

By: Representatives Guice, Formby

To: Insurance

HOUSE BILL NO. 729

1 AN ACT TO DISQUALIFY CERTAIN INCARCERATED WORKERS'
 2 COMPENSATION CLAIMANTS FROM ENTITLEMENT TO BENEFITS; TO AMEND
 3 SECTION 71-3-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 4 PREEXISTING CONDITIONS DO NOT HAVE TO BE OCCUPATIONALLY DISABLING
 5 FOR APPORTIONMENT TO APPLY IN A WORKERS' COMPENSATION CLAIM; TO
 6 AMEND SECTION 71-3-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 7 CERTAIN MEDICAL INFORMATION SHALL BE EQUALLY ACCESSIBLE BY
 8 EMPLOYEES AND EMPLOYERS IN WORKERS' COMPENSATION CASES; TO AMEND
 9 SECTION 71-3-25, MISSISSIPPI CODE OF 1972, TO PROVIDE AN EMPLOYER
 10 THE RIGHT TO REQUIRE AN AUTOPSY IN CERTAIN DEATH CASES AT THE
 11 EXPENSE OF THE EMPLOYER UNDER THE WORKERS' COMPENSATION LAWS; TO
 12 AMEND SECTION 71-3-35, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 13 WHEN AN EMPLOYEE RESIGNS, HIS EMPLOYMENT IS TERMINATED OR HE IS
 14 LAID OFF, A COMPENSABLE CLAIM MAY BE MAINTAINED ONLY IF THE
 15 EMPLOYER HAS RECEIVED NOTICE OF THE INJURY BEFORE THE TERMINATION
 16 DATE; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** (1) Notwithstanding any other provision of this
 19 chapter to the contrary, an injured worker is not eligible to
 20 receive workers' compensation benefits or medical expenses for
 21 periods of time during which the worker is incarcerated for the
 22 commission of a crime unless the injured worker is receiving a
 23 structured settlement due to a permanent and total loss of
 24 wage-earning capacity which was attributable to the work-related
 25 injury.

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

29 (3) If upon appeal such conviction is overturned, the
 30 benefits suspended during the period of incarceration shall be
 31 reinstated.

32 **SECTION 2.** Section 71-3-7, Mississippi Code of 1972, is
 33 amended as follows:

34 71-3-7. Compensation shall be payable for disability or
35 death of an employee from injury or occupational disease arising
36 out of and in the course of employment, without regard to fault as
37 to the cause of the injury or occupational disease. An
38 occupational disease shall be deemed to arise out of and in the
39 course of employment when there is evidence that there is a direct
40 causal connection between the work performed and the occupational
41 disease.

42 Where a preexisting physical handicap, disease, or lesion is
43 shown by medical findings to be a material contributing factor in
44 the results following injury, the compensation which, but for this
45 paragraph, would be payable shall be reduced by that proportion
46 which such preexisting physical handicap, disease, or lesion
47 contributed to the production of the results following the injury.
48 The preexisting condition does not have to be occupationally
49 disabling for this apportionment to apply.

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

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

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

61 (d) If maximum medical recovery has occurred before the
62 hearing and order of the attorney-referee, credit for excess
63 payments shall be allowed in future payments. Such allowances and
64 method of accomplishment of the same shall be determined by the
65 attorney-referee, subject to review by the commission. However,

66 no actual repayment of such excess shall be made to the employer
67 or carrier.

68 No compensation shall be payable if the intoxication of the
69 employee was the proximate cause of the injury, or if it was the
70 willful intention of the employee to injure or kill himself or
71 another.

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

75 In the case of an employer who is a subcontractor, the
76 contractor shall be liable for and shall secure the payment of
77 such compensation to employees of the subcontractor, unless the
78 subcontractor has secured such payment.

79 **SECTION 3.** Section 71-3-15, Mississippi Code of 1972, is
80 amended as follows:

81 71-3-15. (1) The employer shall furnish such medical,
82 surgical, and other attendance or treatment, nurse and hospital
83 service, medicine, crutches, artificial members, and other
84 apparatus for such period as the nature of the injury or the
85 process of recovery may require. The injured employee shall have
86 the right to accept the services furnished by the employer or, in
87 his discretion, to select one (1) competent physician of his
88 choosing and such other specialists to whom he is referred by his
89 chosen physician to administer medical treatment. Referrals by the
90 chosen physician shall be limited to one (1) physician within a
91 specialty or subspecialty area. Except in an emergency requiring
92 immediate medical attention, any additional selection of
93 physicians by the injured employee or further referrals must be
94 approved by the employer, if self-insured, or the carrier prior to
95 obtaining the services of the physician at the expense of the
96 employer or carrier. If denied, the injured employee may apply to
97 the commission for approval of the additional selection or
98 referral, and if the commission determines that such request is

99 reasonable, the employee may be authorized to obtain such
100 treatment at the expense of the employer or carrier. Approval by
101 the employer or carrier does not require approval by the
102 commission. A physician to whom the employee is referred by his
103 employer shall not constitute the employee's selection, unless the
104 employee, in writing, accepts the employer's referral as his own
105 selection. Should the employer desire, he may have the employee
106 examined by a physician other than of the employee's choosing for
107 the purpose of evaluating temporary or permanent disability or
108 medical treatment being rendered under such reasonable terms and
109 conditions as may be prescribed by the commission. If at any time
110 during such period the employee unreasonably refuses to submit to
111 medical or surgical treatment, the commission shall, by order,
112 suspend the payment of further compensation during such time as
113 such refusal continues, and no compensation shall be paid at any
114 time during the period of such suspension; provided, that no claim
115 for medical or surgical treatment shall be valid and enforceable,
116 as against such employer, unless within twenty (20) days following
117 the first treatment the physician or provider giving such
118 treatment shall furnish to the employer, if self-insured, or its
119 carrier, a preliminary report of such injury and treatment, on a
120 form or in a format approved by the commission. Subsequent
121 reports of such injury and treatment must be submitted at least
122 every thirty (30) days thereafter until such time as a final
123 report shall have been made. Reports which are required to be
124 filed hereunder shall be furnished by the medical provider to the
125 employer or carrier, and it shall be the responsibility of the
126 employer or carrier receiving such reports to promptly furnish
127 copies to the commission. The commission may, in its discretion,
128 excuse the failure to furnish such reports within the time
129 prescribed herein if it finds good cause to do so, and may, upon
130 request of any party in interest, order or direct the employer or

131 carrier to pay the reasonable value of medical services rendered
132 to the employee.

133 (2) Whenever in the opinion of the commission a physician
134 has not correctly estimated the degree of permanent disability or
135 the extent of the temporary disability of an injured employee, the
136 commission shall have the power to cause such employee to be
137 examined by a physician selected by the commission, and to obtain
138 from such physician a report containing his estimate of such
139 disabilities. The commission shall have the power in its
140 discretion to charge the cost of such examination to the employer,
141 if he is a self-insurer, or to the insurance company which is
142 carrying the risk.

143 (3) In carrying out this section, the commission shall
144 establish an appropriate medical provider fee schedule, medical
145 cost containment system and utilization review which incorporates
146 one or more medical review panels to determine the reasonableness
147 of charges and the necessity for the services, and limitations on
148 fees to be charged by medical providers for testimony and copying
149 or completion of records and reports and other provisions which,
150 at the discretion of the commission, are necessary to encompass a
151 complete medical cost containment program. The commission may
152 contract with a private organization or organizations to establish
153 and implement such a medical cost containment system and fee
154 schedule with the cost for administering such a system to be paid
155 out of the administrative expense fund as provided in this
156 chapter. All fees and other charges for such treatment or service
157 shall be limited to such charges as prevail in the same community
158 for similar treatment and shall be subject to regulation by the
159 commission. No medical bill shall be paid to any doctor until all
160 forms and reports required by the commission have been filed. Any
161 employee receiving treatment or service under the provisions of
162 this chapter may not be held responsible for any charge for such
163 treatment or service, and no doctor, hospital or other recognized

164 medical provider shall attempt to bill, charge or otherwise
165 collect from the employee any amount greater than or in excess of
166 the amount paid by the employer, if self-insured, or its workers'
167 compensation carrier. Any dispute over the amount charged for
168 service rendered under the provisions of this chapter, or over the
169 amount of reimbursement for services rendered under the provisions
170 of this chapter, shall be limited to and resolved between the
171 provider and the employer or carrier in accordance with the fee
172 dispute resolution procedures adopted by the commission.

173 (4) The liability of an employer for medical treatment as
174 herein provided shall not be affected by the fact that his
175 employee was injured through the fault or negligence of a third
176 party, not in the same employ, provided the injured employee was
177 engaged in the scope of his employment when injured. The employer
178 shall, however, have a cause of action against such third party to
179 recover any amounts paid by him for such medical treatment.

180 (5) An injured worker who believes that his best interest
181 has been prejudiced by the findings of the physician designated by
182 the employer or carrier shall have the privilege of a medical
183 examination by a physician of his own choosing, at the expense of
184 the carrier or employer. Such examination may be had at any time
185 after injury and prior to the closing of the case, provided that
186 the charge shall not exceed One Hundred Dollars (\$100.00) and
187 shall be paid by the carrier or employer where the previous
188 medical findings are upset, but paid by the employee if previous
189 medical findings are confirmed.

190 (6) Medical and surgical treatment as provided in this
191 section shall not be deemed to be privileged insofar as carrying
192 out the provisions of this chapter is concerned. All findings and
193 opinions pertaining to a medical, psychological or surgical
194 examination or treatment obtained in accordance with this chapter
195 shall be reported on commission forms and shall be equally
196 accessible by the employee and the employer or their

197 representatives. This section shall not be interpreted so as to
198 prohibit or limit either the employee or employer from discussing
199 with any medical provider who treats or evaluates an employee for
200 an injury or medical condition for which claim is made any
201 information that is necessary to carry out the provisions of this
202 chapter. However, any information obtained under this section
203 shall not be disseminated by the employer to any parties for
204 purposes inconsistent with this chapter unless authorized in
205 writing by the employee or his duly authorized representative or
206 as otherwise required to do so by a court or administrative body
207 of competent jurisdiction. All findings pertaining to an
208 independent medical examination by order of the commission shall
209 be reported as provided in the order for such examination.

210 (7) Any medical benefits paid by reason of any accident or
211 health insurance policy or plan paid for by the employer, which
212 were for expenses of medical treatment under this section, are,
213 upon notice to the carrier prior to payment by it, subject to
214 subrogation in favor of the accident or health insurance company
215 to the extent of its payment for medical treatment under this
216 section. Reimbursement to the accident or health insurance
217 company by the carrier or employer, to the extent of such
218 reimbursement, shall constitute payment by the employer or carrier
219 of medical expenses under this section. Under no circumstances,
220 shall any subrogation be had by any insurance company against any
221 compensation benefits paid under this chapter.

222 **SECTION 4.** Section 71-3-25, Mississippi Code of 1972, is
223 amended as follows:

224 71-3-25. (1) If the injury causes death, the compensation
225 shall be known as a death benefit and shall be payable in the
226 amount and to or for the benefit of the persons following:

227 (a) An immediate lump sum payment of Two Hundred Fifty
228 Dollars (\$250.00) to the surviving spouse, in addition to other
229 compensation benefits.

230 (b) Reasonable funeral expenses not exceeding Two
231 Thousand Dollars (\$2,000.00) exclusive of other burial insurance
232 or benefits.

233 (c) If there be a surviving spouse and no child of the
234 deceased, to such surviving spouse thirty-five percent (35%) of
235 the average wages of the deceased during widowhood or dependent
236 widowhood and, if there be a surviving child or children of the
237 deceased, the additional amount of ten percent (10%) of such wages
238 for each such child. In case of the death or remarriage of such
239 surviving spouse, any surviving child of the deceased employee
240 shall have his compensation increased to fifteen percent (15%) of
241 such wages, provided that the total amount payable shall in no
242 case exceed sixty-six and two-thirds percent (66-2/3%) of such
243 wages, subject to the maximum limitations as to weekly benefits as
244 set up in this chapter. The commission may, in its discretion,
245 require the appointment of a guardian for the purpose of receiving
246 the compensation of a minor dependent. In the absence of such a
247 requirement, the appointment of a guardian for such purposes shall
248 not be necessary, provided that if no legal guardian be appointed,
249 payment to the natural guardian shall be sufficient.

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

256 (e) If there be no surviving spouse or child, or if the
257 amount payable to a surviving spouse and to children shall be less
258 in the aggregate than sixty-six and two-thirds percent (66-2/3%)
259 of the average wages of the deceased, subject to the maximum
260 limitations as to weekly benefits as set up in this chapter, then
261 for the support of grandchildren or brothers and sisters, if
262 dependent upon the deceased at the time of the injury, fifteen

263 percent (15%) of such wages for the support of each such person;
264 and for the support of each parent or grandparent of the deceased,
265 if dependent upon him at the time of injury, fifteen percent (15%)
266 of such wages during such dependency. But in no case shall the
267 aggregate amount payable under this subsection exceed the
268 difference between sixty-six and two-thirds percent (66-2/3%) of
269 such wages and the amount payable as hereinbefore provided to
270 surviving spouse and for the support of surviving child or
271 children, subject to the maximum limitations as to weekly benefits
272 as set up in this chapter.

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

280 (g) All questions of dependency shall be determined as
281 of the time of the injury. A surviving spouse, child or children
282 shall be presumed to be wholly dependent. All other dependents
283 shall be considered on the basis of total or partial dependence as
284 the facts may warrant.

285 (2) The employer shall have the right to require an autopsy
286 at the expense of the employer unless autopsies are against the
287 religious beliefs of the deceased or the family of the deceased.

288 **SECTION 5.** Section 71-3-35, Mississippi Code of 1972, is
289 amended as follows:

290 71-3-35. (1) No claim for compensation shall be maintained
291 unless, within thirty (30) days after the occurrence of the
292 injury, actual notice was received by the employer or by an
293 officer, manager, or designated representative of an employer. If
294 no representative has been designated by posters placed in one or
295 more conspicuous places, then notice received by any superior

296 shall be sufficient. Absence of notice shall not bar recovery if
297 it is found that the employer had knowledge of the injury and was
298 not prejudiced by the employee's failure to give notice.
299 Regardless of whether notice was received, if no payment of
300 compensation (other than medical treatment or burial expense) is
301 made and no application for benefits filed with the commission
302 within two (2) years from the date of the injury or death, the
303 right to compensation therefor shall be barred.

304 (2) If a person who is entitled to compensation under this
305 chapter is mentally incompetent or a minor, the limitation for
306 filing application for benefits shall not be applicable so long as
307 such person has no guardian or other authorized representative,
308 but shall be applicable in the case of a person who is mentally
309 incompetent or a minor from the date of appointment of such
310 guardian or other representative, or in the case of a minor, if no
311 guardian is appointed before he becomes of age, from the date he
312 becomes of age.

313 (3) Where recovery is denied to any person, in a suit
314 brought at law or admiralty to recover damages in respect of
315 injury or death, on the ground that such person was an employee
316 and that the defendant was an employer within the meaning of this
317 chapter and that such employer had secured compensation to such
318 employee under this chapter, the limitation upon filing
319 application for benefits shall begin to run only from the date of
320 termination of such suit.

321 (4) When an employee resigns, his employment is terminated
322 or he is laid off, no claim for physical injury shall be
323 maintained unless actual notice of the injury was received by the
324 employer on or before the date of the resignation, termination or
325 layoff.

326 **SECTION 6.** This act shall take effect and be in force from
327 and after July 1, 2005.