To: Judiciary

MISSISSIPPI LEGISLATURE REGULAR SESSION 2002

By: Senator(s) Ross

To: Judiciary

SENATE BILL NO. 2440

AN ACT TO AMEND SECTION 71-3-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE EXCLUSIVITY OF THE WORKERS' COMPENSATION ACT SHALL PRECLUDE ANY OTHER CLAIMS OF EVERY NATURE WHATSOEVER IN CONTRACT AND IN TORT, INTENTIONAL AND OTHERWISE; TO AUTHORIZE THE WORKERS' COMPENSATION COMMISSION TO IMPOSE A PENALTY IF THERE IS CLEAR AND CONVINCING EVIDENCE OF A CONTINUED COURSE OF CONDUCT ON BEHALF OF THE EMPLOYER OR CARRIER TO INTENTIONALLY AND MALICIOUSLY WITHHOLD BENEFITS TO WHICH THE EMPLOYEE IS ENTITLED UNDER THE WORKERS' COMPENSATION ACT; 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 to pay compensation shall be exclusive and in place of all other liability of such employer 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 on account of such injury or death, except that if an employer 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" shall include groups of employers who have pooled liabilities pursuant to Section 71-3-75(3) and shall include individual self-insured employers.
This exclusive liability of the employer and carrier shall preclude any 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. Provided, however, that if a majority of the commissioners determine there is clear and convincing evidence of a continued course of conduct on behalf of the employer or carrier, or both of them, 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, the commissioners may impose on the employer or carrier, or both of them severally, a penalty in an amount not to exceed one-half of one percent (1/2 of 1%) of the net worth of the employer of the carrier; provided, however, that no penalty assessed hereunder shall exceed the sum of Two Hundred Fifty Thousand Dollars ($250,000.00). Such penalty shall be in addition to all other penalties that may be imposed under this chapter. Net worth shall be determined based on the last available financial audit.

In addition to other legal fees provided under this chapter, an attorney who obtains a recovery of the penalty under this section shall be entitled to a fee of twenty-five percent (25%) of such penalty determined by a majority of the commissioners 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 imposed under this section shall be paid to the commission for purposes of funding and promoting seminars, meetings and conferences for education and training related to the Mississippi Workers' Compensation Act.

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