

By: Senator(s) Hewes

To: Insurance; Judiciary

SENATE BILL NO. 2762

1 AN ACT TO AMEND SECTION 71-3-7, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT PREEXISTING CONDITIONS TO NOT HAVE TO BE
3 OCCUPATIONALLY DISABLING FOR APPORTIONMENT TO APPLY UNDER WORKERS'
4 COMPENSATION; AND FOR RELATED PURPOSES. BE IT ENACTED BY THE
5 LEGISLATURE OF THE STATE OF MISSISSIPPI:

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7 SECTION 1. Section 71-3-7, Mississippi Code of 1972, is
8 amended as follows:

9 71-3-7. Compensation shall be payable for disability or
10 death of an employee from injury or occupational disease arising
11 out of and in the course of employment, without regard to fault as
12 to the cause of the injury or occupational disease. An
13 occupational disease shall be deemed to arise out of and in the
14 course of employment when there is evidence that there is a direct
15 causal connection between the work performed and the occupational
16 disease.

17 Where a preexisting physical handicap, disease, or lesion is
18 shown by medical findings to be a material contributing factor in
19 the results following injury, the compensation which, but for this
20 paragraph, would be payable shall be reduced by that proportion
21 which such preexisting physical handicap, disease, or lesion
22 contributed to the production of the results following the injury.

23 The preexisting condition does not have to be occupationally
24 disabling for this apportionment to apply.

25 (a) Apportionment shall not be applied until the
26 claimant has reached maximum medical recovery.

27 (b) The employer or carrier does not have the power to
28 determine the date of maximum medical recovery or percentage of

29 apportionment. This must be done by the attorney-referee, subject
30 to review by the commission as the ultimate finder of fact.

31 (c) After the date the claimant reaches maximum medical
32 recovery, weekly compensation benefits and maximum recovery shall
33 be reduced by that proportion which the preexisting physical
34 handicap, disease, or lesion contributes to the results following
35 injury.

36 (d) If maximum medical recovery has occurred before the
37 hearing and order of the attorney-referee, credit for excess
38 payments shall be allowed in future payments. Such allowances and
39 method of accomplishment of the same shall be determined by the
40 attorney-referee, subject to review by the commission. However,
41 no actual repayment of such excess shall be made to the employer
42 or carrier.

43 No compensation shall be payable if the intoxication of the
44 employee was the proximate cause of the injury, or if it was the
45 willful intention of the employee to injure or kill himself or
46 another.

47 Every employer to whom this chapter applies shall be liable
48 for and shall secure the payment to his employees of the
49 compensation payable under its provisions.

50 In the case of an employer who is a subcontractor, the
51 contractor shall be liable for and shall secure the payment of
52 such compensation to employees of the subcontractor, unless the
53 subcontractor has secured such payment.

54 SECTION 2. This act shall take effect and be in force from
55 and after July 1, 1999.