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HOUSE BILL 2211

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State of Washington

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2001 Regular Session

By Representatives Lisk, Kessler, Ogden, McIntire, Kenney, Lovick, Darneille, Santos and Edmonds

Read first time 02/27/2001. Referred to Committee on Appropriations.

1 AN ACT Relating to the domestic violence and stalking victims'  
2 compensation benefit using the public safety and education account;  
3 amending RCW 7.68.015, 7.68.020, 7.68.030, 7.68.060, 7.68.070,  
4 7.68.140, and 7.68.145; adding new sections to chapter 7.68 RCW; and  
5 creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 7.68 RCW  
8 to read as follows:

9 (1) The department shall:

10 (a) Establish and administer partial wage replacement benefits for  
11 victims of domestic violence or stalking as specified in this section,  
12 to be known as the domestic violence and stalking victims' compensation  
13 benefit;

14 (b) Pay benefits to victims of domestic violence or stalking from  
15 the public safety and education account;

16 (c) Establish procedures and forms for filing claims for benefits;  
17 and

1 (d) Provide information to claimants for benefits regarding the  
2 availability of protection orders under chapter 26.50 RCW and local  
3 services provided under chapter 70.123 RCW.

4 (2) Benefits under this section are payable to a victim of domestic  
5 violence or stalking if he or she:

6 (a) Has been employed in employment covered under Title 50 RCW for  
7 at least six hundred eighty hours in the first four of the last five  
8 completed calendar quarters or the last four completed calendar  
9 quarters immediately before the date of application for benefits;

10 (b) Is unemployed because of the need to protect the victim of  
11 domestic violence or stalking or his or her immediate family members  
12 from the risk of domestic violence or stalking;

13 (c) Is residing at an address different than that of the  
14 perpetrator;

15 (d) Has filed a police report or obtained a restraining order  
16 against the perpetrator within two years before the date of application  
17 for benefits;

18 (e) Files a claim for benefits as required by rules adopted by the  
19 director; and

20 (f) Consents to the disclosure of information or records deemed  
21 private and confidential under chapter 50.13 RCW. Initial disclosure  
22 of this information and these records by the employment security  
23 department to the department is solely for purposes related to the  
24 administration of this section. Further disclosure of this information  
25 or these records is subject to RCW 7.68.140, 7.68.145, and section 9 of  
26 this act.

27 (3) Benefits under this section are payable as follows:

28 (a) Benefits are payable in an amount calculated in the same manner  
29 that a weekly benefit amount is calculated under chapter 50.20 RCW;

30 (b) Benefits are payable during no more than twelve weeks in a  
31 calendar year or no more than seven weeks in a calendar year if the  
32 separation from employment is covered under RCW 50.20.050(4);

33 (c) Benefits are not payable for any weeks in which compensation  
34 for a permanent total disability or temporary total disability is paid  
35 or payable to the victim of domestic violence or stalking under the  
36 crime victims' compensation benefit under this chapter, or under Title  
37 51 RCW or another state or federal workers' compensation law; and

38 (d) Benefits are not payable for any weeks in which the separation  
39 from employment is covered under Title 50 RCW or another state or

1 federal unemployment compensation law, except for any weeks in the  
2 waiting period under RCW 50.20.050(4) or a comparable provision in  
3 another state or federal unemployment compensation law.

4 (4) Benefits under this section are payable only to the extent that  
5 moneys are available in the public safety and education account.  
6 Neither the state nor the department is liable for any amount in excess  
7 of these limits.

8 (5) This section does not create a continuing entitlement or  
9 contractual right. The legislature reserves the right to amend or  
10 repeal all or part of this section at any time, and a benefit or other  
11 right granted under this section exists subject to the legislature's  
12 power to amend or repeal this chapter. There is no vested private  
13 right of any kind against such amendment or repeal.

14 **Sec. 2.** RCW 7.68.015 and 1989 1st ex.s. c 5 s 1 are each amended  
15 to read as follows:

16 The department (~~(of labor and industries)~~) shall operate the crime  
17 victims' compensation program and the domestic violence and stalking  
18 victims' compensation benefit within the appropriations and the  
19 conditions and limitations on the appropriations provided for (~~(this)~~)  
20 these programs.

21 **Sec. 3.** RCW 7.68.020 and 1997 c 249 s 1 are each amended to read  
22 as follows:

23 The following words and phrases as used in this chapter have the  
24 meanings set forth in this section unless the context otherwise  
25 requires.

26 (1) "Department" means the department of labor and industries.

27 (2) "Criminal act" means an act committed or attempted in this  
28 state which is punishable as a felony or gross misdemeanor under the  
29 laws of this state, or an act committed outside the state of Washington  
30 against a resident of the state of Washington which would be  
31 compensable had it occurred inside this state; and the crime occurred  
32 in a state which does not have a crime victims compensation program,  
33 for which the victim is eligible as set forth in the Washington  
34 compensation law, or an act of terrorism as defined in 18 U.S.C. Sec.  
35 2331, as it exists on May 2, 1997, committed outside of the United  
36 States against a resident of the state of Washington, except as  
37 follows:

1 (a) The operation of a motor vehicle, motorcycle, train, boat, or  
2 aircraft in violation of law does not constitute a "criminal act"  
3 unless:

4 (i) The injury or death was intentionally inflicted;

5 (ii) The operation thereof was part of the commission of another  
6 non-vehicular criminal act as defined in this section;

7 (iii) The death or injury was the result of the operation of a  
8 motor vehicle after July 24, 1983, and a preponderance of the evidence  
9 establishes that the death was the result of vehicular homicide under  
10 RCW 46.61.520, or a conviction of vehicular assault under RCW  
11 46.61.522, has been obtained: PROVIDED, That in cases where a probable  
12 criminal defendant has died in perpetration of vehicular assault or,  
13 because of physical or mental infirmity or disability the perpetrator  
14 is incapable of standing trial for vehicular assault, the department  
15 may, by a preponderance of the evidence, establish that a vehicular  
16 assault had been committed and authorize benefits; or

17 (iv) Injury or death caused by a driver in violation of RCW  
18 46.61.502;

19 (b) Neither an acquittal in a criminal prosecution nor the absence  
20 of any such prosecution is admissible in any claim or proceeding under  
21 this chapter as evidence of the noncriminal character of the acts  
22 giving rise to such claim or proceeding, except as provided for in  
23 subsection (2)(a)(iii) of this section;

24 (c) Evidence of a criminal conviction arising from acts which are  
25 the basis for a claim or proceeding under this chapter is admissible in  
26 such claim or proceeding for the limited purpose of proving the  
27 criminal character of the acts; and

28 (d) Acts which, but for the insanity or mental irresponsibility of  
29 the perpetrator, would constitute criminal conduct are deemed to be  
30 criminal conduct within the meaning of this chapter.

31 (3) "Victim" means a person who suffers bodily injury or death as  
32 a proximate result of a criminal act of another person, the victim's  
33 own good faith and reasonable effort to prevent a criminal act, or his  
34 good faith effort to apprehend a person reasonably suspected of  
35 engaging in a criminal act. For the purposes of receiving benefits  
36 pursuant to this chapter, "victim" is interchangeable with "employee"  
37 or "workman" as defined in chapter 51.08 RCW as now or hereafter  
38 amended.

1       (4) "Victim of domestic violence or stalking" means a person who  
2 was a victim of domestic violence, as defined in RCW 26.50.010, or  
3 stalking, as defined in RCW 9A.46.110, within two years before the date  
4 of application for benefits under section 1 of this act.

5       (5) "Child," "accredited school," "dependent," "beneficiary,"  
6 "average monthly wage," "director," "injury," "invalid," "permanent  
7 partial disability," and "permanent total disability" have the meanings  
8 assigned to them in chapter 51.08 RCW as now or hereafter amended.

9       (~~(5)~~) (6) "Gainfully employed" means engaging on a regular and  
10 continuous basis in a lawful activity from which a person derives a  
11 livelihood.

12       (~~(6)~~) (7) "Private insurance" means any source of recompense  
13 provided by contract available as a result of the claimed injury or  
14 death at the time of such injury or death, or which becomes available  
15 any time thereafter.

16       (~~(7)~~) (8) "Public insurance" means any source of recompense  
17 provided by statute, state or federal, available as a result of the  
18 claimed injury or death at the time of such injury or death, or which  
19 becomes available any time thereafter.

20       **Sec. 4.** RCW 7.68.030 and 1989 1st ex.s. c 5 s 2 are each amended  
21 to read as follows:

22       It shall be the duty of the director to establish and administer a  
23 program of benefits to innocent victims of criminal acts, to be known  
24 as the crime victims' compensation program, within the terms and  
25 limitations of this chapter. In so doing, the director shall, in  
26 accordance with chapter 34.05 RCW, adopt rules and regulations  
27 necessary to the administration of this chapter, and the provisions  
28 contained in chapter 51.04 RCW, including but not limited to RCW  
29 51.04.020, 51.04.030, 51.04.040, 51.04.050 and 51.04.100 as now or  
30 hereafter amended, shall apply where appropriate in keeping with the  
31 intent of this chapter. The director may apply for and, subject to  
32 appropriation, expend federal funds under Public Law 98-473 and any  
33 other federal program providing financial assistance to state crime  
34 victim compensation programs. The federal funds shall be deposited in  
35 the public safety and education account in the general fund and may be  
36 expended only for purposes authorized by applicable federal law.

1       **Sec. 5.** RCW 7.68.060 and 1996 c 122 s 4 are each amended to read  
2 as follows:

3       (1) For the purposes of applying for benefits from the crime  
4 victims' compensation program under this chapter, the rights,  
5 privileges, responsibilities, duties, limitations and procedures  
6 contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 shall  
7 apply: PROVIDED, That no compensation of any kind shall be available  
8 under this chapter if:

9       (a) An application for benefits is not received by the department  
10 within two years after the date the criminal act was reported to a  
11 local police department or sheriff's office or the date the rights of  
12 dependents or beneficiaries accrued, unless the director has determined  
13 that "good cause" exists to expand the time permitted to receive the  
14 application. "Good cause" shall be determined by the department on a  
15 case-by-case basis and may extend the period of time in which an  
16 application can be received for up to five years after the date the  
17 criminal act was reported to a local police department or sheriff's  
18 office or the date the rights of dependents or beneficiaries accrued;  
19 or

20       (b) The criminal act is not reported by the victim or someone on  
21 his or her behalf to a local police department or sheriff's office  
22 within twelve months of its occurrence or, if it could not reasonably  
23 have been reported within that period, within twelve months of the time  
24 when a report could reasonably have been made. In making  
25 determinations as to reasonable time limits, the department shall give  
26 greatest weight to the needs of the victims.

27       (2) This section does not apply to the domestic violence and  
28 stalking victims' compensation benefit under section 1 of this act.

29       (3) This section shall apply only to criminal acts reported after  
30 December 31, 1985.

31       (~~(3)~~) (4) Because victims of childhood criminal acts may repress  
32 conscious memory of such criminal acts far beyond the age of eighteen,  
33 the rights of adult victims of childhood criminal acts shall accrue at  
34 the time the victim discovers or reasonably should have discovered the  
35 elements of the crime. In making determinations as to reasonable time  
36 limits, the department shall give greatest weight to the needs of the  
37 victim.

1       **Sec. 6.** RCW 7.68.070 and 1996 c 122 s 5 are each amended to read  
2 as follows:

3       The right to benefits from the crime victims' compensation program  
4 under this chapter and the amount thereof will be governed insofar as  
5 is applicable by the provisions contained in chapter 51.32 RCW except  
6 as provided in this section:

7       (1) The provisions contained in RCW 51.32.015, 51.32.030,  
8 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not  
9 applicable to this chapter.

10       (2) Each victim injured as a result of a criminal act, including  
11 criminal acts committed between July 1, 1981, and January 1, 1983, or  
12 the victim's family or dependents in case of death of the victim, are  
13 entitled to benefits in accordance with this chapter, subject to the  
14 limitations under RCW 7.68.015. The rights, duties, responsibilities,  
15 limitations, and procedures applicable to a worker as contained in RCW  
16 51.32.010 are applicable to this chapter.

17       (3) The limitations contained in RCW 51.32.020 are applicable to  
18 claims under this chapter. In addition thereto, no person or spouse,  
19 child, or dependent of such person is entitled to benefits under this  
20 chapter when the injury for which benefits are sought, was:

21       (a) The result of consent, provocation, or incitement by the  
22 victim, unless an injury resulting from a criminal act caused the death  
23 of the victim;

24       (b) Sustained while the crime victim was engaged in the attempt to  
25 commit, or the commission of, a felony; or

26       (c) Sustained while the victim was confined in any county or city  
27 jail, federal jail or prison or in any other federal institution, or  
28 any state correctional institution maintained and operated by the  
29 department of social and health services or the department of  
30 corrections, prior to release from lawful custody; or confined or  
31 living in any other institution maintained and operated by the  
32 department of social and health services or the department of  
33 corrections.

34       (4) The benefits established upon the death of a worker and  
35 contained in RCW 51.32.050 shall be the benefits obtainable under this  
36 chapter and provisions relating to payment contained in that section  
37 shall equally apply under this chapter: PROVIDED, That benefits for  
38 burial expenses shall not exceed the amount paid by the department in  
39 case of the death of a worker as provided in chapter 51.32 RCW in any

1 claim: PROVIDED FURTHER, That if the criminal act results in the death  
2 of a victim who was not gainfully employed at the time of the criminal  
3 act, and who was not so employed for at least three consecutive months  
4 of the twelve months immediately preceding the criminal act;

5 (a) Benefits payable to an eligible surviving spouse, where there  
6 are no children of the victim at the time of the criminal act who have  
7 survived the victim or where such spouse has legal custody of all of  
8 his or her children, shall be limited to burial expenses and a lump sum  
9 payment of seven thousand five hundred dollars without reference to  
10 number of children, if any;

11 (b) Where any such spouse has legal custody of one or more but not  
12 all of such children, then such burial expenses shall be paid, and such  
13 spouse shall receive a lump sum payment of three thousand seven hundred  
14 fifty dollars and any such child or children not in the legal custody  
15 of such spouse shall receive a lump sum of three thousand seven hundred  
16 fifty dollars to be divided equally among such child or children;

17 (c) If any such spouse does not have legal custody of any of the  
18 children, the burial expenses shall be paid and the spouse shall  
19 receive a lump sum payment of up to three thousand seven hundred fifty  
20 dollars and any such child or children not in the legal custody of the  
21 spouse shall receive a lump sum payment of up to three thousand seven  
22 hundred fifty dollars to be divided equally among the child or  
23 children;

24 (d) If no such spouse survives, then such burial expenses shall be  
25 paid, and each surviving child of the victim at the time of the  
26 criminal act shall receive a lump sum payment of three thousand seven  
27 hundred fifty dollars up to a total of two such children and where  
28 there are more than two such children the sum of seven thousand five  
29 hundred dollars shall be divided equally among such children.

30 No other benefits may be paid or payable under these circumstances.

31 (5) The benefits established in RCW 51.32.060 for permanent total  
32 disability proximately caused by the criminal act shall be the benefits  
33 obtainable under this chapter, and provisions relating to payment  
34 contained in that section apply under this chapter: PROVIDED, That if  
35 a victim becomes permanently and totally disabled as a proximate result  
36 of the criminal act and was not gainfully employed at the time of the  
37 criminal act, the victim shall receive monthly during the period of the  
38 disability the following percentages, where applicable, of the average

1 monthly wage determined as of the date of the criminal act pursuant to  
2 RCW 51.08.018:

3 (a) If married at the time of the criminal act, twenty-nine percent  
4 of the average monthly wage.

5 (b) If married with one child at the time of the criminal act,  
6 thirty-four percent of the average monthly wage.

7 (c) If married with two children at the time of the criminal act,  
8 thirty-eight percent of the average monthly wage.

9 (d) If married with three children at the time of the criminal act,  
10 forty-one percent of the average monthly wage.

11 (e) If married with four children at the time of the criminal act,  
12 forty-four percent of the average monthly wage.

13 (f) If married with five or more children at the time of the  
14 criminal act, forty-seven percent of the average monthly wage.

15 (g) If unmarried at the time of the criminal act, twenty-five  
16 percent of the average monthly wage.

17 (h) If unmarried with one child at the time of the criminal act,  
18 thirty percent of the average monthly wage.

19 (i) If unmarried with two children at the time of the criminal act,  
20 thirty-four percent of the average monthly wage.

21 (j) If unmarried with three children at the time of the criminal  
22 act, thirty-seven percent of the average monthly wage.

23 (k) If unmarried with four children at the time of the criminal  
24 act, forty percent of the average monthly wage.

25 (l) If unmarried with five or more children at the time of the  
26 criminal act, forty-three percent of the average monthly wage.

27 (6) The benefits established in RCW 51.32.080 for permanent partial  
28 disability shall be the benefits obtainable under this chapter, and  
29 provisions relating to payment contained in that section equally apply  
30 under this chapter.

31 (7) The benefits established in RCW 51.32.090 for temporary total  
32 disability shall be the benefits obtainable under this chapter, and  
33 provisions relating to payment contained in that section apply under  
34 this chapter: PROVIDED, That no person is eligible for temporary total  
35 disability benefits under this chapter if such person was not gainfully  
36 employed at the time of the criminal act, and was not so employed for  
37 at least three consecutive months of the twelve months immediately  
38 preceding the criminal act.

1 (8) The benefits established in RCW 51.32.095 for continuation of  
2 benefits during vocational rehabilitation shall be benefits obtainable  
3 under this chapter, and provisions relating to payment contained in  
4 that section apply under this chapter: PROVIDED, That benefits shall  
5 not exceed five thousand dollars for any single injury.

6 (9) The provisions for lump sum payment of benefits upon death or  
7 permanent total disability as contained in RCW 51.32.130 apply under  
8 this chapter.

9 (10) The provisions relating to payment of benefits to, for or on  
10 behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100,  
11 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and  
12 51.32.210 are applicable to payment of benefits to, for or on behalf of  
13 victims under this chapter.

14 (11) No person or spouse, child, or dependent of such person is  
15 entitled to benefits under this chapter where the person making a claim  
16 for such benefits has refused to give reasonable cooperation to state  
17 or local law enforcement agencies in their efforts to apprehend and  
18 convict the perpetrator(s) of the criminal act which gave rise to the  
19 claim.

20 (12) In addition to other benefits provided under this chapter,  
21 victims of sexual assault are entitled to receive appropriate  
22 counseling. Fees for such counseling shall be determined by the  
23 department in accordance with RCW 51.04.030, subject to the limitations  
24 of RCW 7.68.080. Counseling services may include, if determined  
25 appropriate by the department, counseling of members of the victim's  
26 immediate family, other than the perpetrator of the assault.

27 (13) Except for medical benefits authorized under RCW 7.68.080, no  
28 more than thirty thousand dollars shall be granted as a result of a  
29 single injury or death, except that benefits granted as the result of  
30 total permanent disability or death shall not exceed forty thousand  
31 dollars.

32 (14) Notwithstanding other provisions of this chapter and Title 51  
33 RCW, benefits payable for total temporary disability under subsection  
34 (7) of this section, shall be limited to fifteen thousand dollars.

35 (15) Any person who is responsible for the victim's injuries, or  
36 who would otherwise be unjustly enriched as a result of the victim's  
37 injuries, shall not be a beneficiary under this chapter.

38 (16) Crime victims' compensation is not available to pay for  
39 services covered under chapter 74.09 RCW or Title XIX of the federal

1 social security act, except to the extent that the costs for such  
2 services exceed service limits established by the department of social  
3 and health services or, during the 1993-95 fiscal biennium, to the  
4 extent necessary to provide matching funds for federal medicaid  
5 reimbursement.

6 (17) In addition to other benefits provided under this chapter,  
7 immediate family members of a homicide victim may receive appropriate  
8 counseling to assist in dealing with the immediate, near-term  
9 consequences of the related effects of the homicide. Fees for  
10 counseling shall be determined by the department in accordance with RCW  
11 51.04.030, subject to the limitations of RCW 7.68.080. Payment of  
12 counseling benefits under this section may not be provided to the  
13 perpetrator of the homicide. The benefits under this subsection may be  
14 provided only with respect to homicides committed on or after July 1,  
15 1992.

16 (18) This section does not apply to the domestic violence and  
17 stalking victims' compensation benefit under section 1 of this act.

18 **Sec. 7.** RCW 7.68.140 and 1997 c 310 s 1 are each amended to read  
19 as follows:

20 Information contained in the claim files and records of victims and  
21 victims of domestic violence or stalking, under the provisions of this  
22 chapter, shall be deemed confidential and shall not be open to public  
23 inspection: PROVIDED, That, except as limited by state or federal  
24 statutes or regulations, such information may be provided to public  
25 employees in the performance of their official duties: PROVIDED  
26 FURTHER, That except as otherwise limited by state or federal statutes  
27 or regulations a claimant or a representative of a claimant, be it an  
28 individual or an organization, may review a claim file or receive  
29 specific information therefrom upon the presentation of the signed  
30 authorization of the claimant: PROVIDED FURTHER, That physicians  
31 treating or examining victims claiming benefits under this chapter or  
32 physicians giving medical advice to the department regarding any claim  
33 may, at the discretion of the department and as not otherwise limited  
34 by state or federal statutes or regulations, inspect the claim files  
35 and records of such victims, and other persons may, when rendering  
36 assistance to the department at any stage of the proceedings on any  
37 matter pertaining to the administration of this chapter, inspect the  
38 claim files and records of such victims at the discretion of the

1 department and as not otherwise limited by state or federal statutes or  
2 regulations.

3 **Sec. 8.** RCW 7.68.145 and 1975 1st ex.s. c 176 s 7 are each amended  
4 to read as follows:

5 Notwithstanding any other provision of law, all law enforcement,  
6 criminal justice, or other governmental agencies, or hospital; any  
7 physician or other practitioner of the healing arts; or any other  
8 organization or person having possession or control of any  
9 investigative or other information pertaining to any alleged criminal  
10 act or victim or victim of domestic violence or stalking concerning  
11 which a claim for benefits has been filed under this chapter, shall,  
12 upon request, make available to and allow the reproduction of any such  
13 information by the section of the department administering this chapter  
14 or other public employees in their performance of their official duties  
15 under this chapter.

16 No person or organization, public or private, shall incur any legal  
17 liability by reason of releasing any such information to the director  
18 of labor and industries or the section of the department which  
19 administers this chapter or other public employees in the performance  
20 of their official duties under this chapter.

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 7.68 RCW  
22 to read as follows:

23 Information contained in the claim files and records of victims of  
24 domestic violence or stalking, under section 1 of this act, shall not  
25 be subject to discovery in any judicial proceeding unless the  
26 requirements of RCW 70.123.075 are satisfied.

27 NEW SECTION. **Sec. 10.** This act applies beginning with weeks of  
28 eligibility that begin on or after January 1, 2002.

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