

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

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J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

CHAPTER 806**H.P. 1265 - L.D. 1834****An Act Creating the Victims' Compensation Fund****Be it enacted by the People of the State of Maine as follows:**

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.

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-§11 is enacted to read:

11.	<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;

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.

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

1. Establishment and membership. There is established within the Department of the Attorney General the Victims' Compensation Board. The board consists of 3 members appointed by the Attorney General. One member must be a physician licensed to 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.

2. Terms of appointment. The term of each member is 3 years. The Attorney General shall make initial appointments for 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 initial term of one year. When a vacancy occurs prior to the expiration of a term, the appointment to fill that vacancy is for the balance of the unexpired term.

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

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

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

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

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

§3360-B. Award of compensation

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

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

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

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

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

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

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

§3360-C. Requirements and exclusions

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

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

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

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

§3360-E. 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 3360, 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.

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

§3360-F. Determination of award

1. Hearings. The board may hold a hearing on any claim and 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.

2. Information. In addition to the material and information required by law and by the board, the claimant may provide the board with any other information pertinent to the 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.

3. Determination of award. The board shall determine by a preponderance of the evidence whether a specified crime occurred, whether the bodily injury or death was the result of that criminal conduct, the amount of eligible expenses and losses suffered by the claimant, whether to award compensation and the 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.

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

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

§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.

§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.

§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.

§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.

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. 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	\$29,698

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.

Victims' Compensation Board

All Other	\$98,634
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Provides for the allocation of funds to pay victim compensation claims.

DEPARTMENT OF THE ATTORNEY GENERAL	
TOTAL	\$128,332

JUDICIAL DEPARTMENT

Courts - Supreme, Superior, District and Administrative

All Other	\$10,000
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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.

JUDICIAL DEPARTMENT TOTAL	\$10,000
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TOTAL ALLOCATIONS	\$138,332
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See title page for effective date.

CHAPTER 807

H.P. 1701 - L.D. 2381

An Act to Establish the Nontraditional Occupation Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §784, sub-§2, ¶E is enacted to read:

E. Contractors and subcontractors with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs.

Sec. 2. 26 MRSA c. 25, sub-c. III is enacted to read:

SUBCHAPTER III

NONTRADITIONAL OCCUPATION ACT

§2021. Short title

This subchapter may be known and cited as the "Nontraditional Occupation Act."

§2022. Definitions

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

1. Department. "Department" means the Department of Labor.