

By: Representative Guice

To: Insurance; Judiciary A

HOUSE BILL NO. 1155

1 AN ACT TO AMEND SECTION 71-3-5, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE MISSISSIPPI EMPLOYERS TO MAINTAIN WORKERS' COMPENSATION
3 COVERAGE REGARDLESS OF THE NUMBER OF THE EMPLOYEES IN THEIR
4 EMPLOY; TO PROVIDE AN EXEMPTION FOR CERTAIN RELATIVES OF THE
5 EMPLOYER; TO AMEND SECTION 71-3-3, MISSISSIPPI CODE OF 1972, TO
6 REVISE DEFINITIONS; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 71-3-5, Mississippi Code of 1972, is
9 amended as follows:

10 71-3-5. The following shall constitute employers subject to
11 the provisions of this chapter:

12 Every person, firm and private corporation, including any
13 public service corporation but excluding, however, all nonprofit
14 charitable, fraternal, cultural, or religious corporations or
15 associations, that have in service * * * workmen or
16 operatives * * * under any contract of hire, express or implied.

17 Any state agency, state institution, state department, or
18 subdivision thereof, including counties, municipalities and school
19 districts, or the singular thereof, not heretofore included under
20 the Workers' Compensation Law, may elect, by proper action of its
21 officers or department head, to come within its provisions and, in
22 such case, shall notify the commission of such action by filing
23 notice of compensation insurance with the commission. Payment for
24 compensation insurance policies so taken may be made from any
25 appropriation or funds available to such agency, department or
26 subdivision thereof, or from the general fund of any county or
27 municipality.

28 From and after July 1, 1990, all offices, departments,
29 agencies, bureaus, commissions, boards, institutions, hospitals,

30 colleges, universities, airport authorities or other
31 instrumentalities of the "state" as such term is defined in
32 Section 11-46-1, Mississippi Code of 1972, shall come under the
33 provisions of the Workers' Compensation Law. Payment for
34 compensation insurance policies so taken may be made from any
35 appropriation or funds available to such office, department,
36 agency, bureau, commission, board, institution, hospital, college,
37 university, airport authority or other instrumentality of the
38 state.

39 From and after October 1, 1990, counties and municipalities
40 shall come under the provisions of the Workers' Compensation Law.
41 Payment for compensation insurance policies so taken may be made
42 from any funds available to such counties and municipalities.

43 From and after October 1, 1993, all "political subdivisions,"
44 as such term is defined in Section 11-46-1, Mississippi Code of
45 1972, except counties and municipalities shall come under the
46 provisions of the Workers' Compensation Law. Payment for
47 compensation insurance policies so taken may be made from any
48 funds available to such political subdivisions.

49 From and after July 1, 1988, the "state" as such term is
50 defined in Section 11-46-1, Mississippi Code of 1972, may elect to
51 become a self-insurer under the provisions elsewhere set out by
52 law, by notifying the commission of its intent to become a
53 self-insurer. The cost of being such a self-insurer, as provided
54 otherwise by law, may be paid from funds available to the offices,
55 departments, agencies, bureaus, commissions, boards, institutions,
56 hospitals, colleges, universities, airport authorities or other
57 instrumentalities of the state.

58 The Mississippi Transportation Commission, the Department of
59 Public Safety and the Mississippi Industries for the Blind may
60 elect to become self-insurers under the provisions elsewhere set
61 out by law by notifying the commission of their intention of
62 becoming such a self-insurer. The cost of being such a

63 self-insurer, as provided elsewhere by law, may be paid from funds
64 available to the Mississippi Transportation Commission, the
65 Department of Public Safety or the Mississippi Industries for the
66 Blind.

67 The Mississippi State Senate and the Mississippi House of
68 Representatives may elect to become self-insurers under provisions
69 elsewhere set out by law by notifying the commission of their
70 intention of becoming such self-insurers. The cost of being such
71 self-insurers, as provided elsewhere by law, may be paid from
72 funds available to the Mississippi State Senate and the
73 Mississippi House of Representatives. The Mississippi State
74 Senate and the Mississippi House of Representatives are authorized
75 and empowered to provide workers' compensation benefits for
76 employees after January 1, 1970.

77 Any municipality of the State of Mississippi having forty
78 thousand (40,000) population or more desiring to do so may elect
79 to become a self-insurer under provisions elsewhere set out by law
80 by notifying the commission of its intention of becoming such an
81 insurer. The cost of being such a self-insurer, as provided
82 elsewhere by law, may be provided from any funds available to such
83 municipality.

84 The commission may, under such rules and regulations as it
85 prescribes, permit two (2) or more "political subdivisions," as
86 such term is defined in Section 11-46-1, Mississippi Code of 1972,
87 to pool their liabilities to participate in a group workers'
88 compensation self-insurance program. The governing authorities of
89 any political subdivision may authorize the organization and
90 operation of, or the participation in such a group self-insurance
91 program with other political subdivisions, provided such program
92 is approved by the commission. The cost of participating in a
93 group self-insurance program may be provided from any funds
94 available to a political subdivision.

95 Domestic servants, farmers and farm labor are not included
96 under the provisions of this chapter, but this exemption does not
97 apply to the processing of agricultural products when carried on
98 commercially. Any purchaser of timber products shall not be
99 liable for workers' compensation for any person who harvests and
100 delivers timber to such purchaser if such purchaser is not liable
101 for unemployment tax on the person harvesting and delivering the
102 timber as provided by United States Code Annotated, Title 26,
103 Section 3306, as amended. Provided, however, nothing in this
104 section shall be construed to exempt an employer who would
105 otherwise be covered under Section 71-3-5 from providing workers'
106 compensation coverage on those employees for whom he is liable for
107 unemployment tax.

108 Employers exempted by this section may assume, with respect
109 to any employee or classification of employees, the liability for
110 compensation imposed upon employers by this chapter with respect
111 to employees within the coverage of this chapter. The purchase
112 and acceptance by such employer of valid workers' compensation
113 insurance applicable to such employee or classification of
114 employees shall constitute, as to such employer, an assumption by
115 him of such liability under this chapter without any further act
116 on his part notwithstanding any other provisions of this chapter,
117 but only with respect to such employee or such classification of
118 employees as are within the coverage of the state fund. Such
119 assumption of liability shall take effect and continue from the
120 effective date of such workers' compensation insurance and as long
121 only as such coverage shall remain in force, in which case the
122 employer shall be subject with respect to such employee or
123 classification of employees to no other liability than the
124 compensation as provided for in this chapter.

125 This chapter shall not apply to transportation and maritime
126 employments for which a rule of liability is provided by the laws
127 of the United States.

128 This chapter shall not be applicable to a mere direct
129 buyer-seller or vendor-vendee relationship where there is no
130 employer-employee relationship as defined by Section 71-3-3, and
131 any insurance carrier is hereby prohibited from charging a premium
132 for any person who is a seller or vendor rather than an employee.

133 This chapter shall not apply to employments wherein the
134 employer-employee relationship is either that of employer-spouse,
135 employer-parent, employer-child, employer-grandparent or
136 employer-grandchild or any combination thereof.

137 Any employer may elect, by proper and written action of its
138 own governing authority, to be exempt from the provisions of the
139 Workers' Compensation Law as to its sole proprietor, its partner
140 in a partnership or to its employee who is the owner of fifteen
141 percent (15%) or more of its stock in a corporation, if such sole
142 proprietor, partner or employee also voluntarily agrees thereto in
143 writing. * * *

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

146 71-3-3. Unless the context otherwise requires, the
147 definitions which follow govern the construction and meaning of
148 the terms used in this chapter:

149 (a) "Person" includes an individual, firm, voluntary
150 association or a corporation.

151 (b) "Injury" means accidental injury or accidental
152 death arising out of and in the course of employment without
153 regard to fault which results from an untoward event or events, if
154 contributed to or aggravated or accelerated by the employment in a
155 significant manner. Untoward event includes events causing
156 unexpected results. An untoward event or events shall not be
157 presumed to have arisen out of and in the course of employment,
158 except in the case of an employee found dead in the course of
159 employment. This definition includes injuries to artificial
160 members, and also includes an injury caused by the willful act of

161 a third person directed against an employee because of his
162 employment while so employed and working on the job, and
163 disability or death due to exposure to ionizing radiation from any
164 process in employment involving the use of or direct contact with
165 radium or radioactive substances with the use of or direct
166 exposure to roentgen (X-rays) or ionizing radiation. In radiation
167 cases only, the date of disablement shall be treated as the date
168 of the accident. Occupational diseases, or the aggravation
169 thereof, are excluded from the term "injury," provided that,
170 except as otherwise specified, all provisions of this chapter
171 apply equally to occupational diseases as well as injury.

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

174 (d) "Employee" means any person, including a minor
175 whether lawfully or unlawfully employed, in the service of an
176 employer under any contract of hire or apprenticeship, written or
177 oral, express or implied, provided that there shall be excluded
178 therefrom all independent contractors and especially any
179 individual performing service in, and at the time of, the sale of
180 newspapers or magazines to ultimate consumers under an arrangement
181 under which the newspapers or magazines are to be sold by the
182 individual at a fixed price, the individual's compensation being
183 based on the retention of the excess of such price over the amount
184 at which the newspapers or magazines are charged to the
185 individual, whether or not the individual is guaranteed a minimum
186 amount of compensation for such service or is entitled to be
187 credited with the unsold newspapers or magazines returned. A
188 student of an educational institution who, as a part of such
189 educational institution's curriculum, is receiving practical
190 training at any facility, who is under the active and direct
191 supervision of the personnel of the facility and/or an instructor
192 of the educational institution, and who is not receiving wages as
193 a consequence of participation in such practical training shall

194 not be considered an employee of such facility on account of
195 participation in such practical training. A spouse, child,
196 grandchild, parent or grandparent of the employer shall not be
197 considered an employee under this definition.

198 (e) "Employer," except when otherwise expressly stated,
199 includes a person, partnership, association, corporation and the
200 legal representatives of a deceased employer, or the receiver or
201 trustee of a person, partnership, association or corporation.

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

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

209 (h) "Commission" means the Workers' Compensation
210 Commission.

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

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

218 (k) "Wages" includes the money rate at which the
219 service rendered is recompensed under the contract of hiring in
220 force at the time of injury, and also the reasonable value of
221 board, rent, housing, lodging or similar advantage received from
222 the employer and gratuities received in the course of employment
223 from others than the employer. The term "wages" shall not include
224 practical training received by students of an educational
225 institution as a part of such educational institution's
226 curriculum.

227 (1) "Child" shall include a posthumous child, a child
228 legally adopted prior to the injury of the employee, a child in
229 relation to whom the deceased employee stood in the place of a
230 parent for at least one (1) year prior to the time of injury and a
231 stepchild or acknowledged illegitimate child dependent upon the
232 deceased, but does not include married children unless wholly
233 dependent on him. "Grandchild" means a child as above defined of
234 a child as above defined. "Brother" and "sister" include
235 stepbrothers and stepsisters, half brothers and half sisters, and
236 brothers and sisters by adoption, but does not include married
237 brothers nor married sisters unless wholly dependent on the
238 employee. "Child," "grandchild," "brother" and "sister" include
239 only persons who are under eighteen (18) years of age, and also
240 persons who, though eighteen (18) years of age or over, are wholly
241 dependent upon the deceased employee and incapable of self-support
242 by reason of mental or physical disability, and also a child
243 eighteen (18) years of age or older, until his twenty-third
244 birthday, who is dependent upon the deceased and is pursuing a
245 full-time education.

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

251 (n) The term "surviving spouse" includes the decedent's
252 legal wife or husband, living with him or her or dependent for
253 support upon him or her at the time of death or living apart for
254 justifiable cause or by reason of desertion at such time,
255 provided, however, such separation had not existed for more than
256 three (3) years without an award for separate maintenance or
257 alimony or the filing of a suit for separate maintenance or
258 alimony in the proper court in this state. The term "surviving
259 spouse" shall likewise include one not a legal wife or husband but

260 who had entered into a ceremonial marriage with the decedent at
261 least one (1) year prior to death and who, on the date of the
262 decedent's death, stood in the relationship of a wife or husband,
263 provided there was no living legal spouse who had protected her or
264 his rights for support by affirmative action as hereinabove
265 required. The term "surviving spouse" as contemplated in this
266 chapter shall not apply to any person who has, since his or her
267 separation from decedent, entered into a ceremonial marriage or
268 lived in open adultery with another.

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

271 (p) The singular includes the plural and the masculine
272 includes the feminine and neuter.

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

277 (r) "Independent contractor" means any individual, firm
278 or corporation who contracts to do a piece of work according to
279 his own methods without being subject to the control of his
280 employer except as to the results of the work, and who has the
281 right to employ and direct the outcome of the workers independent
282 of the employer and free from any superior authority in the
283 employer to say how the specified work shall be done or what the
284 laborers shall do as the work progresses, one who undertakes to
285 produce a given result without being in any way controlled as to
286 the methods by which he attains the result.

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

293 **SECTION 3.** This act shall take effect and be in force from
294 and after July 1, 2006.