

By: Senator(s) Ross

To: Judiciary

SENATE BILL NO. 2440

1 AN ACT TO AMEND SECTION 71-3-9, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT THE EXCLUSIVITY OF THE WORKERS' COMPENSATION ACT
 3 SHALL PRECLUDE ANY OTHER CLAIMS OF EVERY NATURE WHATSOEVER IN
 4 CONTRACT AND IN TORT, INTENTIONAL AND OTHERWISE; TO AUTHORIZE THE
 5 WORKERS' COMPENSATION COMMISSION TO IMPOSE A PENALTY IF THERE IS
 6 CLEAR AND CONVINCING EVIDENCE OF A CONTINUED COURSE OF CONDUCT ON
 7 BEHALF OF THE EMPLOYER OR CARRIER TO INTENTIONALLY AND MALICIOUSLY
 8 WITHHOLD BENEFITS TO WHICH THE EMPLOYEE IS ENTITLED UNDER THE
 9 WORKERS' COMPENSATION ACT; AND FOR RELATED PURPOSES.

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

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

13 71-3-9. The liability of an employer to pay compensation
 14 shall be exclusive and in place of all other liability of such
 15 employer to the employee, his legal representative, husband or
 16 wife, parents, dependents, next of kin, and anyone otherwise
 17 entitled to recover damages at common law or otherwise from such
 18 employer on account of such injury or death, except that if an
 19 employer fails to secure payment of compensation as required by
 20 this chapter, an injured employee, or his legal representative in
 21 case death results from the injury, may elect to claim
 22 compensation under this chapter, or to maintain an action at law
 23 for damages on account of such injury or death. In such action
 24 the defendant may not plead as a defense that the injury was
 25 caused by the negligence of a fellow servant, nor that the
 26 employee assumed the risk of his employment, nor that the injury
 27 was due to the contributory negligence of the employee. For
 28 purposes of this section, the term "carrier" shall include groups
 29 of employers who have pooled liabilities pursuant to Section
 30 71-3-75(3) and shall include individual self-insured employers.



31 This exclusive liability of the employer and carrier shall
32 preclude any other claims of every nature whatsoever in contract
33 and in tort, intentional and otherwise, including, but not limited
34 to, bad faith claims and intentional tort claims. Provided,
35 however, that if a majority of the commissioners determine there
36 is clear and convincing evidence of a continued course of conduct
37 on behalf of the employer or carrier, or both of them, to
38 intentionally and maliciously withhold benefits to which the
39 employee is entitled under this chapter without an arguable reason
40 for such continuing course of conduct, the commissioners may
41 impose on the employer or carrier, or both of them severally, a
42 penalty in an amount not to exceed one-half of one percent (1/2 of
43 1%) of the net worth of the employer of the carrier; provided,
44 however, that no penalty assessed hereunder shall exceed the sum
45 of Two Hundred Fifty Thousand Dollars (\$250,000.00). Such penalty
46 shall be in addition to all other penalties that may be imposed
47 under this chapter. Net worth shall be determined based on the
48 last available financial audit.

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

56 Two percent (2%) of each penalty imposed under this section
57 shall be paid to the commission for purposes of funding and
58 promoting seminars, meetings and conferences for education and
59 training related to the Mississippi Workers' Compensation Act.

60 **SECTION 2.** This act shall take effect and be in force from
61 and after its passage.

