

By: Representative Formby

To: Insurance; Judiciary A

HOUSE BILL NO. 1158

1 AN ACT TO AMEND SECTION 71-3-7, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT PREEXISTING CONDITIONS DO NOT HAVE TO BE
3 OCCUPATIONALLY DISABLING FOR APPORTIONMENT TO APPLY IN A WORKERS'
4 COMPENSATION CLAIM; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 71-3-7, Mississippi Code of 1972, is
7 amended as follows:

8 71-3-7. Compensation shall be payable for disability or
9 death of an employee from injury or occupational disease arising
10 out of and in the course of employment, without regard to fault as
11 to the cause of the injury or occupational disease. An
12 occupational disease shall be deemed to arise out of and in the
13 course of employment when there is evidence that there is a direct
14 causal connection between the work performed and the occupational
15 disease.

16 Where a preexisting physical handicap, disease, or lesion is
17 shown by medical findings to be a material contributing factor in
18 the results following injury, the compensation which, but for this
19 paragraph, would be payable shall be reduced by that proportion
20 which such preexisting physical handicap, disease, or lesion
21 contributed to the production of the results following the injury.
22 The preexisting condition does not have to be occupationally
23 disabling for this apportionment to apply.

24 (a) Apportionment shall not be applied until the
25 claimant has reached maximum medical recovery.

26 (b) The employer or carrier does not have the power to
27 determine the date of maximum medical recovery or percentage of

28 apportionment. This must be done by the attorney-referee, subject
29 to review by the commission as the ultimate finder of fact.

30 (c) After the date the claimant reaches maximum medical
31 recovery, weekly compensation benefits and maximum recovery shall
32 be reduced by that proportion which the preexisting physical
33 handicap, disease, or lesion contributes to the results following
34 injury.

35 (d) If maximum medical recovery has occurred before the
36 hearing and order of the attorney-referee, credit for excess
37 payments shall be allowed in future payments. Such allowances and
38 method of accomplishment of the same shall be determined by the
39 attorney-referee, subject to review by the commission. However,
40 no actual repayment of such excess shall be made to the employer
41 or carrier.

42 No compensation shall be payable if the intoxication of the
43 employee was the proximate cause of the injury, or if it was the
44 willful intention of the employee to injure or kill himself or
45 another.

46 Every employer to whom this chapter applies shall be liable
47 for and shall secure the payment to his employees of the
48 compensation payable under its provisions.

49 In the case of an employer who is a subcontractor, the
50 contractor shall be liable for and shall secure the payment of
51 such compensation to employees of the subcontractor, unless the
52 subcontractor has secured such payment.

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