

ACT 235

H.B. NO. 3538

A Bill for an Act Relating to Criminal Injuries Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 351-13, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(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.”

SECTION 2. Section 351-16, Hawaii Revised Statutes, is amended to read as follows:

“**§351-16 Attorneys’ fees.** The criminal injuries compensation commission [may], as<sup>1</sup> 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 [fifteen per cent of the award,] \$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.”

SECTION 3. Section 351-17, Hawaii Revised Statutes, is amended to read as follows:

“**§351-17 Reconsideration by commission; judicial review.** (a) [The] 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 [service] 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 criminal injuries compensation 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 [service] 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."

SECTION 4. Section 351-31, Hawaii Revised Statutes, is amended to read as follows:

**"§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 not having a compensation program eligible for federal funding under 42 United States Code §10601, et seq., under which the state resident may receive compensation, which act or omission is within the description of the crimes enumerated in section 351-32, the criminal injuries compensation 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, where 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; or
- (4) To [a relative of a deceased victim where the relative] 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.

(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 such 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 such 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)[,]; provided an arrest has been made or such 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 such 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; provided that if the claim has already been paid, the applicant is responsible for reimbursement to the commission.”

SECTION 5. This Act does not affect the rights and duties that were matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

**Note**

1. Prior to amendment “a” appeared here.