HOUSE BILL NO. 1521

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

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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 forty percent (40%) of such penalty determined by the commissioners or a majority of the commissioners, as the case may be, or a fee of fifty percent (50%) of such penalty if the determination of the commissioners is affirmed in whole or in part on appeal.

Five percent (5%) 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.