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Introduced and read first time: February 4, 1999

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 1999

CHAPTER _____

1 AN ACT concerning

2 **Victims' Rights - Criminal Injuries Compensation Board - Claims**

3 FOR the purpose of providing that a resident of this State who is the victim of a crime
4 in another state is eligible for an award if the other state operates a criminal
5 injuries compensation program for which funds have not been appropriated or
6 made available; establishing certain time limitations for notifying a claimant,
7 reviewing and evaluating certain claims and decisions, and reporting certain
8 recommendations concerning criminal injuries compensation; establishing and
9 increasing the maximum amount of compensation for certain claims; prohibiting
10 the Criminal Injuries Compensation Board from finding that a claimant fails to
11 suffer serious financial hardship under certain circumstances; requiring the
12 Department of Public Safety and Correctional Services to report to the General
13 Assembly on or before a certain date; making stylistic changes; and generally
14 relating to compensation awards by the Criminal Injuries Compensation Board.

15 BY repealing and reenacting, with amendments,

16 Article 27 - Crimes and Punishments

17 Section 819(c), 822, and 825

18 Annotated Code of Maryland

1 (1996 Replacement Volume and 1998 Supplement)

2 BY adding to

3 Article 27 - Crimes and Punishments

4 Section 820(d)

5 Annotated Code of Maryland

6 (1996 Replacement Volume and 1998 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article 27 - Crimes and Punishments**

10 819.

11 (c) Any resident of the State is eligible for an award if the resident:

12 (1) Meets the requirements of this subheading; or

13 (2) Becomes a victim of a crime in a state other than Maryland that:

14 (i) Does not operate a criminal injuries compensation program;

15 [or]

16 (ii) Operates a criminal injuries compensation program for which

17 the victim is ineligible; OR

18 (III) OPERATES A CRIMINAL INJURIES COMPENSATION PROGRAM

19 FOR WHICH FUNDS HAVE NOT BEEN APPROPRIATED OR MADE AVAILABLE.

20 820.

21 (D) THE BOARD SHALL NOTIFY THE CLAIMANT WITHIN 10 DAYS AFTER

22 RECEIPT OF THE CLAIM.

23 822.

24 (A) WITHIN 30 DAYS AFTER THE RECEIPT OF A CLAIM, THE BOARD SHALL

25 NOTIFY THE CLAIMANT IF ADDITIONAL MATERIAL IS REQUIRED.

26 (B) (1) [Upon completing] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS

27 SUBSECTION, WITHIN 90 DAYS AFTER THE RECEIPT OF A CLAIM AND ALL NECESSARY

28 SUPPORTING MATERIAL, THE BOARD SHALL:

29 (I) COMPLETE the review and evaluation process on each claim[,

30 the Board shall file]; AND

31 (II) FILE with the Secretary a written report setting forth the

32 decision and the reasons in support of the decision.

1 (2) FOR GOOD CAUSE SHOWN, FOR A PERIOD NOT TO EXCEED 1 YEAR
2 THE BOARD MAY EXTEND THE TIME TO FILE ITS REPORT WITH THE SECRETARY
3 AFTER RECEIPT OF THE CLAIM AND ALL NECESSARY SUPPORTING MATERIAL UNTIL
4 THE FIRST TO OCCUR OF THE FOLLOWING EVENTS:

5 (I) THE CLAIMANT NO LONGER HAS EXPENSES RELATED TO THE
6 CRIME; OR

7 (II) THE CLAIMANT HAS BEEN AWARDED THE MAXIMUM AMOUNT
8 AUTHORIZED UNDER § 825 OF THIS SUBHEADING.

9 (C) [After reviewing the records,] WITHIN 30 DAYS AFTER THE RECEIPT OF A
10 WRITTEN REPORT FROM THE BOARD, the Secretary shall modify, affirm, or reverse
11 the decision of the Board. The action of the Secretary in affirming, modifying, or
12 reversing the decision of the Board shall be final. The claimant shall be furnished
13 with a copy of the final report upon request.

14 825.

15 (a) (1) An award may not be made unless the Board members find that:

16 (i) A crime was committed;

17 (ii) The crime directly resulted in physical injury to, or death of the
18 victim, or in the case of sexual assault or child abuse, psychological or emotional
19 injury;

20 (iii) Police, other law enforcement, or judicial records show that the
21 crime or the discovery of child abuse was reported to the proper authorities within 48
22 hours after the occurrence of the crime; and

23 (iv) The victim has fully cooperated with all law enforcement
24 agencies.

25 (2) The Board may waive the requirements of paragraph (1)(iii) and (iv)
26 of this subsection for good cause shown.

27 (3) (i) An award may not be made unless funds are appropriated and
28 available for the full amount of the award.

29 (ii) If a multiyear award is made, the total amount of the award
30 shall be obligated and held for any period of time as is necessary to complete payment
31 in accordance with the provisions of the award.

32 (iii) If payment of the award is terminated for any reason
33 subsequent to June 30 of the fiscal year in which the award was made, the remainder
34 of the award shall revert to the Criminal Injuries Compensation Fund established
35 under § 831 of this subheading.

1 (iv) Any compensation awarded under the provisions of this Act
2 shall not exceed \$25,000 for any disability-related or dependency-related claim and
3 \$45,000 for any medical claim. The maximum amount awarded under all of the
4 provisions of this Act shall not exceed \$45,000, including any subsequent and
5 supplemental awards.

6 (4) Any compensation awarded under the provisions of this subheading
7 for the purposes of psychiatric, psychological, or mental health counseling may not
8 exceed ~~\$2,000~~ \$5,000 for each claimant.

9 (5) The Board may negotiate a settlement with a health care provider for
10 the medical and medically related expenses of a claimant.

11 (b) (1) Except as provided in paragraph (2) of this subsection, any award
12 made under this subheading shall be made in accordance with the schedule of
13 benefits, as it existed on January 1, 1989, and degree of disability, as specified in Title
14 9, Subtitle 6 of the Labor and Employment Article and any other applicable provisions
15 of the Labor and Employment Article, except for Title 9, Subtitle 8 of the Labor and
16 Employment Article. However, the term "average weekly wages", as applied to
17 determine the award in accordance with Title 9, Subtitle 6 of the Labor and
18 Employment Article, does not include tips, gratuities and wages that are undeclared
19 on the claimant's State or federal income tax returns in the applicable years. If a
20 claimant does not have "average weekly wages" so as to qualify under the formula in
21 Title 9, Subtitle 6 of the Labor and Employment Article, the award shall be in an
22 amount equal to the arithmetic average between the maximum and minimum awards
23 listed in the applicable portion of that subtitle.

24 (2) (I) Awards for disability or dependency made pursuant to this
25 article may be up to two-thirds of the victim's gross average wage, but may not be less
26 than the amount provided in paragraph (1) of this subsection.

27 (II) AN AWARD FOR FUNERAL EXPENSES MAY BE IN AN AMOUNT
28 NOT TO EXCEED \$5,000.

29 (3) Any person who is entitled to an award due to the death of a victim as
30 the direct result of a crime or who has psychological injury may be eligible, under the
31 rules established by the Board, to receive psychiatric, psychological, or mental health
32 counseling, within the specific limitations of subsection (a)(3) of this section.

33 (c) If there are two or more persons entitled to an award as a result of the
34 death of a person which is the direct result of a crime, the award shall be apportioned
35 among the claimants.

36 (d) Any award made under this subheading shall be reduced by the amount of
37 any payments received or to be received as a result of the injury:

38 (1) From or on behalf of the person who committed the crime;

1 (2) From any other public or private source, including an award of the
2 State Workers' Compensation Commission under the Maryland Workers'
3 Compensation Act; or

4 (3) As an emergency award under § 824 of this subheading.

5 (e) (1) (i) Except as provided under subparagraph (ii) of this paragraph,
6 in determining the amount of an award, the Board members shall determine whether,
7 because of the victim's conduct, the victim of the crime contributed to the infliction of
8 the victim's injury, and the Board members shall reduce the amount of the award or
9 reject the claim altogether, in accordance with this determination.

10 (ii) The Board members may disregard for this purpose the
11 responsibility of the victim for the victim's own injury where the record shows that
12 this responsibility was attributable to efforts by the victim to prevent a crime or an
13 attempted crime from occurring in the victim's presence or to apprehend a person who
14 had committed a crime in the victim's presence or had, in fact, committed a felony.

15 (2) Claimants filing for injuries incurred as the occupants of a motor
16 vehicle or dependents of an occupant of a motor vehicle operated by a person in
17 violation of the provisions of § 21-902 of the Transportation Article may not recover
18 unless the claimant can prove that the occupant did not or could not have known of
19 the condition of the operator of the vehicle.

20 (3) A person is not eligible for all or a portion of an award if the person
21 initiated, consented to, provoked, or unreasonably failed to avoid a physical
22 confrontation with the offender, or the victim was participating in a criminal offense
23 at the time the injury was inflicted.

24 (f) (1) (I) If the Board finds that the claimant will not suffer serious
25 financial hardship, as a result of the loss of earnings or support and the out-of-pocket
26 expenses incurred as a result of the injury, if not granted financial assistance
27 pursuant to this article to meet the loss of earnings, support, or out-of-pocket
28 expenses, the Board shall deny an award.

29 (II) In determining the serious financial hardship, the Board shall
30 consider all of the financial resources of the claimant.

31 (III) Unless total dependency is established, a family is considered to
32 be partially dependent on a parent with whom they reside without regard to actual
33 earnings.

34 (2) The conditions of paragraph (1) of this subsection do not apply in
35 determining an award under § 819(a)(4), (5), and (6) of this subheading.

36 (3) THE BOARD MAY NOT FIND THAT A CLAIMANT FAILS TO SUFFER
37 SERIOUS FINANCIAL HARDSHIP BECAUSE A CLAIMANT IS INDIGENT OR JUDGMENT
38 PROOF.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of Public
2 Safety and Correctional Services shall report to the General Assembly on or before
3 November 1, 1999, in accordance with § 2-1246 of the State Government Article, on
4 the results of a study to:

5 (1) Identify and examine alternate models for determining the financial
6 eligibility of criminal injuries compensation claimants;

7 (2) Determine whether other reasonable expenses incurred by victims
8 and their families should be compensated, including mental health counseling for
9 family and household members;

10 ~~(2)~~ (3) Project the effect of the models and any other changes on the
11 long-term stability and strength of the Criminal Injuries Compensation Fund; and

12 ~~(3)~~ (4) Recommend a model to replace the current serious financial
13 hardship standard.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 1999.