HOUSE BILL NO. 1275

AN ACT TO AMEND SECTION 71-3-9, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXCLUSIVENESS OF LIABILITY UNDER THE WORKERS' COMPENSATION LAWS; TO PROVIDE PENALTIES ON EMPLOYERS AND CARRIERS WHO INTENTIONALLY WITHHOLD WORKERS' COMPENSATION BENEFITS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 71-3-9, Mississippi Code of 1972, is amended as follows:

71-3-9. The liability of an employer or carrier to pay compensation shall be exclusive and in place of all other liability of such employer or carrier to the employee, his legal representative, husband or wife, parents, dependents, next-of-kin, and anyone otherwise entitled to recover damages at common law or otherwise from such employer or carrier on account of such injury or death, except that if an employer or carrier fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee. For purposes of this section, the term "carrier" includes groups of employers who have pooled liabilities under Section 71-3-75(3).

This exclusive liability of the employer or carrier precludes any and all other claims of every nature whatsoever in contract and in tort, intentional and otherwise, including, but not limited
to, "bad faith" claims and intentional tort claims. However, if
the three (3) commissioners or a majority of such commissioners
determine that there is clear and convincing evidence of a
continued course of conduct on behalf of the employer or carrier,
or both, to intentionally and maliciously withhold benefits to
which the employee is entitled under this chapter without an
arguable reason for such continuing course of conduct, there shall
be imposed on the employer or carrier, or both of them severally,
a penalty in an amount of up to one-half of one percent (1/2 of
1%) of the net worth of the employer or the carrier; however, no
penalty assessed hereunder shall exceed the sum of Two Hundred
Fifty Thousand Dollars ($250,000.00), which penalty shall be in
addition to all other penalties that may be imposed under this
chapter. The net worth shall be determined based on the last
available financial audit.

In addition to other legal fees provided for under this
chapter, an attorney who obtains a recovery of the penalty under
this section is entitled to a fee of twenty-five percent (25%) of
such penalty determined by the commissioners or a majority of the
commissioners, as the case may be, or a fee of thirty-three and
one-third percent (33-1/3%) of such penalty if the determination
of the commissioners is affirmed in whole or in part on appeal.

Two percent (2%) of each penalty determined under this
section shall be paid to the Mississippi Workers' Compensation
Commission for purposes of funding and promoting seminars,
meetings and conferences for education and training related to
this chapter.

Damages in all civil litigation cases pending on the
effective date of this act regarding intentional tort claims,
including "bad faith" claims, arising out of underlying claims
under this chapter shall be limited to an amount of up to one-half
of one percent (1/2 of 1%) of the net worth of the employer or the
carrier, or both of them severally, as the case may be; however,
such damages shall not exceed the sum of Two Hundred Fifty Thousand Dollars ($250,000.00). These damages shall be determined by the courts in which such cases are proceeding.

SECTION 2. This act shall take effect and be in force from and after July 1, 2002.