

***** Pending *****
AMENDMENT NO 1 PROPOSED TO

Cmte Sub for Senate Bill No. 2466

BY: Senator(s) Albritton, Tollison

1 **AMEND after line 90 by inserting the following:**

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

4 99-41-3. It is the intent of the Legislature to provide a
5 method of compensating and assisting those persons who are
6 innocent victims of criminal acts within the state and who suffer
7 bodily injury or death. To this end, it is the Legislature's
8 intention to provide compensation for injuries suffered as a
9 direct result of the criminal acts of other persons. It is the
10 further intent of the Legislature that all agencies, departments,
11 boards and commissions of the state and political subdivisions of
12 the state shall cooperate with the Attorney General's Office in
13 carrying out the provisions of this chapter.

14 **SECTION *.** Section 99-41-5, Mississippi Code of 1972, is
15 amended as follows:

16 99-41-5. As used in this chapter, unless the context
17 otherwise requires, the term:

18 (a) "Allowable expense" means reasonable charges
19 incurred for reasonably needed:

20 (i) Products, services and accommodations,
21 including, but not limited to, medical care, rehabilitation,

22 rehabilitative occupational training and other remedial treatment
23 and care, but not to exceed Ten Thousand Dollars (\$10,000.00);

24 (ii) Mental health counseling and care not to
25 exceed Three Thousand Five Hundred Dollars (\$3,500.00) for the
26 victim and victim's family member; provided, however, if there is
27 more than one (1) family member, the amount of compensation
28 awarded shall be prorated and not to exceed Three Thousand Five
29 Hundred Dollars (\$3,500.00); and

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

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

36 (i) A victim;

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

39 (iii) A person authorized to act on behalf of any
40 of the persons enumerated in subparagraphs (i) and (ii) of this
41 paragraph; however, "claimant" shall not include any of the
42 following: provider or creditor of victim; assignee of provider
43 or creditor, including a collection agency; or another person or
44 entity other than those enumerated in this paragraph;

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

50 (i) The offender;

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

54 (iii) Social security, Medicare and Medicaid;
55 (iv) Workers' compensation;
56 (v) Wage continuation programs of any employer;
57 (vi) Proceeds of a contract of insurance payable
58 to the claimant for loss which the victim sustained because of the
59 criminally injurious conduct;

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

62 (viii) Any temporary nonoccupational disability
63 insurance;

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

76 * * *

77 (e) "Dependent" means a natural person wholly or
78 partially dependent upon the victim for care or support, and
79 includes a child of the victim born after the death of the victim
80 where the death occurred as a result of criminally injurious
81 conduct;

82 (f) "Economic loss of a dependent" means loss, after
83 death of the victim, of contributions or things of economic value
84 to the dependent, not including services which would have been
85 received from the victim if he or she had not suffered the fatal

86 injury, less expenses of the dependent avoided by reason of death
87 of the victim;

88 (g) "Economic loss" means monetary detriment consisting
89 only of allowable expense, work loss and, if injury causes death,
90 economic loss of a dependent, but shall not include noneconomic
91 loss or noneconomic detriment;

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

95 (i) "Noneconomic loss or detriment" means pain,
96 suffering, inconvenience, physical impairment and nonpecuniary
97 damage;

98 (j) "Work loss" means loss of income from work the
99 victim or claimant would have performed if the victim had not been
100 injured, but reduced by any income from substitute work actually
101 performed by the victim or claimant or by income the victim or
102 claimant would have earned in available appropriate substitute
103 work that he or she was capable of performing, but unreasonably
104 failed to undertake; and

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

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

109 99-41-7. There is hereby created in the Attorney General's
110 Office the Division of Victim Compensation * * *, hereafter
111 referred to as "division." In the Division of Victim Compensation
112 there is hereby created the position of Director of Victim
113 Compensation, hereafter referred to as "director." The duties of
114 the director shall include receipt, investigation, verification
115 and adjudication of a claim for compensation under the provisions
116 of this chapter. The director shall be appointed by the Attorney
117 General.

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

120 99-41-9. In addition to any other powers and duties
121 specified elsewhere in this chapter, the division is hereby
122 authorized to:

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

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

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

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

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

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

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

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

149 99-41-11. (1) The director shall award compensation for
150 economic loss arising from criminally injurious conduct if
151 satisfied by a preponderance of the evidence that the requirements
152 for compensation have been met.

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

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

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

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

179 (6) Any statute providing for the confidentiality of a
180 claimant or victim's court record shall not be applicable under

181 this chapter, notwithstanding the provisions of any other law to
182 the contrary; provided, however, any such record or report which
183 is otherwise protected from public disclosure by the provisions of
184 any other law shall otherwise remain subject to the provisions of
185 such law.

186 (7) The director may require that the claimant submit with
187 the application material substantiating the facts stated in the
188 application.

189 (8) After processing an application for compensation filed
190 under rules and regulations promulgated by the Attorney General,
191 the director shall enter an order stating:

192 (a) Findings of fact;

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

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

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

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

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

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

209 (10) If a claimant disagrees with the decision of the
210 director, he may contest such decision to the Attorney General
211 within fifteen (15) days after notification of issuance of the

212 decision. There shall be no appeal of a decision of the director
213 except as set forth in this subsection.

214 (11) In a contested case, all parties shall be afforded an
215 opportunity for a hearing after reasonable notice pursuant to
216 regulations promulgated pursuant to this chapter and may offer
217 evidence and argument on any issue relevant to the claim and may
218 examine witnesses and offer evidence in reply to any matter of an
219 evidentiary nature relevant to the claim. The Attorney General
220 shall have the power to subpoena witnesses, compel their
221 attendance and require the production of records and other
222 evidence. The decision of the Attorney General becomes the final
223 decision * * *. A record of the hearing in a contested case shall
224 be made and shall be transcribed upon request of any party who
225 shall pay transcription costs unless otherwise ordered by the
226 Attorney General.

227 **SECTION *.** Section 99-41-13, Mississippi Code of 1972, is
228 amended as follows:

229 99-41-13. Any claimant aggrieved by a final decision of the
230 Attorney General shall be entitled to judicial review thereof in
231 the manner provided in this section.

232 (a) An appeal may be taken by such claimant to the
233 circuit court of the claimant's residence or the Circuit Court of
234 the First Judicial District of Hinds County by filing a petition
235 with the clerk of the court and executing and filing bond payable
236 to the State of Mississippi with sufficient sureties to be
237 approved by the clerk of the court, conditioned upon the payment
238 of all costs of appeal, including the cost of preparing the
239 transcript of the hearing before the Attorney General. The
240 petition and bond shall be filed within thirty (30) days of the
241 receipt of the final decision of the Attorney General. Upon
242 approval of the bond, the clerk of the court shall notify the

243 office of the Attorney General, which shall prepare its record in
244 the matter and transmit it to the circuit court.

245 (b) The scope of review of the circuit court in such
246 cases shall be limited to a review of the record made before the
247 Attorney General to determine if the action of the Attorney
248 General is unlawful for the reason that it was:

249 (i) Not supported by a preponderance of the
250 evidence;

251 (ii) Arbitrary and capricious; or

252 (iii) In violation of a statutory right of
253 claimant.

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

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

258 **SECTION *.** Section 99-41-17, Mississippi Code of 1972, is
259 amended as follows:

260 99-41-17. (1) Compensation shall not be awarded under this
261 chapter:

262 (a) Unless the criminally injurious conduct occurred
263 after July 1, 1991;

264 (b) Unless the claim has been filed with the director
265 within twenty-four (24) months after the crime occurred, or in
266 cases of child sexual abuse, within twenty-four (24) months after
267 the crime was reported to law enforcement or the Department of
268 Human Services, but in no event later than the child's
269 twenty-first birthday;

270 (c) To a claimant or victim who was the offender or an
271 accomplice to the offender, or, except in cases of children under
272 the age of consent as specified in Section 97-3-65, 97-3-97 or
273 97-5-23, Mississippi Code of 1972, who encouraged or in any way
274 knowingly participated in criminally injurious conduct;

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

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

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

285 (g) If the victim was injured as a result of the
286 operation of a motor vehicle, boat or airplane, unless the vehicle
287 was used by the offender (i) while under the influence of alcohol
288 or drugs, or (ii) as a weapon in the deliberate attempt to injure
289 or cause the death of the victim;

290 (h) If, following the filing of an application, the
291 claimant failed to take further steps as required by the division
292 to support the application within forty-five (45) days of such
293 request made by the director or failed to otherwise cooperate with
294 requests of the director to determine eligibility, unless failure
295 to provide information was beyond the control of the claimant;

296 (i) To a claimant or victim who, subsequent to the
297 injury for which application is made, is convicted of any felony
298 which is a violation of the Controlled Substances Act, or in which
299 a weapon was used or possessed or in which any personal injury was
300 committed or attempted, and the conviction becomes known to the
301 director.

302 (2) Compensation otherwise payable to a claimant shall be
303 diminished to the extent:

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

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

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

312 **SECTION *.** Section 99-41-27, Mississippi Code of 1972, is
313 amended as follows:

314 99-41-27. (1) Claims shall be made under oath. The filing
315 of a false claim for compensation pursuant to this chapter shall
316 constitute a misdemeanor and shall be punishable by a fine of not
317 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment in
318 the county jail for a term not to exceed one (1) year, or by both
319 such fine and imprisonment, and the person convicted shall, as
320 part of the sentence in either case, be required to repay to the
321 Crime Victims' Compensation Fund the amount received pursuant to
322 the false claim.

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

333 (3) If a payment or overpayment of compensation is made
334 because of clerical error, mistaken identity, innocent
335 misrepresentation by or on behalf of the recipient of the
336 compensation award or other circumstances of a similar nature not
337 induced by fraud by or on behalf of the recipient, the recipient

338 is liable for repayment of the compensation. The division may
339 waive, decrease or adjust the amount of the repayment of the
340 compensation.

341 **SECTION *.** Section 99-41-29, Mississippi Code of 1972, is
342 amended as follows:

343 99-41-29. (1) From and after July 1, 1990, there is hereby
344 created in the State Treasury a special interest-bearing fund to
345 be known as the Crime Victims' Compensation Fund. The purpose of
346 the fund shall be to provide for the payment of awards of
347 compensation pursuant to this chapter and the payment of all
348 necessary and proper expenses incurred by the division in the
349 administration of this chapter. Expenditures from the fund shall
350 be paid by the State Treasurer upon warrants issued by the
351 Department of Finance and Administration, and upon requisitions
352 signed by the Attorney General or his duly designated
353 representative in the manner provided by law. The fund shall be a
354 continuing fund, not subject to fiscal-year limitations, and shall
355 consist of: (a) monies appropriated by the Legislature for the
356 purposes of compensating the victims of crime and other claimants
357 under this chapter; (b) the interest accruing to the fund; (c)
358 monies recovered by the director under the provisions of Section
359 99-41-21; (d) monies received from the federal government; and (e)
360 monies received from such other sources as may be provided by law.

361 (2) No compensation payments shall be made which exceed the
362 amount of money in the fund. The state shall not be liable for a
363 written order to pay compensation, except to the extent that
364 monies are available in the fund on the date the award is ordered.
365 The Attorney General shall establish such rules and regulations as
366 shall be necessary to adjust awards and payments so that the total
367 amount awarded does not exceed the amount of money on deposit in
368 the fund. Such rules and regulations may include, but shall not
369 be limited to, the authority to provide for suspension of payments

370 and proportioned reduction of benefits to all claimants; provided,
371 however, no such reductions as provided for shall entitle
372 claimants to future retroactive reimbursements in future years.

373 **SECTION *.** Section 99-41-31, Mississippi Code of 1972, is
374 amended as follows:

375 99-41-31. It is unlawful, except for purposes directly
376 connected with the administration of the division, for any person
377 to solicit, disclose, receive or make use of or authorize,
378 knowingly permit, participate in or acquiesce in the use of any
379 list, or names of, or information concerning persons applying for
380 or receiving awards under this chapter without the written consent
381 of the claimant or recipient. The records, papers, files and
382 communications of the division, director, staff and agents must be
383 regarded as confidential information and privileged and not
384 subject to disclosure under any condition including the
385 Mississippi Public Records Act of 1983.

386 **FURTHER, amend the title in line 6 by inserting after the**
387 **semicolon thereon the following:**

388 TO AMEND SECTIONS 99-41-3, 99-41-5, 99-41-7, 99-41-9, 99-41-11,
389 99-41-13, 99-41-17, 99-41-27, 99-41-29 AND 99-41-31, MISSISSIPPI
390 CODE OF 1972, TO TRANSFER THE ADMINISTRATION OF THE MISSISSIPPI
391 CRIME VICTIMS' COMPENSATION ACT FROM THE DEPARTMENT OF FINANCE AND
392 ADMINISTRATION TO THE ATTORNEY GENERAL'S OFFICE;