STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1434

By: Douglass of the Senate

and

Bryant, Claunch, Calvey, Miller, Benge, Liotta, Smith (Hopper) and Nance of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Crime Victims Compensation Act and motor vehicles; amending 21 O.S. 1991, Section 142.3, as last amended by Section 2, Chapter 177, O.S.L. 1999 (21 O.S. Supp. 1999, Section 142.3), which relates to definitions; providing certain exception to definition of criminally injurious conduct; authorizing consideration of claims for certain victims of accidents involving felonious failure to stop after being involved in an accident; amending 21 O.S. 1991, Section 142.13, as last amended by Section 6, Chapter 177, O.S.L. 1999 (21 O.S. Supp. 1999, Section 142.13), which relates to payment of awards to victims; expanding type and duration of counseling for which Board may approve payment; amending 47 O.S. 1991, Section 10-115, which relates to public inspection of accident reports; allowing copying and inspection of certain reports by certain persons; modifying references; making gender neutral; amending 47 O.S. 1991, Section 40-102, as last amended by Section 1, Chapter 14, O.S.L. 1999 (47 O.S. Supp. 1999, Section 40-102), which relates to prohibiting examination or reproduction of accident records for commercial solicitation; expanding exceptions to certain definition; authorizing release of records for certain purposes; providing certain information for verification or settlement of insurance claims; clarifying use of certain information for commercial solicitation; excepting certain agent or business from filing certain affidavit; requiring certain agent or business to secure client affidavit annually; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 1991, Section 142.3, as last amended by Section 2, Chapter 177, O.S.L. 1999 (21 O.S. Supp. 1999, Section 142.3), is amended to read as follows:

Section 142.3 As used in the Oklahoma Crime Victims Compensation Act, Section 142.1 et seq. of this title:

1. "Allowable expense" means:

a. charges incurred for needed products, services and accommodations, including, but not limited to, medical care, wage loss, rehabilitation, rehabilitative occupational training and other remedial treatment and care,

b. any reasonable expenses related to the funeral, cremation or burial,

c. reasonable costs for counseling family members of a homicide victim, and

d. reasonable costs associated with homicide crime scene cleanup;

2. "Board" means the Crime Victims Compensation Board created by Section 142.4 of this title;

3. "Claimant" means any of the following persons applying for compensation under the Crime Victims Compensation Act:

a. a victim,

b. a dependent of a victim who has died because of criminally injurious conduct, or

c. a person authorized to act on behalf of any of the persons enumerated in subparagraphs a and b of this paragraph;

4. "Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive compensation under this act, and which the claimant has received, or which is readily available to the claimant, from any one or more of the following:

a. the offender,

b. the government of the United States or any agency thereof, in the form of benefits, such as social

security, Medicare and Medicaid, a state or any of its political subdivisions or an instrumentality or two or more states, unless the law providing for the benefits or advantages makes them excessive or secondary to benefits under this act,

c. state-required temporary nonoccupational disability insurance,

d. workers' compensation,

e. wage continuation programs of any employer,

f. a contract providing prepaid hospital and other health care services or benefits for disability,

g. a contract providing prepaid burial expenses or benefits, or

h. proceeds of any contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, except:

(1) life insurance proceeds or uninsured motorist proceeds in an amount of Fifty Thousand Dollars ($50,000.00) or less shall not be considered a collateral source when computing loss of support, and

(2) life insurance proceeds and proceeds from personal uninsured motorist coverage of any amount shall not be considered a collateral source for computing burial expenses;

5. a. "Criminally injurious conduct" means a misdemeanor or felony which occurs or is attempted in this state, or against a resident of this state in a state that does not have an eligible crime victims compensation program as such term is defined in the federal Victims of Crime Act of 1984, Public Law 98-473, that results

in bodily injury, threat of bodily injury or death to a victim which:

(1) may be punishable by fine, imprisonment or death, or

(2) if the act is committed by a child, could result in such child being adjudicated a delinquent child.

b. Such term shall not include acts arising out of the negligent maintenance or use of a motor vehicle unless:

(1) the vehicle was operated or driven by the offender while under the influence of alcohol, with a blood alcohol level in excess of the legal limit, or while under the influence of any other intoxicating substance ~~or~~,

(2) the vehicle was operated or driven by the offender with the intent to injure or kill the victim or in a manner imminently dangerous to another person and evincing a depraved mind, although without any premeditated design to injure or effect the death of any particular person, or

(3) the offense involved willful, malicious or felonious failure to stop after being involved in a personal injury accident to avoid detection or prosecution, provided the victim of the accident was a pedestrian or was operating a vehicle moved solely by human power or a mobility device at the time of contact.

c. "Criminally injurious conduct" shall include an act of terrorism, as defined in Section 2331 of Title 18,

United States Code, committed outside the United States;

6. "Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of the victim born after the death of the victim where the death occurred as a result of criminally injurious conduct;

7. "Economic loss of a dependent" means loss after death of the victim of contributions of things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury;

8. "Replacement services loss of dependent" means the loss reasonably incurred by dependents after death of the victim in obtaining ordinary and necessary services in lieu of those the deceased victim would have performed for their benefit had the deceased victim not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim and not subtracted in calculating the economic loss of the dependent;

9. "Economic loss" means monetary detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, economic loss and replacement services loss of a dependent, but shall not include noneconomic loss;

10. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage;

11. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income, but for the benefit of self or family, if the victim had not been injured or died;

12. "Traffic offense" means violation of a law relating to the operation of vehicles, but shall not mean negligent homicide due to operation of a motor vehicle, reckless driving, tampering with or damaging a motor vehicle, failure of a driver of a motor vehicle

involved in an accident resulting in death or personal injury to stop at the scene of the accident, leaving the scene of an accident resulting in death or personal injury, operating or being in actual physical control of a motor vehicle while intoxicated or impaired due to alcohol or other intoxicating substance, or combination thereof, or operating a motor vehicle with a blood alcohol content in excess of the legal limit;

13. "Work loss for victim" means loss of income from work the victim would have performed if such person had not been injured or died, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work that ~~he or she~~ the victim was capable of performing but unreasonably failed to undertake, or loss of income from work the victim's caregiver would have performed if the injuries of the victim sustained as a result of the criminally injurious conduct had not created the need for the caregiver to miss work to care for the injured victim; and

14. "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct and shall include a resident of this state who is injured or killed by an act of terrorism committed outside of the United States.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 142.13, as last amended by Section 6, Chapter 177, O.S.L. 1999 (21 O.S. Supp. 1999, Section 142.13), is amended to read as follows:

Section 142.13 A. The Board may compensate for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss. Compensation for a caregiver who has out-of-pocket wage loss as a result of caring for the victim who was injured as a result of criminally injurious conduct may not exceed Two Thousand Dollars ($2,000.00).

B. Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that

victim may not exceed Twenty Thousand Dollars ($20,000.00) in the aggregate.

C. The Board may provide for the payment to a claimant in a lump sum or in installments. At the request of the claimant, the Board may convert future economic loss, other than allowable expense, to a lump sum.

D. An award payable in a lump sum or installments for loss of support for a dependent of the deceased victim may be computed through a formula which calculates the net loss of support for dependents based upon an estimated date of retirement or an estimated date of adulthood for dependent children, beginning with the date of death of the victim and ending with the least of one of the following time periods for each dependent filing loss of support:

1. The amount of time from the date of death of the victim to the date the victim would have been expected to reach sixty-two (62) years of age; or

2. The amount of time from the date of death of the victim to the date the spouse of the victim is expected to reach sixty-two (62) years of age; or

3. The amount of time from the date of death of the victim to the date a dependent child is expected to reach eighteen (18) years of age or twenty-three (23) years of age if the dependent child is enrolled as a full-time student.

An award payable in installments for future loss of support may be modified by the Board in the event a dependent child receiving loss of support is between the ages of eighteen (18) and twenty-three (23) years of age and is no longer enrolled as a full-time student, the dependent dies before all installments are paid or the dependent receiving installments moves and leaves no forwarding address with the Board office.

E. An award shall not be subject to execution, attachment, garnishment or other process, except for child support and except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that such creditor has provided products, services or accommodations, the costs of which are included in the award.

F. An assignment by the claimant to any future award under the provisions of this act is unenforceable, except:

1. An assignment of any award for work loss to assure payment of court ordered alimony, maintenance or child support; or

2. An assignment of any award for allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

G. The Board may, in its discretion, approve payment of ~~immediate~~ crisis counseling, occurring within ~~one hundred twenty (120) days~~ <u>two (2) years</u> of the crime, in an amount not to exceed Five Hundred Dollars ($500.00) for each family member of a homicide victim, with a maximum of Three Thousand Dollars ($3,000.00) per family, provided the counselor is a qualified mental health care provider. Medical and pharmaceutical treatment is not compensable for any family member of a deceased victim.

H. Outpatient counseling expenses for a victim of criminally injurious conduct may be considered by the Board provided the counseling is focused on the crime and the counselor is a qualified mental health care provider. A total not to exceed Three Thousand Dollars ($3,000.00) may be awarded for individual counseling sessions for victims of criminally injurious conduct. Sessions between the mental health care provider and nonoffending parents of a victimized child under eighteen (18) years of age may also be included in the award provided the combined total for the counseling and parental sessions do not exceed Three Thousand Dollars

($3,000.00) and the parental sessions relate to the victimization. In extreme cases, the Board may, in its discretion, waive the three-thousand-dollar limit. Inpatient mental health treatment will be reviewed on a case-by-case basis and may be compensated, at the discretion of the Board, in an amount not to exceed Ten Thousand Dollars ($10,000.00).

I. Reasonable funeral, cremation or burial expenses shall not exceed Five Thousand Dollars ($5,000.00).

J. Reasonable costs associated with homicide crime scene cleanup shall not exceed Five Hundred Dollars ($500.00).

K. Loss of income of a caregiver shall not exceed Two Thousand Dollars ($2,000.00).

SECTION 3. AMENDATORY 47 O.S. 1991, Section 10-115, is amended to read as follows:

Section 10-115. ~~(a)~~ A. All accident reports made by persons involved in accidents shall be without prejudice to the individual so reporting and shall be for the confidential use of the Department or other state agencies having use for the records for accident prevention purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the Department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies ~~his~~ any presence at ~~such~~ an accident.

~~(b)~~ B. All accident reports and supplemental information filed in connection with the administration of the laws of this state relating to the deposit of security or proof of financial responsibility shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted, except, however, that such reports and supplemental information may be examined by any person named therein, ~~or~~ by ~~his~~ a representative

designated in writing, or as provided in Section 40-102 of this title.

~~(c)~~ C. No reports or information mentioned in this section shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the Department shall furnish upon demand of any party to such trial, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the Department in compliance with law.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 40-102, as last amended by Section 1, Chapter 14, O.S.L. 1999 (47 O.S. Supp. 1999, Section 40-102), is amended to read as follows:

Section 40-102. A. Every law enforcement officer who, in the regular course of duty, investigates or receives a report of a traffic accident resulting in injury to or death of a person or total property damage to an apparent extent of Five Hundred Dollars ($500.00) or more shall prepare a written report of the accident on the standard accident report form supplied by the Department. Such reports shall be forwarded forthwith by the Police Department or other agency to the Department of Public Safety.

B. 1. No public employee or officer shall allow a person to examine or reproduce an accident report or any related investigation report if examination or reproduction of the report is sought for the purpose of making a commercial solicitation. Any person requesting an accident report may be required to state, in writing, under penalty of perjury, that the report will not be examined, reproduced, or otherwise used for commercial solicitation purposes. It shall be unlawful and constitute a misdemeanor for any person to obtain or use information from an accident report or a copy thereof for the purpose of making a commercial solicitation.

2. As used in this subsection:

a. "commercial solicitation" means any attempt to use, or offer for use, information contained in an accident

report to solicit any person named in the report, or a relative of such person, or to ~~enter into~~ solicit a professional, business, or commercial relationship. "Commercial solicitation" does not ~~mean~~ include publication in a legal newspaper, as defined in Section 106 of Title 25 of the Oklahoma Statutes, or broadcast of information by news media for news purposes, or obtaining information for the purpose of verification or settlement of claims by insurance companies, and

b. "accident report" means any report regarding a motor vehicle accident or collision which has been submitted by an individual or investigating officer on a form prescribed or used by the Department of Public Safety or local police department.

3. Publication in a legal newspaper, as defined in Section 106 of Title 25 of the Oklahoma Statutes, or broadcast by news media for news purposes shall not constitute a resale or use of data for trade or commercial solicitation purposes. Because publication by a legal newspaper ~~or~~, broadcast by news media for news purposes, or obtaining information of verification or settlement of claims by insurance companies is not a resale or use of data for ~~trade or~~ commercial purposes, an affidavit shall not be required as a condition for allowing a member of a legal newspaper or broadcast news media, or allowing an agent, or business serving as an agent, to insurance companies, to examine or obtain a copy of an accident report. Any agent or business obtaining information for verification or settlement of claims involving persons named in a report shall secure an affidavit annually from each client stating the information provided to the client shall not be used for commercial solicitation purposes under penalty of law.

4. The Department of Public Safety and local police departments shall include the following or a similar notice upon any copy of an accident report furnished to others: "Warning - State Law. Use of contents for commercial solicitation is unlawful."

C. 1. In addition to any other penalties or remedies provided by law:

a. a violation of this section by a health care professional or health care provider shall be grounds for disciplinary action by the state agency licensing, certifying or registering such professional or provider, and

b. the state agency licensing, certifying or registering such professional or provider may institute an action to enjoin violation or potential violation of this section.

2. As used in this subsection:

a. "health care professional" means any person who offers or provides health care services under a license, certification or registration issued pursuant to Title 59 of the Oklahoma Statutes; and

b. "health care provider" means any hospital or related institution who offers or provides health care services under a license issued pursuant to Section 1-702 et seq. of Title 63 of the Oklahoma Statutes.

SECTION 5. This act shall become effective July 1, 2000.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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