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Legislative Document

No. 1550

S.P. 487

In Senate, April 11, 2019

An Act To Create a Victims' Compensation Fund for Victims of Property Crimes

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LIBBY of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA c. 316-C** is enacted to read:

3 **CHAPTER 316-C**

4 **VICTIMS' PROPERTY COMPENSATION FUND**

5 **§3360-S. Victims' Property Compensation Fund**

6 **1. Definitions.** As used in this chapter, unless the context otherwise indicates, the
7 following terms have the following meanings.

8 A. "Board" means the Victims' Compensation Board established in section 12004-J,
9 subsection 11.

10 B. "Crime" means a criminal offense committed under the laws of the State that
11 resulted in verifiable property loss of a person other than a person who committed the
12 crime.

13 C. "Fund" means the Victims' Property Compensation Fund established in subsection
14 2.

15 D. "Property loss" means the value of property taken from a victim or of property
16 destroyed or otherwise broken or harmed as a direct result of a crime. "Property loss"
17 includes a deductible paid by the victim pursuant to an insurance claim related to the
18 property loss.

19 **2. Victims' Property Compensation Fund established.** The Victims' Property
20 Compensation Fund is established to provide for the payment of claims arising under this
21 chapter and for the payment of all necessary and proper expenses incurred by the board in
22 carrying out this chapter. The Attorney General shall administer the fund, which must be
23 held separate and apart from all other money, funds and accounts. The fund receives
24 proceeds from money collected pursuant to subsection 3 and may receive private
25 donations, federal funds and state funds designated by law that may be used for the
26 payment of claims and for reasonable administrative costs. Eligible investment earnings
27 credited to the assets of the fund become part of the assets of the fund. Any unexpended
28 balances remaining in the fund at the end of any fiscal year do not lapse and must be
29 carried forward to the next fiscal year.

30 **3. Funding source.** In addition to an assessment under section 3360-I, the court
31 shall impose an assessment of \$10 on any person convicted of murder or a Class A crime,
32 Class B crime or Class C crime and \$5 on any person convicted of a Class D crime or
33 Class E crime. Notwithstanding any other law, the court may not waive the imposition of
34 the assessment required by this subsection. For purposes of collection and collection
35 procedures, this assessment is considered part of the fine. At the time of commitment, the
36 court shall inform the Department of Corrections or the county sheriff of any unpaid
37 balances on assessments owed by the offender to the fund. All funds collected as a result
38 of these assessments accrue to the fund. When compensation is awarded from the fund,
39 the amount of any restitution ordered and paid as part of a sentence imposed that, when
40 added to the award from the fund, exceeds the victim's actual property loss must be paid

1 to the fund, in an amount not to exceed the amount of the award. Similarly, the amount
2 of any insurance, 3rd-party payment or recovery in a successful civil action against a
3 person responsible for the property loss that, when added to the award from the fund,
4 exceeds the victim's actual property loss must be paid to the fund, in an amount not to
5 exceed the amount of the award.

6 **4. Eligibility.** The board may award compensation under this chapter to an
7 individual who:

8 A. Suffers a property loss as a result of a crime;

9 B. Would otherwise be eligible for compensation, even though:

10 (1) The criminal conduct occurred in this State but within the exclusive
11 jurisdiction of the United States;

12 (2) The property loss resulted from conduct that violates a criminal law of the
13 United States; or

14 (3) The crime occurred in another state, but only if the person is a resident of this
15 State and the other state does not have a victims' property compensation program
16 for which residents of this State are eligible and the person would have been
17 eligible under this chapter if the conduct had occurred in this State; or

18 C. Is a resident of this State and suffers property loss as a direct result of a crime
19 specified in section 3360, subsection 3, paragraph F committed outside of the United
20 States.

21 **5. Claim requirements.** The board shall consider a claim under this chapter if:

22 A. The underlying crime was reported to a law enforcement officer within 5 days of
23 the occurrence or discovery of the crime or of the resultant property loss; and

24 B. The claim is filed with the board within 3 years of the occurrence of the property
25 loss or within 60 days of the discovery of the property loss, whichever is later.

26 The board may waive the time requirements of this subsection for good cause shown.

27 **6. Cooperation.** Compensation under this chapter may not be paid:

28 A. To any claimant who does not fully cooperate with the board or with the
29 reasonable requests of law enforcement officers or prosecution authorities; or

30 B. To or on behalf of any person who violated a criminal law that caused or
31 contributed to the property loss for which compensation is sought.

32 **7. Submission of claims.** The board may provide forms for the submission of
33 claims and claims information under this chapter. A claim must be submitted to the
34 board and must:

35 A. Be in writing;

36 B. Specify the date, the nature and circumstances of the crime and the law
37 enforcement agency to which the crime was reported; and

1 C. Include documentation of an eligible property loss for which the claimant seeks
2 compensation, including the payment of any deductible paid by the victim pursuant to
3 an insurance claim related to the property loss.

4 **8. Compensation.** The board may award compensation under this chapter to a
5 claimant of up to \$5,000 for actual and unreimbursed property losses or in whole or in
6 part for an insurance deductible paid by the victim pursuant to an insurance claim related
7 to the property loss. The board, in its sole discretion, may disburse funds awarded
8 directly to the claimant or to the individuals or entities who provided the services to
9 restore, repair or replace property for which compensation was awarded. In the case of
10 joint claimants, the board may apportion the total compensation as the board determines.

11 **9. Hearing; determination of compensation.** The board may hold a hearing on any
12 claim under this chapter, and the board shall hold a hearing if requested by the claimant.
13 The claimant may address the board at a hearing on the claim, and the board may take
14 testimony under oath. A determination under this subsection must be conducted as
15 follows.

16 A. In addition to the material and information required by law and by the board, the
17 claimant may provide the board with any other information pertinent to the nature or
18 the amount of the claim. The board shall receive and consider information provided
19 by law enforcement agencies and prosecution authorities and, at its sole discretion,
20 may receive and consider relevant information from any other source.

21 B. The board shall determine by a preponderance of the evidence whether a specified
22 crime occurred, whether the property loss was the result of that criminal conduct, the
23 amount of property loss suffered by the claimant, whether to award compensation and
24 the amount of the compensation, if awarded. In determining the amount of
25 compensation to be paid, the board shall consider the amount available to pay
26 victims' property compensation claims, the history of claims paid by the board, the
27 number and amount of currently pending claims and the nature and cost of expenses
28 submitted by the claimant.

29 C. The board shall determine action on a claim with a quorum participating on that
30 claim, but any award of compensation requires the unanimous concurrence of all
31 members present.

32 D. The board's final decision must contain reasons for the determination.

33 **10. Appeal.** Only a claimant under this chapter may appeal a decision of the board.
34 An appeal of the board's final decisions must be to the Superior Court as provided for
35 other administrative actions under chapter 375, subchapter 7. Board decisions and the
36 amount of awards must be upheld unless the court finds no rational basis for the decision
37 or that the board abused its discretion.

38 **11. Implementation.** Notwithstanding the effective date of this chapter:

39 A. The assessments required by subsection 3 apply to penalties imposed for criminal
40 conduct alleged to have occurred on or after January 1, 2020;

41 B. The board may not award compensation under this chapter for any crime that
42 occurred prior to January 1, 2020; and

1 C. The board is not obligated to process or pay claims under this chapter before June
2 1, 2020.

3 **12. Information.** The Attorney General shall develop a fact sheet for victims about
4 the victims' property compensation program under this chapter and shall make copies
5 available to all courts, prosecutors' offices and law enforcement agencies, which shall
6 provide the fact sheet to all victims of crimes in which property losses were incurred.
7 The Attorney General shall make the fact sheet available on the Attorney General's
8 publicly available website.

9 **13. Confidentiality.** All records and information obtained by or in the possession of
10 the Department of the Attorney General concerning an application for or an award of
11 compensation under this chapter are confidential and may not be disclosed, except that
12 the Attorney General may provide access to those records and information to the board
13 for use in the board's official duties and those records and information remain
14 confidential while in the possession of the board. The records or information may, at the
15 sole discretion of the Attorney General or designee of the Attorney General, be disclosed
16 to:

17 A. Law enforcement officers to assist them with the discharge of their official duties;

18 B. The courts and the Department of Corrections to provide them with information to
19 assess, collect and disburse restitution;

20 C. A claimant who has requested a hearing before the board or who has appealed a
21 final decision of the board; and

22 D. Other persons to carry out the purposes of this chapter.

23 SUMMARY

24 This bill creates the Victims' Property Compensation Fund to compensate victims of
25 crimes in which the victims suffered property losses, patterned after the existing Victims'
26 Compensation Fund, which compensates victims of crimes for damages resulting from
27 personal injuries resulting from those crimes. The Victims' Property Compensation Fund
28 is funded by an assessment of \$10 on any person convicted of murder or a Class A crime,
29 Class B crime or Class C crime and \$5 on any person convicted of a Class D crime or
30 Class E crime and may compensate a victim of a property crime up to \$5,000 for property
31 losses or insurance deductibles paid pursuant to an insurance claim as a result of the
32 property loss. The bill provides that the existing Victims' Compensation Board hears
33 claims made upon the Victims' Property Compensation Fund.