

MAINE STATE LEGISLATURE

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

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

Amend the bill by striking out the title and substituting the following:

'An Act Creating the Victims' Compensation Fund'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 4 MRSA §163, sub-§1, as amended by PL 1991, c. 549, §2 and affected by §17, is further amended to read:

1. District Court funds. Except as otherwise provided by law, all fines, forfeitures, surcharges, assessments and fees collected in any division of the District Court or by the violations bureau must be paid to the clerk of that District Court, who shall deposit them in a special account in a timely manner. Once each month, the clerk shall remit the sums to the Treasurer of State, who shall credit them to the General Fund. At the same time, the clerk shall remit the sums that have been collected in accordance with section 1057, Title 25, chapter 453 and Title 29, section 1312-B, subsection 5. Funds received by the clerk as bail in criminal cases must be deposited daily in a special account. The clerk shall deposit the funds in an interest-bearing account unless the clerk determines that it is not cost effective to do so. Interest accrued in the account is the property of and accrues to the State. The forfeiture and setoff of bail is governed as otherwise provided by law.

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The court shall file a monthly report with the State Auditor itemizing the amount of fines, surcharges and assessments imposed and to whom each is payable.

Sec. 2. 5 MRSA §12004-J, sub-§9 is enacted to read:

9.	<u>Victims'</u>	<u>Legislative</u>	<u>25 MRSA</u>
<u>Public</u>	<u>Compensation</u>	<u>Per Diem</u>	<u>§3952</u>
<u>Safety</u>	<u>Board</u>	<u>and Expenses</u>	

Sec. 4. 14 MRSA §3141, sub-§1, as enacted by PL 1987, c. 414, §2, is amended to read:

1. **Applicability.** The procedures established by this chapter apply to all monetary fines, however designated, imposed by a court in a civil violation or traffic infraction proceeding and shall must be utilized, to the maximum extent possible, to obtain prompt and full payment of all such fines. The procedures established by this chapter may be used to collect any fine, surcharge or assessment imposed as part of a sentence for a criminal conviction. The procedures established by this chapter shall-be are in addition to, and not in lieu of, those otherwise authorized by law. As used in this chapter, "fine" includes any surcharge or assessment required by law to be imposed as all or part of a sentence for a criminal conviction.

Sec. 5. 25 MRSA Pt. 11 is enacted to read:

PART 11

VICTIMS' COMPENSATION FUND

CHAPTER 453

VICTIMS' COMPENSATION FUND

§3951. 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 Title 5, section 12004-J, subsection 9.

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;

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

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

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

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

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

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

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

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

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

8 **§3952. Victims' Compensation Board; established; compensation**

10 1. Establishment and membership. There is established
within the Department of Public Safety, the Victims' Compensation
12 Board. The board consists of 3 members appointed by the
Governor. One member must be a physician licensed to practice
14 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.

16 2. Terms of appointment. The term of each member is 3
18 years. The Governor shall make initial appointments for the
following terms: One member for an initial term of 3 years, one
20 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
22 expiration of a term, the appointment to fill that vacancy is for
the balance of the unexpired term.

24 3. Compensation. Members of the board are entitled to the
26 legislative per diem plus compensation for actual and necessary
expenses.

28 4. Meetings. The board may not meet more than once a month.

30 5. Quorum. Two members of the board constitutes a quorum.

32 6. Rules. The board may adopt rules pursuant to the Maine
34 Administrative Procedure Act to carry out the purposes of this
chapter.

36 **§3953. Award of compensation**

38 1. Eligibility. The board may award compensation to any
40 person who:

42 A. Suffers bodily injury as a direct result of a crime
specified in section 3951, committed within the jurisdiction
44 of the State;

46 B. Has been sexually assaulted within this State in
violation of the Maine Criminal Code, chapter 11 without
48 regard to whether bodily injury occurred; or

2 C. Would otherwise be eligible for compensation, even
4 though:

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

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

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

18 **§3954. Requirements and exclusions**

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

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

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

32 2. Cooperation. Compensation may not be paid:

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

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

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

48 **§3955. Claims**

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

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

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

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

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

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

44 3. Forms. The board may provide forms for the submission
46 of claims and claims information.

§3956. Payment of awards; limits

The board may award compensation to a claimant of up to
 \$5,000 for actual and unreimbursed losses and eligible expenses
 of any person who is sexually assaulted or who suffers bodily
 injury or death as the result of a crime specified in section
 3951, subsection 3.

Within the limits specified in this section, the spouse,
 child or parent of a person who dies as the direct result of a
 specified crime may seek compensation for unreimbursed medical,
 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.

2 The board may disburse funds awarded directly to the
3 claimant or to the individuals or entities who provided the
4 services for which compensation was awarded. In the case of more
5 than one survivor of a deceased person, the board may apportion
6 the total compensation as the board determines.

8 **§3957. Determination of award**

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

14 2. Information. In addition to the material and
15 information required by law and by the board, the claimant may
16 provide the board with any other information pertinent to the
17 nature or the amount of the claim. The board shall receive and
18 consider information provided by law enforcement agencies and
19 prosecution authorities. Identified perpetrators may also submit
20 information.

22 3. Determination of award. The board shall determine by a
23 preponderance of the evidence whether a specified crime occurred,
24 whether the bodily injury or death was the result of that
25 criminal conduct, the amount of unreimbursed eligible expenses
26 and losses suffered by the claimant, whether to award
27 compensation and the amount of the compensation. In determining
28 the amount of compensation to be paid, the board shall consider
29 the amount available to pay victim compensation claims, the
30 history of claims paid by the board, the number and amount of
31 currently pending claims and the nature and cost of expenses
32 submitted by the claimant.

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

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

42 **§3958. Appeal**

44 An appeal of the board's final decisions must be to the
45 Superior Court as provided for other administrative actions under
46 Title 5, chapter 375, subchapter VII. Board decisions and the
amount of awards must be upheld unless the court finds no

2 rational basis for the decision or that the board abused its
3 discretion.

4 **§3959. Victims' Compensation Fund**

6 There is created a special fund to be known as the "Victims'
7 Compensation Fund" for the purpose of providing for the payment
8 of claims arising under this chapter and for the payment of all
9 necessary and proper expenses incurred by the board. The
10 Commissioner of Public Safety shall administer the fund.

12 All administrative costs of the board must be paid out of
13 money collected pursuant to section 3960 and deposited in the
14 Victims' Compensation Fund.

16 **§3960. Funding sources**

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

26 When compensation is awarded from the Victims' Compensation
27 Fund, 1/2 of any restitution ordered and paid as part of a
28 sentence imposed must be paid to the fund, in an amount not to
29 exceed the amount of the award. Similarly, 1/2 of any insurance,
30 3rd-party payment or recovery in a successful civil action
31 against a person responsible for the eligible expenses and losses
32 paid by the board, up to the full amount of the board's award,
33 must be paid to the fund.

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

40 **§3961. Use of funds**

42 1. Compensation of board. The Commissioner of Public
43 Safety may use up to 7.5% of the Victims' Compensation Fund to
44 defray the per diem and administrative expenses of the board.

2 2. Provide services. The board may contract with
3 individuals and organizations to provide services to victims of
4 crimes by agreement with the board.

6 §3962. Effective dates

8 1. Penalty imposed. The assessments required by section
9 3960 apply to penalties imposed for criminal conduct alleged to
10 have occurred on or after January 1, 1993.

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

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

20 **Sec. 6. Appropriation.** The following funds are appropriated
21 from the General Fund to carry out the purposes of this Act.

22 1992-93

24 **JUDICIAL DEPARTMENT**

26 **Courts - Supreme, Superior,**
27 **District and Administrative**

28 All Other \$10,000

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

36 **JUDICIAL DEPARTMENT**

38 **TOTAL** \$10,000

40 **Sec. 7. Allocation.** The following funds are allocated from
41 Other Special Revenue funds to carry out the purposes of this Act.

42 1992-93

44 **PUBLIC SAFETY, DEPARTMENT OF**

46 **Victims' Compensation Board**

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2	Positions	(1.0)
	Personal Services	\$17,548
4	All Other	2,825
	Capital Expenditures	2,200

6
8 Provides for the allocation of funds for one
10 Clerk IV position, per diem and expenses for
board members, general operating expenses
and capital equipment to administer the
Victims' Compensation Fund.

12	DEPARTMENT OF PUBLIC SAFETY	
14	TOTAL	<u>\$22,583</u>

16
18 **FISCAL NOTE**

1992-93

20 **APPROPRIATIONS/ALLOCATIONS**

22	General Fund	\$10,000
24	Other Funds	22,583

26 **REVENUES**

28	Other Funds	\$138,332
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30
32 This bill establishes the Victims' Compensation Fund and
provides an appropriation to the Judicial Department in the
34 amount of \$10,000 in fiscal year 1992-93 for programming costs.
The amount of funds estimated to be collected in fiscal year
1992-93 from the assessment is \$138,332, which will accrue to the
36 Victims' Compensation Fund. This bill also provides an
allocation of dedicated revenue from the assessment to the
38 Department of Public Safety to administer the fund.

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

44 Future allocations of dedicated revenue will be required to
pay victim compensation and for the payment of necessary expenses

incurring by the board. Based upon an estimated annual number of convictions for Class A, Class B, Class C, Class D and Class E crimes, the projected dedicated revenue, which will be collected from the assessment for a 12-month period, is \$800,000.'

STATEMENT OF FACT

This amendment replaces the bill but carries out the original intent of creating a Victims' Compensation Fund.

The first change this amendment makes is to change the title to correctly depict the emphasis of the bill as creating a fund to compensate victims of crimes. A victim who suffers bodily injury as the result of a specified crime, or who is sexually assaulted, can be compensated from the Fund up to a maximum of \$5,000. The Victims' Compensation Fund is not funded from the General Fund, but from assessments imposed as part of the sentence for individuals convicted of crimes. The court will assess each person convicted of murder or Class A, Class B or Class C crimes \$25, and each person convicted of Class D or Class E crimes, \$10. There is no assessment on civil violations or traffic infractions. Any excess funds in the Victims' Compensation Fund will be transferred to the General Fund on a quarterly basis. The \$5,000 maximum award provides a reasonable amount of compensation while ensuring the availability of funds for as many victims as possible.

Federal legislation requires the Federal Government to reimburse a state 40% of the victim compensation payments actually made to victims, but only if the state law or the victim compensation plan meets certain federal criteria. Certain provisions of the bill, including the provisions for compensation of victims of federal crimes and compensation for Maine residents victimized out of State, are necessary to qualify for the federal reimbursement. Maine is the only state without some form of a victims' compensation fund.

A victim may file a claim for compensation for medical and medically related expenses, including counseling expenses, lost wages, funeral expenses, eyeglasses, hearing aids, dentures and other prosthetic devices taken, lost, destroyed or damaged as a direct result of specified crimes. Victims of the following crimes are eligible to apply for compensation: offenses against the person, such as murder and assault; sexual assaults; kidnapping and criminal restraint; robbery; and operating under the influence or with an excessive blood-alcohol level. The spouse, minor child, dependent parent or dependent adult child of

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2 a person who dies as the result of the crime may file a claim
with the board for lost wages of the deceased person. There is
4 no requirement that there be a conviction before a victim is
eligible for compensation.

6 The amendment provides for a 3-person board to decide on
payment of claims. The board is not permitted to meet more than
8 once a month. All decisions on claims must be made with at least
2 members in attendance and with the unanimous concurrence of all
10 members present. The amendment establishes a 7.5% limit on
administrative expenses.

12 The assessments apply to crimes committed on or after
14 January 1, 1993. Claimants may submit claims for crimes that
occurred on or after January 1, 1993. The board is not required
16 to begin processing or paying claims before June 1, 1993. This
will allow an initial amount of assessments to be credited to the
18 fund before payments are made.

20 This amendment provides clear authority for the courts to
treat the victims' compensation assessment as part of the fine
22 for enforcement and collection purposes.

Reported by the Majority of the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the
House

2/21/92

(Filing No. H-965)