

By: Senator(s) Carmichael

To: Insurance

SENATE BILL NO. 2763

1 AN ACT TO AMEND SECTION 71-3-7, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT A CLAIMANT'S FAILURE TO TIMELY FILE MEDICAL RECORDS
3 IN SUPPORT OF A CONTROVERTED WORKERS' COMPENSATION CLAIM MAY
4 RESULT IN DISMISSAL OF THE CLAIM; TO AMEND SECTION 71-3-35,
5 MISSISSIPPI CODE OF 1972, TO REQUIRE THE EMPLOYER OR CARRIER IN
6 CERTAIN INSTANCES TO NOTIFY THE EMPLOYEE THAT HIS RIGHT TO
7 BENEFITS MAY BE BARRED BY THE STATUTE OF LIMITATIONS; TO AMEND
8 SECTION 71-3-63, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
9 LIMITATION ON ATTORNEYS' FEES; TO AMEND SECTION 71-3-66,
10 MISSISSIPPI CODE OF 1972, TO REVISE THE CONFIDENTIALITY OF
11 WORKERS' COMPENSATION COMMISSION RECORDS; TO AMEND SECTION
12 71-3-77, MISSISSIPPI CODE OF 1972, TO ALLOW NOTICE TO THE INSURED
13 OF CANCELLATIONS AND NONRENEWALS TO BE SERVED ELECTRONICALLY AS
14 LONG AS RECEIPT IS ACKNOWLEDGED; AND FOR RELATED PURPOSES.

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

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

18 71-3-7. (1) Compensation shall be payable for disability or
19 death of an employee from injury or occupational disease arising
20 out of and in the course of employment, without regard to fault as
21 to the cause of the injury or occupational disease. An
22 occupational disease shall be deemed to arise out of and in the
23 course of employment when there is evidence that there is a direct
24 causal connection between the work performed and the occupational



disease. In all claims in which no benefits, including disability, death and medical benefits, have been paid, the claimant shall file medical records in support of his claim for benefits when filing a petition to controvert. If the claimant is unable to file the medical records in support of his claim for benefits at the time of filing the petition to controvert because of a limitation of time established by Section 71-3-35 or Section 71-3-53, the claimant shall file medical records in support of his claim within sixty (60) days after filing the petition to controvert. Claimant's failure to timely file medical records in support of the claim may result in dismissal of the claim.

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

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

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

(b) The employer or carrier does not have the power to determine the date of maximum medical recovery or percentage of



50 apportionment. This must be done by the attorney-referee, subject
51 to review by the commission as the ultimate finder of fact.

52 (c) After the date the claimant reaches maximum medical
53 recovery, weekly compensation benefits and maximum recovery shall
54 be reduced by that proportion which the preexisting physical
55 handicap, disease, or lesion contributes to the results following
56 injury.

57 (d) If maximum medical recovery has occurred before the
58 hearing and order of the attorney-referee, credit for excess
59 payments shall be allowed in future payments. Such allowances and
60 method of accomplishment of the same shall be determined by the
61 attorney-referee, subject to review by the commission. However,
62 no actual repayment of such excess shall be made to the employer
63 or carrier.

64 (4) No compensation shall be payable if the use of drugs
65 illegally, or the use of a valid prescription medication(s) taken
66 contrary to the prescriber's instructions and/or contrary to label
67 warnings, or intoxication due to the use of alcohol of the
68 employee was the proximate cause of the injury, or if it was the
69 willful intention of the employee to injure or kill himself or
70 another.

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



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

SECTION 2. Section 71-3-35, Mississippi Code of 1972, is amended as follows:

71-3-35. (1) No claim for compensation shall be maintained unless, within thirty (30) days after the occurrence of the injury, actual notice was received by the employer or by an officer, manager, or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior shall be sufficient. Absence of notice shall not bar recovery if it is found that the employer had knowledge of the injury and was not prejudiced by the employee's failure to give notice. Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two (2) years from the date of the injury or death, the right to compensation therefor shall be barred. However, if there has been no payment of indemnity benefits and the employer or carrier approve medical treatment or pay medical expenses for a pro se employee during the last thirty (30) days of the two-year period, then the employer or carrier shall notify the employee that his right to any further benefits may be barred by the



99 statute of limitations. Notice may be made electronically as long
100 as receipt is acknowledge by the insured, by personal service,
101 registered mail or certified mail. Notice shall also be provided
102 to the commission in such manner and on such form as the
103 commission may prescribe or direct. If no payment of compensation
104 (other than medical treatment or burial expense) is made and no
105 application for benefits filed with the commission within thirty
106 (30) days from the date the employee receives notice, the right to
107 compensation shall be barred.

108 (2) If a person who is entitled to compensation under this
109 chapter is mentally incompetent or a minor, the limitation for
110 filing application for benefits shall not be applicable so long as
111 such person has no guardian or other authorized representative,
112 but shall be applicable in the case of a person who is mentally
113 incompetent or a minor from the date of appointment of such
114 guardian or other representative, or in the case of a minor, if no
115 guardian is appointed before he becomes of age, from the date he
116 becomes of age.

117 (3) Where recovery is denied to any person, in a suit
118 brought at law or admiralty to recover damages in respect of
119 injury or death, on the ground that such person was an employee
120 and that the defendant was an employer within the meaning of this
121 chapter and that such employer had secured compensation to such
122 employee under this chapter, the limitation upon filing



application for benefits shall begin to run only from the date of termination of such suit.

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

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

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

(3) Representation of one other than himself or herself before the commission shall be considered the practice of law, and all statutes applying to and regulating the practice in all other



148 courts of law in this state shall likewise apply to practice
149 before the commission, insofar as the qualifications of those
150 practicing before the commission are concerned. This paragraph
151 shall not be construed as tightening the rules of evidence which
152 are otherwise relaxed in other sections of this chapter.

153 In no instance shall the amount recovered by an attorney for
154 an appearance before the commission exceed twenty-five percent
155 (25%) of the total award of compensation. The total amount of
156 compensation shall not include any amount designated for funding a
157 Medicare Set Aside account. Such limitations, however, shall not
158 be construed as applying to a fee awarded for additional services
159 by any superior court. Legal services rendered where no motion to
160 controvert has been filed by either employer or employee shall be
161 considered as consultation, and that factor shall be taken into
162 consideration in awarding a fee. Attorneys may not recover
163 attorney's fees based upon benefits voluntarily paid to an injured
164 employee for temporary or permanent disability. Any settlement
165 negotiated by an attorney shall not be considered a voluntary
166 payment. In all instances, fees shall be awarded on the basis of
167 fairness to both attorney and client. Although exceptions may be
168 made in the interest of justice, it shall be deemed conducive to
169 the best interest of all concerned for the commission to approve
170 contracts for attorney's fees voluntarily entered into between
171 attorney and client, within the limitations hereinabove set out.



172 When an award of compensation becomes final and an attorney's
173 fee is outstanding, a partial lump-sum settlement sufficient to
174 cover the attorney's fee approved therein by the commission shall
175 be made immediately, from payments last to become due, and the
176 deductions allowed by the law shall be borne equally by the
177 attorney and the client.

178 **SECTION 4.** Section 71-3-66, Mississippi Code of 1972, is
179 amended as follows:

180 71-3-66. The commission's noncontroverted case medical
181 reports, rehabilitation counselor reports * * *, psychological
182 reports * * *, First Report of Injury Forms (MWCC Form B-3), and
183 compilations of data from those documents, shall not be open to
184 the public under the Mississippi Public Records Act of 1983, but
185 only to the parties satisfying the commission of their interest
186 in * * * the records and the right to inspect them. Under * * *
187 rules and regulations * * * adopted by the commission * * *,
188 employers and insurance carriers against whom an employee is
189 making a claim for indemnity benefits, medical expenses and/or
190 death benefits, shall be entitled to inspect and copy the
191 commission's records pertaining to the employee's other workers'
192 compensation claims. The commission may * * * charge * * * the
193 party requesting the records a reasonable fee for * * * copying
194 and mailing.

195 **SECTION 5.** Section 71-3-77, Mississippi Code of 1972, is
196 amended as follows:



71-3-77. (1) Every contract for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this chapter, and provisions thereof inconsistent with this chapter shall be void. Such contract shall be allowed to offer deductibles on all liability of the assured under and according to the provisions of this chapter, notwithstanding any agreement of the parties to the contrary. However, the payments of the claims, including the deductible amounts, shall be made directly from the insurance company to the employee, except for medical benefits which shall be paid to the medical provider. A copy of such payments shall be forwarded to the employer. The insurance company shall collect the deductible from the employer as shall be provided in the contract between the employer and the insurer. No such policy shall be subject to nonrenewal, or cancelled by the insurer within the policy period, until a notice in writing shall be given to the commission and to the insured, fixing the date on which it is proposed to cancel it or declaring that the company does not intend to renew the policy upon expiration date. Notice to the insured shall be served personally or by registered or certified mail, or electronically as long as receipt is acknowledged by the insured. Notice to the commission shall be provided in such manner and on such form as the commission may prescribe or direct. No such cancellation or nonrenewal shall be effective until thirty (30) days after the service of such notice on the insured and the



222 provision of notice to the commission, unless the employer has
223 obtained other insurance coverage, in which case such policy shall
224 be deemed cancelled as of the effective date of such other
225 insurance, whether or not such notice has been given. The notice
226 requirements of this section shall not apply when a replacement
227 policy form providing the same or substantially similar coverage
228 is issued by the same insurer, or when transfer of an insured to a
229 licensed affiliate providing the same or substantially similar
230 coverage occurs. Whenever a replacement policy form providing the
231 same or substantially similar coverage is issued by the same
232 insurer, or when a transfer of an insured to a licensed affiliate
233 of the insurer providing the same or substantially similar
234 coverage occurs, documents signed by the insured are applicable to
235 the replacement policy and to coverage being transferred, and
236 remain valid and enforceable.

237 The insured may also cancel such a policy on the day that the
238 insured either (a) returns the policy to the agent, or (b) signs
239 and delivers to the agent a "lost policy release." If the insured
240 desires to cancel a policy before the policy has become effective,
241 he may cancel the policy by written notice of cancellation to the
242 agent or company without return of the policy or a release.

243 Whenever a replacement policy form providing the same or
244 substantially similar coverage is issued by the same insurer, or
245 by a licensed affiliate insurer, such insurer shall mail or
246 deliver to the policyholder, at least thirty (30) days in advance



of the effective date of renewal, written notice of any terms or conditions that are less favorable to the policyholder.

A transferring insurer shall notify the Mississippi Insurance Department and the Mississippi Workers' Compensation Commission at least forty-five (45) days in advance of notifying a policyholder that its personal or commercial lines insurance policies will be transferred to another licensed insurer within the same insurance group or same holding company. The notice shall include the name of insurer transferring the personal or commercial lines policies and the name and financial rating of the insurer receiving the transferred personal or commercial lines policies.

A transferring insurer shall provide the policyholder written notice of the policy transfer at least thirty (30) days prior to expiration of the policy term and shall include the financial rating of the insurer receiving the transferred policy. Such notice must be provided to the policyholder with the notice of renewal premium at least thirty (30) days before the effective date of the transfer.

(2) In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer and in order that the administration of this chapter in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier or carriers for such employer, of such obligations and duties of the employer in



272 respect of such liability imposed by this chapter upon the
273 employer as it considers proper in order to effectuate the
274 provisions of this chapter. For such purpose (a) notice to or
275 knowledge of an employer of the occurrence of the injury shall be
276 notice to or knowledge of the carrier or carriers; (b)
277 jurisdiction of the employer by the commission or any court under
278 this chapter shall be jurisdiction of the carrier or carriers; and
279 (c) any requirement by the commission or any court under any
280 compensation order, finding, or decision shall be binding upon the
281 carrier or carriers in the same manner and to the same extent as
282 upon the employer.

283 (3) As used in this section:

284 (a) "Affiliate transfer" is when an insurer transfers,
285 at renewal or policy expiration, its personal or commercial lines
286 insurance policies to an affiliated licensed insurer that is a
287 member of the same insurance group or same holding company as the
288 transferring insurer. The issuance of a replacement policy form
289 providing the same or substantially similar coverage issued by the
290 same insurer, or the transfer of personal or commercial insurance
291 policies to a licensed affiliate insurer that will issue the same
292 or substantially similar policy, are considered a renewal and will
293 not be treated as a cancellation or nonrenewal. The affiliate
294 transfer must be to a licensed affiliate insurer that has been
295 determined by the commissioner to have the same or better



296 financial strength as the transferring insurer. The policy
297 transfer must be selected on a nondiscriminatory basis.

298 (b) "Substantially similar" means a policy that
299 provides the same basic coverages but may add, alter or eliminate
300 incidental coverages and may provide coverages using different
301 textual language.

302 **SECTION 6.** This act shall take effect and be in force from
303 and after July 1, 2019.

