

MAINE STATE LEGISLATURE

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L.D. 1834

(Filing No. S-591)

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STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A" 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>Expenses</u>	<u>5 MRSA</u>
<u>Criminal</u>	<u>Compensation</u>	<u>Only</u>	<u>§3360-A</u>
<u>Justice</u>	<u>Board</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;

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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
actually incurred.

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

22 A. That is not covered by medical or hospitalization
24 insurance, workers' compensation, other 3rd-party payment or
obligation to pay, or federal or state entitlement or
26 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 9 members. Each
district attorney shall appoint one victim advocate or
40 victim-witness advocate working with the victim support program
administered by the district attorney for that prosecutorial
42 district to serve on the board. The Attorney General shall
appoint one victim advocate or victim-witness advocate working
44 with the victim support program administered by the Attorney
General to serve on the board.

46 2. Terms of appointment. The term of each member is 3
48 years. When a vacancy occurs prior to the expiration of a term,
the appointment to fill that vacancy is for the balance of the
50 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
6 compensation for actual and necessary expenses.

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

10 6. Quorum. A majority of the board constitutes 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
though:

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

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

38 (3) The crime occurred in another state, but only if
40 the person is a resident of this State and the other
42 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.

44 **§3360-C. Requirements and exclusions**

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

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

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

2. Cooperation. Compensation may not be paid:

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

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

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

§3360-D. Claims

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

A. Claims must be in writing and under oath.

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

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

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

2. Release of records. If required by the board, the claimant shall execute a release of medical and employment records and information enabling the board to obtain the records and information directly. Additionally, the claimant shall provide the board with other information or the release of such

2 other information as the board determines is reasonably necessary
3 to decide the claim.

4 3. Forms. The board may provide forms for the submission
5 of claims and claims information.

6 **§3360-E. Payment of awards; limits**

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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.

15
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.

23
24 The board may disburse funds awarded directly to the
25 claimant or to the individuals or entities who provided the
26 services for which compensation was awarded. In the case of more
27 than one survivor of a deceased person, the board may apportion
28 the total compensation as the board determines.

29 **§3360-F. Determination of award**

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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.

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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 the amount of compensation to be paid, the board shall consider

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

6 4. Decision. The board shall determine action on a claim
7 with a quorum participating on that claim, but a majority of
8 members must agree to any award of compensation.

10 5. Recusal. Any board member representing the
11 prosecutorial district in which the crime took place may not take
12 part in the decision on the claim submitted as a result of that
13 crime.

14 6. Final decision. The board's final decision must contain
15 reasons for the determination.

18 **§3360-G. Appeal**

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

26 **§3360-H. Victims' Compensation Fund**

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

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

38 **§3360-I. Funding sources**

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

48 When compensation is awarded from the Victims' Compensation
49 Fund, the amount of any restitution ordered and paid as part of a
50 restoration order shall be paid from the Victims' Compensation

2 sentence imposed that, when added to the award from the fund,
4 exceeds the victim's actual loss must be paid to the fund, in an
6 amount not to exceed the amount of the award. Similarly, the
8 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.

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

16 **§3360-J. Use of funds**

18 1. Administrative expenses. Administrative expenses of the
20 board may be paid from the Victims' Compensation Fund. After the
22 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.

24 2. Provide services. The board may contract with
26 individuals and organizations to provide services to victims of
crimes. The board may adopt rules establishing the maximum cost
for services that are reimbursable as eligible expenses.

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

34 **§3360-K. Effective dates**

36 1. Penalty imposed. The assessments required by section
38 3360-I apply to penalties imposed for criminal conduct alleged to
have occurred on or after January 1, 1993.

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

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

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

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

4		1992-93
6	ATTORNEY GENERAL, DEPARTMENT OF THE	
8	Victims' Compensation Board	
10	Positions	(1.5)
	Personal Services	\$19,508
12	All Other	7,000
	Capital Expenditures	2,200
14		<hr/>
16	TOTAL	\$28,708
18	Provides for the allocation of funds for one	
20	part-time Research Assistant position, one	
22	Account Clerk II position, expenses for	
	board members, general operating expenses	
	and capital equipment to administer the	
	Victims' Compensation Fund.	
24	Victims' Compensation Board	
26	All Other	\$99,624
28	Provides for the allocation of funds to pay	
30	victim compensation claims.	
32	DEPARTMENT OF THE ATTORNEY GENERAL	
	TOTAL	<hr/> \$128,332
34	JUDICIAL DEPARTMENT	
36	Courts - Supreme, Superior, District	
	and Administrative	
38	All Other	\$10,000
40	Provides for the allocation of funds for	
42	programming costs associated with the design	
44	and implementation to integrate the Victims'	
	Compensation Fund into the accounting and	
	computer systems data base.	
46	JUDICIAL DEPARTMENT	
48	TOTAL	<hr/> \$10,000
50	TOTAL ALLOCATIONS	<hr/> \$138,332'

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2 Further amend the amendment by renumbering the sections to
read consecutively.

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

8 **FISCAL NOTE**

10 **1992-93**

12 **APPROPRIATIONS/ALLOCATIONS**

14 Other Funds \$138,332

16 **REVENUES**

18 Other Funds \$138,332

20 This bill establishes the Victims' Compensation Fund and
provides allocations of dedicated revenue from the assessment in
22 fiscal year 1992-93 to the Judicial Department in the amount of
\$10,000 for programming costs and to the Department of the
24 Attorney General in the amount of \$128,332 to administer the fund
and pay claims. The amount of funds estimated to be collected in
26 fiscal year 1992-93 from the assessment is \$138,332, which will
accrue to the Victims' Compensation Fund.

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

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

40 **STATEMENT OF FACT**

42 This amendment transfers the Victims' Compensation Fund and
the Victims' Compensation Board from the Department of Public
44 Safety to the Department of the Attorney General. The amendment
establishes the Victims' Compensation Board as being composed of
46 9 victim advocates, one from each prosecutorial district
appointed by each district attorney, and one from the Attorney
48 General's office. They will be eligible for expenses only. The
advocate from the prosecutorial district in which the crime took
50 place may not participate in the decision on a claim based on

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2 that crime. If a victim receives an award from the fund and
3 restitution or other settlement or award, the victim must repay
4 to the fund any amount that is in excess of the actual loss, up
5 to the amount of the award from the fund. This prohibits the
6 victim from recovering more than the actual loss at the expense
7 of the fund. The amendment provides for the one-time computer
8 programming costs for the Judicial Department to be paid from the
Victims' Compensation Fund rather than the General Fund.

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(Senator GAUVREAU)

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SPONSORED BY: 

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COUNTY: Androscoggin

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