

By: Representative Guice

To: Insurance

HOUSE BILL NO. 552

1 AN ACT TO AMEND SECTION 71-3-3, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT FOR PURPOSES OF DETERMINING WORKERS' COMPENSATION  
3 BENEFITS FOR EMPLOYEES OF NONPROFIT COMPANIES, NONPROFIT GROUPS OR  
4 NONPROFIT POOLS, THE TERM "INJURY" SHALL NOT INCLUDE DISABILITY OR  
5 DEATH OF SUCH EMPLOYEES THAT RESULTS FROM ACTS OF TERRORISM; AND  
6 FOR RELATED PURPOSES.

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

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

10 71-3-3. Unless the context otherwise requires, the  
11 definitions which follow govern the construction and meaning of  
12 the terms used in this chapter:

13 (a) "Person" includes an individual, firm, voluntary  
14 association or a corporation.

15 (b) "Injury" means accidental injury or accidental  
16 death arising out of and in the course of employment without  
17 regard to fault which results from an untoward event or events, if  
18 contributed to or aggravated or accelerated by the employment in a  
19 significant manner. Untoward event includes events causing  
20 unexpected results. An untoward event or events shall not be  
21 presumed to have arisen out of and in the course of employment,  
22 except in the case of an employee found dead in the course of  
23 employment. This definition includes injuries to artificial  
24 members, and also includes an injury caused by the willful act of  
25 a third person directed against an employee because of his  
26 employment while so employed and working on the job, and  
27 disability or death due to exposure to ionizing radiation from any  
28 process in employment involving the use of or direct contact with  
29 radium or radioactive substances with the use of or direct

30 exposure to roentgen (X-rays) or ionizing radiation. In radiation  
31 cases only, the date of disablement shall be treated as the date  
32 of the accident. Occupational diseases, or the aggravation  
33 thereof, are excluded from the term "injury," provided that,  
34 except as otherwise specified, all provisions of this chapter  
35 apply equally to occupational diseases as well as injury. For  
36 purposes of determining workers' compensation benefits for  
37 employees of nonprofit companies, nonprofit groups or nonprofit  
38 pools, the term "injury" shall not include disability or death of  
39 such employees that results from acts of terrorism.

40 (c) "Death," when mentioned as a basis for the right to  
41 compensation, means only death resulting from such an injury.

42 (d) "Employee" means any person, including a minor  
43 whether lawfully or unlawfully employed, in the service of an  
44 employer under any contract of hire or apprenticeship, written or  
45 oral, express or implied, provided that there shall be excluded  
46 therefrom all independent contractors and especially any  
47 individual performing service in, and at the time of, the sale of  
48 newspapers or magazines to ultimate consumers under an arrangement  
49 under which the newspapers or magazines are to be sold by the  
50 individual at a fixed price, the individual's compensation being  
51 based on the retention of the excess of such price over the amount  
52 at which the newspapers or magazines are charged to the  
53 individual, whether or not the individual is guaranteed a minimum  
54 amount of compensation for such service or is entitled to be  
55 credited with the unsold newspapers or magazines returned. A  
56 student of an educational institution who, as a part of such  
57 educational institution's curriculum, is receiving practical  
58 training at any facility, who is under the active and direct  
59 supervision of the personnel of the facility and/or an instructor  
60 of the educational institution, and who is not receiving wages as  
61 a consequence of participation in such practical training shall

62 not be considered an employee of such facility on account of  
63 participation in such practical training.

64 (e) "Employer," except when otherwise expressly stated,  
65 includes a person, partnership, association, corporation and the  
66 legal representatives of a deceased employer, or the receiver or  
67 trustee of a person, partnership, association or corporation.

68 (f) "Carrier" means any person authorized in accordance  
69 with the provisions of this chapter to insure under this chapter  
70 and includes self-insurers.

71 (g) "Self-insurer" is an employer who has been  
72 authorized under the provisions of this chapter to carry his own  
73 liability on his covered employees without insuring in a stock or  
74 mutual carrier.

75 (h) "Commission" means the Workers' Compensation  
76 Commission.

77 (i) "Disability" means incapacity because of injury to  
78 earn the wages which the employee was receiving at the time of  
79 injury in the same or other employment, which incapacity and the  
80 extent thereof must be supported by medical findings.

81 (j) "Compensation" means the money allowance payable to  
82 an injured worker or his dependents as provided in this chapter,  
83 and includes funeral benefits provided therein.

84 (k) "Wages" includes the money rate at which the  
85 service rendered is recompensed under the contract of hiring in  
86 force at the time of injury, and also the reasonable value of  
87 board, rent, housing, lodging or similar advantage received from  
88 the employer and gratuities received in the course of employment  
89 from others than the employer. The term "wages" shall not include  
90 practical training received by students of an educational  
91 institution as a part of such educational institution's  
92 curriculum.

93 (l) "Child" shall include a posthumous child, a child  
94 legally adopted prior to the injury of the employee, a child in

95 relation to whom the deceased employee stood in the place of a  
96 parent for at least one (1) year prior to the time of injury and a  
97 stepchild or acknowledged illegitimate child dependent upon the  
98 deceased, but does not include married children unless wholly  
99 dependent on him. "Grandchild" means a child as above defined of  
100 a child as above defined. "Brother" and "sister" include  
101 stepbrothers and stepsisters, half brothers and half sisters, and  
102 brothers and sisters by adoption, but does not include married  
103 brothers nor married sisters unless wholly dependent on the  
104 employee. "Child," "grandchild," "brother" and "sister" include  
105 only persons who are under eighteen (18) years of age, and also  
106 persons who, though eighteen (18) years of age or over, are wholly  
107 dependent upon the deceased employee and incapable of self-support  
108 by reason of mental or physical disability, and also a child  
109 eighteen (18) years of age or older, until his twenty-third  
110 birthday, who is dependent upon the deceased and is pursuing a  
111 full-time education.

112 (m) "Parent" includes stepparents and parents by  
113 adoption, parents-in-law or any person who for more than three (3)  
114 years prior to the death of the deceased employee stood in the  
115 place of a parent to him, or her, if dependent on the injured  
116 employee.

117 (n) The term "surviving spouse" includes the decedent's  
118 legal wife or husband, living with him or her or dependent for  
119 support upon him or her at the time of death or living apart for  
120 justifiable cause or by reason of desertion at such time,  
121 provided, however, such separation had not existed for more than  
122 three (3) years without an award for separate maintenance or  
123 alimony or the filing of a suit for separate maintenance or  
124 alimony in the proper court in this state. The term "surviving  
125 spouse" shall likewise include one not a legal wife or husband but  
126 who had entered into a ceremonial marriage with the decedent at  
127 least one (1) year prior to death and who, on the date of the

128 decedent's death, stood in the relationship of a wife or husband,  
129 provided there was no living legal spouse who had protected her or  
130 his rights for support by affirmative action as hereinabove  
131 required. The term "surviving spouse" as contemplated in this  
132 chapter shall not apply to any person who has, since his or her  
133 separation from decedent, entered into a ceremonial marriage or  
134 lived in open adultery with another.

135 (o) The term "adoption" or "adopted" means legal  
136 adoption prior to the time of the injury.

137 (p) The singular includes the plural and the masculine  
138 includes the feminine and neuter.

139 (q) It is expressly provided, agreed and understood in  
140 determining beneficiaries under this section that a surviving  
141 spouse suffering a mental or physical handicap and children under  
142 the age of eighteen (18) years are presumed to be dependent.

143 (r) "Independent contractor" means any individual, firm  
144 or corporation who contracts to do a piece of work according to  
145 his own methods without being subject to the control of his  
146 employer except as to the results of the work, and who has the  
147 right to employ and direct the outcome of the workers independent  
148 of the employer and free from any superior authority in the  
149 employer to say how the specified work shall be done or what the  
150 laborers shall do as the work progresses, one who undertakes to  
151 produce a given result without being in any way controlled as to  
152 the methods by which he attains the result.

153 (s) "Average weekly wage for the state" means an amount  
154 determined by the commission as of October 1 of each year based  
155 upon wage and employment statistics reported to the commission by  
156 the Mississippi Employment Security Commission. Such amount shall  
157 be based upon data for the preceding twelve-month period and shall  
158 be effective from and after January 1 of the following year.

159 **SECTION 2.** This act shall take effect and be in force from  
160 and after July 1, 2004.