

By: Representatives Guice, Formby

To: Insurance

HOUSE BILL NO. 730

1 AN ACT TO AMEND SECTION 71-3-9, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE EXCLUSIVE REMEDY PROVISIONS UNDER THE WORKERS'
3 COMPENSATION LAW; TO AMEND SECTION 71-3-3, MISSISSIPPI CODE OF
4 1972, TO REVISE THE DEFINITION OF "INJURY" UNDER THE WORKERS'
5 COMPENSATION LAW; TO AMEND SECTION 71-3-1, MISSISSIPPI CODE OF
6 1972, TO PROVIDE THAT THE WORKERS' COMPENSATION LAW SHALL BE
7 IMPARTIALLY CONSTRUED; AND FOR RELATED PURPOSES.

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

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

11 71-3-9. The liability of an employer and carrier to pay
12 compensation shall be exclusive and in place of all other
13 liability of such employer and carrier to the employee, his legal
14 representative, husband or wife, parents, dependents, next-of-kin,
15 and anyone otherwise entitled to recover damages at common law or
16 otherwise from such employer and carrier on account of such injury
17 or death, except that if an employer fails to secure payment of
18 compensation as required by this chapter, an injured employee, or
19 his legal representative in case death results from the injury,
20 may elect to claim compensation under this chapter, or to maintain
21 an action at law for damages on account of such injury or death.
22 In such action the defendant may not plead as a defense that the
23 injury was caused by the negligence of a fellow servant, nor that
24 the employee assumed the risk of his employment, nor that the
25 injury was due to the contributory negligence of the employee.
26 For purposes of this section, "carrier" includes groups of
27 employers who have pooled liabilities under Section 71-3-75(3).

28 This exclusive liability of the employer and carrier
29 precludes all claims or causes of action of any nature whatsoever

30 against the employer or carrier in contract or in tort,
31 intentional or otherwise, arising out of or in any way associated
32 with claims covered under this chapter including, but not limited
33 to, bad faith claims arising out of or in any way associated with
34 the processing or handling of claims covered under this chapter.

35 However, if the three (3) commissioners of the Mississippi
36 Workers' Compensation Commission, or a majority of such
37 commissioners, determine that there is clear and convincing
38 evidence of a continuous willful, intentional and malicious course
39 of conduct on behalf of the employer or carrier, or both of them,
40 associated in any way with the processing or handling of a claim
41 covered under this chapter which constitutes bad faith or any
42 other intentional tort arising out of or in any way associated
43 with the processing or handling of a claim covered under this
44 chapter, without an arguable reason for such continuous course of
45 conduct, there shall be imposed on the employer or carrier, or
46 both, a penalty in an amount not to exceed ten percent (10%) of
47 the untimely paid benefits due at the time such determination is
48 made by the commissioners, which penalty shall be in addition to
49 other penalties that may be imposed under this chapter. In no
50 event shall any penalty under this section exceed ten percent
51 (10%) of the maximum recovery specified under Section 71-3-13(2).

52 As of July 1, 2005, damages in civil litigation cases for
53 intentional torts including, but not limited to, bad faith refusal
54 to pay benefits, arising out of or in any way associated with the
55 processing or handling of a claim covered under this chapter,
56 shall not exceed one-half of one percent (1/2 of 1%) of the
57 combined net worth of the defendants in each such case; however,
58 damages for intentional torts in each such case shall in no event
59 exceed the sum of Fifty Thousand Dollars (\$50,000.00). In respect
60 to the determination of net worth, the party or parties against
61 whom such damages are being sought may stipulate, in lieu of

62 determining net worth, that the limitation of Fifty Thousand
63 Dollars (\$50,000.00) of damages is applicable.

64 **SECTION 2.** Section 71-3-3, Mississippi Code of 1972, is
65 amended as follows:

66 71-3-3. Unless the context otherwise requires, the
67 definitions which follow govern the construction and meaning of
68 the terms used in this chapter:

69 (a) "Person" includes an individual, firm, voluntary
70 association or a corporation.

71 (b) "Injury" means * * * injury or * * * death arising
72 out of and in the course of employment, or resulting from a risk
73 created by employment conditions, without regard to fault which
74 results from an untoward event or events, if contributed to or
75 aggravated or accelerated by the employment in a significant
76 manner. Untoward event includes events causing unexpected
77 results. An untoward event or events shall not be presumed to
78 have arisen out of and in the course of employment, except in the
79 case of an employee found dead in the course of employment. This
80 definition includes injuries to artificial members, and also
81 includes an injury caused by a willful act * * * directed against
82 an employee because of his employment while so employed and
83 working on the job, and disability or death due to exposure to
84 ionizing radiation from any process in employment involving the
85 use of or direct contact with radium or radioactive substances
86 with the use of or direct exposure to roentgen (X-rays) or
87 ionizing radiation. In radiation cases only, the date of
88 disablement shall be treated as the date of the accident.
89 Occupational diseases, or the aggravation thereof, are excluded
90 from the term "injury," provided that, except as otherwise
91 specified, all provisions of this chapter apply equally to
92 occupational diseases as well as injury.

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

95 (d) "Employee" means any person, including a minor
96 whether lawfully or unlawfully employed, in the service of an
97 employer under any contract of hire or apprenticeship, written or
98 oral, express or implied, provided that there shall be excluded
99 therefrom all independent contractors and especially any
100 individual performing service in, and at the time of, the sale of
101 newspapers or magazines to ultimate consumers under an arrangement
102 under which the newspapers or magazines are to be sold by the
103 individual at a fixed price, the individual's compensation being
104 based on the retention of the excess of such price over the amount
105 at which the newspapers or magazines are charged to the
106 individual, whether or not the individual is guaranteed a minimum
107 amount of compensation for such service or is entitled to be
108 credited with the unsold newspapers or magazines returned. A
109 student of an educational institution who, as a part of such
110 educational institution's curriculum, is receiving practical
111 training at any facility, who is under the active and direct
112 supervision of the personnel of the facility and/or an instructor
113 of the educational institution, and who is not receiving wages as
114 a consequence of participation in such practical training shall
115 not be considered an employee of such facility on account of
116 participation in such practical training.

117 (e) "Employer," except when otherwise expressly stated,
118 includes a person, partnership, association, corporation and the
119 legal representatives of a deceased employer, or the receiver or
120 trustee of a person, partnership, association or corporation.

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

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

128 (h) "Commission" means the Workers' Compensation
129 Commission.

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

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

137 (k) "Wages" includes the money rate at which the
138 service rendered is recompensed under the contract of hiring in
139 force at the time of injury, and also the reasonable value of
140 board, rent, housing, lodging or similar advantage received from
141 the employer and gratuities received in the course of employment
142 from others than the employer. The term "wages" shall not include
143 practical training received by students of an educational
144 institution as a part of such educational institution's
145 curriculum.

146 (l) "Child" shall include a posthumous child, a child
147 legally adopted prior to the injury of the employee, a child in
148 relation to whom the deceased employee stood in the place of a
149 parent for at least one (1) year prior to the time of injury and a
150 stepchild or acknowledged illegitimate child dependent upon the
151 deceased, but does not include married children unless wholly
152 dependent on him. "Grandchild" means a child as above defined of
153 a child as above defined. "Brother" and "sister" include
154 stepbrothers and stepsisters, half brothers and half sisters, and
155 brothers and sisters by adoption, but does not include married
156 brothers nor married sisters unless wholly dependent on the
157 employee. "Child," "grandchild," "brother" and "sister" include
158 only persons who are under eighteen (18) years of age, and also
159 persons who, though eighteen (18) years of age or over, are wholly
160 dependent upon the deceased employee and incapable of self-support

161 by reason of mental or physical disability, and also a child
162 eighteen (18) years of age or older, until his twenty-third
163 birthday, who is dependent upon the deceased and is pursuing a
164 full-time education.

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

170 (n) The term "surviving spouse" includes the decedent's
171 legal wife or husband, living with him or her or dependent for
172 support upon him or her at the time of death or living apart for
173 justifiable cause or by reason of desertion at such time,
174 provided, however, such separation had not existed for more than
175 three (3) years without an award for separate maintenance or
176 alimony or the filing of a suit for separate maintenance or
177 alimony in the proper court in this state. The term "surviving
178 spouse" shall likewise include one not a legal wife or husband but
179 who had entered into a ceremonial marriage with the decedent at
180 least one (1) year prior to death and who, on the date of the
181 decedent's death, stood in the relationship of a wife or husband,
182 provided there was no living legal spouse who had protected her or
183 his rights for support by affirmative action as hereinabove
184 required. The term "surviving spouse" as contemplated in this
185 chapter shall not apply to any person who has, since his or her
186 separation from decedent, entered into a ceremonial marriage or
187 lived in open adultery with another.

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

190 (p) The singular includes the plural and the masculine
191 includes the feminine and neuter.

192 (q) It is expressly provided, agreed and understood in
193 determining beneficiaries under this section that a surviving

194 spouse suffering a mental or physical handicap and children under
195 the age of eighteen (18) years are presumed to be dependent.

196 (r) "Independent contractor" means any individual, firm
197 or corporation who contracts to do a piece of work according to
198 his own methods without being subject to the control of his
199 employer except as to the results of the work, and who has the
200 right to employ and direct the outcome of the workers independent
201 of the employer and free from any superior authority in the
202 employer to say how the specified work shall be done or what the
203 laborers shall do as the work progresses, one who undertakes to
204 produce a given result without being in any way controlled as to
205 the methods by which he attains the result.

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

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

214 71-3-1. This chapter shall be known and cited as "Workers'
215 Compensation Law," and shall be administered by the Workers'
216 Compensation Commission, hereinafter referred to as the
217 "commission," cooperating with other state and federal authorities
218 for the prevention of injuries and occupational diseases to
219 workers and, in event of injury or occupational disease, their
220 rehabilitation or restoration to health and vocational
221 opportunity; and this chapter shall be fairly construed according
222 to the law and the evidence.

223 Wherever used in this chapter, or in any other statute or
224 rule or regulation affecting the former Workmen's Compensation Law
225 and any of its functions or duties:

226 (a) The words "workmen's compensation" shall mean
227 "workers' compensation"; and

228 (b) The word "commission" shall mean the Workers'
229 Compensation Commission.

230 It is the specific intention of the Legislature that the
231 Mississippi Workers' Compensation Law shall be fairly, impartially
232 and even-handedly construed, that the Mississippi Workers'
233 Compensation Law shall not be liberally construed in favor of any
234 party in any proceeding under this chapter and that all
235 determinations of doubtful issues of fact shall be made by the
236 commission on impartial and even-handed bases. Any violation of
237 this legislative mandate shall constitute reversible error as a
238 matter of law.

239 **SECTION 4.** This act shall take effect and be in force from
240 and after July 1, 2005.