

By: Stevens

To: Judiciary B

HOUSE BILL NO. 1534
(As Sent to Governor)

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; TO AMEND SECTION 11-51-99, MISSISSIPPI
13 CODE OF 1972, TO CLARIFY THE SUPERSEDEAS OF A FIDUCIARY ON APPEAL;
14 AND FOR RELATED PURPOSES.

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

16 SECTION 1. Section 99-41-11, Mississippi Code of 1972, is
17 amended as follows:[CSQ1]

18 99-41-11. (1) The director shall award compensation for
19 economic loss arising from criminally injurious conduct if
20 satisfied by a preponderance of the evidence that the requirements
21 for compensation have been met.

22 (2) The director shall make such investigations, administer
23 such oaths or affirmations and receive such evidence as he deems
24 relevant and necessary to make a determination on any application
25 received. The director shall have the power to subpoena
26 witnesses, compel their attendance and require the production of
27 records and other evidence. Application to a court for aid in
28 enforcing a subpoena may be made in the name of the director. To
29 the extent that funds are appropriated or otherwise available, the
30 department may employ such personnel, including expert witnesses,
31 as may be required in connection with particular applications
32 before the director, and the director may take judicial notice of

33 general, technical and scientific facts within his specialized
34 knowledge.

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

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

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

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

55 (7) The director may require that the claimant submit with
56 the application material substantiating the facts stated in the
57 application.

58 (8) After processing an application for compensation filed
59 under rules and regulations promulgated by the department, the
60 director shall enter an order stating:

61 (a) Findings of fact;

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

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

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

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

70 receive; and

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

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

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

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

96 SECTION 2. Section 99-41-13, Mississippi Code of 1972, is
97 amended as follows:[CSQ2]

98 99-41-13. Any claimant aggrieved by a final decision of the
99 deputy director of the department shall be entitled to judicial
100 review thereof in the manner provided in this section.

101 (a) An appeal may be taken by such claimant to the
102 circuit court of the claimant's residence or the Circuit Court of

103 the First Judicial District of Hinds County by filing a petition
104 with the clerk of the court and executing and filing bond payable
105 to the State of Mississippi with sufficient sureties to be
106 approved by the clerk of the court, conditioned upon the payment
107 of all costs of appeal, including the cost of preparing the
108 transcript of the hearing before the department. The petition and
109 bond shall be filed within thirty (30) days of the receipt of the
110 final decision of the deputy director of the department. Upon
111 approval of the bond, the clerk of the court shall notify the
112 department, which shall prepare its record in the matter and
113 transmit it to the circuit court.

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

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

120 (ii) Arbitrary and capricious; or

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

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

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

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

129 99-41-17. (1) Compensation shall not be awarded under this
130 chapter:

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

133 (b) Unless the claim has been filed with the director
134 within twenty-four (24) months after the crime occurred, or in
135 cases of child sexual abuse, within twenty-four (24) months after

136 the crime was reported to law enforcement or the Department of
137 Human Services, but in no event later than the child's
138 twenty-first birthday;

139 (c) To a claimant or victim who was the offender or an
140 accomplice to the offender, or, except in cases of children under
141 the age of consent as specified in Section 97-3-65, 97-3-97 or
142 97-5-23, Mississippi Code of 1972, who encouraged or in any way
143 knowingly participated in criminally injurious conduct;

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

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

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

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

159 (h) If, following the filing of an application, the
160 claimant failed to take further steps as required by the
161 department to support the application, within forty-five (45) days
162 of such request made by the director, or failed to otherwise
163 cooperate with requests of the director to determine eligibility
164 unless failure to provide information was beyond the control of
165 the claimant;

166 (i) To a claimant or victim who, subsequent to the
167 injury for which application is made, is convicted of any felony
168 which is a violation of the Controlled Substances Act, or in which

169 a weapon was used or possessed or in which any personal injury was
170 committed or attempted, and the conviction becomes known to the
171 director.

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

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

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

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

182 * * *

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

185 99-41-23. (1) Compensation for work loss * * * may not
186 exceed Four Hundred Fifty Dollars (\$450.00) per week, not to
187 exceed fifty-two (52) weeks; * * * the total amount of the award
188 may not exceed the aggregate limitation of this section.

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

195 (3) In the event of the victim's death, compensation for
196 work loss of claimant may not exceed Four Hundred Fifty Dollars
197 (\$450.00) per week not to exceed one (1) week; provided, however,
198 if there is more than one (1) claimant per victim, the amount of
199 compensation awarded shall be prorated among the claimants and the
200 total amount of the award may not exceed Four Hundred Fifty
201 Dollars (\$450.00).

202 (4) Compensation payable to a victim and to all other
203 claimants sustaining economic loss because of injury to or death
204 of that victim may not exceed Ten Thousand Dollars (\$10,000.00) in
205 the aggregate.

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

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

215 (b) That the present value of all future economic loss,
216 other than allowable expense, does not exceed One Thousand Dollars
217 (\$1,000.00).

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

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

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

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

235 (b) An assignment for any award for allowable expense
236 to the extent that the benefits are for the cost of products,
237 services or accommodations necessitated by the injury or death on
238 which the claim is based and which are provided or are to be
239 provided by the assignee.

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

242 99-41-25. If the director determines that the claim is one
243 with respect to which an award probably will be made and the
244 claimant will suffer financial hardship unless an advance award is
245 made, an amount may be paid to the claimant not to exceed Five
246 Hundred Dollars (\$500.00) and shall be deducted from the final
247 award or shall be repaid by and recoverable from the claimant to
248 the extent that it exceeds the final award.

249 SECTION 6. The following shall be codified as Section
250 99-41-31, Mississippi Code of 1972:

251 99-41-31. Disclosure of records as to claims.

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

263 SECTION 7. Section 11-51-99, Mississippi Code of 1972, is
264 amended as follows:[CSQ6]

265 11-51-99. The chancery court, in its discretion, may allow
266 executors, administrators, * * * guardians and conservators * * *
267 to appeal * * * money or property judgments or orders against

268 their wards or estates with supersedeas under any existing bond or
269 one set for that purpose; but they shall pay the costs of the
270 lower court including the Supreme Court filing fee.

271 SECTION 8. This act shall take effect and be in force from
272 and after July 1, 2000.