

By: Frazier

To: Judiciary

SENATE BILL NO. 2634

1 AN ACT TO AMEND SECTION 99-41-11, MISSISSIPPI CODE OF 1972,
 2 TO CLARIFY THE RECONSIDERATION OF A DECISION MADE UNDER THE CRIME
 3 VICTIMS' COMPENSATION ACT AND TO REVISE THE PROVISIONS CONCERNING
 4 A CONTESTED HEARING; TO AMEND SECTION 99-41-13, MISSISSIPPI CODE
 5 OF 1972, TO CLARIFY JUDICIAL REVIEW; TO AMEND SECTION 99-41-17,
 6 MISSISSIPPI CODE OF 1972, TO REVISE THE FILING REQUIREMENTS; TO
 7 AMEND SECTION 99-41-23, MISSISSIPPI CODE OF 1972, TO REVISE THE
 8 LOST WAGE BENEFIT IN THE EVENT OF THE VICTIM'S DEATH; TO AMEND
 9 SECTION 99-41-25, MISSISSIPPI CODE OF 1972, TO CORRECT THE TITLE
 10 OF THE PROGRAM DIRECTOR; TO CODIFY SECTION 99-41-31, MISSISSIPPI
 11 CODE OF 1972, TO PROTECT THE NAMES OF CRIME VICTIMS AND THE
 12 CONFIDENTIALITY OF RECORDS; AND FOR RELATED PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 SECTION 1. Section 99-41-11, Mississippi Code of 1972, is
 15 amended as follows:[CSQ1]

16 99-41-11. (1) The director shall award compensation for
 17 economic loss arising from criminally injurious conduct if
 18 satisfied by a preponderance of the evidence that the requirements
 19 for compensation have been met.

20 (2) The director shall make such investigations, administer
 21 such oaths or affirmations and receive such evidence as he deems
 22 relevant and necessary to make a determination on any application
 23 received. The director shall have the power to subpoena
 24 witnesses, compel their attendance and require the production of
 25 records and other evidence. Application to a court for aid in
 26 enforcing a subpoena may be made in the name of the director. To

27 the extent that funds are appropriated or otherwise available, the
28 department may employ such personnel, including expert witnesses,
29 as may be required in connection with particular applications
30 before the director, and the director may take judicial notice of
31 general, technical and scientific facts within his specialized
32 knowledge.

33 (3) The director may settle a claim by stipulation, agreed
34 settlement, consent order or default.

35 (4) The director may request access to and obtain from
36 prosecuting attorneys or law enforcement officers, as well as
37 state and local agencies, any reports of investigations or other
38 data necessary to assist the director in making a determination of
39 eligibility for compensation under the provisions of this chapter.

40 (5) Notwithstanding any other provision of law, every law
41 enforcement agency and prosecuting attorney in the state shall
42 provide to the director, upon request, a complete copy of the
43 report regarding the incident and any supplemental reports
44 involving the crime or incident giving rise to a claim filed
45 pursuant to this chapter within thirty (30) days of such request.

46 (6) Any statute providing for the confidentiality of a
47 claimant or victim's court record shall not be applicable under
48 this chapter, notwithstanding the provisions of any other law to
49 the contrary; provided, however, any such record or report which
50 is otherwise protected from public disclosure by the provisions of
51 any other law shall otherwise remain subject to the provisions of
52 such law.

53 (7) The director may require that the claimant submit with
54 the application material substantiating the facts stated in the
55 application.

56 (8) After processing an application for compensation filed
57 under rules and regulations promulgated by the department, the

58 director shall enter an order stating:

59 (a) Findings of fact;

60 (b) The decision as to whether or not compensation
61 shall be awarded;

62 (c) The amount of compensation, if any, due under this
63 chapter;

64 (d) The person or persons to whom any compensation
65 should be paid;

66 (e) The percentage share of the total of any
67 compensation award and the dollar amount each person shall
68 receive; and

69 (f) Whether disbursement of any compensation awarded
70 shall be made in a lump sum or in periodic payments.

71 (9) The director on his own motion or on request of the
72 claimant may reconsider a decision granting or denying an award or
73 determining its amount. An order on reconsideration of an award
74 shall not require a refund of amounts previously paid unless the
75 award was obtained by fraud.

76 (10) If a claimant disagrees with the decision of the
77 director, he may contest such decision to the deputy director of
78 the department within fifteen (15) days after notification of
79 issuance of the decision. There shall be no appeal of a decision
80 of the director except as set forth in this subsection.

81 (11) In a contested case, all parties shall be afforded an
82 opportunity for a hearing after reasonable notice pursuant to
83 regulations promulgated pursuant to this chapter and may offer
84 evidence and argument on any issue relevant to the claim and may
85 examine witnesses and offer evidence in reply to any matter of an

86 evidentiary nature relevant to the claim. The deputy director
87 shall have the power to subpoena witnesses, compel their
88 attendance and require the production of records and other
89 evidence. The decision of the deputy director becomes the final
90 decision of the department. A record of the hearing in a
91 contested case shall be made and shall be transcribed upon request
92 of any party who shall pay transcription costs unless otherwise
93 ordered by the deputy director.

94 SECTION 2. Section 99-41-13, Mississippi Code of 1972, is
95 amended as follows:[CSQ2]

96 99-41-13. Any claimant aggrieved by a final decision of the
97 deputy director of the department shall be entitled to judicial
98 review thereof in the manner provided in this section.

99 (a) An appeal may be taken by such claimant to the
100 circuit court of the claimant's residence or the Circuit Court of
101 the First Judicial District of Hinds County by filing a petition
102 with the clerk of the court and executing and filing bond payable
103 to the State of Mississippi with sufficient sureties to be
104 approved by the clerk of the court, conditioned upon the payment
105 of all costs of appeal, including the cost of preparing the
106 transcript of the hearing before the department. The petition and
107 bond shall be filed within thirty (30) days of the receipt of the
108 final decision of the deputy director of the department. Upon
109 approval of the bond, the clerk of the court shall notify the
110 department, which shall prepare its record in the matter and
111 transmit it to the circuit court.

112 (b) The scope of review of the circuit court in such
113 cases shall be limited to a review of the record made before the

114 department to determine if the action of the department is
115 unlawful for the reason that it was:

116 (i) Not supported by a preponderance of the
117 evidence;

118 (ii) Arbitrary and capricious; or

119 (iii) In violation of a statutory right of
120 claimant.

121 (c) No relief shall be granted based upon the court's
122 finding of harmless error.

123 (d) Any party aggrieved by action of the circuit court
124 may appeal to the supreme court in the manner provided by law.

125 SECTION 3. Section 99-41-17, Mississippi Code of 1972, is
126 amended as follows:[CSQ3]

127 99-41-17. (1) Compensation shall not be awarded under this
128 chapter:

129 (a) Unless the criminally injurious conduct occurred
130 after July 1, 1991;

131 (b) Unless the claim has been filed with the director
132 within twenty-four (24) months after the crime occurred, or in
133 cases of child sexual abuse, within twenty-four (24) months after
134 the crime was reported to law enforcement or the Department of
135 Human Services, but in no event later than the child's
136 twenty-first birthday;

137 (c) To a claimant or victim who was the offender or an
138 accomplice to the offender, or, except in cases of children under
139 the age of consent as specified in Section 97-3-65, 97-3-97 or
140 97-5-23, Mississippi Code of 1972, who encouraged or in any way
141 knowingly participated in criminally injurious conduct;

142 (d) To another person, if the award would unjustly
143 benefit the offender or accomplice;

144 (e) Unless the criminally injurious conduct resulting
145 in injury or death was reported to a law enforcement officer
146 within seventy-two (72) hours after its occurrence or unless it is
147 found that there was good cause for the failure to report within
148 such time;

149 (f) To any claimant or victim when the injury or death
150 occurred while the victim was confined in any federal, state,
151 county or city jail or correctional facility;

152 (g) If the victim was injured as a result of the
153 operation of a motor vehicle, boat or airplane, unless the vehicle
154 was used by the offender (i) while under the influence of alcohol
155 or drugs, or (ii) as a weapon in the deliberate attempt to injure
156 or cause the death of the victim;

157 (h) If, following the filing of an application, the
158 claimant failed to take further steps as required by the
159 department to support the application, within forty-five (45) days
160 of such request made by the director, or failed to otherwise
161 cooperate with requests of the director to determine eligibility
162 unless failure to provide information was beyond the control of
163 the claimant;

164 (i) To a claimant or victim who, subsequent to the
165 injury for which application is made, is convicted of any felony
166 which is a violation of the Controlled Substances Act, or in which
167 a weapon was used or possessed or in which any personal injury was
168 committed or attempted, and the conviction becomes known to the
169 director.

170 (2) Compensation otherwise payable to a claimant shall be
171 diminished to the extent:

172 (a) That the economic loss is recouped from other
173 sources, including collateral sources; and

174 (b) Of the degree of responsibility for the cause of
175 injury or death attributable to the victim or claimant.

176 (3) Upon a finding that the claimant or victim has not fully
177 cooperated with appropriate law enforcement agencies and
178 prosecuting attorneys, an award of compensation may be denied,
179 withdrawn or reduced.

180 * * *

181 SECTION 4. Section 99-41-23, Mississippi Code of 1972, is
182 amended as follows:[CSQ4]

183 99-41-23. (1) Compensation for work loss * * * may not
184 exceed Four Hundred Fifty Dollars (\$450.00) per week, not to
185 exceed fifty-two (52) weeks; * * * the total amount of the award
186 may not exceed the aggregate limitation of this section.

187 (2) Compensation for economic loss of a dependent may not
188 exceed Four Hundred Fifty Dollars (\$450.00) per week not to exceed
189 fifty-two (52) weeks; provided, however, if there is more than one
190 (1) dependent per victim the amount of compensation awarded shall
191 be prorated among the dependents and the total amount of the award
192 may not exceed the aggregate limitation of this section.

193 (3) In the event of the victim's death, compensation for
194 work loss of claimant may not exceed Four Hundred Fifty Dollars
195 (\$450.00) per week not to exceed one (1) week; provided, however,
196 if there is more than one (1) claimant per victim, the amount of
197 compensation awarded shall be prorated among the claimants and the

198 total amount of the award may not exceed Four Hundred Fifty
199 Dollars (\$450.00).

200 (4) Compensation payable to a victim and to all other
201 claimants sustaining economic loss because of injury to or death
202 of that victim may not exceed Ten Thousand Dollars (\$10,000.00) in
203 the aggregate.

204 (5) A determination that compensation shall be awarded may
205 provide for payment to a claimant in a lump sum or in
206 installments. All medical bills may be paid directly to affected
207 health care providers. At the request of the claimant, the
208 director may convert future economic loss, other than allowable
209 expense, to a lump sum, but only upon a finding of either of the
210 following:

211 (a) That the award in a lump sum will promote the
212 interests of the claimant; or

213 (b) That the present value of all future economic loss,
214 other than allowable expense, does not exceed One Thousand Dollars
215 (\$1,000.00).

216 (6) An award payable in installments for future economic
217 loss may be made only for a period as to which the future economic
218 loss can reasonably be determined. An award payable in
219 installments for future economic loss may be modified upon
220 findings that a material and substantial change of circumstances
221 has occurred.

222 (7) An award shall not be subject to execution, attachment,
223 garnishment or other process, except that an award shall not be
224 exempt from orders for the withholding of support for minor
225 children, and except that an award for allowable expense shall not

226 be exempt from a claim of a creditor to the extent that such
227 creditor has provided products, services or accommodations, the
228 costs of which are included in the award.

229 (8) An assignment by the claimant to any future award under
230 the provisions of this chapter is unenforceable, except:

231 (a) An assignment of any award for work loss to assure
232 payment of court-ordered alimony, maintenance or child support; or

233 (b) An assignment for any award for allowable expense
234 to the extent that the benefits are for the cost of products,
235 services or accommodations necessitated by the injury or death on
236 which the claim is based and which are provided or are to be
237 provided by the assignee.

238 SECTION 5. Section 99-41-25, Mississippi Code of 1972, is
239 amended as follows:[CSQ5]

240 99-41-25. If the director determines that the claim is one
241 with respect to which an award probably will be made and the
242 claimant will suffer financial hardship unless an advance award is
243 made, an amount may be paid to the claimant not to exceed Five
244 Hundred Dollars (\$500.00) and shall be deducted from the final
245 award or shall be repaid by and recoverable from the claimant to
246 the extent that it exceeds the final award.

247 SECTION 6. The following shall be codified as Section
248 99-41-31, Mississippi Code of 1972:

249 99-41-31. Disclosure of records as to claims.

250 **Confidentiality of records.** It is unlawful, except for purposes
251 directly connected with the administration of the department, for
252 any person to solicit, disclose, receive or make use of or
253 authorize, knowingly permit, participate in or acquiesce in the

254 use of any list, or names of, or information concerning persons
255 applying for or receiving awards under this chapter without the
256 written consent of the claimant or recipient. The records,
257 papers, files and communications of the department, director,
258 staff and agents must be regarded as confidential information and
259 privileged and not subject to disclosure under any condition
260 including the Mississippi Public Records Act of 1983.

261 SECTION 7. This act shall take effect and be in force from
262 and after July 1, 2000.