

By: Williamson

To: Insurance

SENATE BILL NO. 3035

1 AN ACT TO AMEND SECTION 71-3-71, MISSISSIPPI CODE OF 1972,
2 UNDER THE WORKERS' COMPENSATION LAW, TO REVISE THE DISBURSEMENT OF
3 MONEY RECOVERED FOR COMPENSATION FOR INJURIES WHERE THIRD PARTIES
4 ARE LIABLE; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 71-3-71, Mississippi Code of 1972, is
7 amended as follows:[JMR1]

8 71-3-71. The acceptance of compensation benefits from or the
9 making of a claim for compensation against an employer or insurer
10 for the injury or death of an employee shall not affect the right
11 of the employee or his dependents to sue any other party at law
12 for such injury or death, but the employer or his insurer shall be
13 entitled to reasonable notice and opportunity to join in any such
14 action or may intervene therein. If such employer or insurer join
15 in such action and pay an equal share of litigation expenses which
16 have been incurred at the time of their joinder or intervention,
17 and as incurred thereafter, then they shall be entitled to
18 repayment of the amount paid by them as compensation and medical
19 expenses (less their pro rata share of costs of collection and
20 litigation expenses and less the percentage of any comparative
21 fault assessed to the employer) after the employee has been made
22 whole.

23 The commencement of an action by an employee or his
24 dependents (or legal representative) against a third party for
25 damages by reason of the injury, or the adjustment of any such
26 claim, shall not affect the right of the injured employee or his
27 dependents (or legal representative) to recover compensation, but

28 any amount recovered by the injured employee or his dependents (or
29 legal representative) from a third party shall be applied as
30 follows: reasonable costs of collection as approved and allowed
31 by the court in which such action is pending, or by the commission
32 of this state in case of settlement without suit, shall be
33 deducted; the remainder shall be first applied to make the
34 employee or his legal representative whole from the damages caused
35 by the defendant plus any damages caused by any negligent, or
36 wrongful act of the employer, if any. After making the employee
37 whole, any remaining proceeds from such action shall then be
38 applied to repayment of the amount paid by the carrier or
39 self-insured as compensation and medical expenses. The employee
40 or his dependents bringing suit against the third party must
41 notify the employer or carrier within fifteen days of the filing
42 of such suit.

43 If the injured employee or his beneficiaries decline to bring
44 an action at law after having been duly notified by the employer
45 or compensation insurer of its intent to bring such a suit, an
46 employer or compensation insurer who shall have paid compensation
47 benefits under this chapter for the injury or death of the
48 employee shall have the right to maintain an action at law against
49 any other party responsible for such injury or death, in the name
50 of such injured employee or his beneficiaries, or in the name of
51 such employer or insurer, or any or all of them. If reasonable
52 notice and opportunity to be represented in such action by counsel
53 shall have been given to the compensation beneficiary, all claims
54 of such compensation beneficiary shall be determined in such
55 action, as well as the claim of the employer or insurer. If
56 recovery shall be had against such other party, by suit or
57 otherwise, by the action brought by the employer or compensation
58 carrier as provided in this paragraph, then they shall be entitled
59 to repayment of the amounts paid by them as compensation and
60 medical expenses first. If suit is brought by the insurance
61 carrier on self-insured under this provision, the compensation
62 beneficiary shall be entitled to any amount recovered over and
63 above the amount that the employer and insurer shall have paid or
64 are liable for in compensation or other benefits, after deducting

65 the reasonable costs of collection.

66 In case of settlement of any action before the trial thereof,
67 such settlement shall be subject to the approval of the court
68 wherein such action is pending, and settlement before an action is
69 brought shall be subject to the approval of the commission.

70 Distribution of the portion belonging to the dependents shall be
71 made among such dependents in the manner provided in this chapter.

72 In case of liability of the employer or insurer to make
73 payment to the state treasury under the second injury fund
74 provisions, if the injury or death creates a legal liability
75 against a third party, the employer or insurer shall have a right
76 of action against such third party for reimbursement of any sum so
77 paid into the state treasury, which right may be enforced in the
78 action heretofore provided or by an independent action.

79 SECTION 2. This act shall take effect and be in force from
80 and after July 1, 2000.