

HOUSE BILL NO. 581

INTRODUCED BY M. REGIER

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE UNINSURED MOTORIST VICTIM RESTITUTION FUND; PROVIDING DEFINITIONS; PROVIDING ELIGIBILITY REQUIREMENTS; PROVIDING FOR FUNDING; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 3-10-601, 17-7-502, 46-18-251, AND 61-6-304, MCA; AND PROVIDING APPLICABILITY DATES."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Montana Uninsured Motorist Victim Restitution Fund Act".

NEW SECTION. **Section 2. Definitions.** For purposes of [sections 1 though 4], the following definitions apply:

- (1) "Accident" means a motor vehicle accident involving:
  - (a) an eligible victim; and
  - (b) an uninsured motorist.
- (2) "Damage" means the monetary amount of property damage suffered by an eligible victim in an accident, determined by a qualified third-party insurance adjuster or other qualified person. This term includes property damage to the eligible victim's motor vehicle or damage to other property.
- (3) "Eligible victim" means a person who:
  - (a) incurred property damage after being involved in an accident with an uninsured motorist;
  - (b) does not have insurance coverage for the property damage sustained or has suffered damage in excess of any available insurance coverage;
  - (c) had valid motor vehicle insurance at the time of the accident that, at a minimum, met the requirements of 61-6-103; and
  - (d) had a valid driver's license at the time of the accident.
- (4) "Fund" means the uninsured motorist victim restitution fund created in [section 3].
- (5) "Restitution award" means an award of up to \$10,000 per incident to an eligible victim for damage

1 from an accident. This term includes an award of property damage but does not include medical, emotional, or  
 2 any other damages resulting from an accident. If the eligible victim had uninsured or underinsured motorist  
 3 insurance coverage or any insurance coverage that paid for damage from the accident, this term covers an award  
 4 for the out-of-pocket expenses and amounts in excess of the amounts paid by the insurer, up to a total of \$10,000  
 5 per incident. Property damage under this section must be the cost to repair the vehicle or the vehicle's book value  
 6 as provided in 27-1-306, whichever is lower. This term includes costs incurred for hiring the third-party insurance  
 7 adjuster as provided in this section.

8 (6) "Uninsured motorist" means a motor vehicle operator who:

9 (a) does not have mandatory minimum motor vehicle insurance under 61-6-103 at the time of an  
 10 accident; and

11 (b) has been determined to be 100% at fault for an accident because:

12 (i) the uninsured motorist has pleaded guilty to violating 61-6-301 or 61-6-302, including an admission  
 13 of being 100% at fault for the accident; or

14 (ii) the uninsured motorist has been found guilty of violating 61-6-301 or 61-6-302 and has been  
 15 determined to have been 100% at fault for the accident.

16  
 17 **NEW SECTION. Section 3. Restitution fund.** (1) There is an account in the state special revenue fund  
 18 known as the uninsured motorist victim restitution fund for use only for restitution awards as defined in [section  
 19 2]. The money in the account is statutorily appropriated, as provided in 17-7-502, to the state auditor for the  
 20 purposes provided in [sections 1 through 4].

21 (2) The fund consists of amounts received from restitution ordered under [section 4(4)(c)] and mandatory  
 22 fines collected under 61-6-304 from persons who have been convicted of offenses under 61-6-301 or 61-6-302.

23 (3) Funds collected from the mandatory fines under 61-6-304(1)(b) must be paid to the state treasurer  
 24 for deposit in the fund.

25 (4) The fund may be used to pay restitution awards as provided in [sections 1 through 4].

26 (5) (a) Amounts received for the fund may not be placed in the general fund except as provided in  
 27 subsection (5)(b).

28 (b) If the fund balance exceeds three times what was paid out in the previous year with a minimum  
 29 amount of \$500,000 in the fund, the excess funds must be deposited into the state general fund.

30 (6) The state auditor shall establish procedures for the distribution and accountability of money in the

1 account.

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3 **NEW SECTION. Section 4. Restitution award -- eligibility -- application.** (1) An eligible victim may  
4 receive a restitution award from the fund if:

5 (a) the eligible victim meets the definition provided in [section 2];

6 (b) the eligible victim was involved in an accident with an uninsured motorist as defined in [section 2],  
7 including the uninsured motorist having been found 100% at fault under [section 2(6)(b)(i) or (6)(b)(ii)]; and

8 (c) the eligible victim suffered damage as defined in [section 2].

9 (2) The eligible victim must apply for a restitution award within 30 days of the accident with the court in  
10 which the uninsured motorist was charged. The application must include an affirmation that the eligible victim  
11 suffered damage, an estimate of the damage prepared by a third-party insurance adjuster or other qualified entity,  
12 and the book value of the vehicle.

13 (3) At the time of the accident, the investigating officer shall note on the report that a person may have  
14 sustained damage resulting from an uninsured motorist and note that the person may be an eligible victim under  
15 [section 2] who may be eligible for a restitution award under [sections 1 through 4].

16 (4) (a) Except as provided in subsection (4)(b), after the requirements of subsections (1) and (2) have  
17 been met, the court in which the uninsured motorist was found 100% liable under [section 2(6)(b)(i) or (6)(b)(ii)]  
18 must award an eligible victim a restitution award from the fund.

19 (b) If there are insufficient funds, the court must inform the eligible victim in a letter that there are no  
20 finances to disburse and to pursue legal action of their own.

21 (c) In addition to the mandatory fines imposed under 61-6-304, the court shall require the uninsured  
22 motorist found 100% liable under [section 2(6)(b)(i) or (6)(b)(ii)] to pay restitution to the uninsured motorist victim  
23 restitution fund.

24

25 **Section 5.** Section 3-10-601, MCA, is amended to read:

26 **"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Except as  
27 provided in 61-8-726 and 75-7-123, a justice's court shall collect the fees prescribed by law for justices' courts  
28 and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or  
29 before the 10th day of each month, to be credited to the general fund of the county.

30 (2) Except as provided in 61-8-726, 75-7-123, and subsection (4) of this section, all fines, penalties, and

1 forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month,  
 2 be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in  
 3 which the justice's court is situated, except that they may be distributed as provided in 44-12-213 if imposed,  
 4 collected, or paid for a violation of Title 45, chapter 9 or 10.

5 (3) Except as provided in 46-18-236(7), 61-6-304(1)(b), 61-8-726, and 75-7-123, the county treasurer  
 6 shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:

7 (a) 50% to the department of revenue for deposit in the state general fund; and

8 (b) 50% to the county general fund.

9 (4) (a) The justice's court may contract with a private person or entity for the collection of any final  
 10 judgment that requires a payment to the justice's court.

11 (b) In the event that a private person or entity is retained to collect a judgment, the justice's court may  
 12 assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute  
 13 a suit or other lawful collection procedure and other postjudgment remedies in its own name.

14 (c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment.  
 15 The fee incurred by the justice's court must be added to the judgment amount."  
 16

17 **Section 6.** Section 17-7-502, MCA, is amended to read:

18 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
 19 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the  
 20 need for a biennial legislative appropriation or budget amendment.

21 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both  
 22 of the following provisions:

23 (a) The law containing the statutory authority must be listed in subsection (3).

24 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory  
 25 appropriation is made as provided in this section.

26 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;  
 27 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;  
 28 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101;  
 29 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215;  
 30 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;

1 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617;  
2 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301;  
3 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213;  
4 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; [section 3];  
5 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222;  
6 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603;  
7 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

8 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
9 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
10 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
11 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
12 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
13 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion  
14 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded  
15 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and  
16 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.  
17 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under  
18 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion  
19 of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004  
20 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30,  
21 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017;  
22 pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency;  
23 pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch.  
24 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec.  
25 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015,  
26 the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of  
27 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of  
28 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117  
29 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates  
30 September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December

1 31, 2023.)"

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3 **Section 7.** Section 46-18-251, MCA, is amended to read:

4 **"46-18-251. (Temporary) Allocation of fines, costs, restitution, and other charges.** (1) Except as  
5 provided in 46-18-236(7)(b), if a misdemeanor offender is subjected to any combination of fines, costs, restitution,  
6 charges, or other payments arising out of the same criminal proceeding, money that the court collects from the  
7 offender must be allocated as provided in this section. A felony offender shall pay restitution to the department  
8 of corrections, and other fines and costs must be paid to the court and allocated as provided in this section.

9 (2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to payment  
10 of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments,  
11 50% of all money collected from the defendant must be applied to payment of restitution and the balance must  
12 be applied to other payments in the following order:

- 13 (a) payment of charges imposed pursuant to 46-18-236;  
14 (b) payment of supervisory fees imposed pursuant to 46-23-1031;  
15 (c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;  
16 (d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and  
17 (e) any other payments ordered by the court.

18 (3) The money applied under subsection (2) to the payment of restitution must be paid in the following  
19 order:

- 20 (a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;  
21 (b) to the crime victims compensation and assistance program in the department of justice for deposit  
22 in the account provided for in 53-9-113 until the state is fully reimbursed for compensation to the victim provided  
23 pursuant to Title 53, chapter 9, part 1;  
24 (c) to the uninsured motorist victim restitution fund created in [section 3].

25 ~~(e)(d)~~ to any other government agency that has compensated the victim for the victim's pecuniary loss;  
26 and

27 ~~(d)(e)~~ to any insurance company that has compensated the victim for the victim's pecuniary loss.

28 (4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid,  
29 any additional money collected must be applied to payment of those fines, costs, charges, or other payments.  
30 If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any

1 additional money collected must be applied toward payment of the restitution. (Terminates June 30, 2021--sec.  
2 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

3 **46-18-251. (Effective July 1, 2021) Allocation of fines, costs, restitution, and other charges. (1)**

4 Except as provided in 46-18-236(7)(b), if an offender is subjected to any combination of fines, costs, restitution,  
5 charges, or other payments arising out of the same criminal proceeding, money collected from the offender must  
6 be allocated as provided in this section.

7 (2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to payment  
8 of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments,  
9 50% of all money collected from the defendant must be applied to payment of restitution and the balance must  
10 be applied to other payments in the following order:

- 11 (a) payment of charges imposed pursuant to 46-18-236;  
12 (b) payment of supervisory fees imposed pursuant to 46-23-1031;  
13 (c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;  
14 (d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and  
15 (e) any other payments ordered by the court.

16 (3) The money applied under subsection (2) to the payment of restitution must be paid in the following  
17 order:

- 18 (a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;  
19 (b) to the crime victims compensation and assistance program in the department of justice for deposit  
20 in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title  
21 53, chapter 9, part 1;

22 (c) to the uninsured motorist victim restitution fund created in [section 3];

23 ~~(c)~~(d) to any other government agency that has compensated the victim for the victim's pecuniary loss;  
24 and

25 ~~(d)~~(e) to any insurance company that has compensated the victim for the victim's pecuniary loss.

26 (4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid,  
27 any additional money collected must be applied to payment of those fines, costs, charges, or other payments.  
28 If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any  
29 additional money collected must be applied toward payment of the restitution."  
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1           **Section 8.** Section 61-6-304, MCA, is amended to read:

2           **"61-6-304. Penalties.** (1) (a) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by  
3 a fine of not less than \$250 or more than \$500 or by imprisonment in the county jail for not more than 10 days,  
4 or both. A second conviction is punishable by a fine of \$350 or by imprisonment in the county jail for not more  
5 than 10 days, or both. A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the  
6 county jail for not more than 6 months, or both.

7           (b) For any conviction under 61-6-301 or 61-6-302, a mandatory fine of \$200 must be paid into the  
8 uninsured motorist victim restitution fund as provided in [section 3]. This fine may not be deferred or reduced. This  
9 fine must be paid in its entirety into the uninsured motorist victim restitution fund and is not subject to a 50% split  
10 under 3-10-601.

11           (2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall  
12 order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of  
13 the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate  
14 family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall  
15 report the surrender of the registration receipt and license plates to the department, which shall immediately  
16 suspend the vehicle's registration. The vehicle's registration status may not be reinstated until proof of compliance  
17 with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is  
18 entitled to register the vehicle. The surrendered license plates must be recycled or destroyed by the court unless  
19 the court decides to retain the license plates for the owner until the registration suspension has been completed  
20 or the requirements for a restricted registration receipt have been met. Upon proof of compliance with 61-6-301  
21 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under  
22 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction  
23 or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration  
24 receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of  
25 the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

26           (3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the  
27 surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered  
28 to the offender or a member of the offender's immediate family. The court shall send the driver's license, along  
29 with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the  
30 driver's license. The department may not reinstate a driver's license suspended under this subsection until the



1 registered owner provides the department proof of compliance with 61-6-301 and the department determines that  
2 the registered owner is otherwise eligible for licensure.

3 (4) ~~The~~ Except as provided in subsection (1)(b), the court may suspend a required fine only upon a  
4 determination that the offender is or will be unable to pay the fine.

5 (5) A court may not defer imposition of penalties provided by this section.

6 (6) An offender is considered to have been previously convicted for the purposes of sentencing if less  
7 than 5 years have elapsed between the commission of the present offense and a previous conviction."

8  
9 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 4] are intended to be codified  
10 as an integral part of Title 61, chapter 6, and the provisions of Title 61, chapter 6, apply to [sections 1 through 4].

11  
12 **NEW SECTION. Section 10. Applicability.** [This act] applies to fines deposited into the fund beginning  
13 October 1, 2017, and restitution awards to eligible victims beginning October 1, 2018.

14 - END -