

By: Representative Hines

To: Insurance; Judiciary A

HOUSE BILL NO. 495

1 AN ACT TO AMEND SECTION 71-3-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE WORKERS' COMPENSATION LAW SHALL BE CONSTRUED UPON
3 PROOF BY A PREPONDERANCE OF THE EVIDENCE; TO AMEND SECTION 71-3-5,
4 MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN PROVISIONS OF LAW
5 REGARDING WHETHER OWNER/OPERATORS AND MOTOR CARRIERS ARE SUBJECT
6 TO THE WORKERS' COMPENSATION LAW; TO AMEND SECTION 71-3-7,
7 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW
8 REGARDING APPORTIONMENT OF WORKERS' COMPENSATION BENEFITS; TO
9 AMEND SECTION 71-3-11, MISSISSIPPI CODE OF 1972, TO REVISE THE
10 PROVISIONS OF LAW REGARDING THE WAITING PERIOD FOR WORKERS'
11 COMPENSATION BENEFITS; TO AMEND SECTION 71-3-13, MISSISSIPPI CODE
12 OF 1972, TO REVISE THE PROVISIONS OF LAW REGARDING MAXIMUM AND
13 MINIMUM RECOVERY UNDER THE WORKERS' COMPENSATION LAW; TO AMEND
14 SECTION 71-3-15, MISSISSIPPI CODE OF 1972, TO REVISE THE
15 PROVISIONS OF LAW REGARDING MEDICAL SERVICES FOR AN INJURED
16 EMPLOYEE UNDER THE WORKERS' COMPENSATION LAW; TO AMEND SECTION
17 71-3-17, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW
18 REGARDING COMPENSATION FOR DISABILITY PAID TO THE EMPLOYEE UNDER
19 THE WORKERS' COMPENSATION LAW; TO AMEND SECTION 71-3-19,
20 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW
21 REGARDING ADDITIONAL MAINTENANCE COMPENSATION FOR INJURED
22 EMPLOYEES WHILE UNDERGOING CERTAIN VOCATIONAL REHABILITATION UNDER
23 THE WORKERS' COMPENSATION LAW; TO AMEND SECTION 71-3-21,
24 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW
25 REGARDING TEMPORARY PARTIAL DISABILITY UNDER THE WORKERS'
26 COMPENSATION LAW; TO AMEND SECTION 71-3-25, MISSISSIPPI CODE OF
27 1972, TO REVISE THE PROVISIONS OF LAW REGARDING COMPENSATION
28 BENEFITS FOR DEATH UNDER THE WORKERS' COMPENSATION LAW; TO AMEND
29 SECTION 71-3-35, MISSISSIPPI CODE OF 1972, TO REVISE THE
30 PROVISIONS OF LAW REGARDING NOTICE TO THE EMPLOYER OF INJURY UNDER
31 THE WORKERS' COMPENSATION LAW; TO AMEND SECTION 71-3-43,
32 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW
33 REGARDING THE VALIDITY OF CERTAIN LOANS ON OR AGAINST COMPENSATION
34 AND BENEFITS UNDER THE WORKERS' COMPENSATION LAW; TO AMEND SECTION



35 71-3-51, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW
36 REGARDING THE RIGHT OF JUDICIAL APPEAL UNDER THE WORKERS'
37 COMPENSATION LAW; TO AMEND SECTION 71-3-53, MISSISSIPPI CODE OF
38 1972, TO REVISE PROVISIONS OF LAW REGARDING THE REVIEW OF THE
39 COMPENSATION AWARD UNDER THE WORKERS' COMPENSATION LAW; TO AMEND
40 SECTION 71-3-55, MISSISSIPPI CODE OF 1972, TO REVISE THE
41 PROVISIONS OF LAW REGARDING THE WORKERS' COMPENSATION COMMISSION'S
42 PROCEDURES FOR HEARING AND OTHER PROCEEDINGS; TO AMEND SECTION
43 71-3-71, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW
44 REGARDING THE COMPENSATION FOR INJURIES WHERE THIRD PARTIES ARE
45 LIABLE UNDER THE WORKERS' COMPENSATION LAW; TO AMEND SECTION
46 71-3-85, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW
47 REGARDING THE COMPOSITION OF THE WORKERS' COMPENSATION COMMISSION;
48 TO AMEND SECTION 71-3-121, MISSISSIPPI CODE OF 1972, TO REVISE THE
49 PROVISIONS OF LAW REGARDING DRUG AND ALCOHOL TESTING OF EMPLOYEES
50 UNDER THE WORKERS' COMPENSATION LAW; TO CREATE A NEW SECTION OF
51 LAW, TO REQUIRE THAT A PERSON HAVING A CLAIM AGAINST AN INSURER
52 UNDER ANY PROVISION IN AN INSURANCE POLICY OTHER THAN A POLICY OF
53 AN INSOLVENT INSURER, THAT IS ALSO A COVERED CLAIM, TO EXHAUST
54 FIRST HIS RIGHT UNDER SUCH POLICY; TO PROVIDE FOR THE ORDER OF
55 RECOVERY OF CLAIMS RECOVERABLE UNDER MORE THAN ONE ASSOCIATION,
56 AND THE EFFECT OF RECOVERY UNDER ANOTHER INSURANCE GUARANTY
57 ASSOCIATION; TO PROVIDE THAT THE SECTION SHALL BE CODIFIED AS A
58 NEW SECTION WITHIN CHAPTER 3, TITLE 71, MISSISSIPPI CODE OF 1972;
59 TO BRING FORWARD SECTION 71-3-37, MISSISSIPPI CODE OF 1972, WHICH
60 REGARDS WORKERS' COMPENSATION PAYMENTS, FOR PURPOSES OF POSSIBLE
61 AMENDMENT; AND FOR RELATED PURPOSES.

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

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

65 71-3-1. (1) This chapter shall be known and cited as
66 "Workers' Compensation Law," and shall be administered by the
67 Workers' Compensation Commission, hereinafter referred to as the
68 "commission," cooperating with other state and federal authorities
69 for the prevention of injuries and occupational diseases to
70 workers and, in event of injury or occupational disease, their
71 rehabilitation or restoration to health and vocational
72 opportunity; and this chapter shall be fairly and impartially



73 construed upon proof by a preponderance of the evidence and
74 applied according to the law and the evidence in the record * * *.

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

78 (a) The words "workmen's compensation" shall mean
79 "workers' compensation"; and

80 (b) The word "commission" shall mean the Workers'
81 Compensation Commission.

82 * * *

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

85 71-3-5. The following shall constitute employers subject to
86 the provisions of this chapter:

87 Every person, firm and private corporation, including any
88 public service corporation but excluding, however, all nonprofit
89 charitable, fraternal, cultural, or religious corporations or
90 associations, that have in service five (5) or more workmen or
91 operatives regularly in the same business or in or about the same
92 establishment under any contract of hire, express or implied.

93 Any state agency, state institution, state department, or
94 subdivision thereof, including counties, municipalities and school
95 districts, or the singular thereof, not heretofore included under
96 the Workers' Compensation Law, may elect, by proper action of its
97 officers or department head, to come within its provisions and, in



98 such case, shall notify the commission of such action by filing
99 notice of compensation insurance with the commission. Payment for
100 compensation insurance policies so taken may be made from any
101 appropriation or funds available to such agency, department or
102 subdivision thereof, or from the general fund of any county or
103 municipality.

104 From and after July 1, 1990, all offices, departments,
105 agencies, bureaus, commissions, boards, institutions, hospitals,
106 colleges, universities, airport authorities or other
107 instrumentalities of the "state" as such term is defined in
108 Section 11-46-1, Mississippi Code of 1972, shall come under the
109 provisions of the Workers' Compensation Law. Payment for
110 compensation insurance policies so taken may be made from any
111 appropriation or funds available to such office, department,
112 agency, bureau, commission, board, institution, hospital, college,
113 university, airport authority or other instrumentality of the
114 state.

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

119 From and after October 1, 1993, all "political subdivisions,"
120 as such term is defined in Section 11-46-1, Mississippi Code of
121 1972, except counties and municipalities shall come under the
122 provisions of the Workers' Compensation Law. Payment for



123 compensation insurance policies so taken may be made from any
124 funds available to such political subdivisions.

125 From and after July 1, 1988, the "state" as such term is
126 defined in Section 11-46-1, Mississippi Code of 1972, may elect to
127 become a self-insurer under the provisions elsewhere set out by
128 law, by notifying the commission of its intent to become a
129 self-insurer. The cost of being such a self-insurer, as provided
130 otherwise by law, may be paid from funds available to the offices,
131 departments, agencies, bureaus, commissions, boards, institutions,
132 hospitals, colleges, universities, airport authorities or other
133 instrumentalities of the state.

134 The Mississippi Transportation Commission, the Department of
135 Public Safety and the Mississippi Industries for the Blind may
136 elect to become self-insurers under the provisions elsewhere set
137 out by law by notifying the commission of their intention of
138 becoming such a self-insurer. The cost of being such a
139 self-insurer, as provided elsewhere by law, may be paid from funds
140 available to the Mississippi Transportation Commission, the
141 Department of Public Safety or the Mississippi Industries for the
142 Blind.

143 The Mississippi State Senate and the Mississippi House of
144 Representatives may elect to become self-insurers under provisions
145 elsewhere set out by law by notifying the commission of their
146 intention of becoming such self-insurers. The cost of being such
147 self-insurers, as provided elsewhere by law, may be paid from



148 funds available to the Mississippi State Senate and the
149 Mississippi House of Representatives. The Mississippi State
150 Senate and the Mississippi House of Representatives are authorized
151 and empowered to provide workers' compensation benefits for
152 employees after January 1, 1970.

153 Any municipality of the State of Mississippi having forty
154 thousand (40,000) population or more desiring to do so may elect
155 to become a self-insurer under provisions elsewhere set out by law
156 by notifying the commission of its intention of becoming such an
157 insurer. The cost of being such a self-insurer, as provided
158 elsewhere by law, may be provided from any funds available to such
159 municipality.

160 The commission may, under such rules and regulations as it
161 prescribes, permit two (2) or more "political subdivisions," as
162 such term is defined in Section 11-46-1, Mississippi Code of 1972,
163 to pool their liabilities to participate in a group workers'
164 compensation self-insurance program. The governing authorities of
165 any political subdivision may authorize the organization and
166 operation of, or the participation in such a group self-insurance
167 program with other political subdivisions, provided such program
168 is approved by the commission. The cost of participating in a
169 group self-insurance program may be provided from any funds
170 available to a political subdivision.

171 Domestic servants, farmers and farm labor are not included
172 under the provisions of this chapter, but this exemption does not



173 apply to the processing of agricultural products when carried on
174 commercially. Any purchaser of timber products shall not be
175 liable for workers' compensation for any person who harvests and
176 delivers timber to such purchaser if such purchaser is not liable
177 for unemployment tax on the person harvesting and delivering the
178 timber as provided by United States Code Annotated, Title 26,
179 Section 3306, as amended. Provided, however, nothing in this
180 section shall be construed to exempt an employer who would
181 otherwise be covered under this section from providing workers'
182 compensation coverage on those employees for whom he is liable for
183 unemployment tax.

184 Employers exempted by this section may assume, with respect
185 to any employee or classification of employees, the liability for
186 compensation imposed upon employers by this chapter with respect
187 to employees within the coverage of this chapter. The purchase
188 and acceptance by such employer of valid workers' compensation
189 insurance applicable to such employee or classification of
190 employees shall constitute, as to such employer, an assumption by
191 him of such liability under this chapter without any further act
192 on his part notwithstanding any other provisions of this chapter,
193 but only with respect to such employee or such classification of
194 employees as are within the coverage of the state fund. Such
195 assumption of liability shall take effect and continue from the
196 effective date of such workers' compensation insurance and as long
197 only as such coverage shall remain in force, in which case the



198 employer shall be subject with respect to such employee or
199 classification of employees to no other liability than the
200 compensation as provided for in this chapter.

201 An owner/operator, and his drivers, must provide a
202 certificate of insurance of workers' compensation coverage to the
203 motor carrier or proof of coverage under a self-insured plan or an
204 occupational accident policy. The proof of coverage must be
205 originated by the owner/operator and not by the motor carrier.
206 Any such occupational accident policy shall provide a minimum of
207 One Million Dollars (\$1,000,000.00) of overall coverage, with a
208 minimum of five (5) years of indemnity benefits equal to or
209 exceeding sixty-six and two-thirds percent (66-2/3%) of the
210 owner/operator's gross average weekly revenue and medical benefits
211 for the duration of the work injury related medical needs. Should
212 the owner/operator fail to provide written proof of coverage to
213 the motor carrier, or should the coverage in the occupational
214 accident policy not be sufficient to meet the terms in this
215 section, then the owner/operator, and his drivers, shall be
216 covered under the motor carrier's workers' compensation insurance
217 program and the motor carrier is authorized to collect payment of
218 the premium from the owner/operator. In the event that coverage
219 is obtained by the owner/operator under a workers' compensation
220 policy or through a self-insured or occupational accident policy,
221 then the owner/operator, and his drivers, shall not be entitled to
222 benefits under the motor carrier's workers' compensation insurance



223 program unless the owner/operator has elected in writing to be
224 covered under the carrier's workers' compensation program or
225 policy or if the owner/operator is covered by the carrier's plan
226 because he failed to obtain coverage. Coverage under the motor
227 carrier's workers' compensation insurance program does not
228 terminate the independent contractor status of the owner/operator
229 under the written contract or lease agreement. Nothing shall
230 prohibit or prevent an owner/operator from having or securing an
231 occupational accident policy in addition to any workers'
232 compensation coverage authorized by this section. Other than the
233 amendments to this section by Chapter 523, Laws of 2006, the
234 provisions of this section shall not be construed to have any
235 effect on any other provision of law, judicial decision or any
236 applicable common law.

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

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

245 Any employer may elect, by proper and written action of its
246 own governing authority, to be exempt from the provisions of the
247 Workers' Compensation Law as to its sole proprietor, its partner



248 in a partnership or to its employee who is the owner of fifteen
249 percent (15%) or more of its stock in a corporation, if such sole
250 proprietor, partner or employee also voluntarily agrees thereto in
251 writing. Any sole proprietor, partner or employee owning fifteen
252 percent (15%) or more of the stock of his/her corporate employer
253 who becomes exempt from coverage under the Workers' Compensation
254 Law shall be excluded from the total number of workers or
255 operatives toward reaching the mandatory coverage threshold level
256 of five (5).

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

259 71-3-7. (1) Compensation shall be payable for disability or
260 death of an employee from injury or occupational disease arising
261 out of and in the course of employment, without regard to fault as
262 to the cause of the injury or occupational disease. An
263 occupational disease shall be deemed to arise out of and in the
264 course of employment when there is evidence that there is a direct
265 causal connection between the work performed and the occupational
266 disease. In all claims in which no benefits, including
267 disability, death and medical benefits, have been paid, the
268 claimant shall file medical records in support of his claim for
269 benefits when filing a petition to controvert. If the claimant is
270 unable to file the medical records in support of his claim for
271 benefits at the time of filing the petition to controvert because
272 of a limitation of time established by Section 71-3-35 or Section



273 71-3-53, the claimant shall file medical records in support of his
274 claim within sixty (60) days after filing the petition to
275 controvert.

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

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

286 (a) Apportionment shall not be applied until the * * *
287 attorney-referee has determined the percentage of apportionment.
288 Such apportionment shall apply to all benefits for temporary and
289 permanent disability whether total or partial. To the extent that
290 the employer and carrier have already paid an advance of
291 unapportioned indemnity benefits, whether temporary or permanent
292 in nature, they shall be entitled to a credit against any
293 additional indemnity award made by the attorney-referee, subject
294 to review by the commission as the ultimate finder of fact.

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



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

299 (c) After the date the claimant reaches maximum medical
300 recovery, weekly compensation benefits and maximum recovery shall
301 be reduced by that proportion which the preexisting physical
302 handicap, disease, or lesion contributes to the results following
303 injury.

304 (d) If maximum medical recovery has occurred before the
305 hearing and order of the attorney-referee, credit for excess
306 payments shall be allowed in future payments. Such allowances and
307 method of accomplishment of the same shall be determined by the
308 attorney-referee, subject to review by the commission. However,
309 no actual repayment of such excess shall be made to the employer
310 or carrier.

311 (4) No compensation shall be payable if the use of drugs
312 illegally, or the use of a valid prescription medication(s) taken
313 contrary to the prescriber's instructions and/or contrary to label
314 warnings, or intoxication due to the use of alcohol of the
315 employee was the proximate cause of the injury, or if it was the
316 willful intention of the employee to injure or kill himself or
317 another.

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



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

325 **SECTION 4.** Section 71-3-11, Mississippi Code of 1972, is
326 amended as follows:

327 71-3-11. No compensation except medical benefits shall be
328 allowed for the first * * * seven (7) days of the disability. In
329 case the injury results in disability of fourteen (14) days or
330 more, the compensation shall be allowed from the date of
331 disability.

332 **SECTION 5.** Section 71-3-13, Mississippi Code of 1972, is
333 amended as follows:

334 71-3-13. (1) Compensation for disability or in death cases
335 shall not exceed sixty-six and two-thirds percent (66-2/3%) of one
336 hundred twenty-five percent (125%) of the average weekly wage for
337 the state per week, nor shall it be less than * * * Fifty Dollars
338 (\$50.00) per week * * *.

339 (2) Maximum recovery: The total recovery of compensation
340 hereunder, exclusive of medical payments under Section 71-3-15,
341 arising from the injury to an employee or the death of an
342 employee, or any combination of such injury or death, shall not
343 exceed the multiple of * * * six hundred (600) weeks times
344 sixty-six and two-thirds percent (66-2/3%) of one hundred



345 twenty-five percent (125%) of the average weekly wage for the
346 state.

347 **SECTION 6.** Section 71-3-15, Mississippi Code of 1972, is
348 amended as follows:

349 71-3-15. (1) The employer shall furnish such medical,
350 surgical, and other attendance or treatment, nurse and hospital
351 service, medicine, crutches, artificial members, and other
352 apparatus for such period as the nature of the injury or the
353 process of recovery may require. The injured employee shall have
354 the right to accept the services furnished by the employer or, in
355 his discretion, to select one (1) competent physician of his
356 choosing and such other specialists to whom he is referred by his
357 chosen physician to administer medical treatment. Referrals by
358 the chosen physician shall be limited to one (1) physician within
359 a specialty or subspecialty area. Except in an emergency
360 requiring immediate medical attention, any additional selection of
361 physicians by the injured employee or further referrals must be
362 approved by the employer, if self-insured, or the carrier prior to
363 obtaining the services of the physician at the expense of the
364 employer or carrier. If denied, the injured employee may apply to
365 the commission for approval of the additional selection or
366 referral, and if the commission determines that such request is
367 reasonable, the employee may be authorized to obtain such
368 treatment at the expense of the employer or carrier. Approval by
369 the employer or carrier does not require approval by the



370 commission. A physician to whom the employee is referred by his
371 employer shall not constitute the employee's selection * * * if
372 such referral was made by an employer or carrier representative by
373 suggestion, by selecting from a proposed list or by any other
374 means. The employer and carrier are permitted to require the
375 employee to sign a physician selection form naming the doctor whom
376 the employee is selecting and such form will be binding as the
377 employee's selection if the selected physician was not selected at
378 the suggestion of the employer and carrier. Furthermore,
379 treatment by the employee for more than one (1) year from the
380 first date of treatment with a physician shall constitute a waiver
381 of any further physician selection and such physician shall be
382 deemed the employee's selection. Should the employer desire, he
383 may have the employee examined by a physician other than of the
384 employee's choosing for the purpose of evaluating temporary or
385 permanent disability or medical treatment being rendered under
386 such reasonable terms and conditions as may be prescribed by the
387 commission and such physician shall not be paid in excess of the
388 medical provider fee schedule set forth by the commission. Any
389 records or opinions by physicians that resulted from charges to
390 the employer and carrier in excess of the medical provider fee
391 schedule will not be admissible in any hearing before the
392 commission. If at any time during such period the employee
393 unreasonably refuses to submit to medical or surgical treatment,
394 the commission shall, by order, suspend the payment of further



395 compensation during such time as such refusal continues, and no
396 compensation shall be paid at any time during the period of such
397 suspension; provided, that no claim for medical or surgical
398 treatment shall be valid and enforceable, as against such
399 employer, unless within twenty (20) days following the first
400 treatment the physician or provider giving such treatment shall
401 furnish to the employer, if self-insured, or its carrier, a
402 preliminary report of such injury and treatment, on a form or in a
403 format approved by the commission. Subsequent reports of such
404 injury and treatment must be submitted at least every thirty (30)
405 days thereafter until such time as a final report shall have been
406 made. Reports which are required to be filed hereunder shall be
407 furnished by the medical provider to the employer or carrier, and
408 it shall be the responsibility of the employer or carrier
409 receiving such reports to promptly furnish copies to the
410 commission. The commission may, in its discretion, excuse the
411 failure to furnish such reports within the time prescribed herein
412 if it finds good cause to do so, and may, upon request of any
413 party in interest, order or direct the employer or carrier to pay
414 the reasonable value of medical services rendered to the employee.

415 (2) Whenever in the opinion of the commission a physician
416 has not correctly estimated the degree of permanent disability or
417 the extent of the temporary disability of an injured employee, the
418 commission shall have the power to cause such employee to be
419 examined by a physician selected by the commission, and to obtain



420 from such physician a report containing his estimate of such
421 disabilities. The commission shall have the power in its
422 discretion to charge the cost of such examination to the employer,
423 if he is a self-insurer, or to the insurance company which is
424 carrying the risk.

425 (3) In carrying out this section, the commission shall
426 establish an appropriate medical provider fee schedule, medical
427 cost containment system and utilization review which incorporates
428 one or more medical review panels to determine the reasonableness
429 of charges and the necessity for the services, and limitations on
430 fees to be charged by medical providers for testimony and copying
431 or completion of records and reports and other provisions which,
432 at the discretion of the commission, are necessary to encompass a
433 complete medical cost containment program. The commission may
434 contract with a private organization or organizations to establish
435 and implement such a medical cost containment system and fee
436 schedule with the cost for administering such a system to be paid
437 out of the administrative expense fund as provided in this
438 chapter. All fees and other charges for such treatment or service
439 shall be limited to such charges as prevail in the same community
440 for similar treatment and shall be subject to regulation by the
441 commission. No medical bill shall be paid to any doctor until all
442 forms and reports required by the commission have been filed. Any
443 employee receiving treatment or service under the provisions of
444 this chapter may not be held responsible for any charge for such



445 treatment or service, and no doctor, hospital or other recognized
446 medical provider shall attempt to bill, charge or otherwise
447 collect from the employee any amount greater than or in excess of
448 the amount paid by the employer, if self-insured, or its workers'
449 compensation carrier. Any dispute over the amount charged for
450 service rendered under the provisions of this chapter, or over the
451 amount of reimbursement for services rendered under the provisions
452 of this chapter, shall be limited to and resolved between the
453 provider and the employer or carrier in accordance with the fee
454 dispute resolution procedures adopted by the commission.

455 (4) The liability of an employer for medical treatment as
456 herein provided shall not be affected by the fact that his
457 employee was injured through the fault or negligence of a third
458 party, not in the same employ, provided the injured employee was
459 engaged in the scope of his employment when injured. The employer
460 shall, however, have a cause of action against such third party to
461 recover any amounts paid by him for such medical treatment.

462 (5) An injured worker who believes that his best interest
463 has been prejudiced by the findings of the physician designated by
464 the employer or carrier shall have the privilege of a medical
465 examination by a physician of his own choosing, at the expense of
466 the carrier or employer. Such examination may be had at any time
467 after injury and prior to the closing of the case, provided that
468 the charge shall not exceed * * * the amount customarily paid by
469 the employee and carrier for Employer Medical Evaluations and



470 shall be paid by the carrier or employer where the previous
471 medical findings are upset, but paid by the employee if previous
472 medical findings are confirmed.

473 (6) Medical and surgical treatment as provided in this
474 section shall not be deemed to be privileged insofar as carrying
475 out the provisions of this chapter is concerned. All findings
476 pertaining to a second opinion medical examination, at the
477 instance of the employer shall be reported as herein required
478 within fourteen (14) days of the examination, except that copies
479 thereof shall also be furnished by the employer or carrier to the
480 employee. All findings pertaining to an independent medical
481 examination by order of the commission shall be reported as
482 provided in the order for such examination.

483 (7) Any medical benefits paid by reason of any accident or
484 health insurance policy or plan paid for by the employer, which
485 were for expenses of medical treatment under this section, are,
486 upon notice to the carrier prior to payment by it, subject to
487 subrogation in favor of the accident or health insurance company
488 to the extent of its payment for medical treatment under this
489 section. Reimbursement to the accident or health insurance
490 company by the carrier or employer, to the extent of such
491 reimbursement, shall constitute payment by the employer or carrier
492 of medical expenses under this section. Under no circumstances,
493 shall any subrogation be had by any insurance company against any
494 compensation benefits paid under this chapter.



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

497 71-3-17. Compensation for disability shall be paid to the
498 employee as follows:

499 (a) Permanent total disability: In case of total
500 disability adjudged to be permanent, sixty-six and two-thirds
501 percent (66-2/3%) of the average weekly wages of the injured
502 employee, subject to the minimum and maximum limitations as to
503 weekly benefits as set up in this chapter, shall be paid to the
504 employee not to exceed * * * the overall maximum as set up in this
505 chapter. Loss of both hands, or both arms, or both feet, or both
506 legs, or both eyes, or of any two (2) thereof shall constitute
507 permanent total disability. In all other cases, permanent total
508 disability shall be determined in accordance with the facts.

509 (b) Temporary total disability: In case of disability,
510 total in character but temporary in quality, sixty-six and
511 two-thirds percent (66-2/3%) of one hundred twenty-five percent
512 (125%) of the average weekly wages of the injured employee,
513 subject to the minimum and maximum limitations as to weekly
514 benefits as set up in this chapter, shall be paid to the employee
515 during the continuance of such disability not to exceed * * * the
516 overall maximum as set up in this chapter. Provided, however, if
517 there arises a conflict in medical opinions of whether or not the
518 claimant has reached maximum medical recovery and the claimant's
519 benefits have been terminated by the carrier, then the claimant



520 may demand an immediate hearing before the commissioner upon five
521 (5) days' notice to the carrier for a determination by the
522 commission of whether or not in fact the claimant has reached
523 maximum recovery.

524 (c) Permanent partial disability: In case of
525 disability partial in character but permanent in quality, the
526 compensation shall be sixty-six and two-thirds percent (66-2/3%)
527 of the average weekly wages of the injured employee, subject to
528 the maximum limitations as to weekly benefits as set up in this
529 chapter, which shall be paid following compensation for temporary
530 total disability paid in accordance with paragraph (b) of this
531 section, and shall be paid to the employee as follows:

532	Member Lost	Number Weeks Compensation
533	(1) Arm	* * * <u>225</u>
534	(2) Leg	* * * <u>200</u>
535	(3) Hand	* * * <u>15</u>
536	(4) Foot	* * * <u>150</u>
537	(5) Eye	* * * <u>125</u>
538	(6) Thumb	* * * <u>100</u>
539	(7) First finger	* * * <u>50</u>
540	(8) Great toe	* * * <u>50</u>
541	(9) Second finger	* * * <u>50</u>
542	(10) Third finger	* * * <u>30</u>
543	(11) Toe other than great toe	* * * <u>20</u>
544	(12) Fourth finger	* * * <u>25</u>



545 (13) Testicle, one * * * *75

546 (14) Testicle, both * * * *200

547 (15) Breast, female, one * * * *75

548 (16) Breast, female, both * * * *200

549 (17) Loss of hearing: Compensation for loss of

550 hearing of one (1) ear, forty (40) weeks. Compensation for loss

551 of hearing of both ears, one hundred fifty (150) weeks.

552 (18) Phalanges: Compensation for loss of more

553 than one (1) phalange of a digit shall be the same as for loss of

554 the entire digit. Compensation for loss of the first phalange

555 shall be one-half (1/2) of the compensation for loss of the entire

556 digit.

557 (19) Amputated arm or leg: Compensation for an

558 arm or leg, if amputated at or above wrist or ankle, shall be for

559 the loss of the arm or leg.

560 (20) Binocular vision or percent of vision:

561 Compensation for loss of binocular vision or for eighty percent

562 (80%) or more of the vision of an eye shall be the same as for

563 loss of the eye.

564 (21) Two (2) or more digits: Compensation for

565 loss of two (2) or more digits, or one (1) or more phalanges of

566 two (2) or more digits, of a hand or foot may be proportioned to

567 the loss of the use of the hand or foot occasioned thereby, but

568 shall not exceed the compensation for loss of a hand or foot.



569 (22) Total loss of use: Compensation for
570 permanent total loss of use of a member shall be the same as for
571 loss of the member.

572 (23) Partial loss or partial loss of use:
573 Compensation for permanent partial loss or loss of use of a member
574 may be for proportionate loss or loss of use of the member.

575 (24) Disfigurement: The commission, in its
576 discretion, is authorized to award proper and equitable
577 compensation for serious * * * disfigurements or scarring not to
578 exceed * * * Ten Thousand Dollars (\$10,000.00). No such award
579 shall be made until a lapse of one (1) year from the date of the
580 injury resulting in such disfigurement.

581 (25) Other cases: In all other cases in this
582 class of disability, the compensation shall be sixty-six and
583 two-thirds percent (66-2/3%) of the difference between his average
584 weekly wages, subject to the minimum and maximum limitations as to
585 weekly benefits as set up in this chapter, and his wage-earning
586 capacity thereafter in the same employment or otherwise, payable
587 during the continuance of such partial disability, but subject to
588 reconsideration of the degree of such impairment by the commission
589 on its own motion or upon application of any party in interest.
590 Such payments shall in no case be made for a longer period
591 than * * * six hundred weeks.

592 (26) In any case in which there shall be a loss
593 of, or loss of use of, more than one (1) member or parts of more



594 than one (1) member set forth in subparagraphs (1) through (23) of
595 this paragraph (c), not amounting to permanent total disability,
596 the award of compensation shall be for the loss of, or loss of use
597 of, each such member or parts thereof, which awards shall run
598 consecutively, except that where the injury affects only two (2)
599 or more digits of the same hand or foot, subparagraph (21) of this
600 paragraph (c) shall apply.

601 **SECTION 8.** Section 71-3-19, Mississippi Code of 1972, is
602 amended as follows:

603 71-3-19. An employee who as a result of injury is or may be
604 expected to be totally or partially incapacitated for a
605 remunerative occupation, retraining or educational program and
606 who, under the direction of the commission is being rendered fit
607 to engage in a remunerative occupation, retraining or educational
608 program may, in the discretion of the commission under regulations
609 adopted by it, receive additional compensation necessary for his
610 maintenance, but such additional compensation shall not
611 exceed * * * Five Hundred Dollars (\$500.00) a week for not more
612 than * * * one hundred four (104) weeks in addition to the overall
613 maximum set forth in this chapter and concurrently with any other
614 benefits provided by this chapter.

615 **SECTION 9.** Section 71-3-21, Mississippi Code of 1972, is
616 amended as follows:

617 71-3-21. In case of temporary partial disability resulting
618 in decrease of earning capacity, there shall be paid to the



619 injured employee sixty-six and two-thirds percent (66-2/3%) of the
620 difference between the injured employee's average weekly wages
621 before the injury and his wage-earning capacity after the injury
622 in the same or other employment, subject to the minimum and
623 maximum limitations as to weekly benefits as set up in this
624 chapter, payable during the continuance of such disability but in
625 no case exceeding * * * six hundred (600) weeks or an amount
626 greater than the * * * overall maximum as set by this chapter.

627 **SECTION 10.** Section 71-3-25, Mississippi Code of 1972, is
628 amended as follows:

629 71-3-25. If the injury causes death, the compensation shall
630 be known as a death benefit and shall be payable in the amount and
631 to or for the benefit of the persons following:

632 (a) * * * Reasonable funeral expenses not
633 exceeding * * * Seven Thousand Five Hundred Dollars (\$7,500.00)
634 exclusive of other burial insurance or benefits.

635 (* * * b) Sixty-six and two-thirds percent (66-2/3%) of
636 the decedent's wages subject to the minimum and maximum weekly
637 limitations set forth in this chapter shall be paid to the family
638 of the decedent by the employer and carrier for a period of six
639 hundred (600) weeks. If there be a surviving spouse and no child
640 of the deceased, to such surviving spouse * * * the entire amount
641 of compensation during widowhood or dependent widowhood and, if
642 there be a surviving child or children of the deceased, the * * *
643 included amount of ten percent (10%) of such wages for each such



644 child which such amount shall be reduced from the compensation for
645 the spouse and provided for each child. In case there is no
646 surviving spouse or in case of the death or remarriage of such
647 surviving spouse, any surviving * * * children of the deceased
648 employee shall * * * share the entire amount of compensation
649 provided for in this chapter equally with other surviving children
650 of the deceased. If there be any child not surviving then the
651 nonsurviving child's spouse, children, brothers, sisters and
652 grandchildren, shall share such nonsurviving spouse's portion as
653 otherwise provided in this chapter. The commission may, in its
654 discretion, require the appointment of a guardian for the purpose
655 of receiving the compensation of a minor dependent. In the
656 absence of such a requirement, the appointment of a guardian for
657 such purposes shall not be necessary, provided that if no legal
658 guardian be appointed, payment to the natural guardian shall be
659 sufficient.

660 * * *

661 (* * *c) If there be no surviving spouse or
662 child, * * * then such compensation provided for in this chapter
663 shall be provided in equal shares to all surviving grandchildren
664 or brothers and sisters * * * of the decedent.

665 (* * *d) The total weekly compensation payments to any
666 or all beneficiaries in death cases shall not exceed the weekly
667 benefits as set up in this chapter and shall in no case be paid
668 for a longer period than * * * six hundred (600) weeks or for a



669 greater amount than the * * * maximum as set forth in this
670 chapter.

671 * * *

672 **SECTION 11.** Section 71-3-35, Mississippi Code of 1972, is
673 amended as follows:

674 71-3-35. (1) No claim for compensation shall be maintained
675 unless, within thirty (30) days after the occurrence or discovery
676 by the employee of the injury, actual notice was received by the
677 employer or by an officer, manager, or designated representative
678 of an employer. If no representative has been designated by
679 posters placed in one or more conspicuous places, then notice
680 received by any superior shall be sufficient. Absence of notice
681 shall not bar recovery if it is found that the employer had
682 knowledge of the injury and was not prejudiced by the employee's
683 failure to give notice. Regardless of whether notice was received,
684 if no payment of compensation (other than medical treatment or
685 burial expense) is made and no application for benefits filed with
686 the commission within two (2) years from the date of the injury or
687 death, the right to compensation therefor shall be barred. If any
688 benefits are paid whether for medical, compensation or other
689 workers' compensation benefits, then no application for benefits
690 shall be filed with the commission more than one (1) year from the
691 date the last medical payment, compensation or other workers'
692 compensation benefit was denied. In any event, and in no case,
693 shall the limitation period be less than two (2) years from the



694 date of injury or the date the injury was known or should have
695 been known.

696 (2) If a person who is entitled to compensation under this
697 chapter is mentally incompetent or a minor, the limitation for
698 filing application for benefits shall not be applicable so long as
699 such person has no guardian or other authorized representative,
700 but shall be applicable in the case of a person who is mentally
701 incompetent or a minor from the date of appointment of such
702 guardian or other representative, or in the case of a minor, if no
703 guardian is appointed before he becomes of age, from the date he
704 becomes of age.

705 (3) Where recovery is denied to any person, in a suit
706 brought at law or admiralty to recover damages in respect of
707 injury or death, on the ground that such person was an employee
708 and that the defendant was an employer within the meaning of this
709 chapter and that such employer had secured compensation to such
710 employee under this chapter, the limitation upon filing
711 application for benefits shall begin to run only from the date of
712 termination of such suit.

713 **SECTION 12.** Section 71-3-43, Mississippi Code of 1972, is
714 amended as follows:

715 71-3-43. No assignment, release, loan on or against
716 compensation or commutation of compensation or benefits due or
717 payable under this chapter, except as provided by this chapter,
718 shall be valid; and such compensation and benefits shall be exempt



719 from all claims of creditors and from levy, execution, and
720 attachment or other remedy for recovery or collection of a debt,
721 which exemption may be waived. This section prevails over
722 Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform
723 Commercial Code to the extent, if any, that these sections may
724 otherwise be applicable. If any person or company shall loan an
725 employee money with the promise to be paid back from compensation
726 funds or workers' compensation lump sum settlement, such
727 transaction shall not be valid and the person or company loaning
728 the funds shall forfeit any such funds without redress.

729 **SECTION 13.** Section 71-3-51, Mississippi Code of 1972, is
730 amended as follows:

731 71-3-51. The final award of the commission shall be
732 conclusive and binding unless either party to the controversy
733 shall, within thirty (30) days from the date of its filing in the
734 office of the commission and notification to the parties, appeal
735 therefrom to the Supreme Court according to the rules set forth by
736 such court and in the same manner by which an appeal would be
737 taken by law from a circuit court to the Supreme Court according
738 to the Rules of Appellate Procedures, with the exception of Rule
739 11(b), as promulgated by the Supreme Court.

740 Such appeal may be taken by filing notice of appeal with the
741 commission, whereupon the commission shall under its certificate
742 transmit to the Supreme Court all documents and papers on file in
743 the matter, together with a transcript of the evidence, the



744 findings, and award, which shall thereupon become the record of
745 the cause. Appeals shall be considered only upon the record as
746 made before the commission. The Supreme Court shall always be
747 deemed open for hearing of such appeals. The Supreme Court shall
748 review all questions of law and of fact. If no prejudicial error
749 be found, the matter shall be affirmed and remanded to the
750 commission for enforcement. If prejudicial error be found, the
751 same shall be reversed and the Supreme Court shall enter such
752 judgment or award as the commission should have entered. An
753 appeal from the commission to the Supreme Court shall not act as a
754 supersedeas unless the court shall so direct, and then upon such
755 terms as such court shall direct.

756 No controversy shall be heard by the commission or an award
757 of compensation made therein while the same matter is pending
758 either before a federal court or in any court in this state.

759 Any award of compensation made by the Supreme Court shall
760 bear the same interest and penalties as do other judgments awarded
761 in circuit court.

762 **SECTION 14.** Section 71-3-53, Mississippi Code of 1972, is
763 amended as follows:

764 71-3-53. Upon its own initiative or upon the application of
765 any party in interest on the ground of a change in conditions or
766 because of a mistake in a determination of fact, the commission
767 may, at any time prior to one (1) year after date of the last
768 payment of compensation, whether or not a compensation order has



769 been issued, or at any time prior to one (1) year after the
770 rejection of a claim, review a compensation case, issue a new
771 compensation order which may terminate, continue, reinstate,
772 increase, or decrease such compensation, or award compensation.
773 Such new order shall not affect any compensation previously paid,
774 except that an award increasing the compensation rate may be made
775 effective from the date of the injury; and if any part of the
776 compensation due or to become due is unpaid, an award decreasing
777 the compensation rate may be made effective from the date of the
778 injury, and any payment made prior thereto in excess of such
779 decreased rate shall be deducted from any unpaid compensation in
780 such manner and by such method as may be determined by the
781 commission. This section shall not be construed to limit, reduce,
782 alter or affect the statute of limitations for filing a workers'
783 compensation claim as stated in Section 71-3-35.

784 **SECTION 15.** Section 71-3-55, Mississippi Code of 1972, is
785 amended as follows:

786 71-3-55. (1) In making an investigation or inquiry or
787 conducting a hearing, the commission shall not be bound by common
788 law or statutory rules of evidence or by technical or formal rules
789 or procedure, except as provided by this chapter, but may make
790 such investigation or inquiry or conduct such hearing in such
791 manner as best to ascertain the rights of the parties.

792 Declarations of a deceased employee concerning the injury in
793 respect of which the investigation or inquiry is being made or the



794 hearing conducted shall be received in evidence and shall, if
795 corroborated by other evidence, be sufficient to establish the
796 injury.

797 (2) Hearings before the commission shall be open to the
798 public and shall be stenographically reported or recorded and
799 transcribed. The commission shall by regulations provide for the
800 preparation of a record of the hearings and other proceedings.

801 (3) Unless otherwise ordered by the commission, hearings
802 shall be conducted in the county where the injury occurred or at
803 the headquarters of the commission located in Hinds County should
804 the claimant so elect and should the commission find such hearing
805 location to be the most efficient and convenient location
806 considering the interests of all parties and the time and
807 resources of the commission.

808 **SECTION 16.** Section 71-3-71, Mississippi Code of 1972, is
809 amended as follows:

810 71-3-71. The acceptance of compensation benefits from or the
811 making of a claim for compensation against an employer or insurer
812 for the injury or death of an employee shall not affect the right
813 of the employee or his dependents to sue any other party at law
814 for such injury or death, but the employer or his insurer shall be
815 entitled to reasonable notice and opportunity to join in any such
816 action or may intervene therein. If such employer or insurer join
817 in such action, they shall be entitled to repayment of the amount
818 paid by them as compensation and medical expenses from the * * *



819 proceeds of such action * * * less a pro rata share of the costs
820 of collection as hereinafter provided.

821 The commencement of an action by an employee or his
822 dependents (or legal representative) against a third party for
823 damages by reason of the injury, or the adjustment of any such
824 claim, shall not affect the right of the injured employee or his
825 dependents (or legal representative) to recover compensation, but
826 any amount recovered by the injured employee or his dependents (or
827 legal representative) from a third party shall be applied as
828 follows: reasonable costs of collection as approved and allowed
829 by the court in which such action is pending, or by the commission
830 of this state in case of settlement without suit, shall be
831 deducted; the remainder, or so much thereof as is necessary, shall
832 be used to discharge the legal liability of the employer or
833 insurer less a pro rata share of the costs of collection; and any
834 excess shall belong to the injured employee or his dependents.
835 The employee or his dependents bringing suit against the third
836 party must notify the employer or carrier within fifteen (15) days
837 of the filing of such suit.

838 An employer or compensation insurer who shall have paid
839 compensation benefits under this chapter for the injury or death
840 of the employee shall have the right to maintain an action at law
841 against any other party responsible for such injury or death, in
842 the name of such injured employee or his beneficiaries, or in the
843 name of such employer or insurer, or any or all of them. If



844 reasonable notice and opportunity to be represented in such action
845 by counsel shall have been given to the compensation beneficiary,
846 all claims of such compensation beneficiary shall be determined in
847 such action, as well as the claim of the employer or insurer. If
848 recovery shall be had against such other party, by suit or
849 otherwise, the compensation beneficiary shall be entitled to any
850 amount recovered over and above the amount that the employer and
851 insurer shall have paid or are liable for in compensation or other
852 benefits, after deducting the reasonable costs of collection.

853 In case of settlement of any action before the trial thereof,
854 such settlement shall be subject to the approval of the court
855 wherein such action is pending, and settlement before an action is
856 brought shall be subject to the approval of the commission.
857 Distribution of the portion belonging to the dependents shall be
858 made among such dependents in the manner provided in this chapter.

859 In case of liability of the employer or insurer to make
860 payment to the State Treasury under the Second Injury Fund
861 provisions, if the injury or death creates a legal liability
862 against a third party, the employer or insurer shall have a right
863 of action against such third party for reimbursement of any sum so
864 paid into the State Treasury, which right may be enforced in the
865 action heretofore provided or by an independent action.

866 **SECTION 17.** Section 71-3-85, Mississippi Code of 1972, is
867 amended as follows:



868 71-3-85. (1) There is hereby created a commission to be
869 known as the * * * Workers' Compensation Commission, consisting of
870 three (3) members, who shall devote their entire time to the
871 duties of the office. The Governor shall appoint the members of
872 the commission, by and with the consent of the Mississippi State
873 Senate, one (1) for a term of two (2) years, one (1) for a term of
874 four (4) years, and one (1) for a term of six (6) years. Upon the
875 expiration of each term as above set forth, the Governor shall
876 appoint a successor for a term of six (6) years, and thereafter
877 the term of office of each commissioner shall be for six (6)
878 years. One (1) member shall be a person who by reason of his
879 previous vocation or affiliation can be classed as a
880 representative of employers and who has at least five (5) years of
881 experience dealing with workers' compensation claims, and one (1)
882 member shall be a person who by reason of his previous vocation or
883 affiliation can be classed as a representative of employees and
884 who has at least five (5) years of experience dealing with
885 workers' compensation claims. One (1) member shall be an
886 attorney-at-law of recognized ability with at least five (5)
887 years' active practice in Mississippi with a substantial portion
888 of such practice in the area of Workers' Compensation prior to his
889 appointment. If possible by way of qualification and experience,
890 at least one (1) of the three (3) members should have previous
891 experience as an administrative law judge for the commission. The
892 Governor shall designate the chairman of the commission, whose



893 term of chairman shall run concurrently with his appointment as a
894 commissioner.

895 The chairman shall be the administrative head of the
896 commission and shall have the final authority in all matters
897 relating to assignment of cases for hearing and trial and the
898 administrative work of the commission and its employees, except in
899 the promulgation of rules and regulations wherein the commission
900 shall act as a body, and in the trial and determination of cases
901 as otherwise provided.

902 Upon the expiration of the term of a commissioner, he shall
903 continue to serve until his successor has been appointed. Because
904 cumulative experience is conspicuously essential to the proper
905 administration of a * * * Workers' Compensation Law, it is
906 declared to be in the public interest to continue * * * Workers'
907 Compensation Commissioners in office as long as efficiency is
908 demonstrated. A commissioner may be removed for cause prior to
909 the expiration of his term, but shall be furnished a written copy
910 of the charges against him and shall be accorded a public hearing.

911 Each member of the commission and each administrative law
912 judge shall receive an annual salary fixed by the Legislature.

913 (2) A vacancy in the commission, if there remain two (2)
914 members of it, shall not impair the authority of such two (2)
915 members to act. In case of illness or continued absence for other
916 reasons, the same authority of such two (2) members shall apply.



917 (3) The commission shall have the powers and duties
918 necessary for effecting the purposes of this chapter, including
919 the powers of a court of record for compelling the attendance of
920 witnesses, examining them under oath, and compelling the
921 production of books, papers, documents and objects relevant to the
922 determination of a claim for compensation, and the power to adopt
923 rules and regulations and make or approve the forms relating to
924 notices of injuries, payment of claims and other purposes. The
925 authority of the commission and its duly authorized
926 representatives to investigate and determine claims for
927 compensation shall include the right to enter the premises where
928 an injury occurred, to ascertain its causes and circumstances.

929 (4) The office of the commission shall be situated in the
930 City of Jackson, but hearings may be held at such places as it may
931 deem most convenient for the proper and speedy performance of its
932 duties. The commission is authorized, if it deems it necessary
933 for the convenient and efficient dispatch of business, to lease
934 office space and facilities in other than publicly owned
935 buildings.

936 (5) The commission shall adopt detailed rules and
937 regulations for implementing the purposes of this chapter at
938 hearings attended by the main parties interested. Such rules,
939 upon adoption, shall be published and be at all reasonable times
940 made available to the public and, if not inconsistent with law,



941 shall be binding upon those participating in the responsibilities
942 and benefits of the * * * Workers' Compensation Law.

943 (6) The commission shall adopt or approve the forms required
944 for administering the chapter, such notices of injury, application
945 for benefits, receipts for compensation and all other forms needed
946 to assure the orderly and prompt operation of the law, and may
947 require the exclusive use of any or all such approved forms.

948 **SECTION 18.** Section 71-3-121, Mississippi Code of 1972, is
949 amended as follows:

950 71-3-121.

951 * * * The Commissioner of Insurance shall promulgate such
952 rules and regulations as to require each insurer to establish a
953 safety program for the health and benefit of the employees of the
954 insured employer. Such safety program shall include language to
955 explain the rights of workers under the Workers' Compensation Law.
956 Such safety program shall require that all insured employers
957 implement a written policy for drug and alcohol testing in
958 accordance with Section 71-7-1 et seq., Mississippi Code of 1972,
959 in order to ensure that the workplace is a drug and alcohol free
960 environment and to deter the use of drugs and alcohol at the
961 workplace. Under such policy, the employer may require the
962 employee to submit to a test for the presence of any controlled
963 substance or alcohol in his system if the employer has probable
964 cause to suspect that an employee is under the influence of any
965 controlled substances or alcohol to the extent the employee was



966 impaired and that such impairment was a proximate cause of the
967 employee's injury.

968 * * * In the event the employee is injured, the employer may
969 offer the results of drug and alcohol tests, whether
970 employer-administered or otherwise, subject to other rules of
971 admissibility as set forth by the commission, as evidence solely
972 on the issue of causation in the determination of the use of drugs
973 illegally, or the use of a valid prescription medication(s) taken
974 contrary to the prescriber's instructions and/or contrary to label
975 warnings, or the intoxication due to the use of alcohol of an
976 employee at the time of injury for workers' compensation purposes
977 under Section 71-3-7.

978 * * *

979 SECTION 19. (1) Any person having a claim against an
980 insurer under any provision in an insurance policy other than a
981 policy of an insolvent insurer, that is also a covered claim,
982 shall be required to exhaust first his right under such policy.
983 Any amount payable on a covered claim under Sections 71-3-151
984 through 71-3-181 shall be reduced by the amount of any recovery
985 under such insurance policy.

986 (2) Any person having a claim that may be recovered under
987 more than one (1) insurance guaranty association or its equivalent
988 shall seek recovery first from the association of the place of
989 residence of the claimant. Any amount payable on a covered claim
990 under Sections 71-3-151 through 71-3-181 shall be reduced by the



991 amount of any recovery from any other insurance guaranty
992 association or its equivalent.

993 **SECTION 20.** Section 19 of this act shall be codified as a
994 new section within Chapter 3, Title 71, Mississippi Code of 1972.

995 **SECTION 21.** Section 71-3-37, Mississippi Code of 1972, is
996 brought forward as follows:

997 71-3-37. (1) Compensation under this chapter shall be paid
998 periodically, promptly, in the usual manner, and directly to the
999 person entitled thereto, without an award except where liability
1000 to pay compensation is controverted by the employer.

1001 (2) The first installment of compensation shall become due
1002 on the fourteenth (14th) day after the employer has notice, as
1003 provided in Section 71-3-35, of the injury or death, on which date
1004 all compensation then due shall be paid. Thereafter, compensation
1005 shall be paid in installments, every fourteen (14) days, except
1006 where the commission determines that payment in installments
1007 should be made at some other period.

1008 (3) Upon making the first payment and upon suspension of
1009 payment for any cause, the employer shall immediately notify the
1010 commission in accordance with a form prescribed by the commission
1011 that payment of compensation has begun or has been suspended, as
1012 the case may be. No suspension in payments of compensation shall
1013 be made for refusing to submit to medical or surgical treatment
1014 until the reasonableness of such request or refusal has been



1015 determined by the commission, and a written order suspending
1016 payment issued.

1017 (4) If the employer controverts the right to compensation,
1018 he shall file with the commission, on or before the fourteenth day
1019 after he has knowledge of the alleged injury or death, a notice in
1020 accordance with a form prescribed by the commission, stating that
1021 the right to compensation is controverted, the name of the
1022 claimant, the name of the employer, the date of the alleged injury
1023 or death, and the grounds upon which the right to compensation is
1024 controverted. Failure to file this notice shall not prevent the
1025 employer raising any defense where claim is subsequently filed by
1026 the employee, nor shall the filing of the notice preclude the
1027 employer raising any additional defense.

1028 (5) If any installment of compensation payable without an
1029 award is not paid within fourteen (14) days after it becomes due,
1030 as provided in subsection (2) of this section, there shall be
1031 added to such unpaid installment an amount equal to ten percent
1032 (10%) thereof, which shall be paid at the same time as, but in
1033 addition to, such installment unless notice is filed under
1034 subsection (4) of this section, or unless such nonpayment is
1035 excused by the commission after a showing by the employer that
1036 owing to conditions over which he had no control such installment
1037 could not be paid within the period prescribed for the payment.

1038 (6) If any installment payable under the terms of an award
1039 is not paid within fourteen (14) days after it becomes due, there



1040 shall be added to such unpaid installment an amount equal to
1041 twenty percent (20%) thereof, which shall be paid at the same time
1042 as, but in addition to, such compensation unless review of the
1043 compensation order making such award is had.

1044 (7) Within thirty (30) days after the final payment of
1045 compensation has been made, the employer shall send to the
1046 commission a notice in accordance with a form prescribed by the
1047 commission, stating that such final payment has been made, the
1048 total amount of compensation paid, the name of the employee and of
1049 any other person to whom compensation has been paid, the date of
1050 the injury or death, and the date to which compensation has been
1051 paid. If the employer fails so to notify the commission within
1052 such time, the commission may assess against such employer a civil
1053 penalty in an amount not exceeding One Hundred Dollars (\$100.00).
1054 No case shall be closed nor any penalty be assessed without notice
1055 to all parties interested and without giving to all such parties
1056 an opportunity to be heard.

1057 (8) The commission (a) may upon its own initiative at any
1058 time in a case in which payments are being made without an award,
1059 and (b) shall in any case where right to compensation is
1060 controverted or where payments of compensation have been stopped
1061 or suspended, upon receipt of notice from any person entitled to
1062 compensation or from the employer that the right to compensation
1063 is controverted or that payments of compensation have been stopped
1064 or suspended, make such investigations, cause such medical



1065 examinations to be made, hold such hearings, and take such further
1066 action as it considers will properly protect the rights of all
1067 parties.

1068 (9) Whenever the commission deems it advisable, it may
1069 require any self-insurer to make a deposit with the State
1070 Treasurer to secure prompt and convenient payment of such
1071 compensation; and payments therefrom upon any awards shall be made
1072 upon order of the commission.

1073 (10) Whenever the commission determines that it is for the
1074 best interests of a person entitled to compensation, the liability
1075 of the employer for compensation, or any part thereof as
1076 determined by the commission, may be discharged by the payment of
1077 a lump sum equal to the present value of future compensation
1078 payments commuted, computed at four percent (4%) true discount
1079 compounded annually. The probability of the death of the injured
1080 employee or other person entitled to compensation shall be
1081 determined in accordance with validated actuarial tables or
1082 factors as the commission finds equitable and consistent with the
1083 purposes of the Workers' Compensation Law, and the probability of
1084 the remarriage of the surviving spouse or other person entitled to
1085 compensation may be determined in accordance with rules adopted by
1086 the commission which shall apply validated actuarial tables or
1087 factors as the commission finds equitable and consistent with the
1088 purposes of the Workers' Compensation Law. The probability of the
1089 happening of any other contingency affecting the amount or



1090 duration of the compensation shall be disregarded. The commission
1091 shall be the sole judge as to whether or not a lump-sum payment
1092 shall be to the best interest of the injured worker or his
1093 dependents.

1094 (11) If the employer has made advance payments of
1095 compensation, he shall be entitled to be reimbursed out of any
1096 unpaid installment or installments of compensation due.

1097 (12) An injured employee or, in case of death, his
1098 dependents or personal representative shall give receipts for
1099 payment of compensation to the employer paying the same; and
1100 whenever required, such employer shall produce the same for
1101 inspection by the commission.

1102 (13) Whenever a dispute arises between two (2) or more
1103 parties as to which party is liable for the payment of workers'
1104 compensation benefits to an injured employee and there is no
1105 genuine issue of material fact as to the employee's employment,
1106 his average weekly wage, the occurrence of an injury, the extent
1107 of the injury, and the fact that the injury arose out of and in
1108 the course of the employment, the commission may require the
1109 disputing parties involved to pay benefits immediately to the
1110 employee and to share equally in the payment of those benefits
1111 until it is determined which party is solely liable, at which time
1112 the liable party must reimburse all other parties for the benefits
1113 they have paid to the employee with interest at the legal rate.



1114 **SECTION 22.** This act shall take effect and be in force from
1115 and after July 1, 2015.

