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1 IN THE SENATE

BY MILLER

2 SENATE BILL NO. 28

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a Violent Crimes Compensation
7 Board; and providing for an effective date."

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

9 * Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 67. VIOLENT CRIMES COMPENSATION BOARD.

11 Sec. 18.67.010. 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.

16 Sec. 18.67.020. CRIMINAL INJURIES COMPENSATION BOARD. (a) There
17 is the Violent Crimes Compensation Board in the Department of Health
18 and Welfare composed of three members to be appointed by the governor.
19 One of the members shall be designated as chairman by the governor. At
20 least one member of the board shall be an attorney licensed to practice
21 in this state, and at least one member shall be a medical or osteo-
22 pathic physician licensed to practice in this state.

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

28 (c) Each member of the board is eligible for reappointment and
29 serves at the pleasure of the governor.

1 (d) Each member of the board is eligible for reappointment and
2 any member of the board may be removed by the governor for inefficiency,
3 neglect of duty or malfeasance in office after due notice and hearing.

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

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

14 (g) The board may appoint and fix the duties of personnel
15 necessary for carrying out its functions under this chapter.

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

24 (b) In order to be eligible for compensation under this chapter,
25 the applicant shall, before a hearing on an application under this
26 chapter, submit reports, if reasonably available, from all physicians
27 or surgeons who have treated or examined the victim in relation to the
28 injury for which compensation is claimed at the time of or subsequent to
29 victim's injury or death. If, in the opinion of the board, reports on

1 the previous medical history of the victim, a report on the examination
2 of the injured victim, or a report on the cause of death of the victim
3 by an impartial medical expert would be of material aid to its deter-
4 mination, the board shall order the reports and examination.

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

8 (b) For the purpose of carrying out the provisions of this chap-
9 ter, the board or its hearing officer may hold the hearings, sit and
10 act at the times and places, and take the testimony that it or he con-
11 siders advisable. The board or its hearing officer may administer oaths
12 or affirmations to witnesses. The board has full powers of subpoena and
13 compulsion of attendance of witnesses and production of documents, but
14 no subpoena shall be issued except under the signature of a member of
15 the board. Application to a court for aid in enforcing the subpoena
16 may be made in the name of the board only by a board member. Subpoenas
17 are served by any person designated by the board.

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

23 (d) Admissibility of evidence is governed by the Administrative
24 Procedure Act (AS 44.62).

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

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

2 Sec. 44.58.050. ATTORNEY FEES. The board may, as part of an order
3 entered under this chapter, determine and allow reasonable attorney
4 fees, which shall not exceed 15 per cent of the amount awarded as
5 compensation under sec. 70 of this chapter, to be paid out of but not
6 in addition to the amount of the compensation, to the attorney repre-
7 senting the applicant. It is unlawful for the attorney to ask for,
8 contract for, or receive a larger sum than the amount allowed in the
9 award.

10 Sec. 44.58.060. REGULATIONS. In the performance of its functions,
11 the board is authorized to make, rescind and amend regulations pre-
12 scribing the procedures to be followed in the filing of applications
13 and proceedings under this chapter, and other matters the board con-
14 siders appropriate.

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

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

- 28 (1) to or for the benefit of the injured person;
29 (2) in the case of personal injury of the victim, to any

1 person responsible for the maintenance of the victim who has suffered
2 pecuniary loss or incurred expenses as a result of the injury; or

3 (3) in the case of death of the victim, to or for the benefit
4 of any one or more of the dependents of the victim.

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

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

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

23 Sec. 44.58.085. RECOVERY FROM COLLATERAL SOURCE. (a) The board
24 shall deduct from any compensation awarded under this chapter any pay-
25 ments received from the offender or from any person on behalf of the
26 offender, or from the United States, a state, or any of its subdivisions
27 or agencies, or any private source or any emergency awards under
28 sec. 105 of this chapter, for injury or death compensable under this
29 chapter.

1 (b) If compensation is awarded under this chapter and the person
2 receiving it also receives a collateral sum under (a) of this section
3 which has not been deducted from it, he shall refund to the board the
4 lesser of the sums or the amount of compensation paid to him under this
5 chapter.

6 Sec. 44.58.090. INCIDENTS AND OFFENSES TO WHICH CHAPTER APPLIES.
7 The board may order the payment of compensation in accordance with the
8 provisions of this chapter for personal injury or death which resulted
9 from

10 (1) an attempt on the part of the applicant to prevent the
11 commission of crime, or to apprehend a suspected criminal, or in aiding
12 or attempting to aid a police officer to do so, or in aiding a victim
13 of a crime, or

14 (2) the commission or attempt on the part of one other than
15 the applicant to commit any of the following offenses: mayhem; indecent
16 act with children; kidnapping; murder; manslaughter; rape; assault with
17 intent to kill, rob, rape, or poison; assault with intent to maim;
18 assault with a dangerous weapon; threats to do bodily harm; or lewd,
19 indecent, or obscene acts.

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

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

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

26 (3) pecuniary loss to the dependents of the deceased victim;
27 and

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

1 Sec. 44.58.105. EMERGENCY COMPENSATION. If it appears to the
2 board that, prior to taking action on an application, the claim is one
3 for which compensation is probable, and undue hardship will result
4 to the applicant if immediate payment is not made, the board may make
5 an emergency award of compensation to the applicant pending a final
6 decision in the case. However

7 (1) the amount of the emergency compensation shall not
8 exceed \$500;

9 (2) the amount of the emergency compensation shall be
10 deducted from the final compensation made to the applicant;

11 (3) the excess of the amount of the emergency compensation
12 over the final amount shall be repaid by the applicant to the board.

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

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

23 (1) is a relative of the offender;

24 (2) is at the time of the personal injury or death of the
25 victim living with the offender as a member of his family or household,
26 or maintaining a sexual relationship, whether illicit or not, with the
27 person or with any member of his family;

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

1 (4) is injured as a result of the operation of a motor
2 vehicle, boat or airplane unless the vehicle was used as a weapon in a
3 deliberate attempt to run the victim down.

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

6 (d) Orders for payment of compensation under this chapter may be
7 made only as to injuries or death resulting from incidents or offenses
8 occurring on and after July 1, 1971.

9 Sec. 44.58.120. RECOVERY FROM OFFENDER. When an order for the
10 payment of compensation for personal injury or death is made under this
11 chapter, the board, upon payment of the amount of the order, is subro-
12 gated to the cause of action of the applicant against the person or
13 persons responsible for the injury or death and is entitled to bring an
14 action against the person or persons for the amount of the damages sus-
15 tained by the applicant. If an amount greater than that paid under the
16 order is recovered and collected in the action, the board shall pay the
17 balance to the applicant.

18 Sec. 44.58.122. FALSE CLAIM. A person who knowingly makes a
19 false claim under this chapter is guilty of a misdemeanor and upon
20 conviction is punishable by a fine of not less than \$500, or by
21 imprisonment for not more than one year, or by both, and shall forfeit
22 any benefit received and shall repay the state for any payment of
23 compensation made under this chapter.

24 Sec. 44.58.124. SURVIVAL AND ABATEMENT. The rights to compen-
25 sation created under this chapter are personal and shall not survive
26 the death of a victim or dependent entitled to them, except that if
27 the death occurs after an application for compensation has been filed
28 with the Violent Crimes Compensation Board, the proceeding shall not
29 abate, but may be continued by the legal representative of the

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decedent's estate.

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

Sec. 44.58.140. DEFINITIONS. In this chapter

(1) "board" means the Violent Crimes Compensation Board;

(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.

* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.