

By: Representative Formby

To: Insurance; Judiciary A

HOUSE BILL NO. 1156

1 AN ACT TO AMEND SECTION 71-3-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF INJURY UNDER THE WORKERS' COMPENSATION
3 LAWS; AND FOR RELATED PURPOSES.

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

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

7 71-3-3. Unless the context otherwise requires, the
8 definitions which follow govern the construction and meaning of
9 the terms used in this chapter:

10 (a) "Person" includes an individual, firm, voluntary
11 association or a corporation.

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

28 ionizing radiation. In radiation cases only, the date of
29 disablement shall be treated as the date of the accident.
30 Occupational diseases, or the aggravation thereof, are excluded
31 from the term "injury," provided that, except as otherwise
32 specified, all provisions of this chapter apply equally to
33 occupational diseases as well as injury.

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

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

58 (e) "Employer," except when otherwise expressly stated,
59 includes a person, partnership, association, corporation and the

60 legal representatives of a deceased employer, or the receiver or
61 trustee of a person, partnership, association or corporation.

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

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

69 (h) "Commission" means the Workers' Compensation
70 Commission.

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

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

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

87 (l) "Child" shall include a posthumous child, a child
88 legally adopted prior to the injury of the employee, a child in
89 relation to whom the deceased employee stood in the place of a
90 parent for at least one (1) year prior to the time of injury and a
91 stepchild or acknowledged illegitimate child dependent upon the
92 deceased, but does not include married children unless wholly

93 dependent on him. "Grandchild" means a child as above defined of
94 a child as above defined. "Brother" and "sister" include
95 stepbrothers and stepsisters, half brothers and half sisters, and
96 brothers and sisters by adoption, but does not include married
97 brothers nor married sisters unless wholly dependent on the
98 employee. "Child," "grandchild," "brother" and "sister" include
99 only persons who are under eighteen (18) years of age, and also
100 persons who, though eighteen (18) years of age or over, are wholly
101 dependent upon the deceased employee and incapable of self-support
102 by reason of mental or physical disability, and also a child
103 eighteen (18) years of age or older, until his twenty-third
104 birthday, who is dependent upon the deceased and is pursuing a
105 full-time education.

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

111 (n) The term "surviving spouse" includes the decedent's
112 legal wife or husband, living with him or her or dependent for
113 support upon him or her at the time of death or living apart for
114 justifiable cause or by reason of desertion at such time,
115 provided, however, such separation had not existed for more than
116 three (3) years without an award for separate maintenance or
117 alimony or the filing of a suit for separate maintenance or
118 alimony in the proper court in this state. The term "surviving
119 spouse" shall likewise include one not a legal wife or husband but
120 who had entered into a ceremonial marriage with the decedent at
121 least one (1) year prior to death and who, on the date of the
122 decedent's death, stood in the relationship of a wife or husband,
123 provided there was no living legal spouse who had protected her or
124 his rights for support by affirmative action as hereinabove
125 required. The term "surviving spouse" as contemplated in this

126 chapter shall not apply to any person who has, since his or her
127 separation from decedent, entered into a ceremonial marriage or
128 lived in open adultery with another.

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

131 (p) The singular includes the plural and the masculine
132 includes the feminine and neuter.

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

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

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

153 **SECTION 2.** This act shall take effect and be in force from
154 and after July 1, 2006.