

By: Senator(s) Hewes

To: Insurance

SENATE BILL NO. 2647

1 AN ACT TO AMEND SECTION 71-3-9, MISSISSIPPI CODE OF 1972, TO  
2 CLARIFY THE EXCLUSIVENESS OF LIABILITY UNDER THE WORKERS'  
3 COMPENSATION LAWS; TO PROVIDE PENALTIES ON EMPLOYERS AND CARRIERS  
4 WHO INTENTIONALLY WITHHOLD WORKERS' COMPENSATION BENEFITS; AND FOR  
5 RELATED PURPOSES.

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

7 **SECTION 1.** Section 71-3-9, Mississippi Code of 1972, is  
8 amended as follows:

9 71-3-9. The liability of an employer or carrier to pay  
10 compensation shall be exclusive and in place of all other  
11 liability of such employer to the employee, his legal  
12 representative, husband or wife, parents, dependents, next-of-kin,  
13 and anyone otherwise entitled to recover damages at common law or  
14 otherwise from such employer or carrier on account of such injury  
15 or death, except that if an employer or carrier fails to secure  
16 payment of compensation as required by this chapter, an injured  
17 employee, or his legal representative in case death results from  
18 the injury, may elect to claim compensation under this chapter, or  
19 to maintain an action at law for damages on account of such injury  
20 or death. In such action the defendant may not plead as a defense  
21 that the injury was caused by the negligence of a fellow servant,  
22 nor that the employee assumed the risk of his employment, nor that  
23 the injury was due to the contributory negligence of the employee.  
24 For purposes of this section, the term "carrier" includes groups  
25 of employers who have pooled liabilities under Section 71-3-75(3).

26 This exclusive liability of the employer or carrier precludes  
27 any and all other claims of every nature whatsoever in contract  
28 and in tort, intentional and otherwise, including, but not limited

29 to, "bad faith" claims and intentional tort claims. However, if  
30 the three (3) commissioners or a majority of such commissioners  
31 determine that there is clear and convincing evidence of a  
32 continued course of conduct on behalf of the employer or carrier,  
33 or both, to intentionally and maliciously withhold benefits to  
34 which the employee is entitled under this chapter without an  
35 arguable reason for such continuing course of conduct, there shall  
36 be imposed on the employer or carrier, or both of them severally,  
37 a penalty in an amount of up to one-half of one percent (1/2 of  
38 1%) of the net worth of the employer or the carrier; however, no  
39 penalty assessed hereunder shall exceed the sum of Two Hundred  
40 Fifty Thousand Dollars (\$250,000.00), which penalty shall be in  
41 addition to all other penalties that may be imposed under this  
42 chapter. The net worth shall be determined based on the last  
43 available financial audit.

44 In addition to other legal fees provided for under this  
45 chapter, an attorney who obtains a recovery of the penalty under  
46 this section is entitled to a fee of twenty-five percent (25%) of  
47 such penalty determined by the commissioners or a majority of the  
48 commissioners, as the case may be, or a fee of thirty-three and  
49 one-third percent (33-1/3%) of such penalty if the determination  
50 of the commissioners is affirmed in whole or in part on appeal.

51 Two percent (2%) of each penalty determined under this  
52 section shall be paid to the Mississippi Workers' Compensation  
53 Commission for purposes of funding and promoting seminars,  
54 meetings and conferences for education and training related to  
55 this chapter.

56 Damages in all civil litigation cases pending on the  
57 effective date of this act regarding intentional tort claims,  
58 including "bad faith" claims, arising out of underlying claims  
59 under this chapter shall be limited to an amount of up to one-half  
60 of one percent (1/2 of 1%) of the net worth of the employer or the  
61 carrier, or both of them severally, as the case may be; however,

62 such damages shall not exceed the sum of Two Hundred Fifty  
63 Thousand Dollars (\$250,000.00). These damages shall be determined  
64 by the courts in which such cases are proceeding.

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