

CHAPTER 101

H.B. No. 878

AN ACT

relating to compensation for certain victims of crime.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 3, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DEFINITIONS. In this Act:

- (1) "Board" means the Industrial Accident Board.
- (2) "Claimant" means a victim or an authorized person acting on behalf of any victim.
- (3) "Collateral source" means a source of benefits or advantages for pecuniary loss awardable other than under this Act which the victim has received, or which is readily available to him or her from:
 - (A) the offender under an order of restitution to the claimant imposed by a court as a condition of probation;
 - (B) the United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this Act;

- (C) Social Security, Medicare and Medicaid;
- (D) state-required temporary nonoccupational disability insurance;
- (E) workers' compensation;
- (F) wage continuation programs of any employer;
- (G) proceeds of a contract of insurance payable to the victim for loss which he or she sustained because of the criminally injurious conduct; or
- (H) a contract providing prepaid hospital and other health care services, or benefits for disability.

(4) "Criminally injurious conduct" means conduct that:

- (A) occurs or is attempted in this state;
- (B) poses a substantial threat of personal injury or death;
- (C) is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; and
- (D) is not conduct arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle except when intended to cause personal injury or death in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 67011-1 [~~or 67011-2~~], Revised [~~Civil~~] Statutes [~~of Texas, 1925, as amended~~].

(5) "Dependent" means:

- (A) a surviving spouse;
- (B) a person who is a dependent of a deceased victim or intervenor within the meaning of Section 152, Internal Revenue Code of 1954, as amended (26 U.S.C. Section 152); or
- (C) a posthumous child of the deceased intervenor or victim.

(6) [~~"Financial stress" means financial hardship experienced by a claimant as a result of pecuniary loss from criminally injurious conduct giving rise to a claim under this Act. A claimant suffers financial stress only if he or she cannot maintain his or her customary level of health, safety, and education for himself or herself and his or her dependents without undue financial hardship. In making its finding, the board shall consider all relevant factors, including:~~

- ~~[(A) the number of the claimant's dependents;~~
- ~~[(B) the usual living expenses of the claimant and his or her family;~~
- ~~[(C) the special needs of the claimant and his or her dependents;~~
- ~~[(D) the claimant's income and potential earning capacity; and~~
- ~~[(E) the claimant's resources.~~

(7) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred:

- (A) regarding personal injury for:
 - (i) medical, hospital, nursing, or psychiatric care or counseling, and physical therapy;
 - (ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed \$150 per week unless the victim is an accomplice of the offender or residing in the same household as the offender, then compensation for actual loss of past earnings and anticipated loss of future earnings is strictly prohibited; and
 - (iii) care of minor children enabling a victim or his or her spouse, but not both of them, to continue gainful employment at a rate not to exceed \$50 [~~\$30~~] per child per week up to a maximum of \$125 [~~\$75~~] per week for any number of children; and
- (B) as a consequence of death for:
 - (i) funeral and burial expenses;
 - (ii) loss of support to a dependent or dependents not otherwise compensated for as a pecuniary loss for personal injury, for as long as the dependence would have existed had

the victim survived, at a rate of not more than a total of \$150 per week for all dependents; and

(iii) care of minor children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury, at a rate not to exceed \$50 [~~\$30~~] per week per child, up to a maximum of \$125 [~~\$75~~] per week for any number of children.

(C) Pecuniary loss does not include loss attributable to pain and suffering.

(7) [~~8~~] “Intervenor” means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in such conduct, or to aid a police officer. Intervenor does not include a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of his or her employment.

(8) [~~9~~] “Victim” means:

(A) a person who is a Texas resident or a resident of another state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession or territory of the United States who is in this state at the time of the crime and who suffers personal injury or death as a result of criminally injurious conduct;

(B) an intervenor;

(C) a dependent of a deceased victim *or an immediate family member of a deceased victim who is not a dependent but who, as a direct result of the crime, requires psychiatric care or counseling;* [~~and~~]

(D) *a person who is not an immediate family member or a dependent, but who resided in the same permanent household as a deceased victim in a relationship with the victim within the second degree of consanguinity, and who, as a direct result of the crime, requires psychiatric care or counseling; and*

(E) in the event of a death, a person who legally assumes the obligation or who voluntarily pays the medical or burial expenses incurred as a direct result of the crime.

(9) [~~10~~] “Crime of violence” means any criminal offense as defined in the Penal Code of this state or in a federal criminal law that results in a personal injury to a victim. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime of violence for the purposes of this Act, except that a crime of violence includes injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle, or injury or death sustained in an accident caused by a driver in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon’s Texas Civil Statutes), or Article 6701-1 [~~or 6701-2~~], Revised [Civil] Statutes [~~of Texas, 1925, as amended~~].

(10) [~~11~~] “Personal injury” means physical harm to the victim or intervenor.

(11) “Immediate family member” means a person who is the father, mother, sister, brother, daughter, son, or spouse of the victim and who resided in the same permanent household as the victim at the time that the criminally injurious conduct occurred.

SECTION 2. Subsections (b) and (c), Section 6, Crime Victims Compensation Act (Article 8309-1, Vernon’s Texas Civil Statutes), are amended to read as follows:

(b) The board shall establish that as a direct result of criminally injurious conduct the victim suffered personal injury or death that resulted in a pecuniary loss [~~which the victim is unable to recoup without suffering financial stress and~~] for which he or she is not compensated from any collateral source.

(c) The board shall deny the application if:

(1) the criminally injurious conduct is not reported or the application is not made in the manner specified in Section 4 of this Act;

(2) the victim or person whose injury or death gives rise to the application knowingly and willingly participated in the criminally injurious conduct;

(3) ~~[the claimant will not suffer financial stress as a result of the pecuniary loss arising out of criminally injurious conduct;~~

~~[(4)]~~ the claimant is the offender or an accomplice of the offender;

~~(4) [(5)]~~ an award of compensation to the claimant would benefit the offender or an accomplice of the offender; or

~~(5) [(6)]~~ the victim was incarcerated in a penal institution, as defined in Subdivision (26), Section 1.07, Penal Code, at the time the offense was committed.

SECTION 3. This Act takes effect September 1, 1987, and applies only to a claim for compensation based on a criminal act that occurs on or after that date.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on March 30, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 878 on May 5, 1987, by a non-record vote. Passed by the Senate, with amendments, on April 29, 1987, by a viva-voce vote.

Approved May 14, 1987.

Effective Sept. 1, 1987.