

MAINE STATE LEGISLATURE

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

HOUSE AMENDMENT "D" 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 §3360-A. Victims' Compensation Board established; compensation

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

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

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

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

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

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

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

6 §3360-B. Award of compensation

8 1. Eligibility. The board may award compensation to any
9 individual who:

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

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

18 C. Would otherwise be eligible for compensation, even
19 though:

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

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

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

32 §3360-C. Requirements and exclusions

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

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

42 B. The claim was filed with the board within one year of
43 the occurrence of the injury or compensable loss, or within
44 60 days of the discovery of injury or compensable loss,
45 whichever is later.

46 2. Cooperation. Compensation may not be paid:

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

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

6 3. Exception. The board may waive the time requirements of
 subsection 1 for good cause shown and shall waive the time
8 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
10 enforcement officers and the board by an adult who becomes aware
 of the crime and of the compensable injury.

12 **§3360-D. Claims**

14 1. Submission of claims. Claims are submitted to the board
16 as follows.

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

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

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

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

34 2. Release of records. If required by the board, the
 claimant shall execute a release of medical and employment
36 records and information enabling the board to obtain the records
 and information directly. Additionally, the claimant shall
38 provide the board with other information or the release of such
 other information as the board determines is reasonably necessary
40 to decide the claim.

42 3. Forms. The board may provide forms by rule for the
 submission of claims and claims information.

44 **§3360-E. Payment of awards; limits**

46 The board may award compensation to a claimant of up to
48 \$5,000 for actual and unreimbursed losses and eligible expenses
 of any person who is sexually assaulted or who suffers bodily
50 injury or death as the result of a crime specified in section
 3360, subsection 3.

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

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

16 **§3360-F. Determination of award**

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

22 2. Information. In addition to the material and
24 information required by law and by the board, the claimant may
26 provide the board with any other information pertinent to the
28 nature or the amount of the claim. The board shall receive and
 consider information provided by law enforcement agencies and
 prosecution authorities. Identified perpetrators may also submit
 information.

30 3. Determination of award. The board shall determine by a
32 preponderance of the evidence whether a specified crime occurred,
34 whether the bodily injury or death was the result of that
36 criminal conduct, the amount of eligible expenses and losses
38 suffered by the claimant, whether to award compensation and the
40 amount of the compensation. In determining the amount of
 compensation to be paid, the board shall consider the amount
 available to pay victim compensation claims, the history of
 claims paid by the board, the number and amount of currently
 pending claims and the nature and cost of expenses submitted by
 the claimant.

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

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

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§3360-G. Appeal

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

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§3360-H. Victims' Compensation Fund

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

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

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§3360-I. Funding sources

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

When compensation is awarded from the Victims' Compensation Fund, the amount of any restitution ordered and paid as part of a sentence imposed that, when added to the award from the fund, exceeds the victim's actual loss must be paid to the fund, in an amount not to exceed the amount of the award. Similarly, the amount of any insurance, 3rd-party payment or recovery in a successful civil action against a person responsible for the eligible expenses and losses that, when added to the award from the fund, exceeds the victim's actual loss must be paid to the fund, in an amount not to exceed the amount of the award.

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

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§3360-J. Use of funds

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

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

§3360-K. Effective dates

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

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

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

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

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

1992-93

ATTORNEY GENERAL, DEPARTMENT OF THE

Victims' Compensation Board

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

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

2	Victims' Compensation Board	
4	All Other	\$98,634
6	Provides for the allocation of funds to pay victim compensation claims.	
8		
10	DEPARTMENT OF THE ATTORNEY GENERAL TOTAL	<u>\$128,332</u>
12	JUDICIAL DEPARTMENT	
14	Courts - Supreme, Superior, District and Administrative	
16	All Other	\$10,000
18	Provides for the allocation of funds for programming costs associated with the design and implementation to integrate the Victims' Compensation Fund into the accounting and computer systems data base.	
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26	JUDICIAL DEPARTMENT TOTAL	<u>\$10,000</u>
28	TOTAL ALLOCATIONS	<u>\$138,332'</u>

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

34 **FISCAL NOTE**

36 **1992-93**

38 **APPROPRIATIONS/ALLOCATIONS**

40 Other Funds \$138,332

42 **REVENUES**

44 Other Funds \$138,332

46 This bill establishes the Victims' Compensation Fund and
48 provides allocations of dedicated revenue from the assessment in
fiscal year 1992-93 to the Judicial Department in the amount of
\$10,000 for programming costs and to the Department of the
Attorney General in the amount of \$128,332 to administer the fund

2 and pay claims. The amount of funds estimated to be collected in
fiscal year 1992-93 from the assessment is \$138,332, which will
accrue to the Victims' Compensation Fund.

4
6 The additional workload and administrative costs associated
with the collection of the assessment in the court system can be
absorbed within the budgeted resources of the Judicial Department.

8
10 Future allocations will be required to pay victim
compensation and the expenses incurred by the Victims'
12 Compensation Board. Based upon an estimated annual number of
convictions for Class A, B, C, D and E crimes, the projected
14 dedicated revenue that will be collected from the assessment for
a 12-month period is \$800,000.'

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18 **STATEMENT OF FACT**

20 This amendment establishes a 3-member victims' compensation
board within the Department of the Attorney General.

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24 The amendment expands the crimes covered to include
operating-under-the-influence by the holder of a provisional
license.

26
28 The amendment also deletes the definition of "unreimbursed
loss" and use of the term "unreimbursed" because they are
unnecessary.

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Filed by Rep. Paradis of Augusta
Reproduced and distributed under the direction of the Clerk of the
House
3/24/92 (Filing No. H-1233)

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