

HOUSE BILL 1297

E2
HB 1278/09 – JUD

0lr1716

By: **Delegates Valderrama and Vallario**
Introduced and read first time: February 18, 2010
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 21, 2010

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Criminal Injuries Compensation Board – Delegation of**
3 **Contested Claims to Office of Administrative Hearings**

4 FOR the purpose of establishing that a member of the Criminal Injuries Compensation
5 Board is not entitled to compensation or reimbursement to attend a certain
6 hearing; authorizing the Board to adopt regulations for the approval of
7 attorney's fees for representation before the Office of Administrative Hearings;
8 ~~repealing the authority of the Board to hear and determine a certain claim, hold~~
9 ~~hearings, administer oaths, examine any person under oath, and issue certain~~
10 ~~subpoenas; authorizing the Board to tentatively determine a certain claim and~~
11 ~~request certain subpoenas; repealing the authority of the Board to delegate~~
12 ~~certain power to a certain member or employee; requiring the Board to provide~~
13 a certain report to a certain claimant and a certain attorney; ~~requiring the~~
14 ~~Secretary of Public Safety and Correctional Services to delegate the authority to~~
15 ~~conduct a certain hearing to the Office of Administrative Hearings under~~
16 ~~certain circumstances and requiring the Office to hold the hearing at a certain~~
17 ~~location under certain circumstances; altering a certain provision of law to~~
18 ~~require the Secretary to modify, affirm, or reverse a certain decision within a~~
19 ~~certain time period under certain circumstances; requiring that a certain~~
20 claimant and a certain attorney be given a copy of ~~a certain decision~~ certain
21 decisions; authorizing a certain claimant to request a certain de novo final
22 decision by the Office of Administrative Hearings under certain circumstances;
23 requiring the Secretary of Public Safety and Correctional Services, within a
24 certain time period, to delegate a certain case to the Office of Administrative
25 Hearings for a certain de novo determination under certain circumstances;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 requiring the Office of Administrative Hearings, at a certain time, to promptly
 2 schedule a certain matter for proceedings and hold a hearing in a certain county
 3 at the election of a certain claimant; authorizing a certain claimant to appeal a
 4 certain decision within a certain time period; ~~authorizing the transfer and~~
 5 ~~appropriation of certain money in a certain manner to the Office of~~
 6 ~~Administrative Hearings for a certain purpose;~~ providing for the application of
 7 this Act; and generally relating to the Criminal Injuries Compensation Board.

8 BY repealing and reenacting, with amendments,
 9 Article – Criminal Procedure
 10 Section 11–804, 11–805(a)(2), 11–814(b)(1) and (e), and 11–815
 11 Annotated Code of Maryland
 12 (2008 Replacement Volume and 2009 Supplement)

13 BY adding to
 14 Article – Criminal Procedure
 15 Section 11–814.1
 16 Annotated Code of Maryland
 17 (2008 Replacement Volume and 2009 Supplement)

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

20 **Article – Criminal Procedure**

21 11–804.

22 (a) There is a Criminal Injuries Compensation Board in the Department.

23 (b) (1) The Board consists of five members.

24 (2) Of the five members of the Board:

25 (i) no more than four may belong to the same political party;
 26 and

27 (ii) one shall have been admitted to practice law in the State for
 28 at least 5 years immediately preceding the appointment.

29 (3) The Secretary shall appoint the members of the Board, with the
 30 approval of the Governor and the advice and consent of the Senate.

31 (c) (1) The term of a member is 5 years.

32 (2) A member who is appointed to fill a vacancy occurring other than
 33 by expiration of a term serves for the rest of the unexpired term.

1 (d) (1) With the approval of the Governor, the Secretary shall designate
2 one member of the Board as chairman.

3 (2) The chairman serves at the pleasure of the Secretary.

4 (e) (1) Each member of the Board shall devote the time necessary to
5 perform the duties listed under this subtitle.

6 (2) **[Each] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
7 **SUBSECTION, EACH** member of the Board is entitled to:

8 (i) compensation in accordance with the State budget; and

9 (ii) reimbursement for expenses under the Standard State
10 Travel Regulations, as provided in the State budget.

11 **(3) A MEMBER OF THE BOARD IS NOT ENTITLED TO**
12 **COMPENSATION OR REIMBURSEMENT TO ATTEND A CONTESTED HEARING**
13 **BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS.**

14 11-805.

15 (a) Subject to the authority of the Secretary as set forth in Title 2, Subtitle 1
16 of the Correctional Services Article, the Board has the following powers and duties:

17 ~~(1) to establish and maintain an office and to appoint and prescribe~~
18 ~~the duties of a claims examiner, a secretary, clerks, and any other employees and~~
19 ~~agents as may be necessary;~~

20 (2) to adopt regulations to carry out the provisions and purposes of
21 this subtitle, including procedures for the review and evaluation of claims and
22 regulations for the approval of attorneys' fees for representation before the Board,
23 **OFFICE OF ADMINISTRATIVE HEARINGS**, or before the court on judicial review;

24 ~~(3) to request from the State's Attorney, the Department of State~~
25 ~~Police, or county or municipal police departments any investigation and information~~
26 ~~that will help the Board to determine:~~

27 ~~(i) whether a crime or a delinquent act was committed or~~
28 ~~attempted; and~~

29 ~~(ii) whether and to what extent the victim or claimant was~~
30 ~~responsible for the victim's or claimant's own injury;~~

31 ~~(4) to [hear and] TENTATIVELY determine each claim for an award~~
32 ~~filed with the Board under this subtitle and to reinvestigate or reopen a case as the~~
33 ~~Board determines to be necessary;~~

1 ~~(5) to direct medical examination of victims;~~

2 ~~(6) to [hold hearings, administer oaths, examine any person under~~
 3 ~~oath, and issue] **REQUEST** subpoenas requiring the attendance and testimony of~~
 4 ~~witnesses or requiring the production of documents or other evidence **IN A HEARING**~~
 5 ~~**TO DETERMINE A CLAIM BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS;**~~

6 ~~(7) to take or cause to be taken affidavits or depositions within or~~
 7 ~~outside the State; and~~

8 ~~(8) to submit each year to the Governor, to the Secretary, and, subject~~
 9 ~~to § 2-1246 of the State Government Article, to the General Assembly a written report~~
 10 ~~of the activities of the Board.~~

11 ~~(b) Except as otherwise provided by law, an employee of the Board is subject~~
 12 ~~to the State Personnel and Pensions Article.~~

13 ~~[(e) (1) The Board may delegate to a member or employee of the Board its~~
 14 ~~powers under this section to hold hearings, administer oaths, examine a person under~~
 15 ~~oath, and issue subpoenas.~~

16 ~~(2) A subpoena issued under this section is subject to the Maryland~~
 17 ~~Rules.]~~

18 11-814.

19 ~~(a) Within 30 days after the receipt of a claim, the Board shall notify the~~
 20 ~~claimant if additional material is required.~~

21 (b) (1) Except as provided in paragraph (2) of this subsection, within 90
 22 days after the receipt of a claim and all necessary supporting material, the Board
 23 shall:

24 (i) complete the review and evaluation of each claim; and

25 (ii) file with the Secretary **AND PROVIDE TO THE CLAIMANT**
 26 **AND ANY ATTORNEY OF RECORD FOR THE CLAIMANT** a written report setting forth
 27 the decision and the reasons in support of the decision.

28 ~~(2) For good cause shown, for a period not to exceed 1 year the Board~~
 29 ~~may extend the time to file its report with the Secretary after receipt of the claim and~~
 30 ~~all necessary supporting material until the first to occur of the following events:~~

31 ~~(i) the claimant no longer has expenses related to the crime; or~~

1 (ii) ~~the claimant has been awarded the maximum amount~~
2 ~~authorized under §§ 11-811(b) and 11-812 of this subtitle.~~

3 ~~(c) (1) IF THE CLAIMANT NOTIFIES THE SECRETARY WITHIN 30 DAYS~~
4 ~~AFTER RECEIPT OF A WRITTEN REPORT FROM THE BOARD THAT THE CLAIMANT~~
5 ~~CONTESTS THE BOARD'S DECISION, THE SECRETARY SHALL DELEGATE TO THE~~
6 ~~OFFICE OF ADMINISTRATIVE HEARINGS THE AUTHORITY TO CONDUCT A~~
7 ~~CONTESTED CASE HEARING REGARDING ALL MATTERS RELATING TO THE CLAIM~~
8 ~~AND ISSUE FINAL FINDINGS OF FACT, FINAL CONCLUSIONS OF LAW, AND THE~~
9 ~~FINAL ADMINISTRATIVE DECISION OF THE BOARD AS PROVIDED UNDER TITLE~~
10 ~~10, SUBTITLE 2 (ADMINISTRATIVE PROCEDURE ACT - CONTESTED CASES) OF~~
11 ~~THE STATE GOVERNMENT ARTICLE.~~

12 ~~(2) AT THE REQUEST OF THE CLAIMANT, THE OFFICE OF~~
13 ~~ADMINISTRATIVE HEARINGS SHALL HOLD A HEARING UNDER THIS SUBSECTION~~
14 ~~IN A COUNTY WHERE THE CRIME OR DELINQUENT ACT OCCURRED, THE~~
15 ~~CLAIMANT RESIDES, OR THE CLAIMANT IS REGULARLY EMPLOYED.~~

16 ~~[(c)] (d) (1) [Within 30] IF THE CLAIMANT DOES NOT CONTEST THE~~
17 ~~BOARD'S DECISION, WITHIN 60 days after the receipt of a written report from the~~
18 ~~Board, the Secretary shall modify, affirm, or reverse the decision of the Board.~~

19 ~~[(d)] (2) The decision of the Secretary to affirm, modify, or reverse the~~
20 ~~decision of the Board is final.~~

21 (e) The claimant AND ANY ATTORNEY OF RECORD FOR THE CLAIMANT
22 shall be given a copy of the final [report on request] DECISION OF THE SECRETARY
23 ~~OR OFFICE OF ADMINISTRATIVE HEARINGS.~~

24 11-814.1.

25 (A) IF A CLAIMANT CONTESTS THE FINDINGS OF FACT OR CONCLUSIONS
26 OF LAW IN A FINAL DECISION OF THE SECRETARY, WITHIN 30 DAYS AFTER THE
27 FINAL DECISION OF THE SECRETARY, THE CLAIMANT MAY REQUEST A DE NOVO
28 FINAL DECISION BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

29 (B) WITHIN 5 DAYS OF A REQUEST BY THE CLAIMANT UNDER
30 SUBSECTION (A) OF THIS SECTION, THE SECRETARY, IN ACCORDANCE WITH §
31 10-205 OF THE STATE GOVERNMENT ARTICLE, SHALL DELEGATE THE CASE TO
32 THE OFFICE OF ADMINISTRATIVE HEARINGS FOR A DE NOVO DETERMINATION
33 OF FINAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING ALL
34 MATTERS RELATED TO THE CLAIM CONTESTED BY THE CLAIMANT.

1 (C) AFTER THE SECRETARY DELEGATES A CASE TO THE OFFICE OF
2 ADMINISTRATIVE HEARINGS, THE OFFICE OF ADMINISTRATIVE HEARINGS
3 SHALL:

4 (1) PROMPTLY SCHEDULE THE MATTER FOR PROCEEDINGS; AND

5 (2) HOLD A HEARING IN THE COUNTY WHERE THE CRIME OR
6 DELINQUENT ACT OCCURRED, WHERE THE CLAIMANT RESIDES, OR WHERE THE
7 CLAIMANT IS REGULARLY EMPLOYED, AT THE ELECTION OF THE CLAIMANT.

8 (D) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL GIVE THE
9 CLAIMANT AND ANY ATTORNEY OF RECORD FOR THE CLAIMANT A COPY OF THE
10 FINAL DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS.

11 11-815.

12 Within 30 days after the final decision of the Secretary **OR THE OFFICE OF**
13 **ADMINISTRATIVE HEARINGS**, a claimant aggrieved by that decision may appeal the
14 decision under §§ 10-222 and 10-223 of the State Government Article.

15 ~~SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding any~~
16 ~~other provision of law, any money saved by eliminating hearings that would have been~~
17 ~~conducted by the Criminal Injuries Compensation Board prior to the effective date of~~
18 ~~this Act may be transferred and appropriated in the annual budget bill or by budget~~
19 ~~amendment to the Office of Administrative Hearings for the purpose of conducting~~
20 ~~hearings as required under this Act.~~

21 SECTION ~~2~~ 2. AND BE IT FURTHER ENACTED, That the provisions of this
22 Act shall apply to all claims that are not final as of the end of September 30, 2010.

23 SECTION ~~4~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
24 effect October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.