

MAINE STATE LEGISLATURE

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L.D. 1834

(Filing No. S- 599)

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STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "3" 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;

SENATE AMENDMENT

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,
drugs or with an excessive blood-alcohol level, as described
10 in Title 29, section 1312-B.

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

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

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

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

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

32 §3360-A. Victims' Compensation Board established; compensation

34 1. Establishment and membership. There is established
36 within the Department of the Attorney General the Victims'
Compensation Board. The board consists of 9 members. Each
38 district attorney shall appoint one victim advocate or
victim-witness advocate working with the victim support program
40 administered by the district attorney for that prosecutorial
district to serve on the board. The Attorney General shall
42 appoint one victim advocate or victim-witness advocate working
with the victim support program administered by the Attorney
44 General to serve on the board.

46 2. Terms of appointment. The term of each member is 3
years. When a vacancy occurs prior to the expiration of a term,
48 the appointment to fill that vacancy is for 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
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
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
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

R. 688

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

2. Cooperation. Compensation may not be paid:

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

14 B. To or on behalf of any person who violated a criminal
16 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
22 subsection 1 for good cause shown and shall waive the time
24 requirements on behalf of a child or when the claimant is a child
26 and the crime and the claim have been properly reported to law
28 enforcement officers and the board by an adult who becomes aware
30 of the crime and of the compensable injury.

§3360-D. Claims

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

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

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

44 C. Claims must include documentation of all eligible
46 expenses and losses for which the claimant seeks
48 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

1
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**

7
8
9 The board may award compensation to a claimant of up to
10 \$5,000 for actual and unreimbursed losses and eligible expenses
11 of any person who is sexually assaulted or who suffers bodily
12 injury or death as the result of a crime specified in section
13 3360, subsection 3.

14
15 Within the limits specified in this section, the spouse,
16 child or parent of a person who dies as the direct result of a
17 specified crime may seek compensation for unreimbursed medical,
18 medically related and funeral expenses incurred by the spouse,
19 child or parent. Only a spouse, minor child, dependent parent or
20 dependent adult child may be awarded compensation for lost wages
21 of a deceased person.

22
23 The board shall disburse funds awarded directly to the
24 claimant. In the case of more than one survivor of a deceased
25 person, the board may apportion the total compensation as the
26 board determines.

27 **§3360-F. Determination of award**

28
29 1. Hearings. The board may hold a hearing on any claim and
30 the board shall hold a hearing if requested by the claimant. The
31 claimant may address the board at a hearing on the claim and the
32 board may take testimony under oath.

33
34 2. Information. In addition to the material and
35 information required by law and by the board, the claimant may
36 provide the board with any other information pertinent to the
37 nature or the amount of the claim. The board shall receive and
38 consider information provided by law enforcement agencies and
39 prosecution authorities. Identified perpetrators may also submit
40 information.

41
42 3. Determination of award. The board shall determine by a
43 preponderance of the evidence whether a specified crime occurred,
44 whether the bodily injury or death was the result of that
45 criminal conduct, the amount of unreimbursed eligible expenses
46 and losses suffered by the claimant, whether to award
47 compensation and the amount of the compensation. In determining
48 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
50 Fund, the amount of any restitution ordered and paid as part of a

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

10 The board may establish a reserve fund approved by the State
11 Auditor and the Treasurer of State. At the end of every quarter,
12 the Treasurer of State shall credit unreserved funds in excess of
13 \$2,000,000 to the General Fund.

14 **§3360-J. Use of funds**

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

21
22 **2. Judicial administrative expenses.** Up to \$10,000 may be
23 used the first year to defray the programming costs to integrate
24 the Victims' Compensation Fund into the Judicial Department
25 computer system.

26
27 **§3360-K. Effective dates**

28
29 **1. Penalty imposed.** The assessments required by section
30 3360-I apply to penalties imposed for criminal conduct alleged to
31 have occurred on or after January 1, 1993.

32
33 **2. Compensation awarded.** Notwithstanding the effective
34 date of this chapter, the board may not award compensation for
35 any crime that occurred prior to January 1, 1993.

36
37 **3. Processing claims.** Notwithstanding the effective date
38 of this chapter, the board is not obligated to process or pay
39 claims before June 1, 1993.'

40
41 Further amend the amendment by striking out all of sections
42 5 to 7 and inserting in their place the following:

43
44 **'Sec. 5. Allocation.** The following funds are allocated from
45 Other Special Revenue to carry out the purposes of this Act.

P. of S.

SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1265,
L.D. 1834

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

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

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

FISCAL NOTE

1992-93

APPROPRIATIONS/ALLOCATIONS

Other Funds \$138,332

REVENUES

Other Funds \$138,332

This bill establishes the Victims' Compensation Fund and 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 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.

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.

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

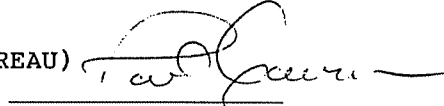
STATEMENT OF FACT

This amendment transfers the Victims' Compensation Fund and the Victims' Compensation Board from the Department of Public Safety to the Department of the Attorney General. The amendment establishes the Victims' Compensation Board as being composed of 9 victim advocates, one from each prosecutorial district appointed by each district attorney, and one from the Attorney General's office. They will be eligible for expenses only. The advocate from the prosecutorial district in which the crime took

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place may not participate in the decision on a claim based on
that crime. If a victim receives an award from the fund and
restitution or other settlement or award, the victim must repay
to the fund any amount that is in excess of the actual loss, up
to the amount of the award from the fund. This prohibits the
victim from recovering more than the actual loss at the expense
of the fund. The amendment provides for the one-time computer
programming costs for the Judicial Department to be paid from the
Victims' Compensation Fund rather than the General Fund.

This amendment requires that the compensation awarded be
paid directly to claimants and not to service providers.

(Senator GAUVREAU)
SPONSORED BY: 

COUNTY: Androscoggin

REPRODUCED AND DISTRIBUTED PURSUANT TO SENATE RULE 12.
(3/5/92) (Filing No. S-599)