

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

400B0275

HOUSE JUDICIARY COMMITTEE

ENGROSSED NO. **HB1026** - 1/22/98

This bill has been extensively amended (hoghoused) and may no longer be consistant with the original intention of the sponsors.

Introduced by: The Committee on Judiciary at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding crime victims'

2 compensation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-28B-4 be amended to read as follows:

5 23A-28B-4. The commission shall:

6 (1) Hear and determine claims for compensation as provided in §§ ~~23A-28B-29~~ and

7 23A-28B-32;

8 (2) Promulgate rules, pursuant to chapter 1-26, governing conduct of hearings before the

9 commission;

10 (3) Assist the department in publicizing the availability of and procedures for obtaining

11 compensation pursuant to the provisions of this chapter; and

12 (4) Assist the department in developing, implementing and evaluating effective crime

13 victim compensation policies and procedures.

14 Section 2. That § 23A-28B-28 be amended to read as follows:

15 23A-28B-28. The department shall receive, review and investigate, any application for

1 victims' compensation which has been properly filed. Following such review and investigation;
2 ~~and based upon the amount of the claim;~~ the department shall issue ~~either a recommendation to~~
3 ~~the commission pursuant to § 23A-28B-29 or~~ an order pursuant to § 23A-28B-31. The
4 department shall file any such ~~recommendation or~~ order with the commission and shall serve
5 notice of such by mailing a copy to the claimant.

6 Section 3. That § 23A-28B-29 be repealed.

7 ~~—23A-28B-29. In any case in which a claim exceeds two thousand dollars, the department shall~~
8 ~~issue a written recommendation to the commission regarding compensability of the claim. The~~
9 ~~commission shall hold a hearing on the claim upon at least thirty days notice to the claimant and~~
10 ~~any other interested persons. The commission shall consider the recommendation of the~~
11 ~~department and any objections to the recommendation by the claimant. In addition, the~~
12 ~~commission may subpoena persons or documents, administer oaths or affirmations and receive~~
13 ~~any additional relevant evidence which the commission deems necessary to decide the~~
14 ~~compensability of the claim. Based upon evidence presented at the hearing, the commission may~~
15 ~~adopt, modify or reject the recommendation of the department. A record of all proceedings at~~
16 ~~the hearing shall be kept. Any hearing held pursuant to this section may not be deemed a~~
17 ~~contested case hearing and the provisions of §§ 1-26-16 to 1-26-37, inclusive, governing~~
18 ~~contested cases and appeals therefrom do not apply. However, the commission shall adopt~~
19 ~~procedural rules pursuant to chapter 1-26 governing hearings held pursuant to this section.~~

20 Section 4. That § 23A-28B-31 be amended to read as follows:

21 23A-28B-31. ~~In any case in which a compensation claim is for two thousand dollars or less,~~
22 ~~the~~ The department ~~may~~ shall enter an order which shall include:

- 23 (1) Findings of fact;
- 24 (2) The amount of compensation, if any, payable under the provisions of this chapter;
- 25 (3) The name of any person to whom such compensation is payable;

1 (4) A notice that the claimant may request commission review of the order in accordance
2 with § 23A-28B-32; and

3 (5) Any other information which the department deems necessary.

4 Section 5. That § 23A-28B-32 be amended to read as follows:

5 23A-28B-32. If a claimant disagrees with an order entered by the department, the claimant,
6 within fifteen days from the date of service of the order, may request a review of the claim by
7 the commission. A request for review shall be in writing in a form prescribed by the commission.
8 Upon receipt of a request for review, the commission shall treat the department order as a
9 recommendation by the department and shall hold a hearing to decide the claim ~~in the same~~
10 manner as provided in § 23A-28B-29. The hearing shall be held upon at least thirty days notice
11 to the claimant and any other interested persons. The commission shall consider the order of the
12 department and any objections to the order by the claimant. In addition, the commission may
13 subpoena persons or documents, administer oaths or affirmations and receive any additional
14 relevant evidence which the commission deems necessary to decide the compensability of the
15 claim. Based upon evidence presented at the hearing, the commission may adopt, modify, or
16 reject the order of the department. A record of all proceedings at the hearing shall be kept. Any
17 hearing held pursuant to this section may not be deemed a contested case hearing and the
18 provisions of §§ 1-26-16 to 1-26-37, inclusive, governing contested cases and appeals therefrom
19 do not apply. However, the commission shall adopt procedural rules pursuant to chapter 1-26
20 governing hearings held pursuant to this section. If no request for review is received within
21 fifteen days, the department order shall become final with no further action by the commission
22 and compensation shall be paid in accordance therewith.

23 Section 6. That chapter 23A-28B be amended by adding thereto a NEW SECTION to read
24 as follows:

25 Upon request of the claimant and subject to the limitations set forth in this chapter, including

1 any rules promulgated pursuant to § 23A-28B-20, the department may amend an order entered
2 by the commission pursuant to § 23A-28B-32. However, such amendments may not exceed five
3 percent of the total amount authorized by the commission. The department may not award
4 compensation for the claim if the commission denied compensation.

1 **BILL HISTORY**

2 1/13/98 First read in House and referred to Judiciary. H.J. 24

3 1/16/98 Scheduled for Committee hearing on this date.

4 1/16/98 Judiciary Deferred to another day.

5 1/21/98 Scheduled for Committee hearing on this date.

6 1/21/98 Judiciary Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 138