

MARCH 28, 1991

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 1, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1
2 INTROSUCED BY Senate BILL NO. 321
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIME
5 VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COMPENSATION
6 TO INNOCENT VICTIMS OF DUI OFFENDERS; PROVIDING A METHOD TO
7 FUND CLAIMS OF DUI VICTIMS; PROVIDING BENEFITS TO VICTIMS
8 INJURED OR KILLED IN STATES THAT DO NOT HAVE VICTIMS
9 COMPENSATION PROGRAMS THAT COMPENSATE RESIDENTS OF THIS
10 STATE; REMOVING THE FAMILY EXCLUSION AND PROVIDING BENEFITS
11 TO AN INNOCENT VICTIM REGARDLESS OF RESIDENCE WITH THE
12 OFFENDER OR HIS ACCOMPLICE; AMENDING SECTIONS 46-18-248,
13 53-9-102, 53-9-103, 53-9-109, 53-9-125, 61-8-714, AND
14 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
15

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

17 **Section 1.** Section 46-18-248, MCA, is amended to read:

18 "46-18-248. Rights of crime victims⁺ victims or DUI
19 victims compensation account accounts. (1) Whenever a victim
20 is paid from the crime victims⁺ victims compensation account
21 or the DUI victims compensation account established in
22 53-9-109 for loss arising out of a criminal act, the account
23 is subrogated, to the extent of the account's payment to the
24 victim, to the rights of the victim to any restitution
25 ordered by the court.

1 (2) The rights of the crime victims⁺ victims
2 compensation account or the DUI victims compensation account
3 are subordinate to the claims of multiple victims who have
4 suffered loss arising out of multiple offenses by the same
5 offender or arising from any transaction which is part of
6 the same continuous scheme of criminal activity of an
7 offender."

8 **Section 2.** Section 53-9-102, MCA, is amended to read:

9 "53-9-102. Legislative purpose and intent. It is the
10 intent of the legislature of this state to provide a method
11 of compensating and assisting those persons within the state
12 who are innocent victims of criminal acts and who suffer
13 bodily injury or death and those innocent citizens of this
14 state who are injured or killed in a state that does not
15 have a crime victims compensation program that covers
16 out-of-state residents injured or killed in that state. To
17 this end, it is the legislature's intention to provide
18 compensation for injuries suffered as a direct result of the
19 criminal acts of other persons."

20 **Section 3.** Section 53-9-103, MCA, is amended to read:

21 "53-9-103. Definitions. As used in this part, the
22 following definitions apply:

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

25 (a) a victim;

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

1 under this part are a primary source; or
 2 (h) a crime victims compensation program operated by
 3 the state in which the victim was injured or killed that
 4 compensates residents of this state injured or killed in
 5 that state.
 6 (3) "Criminally injurious conduct" means conduct that:
 7 (a) occurs or is attempted in this state;
 8 (b) results in bodily injury or death; and
 9 (c) is punishable by fine, imprisonment, or death or
 10 would be so punishable but for the fact that the person
 11 engaging in the conduct lacked capacity to commit the crime
 12 under the laws of this state. Criminally injurious conduct
 13 does not include conduct arising out of the ownership,
 14 maintenance, or use of a motor vehicle unless the bodily
 15 injury or death occurred during the commission of an offense
 16 defined in Title 45 that requires the mental state of
 17 purposely as an element of the offense, or the injury or
 18 death was inflicted by the driver of a motor vehicle who is
 19 convicted of a violation of 61-8-401, 61-8-406, or a similar
 20 statute of another state; or
 21 (d) is committed in a state without a crime victims
 22 compensation program that covers a resident of this state if
 23 the conduct meets the requirements in subsections (3)(b) and
 24 (3)(c).
 25 (4) "Dependent" means a natural person who is

1 recognized under the law of this state to be wholly or
2 partially dependent upon the victim for care or support and
3 includes a child of the victim conceived before the victim's
4 death but born after the victim's death, including a child
5 that is conceived as a result of the criminally injurious
6 conduct.

7 (5) "Division" means the division of crime control of
8 the department of justice.

9 (6) "Victim" means a person who suffers bodily injury
10 or death as a result of:

11 (a) criminally injurious conduct;

12 (b) his good faith effort to prevent criminally
13 injurious conduct; or

14 (c) his good faith effort to apprehend a person
15 reasonably suspected of engaging in criminally injurious
16 conduct."

17 **Section 4.** Section 53-9-109, MCA, is amended to read:

18 "53-9-109. Crime victims and DUI victims compensation
19 account accounts. (1) There is are a crime victims
20 compensation account and a DUI victims compensation account
21 in the state special revenue fund. There shall must be paid
22 into this the crime victims compensation account 18% of the
23 finances assessed and bails forfeited, except those paid to a
24 justice's court, on all offenses involving a violation of
25 chapter 3, part 1 of chapter 4, or chapters 5 through 10 of

1 Title 61 that are a result of citations or tickets issued by
2 the highway patrol. The Except for compensating DUI victims,
3 money in the crime victims compensation account is to be
4 used solely for the purposes of this part, and no any cash
5 balance in the account at the end of a fiscal biennium may
6 not be deposited-in transferred to the general fund.

7 (2) Fines imposed under 61-8-714(7) and 61-8-722(7)
8 must be paid into the DUI victims compensation account.
9 Except for compensating crime victims, money in the DUI
10 victims compensation account is to be used solely for the
11 purposes of this part, and any cash balance in the account
12 at the end of a fiscal biennium may not be transferred to
13 the general fund.

14 (3) At the end of a fiscal year, subject to legislative
15 appropriation as provided in 53-9-108, funds remaining in
16 the crime victims compensation account may be used to pay
17 claims for DUI victims if there were insufficient funds in
18 the DUI victims compensation account to pay DUI victims'
19 claims.

20 (4) At the end of a fiscal year, subject to legislative
21 appropriation as provided in 53-9-108, funds remaining in
22 the DUI victims compensation account may be used to pay
23 claims for crime victims if there were insufficient funds in
24 the crime victims compensation account to pay crime victims'
25 claims."

1 **Section 5.** Section 53-9-125, MCA, is amended to read:

2 "53-9-125. **Limitations on awards.** (1) Compensation may
3 not be awarded unless the claim is filed with the division
4 within 1 year after the day the criminally injurious conduct
5 occurred causing the injury or death upon which the claim is
6 based. The time for filing a claim may be extended by the
7 division for good cause shown.

8 (2) Compensation may not be awarded to a claimant who
9 is the offender or an accomplice of the offender or to any
10 claimant if the award would unjustly benefit the offender or
11 accomplice. ~~Unless the division determines that the~~
12 ~~interests of justice otherwise require in a particular case,~~
13 ~~compensation may not be awarded to the spouse of or a person~~
14 ~~living in the same household with the offender or his~~
15 ~~accomplice or to the parent, child, brother, or sister of~~
16 ~~the offender or his accomplice.~~

17 (3) Compensation may not be awarded unless the
18 criminally injurious conduct resulting in injury or death
19 was reported to a law enforcement officer within 72 hours
20 after its occurrence or the division finds there was good
21 cause for the failure to report within that time.

22 (4) In order to be entitled to benefits under this
23 part, a claimant must fully cooperate with all law
24 enforcement agencies and prosecuting attorneys in the
25 apprehension and prosecution of the offender causing the

1 criminally injurious conduct. The division, upon finding
2 that the claimant or victim has not fully cooperated with
3 appropriate law enforcement agencies or prosecuting
4 attorneys, may deny or reconsider and reduce an award of
5 compensation.

6 (5) Compensation otherwise payable to a claimant shall
7 be reduced or denied to the extent the compensation benefits
8 payable are or can be recouped from collateral sources.

9 (6) Persons serving a sentence of imprisonment or
10 residing in any other public institution which provides for
11 the maintenance of such person are not entitled to the
12 benefits of this part.

13 (7) Compensation may be denied or reduced if the victim
14 contributed to the infliction of death or injury with
15 respect to which the claim is made. Any reduction in
16 benefits under this subsection shall be in proportion to
17 what the division finds to be the victim's contribution to
18 the infliction of death or injury."

19 **Section 6.** Section 61-8-714, MCA, is amended to read:

20 "61-8-714. **Penalty for driving under the influence of**
21 **alcohol or drugs.** (1) A person convicted of a violation of
22 61-8-401 shall be punished by imprisonment in the county
23 jail for not less than 24 consecutive hours or more than 60
24 days and shall be punished by a fine of not less than \$100
25 or more than \$500. The jail sentence may not be suspended

1 unless the judge finds that the imposition of the jail
2 sentence will pose a risk to the defendant's physical or
3 mental well-being.

4 (2) On a second conviction, he shall be punished by a
5 fine of not less than \$300 or more than \$500 and by
6 imprisonment for not less than 7 days, at least 48 hours of
7 which must be served consecutively, or more than 6 months.
8 Three days of the jail sentence may not be suspended unless
9 the judge finds that the imposition of the jail sentence
10 will pose a risk to the defendant's physical or mental
11 well-being.

12 (3) On the third or subsequent conviction, he shall be
13 punished by imprisonment for a term of not less than 30
14 days, at least 48 hours of which must be served
15 consecutively, or more than 1 year, and by a fine of not
16 less than \$500 or more than \$1,000. Notwithstanding any
17 provision to the contrary providing for suspension of
18 execution of a sentence imposed under this subsection, the
19 imposition or execution of the first 10 days of the jail
20 sentence imposed for a third or subsequent offense that
21 occurred within 5 years of the first offense may not be
22 deferred or suspended.

23 (4) In addition to the punishment provided in this
24 section, regardless of disposition, the defendant shall
25 complete an alcohol information course at an alcohol

1 treatment program approved by the department of
2 institutions, which may, in the sentencing court's
3 discretion and upon recommendation of a certified chemical
4 dependency counselor, include alcohol or drug treatment, or
5 both. On conviction of a second or subsequent offense under
6 this section, in addition to the punishment provided in this
7 section, regardless of disposition, the defendant shall
8 complete an alcohol information course at an alcohol
9 treatment program approved by the department of
10 institutions, which must include alcohol or drug treatment,
11 or both. Each counselor providing education or treatment
12 shall, at the commencement of the education or treatment,
13 notify the court that the defendant has been enrolled in a
14 course or treatment program. If the defendant fails to
15 attend the course or the treatment program, the counselor
16 shall notify the court of the failure. As long as the
17 alcohol information course and treatment program are
18 approved as provided in this subsection, the defendant may
19 attend the information course and treatment program of his
20 choice. The treatment provided to the defendant at a
21 treatment program must be at a level appropriate to his
22 alcohol problem, as determined by the judge based upon the
23 recommendation from the certified chemical dependency
24 counselor.

25 (5) For the purpose of determining the number of

1 convictions under this section, "conviction" means a final
 2 conviction, as defined in 45-2-101, in this state,
 3 conviction for a violation of a similar statute in another
 4 state, or a forfeiture of bail or collateral deposited to
 5 secure the defendant's appearance in court in this state or
 6 another state, which forfeiture has not been vacated. An
 7 offender is considered to have been previously convicted for
 8 the purposes of this section if less than 5 years have
 9 elapsed between the commission of the present offense and a
 10 previous conviction. If there has been no additional
 11 conviction for an offense under this section for a period of
 12 5 years after a prior conviction hereunder, then all records
 13 and data relating to the prior conviction are confidential
 14 criminal justice information as defined in 44-5-103 and
 15 public access to the information may only be obtained by
 16 district court order upon good cause shown.

17 (6) For the purpose of calculating subsequent
 18 convictions under this section, a conviction for a violation
 19 of 61-8-406 also constitutes a conviction for a violation of
 20 61-8-401.

21 (7) In addition to any fine imposed under subsection
 22 (1), (2), or (3), a person convicted of a violation of
 23 61-8-401 shall pay \$150 into the DUI victims compensation
 24 fund provided for in 53-9-109."

25 **Section 7.** Section 61-8-722, MCA, is amended to read:

1 **"61-8-722. Penalty for driving with excessive blood**
 2 **alcohol concentration.** (1) A person convicted of a violation
 3 of 61-8-406 shall be punished by imprisonment for not more
 4 than 10 days and shall be punished by a fine of not less
 5 than \$100 or more than \$500.

6 (2) On a second conviction of a violation of 61-8-406,
 7 he shall be punished by imprisonment for not less than 48
 8 consecutive hours or more than 30 days and by a fine of not
 9 less than \$300 or more than \$500.

10 (3) On a third or subsequent conviction of a violation
 11 of 61-8-406, he shall be punished by imprisonment for not
 12 less than 48 consecutive hours or more than 6 months and by
 13 a fine of not less than \$500 or more than \$1,000.

14 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 15 61-11-203(2)(d) relating to revocation and suspension of
 16 driver's licenses shall apply to any conviction under
 17 61-8-406.

18 (5) In addition to the punishment provided in this
 19 section, regardless of disposition, the defendant shall
 20 complete an alcohol information course at an alcohol
 21 treatment program approved by the department of
 22 institutions, which may include alcohol or drug treatment,
 23 or both, if considered necessary by the counselor conducting
 24 the program. Each counselor providing such education or
 25 treatment shall, at the commencement of the education or

1 treatment, notify the court that the defendant has been
2 enrolled in a course or treatment program. If the defendant
3 fails to attend the course or the treatment program, the
4 counselor shall notify the court of the failure.

5 (6) For the purpose of determining the number of
6 convictions under this section, "conviction" means a final
7 conviction, as defined in 45-2-101, in this state or a
8 similar statute in another state or a forfeiture of bail or
9 collateral deposited to secure the defendant's appearance in
10 court in this state or another state, which forfeiture has
11 not been vacated. An offender is considered to have been
12 previously convicted for the purposes of this section if
13 less than 5 years have elapsed between the commission of the
14 present offense and a previous conviction. If there has been
15 no additional conviction for an offense under this section
16 for a period of 5 years after a prior conviction hereunder,
17 then such prior offense shall be expunged from the
18 defendant's record.

19 (7) In addition to any fine imposed under subsection
20 (1), (2), or (3), a person convicted of a violation of
21 61-8-406 shall pay \$150 into the DUI victims compensation
22 fund provided for in 53-9-109."

23 NEW SECTION. Section 8. Effective date. [This act] is
24 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0321, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act revising the Crime Victims Compensation Act of Montana to provide compensation to innocent victims of DUI offenders; providing a method to fund claims of DUI victims; providing benefits to victims injured or killed in states that do not have victims compensation programs that compensate residents of this state; removing the family exclusion and providing benefits to an innocent victim regardless of residence with the offender or his accomplice.

ASSUMPTIONS:

1. Awards will be made on 15 DUI claims per year. The national median number of awards to innocent victims of DUI accidents is 15 per year. (National Association of Crime Victims Compensation Boards)
2. The average benefit cost of a DUI claim is estimated at \$4,000, the national average.
3. There will be a 1% increase in claims for Montana residents injured in a state without a crime victims program.
4. There will be a 2% increase in primary victim claims due to removal of the family exclusion clause.
5. It is assumed additional work load can be handled by the FTE level in the executive budget recommendation for the Crime Control Division.
6. Operating costs will increase due to expanded services and the need to verify DUI claims and claims from residents injured/killed out of state.
7. Half of all DUI convictions will be made under a city ordinance and will not be subject to payment into the DUI Compensation Fund.
8. 75% of the mandatory surcharge imposed on DUI convictions will actually be collected for a total of \$399,234 per year.
9. Passage of this legislation may qualify Montana to apply for an annual federal block grant equal to 40% of the prior year awards paid out of state funds for victims compensation.
10. If federal funds are available, they can not be used to pay administrative costs.

FISCAL IMPACT:

see next page



ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

2-18-91
DATE



HARRY FRITZ, PRIMARY SPONSOR

3/14/91
DATE

Fiscal Note for SB0321, as introduced

SB 321

FISCAL IMPACT:Crime Control Division-Victims Compensation Unit

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Expenses	10,000	11,815	1,815	10,000	11,315	1,315
Benefits and Claims	<u>375,000</u>	<u>446,223</u>	<u>71,223</u>	<u>375,000</u>	<u>446,223</u>	<u>71,223</u>
Total	385,000	458,038	73,038	385,000	457,538	72,538
<u>Funding:</u>						
Crime/DUI Victim Benefits (02)	385,000	458,038	73,038	385,000	457,538	72,538
<u>Revenues:</u>						
DUI Victims Benefits (02)	0	399,234	399,234	0	399,234	399,234
Net Impact Crime/DUI Victims Account			326,200			326,700

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Depending on judges' sentencing practices, there is a potential that revenues to local governments may decrease if other fines are reduced because of the mandatory surcharge for DUI victims.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

- Benefit costs will increase in relation to the number of additional innocent victims served. Additional state special revenue or federal special revenue may be required to pay benefits.
- Program changes in this legislation may meet the federal requirements for a federally approved program and enable Montana to apply for federal block grant funds for victims compensation.
- If the Montana Crime Victims Compensation Program participates in the federal program and meets compliance guidelines, application could be made for grants up to 40% of the prior year benefit payment amounts.

TECHNICAL NOTES:

The legislation is effective upon passage. There is a potential that there may be claims before revenue is collected to pay for them.

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 321

INTRODUCED BY FRITZ, BROOKE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COMPENSATION TO INNOCENT VICTIMS OF DUI OFFENDERS; PROVIDING A METHOD TO FUND CLAIMS OF DUI VICTIMS; PROVIDING BENEFITS TO VICTIMS INJURED OR KILLED IN STATES THAT DO NOT HAVE VICTIMS COMPENSATION PROGRAMS THAT COMPENSATE RESIDENTS OF THIS STATE; REMOVING THE FAMILY EXCLUSION AND PROVIDING BENEFITS TO AN INNOCENT VICTIM REGARDLESS OF RESIDENCE WITH THE OFFENDER OR HIS ACCOMPLICE; AMENDING SECTIONS 46-18-248, 53-9-102, 53-9-103, 53-9-109, 53-9-125, 61-8-714, AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 46-18-248, MCA, is amended to read:

"**46-18-248.** Rights of crime victims+ victims or DUI victims compensation account accounts. (1) Whenever a victim is paid from the crime victims+ victims compensation account or the DUI victims compensation account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the crime victims+ victims compensation account or the DUI victims compensation account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction which is part of the same continuous scheme of criminal activity of an offender."

Section 2. Section 53-9-102, MCA, is amended to read:

"**53-9-102.** Legislative purpose and intent. It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death and those innocent citizens of this state who are injured or killed in a state that does not have a crime victims compensation program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons."

Section 3. 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;

SECOND READING

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

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

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

8 (a) the offender;

9 (b) the government of the United States or any agency
10 thereof, a state or any of its political subdivisions, or an
11 instrumentality of two or more states, unless the law
12 providing for the benefits or advantages makes them excess
13 or secondary to benefits under this part;

14 (c) social security, medicare, and medicaid;

15 (d) workers' compensation;

16 (e) wage continuation programs of any employer;

17 (f) proceeds of a contract of insurance payable to the
18 claimant for loss which was sustained because of the
19 criminally injurious conduct; or

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

1 under this part are a primary source; or

2 (h) a crime victims compensation program operated by
3 the state in which the victim was injured or killed that
4 compensates residents of this state injured or killed in
5 that state.

6 (3) "Criminally injurious conduct" means conduct that:

7 (a) occurs or is attempted in this state;

8 (b) results in bodily injury or death; and

9 (c) is punishable by fine, imprisonment, or death or
10 would be so punishable but for the fact that the person
11 engaging in the conduct lacked capacity to commit the crime
12 under the laws of this state. Criminally injurious conduct
13 does not include conduct arising out of the ownership,
14 maintenance, or use of a motor vehicle unless the bodily
15 injury or death occurred during the commission of an offense
16 defined in Title 45 that requires the mental state of
17 purposely as an element of the offense or the injury or
18 death was inflicted by the driver of a motor vehicle who is
19 convicted of a violation of 61-8-401, 61-8-406, or a similar
20 statute of another state; or

21 (d) is committed in a state without a crime victims
22 compensation program that covers a resident of this state if
23 the conduct meets the requirements in subsections (3)(b) and
24 (3)(c).

25 (4) "Dependent" means a natural person who is

1 recognized under the law of this state to be wholly or
2 partially dependent upon the victim for care or support and
3 includes a child of the victim conceived before the victim's
4 death but born after the victim's death, including a child
5 that is conceived as a result of the criminally injurious
6 conduct.

7 (5) "Division" means the division of crime control of
8 the department of justice.

9 (6) "Victim" means a person who suffers bodily injury
10 or death as a result of:

11 (a) criminally injurious conduct;

12 (b) his good faith effort to prevent criminally
13 injurious conduct; or

14 (c) his good faith effort to apprehend a person
15 reasonably suspected of engaging in criminally injurious
16 conduct."

17 **Section 4.** Section 53-9-109, MCA, is amended to read:

18 "**53-9-109. Crime victims and DUI victims compensation**
19 **account accounts.** (1) There ~~is~~ are a crime victims
20 compensation account and a DUI victims compensation account
21 in the state special revenue fund. There ~~shall~~ must be paid
22 into ~~this~~ the crime victims compensation account 18% of the
23 fines assessed and bails forfeited, except those paid to a
24 justice's court, on all offenses involving a violation of
25 chapter 3, part 1 of chapter 4, or chapters 5 through 10 of

1 Title 61 that are a result of citations or tickets issued by
2 the highway patrol. ~~The~~ Except for compensating DUI victims,
3 money in the crime victims compensation account is to be
4 used solely for the purposes of this part, and no any cash
5 balance in the account at the end of a fiscal biennium may
6 not be deposited-in transferred to the general fund.

7 (2) Fines imposed under 61-8-714(7) and 61-8-722(7)
8 must be paid into the DUI victims compensation account.
9 Except for compensating crime victims, money in the DUI
10 victims compensation account is to be used solely for the
11 purposes of this part, and any cash balance in the account
12 at the end of a fiscal biennium may not be transferred to
13 the general fund.

14 (3) At the end of a fiscal year, subject to legislative
15 appropriation as provided in 53-9-108, funds remaining in
16 the crime victims compensation account may be used to pay
17 claims for DUI victims if there were insufficient funds in
18 the DUI victims compensation account to pay DUI victims'
19 claims.

20 (4) At the end of a fiscal year, subject to legislative
21 appropriation as provided in 53-9-108, funds remaining in
22 the DUI victims compensation account may be used to pay
23 claims for crime victims if there were insufficient funds in
24 the crime victims compensation account to pay crime victims'
25 claims."

1 **Section 5.** Section 53-9-125, MCA, is amended to read:

2 **"53-9-125. Limitations on awards.** (1) Compensation may
3 not be awarded unless the claim is filed with the division
4 within 1 year after the day the criminally injurious conduct
5 occurred causing the injury or death upon which the claim is
6 based. The time for filing a claim may be extended by the
7 division for good cause shown.

8 (2) Compensation may not be awarded to a claimant who
9 is the offender or an accomplice of the offender or to any
10 claimant if the award would unjustly benefit the offender or
11 accomplice. ~~Unless--the--division---determines---that---the~~
12 ~~interests-of-justice-otherwise-require-in-a-particular-case~~
13 ~~compensation-may-not-be-awarded-to-the-spouse-of-or-a-person~~
14 ~~living--in--the--same--household--with--the--offender-or-his~~
15 ~~accomplice-or-to-the-parents-child-brother-or-sister--of~~
16 ~~the-offender-or-his-accomplice.~~

17 (3) Compensation may not be awarded unless the
18 criminally injurious conduct resulting in injury or death
19 was reported to a law enforcement officer within 72 hours
20 after its occurrence or the division finds there was good
21 cause for the failure to report within that time.

22 (4) In order to be entitled to benefits under this
23 part, a claimant must fully cooperate with all law
24 enforcement agencies and prosecuting attorneys in the
25 apprehension and prosecution of the offender causing the

1 criminally injurious conduct. The division, upon finding
2 that the claimant or victim has not fully cooperated with
3 appropriate law enforcement agencies or prosecuting
4 attorneys, may deny or reconsider and reduce an award of
5 compensation.

6 (5) Compensation otherwise payable to a claimant shall
7 be reduced or denied to the extent the compensation benefits
8 payable are or can be recouped from collateral sources.

9 (6) Persons serving a sentence of imprisonment or
10 residing in any other public institution which provides for
11 the maintenance of such person are not entitled to the
12 benefits of this part.

13 (7) Compensation may be denied or reduced if the victim
14 contributed to the infliction of death or injury with
15 respect to which the claim is made. Any reduction in
16 benefits under this subsection shall be in proportion to
17 what the division finds to be the victim's contribution to
18 the infliction of death or injury."

19 **Section 6.** Section 61-8-714, MCA, is amended to read:

20 **"61-8-714. Penalty for driving under the influence of**
21 **alcohol or drugs.** (1) A person convicted of a violation of
22 61-8-401 shall be punished by imprisonment in the county
23 jail for not less than 24 consecutive hours or more than 60
24 days and shall be punished by a fine of not less than \$100
25 or more than \$500. The jail sentence may not be suspended

1 unless the judge finds that the imposition of the jail
2 sentence will pose a risk to the defendant's physical or
3 mental well-being.

4 (2) On a second conviction, he shall be punished by a
5 fine of not less than \$300 or more than \$500 and by
6 imprisonment for not less than 7 days, at least 48 hours of
7 which must be served consecutively, or more than 6 months.
8 Three days of the jail sentence may not be suspended unless
9 the judge finds that the imposition of the jail sentence
10 will pose a risk to the defendant's physical or mental
11 well-being.

12 (3) On the third or subsequent conviction, he shall be
13 punished by imprisonment for a term of not less than 30
14 days, at least 48 hours of which must be served
15 consecutively, or more than 1 year, and by a fine of not
16 less than \$500 or more than \$1,000. Notwithstanding any
17 provision to the contrary providing for suspension of
18 execution of a sentence imposed under this subsection, the
19 imposition or execution of the first 10 days of the jail
20 sentence imposed for a third or subsequent offense that
21 occurred within 5 years of the first offense may not be
22 deferred or suspended.

23 (4) In addition to the punishment provided in this
24 section, regardless of disposition, the defendant shall
25 complete an alcohol information course at an alcohol

1 treatment program approved by the department of
2 institutions, which may, in the sentencing court's
3 discretion and upon recommendation of a certified chemical
4 dependency counselor, include alcohol or drug treatment, or
5 both. On conviction of a second or subsequent offense under
6 this section, in addition to the punishment provided in this
7 section, regardless of disposition, the defendant shall
8 complete an alcohol information course at an alcohol
9 treatment program approved by the department of
10 institutions, which must include alcohol or drug treatment,
11 or both. Each counselor providing education or treatment
12 shall, at the commencement of the education or treatment,
13 notify the court that the defendant has been enrolled in a
14 course or treatment program. If the defendant fails to
15 attend the course or the treatment program, the counselor
16 shall notify the court of the failure. As long as the
17 alcohol information course and treatment program are
18 approved as provided in this subsection, the defendant may
19 attend the information course and treatment program of his
20 choice. The treatment provided to the defendant at a
21 treatment program must be at a level appropriate to his
22 alcohol problem, as determined by the judge based upon the
23 recommendation from the certified chemical dependency
24 counselor.

25 (5) For the purpose of determining the number of

1 convictions under this section, "conviction" means a final
 2 conviction, as defined in 45-2-101, in this state,
 3 conviction for a violation of a similar statute in another
 4 state, or a forfeiture of bail or collateral deposited to
 5 secure the defendant's appearance in court in this state or
 6 another state, which forfeiture has not been vacated. An
 7 offender is considered to have been previously convicted for
 8 the purposes of this section if less than 5 years have
 9 elapsed between the commission of the present offense and a
 10 previous conviction. If there has been no additional
 11 conviction for an offense under this section for a period of
 12 5 years after a prior conviction hereunder, then all records
 13 and data relating to the prior conviction are confidential
 14 criminal justice information as defined in 44-5-103 and
 15 public access to the information may only be obtained by
 16 district court order upon good cause shown.

17 (6) For the purpose of calculating subsequent
 18 convictions under this section, a conviction for a violation
 19 of 61-8-406 also constitutes a conviction for a violation of
 20 61-8-401.

21 (7) In addition to any fine imposed under subsection
 22 (1), (2), or (3), THE COURT SHALL ORDER a person convicted
 23 of a violation of 61-8-401 shall TO pay \$150 into \$35 TO THE
 24 CLERK OF THE COURT TO BE DEPOSITED IN the DUI victims
 25 compensation fund provided for in 53-9-109."

1 **Section 7.** Section 61-8-722, MCA, is amended to read:

2 "61-8-722. **Penalty for driving with excessive blood**
 3 **alcohol concentration.** (1) A person convicted of a violation
 4 of 61-8-406 shall be punished by imprisonment for not more
 5 than 10 days and shall be punished by a fine of not less
 6 than \$100 or more than \$500.

7 (2) On a second conviction of a violation of 61-8-406,
 8 he shall be punished by imprisonment for not less than 48
 9 consecutive hours or more than 30 days and by a fine of not
 10 less than \$300 or more than \$500.

11 (3) On a third or subsequent conviction of a violation
 12 of 61-8-406, he shall be punished by imprisonment for not
 13 less than 48 consecutive hours or more than 6 months and by
 14 a fine of not less than \$500 or more than \$1,000.

15 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 16 61-11-203(2)(d) relating to revocation and suspension of
 17 driver's licenses shall apply to any conviction under
 18 61-8-406.

19 (5) In addition to the punishment provided in this
 20 section, regardless of disposition, the defendant shall
 21 complete an alcohol information course at an alcohol
 22 treatment program approved by the department of
 23 institutions, which may include alcohol or drug treatment,
 24 or both, if considered necessary by the counselor conducting
 25 the program. Each counselor providing such education or

1 treatment shall, at the commencement of the education or
 2 treatment, notify the court that the defendant has been
 3 enrolled in a course or treatment program. If the defendant
 4 fails to attend the course or the treatment program, the
 5 counselor shall notify the court of the failure.

6 (6) For the purpose of determining the number of
 7 convictions under this section, "conviction" means a final
 8 conviction, as defined in 45-2-101, in this state or a
 9 similar statute in another state or a forfeiture of bail or
 10 collateral deposited to secure the defendant's appearance in
 11 court in this state or another state, which forfeiture has
 12 not been vacated. An offender is considered to have been
 13 previously convicted for the purposes of this section if
 14 less than 5 years have elapsed between the commission of the
 15 present offense and a previous conviction. If there has been
 16 no additional conviction for an offense under this section
 17 for a period of 5 years after a prior conviction hereunder,
 18 then such prior offense shall be expunged from the
 19 defendant's record.

20 (7) In addition to any fine imposed under subsection
 21 (1), (2), or (3), THE COURT SHALL ORDER a person convicted
 22 of a violation of 61-8-406 shall TO pay \$150-into \$35 TO THE
 23 CLERK OF THE COURT TO BE DEPOSITED IN the DUI victims
 24 compensation fund provided for in 53-9-109."

25 NEW SECTION. Section 8. Effective date. [This act] is

1 effective on passage and approval.

-End-

1 SENATE BILL NO. 321

2 INTRODUCED BY FRITZ, BROOKE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIME
5 VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COMPENSATION
6 TO INNOCENT VICTIMS OF DUI OFFENDERS; PROVIDING A METHOD TO
7 FUND CLAIMS OF DUI VICTIMS; PROVIDING BENEFITS TO VICTIMS
8 INJURED OR KILLED IN STATES THAT DO NOT HAVE VICTIMS
9 COMPENSATION PROGRAMS THAT COMPENSATE RESIDENTS OF THIS
10 STATE; REMOVING THE FAMILY EXCLUSION AND PROVIDING BENEFITS
11 TO AN INNOCENT VICTIM REGARDLESS OF RESIDENCE WITH THE
12 OFFENDER OR HIS ACCOMPLICE; AMENDING SECTIONS 46-18-248,
13 53-9-102, 53-9-103, 53-9-109, 53-9-125, 61-8-714, AND
14 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
15

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

17 **Section 1.** Section 46-18-248, MCA, is amended to read:

18 "46-18-248. Rights of crime victims¹ victims or DUI
19 victims compensation account accounts. (1) Whenever a victim
20 is paid from the crime victims¹ victims compensation account
21 or the DUI victims compensation account established in
22 53-9-109 for loss arising out of a criminal act, the account
23 is subrogated, to the extent of the account's payment to the
24 victim, to the rights of the victim to any restitution
25 ordered by the court.

1 (2) The rights of the crime victims¹ victims
2 compensation account or the DUI victims compensation account
3 are subordinate to the claims of multiple victims who have
4 suffered loss arising out of multiple offenses by the same
5 offender or arising from any transaction which is part of
6 the same continuous scheme of criminal activity of an
7 offender."

8 **Section 2.** Section 53-9-102, MCA, is amended to read:

9 "53-9-102. Legislative purpose and intent. It is the
10 intent of the legislature of this state to provide a method
11 of compensating and assisting those persons within the state
12 who are innocent victims of criminal acts and who suffer
13 bodily injury or death and those innocent citizens of this
14 state who are injured or killed in a state that does not
15 have a crime victims compensation program that covers
16 out-of-state residents injured or killed in that state. To
17 this end, it is the legislature's intention to provide
18 compensation for injuries suffered as a direct result of the
19 criminal acts of other persons."

20 **Section 3.** Section 53-9-103, MCA, is amended to read:21 "53-9-103. Definitions. As used in this part, the
22 following definitions apply:23 (1) "Claimant" means any of the following claiming
24 compensation under this part:

25 (a) a victim;

THIRD READING

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

1 under this part are a primary source; or
 2 (h) a crime victims compensation program operated by
 3 the state in which the victim was injured or killed that
 4 compensates residents of this state injured or killed in
 5 that state.
 6 (3) "Criminally injurious conduct" means conduct that:
 7 (a) occurs or is attempted in this state;
 8 (b) results in bodily injury or death; and
 9 (c) is punishable by fine, imprisonment, or death or
 10 would be so punishable but for the fact that the person
 11 engaging in the conduct lacked capacity to commit the crime
 12 under the laws of this state. Criminally injurious conduct
 13 does not include conduct arising out of the ownership,
 14 maintenance, or use of a motor vehicle unless the bodily
 15 injury or death occurred during the commission of an offense
 16 defined in Title 45 that requires the mental state of
 17 purposely as an element of the offense; or the injury or
 18 death was inflicted by the driver of a motor vehicle who is
 19 convicted of a violation of 61-8-401, 61-8-406, or a similar
 20 statute of another state; or
 21 (d) is committed in a state without a crime victims
 22 compensation program that covers a resident of this state if
 23 the conduct meets the requirements in subsections (3)(b) and
 24 (3)(c).
 25 (4) "Dependent" means a natural person who is

1 recognized under the law of this state to be wholly or
2 partially dependent upon the victim for care or support and
3 includes a child of the victim conceived before the victim's
4 death but born after the victim's death, including a child
5 that is conceived as a result of the criminally injurious
6 conduct.

7 (5) "Division" means the division of crime control of
8 the department of justice.

9 (6) "Victim" means a person who suffers bodily injury
10 or death as a result of:

11 (a) criminally injurious conduct;

12 (b) his good faith effort to prevent criminally
13 injurious conduct; or

14 (c) his good faith effort to apprehend a person
15 reasonably suspected of engaging in criminally injurious
16 conduct."

17 **Section 4.** Section 53-9-109, MCA, is amended to read:

18 "53-9-109. Crime victims and DUI victims compensation
19 account accounts. (1) There ~~is~~ are a crime victims
20 compensation account and a DUI victims compensation account
21 in the state special revenue fund. There shall must be paid
22 into this the crime victims compensation account 18% of the
23 finer assessed and bails forfeited, except those paid to a
24 justice's court, on all offenses involving a violation of
25 chapter 3, part 1 of chapter 4, or chapters 5 through 10 of

1 Title 61 that are a result of citations or tickets issued by
2 the highway patrol. ~~The~~ Except for compensating DUI victims,
3 money in the crime victims compensation account is to be
4 used solely for the purposes of this part, and no any cash
5 balance in the account at the end of a fiscal biennium may
6 not be deposited-in transferred to the general fund.

7 (2) Fines imposed under 61-8-714(7) and 61-8-722(7)
8 must be paid into the DUI victims compensation account.
9 Except for compensating crime victims, money in the DUI
10 victims compensation account is to be used solely for the
11 purposes of this part, and any cash balance in the account
12 at the end of a fiscal biennium may not be transferred to
13 the general fund.

14 (3) At the end of a fiscal year, subject to legislative
15 appropriation as provided in 53-9-108, funds remaining in
16 the crime victims compensation account may be used to pay
17 claims for DUI victims if there were insufficient funds in
18 the DUI victims compensation account to pay DUI victims'
19 claims.

20 (4) At the end of a fiscal year, subject to legislative
21 appropriation as provided in 53-9-108, funds remaining in
22 the DUI victims compensation account may be used to pay
23 claims for crime victims if there were insufficient funds in
24 the crime victims compensation account to pay crime victims'
25 claims."

Section 5. Section 53-9-125, MCA, is amended to read:

"53-9-125. **Limitations on awards.** (1) Compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the division for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice. ~~Unless--the--division---determines---that---the interests-of-justice-otherwise-require-in-a-particular-case, compensation-may-not-be-awarded-to-the-spouse-of-or-a-person living--in--the--same--household--with--the--offender-or-his accomplice-or-to-the-parent,-child,-brother,-or--sister--of the-offender-or-his-accomplice.~~

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the division finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the

criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury."

Section 6. Section 61-8-714, MCA, is amended to read:

"61-8-714. **Penalty for driving under the influence of alcohol or drugs.** (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended

1 unless the judge finds that the imposition of the jail
2 sentence will pose a risk to the defendant's physical or
3 mental well-being.

4 (2) On a second conviction, he shall be punished by a
5 fine of not less than \$300 or more than \$500 and by
6 imprisonment for not less than 7 days, at least 48 hours of
7 which must be served consecutively, or more than 6 months.
8 Three days of the jail sentence may not be suspended unless
9 the judge finds that the imposition of the jail sentence
10 will pose a risk to the defendant's physical or mental
11 well-being.

12 (3) On the third or subsequent conviction, he shall be
13 punished by imprisonment for a term of not less than 30
14 days, at least 48 hours of which must be served
15 consecutively, or more than 1 year, and by a fine of not
16 less than \$500 or more than \$1,000. Notwithstanding any
17 provision to the contrary providing for suspension of
18 execution of a sentence imposed under this subsection, the
19 imposition or execution of the first 10 days of the jail
20 sentence imposed for a third or subsequent offense that
21 occurred within 5 years of the first offense may not be
22 deferred or suspended.

23 (4) In addition to the punishment provided in this
24 section, regardless of disposition, the defendant shall
25 complete an alcohol information course at an alcohol

1 treatment program approved by the department of
2 institutions, which may, in the sentencing court's
3 discretion and upon recommendation of a certified chemical
4 dependency counselor, include alcohol or drug treatment, or
5 both. On conviction of a second or subsequent offense under
6 this section, in addition to the punishment provided in this
7 section, regardless of disposition, the defendant shall
8 complete an alcohol information course at an alcohol
9 treatment program approved by the department of
10 institutions, which must include alcohol or drug treatment,
11 or both. Each counselor providing education or treatment
12 shall, at the commencement of the education or treatment,
13 notify the court that the defendant has been enrolled in a
14 course or treatment program. If the defendant fails to
15 attend the course or the treatment program, the counselor
16 shall notify the court of the failure. As long as the
17 alcohol information course and treatment program are
18 approved as provided in this subsection, the defendant may
19 attend the information course and treatment program of his
20 choice. The treatment provided to the defendant at a
21 treatment program must be at a level appropriate to his
22 alcohol problem, as determined by the judge based upon the
23 recommendation from the certified chemical dependency
24 counselor.

25 (5) For the purpose of determining the number of

1 convictions under this section, "conviction" means a final
 2 conviction, as defined in 45-2-101, in this state,
 3 conviction for a violation of a similar statute in another
 4 state, or a forfeiture of bail or collateral deposited to
 5 secure the defendant's appearance in court in this state or
 6 another state, which forfeiture has not been vacated. An
 7 offender is considered to have been previously convicted for
 8 the purposes of this section if less than 5 years have
 9 elapsed between the commission of the present offense and a
 10 previous conviction. If there has been no additional
 11 conviction for an offense under this section for a period of
 12 5 years after a prior conviction hereunder, then all records
 13 and data relating to the prior conviction are confidential
 14 criminal justice information as defined in 44-5-103 and
 15 public access to the information may only be obtained by
 16 district court order upon good cause shown.

17 (6) For the purpose of calculating subsequent
 18 convictions under this section, a conviction for a violation
 19 of 61-8-406 also constitutes a conviction for a violation of
 20 61-8-401.

21 (7) In addition to any fine imposed under subsection
 22 (1), (2), or (3), THE COURT SHALL ORDER a person convicted
 23 of a violation of 61-8-401 shall TO pay \$150-into \$35 TO THE
 24 CLERK OF THE COURT TO BE DEPOSITED IN the DUI victims
 25 compensation fund provided for in 53-9-109."

1 **Section 7.** Section 61-8-722, MCA, is amended to read:

2 **"61-8-722. Penalty for driving with excessive blood**
 3 **alcohol concentration.** (1) A person convicted of a violation
 4 of 61-8-406 shall be punished by imprisonment for not more
 5 than 10 days and shall be punished by a fine of not less
 6 than \$100 or more than \$500.

7 (2) On a second conviction of a violation of 61-8-406,
 8 he shall be punished by imprisonment for not less than 48
 9 consecutive hours or more than 30 days and by a fine of not
 10 less than \$300 or more than \$500.

11 (3) On a third or subsequent conviction of a violation
 12 of 61-8-406, he shall be punished by imprisonment for not
 13 less than 48 consecutive hours or more than 6 months and by
 14 a fine of not less than \$500 or more than \$1,000.

15 (4) The provisions of 61-5-205(2), 61-5-208(2), and
 16 61-11-203(2)(d) relating to revocation and suspension of
 17 driver's licenses shall apply to any conviction under
 18 61-8-406.

19 (5) In addition to the punishment provided in this
 20 section, regardless of disposition, the defendant shall
 21 complete an alcohol information course at an alcohol
 22 treatment program approved by the department of
 23 institutions, which may include alcohol or drug treatment,
 24 or both, if considered necessary by the counselor conducting
 25 the program. Each counselor providing such education or

1 treatment shall, at the commencement of the education or
 2 treatment, notify the court that the defendant has been
 3 enrolled in a course or treatment program. If the defendant
 4 fails to attend the course or the treatment program, the
 5 counselor shall notify the court of the failure.

6 (6) For the purpose of determining the number of
 7 convictions under this section, "conviction" means a final
 8 conviction, as defined in 45-2-101, in this state or a
 9 similar statute in another state or a forfeiture of bail or
 10 collateral deposited to secure the defendant's appearance in
 11 court in this state or another state, which forfeiture has
 12 not been vacated. An offender is considered to have been
 13 previously convicted for the purposes of this section if
 14 less than 5 years have elapsed between the commission of the
 15 present offense and a previous conviction. If there has been
 16 no additional conviction for an offense under this section
 17 for a period of 5 years after a prior conviction hereunder,
 18 then such prior offense shall be expunged from the
 19 defendant's record.

20 (7) In addition to any fine imposed under subsection
 21 (1), (2), or (3), THE COURT SHALL ORDER a person convicted
 22 of a violation of 61-8-406 shall TO pay \$150-into \$35 TO THE
 23 CLERK OF THE COURT TO BE DEPOSITED IN the DUI victims
 24 compensation fund provided for in 53-9-109."

25 NEW SECTION. Section 8. Effective date. [This act] is

1 effective on passage and approval.


-End-

HOUSE STANDING COMMITTEE REPORT

March 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 321 (third reading copy -- blue) be concurred in as amended.

Signed: 

Bill Strizich, Chairman

Carried by: Rep. Brooke

And, that such amendments read:

1. Title, lines 6 and 7.

Strike: "PROVIDING A METHOD TO FUND CLAIMS OF DUI VICTIMS;"

2. Title, line 12.

Strike: "46-18-248,"

3. Title, line 13.

Strike: "53-9-109,"

Insert: "AND"

Strike: "61-8-714, AND"

4. Title, line 14.

Strike: "61-8-722,"

5. Page 1, line 17, through page 2, line 7.

Strike: section 1 in its entirety

Renumber: subsequent sections

6. Page 4, lines 19 and 20.

Strike: "convicted" on line 19 through "state" on line 20

Insert: "found by the division, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in 61-8-401"

7. Page 5, line 17, through page 6, line 25.

Strike: section 4 in its entirety

Renumber: subsequent sections

8. Page 8, line 19, through page 13, line 24.

Strike: sections 6 and 7 in their entirety

Renumber: subsequent section

SB 321

HOUSE

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 321
Representative Brooke

March 19, 1991 2:24 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 321 (third reading copy -- blue).

Signed: *Simon M. Brooke*
Representative Brooke

And, that such amendments to Senate Bill 321 read as follows:

1. Title, line 14.
Strike: "IMMEDIATE"
2. Page 14, line 1.
Strike: "passage and approval"
Insert: " July 1, 1991"

ADOPT

REJECT

HOUSE
S B 321

591424CW.Hpd

SENATE BILL NO. 321

INTRODUCED BY FRITZ, BROOKE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COMPENSATION TO INNOCENT VICTIMS OF DUI OFFENDERS; PROVIDING A METHOD TO FUND CLAIMS OF DUI VICTIMS; PROVIDING BENEFITS TO VICTIMS INJURED OR KILLED IN STATES THAT DO NOT HAVE VICTIMS COMPENSATION PROGRAMS THAT COMPENSATE RESIDENTS OF THIS STATE; REMOVING THE FAMILY EXCLUSION AND PROVIDING BENEFITS TO AN INNOCENT VICTIM REGARDLESS OF RESIDENCE WITH THE OFFENDER OR HIS ACCOMPLICE; AMENDING SECTIONS ~~46-18-240~~ 53-9-102, 53-9-103, 53-9-109, AND 53-9-125, ~~61-8-714~~ AND ~~61-8-722~~ MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~Section 46-18-240, MCA, is amended to read:~~

"~~46-18-240. Rights of crime victims¹ victims--or--DUI~~ victims compensation account accounts--(1) Whenever a victim is paid from the crime victims¹ victims compensation account or the DUI victims compensation account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

~~(2) The rights of the crime victims¹ victims compensation account or the DUI victims compensation account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction which is part of the same continuous scheme of criminal activity of an offender."~~

Section 1. Section 53-9-102, MCA, is amended to read:

"**53-9-102. Legislative purpose and intent.** It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death and those innocent citizens of this state who are injured or killed in a state that does not have a crime victims compensation program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons."

Section 2. 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;



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

1 under this part are a primary source; or
 2 (h) a crime victims compensation program operated by
 3 the state in which the victim was injured or killed that
 4 compensates residents of this state injured or killed in
 5 that state.
 6 (3) "Criminally injurious conduct" means conduct that:
 7 (a) occurs or is attempted in this state;
 8 (b) results in bodily injury or death; and
 9 (c) is punishable by fine, imprisonment, or death or
 10 would be so punishable but for the fact that the person
 11 engaging in the conduct lacked capacity to commit the crime
 12 under the laws of this state. Criminally injurious conduct
 13 does not include conduct arising out of the ownership,
 14 maintenance, or use of a motor vehicle unless the bodily
 15 injury or death occurred during the commission of an offense
 16 defined in Title 45 that requires the mental state of
 17 purposely as an element of the offense; or the injury or
 18 death was inflicted by the driver of a motor vehicle who is
 19 convicted-of-a-violation-of-61-8-401, 61-8-406, or a similar
 20 statute--of--another--state FOUND BY THE DIVISION, BY A
 21 PREPONDERANCE OF THE EVIDENCE, TO HAVE BEEN OPERATING THE
 22 MOTOR VEHICLE WHILE UNDER THE INFLUENCE, AS THAT TERM IS
 23 DEFINED IN 61-8-401; or
 24 (d) is committed in a state without a crime victims
 25 compensation program that covers a resident of this state if

1 the conduct meets the requirements in subsections (3)(b) and
2 (3)(c).

3 (4) "Dependent" means a natural person who is
4 recognized under the law of this state to be wholly or
5 partially dependent upon the victim for care or support and
6 includes a child of the victim conceived before the victim's
7 death but born after the victim's death, including a child
8 that is conceived as a result of the criminally injurious
9 conduct.

10 (5) "Division" means the division of crime control of
11 the department of justice.

12 (6) "Victim" means a person who suffers bodily injury
13 or death as a result of:

14 (a) criminally injurious conduct;

15 (b) his good faith effort to prevent criminally
16 injurious conduct; or

17 (c) his good faith effort to apprehend a person
18 reasonably suspected of engaging in criminally injurious
19 conduct."

20 Section 4. Section 53-9-109, MEA, is amended to read:

21 "53-9-109. Crime victims and DUI victims compensation
22 account accounts. (1) There is are a crime victims
23 compensation account and a DUI victims compensation account
24 in the state special revenue fund. There shall must be paid
25 into this the crime victims compensation account 10% of the

1 fines assessed and bailis forfeited, except those paid to a
2 justice's court, on all offenses involving a violation of
3 chapter 37 part 1 of chapter 47 or chapters 5 through 10 of
4 Title 61 that are a result of citations or tickets issued by
5 the highway patrol. The Except for compensating DUI victims,
6 money in the crime victims compensation account is to be
7 used solely for the purposes of this part, and no any cash
8 balance in the account at the end of a fiscal biennium may
9 not be deposited in transferred to the general fund.

10 (2) Fines imposed under 61-8-714(7) and 61-8-722(7)
11 must be paid into the DUI victims compensation account.
12 Except for compensating crime victims, money in the DUI
13 victims compensation account is to be used solely for the
14 purposes of this part, and any cash balance in the account
15 at the end of a fiscal biennium may not be transferred to
16 the general fund.

17 (3) At the end of a fiscal year, subject to legislative
18 appropriation as provided in 53-9-108, funds remaining in
19 the crime victims compensation account may be used to pay
20 claims for DUI victims if there were insufficient funds in
21 the DUI victims compensation account to pay DUI victims'
22 claims.

23 (4) At the end of a fiscal year, subject to legislative
24 appropriation as provided in 53-9-108, funds remaining in
25 the DUI victims compensation account may be used to pay

~~claims-for-crime-victims-if-there-were-insufficient-funds-in
the-crime-victims-compensation-account-to-pay-crime-victims'
claims."~~

Section 3. Section 53-9-125, MCA, is amended to read:

"53-9-125. Limitations on awards. (1) Compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the division for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice. ~~Unless---the---division---determines---that---the
interests-of-justice-otherwise-require-in-a-particular-case,
compensation-may-not-be-awarded-to-the-spouse-of-or-a-person
living-in-the--same--household--with--the--offender--or--his
accomplice--or--to--the-parent,--child,--brother,--or--sister--of
the-offender-or-his-accomplice.~~

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the division finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this

part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury."

~~Section-6,--Section-61-8-714,--MCA,--is--amended--to--read:~~

~~"61-8-714,--Penalty--for--driving-under-the-influence-of
alcohol-or-drugs:--(1)--A-person-convicted-of-a--violation--of
61-8-401--shall--be--punished--by--imprisonment-in-the-county~~

1 jail-for-not-less-than-24-consecutive-hours-or-more-than-60
 2 days--and--shall-be-punished-by-a-fine-of-not-less-than-\$100
 3 or-more-than-\$500. The-jail-sentence-may-not-be-suspended
 4 unless--the--judge--finds--that--the--imposition-of-the-jail
 5 sentence-will-pose-a-risk-to--the--defendant's--physical--or
 6 mental-well-being.

7 {2}--On--a--second-conviction, he-shall-be-punished-by-a
 8 fine-of-not--less--than--\$300--or--more--than--\$500--and--by
 9 imprisonment--for-not-less-than-7-days, at-least-48-hours-of
 10 which-must-be-served-consecutively, or-more-than-6--months.
 11 Three--days-of-the-jail-sentence-may-not-be-suspended-unless
 12 the-judge-finds-that-the-imposition--of--the--jail--sentence
 13 will--pose--a--risk--to--the--defendant's-physical-or-mental
 14 well-being.

15 {3}--On-the-third-or-subsequent-conviction, he-shall--be
 16 punished--by--imprisonment--for--a--term-of-not-less-than-30
 17 days,--at--least--48--hours--of--which--must--be--served
 18 consecutively,--or--more--than--1-year, and-by-a-fine-of-not
 19 less-than-\$500-or--more--than--\$1,000. Notwithstanding--any
 20 provision--to--the--contrary--providing--for--suspension--of
 21 execution--of--a-sentence-imposed-under-this-subsection, the
 22 imposition-or-execution-of-the-first-10--days--of--the--jail
 23 sentence--imposed--for--a--third--or-subsequent-offense--that
 24 occurred-within-5-years-of-the--first--offense--may--not--be
 25 deferred-or-suspended.

1 {4}--In--addition--to--the--punishment--provided-in-this
 2 section, regardless--of--disposition, the--defendant--shall
 3 complete--an--alcohol--information--course--at--an--alcohol
 4 treatment--program--approved--by--the--department--of
 5 institutions,--which--may,--in--the--sentencing--court's
 6 discretion-and-upon-recommendation-of-a--certified--chemical
 7 dependency--counselor, include-alcohol-or-drug-treatment, or
 8 both. On-conviction-of-a-second-or-subsequent-offense--under
 9 this-section, in-addition-to-the-punishment-provided-in-this
 10 section, regardless--of--disposition, the--defendant-shall
 11 complete--an--alcohol--information--course--at--an--alcohol
 12 treatment--program--approved--by--the--department--of
 13 institutions, which-must-include-alcohol-or-drug--treatment,
 14 or--both. Each--counselor--providing-education-or-treatment
 15 shall, at-the-commencement-of-the--education--or--treatment,
 16 notify--the--court--that--the--defendant--has--been--enrolled--in--a
 17 course-or-treatment--program,--if--the--defendant--fails--to
 18 attend--the--course--or--the--treatment-program, the-counselor
 19 shall-notify-the-court--of--the--failure. As--long--as--the
 20 alcohol--information--course--and--treatment--program--are
 21 approved-as-provided-in-this-subsection, the--defendant--may
 22 attend--the--information-course-and-treatment-program-of-his
 23 choice. The--treatment--provided--to--the--defendant--at--a
 24 treatment-program-must-be-at--a--level--appropriate--to--his
 25 alcohol--problem,--as-determined-by-the-judge-based-upon-the

1 recommendation from the certified chemical dependency
2 counselor.

3 (5) For the purpose of determining the number of
4 convictions under this section, "conviction" means a final
5 conviction, as defined in 45-2-101, in this state,
6 conviction for a violation of a similar statute in another
7 state, or a forfeiture of bail or collateral deposited to
8 secure the defendant's appearance in court in this state or
9 another state, which forfeiture has not been vacated. An
10 offender is considered to have been previously convicted for
11 the purposes of this section if less than 5 years have
12 elapsed between the commission of the present offense and a
13 previous conviction, if there has been no additional
14 conviction for an offense under this section for a period of
15 5 years after a prior conviction hereunder, then all records
16 and data relating to the prior conviction are confidential
17 criminal justice information as defined in 44-5-103 and
18 public access to the information may only be obtained by
19 district court order upon good cause shown.

20 (6) For the purpose of calculating subsequent
21 convictions under this section, a conviction for a violation
22 of 61-8-406 also constitutes a conviction for a violation of
23 61-8-401.

24 (7) In addition to any fine imposed under subsection
25 (1), (2), or (3), THE COURT SHALL ORDER a person convicted

1 of a violation of 61-8-401 shall TO pay \$150 into \$35 TO THE
2 CLERK OF THE COURT TO BE DEPOSITED IN the DUI victims
3 compensation fund provided for in 53-9-109."

4 Section 7, Section 61-8-722, MCA, is amended to read:
5 "61-8-722. Penalty for driving with excessive blood
6 alcohol concentration. (1) A person convicted of a violation
7 of 61-8-406 shall be punished by imprisonment for not more
8 than 10 days and shall be punished by a fine of not less
9 than \$100 or more than \$500.

10 (2) On a second conviction of a violation of 61-8-406,
11 he shall be punished by imprisonment for not less than 48
12 consecutive hours or more than 30 days and by a fine of not
13 less than \$300 or more than \$500.

14 (3) On a third or subsequent conviction of a violation
15 of 61-8-406, he shall be punished by imprisonment for not
16 less than 48 consecutive hours or more than 6 months and by
17 a fine of not less than \$500 or more than \$1,000.

18 (4) The provisions of 61-5-205(2), 61-5-208(2), and
19 61-11-203(2)(d) relating to revocation and suspension of
20 driver's licenses shall apply to any conviction under
21 61-8-406.

22 (5) In addition to the punishment provided in this
23 section, regardless of disposition, the defendant shall
24 complete an alcohol information course at an alcohol
25 treatment program approved by the department of

1 institutions, which may include alcohol or drug treatment,
 2 or both, if considered necessary by the counselor conducting
 3 the program. Each counselor providing such education or
 4 treatment shall, at the commencement of the education or
 5 treatment, notify the court that the defendant has been
 6 enrolled in a course or treatment program. If the defendant
 7 fails to attend the course or the treatment program, the
 8 counselor shall notify the court of the failure.

9 (6) For the purpose of determining the number of
 10 convictions under this section, "conviction" means a final
 11 conviction, as defined in 45-2-101, in this state or a
 12 similar statute in another state or a forfeiture of bail or
 13 collateral deposited to secure the defendant's appearance in
 14 court in this state or another state, which forfeiture has
 15 not been vacated. An offender is considered to have been
 16 previously convicted for the purposes of this section if
 17 less than 5 years have elapsed between the commission of the
 18 present offense and a previous conviction. If there has been
 19 no additional conviction for an offense under this section
 20 for a period of 5 years after a prior conviction hereunder,
 21 then such prior offense shall be expunged from the
 22 defendant's record.

23 (7) In addition to any fine imposed under subsection
 24 (1), (2), or (3), THE COURT SHALL ORDER a person convicted
 25 of a violation of 61-8-406 shall TO pay \$150 into §35-70-THE

1 CLERK OF THE COURT TO BE DEPOSITED IN the DUI victims
 2 compensation fund provided for in 53-9-109.

3 NEW SECTION. Section 4. Effective date. [This act] is
 4 effective on passage and approval JULY 1, 1991.

-End-