

By: Senator(s) Walls

To: Appropriations

SENATE BILL NO. 2394

1 AN ACT TO BE KNOWN AS THE EMMITT LOUIS TILL VICTIMS'
 2 COMPENSATION ACT; TO CODIFY SECTION 99-42-1, MISSISSIPPI CODE OF
 3 1972, FOR THAT PURPOSE; TO CODIFY SECTION 99-42-3, MISSISSIPPI
 4 CODE OF 1972, TO PRESCRIBE THE BASIS OF CLAIMS UNDER THE ACT; TO
 5 CODIFY SECTION 99-42-5, MISSISSIPPI CODE OF 1972, TO ENACT
 6 LEGISLATIVE INTENT; TO CODIFY SECTION 99-42-7, MISSISSIPPI CODE OF
 7 1972, TO PROVIDE CONDITIONS AND EXCEPTIONS FOR AWARDS; TO CODIFY
 8 SECTION 99-42-9, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE
 9 PENALTY FOR FALSE CLAIMS; TO CODIFY SECTION 99-42-11, MISSISSIPPI
 10 CODE OF 1972, TO CREATE A SPECIAL FUND TO BE KNOWN AS THE EMMITT
 11 LOUIS TILL VICTIMS' COMPENSATION FUND; TO AMEND SECTIONS 99-41-7,
 12 99-41-9 AND 99-41-11, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND
 13 FOR RELATED PURPOSES.

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

15 **SECTION 1.** The following shall be codified as Section
 16 99-42-1, Mississippi Code of 1972:

17 99-42-1. This chapter shall be known and may be cited as the
 18 "Emmitt Louis Till Victims' Compensation Act."

19 **SECTION 2.** The following shall be codified as Section
 20 99-42-3, Mississippi Code of 1972:

21 99-42-3. It is the intent of the Legislature to provide a
 22 method of compensating those persons who are lawful survivors of
 23 persons who were innocent victims of racially motivated criminal
 24 acts evincing racial animus or hatred that were committed between
 25 the years of 1945 and 1970. To this end, it is the Legislature's
 26 intention to provide compensation for the lawful survivors of
 27 victims of such acts, not to exceed One Hundred Thousand Dollars
 28 (\$100,000.00) per group of claimants who are lawful survivors of a
 29 single victim.

30 **SECTION 3.** The following shall be codified as Section
 31 99-42-5, Mississippi Code of 1972:

32 99-42-5. As used in this chapter, unless the context
33 otherwise requires, the term:

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

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

43 (c) "Department" means the Department of Finance and
44 Administration.

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

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

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

53 **SECTION 4.** The following shall be codified as Section
54 99-42-7, Mississippi Code of 1972:

55 99-42-7. (1) Compensation shall not be awarded under this
56 chapter:

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

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

62 (c) Unless the racially motivated criminal conduct
63 resulted in death;

64 (d) If, following the filing of an application, the
65 claimant failed to take further steps as required by the director
66 to support the application, within ninety (90) days of such
67 request made by the director, or failed to otherwise cooperate
68 with requests of the director to determine eligibility unless
69 failure to provide information was beyond the control of the
70 claimant;

71 (e) In excess of One Hundred Thousand Dollars
72 (\$100,000.00) in the aggregate for all the lawful survivors of a
73 single victim.

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

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

84 **SECTION 5.** The following shall be codified as Section
85 99-42-9, Mississippi Code of 1972:

86 99-42-9. (1) Claims shall be made under oath. The filing
87 of a false claim for compensation pursuant to this chapter shall
88 constitute a misdemeanor and shall be punishable by a fine not to
89 exceed One Thousand Dollars (\$1,000.00), or by imprisonment in the
90 county jail for a term not to exceed one (1) year, or by both such
91 fine and imprisonment, and the person convicted shall, as part of
92 the sentence in either case, be required to repay to the Emmitt
93 Louis Till Victims' Compensation Fund the amount received pursuant
94 to the false claim.

95 (2) Any person who shall knowingly furnish any false
96 information or knowingly fails or omits to disclose a material

97 fact or circumstance with the intent to defraud the department for
98 compensation pursuant to this chapter shall be guilty of a
99 misdemeanor and shall be punished by a fine not to exceed One
100 Thousand Dollars (\$1,000.00), or by imprisonment in the county
101 jail for a term not to exceed one (1) year, or both, and the
102 person convicted shall, as part of the sentence in either case, be
103 required to repay to the Emmitt Louis Till Victims' Compensation
104 Fund the total amount received pursuant to the false claim.

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

113 **SECTION 6.** The following shall be codified as Section
114 99-42-11, Mississippi Code of 1972:

115 99-42-11. (1) From and after July 1, 2005, there is hereby
116 created in the State Treasury a special interest-bearing fund to
117 be known as the Emmitt Louis Till Victims' Compensation Fund. The
118 purpose of the fund shall be to provide for the payment of awards
119 of compensation pursuant to this chapter and the payment of all
120 necessary and proper expenses incurred by the department in the
121 administration of this chapter. Expenditures from the fund shall
122 be paid by the State Treasurer upon warrants issued by the
123 Department of Finance and Administration, and upon requisitions
124 signed by the executive director of the department or his duly
125 designated representative in the manner provided by law. The fund
126 shall be a continuing fund, not subject to fiscal-year
127 limitations, and shall consist of: (a) monies appropriated by the
128 Legislature for the purposes of compensating claimants under this
129 chapter; (b) the interest accruing to the fund; (c) monies

130 received from the federal government; and (d) monies received from
131 such other sources as may be provided by law.

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

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

146 99-41-7. There is hereby created in the Attorney General's
147 Office the Division of Victim Compensation, hereafter referred to
148 as "division." In the Division of Victim Compensation there is
149 hereby created the position of Director of Victim Compensation,
150 hereafter referred to as "director." The duties of the director
151 shall include receipt, investigation, verification and
152 adjudication of a claim for compensation under the provisions of
153 this chapter and of Section 99-42-1 et seq. The director shall be
154 appointed by the Attorney General.

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

157 99-41-9. In addition to any other powers and duties
158 specified elsewhere in this chapter, the division is hereby
159 authorized to:

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

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

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

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

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

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

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

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

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

189 99-41-11. (1) The director shall award compensation for
190 economic loss arising from criminally injurious conduct if
191 satisfied by a preponderance of the evidence that the requirements
192 for compensation have been met.

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

196 received. The director shall have the power to subpoena
197 witnesses, compel their attendance and require the production of
198 records and other evidence. Application to a court for aid in
199 enforcing a subpoena may be made in the name of the director. To
200 the extent that funds are appropriated or otherwise available, the
201 Attorney General may employ such personnel, including expert
202 witnesses, as may be required in connection with particular
203 applications before the director, and the director may take
204 judicial notice of general, technical and scientific facts within
205 his specialized knowledge.

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

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

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

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

226 (7) The director may require that the claimant submit with
227 the application material substantiating the facts stated in the
228 application.

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

232 (a) Findings of fact;

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

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

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

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

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

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

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

254 (11) In a contested case, all parties shall be afforded an
255 opportunity for a hearing after reasonable notice pursuant to
256 regulations promulgated pursuant to this chapter and may offer
257 evidence and argument on any issue relevant to the claim and may
258 examine witnesses and offer evidence in reply to any matter of an
259 evidentiary nature relevant to the claim. The Attorney General
260 shall have the power to subpoena witnesses, compel their
261 attendance and require the production of records and other

262 evidence. The decision of the Attorney General becomes the final
263 decision. A record of the hearing in a contested case shall be
264 made and shall be transcribed upon request of any party who shall
265 pay transcription costs unless otherwise ordered by the Attorney
266 General.

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

273 **SECTION 10.** This act shall take effect and be in force from
274 and after July 1, 2005, and shall stand repealed on July 1, 2010.