

By: Senator(s) Kirby

To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2181

1 AN ACT TO AMEND SECTIONS 71-3-3 AND 71-3-5, MISSISSIPPI CODE
2 OF 1972, TO PROVIDE THAT CERTAIN OWNER/OPERATORS OF MOTOR VEHICLES
3 ARE INDEPENDENT CONTRACTORS AND ARE EXEMPT FROM THE PROVISIONS OF
4 THE WORKERS' COMPENSATION LAW; AND FOR RELATED PURPOSES.

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

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

8 71-3-3. Unless the context otherwise requires, the
9 definitions which follow govern the construction and meaning of
10 the terms used in this chapter:

11 (a) "Person" includes an individual, firm, voluntary
12 association or a corporation.

13 (b) "Injury" means accidental injury or accidental
14 death arising out of and in the course of employment without
15 regard to fault which results from an untoward event or events, if
16 contributed to or aggravated or accelerated by the employment in a
17 significant manner. Untoward event includes events causing
18 unexpected results. An untoward event or events shall not be
19 presumed to have arisen out of and in the course of employment,
20 except in the case of an employee found dead in the course of
21 employment. This definition includes injuries to artificial
22 members, and also includes an injury caused by the willful act of
23 a third person directed against an employee because of his
24 employment while so employed and working on the job, and
25 disability or death due to exposure to ionizing radiation from any
26 process in employment involving the use of or direct contact with
27 radium or radioactive substances with the use of or direct
28 exposure to roentgen (X-rays) or ionizing radiation. In radiation

cases only, the date of disablement shall be treated as the date of the accident. Occupational diseases, or the aggravation thereof, are excluded from the term "injury," provided that, except as otherwise specified, all provisions of this chapter apply equally to occupational diseases as well as injury.

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

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

(ii) "Employee" shall not include any owner/operator who leases his vehicular equipment with a driver to a motor carrier under a written contract. Such owner/operator and his driver are independent contractors exempt from the provisions

62 of this chapter. This subparagraph (ii) shall apply only to motor
63 carriers regulated by the U.S. Department of Transportation
64 pursuant to 49 CFR Part 376.

65 (e) "Employer," except when otherwise expressly stated,
66 includes a person, partnership, association, corporation and the
67 legal representatives of a deceased employer, or the receiver or
68 trustee of a person, partnership, association or corporation.

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

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

76 (h) "Commission" means the Workers' Compensation
77 Commission.

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

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

85 (k) "Wages" includes the money rate at which the
86 service rendered is recompensed under the contract of hiring in
87 force at the time of injury, and also the reasonable value of
88 board, rent, housing, lodging or similar advantage received from
89 the employer and gratuities received in the course of employment
90 from others than the employer. The term "wages" shall not include
91 practical training received by students of an educational
92 institution as a part of such educational institution's
93 curriculum.

94 (1) "Child" shall include a posthumous child, a child
95 legally adopted prior to the injury of the employee, a child in
96 relation to whom the deceased employee stood in the place of a
97 parent for at least one (1) year prior to the time of injury and a
98 stepchild or acknowledged illegitimate child dependent upon the
99 deceased, but does not include married children unless wholly
100 dependent on him. "Grandchild" means a child as above defined of
101 a child as above defined. "Brother" and "sister" include
102 stepbrothers and stepsisters, half brothers and half sisters, and
103 brothers and sisters by adoption, but does not include married
104 brothers nor married sisters unless wholly dependent on the
105 employee. "Child," "grandchild," "brother" and "sister" include
106 only persons who are under eighteen (18) years of age, and also
107 persons who, though eighteen (18) years of age or over, are wholly
108 dependent upon the deceased employee and incapable of self-support
109 by reason of mental or physical disability, and also a child
110 eighteen (18) years of age or older, until his twenty-third
111 birthday, who is dependent upon the deceased and is pursuing a
112 full-time education.

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

118 (n) The term "surviving spouse" includes the decedent's
119 legal wife or husband, living with him or her or dependent for
120 support upon him or her at the time of death or living apart for
121 justifiable cause or by reason of desertion at such time,
122 provided, however, such separation had not existed for more than
123 three (3) years without an award for separate maintenance or
124 alimony or the filing of a suit for separate maintenance or
125 alimony in the proper court in this state. The term "surviving
126 spouse" shall likewise include one not a legal wife or husband but

127 who had entered into a ceremonial marriage with the decedent at
128 least one (1) year prior to death and who, on the date of the
129 decedent's death, stood in the relationship of a wife or husband,
130 provided there was no living legal spouse who had protected her or
131 his rights for support by affirmative action as hereinabove
132 required. The term "surviving spouse" as contemplated in this
133 chapter shall not apply to any person who has, since his or her
134 separation from decedent, entered into a ceremonial marriage or
135 lived in open adultery with another.

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

138 (p) The singular includes the plural and the masculine
139 includes the feminine and neuter.

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

144 (r) "Independent contractor" means any individual, firm
145 or corporation who contracts to do a piece of work according to
146 his own methods without being subject to the control of his
147 employer except as to the results of the work, and who has the
148 right to employ and direct the outcome of the workers independent
149 of the employer and free from any superior authority in the
150 employer to say how the specified work shall be done or what the
151 laborers shall do as the work progresses, one who undertakes to
152 produce a given result without being in any way controlled as to
153 the methods by which he attains the result.

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

160 **SECTION 2.** Section 71-3-5, Mississippi Code of 1972, is
161 amended as follows:

162 71-3-5. The following shall constitute employers subject to
163 the provisions of this chapter:

164 Every person, firm and private corporation, including any
165 public service corporation but excluding, however, all nonprofit
166 charitable, fraternal, cultural, or religious corporations or
167 associations, that have in service five (5) or more workmen or
168 operatives regularly in the same business or in or about the same
169 establishment under any contract of hire, express or implied.

170 Any state agency, state institution, state department, or
171 subdivision thereof, including counties, municipalities and school
172 districts, or the singular thereof, not heretofore included under
173 the Workers' Compensation Law, may elect, by proper action of its
174 officers or department head, to come within its provisions and, in
175 such case, shall notify the commission of such action by filing
176 notice of compensation insurance with the commission. Payment for
177 compensation insurance policies so taken may be made from any
178 appropriation or funds available to such agency, department or
179 subdivision thereof, or from the general fund of any county or
180 municipality.

181 From and after July 1, 1990, all offices, departments,
182 agencies, bureaus, commissions, boards, institutions, hospitals,
183 colleges, universities, airport authorities or other
184 instrumentalities of the "state" as such term is defined in
185 Section 11-46-1, Mississippi Code of 1972, shall come under the
186 provisions of the Workers' Compensation Law. Payment for
187 compensation insurance policies so taken may be made from any
188 appropriation or funds available to such office, department,
189 agency, bureau, commission, board, institution, hospital, college,
190 university, airport authority or other instrumentality of the
191 state.

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

196 From and after October 1, 1993, all "political subdivisions,"
197 as such term is defined in Section 11-46-1, Mississippi Code of
198 1972, except counties and municipalities shall come under the
199 provisions of the Workers' Compensation Law. Payment for
200 compensation insurance policies so taken may be made from any
201 funds available to such political subdivisions.

202 From and after July 1, 1988, the "state" as such term is
203 defined in Section 11-46-1, Mississippi Code of 1972, may elect to
204 become a self-insurer under the provisions elsewhere set out by
205 law, by notifying the commission of its intent to become a
206 self-insurer. The cost of being such a self-insurer, as provided
207 otherwise by law, may be paid from funds available to the offices,
208 departments, agencies, bureaus, commissions, boards, institutions,
209 hospitals, colleges, universities, airport authorities or other
210 instrumentalities of the state.

211 The Mississippi Transportation Commission, the Department of
212 Public Safety and the Mississippi Industries for the Blind may
213 elect to become self-insurers under the provisions elsewhere set
214 out by law by notifying the commission of their intention of
215 becoming such a self-insurer. The cost of being such a
216 self-insurer, as provided elsewhere by law, may be paid from funds
217 available to the Mississippi Transportation Commission, the
218 Department of Public Safety or the Mississippi Industries for the
219 Blind.

220 The Mississippi State Senate and the Mississippi House of
221 Representatives may elect to become self-insurers under provisions
222 elsewhere set out by law by notifying the commission of their
223 intention of becoming such self-insurers. The cost of being such
224 self-insurers, as provided elsewhere by law, may be paid from

225 funds available to the Mississippi State Senate and the
226 Mississippi House of Representatives. The Mississippi State
227 Senate and the Mississippi House of Representatives are authorized
228 and empowered to provide workers' compensation benefits for
229 employees after January 1, 1970.

230 Any municipality of the State of Mississippi having forty
231 thousand (40,000) population or more desiring to do so may elect
232 to become a self-insurer under provisions elsewhere set out by law
233 by notifying the commission of its intention of becoming such an
234 insurer. The cost of being such a self-insurer, as provided
235 elsewhere by law, may be provided from any funds available to such
236 municipality.

237 The commission may, under such rules and regulations as it
238 prescribes, permit two (2) or more "political subdivisions," as
239 such term is defined in Section 11-46-1, Mississippi Code of 1972,
240 to pool their liabilities to participate in a group workers'
241 compensation self-insurance program. The governing authorities of
242 any political subdivision may authorize the organization and
243 operation of, or the participation in such a group self-insurance
244 program with other political subdivisions, provided such program
245 is approved by the commission. The cost of participating in a
246 group self-insurance program may be provided from any funds
247 available to a political subdivision.

248 Domestic servants, farmers and farm labor are not included
249 under the provisions of this chapter, but this exemption does not
250 apply to the processing of agricultural products when carried on
251 commercially. Any purchaser of timber products shall not be
252 liable for workers' compensation for any person who harvests and
253 delivers timber to such purchaser if such purchaser is not liable
254 for unemployment tax on the person harvesting and delivering the
255 timber as provided by United States Code Annotated, Title 26,
256 Section 3306, as amended. Provided, however, nothing in this
257 section shall be construed to exempt an employer who would

otherwise be covered under Section 71-3-5 from providing workers' compensation coverage on those employees for whom he is liable for unemployment tax.

Employers exempted by this section may assume, with respect to any employee or classification of employees, the liability for compensation imposed upon employers by this chapter with respect to employees within the coverage of this chapter. The purchase and acceptance by such employer of valid workers' compensation insurance applicable to such employee or classification of employees shall constitute, as to such employer, an assumption by him of such liability under this chapter without any further act on his part notwithstanding any other provisions of this chapter, but only with respect to such employee or such classification of employees as are within the coverage of the state fund. Such assumption of liability shall take effect and continue from the effective date of such workers' compensation insurance and as long only as such coverage shall remain in force, in which case the employer shall be subject with respect to such employee or classification of employees to no other liability than the compensation as provided for in this chapter.

An owner/operator exempted from the provisions of this chapter pursuant to Section 71-3-3(d)(ii) may assume, with respect to his employees or drivers, to provide coverage under a workers' compensation insurance policy or an authorized occupational policy that insures the owner/operator or his drivers. However, the failure of the owner/operator to secure such coverage shall not create any liability on the motor carrier under the provisions of this chapter.

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

This chapter shall not be applicable to a mere direct buyer-seller or vendor-vendee relationship where there is no

291 employer-employee relationship as defined by Section 71-3-3, and
292 any insurance carrier is hereby prohibited from charging a premium
293 for any person who is a seller or vendor rather than an employee.

294 Any employer may elect, by proper and written action of its
295 own governing authority, to be exempt from the provisions of the
296 Workers' Compensation Law as to its sole proprietor, its partner
297 in a partnership or to its employee who is the owner of fifteen
298 percent (15%) or more of its stock in a corporation, if such sole
299 proprietor, partner or employee also voluntarily agrees thereto in
300 writing. Any sole proprietor, partner or employee owning fifteen
301 percent (15%) or more of the stock of his/her corporate employer
302 who becomes exempt from coverage under the Workers' Compensation
303 Law shall be excluded from the total number of workers or
304 operatives toward reaching the mandatory coverage threshold level
305 of five (5).

306 **SECTION 3.** This act shall take effect and be in force from
307 and after its passage.