

HOUSE BILL NO. 309

INTRODUCED BY QUILICI, SPAETH, HARP,
PAVLOVICH, MANNING, DAILY

BY REQUEST OF THE DEPARTMENT OF LABOR
AND INDUSTRY AND THE BOARD OF CRIME CONTROL

IN THE HOUSE

JANUARY 20, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 3, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 4, 1987	PRINTING REPORT.
FEBRUARY 5, 1987	SECOND READING, DO PASS. ON MOTION, TAKEN FROM ENGROSSING AND REREFERRED TO COMMITTEE ON APPROPRIATIONS.
FEBRUARY 18, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 19, 1987	PRINTING REPORT.
FEBRUARY 20, 1987	SECOND READING, DO PASS.
FEBRUARY 21, 1987	ENGROSSING REPORT. THIRD READING, PASSED. AYES, 88; NOES, 3. TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 26, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

MARCH 30, 1987

SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *House* BILL NO. *309*
 2 INTRODUCED BY *Luisi Spalding* *HB 309*
 3 *Richard E. Manning* BY REQUEST OF THE DEPARTMENT OF LABOR *Daly*
 4 AND INDUSTRY AND THE BOARD OF CRIME CONTROL

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIME
 7 VICTIMS COMPENSATION ACT OF MONTANA; TRANSFERRING
 8 ADMINISTRATION OF THE ACT TO THE CRIME CONTROL DIVISION OF
 9 THE DEPARTMENT OF JUSTICE; REQUIRING AN APPEAL FROM A
 10 DEPARTMENT DETERMINATION CONCERNING A CLAIM TO BE MADE TO
 11 DISTRICT COURT; PROVIDING FOR CONFIDENTIALITY OF CERTAIN
 12 RECORDS; INCREASING CERTAIN BENEFITS; EXPANDING THE
 13 SUBROGATION RIGHTS OF THE FUND; AMENDING SECTIONS 53-9-103,
 14 53-9-106, 53-9-107, 53-9-128, 53-9-131, AND 59-9-132, MCA;
 15 AND PROVIDING AN EFFECTIVE DATE."

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 53-9-103, MCA, is amended to read:
 19 "53-9-103. Definitions. As used in this part, the
 20 following definitions apply:

- 21 (1) "Claimant" means any of the following claiming
 22 compensation under this part:
 23 (a) a victim;
 24 (b) a dependent of a deceased victim; or
 25 (c) an authorized person acting on behalf of any of

- 1 them.
 2 (2) "Collateral source" means a source of benefits,
 3 other than welfare benefits, or advantages for economic loss
 4 otherwise compensable under this part which the claimant has
 5 received or which is readily available to him from:
 6 (a) the offender;
 7 (b) the government of the United States or any agency
 8 thereof, a state or any of its political subdivisions, or an
 9 instrumentality of two or more states, unless the law
 10 providing for the benefits or advantages makes them excess
 11 or secondary to benefits under this part;
 12 (c) social security, medicare, and medicaid;
 13 (d) workers' compensation;
 14 (e) wage continuation programs of any employer;
 15 (f) proceeds of a contract of insurance payable to the
 16 claimant for loss which was sustained because of the
 17 criminally injurious conduct; or
 18 (g) a contract, including an insurance contract,
 19 providing hospital and other health care services or
 20 benefits for disability. Any such contract in this state may
 21 not provide that benefits under this part shall be a
 22 substitute for benefits under the contract or that the
 23 contract is a secondary source of benefits and benefits
 24 under this part are a primary source.
 25 (3) "Criminally injurious conduct" means conduct that:



- 1 (a) occurs or is attempted in this state;
- 2 (b) results in bodily injury or death; and
- 3 (c) is punishable by fine, imprisonment, or death or
- 4 would be so punishable but for the fact that the person
- 5 engaging in the conduct lacked capacity to commit the crime
- 6 under the laws of this state. Criminally injurious conduct
- 7 does not include conduct arising out of the ownership,
- 8 maintenance, or use of a motor vehicle as described in Title
- 9 61.
- 10 (4) "Dependent" means a natural person who is
- 11 recognized under the law of this state to be wholly or
- 12 partially dependent upon the victim for care or support and
- 13 includes a child of the victim conceived before the victim's
- 14 death but born after the victim's death, including a child
- 15 that is conceived as a result of the criminally injurious
- 16 conduct.
- 17 (5) "Division" means the division of ~~workers'~~
- 18 ~~compensation-provided-for-in-2-15-1782~~ crime control of the
- 19 department of justice.
- 20 (6) "Victim" means a person who suffers bodily injury
- 21 or death as a result of:
- 22 (a) criminally injurious conduct;
- 23 (b) his good faith effort to prevent criminally
- 24 injurious conduct; or
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- 1 reasonably suspected of engaging in criminally injurious
- 2 conduct."
- 3 Section 2. Section 53-9-106, MCA, is amended to read:
- 4 "53-9-106. Attorneys' fees. (1) The division may grant
- 5 attorneys' fees to attorneys for representing claimants
- 6 before the division. Any attorney's fee granted by the
- 7 division shall be in addition to compensation awarded the
- 8 claimant under this part.
- 9 (2) The division may regulate the amount of the
- 10 attorney's fee in any claim under this part when an attorney
- 11 is representing a claimant.
- 12 (3) In cases under this part that go before the
- 13 ~~workers'~~compensation-judge a district court, the judge may
- 14 grant, in addition to compensation benefits granted,
- 15 attorneys' fees to attorneys for representing claimants
- 16 before the judge court.
- 17 (4) In no claim or case may attorney fees in excess of
- 18 5% of the amount paid to a claimant or on his behalf be paid
- 19 directly or indirectly to a claimant's attorney."
- 20 Section 3. Section 53-9-107, MCA, is amended to read:
- 21 "53-9-107. Public inspection and disclosure of
- 22 division's records. The (1) Except as provided in
- 23 subsection (2), the records the division maintains in its
- 24 possession in the administration of this part are open to
- 25 public inspection and disclosure in accordance with the

1 provisions of 39-71-221 through 39-71-224.

2 (2) Confidential criminal justice information obtained
3 by the division is subject to the confidentiality provisions
4 of the Montana Criminal Justice Information Act of 1979,
5 Title 44, chapter 5. Information regarding youth court
6 proceedings obtained by the division is subject to the
7 confidentiality provisions of Title 41, chapter 5, part 6."

8 Section 4. Section 53-9-128, MCA, is amended to read:
9 "53-9-128. Compensation benefits. (1) A claimant is
10 entitled to weekly compensation benefits when the claimant
11 has a total actual loss of wages due to injury as a result
12 of criminally injurious conduct. During the time the
13 claimant seeks such weekly benefits, the claimant, as a
14 result of such injury, must have no reasonable prospect of
15 being regularly employed in the normal labor market. The
16 weekly benefit amount is 66 2/3% of the wages received at
17 the time of the criminally injurious conduct, subject to a
18 maximum of \$125 one-half the state's average weekly wage as
19 determined in 39-51-2201. Weekly compensation payments shall
20 be made at the end of each 2-week period. No weekly
21 compensation payments may be paid for the first week after
22 the criminally injurious conduct occurred, but if total
23 actual loss of wages continues for 1 week, weekly
24 compensation payments shall be paid from the date the wage
25 loss began. Weekly compensation payments shall continue

1 until the claimant has a reasonable prospect of being
2 regularly employed in the normal labor market.

3 (2) The claimant is entitled to be reimbursed for
4 reasonable services by a physician or surgeon, reasonable
5 hospital services and medicines, and such other treatment as
6 may be approved by the division for the injuries suffered
7 due to criminally injurious conduct.

8 (3) (a) The dependents of a victim who is killed as a
9 result of criminally injurious conduct are entitled to
10 receive, in a gross single amount payable to all dependents,
11 weekly benefits amounting to 66 2/3% of the wages received
12 at the time of the criminally injurious conduct causing the
13 death, subject to a maximum of \$125-per-week one-half the
14 state's average weekly wage as determined in 39-51-2201.
15 Weekly compensation payments shall be made at the end of
16 each 2-week period.

17 (b) Benefits under subsection (3)(a) of this section
18 shall be paid to the spouse for the benefit of the spouse
19 and other dependents unless the division determines that
20 other payment arrangements should be made. If a spouse dies
21 or remarries, benefits under subsection (3)(a) shall cease
22 to be paid to the spouse but shall continue to be paid to
23 the other dependents so long as their dependent status
24 continues.

25 (4) Reasonable funeral and burial expenses of the

1 victim, not exceeding ~~\$1,100~~ \$2,000, shall be paid if all
 2 other collateral sources have properly paid such expenses
 3 but have not covered all such expenses.

4 (5) Compensation payable to a victim and all of the
 5 victim's dependents in cases of the victim's death, because
 6 of injuries suffered due to an act of criminally injurious
 7 conduct may not exceed \$25,000 in the aggregate.

8 (6) Compensation benefits are not payable for pain and
 9 suffering, inconvenience, physical impairment, or nonbodily
 10 damage.

11 (7) (a) A person who has suffered injury as a result
 12 of criminally injurious conduct and as a result of such
 13 injury has no reasonable prospect of being regularly
 14 employed in the normal labor market, who was employable but
 15 was not employed at the time of such injury, may in the
 16 discretion of the division be awarded weekly compensation
 17 benefits in an amount determined by the division not to
 18 exceed \$100 per week. Weekly compensation payments shall
 19 continue until the claimant has a reasonable prospect of
 20 being regularly employed in the normal labor market or for a
 21 shorter period as determined by the division. The claimant
 22 shall be awarded benefits as provided in subsection (2) of
 23 this section.

24 (b) The dependents of a victim who is killed as a
 25 result of criminally injurious conduct and who was

1 employable but not employed at the time of death may in the
 2 discretion of the division be awarded, in a gross single
 3 amount payable to all dependents, a sum not to exceed \$100
 4 per week which shall be payable in the manner and for the
 5 period provided by subsection (3)(b) of this section or for
 6 such shorter period as determined by the division. The
 7 claimant shall be awarded benefits as provided in subsection
 8 (4) of this section.

9 ~~(c) Compensation payable to a victim or a victim's~~
 10 ~~dependents under this subsection may not exceed \$20,000, and~~
 11 ~~the limitations of subsection (6) apply to compensation~~
 12 ~~under this subsection (7).~~

13 (8) Amounts payable as weekly compensation may not be
 14 commuted to a lump sum and may not be paid less frequently
 15 than every 2 weeks."

16 Section 5. Section 53-9-131, MCA, is amended to read:
 17 "53-9-131. Appeals. (1) After the division has made
 18 final determination concerning any matter relating to a
 19 claim, if the claimant disputes the division's
 20 determination, he may appeal to the ~~workers' compensation~~
 21 judge district court for the county in which he resides or
 22 Lewis and Clark County for review. Review on appeal must be
 23 in conformity with 2-4-701 through 2-4-704 of the Montana
 24 Administrative Procedure Act. The judge, after a hearing,
 25 shall make a final determination concerning the dispute and

1 issue an appropriate order affirming, reversing, or
2 modifying the division's determination.

3 ~~{2}--All-proceedings-and-hearings-before-the-workers'
4 compensation-judge-shall-be-in-accordance-with-the
5 appropriate-provisions-of-the-Montana-Administrative
6 Procedure-Act--However, the-workers'-compensation-judge-is
7 not-bound-by-common-law-and-statutory-rules-of-evidence-~~

8 ~~{3}--Notwithstanding-Title-2, chapter-47-part-77--an
9 appeal--from--a--final-decision-of-the-workers'-compensation
10 judge-shall-be-filed-directly--with--the--supreme--court--of
11 Montana--in--the-manner-provided-by-law-for-appeals-from-the
12 district-court-in-civil-cases--"~~

13 Section 6. Section 53-9-132, MCA, is amended to read:
14 "53-9-132. Subrogation. (1) If a claimant seeks
15 compensation under this part and compensation is awarded,
16 the division is entitled to full subrogation against a
17 judgment or recovery received by the claimant against the
18 offender or a collateral source arising from the criminally
19 injurious conduct committed by the offender for all
20 compensation paid under this part. The division's right of
21 subrogation shall be a first lien on the judgment or
22 recovery. If the claimant does not institute the action
23 against the offender or collateral source within 1 year from
24 the date the criminally injurious conduct occurred, the
25 division may institute the action in the name of the

1 claimant or the claimant's personal representative.

2 (2) If the claimant institutes the action, the
3 division shall pay a proportional share of costs and
4 attorneys' fees if it recovers under its subrogation
5 interest.

6 (3) If the division institutes the action in the name
7 of the claimant or the claimant's personal representative
8 and the recovery is in excess of the amount of compensation
9 paid to the claimant and costs incurred by the division in
10 pursuit of the action, the excess shall be paid to the
11 claimant.

12 (4) If a judgment or recovery includes both damages
13 for bodily injury or death for which the division has paid
14 compensation under this part and damages for which the
15 division has not paid compensation, then the division's
16 subrogation interest shall apply only to that proportion of
17 the judgment or recovery for which it has paid compensation.
18 In a civil action in a court of this state arising out of
19 criminally injurious conduct, the judge, on timely motion,
20 shall direct the jury to return a special verdict indicating
21 separately the amounts of the various items of damages
22 awarded. A claimant may not make recoveries against the
23 offender or collateral source in such a way as to avoid and
24 preclude the division from receiving its proper subrogation
25 share as provided in this section. The division shall

1 release its lien provided for in subsection (1) above upon
2 receipt of its subrogation share."

3 NEW SECTION. Section 7. Extension of authority. Any
4 existing authority of the workers' compensation division to
5 make rules on the subject of the provisions of this act is
6 extended to the division of crime control to make rules on
7 the subject of the provisions of this act.

8 NEW SECTION. Section 8. Effective date. This act is
9 effective July 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB309, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the Crime Victims' Compensation Act of Montana, transferring administration of the act to the Crime Control Division of the Department of Justice; requiring an appeal from a department determination concerning a claim to be made to District Court; providing for confidentiality of certain records; increasing certain benefits; expanding the subrogation rights of the fund.

PART I

This portion of the fiscal note pertains to increasing certain benefits.

ASSUMPTIONS:

1. Collateral sources remain at current levels for wage benefits and funeral expenses.
2. No additional operational costs are associated with increase in benefits.
3. No increase in actual cost of funeral. (Average funeral cost based on FY86 claims is \$2,445.)
4. No increase in number of qualifying claims for funeral expenses. (23 claims approved in FY86.)
5. Montana's average weekly wage will increase 3% per annum over present \$299 base.
6. Number of claims for maximum wage benefits will remain constant with 3 year historical average.
7. Costs under current law are based on FY86 actual.

FISCAL IMPACT:

Revenues:


All revenue into the Crime Victims' account would no longer be part of DWC's operation.


Expenditures:

The following figures represent only increased benefit costs of the proposed legislation. If this program is transferred to Justice, the operational and benefit costs would also transfer.

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Compensation benefits	\$ 9,601	\$11,218	\$ 1,617	\$ 9,601	\$11,555	\$ 1,954
Funeral benefits	22,434	35,199	12,765	22,434	35,199	12,765
TOTAL	\$32,035	\$46,417	\$ 14,382	\$32,035	\$46,754	\$ 14,719

Source of Funds: State Special Revenue Fund


 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning
 DATE 1/27/87


 JOE QUILICI, PRIMARY SPONSOR
 DATE _____
 Fiscal Note for HB309, as introduced.

HB 309

Fiscal Note Request, HB309, as introduced.

Form BD-15

Page 2

PART II

The following figures represent the transfer administration of the act to Justice Department.

ASSUMPTIONS:

1. Program supervisor will transfer with the program. When the Crime Victims program began in 1978, three FTE were provided to Workers' Compensation Division. The department proposes transferring 1 FTE with the program and two FTE will remain in Workers' Compensation to provide other functions to the department.
2. Secretary, Grade 8, will be hired to support the program; currently, Workers' Compensation provides support and charges the program as indirect costs.
3. Benefits are calculated at 14.5% of salaries plus \$115 per month per person for health insurance.

FISCAL IMPACT:

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	<u>FY88</u>			<u>FY89</u>		
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	<u>Law</u>	<u>Law</u>		<u>Law</u>	<u>Law</u>	
Personal Services	\$ 27,130	\$ 43,569	\$ 16,439	\$ 27,206	\$ 43,623	\$ 16,417
Operating Expense	5,709	11,231	5,522	5,706	11,231	5,525
Equipment	0	2,750	2,750	0	500	500
Benefits & Claims	365,863	380,245	14,382	365,863	380,582	14,719
Transfers	25,948	0	(25,948)	27,633	0	(27,633)
TOTAL	\$424,650	\$437,795	(\$ 13,145)	\$426,408	\$435,936	(\$ 9,528)

Source of Funds: State Special Revenue Fund

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Minimal - only 7 cases since 1978 have required court action.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

53-9-107 references the Workers' Compensation Act 39-71-221 through 224 and should be deleted.

STATE OF MONTANA - FISCAL NOTE

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 DATE 1/30/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

 DATE _____
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APPROVED BY COMMITTEE
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10 "53-9-128. Compensation benefits. (1) A claimant is
11 entitled to weekly compensation benefits when the claimant
12 has a total actual loss of wages due to injury as a result
13 of criminally injurious conduct. During the time the
14 claimant seeks such weekly benefits, the claimant, as a
15 result of such injury, must have no reasonable prospect of
16 being regularly employed in the normal labor market. The
17 weekly benefit amount is 66 2/3% of the wages received at
18 the time of the criminally injurious conduct, subject to a
19 maximum of \$125 one-half the state's average weekly wage as
20 determined in 39-51-2201. Weekly compensation payments shall
21 be made at the end of each 2-week period. No weekly
22 compensation payments may be paid for the first week after
23 the criminally injurious conduct occurred, but if total
24 actual loss of wages continues for 1 week, weekly
25 compensation payments shall be paid from the date the wage

1 loss began. Weekly compensation payments shall continue
2 until the claimant has a reasonable prospect of being
3 regularly employed in the normal labor market.

4 (2) The claimant is entitled to be reimbursed for
5 reasonable services by a physician or surgeon, reasonable
6 hospital services and medicines, and such other treatment as
7 may be approved by the division for the injuries suffered
8 due to criminally injurious conduct.

9 (3) (a) The dependents of a victim who is killed as a
10 result of criminally injurious conduct are entitled to
11 receive, in a gross single amount payable to all dependents,
12 weekly benefits amounting to 66 2/3% of the wages received
13 at the time of the criminally injurious conduct causing the
14 death, subject to a maximum of \$125 per-week one-half the
15 state's average weekly wage as determined in 39-51-2201.
16 Weekly compensation payments shall be made at the end of
17 each 2-week period.

18 (b) Benefits under subsection (3)(a) of this section
19 shall be paid to the spouse for the benefit of the spouse
20 and other dependents unless the division determines that
21 other payment arrangements should be made. If a spouse dies
22 or remarries, benefits under subsection (3)(a) shall cease
23 to be paid to the spouse but shall continue to be paid to
24 the other dependents so long as their dependent status
25 continues.

1 (4) Reasonable funeral and burial expenses of the
2 victim, not exceeding ~~\$17,000~~ \$2,000, shall be paid if all
3 other collateral sources have properly paid such expenses
4 but have not covered all such expenses.

5 (5) Compensation payable to a victim and all of the
6 victim's dependents in cases of the victim's death, because
7 of injuries suffered due to an act of criminally injurious
8 conduct may not exceed \$25,000 in the aggregate.

9 (6) Compensation benefits are not payable for pain and
10 suffering, inconvenience, physical impairment, or nonbodily
11 damage.

12 (7) (a) A person who has suffered injury as a result
13 of criminally injurious conduct and as a result of such
14 injury has no reasonable prospect of being regularly
15 employed in the normal labor market, who was employable but
16 was not employed at the time of such injury, may in the
17 discretion of the division be awarded weekly compensation
18 benefits in an amount determined by the division not to
19 exceed \$100 per week. Weekly compensation payments shall
20 continue until the claimant has a reasonable prospect of
21 being regularly employed in the normal labor market or for a
22 shorter period as determined by the division. The claimant
23 shall be awarded benefits as provided in subsection (2) of
24 this section.

25 (b) The dependents of a victim who is killed as a

1 result of criminally injurious conduct and who was
2 employable but not employed at the time of death may in the
3 discretion of the division be awarded, in a gross single
4 amount payable to all dependents, a sum not to exceed \$100
5 per week which shall be payable in the manner and for the
6 period provided by subsection (3)(b) of this section or for
7 such shorter period as determined by the division. The
8 claimant shall be awarded benefits as provided in subsection
9 (4) of this section.

10 ~~{c}--Compensation payable to a victim or a victim's~~
11 ~~dependents under this subsection may not exceed \$20,000, and~~
12 ~~the limitations of subsection (6) apply to compensation~~
13 ~~under this subsection (7).~~

14 (8) Amounts payable as weekly compensation may not be
15 commuted to a lump sum and may not be paid less frequently
16 than every 2 weeks."

17 Section 5. Section 53-9-131, MCA, is amended to read:

18 "53-9-131. Appeals. {1} After the division has made
19 final determination concerning any matter relating to a
20 claim, if the claimant disputes the division's
21 determination, he may appeal to the workers' compensation
22 judge district court for the county in which he resides or
23 Lewis and Clark County for review. Review on appeal must be
24 in conformity with 2-4-701 through 2-4-704 of the Montana
25 Administrative Procedure Act. The judge, after a hearing,

1 shall make a final determination concerning the dispute and
 2 issue an appropriate order affirming, reversing, or
 3 modifying the division's determination.

4 ~~(2) All proceedings and hearings before the workers'~~
 5 ~~compensation judge shall be in accordance with the~~
 6 ~~appropriate provisions of the Montana Administrative~~
 7 ~~Procedure Act. However, the workers' compensation judge is~~
 8 ~~not bound by common law and statutory rules of evidence.~~

9 ~~(3) Notwithstanding Title 27, chapter 47, part 7, an~~
 10 ~~appeal from a final decision of the workers' compensation~~
 11 ~~judge shall be filed directly with the supreme court of~~
 12 ~~Montana in the manner provided by law for appeals from the~~
 13 ~~district court in civil cases."~~

14 Section 6. Section 53-9-132, MCA, is amended to read:
 15 "53-9-132. Subrogation. (1) If a claimant seeks
 16 compensation under this part and compensation is awarded,
 17 the division is entitled to full subrogation against a
 18 judgment or recovery received by the claimant against the
 19 offender or a collateral source arising from the criminally
 20 injurious conduct committed by the offender for all
 21 compensation paid under this part. The division's right of
 22 subrogation shall be a first lien on the judgment or
 23 recovery. If the claimant does not institute the action
 24 against the offender or collateral source within 1 year from
 25 the date the criminally injurious conduct occurred, the

1 division may institute the action in the name of the
 2 claimant or the claimant's personal representative.

3 (2) If the claimant institutes the action, the
 4 division shall pay a proportional share of costs and
 5 attorneys' fees if it recovers under its subrogation
 6 interest.

7 (3) If the division institutes the action in the name
 8 of the claimant or the claimant's personal representative
 9 and the recovery is in excess of the amount of compensation
 10 paid to the claimant and costs incurred by the division in
 11 pursuit of the action, the excess shall be paid to the
 12 claimant.

13 (4) If a judgment or recovery includes both damages
 14 for bodily injury or death for which the division has paid
 15 compensation under this part and damages for which the
 16 division has not paid compensation, then the division's
 17 subrogation interest shall apply only to that proportion of
 18 the judgment or recovery for which it has paid compensation.
 19 In a civil action in a court of this state arising out of
 20 criminally injurious conduct, the judge, on timely motion,
 21 shall direct the jury to return a special verdict indicating
 22 separately the amounts of the various items of damages
 23 awarded. A claimant may not make recoveries against the
 24 offender or collateral source in such a way as to avoid and
 25 preclude the division from receiving its proper subrogation

1 share as provided in this section. The division shall
2 release its lien provided for in subsection (1) above upon
3 receipt of its subrogation share."

4 NEW SECTION. Section 7. Extension of authority. Any
5 existing authority of the workers' compensation division to
6 make rules on the subject of the provisions of this act is
7 extended to the division of crime control to make rules on
8 the subject of the provisions of this act.

9 NEW SECTION. Section 8. Effective date. This act is
10 effective July 1, 1987.

-End-

HOUSE BILL NO. 309

INTRODUCED BY QUILICI, SPAETH, HARP,

PAVLOVICH, MANNING, DAILY

BY REQUEST OF THE DEPARTMENT OF LABOR

AND INDUSTRY AND THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA; TRANSFERRING ADMINISTRATION OF THE ACT TO THE CRIME CONTROL DIVISION OF THE DEPARTMENT OF JUSTICE; REQUIRING AN APPEAL FROM A DEPARTMENT DETERMINATION CONCERNING A CLAIM TO BE MADE TO DISTRICT COURT; PROVIDING FOR CONFIDENTIALITY OF CERTAIN RECORDS; INCREASING CERTAIN BENEFITS; EXPANDING THE SUBROGATION RIGHTS OF THE FUND; AMENDING SECTIONS 53-9-103, 53-9-106, 53-9-107, 53-9-128, 53-9-131, AND 59-9-132, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-9-103, MCA, is amended to read:

"53-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

- (a) a victim;
(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part which the claimant has received or which is readily available to him from:

- (a) the offender;
(b) the government of the United States or any agency thereof, 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 excess or secondary to benefits under this part;
(c) social security, medicare, and medicaid;
(d) workers' compensation;
(e) wage continuation programs of any employer;
(f) proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; or

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this part shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.



1 (3) "Criminally injurious conduct" means conduct that:
 2 (a) occurs or is attempted in this state;
 3 (b) results in bodily injury or death; and
 4 (c) is punishable by fine, imprisonment, or death or
 5 would be so punishable but for the fact that the person
 6 engaging in the conduct lacked capacity to commit the crime
 7 under the laws of this state. Criminally injurious conduct
 8 does not include conduct arising out of the ownership,
 9 maintenance, or use of a motor vehicle as described in Title
 10 61.

11 (4) "Dependent" means a natural person who is
 12 recognized under the law of this state to be wholly or
 13 partially dependent upon the victim for care or support and
 14 includes a child of the victim conceived before the victim's
 15 death but born after the victim's death, including a child
 16 that is conceived as a result of the criminally injurious
 17 conduct.

18 (5) "Division" means the division of workers'
 19 ~~compensation-provided-for-in-2-15-1702~~ crime control of the
 20 department of justice.

21 (6) "Victim" means a person who suffers bodily injury
 22 or death as a result of:
 23 (a) criminally injurious conduct;
 24 (b) his good faith effort to prevent criminally
 25 injurious conduct; or

1 (c) his good faith effort to apprehend a person
 2 reasonably suspected of engaging in criminally injurious
 3 conduct."

4 Section 2. Section 53-9-106, MCA, is amended to read:
 5 "53-9-106. Attorneys' fees. (1) The division may grant
 6 attorneys' fees to attorneys for representing claimants
 7 before the division. Any attorney's fee granted by the
 8 division shall be in addition to compensation awarded the
 9 claimant under this part.

10 (2) The division may regulate the amount of the
 11 attorney's fee in any claim under this part when an attorney
 12 is representing a claimant.

13 (3) In cases under this part that go before the
 14 workers'~~compensation-judge~~ a district court, the judge may
 15 grant, in addition to compensation benefits granted,
 16 attorneys' fees to attorneys for representing claimants
 17 before the judge court.

18 (4) In no claim or case may attorney fees in excess of
 19 5% of the amount paid to a claimant or on his behalf be paid
 20 directly or indirectly to a claimant's attorney."

21 Section 3. Section 53-9-107, MCA, is amended to read:
 22 "53-9-107. Public inspection and disclosure of
 23 division's records. The (1) Except as provided in subsection
 24 (2), the records the division maintains in its possession in
 25 the administration of this part are open to public

1 inspection and disclosure in accordance with the provisions
2 of 39-71-221 through 39-71-224.

3 (2) Confidential criminal justice information obtained
4 by the division is subject to the confidentiality provisions
5 of the Montana Criminal Justice Information Act of 1979,
6 Title 44, chapter 5. Information regarding youth court
7 proceedings obtained by the division is subject to the
8 confidentiality provisions of Title 41, chapter 5, part 6."

9 Section 4. Section 53-9-128, MCA, is amended to read:

10 "53-9-128. Compensation benefits. (1) A claimant is
11 entitled to weekly compensation benefits when the claimant
12 has a total actual loss of wages due to injury as a result
13 of criminally injurious conduct. During the time the
14 claimant seeks such weekly benefits, the claimant, as a
15 result of such injury, must have no reasonable prospect of
16 being regularly employed in the normal labor market. The
17 weekly benefit amount is 66 2/3% of the wages received at
18 the time of the criminally injurious conduct, subject to a
19 maximum of \$125 one-half the state's average weekly wage as
20 determined in 39-51-2201. Weekly compensation payments shall
21 be made at the end of each 2-week period. No weekly
22 compensation payments may be paid for the first week after
23 the criminally injurious conduct occurred, but if total
24 actual loss of wages continues for 1 week, weekly
25 compensation payments shall be paid from the date the wage

1 loss began. Weekly compensation payments shall continue
2 until the claimant has a reasonable prospect of being
3 regularly employed in the normal labor market.

4 (2) The claimant is entitled to be reimbursed for
5 reasonable services by a physician or surgeon, reasonable
6 hospital services and medicines, and such other treatment as
7 may be approved by the division for the injuries suffered
8 due to criminally injurious conduct.

9 (3) (a) The dependents of a victim who is killed as a
10 result of criminally injurious conduct are entitled to
11 receive, in a gross single amount payable to all dependents,
12 weekly benefits amounting to 66 2/3% of the wages received
13 at the time of the criminally injurious conduct causing the
14 death, subject to a maximum of \$125 per-week one-half the
15 state's average weekly wage as determined in 39-51-2201.
16 Weekly compensation payments shall be made at the end of
17 each 2-week period.

18 (b) Benefits under subsection (3)(a) of this section
19 shall be paid to the spouse for the benefit of the spouse
20 and other dependents unless the division determines that
21 other payment arrangements should be made. If a spouse dies
22 or remarries, benefits under subsection (3)(a) shall cease
23 to be paid to the spouse but shall continue to be paid to
24 the other dependents so long as their dependent status
25 continues.

1 (4) Reasonable funeral and burial expenses of the
2 victim, not exceeding ~~\$1,100~~ \$2,000, shall be paid if all
3 other collateral sources have properly paid such expenses
4 but have not covered all such expenses.

5 (5) Compensation payable to a victim and all of the
6 victim's dependents in cases of the victim's death, because
7 of injuries suffered due to an act of criminally injurious
8 conduct may not exceed \$25,000 in the aggregate.

9 (6) Compensation benefits are not payable for pain and
10 suffering, inconvenience, physical impairment, or nonbodily
11 damage.

12 (7) (a) A person who has suffered injury as a result
13 of criminally injurious conduct and as a result of such
14 injury has no reasonable prospect of being regularly
15 employed in the normal labor market, who was employable but
16 was not employed at the time of such injury, may in the
17 discretion of the division be awarded weekly compensation
18 benefits in an amount determined by the division not to
19 exceed \$100 per week. Weekly compensation payments shall
20 continue until the claimant has a reasonable prospect of
21 being regularly employed in the normal labor market or for a
22 shorter period as determined by the division. The claimant
23 shall be awarded benefits as provided in subsection (2) of
24 this section.

25 (b) The dependents of a victim who is killed as a

1 result of criminally injurious conduct and who was
2 employable but not employed at the time of death may in the
3 discretion of the division be awarded, in a gross single
4 amount payable to all dependents, a sum not to exceed \$100
5 per week which shall be payable in the manner and for the
6 period provided by subsection (3)(b) of this section or for
7 such shorter period as determined by the division. The
8 claimant shall be awarded benefits as provided in subsection
9 (4) of this section.

10 ~~{c}--Compensation payable to a victim or a victim's~~
11 ~~dependents under this subsection may not exceed \$20,000, and~~
12 ~~the limitations of subsection {6} apply to compensation~~
13 ~~under this subsection {7}.~~

14 (8) Amounts payable as weekly compensation may not be
15 commuted to a lump sum and may not be paid less frequently
16 than every 2 weeks."

17 Section 5. Section 53-9-131, MCA, is amended to read:
18 "53-9-131. Appeals. {1} After the division has made
19 final determination concerning any matter relating to a
20 claim, if the claimant disputes the division's
21 determination, he may appeal to the workers'--compensation
22 judge district court for the county in which he resides or
23 Lewis and Clark County for review. Review on appeal must be
24 in conformity with 2-4-701 through 2-4-704 of the Montana
25 Administrative Procedure Act. The judge, after a hearing,

1 shall make a final determination concerning the dispute and
 2 issue an appropriate order affirming, reversing, or
 3 modifying the division's determination.

4 ~~{2}--All-proceedings-and-hearings-before--the--workers'
 5 compensation--judge--shall--be--in--accordance--with--the
 6 appropriate--provisions--of--the--Montana--Administrative
 7 Procedure--Act--However,--the-workers'-compensation-judge-is
 8 not-bound-by-common-law-and-statutory-rules-of-evidence.~~

9 ~~{3}--Notwithstanding--Title-2,--chapter--4,--part--7,--an
 10 appeal--from--a--final--decision--of--the-workers'-compensation
 11 judge--shall--be--filed--directly--with--the--supreme--court--of
 12 Montana--in--the--manner--provided--by--law--for--appeals--from--the
 13 district-court-in-civil-cases."~~

14 Section 6. Section 53-9-132, MCA, is amended to read:

15 "53-9-132. Subrogation. (1) If a claimant seeks
 16 compensation under this part and compensation is awarded,
 17 the division is entitled to full subrogation against a
 18 judgment or recovery received by the claimant against the
 19 offender or a collateral source arising from the criminally
 20 injurious conduct committed by the offender for all
 21 compensation paid under this part. The division's right of
 22 subrogation shall be a first lien on the judgment or
 23 recovery. If the claimant does not institute the action
 24 against the offender or collateral source within 1 year from
 25 the date the criminally injurious conduct occurred, the

1 division may institute the action in the name of the
 2 claimant or the claimant's personal representative.

3 (2) If the claimant institutes the action, the
 4 division shall pay a proportional share of costs and
 5 attorneys' fees if it recovers under its subrogation
 6 interest.

7 (3) If the division institutes the action in the name
 8 of the claimant or the claimant's personal representative
 9 and the recovery is in excess of the amount of compensation
 10 paid to the claimant and costs incurred by the division in
 11 pursuit of the action, the excess shall be paid to the
 12 claimant.

13 (4) If a judgment or recovery includes both damages
 14 for bodily injury or death for which the division has paid
 15 compensation under this part and damages for which the
 16 division has not paid compensation, then the division's
 17 subrogation interest shall apply only to that proportion of
 18 the judgment or recovery for which it has paid compensation.
 19 In a civil action in a court of this state arising out of
 20 criminally injurious conduct, the judge, on timely motion,
 21 shall direct the jury to return a special verdict indicating
 22 separately the amounts of the various items of damages
 23 awarded. A claimant may not make recoveries against the
 24 offender or collateral source in such a way as to avoid and
 25 preclude the division from receiving its proper subrogation

1 share as provided in this section. The division shall
2 release its lien provided for in subsection (1) above upon
3 receipt of its subrogation share."

4 NEW SECTION. Section 7. Extension of authority. Any
5 existing authority of the workers' compensation division to
6 make rules on the subject of the provisions of this act is
7 extended to the division of crime control to make rules on
8 the subject of the provisions of this act.

9 NEW SECTION. Section 8. Effective date. This act is
10 effective July 1, 1987.

-End-

1 HOUSE BILL NO. 309
 2 INTRODUCED BY QUILICI, SPAETH, HARP,
 3 PAVLOVICH, MANNING, DAILY
 4 BY REQUEST OF THE DEPARTMENT OF LABOR
 5 AND INDUSTRY AND THE BOARD OF CRIME CONTROL
 6

7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIME
 8 VICTIMS COMPENSATION ACT OF MONTANA; TRANSFERRING
 9 ADMINISTRATION OF THE ACT TO THE CRIME CONTROL DIVISION OF
 10 THE DEPARTMENT OF JUSTICE; REQUIRING AN APPEAL FROM A
 11 DEPARTMENT DETERMINATION CONCERNING A CLAIM TO BE MADE TO
 12 DISTRICT COURT; PROVIDING FOR CONFIDENTIALITY OF CERTAIN
 13 RECORDS; INCREASING CERTAIN BENEFITS; EXPANDING THE
 14 SUBROGATION RIGHTS OF THE FUND; AMENDING SECTIONS 53-9-103,
 15 53-9-106, 53-9-107, 53-9-128, 53-9-131, AND 59-9-132, MCA;
 16 AND PROVIDING AN EFFECTIVE DATE."
 17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 19 Section 1. Section 53-9-103, MCA, is amended to read:
 20 "53-9-103. Definitions. As used in this part, the
 21 following definitions apply:

- 22 (1) "Claimant" means any of the following claiming
 23 compensation under this part:
 24 (a) a victim;
 25 (b) a dependent of a deceased victim; or

1 (c) an authorized person acting on behalf of any of
 2 them.

3 (2) "Collateral source" means a source of benefits,
 4 other than welfare benefits, or advantages for economic loss
 5 otherwise compensable under this part which the claimant has
 6 received or which is readily available to him from:

- 7 (a) the offender;
 8 (b) the government of the United States or any agency
 9 thereof, a state or any of its political subdivisions, or an
 10 instrumentality of two or more states, unless the law
 11 providing for the benefits or advantages makes them excess
 12 or secondary to benefits under this part;
 13 (c) social security, medicare, and medicaid;
 14 (d) workers' compensation;
 15 (e) wage continuation programs of any employer;
 16 (f) proceeds of a contract of insurance payable to the
 17 claimant for loss which was sustained because of the
 18 criminally injurious conduct; or
 19 (g) a contract, including an insurance contract,
 20 providing hospital and other health care services or
 21 benefits for disability. Any such contract in this state may
 22 not provide that benefits under this part shall be a
 23 substitute for benefits under the contract or that the
 24 contract is a secondary source of benefits and benefits
 25 under this part are a primary source.

1 (3) "Criminally injurious conduct" means conduct that:
 2 (a) occurs or is attempted in this state;
 3 (b) results in bodily injury or death; and
 4 (c) is punishable by fine, imprisonment, or death or
 5 would be so punishable but for the fact that the person
 6 engaging in the conduct lacked capacity to commit the crime
 7 under the laws of this state. Criminally injurious conduct
 8 does not include conduct arising out of the ownership,
 9 maintenance, or use of a motor vehicle as described in Title
 10 61.

11 (4) "Dependent" means a natural person who is
 12 recognized under the law of this state to be wholly or
 13 partially dependent upon the victim for care or support and
 14 includes a child of the victim conceived before the victim's
 15 death but born after the victim's death, including a child
 16 that is conceived as a result of the criminally injurious
 17 conduct.

18 (5) "Division" means the division of ~~workers'~~
 19 ~~compensation-provided-for-in-2-15-1702~~ crime control of the
 20 department of justice.

21 (6) "Victim" means a person who suffers bodily injury
 22 or death as a result of:
 23 (a) criminally injurious conduct;
 24 (b) his good faith effort to prevent criminally
 25 injurious conduct; or

1 (c) his good faith effort to apprehend a person
 2 reasonably suspected of engaging in criminally injurious
 3 conduct."

4 Section 2. Section 53-9-106, MCA, is amended to read:
 5 "53-9-106. Attorneys' fees. (1) The division may grant
 6 attorneys' fees to attorneys for representing claimants
 7 before the division. Any attorney's fee granted by the
 8 division shall be in addition to compensation awarded the
 9 claimant under this part.

10 (2) The division may regulate the amount of the
 11 attorney's fee in any claim under this part when an attorney
 12 is representing a claimant.

13 (3) In cases under this part that go before the
 14 ~~workers'~~~~compensation-judge a district court~~, the judge may
 15 grant, in addition to compensation benefits granted,
 16 attorneys' fees to attorneys for representing claimants
 17 before the judge court.

18 (4) In no claim or case may attorney fees in excess of
 19 5% of the amount paid to a claimant or on his behalf be paid
 20 directly or indirectly to a claimant's attorney."

21 Section 3. Section 53-9-107, MCA, is amended to read:
 22 "53-9-107. Public inspection and disclosure of
 23 division's records. ~~The (1) Except as provided in subsection~~
 24 SUBSECTIONS (2) AND (3), the records the division maintains
 25 in its possession in the administration of this part are

1 open to public inspection and disclosure in accordance--with
2 the provisions of 39-71-221 through 39-71-224.

3 (2) Confidential criminal justice information obtained
4 by the division is subject to the confidentiality provisions
5 of the Montana Criminal Justice Information Act of 1979,
6 Title 44, chapter 5. Information regarding youth court
7 proceedings obtained by the division is subject to the
8 confidentiality provisions of Title 41, chapter 5, part 6.

9 (3) IN ASSURING THAT THE RIGHT OF INDIVIDUAL PRIVACY
10 SO ESSENTIAL TO THE WELL-BEING OF A FREE SOCIETY MAY NOT BE
11 INFRINGED WITHOUT THE SHOWING OF A COMPELLING STATE
12 INTEREST, THE FOLLOWING PUBLIC RECORDS OF THE DIVISION ARE
13 EXEMPT FROM DISCLOSURE:

14 (A) INFORMATION OF A PERSONAL NATURE, SUCH AS
15 PERSONAL, MEDICAL, OR SIMILAR INFORMATION, IF THE PUBLIC
16 DISCLOSURE THEREOF WOULD CONSTITUTE AN UNREASONABLE INVASION
17 OF PRIVACY, UNLESS THE PUBLIC INTEREST BY CLEAR AND
18 CONVINCING EVIDENCE REQUIRES DISCLOSURE IN THE PARTICULAR
19 INSTANCE. THE PARTY SEEKING DISCLOSURE SHALL HAVE THE BURDEN
20 OF SHOWING THAT PUBLIC DISCLOSURE WOULD NOT CONSTITUTE AN
21 UNREASONABLE INVASION OF PRIVACY.

22 (B) ANY PUBLIC RECORDS OR INFORMATION, THE DISCLOSURE
23 OF WHICH IS PROHIBITED BY FEDERAL LAW OR REGULATIONS.

24 (4) IF ANY PUBLIC RECORD OF THE DIVISION CONTAINS
25 MATERIAL WHICH IS NOT EXEMPT UNDER SUBSECTION (3), AS WELL

1 AS MATERIAL WHICH IS EXEMPT FROM DISCLOSURE, THE DIVISION
2 SHALL SEPARATE THE EXEMPT AND NONEXEMPT AND MAKE THE
3 NONEXEMPT MATERIAL AVAILABLE FOR EXAMINATION."

4 Section 4. Section 53-9-128, MCA, is amended to read:
5 "53-9-128. Compensation benefits. (1) A claimant is
6 entitled to weekly compensation benefits when the claimant
7 has a total actual loss of wages due to injury as a result
8 of criminally injurious conduct. During the time the
9 claimant seeks such weekly benefits, the claimant, as a
10 result of such injury, must have no reasonable prospect of
11 being regularly employed in the normal labor market. The
12 weekly benefit amount is 66 2/3% of the wages received at
13 the time of the criminally injurious conduct, subject to a
14 maximum of \$125 one-half the state's average weekly wage as
15 determined in 39-51-2201. Weekly compensation payments shall
16 be made at the end of each 2-week period. No weekly
17 compensation payments may be paid for the first week after
18 the criminally injurious conduct occurred, but if total
19 actual loss of wages continues for 1 week, weekly
20 compensation payments shall be paid from the date the wage
21 loss began. Weekly compensation payments shall continue
22 until the claimant has a reasonable prospect of being
23 regularly employed in the normal labor market.

24 (2) The claimant is entitled to be reimbursed for
25 reasonable services by a physician or surgeon, reasonable

1 hospital services and medicines, and such other treatment as
2 may be approved by the division for the injuries suffered
3 due to criminally injurious conduct.

4 (3) (a) The dependents of a victim who is killed as a
5 result of criminally injurious conduct are entitled to
6 receive, in a gross single amount payable to all dependents,
7 weekly benefits amounting to $66 \frac{2}{3}\%$ of the wages received
8 at the time of the criminally injurious conduct causing the
9 death, subject to a maximum of ~~\$125-per-week~~ one-half the
10 state's average weekly wage as determined in 39-51-2201.
11 Weekly compensation payments shall be made at the end of
12 each 2-week period.

13 (b) Benefits under subsection (3)(a) of this section
14 shall be paid to the spouse for the benefit of the spouse
15 and other dependents unless the division determines that
16 other payment arrangements should be made. If a spouse dies
17 or remarries, benefits under subsection (3)(a) shall cease
18 to be paid to the spouse but shall continue to be paid to
19 the other dependents so long as their dependent status
20 continues.

21 (4) Reasonable funeral and burial expenses of the
22 victim, not exceeding ~~\$17100~~ \$2,000, shall be paid if all
23 other collateral sources have properly paid such expenses
24 but have not covered all such expenses.

25 (5) Compensation payable to a victim and all of the

1 victim's dependents in cases of the victim's death, because
2 of injuries suffered due to an act of criminally injurious
3 conduct may not exceed \$25,000 in the aggregate.

4 (6) Compensation benefits are not payable for pain and
5 suffering, inconvenience, physical impairment, or nonbodily
6 damage.

7 (7) (a) A person who has suffered injury as a result
8 of criminally injurious conduct and as a result of such
9 injury has no reasonable prospect of being regularly
10 employed in the normal labor market, who was employable but
11 was not employed at the time of such injury, may in the
12 discretion of the division be awarded weekly compensation
13 benefits in an amount determined by the division not to
14 exceed \$100 per week. Weekly compensation payments shall
15 continue until the claimant has a reasonable prospect of
16 being regularly employed in the normal labor market or for a
17 shorter period as determined by the division. The claimant
18 shall be awarded benefits as provided in subsection (2) of
19 this section.

20 (b) The dependents of a victim who is killed as a
21 result of criminally injurious conduct and who was
22 employable but not employed at the time of death may in the
23 discretion of the division be awarded, in a gross single
24 amount payable to all dependents, a sum not to exceed \$100
25 per week which shall be payable in the manner and for the

1 period provided by subsection (3)(b) of this section or for
 2 such shorter period as determined by the division. The
 3 claimant shall be awarded benefits as provided in subsection
 4 (4) of this section.

5 ~~{c}--Compensation--payable--to--a--victim-or-a-victim's~~
 6 ~~dependents-under-this-subsection-may-not-exceed-\$20,000,--and~~
 7 ~~the-limitations-of--subsection--(6)--apply--to--compensation~~
 8 ~~under-this-subsection--(7);~~

9 (8) Amounts payable as weekly compensation may not be
 10 commuted to a lump sum and may not be paid less frequently
 11 than every 2 weeks."

12 Section 5. Section 53-9-131, MCA, is amended to read:

13 "53-9-131. Appeals. ~~{t}~~ After the division has made
 14 final determination concerning any matter relating to a
 15 claim, if the claimant disputes the division's
 16 determination, he may appeal to the workers' compensation
 17 judge district court for the county in which he resides or
 18 Lewis and Clark County for review. Review on appeal must be
 19 in conformity with 2-4-701 through 2-4-704 of the Montana
 20 Administrative Procedure Act. The judge, after a hearing,
 21 shall make a final determination concerning the dispute and
 22 issue an appropriate order affirming, reversing, or
 23 modifying the division's determination.

24 ~~{2}--All--proceedings-and-hearings-before--the--workers'~~
 25 ~~compensation--judge--shall--be--in--accordance--with--the~~

1 ~~appropriate--provisions--of--the--Montana--Administrative~~
 2 ~~Procedure--Act.--However,--the--workers'--compensation--judge--is~~
 3 ~~not--bound--by--common-law-and-statutory-rules-of-evidence;~~

4 ~~{3}--Notwithstanding--Title--2,--chapter--4,--part--7,--an~~
 5 ~~appeal--from--a--final--decision--of--the--workers'--compensation~~
 6 ~~judge--shall--be--filed--directly--with--the--supreme--court--of~~
 7 ~~Montana--in--the--manner--provided--by--law--for--appeals--from--the~~
 8 ~~district-court--in--civil--cases."~~

9 Section 6. Section 53-9-132, MCA, is amended to read:

10 "53-9-132. Subrogation. (1) If a claimant seeks
 11 compensation under this part and compensation is awarded,
 12 the division is entitled to full subrogation against a
 13 judgment or recovery received by the claimant against the
 14 offender or a collateral source arising from the criminally
 15 injurious conduct committed by the offender for all
 16 compensation paid under this part. The division's right of
 17 subrogation shall be a first lien on the judgment or
 18 recovery. If the claimant does not institute the action
 19 against the offender or collateral source within 1 year from
 20 the date the criminally injurious conduct occurred, the
 21 division may institute the action in the name of the
 22 claimant or the claimant's personal representative.

23 (2) If the claimant institutes the action, the
 24 division shall pay a proportional share of costs and
 25 attorneys' fees if it recovers under its subrogation

1 interest.

2 (3) If the division institutes the action in the name
3 of the claimant or the claimant's personal representative
4 and the recovery is in excess of the amount of compensation
5 paid to the claimant and costs incurred by the division in
6 pursuit of the action, the excess shall be paid to the
7 claimant.

8 (4) If a judgment or recovery includes both damages
9 for bodily injury or death for which the division has paid
10 compensation under this part and damages for which the
11 division has not paid compensation, then the division's
12 subrogation interest shall apply only to that proportion of
13 the judgment or recovery for which it has paid compensation.
14 In a civil action in a court of this state arising out of
15 criminally injurious conduct, the judge, on timely motion,
16 shall direct the jury to return a special verdict indicating
17 separately the amounts of the various items of damages
18 awarded. A claimant may not make recoveries against the
19 offender or collateral source in such a way as to avoid and
20 preclude the division from receiving its proper subrogation
21 share as provided in this section. The division shall
22 release its lien provided for in subsection (1) above upon
23 receipt of its subrogation share."

24 NEW SECTION. Section 7. Extension of authority. Any
25 existing authority of the workers' compensation division to

1 make rules on the subject of the provisions of this act is
2 extended to the division of crime control to make rules on
3 the subject of the provisions of this act.

4 NEW SECTION. Section 8. Effective date. This act is
5 effective July 1, 1987.

-End-

STANDING COMMITTEE REPORT

SENATE

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SENATE JUDICIARY
HB 309
Page 2.

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MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 309

Third reading copy (blue color)

Generally revising the crime victims compensation act.
Quilici (Bishop)

Respectfully report as follows: That HOUSE BILL No. 309

1. Page 4, line 23.
Strike: "subsection"
Insert: "subsections"

2. Page 4, line 24.
Following: "(2)"
Insert: "and (3)"

3. Page 5, line 9.
Following: line 8
Insert: "(3) In assuring that the right of individual privacy so essential to the well-being of a free society may not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:
(a) information of a personal nature, such as personal, medical, or similar information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.
(4) If any public record of the division contains material which is not exempt under subsection (3), as well as material which is exempt from disclosure, the division shall separate the exempt and nonexempt and make the nonexempt material available for examination."

7083a/C:JEANNE\WP:jj

KHK

AND AS AMENDED
BE CONCURRED IN

XXXXXX

XXXXXXXXX CONTINUED

SENATE MAZUREK

Chairman

Signature of Senator Mazurek
SENATOR MAZUREK