

Senate Bill 172

By: Senators Hamrick of the 30th and Mullis of the 53rd

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 15 of Title 17 of the Official Code of Georgia Annotated, relating to  
2 victim compensation, so as to provide for recovery for serious mental and emotional trauma;  
3 to update legislative intent; to change definitions and provide for a new definition; to change  
4 provisions related to filing of claims; to change provisions relating to investigations; to revise  
5 the characteristics of persons eligible for awards; to change provisions relating to the board's  
6 required findings and effective dates for certain awards; to provide for related matters; to  
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 15 of Title 17 of the Official Code of Georgia Annotated, relating to victim  
11 compensation, is amended by revising Code Section 17-15-1, relating to legislative intent,  
12 as follows:

13 "17-15-1.

14 The General Assembly recognizes that many innocent persons suffer personal physical  
15 injury, serious mental or emotional trauma, severe financial hardship, or death as a result  
16 of criminal acts or attempted criminal acts. The General Assembly finds and determines  
17 that there is a need for assistance for such victims of crime. Accordingly, it is the General  
18 Assembly's intent that under certain circumstances aid, care, and assistance be provided by  
19 the state for such victims of crime."

20 **SECTION 2.**

21 Said chapter is further amended by revising Code Section 17-15-2, relating to definitions, as  
22 follows:

23 "17-15-2.

24 As used in this chapter, the term:

25 (1) 'Board' means the Criminal Justice Coordinating Council.

- 26 (2) 'Claimant' means any person filing a claim pursuant to this chapter.
- 27 (3) 'Crime' means:
- 28 (A) An act which constitutes hit and run as defined in Code Section 40-6-270,  
 29 homicide by vehicle as defined in Code Section 40-6-393, serious injury by vehicle as  
 30 defined in Code Section 40-6-394, or any act which constitutes a violation of Chapter  
 31 6 or Part 2 of Article 3 of Chapter 12 of Title 16, a violation of Code Section 16-5-70,  
 32 or a violent crime as defined by state or federal law which results in physical injury,  
 33 serious mental or emotional trauma, or death to the victim and which is committed:
- 34 (i) In this state;
- 35 (ii) In a state which does not have a victims' compensation program, if the victim is  
 36 a resident of this state; or
- 37 (iii) In a state which has compensated the victim in an amount less than the victim  
 38 would be entitled to pursuant to this chapter, if the victim is a resident of this state;
- 39 (B) An act which constitutes international terrorism as defined in 18 U.S.C. Section  
 40 2331 which results in physical injury, serious mental or emotional trauma, or death to  
 41 the victim, if the victim is a resident of this state and is outside the territorial boundaries  
 42 of the United States when such act is committed; or
- 43 (C) An act of mass violence which results in physical injury, serious mental or  
 44 emotional trauma, or death to the victim, if the victim is a resident of this state and is  
 45 outside the territorial boundaries of the United States when such act is committed.
- 46 (4) 'Direct service provider' means a public or nonprofit entity which provides aid, care,  
 47 and assistance to a victim.
- 48 (5) 'Director' means the director of the Criminal Justice Coordinating Council.
- 49 (6) 'Fund' means the Georgia Crime Victims Emergency Fund.
- 50 (7) 'Investigator' means an investigator of the board.
- 51 (8) 'Serious mental or emotional trauma' means a nonphysical injury which has been  
 52 documented by a licensed mental health professional and which meets the specifications  
 53 promulgated by the board's rules and regulations relating to this type of trauma.
- 54 ~~(8)~~(9) 'Victim' means a person who:
- 55 (A) Is is injured physically, who dies, or who suffers financial hardship as a result of  
 56 being injured physically as a direct result of a crime;
- 57 (B) Suffers a serious mental or emotional trauma as a result of being threatened with  
 58 a crime which could result in physical injury or death; or
- 59 (C) Suffers a serious mental or emotional trauma as a result of being present during the  
 60 commission of a crime."

61 **SECTION 3.**

62 Said chapter is further amended by revising paragraph (3) of subsection (c) of Code Section  
63 17-15-5, relating to filing of claims, as follows:

64 "(3) When appropriate, a statement indicating the extent of any disability resulting from  
65 the injury or serious mental or emotional trauma incurred;"

66 **SECTION 4.**

67 Said chapter is further amended by revising subsection (a) of Code Section 17-15-6, relating  
68 to investigations, as follows:

69 "(a) A claim, once accepted for filing and completed, ~~must~~ shall be assigned to an  
70 investigator. The investigator shall examine the papers filed in support of the claim and  
71 cause an investigation to be conducted into the validity of the claim. The investigation  
72 shall include, but not be limited to, an examination of law enforcement, court, and official  
73 records and reports concerning the crime and an examination of medical, psychiatric,  
74 counseling, financial, and hospital reports relating to the injury, serious mental or  
75 emotional trauma, or loss upon which the claim is based. All claims arising from the death  
76 of an individual as a direct result of a crime must be considered together by a single  
77 investigator."

78 **SECTION 5.**

79 Said chapter is further amended by revising subsections (a) and (h) of Code Section 17-15-7,  
80 relating to persons eligible for awards, as follows:

81 "(a) Except as otherwise provided in this Code section, the following persons are eligible  
82 for awards pursuant to this chapter:

83 (1) A victim;

84 (2) A dependent spouse or child of a victim;

85 (2.1) For purposes of an award under subsection (k) of Code Section 17-15-8, any  
86 member of the immediate family of a victim of homicide by vehicle caused by a violation  
87 of Code Section 40-6-391;

88 (3) Any person who goes to the aid of another and suffers physical injury, serious mental  
89 or emotional trauma, or death as a direct result of acting, not recklessly, to prevent the  
90 commission of a crime, to apprehend lawfully a person reasonably suspected of having  
91 committed a crime, or to aid the victim of a crime or any person who is injured,  
92 traumatized, or killed while aiding or attempting to aid a law enforcement officer in the  
93 prevention of crime or apprehension of a criminal at the officer's request;

94 (4) Any person who is a victim of family violence as defined by Code Section 19-13-1  
95 and anyone who is a victim as a result of a violation of Code Section 40-6-391; or

96 (5) Any person who is not a direct service provider and who assumes the cost of an  
 97 eligible expense of a victim regardless of such person's relationship to the victim or  
 98 whether such person is a dependent of the victim."

99 "(h) A victim or claimant who has been convicted of a felony involving criminally  
 100 injurious conduct and who is currently serving a sentence therefor shall not be considered  
 101 eligible to receive an award under this chapter. For purposes of this subsection, 'criminally  
 102 injurious conduct' means an act which occurs or is attempted in this state that results in  
 103 ~~personal~~ physical injury, serious mental or emotional trauma, or death to a victim, which  
 104 act is punishable by fine, imprisonment, or death. Such term shall not include acts arising  
 105 out of the operation of motor vehicles, boats, or aircraft unless the acts were committed  
 106 with the intent to inflict injury, trauma, or death or unless the acts committed were in  
 107 violation of Code Section 40-6-391. For the purposes of this subsection, a person shall be  
 108 deemed to have committed criminally injurious conduct notwithstanding that by reason of  
 109 age, insanity, drunkenness, or other reason, he or she was legally incapable of committing  
 110 a crime."

#### 111 SECTION 6.

112 Said chapter is further amended by revising Code Section 17-15-8, relating to required  
 113 findings and amounts of award, as follows:

114 "17-15-8.

115 (a) No award may be made unless the board or director finds that:

116 (1) A crime was committed;

117 (2) The crime directly resulted in the victim's physical injury, serious mental or  
 118 emotional trauma, or financial hardship as a result of the victim's physical injury, serious  
 119 mental or emotional trauma, or the victim's death;

120 (3) Police records, records of an investigating agency, or records created pursuant to a  
 121 mandatory reporting requirement show that the crime was promptly reported to the proper  
 122 authorities. In no case may an award be made where the police records, records of an  
 123 investigating agency, or records created pursuant to a mandatory reporting requirement  
 124 show that such report was made more than 72 hours after the occurrence of such crime  
 125 unless the board, for good cause shown, finds the delay to have been justified; and

126 (4) The applicant has pursued restitution rights against any person who committed the  
 127 crime unless the board or director determines that such action would not be feasible.

128 The board, upon finding that any claimant or award recipient has not fully cooperated with  
 129 all law enforcement agencies, may deny, reduce, or withdraw any award.

130 (b) Any award made pursuant to this chapter may be in an amount not exceeding actual  
 131 expenses, including indebtedness reasonably incurred for medical expenses, loss of wages,

132 funeral expenses, mental health counseling, or support for dependents of a deceased victim  
 133 necessary as a direct result of the injury or hardship upon which the claim is based.

134 (c)(1) Notwithstanding any other provisions of this chapter, no award made under the  
 135 provisions of this chapter shall exceed \$1,000.00 in the aggregate; provided, however,  
 136 with respect to any claim filed with the board as a result of a crime occurring on or after  
 137 July 1, 1994, no award made under the provisions of this chapter payable to a victim and  
 138 to all other claimants sustaining economic loss because of injury to or death of such  
 139 victim shall exceed \$5,000.00 in the aggregate; provided, ~~however~~ further, with respect  
 140 to any claim filed with the board as a result of a crime occurring on or after July 1, 1995,  
 141 no award made under the provisions of this chapter payable to a victim and to all other  
 142 claimants sustaining economic loss because of injury to or death of such victim shall  
 143 exceed \$10,000.00 in the aggregate; provided, further, with respect to any claim filed  
 144 with the board as a result of a crime occurring on or after July 1, 2002, no award made  
 145 under the provisions of this chapter payable to a victim and to all other claimants  
 146 sustaining economic loss because of injury to or death of such victim shall exceed  
 147 \$25,000.00 in the aggregate; provided, further, with respect to any claim filed with the  
 148 board for serious mental or emotional trauma, no award shall be made for a crime  
 149 occurring before July 1, 2009.

150 (2) No award under this chapter for the following losses shall exceed the maximum  
 151 amount authorized:

| <u>Category</u>                       | <u>Maximum Award</u> |
|---------------------------------------|----------------------|
| Lost wages                            | \$ 10,000.00         |
| Funeral expenses                      | 3,000.00             |
| Financial hardship or loss of support | 10,000.00            |
| Medical                               | 15,000.00            |
| Counseling                            | 3,000.00             |
| Crime scene sanitization              | 1,500.00             |

159 (d) In determining the amount of an award, the director and board shall determine whether  
 160 because of his or her conduct the victim of such crime contributed to the infliction of his  
 161 or her injury, serious mental or emotional trauma, or financial hardship, and the director  
 162 and board may reduce the amount of the award or reject the claim altogether in accordance  
 163 with such determination.

164 (e) The director and board may reject an application for an award when the claimant has  
 165 failed to cooperate in the verification of the information contained in the application.

166 (f) Any award made pursuant to this chapter may be reduced by or set off by the amount  
167 of any payments received or to be received as a result of the injury, serious mental or  
168 emotional trauma:

169 (1) From or on behalf of the person who committed the crime; and

170 (2) From any other private or public source, including an award of workers'  
171 compensation pursuant to the laws of this state,

172 provided that private sources shall not include contributions received from family members  
173 or persons or private organizations making charitable donations to a victim.

174 (g) No award made pursuant to this chapter is subject to garnishment, execution, or  
175 attachment other than for expenses resulting from the injury or serious mental or emotional  
176 trauma which is the basis for the claim.

177 (h) An award made pursuant to this chapter shall not constitute a payment which is treated  
178 as ordinary income under either the provisions of Chapter 7 of Title 48 or, to the extent  
179 lawful, under the United States Internal Revenue Code.

180 (i) Notwithstanding any other provisions of this chapter to the contrary, no awards from  
181 state funds shall be paid prior to July 1, 1989.

182 (j) In any case where a crime results in death, the spouse, children, parents, or siblings of  
183 such deceased victim may be considered eligible for an award for the cost of psychological  
184 counseling which is deemed necessary as a direct result of said criminal incident. The  
185 maximum award for said counseling expenses shall not exceed \$3,000.00 ~~in the aggregate~~  
186 for each claimant identified in this subsection.

187 (k)(1) In addition to any other award authorized by this Code section, in any case where  
188 a deceased was a victim of homicide by vehicle caused by a violation of Code Section  
189 40-6-391 on any road which is part of the state highway system, upon request of the next  
190 of kin of the deceased, an award of compensation in the form of a memorial sign erected  
191 by the Department of Transportation as provided by this subsection shall be paid to an  
192 eligible claimant.

193 (2) The provisions of paragraph (4) of subsection (a) of this Code section shall not apply  
194 for purposes of eligibility for awards made under this subsection, and the value of any  
195 award paid to a claimant under this subsection shall not apply toward or be subject to any  
196 limitation on award amounts paid to any claimant under other provisions of this Code  
197 section.

198 (3) The Department of Transportation, upon receiving payment for the cost of materials  
199 and labor from the board, shall upon request of the next of kin of the deceased erect a  
200 sign memorializing the deceased on the right of way of such public highway at the  
201 location of the accident or as near thereto as safely and reasonably possible and shall  
202 maintain such sign for a period of five years from the date the sign is erected unless its

203 earlier removal is requested in writing by the next of kin. Such sign shall be 24 inches  
204 wide by 36 inches high and depict a map of the State of Georgia, with a dark blue  
205 background and a black outline of the state boundaries. A border of white stars shall be  
206 placed on the inside of the state boundaries, and the sign shall contain the words 'In  
207 Memory of (name), DUI Victim (date of accident).'

208 (4) In the event of multiple such claims arising out of a single motor vehicle accident,  
209 the names of all deceased victims for whom such claims are made and for whom a  
210 request has been made by the next of kin of the deceased may be placed on one such sign  
211 or, if necessary, on one such sign and a plaque beneath of the same color as the sign. In  
212 the event of multiple claims relating to the same deceased victim, no more than one such  
213 sign shall be paid for and erected for such victim."

214

**SECTION 7.**

215 All laws and parts of laws in conflict with this Act are repealed.