

By: Frazier

To: Judiciary

SENATE BILL NO. 2634  
(As Passed the Senate)

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

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

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

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

118 (ii) Arbitrary and capricious; or

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

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

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

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

127 99-41-17. (1) Compensation shall not be awarded under this  
128 chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180 \* \* \*

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

183 99-41-23. (1) Compensation for work loss \* \* \* may not  
184 exceed Four Hundred Fifty Dollars (\$450.00) per week, not to  
185 exceed fifty-two (52) weeks; \* \* \* the total amount of the award  
186 may not exceed the aggregate limitation of this section.

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

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

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

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

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

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

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

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

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

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

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

233 (b) An assignment for any award for allowable expense

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

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

240 99-41-25. If the director determines that the claim is one  
241 with respect to which an award probably will be made and the  
242 claimant will suffer financial hardship unless an advance award is  
243 made, an amount may be paid to the claimant not to exceed Five  
244 Hundred Dollars (\$500.00) and shall be deducted from the final  
245 award or shall be repaid by and recoverable from the claimant to  
246 the extent that it exceeds the final award.

247 SECTION 6. The following shall be codified as Section  
248 99-41-31, Mississippi Code of 1972:

249 99-41-31. Disclosure of records as to claims.

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

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