

2023 Regular Session

HOUSE BILL NO. 439

BY REPRESENTATIVE BRYANT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FUNDS/FUNDING: Creates the Victims of Vehicular Homicide Fund

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AN ACT

To amend and reenact R.S. 44:4.1(B)(31) and R.S. 46:1807(A) and to enact R.S. 46:1807(B)(8) and Chapter 21-A of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:1823 through 1838, relative to victims of vehicular homicide; to provide relative to the powers and duties of the Crime Victims Reparations Board; to provide exceptions to public record requirements for certain information submitted to the board; to authorize the board to take actions and perform duties necessary relative to victims of vehicular homicide; to create the Victims of Vehicular Homicide Fund; to provide relative to the payment of reparations for loss for death resulting from vehicular homicide; to provide relative to applications for reparations; to provide relative to the criteria for the payment of reparations; to provide relative to sources of money in the fund; to provide relative to termination; to provide relative to the amount of the reparations award; to provide relative to reports; to provide relative to limited liability of the state; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 44:4.1(B)(31) is hereby amended and reenacted to read as follows:

§4.1. Exceptions

* * *

1 B. The legislature further recognizes that there exist exceptions, exemptions,
 2 and limitations to the laws pertaining to public records throughout the revised
 3 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
 4 limitations are hereby continued in effect by incorporation into this Chapter by
 5 citation:

6 * * *

7 (31) R.S. 46:56, 123(K), 236.1.1 through 238, 284, 286.1, 439.1, 446.1,
 8 1073, 1355, 1806, 1827, 1844, 1862, 1923, 2124.1, 2134, 2187, 2356, 2416, 2597,
 9 2603, 2625

10 * * *

11 Section 2. R.S. 46:1807(A) is hereby amended and reenacted and R.S. 46:1807(B)(8)
 12 and Chapter 21-A of Title 46 of the Louisiana Revised Statutes of 1950, comprised of R.S.
 13 46:1823 through 1838, is hereby enacted to read as follows:

14 §1807. Powers and duties of board; staff

15 A. The board shall administer the provisions of this Chapter and Chapter 21-
 16 A of this Title and shall be responsible, in accordance with this Chapter and Chapter
 17 21-A of this Title, for determining all matters pertaining to applications for
 18 reparations, investigations, and determinations based upon its findings, the granting
 19 or rejecting of claims, and fixing the amounts of such grants or payments and the
 20 methods of their payment.

21 B. In the performance of its powers and duties the board shall:

22 * * *

23 (8) Take such actions and perform such other functions as are required by
 24 Chapter 21-A of this Title or necessary to perform its purposes.

25 * * *

26 CHAPTER 21-A. VICTIMS OF VEHICULAR HOMICIDE

27 §1823. Short title

28 This Chapter may be cited as the Victims of Vehicular Homicide Act.

1 §1824. Definitions

2 As used in this Chapter:

3 (1) "Board" means the Crime Victims Reparations Board as provided in R.S.
4 46:1803.

5 (2) "Reparations" means payment of compensation in accordance with the
6 provisions of this Chapter for loss resulting from death by reason of a crime
7 enumerated in this Chapter.

8 (3) "Victim" means:

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

11 (b) A Louisiana resident who suffers death as a result of a crime described
12 in R.S. 46:1826, except that the criminal act occurred outside of this state. In this
13 Subparagraph, "Louisiana resident" means a person who maintained a place of
14 permanent abode in this state at the time the crime was committed for which
15 reparations are sought.

16 §1825. Eligibility to apply for reparations

17 Survivors enumerated in Civil Code Article 2315.2 shall be eligible to make
18 an application to the board for reparations and shall be eligible for an award of
19 reparations in accordance with the provisions of this Chapter. Upon charging or
20 indictment of an offender convicted of a violation of R.S. 14:32.1, the judge shall
21 inform such survivor of eligibility for an award of reparations. The judge shall also
22 provide the contact information for the board to such persons for submitting an
23 application to the board for an award of reparations.

24 §1826. Crimes to which Chapter applies

25 A. The board may make an award and order the payment of reparations for
26 loss in accordance with the provisions of this Chapter for death resulting from the
27 offense of vehicular homicide, pursuant to R.S. 14:32.1, when the offender failed to
28 maintain compulsory motor vehicle liability security pursuant to R.S. 32:861, and
29 the victim failed to maintain uninsured motorist coverage.

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

4 §1827. Application; requirements; confidentiality

5 A.(1) An application for reparations shall be filed in writing with the board
6 within one year after the date of the death or within such longer period as the board
7 determines is justified by the circumstances. The application shall be valid only if
8 reasonable documentation of the crime resulting in the death is submitted with the
9 application.

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

12 (a) A police report documenting the commission of the crime of vehicular
13 homicide, pursuant to R.S. 14:32.1, and documenting that the offender did not
14 maintain compulsory motor vehicle liability security pursuant to R.S. 32:861.

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

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

20 (d) A copy of the death certificate.

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

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

25 (2) A copy of the death certificate.

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

28 (4) 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. Criteria for making awards; prohibitions; authority to deny or reduce awards

6 A. The board shall order the payment of reparations in an amount determined
7 by it if, upon receipt of the application and without hearings, it finds by a
8 preponderance of the evidence that loss was sustained by reason of death and that
9 such loss was proximately caused by the crime of vehicular homicide, pursuant to
10 R.S. 14:32.1.

11 B. A finding by the board, for purposes of considering an application for
12 award under this Chapter, that the charge or indictment of a crime enumerated in
13 R.S. 46:1826 resulted in a loss covered by this Chapter shall be a sufficient finding
14 with respect to the crime giving rise to the application for a reparations award.

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

22 §1829. Amount of reparations award

23 Awards payable under this Chapter shall not exceed sixty thousand dollars
24 per occurrence, in the aggregate, for all claims arising out of the same crime. No
25 survivor shall recover more than fifteen thousand dollars on behalf of each victim.

26 §1830. Reparation order; terms and conditions

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

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

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

6 §1831. Finality of decision

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

9 §1832. Effect of reparations award on right to recover damages in civil action;
10 repayment of award

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

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

21 §1833. Recovery from the offender

22 A. Whenever any person is charged with vehicular homicide under R.S.
23 14:32.1 and an order for the payment of reparations is or has been made under this
24 Chapter from the act constituting the crime for the charge, the attorney general,
25 within two years after the date on which charges are final, may institute a civil action
26 against the person charged for the recovery of all or any part of the reparations
27 payment. The suit shall be instituted in the district court having jurisdiction in the
28 parish in which such person resides or is found or, in Orleans Parish, in the civil
29 district court for that parish. The court shall have jurisdiction to hear, determine, and

1 render judgment in any such action. Any amount recovered under this Subsection
2 shall be deposited in the state treasury and, after meeting the requirements of Article
3 VII, Section 9 of the Constitution of Louisiana, credited to the Victims of Vehicular
4 Homicide Fund hereinafter created. If an amount greater than that paid pursuant to
5 the order for payment of reparations is recovered and collected in any such action,
6 the board shall pay the balance to the person.

7 B. The board shall provide the attorney general with such information, data,
8 and reports as he may require to institute actions in accordance with this Section.
9 §1834. Victims of Vehicular Homicide Fund; creation; sources and use of funds

10 A. The Victims of Vehicular Homicide Fund, hereinafter referred to as "the
11 fund," is hereby created as a special fund in the state treasury.

12 B. The fund shall be composed of:

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

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

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

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

20 C. Monies in the fund shall be invested by the treasurer in the same manner
21 as state general fund monies. Unexpended and unencumbered monies in the fund at
22 the end of the fiscal year shall remain in the fund. Subject to appropriation, monies
23 in the fund shall be used solely to pay reparation awards pursuant to this Chapter and
24 disbursements therefrom shall be made by the state treasurer upon written order of
25 the board, signed by the chairman, or a court.

26 §1835. Report to legislature and governor

27 The board shall submit an annual report to the legislature and the governor
28 detailing its activities during the preceding year. The report shall be made available
29 electronically on the website of the Louisiana Commission on Law Enforcement and

1 Administration of Criminal Justice. A sufficient number of copies shall be printed
2 for distribution to the governor, the chairman of the House Committee on Judiciary,
3 the chairman of the Senate Committee on Judiciary C, and to as many others as may
4 be requested.

5 §1836. Penalty for fraud

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

10 §1837. Limited liability of the state

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

13 §1838. Termination of fund

14 Unless otherwise extended, the provisions of this Chapter shall be null, void,
15 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 Re-Reengrossed

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, reparations, and victim.

Proposed law creates the Victims of Vehicular Homicide Fund as a special fund in the treasury from which awards under the proposed law shall be paid.

Proposed law provides definitions for "board", "reparations", and "victim".

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

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 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 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 \$60,000, per occurrence, 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 two years 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. 44:4.1(B)(31) and 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.

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Add a cross reference to present law open meetings law exceptions (R.S. 44:4.1(B)(31)).
2. Add language that the fund created in proposed law is a special fund in the state treasury.
3. Add language providing for investment of monies in the fund and unexpended and unencumbered monies in the fund at the end of the fiscal year.
4. Add that subject to appropriation monies in the fund shall be used solely for reparations.
5. Make technical changes.

The House Floor Amendments to the reengrossed bill:

1. Make technical changes.
2. Remove references to "pecuniary".
3. Remove the definition of "collateral source".
4. Remove proposed law reference to the lack of reparations for criminal acts occurring outside of this state.
5. Add requirement that victim failed to maintain uninsured motorist coverage.
6. Remove confidentiality of information submitted to the board.
7. Remove authority to order reparations whether or not there is an arrest, prosecution, or conviction for the crime.
8. Increase the maximum amount of reparations award from \$50,000 to \$60,000.
9. Remove requirement to notify the attorney general of the filing of a civil action.