

1 (3) "Pecuniary loss" means the amount of expense reasonably and
2 necessarily incurred by reason of personal injury, as a consequence of death, or a
3 catastrophic property loss, and includes:

4 (a) For personal injury:

5 (i) Medical, hospital, nursing, or psychiatric care or counseling, and physical
6 therapy.

7 (ii) Actual loss of past earnings and anticipated loss of future earnings
8 because of a disability resulting from the personal injury or the receipt of medically
9 indicated services by a victim related to the personal injury.

10 (iii) Care of a child or dependent.

11 (b) As a consequence of death:

12 (i) Funeral, burial, or cremation expenses.

13 (ii) Loss of support to one or more dependents not otherwise compensated
14 for as a pecuniary loss for personal injury.

15 (iii) Care of a child or children enabling the surviving spouse of a victim or
16 the legal custodian or caretaker of the deceased victim's child or children to engage
17 in lawful employment, where that expense is not otherwise compensated for as a
18 pecuniary loss for personal injury.

19 (iv) Counseling or therapy for any surviving family member of the victim
20 or any person in close relationship to such victim.

21 (3.1) "Pecuniary loss" does not include loss attributable to pain and
22 suffering.

23 (4) "Reparations" means payment of compensation in accordance with the
24 provisions of this Chapter for pecuniary loss resulting from death by reason of a
25 crime enumerated in this Chapter.

26 (5) "Victim" means:

27 (a) Any person who suffers death as a result of a crime committed in this
28 state and covered by this Chapter.

1 (b) A Louisiana resident who suffers death as a result of a crime described
2 in R.S. 46:1826, except that the criminal act occurred outside of this state. The
3 resident shall have the same rights under this Chapter as if the act had occurred in
4 this state upon a showing that the state in which the act occurred does not have an
5 eligible reparations program and the crime would have been compensable had it
6 occurred in Louisiana. In this Subparagraph, "Louisiana resident" means a person
7 who maintained a place of permanent abode in this state at the time the crime was
8 committed for which reparations are sought.

9 §1825. Eligibility to apply for reparations

10 A. Survivors enumerated in Civil Code Article 2315.2 shall be eligible to
11 make an application to the board for reparations and shall be eligible for an award
12 of reparations in accordance with the provisions of this Chapter.

13 B. During sentencing, the judge shall inform such survivor of eligibility for
14 an award of reparations. The judge shall also provide the contact information for the
15 board to such persons for submitting an application to the board for an award of
16 reparations.

17 §1826. Crimes to which Chapter applies

18 A. The board may make an award and order the payment of reparations for
19 pecuniary loss in accordance with the provisions of this Chapter for death resulting
20 from the offense of vehicular homicide, pursuant to R.S. 14:32.1, and the offender
21 failed to maintain compulsory motor vehicle liability security pursuant to R.S.
22 32:861.

23 B. For the purposes of this Chapter, a person shall be deemed to have
24 committed a criminal act or omission notwithstanding that by reason of age, insanity,
25 or other reason he was legally incapable of committing a crime.

26 §1827. Application; requirements; confidentiality

27 A.(1) An application for reparations shall be filed in writing with the board
28 within one year after the date of the death or within such longer period as the board
29 determines is justified by the circumstances. The application shall be valid only if

1 reasonable documentation of the crime resulting in the death is submitted with the
2 application.

3 (2) For the purposes of this Subsection, "reasonable documentation" means
4 any of the following:

5 (a) A police report documenting the commission of the crime of vehicular
6 homicide, pursuant to R.S. 14:32.1.

7 (b) Court records evidencing the criminal prosecution of the crime of
8 vehicular homicide, pursuant to R.S. 14:32.1.

9 (c) A certification of the crime signed under oath by a prosecuting attorney
10 or investigating law enforcement officer who has personal involvement in the
11 prosecution or investigation of the criminal case relative to the application.

12 (d) Any other documentation the board deems sufficient.

13 B. Application shall be made on a form prescribed and provided by the
14 board, which shall contain at least the following:

15 (1) A description of the date, nature, and circumstances of the act or acts
16 resulting in the death of the victim.

17 (2) A complete financial statement, including the cost of medical care or
18 funeral, burial, or cremation expenses, the loss of wages or support, and the extent
19 of the property loss, if any.

20 (3) An authorization permitting the board or its representatives to verify the
21 contents of the application.

22 (4) Such other information as the board may require.

23 C. The following information, when submitted to the board as part of an
24 application, shall be confidential:

25 (1) Documents which relate to medical treatment including any itemized
26 billing statements.

27 (2) Law enforcement investigative reports.

28 D. Records, documents, and information in the possession of the board
29 received pursuant to a law enforcement investigation or a verification of application

1 by a law enforcement agency shall be considered investigative records of a law
2 enforcement agency as described in R.S. 44:3 and shall not be disseminated under
3 any condition without the permission of the agency providing the record or
4 information to the board.

5 §1828. Procedure by the board; public hearings; right to counsel

6 A. Upon receipt of one or more applications for reparations resulting from
7 the same crime, the board shall examine the application to determine that it is
8 complete and shall schedule all of such claims for consideration at the same time. If
9 the board determines that a hearing is necessary to a decision in the matter, it shall
10 fix the day, time, and place thereof and shall notify persons who have indicated a
11 desire to be present or that the board desires to hear. The notice shall be in writing
12 and shall be mailed by certified mail at least ten days prior to the day fixed for the
13 hearing.

14 B. Hearings shall be open to the public unless in a particular case the board
15 determines that all or part of the hearing should be closed, taking into consideration
16 the fact that an accused has not been convicted. Any person who has a substantial
17 interest in the proceedings, as determined by the board, may appear before the board
18 and shall have the right to introduce evidence and cross examine witnesses.

19 C. The members of the board and the attorney representing the board, if any,
20 may question and cross examine witnesses. The board may receive in evidence any
21 statement, document, information, or matter that it believes may contribute to the
22 purposes of the hearing or to any of its deliberations, whether or not a hearing is held
23 and whether or not any of them would be admissible in court.

24 §1829. Criteria for making awards; prohibitions; authority to deny or reduce awards

25 A. The board shall order the payment of reparations in an amount determined
26 by it if, with or without hearings, it finds by a preponderance of the evidence that
27 pecuniary loss was sustained by reason of death and that such loss was proximately
28 caused by the crime of vehicular homicide, pursuant to R.S. 14:32.1, and that such
29 pecuniary loss has or will not be compensated from any collateral or other source.

1 B. In making its determination, the following provisions shall apply:

2 (1) A finding by the board, for purposes of considering an application for
3 award under this Chapter, that the commission of a crime enumerated in R.S.
4 46:1826 resulted in a pecuniary loss covered by this Chapter shall be a sufficient
5 finding with respect to the crime giving rise to the application for a reparations
6 award. An order for reparations may be made whether or not any person is arrested,
7 prosecuted, or convicted of the crime giving rise to the application for reparations.
8 The board may suspend proceedings in the interest of justice if a civil or criminal
9 action arising from such act or omission constituting the crime is pending or
10 imminent.

11 (2) Conviction of an offender of a crime giving rise to the application for
12 reparations under this Chapter shall be conclusive evidence that the crime was
13 committed.

14 (3) The board may deny or reduce an award:

15 (a) To the extent that the pecuniary loss is recouped from collateral or other
16 sources.

17 (b) If it finds that the victim was not wearing a safety belt in compliance with
18 R.S. 32:295.1.

19 (c) If it finds that the victim was a willing passenger in a motor vehicle, boat,
20 or aircraft that was operated by an individual who was in violation of R.S. 14:98 or
21 98.1.

22 C. No person shall be denied or otherwise deemed ineligible for reparations
23 pursuant to this Chapter, nor shall any award for reparations pursuant to this Chapter
24 be reduced, on the basis that the person has any conviction or adjudication of
25 delinquency, on the basis that the person is currently on probation or parole, or on
26 the basis that the person has previously served any sentence of incarceration,
27 probation, or parole unrelated to the offense for which reparations would otherwise
28 be awarded pursuant to this Chapter.

1 §1830. Amount of reparations award

2 Awards payable under this Chapter shall not exceed fifty thousand dollars in
3 the aggregate for all claims arising out of the same crime.

4 §1831. Reparation order; terms and conditions

5 A. The board may order the payment of an award in a lump sum or in
6 installments. The board shall determine all matters respecting the payment of
7 awards, consistent with the provisions of this Chapter.

8 B. The state treasurer shall pay to the person named in the order of payment
9 of reparations the amount stated therein in accordance with the provisions of such
10 order.

11 C. The board shall not be subject to garnishment, execution, or attachment
12 on any award.

13 §1832. Finality of decision

14 A decision or order of the board with respect to any application or claim for
15 reparations shall be subject to review in accordance with the provisions of Chapter
16 13 of Title 49 of the Louisiana Revised Statutes of 1950.

17 §1833. Emergency awards

18 A. If it appears to the board prior to its taking action on a claim that an award
19 likely will be made and that undue hardship will result if no immediate economic
20 relief is provided, the board may make an emergency award pending its final
21 decision in the case. The amount of an emergency award shall not exceed one
22 thousand dollars.

23 B. The amount of any emergency award shall be deducted from any final
24 award made to the person receiving the emergency award. The person shall repay
25 to the board the excess of the emergency award over the final award, or the full
26 amount if no final award is made. However, the board may waive all or part of the
27 repayment if in its judgment repayment would cause severe financial hardship.

1 §1834. Effect of reparations award on right to recover damages in civil action;
2 repayment of award

3 A. An order for reparations payments under this Chapter shall not affect the
4 right of any person to institute a civil suit to recover damages for the death from any
5 other person. However, if damages in a civil action are recovered, from the offender
6 or any other third party, the person shall reimburse the Victims of Vehicular
7 Homicide Board, through the board, in an amount equal to the amount of the
8 reparations award or such lesser amount as is recovered in damages in the civil
9 action.

10 B. When any person who has received an award from the board files a civil
11 action to recover damages, he shall, at the time of the filing of the suit, notify the
12 board and the attorney general.

13 §1835. Recovery from the criminal

14 A. Whenever any person is convicted of vehicular homicide under R.S.
15 14:32.1 or operating a vehicle while intoxicated under R.S. 14:98 and an order for
16 the payment of reparations is or has been made under this Chapter from the act
17 constituting the crime for which conviction was had, the attorney general, within one
18 year after the date on which the judgment of conviction becomes final, may institute
19 a civil action against the convicted person for the recovery of all or any part of the
20 reparations payment. The suit shall be instituted in the district court having
21 jurisdiction in the parish in which such person resides or is found or, in Orleans
22 Parish, in the civil district court for that parish. The court shall have jurisdiction to
23 hear, determine, and render judgment in any such action. Any amount recovered
24 under this Subsection shall be deposited in the state treasury and, after meeting the
25 requirements of Article VII, Section 9 of the Constitution of Louisiana, credited to
26 the Victims of Vehicular Homicide Fund hereinafter created. If an amount greater
27 than that paid pursuant to the order for payment of reparations is recovered and
28 collected in any such action, the board shall pay the balance to the person.

1 B. The board shall provide the attorney general with such information, data,
2 and reports as he may require to institute actions in accordance with this Section.

3 §1836. Victims of Vehicular Homicide Fund; creation; sources and use of funds

4 A. The Victims of Vehicular Homicide Fund, hereinafter referred to as "the
5 fund," is hereby created in the state treasury.

6 B. The fund shall be composed of:

7 (1) Monies derived from appropriations by the legislature.

8 (2) All monies paid as a cost levied on criminal actions, as provided by
9 Subsection D of this Section.

10 (3) Any federal monies made available to the state for victim compensation.

11 (4) All monies received from any action to recover damages for a crime
12 which was the basis of a reparations award under this Chapter.

13 (5) Any gift, grant, devise or bequest of monies or properties of any nature
14 or description.

15 C. All monies deposited in the fund shall be used solely to pay reparation
16 awards pursuant to this Chapter and disbursements therefrom shall be made by the
17 state treasurer upon written order of the board, signed by the chairman, or a court.

18 D.(1)(a) In addition to any other costs otherwise imposed by law, a cost of
19 not less than fifty thousand dollars for vehicular homicide under R.S. 14:32.1 or
20 operating a vehicle while intoxicated under R.S. 14:98 is hereby levied in each
21 criminal action which results in a conviction or a guilty plea. These costs shall be
22 paid by the defendant. If the court finds that the defendant is indigent and therefore
23 unable to pay the mandatory cost at the time of conviction, the court shall order a
24 period payment plan consistent with the financial ability of the person.

25 (b) The recipient of the costs shall remit all costs so collected to the
26 Louisiana Commission on Law Enforcement and Administration of Criminal Justice
27 on or before the first day of each calendar month to be deposited in the state
28 treasurer's account for credit to the Victims of Vehicular Homicide Fund after
29 meeting the requirements of Article VII, Section 9 of the Constitution of Louisiana.

1 The monies in this fund shall be invested by the state treasurer in the same manner
2 as monies in the state general fund, and interest earned on the investment of these
3 monies shall be credited to the fund following compliance with the requirement of
4 Article VII, Section 9(B) relative to the Bond Security and Redemption Fund.

5 §1837. Report to legislature and governor

6 The board shall submit an annual report to the legislature and the governor
7 detailing its activities during the preceding year. The report shall be made available
8 electronically on the website of the Louisiana Commission on Law Enforcement. A
9 sufficient number of copies shall be printed for distribution to the governor, the
10 chairman of the House Committee on Judiciary, the chairman of the Senate
11 Committee on Judiciary C, and to as many others as may be requested.

12 §1838. Penalty for fraud

13 No person shall procure or counsel another person to procure reparations
14 under the provisions of this Chapter by any fraud. The penalty for the violation of
15 the provisions of this Section shall be a fine of not more than five hundred dollars
16 or imprisonment for not more than one year, or both.

17 §1839. Attorney fees

18 As part of an order resulting from a hearing, the board shall determine and
19 award reasonable attorney's fees, commensurate with services rendered, to be paid
20 from the fund in accordance with rules adopted by the board. Additional attorney's
21 fees may be awarded by a court in the event of a review by the court in which the
22 person prevails. Attorney's fees may be denied on a finding that the claim or appeal
23 is frivolous. Awards of attorney's fees shall be in addition to awards of reparations
24 and may be made whether or not compensation is awarded. In no event shall an
25 award of attorney's fees be in excess of a rate of fifty dollars per hour.

26 §1839.1. Limited liability of the state

27 The state shall not be liable for the claim of any applicant in excess of the
28 funds appropriated for the payment of claims under this Chapter.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 439 Original

2023 Regular Session

Bryant

Abstract: Creates the Victims of Vehicular Homicide Fund and provides relative to the payment of reparations.

Present law (R.S. 46:1807), relative to the Crime Victims Reparations Board (board), requires the board to take certain actions in regard to the performance of its powers and duties.

Proposed law adds that the board shall also take such actions and perform such other functions as are required by proposed law (relative to Victims of Vehicular Homicide).

Proposed law creates the Victims of Vehicular Homicide Act and provides for definitions for certain terms, including but not limited to: board, collateral source, pecuniary loss, and victim.

Proposed law authorizes the board to make an award and order the payment of reparations for pecuniary loss for death resulting from the present law offense of vehicular homicide (R.S. 14:32.1), and the offender failed to maintain compulsory motor vehicle liability security pursuant to present law (R.S. 32:861).

Proposed law provides for the requirements for applications and provides that applications for reparations shall be filed in writing with the board within one year after the date of the death or within such longer period as the board determines is justified by the circumstances. Requires certain reasonable documentation to be submitted with the application.

Proposed law provides that certain information shall be confidential when submitted to the board.

Proposed law provides relative to the procedure for hearings by the board and requires that hearings are open to the public, unless the board determines that all or part of the hearing should be closed, taking into consideration the fact that an accused has not been convicted. Authorizes the board to receive in evidence any statement, document, information, or matter that it believes may contribute to the purposes of the hearing or its deliberations.

Proposed law requires the board to order the payment of reparations in an amount determined by it if, with or without hearings, it finds by a preponderance of evidence that pecuniary loss was sustained by reason of death and that such loss was proximately caused by the crime of vehicular homicide.

Proposed law provides that awards payable under proposed law shall not exceed \$50,000 in the aggregate for all claims arising out of the same crime. Further authorizes the board to order the payment of an award in a lump sum or in installments.

Proposed law authorizes the board to make an emergency award pending its final decision in the case. Provides that an emergency award shall not exceed \$1,000.

Proposed law provides that whenever any person is convicted of vehicular homicide or operating a vehicle while intoxicated and an order for the payment of reparations is or has been made pursuant to proposed law, the attorney general, within one year after the date on which the judgment of conviction becomes final, may institute a civil action against the

convicted person for the recovery for all or any part of the reparations payment. Further provides that any amount recovered shall be deposited in the state treasury and credited to the Victims of Vehicular Homicide Fund.

Proposed law provides that in addition to any other costs otherwise imposed by present law a cost of not less than \$50,000 for vehicular homicide or operating a motor vehicle while intoxicated is levied in each criminal action which results in a conviction or guilty plea. Provides that the cost is paid by the defendant and a periodic payment plan may be ordered.

Proposed law requires the board to submit an annual report to the legislature and the governor detailing its activities during the preceding year.

Proposed law provides that the state shall not be liable for the claim of any applicant in excess of the funds appropriated for the payment of claims under proposed law.

(Amends R.S. 46:1807(A); Adds R.S. 46:1807(B)(8) and 1823-1839.1)