

1 HOUSE BILL NO. 755

2 INTRODUCED BY J. WINDHAM

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR VICTIM COMPENSATION FOR OWNERS OF
5 PROPERTY THAT HAS BEEN DAMAGED BY USE AS A CLANDESTINE DRUG LAB; PROVIDING FOR A TAX
6 ON EPHEDRINE AND PSEUDOEPHEDRINE TO FUND VICTIMS' COMPENSATION; AMENDING SECTIONS
7 53-9-103 AND 53-9-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

10

11 **Section 1.** Section 53-9-103, MCA, is amended to read:12 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

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

14 (a) a victim;

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

16 (c) an authorized person acting on behalf of ~~any of them~~ a victim or dependent of a deceased victim.

17 (2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for
18 economic loss otherwise compensable under this part that the claimant has received or that is readily available
19 to the claimant from:

20 (a) the offender;

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

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

25 (d) workers' compensation;

26 (e) wage continuation programs of any employer;

27 (f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of
28 the criminally injurious conduct;

29 (g) a contract, including an insurance contract, providing hospital and other health care services or
30 benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for

1 benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are
2 a primary source.

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

5 (i) any other ~~third party~~ third-party payment.

6 (3) ~~(a)~~ (i) "Criminally injurious conduct" means conduct that:

7 ~~(a)~~(A) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C.
8 2331, committed outside of the United States against a resident of this state;

9 ~~(b)~~(B) results in bodily injury or death; and

10 ~~(c)~~(C) is punishable by fine, imprisonment, or death or would be ~~so~~ punishable except that the person
11 engaging in the conduct lacked capacity to commit the crime under the laws of this state;_

12 (ii) The term includes conduct that is committed in a state without a crime victims compensation program
13 that covers a resident of this state if the conduct meets the requirements in subsections (3)(a)(i)(B) and
14 (3)(a)(i)(C).

15 ~~(b) however, criminally injurious conduct~~ The term does not include conduct arising out of the
16 ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the
17 commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the
18 offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the office, by a
19 preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term
20 is defined in 61-8-401; ~~or~~_

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

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

27 (5) "Office" means the office of victims services established in 2-15-2016.

28 (6) "Victim" means a person:

29 (a) who suffers bodily injury or death as a result of:

30 ~~(a)~~(i) criminally injurious conduct;

1 ~~(b)~~(ii) the person's good faith effort to prevent criminally injurious conduct; or
2 ~~(c)~~(iii) the person's good faith effort to apprehend a person reasonably suspected of engaging in
3 criminally injurious conduct; or
4 (b) who owns property that has been damaged through use as a clandestine drug lab by another person
5 without the property owner's knowledge."
6

7 **Section 2.** Section 53-9-128, MCA, is amended to read:

8 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when
9 the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the
10 time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable
11 prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the
12 wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's
13 average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end
14 of each 2-week period. Weekly compensation payments may not be paid for the first week after the criminally
15 injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation
16 payments must be paid from the date the wage loss began. Weekly compensation payments must continue until
17 the claimant has a reasonable prospect of being regularly employed in the normal labor market.

18 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
19 reasonable hospital services and medicines, and other treatment approved by the office for the injuries suffered
20 due to criminally injurious conduct. Unless expressly requested by the claimant, benefits may not be paid under
21 this subsection until the claimant has been fully compensated for total wage loss benefits as provided in
22 subsection (1) or (7).

23 (3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled
24 to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the
25 wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of
26 one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must
27 be made at the end of each 2-week period.

28 (b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and other
29 dependents unless the office determines that other payment arrangements should be made. If a spouse dies
30 or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must continue to be paid

1 to the other dependents as long as their dependent status continues.

2 (4) Reasonable funeral and burial expenses of the victim, not exceeding \$3,500, must be paid if all other
3 collateral sources have properly paid expenses but have not covered all expenses.

4 (5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death
5 because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000 in the
6 aggregate.

7 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment,
8 or nonbodily damage.

9 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of the
10 injury has no reasonable prospect of being regularly employed in the normal labor market and who was
11 employable but was not employed at the time of the injury may in the discretion of the office be awarded weekly
12 compensation benefits in an amount determined by the office not to exceed \$100 per week. Weekly
13 compensation payments must continue until the claimant has a reasonable prospect of being regularly employed
14 in the normal labor market. The claimant must be awarded benefits as provided in subsection (2).

15 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was
16 employable but not employed at the time of death may in the discretion of the office be awarded, in a gross
17 single amount payable to all dependents, a sum not to exceed \$100 per week, which is payable in the manner
18 and for the period provided by subsection (3)(b) or for a shorter period as determined by the office. The claimant
19 must be awarded benefits as provided in subsection (4).

20 (8) Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid when the victim
21 is killed as a result of criminally injurious conduct, amounts payable as weekly compensation may not be
22 commuted to a lump sum and may not be paid less frequently than every 2 weeks.

23 (9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a
24 victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health
25 treatment received as a result of the victim's death.

26 (b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim
27 of criminally injurious conduct involving a sexual offense and who is not entitled to receive services under Title
28 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of that criminally
29 injurious conduct.

30 (c) Total payments made under subsections (9)(a) and (9)(b) may not exceed \$2,000 or 12 consecutive

1 months of treatment for each person, whichever occurs first.

2 (10) An owner of property that has been damaged by use as a clandestine drug lab by an individual
3 without the property owner's knowledge may be compensated for cleanup and restoration of the property."

4
5 **NEW SECTION. Section 3. Tax on ephedrine and pseudoephedrine products.** (1) There is a tax
6 of 25 cents on each package of a product, mixture, or preparation containing any detectable quantity of
7 ephedrine or pseudoephedrine, any of their salts or optical isomers, or salts of optical isomers. The surcharge
8 must be paid by the wholesale drug distributor.

9 (2) The wholesale drug distributor shall collect the tax imposed by subsection (1) and report to the
10 department at the end of each calendar quarter the gross receipts collected during that quarter attributable to
11 the distribution of products containing ephedrine or pseudoephedrine. The report is due within 30 days following
12 the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required
13 to be collected under subsection (1).

14 (3) All taxes collected by the department under this section must be deposited in an account in the state
15 special revenue fund to the credit of the office of victims services provided for in 2-15-2016, for the purpose of
16 compensating victims of the operation of clandestine drug labs.

17 (4) For the purposes of general administration, enforcement of unlawful sales, collection and payment
18 of taxes, collection of delinquent taxes, and audits, the provisions of chapter 68 apply.

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20 **NEW SECTION. Section 4. Codification instruction.** [Section 3] is intended to be codified as an
21 integral part of Title 15, and the provisions of Title 15 apply to [section 3].

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23 **NEW SECTION. Section 5. Effective date.** [This act] is effective July 1, 2005.

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