

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "C" to COMMITTEE AMENDMENT "A" to H.P. 1265, L.D. 1834, Bill, "An Act Creating the Victims' Compensation Board"

Amend the amendment by striking out all of section 2 and inserting in its place the following:

Sec. 2. 5 MRSA §12004-J, sub-§11 is enacted to read:

<u>11.</u>	<u>Victims'</u>	<u>Legislative</u>	<u>5 MRSA</u>
<u>Criminal</u>	<u>Compensation</u>	<u>Per Diem</u>	<u>§3360-A</u>
<u>Justice</u>	<u>Board</u>	<u>and Expenses</u>	

Sec. 3. 5 MRSA c. 316-A is enacted to read:

CHAPTER 316-A

VICTIMS' COMPENSATION FUND

§3360. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means the Victims' Compensation Board as established in section 12004-J, subsection 11.

2. Bodily injury. "Bodily injury" has the same meaning as defined in Title 17-A, section 2, subsection 5.

3. Crime. "Crime" means one of the following:

A. Offenses against the person as described in Title 17-A, chapter 9;

2 B. Sexual assaults as described in Title 17-A, chapter 11;

4 C. Kidnapping and criminal restraint as described in Title
17-A, chapter 13;

6 D. Robbery as described in Title 17-A, chapter 27; or

8 E. Operating under the influence of intoxicating liquor,
10 drugs or with an excessive blood-alcohol level, as described
in Title 29, section 1312-B.

12 4. Eligible expenses and losses. "Eligible expenses and
14 losses" means medical and medically related expenses, which may
include psychological or mental health counseling expenses, lost
16 wages, funeral expenses, eyeglasses, hearing aids, dentures or
other prosthetic devices taken, lost, destroyed or damaged as the
18 direct result of a crime specified in subsection 3. Expenses and
losses claimed under this subsection must be expenses or losses
20 actually incurred.

22 5. Unreimbursed loss. "Unreimbursed loss" means a loss:

24 A. That is not covered by medical or hospitalization
insurance, workers' compensation, other 3rd-party payment or
26 obligation to pay, or federal or state entitlement or
assistance programs;

28 B. That is not ordered by a court to be paid as restitution
or other compensation from any person who engaged in the
30 criminal conduct that resulted in the loss; or

32 C. That is ordered by a court but has not been paid.

34 §3360-A. Victims' Compensation Board established; compensation

36 1. Establishment and membership. There is established
within the Department of the Attorney General the Victims'
38 Compensation Board. The board consists of 3 members appointed by
the Attorney General. One member must be a physician licensed to
40 practice medicine in the State; one member must be an attorney
licensed to practice law in the State; and one member must be
42 experienced in working with victims of crime.

44 2. Terms of appointment. The term of each member is 3
years. The Attorney General shall make initial appointments for
46 the following terms: one member for an initial term of 3 years,
one member for an initial term of 2 years and one member for an
48 initial term of one year. When a vacancy occurs prior to the
expiration of a term, the appointment to fill that vacancy is for
50 the balance of the unexpired term.

2 3. Chair. Annually, the members shall elect a chair from
among the members.

4 4. Compensation. Members of the board are entitled to the
6 legislative per diem plus compensation for actual and necessary
expenses.

8 5. Meetings. The board may not meet more than once a month.

10 6. Quorum. Two members of the board constitute a quorum.

12 7. Rules. The board may adopt rules pursuant to the Maine
14 Administrative Procedure Act to carry out the purposes of this
chapter.

16 §3360-B. Award of compensation

18 1. Eligibility. The board may award compensation to any
20 person who:

22 A. Suffers bodily injury as a direct result of a crime
24 specified in section 3360, committed within the jurisdiction
of the State;

26 B. Has been sexually assaulted within this State in
28 violation of Title 17-A, chapter 11 without regard to
whether bodily injury occurred; or

30 C. Would otherwise be eligible for compensation, even
32 though:

34 (1) The criminal conduct occurred in this State but
within the exclusive jurisdiction of the United States;

36 (2) The bodily injury resulted from conduct that
38 violates a criminal law of the United States; or

40 (3) The crime occurred in another state, but only if
42 the person is a resident of this State and the other
44 state does not have a victim compensation program and
the person would have been eligible under this chapter
if the conduct had occurred in this State.

46 §3360-C. Requirements and exclusions

48 1. Compensation. Compensation may not be paid for any
crime unless:

2 A. The crime was reported to a law enforcement officer
within 5 days of the occurrence or discovery of the crime or
4 of the resultant injury; and

6 B. The claim was filed with the board within one year of
the occurrence of the injury or compensable loss, or within
8 60 days of the discovery of injury or compensable loss,
whichever is later.

10 2. Cooperation. Compensation may not be paid:

12 A. To any claimant who does not fully cooperate with law
enforcement officers, prosecution authorities and the board;
14 or

16 B. To or on behalf of any person who violated a criminal
law that caused or contributed to the injury or death for
18 which compensation is sought.

20 3. Exception. The board may waive the time requirements of
subsection 1 for good cause shown and shall waive the time
22 requirements on behalf of a child or when the claimant is a child
and the crime and the claim have been properly reported to law
24 enforcement officers and the board by an adult who becomes aware
of the crime and of the compensable injury.

26 §3360-D. Claims

28 1. Submission of claims. Claims are submitted to the board
30 as follows.

32 A. Claims must be in writing and under oath.

34 B. Claims must specify the date, the nature and
circumstances of the crime and the law enforcement agency to
36 which the crime was reported.

38 C. Claims must include documentation of all eligible
expenses and losses for which the claimant seeks
40 compensation, including but not limited to medical reports,
records and bills, funeral bills and employment records when
42 lost wages are sought.

44 D. Claims must include records related to insurance,
workers' compensation, federal and state entitlement and
46 assistance programs.

48 2. Release of records. If required by the board, the
claimant shall execute a release of medical and employment
50 records and information enabling the board to obtain the records

2 and information directly. Additionally, the claimant shall
3 provide the board with other information or the release of such
4 other information as the board determines is reasonably necessary
5 to decide the claim.

6 3. Forms. The board may provide forms for the submission
7 of claims and claims information.

8 **§3360-E. Payment of awards; limits**

10 The board may award compensation to a claimant of up to
11 \$5,000 for actual and unreimbursed losses and eligible expenses
12 of any person who is sexually assaulted or who suffers bodily
13 injury or death as the result of a crime specified in section
14 3360, subsection 3.

16 Within the limits specified in this section, the spouse,
17 child or parent of a person who dies as the direct result of a
18 specified crime may seek compensation for unreimbursed medical,
19 medically related and funeral expenses incurred by the spouse,
20 child or parent. Only a spouse, minor child, dependent parent or
21 dependent adult child may be awarded compensation for lost wages
22 of a deceased person.

24 The board shall disburse funds awarded directly to the
25 claimant. In the case of more than one survivor of a deceased
26 person, the board may apportion the total compensation as the
27 board determines.

30 **§3360-F. Determination of award**

32 1. Hearings. The board may hold a hearing on any claim and
33 the board shall hold a hearing if requested by the claimant. The
34 claimant may address the board at a hearing on the claim and the
35 board may take testimony under oath.

36 2. Information. In addition to the material and
37 information required by law and by the board, the claimant may
38 provide the board with any other information pertinent to the
39 nature or the amount of the claim. The board shall receive and
40 consider information provided by law enforcement agencies and
41 prosecution authorities. Identified perpetrators may also submit
42 information.

44 3. Determination of award. The board shall determine by a
45 preponderance of the evidence whether a specified crime occurred,
46 whether the bodily injury or death was the result of that
47 criminal conduct, the amount of unreimbursed eligible expenses
48 and losses suffered by the claimant, whether to award
49 compensation and the amount of the compensation. In determining
50

2 the amount of compensation to be paid, the board shall consider
3 the amount available to pay victim compensation claims, the
4 history of claims paid by the board, the number and amount of
5 currently pending claims and the nature and cost of expenses
6 submitted by the claimant.

7 4. Unanimous decision. The board shall determine action on
8 a claim with a quorum participating on that claim, but any award
9 of compensation requires the unanimous concurrence of all members
10 present.

11 5. Final decision. The board's final decision must contain
12 reasons for the determination.

13 §3360-G. Appeal

14
15 An appeal of the board's final decisions must be to the
16 Superior Court as provided for other administrative actions under
17 chapter 375, subchapter VII. Board decisions and the amount of
18 awards must be upheld unless the court finds no rational basis
19 for the decision or that the board abused its discretion.

20
21 §3360-H. Victims' Compensation Fund

22
23 There is created a special fund, known as the "Victims'
24 Compensation Fund," for the purpose of providing for the payment
25 of claims arising under this chapter and for the payment of all
26 necessary and proper expenses incurred by the board. The
27 Attorney General shall administer the fund.

28
29 All administrative costs of the board must be paid out of
30 money collected pursuant to section 3360-I and deposited in the
31 Victims' Compensation Fund.

32
33 §3360-I. Funding sources

34
35 As part of the sentence or fine imposed, the court shall
36 impose an assessment of \$25 on any person convicted of murder, a
37 Class A crime, a Class B crime or a Class C crime and \$10 on any
38 person convicted of a Class D crime or a Class E crime. For
39 purposes of collection and collection procedures, these
40 assessments are considered part of the fine. All funds collected
41 as a result of these assessments accrue to the Victims'
42 Compensation Fund.

43
44 When compensation is awarded from the Victims' Compensation
45 Fund, the amount of any restitution ordered and paid as part of a
46 sentence imposed that, when added to the award from the fund,
47 exceeds the victim's actual loss must be paid to the fund, in an
48 amount not to exceed the amount of the award. Similarly, the
49 amount of any award from the fund shall not exceed the amount of
50 the award.

2 amount of any insurance, 3rd-party payment or recovery in a
3 successful civil action against a person responsible for the
4 eligible expenses and losses that, when added to the award from
5 the fund, exceeds the victim's actual loss must be paid to the
6 fund, in an amount not to exceed the amount of the award.

7 The board may establish a reserve fund approved by the State
8 Auditor and the Treasurer of State. At the end of every quarter,
9 the Treasurer of State shall credit unreserved funds in excess of
10 \$2,000,000 to the General Fund.

11 **§3360-J. Use of funds**

12 1. Administrative expenses. Administrative expenses of the
13 board may be paid from the Victims' Compensation Fund. After the
14 first year, the Attorney General may use no more than 7.5% of the
15 Victims' Compensation Fund to defray the administrative expenses
16 of the board.

17 2. Judicial administrative expenses. Up to \$10,000 may be
18 used the first year to defray the programming costs to integrate
19 the Victims' Compensation Fund into the Judicial Department
20 computer system.

21 **§3360-K. Effective dates**

22 1. Penalty imposed. The assessments required by section
23 3360-I apply to penalties imposed for criminal conduct alleged to
24 have occurred on or after January 1, 1993.

25 2. Compensation awarded. Notwithstanding the effective
26 date of this chapter, the board may not award compensation for
27 any crime that occurred prior to January 1, 1993.

28 3. Processing claims. Notwithstanding the effective date
29 of this chapter, the board is not obligated to process or pay
30 claims before June 1, 1993.'

31 Further amend the amendment by striking out all of sections
32 5 to 7 and inserting in their place the following:

33 'Sec. 5. Allocation. The following funds are allocated from
34 Other Special Revenue to carry out the purposes of this Act.

35 **1992-93**

36 **ATTORNEY GENERAL, DEPARTMENT OF THE**
37 **Victims' Compensation Board**

HOUSE AMENDMENT "C" to COMMITTEE AMENDMENT "A" to H.P. 1265,
L.D. 1834

2	Positions	(1.5)
	Personal Services	\$20,498
	All Other	7,000
4	Capital Expenditures	2,200
6	TOTAL	<u>\$29,698</u>

8 Provides for the allocation of funds for one
10 part-time Research Assistant position, one
12 Account Clerk II position, per diem and
14 expenses for board members, general
operating expenses and capital equipment to
administer the Victims' Compensation Fund.

Victims' Compensation Board

16 All Other \$98,634

18 Provides for the allocation of funds to pay
20 victim compensation claims.

22 **DEPARTMENT OF THE ATTORNEY GENERAL**
24 **TOTAL**

\$128,332

26 **JUDICIAL DEPARTMENT**

28 **Courts - Supreme, Superior, District
and Administrative**

30 All Other \$10,000

32 Provides for the allocation of funds for
34 programming costs associated with the design
and implementation to integrate the Victims'
36 Compensation Fund into the accounting and
computer systems data base.

38 **JUDICIAL DEPARTMENT**
40 **TOTAL**

\$10,000

42 **TOTAL ALLOCATIONS**

\$138,332'

44 Further amend the amendment by striking out all of the
fiscal note and inserting in its place the following:

46 **FISCAL NOTE**

48 1992-93

50 **APPROPRIATIONS/ALLOCATIONS**

52 Other Funds \$138,332

