

By: Representatives Formby, Chism

To: Insurance

HOUSE BILL NO. 555

1 AN ACT TO AMEND SECTION 71-3-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE MISSISSIPPI WORKERS' COMPENSATION LAW SHALL NOT
3 BE PRESUMED TO FAVOR ONE PARTY OVER ANOTHER; TO PROVIDE THE
4 PRIMARY PURPOSES OF THE WORKERS' COMPENSATION LAW; TO AMEND
5 SECTION 71-3-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION
6 OF "INJURY" IN THE WORKERS' COMPENSATION LAW TO DELETE THE
7 PROVISION OF LAW THAT PROVIDES THAT AN EMPLOYEE FOUND DEAD SHALL
8 BE PRESUMED TO HAVE BEEN INJURED OUT OF OR IN THE COURSE OF HIS
9 EMPLOYMENT; TO AMEND SECTION 71-3-7, MISSISSIPPI CODE OF 1972, TO
10 REVISE THE WORKERS' COMPENSATION LAW TO REQUIRE THE CLAIMANT TO
11 PROVIDE MEDICAL PROOF TO HIS EMPLOYER OF THE DIRECT CAUSAL
12 CONNECTION BETWEEN THE WORK PERFORMED AND THE ALLEGED WORK-RELATED
13 INJURY OR OCCUPATIONAL DISEASE; TO REQUIRE THE CLAIMANT TO FILE
14 MEDICAL PROOF OF THE DIRECT CAUSAL CONNECTION BETWEEN THE WORK
15 PERFORMED AND THE ALLEGED WORK-RELATED INJURY OR OCCUPATIONAL
16 DISEASE WHEN FILING A PETITION TO CONTROVERT; TO PROVIDE THAT A
17 PREEXISTING CONDITION DOES NOT HAVE TO BE OCCUPATIONALLY DISABLING
18 FOR APPORTIONMENT TO APPLY; TO AMEND SECTION 71-3-15, MISSISSIPPI
19 CODE OF 1972, TO REVISE THE WORKERS' COMPENSATION LAW TO PROVIDE
20 THAT IF THE EMPLOYEE IS TREATED FOR HIS ALLEGED WORK-RELATED
21 INJURY OR OCCUPATIONAL DISEASE BY A PHYSICIAN FOR SIX MONTHS OR
22 LONGER, OR IF THE EMPLOYEE HAS SURGERY FOR THE ALLEGED
23 WORK-RELATED INJURY OR OCCUPATIONAL DISEASE PERFORMED BY A
24 PHYSICIAN, THEN THAT PHYSICIAN SHALL BE DEEMED THE EMPLOYEE'S
25 SELECTION; TO AMEND SECTION 71-3-17, MISSISSIPPI CODE OF 1972, TO
26 REVISE THE WORKERS' COMPENSATION LAW TO INCREASE THE MAXIMUM
27 AMOUNT THE COMMISSION MAY AWARD THE EMPLOYEE FOR SERIOUS FACIAL OR
28 HEAD DISFIGUREMENT FROM \$2,000.00 TO \$5,000.00; TO AMEND SECTION
29 71-3-19, MISSISSIPPI CODE OF 1972, TO REVISE THE WORKERS'
30 COMPENSATION LAW TO INCREASE THE MAXIMUM AMOUNT THE COMMISSION MAY
31 AWARD IN ADDITIONAL COMPENSATION FROM \$10.00 PER WEEK TO \$25.00
32 PER WEEK, UP TO A MAXIMUM OF 52 WEEKS, FOR AN EMPLOYEE WHO AS A
33 RESULT OF INJURY IS OR MAY BE EXPECTED TO BE TOTALLY OR PARTIALLY
34 INCAPACITATED FOR A REMUNERATIVE OCCUPATION AND WHO, UNDER THE
35 DIRECTION OF THE COMMISSION IS BEING RENDERED FIT TO ENGAGE IN A
36 REMUNERATIVE OCCUPATION; TO AMEND SECTION 71-3-25, MISSISSIPPI
37 CODE OF 1972, TO REVISE THE WORKERS' COMPENSATION LAW TO INCREASE
38 THE DEATH BENEFIT IMMEDIATE LUMP-SUM PAYMENT FROM \$250.00 TO
39 \$1,000.00; TO INCREASE THE MAXIMUM DEATH BENEFIT FOR REASONABLE
40 FUNERAL EXPENSES FROM \$2,000.00 TO \$5,000.00; TO AMEND SECTION
41 71-3-63, MISSISSIPPI CODE OF 1972, TO REVISE THE WORKERS'
42 COMPENSATION LAW TO PROVIDE THAT ATTORNEYS MAY NOT RECOVER
43 ATTORNEY'S FEES BASED UPON BENEFITS VOLUNTARILY PAID TO AN INJURED
44 EMPLOYEE FOR TEMPORARY OR PERMANENT DISABILITY; TO AMEND SECTION
45 71-3-121, MISSISSIPPI CODE OF 1972, TO REVISE THE WORKERS'
46 COMPENSATION LAW PROVISIONS OF LAW REGARDING THE RIGHT OF AN



47 EMPLOYER TO ADMINISTER OR DEMAND THE EMPLOYEE SUBMIT TO A DRUG AND
48 ALCOHOL TEST; TO REVISE THE PROVISIONS OF LAW REGARDING THE
49 ADMISSIBILITY OF DRUG AND ALCOHOL TESTS AS EVIDENCE; TO REVISE THE
50 PROVISIONS OF LAW REGARDING THE BURDEN OF PROOF THAT THE EMPLOYEE
51 WAS USING DRUGS ILLEGALLY, USING PRESCRIPTION DRUGS IMPROPERLY OR
52 INTOXICATED DUE TO THE USE OF ALCOHOL; TO REVISE THE PROVISIONS OF
53 LAW REGARDING THE BURDEN OF PROOF THAT THE EMPLOYEE'S USE OF DRUGS
54 ILLEGALLY, USE OF PRESCRIPTION DRUGS IMPROPERLY OR INTOXICATION
55 DUE TO THE USE OF ALCOHOL WAS A CONTRIBUTING CAUSE OF THE
56 ACCIDENT; TO AMEND SECTION 71-7-5, MISSISSIPPI CODE OF 1972, TO
57 CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

61 71-3-1. (1) This chapter shall be known and cited as
62 "Workers' Compensation Law," and shall be administered by the
63 Workers' Compensation Commission, hereinafter referred to as the
64 "commission," cooperating with other state and federal authorities
65 for the prevention of injuries and occupational diseases to
66 workers and, in event of injury or occupational disease, their
67 rehabilitation or restoration to health and vocational
68 opportunity; and this chapter shall be fairly and impartially
69 construed and applied according to the law and the evidence in the
70 record, and, notwithstanding any common law or case law to the
71 contrary, this chapter shall not be presumed to favor one (1)
72 party over another and shall not be liberally construed in order
73 to fulfill any beneficent purposes.

74 (2) Wherever used in this chapter, or in any other statute
75 or rule or regulation affecting the former Workmen's Compensation
76 Law and any of its functions or duties:

77 (a) The words "workmen's compensation" shall mean
78 "workers' compensation"; and

79 (b) The word "commission" shall mean the Workers'
80 Compensation Commission.

81 (3) The primary purposes of the Workers' Compensation Law
82 are to pay timely temporary and permanent disability benefits to
83 every worker who legitimately suffers a work-related injury or
84 occupational disease arising out of and in the course of his



85 employment, to pay reasonable and necessary medical expenses
86 resulting from the work-related injury or occupational disease,
87 and to encourage the return to work of the worker.

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

90 71-3-3. Unless the context otherwise requires, the
91 definitions which follow govern the construction and meaning of
92 the terms used in this chapter:

93 (a) "Person" includes an individual, firm, voluntary
94 association or a corporation.

95 (b) "Injury" means accidental injury or accidental
96 death arising out of and in the course of employment without
97 regard to fault which results from an untoward event or events, if
98 contributed to or aggravated or accelerated by the employment in a
99 significant manner. Untoward event includes events causing
100 unexpected results. An untoward event or events shall not be
101 presumed to have arisen out of and in the course of
102 employment * * *. This definition includes injuries to artificial
103 members, and also includes an injury caused by the willful act of
104 a third person directed against an employee because of his
105 employment while so employed and working on the job, and
106 disability or death due to exposure to ionizing radiation from any
107 process in employment involving the use of or direct contact with
108 radium or radioactive substances with the use of or direct
109 exposure to roentgen (X-rays) or ionizing radiation. In radiation
110 cases only, the date of disablement shall be treated as the date
111 of the accident. Occupational diseases, or the aggravation
112 thereof, are excluded from the term "injury," provided that,
113 except as otherwise specified, all provisions of this chapter
114 apply equally to occupational diseases as well as injury.

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



117 (d) "Employee" means any person, including a minor
118 whether lawfully or unlawfully employed, in the service of an
119 employer under any contract of hire or apprenticeship, written or
120 oral, express or implied, provided that there shall be excluded
121 therefrom all independent contractors and especially any
122 individual performing service in, and at the time of, the sale of
123 newspapers or magazines to ultimate consumers under an arrangement
124 under which the newspapers or magazines are to be sold by the
125 individual at a fixed price, the individual's compensation being
126 based on the retention of the excess of such price over the amount
127 at which the newspapers or magazines are charged to the
128 individual, whether or not the individual is guaranteed a minimum
129 amount of compensation for such service or is entitled to be
130 credited with the unsold newspapers or magazines returned. A
131 student of an educational institution who, as a part of such
132 educational institution's curriculum, is receiving practical
133 training at any facility, who is under the active and direct
134 supervision of the personnel of the facility and/or an instructor
135 of the educational institution, and who is not receiving wages as
136 a consequence of participation in such practical training shall
137 not be considered an employee of such facility on account of
138 participation in such practical training.

139 (e) "Employer," except when otherwise expressly stated,
140 includes a person, partnership, association, corporation and the
141 legal representatives of a deceased employer, or the receiver or
142 trustee of a person, partnership, association or corporation.

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

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



150 (h) "Commission" means the Workers' Compensation
151 Commission.

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

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

159 (k) "Wages" includes the money rate at which the
160 service rendered is recompensed under the contract of hiring in
161 force at the time of injury, and also the reasonable value of
162 board, rent, housing, lodging or similar advantage received from
163 the employer and gratuities received in the course of employment
164 from others than the employer. The term "wages" shall not include
165 practical training received by students of an educational
166 institution as a part of such educational institution's
167 curriculum.

168 (l) "Child" shall include a posthumous child, a child
169 legally adopted prior to the injury of the employee, a child in
170 relation to whom the deceased employee stood in the place of a
171 parent for at least one (1) year prior to the time of injury and a
172 stepchild or acknowledged illegitimate child dependent upon the
173 deceased, but does not include married children unless wholly
174 dependent on him. "Grandchild" means a child as above defined of
175 a child as above defined. "Brother" and "sister" include
176 stepbrothers and stepsisters, half brothers and half sisters, and
177 brothers and sisters by adoption, but does not include married
178 brothers nor married sisters unless wholly dependent on the
179 employee. "Child," "grandchild," "brother" and "sister" include
180 only persons who are under eighteen (18) years of age, and also
181 persons who, though eighteen (18) years of age or over, are wholly
182 dependent upon the deceased employee and incapable of self-support



183 by reason of mental or physical disability, and also a child
184 eighteen (18) years of age or older, until his twenty-third
185 birthday, who is dependent upon the deceased and is pursuing a
186 full-time education.

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

192 (n) The term "surviving spouse" includes the decedent's
193 legal wife or husband, living with him or her or dependent for
194 support upon him or her at the time of death or living apart for
195 justifiable cause or by reason of desertion at such time,
196 provided, however, such separation had not existed for more than
197 three (3) years without an award for separate maintenance or
198 alimony or the filing of a suit for separate maintenance or
199 alimony in the proper court in this state. The term "surviving
200 spouse" shall likewise include one not a legal wife or husband but
201 who had entered into a ceremonial marriage with the decedent at
202 least one (1) year prior to death and who, on the date of the
203 decedent's death, stood in the relationship of a wife or husband,
204 provided there was no living legal spouse who had protected her or
205 his rights for support by affirmative action as hereinabove
206 required. The term "surviving spouse" as contemplated in this
207 chapter shall not apply to any person who has, since his or her
208 separation from decedent, entered into a ceremonial marriage or
209 lived in open adultery with another.

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

212 (p) The singular includes the plural and the masculine
213 includes the feminine and neuter.

214 (q) It is expressly provided, agreed and understood in
215 determining beneficiaries under this section that a surviving



216 spouse suffering a mental or physical handicap and children under
217 the age of eighteen (18) years are presumed to be dependent.

218 (r) "Independent contractor" means any individual, firm
219 or corporation who contracts to do a piece of work according to
220 his own methods without being subject to the control of his
221 employer except as to the results of the work, and who has the
222 right to employ and direct the outcome of the workers independent
223 of the employer and free from any superior authority in the
224 employer to say how the specified work shall be done or what the
225 laborers shall do as the work progresses, one who undertakes to
226 produce a given result without being in any way controlled as to
227 the methods by which he attains the result.

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

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

236 71-3-7. (1) Compensation shall be payable for disability or
237 death of an employee from injury or occupational disease arising
238 out of and in the course of employment, without regard to fault as
239 to the cause of the injury or occupational disease. An
240 occupational disease shall be deemed to arise out of and in the
241 course of employment when there is evidence that there is a direct
242 causal connection between the work performed and the occupational
243 disease. The claimant shall provide medical proof to his employer
244 of the direct causal connection between the work performed
245 according to his employment and the alleged work-related injury or
246 occupational disease. The claimant shall file medical proof of
247 the direct causal connection between the work performed according



248 to his employment and the alleged work-related injury or
249 occupational disease when filing a petition to controvert.

250 (2) Where a preexisting physical handicap, disease, or
251 lesion is shown by medical findings to be a material contributing
252 factor in the results following injury, the compensation which,
253 but for this subsection, would be payable shall be reduced by that
254 proportion which such preexisting physical handicap, disease, or
255 lesion contributed to the production of the results following the
256 injury. The preexisting condition does not have to be
257 occupationally disabling for this apportionment to apply.

258 (3) The following provisions shall apply to subsections (1)
259 and (2) of this section:

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

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

266 (c) After the date the claimant reaches maximum medical
267 recovery, weekly compensation benefits and maximum recovery shall
268 be reduced by that proportion which the preexisting physical
269 handicap, disease, or lesion contributes to the results following
270 injury.

271 (d) If maximum medical recovery has occurred before the
272 hearing and order of the attorney-referee, credit for excess
273 payments shall be allowed in future payments. Such allowances and
274 method of accomplishment of the same shall be determined by the
275 attorney-referee, subject to review by the commission. However,
276 no actual repayment of such excess shall be made to the employer
277 or carrier.

278 (4) No compensation shall be payable if the use of drugs
279 illegally, the use of prescription drugs improperly or
280 intoxication due to the use of alcohol of the employee was the



281 proximate cause of the injury, or if it was the willful intention
282 of the employee to injure or kill himself or another.

283 (5) Every employer to whom this chapter applies shall be
284 liable for and shall secure the payment to his employees of the
285 compensation payable under its provisions.

286 (6) In the case of an employer who is a subcontractor, the
287 contractor shall be liable for and shall secure the payment of
288 such compensation to employees of the subcontractor, unless the
289 subcontractor has secured such payment.

290 **SECTION 4.** Section 71-3-15, Mississippi Code of 1972, is
291 amended as follows:

292 71-3-15. (1) The employer shall furnish such medical,
293 surgical, and other attendance or treatment, nurse and hospital
294 service, medicine, crutches, artificial members, and other
295 apparatus for such period as the nature of the injury or the
296 process of recovery may require. The injured employee shall have
297 the right to accept the services furnished by the employer or, in
298 his discretion, to select one (1) competent physician of his
299 choosing and such other specialists to whom he is referred by his
300 chosen physician to administer medical treatment. Referrals by the
301 chosen physician shall be limited to one (1) physician within a
302 specialty or subspecialty area. Except in an emergency requiring
303 immediate medical attention, any additional selection of
304 physicians by the injured employee or further referrals must be
305 approved by the employer, if self-insured, or the carrier prior to
306 obtaining the services of the physician at the expense of the
307 employer or carrier. If denied, the injured employee may apply to
308 the commission for approval of the additional selection or
309 referral, and if the commission determines that such request is
310 reasonable, the employee may be authorized to obtain such
311 treatment at the expense of the employer or carrier. Approval by
312 the employer or carrier does not require approval by the
313 commission. A physician to whom the employee is referred by his



314 employer shall not constitute the employee's selection, unless the
315 employee, in writing, accepts the employer's referral as his own
316 selection. However, if the employee is treated for his alleged
317 work-related injury or occupational disease by a physician for six
318 (6) months or longer, or if the employee has surgery for the
319 alleged work-related injury or occupational disease performed by a
320 physician, then that physician shall be deemed the employee's
321 selection. Should the employer desire, he may have the employee
322 examined by a physician other than of the employee's choosing for
323 the purpose of evaluating temporary or permanent disability or
324 medical treatment being rendered under such reasonable terms and
325 conditions as may be prescribed by the commission. If at any time
326 during such period the employee unreasonably refuses to submit to
327 medical or surgical treatment, the commission shall, by order,
328 suspend the payment of further compensation during such time as
329 such refusal continues, and no compensation shall be paid at any
330 time during the period of such suspension; provided, that no claim
331 for medical or surgical treatment shall be valid and enforceable,
332 as against such employer, unless within twenty (20) days following
333 the first treatment the physician or provider giving such
334 treatment shall furnish to the employer, if self-insured, or its
335 carrier, a preliminary report of such injury and treatment, on a
336 form or in a format approved by the commission. Subsequent
337 reports of such injury and treatment must be submitted at least
338 every thirty (30) days thereafter until such time as a final
339 report shall have been made. Reports which are required to be
340 filed hereunder shall be furnished by the medical provider to the
341 employer or carrier, and it shall be the responsibility of the
342 employer or carrier receiving such reports to promptly furnish
343 copies to the commission. The commission may, in its discretion,
344 excuse the failure to furnish such reports within the time
345 prescribed herein if it finds good cause to do so, and may, upon
346 request of any party in interest, order or direct the employer or



347 carrier to pay the reasonable value of medical services rendered
348 to the employee.

349 (2) Whenever in the opinion of the commission a physician
350 has not correctly estimated the degree of permanent disability or
351 the extent of the temporary disability of an injured employee, the
352 commission shall have the power to cause such employee to be
353 examined by a physician selected by the commission, and to obtain
354 from such physician a report containing his estimate of such
355 disabilities. The commission shall have the power in its
356 discretion to charge the cost of such examination to the employer,
357 if he is a self-insurer, or to the insurance company which is
358 carrying the risk.

359 (3) In carrying out this section, the commission shall
360 establish an appropriate medical provider fee schedule, medical
361 cost containment system and utilization review which incorporates
362 one or more medical review panels to determine the reasonableness
363 of charges and the necessity for the services, and limitations on
364 fees to be charged by medical providers for testimony and copying
365 or completion of records and reports and other provisions which,
366 at the discretion of the commission, are necessary to encompass a
367 complete medical cost containment program. The commission may
368 contract with a private organization or organizations to establish
369 and implement such a medical cost containment system and fee
370 schedule with the cost for administering such a system to be paid
371 out of the administrative expense fund as provided in this
372 chapter. All fees and other charges for such treatment or service
373 shall be limited to such charges as prevail in the same community
374 for similar treatment and shall be subject to regulation by the
375 commission. No medical bill shall be paid to any doctor until all
376 forms and reports required by the commission have been filed. Any
377 employee receiving treatment or service under the provisions of
378 this chapter may not be held responsible for any charge for such
379 treatment or service, and no doctor, hospital or other recognized



380 medical provider shall attempt to bill, charge or otherwise
381 collect from the employee any amount greater than or in excess of
382 the amount paid by the employer, if self-insured, or its workers'
383 compensation carrier. Any dispute over the amount charged for
384 service rendered under the provisions of this chapter, or over the
385 amount of reimbursement for services rendered under the provisions
386 of this chapter, shall be limited to and resolved between the
387 provider and the employer or carrier in accordance with the fee
388 dispute resolution procedures adopted by the commission.

389 (4) The liability of an employer for medical treatment as
390 herein provided shall not be affected by the fact that his
391 employee was injured through the fault or negligence of a third
392 party, not in the same employ, provided the injured employee was
393 engaged in the scope of his employment when injured. The employer
394 shall, however, have a cause of action against such third party to
395 recover any amounts paid by him for such medical treatment.

396 (5) An injured worker who believes that his best interest
397 has been prejudiced by the findings of the physician designated by
398 the employer or carrier shall have the privilege of a medical
399 examination by a physician of his own choosing, at the expense of
400 the carrier or employer. Such examination may be had at any time
401 after injury and prior to the closing of the case, provided that
402 the charge shall not exceed One Hundred Dollars (\$100.00) and
403 shall be paid by the carrier or employer where the previous
404 medical findings are upset, but paid by the employee if previous
405 medical findings are confirmed.

406 (6) Medical and surgical treatment as provided in this
407 section shall not be deemed to be privileged insofar as carrying
408 out the provisions of this chapter is concerned. All findings
409 pertaining to a second opinion medical examination, at the
410 instance of the employer shall be reported as herein required
411 within fourteen (14) days of the examination, except that copies
412 thereof shall also be furnished by the employer or carrier to the



413 employee. All findings pertaining to an independent medical
414 examination by order of the commission shall be reported as
415 provided in the order for such examination.

416 (7) Any medical benefits paid by reason of any accident or
417 health insurance policy or plan paid for by the employer, which
418 were for expenses of medical treatment under this section, are,
419 upon notice to the carrier prior to payment by it, subject to
420 subrogation in favor of the accident or health insurance company
421 to the extent of its payment for medical treatment under this
422 section. Reimbursement to the accident or health insurance
423 company by the carrier or employer, to the extent of such
424 reimbursement, shall constitute payment by the employer or carrier
425 of medical expenses under this section. Under no circumstances,
426 shall any subrogation be had by any insurance company against any
427 compensation benefits paid under this chapter.

428 **SECTION 5.** Section 71-3-17, Mississippi Code of 1972, is
429 amended as follows:

430 71-3-17. Compensation for disability shall be paid to the
431 employee as follows:

432 (a) Permanent total disability: In case of total
433 disability adjudged to be permanent, sixty-six and two-thirds
434 percent (66-2/3%) of the average weekly wages of the injured
435 employee, subject to the maximum limitations as to weekly benefits
436 as set up in this chapter, shall be paid to the employee not to
437 exceed four hundred fifty (450) weeks or an amount greater than
438 the multiple of four hundred fifty (450) weeks times sixty-six and
439 two-thirds percent (66-2/3%) of the average weekly wage for the
440 state. Loss of both hands, or both arms, or both feet, or both
441 legs, or both eyes, or of any two (2) thereof shall constitute
442 permanent total disability. In all other cases, permanent total
443 disability shall be determined in accordance with the facts.

444 (b) Temporary total disability: In case of disability,
445 total in character but temporary in quality, sixty-six and



446 two-thirds percent (66-2/3%) of the average weekly wages of the
 447 injured employee, subject to the maximum limitations as to weekly
 448 benefits as set up in this chapter, shall be paid to the employee
 449 during the continuance of such disability not to exceed four
 450 hundred fifty (450) weeks or an amount greater than the multiple
 451 of four hundred fifty (450) weeks times sixty-six and two-thirds
 452 percent (66-2/3%) of the average weekly wage for the state.
 453 Provided, however, if there arises a conflict in medical opinions
 454 of whether or not the claimant has reached maximum medical
 455 recovery and the claimant's benefits have terminated by the
 456 carrier, then the claimant may demand an immediate hearing before
 457 the commissioner upon five (5) days' notice to the carrier for a
 458 determination by the commission of whether or not in fact the
 459 claimant has reached maximum recovery.

460 (c) Permanent partial disability: In case of
 461 disability partial in character but permanent in quality, the
 462 compensation shall be sixty-six and two-thirds percent (66-2/3%)
 463 of the average weekly wages of the injured employee, subject to
 464 the maximum limitations as to weekly benefits as set up in this
 465 chapter, which shall be paid following compensation for temporary
 466 total disability paid in accordance with paragraph (b) of this
 467 section, and shall be paid to the employee as follows:

468	Member Lost	Number Weeks Compensation
469	(1) Arm	200
470	(2) Leg	175
471	(3) Hand	150
472	(4) Foot	125
473	(5) Eye	100
474	(6) Thumb	60
475	(7) First finger	35
476	(8) Great toe	30
477	(9) Second finger	30
478	(10) Third finger	20



479 (11) Toe other than great toe 10

480 (12) Fourth finger 15

481 (13) Testicle, one 50

482 (14) Testicle, both 150

483 (15) Breast, female, one 50

484 (16) Breast, female, both 150

485 (17) Loss of hearing: Compensation for loss of

486 hearing of one (1) ear, forty (40) weeks. Compensation for loss

487 of hearing of both ears, one hundred fifty (150) weeks.

488 (18) Phalanges: Compensation for loss of more

489 than one (1) phalange of a digit shall be the same as for loss of

490 the entire digit. Compensation for loss of the first phalange

491 shall be one-half (1/2) of the compensation for loss of the entire

492 digit.

493 (19) Amputated arm or leg: Compensation for an

494 arm or leg, if amputated at or above wrist or ankle, shall be for

495 the loss of the arm or leg.

496 (20) Binocular vision or percent of vision:

497 Compensation for loss of binocular vision or for eighty percent

498 (80%) or more of the vision of an eye shall be the same as for

499 loss of the eye.

500 (21) Two (2) or more digits: Compensation for

501 loss of two (2) or more digits, or one (1) or more phalanges of

502 two (2) or more digits, of a hand or foot may be proportioned to

503 the loss of the use of the hand or foot occasioned thereby, but

504 shall not exceed the compensation for loss of a hand or foot.

505 (22) Total loss of use: Compensation for

506 permanent total loss of use of a member shall be the same as for

507 loss of the member.

508 (23) Partial loss or partial loss of use:

509 Compensation for permanent partial loss or loss of use of a member

510 may be for proportionate loss or loss of use of the member.



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

517 (25) Other cases: In all other cases in this
518 class of disability, the compensation shall be sixty-six and
519 two-thirds percent (66-2/3%) of the difference between his average
520 weekly wages, subject to the maximum limitations as to weekly
521 benefits as set up in this chapter, and his wage-earning capacity
522 thereafter in the same employment or otherwise, payable during the
523 continuance of such partial disability, but subject to
524 reconsideration of the degree of such impairment by the commission
525 on its own motion or upon application of any party in interest.
526 Such payments shall in no case be made for a longer period than
527 four hundred fifty (450) weeks.

528 (26) In any case in which there shall be a loss
529 of, or loss of use of, more than one (1) member or parts of more
530 than one (1) member set forth in subparagraphs (1) through (23) of
531 this paragraph (c), not amounting to permanent total disability,
532 the award of compensation shall be for the loss of, or loss of use
533 of, each such member or parts thereof, which awards shall run
534 consecutively, except that where the injury affects only two (2)
535 or more digits of the same hand or foot, subparagraph (21) of this
536 paragraph (c) shall apply.

537 **SECTION 6.** Section 71-3-19, Mississippi Code of 1972, is
538 amended as follows:

539 71-3-19. An employee who as a result of injury is or may be
540 expected to be totally or partially incapacitated for a
541 remunerative occupation and who, under the direction of the
542 commission is being rendered fit to engage in a remunerative
543 occupation may, in the discretion of the commission under



544 regulations adopted by it, receive additional compensation
545 necessary for his maintenance, but such additional compensation
546 shall not exceed Twenty-five Dollars (\$25.00) a week for not more
547 than fifty-two (52) weeks.

548 **SECTION 7.** Section 71-3-25, Mississippi Code of 1972, is
549 amended as follows:

550 71-3-25. If the injury causes death, the compensation shall
551 be known as a death benefit and shall be payable in the amount and
552 to or for the benefit of the persons following:

553 (a) An immediate lump-sum payment of One Thousand
554 Dollars (\$1,000.00) to the surviving spouse, in addition to other
555 compensation benefits.

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

559 (c) If there be a surviving spouse and no child of the
560 deceased, to such surviving spouse thirty-five percent (35%) of
561 the average wages of the deceased during widowhood or dependent
562 widowhood and, if there be a surviving child or children of the
563 deceased, the additional amount of ten percent (10%) of such wages
564 for each such child. In case of the death or remarriage of such
565 surviving spouse, any surviving child of the deceased employee
566 shall have his compensation increased to fifteen percent (15%) of
567 such wages, provided that the total amount payable shall in no
568 case exceed sixty-six and two-thirds percent (66-2/3%) of such
569 wages, subject to the maximum limitations as to weekly benefits as
570 set up in this chapter. The commission may, in its discretion,
571 require the appointment of a guardian for the purpose of receiving
572 the compensation of a minor dependent. In the absence of such a
573 requirement, the appointment of a guardian for such purposes shall
574 not be necessary, provided that if no legal guardian be appointed,
575 payment to the natural guardian shall be sufficient.



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

582 (e) If there be no surviving spouse or child, or if the
583 amount payable to a surviving spouse and to children shall be less
584 in the aggregate than sixty-six and two-thirds percent (66-2/3%)
585 of the average wages of the deceased, subject to the maximum
586 limitations as to weekly benefits as set up in this chapter, then
587 for the support of grandchildren or brothers and sisters, if
588 dependent upon the deceased at the time of the injury, fifteen
589 percent (15%) of such wages for the support of each such person;
590 and for the support of each parent or grandparent of the deceased,
591 if dependent upon him at the time of injury, fifteen percent (15%)
592 of such wages during such dependency. But in no case shall the
593 aggregate amount payable under this subsection exceed the
594 difference between sixty-six and two-thirds percent (66-2/3%) of
595 such wages and the amount payable as hereinbefore provided to
596 surviving spouse and for the support of surviving child or
597 children, subject to the maximum limitations as to weekly benefits
598 as set up in this chapter.

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

606 (g) All questions of dependency shall be determined as
607 of the time of the injury. A surviving spouse, child or children
608 shall be presumed to be wholly dependent. All other dependents



609 shall be considered on the basis of total or partial dependence as
610 the facts may warrant.

611 **SECTION 8.** Section 71-3-63, Mississippi Code of 1972, is
612 amended as follows:

613 71-3-63. (1) No claim for legal services or for any other
614 services rendered in respect of a claim or award for compensation,
615 to or on account of any person, shall be valid unless approved by
616 the commission or, if proceedings for review of the order of the
617 commission in respect of such claim or award are had before any
618 court, unless approved by such court. Any claim so approved
619 shall, in the manner and to the extent fixed by the commission or
620 such court, be a lien upon such compensation.

621 (2) Any person (a) who receives any fee, other
622 consideration, or any gratuity on account of services so rendered,
623 unless such consideration or gratuity is approved by the
624 commission or such court, or (b) who makes it a business to
625 solicit employment for a lawyer or for himself in respect of any
626 claim or award for compensation, shall be guilty of a misdemeanor
627 and, upon conviction thereof, shall for each offense be punished
628 by a fine of not more than One Thousand Dollars (\$1,000.00) or by
629 imprisonment not to exceed one (1) year, or by both such fine and
630 imprisonment.

631 (3) Representation of one other than himself or herself
632 before the commission shall be considered the practice of law, and
633 all statutes applying to and regulating the practice in all other
634 courts of law in this state shall likewise apply to practice
635 before the commission, insofar as the qualifications of those
636 practicing before the commission are concerned. This paragraph
637 shall not be construed as tightening the rules of evidence which
638 are otherwise relaxed in other sections of this chapter.

639 In no instance shall the amount recovered by an attorney for
640 an appearance before the commission exceed twenty-five percent
641 (25%) of the total award of compensation. Such limitations,



642 however, shall not be construed as applying to a fee awarded for
643 additional services by any superior court. Legal services
644 rendered where no motion to controvert has been filed by either
645 employer or employee shall be considered as consultation, and that
646 factor shall be taken into consideration in awarding a fee.
647 Attorneys may not recover attorney's fees based upon benefits
648 voluntarily paid to an injured employee for temporary or permanent
649 disability. In all instances, fees shall be awarded on the basis
650 of fairness to both attorney and client. Although exceptions may
651 be made in the interest of justice, it shall be deemed conducive
652 to the best interest of all concerned for the commission to
653 approve contracts for attorney's fees voluntarily entered into
654 between attorney and client, within the limitations hereinabove
655 set out.

656 When an award of compensation becomes final and an attorney's
657 fee is outstanding, a partial lump sum settlement sufficient to
658 cover the attorney's fee approved therein by the commission shall
659 be made immediately, from payments last to become due, and the
660 deductions allowed by the law shall be borne equally by the
661 attorney and the client.

662 **SECTION 9.** Section 71-3-121, Mississippi Code of 1972, is
663 amended as follows:

664 71-3-121. * * *

665 If the employer has a reasonable suspicion to believe that an
666 employee is under the influence of alcohol, a drug illegally used
667 or prescription drugs improperly used, or in the event that the
668 claimant asserts a work-related injury, the employer shall have
669 the right to administer drug and alcohol testing or demand that
670 the employee submit himself to drug and alcohol testing. If the
671 employee has a positive initial test and a positive confirmation
672 test indicating the presence, at the time of injury, of any drug
673 illegally used or any prescription drug improperly used or eight
674 one-hundredths percent (.08%) or more by weight volume of alcohol



675 in the person's blood, it shall be presumed that the proximate
676 cause of the injury was the use of a drug illegally, the use of a
677 prescription drug improperly or the intoxication due to the use of
678 alcohol of the employee. If the employee refuses to submit
679 himself to drug and alcohol testing immediately after the alleged
680 work-related injury, then it shall be presumed that the employee
681 was using a drug illegally, using a prescription drug improperly
682 or intoxicated due to the use of alcohol at the time of the
683 accident.

684 The results of the drug and alcohol tests,
685 employer-administered or otherwise, shall be considered admissible
686 evidence solely on the issue of causation in the determination of
687 the use of drugs illegally, the use of prescription drugs
688 improperly or the intoxication of an employee at the time of
689 injury for workers' compensation purposes under Section 71-3-7.

690 In order to support a finding of the use of drugs illegally,
691 the use of prescription drugs improperly or intoxication due to
692 the use of alcohol, the employer must prove the employee's use of
693 the drug or alcohol by a preponderance of the evidence.

694 No cause of action for defamation of character, libel,
695 slander or damage to reputation arises in favor of any person
696 against an employer under the provisions of this section.

697 Notwithstanding the provisions of any other law to the
698 contrary, once the employer has met the burden of proving the use
699 of drugs illegally, the use of prescription drugs improperly or
700 intoxication due to the use of alcohol at the time of the
701 accident, it shall be presumed that the accident was caused by the
702 use of drugs illegally, the use of prescription drugs improperly
703 or intoxication due to the use of alcohol of the employee. The
704 burden of proof then shall be placed upon the employee to prove
705 that the use of drugs illegally, the use of prescription drugs
706 improperly or intoxication due to the use of alcohol was not a



707 contributing cause of the accident in order to defeat the defense
708 of the employer provided under Section 71-3-7(4).

709 **SECTION 10.** Section 71-7-5, Mississippi Code of 1972, is
710 amended as follows:

711 71-7-5. (1) Except as otherwise provided in Section
712 71-7-27, all drug and alcohol testing conducted by employers shall
713 be in conformity with the standards established in this section,
714 other applicable provisions of this chapter, and all applicable
715 regulations promulgated pursuant to this chapter.

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

718 (a) Employers may require job applicants to submit to a
719 drug and alcohol test as a condition of the employment application
720 and may use a refusal to submit to a test or positive confirmed
721 test result as a basis for refusal to hire.

722 (b) An employer may require all employees to submit to
723 reasonable suspicion drug and alcohol testing. There is created a
724 rebuttable presumption that the employer had reasonable suspicion
725 to test for drugs if the specimen provided by the employee tested
726 positive for drugs in a confirmatory drug test.

727 (c) An employer may require all employees to submit to
728 neutral selection drug and alcohol testing pursuant to Section
729 71-7-9.

730 (d) An employer may administer drug and alcohol testing
731 or demand that the employee submit himself to drug and alcohol
732 testing as provided under Section 71-3-121 in the event that the
733 employee asserts a work-related injury.

734 **SECTION 11.** This act shall take effect and be in force from
735 and after July 1, 2012.

