

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Introduced**

## **House Bill 2153**

By Delegate Rohrbach

[Introduced January 11, 2023; Referred to the  
Committee on the Judiciary then Finance]



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 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 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, shall  
13 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 or  
3 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, public  
6 funds and private funds or assets, those funds or assets awarded to the state are public funds and  
7 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 or  
10 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 in  
15 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 may  
17 not administer trust funds or assets for charitable, eleemosynary, benevolent, educational, or  
18 similar public purposes except 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 §5-3A-  
20 3(a) or §5-3A-3(b) of this code may be disbursed without a specific legislative appropriation of the  
21 deposited funds by the Legislature.

22 (d) Funds or assets collected or recovered under §5-3A-3(a) or §5-3A-3(b) of this code  
23 may not be deposited in the General Revenue Fund of the state. These funds or assets shall be  
24 handled as follows:

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

28 (2) Funds or assets recovered on behalf of a political subdivision of the state and the funds  
29 or assets were specifically awarded to the political subdivision shall be transmitted to the  
30 Treasurer of such political subdivision for deposit in its general fund; or

31 (3) If, as part of a recovery under §5-3A-3(a) or §5-3A-3(b) of this code, attorney fees,  
32 expenses and costs are specifically awarded to the Attorney General, those moneys shall be  
33 deposited in the Attorney General's General Administrative Fund and shall be available for  
34 expenditure by the Attorney General: *Provided*, That if the matter involves an action brought by the  
35 Attorney General pursuant to §47-18-1, et seq. of this code, then the award of attorney fees,  
36 expenses, and costs shall be deposited in the Attorney General's Antitrust Enforcement Fund and  
37 shall be available for expenditure: *Provided, however*, That if the specifically awarded attorney

38 fees and costs are owed to a special assistant Attorney General appointed by the Attorney  
39 General pursuant to §5-3-3a of this code, then the attorney fees and expenses shall be paid to the  
40 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 is responsible to investigate, research, prepare pleadings and, if appropriate,  
3 bring action on behalf of the state, its agencies, and its citizens. These litigation responsibilities  
4 include employing attorneys, investigators, support staff and other administrative costs and  
5 expenses in performance of the Attorney General's duties. In order to effectively and efficiently  
6 perform litigation responsibilities, certain operational moneys shall be retained by the Attorney  
7 General's office.

8 (b) Except as required under §5-3A-4(c) of this code, any moneys recovered or received by  
9 the state as a result of a civil action filed by the Attorney General pursuant to §46A-7-1, et seq. of  
10 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 §46A-  
20 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, to

23 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, these  
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 is a  
4 party to or has entered his or her appearance in the action on behalf of the State of West Virginia,  
5 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 the  
9 court of the provisions of this section and of the provisions of §5-3A-3 of this code.

10 (c) If there is an extra-judicial settlement that would result in the recovery of funds or assets  
11 by the state, the Attorney General, or other officer or agency of the state acting on behalf of the  
12 State of West Virginia, may not agree to any terms contrary to the provisions of §5-3A-3 of this  
13 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; 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 §5-3-4 of
- 8 this code, the Attorney General shall quarterly deliver to the Governor, the Joint Committee on
- 9 Government and Finance and the State Auditor a report of the causes described in §5-3A-3 of this
- 10 code in which there has been a disposition, and any extra-judicial settlements obtained, during the
- 11 respective reporting period and summary of the disposition, including amounts or assets
- 12 recovered by the state.
- 13           (c) The report required by §5-3A-6(b) of this code shall also include:
- 14           (1) Amounts paid to any special assistant Attorney General, or other persons under
- 15 contract with the Attorney General to perform legal services, for representing the state or a public
- 16 officer or employee of the state; and
- 17           (2) The amount of judgments, settlements, costs, and fees awarded by the courts to the
- 18 Attorney General or to the state, including its officers or agencies, in which the Attorney General
- 19 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.