CHAPTER NO. 367

HOUSE BILL NO. 32

INTRODUCED BY QUILICI

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Judiciary.
January 6, 1979	On motion, joint rule 6-6 suspended and sponsor's signature allowed to be added to prefiled bill.
January 12, 1979	Committee recommend bill do pass as amended. Report adopted.
January 15, 1979	Printed and placed on members' desks.
January 16, 1979	Second reading, do pass.
January 17, 1979	Considered correctly engrossed
January 18, 1979	Third reading, passed. Transmitted to second house.
I	N THE SENATE
January 19, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 5, 1979	Committee recommend bill be concurred in as amended. Report adopted.
February 7, 1979	Second reading, pass con- sideration.
	On motion, taken from second reading and rereferred to Committee on Judiciary.

March	7, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March	9, 1979	Second reading, concurred in.
March	13, 1979	Third reading, concurred in as amended.
	IN THE HOU	SE
March	14, 1979	Returned from second house. Concurred in as amended.
March	16, 1979	Second reading, amendments adopted.
March	17, 1979	Third reading, amendments adopted. Sent to enrolling.
		Reported correctly enrolled.

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LC 0282/01

1	HOUSE BILL NO. 32
Z	INTRODUCED BY
3	BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS
6	RELATING TO CRIME VICTIMS COMPENSATION BY DELETING WELFARE
7	BENEFITS AS A COLLATERAL SOURCE, BY PERMITTING THE DIVISION
8	OF WORKERS* COMPENSATION TO COMPLY WITH FEDERAL REQUIREMENTS
9	CONCERNING INFORMATION ON THE AVAILABILITY OF ASSISTANCE TO
10	VICTIMS AND THE ESTABLISHMENT OF ESCROW ACCOUNTS FOR FUNDS
11	OWED TO INDIVIDUALS INFLICTING INJURY OR DEATH, BY
12	PERMITTING THE REDUCTION OR ELIMINATION OF COMPENSATION WHEN
13	THE VICTIM CONTRIBUTES TO THE INJURY OR DEATH, AND BY
14	CHANGING A REFERENCE TO EARNARKED REVENUE FUND TO AGENCY
15	FUND; AMENDING SECTIONS 53-9-103, 53-9-104, 53-9-109, AND
16	53-9-125, MCA."
17	
18	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19	Section 1. Section 53-9-103, NCA, is amended to read:
20	#53-9-103. Definitions. As used in this part, the
21	following definitions apply:
22	(1) "Claimant" means any of the following claiming
23	compensation under this part:
24	(a) a victim;
25	(b) a dependent of a deceased victim; or

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

3 {2} "Collateral source" means a source of benefits:
4 <u>other than welfare benefits</u> or advantages for economic loss
5 otherwise compensable under this part which the victim or
6 claimant has received or which is readily available to him
7 from:

(a) the offender;

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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 medicaidy---ond 15 welfare;

- 16 (d) workers* compensation;
- 17 (e) waye continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the
victim for loss which he sustained because of the criminally
injurious conduct; or

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

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INTRODUCED BILL

1 contract is a secondary source of benefits and benefits 2 under this part are a primary source. 3 (3) "Criminally injurious conduct" means conduct that: (a) occurs or is attempted in this state: 4 5 (b) results in bodily injury or death; and 6 (c) is punishable by fine, imprisonment, or death or 7 would be so punishable out for the fact that the person engaging in the conduct lacked capacity to commit the crime 8 under the laws of this state. Criminally injurious conduct 9 10 does not include conduct arising out of the ownership. 11 maintenance, or use of a motor vehicle. 12 (4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or 13 14 partially dependent upon the victim for care or support and 15 includes a child of the victim conceived before the victizes death but born after the victim's death, including a child 16 17 that is conceived as a result of the criminally injurious 18 conduct. 19 (5) "Division" means the division of workers" 20 compensation provided for in 2-15-1702. 21 (6) "Victim" means a person who suffers bodily injury 22 or death as a result of: 23 (a) criminally injurious conduct; 24 (b) his good faith effort to prevent criminally

25 injurious conduct; or

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

Section 2. Section 53-9-104, MCA, is amended to read:
#53-9-104. Powers and duties of division. (1) The
division shall:

7 (a) adopt rules to implement this part;

8 (b) prescribe forms for applications for compensation;9 and

10 (c) determine all motter matters relating to claims 11 for compensation.

12 (2) The division may:

13 (a) request and obtain from prosecuting attorneys and 14 law enforcement officers investigations and data to enable 15 the division to determine whether and the extent to which a 16 claimant qualifies for compensation. A statute providing 17 confidentiality for a claimant's or victim's juvenile court 18 records does not apply to proceedings under this part.

(b) subpoena witnesses and other prospective evidence,
 administer oaths or affirmations, conduct hearings, and
 receive relevant, nonprivileged evidence; and

(c) take notice of judicially cognizable facts and
 general, technical, and scientific facts within its
 specialized knowledge;

25 (d) requires if there is such a requirement under

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1	federal law in order to receive federal funds. that law
2	enforcement agencies and officials take reasonable care that
3	victims be informed upout the existence of this part and the
4	procedure for applying for compensation under this parts and
5	le) requires if there is such a requirement under
ь	federal law in order to receive federal funds, that any
7	person contracting directly or indirectly with an individual
э	formally charged with or convicted of qualifying crime for
9	any rendition. interview. statement. or article relating to
10	such crime to deposit any proceeds owed to such individual
11	under the terms of the contract into an escrow fund for the
12	benefit of any victies of the qualifying crime or any
13	surviving dependents of the victime if such individual is
14	convicted of that crime. to be held for such period of time
15	as the division may determine is reasonably necessary to
16	perfect the claims of the victims or dependents."
17	Section 3. Section 53-9-109, MCA, is amended to read:
18	#53-9-109. Crime victims compensation account. There
19	is created a crime victims compensation account in the
20	earsarked-revenue agency fund. There shall be paid into this
21	account 6% of the fines assessed and bails forfeited on all
22	offenses involving a violation of a state statute or a city
Z 3	ordinance relating to the operation or use of motor
24	vehicles, except offenses relating to parking of vehicles."
25	Section 4. Section 53-9-125, MCA, is amended to read:

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

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

16 (3) Compensation may not be awarded unless the 17 criminally injurious conduct resulting in injury or death 18 was reported to a law enforcement officer within 72 hours 19 after its occurrence or the division finds there was good 20 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 claiment or victim has not fully conperated with
 appropriate law enforcement agencies or prosecuting
 attorneys, way deny or reconsider and reduce an award of
 compensation.

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

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

12 171 Componention may, in the division's discretions be 13 denied or reduced if the victle contributed to the 14 infliction of death of lower with respect to which the 15 claim is made. Any reduction in benefits under this 16 subsection shall be in properties to what the division 17 considers to be the victim's contribution in the infliction 18 of death or injury."

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Approved by Committee on Judiciary

1	HOUSE BILL NO. 32	1	(c) an authorized person acting on behalf of any of
2	INTRODUCED BY QUILICI	2	them.
3	BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY	3	(2) "Collateral source" means a source of benefits <u>.</u>
4		4	other than welfare benefits, or advantages for economic loss
5	A BILL FUR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS	5	otherwise compensable under this part which the victim-or
6	RELATING TO CRIME VICTIMS [®] COMPENSATION <u>BY CLARIEVING</u>	6	claimant has received or which is readily available to him
7	<u>IEKMINOLUGY:</u> BY DELETING WELFARE BENEFITS AS A COLLATERAL	7	from:
8	SOURCE: BY PERMITTING THE DIVISION OF WORKERS' COMPENSATION	6	(a) the offender;
9	TO EBHPEYWIIHFEBERAE <u>ADOPI</u> REQUIREMENTS CONCERNING	9	(b) the government of the United States or any agency
10	INFORMATION ON THE AVAILABILITY OF ASSISTANCE TO VICTIMS AND	10	thereof, a state or any of its political subdivisions, or an
11	THE ESTABLISHMENT OF ESCROW ACCOUNTS FOR FUNDS OWED TO	11	instrumentality of two or more states, unless the law
12	INDIVIDUALS INFLICTING INJURY OR DEATH, BY PERMITTING THE	12	providing for the benefits or advantages makes them excess
13	REDUCTION OR ELIMINATION OF COMPENSATION WHEN THE VICTIM	13	or secondary to benefits under this part:
14	CONTRIBUTES TO THE INJURY OR DEATH, AND BY CHANGING A	14	(c) social security, medicare, <u>and</u> medicaidyand
15	REFERENCE TO EARMARKED REVENUE FUND TO AGENCY FUND; AMENDING	15	<pre>weifore;</pre>
16	SECTIONS 53-9-103, 53-9-104, 53-9-109, AND 53-9-125, MCA."		
17		16	(d) workers [®] compensation;
18	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	17	(a) wage continuation programs of any employer;
		18	(f) proceeds of a contract of insurance payable to the
19	Section 1. Section 53-9-103, HCA, is amended to read:	19	victim <u>CLAINANI</u> for loss which he <u>WAS</u> sustained because of
20	#53-9-103. Definitions. As used in this part, the	20	the criminally injurious conduct; or
21	following definitions apply:	21	(g) a contract, including an insurance contract,
22	(1) "Claimant" means any of the following claiming	22	providing hospital and other health care services or
∠3	compensation under this part:	23	benefits for disability. Any such contract in this state may
24	(a) a victim;		
25	(b) a dependent of a deceased victim; or	24	not provide that benefits under this part shall be a
• /	(c)	25	substitute for benefits under the contract or that the

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1	contract is a secondary source of benefits and benefits
2	under this part are a primary source.
3	(3) "Criminally injurious conduct" means conduct that:
4	(a) occurs or is attempted in this state;
5	(b) results in bodily injury or death; and
6	(c) is punishable by fine, imprisonment, or death or
7	would be so punishable but for the fact that the person
8	engaging in the conduct lacked capacity to commit the crime
9	under the laws of this state. Criminally injurious conduct
10	doesnotincludeconductarisingoutof-the-ownershipv
11	maintenancev-or-use-of-a-motor-vehicle <u>MAY_INCLUDE_CONDUCI</u>
12	ARISING OUT OF THE OWNERSHIP. MAINIENANCE, OR USE OF A HOIOR
13	VEHICLE_ONLY_IF_THE_DIVISION_DETERMINES_THAT_THE_PERSON
14	RESPONSIBLE FOR THE CONDUCT ACTED PURPOSELY AS DEFINED IN
15	IIILE_45.
16	(4) "Dependent" means a natural person who is
17	recognized under the law of this state to be wholly or
18	partially dependent upon the victim for care or support and
19	includes a child of the victim conceived before the victim*s
20	death but born after the victim's death, including a child
21	that is conceived as a result of the criminally injurious
22	conduct.
23	(5) "Division" means the division of workers"
24	compensation provided for in 2-15-1702.
25	(6) "Victim" means a person who suffers bodily injury

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1	or death as a result of:
z	(a) criminally injurious conduct;
3	(b) his good faith effort to prevent criminally
4	injurious conduct; or
5	(c) his good faith effort to apprehend a person
6	reasonably suspected of engaging in criminally injurious
7	conduct."
8	Section 2. Section 53-9-104, MCA, is amended to read:
9	#53-9-104. Powers and duties of division. (1) The
10	division shall:
11	(a) adopt rules to implement this part;
12	(b) prescribe forms for applications for compensation;
13	and
14	(c) determine all motter <u>matters</u> relating to claims
15	for compensation.
16	(2) The division may:
17	(a) request and obtain from prosecuting attorneys and
18	law enforcement officers investigations and data to enable
19	the division to determine whether and the extent to which a
20	claimant qualifies for compensation. A statute providing
21	confidentiality for a claimant's or-victim*s juvenile court
22	records does not apply to proceedings under this part.
23	(b) subpoena witnesses and other prospective evidence.
24	administer oaths or affirmations, conduct hearings, and
25	receive relevant, nonprivileged evidence; and

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1 (c) take notice of judicially cognizable facts and 2 general, technical, and scientific facts within its 3 specialized knowledgev:

[d]__requirex_if_there__ia__auch__arequirement__under 4 5 federal-lewining-orderito-receive-federal-funder that law 6 enforcement_agencies_and_officials_take_reasonable_care_that 7 victims be informed about the existence of this part and the procedure for applying for compensation under this part; and 8 9 [e]__requirer_if-there__ia=_such__a=requirement_under 10 federal-law-in-corder-to-receive-federal-funday that any 11 person contracting directly or indirectly with an individual 12 formally charged with or convicted of A qualifying crime for 13 any renditions interviews statements or article relating to 14 such crime to deposit any proceeds owed to such individual 15 under the terms of the contract into an escrew fund for the 16 penefit of any victims of the qualifying crime or any 17 surviving dependents of the victime if such individual is 18 convicted of that crimes to be held for such period of time 19 as the division may determine is reasonably necessary to 20 perfect the claims of the victims or dependents." 21 Section 3. Section 53-9-109, MCA, is amended to read: 22 #53-9-109. Crime victims compensation account. There 23 is created a crime victims compensation account in the cormorked-revenue agency fund. There shall be paid into this 24

offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor

3 vehicles, except offenses relating to parking of vehicles." Section 4. Section 53-9-125, MCA, is amended to read: 4 5 **#53-9-125.** Limitations on awards. (1) Compensation may 6 not be awarded unless the claim is filed with the division 7 within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is 8 9 based. The time for filing a claim may be extended by the 10 division for good cause shown.

11 (2) Compensation: may not be awarded to a claimant who 12 is the offender or an accomplice of the offender or to any 13 claimant if the award would unjustly benefit the offender or accomplice. Unless the division determines that the 14 15 interests of justice otherwise require in a particular case. 16 compensation may not be awarded to the spouse of or a person 17 living in the same household with the offender or his 18 accomplice or to the parent, child, brother, or sister of 19 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.

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

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-5-

account 6% of the fines assessed and bails forfeited on all

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part, a claimant must fully cooperate with all law 1 2 enforcement agencies and prosecuting attorneys in the 3 apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding 4 5 that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting 6 7 attorneys, may deny or reconsider and reduce an award of compensation. 8

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

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

16[11]_Compensation_mayx=in=the=division*s=dimensions be17.denied__or__reduced_if_the_victim_contributed_to_the18infliction_of_death_or_injury_with_respect_to_which_the19claim__is_made._Any_reduction_in_benefits_under_this20subsection_shall_be_in_proportion_to_what_the_division21censiders_FINOS_to_be_the_victim's_contribution_to_the

27 infliction_of_death_or_injury."

-End-

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HOUSE BILL NO. 32 1 INTRODUCED BY QUILICI 2 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS 5 RELATING TO CRIME VICTIMS. COMPENSATION BY CLARIFYING 6 TERMINOLOGY: BY DELETING WELFARE BENEFITS AS A COLLATERAL 7 SOURCE. BY PERMITTING THE DIVISION OF WORKERS' COMPENSATION 8 TO EOMPEY--WETH--FEDERAL ADOPT REQUIREMENTS CONCERNING 9 INFORMATION ON THE AVAILABILITY OF ASSISTANCE TO VICTIMS AND 10 THE ESTABLISHMENT OF ESCROW ACCOUNTS FOR FUNDS OWED TO 11 INDIVIDUALS INFLICTING INJURY OR DEATH, BY PERMITTING THE 12 REDUCTION OR ELIMINATION OF COMPENSATION WHEN THE VICTIM 13 CONTRIBUTES TO THE INJURY OR DEATH, AND BY CHANGING A 14 REFERENCE TO EARMARKED REVENUE FUND TO AGENCY FUND; AMENDING 15 SECTIONS 53-9-103, 53-9-104, 53-9-109, AND 53-9-125, MCA." 16 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 18 19 Section 1. Section 53-9-103, MCA, is amended to read: #53-9-103. Definitions. As used in this part, the 20 21 following definitions apply: (1) "Claimant" means any of the following claiming 22 23 compensation under this part: {a} a victim; 24 (b) a dependent of a deceased victim; or 25

1 (c) an authorized person acting on behalf of any of 2 them. 3 (2) "Collateral source" means a source of benefits1 other than welfare benefits, or advantages for economic loss 4 5 otherwise compensable under this part which the victim-or claimant has received or which is readily available to him 6 7 from: 8 (a) the offender; (b) the government of the United States or any agency 9 10 thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law 11 providing for the benefits or advantages makes them excess 12 or secondary to benefits under this part; 13 (c) social security, medicare, and medicaidy---and 14 15 weifore; (d) workers* compensation: 16 17 (e) wage continuation programs of any employer; 18 (f) proceeds of a contract of insurance payable to the 19 vietim CLAIHANT for loss which he HAS sustained because of the criminally injurious conduct; or 20 (q) a contract, including an insurance contract, 21

22 providing hospital and other health care services or 23 benefits for disability. Any such contract in this state may 24 not provide that benefits under this part shall be a 25 substitute for benefits under the contract or that the

-2- THIRD READING HB 32

contract is a secondary source of benefits and benefit	i or death as a result of:
under this part are a primary source.	2 (a) criminally injurious conduct;
(3) "Criminally injurious conduct" means conduct that	3 (b) his good faith effort to prevent criminally
(a) occurs or is attempted in this state;	4 injurious conduct; or
(b) results in bodily injury or death; and	5 (c) his good faith effort to apprehend a person
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doesnotincludeconducterisingoutof-the-ownership	n 10 division shall:
maintenance;-or-use-of-e-motor-vehicle <u>MAYINCLUDECONDUC</u>	[11 (a) adopt rules to implement this part;
ARISING_OUT_DE_THE_OWNERSHIPs_MAINIENANCEs_OR_USE_DE_A_NOTO	12 (b) prescribe forms for applications for compensation;
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RESPONSIBLE FOR THE CONDUCT ACTED PURPOSELY AS DEFINED 1	14 (c) determine all matter matters relating to claims
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recognized under the law of this state to be wholly o	17 (a) request and obtain from prosecuting attorneys and
partially dependent upon the victim for care or support an	18 law enforcement officers investigations and data to enable
includes a child of the victim conceived before the victim*	19 the division to determine whether and the extent to which a
death but born after the victim's death, including a chil	20 claimant qualifies for compensation. A statute providing
that is conceived as a result of the criminally injuriou	21 confidentiality for a claimant's or-victim*s juvenile court
conduct.	22 records does not apply to proceedings under this part.
(5) "Division" means the division of workers	23 (b) subpoena witnesses and other prospective evidence.
compensation provided for in 2-15-1702.	24 administer oaths or affirmations, conduct hearings, and
(6) "Victim" means a person who suffers bodily injur	25 receive relevant, nonprivileged evidence; and
-3- XB 3	-4- HB 32

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HB 0032/02

1 (c) take notice of judicially cognizable facts and 2 general, technical, and scientific facts within its 3 specialized knowledgew:

(d) __requirev-if-there--is--such--a--requirement--under 4 5 federol--law--in--order--to--receive-federol-funder that law enforcement agencies and officials take reasonable care that 6 7 victims be informed about the existence of this part and the 8 procedure for applying for compensation under this part; and 9 (e) requirer-if-there--is--such--s--requirement--under 10 federal-clow-in-corder-to-receive-federal-funday that any 11 person contracting directly or indirectly with an individual 12 formally charged with or convicted of A gualifying crime for 13 any rendition, interview, statement, or article relating to 14 such crime to deposit any proceeds owed to such individual 15 under the terms of the contract into an escrow fund for the 16 penefit of any victims of the qualifying crime or any 17 surviving dependents of the victim, if such individual is 18 convicted of that crime, to be held for such period of time 19 as the division may determine is reasonably necessary to 20 perfect the claims of the victims or dependents." 21 Section 3. Section 53-9-109. MCA. is amended to read: 22 #53-9-109. Crime victims compensation account. There 23 is created a crime victims compensation account in the 24 cormorked-revenue agency fund. There shall be paid into this 25 account 6% of the fines assessed and bails forfeited on all

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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.

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

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part, a claimant must fully cooperate with all law 1 enforcement agencies and prosecuting attorneys in the Z 3 apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding 4 that the claimant or victim has not fully cooperated with 5 appropriate law enforcement agencies or prosecuting 6 attorneys, may deny or reconsider and reduce an award of 7 compensation. 8

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

12 (b) Persons serving a sentence of imprisonment or 13 residing in any other public institution which provides for 14 the maintenance of such person are not entitled to the 15 benefits of this part.

16 <u>111_Compensation_mayrin_the_division_maintertions</u> be 17 <u>denied_or_reduced_if_the_victim_contributed_to_the</u> 18 infliction_of_death_or_injury_with_respect_to_which_the 19 <u>claim_is_mades_Any_reduction_in_benefits_under_this</u> 20 <u>subsection_shall_be_in_proportion_to_what_the_division</u> 21 <u>considers_finOS_to_be_the_victim's_contribution_to_the</u> 22 infliction_of_death_or_injurys"

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HB 0032703

1	HOUSE BILL NO. 32
2	INTRODUCED BY QUILICI
3	BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS
6	RELATING TO CRIME VICTIMS' COMPENSATION BYCLARIEVING
7	IERMINDLOGY, BY DELETING WELFARE BENEFITS AS A COLLATERAL
ล	SOURCE, BY PERMITTING THE DIVISION OF WORKERS' COMPENSATION
9	TO COMPEYWITHFEDERAL ADDPT REQUIREMENTS CONCERNING
10	INFORMATION ON THE AVAILABILITY OF ASSISTANCE TO VICTIMS AND
11	THE ESTABLISHMENT OF ESCROW ACCOUNTS FOR FUNDS OWED TO
12	INDIVIDUALS INFLICTING INJURY OR DEATH, BY PERMITTING THE
13	REDUCTION OR ELIMINATION OF COMPENSATION WHEN THE VICTIM
14	CONTRIBUTES TO THE INJURY OR DEATH. AND BY CHANGING A
15	REFERENCE TO EARMARKED REVENUE FUND TO AGENCY FUND; AMENDING
16	SECTIONS 53-9-103, 53-9-104, 53-9-109, AND 53-9-125, MCA.*
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18	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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25	(b) a dependent of a deceased victim; or

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

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

(a) the offender; 8

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

14 (c) social security, medicare, and medicaidy---ond welfare; 15

(d) workers' compensation; 16

17 (e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the 18 19 victim CLAIMANI for loss which he MAS sustained because of the criminally injurious conduct; or 20 (g) a contract, including an insurance contract, 21 22 providing hospital and other health care services or 23 benefits for disability. Any such contract in this state may 24 not provide that benefits under this part shall be a

25 substitute for henefits under the contract or that the

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REFERENCE BILL
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1	contract is a secondary source of benefits and benefits	1	compensation provided for in 2-15-1702.
2	under this part are a primary source.	2	(6) "Victim" means a person who suffers bodily injury
3	(3) "Criminally injurious conduct" means conduct that:	3	or death as a result of:
4	(a) occurs or is attempted in this state;	4	(a) criminally injurious conduct;
5	(b) results in bodily injury or death; and	5	(b) his good faith effort to prevent criminally
6	(c) is punishable by fine, imprisonment, or death or	6	injurious conduct; or
7	would be so punishable but for the fact that the person	7	(c) his good faith effort to apprehend a person
R	engaging in the conduct lacked capacity to commit the crime	6	reasonably suspected of engaging in criminally injurious
9	under the laws of this state. Criminally injurious conduct	9	conduct."
10	do esnotincludeconductaris ingoutof-the-ownership v	10	Section 2. Section 53-9-104, MCA, is amended to read:
11	maintenance.or-use-of-e-motor-vehicle <u>MAXINELUBEEBNBUEI</u>	11	*53-9-104. Powers and duties of division. (1) The
12	ABISING_OUI_DE_THE_OWNERSHIPMAINIENANGEx_OB_WSE_OE_A_MOIDB	12	division shall:
13	YEWIELEONLYIETHEDIVISIONDETERMINES_INAI_IHE_PERSON	13	(a) adopt rules to implement this part;
14	RESCONSIBLE-FOR-INE-CONDUCT-ACTED-PURPOSELYASDEFINEDIN	14	(b) prescribe forms for applications for compensation;
15	FIFLE==45# DOES_NOT_INCLUDE_CONDUCT_ABISING_OUT_OF_THE	15	and
16	QUNERSHIPMAINTENANCEOBUSEOEA_MOTORYEHICLE AS	16	(c) determine all motter matters relating to claims
17	DESCRIBED_IN_IIILE_61.	17	for compensation.
18	(4) "Dependent" means a natural person who is	18	(2) The division may:
19	recognized under the law of this state to be wholly or	19	(a) request and obtain from prosecuting attorneys and
20	partially dependent upon the victim for care or support and	20	law enforcement officers investigations and data to enable
21	includes a child of the victim conceived before the victim's	21	the division to determine whether and the extent to which $ a $
22	death but born after the victim's death, including a child	22	claimant qualifies for compensation. A statute providing
23	that is conceived as a result of the criminally injurious	23	confidentiality for a claimant's or-vietim*s juvenile court
24	conduct.	24	records does not apply to proceedings under this part.
25	(5) "Division" means the division of workers"	25	(b) subpoena witnesses and other prospective evidence,

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administer oaths or affirmations, conduct hearings, and
 receive relevant, nonprivileged evidence; and

3 (c) take notice of judicially cognizable facts and
4 general, technical, and scientific facts within its
5 specialized knowledgew;

6 [d]__requirer_if_there=_ia=:auch==a==requirement==under 7 federal_low-in_coder_to-receive-federal-funday that_law 8 enforcement_agencies_and_officials_take_reasonable_care_that 9 victims be informed about the existence of this part and the 10 procedure for applying for compensation under this parti and 11 [e]__requires_if-there__is__such__s_requirement__under 12 federal-staw-sin-sorders-tos-receivesfederal-funday that any 13 person_contracting_directly_or_indirectly_with_an_individual 14 formally_charged with or convicted of A qualifying crime for 15 any rendition: interview: statement: or article relating to 16 such_crime_to_deposit_any_proceeds_oved_to_such_individual 17 under the terms of the contract into an escrew fund for the 18 benefit_of_any_victims_of_the_oualifying_crime_or_any 19 surviving dependents of the victime if such individual is 20 convicted_of_that_crime:_to_be_held_for_such_period_of_time 21 as_the_division_may_determine__is__reasonably__necessary__to 22 perfect__the__claims_of_the_victims_or_dependents__IF__AFIER 23 ALL_EUNDS_DUE_THE_VICTIM_HAVE_BEEN_PAID_TO_THE_VICTIM_UNDER 24 IHIS_SECTION: THERE REMAIN ADDITIONAL FUNDS IN THE ESCROW 25 ACCOUNT: SUCH EUNDS SHALL BE RETURNED TO THE INDIVIDUAL

CHARGED_OR_CONVICIED_OF_IHE_CRIME."

2 Section 3. Section 53-9-109. HCA, is amended to read: з #53-9-109. Crime victims compensation account. There 4 is created a crime victims compensation account in the cormarked-revenue agency fund. There shall be paid into this 5 account of the fines assessed and bails forfeited on all 6 7 offenses involving a violation of a state statute or a city A ordinance relating to the operation or use of motor 9 vehicles, except offenses relating to parking of vehicles." 10 Section 4. Section 53-9-125, MCA, is amended to read: 11 #53-9-125. Limitations on awards. (1) Compensation may 12 not be awarded unless the claim is filed with the division 13 within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is 14 based. The time for filing a claim may be extended by the 15 16 division for good cause shown. 17 (2) Compensation may not be awarded to a claimant who

18 is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or 19 20 accomplice. Unless the division determines that the interests of justice otherwise require in a particular case, 21 22 compensation may not be awarded to the spouse of or a person 23 living in the same household with the offender or his 24 accomplice or to the parent, child, brother, or sister of 25 the offender or his accomplice.

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1 (3) Compensation may not be awarded unless the 2 criminally injurious conduct resulting in injury or death 3 was reported to a law enforcement officer within 72 hours 4 after its occurrence or the division finds there was good 5 cause for the failure to report within that time.

6 (4) In order to be entitled to benefits under this 7 part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the 8 9 apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding 10 11 that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting 12 13 attorneys, may deny or reconsider and reduce an award of compensation. 14

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

18 (6) Persons serving a sentence of imprisonment or 19 residing in any other public institution which provides for 20 the maintenance of such person are not entitled to the 21 benefits of this part.

22 (11)_Compensation_mays:in=the=division^s_discretions be 23 denied__or__reduced_if__the_victim_contributed_to_the 24 infliction_of_deatb_or_injury_with_respect_to_which_the 25 claim__is_mades_Any_reduction_in_benefits_under_this

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1 subsection shall be in proportion to what the division

- 2 considers EINOS to be the victim's contribution to the
- 3 infliction_of_death_or_injury=""

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SENATE STANDING COMMITTEE REPORT

That House Bill No. 32 be amended as follows:

1. Page 5, line 20. Following: "dependents." Insert: "If, after all funds due the victim have been paid to the victim under this section, there remains additional lunds in the escrow account, such funds shall be returned to the individual charged or convicted of the crime." SENATE STANDING COMMITTEE REPORT (Judiciary)

That House Bill No. 32 be amended as follows:

1. Page 3, lines 11 through 15. Following: "vehicle" on line 11 Strike: remainder of line 11 through "45" on line 15 Insert: "does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle as described in Title 61"