

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 147

Short Title: Victim's Comp/Changes.

(Public)

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Sponsors: Senator Odom.

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Referred to: Judiciary I.

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February 13, 1989

A BILL TO BE ENTITLED

1 AN ACT TO LIMIT CLAIMS TO VICTIM AND PERSONS WHO HELPED HIM,  
2 TO ALLOW THE NORTH CAROLINA CRIME VICTIM'S COMPENSATION  
3 COMMISSION AND ITS DIRECTOR AUTHORITY TO ADEQUATELY  
4 INVESTIGATE A CLAIM FOR COMPENSATION BY REQUIRING A VICTIM  
5 OR CLAIMANT TO PROVIDE NECESSARY MEDICAL AND  
6 PSYCHOLOGICAL INFORMATION, TO REQUIRE LAW ENFORCEMENT TO  
7 COOPERATE WITH THE COMMISSION, TO ALLOW THE COMMISSION TO  
8 KEEP MEDICAL, LAW ENFORCEMENT AND JUVENILE RECORDS  
9 CONFIDENTIAL, TO MAKE A TECHNICAL CORRECTION TO THE RULES  
10 OF EVIDENCE IN A CONTESTED CASE HEARING, TO ALLOW THE  
11 DIRECTOR TO NEGOTIATE WITH SERVICE PROVIDERS FOR A REDUCED  
12 RATE, AND TO PROVIDE FOR THE DIRECTOR TO PURSUE RESTITUTION  
13 FROM CONVICTED CRIMINALS.  
14

15 The General Assembly of North Carolina enacts:

16 Section 1. G.S. 15B-2(2) reads as rewritten:

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

- 19 a. A victim;
- 20 b. A dependent of a deceased victim;
- 21 c. A third person ~~other than who is not a collateral source;~~ source and who  
22 provided benefit to the victim or his family other than in the course or  
23 scope of his employment, business, or profession;

1 d. A person who is authorized to act on behalf of a victim, a dependent,  
2 or a third person ~~who is not a collateral source.~~ described in subdivision  
3 c.

4 The claimant, however, may not be the offender or an accomplice of the offender who  
5 committed the criminally injurious conduct."

6 Sec. 2. G.S. 15B-2(3) reads as rewritten:

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

- 10 a. The offender;
- 11 b. The government of the United States or any of its agencies, a state or  
12 any of its political subdivisions, or an instrumentality of two or more  
13 states;
- 14 c. Social security, medicare, and medicaid;
- 15 d. State-required, temporary, nonoccupational disability insurance;
- 16 e. Worker's compensation;
- 17 f. Wage continuation programs of any employer;
- 18 g. Proceeds of a contract of insurance payable to the ~~victim~~ victim, his  
19 estate, heirs, or a claimant on account of the victim's death or for loss  
20 that he—the victim sustained because of the criminally injurious  
21 conduct;
- 22 h. A contract providing prepaid hospital and other health care services, or  
23 benefits for disability."

24 Sec. 3. G.S. 15B-4 reads as rewritten:

25 **"§ 15B-4. Award of compensation.**

26 (a) Subject to the limitations in G.S. 15B-22, compensation for criminally  
27 injurious conduct shall be awarded to a claimant if substantial evidence establishes that  
28 the requirements for an award have been met. Compensation shall only be paid for  
29 economic loss and not for non-economic loss.

30 (b) Compensation shall only be awarded for criminally injurious conduct that  
31 occurs or is attempted in this State except that criminally injurious conduct that occurs  
32 or is attempted against a resident of this State while in another state which does not have  
33 a victim's compensation program of any type may be a basis of compensation."

34 Sec. 4. G.S. 15B-6 reads as rewritten:

35 **"§ 15B-6. Powers of the ~~Commission.~~ Commission and Director.**

36 (a) In addition to powers authorized by this Chapter and Chapter 150B, the  
37 Commission may:

- 38 (1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and  
39 Article 2 of Chapter 150B of the General Statutes necessary to carry  
40 out the purposes of this Chapter;
- 41 (2) Establish general policies and guidelines for awarding compensation  
42 and provide guidance to the staff assigned by the Secretary of the  
43 Department of Crime Control and Public Safety to administer the  
44 program;

1 (3) Accept for any lawful purpose and functions under this Chapter any  
2 and all donations, both real and personal, and grants of money from  
3 any governmental unit or public agency, or from any institution,  
4 person, firm, or corporation, and may deposit the same to the Crime  
5 Victims Compensation Fund.

6 (b) The Director shall have the following authority:

7 (1) If the mental, physical or emotional condition of a victim or claimant  
8 is material to a claim for an award of compensation, the Director may  
9 order the victim or claimant to submit to a mental or physical  
10 examination by a physician or psychologist, and may order the autopsy  
11 of a deceased victim. The order may be made for good cause shown  
12 and upon notice to the person to be examined and to the claimant. The  
13 order shall specify the time, place, manner, conditions, and scope of  
14 the examination or autopsy, the person by whom it is to be made, and  
15 shall require the person who performs the examination or autopsy to  
16 file with the Director a detailed written report of the examination or  
17 autopsy. The report shall set out the findings, include the results of all  
18 tests made, diagnosis, prognosis, and other conclusions, and report of  
19 earlier examinations of the same conditions. On request of the person  
20 examined, the Director shall furnish him a copy of the report. If the  
21 victim is deceased, the Director on request, shall furnish the claimant a  
22 copy of the report.

23 (2) The Director may request that law enforcement officers employed by  
24 the State or any political subdivision thereof provide him with copies  
25 of any information or data gathered in the investigation of criminally  
26 injurious conduct, that is, the basis of any claim to enable it to  
27 determine whether, and the extent to which, a claimant qualifies for an  
28 award of compensation. The Director may also request that  
29 prosecuting attorneys, law enforcement officers, and State agencies  
30 conduct investigations and provide information necessary to enable the  
31 Director or Commission to determine whether, and the extent to  
32 which, a claimant qualifies for an award of compensation. Information  
33 obtained pursuant to this subdivision is subject to the same privilege  
34 against public disclosure that may be asserted by the providing source.

35 (3) The Director may require the claimant to supplement the application  
36 for an award of compensation with any reasonably available medical  
37 or psychological reports pertaining to the injury for which the award of  
38 compensation is claimed.

39 (4) The Director may not request the victim or the claimant to supply any  
40 evidence that would not be admissible at trial under G.S. 8C-1, Rule  
41 412.

42 (5) Notwithstanding any provision to the contrary relating to  
43 confidentiality of juvenile records, the Commission and Director shall  
44 have access to the records of juvenile proceedings which bear upon an

1                    application for compensation, but to the extent possible, it shall  
2                    maintain the confidentiality of those records."

3                    Sec. 5. Chapter 15B of the General Statutes is amended by adding a new  
4 subsection to read:

5 **"§ 15B-8A. Privilege and records of the Commission.**

6                    (a) There is no privilege, except the privileges arising from attorney-client  
7 relationship in the North Carolina and the United States Constitutions, as  
8 communications or records that are relevant to the physical, mental, or emotional  
9 condition of the claimant or victim in a proceeding under this Chapter in which that  
10 condition is an element.

11                    (b) All medical information relating to the mental, physical, or emotional  
12 condition of a victim or claimant and all law enforcement records and information and  
13 any juvenile records shall be held confidential by the Commission and Director. Except  
14 for information held confidential under this subsection, the records of the Division shall  
15 be open to public inspection."

16                    Sec. 6. G.S. 15B-12(f) reads as rewritten:

17                    "(f) The administrative law judge may not request the victim or the claimant to  
18 supply any evidence that would not be admissible at a trial under ~~G.S. 8-58.6~~ G.S. 8C-1,  
19 Rule 412."

20                    Sec. 7. G.S. 15B-16 is amended by adding a new subsection to read:

21                    "(e) The Director, even after an award made by the Commission, may negotiate  
22 with any service provider in order to obtain a reduction of the amount claimed by the  
23 provider in exchange for a full release of any claim against a claimant."

24                    Sec. 8. G.S. 15B-18 is amended by adding a new subsection to read:

25                    "(f) The Director may pursue any claim of the Crime Victim's Compensation  
26 Fund or the Commission set forth in this Chapter. At the request of the Director, or  
27 otherwise, the Attorney General is authorized to assert the rights of the Crime Victim's  
28 Compensation Fund or Commission before any administrative or judicial tribunal for  
29 purposes of enforcing a claim or right set forth in this Chapter."

30                    Sec. 9. This act is effective upon ratification.