MISSISSIPPI LEGISLATURE

REGULAR SESSION 2003

By: Senator(s) Walls
To: Appropriations

SENATE BILL NO. 2683

AN ACT TO BE KNOWN AS THE EMMITT LOUIS TILL VICTIMS' COMPENSATION ACT; TO CODIFY SECTION 99-42-1, MISSISSIPPI CODE OF 1972, FOR THAT PURPOSE; TO CODIFY SECTION 99-42-3, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE BASIS OF CLAIMS UNDER THE ACT; TO CODIFY SECTION 99-42-5, MISSISSIPPI CODE OF 1972, TO ENACT LEGISLATIVE INTENT; TO CODIFY SECTION 99-42-7, MISSISSIPPI CODE OF 1972, TO PROVIDE CONDITIONS AND EXCEPTIONS FOR AWARDS; TO CODIFY SECTION 99-42-9, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE PENALTY FOR FALSE CLAIMS; TO CODIFY SECTION 99-42-11, MISSISSIPPI CODE OF 1972, TO CREATE A SPECIAL FUND TO BE KNOWN AS THE EMMITT LOUIS TILL VICTIMS' COMPENSATION FUND; TO AMEND SECTIONS 99-41-7, 99-41-9 AND 99-41-11, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 99-42-1, Mississippi Code of 1972:

99-42-1. The chapter shall be known and may be cited as "The 'Emmitt Louis Till' Victims' Compensation Act."

SECTION 2. The following shall be codified as Section 99-42-3, Mississippi Code of 1972:

99-42-3. It is the intent of the Legislature to provide a method of compensating those persons who are lawful survivors of persons who were innocent victims of racially motivated criminal acts evincing racial animus or hatred that were committed between the years of 1945 and 1970. To this end, it is the Legislature's intention to provide compensation for the lawful survivors of victims of such acts, not to exceed One Hundred Thousand Dollars ($100,000.00) per group of claimants who are lawful survivors of a single victim.

SECTION 3. The following shall be codified as Section 99-42-5, Mississippi Code of 1972:
As used in this chapter, unless the context otherwise requires, the term:

(a) "Claimant" means any person applying for compensation under this chapter who is a lawful survivor of a victim as defined by this chapter.

(b) "Racially motivated criminal conduct" means an act occurring within the geographical boundaries of this state between the years of 1945 and 1970, inclusive, which act resulted in the death of a victim, and includes, but is not limited to, lynching, bombing, burning, shooting or hanging. The conduct must have evinced racial animus or hatred.

(c) "Department" means the Department of Finance and Administration;

(d) "Director" means the Victim Compensation Director as prescribed in Section 99-41-7, Mississippi Code of 1972;

(e) "Lawful survivor" means the surviving spouse or any direct descendant, per stirpes, of a victim;

(f) "Victim" means a person who suffered death in the State of Mississippi between the years of 1945 and 1970 as a result of racially motivated criminal conduct by Mississippi citizens.

SECTION 4. The following shall be codified as Section 99-42-7, Mississippi Code of 1972:

99-42-7. (1) Compensation shall not be awarded under this chapter:

(a) Unless the racially motivated criminal conduct occurred between January 1, 1945, and December 31, 1970;

(b) Unless the claim has been filed with the Victim Compensation Director within five (5) years from the date of this act;

(c) Unless the racially motivated criminal conduct resulted in death;
(d) If, following the filing of an application, the claimant failed to take further steps as required by the director to support the application, within ninety (90) days of such request made by the director, or failed to otherwise cooperate with requests of the director to determine eligibility unless failure to provide information was beyond the control of the claimant;

(e) In excess of One Hundred Thousand Dollars ($100,000.00) in the aggregate for all the lawful survivors of a single victim.

(2) The director, on his own motion or on request of the claimant, may reconsider a decision granting or denying an award or determining its amount. An order of reconsideration of an award shall not require a refund of amounts previously paid unless the award was obtained by fraud. The right of reconsideration does not affect the finality of the decision concerning the amount of compensation for the purpose of judicial review.

(3) Claims shall be filed, hearings held, and appeals governed by Section 99-41-1 et seq., Mississippi Code of 1972, except where to do so would be inconsistent with this chapter.

SECTION 5. The following shall be codified as Section 99-42-9, Mississippi Code of 1972:

99-42-9. (1) Claims shall be made under oath. The filing of a false claim for compensation pursuant to this chapter shall constitute a misdemeanor and shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment, and the person convicted shall, as part of the sentence in either case, be required to repay to the Emmitt Louis Till Victims' Compensation Fund the amount received pursuant to the false claim.

(2) Any person who shall knowingly furnish any false information or knowingly fails or omits to disclose a material
fact or circumstance with the intent to defraud the department for compensation pursuant to this chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term not to exceed one (1) year, or both, and the person convicted shall, as part of the sentence in either case, be required to repay to the Emmitt Louis Till Victims' Compensation Fund the total amount received pursuant to the false claim.

(3) If a payment or overpayment of compensation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient of the compensation award or other circumstances of a similar nature not induced by fraud by or on behalf of the recipient, the recipient is liable for repayment of the compensation. The department may waive, decrease or adjust the amount of the repayment of the compensation.

SECTION 6. The following shall be codified as Section 99-42-11, Mississippi Code of 1972:

99-42-11. (1) From and after July 1, 2000, there is hereby created in the State Treasury a special interest-bearing fund to be known as the Emmitt Louis Till Victims' Compensation Fund. The purpose of the fund shall be to provide for the payment of awards of compensation pursuant to this chapter and the payment of all necessary and proper expenses incurred by the department in the administration of this chapter. Expenditures from the fund shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, and upon requisitions signed by the executive director of the department or his duly designated representative in the manner provided by law. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of compensating claimants under this chapter; (b) the interest accruing to the fund; (c) monies
received from the federal government; and (d) monies received from
such other sources as may be provided by law.

(2) No compensation payments shall be made which exceed the
amount of money in the fund. The state shall not be liable for a
written order to pay compensation, except to the extent that
monies are available in the fund on the date the award is ordered.
The department shall establish such rules and regulations as shall
be necessary to adjust awards and payments so that the total
amount awarded does not exceed the amount of money on deposit in
the fund. Such rules and regulations may include, but shall not
be limited to, the authority to provide for suspension of payments
and proportioned reduction of benefits to all claimants; provided,
however, no such reductions as provided for shall entitle
claimants to future retroactive reimbursements in future years.

SECTION 7. Section 99-41-7, Mississippi Code of 1972, is
amended as follows:

99-41-7. There is hereby created in the Department of
Finance and Administration the position of Victim Compensation
Director, hereafter referred to as "director." The duties of the
director shall include receipt, investigation, verification and
adjudication of a claim for compensation under the provisions of
this chapter and of Section 99-42-1 et seq. The director shall be
appointed by the executive director of the department.

SECTION 8. Section 99-41-9, Mississippi Code of 1972, is
amended as follows:

99-41-9. In addition to any other powers and duties
specified elsewhere in this chapter, the department is hereby
authorized to:

(a) Except as otherwise provided by this chapter,
regulate the procedures for the director to expedite his functions
and adopt rules and regulations for the position of director;

(b) Define any term not defined in this chapter in a
manner not inconsistent with this chapter;
(c) Prescribe forms necessary to carry out the purposes
of this chapter and make such forms available for use in making
applications for compensation;

(d) Authorize the director to take judicial notice of
general, technical and scientific facts within the director's
specialized knowledge;

(e) Publicize the availability of compensation and
information regarding the filing of claims and ask that public
officials and law enforcement agencies take reasonable care that
victims be informed about the availability of compensation and the
procedure for applying for compensation;

(f) Apply for funds from and to submit all necessary
forms to any federal agency participating in a cooperative program
to compensate victims of crimes, and to apply for and accept any
gifts, bequests, grants, donations or funds from other sources,
public or private, for carrying out the provisions of this
chapter; * * *

(g) Adopt such rules and regulations as shall be
necessary for carrying out the provisions of this chapter; and

(h) Perform all the duties and possess all the powers
enumerated in this section in connection with the administration
of claims under Section 99-42-1 et seq.

SECTION 9. Section 99-41-11, Mississippi Code of 1972, is
amended as follows:

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

(2) The director shall make such investigations, administer
such oaths or affirmations and receive such evidence as he deems
relevant and necessary to make a determination on any application
received. The director shall have the power to subpoena
witnesses, compel their attendance and require the production of
records and other evidence. Application to a court for aid in enforcing a subpoena may be made in the name of the director. To the extent that funds are appropriated or otherwise available, the department may employ such personnel, including expert witnesses, as may be required in connection with particular applications before the director, and the director may take judicial notice of general, technical and scientific facts within his specialized knowledge.

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

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

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

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

(7) The director may require that the claimant submit with the application material substantiating the facts stated in the application.
(8) After processing an application for compensation filed under rules and regulations promulgated by the department, the director shall enter an order stating:

(a) Findings of fact;

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

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

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

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

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

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

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

(11) In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice pursuant to regulations promulgated pursuant to this chapter and may offer evidence and argument on any issue relevant to the claim and may examine witnesses and offer evidence in reply to any matter of an evidentiary nature relevant to the claim. The deputy director shall have the power to subpoena witnesses, compel their attendance and require the production of records and other
evidence. The decision of the deputy director becomes the final
decision of the department. A record of the hearing in a
contested case shall be made and shall be transcribed upon request
of any party who shall pay transcription costs unless otherwise
ordered by the deputy director.

(12) The director shall award compensation for racially
motivated criminal conduct pursuant to Section 99-42-1 et seq.,
and shall exercise all the duties and privileges conferred by this
section in the conduct of that responsibility where not
inconsistent with the terms and conditions of awards from the
fund.

SECTION 10. This act shall take effect and be in force from
and after July 1, 2003; and shall stand repealed on July 1, 2008.