

By: Representative Formby

To: Insurance; Judiciary A

## HOUSE BILL NO. 1295

1 AN ACT TO AMEND SECTION 71-3-121, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE CRITERIA FOR DRUG AND ALCOHOL TESTING UNDER WORKERS'  
3 COMPENSATION; TO AMEND SECTION 71-7-5, MISSISSIPPI CODE OF 1972,  
4 IN CONFORMITY THERETO; TO AMEND SECTION 71-3-17, MISSISSIPPI CODE  
5 OF 1972, TO INCREASE THE AMOUNT OF COMPENSATION THE WORKERS'  
6 COMPENSATION COMMISSION IS AUTHORIZED TO AWARD FOR SERIOUS FACIAL  
7 OR HEAD DISFIGUREMENTS; TO AMEND SECTION 71-3-19, MISSISSIPPI CODE  
8 OF 1972, TO INCREASE THE AMOUNT OF COMPENSATION THE WORKERS'  
9 COMPENSATION COMMISSION IS AUTHORIZED TO AWARD WHILE AN EMPLOYEE  
10 IS UNDERGOING VOCATIONAL REHABILITATION; TO AMEND SECTION 71-3-25,  
11 MISSISSIPPI CODE OF 1972, TO INCREASE THE AMOUNT OF THE DEATH  
12 BENEFIT COMPENSATION THE WORKERS' COMPENSATION COMMISSION IS  
13 AUTHORIZED TO AWARD FOR DEATH; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 71-3-121, Mississippi Code of 1972, is  
16 amended as follows:

17 71-3-121. If the employer has a reasonable suspicion to  
18 believe that an employee is under the influence of alcohol, a drug  
19 illegally used or prescription drugs improperly used, or in the  
20 event that the claimant asserts a work-related injury, the  
21 employer shall have the right to administer drug and alcohol  
22 testing or demand that the employee submit himself to drug and  
23 alcohol testing. If the employee has a positive initial test and  
24 a positive confirmation test indicating the presence, at the time  
25 of injury, of any drug or ten one-hundredths percent (.10%) or  
26 more by weight volume of alcohol in the person's blood, it shall  
27 be presumed that the proximate cause of the injury was the  
28 intoxication of the employee or the use of a drug. If the  
29 employee refuses to submit himself to drug and alcohol testing  
30 immediately after the alleged work injury, then it is presumed  
31 that the employee was intoxicated at the time of the accident,  
32 unless the commission determines and sets forth a written finding

33 that the refusal is excused for a specific reason or specific  
34 reasons constituting just cause for refusal.

35 The results of a post-accident test shall be considered  
36 admissible evidence \* \* \* on the issue of causation in the  
37 determination of intoxication of an employee at the time of the  
38 injury for workers' compensation purposes under Section 71-3-7.

39 In order to support a finding of intoxication due to drug or  
40 alcohol use, the employer must prove the employee's use of the  
41 controlled substance only by a preponderance of the evidence.

42 No cause of action for defamation of character, libel,  
43 slander or damage to reputation rises in favor of any person  
44 against an employer.

45 Not withstanding any language or statute to the contrary,  
46 once the employer has met the burden of proving intoxication at  
47 the time of the accident, it shall be presumed that the accident  
48 was caused by the intoxication of the employee. The burden of  
49 proof then shall be placed upon the employee to prove that the  
50 intoxication was not a contributing cause of the accident in order  
51 to defeat the intoxication defense of the employer as provided by  
52 Section 71-3-7.

53 **SECTION 2.** Section 71-7-5, Mississippi Code of 1972, is  
54 amended as follows:

55 71-7-5. (1) Except as otherwise provided in Section  
56 71-7-27, all drug and alcohol testing conducted by employers shall  
57 be in conformity with the standards established in this section,  
58 other applicable provisions of this chapter, and all applicable  
59 regulations promulgated pursuant to this chapter.

60 (2) An employer is authorized to conduct the following types  
61 of drug and alcohol tests:

62 (a) Employers may require job applicants to submit to a  
63 drug and alcohol test as a condition of the employment application  
64 and may use a refusal to submit to a test or positive confirmed  
65 test result as a basis for refusal to hire.

66 (b) An employer may require all employees to submit to  
67 reasonable suspicion drug and alcohol testing. There is created a  
68 rebuttable presumption that the employer had reasonable suspicion  
69 to test for drugs if the specimen provided by the employee tested  
70 positive for drugs in a confirmatory drug test.

71 (c) An employer may require all employees to submit to  
72 neutral selection drug and alcohol testing pursuant to Section  
73 71-7-9.

74 (d) Following a claim of work-related injury.

75 **SECTION 3.** Section 71-3-17, Mississippi Code of 1972, is  
76 amended as follows:

77 71-3-17. Compensation for disability shall be paid to the  
78 employee as follows:

79 (a) Permanent total disability: In case of total  
80 disability adjudged to be permanent, sixty-six and two-thirds  
81 percent (66-2/3%) of the average weekly wages of the injured  
82 employee, subject to the maximum limitations as to weekly benefits  
83 as set up in this chapter, shall be paid to the employee not to  
84 exceed four hundred fifty (450) weeks or an amount greater than  
85 the multiple of four hundred fifty (450) weeks times sixty-six and  
86 two-thirds percent (66-2/3%) of the average weekly wage for the  
87 state. Loss of both hands, or both arms, or both feet, or both  
88 legs, or both eyes, or of any two (2) thereof shall constitute  
89 permanent total disability. In all other cases permanent total  
90 disability shall be determined in accordance with the facts.

91 (b) Temporary total disability: In case of disability,  
92 total in character but temporary in quality, sixty-six and  
93 two-thirds percent (66-2/3%) of the average weekly wages of the  
94 injured employee, subject to the maximum limitations as to weekly  
95 benefits as set up in this chapter, shall be paid to the employee  
96 during the continuance of such disability not to exceed four  
97 hundred fifty (450) weeks or an amount greater than the multiple  
98 of four hundred fifty (450) weeks times sixty-six and two-thirds

99 percent (66-2/3%) of the average weekly wage for the state.  
 100 Provided, however, if there arises a conflict in medical opinions  
 101 of whether or not the claimant has reached maximum medical  
 102 recovery and the claimant's benefits have terminated by the  
 103 carrier, then the claimant may demand an immediate hearing before  
 104 the commissioner upon five (5) days' notice to the carrier for a  
 105 determination by the commission of whether or not in fact the  
 106 claimant has reached maximum recovery.

107 (c) Permanent partial disability: In case of  
 108 disability partial in character but permanent in quality, the  
 109 compensation shall be sixty-six and two-thirds percent (66-2/3%)  
 110 of the average weekly wages of the injured employee, subject to  
 111 the maximum limitations as to weekly benefits as set up in this  
 112 chapter, which shall be paid following compensation for temporary  
 113 total disability paid in accordance with subsection (b) of this  
 114 section, and shall be paid to the employee as follows:

115 Member Lost	Number Weeks Compensation
116 (1) Arm	200
117 (2) Leg	175
118 (3) Hand	150
119 (4) Foot	125
120 (5) Eye	100
121 (6) Thumb	60
122 (7) First finger	35
123 (8) Great toe	30
124 (9) Second finger	30
125 (10) Third finger	20
126 (11) Toe other than great toe	10
127 (12) Fourth finger	15
128 (13) Testicle, one	50
129 (14) Testicle, both	150
130 (15) Breast, female, one	50
131 (16) Breast, female, both	150

132           (17) Loss of hearing: Compensation for loss of hearing of  
133 one (1) ear, forty (40) weeks. Compensation for loss of hearing  
134 of both ears, one hundred fifty (150) weeks.

135           (18) Phalanges: Compensation for loss of more than one (1)  
136 phalange of a digit shall be the same as for loss of the entire  
137 digit. Compensation for loss of the first phalange shall be  
138 one-half (1/2) of the compensation for loss of the entire digit.

139           (19) Amputated arm or leg: Compensation for an arm or leg,  
140 if amputated at or above wrist or ankle, shall be for the loss of  
141 the arm or leg.

142           (20) Binocular vision or percent of vision: Compensation  
143 for loss of binocular vision or for eighty percent (80%) or more  
144 of the vision of an eye shall be the same as for loss of the eye.

145           (21) Two (2) or more digits: Compensation for loss of two  
146 (2) or more digits, or one (1) or more phalanges of two (2) or  
147 more digits, of a hand or foot may be proportioned to the loss of  
148 the use of the hand or foot occasioned thereby, but shall not  
149 exceed the compensation for loss of a hand or foot.

150           (22) Total loss of use: Compensation for permanent total  
151 loss of use of a member shall be the same as for loss of the  
152 member.

153           (23) Partial loss or partial loss of use: Compensation for  
154 permanent partial loss or loss of use of a member may be for  
155 proportionate loss or loss of use of the member.

156           (24) Disfigurement: The commission, in its discretion, is  
157 authorized to award proper and equitable compensation for serious  
158 facial or head disfigurements not to exceed Five Thousand Dollars  
159 (\$5,000.00). No such award shall be made until a lapse of one (1)  
160 year from the date of the injury resulting in such disfigurement.

161           (25) Other cases: In all other cases in this class of  
162 disability, the compensation shall be sixty-six and two-thirds  
163 percent (66-2/3%) of the difference between his average weekly  
164 wages, subject to the maximum limitations as to weekly benefits as

165 set up in this chapter, and his wage-earning capacity thereafter  
166 in the same employment or otherwise, payable during the  
167 continuance of such partial disability, but subject to  
168 reconsideration of the degree of such impairment by the commission  
169 on its own motion or upon application of any party in interest.  
170 Such payments shall in no case be made for a longer period than  
171 four hundred fifty (450) weeks.

172 (26) In any case in which there shall be a loss of, or loss  
173 of use of, more than one (1) member or parts of more than one (1)  
174 member set forth in paragraphs (1) to (23) of this subsection, not  
175 amounting to permanent total disability, the award of compensation  
176 shall be for the loss of, or loss of use of, each such member or  
177 parts thereof, which awards shall run consecutively, except that  
178 where the injury affects only two (2) or more digits of the same  
179 hand or foot, paragraph (21) of this subsection shall apply.

180 **SECTION 4.** Section 71-3-19, Mississippi Code of 1972, is  
181 amended as follows:

182 71-3-19. An employee who as a result of injury is or may be  
183 expected to be totally or partially incapacitated for a  
184 remunerative occupation and who, under the direction of the  
185 commission is being rendered fit to engage in a remunerative  
186 occupation may, in the discretion of the commission under  
187 regulations adopted by it, receive additional compensation  
188 necessary for his maintenance, but such additional compensation  
189 shall not exceed Twenty-five Dollars (\$25.00) a week for not more  
190 than fifty-two (52) weeks.

191 **SECTION 5.** Section 71-3-25, Mississippi Code of 1972, is  
192 amended as follows:

193 71-3-25. If the injury causes death, the compensation shall  
194 be known as a death benefit and shall be payable in the amount and  
195 to or for the benefit of the persons following:

196           (a) An immediate lump sum payment of One Thousand  
197 Dollars (\$1,000.00) to the surviving spouse, in addition to other  
198 compensation benefits.

199           (b) Reasonable funeral expenses not exceeding Five  
200 Thousand Dollars (\$5,000.00) exclusive of other burial insurance  
201 or benefits.

202           (c) If there be a surviving spouse and no child of the  
203 deceased, to such surviving spouse thirty-five percent (35%) of  
204 the average wages of the deceased during widowhood or dependent  
205 widowhood and, if there be a surviving child or children of the  
206 deceased, the additional amount of ten percent (10%) of such wages  
207 for each such child. In case of the death or remarriage of such  
208 surviving spouse, any surviving child of the deceased employee  
209 shall have his compensation increased to fifteen percent (15%) of  
210 such wages, provided that the total amount payable shall in no  
211 case exceed sixty-six and two-thirds percent (66-2/3%) of such  
212 wages, subject to the maximum limitations as to weekly benefits as  
213 set up in this chapter. The commission may, in its discretion,  
214 require the appointment of a guardian for the purpose of receiving  
215 the compensation of a minor dependent. In the absence of such a  
216 requirement, the appointment of a guardian for such purposes shall  
217 not be necessary, provided that if no legal guardian be appointed,  
218 payment to the natural guardian shall be sufficient.

219           (d) If there be a surviving child or children of the  
220 deceased but no surviving spouse, then for the support of each  
221 such child twenty-five percent (25%) of the wages of the deceased,  
222 provided that the aggregate shall in no case exceed sixty-six and  
223 two-thirds percent (66-2/3%) of such wages, subject to the maximum  
224 limitations as to weekly benefits as set up in this chapter.

225           (e) If there be no surviving spouse or child, or if the  
226 amount payable to a surviving spouse and to children shall be less  
227 in the aggregate than sixty-six and two-thirds percent (66-2/3%)  
228 of the average wages of the deceased, subject to the maximum

229 limitations as to weekly benefits as set up in this chapter, then  
230 for the support of grandchildren or brothers and sisters, if  
231 dependent upon the deceased at the time of the injury, fifteen  
232 percent (15%) of such wages for the support of each such person;  
233 and for the support of each parent or grandparent of the deceased,  
234 if dependent upon him at the time of injury, fifteen percent (15%)  
235 of such wages during such dependency. But in no case shall the  
236 aggregate amount payable under this subsection exceed the  
237 difference between sixty-six and two-thirds percent (66-2/3%) of  
238 such wages and the amount payable as hereinbefore provided to  
239 surviving spouse and for the support of surviving child or  
240 children, subject to the maximum limitations as to weekly benefits  
241 as set up in this chapter.

242 (f) The total weekly compensation payments to any or  
243 all beneficiaries in death cases shall not exceed the weekly  
244 benefits as set up in this chapter and shall in no case be paid  
245 for a longer period than four hundred fifty (450) weeks or for a  
246 greater amount than the multiple of four hundred fifty (450) weeks  
247 times sixty-six and two-thirds percent (66-2/3%) of the average  
248 weekly wage for the state.

249 (g) All questions of dependency shall be determined as  
250 of the time of the injury. A surviving spouse, child or children  
251 shall be presumed to be wholly dependent. All other dependents  
252 shall be considered on the basis of total or partial dependence as  
253 the facts may warrant.

254 **SECTION 6.** This act shall take effect and be in force from  
255 and after July 1, 2006.