

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 484

An Act to amend and reenact §§ 19.2-368.2, 19.2-368.3 as it is currently effective and as it may become effective, 19.2-368.5, 19.2-368.5:1, 19.2-368.6 as it is currently effective and as it may become effective, and 19.2-368.11:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-368.3:1, relating to the Compensation for Victims of Crime Act.

[H 571]

Approved April 14, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-368.2, 19.2-368.3 as it is currently effective and as it may become effective, 19.2-368.5, 19.2-368.5:1, 19.2-368.6 as it is currently effective and as it may become effective, and 19.2-368.11:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-368.3:1 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.

"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 ~~robbery, abduction~~ *a violent felony offense as defined in subsection C of § 17-237, or attempted robbery or abduction.*

§ 19.2-368.3. Powers and duties of Commission.

The Commission shall have the following powers and duties in the administration of the provisions of this chapter:

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter.

2. Notwithstanding the provisions of subdivision B 1 of § 2.1-342, to acquire from the attorneys for the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigative results, information and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury. These data shall include prior adult arrest records and juvenile court disposition records of the offender. For such purposes and in accordance with § 16.1-305, the Commission may also acquire from the juvenile and domestic relations district courts a copy of the order of disposition relating to the crime. The use of any information received by the Commission pursuant to this subdivision shall be limited to carrying out the purposes set forth in this section, and this information shall *be confidential and shall not be disseminated further.* The agency from which the information is requested may submit original reports, portions thereof, summaries, or such other configurations of information as will comply with the requirements of this section.

3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter, and to reinvestigate or reopen cases as the Commission deems necessary.

4. To require and direct medical examination of victims.

5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue summonses requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Commission to any member or employee thereof.

6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

7. To render each year to the Governor and to the General Assembly a written report of its activities.

8. To accept from the government of the United States grants of federal moneys for disbursement under the provisions of this chapter.

§ 19.2-368.3. (Delayed effective date) Powers and duties of Commission.

The Commission shall have the following powers and duties in the administration of the provisions

of this chapter:

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter.

2. Notwithstanding the provisions of subdivision B 1 of § 2.1-342, to acquire from the attorneys for the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigative results, information and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury. These data shall include prior adult arrest records and family court disposition records of the offender. For such purposes and in accordance with § 16.1-305, the Commission may also acquire from the family courts a copy of the order of disposition relating to the crime. The use of any information received by the Commission pursuant to this subdivision shall be limited to carrying out the purposes set forth in this section, and this information shall *be confidential and shall not be disseminated further*. The agency from which the information is requested may submit original reports, portions thereof, summaries, or such other configurations of information as will comply with the requirements of this section.

3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter, and to reinvestigate or reopen cases as the Commission deems necessary.

4. To require and direct medical examination of victims.

5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue summonses requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Commission to any member or employee thereof.

6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

7. To render each year to the Governor and to the General Assembly a written report of its activities.

8. To accept from the government of the United States grants of federal moneys for disbursement under the provisions of this chapter.

§ 19.2-368.3:1. *Crime victims' ombudsman.*

A. *The Commission shall employ a crime victims' ombudsman and adequate staff to facilitate the prompt review and resolution of crime victim compensation claims and to assure that crime victims' rights are safeguarded and protected during the claims process. The ombudsman shall report directly to the Commission.*

B. *The ombudsman shall ensure that all parties, including service providers and Criminal Injuries Compensation Fund personnel, are acting in the best interests of the crime victim. The ombudsman shall also provide assistance to crime victims in filling out the necessary forms for compensation and obtaining necessary documentation.*

§ 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 ~~must~~ shall be filed by the claimant not later than ~~180 days~~ one year after the occurrence of the crime upon which such claim is based, or not later than ~~180 days~~ 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 ~~180-day~~ 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. In all other cases, upon 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.

§ 19.2-368.5:1. Failure to perfect claim; denial.

Notwithstanding the provisions of § 19.2-368.5, if, following the initial filing of a claim, a claimant fails to take such further steps to support or perfect the claim as may be required by the Commission within ~~ninety~~ 180 days after written notice of such requirement is sent by the Commission to the claimant, the claimant shall be deemed in default. If the claimant is in default, the Commission shall notify the claimant that the claim is denied and the claimant shall be forever barred from reasserting it; however, the Commission may reopen the proceeding upon a showing by claimant that the failure to do the acts required by the Commission was beyond the control of the claimant.

§ 19.2-368.6. Assignment of claims; investigation; hearing; confidentiality of records; decisions.

A. A claim, when accepted for filing, shall be properly investigated, and, if necessary, assigned by the chairman to a commissioner, deputy commissioner or other proper party for disposition. All claims arising from the death of an individual shall be considered together by the same person.

B. The person to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime, and an examination of medical and hospital reports relating to the injury upon which the claim is based. Health care providers, as defined in § 8.01-581.1, shall provide medical and hospital reports relating to the diagnosis and treatment of the injury upon which the claim is based to the Commission, upon request.

C. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for, or convicted of, any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to a lack of criminal responsibility or other legal exemption.

D. There shall be a rebuttable presumption that the claimant did not contribute to and was not responsible for the infliction of his injury.

~~D.~~ E. The person to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If he is unable to decide the claim, upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible. The hearing of any claim involving a claimant or victim who is a juvenile shall be closed. All records, papers, and reports involving such claim shall be confidential except as to the amount of the award and nonidentifying information concerning the claimant or victim.

~~E.~~ F. For purposes of this chapter, confidentiality provided for by law applicable to a claimant's or victim's juvenile court records shall not be applicable to the extent that the Commission shall have access to those records only for the purposes set forth in this chapter.

~~F.~~ G. After examining the papers filed in support of the claim, and the report of investigation, and after a hearing, if any, a decision shall be made either granting an award pursuant to § 19.2-368.11:1 of this chapter or denying the claim.

~~G.~~ H. The person making a decision shall issue a written report setting forth such decision and his reasons therefor, and shall notify the claimant and furnish him a copy of such report.

§ 19.2-368.6. (Delayed effective date) Assignment of claims; investigation; hearing; confidentiality of records; decisions.

A. A claim, when accepted for filing, shall be properly investigated, and, if necessary, assigned by the chairman to a commissioner, deputy commissioner or other proper party for disposition. All claims arising from the death of an individual shall be considered together by the same person.

B. The person to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime, and an examination of medical and hospital reports relating to the injury upon which the claim is based. Health care providers, as defined in § 8.01-581.1, shall provide medical and hospital reports relating to the diagnosis and treatment of the injury upon which the claim is based to the Commission, upon request.

C. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for, or convicted of, any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to a lack of criminal responsibility or other legal exemption.

D. There shall be a rebuttable presumption that the claimant did not contribute to and was not responsible for the infliction of his injury.

~~D.~~ E. The person to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If he is unable to decide the claim, upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible. The hearing of any claim involving a claimant or victim who is a juvenile shall be closed. All records, papers, and reports involving such claim shall be confidential except as to the amount of the award and nonidentifying

information concerning the claimant or victim.

~~E.~~ *F.* For purposes of this chapter, confidentiality provided for by law applicable to a claimant's or victim's family court records shall not be applicable to the extent that the Commission shall have access to those records only for the purposes set forth in this chapter.

~~F.~~ *G.* After examining the papers filed in support of the claim, and the report of investigation, and after a hearing, if any, a decision shall be made either granting an award pursuant to § 19.2-368.11:1 of this chapter or denying the claim.

~~G.~~ *H.* The person making a decision shall issue a written report setting forth such decision and his reasons therefor, and shall notify the claimant and furnish him a copy of such report.

§ 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 sixty-six and two-thirds percent of the victim's average weekly wages. The total amount of weekly compensation shall not exceed \$200. 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 sixty-six and two-thirds 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 \$200 per week.

C. 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.

D. 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 in any way related to funeral or burial, not to exceed ~~\$2,000~~ \$3,500; (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 \$1,000 per claim; ~~and~~ (vi) *reasonable and necessary moving expenses, not to exceed \$500, 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.

E. 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.

F. 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 E, shall not exceed \$15,000 in the aggregate.