

By: Representative Guice

To: Insurance; Judiciary A

HOUSE BILL NO. 1429

1 AN ACT TO AMEND SECTION 71-3-121, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE CRITERIA FOR DRUG AND ALCOHOL TESTING UNDER WORKERS'
3 COMPENSATION; TO AMEND SECTION 71-7-5, MISSISSIPPI CODE OF 1972,
4 IN CONFORMITY THERETO; TO AMEND SECTION 71-3-17, MISSISSIPPI CODE
5 OF 1972, TO INCREASE THE AMOUNT OF COMPENSATION THE WORKERS'
6 COMPENSATION COMMISSION IS AUTHORIZED TO AWARD FOR SERIOUS FACIAL
7 OR HEAD DISFIGUREMENTS; TO AMEND SECTION 71-3-19, MISSISSIPPI CODE
8 OF 1972, TO INCREASE THE AMOUNT OF COMPENSATION THE WORKERS'
9 COMPENSATION COMMISSION IS AUTHORIZED TO AWARD WHILE AN EMPLOYEE
10 IS UNDERGOING VOCATIONAL REHABILITATION; TO AMEND SECTION 71-3-25,
11 MISSISSIPPI CODE OF 1972, TO INCREASE THE AMOUNT OF THE DEATH
12 BENEFIT COMPENSATION THE WORKERS' COMPENSATION COMMISSION IS
13 AUTHORIZED TO AWARD FOR DEATH; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 71-3-121, Mississippi Code of 1972, is
16 amended as follows:

17 71-3-121. If the employer has a reasonable suspicion to
18 believe that an employee is under the influence of alcohol, a drug
19 illegally used or prescription drugs improperly used, or in the
20 event that the claimant asserts a work-related injury, the
21 employer shall have the right to administer drug and alcohol
22 testing or demand that the employee submit himself to drug and
23 alcohol testing. If the employee has a positive initial test and
24 a positive confirmation test indicating the presence, at the time
25 of injury, of any drug or ten one-hundredths percent (.10%) or
26 more by weight volume of alcohol in the person's blood, it shall
27 be presumed that the proximate cause of the injury was the
28 intoxication of the employee or the use of a drug. If the
29 employee refuses to submit himself to drug and alcohol testing
30 immediately after the alleged work injury, then it is presumed
31 that the employee was intoxicated at the time of the accident,
32 unless the commission determines and sets forth a written finding

33 that the refusal is excused for a specific reason or specific
34 reasons constituting just cause for refusal.

35 The results of a post-accident test shall be considered
36 admissible evidence * * * on the issue of causation in the
37 determination of intoxication of an employee at the time of the
38 injury for workers' compensation purposes under Section 71-3-7.

39 In order to support a finding of intoxication due to drug or
40 alcohol use, the employer must prove the employee's use of the
41 controlled substance only by a preponderance of the evidence.

42 No cause of action for defamation of character, libel,
43 slander or damage to reputation rises in favor of any person
44 against an employer.

45 Notwithstanding any language or statute to the contrary, once
46 the employer has met the burden of proving intoxication at the
47 time of the accident, it shall be presumed that the accident was
48 caused by the intoxication of the employee. The burden of proof
49 then shall be placed upon the employee to prove that the
50 intoxication was not a contributing cause of the accident in order
51 to defeat the intoxication defense of the employer as provided by
52 Section 71-3-7.

53 **SECTION 2.** Section 71-7-5, Mississippi Code of 1972, is
54 amended as follows:

55 71-7-5. (1) Except as otherwise provided in Section
56 71-7-27, all drug and alcohol testing conducted by employers shall
57 be in conformity with the standards established in this section,
58 other applicable provisions of this chapter, and all applicable
59 regulations promulgated pursuant to this chapter.

60 (2) An employer is authorized to conduct the following types
61 of drug and alcohol tests:

62 (a) Employers may require job applicants to submit to a
63 drug and alcohol test as a condition of the employment application
64 and may use a refusal to submit to a test or positive confirmed
65 test result as a basis for refusal to hire.

66 (b) An employer may require all employees to submit to
67 reasonable suspicion drug and alcohol testing. There is created a
68 rebuttable presumption that the employer had reasonable suspicion
69 to test for drugs if the specimen provided by the employee tested
70 positive for drugs in a confirmatory drug test.

71 (c) An employer may require all employees to submit to
72 neutral selection drug and alcohol testing pursuant to Section
73 71-7-9.

74 (d) Following a claim of work-related injury.

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

77 71-3-17. Compensation for disability shall be paid to the
78 employee as follows:

79 (a) Permanent total disability: In case of total
80 disability adjudged to be permanent, sixty-six and two-thirds
81 percent (66-2/3%) of the average weekly wages of the injured
82 employee, subject to the maximum limitations as to weekly benefits
83 as set up in this chapter, shall be paid to the employee not to
84 exceed four hundred fifty (450) weeks or an amount greater than
85 the multiple of four hundred fifty (450) weeks times sixty-six and
86 two-thirds percent (66-2/3%) of the average weekly wage for the
87 state. Loss of both hands, or both arms, or both feet, or both
88 legs, or both eyes, or of any two (2) thereof shall constitute
89 permanent total disability. In all other cases permanent total
90 disability shall be determined in accordance with the facts.

91 (b) Temporary total disability: In case of disability,
92 total in character but temporary in quality, sixty-six and
93 two-thirds percent (66-2/3%) of the average weekly wages of the
94 injured employee, subject to the maximum limitations as to weekly
95 benefits as set up in this chapter, shall be paid to the employee
96 during the continuance of such disability not to exceed four
97 hundred fifty (450) weeks or an amount greater than the multiple
98 of four hundred fifty (450) weeks times sixty-six and two-thirds

99 percent (66-2/3%) of the average weekly wage for the state.
 100 Provided, however, if there arises a conflict in medical opinions
 101 of whether or not the claimant has reached maximum medical
 102 recovery and the claimant's benefits have terminated by the
 103 carrier, then the claimant may demand an immediate hearing before
 104 the commissioner upon five (5) days' notice to the carrier for a
 105 determination by the commission of whether or not in fact the
 106 claimant has reached maximum recovery.

107 (c) Permanent partial disability: In case of
 108 disability partial in character but permanent in quality, the
 109 compensation shall be sixty-six and two-thirds percent (66-2/3%)
 110 of the average weekly wages of the injured employee, subject to
 111 the maximum limitations as to weekly benefits as set up in this
 112 chapter, which shall be paid following compensation for temporary
 113 total disability paid in accordance with subsection (b) of this
 114 section, and shall be paid to the employee as follows:

| 115 | Member Lost | Number Weeks Compensation |
|-----|-------------------------------|---------------------------|
| 116 | (1) Arm | 200 |
| 117 | (2) Leg | 175 |
| 118 | (3) Hand | 150 |
| 119 | (4) Foot | 125 |
| 120 | (5) Eye | 100 |
| 121 | (6) Thumb | 60 |
| 122 | (7) First finger | 35 |
| 123 | (8) Great toe | 30 |
| 124 | (9) Second finger | 30 |
| 125 | (10) Third finger | 20 |
| 126 | (11) Toe other than great toe | 10 |
| 127 | (12) Fourth finger | 15 |
| 128 | (13) Testicle, one | 50 |
| 129 | (14) Testicle, both | 150 |
| 130 | (15) Breast, female, one | 50 |
| 131 | (16) Breast, female, both | 150 |

132 (17) Loss of hearing: Compensation for loss of hearing of
133 one (1) ear, forty (40) weeks. Compensation for loss of hearing
134 of both ears, one hundred fifty (150) weeks.

135 (18) Phalanges: Compensation for loss of more than one (1)
136 phalange of a digit shall be the same as for loss of the entire
137 digit. Compensation for loss of the first phalange shall be
138 one-half (1/2) of the compensation for loss of the entire digit.

139 (19) Amputated arm or leg: Compensation for an arm or leg,
140 if amputated at or above wrist or ankle, shall be for the loss of
141 the arm or leg.

142 (20) Binocular vision or percent of vision: Compensation
143 for loss of binocular vision or for eighty percent (80%) or more
144 of the vision of an eye shall be the same as for loss of the eye.

145 (21) Two (2) or more digits: Compensation for loss of two
146 (2) or more digits, or one (1) or more phalanges of two (2) or
147 more digits, of a hand or foot may be proportioned to the loss of
148 the use of the hand or foot occasioned thereby, but shall not
149 exceed the compensation for loss of a hand or foot.

150 (22) Total loss of use: Compensation for permanent total
151 loss of use of a member shall be the same as for loss of the
152 member.

153 (23) Partial loss or partial loss of use: Compensation for
154 permanent partial loss or loss of use of a member may be for
155 proportionate loss or loss of use of the member.

156 (24) Disfigurement: The commission, in its discretion, is
157 authorized to award proper and equitable compensation for serious
158 facial or head disfigurements not to exceed Five Thousand Dollars
159 (\$5,000.00). No such award shall be made until a lapse of one (1)
160 year from the date of the injury resulting in such disfigurement.

161 (25) Other cases: In all other cases in this class of
162 disability, the compensation shall be sixty-six and two-thirds
163 percent (66-2/3%) of the difference between his average weekly
164 wages, subject to the maximum limitations as to weekly benefits as

165 set up in this chapter, and his wage-earning capacity thereafter
166 in the same employment or otherwise, payable during the
167 continuance of such partial disability, but subject to
168 reconsideration of the degree of such impairment by the commission
169 on its own motion or upon application of any party in interest.
170 Such payments shall in no case be made for a longer period than
171 four hundred fifty (450) weeks.

172 (26) In any case in which there shall be a loss of, or loss
173 of use of, more than one (1) member or parts of more than one (1)
174 member set forth in paragraphs (1) to (23) of this subsection, not
175 amounting to permanent total disability, the award of compensation
176 shall be for the loss of, or loss of use of, each such member or
177 parts thereof, which awards shall run consecutively, except that
178 where the injury affects only two (2) or more digits of the same
179 hand or foot, paragraph (21) of this subsection shall apply.

180 **SECTION 4.** Section 71-3-19, Mississippi Code of 1972, is
181 amended as follows:

182 71-3-19. An employee who as a result of injury is or may be
183 expected to be totally or partially incapacitated for a
184 remunerative occupation and who, under the direction of the
185 commission is being rendered fit to engage in a remunerative
186 occupation may, in the discretion of the commission under
187 regulations adopted by it, receive additional compensation
188 necessary for his maintenance, but such additional compensation
189 shall not exceed Twenty-five Dollars (\$25.00) a week for not more
190 than fifty-two (52) weeks.

191 **SECTION 5.** Section 71-3-25, Mississippi Code of 1972, is
192 amended as follows:

193 71-3-25. If the injury causes death, the compensation shall
194 be known as a death benefit and shall be payable in the amount and
195 to or for the benefit of the persons following:

196 (a) An immediate lump sum payment of One Thousand
197 Dollars (\$1,000.00) to the surviving spouse, in addition to other
198 compensation benefits.

199 (b) Reasonable funeral expenses not exceeding Five
200 Thousand Dollars (\$5,000.00) exclusive of other burial insurance
201 or benefits.

202 (c) If there be a surviving spouse and no child of the
203 deceased, to such surviving spouse thirty-five percent (35%) of
204 the average wages of the deceased during widowhood or dependent
205 widowhood and, if there be a surviving child or children of the
206 deceased, the additional amount of ten percent (10%) of such wages
207 for each such child. In case of the death or remarriage of such
208 surviving spouse, any surviving child of the deceased employee
209 shall have his compensation increased to fifteen percent (15%) of
210 such wages, provided that the total amount payable shall in no
211 case exceed sixty-six and two-thirds percent (66-2/3%) of such
212 wages, subject to the maximum limitations as to weekly benefits as
213 set up in this chapter. The commission may, in its discretion,
214 require the appointment of a guardian for the purpose of receiving
215 the compensation of a minor dependent. In the absence of such a
216 requirement, the appointment of a guardian for such purposes shall
217 not be necessary, provided that if no legal guardian be appointed,
218 payment to the natural guardian shall be sufficient.

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

225 (e) If there be no surviving spouse or child, or if the
226 amount payable to a surviving spouse and to children shall be less
227 in the aggregate than sixty-six and two-thirds percent (66-2/3%)
228 of the average wages of the deceased, subject to the maximum

229 limitations as to weekly benefits as set up in this chapter, then
230 for the support of grandchildren or brothers and sisters, if
231 dependent upon the deceased at the time of the injury, fifteen
232 percent (15%) of such wages for the support of each such person;
233 and for the support of each parent or grandparent of the deceased,
234 if dependent upon him at the time of injury, fifteen percent (15%)
235 of such wages during such dependency. But in no case shall the
236 aggregate amount payable under this subsection exceed the
237 difference between sixty-six and two-thirds percent (66-2/3%) of
238 such wages and the amount payable as hereinbefore provided to
239 surviving spouse and for the support of surviving child or
240 children, subject to the maximum limitations as to weekly benefits
241 as set up in this chapter.

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

249 (g) All questions of dependency shall be determined as
250 of the time of the injury. A surviving spouse, child or children
251 shall be presumed to be wholly dependent. All other dependents
252 shall be considered on the basis of total or partial dependence as
253 the facts may warrant.

254 **SECTION 6.** This act shall take effect and be in force from
255 and after July 1, 2007.