

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 19.2-368.2, 19.2-368.5, 19.2-368.8 and 19.2-368.10 of the Code of Virginia, relating to the Criminal Injuries Compensation Fund.*

[S 1308]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-368.2, 19.2-368.5, 19.2-368.8 and 19.2-368.10 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-368.2. Definitions.

For the purpose of this chapter:

"Claimant" means the person filing a claim pursuant to this chapter.

"Commission" means the Virginia Workers' Compensation Commission.

"Crime" means an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-51.4 or § 18.2-266.

"Family," when used with reference to a person, means (i) any person related to such person within the third degree of consanguinity or affinity, (ii) any person residing in the same household with such person, or (iii) a spouse.

"Sexual abuse" means sexual abuse as defined in subdivision 6 of § 18.2-67.10 and acts constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2.

"Victim" means a person who suffers personal physical injury or death as a direct result of a crime including a person who is injured or killed as a result of foreign terrorism or who suffers personal emotional injury as a direct result of being the subject of a violent felony offense as defined in subsection C of § 17.1-805, or attempted robbery or abduction.

§ 19.2-368.5. Filing of claims; deferral of proceedings.

A. A claim may be filed by a person eligible to receive an award, as provided in § 19.2-368.4, or if such person is a minor, by his parent or guardian. In any case in which the person entitled to make a claim is incapacitated, the claim may be filed on his behalf by his guardian, conservator or such other individual authorized to administer his estate.

B. A claim shall be filed by the claimant not later than one year after the occurrence of the crime upon which such claim is based, or not later than one year after the death of the victim. However, (i) in cases involving claims made on behalf of a minor or a person who is incapacitated, the provisions of subsection A of § 8.01-229 shall apply to toll the one-year period; ~~and~~ (ii) in cases involving claims made by a victim against profits of crime forfeited and held in escrow pursuant to Chapter 21.2 (§ 19.2-368.19 et seq.) of this title, the claim shall be filed within five years of the date of the order of forfeiture; ~~and (iii) in cases involving claims of sexual abuse of a minor, the claim shall be filed within ten years after the minor's eighteenth birthday. In all other cases, upon~~ For good cause shown, the Commission may extend the time for filing for a period not exceeding, under any circumstances, two years after such occurrence.

C. Claims shall be filed in the office of the Commission in person or by mail. The Commission shall accept for filing all claims submitted by persons eligible under subsection A of this section and alleging the jurisdictional requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the Commission.

D. Upon filing of a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred. If, within ten days after such notification, the attorney for the Commonwealth so notified advises the Commission that a criminal prosecution is pending upon the same alleged crime, the Commission shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded in the circuit court unless notification is received from the attorney for the Commonwealth that no objection is made to a continuation of the investigation and determination of the claim. When such criminal prosecution has been concluded in the circuit court the attorney for the Commonwealth shall promptly so notify the Commission. Nothing in this section shall be construed to mean that the Commission is to defer proceedings upon the filing of an appeal, nor shall this section be construed to limit the authority

of the Commission to grant emergency awards as hereinafter provided.

§ 19.2-368.8. Reinvestigation of decision; reconsideration of award; judicial review.

A. The Commission, on its own motion, or upon request of the claimant, may reinvestigate or reopen a decision making or denying an award. ~~Under no circumstances shall~~ *Except for claims of sexual abuse that occurred while the victim was a minor*, the Commission shall not reopen or reinvestigate a case after the expiration of two years from the date of occurrence of the crime upon which the claim is based. *Any claim involving the sexual abuse of a minor that has been denied before July 1, 2001, because it was not timely filed may, upon application filed with the Commission, be reconsidered provided the application for reconsideration is filed within ten years after the minor's eighteenth birthday.*

B. The Commission shall reconsider, at least annually, every award upon which periodic payments are being made. An order or reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud. The right of reconsideration does not affect the finality of a Commission decision for the purposes of judicial review.

C. Within thirty days of the date of the report containing the final decision of the Commission, the claimant may, if in his judgment the award is improper, appeal such decision to the Court of Appeals, as provided in § 65.2-706. The Attorney General may appear in such proceedings as counsel for the Commission.

§ 19.2-368.10. When awards to be made; reporting crime and cooperation with law-enforcement.

No award shall be made unless the Commission finds that:

(1) 1. A crime was committed;;

(2) 2. Such crime directly resulted in personal physical injury to, or death of the victim;; and

(3) 3. Police records show that such crime was promptly reported to the proper authorities., and In no case may an award be made where the police records show that such report was made more than 120 hours after the occurrence of such crime, unless the Commission, for good cause shown, finds the delay to have been justified. *The provisions of this subdivision shall not apply to claims of sexual abuse that occurred while the victim was a minor.*

The Commission, upon finding that any claimant or award recipient has not fully cooperated with all law-enforcement agencies, may deny, reduce or withdraw any award, as the case may be.