

HOUSE BILL NO. 435
INTRODUCED BY J. PARKER

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING STATUTES REGARDING THE ABILITY OF A VICTIM OR DEPENDENT OF A DECEASED VICTIM TO RECOVER MONEY GAINED AS A DIRECT RESULT OF A HOMICIDE OR CERTAIN OTHER CRIMINAL OFFENSES; REVISING THE STATUTE OF LIMITATIONS FOR CERTAIN WRONGFUL DEATH ACTIONS; AMENDING SECTIONS 27-2-204 AND 53-9-104, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 27-2-204, MCA, is amended to read:

"27-2-204. Tort actions -- general and personal injury. (1) Except as provided in 27-2-216 and 27-2-217, the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years, except when the wrongful death is the result of a homicide, in which case the period is within 10 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

Section 2. Section 53-9-104, MCA, is amended to read:

"53-9-104. Powers and duties of office. (1) The office shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;
- (c) determine all matters relating to claims for compensation; and
- (d) require any person contracting directly or indirectly with an individual ~~formally charged with or~~ convicted of a qualifying crime for any ~~rendition, interview, statement,~~ book, photograph, movie, television production, ~~or play,~~ or article relating to prepared for a commercial purpose that is based directly upon the crime or for the sale of an item produced or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow

fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, ~~if the individual is convicted of the crime~~, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in 47-1-201, for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

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

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

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

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

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 4. Applicability. (1) [Section 1] applies to a death occurring after October 1, 2007.

(2) [Section 2] applies to a contract entered into after October 1, 2007.

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