to subsection (a) or (b) of this section shall not be disbursed without a specific legislative appropriation of the deposited funds by the Legislature.

(d) With respect to funds or assets collected or recovered under subsections (a) or (b) of this section, the following shall apply and not be deposited in the General Revenue Fund of the state:

(1) Moneys recovered or received by the state pursuant to §46A-7-101 et seq. of this code, in which event the moneys shall be deposited in the Consumer Protection Recovery Fund in accordance with, and otherwise comply with, §5-3A-4 of this code;

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

(3) If, as part of a recovery under subsections (a) or (b) of this section, attorney fees, expenses, and costs are specifically awarded to the Attorney General, those moneys shall be deposited in the Attorney General’s, General Administrative Fund and shall be available for expenditure by the Attorney General: *Provided*, That should the matter involve an action brought by the Attorney General pursuant to §47-18-1 et seq. of this code, then such award of attorney fees, expenses, and costs shall be deposited in the Attorney General’s Antitrust Enforcement Fund and shall be available for expenditure: *Provided, however,* That should the specifically awarded attorney fees and costs be owed to a Special Assistant Attorney General appointed by the Attorney General pursuant to §5-3-3a of this code , then such attorney fees and expenses shall be paid to the Special Assistant Attorney General; or

(4) Civil asset forfeiture proceedings; or

(5) Fines and civil penalties.

§5-3A-4. Retention of operational moneys by Attorney General.

(a) Legislative findings and purpose. - The Legislature finds and recognizes that the Attorney General bears the responsibility to investigate, research, prepare pleadings, and, if appropriate, bring action on behalf of the state, its agencies and its citizens. These litigation responsibilities include employing attorneys, investigators, support staff, and other administrative costs and expenses in performance of the Attorney General’s duties. In order to effectively and efficiently perform litigation responsibilities, certain operational moneys need to be retained by the Attorney General’s office.

(b) Except as required under subsection (c) of this section, any moneys recovered or received by the state as a result of a civil action filed by the Attorney General pursuant to §46A-7-1 *et seq.* of this code, shall be deposited in a separate Special Revenue Fund by the State Treasurer, to be known as the Consumer Protection Recovery Fund, which is hereby created in the State Treasury and to be administered by the Attorney General as follows:

(1) The Attorney General shall transfer, upon the expiration of each fiscal year, from the Consumer Protection Recovery Fund into the General Revenue Fund of the state, any unencumbered moneys that are related to the settlement of opioid litigation matters and excluding those moneys related to the payment of agency expenses, in excess of $7 million from the balance remaining in the Consumer Protection Recovery Fund. Unless otherwise directed by the Legislature, 80 percent of all funds remaining in the Consumer Protection Recovery Fund shall be allocated for the prevention of substance use disorder in West Virginia. The remaining 20 percent shall be allocated for other programs. The money shall be used to fund prevention programs shall include, but will not be limited to, evidence-based programs conducted by law enforcement; corrections; lock down detoxification programs; lock down programs lasting longer than six months; programs that accomplish sobriety or a drug-free lifestyle two years post admission of a lock down program; long acting reversible contraceptive; early childhood school based intervention designed to decrease truancy, increase reading and math scores, and increase the rate of academic improvement. The term evidence-based means research study outcomes have been published in a peer-reviewed journal. State funds received from opioid settlements shall be used to fund only those programs that are well supported or supported by research evidence. Those programs that are promising, where the evidence fails to demonstrate effect, are a concerning practice, or are not able to be rated shall not be funded with state dollars. These programs must be rated by a reputable, national clearing house.

(2) The moneys in the Consumer Protection Recovery Fund shall be used by the Attorney General for the direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes in accordance with the provisions of chapter 46A of this code.

(c) Any moneys received by the Attorney General for the specific purpose of consumer restitution or refunds shall be placed in a separate Special Revenue Fund by the State Treasurer, to be known as the Consumer Protection Restitution Fund, which is hereby created in the State Treasury under the administration of the Attorney General. All moneys placed in the Consumer Protection Restitution Fund shall be paid out to the specific consumers for whom recovery was made: *Provided*, That when the Attorney General is unable to locate a consumer, for purposes of payment of restitution or refund, within one year of the date of receipt of any such restitution, said funds shall be transferred to the Consumer Protection Recovery Fund.

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

§5-3A-5. Preparation and enforceability of orders.

(a) In the preparation of a settlement agreement, conciliation agreement, memorandum of understanding, or other type of agreement setting forth a disposition that will result in the recovery of funds or assets by the state, the Attorney General, or other officer or agency of the state who is a party to or has entered his or her appearance in the action on behalf of the State of West Virginia, may not agree to any terms contrary to the provisions of §5-3A-3 or §5-3A-4 of this code.

(b) In the preparation of a judgment order that will result in the recovery of funds or assets by the state, the Attorney General, or other officer or agency of the state who is a party to or has entered his or her appearance in the action on behalf of the State of West Virginia, shall advise the court of the provisions of this section and of the provisions of §5-3A-3 or §5-3A-4 of this code.

(c) In the event of an extra-judicial settlement that would result in the recovery of funds or assets by the state, the Attorney General, or other officer or agency of the state acting on behalf of the State of West Virginia, may not agree to any terms contrary to the provisions of sections three or four of this article.

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

(a) For purposes of this section, the Attorney General shall, on or before August 15 of each year, deliver to the Governor, the Joint Committee on Government and Finance, and the State Auditor, a report providing an accounting of receipts and expenditures for each fund administered by the Attorney General during the next preceding fiscal year.

(b) In addition to, and separate from, the annual report required to be filed under §5-3-4 of this code, the Attorney General shall, on or before January 15 of each year, deliver to the Governor, the Joint Committee on Government and Finance, and the State Auditor, a report of the causes described in §5-3A-3 of this code, in which there has been a disposition, and any extra-judicial settlements obtained, and summary of, the disposition, including amounts or assets recovered by the state during the next preceding calendar year.

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

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

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

NOTE: The purpose of this bill requires the deposit of settlement moneys and recovered funds to be deposited in the general revenue.

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