

By: Senator(s) Ross

To: Insurance

SENATE BILL NO. 2453

1 AN ACT TO DISQUALIFY CERTAIN INCARCERATED WORKERS'
 2 COMPENSATION CLAIMANTS FROM ENTITLEMENT TO BENEFITS; TO AMEND
 3 SECTION 71-3-3, MISSISSIPPI CODE OF 1972, TO DELETE THE FOUND DEAD
 4 PRESUMPTION UNDER THE WORKERS' COMPENSATION LAW; TO AMEND SECTION
 5 71-3-7, MISSISSIPPI CODE OF 1972, TO SPECIFICALLY INCLUDE INJURIES
 6 BY HEART ATTACK OR STROKE WITHIN THE APPORTIONMENT PROVISION; TO
 7 AMEND SECTION 71-3-17, MISSISSIPPI CODE OF 1972, TO PROHIBIT LOSS
 8 OF EARNING CAPACITY BENEFITS IN CASES WHERE AN INJURED WORKER
 9 VOLUNTARILY RETIRES, AND TO LIMIT AWARDS FOR SCHEDULED MEMBER
 10 INJURIES TO THE AMOUNT PROVIDED IN THE SCHEDULE OF BENEFITS; AND
 11 FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) Notwithstanding any other provision of this
 14 chapter to the contrary, an injured worker is not eligible to
 15 receive workers' compensation benefits or medical expenses for
 16 periods of time during which the worker is incarcerated for the
 17 commission of a crime unless the injured worker had been "found"
 18 to have a permanent and total loss of wage-earning capacity which
 19 was attributable to the work-related injury.

20 (2) As used in this section, an individual is not
 21 "incarcerated" if the individual is on parole or work release
 22 status.

23 (3) If upon appeal such conviction is overturned, the
 24 benefits suspended during the period of incarceration shall be
 25 reinstated.

26 **SECTION 2.** Section 71-3-3, Mississippi Code of 1972, is
 27 amended as follows:

28 71-3-3. Unless the context otherwise requires, the
 29 definitions which follow govern the construction and meaning of
 30 the terms used in this chapter:

31 (a) "Person" includes an individual, firm, voluntary
32 association or a corporation.

33 (b) "Injury" means accidental injury or accidental
34 death arising out of and in the course of employment without
35 regard to fault which results from an untoward event or events, if
36 contributed to or aggravated or accelerated by the employment in a
37 significant manner. Untoward event includes events causing
38 unexpected results. An untoward event or events shall not be
39 presumed to have arisen out of and in the course of
40 employment * * *. This definition includes injuries to artificial
41 members, and also includes an injury caused by the willful act of
42 a third person directed against an employee because of his
43 employment while so employed and working on the job, and
44 disability or death due to exposure to ionizing radiation from any
45 process in employment involving the use of or direct contact with
46 radium or radioactive substances with the use of or direct
47 exposure to roentgen (X-rays) or ionizing radiation. In radiation
48 cases only, the date of disablement shall be treated as the date
49 of the accident. Occupational diseases, or the aggravation
50 thereof, are excluded from the term "injury," provided that,
51 except as otherwise specified, all provisions of this chapter
52 apply equally to occupational diseases as well as injury.

53 (c) "Death," when mentioned as a basis for the right to
54 compensation, means only death resulting from such an injury.

55 (d) "Employee" means any person, including a minor
56 whether lawfully or unlawfully employed, in the service of an
57 employer under any contract of hire or apprenticeship, written or
58 oral, express or implied, provided that there shall be excluded
59 therefrom all independent contractors and especially any
60 individual performing service in, and at the time of, the sale of
61 newspapers or magazines to ultimate consumers under an arrangement
62 under which the newspapers or magazines are to be sold by the
63 individual at a fixed price, the individual's compensation being

64 based on the retention of the excess of such price over the amount
65 at which the newspapers or magazines are charged to the
66 individual, whether or not the individual is guaranteed a minimum
67 amount of compensation for such service or is entitled to be
68 credited with the unsold newspapers or magazines returned. A
69 student of an educational institution who, as a part of such
70 educational institution's curriculum, is receiving practical
71 training at any facility, who is under the active and direct
72 supervision of the personnel of the facility and/or an instructor
73 of the educational institution, and who is not receiving wages as
74 a consequence of participation in such practical training shall
75 not be considered an employee of such facility on account of
76 participation in such practical training.

77 (e) "Employer," except when otherwise expressly stated,
78 includes a person, partnership, association, corporation and the
79 legal representatives of a deceased employer, or the receiver or
80 trustee of a person, partnership, association or corporation.

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

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

88 (h) "Commission" means the Workers' Compensation
89 Commission.

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

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

97 (k) "Wages" includes the money rate at which the
98 service rendered is recompensed under the contract of hiring in
99 force at the time of injury, and also the reasonable value of
100 board, rent, housing, lodging or similar advantage received from
101 the employer and gratuities received in the course of employment
102 from others than the employer. The term "wages" shall not include
103 practical training received by students of an educational
104 institution as a part of such educational institution's
105 curriculum.

106 (1) "Child" shall include a posthumous child, a child
107 legally adopted prior to the injury of the employee, a child in
108 relation to whom the deceased employee stood in the place of a
109 parent for at least one (1) year prior to the time of injury and a
110 stepchild or acknowledged illegitimate child dependent upon the
111 deceased, but does not include married children unless wholly
112 dependent on him. "Grandchild" means a child as above defined of
113 a child as above defined. "Brother" and "sister" include
114 stepbrothers and stepsisters, half brothers and half sisters, and
115 brothers and sisters by adoption, but does not include married
116 brothers nor married sisters unless wholly dependent on the
117 employee. "Child," "grandchild," "brother" and "sister" include
118 only persons who are under eighteen (18) years of age, and also
119 persons who, though eighteen (18) years of age or over, are wholly
120 dependent upon the deceased employee and incapable of self-support
121 by reason of mental or physical disability, and also a child
122 eighteen (18) years of age or older, until his twenty-third
123 birthday, who is dependent upon the deceased and is pursuing a
124 full-time education.

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

130 (n) The term "surviving spouse" includes the decedent's
131 legal wife or husband, living with him or her or dependent for
132 support upon him or her at the time of death or living apart for
133 justifiable cause or by reason of desertion at such time,
134 provided, however, such separation had not existed for more than
135 three (3) years without an award for separate maintenance or
136 alimony or the filing of a suit for separate maintenance or
137 alimony in the proper court in this state. The term "surviving
138 spouse" shall likewise include one not a legal wife or husband but
139 who had entered into a ceremonial marriage with the decedent at
140 least one (1) year prior to death and who, on the date of the
141 decedent's death, stood in the relationship of a wife or husband,
142 provided there was no living legal spouse who had protected her or
143 his rights for support by affirmative action as hereinabove
144 required. The term "surviving spouse" as contemplated in this
145 chapter shall not apply to any person who has, since his or her
146 separation from decedent, entered into a ceremonial marriage or
147 lived in open adultery with another.

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

150 (p) The singular includes the plural and the masculine
151 includes the feminine and neuter.

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

156 (r) "Independent contractor" means any individual, firm
157 or corporation who contracts to do a piece of work according to
158 his own methods without being subject to the control of his
159 employer except as to the results of the work, and who has the
160 right to employ and direct the outcome of the workers independent
161 of the employer and free from any superior authority in the
162 employer to say how the specified work shall be done or what the

163 laborers shall do as the work progresses, one who undertakes to
164 produce a given result without being in any way controlled as to
165 the methods by which he attains the result.

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

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

174 71-3-7. Compensation shall be payable for disability or
175 death of an employee from injury or occupational disease arising
176 out of and in the course of employment, without regard to fault as
177 to the cause of the injury or occupational disease. An
178 occupational disease shall be deemed to arise out of and in the
179 course of employment when there is evidence that there is a direct
180 causal connection between the work performed and the occupational
181 disease.

182 Where a preexisting physical handicap, disease, or lesion is
183 shown by medical findings to be a material contributing factor in
184 the results following injury, including, but not limited to,
185 injury by heart attack, stroke or other cardiovascular or cerebral
186 origin, the compensation which, but for this paragraph, would be
187 payable shall be reduced by that proportion which such preexisting
188 physical handicap, disease, or lesion contributed to the
189 production of the results following the injury. Where the injury
190 giving rise to apportionment under this provision is by heart
191 attack, stroke or other cardiovascular or cerebrovascular origin,
192 a showing of preexisting occupational disability shall not be a
193 prerequisite for apportionment.

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

196 (b) The employer or carrier does not have the power to
197 determine the date of maximum medical recovery or percentage of
198 apportionment. This must be done by the attorney-referee, subject
199 to review by the commission as the ultimate finder of fact.

200 (c) After the date the claimant reaches maximum medical
201 recovery, weekly compensation benefits and maximum recovery shall
202 be reduced by that proportion which the preexisting physical
203 handicap, disease, or lesion contributes to the results following
204 injury.

205 (d) If maximum medical recovery has occurred before the
206 hearing and order of the attorney-referee, credit for excess
207 payments shall be allowed in future payments. Such allowances and
208 method of accomplishment of the same shall be determined by the
209 attorney-referee, subject to review by the commission. However,
210 no actual repayment of such excess shall be made to the employer
211 or carrier.

212 No compensation shall be payable if the intoxication of the
213 employee was the proximate cause of the injury, or if it was the
214 willful intention of the employee to injure or kill himself or
215 another.

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

219 In the case of an employer who is a subcontractor, the
220 contractor shall be liable for and shall secure the payment of
221 such compensation to employees of the subcontractor, unless the
222 subcontractor has secured such payment.

223 **SECTION 4.** Section 71-3-17, Mississippi Code of 1972, is
224 amended as follows:

225 71-3-17. Compensation for disability shall be paid to the
226 employee as follows:

227 (a) Permanent total disability: In case of total
228 disability adjudged to be permanent, sixty-six and two-thirds

229 percent (66-2/3%) of the average weekly wages of the injured
230 employee, subject to the maximum limitations as to weekly benefits
231 as set up in this chapter, shall be paid to the employee not to
232 exceed four hundred fifty (450) weeks or an amount greater than
233 the multiple of four hundred fifty (450) weeks times sixty-six and
234 two-thirds percent (66-2/3%) of the average weekly wage for the
235 state. Loss of both hands, or both arms, or both feet, or both
236 legs, or both eyes, or of any two (2) thereof shall constitute
237 permanent total disability. In all other cases permanent total
238 disability shall be determined in accordance with the facts.
239 Injuries which fall within the schedule set forth in subsection
240 (c), other than a loss of both hands, or both arms, or both legs,
241 or both feet, or both eyes, or any two (2) thereof, shall be
242 payable in accordance with the schedule and shall not be
243 considered for permanent total disability benefits under this
244 subsection.

245 (b) Temporary total disability: In case of disability,
246 total in character but temporary in quality, sixty-six and
247 two-thirds percent (66-2/3%) of the average weekly wages of the
248 injured employee, subject to the maximum limitations as to weekly
249 benefits as set up in this chapter, shall be paid to the employee
250 during the continuance of such disability not to exceed four
251 hundred fifty (450) weeks or an amount greater than the multiple
252 of four hundred fifty (450) weeks times sixty-six and two-thirds
253 percent (66-2/3%) of the average weekly wage for the state.
254 Provided, however, if there arises a conflict in medical opinions
255 of whether or not the claimant has reached maximum medical
256 recovery and the claimant's benefits have terminated by the
257 carrier, then the claimant may demand an immediate hearing before
258 the commissioner upon five (5) days' notice to the carrier for a
259 determination by the commission of whether or not in fact the
260 claimant has reached maximum recovery.

261 (c) Permanent partial disability: In case of
 262 disability partial in character but permanent in quality, the
 263 compensation shall be sixty-six and two-thirds percent (66-2/3%)
 264 of the average weekly wages of the injured employee, subject to
 265 the maximum limitations as to weekly benefits as set up in this
 266 chapter, which shall be paid following compensation for temporary
 267 total disability paid in accordance with subsection (b) of this
 268 section, and shall be paid to the employee as follows:

269	Member Lost	Number Weeks Compensation
270	(1) Arm	200
271	(2) Leg	175
272	(3) Hand	150
273	(4) Foot	125
274	(5) Eye	100
275	(6) Thumb	60
276	(7) First finger	35
277	(8) Great toe	30
278	(9) Second finger	30
279	(10) Third finger	20
280	(11) Toe other than great toe	10
281	(12) Fourth finger	15
282	(13) Testicle, one	50
283	(14) Testicle, both	150
284	(15) Breast, female, one	50
285	(16) Breast, female, both	150
286	(17) Loss of hearing: Compensation for loss of	
287	hearing of one (1) ear, forty (40) weeks. Compensation for loss	
288	of hearing of both ears, one hundred fifty (150) weeks.	
289	(18) Phalanges: Compensation for loss of more	
290	than one (1) phalange of a digit shall be the same as for loss of	
291	the entire digit. Compensation for loss of the first phalange	
292	shall be one-half (1/2) of the compensation for loss of the entire	
293	digit.	

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

297 (20) Binocular vision or percent of vision:
298 Compensation for loss of binocular vision or for eighty percent
299 (80%) or more of the vision of an eye shall be the same as for
300 loss of the eye.

301 (21) Two (2) or more digits: Compensation for
302 loss of two (2) or more digits, or one (1) or more phalanges of
303 two (2) or more digits, of a hand or foot may be proportioned to
304 the loss of the use of the hand or foot occasioned thereby, but
305 shall not exceed the compensation for loss of a hand or foot.

306 (22) Total loss of use: Compensation for
307 permanent total loss of use of a member shall be the same as for
308 loss of the member.

309 (23) Partial loss or partial loss of use:
310 Compensation for permanent partial loss or loss of use of a member
311 may be for proportionate loss or loss of use of the member.

312 (24) Disfigurement: The commission, in its
313 discretion, is authorized to award proper and equitable
314 compensation for serious facial or head disfigurements not to
315 exceed Two Thousand Dollars (\$2,000.00). No such award shall be
316 made until a lapse of one (1) year from the date of the injury
317 resulting in such disfigurement.

318 (25) Other cases: In all other cases in this
319 class of disability, the compensation shall be sixty-six and
320 two-thirds percent (66-2/3%) of the difference between his average
321 weekly wages, subject to the maximum limitations as to weekly
322 benefits as set up in this chapter, and his wage-earning capacity
323 thereafter in the same employment or otherwise, payable during the
324 continuance of such partial disability, but subject to
325 reconsideration of the degree of such impairment by the commission
326 on its own motion or upon application of any party in interest.

327 Such payments shall in no case be made for a longer period than
328 four hundred fifty (450) weeks.

329 (26) In any case in which there shall be a loss
330 of, or loss of use of, more than one (1) member or parts of more
331 than one (1) member set forth in paragraphs (1) through (23) of
332 this subsection, not amounting to permanent total disability, the
333 award of compensation shall be for the loss of, or loss of use of,
334 each such member or parts thereof, which awards shall run
335 consecutively, except that where the injury affects only two (2)
336 or more digits of the same hand or foot, paragraph (21) of this
337 subsection shall apply.

338 (27) Except as provided in subsection (a) of this
339 section, the permanent disability benefits due for an injury which
340 falls within paragraphs (1) through (23) of this subsection shall
341 be exclusive and in place of any other permanent disability
342 benefits which might otherwise apply.

343 (d) In any case in which an injured worker has
344 voluntarily elected to retire or otherwise withdraw from the labor
345 market, and the injury for which compensation is claimed is not
346 permanently and totally disabling, such employee shall not be
347 entitled to any further permanent disability benefits as otherwise
348 provided under this section from and after the date of his
349 voluntary retirement or withdrawal from the labor force.

350 **SECTION 5.** This act shall take effect and be in force from
351 and after July 1, 2007.