

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2181

1 AN ACT TO AMEND SECTIONS 71-3-3 AND 71-3-5, MISSISSIPPI CODE
2 OF 1972, TO PROVIDE THAT CERTAIN OWNER/OPERATORS OF MOTOR VEHICLES
3 ARE INDEPENDENT CONTRACTORS AND ARE EXEMPT FROM THE PROVISIONS OF
4 THE WORKERS' COMPENSATION LAW; AND FOR RELATED PURPOSES.

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

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

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

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

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

29 cases only, the date of disablement shall be treated as the date
30 of the accident. Occupational diseases, or the aggravation
31 thereof, are excluded from the term "injury," provided that,
32 except as otherwise specified, all provisions of this chapter
33 apply equally to 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. "Employee" shall not
58 include an owner/operator of a motor vehicle who leases his
59 vehicular equipment with a driver to a motor carrier under a
60 written contract. Such owner/operator and his driver are

61 independent contractors exempt from the provisions of this
62 chapter.

63 (e) "Employer," except when otherwise expressly stated,
64 includes a person, partnership, association, corporation and the
65 legal representatives of a deceased employer, or the receiver or
66 trustee of a person, partnership, association or corporation.

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

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

74 (h) "Commission" means the Workers' Compensation
75 Commission.

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

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

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

92 (l) "Child" shall include a posthumous child, a child
93 legally adopted prior to the injury of the employee, a child in

94 relation to whom the deceased employee stood in the place of a
95 parent for at least one (1) year prior to the time of injury and a
96 stepchild or acknowledged illegitimate child dependent upon the
97 deceased, but does not include married children unless wholly
98 dependent on him. "Grandchild" means a child as above defined of
99 a child as above defined. "Brother" and "sister" include
100 stepbrothers and stepsisters, half brothers and half sisters, and
101 brothers and sisters by adoption, but does not include married
102 brothers nor married sisters unless wholly dependent on the
103 employee. "Child," "grandchild," "brother" and "sister" include
104 only persons who are under eighteen (18) years of age, and also
105 persons who, though eighteen (18) years of age or over, are wholly
106 dependent upon the deceased employee and incapable of self-support
107 by reason of mental or physical disability, and also a child
108 eighteen (18) years of age or older, until his twenty-third
109 birthday, who is dependent upon the deceased and is pursuing a
110 full-time education.

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

116 (n) The term "surviving spouse" includes the decedent's
117 legal wife or husband, living with him or her or dependent for
118 support upon him or her at the time of death or living apart for
119 justifiable cause or by reason of desertion at such time,
120 provided, however, such separation had not existed for more than
121 three (3) years without an award for separate maintenance or
122 alimony or the filing of a suit for separate maintenance or
123 alimony in the proper court in this state. The term "surviving
124 spouse" shall likewise include one not a legal wife or husband but
125 who had entered into a ceremonial marriage with the decedent at
126 least one (1) year prior to death and who, on the date of the

127 decedent's death, stood in the relationship of a wife or husband,
128 provided there was no living legal spouse who had protected her or
129 his rights for support by affirmative action as hereinabove
130 required. The term "surviving spouse" as contemplated in this
131 chapter shall not apply to any person who has, since his or her
132 separation from decedent, entered into a ceremonial marriage or
133 lived in open adultery with another.

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

136 (p) The singular includes the plural and the masculine
137 includes the feminine and neuter.

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

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

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

158 **SECTION 2.** Section 71-3-5, Mississippi Code of 1972, is
159 amended as follows:

160 71-3-5. The following shall constitute employers subject to
161 the provisions of this chapter:

162 Every person, firm and private corporation, including any
163 public service corporation but excluding, however, all nonprofit
164 charitable, fraternal, cultural, or religious corporations or
165 associations, that have in service five (5) or more workmen or
166 operatives regularly in the same business or in or about the same
167 establishment under any contract of hire, express or implied.

168 Any state agency, state institution, state department, or
169 subdivision thereof, including counties, municipalities and school
170 districts, or the singular thereof, not heretofore included under
171 the Workers' Compensation Law, may elect, by proper action of its
172 officers or department head, to come within its provisions and, in
173 such case, shall notify the commission of such action by filing
174 notice of compensation insurance with the commission. Payment for
175 compensation insurance policies so taken may be made from any
176 appropriation or funds available to such agency, department or
177 subdivision thereof, or from the general fund of any county or
178 municipality.

179 From and after July 1, 1990, all offices, departments,
180 agencies, bureaus, commissions, boards, institutions, hospitals,
181 colleges, universities, airport authorities or other
182 instrumentalities of the "state" as such term is defined in
183 Section 11-46-1, Mississippi Code of 1972, shall come under the
184 provisions of the Workers' Compensation Law. Payment for
185 compensation insurance policies so taken may be made from any
186 appropriation or funds available to such office, department,
187 agency, bureau, commission, board, institution, hospital, college,
188 university, airport authority or other instrumentality of the
189 state.

190 From and after October 1, 1990, counties and municipalities
191 shall come under the provisions of the Workers' Compensation Law.

192 Payment for compensation insurance policies so taken may be made
193 from any funds available to such counties and municipalities.

194 From and after October 1, 1993, all "political subdivisions,"
195 as such term is defined in Section 11-46-1, Mississippi Code of
196 1972, except counties and municipalities shall come under the
197 provisions of the Workers' Compensation Law. Payment for
198 compensation insurance policies so taken may be made from any
199 funds available to such political subdivisions.

200 From and after July 1, 1988, the "state" as such term is
201 defined in Section 11-46-1, Mississippi Code of 1972, may elect to
202 become a self-insurer under the provisions elsewhere set out by
203 law, by notifying the commission of its intent to become a
204 self-insurer. The cost of being such a self-insurer, as provided
205 otherwise by law, may be paid from funds available to the offices,
206 departments, agencies, bureaus, commissions, boards, institutions,
207 hospitals, colleges, universities, airport authorities or other
208 instrumentalities of the state.

209 The Mississippi Transportation Commission, the Department of
210 Public Safety and the Mississippi Industries for the Blind may
211 elect to become self-insurers under the provisions elsewhere set
212 out by law by notifying the commission of their intention of
213 becoming such a self-insurer. The cost of being such a
214 self-insurer, as provided elsewhere by law, may be paid from funds
215 available to the Mississippi Transportation Commission, the
216 Department of Public Safety or the Mississippi Industries for the
217 Blind.

218 The Mississippi State Senate and the Mississippi House of
219 Representatives may elect to become self-insurers under provisions
220 elsewhere set out by law by notifying the commission of their
221 intention of becoming such self-insurers. The cost of being such
222 self-insurers, as provided elsewhere by law, may be paid from
223 funds available to the Mississippi State Senate and the
224 Mississippi House of Representatives. The Mississippi State

225 Senate and the Mississippi House of Representatives are authorized
226 and empowered to provide workers' compensation benefits for
227 employees after January 1, 1970.

228 Any municipality of the State of Mississippi having forty
229 thousand (40,000) population or more desiring to do so may elect
230 to become a self-insurer under provisions elsewhere set out by law
231 by notifying the commission of its intention of becoming such an
232 insurer. The cost of being such a self-insurer, as provided
233 elsewhere by law, may be provided from any funds available to such
234 municipality.

235 The commission may, under such rules and regulations as it
236 prescribes, permit two (2) or more "political subdivisions," as
237 such term is defined in Section 11-46-1, Mississippi Code of 1972,
238 to pool their liabilities to participate in a group workers'
239 compensation self-insurance program. The governing authorities of
240 any political subdivision may authorize the organization and
241 operation of, or the participation in such a group self-insurance
242 program with other political subdivisions, provided such program
243 is approved by the commission. The cost of participating in a
244 group self-insurance program may be provided from any funds
245 available to a political subdivision.

246 Domestic servants, farmers and farm labor are not included
247 under the provisions of this chapter, but this exemption does not
248 apply to the processing of agricultural products when carried on
249 commercially. Any purchaser of timber products shall not be
250 liable for workers' compensation for any person who harvests and
251 delivers timber to such purchaser if such purchaser is not liable
252 for unemployment tax on the person harvesting and delivering the
253 timber as provided by United States Code Annotated, Title 26,
254 Section 3306, as amended. Provided, however, nothing in this
255 section shall be construed to exempt an employer who would
256 otherwise be covered under Section 71-3-5 from providing workers'

257 compensation coverage on those employees for whom he is liable for
258 unemployment tax.

259 Employers exempted by this section may assume, with respect
260 to any employee or classification of employees, the liability for
261 compensation imposed upon employers by this chapter with respect
262 to employees within the coverage of this chapter. The purchase
263 and acceptance by such employer of valid workers' compensation
264 insurance applicable to such employee or classification of
265 employees shall constitute, as to such employer, an assumption by
266 him of such liability under this chapter without any further act
267 on his part notwithstanding any other provisions of this chapter,
268 but only with respect to such employee or such classification of
269 employees as are within the coverage of the state fund. Such
270 assumption of liability shall take effect and continue from the
271 effective date of such workers' compensation insurance and as long
272 only as such coverage shall remain in force, in which case the
273 employer shall be subject with respect to such employee or
274 classification of employees to no other liability than the
275 compensation as provided for in this chapter.

276 An owner/operator exempted from the provisions of this
277 chapter pursuant to Section 71-3-3(d) may assume, with respect to
278 his employees or drivers, to provide coverage under a workers'
279 compensation insurance policy or an authorized occupational policy
280 that insures the owner/operator or his drivers. However, the
281 failure of the owner/operator to secure such coverage shall not
282 create any liability on the motor carrier under the provisions of
283 this chapter.

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

287 This chapter shall not be applicable to a mere direct
288 buyer-seller or vendor-vendee relationship where there is no
289 employer-employee relationship as defined by Section 71-3-3, and

290 any insurance carrier is hereby prohibited from charging a premium
291 for any person who is a seller or vendor rather than an employee.

292 Any employer may elect, by proper and written action of its
293 own governing authority, to be exempt from the provisions of the
294 Workers' Compensation Law as to its sole proprietor, its partner
295 in a partnership or to its employee who is the owner of fifteen
296 percent (15%) or more of its stock in a corporation, if such sole
297 proprietor, partner or employee also voluntarily agrees thereto in
298 writing. Any sole proprietor, partner or employee owning fifteen
299 percent (15%) or more of the stock of his/her corporate employer
300 who becomes exempt from coverage under the Workers' Compensation
301 Law shall be excluded from the total number of workers or
302 operatives toward reaching the mandatory coverage threshold level
303 of five (5).

304 **SECTION 3.** This act shall take effect and be in force from
305 and after its passage.