

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 79

Short Title: No Comp for Unlawful Conduct.

(Public)

Sponsors: Representatives Russell; Berry, Bowman, Brawley, Church, Lemmond, Mitchell, Morgan, and Wood.

Referred to: Judiciary II.

February 11, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INJURY OCCURRING IN THE COURSE OF
UNLAWFUL CONDUCT SHALL NOT BE COMPENSABLE THROUGH THE
CRIME VICTIMS COMPENSATION FUND.

The General Assembly of North Carolina enacts:

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

"§ 15B-2. Definitions.

As used in this Chapter, unless the context requires otherwise:

- (1) 'Allowable expense' means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of two thousand dollars (\$2,000) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service.

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

- a. A victim;
b. A dependent of a deceased victim;

- 1 c. A third person who is not a collateral source and who provided
2 benefit to the victim or his family other than in the course or
3 scope of his employment, business, or profession;
- 4 d. A person who is authorized to act on behalf of a victim, a
5 dependent, or a third person described in subdivision c.
6 ~~The claimant, however,~~ However, the claimant may not be the offender
7 or an accomplice of the offender who committed the criminally
8 injurious ~~conduct.~~ conduct nor may the claimant be any person who
9 was injured while engaged in unlawful conduct.
- 10 (3) 'Collateral source' means a source of benefits or advantages for
11 economic loss otherwise compensable that the victim or claimant has
12 received or that is readily available to him from any of the following
13 sources:
- 14 a. The offender;
- 15 b. The government of the United States or any of its agencies, a
16 state or any of its political subdivisions, or an instrumentality of
17 two or more states;
- 18 c. Social security, medicare, and medicaid;
- 19 d. State-required, temporary, nonoccupational disability insurance;
- 20 e. Worker's compensation;
- 21 f. Wage continuation programs of any employer;
- 22 g. Proceeds of a contract of insurance payable to the victim for
23 loss that he sustained because of the criminally injurious
24 conduct;
- 25 h. A contract providing prepaid hospital and other health care
26 services, or benefits for disability.
- 27 (4) 'Commission' means the Crime Victims Compensation Commission
28 established by G.S. 15B-3.
- 29 (5) 'Criminally injurious conduct' means conduct which by its nature poses
30 a substantial threat of personal injury or death, and is punishable by
31 fine or imprisonment or death, or would be so punishable but for the
32 fact that the person engaging in the conduct lacked the capacity to
33 commit the crime under the laws of this State. Criminally injurious
34 conduct includes conduct which amounts to an offense involving
35 impaired driving as defined in G.S. 20-4.01(24a) but does not include
36 conduct arising out of the ownership, maintenance, or use of a motor
37 vehicle when the conduct is punishable only as a violation of other
38 provisions of Chapter 20 of the General Statutes.
- 39 (6) 'Dependent' means an individual wholly or substantially dependent
40 upon the victim for care and support and includes a child of the victim
41 born after his death.
- 42 (7) 'Dependent's economic loss' means loss after a victim's death of
43 contributions of things of economic value to his dependents, not
44 including services they would have received from the victim if he had

1 not suffered the fatal injury, less expenses of the dependents avoided
2 by reason of the victim's death.

- 3 (8) 'Dependent's replacement service loss' means loss reasonably incurred
4 by dependents after a victim's death in obtaining ordinary and
5 necessary services in lieu of those the victim would have performed
6 for their benefit if he had not suffered the fatal injury, less expenses of
7 the dependents avoided by reason of the victim's death and not
8 subtracted in calculating dependent's economic loss.

9 Dependent's replacement service loss will be limited to a 26-week period
10 commencing from the date of the injury and compensation shall not
11 exceed two hundred dollars (\$200.00) per week.

- 12 (9) 'Director' means the Director of the Commission appointed under G.S.
13 15B-3(g).

- 14 (10) 'Economic loss' means economic detriment consisting only of
15 allowable expense, work loss, and replacement services loss. If
16 criminally injurious conduct causes death, economic loss includes a
17 dependent's economic loss and a dependent's replacement service loss.
18 Noneconomic detriment is not economic loss, but economic loss may
19 be caused by pain and suffering or physical impairment.

- 20 (11) 'Noneconomic detriment' means pain, suffering, inconvenience,
21 physical impairment, or other nonpecuniary damage.

- 22 (12) 'Replacement services loss' means expenses reasonably incurred in
23 obtaining ordinary and necessary services in lieu of those the injured
24 person would have performed, not for income but for the benefit of
25 himself or his family, if he had not been injured.

26 Replacement service loss will be limited to a 26-week period
27 commencing from the date of the injury, and compensation may not
28 exceed two hundred dollars (\$200.00) per week.

- 29 (12a) 'Substantial evidence' means relevant evidence that a reasonable mind
30 might accept as adequate to support a conclusion.

- 31 (12b) 'Unlawful conduct' means conduct which would constitute the
32 commission of a misdemeanor or felony.

- 33 (13) 'Victim' means a person who suffers personal injury or death
34 proximately caused by criminally injurious conduct.

- 35 (14) 'Work loss' means loss of income from work that the injured person
36 would have performed if he had not been injured and expenses
37 reasonably incurred by him to obtain services in lieu of those he would
38 have performed for income, reduced by any income from substitute
39 work actually performed by him, or by income he would have earned
40 in available appropriate substitute work that he was capable of
41 performing but unreasonably failed to undertake.

42 Compensation for work loss will be limited to 26 weeks
43 commencing from the date of the injury, and compensation may not
44 exceed two hundred dollars (\$200.00) per week. A claim for work

1 loss will be paid only upon proof that the injured person was gainfully
2 employed at the time of the criminally injurious conduct and, by
3 physician's certificate, that the injured person was unable to work."

4 Sec. 2. G.S. 15B-11(a) reads as rewritten:

5 "(a) An award of compensation ~~will~~ shall be denied if:

- 6 (1) The claimant fails to file his application for an award within one year
7 after the date of the criminally injurious conduct that caused the injury
8 or death for which he seeks the award;
- 9 (2) The economic loss is incurred after one year from the date of the
10 criminally injurious conduct that caused the injury or death for which
11 the victim seeks the award, except in the case where the victim for
12 whom compensation is sought was 10 years old or younger at the time
13 the injury occurred. In that case an award of compensation will be
14 denied if the economic loss is incurred after two years from the date of
15 the criminally injurious conduct that caused the injury or death for
16 which the victim seeks the award;
- 17 (3) The criminally injurious conduct was not reported to a law
18 enforcement officer or agency within 72 hours of its occurrence, and
19 there was no good cause for the delay;
- 20 (4) The award would benefit the offender or ~~his accomplice, unless a~~
21 ~~determination is made that the interests of justice require that an award~~
22 ~~be approved in a particular case; or~~ the offender's accomplice or any
23 person whose claim arises from an injury that occurred in the course of
24 unlawful conduct; or
- 25 (5) The criminally injurious conduct occurred while the victim was
26 confined in any State, county, or city prison, correctional, youth
27 services, or juvenile facility, or local confinement facility, or half-way
28 house, group home, or similar facility."

29 Sec. 3. This act becomes effective July 1, 1994, and applies to conduct
30 occurring on or after that date.