

CHAPTER 351
CRIME VICTIM COMPENSATION

Part I. Introductory

Section

- 351-1 Purpose
- 351-2 Definitions

Part II. Establishment of Commission

- 351-11 Crime victim compensation commission
- 351-12 Tenure and compensation of members
- 351-13 Powers and procedures of commission
- 351-14 Hearings and evidence
- 351-15 Medical examination
- 351-16 Attorneys' fees
- 351-17 Reconsideration by commission; judicial review

Part III. Compensation to Victims or Dependents

- 351-31 Eligibility for compensation
- 351-32 Violent crimes
- 351-33 Award of compensation
- 351-34 Repealed
- 351-35 Recovery from offender

Part IV. Compensation to Private Citizens

- 351-51 Eligibility for compensation
- 351-52 Award of compensation

Part V. General Provisions

- 351-61 Terms of order
- 351-62 Limitations upon award of compensation
- 351-62.5 Crime victim compensation special fund; when payments authorized
- 351-62.6 Compensation fee
- 351-63 Recovery from collateral source
- 351-64 No double recovery
- 351-64.5 Recovery of compensation paid
- 351-65 Legal adviser
- 351-66 Exemption from execution
- 351-67 Survival and abatement
- 351-68 Rulemaking powers
- 351-69 Commission staff
- 351-70 Annual report

Part VI. Limiting Commercial Exploitation of Crime

- 351-81 Deposit of copy of contract upon indictment or charge of criminal offense

- 351-82 Effect of conviction upon contract; deposit of
monetary compensation with the commission
- 351-83 Collection account, creation, disbursements
- 351-84 Special account, creation, disbursements
- 351-85 Collection, special accounts to be interest bearing
- 351-86 Money deposited not subject to execution, levy,
attachment, or lien
- 351-87 Lien in favor of State
- 351-88 Part not applicable; return of moneys held

Note

Chapter heading amended by L 1998, c 240, §2.

Case Notes

Trial court was not authorized, under §706-605, to order defendant to pay restitution to the Honolulu police department for its drug "buy money" expenses where (1) it was unlikely that ordering defendant to pay restitution would aid defendant in developing a degree of self-respect and pride in knowing that defendant has righted the wrong committed; and (2) department did not qualify as a "crime victim" under this chapter and defendant's offenses did not qualify as a "violent crime" under §351-32. 93 H. 34 (App.), 995 P.2d 335 (2000).

"PART I. INTRODUCTORY

§351-1 Purpose. The purpose of this chapter is to aid victims of criminal acts, by providing compensation for victims of certain crimes or dependents of deceased victims, and for indemnification of private citizens for personal injury or property damage suffered in prevention of crime or apprehension of a criminal. [L 1967, c 226, pt of §1; HRS §351-1]

Attorney General Opinions

No award to someone who suffers psychological or physical trauma in reaction to the death of a crime victim. Att. Gen. Op. 88-2.

Case Notes

In light of its purpose, chapter should be construed liberally in determining eligibility of applicants. 55 H. 514, 523 P.2d 311 (1974); 63 H. 254, 625 P.2d 372 (1981).

" **§351-2 Definitions.** As used in this chapter, unless the context otherwise requires:

"Child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child.

"Commission" means the crime victim compensation commission established by this chapter.

"Crime" means those under section 351-32, and shall include an act of terrorism occurring outside the United States as defined in title 18 United States Code section 2331, against a resident of this State.

"Dependents" mean such relatives of a deceased victim who were wholly or partially dependent upon the victim's income at the time of the victim's death or would have been so dependent but for the incapacity due to the injury from which the death resulted and includes the child of the victim born after the victim's death.

"Designated person" means a person who made payments for funeral, burial, and medical expenses on behalf of a victim.

"Injury" means actual bodily harm and, in respect of a victim, includes pregnancy and mental or nervous shock; and "injured" has a corresponding meaning.

"Mass casualty incident" means an incident with multiple victims killed during a continuous course of criminal conduct.

"Private citizen" means any natural person other than a police officer who is actively engaged in the performance of the police officer's official duties.

"Relative" means a victim's spouse or reciprocal beneficiary, parent, grandparent, stepparent, child, grandchild, stepchild, brother, sister, half brother, half sister, stepbrother, stepsister, spouse's or reciprocal beneficiary's parents, niece, nephew, or person residing in the same dwelling unit as the victim.

"Resident" means every individual who:

- (1) Intends to permanently reside in this State;
- (2) Has a permanent abode in this State;
- (3) Is a student at any institution of learning and claimed as a dependent of a Hawaii resident;
- (4) Files a Hawaii income tax return; or
- (5) Is registered to vote in this State.

"Victim" means:

- (1) A person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State;
- (2) Any resident of the State who is injured or killed in another state by an act or omission of another person, which act or omission is within the description of any of the crimes specified in section 351-32; or
- (3) A person who is a resident of this State who is injured or killed by an act of terrorism occurring outside the United States, as defined in title 18 United States Code section 2331. [L 1967, c 226, pt of §1; HRS §351-2; am L 1972, c 2, §13 and c 61, §1a; am L 1977, c 191, §2; am L 1983, c 124, §15; gen ch 1985; am L 1989, c 177, §§1 to 3; am L 1995, c 182, §1; am L 1997, c 383, §49; am L 1998, c 239, §1 and c 240, §3; am L 2000, c 57, §§2, 3]

Revision Note

Punctuation changed pursuant to §23G-15.

"PART II. ESTABLISHMENT OF COMMISSION

§351-11 Crime victim compensation commission. There shall be a crime victim compensation commission composed of three members appointed and removable in the manner prescribed by section 26-34. No officer or employee of the State or any county shall be eligible for appointment to the commission. The commission is placed within the department of public safety for administrative purposes. [L 1967, c 226, pt of §1; HRS §351-11; am L 1970, c 105, §5; am L 1987, c 338, §10; am L 1989, c 177, §4 and c 211, §8; am L 1992, c 260, §1; am L 1998, c 240, §4]

Case Notes

Action against commission for damages. 59 H. 404, 581 P.2d 766 (1978).

" **§351-12 Tenure and compensation of members.** (a) The term of office of each member of the commission shall be four years or until the member's successor is appointed, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of the term. Each member shall be eligible for reappointment, subject to section 26-34. A vacancy in the commission shall not affect its powers. If any member is unable to act because of absence, illness, or other sufficient cause, the governor may make a temporary appointment, and the appointee shall have all the powers accorded the regular member for the period of the temporary appointment.

(b) Each member shall be compensated at the rate of \$100 per day for each day's actual attendance to the member's duties; provided that the compensation shall not exceed a maximum of \$10,000 per year. Members shall be paid necessary traveling and subsistence expenses incurred in the discharge of their duties. [L 1967, c 226, pt of §1; HRS §351-12; gen ch 1985; am L 1989, c 177, §5; am L 1990, c 136, §2; am L 1992, c 260, §2]

Attorney General Opinions

Cited, as a constitutional board and commission statute where members may serve as holdovers until their successors are "appointed", without any reference to the successors being fully

"qualified"; an "appointment" properly occurs under the interim appointments provision of article V, §6 of the state constitution. Att. Gen. Op. 16-3.

" **§351-13 Powers and procedures of commission.** (a) Except for cases assigned to the administrator pursuant to subsection (c), upon an application for compensation under this chapter, the commission shall fix a time and place for a hearing on the application and shall cause notice thereof to be given to the applicant. The commission may hold hearings, sit and act at times and places, and take testimony as it may deem advisable. Any two members shall constitute a quorum, but the concurring vote of the two members shall be necessary to take any action. Any member may administer oaths or affirmations to witnesses appearing before the commission. The commission shall have the same powers of subpoena and compulsion of attendance of witnesses and production of documents and of examination of witnesses as a circuit court. Subpoenas shall be issued under the signature of the chairperson or by majority vote of the commission members. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required, upon the application of the commission, may enforce the attendance and testimony of any witness and the production of any document so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts and shall be payable from funds appropriated for expenses of administration. The orders shall be signed by the chairperson or, in the absence of the chairperson, by the other two members.

(b) Notwithstanding any other provision, the commission may delegate to the administrator the authority to sign any order.

(c) The commission shall assign cases to the administrator for determination of eligibility and any order of compensation.

(d) If the applicant is dissatisfied with the determination by the administrator, the applicant may appeal to the commission for a hearing; provided that to be considered, the written appeal shall be received by the commission within sixty days of the mailing of a certified copy of the decision and order, and the commission shall review the case as if it was not heard before and as if no decision had been previously rendered. In such an event, the commission's decision shall be final. [L 1967, c 226, pt of §1; HRS §351-13; am L 1975, c 138, §1; am L 1989, c 177, §6; am L 1992, c 260, §3; am L 1993, c 219, §1; am L 1995, c 182, §2; am L 1996, c 235, §1]

" **§351-14 Hearings and evidence.** For those applications that will be heard by the commission, the applicant and the commission's legal adviser shall be entitled to appear and be heard. Any other person may appear and be heard who satisfies the commission that the person has a substantial interest in the proceedings. In any case in which the person entitled to make an application is a child, the application may be made on the child's behalf by any person acting as the child's parent or guardian. In any case in which the person entitled to make an application is mentally defective, the application may be made on the person's behalf by the person's guardian or any other individual authorized to administer the person's estate.

Where, under this chapter, any person is entitled to appear and be heard by the commission, that person may appear in person or be represented by the person's attorney. All hearings shall be open to the public, unless in a particular case, the commission determines that the hearing, or a portion thereof, should be held in private, because the offender has not been convicted or in the interest of the victim of an alleged sexual offense.

Every person appearing under this section shall have the right to produce evidence and to cross-examine witnesses. The commission may receive in evidence any statement, document, information, or matter that, in the opinion of the commission, may contribute to its functions under this chapter, whether or not the statement, document, information, or matter would be admissible in a court of law.

If any person has been convicted of any offense with respect to an act or omission on which a claim under this chapter is based, proof of that conviction, unless an appeal against the conviction or a petition for a rehearing in respect of the charge is pending or a new trial or rehearing has been ordered, shall be taken as conclusive evidence that the offense has been committed. [L 1967, c 226, pt of §1; HRS §351-14; gen ch 1985; am L 1993, c 219, §2]

Case Notes

Applicability of the administrative procedure act. 54 H. 294, 506 P.2d 444 (1973).

" **§351-15 Medical examination.** The commission may appoint an impartial licensed physician or licensed psychologist to examine any person making application under this chapter, and the fees for the examination shall be paid from funds appropriated for expenses of administration. [L 1967, c 226, pt of §1; HRS §351-15; am L 1988, c 305, §1; am L 1998, c 240, §5]

" **§351-16 Attorneys' fees.** The commission, as part of any order entered under this chapter, may determine and allow reasonable attorneys' fees, which if the award of compensation is more than \$1,000 shall not exceed \$150, to be paid out of but not in addition to the award, to the attorneys representing the applicant; provided that the amount of the attorneys' fees shall not, in any event, exceed the award of compensation remaining after deducting that portion thereof for expenses actually incurred by the claimant.

Any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than \$2,000. [L 1967, c 226, pt of §1; HRS §351-16; am L 1996, c 235, §2; am L 1998, c 240, §5]

" **§351-17 Reconsideration by commission; judicial review.**

(a) In the absence of an appeal to the commission, the commission, at any time, on its own motion, may reconsider the order or decision and revoke, confirm, or vary the order or decision, based upon the findings of the commission. Any applicant aggrieved by an order or decision may request reconsideration; provided that, to be considered, the request shall be received by the commission within thirty days after mailing of a certified copy of the order or decision to the applicant's last known address.

(b) Any person aggrieved by an order or decision of the commission on the sole ground that the order or decision was in excess of the commission's authority or jurisdiction, shall have a right of appeal to the circuit court of the circuit in which the person resides; provided the appeal is filed within thirty days after mailing of an original or a certified copy of the order or decision to the applicant's last known address. Except as otherwise provided in this section, orders and decisions of the commission shall be conclusive and not subject to judicial review. [L 1967, c 226, pt of §1; HRS §351-17; am L 1972, c 61, §1b; am L 1979, c 111, §15; am L 1989, c 177, §7; am L 1992, c 260, §4; am L 1996, c 235, §3; am L 1998, c 240, §5]

Case Notes

Decision must comply with requirements of §91-12. 54 H. 294, 506 P.2d 444 (1973).

Where action of commission involves construction of statute, a question of law is presented and appeal lies. 63 H. 254, 625 P.2d 372 (1981).

"PART III. COMPENSATION TO VICTIMS OR DEPENDENTS

§351-31 Eligibility for compensation. (a) In the event any private citizen is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, or any state resident is injured or killed by any act or omission of any other person after July 1, 1989, in another state, which act or omission is within the description of the crimes enumerated in section 351-32, or any resident of this State who is injured or killed by an act of terrorism occurring outside the United States, as defined in title 18 United States Code section 2331, the commission in its discretion, upon an application, may order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the victim;
- (2) To any person responsible for the maintenance of the victim, if that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury or death;
- (3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim;
- (4) To any person who has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the deceased victim's injury and death; or
- (5) In cases involving a mass casualty incident, for mental health services to or for the benefit of:
 - (A) A relative of the deceased victim;
 - (B) A witness to the mass casualty; or
 - (C) An individual engaged in business or educational activities at the scene of the mass casualty incident;

provided that compensation to a victim shall have priority over compensation to a relative, a witness, or another individual under this paragraph, and provided further that this paragraph shall not apply to a member of a public or private agency responding to or providing services as a result of a mass casualty incident.

(b) For the purposes of this chapter, a person shall be deemed to have intentionally committed an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise the person was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the commission may consider any circumstances it

determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused the victim's injury or death and the commission shall reduce the amount of compensation in proportion to the amount of responsibility for the crime which caused the victim's injury or death; provided that if the proportion is greater than the responsibility of the person who committed the act or omission or, in the case of more than one person, the aggregate responsibility of such persons because of whom compensation is sought, the commission shall not award any compensation to the victim.

(d) An order may be made under this section whether or not any person is prosecuted for or convicted of a crime arising out of an act or omission described in subsection (a) if an arrest has been made or the act or omission has been reported to the police without undue delay. No order may be made under this section unless the commission finds that:

- (1) The act or omission did occur; and
- (2) The injury or death of the victim resulted from the act or omission.

Upon application from either the prosecuting attorney or the chief of police of the appropriate county, the commission may suspend proceedings under this chapter for a period as it deems desirable on the ground that a prosecution for a crime arising out of the act or omission has been commenced or is imminent, or that release of the investigation report would be detrimental to the public interest.

(e) If the commission finds that an applicant has made a false statement or representation of a material fact knowing it to be false, or has knowingly failed to disclose a material fact to obtain or increase any compensation under this chapter, and if the false statement or representation was discovered prior to the payment of compensation, the claim may be denied in its entirety. If the claim has already been paid, the applicant shall reimburse the commission.

(f) No compensation of any kind shall be awarded to a victim or intervenor who suffered injury or death while confined in any federal, state, or county jail, prison, or other correctional facility. [L 1967, c 226, pt of §1; HRS §351-31; am L 1972, c 61, §1c; am L 1975, c 138, §2; am L 1979, c 92, §1; am L 1980, c 232, §19; gen ch 1985; am L 1989, c 177, §8; am L 1995, c 182, §3; am L 1996, c 235, §4; am L 1998, c 239, §2 and c 240, §5; am L 2000, c 57, §4]

Attorney General Opinions

Subsection (a)(3) cited in holding that dependents stand in shoes of victim and are entitled to no more than \$10,000 in aggregate amount. Att. Gen. Op. 69-22.

" **§351-32 Violent crimes.** The crimes to which part III of this chapter applies are the following and no other:

- (1) Murder in the first degree (section 707-701);
- (2) Murder in the second degree (section 707-701.5);
- (3) Manslaughter (section 707-702);
- (4) Negligent homicide in the first degree (section 707-702.5);
- (5) Negligent homicide in the second degree (section 707-703);
- (6) Negligent injury in the first degree (section 707-705);
- (7) Negligent injury in the second degree (section 707-706);
- (8) Assault in the first degree (section 707-710);
- (9) Assault in the second degree (section 707-711);
- (10) Assault in the third degree (section 707-712);
- (11) Kidnapping (section 707-720);
- (12) Sexual assault in the first degree (section 707-730);
- (13) Sexual assault in the second degree (section 707-731);
- (14) Sexual assault in the third degree (section 707-732);
- (15) Sexual assault in the fourth degree (section 707-733);
- (16) Abuse of family or household members (section 709-906);
- (17) Sex trafficking (section 712-1202); and
- (18) Terrorism, as defined in title 18 United States Code section 2331. [L 1967, c 226, pt of §1; HRS §351-32; am L 1973, c 85, §1; am L 1975, c 138, §3; am L 1989, c 177, §9; am L 1998, c 239, §3; am L 2016, c 206, §2]

Case Notes

Trial court was not authorized, under §706-605, to order defendant to pay restitution to the Honolulu police department for its drug "buy money" expenses where (1) it was unlikely that ordering defendant to pay restitution would aid defendant in developing a degree of self-respect and pride in knowing that defendant has righted the wrong committed; and (2) department did not qualify as a "crime victim" under chapter 351 and defendant's offenses did not qualify as a "violent crime" under this section. 93 H. 34 (App.), 995 P.2d 335 (2000).

" **§351-33 Award of compensation.** The commission may order the payment of compensation under this part for:

- (1) Expenses actually and reasonably incurred during the period of the injury or death of the victim;
- (2) Loss to the victim of earning power as a result of total or partial incapacity;
- (3) Pecuniary loss to the dependents of the deceased victim;
- (4) Pain and suffering to the victim;
- (5) Any other pecuniary loss directly resulting from the injury or death of the victim that the commission determines to be reasonable and proper; and
- (6) Expenses actually and reasonably incurred for mental health services in the case of a mass casualty incident. [L 1967, c 226, pt of §1; HRS §351-33; am L 1995, c 182, §4; am L 1998, c 240, §5; am L 2000, c 57, §5]

Case Notes

Defendant's argument that a crime victim who received indemnification from an insurer did not suffer a "loss" within the meaning of §706-646 was without merit; the only exception for or reduction of restitution plainly stated in §706-646 is that any amount actually recovered by the victim from the criminal should be deducted from the amount the victim might recover from the crime victim compensation special fund pursuant to this section. 121 H. 135 (App.), 214 P.3d 1125 (2009).

" **§351-34 REPEALED.** L 1989, c 177, §11.

" **§351-35 Recovery from offender.** Whenever any person is convicted of an offense that includes any crime enumerated in section 351-32 and an order or the payment of compensation is or has been made under this part for injury or death resulting from the act or omission constituting such offense, the commission may institute a derivative action against the person and against any person liable at law on the person's behalf, in the name of the victim or such of the victim's dependents as have been awarded compensation under this part in the circuit court of the circuit in which any such person resides or is found, for such damages as may be recoverable at common law by the victim or such dependents without reference to the payment of compensation under this part. The court shall have jurisdiction to hear, determine, and render judgment in any such action. The time from the occurrence of the act or omission until conviction of the offense and, thereafter, as long as the offender is in confinement for conviction of the offense, shall not constitute any part of the time limited for the commencement of the action

by the commission under the applicable statute of limitations. Any recovery in the action shall belong to the State, provided that the commission shall amend its order of compensation to provide for the payment of any portion of the recovery in excess of the amount of compensation prescribed in the order to any of the persons entitled to receive compensation under section 351-31 in such proportions and upon such terms as the commission shall deem appropriate. If the legislature fails to appropriate funds to pay all or any part of the award of payment made by the commission and there is a recovery of the money from the offender, the commission shall pay all of such recovery to the claimant or such portion thereof, to the claimant as to the commission appears just and equitable, but in no case shall any claimant be given an award in excess of both the recovery and the award. [L 1967, c 226, pt of §1; HRS §351-35; gen ch 1993; am L 1998, c 240, §5]

"PART IV. COMPENSATION TO PRIVATE CITIZENS

§351-51 Eligibility for compensation. In the event a private citizen incurs injury or property damage in preventing the commission of a crime within the State, in apprehending a person who has committed a crime within the State, or in materially assisting a peace officer who is engaged in the prevention or attempted prevention of such a crime or the apprehension or attempted apprehension of such a person, the commission may, in its discretion, upon an application, order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the private citizen; or
- (2) To any person responsible for the maintenance of the private citizen, where that person has suffered pecuniary loss or incurred expenses as a result of the private citizen's injury. [L 1967, c 226, pt of §1; HRS §351-51; am L 1998, c 240, §5]

" **§351-52 Award of compensation.** The commission may order the payment of compensation under this part for:

- (1) Expenses actually and reasonably incurred during the period of the injury of the private citizen;
- (2) Pain and suffering to the private citizen;
- (3) Loss to the private citizen of earning power as a result of total or partial incapacity; and
- (4) Pecuniary loss to the private citizen directly resulting from damage to the citizen's property. [L 1967, c 226, pt of §1; HRS §351-52; gen ch 1985; am L 1995, c 182, §5; am L 1998, c 240, §5]

"PART V. GENERAL PROVISIONS

§351-61 Terms of order. Except as otherwise provided in this chapter, any order for the payment of compensation under this chapter may be made on such terms as the commission deems appropriate. Without limiting the generality of the preceding sentence, the order may provide for apportionment of the compensation, for the holding of the compensation or any part thereof in trust, for the payment of the compensation in a lump sum or periodic installments, and for the payment of compensation for hospital, medical, funeral, or burial expenses directly to the person who has provided such services. All such orders shall contain words clearly informing the claimant that all awards and orders for payments under this chapter are subject to the making of an appropriation by the legislature to pay the claim, except as otherwise provided in section 351-62.5. [L 1967, c 226, pt of §1; HRS §351-61; am L 1972, c 61, §1d; am L 1998, c 240, §5]

" **§351-62 Limitations upon award of compensation.** (a) No order for the payment of compensation shall be made under this chapter unless the application has been made within eighteen months after the date of injury, death, or property damage; provided that upon a showing of good cause, the commission may consider applications filed beyond this time period.

(b) No compensation shall be awarded under this chapter in an amount in excess of \$10,000; provided that, if a case involves compensable medical expenses in excess of \$10,000, no compensation shall be awarded in excess of \$20,000 or the actual amount of compensable medical expenses, whichever is lower. In determining the amount of compensable medical expenses to be awarded, the commission shall deduct amounts or benefits as provided under section 351-63. [L 1967, c 226, pt of §1; HRS §351-62; am L 1989, c 177, §10; am L 2002, c 97, §1]

Attorney General Opinions

\$10,000 is maximum award for particular victim and compensation to dependents of deceased victim may not in aggregate exceed that sum. Att. Gen. Op. 69-22.

" **§351-62.5 Crime victim compensation special fund; when payments authorized.** (a) There is established a crime victim compensation special fund from which the commission may make payments as provided in subsection (b). The fund shall be administered by the director of public safety for purposes of this chapter. Interest and investment earnings credited to the

assets of the fund shall become part of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried forward for the next fiscal year.

(b) Where the commission has made an award pursuant to this chapter, the commission shall make the payments to or on behalf of the victim or one or more of the dependents of a deceased victim, or to or for the benefit of other persons who have suffered pecuniary loss or incurred expenses on account of hospital, medical, funeral, or burial expenses as a result of the victim's injury or death. Victims or dependents entitled to receive awards shall be notified of the option to have payments made on their behalf to other designated persons. Payments made pursuant to this section shall not exceed the total amount of the award.

(c) The amount appropriated under section 351-70 shall be redeposited into the fund and applied to other payments as authorized by the commission.

(d) Funds received pursuant to section 354D-12(b)(1) and amounts received pursuant to sections 351-35, 351-62.6, 351-63, 706-605, and 853-1 shall be deposited into the crime victim compensation special fund. Moneys received shall be used for compensation payments, operating expenses, salaries of positions as authorized by the legislature, and collection of fees. The commission may enter into memorandums of agreement with the judiciary for the collection of fees by the judiciary; provided that no funds shall be deposited by the judiciary into the crime victim compensation special fund until collected. [L 1972, c 61, §1f; am L 1974, c 204, §1; am L 1988, c 322, §1; am L 1992, c 125, §1; am L 1993, c 219, §3; am L 1998, c 206, §3 and c 240, §§5, 7; am L 1999, c 278, §§4, 7; am L 2000, c 115, §1; am L 2001, c 176, §2]

" **§351-62.6 Compensation fee.** (a) The court shall impose a compensation fee upon every defendant who has been convicted or who has entered a plea under section 853-1 and who is or will be able to pay the compensation fee. The amount of the compensation fee shall be commensurate with the seriousness of the offense as follows:

- (1) Not less than \$105 nor more than \$505 for a felony;
- (2) \$55 for a misdemeanor; and
- (3) \$30 for a petty misdemeanor.

The compensation fee shall be separate from any fine that may be imposed under section 706-640 and shall be in addition to any other disposition under this chapter; provided that the court shall waive the imposition of a compensation fee if the defendant is unable to pay the compensation fee. Moneys from

the compensation fees shall be deposited into the crime victim compensation special fund under section 351-62.5.

(b) The criteria of section 706-641 may apply to this section. In setting the amount of the compensation fee to be imposed, the court shall consider all relevant factors, including but not limited to:

- (1) The seriousness of the offense;
- (2) The circumstances of the commission of the offense;
- (3) The economic gain, if any, realized by the defendant;
- (4) The number of victims; and
- (5) The defendant's earning capacity, including future earning capacity.

(c) The compensation fee shall be considered a civil judgment. [L 1998, c 206, §2; am L 1999, c 18, §8; am L 2000, c 115, §2; am L 2005, c 144, §1]

" **§351-63 Recovery from collateral source.** (a) In determining the amount of compensation to be awarded under this chapter, the commission shall deduct amounts or benefits received or to be received from any source, whether from the offender or from any person on behalf of the offender, or from public or private funds, and which amounts or benefits result from or are in any manner, directly or indirectly, attributable to the injury or death which gave rise to the award; provided that no deduction shall be made for death benefits received or to be received under any insurance policy covering the life of a deceased victim.

(b) Where compensation is awarded under this chapter and the person receiving same also receives any sum required to be, and that has not been deducted under subsection (a), the person shall refund to the State the lesser of the sum or the amount of the compensation paid to the person under this chapter. [L 1967, c 226, pt of §1; HRS §351-63; am L 1972, c 61, §1e; gen ch 1985; am L 1998, c 240, §5]

Attorney General Opinions

Amount of welfare payments made to victim for food and necessities during disability is not deductible from compensation awarded. Att. Gen. Op. 69-27.

Case Notes

Collateral benefits are deductible from gross economic loss plus pain and suffering without regard to the \$10,000 maximum on awards. 63 H. 254, 625 P.2d 372 (1981).

" **§351-64 No double recovery.** Application may be made by any eligible person for compensation under both parts III and IV of this chapter, but no order shall have the effect of compensating any person more than once for any loss, expense, or other matter compensable under this chapter. [L 1967, c 226, pt of §1; HRS §351-64]

" **§351-64.5 Recovery of compensation paid.** (a) Any person who has received under this chapter any amount as compensation to which the person was not entitled shall be liable for that amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience. The order or decision shall specify that the person is liable to repay to the fund the amount of overpaid compensation and the basis of the overpayment.

(b) The person liable shall, in the discretion of the commission, either repay any amount to the crime victim compensation special fund or have such amount deducted from any future compensation payable to the person under this chapter.

(c) Failure to comply with the provisions of this section by the person liable to repay overpaid compensation may at the discretion of the commission, result in civil action in the name of the State by the attorney general. [L 1996, c 236, §2; am L 1998, c 240, §7; am L 1999, c 18, §9]

" **§351-65 Legal adviser.** The attorney general shall serve as legal adviser to the commission. [L 1967, c 226, pt of §1; HRS §351-65; am L 1998, c 240, §5]

" **§351-66 Exemption from execution.** No compensation payable under this chapter shall, prior to actual receipt thereof by the person or beneficiary entitled thereto, or their legal representatives, be assignable or subject to execution, garnishment, attachment, or other process whatsoever, including process to satisfy an order or judgment for support or alimony. [L 1967, c 226, pt of §1; HRS §351-66]

" **§351-67 Survival and abatement.** The rights to compensation created by this chapter are personal and shall not survive the death of the person or beneficiary entitled thereto, provided that if such death occurs after an application for compensation has been filed with the commission, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate. [L 1967, c 226, pt of §1; HRS §351-67; am L 1998, c 240, §5]

" **§351-68 Rulemaking powers.** In the performance of its functions, the commission may adopt, amend, and repeal rules and regulations, not inconsistent with this chapter, prescribing the procedures to be followed in the filing of applications and the proceedings under this chapter and such other matters as the commission deems appropriate. [L 1967, c 226, pt of §1; HRS §351-68; am L 1998, c 240, §5]

Cross References

Rulemaking, see chapter 91.

" **§351-69 Commission staff.** (a) Supervisory, administrative, and clerical personnel necessary for the efficient functioning of the commission shall be appointed as provided in section 26-35 without regard to chapter 76, but subject to chapter 89, and provided that:

- (1) No position filled as of June 19, 2007 by an employee appointed pursuant to chapter 76 shall be affected by this [section]; and
- (2) Upon becoming vacant, any position filled as of June 19, 2007 by an employee appointed pursuant to chapter 76 shall be filled by an employee appointed without regard to chapter 76.

(b) An executive director and an administrative assistant shall be appointed, without regard to chapter 76, for the proper administration and enforcement of this chapter. [L 1967, c 226, pt of §1; HRS §351-69; am L 1998, c 240, §5; am L 2001, c 176, §1; am L 2007, c 199, §2]

Revision Note

"June 19, 2007" substituted for "the effective date of this Act".

" **§351-70 Annual report.** The commission shall transmit annually to the governor and to the director of public safety, at least thirty days prior to the convening of the legislature a report of its activities under this chapter including a brief description of the facts in each case, and the amount, if any, of compensation awarded, and the names of attorneys and health care providers where they are the applicants. The director of public safety shall, within five days after the opening of the legislative session, transmit the report, together with a tabulation of the total amount of compensation awarded during the prior fiscal year and an estimate of the amount that is reasonably estimated to be required for the next fiscal year,

and a legislative bill to appropriate funds for the crime victim compensation special fund for the next fiscal year. The commission shall provide upon request of the governor, the director of public safety, or the legislature, the relevant data, including the names of all applicants for compensation, under this chapter. [L 1967, c 226, pt of §1; HRS §351-70; am L 1973, c 178, §2; am L 1974, c 204, §2; am L 1979, c 77, §1; am L 1989, c 211, §26 and c 251, §1; am L 1998, c 240, §§5, 7; am L 1999, c 18, §10]

"PART VI. LIMITING COMMERCIAL EXPLOITATION OF CRIME

§351-81 Deposit of copy of contract upon indictment or charge of criminal offense. Every person, firm, corporation, partnership, association, or other legal entity upon entering into a contract with any person indicted or charged with a criminal offense committed in this State or a representative or assignee of any such person, shall submit a copy of the contract to the commission if:

- (1) The contract provides for monetary compensation payable to the person indicted or charged or payable at the person's direction; and
- (2) The subject matter of the contract is the reenactment of the crime, or the expression of the thoughts, feelings, opinions, or emotions of the person about the criminal offense for which the person is indicted or charged which is to be reflected in a movie, book, article, radio or television program, or other form of communication. [L 1986, c 155, pt of §1]

" **§351-82 Effect of conviction upon contract; deposit of monetary compensation with the commission.** If the person indicted or charged is subsequently convicted, the person, firm, corporation, partnership, association, or other legal entity which entered into a contract of the type identified in section 351-81 shall:

- (1) Deposit fifty per cent of the monetary compensation paid under such contract into a collection account established by the commission pursuant to section 351-83 and deposit the other fifty per cent of such monetary compensation in a special account established by the commission pursuant to section 351-84 if a timely appeal from the conviction is filed and the contract provides that monetary compensation is payable to the convicted person; or
- (2) Deposit all monetary compensation paid under such contract with the commission to a special account

established pursuant to section 351-84, if a timely appeal from the conviction is:

- (A) Filed and the contract provides that the monetary compensation is payable to a person other than the convicted person;
- (B) Filed, the conviction is affirmed on appeal, and no further appellate action is allowed; or
- (C) Not filed. [L 1986, c 155, pt of §1; am L 1998, c 240, §5]

" **§351-83 Collection account, creation, disbursements.**

Monetary compensation received by the commission pursuant to section 351-82(1) shall be deposited into a collection account established by the commission. The moneys deposited into the collection account including interest earned shall be used exclusively to pay the expenses of legal representation incurred by the convicted person in prosecuting an appeal of the conviction. Upon the presentation of a verified statement of attorney's fees and expenses, the commission shall pay such attorney's fees and expenses reasonably and necessarily incurred in prosecuting the appeal.

If the monetary compensation deposited into the collection account pursuant to section 351-82(1) is not sufficient to prosecute the convicted person's appeal, or if the convicted person seeks other judicial relief in order to void the conviction or to obtain release from incarceration, then the convicted person may obtain a court order compelling the commission either to pay the sum necessary for adequate legal representation out of the funds deposited in the special account pursuant to section 351-82(2) or to deposit into the collection account a percentage greater than fifty per cent of the monetary compensation payable to the convicted person. [L 1986, c 155, pt of §1]

" **§351-84 Special account, creation, disbursements.** (a)

Monetary compensation received by the commission pursuant to section 351-82(2) shall be deposited into a special account established by the commission. The moneys deposited into the special account including interest earned shall be retained or disbursed by the commission pursuant to this section.

(b) Moneys deposited into the special account shall be used first as provided in section 351-83, if necessary, and then to reimburse the crime victim compensation special fund for payments made pursuant to this chapter for the crime committed by the convicted person.

(c) Moneys remaining after disbursement under subsection (b) shall be disbursed to a judgment creditor, for the purpose of satisfying a judgment, from the special account if:

- (1) The judgment creditor is a victim, a victim's representative, or other person specified in section 351-31, or a person who is not specified in section 351-31 but is the victim of a crime subject to this part;
- (2) The judgment is for the damages arising out of the criminal act of the convicted person;
- (3) A certified copy of the judgment is presented to the commission; and
- (4) There is no order staying the judgment or enjoining disbursement.

Judgment creditors shall be paid out of the special account in the order in which certified copies of the judgments are presented to the commission. [L 1986, c 155, pt of §1; am L 1988, c 141, §30; am L 1998, c 240, §7; am L 1999, c 18, §11]

" **§351-85 Collection, special accounts to be interest bearing.** All moneys deposited into the collection account or special account under this part shall be deposited into federally-insured interest-bearing accounts. [L 1986, c 155, pt of §1]

" **§351-86 Money deposited not subject to execution, levy, attachment, or lien.** All moneys received by the commission pursuant to this part shall not be subject to execution, levy, attachment, or lien of any kind. [L 1986, c 155, pt of §1]

" **§351-87 Lien in favor of State.** The failure of any person, firm, corporation, partnership, association, or legal entity to pay moneys over to the commission in accordance with this part shall create a debt owing to the commission from that person, firm, corporation, partnership, association, or legal entity and shall constitute a preferential lien in favor of the State which may be collected by the commission by civil process. [L 1986, c 155, pt of §1]

" **[§351-88] Part not applicable; return of moneys held.**

This part shall not apply and shall have no effect where:

- (1) The conviction is reversed or overturned; or
- (2) The applicable statute of limitations for a civil action which may be filed by a victim, a victim's representative, or a person specified in section 351-31 relating to the criminal act committed by the convicted person has expired, and there are no such

civil actions pending and ten years have elapsed since the date of the last judgment obtained by a victim, a victim's representative, or a person specified in section 351-31.

Under the circumstances set forth in paragraph (1) or (2), all moneys held by the commission in a collection account or special account, including interest, shall be disbursed to the convicted person or any other person legally entitled to receive the disbursement. [L 1986, c 155, pt of §1]