

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, and documenting that the defendant did not
7 maintain compulsory motor vehicle liability security pursuant to R.S. 32:861.

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

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

13 (d) A copy of the death certificate.

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

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

18 (2) A copy of the death certificate.

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

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

23 (1) Documents which relate to medical treatment including any itemized
24 billing statements.

25 (2) Law enforcement investigative reports.

26 D. Records, documents, and information in the possession of the board
27 received pursuant to a law enforcement investigation or a verification of application
28 by a law enforcement agency shall be considered investigative records of a law
29 enforcement agency as described in R.S. 44:3 and shall not be disseminated under

1 any condition without the permission of the agency providing the record or
2 information to the board.

3 §1828. Criteria for making awards; prohibitions; authority to deny or reduce awards

4 A. The board shall order the payment of reparations in an amount determined
5 by it if, upon receipt of the application and without hearings, it finds by a
6 preponderance of the evidence that pecuniary loss was sustained by reason of death
7 and that such loss was proximately caused by the crime of vehicular homicide,
8 pursuant to R.S. 14:32.1, and that such pecuniary loss has or will not be compensated
9 from any collateral or other source.

10 B. A finding by the board, for purposes of considering an application for
11 award under this Chapter, that the commission of a crime enumerated in R.S.
12 46:1826 resulted in a pecuniary loss covered by this Chapter shall be a sufficient
13 finding with respect to the crime giving rise to the application for a reparations
14 award. An order for reparations may be made whether or not any person is arrested,
15 prosecuted, or convicted of the crime giving rise to the application for reparations.
16 The board may suspend proceedings in the interest of justice if a civil or criminal
17 action arising from such act or omission constituting the crime is pending or
18 imminent.

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

26 §1829. Amount of reparations award

27 Awards payable under this Chapter shall not exceed fifty thousand dollars for
28 two or more victims and twenty-five thousand dollars for one victim in the aggregate
29 for all claims arising out of the same crime.

1 §1830. Reparation order; terms and conditions

2 A. The board may order the payment of an award in a lump sum.

3 B. The state treasurer shall pay to the person named in the order of payment
4 of reparations the amount stated therein in accordance with the provisions of such
5 order.

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

8 §1831. Finality of decision

9 A decision or order of the board with respect to any application or claim for
10 reparations shall be final and shall not be subject to any review by a court.

11 §1832. Effect of reparations award on right to recover damages in civil action;
12 repayment of award

13 A. An order for reparations payments under this Chapter shall not affect the
14 right of any person to institute a civil suit to recover damages for the death from any
15 other person. However, if damages in a civil action are recovered, from the offender
16 or any other third party, the person shall reimburse the Victims of Vehicular
17 Homicide Board, through the board, in an amount equal to the amount of the
18 reparations award or such lesser amount as is recovered in damages in the civil
19 action.

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

23 §1833. Recovery from the offender

24 A. Whenever any person is charged with vehicular homicide under R.S.
25 14:32.1 and an order for the payment of reparations is or has been made under this
26 Chapter from the act constituting the crime for the charge, the attorney general,
27 within two years after the date on which charges are final, may institute a civil action
28 against the person charged for the recovery of all or any part of the reparations
29 payment. The suit shall be instituted in the district court having jurisdiction in the

1 parish in which such person resides or is found or, in Orleans Parish, in the civil
2 district court for that parish. The court shall have jurisdiction to hear, determine, and
3 render judgment in any such action. Any amount recovered under this Subsection
4 shall be deposited in the state treasury and, after meeting the requirements of Article
5 VII, Section 9 of the Constitution of Louisiana, credited to the Victims of Vehicular
6 Homicide Fund hereinafter created. If an amount greater than that paid pursuant to
7 the order for payment of reparations is recovered and collected in any such action,
8 the board shall pay the balance to the person.

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

11 §1834. Victims of Vehicular Homicide Fund; creation; sources and use of funds

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

14 B. The fund shall be composed of:

15 (1) Monies derived from appropriations by the legislature or private funds
16 not to exceed five hundred thousand dollars per fiscal year.

17 (2) Any federal monies made available to the state for victim compensation.

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

20 (4) Any gift, grant, devise or bequest of monies or properties of any nature
21 or description.

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

25 §1835. Report to legislature and governor

26 The board shall submit an annual report to the legislature and the governor
27 detailing its activities during the preceding year. The report shall be made available
28 electronically on the website of the Louisiana Commission on Law Enforcement. A
29 sufficient number of copies shall be printed for distribution to the governor, the

1 chairman of the House Committee on Judiciary, the chairman of the Senate
2 Committee on Judiciary C, and to as many others as may be requested.

3 §1836. Penalty for fraud

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

8 §1837. Limited liability of the state

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

11 §1838. Termination of fund

12 Unless otherwise extended, the provisions of this Chapter shall be null, void,
13 and without effect and shall cease to exist on August 1, 2027.

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 Engrossed

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 Act).

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), if 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 that the board shall order payments of reparations without hearings.

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.

Proposed law terminates the fund on Aug. 1, 2027.

(Amends R.S. 46:1807(A); Adds R.S. 46:1807(B)(8) and 1823-1838)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Add documentation of failure to maintain compulsory motor vehicle insurance as a form of reasonable documentation.
2. Add a copy of the death certificate in lieu of any documentation the board deems sufficient.
3. Remove provisions for emergency awards.
4. Add an amount of \$25,000 in reparations for survivors when there is only one victim of vehicular homicide and an amount of \$50,000 when there are two or more victims of vehicular homicide.

5. Remove the requirement of hearings and all related evidentiary and procedural provisions.
6. Require the monies for the fund to be derived from the legislature or private funds not to exceed \$50,000.
7. Remove court cost of \$50,000 imposed on persons convicted of vehicular homicide or driving while intoxicated.
8. Remove the award of attorney fees.
9. Terminate the fund on Aug. 1, 2027.