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1 IN THE SENATE

BY PALMER AND B. PHILLIPS

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SENATE BILL NO. 310

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FIFTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act establishing a Criminal Injuries Compensation
7 Board."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 44 is amended by adding a new chapter to read:

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CHAPTER 58. CRIMINAL INJURIES COMPENSATION BOARD.

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Sec. 44.58.010. PURPOSE. It is the purpose of this chapter to
12 facilitate and permit the payment of compensation to innocent persons
13 injured and to dependents of persons killed as a result of certain
14 serious crimes or in attempts to prevent the commission of crime or to
15 apprehend suspected criminals.

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Sec. 44.58.020. CRIMINAL INJURIES COMPENSATION BOARD. (a) There
17 is a Criminal Injuries Compensation Board composed of three members to
18 be appointed by the governor with the advice and consent of the legis-
19 lature. One of the members shall be designated as chairman by the
20 governor. At least one member of the board shall be an attorney
21 licensed to practice in this state, and at least one member shall be a
22 medical or osteopathic physician licensed to practice in this state.

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(b) The term of office of each member of the board shall be five
24 years, except that of the members first appointed one shall be appointed
25 for a term of five years, one for a term of four years and one for a term
26 of three years. All vacancies, except through the expiration of term,
27 shall be filled for the unexpired term only.

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(c) Each member of the board shall be eligible for reappointment and
29 any member of the board may be removed by the governor for inefficiency,

1 neglect of duty or malfeasance in office after due notice and hearing.

2 (d) Members of the board receive no salary, but are entitled to
3 per diem and travel expenses authorized by law for other boards.

4 (e) The board may appoint one or more hearing officers, who must
5 be licensed to practice law in the state, to conduct hearings and take
6 testimony in proceedings under this chapter, but final determinations
7 of any matter shall be only by the board. A hearing officer acting
8 under this subsection shall report his findings of fact and conclusions
9 of law to the board, together with the reasons therefor. The board shall
10 act only after consideration of the report and such other evidence as it
11 considers appropriate.

12 (f) The board may appoint and fix the duties of personnel necessary
13 for carrying out its functions under this chapter.

14 Sec. 44.58.030. APPLICATION FOR COMPENSATION. (a) Any person who may
15 be eligible for compensation under this chapter may make application to
16 the board. In a case in which the person entitled to make application is
17 a minor, the application may be made on his behalf by his parent or
18 guardian. In a case in which the person entitled to make application is
19 mentally incompetent, the application may be made on his behalf by his
20 parent, guardian or other individual authorized to administer his estate

21 (b) In order to be eligible for compensation under this chapter,
22 the applicant shall, before a hearing on an application under this chapter,
23 submit reports, if reasonably available, from all physicians or surgeons
24 who have treated or examined the victim in relation to the injury for
25 which compensation is claimed at the time of or subsequent to victim's
26 injury or death. If, in the opinion of the board, reports on the
27 previous medical history of the victim, examination of the injured
28 victim and a report thereon or a report on the cause of death of the
29 victim by an impartial medical expert would be of material aid to its

1 just determination, the board shall order the reports and examination.

2 Sec. 44.58.040. HEARINGS. (a) Upon application made under the
3 provisions of this chapter, the board shall fix a time and place for a
4 hearing and shall give notice to the applicant.

5 (b) For the purpose of carrying out the provisions of this chapter,
6 the board or its hearing officer may hold the hearings, sit and act
7 at the times and places, and take the testimony that it or he considers
8 advisable. The board or its hearing officer may administer oaths or
9 affirmations to witnesses. The board shall have full powers of subpoena
10 and compulsion of attendance of witnesses and production of documents:
11 provided that no subpoena shall be issued except under the signature of
12 a member of the board, and application to a court for aid in enforcing
13 the subpoena may be made in the name of the board only by a board
14 member. Subpoenas shall be served by any person designated by the
15 board.

16 (c) The applicant and any other person having a substantial
17 interest in a proceeding may appear and be heard, produce evidence and
18 cross-examine witnesses in person or by his attorney. The board or its
19 hearing officer also may hear other persons who in its or his judgment
20 may have relevant evidence to submit.

21 (d) Admissibility of evidence shall be governed by the Administra-
22 tive Procedure Act (AS 44.62).

23 (e) If a person has been convicted of an offense with respect to
24 an act on which a claim under this chapter is based, proof of that
25 conviction shall be taken as conclusive evidence that the offense has
26 been committed, unless an appeal or a proceeding with regard to it is
27 pending.

28 (f) Orders and decisions of the board shall be final.

29 Sec. 44.58.050. ATTORNEY FEES. The board may, as part of an order

1 entered under this chapter, determine and allow reasonable attorney
2 fees, which shall not exceed 15 per cent of the amount awarded as
3 compensation under sec. 70 of this chapter, to be paid out of but not
4 in addition to the amount of the compensation, to the attorney repre-
5 senting the applicant. It is unlawful for the attorney to ask for,
6 contract for, or receive a larger sum than the amount so allowed.

7 Sec. 44.58.060. REGULATIONS. In the performance of its functions,
8 the board is authorized to make, rescind and amend rules and regulations
9 prescribing the procedures to be followed in the filing of applications
10 and proceedings under this chapter, and other matters the board con-
11 siders appropriate.

12 Sec. 44.58.070. STANDARDS FOR COMPENSATION. For the purpose of
13 determining the amount of compensation payable under this chapter, the
14 board shall, insofar as practicable, formulate standards for uniform
15 application of this chapter and shall take into consideration rates and
16 amounts of compensation payable for injuries and death under other laws
17 of the state and of the United States and the availability of funds
18 appropriated for purposes of this chapter.

19 Sec. 44.58.080. AWARING COMPENSATION. (a) In a case in which a
20 person is injured or killed by an incident specified in sec. 90(1) of
21 this chapter, or by any act of any other person which is within the
22 description of offenses listed in sec. 90(2) of this chapter, the board
23 may order the payment of compensation in accordance with the provisions
24 of this chapter:

25 (1) to or for the benefit of the injured person;

26 (2) in the case of personal injury of the victim, to any
27 person responsible for the maintenance of the victim who has suffered
28 pecuniary loss or incurred expenses as a result of the injury; or

29 (3) in the case of death of the victim, to or for the benefit

1 of any one or more of the dependents of the victim.

2 (b) For the purposes of this chapter, a person shall be considered
3 to have intended an act notwithstanding that by reason of age, insanity,
4 drunkenness, or otherwise, he was legally incapable of forming a
5 criminal intent.

6 (c) In determining whether to make an order under this section,
7 the board shall consider all circumstances determined to be relevant,
8 including provocation, consent or any other behavior of the victim
9 which directly or indirectly contributed to his injury or death; the
10 prior case or social history, if any, of the victim; need for financial
11 aid; and any other relevant matters.

12 (d) An order may be made under this section whether or not any
13 person is prosecuted or convicted of an offense arising out of the act
14 which caused the injury or death involved in the application. Upon
15 application made by an appropriate prosecuting authority, the board
16 may suspend proceedings under this chapter for a period it considers
17 appropriate on the ground that a prosecution for an offense arising out
18 of the act which caused the injury or death involved in the application
19 has been commenced or is imminent.

20 (e) In determining the amount of compensation to be allowed by
21 order, the board shall take into consideration amounts received or
22 receivable from any other source or sources by the victim or his
23 dependents as a result of the incident or offense giving rise to the
24 application.

25 **Sec. 44.58.090. INCIDENTS AND OFFENSES TO WHICH CHAPTER APPLIES.**
26 **The board may order the payment of compensation in accordance with the**
27 **provisions of this chapter for personal injury or death which resulted**
28 **from**

29 (1) an attempt on the part of the applicant to prevent the

1 commission of crime, or to apprehend a suspected criminal, or in aiding
2 or attempting to aid a police officer so to do; or

3 (2) the commission or attempt on the part of one other than
4 the applicant to commit any of the following offenses: mayhem; malicious
5 disfiguring; indecent act with children; kidnapping; murder; manslaughter;
6 rape; assault with intent to kill, rob, rape, or poison; assault with
7 intent to maim; assault with a dangerous weapon; threats to do bodily
8 harm; or lewd, indecent, or obscene acts.

9 Sec. 44.58.100. NATURE OF THE COMPENSATION. The board may order
10 the payment of compensation under this chapter for

11 (1) expenses actually and reasonably incurred as a result of
12 the personal injury or death of the victim;

13 (2) loss of earning power as a result of total or partial
14 incapacity of the victim;

15 (3) pecuniary loss to the dependents of the deceased victim;
16 and

17 (4) any other loss resulting from the personal injury or
18 death of the victim which the board determines to be reasonable.

19 Sec. 44.58.110. LIMITATIONS ON AWARDING COMPENSATION. (a) No
20 order for the payment of compensation may be made under sec. 80 of this
21 chapter unless the application has been made within two years after the
22 date of the personal injury or death, and the personal injury or death
23 was the result of an incident or offense listed in sec. 90 of this
24 chapter which had been reported to the police within five days of
25 its occurrence or, if the incident or offense could not reasonably
26 have been reported within that period, within five days of the time
27 when a report could reasonably have been made.

28 (b) No compensation may be awarded if the victim:

29 (1) is a relative of the offender;

1 (2) was at the time of the personal injury or death of the
2 victim living with the offender as a member of his family or household,
3 or maintaining a sexual relationship, whether illicit or not, with the
4 person or with any member of his family;

5 (3) violated a penal law of the state, which violation
6 caused or contributed to his injuries or death; or

7 (4) was injured as a result of the operation of a motor
8 vehicle, boat or airplane unless the same was used as a weapon in a
9 deliberate attempt to run the victim down.

10 (c) No compensation may be awarded under this chapter in an amount
11 in excess of \$10,000 and all payments shall be made in a lump sum.

12 (d) Orders for payment of compensation under this chapter may be
13 made only as to injuries or death resulting from incidents or offenses
14 occurring on and after July 1, 1968.

15 Sec. 44.58.120. RECOVERY FROM OFFENDER. Whenever an order for the
16 payment of compensation for personal injury or death is or has been made
17 under this chapter, the board shall, upon payment of the amount of the
18 order, be subrogated to the cause of action of the applicant against the
19 person or persons responsible for the injury or death and shall be en-
20 titled to bring an action against the person or persons for the amount of
21 the damages sustained by the applicant. If an amount greater than that
22 paid under the order is recovered and collected in the action, the
23 board shall pay the balance to the applicant.

24 Sec. 44.58.130. REPORTS. The board shall prepare and transmit to
25 the governor and legislature annually a report of its activities under
26 this chapter including the name of each applicant, a brief description
27 of the facts in each case, and the amount of compensation awarded.

28 Sec. 44.58.140. DEFINITIONS. In this chapter

29 (1) "board" means the Criminal Injuries Compensation Board;

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(2) "dependent" means a relative of deceased victim, who was dependent upon the victim's income at the time of his death; children of a victim born after a victim's death are included;

(3) "personal injury" means actual bodily harm;

(4) "relative" means spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or spouse's parents;

(5) "victim" means a person who is injured or killed by an incident specified in sec. 90 of this chapter.