

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1162
(Representative Maragos)
(Senator Nalewaja)
(At the request of the Department of Corrections and
Rehabilitation)

AN ACT to create and enact three new subsections to section 54-23.4-10 of the North Dakota Century Code, relating to closure of crime victims compensation claims; to amend and 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 Dakota Century Code, relating to definitions, award of benefits, attorney's fees, and subrogation for purposes of crime victims compensation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Bodily injury" means any harm that requires medical treatment and results in economic loss and includes pregnancy and nervous shock.
2. "Claimant" means a victim, a dependent of a deceased victim, or a representative 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 is readily available to the claimant. ~~Social service benefits are not a collateral source unless the claimant was receiving those benefits prior to the injury.~~ The first twenty-five thousand dollars of a life insurance policy are not a collateral source if they are payable to a dependent beneficiary or to a parent, legal 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 was a minor or lacked capacity to commit the crime ~~under the laws of this state.~~ The term includes an act of terrorism, as defined under Public Law No. 102-572 [106 Stat. 4506; 18 U.S.C. 2331], committed outside of the United States against a resident of this state. The term does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death or when the division determines that the conduct ~~arose out of the use of intoxicating liquor or controlled substances as provided in section 39-08-01 or the conduct was followed by failure to stop or to give information and render aid as provided in sections 39-08-04 and 39-08-06~~ was in violation of section 12.1-16-02, 12.1-16-03, 39-08-01, 39-08-03, 39-08-04, or 39-08-06.
5. "Dependent" means a natural person wholly or partially dependent upon a victim for care or support and includes a child of a victim born after the victim's death.
6. "Division" means the division of adult services of the department of corrections and rehabilitation.
7. "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss

and dependent's replacement services loss. Noneconomic detriment is not loss. The term includes economic detriment caused by pain and suffering or physical impairment.

- a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of ~~one~~ three thousand ~~five hundred~~ dollars for expenses in any way related to funeral, cremation, and burial. The term does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless the excess represents costs of other accommodations that are medically required.
 - b. "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to a victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death.
 - c. "Dependent's replacement services loss" means loss reasonably incurred by a dependent after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for the dependent's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.
 - d. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage.
 - e. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income but for the benefit of the victim or the victim's family, if the victim had not been injured.
 - f. "Work loss" means loss of income from work the victim would have performed if the victim had not been injured, and expenses reasonably incurred by the victim in obtaining services in lieu of those the victim would have performed for income, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing but unreasonably failed to undertake.
8. "Victim" means a person who suffers bodily injury or death as a result of criminally injurious conduct, the good faith effort of any person to prevent criminally injurious conduct, or the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct. The term includes a resident of this state who is injured or killed by an act of terrorism, as defined under Public Law No. 102-572 [106 Stat. 4506; 18 U.S.C. 2331], committed outside of the United States. The term does not mean a person who suffers bodily injury or death as a result of operating a motor vehicle, when, at the time of the injury or death, the person was not in compliance with applicable state laws and rules concerning motor vehicle insurance coverage and the person was at least partially at fault for causing the accident.

SECTION 2. AMENDMENT. Section 54-23.4-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-03. No award paid to inmates. The division may not make an award of any kind under this chapter to a victim convicted of a crime and injured while confined in ~~any state, county, or city~~ a jail, prison, or other correctional facility.

SECTION 3. AMENDMENT. Section 54-23.4-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-06. Application for compensation - Awards - Limitations on awards.

1. An applicant for an award of compensation shall apply in writing in a form that conforms substantially to that prescribed by the division. If a resident of this state is a victim of criminally injurious conduct, but the criminally injurious conduct occurred outside the geographical boundaries of this state, the resident has the same rights under this chapter as if the criminally injurious conduct occurred within this state upon a showing that the state, territory, country, or political subdivision of the country in which the criminally injurious conduct occurred does not have a crime victims compensation law which covers the bodily injury or death of the victim.
2. A claim for compensation must be filed within one year ~~after the date of injury or death. When the division cannot determine with certainty the date of injury, then the date of injury is the first date that a reasonable person should have known that the injury resulted from criminally injurious conduct~~ from the date the criminally injurious conduct was reported to a law enforcement officer. The division may extend the time for filing ~~when~~ if it determines that the interests of justice so require. There is no appeal from a decision of the division not to extend the filing time, not to reopen, or not to reinvestigate a claim.
3. Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or an accomplice.
4. Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two hours after its occurrence or the division finds there was good cause for the failure to report within that time. In the case of child abuse or sexual molestation of a child, the criminally injurious conduct must be reported to a law enforcement officer within three years after the child reaches the age of majority.
5. The division, upon finding that the claimant has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of compensation.
6. Compensation otherwise payable to a claimant must be reduced or denied:
 - a. To the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources;
 - b. To the extent the division deems reasonable because of the contributory misconduct of the claimant or of a victim on whose behalf compensation is claimed; and
 - c. To the extent the division deems reasonable when it is determined that a victim was under the influence of an alcoholic beverage or a controlled substance at the time the criminally injurious conduct occurred and the victim's intoxication was a factor causing the criminally injurious conduct.
7. Compensation for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed three hundred dollars per week.
8. Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed twenty-five thousand dollars in the aggregate. If a resident of this state is the victim of criminally injurious conduct outside the geographical boundaries of this state and the total amount of crime victims compensation benefits payable where the criminally injurious conduct occurred is less than twenty-five thousand dollars, the division may pay additional compensation to the victim. The maximum additional compensation the division may pay is the difference between twenty-five thousand dollars and the total amount of crime victims compensation benefits payable where the criminally injurious conduct occurred.

SECTION 4. Three new subsections to section 54-23.4-10 of the 1995 Supplement to the North Dakota Century Code are created and enacted as follows:

A claim for crime victims compensation benefits is presumed closed if the division has not paid any benefit or received a demand for payment of benefits for a period of five years from the date a payment was last made on a claim. A claim that is presumed closed may not be reopened for payment of any further benefits unless the presumption is rebutted by a preponderance of the evidence that the criminally injurious conduct is the principal cause of the current symptoms.

A claim for crime victims compensation benefits must be closed ten years after benefits have last been paid and may not be reopened.

This section applies to all claims for crime victims compensation benefits, irrespective of the date of the criminally injurious conduct.

SECTION 5. AMENDMENT. Section 54-23.4-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-11. Attorney's fees. ~~As part of an order, the~~ The division shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. ~~Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous or that the appeal was unsuccessful if the claimant prevails after a petition for reconsideration or rehearing under section 28-32-14 from an order reducing or denying crime victims compensation benefits. A district court may award attorney's fees in an appeal pursuant to section 28-32-15 if the claimant prevails on appeal from an order reducing or denying benefits. Attorney's fees are allowable for settlement of a disputed claim. Attorney's fees are not allowable for assisting a claimant in filing a claim. An award of attorney's fees is in addition to an award of compensation and may be made whether or not compensation is awarded. An award of attorney's fees may not exceed the lesser of twenty percent of the compensation awarded or one thousand dollars. No attorney may contract for or receive any larger sum than the amount allowed.~~

SECTION 6. AMENDMENT. Section 54-23.4-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-12. Subrogation - Actions - Allocation of expenses.

1. If compensation is awarded, the ~~state division~~ is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that compensation is awarded, from a source that is, or, if readily available to the claimant, would be, a collateral source.
2. ~~As a prerequisite~~ Prior 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:~~
 - a: ~~Join in the action as a party plaintiff to recover compensation awarded;~~
 - b: ~~Require the claimant to bring the action in the claimant's individual name, as a trustee in behalf of the state, to recover compensation awarded; or~~
 - c: ~~Reserve its rights and do neither in the proposed action.~~

~~If, as requested by the division, the claimant brings the action as trustee and recovers compensation awarded by the division, the claimant may deduct from the compensation recovered in behalf of the state the reasonable expenses, including attorney's fees, allocable by the court for that recovery. If a claimant brings an action for the recovery of damages related to criminally injurious conduct for which 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 recovery of damages, the costs of the action, to~~

be paid by the division from the recovery, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the division recovered to the total recovery. If there is a recovery, the division shall pay attorney's fees to the claimant's attorney from the recovery in the amount of twenty-five percent of the subrogation interest recovered. For purposes of this section, recovery includes proceeds paid pursuant to a settlement, confession of judgment, or judgment of a court. The division may intervene in the action to recover compensation awarded. The division has a lien on a recovery to the extent it has paid compensation.

3. If a judgment or verdict indicates separately economic loss and noneconomic detriment, payments on the judgment must be allocated between them in proportion to the amounts indicated. In an action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

SECTION 7. EFFECTIVE DATE. This Act is effective August 1, 1997, for all claims for crime victims compensation benefits, irrespective of the date of the criminally injurious conduct or the date of application for crime victims compensation benefits.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1162.

House Vote: Yeas 93 Nays 0 Absent 4

Senate Vote: Yeas 46 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State