

HOUSE BILL NO. 97

AN ACT TO AMEND SECTIONS 99-41-5, 99-41-11, 99-41-17, 99-41-21, 99-41-23, 99-41-29 AND 99-41-31, MISSISSIPPI CODE OF 1972, TO MAKE TECHNICAL REVISIONS TO THE MISSISSIPPI CRIME VICTIMS' COMPENSATION ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 99-41-5, Mississippi Code of 1972, is amended as follows:

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

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

(i) Products, services and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care, but not to exceed Fifteen Thousand Dollars (\$15,000.00);

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

(iii) Expenses related to funeral, cremation or burial, but not to exceed a total charge of Six Thousand Five Hundred Dollars (\$6,500.00) and transportation costs to arrange or attend services, but not to exceed Eight Hundred Dollars (\$800.00); and

(iv) Necessary expenses, including, but not limited to, temporary housing and relocation assistance for victims of domestic violence in imminent danger, crime scene cleanup, court-related travel, execution travel, property damage repair and replacement costs for windows, doors, locks or other security devices of a residential dwelling. The division shall establish, by administrative rule, guidelines and monetary limits for such expenses.

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

(i) A victim;

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

(iii) The surviving parent, spouse, child or any person who is legally obligated to pay or has paid medical, funeral or other allowable expenses incurred as a result of the criminally injurious conduct which caused the victim's injuries and/or death;

(iv) Family members of the victim who incur mental health counseling expenses as a result of the criminally injurious conduct which caused the victim's injuries and/or death; or

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

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

(i) The offender;

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

(iii) Social security, Medicare and Medicaid;

(iv) Workers' compensation;

(v) Wage continuation programs of any employer;

(vi) Proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct;

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

(viii) Any temporary nonoccupational disability insurance.

(d) "Criminally injurious conduct" means an act occurring or attempted within the geographical boundaries of this state, or to a resident of Mississippi while that resident is within any other state of the United States or any foreign country, which state or foreign country does not provide compensation for those injuries caused by an act for which compensation would be available had the act occurred in Mississippi, and which act results in personal injury or death to a victim for which punishment by fine, imprisonment or death may be imposed. For purposes of this chapter, "criminally injurious conduct" shall also include federal offenses committed within the state that result in personal injury or death to a victim and which are punishable by fine, imprisonment or death, and delinquent acts as defined in Section 43-21-105 which result in personal injury or death to a victim and which, if committed by an adult, would be a crime punishable by fine, imprisonment or death.

(e) "Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of the victim born after the death of the victim

where the death occurred as a result of criminally injurious conduct.

(f) "Economic loss of a dependent" means loss, after death of the victim, of contributions or things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim.

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

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

(i) "Hospital ancillary services" means those hospital support services other than room, board and medical and nursing services that are provided to hospital patients in the course of care including, but not limited to, laboratory, radiology, pharmacy and physical therapy services.

(j) "Noneconomic loss or detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage.

(k) "Work loss" means loss of income from work the victim or claimant would have performed if the victim had not been injured, but reduced by any income from substitute work actually performed by the victim or claimant or by income the victim or claimant would have earned in available appropriate substitute work that he or she was capable of performing, but unreasonably failed to undertake.

(l) "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct, regardless of whether that person was the intended victim of the criminally

injurious conduct. This definition may include a person who suffers personal injury or death as a result of criminally injurious conduct while going to the aid of another person or a duly sworn law enforcement officer, or while attempting to prevent a crime from occurring.

SECTION 2. Section 99-41-11, Mississippi Code of 1972, is amended as follows:

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

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

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

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

(5) Notwithstanding any other provision of law, every law enforcement agency and prosecuting attorney in the state shall

provide to the director, upon request, a complete copy of the report regarding the incident and any supplemental reports involving the crime or incident giving rise to a claim filed pursuant to this chapter within thirty (30) days of such request.

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

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

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

(a) Findings of fact;

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

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

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

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

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

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

award was obtained by fraud or upon finding that the victim's or claimant's actions and/or circumstances would no longer make the victim or claimant eligible.

(10) If a claimant disagrees with the decision of the director, he may contest such decision to the Attorney General within thirty (30) days after notification of issuance of the decision. There shall be no appeal of a decision of the director except as set forth in this subsection.

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

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

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 thirty-six (36) months after the crime occurred, or in cases of child sexual abuse, within thirty-six (36) months after the crime was reported to law enforcement or the Department of Human Services, but in no event later than the victim's twenty-fifth birthday. For good cause, the director may extend

the time period allowed for filing a claim for an additional period not to exceed twelve (12) months;

(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, (ii) as a weapon in the deliberate attempt to injure or cause the death of the victim, (iii) in a hit-and-run accident by leaving the scene of an accident as specified in Section 63-3-401, or (iv) to flee apprehension by law enforcement as specified in Sections 97-9-72 and 97-9-73;

(h) If, following the filing of an application, the claimant failed to take further steps as required by the division 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, and the conviction becomes known to the director;

(j) To any claimant or victim who has been previously convicted as, or otherwise meets the definition of, a habitual criminal as defined in Section 99-19-81;

(k) To any claimant or victim who, at the time of the criminally injurious conduct upon which the claim for compensation is based, engaged in conduct unrelated to the crime upon which the claim for compensation is based that either was (i) a felony, or (ii) a delinquent act which, if committed by an adult, would constitute a felony.

(l) To any claimant or victim who knowingly furnishes any false or misleading information or knowingly fails or omits to disclose a material fact or circumstance.

(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.

(4) Compensation otherwise payable to a claimant or victim may be denied or reduced to a claimant or victim who, at the time of the crime upon which the claim for compensation is based, was engaging in or attempting to engage in other unlawful activity unrelated to the crime upon which the claim for compensation is based.

SECTION 4. Section 99-41-21, Mississippi Code of 1972, is amended as follows:

99-41-21. (1) If compensation is awarded the state shall be subrogated to all the rights of a claimant or victim to receive or recover from a collateral source to the extent that compensation was awarded.

(2) In the event that the claimant or victim recovers compensation, other than under the provisions of this chapter, for injuries or death resulting from criminally injurious conduct, the claimant or victim shall retain, as trustee, so much of the recovered funds as necessary to reimburse the Crime Victims' Compensation Fund, as created in Section 99-41-29, to the extent that compensation was awarded to the claimant or victim from such fund. Such funds as are retained in trust under the provisions of this section shall be promptly deposited in the Crime Victims' Compensation Fund created in Section 99-41-29.

(3) If a claimant or victim brings an action to recover damages related to the criminally injurious conduct upon which compensation is claimed or awarded, the claimant shall give the director written notice of the action. After receiving such notice the director may join in the action as a party plaintiff to recover any compensation awarded.

SECTION 5. Section 99-41-23, Mississippi Code of 1972, is amended as follows:

99-41-23. (1) Compensation for work loss may not exceed Six Hundred Dollars (\$600.00) 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 Six Hundred Dollars (\$600.00) 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 Six Hundred Dollars (\$600.00) 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 Six Hundred Dollars (\$600.00).

(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 Twenty Thousand Dollars (\$20,000.00) 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) If a hospital or hospital ancillary service provider accepts payment from the division on behalf of the victim or claimant, the division may require that the provider shall not collect or attempt to collect further payment from the victim, the

claimant, or the division, except that hospital and hospital ancillary service providers may collect or attempt to collect from collateral sources available to the victim or the claimant. The division may also make any such payment contingent upon the provider limiting its right to collect from the victim, the claimant, or the division; or contingent upon the provider entering into a covenant not to sue the victim, the claimant or the division.

(8) 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 in accordance with Section 93-11-71, 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.

(9) 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.

(10) Subsections (8) and (9) of this section prevail over Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform Commercial Code to the extent, if any, that Sections 75-9-406 and 75-9-408 may otherwise be applicable.

SECTION 6. Section 99-41-29, Mississippi Code of 1972, is amended as follows:

99-41-29. (1) From and after July 1, 1990, there is hereby created in the State Treasury a special interest-bearing fund to

be known as the Crime Victims' Compensation Fund. The monies contained in the fund shall be held in trust for the sole purpose of payment of awards of compensation to victims and claimants pursuant to this chapter, the payment of all necessary and proper expenses incurred by the division in the administration of this chapter, payment of sexual assault examinations pursuant to Section 99-37-25, payment of Address Confidentiality Program administrative expenses pursuant to Section 99-47-1(7) and payment of other expenses in furtherance of providing assistance to victims of crime through information referrals, advocacy outreach programs and victim-related services. Expenditures from the fund shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, and upon requisitions signed by the Attorney General or his duly designated representative in the manner provided by law. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of compensating the victims of crime and other claimants under this chapter; (b) the interest accruing to the fund; (c) monies recovered by the director under the provisions of Section 99-41-21; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

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

however, no such reductions as provided for shall entitle claimants to future retroactive reimbursements in future years.

SECTION 7. Section 99-41-31, Mississippi Code of 1972, is amended as follows:

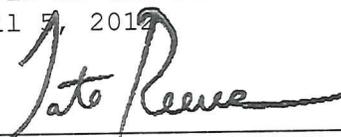
99-41-31. It is unlawful, except for purposes directly connected with the administration of the division and the processing of a claim, for any person to solicit, disclose, receive or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information 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 division, 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 8. This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 9, 2012


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 5, 2012


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR
5/1/12 3:17pm