

By: Stevens

To: Judiciary B

HOUSE BILL NO. 1534

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

with the clerk of the court and executing and filing bond payable to the State of Mississippi with sufficient sureties to be approved by the clerk of the court, conditioned upon the payment of all costs of appeal, including the cost of preparing the transcript of the hearing before the department. The petition and bond shall be filed within thirty (30) days of the receipt of the final decision of the deputy director of the department. Upon approval of the bond, the clerk of the court shall notify the department, which shall prepare its record in the matter and transmit it to the circuit court.

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

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

(ii) Arbitrary and capricious; or

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

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

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

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

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

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

(b) Unless the claim has been filed with the director within twenty-four (24) months after the crime occurred, or in cases of child sexual abuse, within twenty-four (24) months after the crime was reported to law enforcement or the Department of

Human Services, but in no event later than the child's
twenty-first birthday;

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

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

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

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

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

(h) If, following the filing of an application, the
claimant failed to take further steps as required by the
department to support the application, within forty-five (45) 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;

(i) To a claimant or victim who, subsequent to the
injury for which application is made, is convicted of any felony
which is a violation of the Controlled Substances Act, or in which
a weapon was used or possessed or in which any personal injury was

committed or attempted, and the conviction becomes known to the director.

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

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

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

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

* * *

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

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

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

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

(4) Compensation payable to a victim and to all other

claimants sustaining economic loss because of injury to or death of that victim may not exceed Ten Thousand Dollars (\$10,000.00) in the aggregate.

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

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

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

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

(7) An award shall not be subject to execution, attachment, garnishment or other process, except that an award shall not be exempt from orders for the withholding of support for minor children, and except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that such creditor has provided products, services or accommodations, the costs of which are included in the award.

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

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

(b) An assignment for any award for allowable expense

to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and which are provided or are to be provided by the assignee.

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

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

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

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

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