

**Adopted
AMENDMENT NO 1 PROPOSED TO**

Cmte Sub for Senate Bill No. 2835

BY: Senator(s) Carter

1 **AMEND** on line 301 by inserting before the period the following:

2 , and shall stand repealed on June 30, 2019

3 **FURTHER, AMEND** by inserting the following sections after line 299
4 **and renumbering any succeeding sections:**

5 **SECTION *.** Section 71-3-1, Mississippi Code of 1972, is
6 brought forward as follows:

7 71-3-1. (1) This chapter shall be known and cited as
8 "Workers' Compensation Law," and shall be administered by the
9 Workers' Compensation Commission, hereinafter referred to as the
10 "commission," cooperating with other state and federal authorities
11 for the prevention of injuries and occupational diseases to
12 workers and, in event of injury or occupational disease, their
13 rehabilitation or restoration to health and vocational



14 opportunity; and this chapter shall be fairly and impartially
15 construed and applied according to the law and the evidence in the
16 record, and, notwithstanding any common law or case law to the
17 contrary, this chapter shall not be presumed to favor one party
18 over another and shall not be liberally construed in order to
19 fulfill any beneficent purposes.

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

23 (a) The words "workmen's compensation" shall mean
24 "workers' compensation"; and

25 (b) The word "commission" shall mean the Workers'
26 Compensation Commission.

27 (3) The primary purposes of the Workers' Compensation Law
28 are to pay timely temporary and permanent disability benefits to
29 every worker who legitimately suffers a work-related injury or
30 occupational disease arising out of and in the course of his
31 employment, to pay reasonable and necessary medical expenses
32 resulting from the work-related injury or occupational disease,
33 and to encourage the return to work of the worker.

34 **SECTION *.** Section 71-3-3, Mississippi Code of 1972, is
35 brought forward as follows:

36 71-3-3. Unless the context otherwise requires, the
37 definitions which follow govern the construction and meaning of
38 the terms used in this chapter:



39 (a) "Person" includes an individual, firm, voluntary
40 association or a corporation.

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

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



64 (d) "Employee" means any person, including a minor
65 whether lawfully or unlawfully employed, in the service of an
66 employer under any contract of hire or apprenticeship, written or
67 oral, express or implied, provided that there shall be excluded
68 therefrom all independent contractors and especially any
69 individual performing service in, and at the time of, the sale of
70 newspapers or magazines to ultimate consumers under an arrangement
71 under which the newspapers or magazines are to be sold by the
72 individual at a fixed price, the individual's compensation being
73 based on the retention of the excess of such price over the amount
74 at which the newspapers or magazines are charged to the
75 individual, whether or not the individual is guaranteed a minimum
76 amount of compensation for such service or is entitled to be
77 credited with the unsold newspapers or magazines returned. A
78 student of an educational institution who, as a part of such
79 educational institution's curriculum, is receiving practical
80 training at any facility, who is under the active and direct
81 supervision of the personnel of the facility and/or an instructor
82 of the educational institution, and who is not receiving wages as
83 a consequence of participation in such practical training shall
84 not be considered an employee of such facility on account of
85 participation in such practical training.

86 (e) "Employer," except when otherwise expressly stated,
87 includes a person, partnership, association, corporation and the



88 legal representatives of a deceased employer, or the receiver or
89 trustee of a person, partnership, association or corporation.

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

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

97 (h) "Commission" means the Workers' Compensation
98 Commission.

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

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

106 (k) "Wages" includes the money rate at which the
107 service rendered is recompensed under the contract of hiring in
108 force at the time of injury, and also the reasonable value of
109 board, rent, housing, lodging or similar advantage received from
110 the employer and gratuities received in the course of employment
111 from others than the employer. The term "wages" shall not include
112 practical training received by students of an educational



113 institution as a part of such educational institution's
114 curriculum.

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

134 (m) "Parent" includes stepparents and parents by
135 adoption, parents-in-law or any person who for more than three (3)
136 years prior to the death of the deceased employee stood in the



137 place of a parent to him, or her, if dependent on the injured
138 employee.

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

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

159 (p) The singular includes the plural and the masculine
160 includes the feminine and neuter.



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

165 (r) "Independent contractor" means any individual, firm
166 or corporation who contracts to do a piece of work according to
167 his own methods without being subject to the control of his
168 employer except as to the results of the work, and who has the
169 right to employ and direct the outcome of the workers independent
170 of the employer and free from any superior authority in the
171 employer to say how the specified work shall be done or what the
172 laborers shall do as the work progresses, one who undertakes to
173 produce a given result without being in any way controlled as to
174 the methods by which he attains the result.

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

181 **SECTION *.** Section 71-3-5, Mississippi Code of 1972, is
182 brought forward as follows:

183 71-3-5. The following shall constitute employers subject to
184 the provisions of this chapter:



185 Every person, firm and private corporation, including any
186 public service corporation but excluding, however, all nonprofit
187 charitable, fraternal, cultural, or religious corporations or
188 associations, that have in service five (5) or more workmen or
189 operatives regularly in the same business or in or about the same
190 establishment under any contract of hire, express or implied.

191 Any state agency, state institution, state department, or
192 subdivision thereof, including counties, municipalities and school
193 districts, or the singular thereof, not heretofore included under
194 the Workers' Compensation Law, may elect, by proper action of its
195 officers or department head, to come within its provisions and, in
196 such case, shall notify the commission of such action by filing
197 notice of compensation insurance with the commission. Payment for
198 compensation insurance policies so taken may be made from any
199 appropriation or funds available to such agency, department or
200 subdivision thereof, or from the general fund of any county or
201 municipality.

202 From and after July 1, 1990, all offices, departments,
203 agencies, bureaus, commissions, boards, institutions, hospitals,
204 colleges, universities, airport authorities or other
205 instrumentalities of the "state" as such term is defined in
206 Section 11-46-1, Mississippi Code of 1972, shall come under the
207 provisions of the Workers' Compensation Law. Payment for
208 compensation insurance policies so taken may be made from any
209 appropriation or funds available to such office, department,



210 agency, bureau, commission, board, institution, hospital, college,
211 university, airport authority or other instrumentality of the
212 state.

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

217 From and after October 1, 1993, all "political subdivisions,"
218 as such term is defined in Section 11-46-1, Mississippi Code of
219 1972, except counties and municipalities shall come under the
220 provisions of the Workers' Compensation Law. Payment for
221 compensation insurance policies so taken may be made from any
222 funds available to such political subdivisions.

223 From and after July 1, 1988, the "state" as such term is
224 defined in Section 11-46-1, Mississippi Code of 1972, may elect to
225 become a self-insurer under the provisions elsewhere set out by
226 law, by notifying the commission of its intent to become a
227 self-insurer. The cost of being such a self-insurer, as provided
228 otherwise by law, may be paid from funds available to the offices,
229 departments, agencies, bureaus, commissions, boards, institutions,
230 hospitals, colleges, universities, airport authorities or other
231 instrumentalities of the state.

232 The Mississippi Transportation Commission, the Department of
233 Public Safety and the Mississippi Industries for the Blind may
234 elect to become self-insurers under the provisions elsewhere set



235 out by law by notifying the commission of their intention of
236 becoming such a self-insurer. The cost of being such a
237 self-insurer, as provided elsewhere by law, may be paid from funds
238 available to the Mississippi Transportation Commission, the
239 Department of Public Safety or the Mississippi Industries for the
240 Blind.

241 The Mississippi State Senate and the Mississippi House of
242 Representatives may elect to become self-insurers under provisions
243 elsewhere set out by law by notifying the commission of their
244 intention of becoming such self-insurers. The cost of being such
245 self-insurers, as provided elsewhere by law, may be paid from
246 funds available to the Mississippi State Senate and the
247 Mississippi House of Representatives. The Mississippi State
248 Senate and the Mississippi House of Representatives are authorized
249 and empowered to provide workers' compensation benefits for
250 employees after January 1, 1970.

251 Any municipality of the State of Mississippi having forty
252 thousand (40,000) population or more desiring to do so may elect
253 to become a self-insurer under provisions elsewhere set out by law
254 by notifying the commission of its intention of becoming such an
255 insurer. The cost of being such a self-insurer, as provided
256 elsewhere by law, may be provided from any funds available to such
257 municipality.

258 The commission may, under such rules and regulations as it
259 prescribes, permit two (2) or more "political subdivisions," as



260 such term is defined in Section 11-46-1, Mississippi Code of 1972,
261 to pool their liabilities to participate in a group workers'
262 compensation self-insurance program. The governing authorities of
263 any political subdivision may authorize the organization and
264 operation of, or the participation in such a group self-insurance
265 program with other political subdivisions, provided such program
266 is approved by the commission. The cost of participating in a
267 group self-insurance program may be provided from any funds
268 available to a political subdivision.

269 Domestic servants, farmers and farm labor are not included
270 under the provisions of this chapter, but this exemption does not
271 apply to the processing of agricultural products when carried on
272 commercially. Any purchaser of timber products shall not be
273 liable for workers' compensation for any person who harvests and
274 delivers timber to such purchaser if such purchaser is not liable
275 for unemployment tax on the person harvesting and delivering the
276 timber as provided by United States Code Annotated, Title 26,
277 Section 3306, as amended. Provided, however, nothing in this
278 section shall be construed to exempt an employer who would
279 otherwise be covered under this section from providing workers'
280 compensation coverage on those employees for whom he is liable for
281 unemployment tax.

282 Employers exempted by this section may assume, with respect
283 to any employee or classification of employees, the liability for
284 compensation imposed upon employers by this chapter with respect



285 to employees within the coverage of this chapter. The purchase
286 and acceptance by such employer of valid workers' compensation
287 insurance applicable to such employee or classification of
288 employees shall constitute, as to such employer, an assumption by
289 him of such liability under this chapter without any further act
290 on his part notwithstanding any other provisions of this chapter,
291 but only with respect to such employee or such classification of
292 employees as are within the coverage of the state fund. Such
293 assumption of liability shall take effect and continue from the
294 effective date of such workers' compensation insurance and as long
295 only as such coverage shall remain in force, in which case the
296 employer shall be subject with respect to such employee or
297 classification of employees to no other liability than the
298 compensation as provided for in this chapter.

299 An owner/operator, and his drivers, must provide a
300 certificate of insurance of workers' compensation coverage to the
301 motor carrier or proof of coverage under a self-insured plan or an
302 occupational accident policy. Any such occupational accident
303 policy shall provide a minimum of One Million Dollars
304 (\$1,000,000.00) of coverage. Should the owner/operator fail to
305 provide written proof of coverage to the motor carrier, then the
306 owner/operator, and his drivers, shall be covered under the motor
307 carrier's workers' compensation insurance program and the motor
308 carrier is authorized to collect payment of the premium from the
309 owner/operator. In the event that coverage is obtained by the



310 owner/operator under a workers' compensation policy or through a
311 self-insured or occupational accident policy, then the
312 owner/operator, and his drivers, shall not be entitled to benefits
313 under the motor carrier's workers' compensation insurance program
314 unless the owner/operator has elected in writing to be covered
315 under the carrier's workers' compensation program or policy or if
316 the owner/operator is covered by the carrier's plan because he
317 failed to obtain coverage. Coverage under the motor carrier's
318 workers' compensation insurance program does not terminate the
319 independent contractor status of the owner/operator under the
320 written contract or lease agreement. Nothing shall prohibit or
321 prevent an owner/operator from having or securing an occupational
322 accident policy in addition to any workers' compensation coverage
323 authorized by this section. Other than the amendments to this
324 section by Chapter 523, Laws of 2006, the provisions of this
325 section shall not be construed to have any effect on any other
326 provision of law, judicial decision or any applicable common law.

327 This chapter shall not apply to transportation and maritime
328 employments for which a rule of liability is provided by the laws
329 of the United States.

330 This chapter shall not be applicable to a mere direct
331 buyer-seller or vendor-vendee relationship where there is no
332 employer-employee relationship as defined by Section 71-3-3, and
333 any insurance carrier is hereby prohibited from charging a premium
334 for any person who is a seller or vendor rather than an employee.



335 Any employer may elect, by proper and written action of its
336 own governing authority, to be exempt from the provisions of the
337 Workers' Compensation Law as to its sole proprietor, its partner
338 in a partnership or to its employee who is the owner of fifteen
339 percent (15%) or more of its stock in a corporation, if such sole
340 proprietor, partner or employee also voluntarily agrees thereto in
341 writing. Any sole proprietor, partner or employee owning fifteen
342 percent (15%) or more of the stock of his/her corporate employer
343 who becomes exempt from coverage under the Workers' Compensation
344 Law shall be excluded from the total number of workers or
345 operatives toward reaching the mandatory coverage threshold level
346 of five (5).

347 **SECTION *.** Section 71-3-9, Mississippi Code of 1972, is
348 brought forward as follows:

349 71-3-9. The liability of an employer to pay compensation
350 shall be exclusive and in place of all other liability of such
351 employer to the employee, his legal representative, husband or
352 wife, parents, dependents, next-of-kin, and anyone otherwise
353 entitled to recover damages at common law or otherwise from such
354 employer on account of such injury or death, except that if an
355 employer fails to secure payment of compensation as required by
356 this chapter, an injured employee, or his legal representative in
357 case death results from the injury, may elect to claim
358 compensation under this chapter, or to maintain an action at law
359 for damages on account of such injury or death. In such action



360 the defendant may not plead as a defense that the injury was
361 caused by the negligence of a fellow servant, nor that the
362 employee assumed the risk of his employment, nor that the injury
363 was due to the contributory negligence of the employee.

364 **FURTHER, AMEND the title to conform.**

