

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 665

An Act to amend and reenact §§ 19.2-368.5, 19.2-368.9, and 19.2-368.11:1 of the Code of Virginia, relating to the Criminal Injuries Compensation Fund; workgroup.

[H 885]

Approved April 6, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-368.5, 19.2-368.9, and 19.2-368.11:1 of the Code of Virginia are amended and reenacted as follows:

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

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; (ii) in cases involving claims made by a victim against profits of crime 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 special order of escrow; and (iii) in cases involving claims of sexual abuse of a minor, the claim shall be filed within 10 years after the minor's eighteenth birthday. For good cause shown, the Commission may extend the time for filing *for a crime committed on or after July 1, 2001*.

In the case of a crime committed on or after July 1, 1977, and before July 1, 2001, for which a claim was not filed in a timely manner, the Commission may, for good cause shown, extend the time for filing if the attorney for the Commonwealth sends written notification to the Commission that the crime is being investigated as a result of newly discovered evidence. For any claim filed pursuant to this paragraph, the Commission shall only consider expenses that the claimant accrues after the date of written notification by the attorney for the Commonwealth.

C. Claims shall be filed in the office of the Commission in person, by mail, or by electronic means in accordance with standards approved by the Commission. 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 10 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. Upon awarding 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 a criminal prosecution occurs regarding the same alleged crime, the attorney for the Commonwealth shall request the court to order restitution. However, neither the lack of a restitution order, nor the failure of the attorney for the Commonwealth to request such an order, shall preclude the Fund from exercising its subrogation rights pursuant to § 19.2-368.15. Any such restitution shall be paid over to the Comptroller for deposit into the Criminal Injuries Compensation Fund to the extent of the amount of the award paid from the Fund.

§ 19.2-368.9. Emergency awards.

Notwithstanding any other provisions of this chapter, if it appears to the Commission, that (1) such claim is one with respect to which an award probably will be made, and (2) undue hardship will result to the claimant if immediate payment is not made, the Commission may make an emergency award to the claimant, pending a final decision in the case, provided that (i) the amount of such emergency award shall not exceed ~~\$2,000~~ \$3,000, (ii) the amount of such emergency award shall be deducted from any final award made to the claimant, and (iii) the excess of the amount of such emergency award over the

final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the Commission.

§ 19.2-368.11:1. Amount of award.

A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during total incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to 66 2/3 percent of the victim's average weekly wages. The total amount of weekly compensation shall not exceed \$600. The victim's average weekly wages shall be determined as provided in § 65.2-101.

B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during incapacity at a weekly rate equal to 66 2/3 percent of the difference between the victim's average weekly wages before the injury and the weekly wages which the victim is able to earn thereafter. The combined total of actual weekly earnings and compensation for partial loss of earnings shall not exceed \$600 per week.

C. Compensation for Loss of Earnings of Parent of Minor Victim: The parent or guardian of a minor crime victim may receive compensation for loss of earnings, calculated as specified in subsections A and B, for time spent obtaining medical treatment for the child and for accompanying the child to, attending or participating in investigative, prosecutorial, judicial, adjudicatory and post-conviction proceedings.

D. Compensation for Dependents of a Victim Who Is Killed: If death results to a victim of crime entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the provisions of §§ 65.2-512 and 65.2-515 in an amount not to exceed the maximum aggregate payment or the maximum weekly compensation which would have been payable to the deceased victim under this section.

E. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may also be made on claims or portions of claims based upon the claimant's actual expenses incurred as are determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, for the benefit of himself and his family, if he had not been a victim of crime; (iii) expenses directly related to funeral or burial, not to exceed \$5,000; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) mental health counseling for survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4, not to exceed ~~\$2,500~~ \$3,500 per claim; (vi) reasonable and necessary moving expenses, not to exceed ~~\$1,000~~ \$2,000, incurred by a victim or survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4; and (vii) any other reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically provided for. Notwithstanding any other provision of law, a person who is not eligible for an award under subsection A of § 19.2-368.4 who pays expenses directly related to funeral or burial is eligible for reimbursement subject to the limitations of this section.

F. Notwithstanding the provisions of subdivision 3 of § 19.2-368.10, §§ 19.2-368.5, 19.2-368.5:1, 19.2-368.6, 19.2-368.7, 19.2-368.8, subsection G of this section, and § 19.2-368.16, the Criminal Injuries Compensation Fund shall pay for physical evidence recovery kit examinations conducted on victims of sexual assault. Any individual that submits to and completes a physical evidence recovery kit examination shall be considered to have met the reporting and cooperation requirements of this chapter. Funds paid for physical evidence recovery kit collection shall not be offset against the Fund's maximum allowable award as provided in subsection H. Payments may be subject to negotiated agreements with the provider. Healthcare providers that complete physical evidence recovery kit examinations may bill the Fund directly subject to the provisions of § 19.2-368.5:2. The Commission shall develop policies for a distinct payment process for physical evidence recovery kit examination expenses as required under subdivision 1 of § 19.2-368.3.

In order for the Fund to consider additional crime-related expenses, victims shall file with the Fund following the provisions of this chapter and Criminal Injuries Compensation Fund policy.

G. Any claim made pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury from or on behalf of the person who committed the crime or from any other public or private source, including an emergency award by the Commission pursuant to § 19.2-368.9.

H. To qualify for an award under this chapter, a claim must have a minimum value of \$100, and payments for injury or death to a victim of crime, to the victim's dependents or to others entitled to payment for covered expenses, after being reduced as provided in subsection G, shall not exceed \$25,000 in the aggregate.

2. That the Virginia State Crime Commission shall convene a stakeholder workgroup to include state and local representatives from the sexual and domestic violence coalition; representatives from the Department of Criminal Justice Services, the Department of Social Services, the Department of Health and the Criminal Injuries Compensation Fund; and representatives from other relevant state or local entities to support an efficient and comprehensive

streamlining of current federal and state sexual and domestic violence victim service agency funding, including general fund, non-general fund, and special fund monies. The workgroup shall complete its work no later than September 30, 2014.