

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2869

Introduced by Assembly Member Leno

February 24, 2006

An act to amend Sections 13952 and 13955 of the Government Code, relating to crime victims.

LEGISLATIVE COUNSEL’S DIGEST

AB 2869, as amended, Leno. Crime victims: compensation: burial expenses.

Existing law provides for the indemnification of victims of specified types of crimes by the California Victim Compensation and Government Claims Board, subject to specified criteria. A person is generally eligible for compensation if he or she is a victim or derivative victim of a crime, as defined, or he or she voluntarily paid the funeral and burial expenses of a victim of a crime. Existing law provides that no person who is convicted of a felony may be granted compensation by the board until after discharge from probation or release from a correctional institution and discharge from parole.

This bill would ~~declare the intent of the Legislature that~~ *require* the board, pursuant to these provisions; ~~and notwithstanding any other provision of law or decision of the board, to~~ award compensation to an individual seeking reimbursement for burial or funeral expenses if the deceased person died as a result of a crime, regardless of whether the deceased person was a felon not yet discharged from probation or parole, as long as the *deceased person was not involved in the commission of a crime at the time of death and the person seeking reimbursement is not a felon* otherwise ineligible for reimbursement.

This bill would also make other technical, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~It is the intent of the Legislature that the~~ *The*
2 California Victim Compensation and Government Claims Board,
3 *notwithstanding any other provision of law or decision of the*
4 *board, shall,* pursuant to paragraph (1) of subdivision (b) of
5 Section 13952 of, paragraph (3) of subdivision (a) of Section
6 13955 of, and subparagraph (C) of paragraph (9) of subdivision
7 (a) of Section 13957 of, the Government Code, award
8 compensation to an individual seeking reimbursement for burial
9 or funeral expenses if the deceased person died as a result of a
10 crime, regardless of whether the deceased person was ~~a felon as~~
11 ~~long as not discharged from probation or parole as long as the~~
12 ~~deceased person was not involved in the commission of a crime~~
13 ~~at the time of death and the individual seeking reimbursement is~~
14 ~~not a felon otherwise ineligible for compensation.~~

15 SEC. 2. Section 13952 of the Government Code is amended
16 to read:

17 13952. (a) An application for compensation shall be filed
18 with the board in the manner determined by the board.

19 (b) (1) The application for compensation shall be verified
20 under penalty of perjury by the individual who is seeking
21 compensation, who may be the victim or derivative victim, or an
22 individual seeking reimbursement for burial, funeral, or crime
23 scene cleanup expenses pursuant to paragraph (9) of subdivision
24 (a) of Section 13957. If the individual seeking compensation is a
25 minor or is incompetent, the application shall be verified under
26 penalty of perjury or on information and belief by the parent with
27 legal custody, guardian, conservator, or relative caregiver of the
28 victim or derivative victim for whom the application is made.
29 However, if a minor seeks compensation only for expenses for
30 medical, medical related, psychiatric, psychological, or other
31 mental health counseling related services and the minor is
32 authorized by statute to consent to those services, the minor may
33 verify the application for compensation under penalty of perjury.

1 (2) For purposes of this subdivision, “relative caregiver”
2 means a relative as defined in subdivision (i) of Section 6550 of
3 the Family Code, who assumed primary responsibility for the
4 child while the child was in the relative’s care and control, and
5 who is not a biological or adoptive parent.

6 (c) (1) The board may require submission of additional
7 information supporting the application that is reasonably
8 necessary to verify the application and determine eligibility for
9 compensation.

10 (2) The staff of the board shall determine whether an
11 application for compensation contains all of the information
12 required by the board. If the staff determines that an application
13 does not contain all of the required information, the staff shall
14 communicate that determination to the applicant with a brief
15 statement of the additional information required. The applicant,
16 within 30 calendar days of being notified that the application is
17 incomplete, may either supply the additional information or
18 appeal the staff’s determination to the board, which shall review
19 the application to determine whether it is complete.

20 (d) (1) The board may recognize an authorized representative
21 of the victim or derivative victim, who shall represent the victim
22 or derivative victim pursuant to rules adopted by the board.

23 (2) For purposes of this subdivision, an “authorized
24 representative” means any of the following:

25 (A) An attorney.

26 (B) If the victim or derivative victim is a minor or an
27 incompetent adult, the legal guardian or conservator, or an
28 immediate family member, parent, or relative caregiver who is
29 not the perpetrator of the crime that gave rise to the claim.

30 (C) A victim assistance advocate certified pursuant to Section
31 13835.10 of the Penal Code.

32 (D) An immediate family member of the victim or derivative
33 victim, who has written authorization by the victim or derivative
34 victim, and who is not the perpetrator of the crime that gave rise
35 to the claim.

36 (E) Other persons who shall represent the victim or derivative
37 victim pursuant to rules adopted by the board.

38 (3) Except for attorney’s fees awarded under this chapter, no
39 authorized representative described in paragraph (2) shall charge,

1 demand, receive, or collect any amount for services rendered
2 under this subdivision.

3 SEC. 3. Section 13955 of the Government Code is amended
4 to read:

5 13955. Except as provided in Section 13956, a person shall
6 be eligible for compensation when all of the following
7 requirements are met:

8 (a) The person for whom compensation is being sought is any
9 of the following:

10 (1) A victim.

11 (2) A derivative victim.

12 (3) A person who is entitled to reimbursement for funeral,
13 burial, or crime scene cleanup expenses pursuant to paragraph (9)
14 of subdivision (a) of Section 13957.

15 (b) Either of the following conditions is met:

16 (1) The crime occurred within this state, whether or not the
17 victim is a resident of the state. This paragraph shall apply only
18 during those time periods during which the board determines that
19 federal funds are available to the state for the compensation of
20 victims of crime.

21 (2) Whether or not the crime occurred within the State of
22 California, the victim was any of the following:

23 (A) A resident of the state.

24 (B) A member of the military stationed in California.

25 (C) A family member living with a member of the military
26 stationed in this state.

27 (c) If compensation is being sought for a derivative victim, the
28 derivative victim is a resident of this state, or resident of another
29 state, who is any of the following:

30 (1) At the time of the crime was the parent, grandparent,
31 sibling, spouse, child, or grandchild of the victim.

32 (2) At the time of the crime was living in the household of the
33 victim.

34 (3) At the time of the crime was a person who had previously
35 lived in the household of the victim for a period of not less than
36 two years in a relationship substantially similar to a relationship
37 listed in paragraph (1).

38 (4) Is another family member of the victim, including, but not
39 limited to, the victim's fiancé or fiancée, and who witnessed the
40 crime.

1 (5) Is the primary caretaker of a minor victim, but was not the
2 primary caretaker at the time of the crime.

3 (d) The application is timely pursuant to Section 13953.

4 (e) (1) Except as provided in paragraph (2), the injury or
5 death was a direct result of a crime.

6 (2) Notwithstanding paragraph (1), no act involving the
7 operation of a motor vehicle, aircraft, or water vehicle that results
8 in injury or death constitutes a crime for the purposes of this
9 chapter, except when the injury or death from such an act was
10 any of the following:

11 (A) Intentionally inflicted through the use of a motor vehicle,
12 aircraft, or water vehicle.

13 (B) Caused by a driver who fails to stop at the scene of an
14 accident in violation of Section 20001 of the Vehicle Code.

15 (C) Caused by a person who is under the influence of any
16 alcoholic beverage or drug.

17 (D) Caused by a driver of a motor vehicle in the immediate act
18 of fleeing the scene of a crime in which he or she knowingly and
19 willingly participated.

20 (E) Caused by a person who commits vehicular manslaughter
21 in violation of subdivision (c) of Section 192 or Section 192.5 of
22 the Penal Code.

23 (F) Caused by any party where a peace officer is operating a
24 motor vehicle in an effort to apprehend a suspect, and the suspect
25 is evading, fleeing, or otherwise attempting to elude the peace
26 officer.

27 (f) As a direct result of the crime, the victim or derivative
28 victim sustained one or more of the following:

29 (1) Physical injury. The board may presume a child who has
30 been the witness of a crime of domestic violence has sustained
31 physical injury. A child who resides in a home where a crime or
32 crimes of domestic violence have occurred may be presumed by
33 the board to have sustained physical injury, regardless of whether
34 the child has witnessed the crime.

35 (2) Emotional injury and a threat of physical injury.

36 (3) Emotional injury, where the crime was a violation of any
37 of the following provisions:

38 (A) Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a,
39 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the
40 Penal Code.

1 (B) Section 270 of the Penal Code, where the emotional injury
2 was a result of conduct other than a failure to pay child support,
3 and criminal charges were filed.

4 (C) Section 261.5 of the Penal Code, and criminal charges
5 were filed.

6 (D) Section 278 or 278.5 of the Penal Code, where the
7 deprivation of custody as described in those sections has endured
8 for 30 calendar days or more. For purposes of this paragraph, the
9 child, and not the nonoffending parent or other caretaker, shall be
10 deemed the victim.

11 (g) The injury or death has resulted or may result in pecuniary
12 loss within the scope of compensation pursuant to Sections
13 13957 to 13957.9, inclusive.