Fifty-fifth Legislative Assembly of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1162

Introduced by

Representative Maragos

Senator Nalewaja

(At the request of the Department of Corrections and Rehabilitation)

- 1 A BILL for an Act to create and enact three new subsections to section 54-23.4-10 of the North
- 2 Dakota Century Code, relating to closure of crime victims compensation claims; to amend and
- 3 reenact sections 54-23.4-01, 54-23.4-03, 54-23.4-06, 54-23.4-11, and 54-23.4-12 of the North

4 Dakota Century Code, relating to definitions, award of benefits, attorney's fees, and subrogation

5 for purposes of crime victims compensation; and to provide an effective date.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 SECTION 1. AMENDMENT. Section 54-23.4-01 of the 1995 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 54-23.4-01. Definitions. As used in this chapter, unless the context or subject matter
10 otherwise requires:

- "Bodily injury" means any harm that requires medical treatment and results in
 economic loss and includes pregnancy and nervous shock.
- 13 2. "Claimant" means a victim, a dependent of a deceased victim, or a representative
 14 of either, who claims compensation under this chapter.
- 3. "Collateral source" means a source of benefits or advantages for economic loss
 otherwise reparable under this chapter which the claimant has received, or which
- 17 is readily available to the claimant. Social service benefits are not a collateral

18 source unless the claimant was receiving those benefits prior to the injury. The

- 19 first twenty-five thousand dollars of a life insurance policy are not a collateral
- 20 source if they are payable to a dependent beneficiary or to a parent, legal
- 21 guardian, or conservator of a dependent victim.
- 4. "Criminally injurious conduct" means conduct that occurs in or outside this state,
 results in bodily injury or death, and is punishable by fine, imprisonment, or death,
 or would be so punishable but for the fact that the person engaging in the conduct

1		was a minor or lacked capacity to commit the crime under the laws of this state.
2		The term includes an act of terrorism, as defined under Public Law No. 102-572
3		[106 Stat. 4506; 18 U.S.C. 2331], committed outside of the United States against a
4		resident of this state. The term does not include conduct arising out of the
5		ownership, maintenance, or use of a motor vehicle except when intended to cause
6		personal injury or death or when the division determines that the conduct arose out
7		of the use of intoxicating liquor or controlled substances as provided in section
8		39-08-01 or the conduct was followed by failure to stop or to give information and
9		render aid as provided in sections 39-08-04 and 39-08-06 was in violation of
10		section 12.1-16-02, 12.1-16-03, 39-08-01, 39-08-03, 39-08-04, or 39-08-06.
11	5.	"Dependent" means a natural person wholly or partially dependent upon a victim
12		for care or support and includes a child of a victim born after the victim's death.
13	6.	"Division" means the division of adult services of the department of corrections and
14		rehabilitation.
15	7.	"Economic loss" means economic detriment consisting only of allowable expense,
16		work loss, replacement services loss, and, if injury causes death, dependent's
17		economic loss and dependent's replacement services loss. Noneconomic
18		detriment is not loss. The term includes economic detriment caused by pain and
19		suffering or physical impairment.
20		a. "Allowable expense" means reasonable charges incurred for reasonably
21		needed products, services, and accommodations required due to the injury,
22		including those for medical care, rehabilitation, rehabilitative occupational
23		training, and other remedial treatment and care. The term includes a total
24		charge not in excess of one three thousand five hundred dollars for expenses
25		in any way related to funeral, cremation, and burial. The term does not
26		include that portion of a charge for a room in a hospital, clinic, convalescent
27		or nursing home, or any other institution engaged in providing nursing care
28		and related services, in excess of a reasonable and customary charge for
29		semiprivate accommodations, unless the excess represents costs of other
30		accommodations that are medically required.

1		b.	"Dependent's economic loss" means loss after a victim's death of
2			contributions of things of economic value to a victim's dependent, not
3			including services the dependent would have received from the victim if the
4			victim had not suffered the fatal injury, less expenses of the dependent
5			avoided by reason of the victim's death.
6		C.	"Dependent's replacement services loss" means loss reasonably incurred by
7			a dependent after a victim's death in obtaining ordinary and necessary
8			services in lieu of those the victim would have performed for the dependent's
9			benefit if the victim had not suffered the fatal injury, less expenses of the
10			dependent avoided by reason of the victim's death and not subtracted in
11			calculating dependent's economic loss.
12		d.	"Noneconomic detriment" means pain, suffering, inconvenience, physical
13			impairment, and other nonpecuniary damage.
14		e.	"Replacement services loss" means expenses reasonably incurred in
15			obtaining ordinary and necessary services in lieu of those the victim would
16			have performed, not for income but for the benefit of the victim or the victim's
17			family, if the victim had not been injured.
18		f.	"Work loss" means loss of income from work the victim would have performed
19			if the victim had not been injured, and expenses reasonably incurred by the
20			victim in obtaining services in lieu of those the victim would have performed
21			for income, reduced by any income from substitute work actually performed
22			by the victim or by income the victim would have earned in available
23			appropriate substitute work the victim was capable of performing but
24			unreasonably failed to undertake.
25	8.	"Vic	tim" means a person who suffers bodily injury or death as a result of criminally
26		injur	ious conduct, the good faith effort of any person to prevent criminally injurious
27		cond	duct, or the good faith effort of any person to apprehend a person suspected of
28		enga	aging in criminally injurious conduct. The term includes a resident of this state
29		<u>who</u>	is injured or killed by an act of terrorism, as defined under Public Law
30		<u>No.</u>	102-572 [106 Stat. 4506; 18 U.S.C. 2331], committed outside of the United
31		<u>Stat</u>	es. The term does not mean a person who suffers bodily injury or death as a

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1		result of operating a motor vehicle, when, at the time of the injury or death, the
2		person was not in compliance with applicable state laws and rules concerning
3		motor vehicle insurance coverage and the person was at least partially at fault for
4		causing the accident.
5	SEC	CTION 2. AMENDMENT. Section 54-23.4-03 of the 1995 Supplement to the North
6	Dakota Cer	ntury Code is amended and reenacted as follows:
7	54-2	23.4-03. No award paid to inmates. The division may not make an award of any
8	kind under	this chapter to a victim convicted of a crime and injured while confined in any state,
9	county, or c	ity a jail, prison, or other correctional facility.
10	SEC	CTION 3. AMENDMENT. Section 54-23.4-06 of the 1995 Supplement to the North
11	Dakota Cer	ntury Code is amended and reenacted as follows:
12	54-2	23.4-06. Application for compensation - Awards - Limitations on awards.
13	1.	An applicant for an award of compensation shall apply in writing in a form that
14		conforms substantially to that prescribed by the division. If a resident of this state
15		is a victim of criminally injurious conduct, but the criminally injurious conduct
16		occurred outside the geographical boundaries of this state, the resident has the
17		same rights under this chapter as if the criminally injurious conduct occurred within
18		this state upon a showing that the state, territory, country, or political subdivision of
19		the country in which the criminally injurious conduct occurred does not have a
20		crime victims compensation law which covers the bodily injury or death of the
21		victim.
22	2.	A claim for compensation must be filed within one year after the date of injury or
23		death. When the division cannot determine with certainty the date of injury, then
24		the date of injury is the first date that a reasonable person should have known that
25		the injury resulted from criminally injurious conduct from the date the criminally
26		injurious conduct was reported to a law enforcement officer. The division may
27		extend the time for filing when $\underline{i} f$ it determines that the interests of justice so
28		require. There is no appeal from a decision of the division not to extend the filing
29		time, not to reopen, or not to reinvestigate a claim.

1	3.	Compensation may not be awarded to a claimant who is the offender or an
2		accomplice of the offender, nor to any claimant if the award would unjustly benefit
3		the offender or an accomplice.
4	4.	Compensation may not be awarded unless the criminally injurious conduct
5		resulting in injury or death was reported to a law enforcement officer within
6		seventy-two hours after its occurrence or the division finds there was good cause
7		for the failure to report within that time. In the case of child abuse or sexual
8		molestation of a child, the criminally injurious conduct must be reported to a law
9		enforcement officer within three years after the child reaches the age of majority.
10	5.	The division, upon finding that the claimant has not fully cooperated with
11		appropriate law enforcement agencies, may deny, reconsider, or reduce an award
12		of compensation.
13	6.	Compensation otherwise payable to a claimant must be reduced or denied:
14		a. To the extent the economic loss upon which the claim is based is recouped
15		from other persons, including collateral sources;
16		b. To the extent the division deems reasonable because of the contributory
17		misconduct of the claimant or of a victim on whose behalf compensation is
18		claimed; and
19		c. To the extent the division deems reasonable when it is determined that a
20		victim was under the influence of an alcoholic beverage or a controlled
21		substance at the time the criminally injurious conduct occurred and the
22		victim's intoxication was a factor causing the criminally injurious conduct.
23	7.	Compensation for work loss, replacement services loss, dependent's economic
24		loss, and dependent's replacement services loss may not exceed three hundred
25		dollars per week.
26	8.	Compensation payable to a victim and to all other claimants sustaining economic
27		loss because of injury to or death of that victim may not exceed twenty-five
28		thousand dollars in the aggregate. If a resident of this state is the victim of
29		criminally injurious conduct outside the geographical boundaries of this state and
30		the total amount of crime victims compensation benefits payable where the
31		criminally injurious conduct occurred is less than twenty-five thousand dollars, the

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1	division may pay additional compensation to the victim. The maximum additional
2	compensation the division may pay is the difference between twenty-five thousand
3	dollars and the total amount of crime victims compensation benefits payable where
4	the criminally injurious conduct occurred.
5	SECTION 4. Three new subsections to section 54-23.4-10 of the 1995 Supplement to
6	the North Dakota Century Code are created and enacted as follows:
7	A claim for crime victims compensation benefits is presumed closed if the division
8	has not paid any benefit or received a demand for payment of benefits for a period
9	of ten years from the date a payment was last made on a claim. A claim that is
10	presumed closed may not be reopened for payment of any further benefits unless
11	the presumption is rebutted by a preponderance of the evidence that the criminally
12	injurious conduct is the principal cause of the current symptoms.
13	A claim for crime victims compensation benefits must be closed ten years after
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14	benefits have last been paid and may not be reopened.
15	This section applies to all claims for crime victims compensation benefits,
16	irrespective of the date of the criminally injurious conduct.
17	SECTION 5. AMENDMENT. Section 54-23.4-11 of the 1995 Supplement to the North
18	Dakota Century Code is amended and reenacted as follows:
19	54-23.4-11. Attorney's fees. As part of an order, the The division shall determine and
20	award reasonable attorney's fees, commensurate with services rendered, to be paid by the
21	state to the attorney representing the claimant. Additional attorney's fees may be awarded by a
22	court in the event of review. Attorney's fees may be denied on a finding that the claim or
23	appeal is frivolous or that the appeal was unsuccessful if the claimant prevails after a petition
24	for reconsideration or rehearing under section 28-32-14 from an order reducing or denying
25	crime victims compensation benefits. A district court may award attorney's fees in an appeal
26	pursuant to section 28-32-15 if the claimant prevails on appeal from an order reducing or
27	denying benefits. Attorney's fees are allowable for settlement of a disputed claim. Attorney's
28	fees are not allowable for assisting a claimant in filing a claim. An award of attorney's fees is in
29	addition to an award of compensation and may be made whether or not compensation is
30	awarded. An award of attorney's fees may not exceed the lesser of twenty percent of the

- <u>compensation awarded or one thousand dollars.</u> No attorney may contract for or receive any
 larger sum than the amount allowed.
- 3 SECTION 6. AMENDMENT. Section 54-23.4-12 of the 1995 Supplement to the North
 4 Dakota Century Code is amended and reenacted as follows:
- 5 54-23.4-12. Subrogation Actions Allocation of expenses.
 6 1. If compensation is awarded, the state division is subrogated to all the claimant's
 7 rights to receive or recover benefits or advantages, for economic loss for which
 8 and to the extent only that compensation is awarded, from a source that is, or, if
 9 readily available to the claimant, would be, a collateral source.
- As a prerequisite <u>Prior</u> to bringing an action to recover damages related to
 criminally injurious conduct for which compensation is claimed or awarded, the
 claimant shall give the division prior written notice of the proposed action. After
 receiving the notice, the division shall promptly:
- 14 a. Join in the action as a party plaintiff to recover compensation awarded;
- 15 b. Require the claimant to bring the action in the claimant's individual name, as a
 16 trustee in behalf of the state, to recover compensation awarded; or
- 17 c. Reserve its rights and do neither in the proposed action.
- 18 If, as requested by the division, the claimant brings the action as trustee and 19 recovers compensation awarded by the division, the claimant may deduct from the 20 compensation recovered in behalf of the state the reasonable expenses, including 21 attorney's fees, allocable by the court for that recovery. If a claimant brings an 22 action for the recovery of damages related to criminally injurious conduct for which 23 compensation is claimed or awarded, the division is subrogated to the rights of the claimant up to the total amount the division has paid. When there has been a 24 25 recovery of damages, the costs of the action, to be paid by the division from the 26 recovery, exclusive of attorney's fees, must be prorated and adjusted on the 27 percentage of the total subrogation interest of the division recovered to the total 28 recovery. If there is a recovery, the division shall pay attorney's fees to the 29 claimant's attorney from the recovery in the amount of twenty-five percent of the 30 subrogation interest recovered. For purposes of this section, recovery includes 31 proceeds paid pursuant to a settlement, confession of judgment, or judgment of a

1		court. The division may intervene in the action to recover compensation awarded.
2		The division has a lien on a recovery to the extent it has paid compensation.
3	3.	If a judgment or verdict indicates separately economic loss and noneconomic
4		detriment, payments on the judgment must be allocated between them in
5		proportion to the amounts indicated. In an action in a court of this state arising out
6		of criminally injurious conduct, the judge, on timely motion, shall direct the jury to
7		return a special verdict, indicating separately the awards for noneconomic
8		detriment, punitive damages, and economic loss.
9	SE	CTION 7. EFFECTIVE DATE. This Act is effective August 1, 1997, for all claims for
10	crime victin	ns compensation benefits, irrespective of the date of the criminally injurious conduct
11	or the date	of application for crime victims compensation benefits.