

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2181
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 71-3-5, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE AN OWNER/OPERATOR TO PROVIDE THE MOTOR CARRIER PROOF OF
3 INSURANCE COVERAGE UNDER A WORKERS' COMPENSATION POLICY, A
4 SELF-INSURED PLAN OR AN OCCUPATIONAL ACCIDENT POLICY; AND FOR
5 RELATED PURPOSES.

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

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

9 71-3-5. The following shall constitute employers subject to
10 the provisions of this chapter:

11 Every person, firm and private corporation, including any
12 public service corporation but excluding, however, all nonprofit
13 charitable, fraternal, cultural, or religious corporations or
14 associations, that have in service five (5) or more workmen or
15 operatives regularly in the same business or in or about the same
16 establishment 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 An owner/operator, and his drivers, must provide a
126 certificate of insurance of workers' compensation coverage to the
127 motor carrier or proof of coverage under a self-insured plan or an
128 occupational accident policy. Any such occupational accident
129 policy shall provide a minimum of One Million Dollars
130 (\$1,000,000.00) of coverage. Should the owner/operator fail to
131 provide written proof of coverage to the motor carrier, then the
132 owner/operator, and his drivers, shall be covered under the motor
133 carrier's workers' compensation insurance program and the motor
134 carrier is authorized to collect payment of the premium from the
135 owner/operator. In the event that coverage is obtained by the
136 owner/operator under a workers' compensation policy or through a
137 self-insured or occupational accident policy, then the
138 owner/operator, and his drivers, shall not be entitled to benefits
139 under the motor carrier's workers' compensation insurance program
140 unless the owner/operator has elected in writing to be covered
141 under the carrier's workers' compensation program or policy or if
142 the owner/operator is covered by the carrier's plan because he
143 failed to obtain coverage. Coverage under the motor carrier's
144 workers' compensation insurance program does not terminate the
145 independent contractor status of the owner/operator under the
146 written contract or lease agreement. Nothing shall prohibit or
147 prevent an owner/operator from having or securing an occupational
148 accident policy in addition to any workers' compensation coverage
149 authorized by this section. Other than the amendments to this
150 section by Senate Bill No. 2181, 2006 Regular Session, the
151 provisions of this section shall not be construed to have any
152 effect on any other provision of law, judicial decision or any
153 applicable common law.

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

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

162 Any employer may elect, by proper and written action of its
163 own governing authority, to be exempt from the provisions of the
164 Workers' Compensation Law as to its sole proprietor, its partner
165 in a partnership or to its employee who is the owner of fifteen
166 percent (15%) or more of its stock in a corporation, if such sole
167 proprietor, partner or employee also voluntarily agrees thereto in
168 writing. Any sole proprietor, partner or employee owning fifteen
169 percent (15%) or more of the stock of his/her corporate employer
170 who becomes exempt from coverage under the Workers' Compensation
171 Law shall be excluded from the total number of workers or
172 operatives toward reaching the mandatory coverage threshold level
173 of five (5).

174 **SECTION 2.** This act shall take effect and be in force from
175 and after its passage.