

By: Representative Sykes

To: Insurance; Judiciary A

HOUSE BILL NO. 308

1 AN ACT TO AMEND SECTION 71-3-5, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE MISSISSIPPI WORKERS' COMPENSATION LAW TO ELIMINATE
 3 CERTAIN EXEMPTIONS FROM THE LAW; TO REMOVE THE FIVE WORKMEN RULE;
 4 TO AMEND SECTION 71-3-11, MISSISSIPPI CODE OF 1972, TO PROVIDE
 5 THAT THERE SHALL BE NO WAITING PERIOD TO RECEIVE MEDICAL BENEFITS
 6 UNDER THE WORKERS' COMPENSATION LAW; TO AMEND SECTION 71-3-17,
 7 MISSISSIPPI CODE OF 1972, TO REVISE THE LAWS ON PERMANENT TOTAL
 8 DISABILITY AND PERMANENT PARTIAL DISABILITY; TO AMEND SECTIONS
 9 71-3-47 AND 71-3-51, MISSISSIPPI CODE OF 1972, TO PROVIDE TWO
 10 YEARS TO APPEAL CERTAIN DECISIONS OF THE WORKERS' COMPENSATION
 11 COMMISSION; TO AMEND SECTION 71-3-83, MISSISSIPPI CODE OF 1972, TO
 12 REQUIRE THE STATE OF MISSISSIPPI TO PROVIDE COMPENSATION TO AN
 13 INJURED EMPLOYEE IN CERTAIN CIRCUMSTANCES WHEN THE EMPLOYER
 14 ILLEGALLY FAILS TO HAVE WORKERS' COMPENSATION INSURANCE; TO BRING
 15 FORWARD SECTION 71-3-15, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF
 16 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

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

20 71-3-5. The following shall constitute employers subject to
 21 the provisions of this chapter:

22 Every person, firm and private corporation, including any
 23 public service corporation * * *, that have in service * * * one
 24 or more workmen or operatives regularly in the same business or in



25 or about the same establishment under any contract of hire,
26 express or implied.

27 Any state agency, state institution, state department, or
28 subdivision thereof, including counties, municipalities and school
29 districts, or the singular thereof, not heretofore included under
30 the Workers' Compensation Law, may elect, by proper action of its
31 officers or department head, to come within its provisions and, in
32 such case, shall notify the commission of such action by filing
33 notice of compensation insurance with the commission. Payment for
34 compensation insurance policies so taken may be made from any
35 appropriation or funds available to such agency, department or
36 subdivision thereof, or from the general fund of any county or
37 municipality.

38 From and after July 1, 1990, all offices, departments,
39 agencies, bureaus, commissions, boards, institutions, hospitals,
40 colleges, universities, airport authorities or other
41 instrumentalities of the "state" as such term is defined in
42 Section 11-46-1, Mississippi Code of 1972, shall come under the
43 provisions of the Workers' Compensation Law. Payment for
44 compensation insurance policies so taken may be made from any
45 appropriation or funds available to such office, department,
46 agency, bureau, commission, board, institution, hospital, college,
47 university, airport authority or other instrumentality of the
48 state.



49 From and after October 1, 1990, counties and municipalities
50 shall come under the provisions of the Workers' Compensation Law.
51 Payment for compensation insurance policies so taken may be made
52 from any funds available to such counties and municipalities.

53 From and after October 1, 1993, all "political subdivisions,"
54 as such term is defined in Section 11-46-1, Mississippi Code of
55 1972, except counties and municipalities shall come under the
56 provisions of the Workers' Compensation Law. Payment for
57 compensation insurance policies so taken may be made from any
58 funds available to such political subdivisions.

59 From and after July 1, 1988, the "state" as such term is
60 defined in Section 11-46-1, Mississippi Code of 1972, may elect to
61 become a self-insurer under the provisions elsewhere set out by
62 law, by notifying the commission of its intent to become a
63 self-insurer. The cost of being such a self-insurer, as provided
64 otherwise by law, may be paid from funds available to the offices,
65 departments, agencies, bureaus, commissions, boards, institutions,
66 hospitals, colleges, universities, airport authorities or other
67 instrumentalities of the state.

68 The Mississippi Transportation Commission, the Department of
69 Public Safety and the Mississippi Industries for the Blind may
70 elect to become self-insurers under the provisions elsewhere set
71 out by law by notifying the commission of their intention of
72 becoming such a self-insurer. The cost of being such a
73 self-insurer, as provided elsewhere by law, may be paid from funds



74 available to the Mississippi Transportation Commission, the
75 Department of Public Safety or the Mississippi Industries for the
76 Blind.

77 The Mississippi State Senate and the Mississippi House of
78 Representatives may elect to become self-insurers under provisions
79 elsewhere set out by law by notifying the commission of their
80 intention of becoming such self-insurers. The cost of being such
81 self-insurers, as provided elsewhere by law, may be paid from
82 funds available to the Mississippi State Senate and the
83 Mississippi House of Representatives. The Mississippi State
84 Senate and the Mississippi House of Representatives are authorized
85 and empowered to provide workers' compensation benefits for
86 employees after January 1, 1970.

87 Any municipality of the State of Mississippi having forty
88 thousand (40,000) population or more desiring to do so may elect
89 to become a self-insurer under provisions elsewhere set out by law
90 by notifying the commission of its intention of becoming such an
91 insurer. The cost of being such a self-insurer, as provided
92 elsewhere by law, may be provided from any funds available to such
93 municipality.

94 The commission may, under such rules and regulations as it
95 prescribes, permit two (2) or more "political subdivisions," as
96 such term is defined in Section 11-46-1, Mississippi Code of 1972,
97 to pool their liabilities to participate in a group workers'
98 compensation self-insurance program. The governing authorities of



99 any political subdivision may authorize the organization and
100 operation of, or the participation in such a group self-insurance
101 program with other political subdivisions, provided such program
102 is approved by the commission. The cost of participating in a
103 group self-insurance program may be provided from any funds
104 available to a political subdivision.

105 * * * Nothing in this section shall be construed to exempt
106 an employer who would otherwise be covered under this section from
107 providing workers' compensation coverage on those employees for
108 whom he is liable for unemployment tax.

109 Employers exempted by this section may assume, with respect
110 to any employee or classification of employees, the liability for
111 compensation imposed upon employers by this chapter with respect
112 to employees within the coverage of this chapter. The purchase
113 and acceptance by such employer of valid workers' compensation
114 insurance applicable to such employee or classification of
115 employees shall constitute, as to such employer, an assumption by
116 him of such liability under this chapter without any further act
117 on his part notwithstanding any other provisions of this chapter,
118 but only with respect to such employee or such classification of
119 employees as are within the coverage of the state fund. Such
120 assumption of liability shall take effect and continue from the
121 effective date of such workers' compensation insurance and as long
122 only as such coverage shall remain in force, in which case the
123 employer shall be subject with respect to such employee or



124 classification of employees to no other liability than the
125 compensation as provided for in this chapter.

126 An owner/operator, and his drivers, must provide a
127 certificate of insurance of workers' compensation coverage to the
128 motor carrier or proof of coverage under a self-insured plan or an
129 occupational accident policy. Any such occupational accident
130 policy shall provide a minimum of One Million Dollars
131 (\$1,000,000.00) of coverage. Should the owner/operator fail to
132 provide written proof of coverage to the motor carrier, then the
133 owner/operator, and his drivers, shall be covered under the motor
134 carrier's workers' compensation insurance program and the motor
135 carrier is authorized to collect payment of the premium from the
136 owner/operator. In the event that coverage is obtained by the
137 owner/operator under a workers' compensation policy or through a
138 self-insured or occupational accident policy, then the
139 owner/operator, and his drivers, shall not be entitled to benefits
140 under the motor carrier's workers' compensation insurance program
141 unless the owner/operator has elected in writing to be covered
142 under the carrier's workers' compensation program or policy or if
143 the owner/operator is covered by the carrier's plan because he
144 failed to obtain coverage. Coverage under the motor carrier's
145 workers' compensation insurance program does not terminate the
146 independent contractor status of the owner/operator under the
147 written contract or lease agreement. Nothing shall prohibit or
148 prevent an owner/operator from having or securing an occupational



149 accident policy in addition to any workers' compensation coverage
150 authorized by this section. Other than the amendments to this
151 section by Chapter 523, Laws of 2006, the provisions of this
152 section shall not be construed to have any effect on any other
153 provision of law, judicial decision or any 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 * * * one (1).



174 **SECTION 2.** Section 71-3-11, Mississippi Code of 1972, is
175 amended as follows:

176 71-3-11. No compensation except medical benefits shall be
177 allowed for the first five (5) days of the disability, and there
178 shall be no waiting period for receiving medical benefits. In
179 case the injury results in disability of fourteen (14) days or
180 more, the compensation shall be allowed from the date of
181 disability.

182 **SECTION 3.** Section 71-3-17, Mississippi Code of 1972, is
183 amended as follows:

184 71-3-17. Compensation for disability shall be paid to the
185 employee as follows:

186 (a) Permanent total disability: In case of total
187 disability adjudged to be permanent, * * * the compensation shall
188 be paid in increments of the average salary of the employee, with
189 increases over time to adjust for cost of living and potential
190 earnings within the company for the remainder of the person's
191 life. The commission shall develop the calculus for determining
192 the increases in payment.

193 (b) Temporary total disability: In case of disability,
194 total in character but temporary in quality, sixty-six and
195 two-thirds percent (66-2/3%) of the average weekly wages of the
196 injured employee, subject to the maximum limitations as to weekly
197 benefits as set up in this chapter, shall be paid to the employee
198 during the continuance of such disability not to exceed four



199 hundred fifty (450) weeks or an amount greater than the multiple
200 of four hundred fifty (450) weeks times sixty-six and two-thirds
201 percent (66-2/3%) of the average weekly wage for the state.
202 Provided, however, if there arises a conflict in medical opinions
203 of whether or not the claimant has reached maximum medical
204 recovery and the claimant's benefits have been terminated by the
205 carrier, then the claimant may demand an immediate hearing before
206 the commissioner upon five (5) days' notice to the carrier for a
207 determination by the commission of whether or not in fact the
208 claimant has reached maximum recovery.

209 (c) Permanent partial disability: In case of
210 disability partial in character but permanent in quality, the
211 compensation shall be sixty-six and two-thirds percent (66-2/3%)
212 of the average weekly wages of the injured employee, subject to
213 the maximum limitations as to weekly benefits as set up in this
214 chapter, which shall be paid following compensation for temporary
215 total disability paid in accordance with paragraph (b) of this
216 section, and shall be paid to the employee * * * based on a
217 holistic evaluation of the severity of the disability and lack of
218 accessibility to basic services due to geographic location, as
219 determined by the commission.

220 (d) Alternate forms of documentation shall be made
221 available by the commission to determine average weekly wages, to
222 account for tips and other similar earnings.



223 (e) Where payment is limited to sixty-six and
224 two-thirds percent (66-2/3%) of the average weekly wages of the
225 injured employee, that employee, if able, may work alternate jobs
226 requiring different physical skills up until achieving a combined
227 one hundred percent (100%) of his average weekly wage.

228 **SECTION 4.** Section 71-3-47, Mississippi Code of 1972, is
229 amended as follows:

230 71-3-47. Except as otherwise provided by this chapter, the
231 details of practice and procedure in the settlement and
232 adjudication of claims shall be determined by rules of the
233 commission, the text of which shall be published and be readily
234 available to interested parties.

235 The commission shall have full power and authority to
236 determine all questions relating to the payment of claims for
237 compensation. The commission shall make or cause to be made such
238 investigation as it deems necessary and, upon application of
239 either party or upon its own initiative, shall order a hearing,
240 shall make or deny an award, and shall file the same in its
241 office.

242 Informal conferences and hearings in contested cases may be
243 conducted by a duly designated representative of the commission.
244 Upon the conclusion of any such hearing, the commission's
245 representative shall make or deny an award, and file the decision
246 in the office of the commission. Immediately after such filing, a
247 notice of decision shall be sent to all interested parties. This



248 decision shall be final unless within * * * two (2) years a
249 request or petition for review by the full commission is filed.

250 **SECTION 5.** Section 71-3-51, Mississippi Code of 1972, is
251 amended as follows:

252 71-3-51. The final award of the commission shall be
253 conclusive and binding unless either party to the controversy
254 shall, within * * * two (2) years from the date of its filing in
255 the office of the commission and notification to the parties,
256 appeal therefrom to the Supreme Court.

257 Such appeal may be taken by filing notice of appeal with the
258 commission, whereupon the commission shall under its certificate
259 transmit to the Supreme Court all documents and papers on file in
260 the matter, together with a transcript of the evidence, the
261 findings, and award, which shall thereupon become the record of
262 the cause. Appeals shall be considered only upon the record as
263 made before the commission. The Supreme Court shall always be
264 deemed open for hearing of such appeals. The Supreme Court shall
265 review all questions of law and of fact. If no prejudicial error
266 be found, the matter shall be affirmed and remanded to the
267 commission for enforcement. If prejudicial error be found, the
268 same shall be reversed and the Supreme Court shall enter such
269 judgment or award as the commission should have entered. An
270 appeal from the commission to the Supreme Court shall not act as a
271 supersedeas unless the court shall so direct, and then upon such
272 terms as such court shall direct.



273 No controversy shall be heard by the commission or an award
274 of compensation made therein while the same matter is pending
275 either before a federal court or in any court in this state.

276 Any award of compensation made by the Supreme Court shall
277 bear the same interest and penalties as do other judgments awarded
278 in circuit court.

279 **SECTION 6.** Section 71-3-83, Mississippi Code of 1972, is
280 amended as follows:

281 71-3-83. (1) Any employer required to secure the payment of
282 compensation under this chapter who fails to secure such
283 compensation is guilty of a misdemeanor and, upon conviction
284 thereof, shall be punished by a fine of not more than One Thousand
285 Dollars (\$1,000.00), or by imprisonment for not more than one (1)
286 year, or by both such fine and imprisonment. If the employer is a
287 corporation, the president, secretary and treasurer thereof shall
288 be also severally liable to such fine or imprisonment as herein
289 provided for the failure of such corporation to secure the payment
290 of compensation; and such president, secretary and treasurer shall
291 be severally personally liable, jointly with such corporation, for
292 any compensation or other benefit which may accrue under this
293 chapter in respect to any injury which may occur to any employee
294 of such corporation while it shall so fail to secure the payment
295 of compensation as required by this chapter. If the payment of
296 compensation is not paid by the president, secretary, treasurer or
297 corporation in a timely manner, the State of Mississippi shall



298 provide compensation to the injured employee and seek subrogation
299 against such.

300 (2) Any uninsured employer who knowingly transfers, sells,
301 encumbers, assigns, or in any manner disposes of, conceals,
302 secretes or destroys any property belonging to such employer after
303 one of his employees has been injured within the purview of this
304 chapter, and with intent to avoid the payment of compensation
305 under this chapter to such employee or his dependents, is guilty
306 of a misdemeanor and, upon conviction thereof, shall be punished
307 by a fine of not more than One Thousand Dollars (\$1,000.00), or by
308 imprisonment for not more than one (1) year, or by both such fine
309 and imprisonment. If the employer is a corporation, the
310 president, secretary and treasurer thereof shall be also severally
311 liable to such penalty of imprisonment as well as jointly liable
312 with such corporation for such fine.

313 (3) This section shall not affect any other liability of the
314 employer under this chapter.

315 (4) In addition to the criminal penalties set forth above,
316 and under the same circumstances, terms and conditions as set
317 forth in subsections (1) and (2), the commission may assess a
318 civil penalty in an amount to be determined by the commission on a
319 case by case basis, but not to exceed Ten Thousand Dollars
320 (\$10,000.00). Any civil penalty levied and collected by the
321 commission shall be deposited into the Administrative Expense Fund



322 provided for in Section 71-3-97, and any penalty not voluntarily
323 paid may be collected by civil suit brought by the commission.

324 **SECTION 7.** Section 71-3-15, Mississippi Code of 1972, is
325 brought forward as follows:

326 71-3-15. (1) The employer shall furnish such medical,
327 surgical, and other attendance or treatment, nurse and hospital
328 service, medicine, crutches, artificial members, and other
329 apparatus for such period as the nature of the injury or the
330 process of recovery may require. The injured employee shall have
331 the right to accept the services furnished by the employer or, in
332 his discretion, to select one (1) competent physician of his
333 choosing and such other specialists to whom he is referred by his
334 chosen physician to administer medical treatment. Referrals by
335 the chosen physician shall be limited to one (1) physician within
336 a specialty or subspecialty area. Except in an emergency
337 requiring immediate medical attention, any additional selection of
338 physicians by the injured employee or further referrals must be
339 approved by the employer, if self-insured, or the carrier prior to
340 obtaining the services of the physician at the expense of the
341 employer or carrier. If denied, the injured employee may apply to
342 the commission for approval of the additional selection or
343 referral, and if the commission determines that such request is
344 reasonable, the employee may be authorized to obtain such
345 treatment at the expense of the employer or carrier. Approval by
346 the employer or carrier does not require approval by the



347 commission. A physician to whom the employee is referred by his
348 employer shall not constitute the employee's selection, unless the
349 employee, in writing, accepts the employer's referral as his own
350 selection. However, if the employee is treated for his alleged
351 work-related injury or occupational disease by a physician for six
352 (6) months or longer, or if the employee has surgery for the
353 alleged work-related injury or occupational disease performed by a
354 physician, then that physician shall be deemed the employee's
355 selection. Should the employer desire, he may have the employee
356 examined by a physician other than of the employee's choosing for
357 the purpose of evaluating temporary or permanent disability or
358 medical treatment being rendered under such reasonable terms and
359 conditions as may be prescribed by the commission. If at any time
360 during such period the employee unreasonably refuses to submit to
361 medical or surgical treatment, the commission shall, by order,
362 suspend the payment of further compensation during such time as
363 such refusal continues, and no compensation shall be paid at any
364 time during the period of such suspension; provided, that no claim
365 for medical or surgical treatment shall be valid and enforceable,
366 as against such employer, unless within twenty (20) days following
367 the first treatment the physician or provider giving such
368 treatment shall furnish to the employer, if self-insured, or its
369 carrier, a preliminary report of such injury and treatment, on a
370 form or in a format approved by the commission. Subsequent
371 reports of such injury and treatment must be submitted at least



372 every thirty (30) days thereafter until such time as a final
373 report shall have been made. Reports which are required to be
374 filed hereunder shall be furnished by the medical provider to the
375 employer or carrier, and it shall be the responsibility of the
376 employer or carrier receiving such reports to promptly furnish
377 copies to the commission. The commission may, in its discretion,
378 excuse the failure to furnish such reports within the time
379 prescribed herein if it finds good cause to do so, and may, upon
380 request of any party in interest, order or direct the employer or
381 carrier to pay the reasonable value of medical services rendered
382 to the employee.

383 (2) Whenever in the opinion of the commission a physician
384 has not correctly estimated the degree of permanent disability or
385 the extent of the temporary disability of an injured employee, the
386 commission shall have the power to cause such employee to be
387 examined by a physician selected by the commission, and to obtain
388 from such physician a report containing his estimate of such
389 disabilities. The commission shall have the power in its
390 discretion to charge the cost of such examination to the employer,
391 if he is a self-insurer, or to the insurance company which is
392 carrying the risk.

393 (3) In carrying out this section, the commission shall
394 establish an appropriate medical provider fee schedule, medical
395 cost containment system and utilization review which incorporates
396 one or more medical review panels to determine the reasonableness



397 of charges and the necessity for the services, and limitations on
398 fees to be charged by medical providers for testimony and copying
399 or completion of records and reports and other provisions which,
400 at the discretion of the commission, are necessary to encompass a
401 complete medical cost containment program. The commission may
402 contract with a private organization or organizations to establish
403 and implement such a medical cost containment system and fee
404 schedule with the cost for administering such a system to be paid
405 out of the administrative expense fund as provided in this
406 chapter. All fees and other charges for such treatment or service
407 shall be limited to such charges as prevail in the same community
408 for similar treatment and shall be subject to regulation by the
409 commission. No medical bill shall be paid to any doctor until all
410 forms and reports required by the commission have been filed. Any
411 employee receiving treatment or service under the provisions of
412 this chapter may not be held responsible for any charge for such
413 treatment or service, and no doctor, hospital or other recognized
414 medical provider shall attempt to bill, charge or otherwise
415 collect from the employee any amount greater than or in excess of
416 the amount paid by the employer, if self-insured, or its workers'
417 compensation carrier. Any dispute over the amount charged for
418 service rendered under the provisions of this chapter, or over the
419 amount of reimbursement for services rendered under the provisions
420 of this chapter, shall be limited to and resolved between the



421 provider and the employer or carrier in accordance with the fee
422 dispute resolution procedures adopted by the commission.

423 (4) The liability of an employer for medical treatment as
424 herein provided shall not be affected by the fact that his
425 employee was injured through the fault or negligence of a third
426 party, not in the same employ, provided the injured employee was
427 engaged in the scope of his employment when injured. The employer
428 shall, however, have a cause of action against such third party to
429 recover any amounts paid by him for such medical treatment.

430 (5) An injured worker who believes that his best interest
431 has been prejudiced by the findings of the physician designated by
432 the employer or carrier shall have the privilege of a medical
433 examination by a physician of his own choosing, at the expense of
434 the carrier or employer. Such examination may be had at any time
435 after injury and prior to the closing of the case, provided that
436 the charge shall not exceed One Hundred Dollars (\$100.00) and
437 shall be paid by the carrier or employer where the previous
438 medical findings are upset, but paid by the employee if previous
439 medical findings are confirmed.

440 (6) Medical and surgical treatment as provided in this
441 section shall not be deemed to be privileged insofar as carrying
442 out the provisions of this chapter is concerned. All findings
443 pertaining to a second opinion medical examination, at the
444 instance of the employer shall be reported as herein required
445 within fourteen (14) days of the examination, except that copies



446 thereof shall also be furnished by the employer or carrier to the
447 employee. All findings pertaining to an independent medical
448 examination by order of the commission shall be reported as
449 provided in the order for such examination.

450 (7) Any medical benefits paid by reason of any accident or
451 health insurance policy or plan paid for by the employer, which
452 were for expenses of medical treatment under this section, are,
453 upon notice to the carrier prior to payment by it, subject to
454 subrogation in favor of the accident or health insurance company
455 to the extent of its payment for medical treatment under this
456 section. Reimbursement to the accident or health insurance
457 company by the carrier or employer, to the extent of such
458 reimbursement, shall constitute payment by the employer or carrier
459 of medical expenses under this section. Under no circumstances,
460 shall any subrogation be had by any insurance company against any
461 compensation benefits paid under this chapter.

462 **SECTION 8.** This act shall take effect and be in force from
463 and after July 1, 2017.

