

By: Representative Peranich

To: Judiciary B;  
Appropriations

HOUSE BILL NO. 1391

1 AN ACT TO AMEND SECTIONS 99-41-3, 99-41-5, 99-41-7, 99-41-9,  
2 99-41-11, 99-41-13, 99-41-17, 99-41-27, 99-41-29 AND 99-41-31,  
3 MISSISSIPPI CODE OF 1972, TO TRANSFER THE ADMINISTRATION OF THE  
4 MISSISSIPPI CRIME VICTIMS' COMPENSATION ACT FROM THE DEPARTMENT OF  
5 FINANCE AND ADMINISTRATION TO THE ATTORNEY GENERAL'S OFFICE; AND  
6 FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 99-41-3, Mississippi Code of 1972, is  
9 amended as follows:

10 99-41-3. It is the intent of the Legislature to provide a  
11 method of compensating and assisting those persons who are  
12 innocent victims of criminal acts within the state and who suffer  
13 bodily injury or death. To this end, it is the Legislature's  
14 intention to provide compensation for injuries suffered as a  
15 direct result of the criminal acts of other persons. It is the  
16 further intent of the Legislature that all agencies, departments,  
17 boards and commissions of the state and political subdivisions of  
18 the state shall cooperate with the Attorney General's Office in  
19 carrying out the provisions of this chapter.

20 **SECTION 2.** Section 99-41-5, Mississippi Code of 1972, is  
21 amended as follows:

22 99-41-5. As used in this chapter, unless the context  
23 otherwise requires, the term:

24 (a) "Allowable expense" means reasonable charges  
25 incurred for reasonably needed:

26 (i) Products, services and accommodations,  
27 including, but not limited to, medical care, rehabilitation,  
28 rehabilitative occupational training and other remedial treatment  
29 and care, but not to exceed Ten Thousand Dollars (\$10,000.00);

30                   (ii) Mental health counseling and care not to  
31 exceed Three Thousand Five Hundred Dollars (\$3,500.00) for the  
32 victim and victim's family member; provided, however, if there is  
33 more than one (1) family member, the amount of compensation  
34 awarded shall be prorated and not to exceed Three Thousand Five  
35 Hundred Dollars (\$3,500.00); and

36                   (iii) Expenses related to funeral, cremation or  
37 burial, but not to exceed a total charge of Four Thousand Five  
38 Hundred Dollars (\$4,500.00) and transportation costs to arrange or  
39 attend services, but not to exceed Five Hundred Dollars (\$500.00);

40           (b) "Claimant" means any of the following persons  
41 applying for compensation under this chapter:

42                   (i) A victim;

43                   (ii) A dependent of a victim who has died because  
44 of criminally injurious conduct; or

45                   (iii) A person authorized to act on behalf of any  
46 of the persons enumerated in subparagraphs (i) and (ii) of this  
47 paragraph; however, "claimant" shall not include any of the  
48 following: provider or creditor of victim; assignee of provider  
49 or creditor, including a collection agency; or another person or  
50 entity other than those enumerated in this paragraph;

51           (c) "Collateral source" means a source of benefits or  
52 advantages for economic loss for which the claimant would  
53 otherwise be eligible to receive compensation under this chapter  
54 which the claimant has received, or which is readily available to  
55 the claimant, from any one or more of the following:

56                   (i) The offender;

57                   (ii) The government of the United States or any  
58 agency thereof, a state or any of its political subdivisions or an  
59 instrumentality of two (2) or more states;

60                   (iii) Social Security, Medicare and Medicaid;

61                   (iv) Workers' compensation;

62                   (v) Wage continuation programs of any employer;

63                   (vi) Proceeds of a contract of insurance payable  
64 to the claimant for loss which the victim sustained because of the  
65 criminally injurious conduct;

66                   (vii) A contract providing prepaid hospital and  
67 other health care services or benefits for disability; or

68                   (viii) Any temporary nonoccupational disability  
69 insurance;

70                   (d) "Criminally injurious conduct" means an act  
71 occurring or attempted within the geographical boundaries of this  
72 state, or to a resident of Mississippi while that resident is  
73 within any other state of the United States or any foreign  
74 country, which state or foreign country does not provide  
75 compensation for those injuries caused by an act for which  
76 compensation would be available had the act occurred in  
77 Mississippi, and which act results in personal injury or death to  
78 a victim for which punishment by fine, imprisonment or death may  
79 be imposed. The term shall also apply to federal offenses  
80 committed within the state and delinquent acts as defined in  
81 Section 43-21-105 which meet this definition;

82       \* \* \*

83                   (e) "Dependent" means a natural person wholly or  
84 partially dependent upon the victim for care or support, and  
85 includes a child of the victim born after the death of the victim  
86 where the death occurred as a result of criminally injurious  
87 conduct;

88                   (f) "Economic loss of a dependent" means loss, after  
89 death of the victim, of contributions or things of economic value  
90 to the dependent, not including services which would have been  
91 received from the victim if he or she had not suffered the fatal  
92 injury, less expenses of the dependent avoided by reason of death  
93 of the victim;

94                   (g) "Economic loss" means monetary detriment consisting  
95 only of allowable expense, work loss and, if injury causes death,

96 economic loss of a dependent, but shall not include noneconomic  
97 loss or noneconomic detriment;

98           (h) "Family member" means the victim's spouse, parent,  
99 grandparent, stepparent, child, stepchild, grandchild, brother,  
100 sister, half brother, half sister or spouse's parent;

101           (i) "Noneconomic loss or detriment" means pain,  
102 suffering, inconvenience, physical impairment and nonpecuniary  
103 damage;

104           (j) "Work loss" means loss of income from work the  
105 victim or claimant would have performed if the victim had not been  
106 injured, but reduced by any income from substitute work actually  
107 performed by the victim or claimant or by income the victim or  
108 claimant would have earned in available appropriate substitute  
109 work that he or she was capable of performing, but unreasonably  
110 failed to undertake; and

111           (k) "Victim" means a person who suffers personal injury  
112 or death as a result of criminally injurious conduct.

113           **SECTION 3.** Section 99-41-7, Mississippi Code of 1972, is  
114 amended as follows:

115           99-41-7. There is hereby created in the Attorney General's  
116 Office the Division of Victim Compensation \* \* \*, hereafter  
117 referred to as "division." In the Division of Victim Compensation  
118 there is hereby created the position of Director of Victim  
119 Compensation, hereafter referred to as "director." The duties of  
120 the director shall include receipt, investigation, verification  
121 and adjudication of a claim for compensation under the provisions  
122 of this chapter. The director shall be appointed by the Attorney  
123 General.

124           **SECTION 4.** Section 99-41-9, Mississippi Code of 1972, is  
125 amended as follows:

126           99-41-9. In addition to any other powers and duties  
127 specified elsewhere in this chapter, the division is hereby  
128 authorized to:

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

132           (b) Define any term not defined in this chapter in a  
133 manner not inconsistent with this chapter;

134           (c) Prescribe forms necessary to carry out the purposes  
135 of this chapter and make such forms available for use in making  
136 applications for compensation;

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

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

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

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

153           **SECTION 5.** Section 99-41-11, Mississippi Code of 1972, is  
154 amended as follows:

155           99-41-11. (1) The director shall award compensation for  
156 economic loss arising from criminally injurious conduct if  
157 satisfied by a preponderance of the evidence that the requirements  
158 for compensation have been met.

159           (2) The director shall make such investigations, administer  
160 such oaths or affirmations and receive such evidence as he deems  
161 relevant and necessary to make a determination on any application

162 received. The director shall have the power to subpoena  
163 witnesses, compel their attendance and require the production of  
164 records and other evidence. Application to a court for aid in  
165 enforcing a subpoena may be made in the name of the director. To  
166 the extent that funds are appropriated or otherwise available, the  
167 division may employ such personnel, including expert witnesses, as  
168 may be required in connection with particular applications before  
169 the director, and the director may take judicial notice of  
170 general, technical and scientific facts within his specialized  
171 knowledge.

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

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

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

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

192 (7) The director may require that the claimant submit with  
193 the application material substantiating the facts stated in the  
194 application.

195 (8) After processing an application for compensation filed  
196 under rules and regulations promulgated by the division, the  
197 director shall enter an order stating:

198 (a) Findings of fact;

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

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

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

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

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

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

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

220 (11) In a contested case, all parties shall be afforded an  
221 opportunity for a hearing after reasonable notice pursuant to  
222 regulations promulgated pursuant to this chapter and may offer  
223 evidence and argument on any issue relevant to the claim and may  
224 examine witnesses and offer evidence in reply to any matter of an  
225 evidentiary nature relevant to the claim. The deputy director  
226 shall have the power to subpoena witnesses, compel their  
227 attendance and require the production of records and other

228 evidence. The decision of the deputy director becomes the final  
229 decision of the division. A record of the hearing in a contested  
230 case shall be made and shall be transcribed upon request of any  
231 party who shall pay transcription costs unless otherwise ordered  
232 by the deputy director.

233 **SECTION 6.** Section 99-41-13, Mississippi Code of 1972, is  
234 amended as follows:

235 99-41-13. Any claimant aggrieved by a final decision of the  
236 deputy director of the division shall be entitled to judicial  
237 review thereof in the manner provided in this section.

238 (a) An appeal may be taken by such claimant to the  
239 circuit court of the claimant's residence or the Circuit Court of  
240 the First Judicial District of Hinds County by filing a petition  
241 with the clerk of the court and executing and filing bond payable  
242 to the State of Mississippi with sufficient sureties to be  
243 approved by the clerk of the court, conditioned upon the payment  
244 of all costs of appeal, including the cost of preparing the  
245 transcript of the hearing before the division. The petition and  
246 bond shall be filed within thirty (30) days of the receipt of the  
247 final decision of the deputy director of the division. Upon  
248 approval of the bond, the clerk of the court shall notify the  
249 department, which shall prepare its record in the matter and  
250 transmit it to the circuit court.

251 (b) The scope of review of the circuit court in such  
252 cases shall be limited to a review of the record made before the  
253 division to determine if the action of the division is unlawful  
254 for the reason that it was:

255 (i) Not supported by a preponderance of the  
256 evidence;

257 (ii) Arbitrary and capricious; or

258 (iii) In violation of a statutory right of  
259 claimant.



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

262 (d) Any party aggrieved by action of the circuit court  
263 may appeal to the Supreme Court in the manner provided by law.

264 **SECTION 7.** Section 99-41-17, Mississippi Code of 1972, is  
265 amended as follows:

266 99-41-17. (1) Compensation shall not be awarded under this  
267 chapter:

268 (a) Unless the criminally injurious conduct occurred  
269 after July 1, 1991;

270 (b) Unless the claim has been filed with the director  
271 within twenty-four (24) months after the crime occurred, or in  
272 cases of child sexual abuse, within twenty-four (24) months after  
273 the crime was reported to law enforcement or the Department of  
274 Human Services, but in no event later than the child's  
275 twenty-first birthday;

276 (c) To a claimant or victim who was the offender or an  
277 accomplice to the offender, or, except in cases of children under  
278 the age of consent as specified in Section 97-3-65, 97-3-97 or  
279 97-5-23, Mississippi Code of 1972, who encouraged or in any way  
280 knowingly participated in criminally injurious conduct;

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

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

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

291 (g) If the victim was injured as a result of the  
292 operation of a motor vehicle, boat or airplane, unless the vehicle

293 was used by the offender (i) while under the influence of alcohol  
294 or drugs, or (ii) as a weapon in the deliberate attempt to injure  
295 or cause the death of the victim;

296 (h) If, following the filing of an application, the  
297 claimant failed to take further steps as required by the division  
298 to support the application, within forty-five (45) days of such  
299 request made by the director, or failed to otherwise cooperate  
300 with requests of the director to determine eligibility unless  
301 failure to provide information was beyond the control of the  
302 claimant;

303 (i) To a claimant or victim who, subsequent to the  
304 injury for which application is made, is convicted of any felony  
305 which is a violation of the Controlled Substances Act, or in which  
306 a weapon was used or possessed or in which any personal injury was  
307 committed or attempted, and the conviction becomes known to the  
308 director.

309 (2) Compensation otherwise payable to a claimant shall be  
310 diminished to the extent:

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

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

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

319 **SECTION 8.** Section 99-41-27, Mississippi Code of 1972, is  
320 amended as follows:

321 99-41-27. (1) Claims shall be made under oath. The filing  
322 of a false claim for compensation pursuant to this chapter shall  
323 constitute a misdemeanor and shall be punishable by a fine of not  
324 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment in  
325 the county jail for a term not to exceed one (1) year, or by both

326 such fine and imprisonment, and the person convicted shall, as  
327 part of the sentence in either case, be required to repay to the  
328 Crime Victims' Compensation Fund the amount received pursuant to  
329 the false claim.

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

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

348 **SECTION 9.** Section 99-41-29, Mississippi Code of 1972, is  
349 amended as follows:

350 99-41-29. (1) From and after July 1, 1990, there is hereby  
351 created in the State Treasury a special interest-bearing fund to  
352 be known as the Crime Victims' Compensation Fund. The purpose of  
353 the fund shall be to provide for the payment of awards of  
354 compensation pursuant to this chapter and the payment of all  
355 necessary and proper expenses incurred by the division in the  
356 administration of this chapter. Expenditures from the fund shall  
357 be paid by the State Treasurer upon warrants issued by the  
358 Department of Finance and Administration, and upon requisitions

359 signed by the Attorney General or his duly designated  
360 representative in the manner provided by law. The fund shall be a  
361 continuing fund, not subject to fiscal-year limitations, and shall  
362 consist of: (a) monies appropriated by the Legislature for the  
363 purposes of compensating the victims of crime and other claimants  
364 under this chapter; (b) the interest accruing to the fund; (c)  
365 monies recovered by the director under the provisions of Section  
366 99-41-21; (d) monies received from the federal government; and (e)  
367 monies received from such other sources as may be provided by law.

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

380 **SECTION 10.** Section 99-41-31, Mississippi Code of 1972, is  
381 amended as follows:

382 99-41-31. It is unlawful, except for purposes directly  
383 connected with the administration of the division, for any person  
384 to solicit, disclose, receive or make use of or authorize,  
385 knowingly permit, participate in or acquiesce in the use of any  
386 list, or names of, or information concerning persons applying for  
387 or receiving awards under this chapter without the written consent  
388 of the claimant or recipient. The records, papers, files and  
389 communications of the division, director, staff and agents must be  
390 regarded as confidential information and privileged and not

391 subject to disclosure under any condition including the  
392 Mississippi Public Records Act of 1983.

393           **SECTION 11.** This act shall take effect and be in force from  
394 and after July 1, 2004.