

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1506

Short Title: Victims' Compensation Act.

(Public)

Sponsors: Senator Gulley.

Referred to: Judiciary.

May 28, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE VICTIMS' COMPENSATION ACT.
3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 15B-2 reads as rewritten:
5 **"§ 15B-2. Definitions.**

6 As used in this Chapter, unless the context requires otherwise:

7 (1) "Allowable expense" means reasonable charges incurred for reasonably
8 needed products, services, and accommodations, including those for
9 medical care, rehabilitation, medically related property, and other
10 remedial treatment and care.

11 Allowable expense includes a total charge not in excess of three
12 thousand five hundred dollars (\$3,500) for expenses related to funeral,
13 cremation, and burial, including transportation of a body, but excluding
14 expenses for flowers, gravestone, and other items not directly related to
15 the funeral service.

16 (2) "Claimant" means any of the following persons who claims an award of
17 compensation under this Chapter:

- 18 a. A victim;
19 b. A dependent of a deceased victim;

1 c. A third person who is not a collateral source and who provided
2 benefit to the victim or his family other than in the course or
3 scope of his employment, business, or profession;

4 d. A person who is authorized to act on behalf of a victim, a
5 dependent, or a third person described in subdivision c.

6 The claimant, however, may not be the offender or an accomplice of the
7 offender who committed the criminally injurious conduct.

8 (3) " Collateral source" means a source of benefits or advantages for
9 economic loss otherwise compensable that the victim or claimant has
10 received or that is readily available to him from any of the following
11 sources:

12 a. The offender;

13 b. The government of the United States or any of its agencies, a
14 state or any of its political subdivisions, or an instrumentality of
15 two or more states;

16 c. Social security, medicare, and medicaid;

17 d. State-required, temporary, nonoccupational disability insurance;

18 e. Worker's compensation;

19 f. Wage continuation programs of any employer;

20 g. Proceeds of a contract of insurance payable to the victim for loss
21 that he sustained because of the criminally injurious conduct;

22 h. A contract providing prepaid hospital and other health care
23 services, or benefits for disability.

24 (4) " Commission" means the Crime Victims Compensation Commission
25 established by G.S. 15B-3.

26 (5) " Criminally injurious conduct" means conduct that by its nature poses a
27 substantial threat of personal injury or death, and is punishable by fine
28 or imprisonment or death, or would be so punishable but for the fact that
29 the person engaging in the conduct lacked the capacity to commit the
30 crime under the laws of this State. Criminally injurious conduct includes
31 conduct that amounts to an offense involving impaired driving as
32 defined in G.S. 20-4.01(24a), and conduct that amounts to a violation of
33 G.S. 20-166 if the victim was a pedestrian or was operating a vehicle
34 moved solely by human power or a mobility impairment device. For
35 purposes of this Chapter, a mobility impairment device is a device that
36 is designed for and intended to be used as a means of transportation for
37 a person with a mobility impairment, is suitable for use both inside and
38 outside a building, and whose maximum speed does not exceed 12 miles
39 per hour when the device is being operated by a person with a mobility
40 impairment. Criminally injurious conduct does not include conduct
41 arising out of the ownership, maintenance, or use of a motor vehicle
42 when the conduct is punishable only as a violation of other provisions of
43 Chapter 20 of the General Statutes. Criminally injurious conduct shall

1 also include an act of terrorism, as defined in 18 U.S.C. § 2331, that is
2 committed outside of the United States against a citizen of this State.

3 (6) " Dependent" means an individual wholly or substantially dependent
4 upon the victim for care and support and includes a child of the victim
5 born after his death.

6 (7) " Dependent's economic loss" means loss after a victim's death of
7 contributions of things of economic value to his dependents, not
8 including services they would have received from the victim if he had
9 not suffered the fatal injury, less expenses of the dependents avoided by
10 reason of the victim's death.

11 (8) " Dependent's replacement service loss" means loss reasonably incurred
12 by dependents after a victim's death in obtaining ordinary and necessary
13 services in lieu of those the victim would have performed for their
14 benefit if he had not suffered the fatal injury, less expenses of the
15 dependents avoided by reason of the victim's death and not subtracted in
16 calculating dependent's economic loss.

17 Dependent's replacement service loss will be limited to a 26-week
18 period commencing from the date of the injury and compensation shall
19 not exceed two hundred dollars (\$200.00) per week.

20 (9) " Director" means the Director of the Commission appointed under G.S.
21 15B-3(g).

22 (10) " Economic loss" means economic detriment consisting only of
23 allowable expense, work loss, ~~and replacement services loss, loss, and~~
24 household support loss. If criminally injurious conduct causes death,
25 economic loss includes a dependent's economic loss and a dependent's
26 replacement service loss. Noneconomic detriment is not economic loss,
27 but economic loss may be caused by pain and suffering or physical
28 impairment.

29 (11) " Noneconomic detriment" means pain, suffering, inconvenience,
30 physical impairment, or other nonpecuniary damage.

31 (12) " Replacement services loss" means expenses reasonably incurred in
32 obtaining ordinary and necessary services in lieu of those the injured
33 person would have performed, not for income but for the benefit of
34 himself or his family, if he had not been injured.

35 Replacement service loss will be limited to a 26-week period
36 commencing from the date of the injury, and compensation may not
37 exceed two hundred dollars (\$200.00) per week.

38 (12a) " Substantial evidence" means relevant evidence that a reasonable mind
39 might accept as adequate to support a conclusion.

40 (13) " Victim" means a person who suffers personal injury or death
41 proximately caused by criminally injurious conduct.

42 (14) " Work loss" means loss of income from work that the injured person
43 would have performed if he had not been injured and expenses

1 reasonably incurred by him to obtain services in lieu of those he would
2 have performed for income, reduced by any income from substitute
3 work actually performed by him, or by income he would have earned in
4 available appropriate substitute work that he was capable of performing
5 but unreasonably failed to undertake.

6 Compensation for work loss will be limited to 26 weeks
7 commencing from the date of the injury, and compensation ~~may shall~~
8 not exceed ~~two hundred dollars (\$200.00)~~ four hundred dollars (\$400.00)
9 per week. A claim for work loss will be paid only upon proof that the
10 injured person was gainfully employed at the time of the criminally
11 injurious conduct and, by physician's certificate, that the injured person
12 was unable to work.

13 (15) " Household support loss" means the loss of support that a victim would
14 have received from the victim's spouse for the purpose of maintaining a
15 home or residence for the victim and the victim's dependents. A victim
16 may be compensated fifty dollars (\$50.00) per week for each dependent
17 child. Compensation for household support loss shall not exceed four
18 hundred dollars (\$400.00) per week and shall be limited to 26 weeks
19 commencing from the date of the injury. A victim may receive only one
20 compensation for household support loss. Household support loss is
21 only available to an unemployed victim whose spouse is the offender
22 who committed the criminally injurious conduct that is the basis of the
23 victim's claim under this act."

24 Section 2. G.S. 15B-8.1(b) reads as rewritten:

25 "~~(b) All medical information relating to the mental, physical, or emotional~~
26 ~~condition of a victim or claimant and all law enforcement records and information and~~
27 ~~any juvenile records shall be held confidential by the Commission and Director. Except~~
28 ~~for information held confidential under this subsection, the records of the Division shall~~
29 ~~be open to public inspection. All records and information given to the North Carolina~~
30 ~~Crime Victims Compensation Commission to process a claim on behalf of a crime victim~~
31 ~~shall be confidential. Such exhibits, medical records, psychological records, counseling~~
32 ~~records, work records, criminal investigation records, criminal court case records, witness~~
33 ~~statements, telephone records, and any other records of any type or nature that are~~
34 ~~gathered for the purpose of evaluating whether to compensate an innocent victim of~~
35 ~~crime shall not be obtainable by any person except:~~

36 (1) In the event of an appeal under the North Carolina Administrative
37 Procedure Act, and then only to the extent necessary for review by the
38 Office of Administrative Hearings.

39 (2) In the event of a review by the General Courts of Justice, and then only
40 to the extent necessary for review by the court.

41 (3) By order of the North Carolina Crime Victims Compensation
42 Commission granting or denying compensation to an applicant.

1 Upon a strict showing to the court in a separate civil or criminal action that the
2 information being sought is not obtainable after diligent effort from any other source and
3 the information is known to exist only in Commission records, the court may conduct an
4 in camera review of the Commission's records to determine if the information being
5 sought exists. If the court determines that the information exists, the court may order the
6 information released if:

7 (1) The court finds that the release of the documents will not pose any
8 threat to the safety and health of the victim or any other person whose
9 identity may appear in the Commission records.

10 (2) The documents are being sought for a proper purpose and good cause
11 exists to release the documents."

12 Section 3. G.S. 15B-11 reads as rewritten:

13 **"§ 15B-11. Grounds for denial of claim or reduction of award.**

14 (a) An award of compensation shall be denied if:

15 (1) The claimant fails to file an application for an award within ~~one year~~ two
16 years after the date of the criminally injurious conduct that caused the
17 injury or death for which the claimant seeks the award;

18 (2) The economic loss is incurred after one year from the date of the
19 criminally injurious conduct that caused the injury or death for which
20 the victim seeks the award, except in the case where the victim for
21 whom compensation is sought was 10 years old or younger at the time
22 the injury occurred. In that case an award of compensation will be
23 denied if the economic loss is incurred after two years from the date of
24 the criminally injurious conduct that caused the injury or death for
25 which the victim seeks the award;

26 (3) The criminally injurious conduct was not reported to a law enforcement
27 officer or agency within 72 hours of its occurrence, and there was no
28 good cause for the delay;

29 (4) The award would benefit the offender or the offender's accomplice,
30 unless a determination is made that the interests of justice require that
31 an award be approved in a particular case;

32 (5) The criminally injurious conduct occurred while the victim was
33 confined in any State, county, or city prison, correctional, youth
34 services, or juvenile facility, or local confinement facility, or half-way
35 house, group home, or similar facility; or

36 (6) The victim was participating in a felony or a nontraffic misdemeanor at
37 or about the time that the victim's injury occurred.

38 (b) A claim may be denied and an award of compensation may be reduced upon a
39 finding of contributory misconduct by the claimant or a victim through whom the
40 claimant claims.

41 (c) A claim may be denied, an award of compensation may be reduced, and a
42 claim that has already been decided may be reconsidered upon finding that the claimant

1 or victim has not fully cooperated with appropriate law enforcement agencies with regard
2 to the criminally injurious conduct that is the basis for the award.

3 (d) After reaching a decision to approve an award of compensation, but before
4 notifying the claimant, the Director shall require the claimant to submit current
5 information as to collateral sources on forms prescribed by the Commission.

6 An award that has been approved shall nevertheless be denied or reduced to the extent
7 that the economic loss upon which the claim is based is or will be recouped from a
8 collateral source. If an award is reduced or a claim is denied because of the expected
9 recoupment of all or part of the economic loss of the claimant from a collateral source,
10 the amount of the award or the denial of the claim shall be conditioned upon the
11 claimant's economic loss being recouped by the collateral source. If it is thereafter
12 determined that the claimant will not receive all or part of the expected recoupment, the
13 claim shall be reopened and an award shall be approved in an amount equal to the amount
14 of expected recoupment that it is determined the claimant will not receive from the
15 collateral source, subject to the limitations set forth in subsections (f) and (g). The
16 existence of a collateral source that would pay expenses directly related to a funeral,
17 cremation, and burial, including transportation of a body, shall not constitute grounds for
18 the denial or reduction of an award of compensation.

19 ~~(e) Compensation may not be awarded if the economic loss is less than one~~
20 ~~hundred dollars (\$100.00).~~

21 (f) Compensation for work loss, replacement services loss, dependent's economic
22 loss, and dependent's replacement services loss may not exceed two hundred dollars
23 (\$200.00) per week.

24 (g) Compensation payable to a victim and to all other claimants sustaining
25 economic loss because of injury to, or the death of, that victim may not exceed ~~twenty~~
26 thirty thousand dollars (\$20,000)–(\$30,000) in the aggregate in addition to allowable
27 funeral, cremation, and burial expenses.

28 (h) The right to reconsider or reopen a claim does not affect the finality of its
29 decision for the purpose of judicial review."

30 Section 4. G.S. 143B-480.2(a) reads as rewritten:

31 "(a) Only victims who have reported the following crimes are eligible for assistance
32 under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape as
33 defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-
34 degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-
35 degree rape or attempted first-degree or second-degree sexual offense as defined in G.S.
36 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance
37 services, and mental health services provided by a professional licensed or certified by
38 the State to provide such services, not to exceed ~~five hundred dollars (\$500.00)~~ one
39 thousand dollars (\$1,000) incurred by the victim for the medical examination, medical
40 procedures to collect evidence, or counseling treatment which follow the attack, or
41 ambulance services from the place of the attack to a place where medical treatment is
42 provided. Assistance not to exceed fifty dollars (\$50.00) shall be provided to victims to
43 replace clothing that was held for evidence tests."

1 Section 5. This act is effective for all claims where the criminally injurious
2 conduct occurred on or after July 1, 1998.