

By: Senator(s) Frazier

To: Insurance

## SENATE BILL NO. 2629

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 71-3-17, MISSISSIPPI CODE OF 1972, TO REVISE THE  
15 PROVISIONS OF LAW REGARDING COMPENSATION FOR DISABILITY PAID TO  
16 THE EMPLOYEE UNDER THE WORKERS' COMPENSATION LAW; TO AMEND SECTION  
17 71-3-19, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW  
18 REGARDING ADDITIONAL MAINTENANCE COMPENSATION FOR INJURED  
19 EMPLOYEES WHILE UNDERGOING CERTAIN VOCATIONAL REHABILITATION UNDER  
20 THE WORKERS' COMPENSATION LAW; TO AMEND SECTION 71-3-21,  
21 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW  
22 REGARDING TEMPORARY PARTIAL DISABILITY UNDER THE WORKERS'  
23 COMPENSATION LAW; TO AMEND SECTION 71-3-25, MISSISSIPPI CODE OF  
24 1972, TO REVISE THE PROVISIONS OF LAW REGARDING COMPENSATION  
25 BENEFITS FOR DEATH UNDER THE WORKERS' COMPENSATION LAW; TO AMEND  
26 SECTION 71-3-35, MISSISSIPPI CODE OF 1972, TO REVISE THE  
27 PROVISIONS OF LAW REGARDING NOTICE TO THE EMPLOYER OF INJURY UNDER  
28 THE WORKERS' COMPENSATION LAW; TO AMEND SECTION 71-3-43,  
29 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW  
30 REGARDING THE VALIDITY OF CERTAIN LOANS ON OR AGAINST COMPENSATION  
31 AND BENEFITS UNDER THE WORKERS' COMPENSATION LAW; TO AMEND SECTION  
32 71-3-51, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAW  
33 REGARDING THE RIGHT OF JUDICIAL APPEAL UNDER THE WORKERS'  
34 COMPENSATION LAW; TO AMEND SECTION 71-3-53, MISSISSIPPI CODE OF



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

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

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

57 71-3-1. (1) This chapter shall be known and cited as  
58 "Workers' Compensation Law," and shall be administered by the  
59 Workers' Compensation Commission, hereinafter referred to as the  
60 "commission," cooperating with other state and federal authorities  
61 for the prevention of injuries and occupational diseases to  
62 workers and, in event of injury or occupational disease, their  
63 rehabilitation or restoration to health and vocational  
64 opportunity; and this chapter shall be fairly and impartially  
65 construed and applied according to the law and the evidence in the  
66 record, and, notwithstanding any common law or case law to the  
67 contrary, this chapter shall not be presumed to favor one party  
68 over another and shall \* \* \* be fairly construed upon proof by a



69 preponderance of the evidence according to the law and the  
70 evidence.

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

74 (a) The words "workmen's compensation" shall mean  
75 "workers' compensation"; and

76 (b) The word "commission" shall mean the Workers'  
77 Compensation Commission.

78 (3) The primary purposes of the Workers' Compensation Law  
79 are to pay timely temporary and permanent disability benefits to  
80 every worker who legitimately suffers a work-related injury or  
81 occupational disease arising out of and in the course of his  
82 employment, to pay reasonable and necessary medical expenses  
83 resulting from the work-related injury or occupational disease,  
84 and to encourage the return to work of the worker.

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

87 71-3-5. The following shall constitute employers subject to  
88 the provisions of this chapter:

89 Every person, firm and private corporation, including any  
90 public service corporation but excluding, however, all nonprofit  
91 charitable, fraternal, cultural, or religious corporations or  
92 associations, that have in service five (5) or more workmen or



93 operatives regularly in the same business or in or about the same  
94 establishment under any contract of hire, express or implied.

95 Any state agency, state institution, state department, or  
96 subdivision thereof, including counties, municipalities and school  
97 districts, or the singular thereof, not heretofore included under  
98 the Workers' Compensation Law, may elect, by proper action of its  
99 officers or department head, to come within its provisions and, in  
100 such case, shall notify the commission of such action by filing  
101 notice of compensation insurance with the commission. Payment for  
102 compensation insurance policies so taken may be made from any  
103 appropriation or funds available to such agency, department or  
104 subdivision thereof, or from the general fund of any county or  
105 municipality.

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



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

121 From and after October 1, 1993, all "political subdivisions,"  
122 as such term is defined in Section 11-46-1, Mississippi Code of  
123 1972, except counties and municipalities shall come under the  
124 provisions of the Workers' Compensation Law. Payment for  
125 compensation insurance policies so taken may be made from any  
126 funds available to such political subdivisions.

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

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



142 available to the Mississippi Transportation Commission, the  
143 Department of Public Safety or the Mississippi Industries for the  
144 Blind.

145 The Mississippi State Senate and the Mississippi House of  
146 Representatives may elect to become self-insurers under provisions  
147 elsewhere set out by law by notifying the commission of their  
148 intention of becoming such self-insurers. The cost of being such  
149 self-insurers, as provided elsewhere by law, may be paid from  
150 funds available to the Mississippi State Senate and the  
151 Mississippi House of Representatives. The Mississippi State  
152 Senate and the Mississippi House of Representatives are authorized  
153 and empowered to provide workers' compensation benefits for  
154 employees after January 1, 1970.

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

162 The commission may, under such rules and regulations as it  
163 prescribes, permit two (2) or more "political subdivisions," as  
164 such term is defined in Section 11-46-1, Mississippi Code of 1972,  
165 to pool their liabilities to participate in a group workers'  
166 compensation self-insurance program. The governing authorities of



167 any political subdivision may authorize the organization and  
168 operation of, or the participation in such a group self-insurance  
169 program with other political subdivisions, provided such program  
170 is approved by the commission. The cost of participating in a  
171 group self-insurance program may be provided from any funds  
172 available to a political subdivision.

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

186 Employers exempted by this section may assume, with respect  
187 to any employee or classification of employees, the liability for  
188 compensation imposed upon employers by this chapter with respect  
189 to employees within the coverage of this chapter. The purchase  
190 and acceptance by such employer of valid workers' compensation  
191 insurance applicable to such employee or classification of



192 employees shall constitute, as to such employer, an assumption by  
193 him of such liability under this chapter without any further act  
194 on his part notwithstanding any other provisions of this chapter,  
195 but only with respect to such employee or such classification of  
196 employees as are within the coverage of the state fund. Such  
197 assumption of liability shall take effect and continue from the  
198 effective date of such workers' compensation insurance and as long  
199 only as such coverage shall remain in force, in which case the  
200 employer shall be subject with respect to such employee or  
201 classification of employees to no other liability than the  
202 compensation as provided for in this chapter.

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





217 section, then the owner/operator, and his drivers, shall be  
218 covered under the motor carrier's workers' compensation insurance  
219 program and the motor carrier is authorized to collect payment of  
220 the premium from the owner/operator. In the event that coverage  
221 is obtained by the owner/operator under a workers' compensation  
222 policy or through a self-insured or occupational accident policy,  
223 then the owner/operator, and his drivers, shall not be entitled to  
224 benefits under the motor carrier's workers' compensation insurance  
225 program unless the owner/operator has elected in writing to be  
226 covered under the carrier's workers' compensation program or  
227 policy or if the owner/operator is covered by the carrier's plan  
228 because he failed to obtain coverage. Coverage under the motor  
229 carrier's workers' compensation insurance program does not  
230 terminate the independent contractor status of the owner/operator  
231 under the written contract or lease agreement. Nothing shall  
232 prohibit or prevent an owner/operator from having or securing an  
233 occupational accident policy in addition to any workers'  
234 compensation coverage authorized by this section. Other than the  
235 amendments to this section by Chapter 523, Laws of 2006, the  
236 provisions of this section shall not be construed to have any  
237 effect on any other provision of law, judicial decision or any  
238 applicable common law.

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



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

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

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

261 71-3-7. (1) Compensation shall be payable for disability or  
262 death of an employee from injury or occupational disease arising  
263 out of and in the course of employment, without regard to fault as  
264 to the cause of the injury or occupational disease. An  
265 occupational disease shall be deemed to arise out of and in the  
266 course of employment when there is evidence that there is a direct



267 causal connection between the work performed and the occupational  
268 disease. In all claims in which no benefits, including  
269 disability, death and medical benefits, have been paid, the  
270 claimant shall file medical records in support of his claim for  
271 benefits when filing a petition to controvert. If the claimant is  
272 unable to file the medical records in support of his claim for  
273 benefits at the time of filing the petition to controvert because  
274 of a limitation of time established by Section 71-3-35 or Section  
275 71-3-53, the claimant shall file medical records in support of his  
276 claim within sixty (60) days after filing the petition to  
277 controvert.

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

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

288 (a) Apportionment shall not be applied until the \* \* \*  
289 attorney-referee has determined the percentage of apportionment.  
290 Such apportionment shall apply to all benefits for temporary and  
291 permanent disability whether total or partial. To the extent that



292 the employer and carrier have already paid an advance of  
293 unapportioned indemnity benefits, whether temporary or permanent  
294 in nature, they shall be entitled to a credit against any  
295 additional indemnity award made by the attorney-referee, subject  
296 to review by the commission as the ultimate finder of act.

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

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

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

313 (4) No compensation shall be payable if the use of drugs  
314 illegally, or the use of a valid prescription medication(s) taken  
315 contrary to the prescriber's instructions and/or contrary to label  
316 warnings, or intoxication due to the use of alcohol of the



317 employee was the proximate cause of the injury, or if it was the  
318 willful intention of the employee to injure or kill himself or  
319 another.

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

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

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

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

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

336 71-3-13. (1) Compensation for disability or in death cases  
337 shall not exceed sixty-six and two-thirds percent (66-2/3%) of one  
338 hundred twenty-five percent (125%) of the average weekly wage for  
339 the state per week, nor shall it be less than \* \* \* Fifty Dollars  
340 (\$50.00) per week \* \* \*.



341 (2) Maximum recovery: The total recovery of compensation  
342 hereunder, exclusive of medical payments under Section 71-3-15,  
343 arising from the injury to an employee or the death of an  
344 employee, or any combination of such injury or death, shall not  
345 exceed the multiple of \* \* \* six hundred (600) weeks times  
346 sixty-six and two-thirds percent (66-2/3%) of one hundred  
347 twenty-five percent (125%) of the average weekly wage for the  
348 state.

349 **SECTION 6.** Section 71-3-17, Mississippi Code of 1972, is  
350 amended as follows:

351 71-3-17. Compensation for disability shall be paid to the  
352 employee as follows:

353 (a) Permanent total disability: In case of total  
354 disability adjudged to be permanent, sixty-six and two-thirds  
355 percent (66-2/3%) of the average weekly wages of the injured  
356 employee, subject to the minimum and maximum limitations as to  
357 weekly benefits as set up in this chapter, shall be paid to the  
358 employee not to exceed \* \* \* the overall maximum as provided in  
359 this chapter. Loss of both hands, or both arms, or both feet, or  
360 both legs, or both eyes, or of any two (2) thereof shall  
361 constitute permanent total disability. In all other cases,  
362 permanent total disability shall be determined in accordance with  
363 the facts.

364 (b) Temporary total disability: In case of disability,  
365 total in character but temporary in quality, sixty-six and



366 two-thirds percent (66-2/3%) of one hundred twenty-five percent  
 367 (125%) of the average weekly wages of the injured employee,  
 368 subject to the minimum and maximum limitations as to weekly  
 369 benefits as set up in this chapter, shall be paid to the employee  
 370 during the continuance of such disability not to exceed \* \* \* the  
 371 overall maximum as provided in this chapter. Provided, however,  
 372 if there arises a conflict in medical opinions of whether or not  
 373 the claimant has reached maximum medical recovery and the  
 374 claimant's benefits have been terminated by the carrier, then the  
 375 claimant may demand an immediate hearing before the commissioner  
 376 upon five (5) days' notice to the carrier for a determination by  
 377 the commission of whether or not in fact the claimant has reached  
 378 maximum recovery.

379 (c) Permanent partial disability: In case of  
 380 disability partial in character but permanent in quality, the  
 381 compensation shall be sixty-six and two-thirds percent (66-2/3%)  
 382 of the average weekly wages of the injured employee, subject to  
 383 the maximum limitations as to weekly benefits as set up in this  
 384 chapter, which shall be paid following compensation for temporary  
 385 total disability paid in accordance with paragraph (b) of this  
 386 section, and shall be paid to the employee as follows:

387	Member Lost	Number Weeks Compensation
388	(1) Arm	* * * <u>225</u>
389	(2) Leg	* * * <u>200</u>
390	(3) Hand	* * * <u>175</u>



391	(4)	Foot	* * *	<u>150</u>
392	(5)	Eye	* * *	<u>125</u>
393	(6)	Thumb	* * *	<u>100</u>
394	(7)	First finger	* * *	<u>50</u>
395	(8)	Great toe	* * *	<u>50</u>
396	(9)	Second finger	* * *	<u>50</u>
397	(10)	Third finger	* * *	<u>30</u>
398	(11)	Toe other than great toe	* * *	<u>20</u>
399	(12)	Fourth finger	* * *	<u>25</u>
400	(13)	Testicle, one	* * *	<u>75</u>
401	(14)	Testicle, both	* * *	<u>200</u>
402	(15)	Breast, female, one	* * *	<u>75</u>
403	(16)	Breast, female, both	* * *	<u>200</u>
404	(17)	Loss of hearing: Compensation for loss of		
405		hearing of one (1) ear, forty (40) weeks. Compensation for loss		
406		of hearing of both ears, one hundred fifty (150) weeks.		
407	(18)	Phalanges: Compensation for loss of more		
408		than one (1) phalange of a digit shall be the same as for loss of		
409		the entire digit. Compensation for loss of the first phalange		
410		shall be one-half (1/2) of the compensation for loss of the entire		
411		digit.		
412	(19)	Amputated arm or leg: Compensation for an		
413		arm or leg, if amputated at or above wrist or ankle, shall be for		
414		the loss of the arm or leg.		





415                   (20) Binocular vision or percent of vision:  
416 Compensation for loss of binocular vision or for eighty percent  
417 (80%) or more of the vision of an eye shall be the same as for  
418 loss of the eye.

419                   (21) Two (2) or more digits: Compensation for  
420 loss of two (2) or more digits, or one (1) or more phalanges of  
421 two (2) or more digits, of a hand or foot may be proportioned to  
422 the loss of the use of the hand or foot occasioned thereby, but  
423 shall not exceed the compensation for loss of a hand or foot.

424                   (22) Total loss of use: Compensation for  
425 permanent total loss of use of a member shall be the same as for  
426 loss of the member.

427                   (23) Partial loss or partial loss of use:  
428 Compensation for permanent partial loss or loss of use of a member  
429 may be for proportionate loss or loss of use of the member.

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

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



440 weekly benefits as set up in this chapter, and his wage-earning  
441 capacity thereafter in the same employment or otherwise, payable  
442 during the continuance of such partial disability, but subject to  
443 reconsideration of the degree of such impairment by the commission  
444 on its own motion or upon application of any party in interest.  
445 Such payments shall in no case be made for a longer period  
446 than \* \* \* six hundred (600) weeks.

447 (26) In any case in which there shall be a loss  
448 of, or loss of use of, more than one (1) member or parts of more  
449 than one (1) member set forth in subparagraphs (1) through (23) of  
450 this paragraph (c), not amounting to permanent total disability,  
451 the award of compensation shall be for the loss of, or loss of use  
452 of, each such member or parts thereof, which awards shall run  
453 consecutively, except that where the injury affects only two (2)  
454 or more digits of the same hand or foot, subparagraph (21) of this  
455 paragraph (c) shall apply.

456 **SECTION 7.** Section 71-3-19, Mississippi Code of 1972, is  
457 amended as follows:

458 71-3-19. An employee who as a result of injury is or may be  
459 expected to be totally or partially incapacitated for a  
460 remunerative occupation, retraining or educational program and  
461 who, under the direction of the commission is being rendered fit  
462 to engage in a remunerative occupation, retraining or educational  
463 program may, in the discretion of the commission under regulations  
464 adopted by it, receive additional compensation necessary for his



465 maintenance, but such additional compensation shall not  
466 exceed \* \* \* Five Hundred Dollars (\$500.00) a week for not more  
467 than \* \* \* one hundred four (104) weeks in addition to the overall  
468 maximum provided in this chapter and concurrently with any other  
469 benefits provided in this chapter.

470 **SECTION 8.** Section 71-3-21, Mississippi Code of 1972, is  
471 amended as follows:

472 71-3-21. In case of temporary partial disability resulting  
473 in decrease of earning capacity, there shall be paid to the  
474 injured employee sixty-six and two-thirds percent (66-2/3%) of the  
475 difference between the injured employee's average weekly wages  
476 before the injury and his wage-earning capacity after the injury  
477 in the same or other employment, subject to the minimum and  
478 maximum limitations as to weekly benefits as set up in this  
479 chapter, payable during the continuance of such disability but in  
480 no case exceeding \* \* \* six hundred (600) weeks or an amount  
481 greater than the \* \* \* overall maximum as set by this chapter.

482 **SECTION 9.** Section 71-3-25, Mississippi Code of 1972, is  
483 amended as follows:

484 71-3-25. If the injury causes death, the compensation shall  
485 be known as a death benefit and shall be payable in the amount and  
486 to or for the benefit of the persons following:

487 (a) An immediate lump-sum payment of One Thousand  
488 Dollars (\$1,000.00) to the surviving spouse, in addition to other  
489 compensation benefits.



490 (b) Reasonable funeral expenses not exceeding \* \* \*  
491 Seven Thousand Five Hundred Dollars (\$7,500.00) exclusive of other  
492 burial insurance or benefits.

493 (c) Sixty-six and two-thirds percent (66-2/3%) of the  
494 decedent's wages subject to the minimum and maximum weekly  
495 limitations set forth in this chapter shall be paid to the family  
496 of the decedent by the employer and carrier for a period of six  
497 hundred (600) weeks. If there be a surviving spouse and no child  
498 of the deceased, to such surviving spouse \* \* \* the entire amount  
499 of compensation during widowhood or dependent widowhood and, if  
500 there be a surviving child or children of the deceased, the \* \* \*  
501 included amount of ten percent (10%) of such wages for each such  
502 child which such amount shall be reduced from the compensation for  
503 the spouse and provided for each child. In case there is no  
504 surviving spouse or in case of the death or remarriage of such  
505 surviving spouse, any surviving \* \* \* children of the deceased  
506 employee shall \* \* \* share the entire amount of compensation  
507 provided for in this chapter equally with other surviving children  
508 of the deceased. If there be any child not surviving, then the  
509 nonsurviving child's spouse, children, brothers, sisters and  
510 grandchildren shall share such nonsurviving spouse's portion as  
511 otherwise provided in this chapter. The commission may, in its  
512 discretion, require the appointment of a guardian for the purpose  
513 of receiving the compensation of a minor dependent. In the  
514 absence of such a requirement, the appointment of a guardian for



515 such purposes shall not be necessary, provided that if no legal  
516 guardian be appointed, payment to the natural guardian shall be  
517 sufficient.

518 \* \* \*

519 ( \* \* \*d) If there be no surviving spouse or  
520 child, \* \* \* then \* \* \* such compensation provided for in this  
521 chapter shall be provided in equal shares to all surviving  
522 grandchildren or brothers and sisters of the decedent.

523 ( \* \* \*e) The total weekly compensation payments to any  
524 or all beneficiaries in death cases shall not exceed the weekly  
525 benefits as set up in this chapter and shall in no case be paid  
526 for a longer period than \* \* \* six hundred (600) weeks or for a  
527 greater amount than the \* \* \* maximum as set forth in this  
528 chapter.

529 \* \* \*

530 **SECTION 10.** Section 71-3-35, Mississippi Code of 1972, is  
531 amended as follows:

532 71-3-35. (1) No claim for compensation shall be maintained  
533 unless, within thirty (30) days after the occurrence or discovery  
534 by the employee of the injury, actual notice was received by the  
535 employer or by an officer, manager, or designated representative  
536 of an employer. If no representative has been designated by  
537 posters placed in one or more conspicuous places, then notice  
538 received by any superior shall be sufficient. Absence of notice  
539 shall not bar recovery if it is found that the employer had



540 knowledge of the injury and was not prejudiced by the employee's  
541 failure to give notice. Regardless of whether notice was  
542 received, if no payment of compensation (other than medical  
543 treatment or burial expense) is made and no application for  
544 benefits filed with the commission within two (2) years from the  
545 date of the injury or death, the right to compensation therefor  
546 shall be barred. If any benefits are paid whether for medical,  
547 compensation or other workers' compensation benefits, then no  
548 application for benefits shall be filed with the commission more  
549 than one (1) year from the date the last medical payment,  
550 compensation or other workers' compensation benefit was denied.  
551 In any event, and in no case, shall the limitation period be less  
552 than two (2) years from the date of injury or the date the injury  
553 was known or should have been known.

554 (2) If a person who is entitled to compensation under this  
555 chapter is mentally incompetent or a minor, the limitation for  
556 filing application for benefits shall not be applicable so long as  
557 such person has no guardian or other authorized representative,  
558 but shall be applicable in the case of a person who is mentally  
559 incompetent or a minor from the date of appointment of such  
560 guardian or other representative, or in the case of a minor, if no  
561 guardian is appointed before he becomes of age, from the date he  
562 becomes of age.

563 (3) Where recovery is denied to any person, in a suit  
564 brought at law or admiralty to recover damages in respect of



565 injury or death, on the ground that such person was an employee  
566 and that the defendant was an employer within the meaning of this  
567 chapter and that such employer had secured compensation to such  
568 employee under this chapter, the limitation upon filing  
569 application for benefits shall begin to run only from the date of  
570 termination of such suit.

571         **SECTION 11.** Section 71-3-43, Mississippi Code of 1972, is  
572 amended as follows:

573         71-3-43. No assignment, release, loan on or against  
574 compensation or commutation of compensation or benefits due or  
575 payable under this chapter, except as provided by this chapter,  
576 shall be valid; and such compensation and benefits shall be exempt  
577 from all claims of creditors and from levy, execution, and  
578 attachment or other remedy for recovery or collection of a debt,  
579 which exemption may be waived. This section prevails over  
580 Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform  
581 Commercial Code to the extent, if any, that these sections may  
582 otherwise be applicable. If any person or company shall loan an  
583 employee money with the promise to be paid back from compensation  
584 funds or workers' compensation lump-sum settlement, such  
585 transaction shall not be valid and the person or company loaning  
586 the funds shall forfeit any such funds without redress.

587         **SECTION 12.** Section 71-3-51, Mississippi Code of 1972, is  
588 amended as follows:



589           71-3-51. The final award of the commission shall be  
590 conclusive and binding unless either party to the controversy  
591 shall, within thirty (30) days from the date of its filing in the  
592 office of the commission and notification to the parties, appeal  
593 therefrom to the Supreme Court according to the rules set forth by  
594 such court and in the same manner by which an appeal would be  
595 taken by law from a circuit court to the Supreme Court according  
596 to the Rules of Appellate Procedures, with the exception of Rule  
597 11(b), as promulgated by the Supreme Court.

598           Such appeal may be taken by filing notice of appeal with the  
599 commission, whereupon the commission shall under its certificate  
600 transmit to the Supreme Court all documents and papers on file in  
601 the matter, together with a transcript of the evidence, the  
602 findings, and award, which shall thereupon become the record of  
603 the cause. Appeals shall be considered only upon the record as  
604 made before the commission. The Supreme Court shall always be  
605 deemed open for hearing of such appeals. The Supreme Court shall  
606 review all questions of law and of fact. If no prejudicial error  
607 be found, the matter shall be affirmed and remanded to the  
608 commission for enforcement. If prejudicial error be found, the  
609 same shall be reversed and the Supreme Court shall enter such  
610 judgment or award as the commission should have entered. An  
611 appeal from the commission to the Supreme Court shall not act as a  
612 supersedeas unless the court shall so direct, and then upon such  
613 terms as such court shall direct.





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

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

620 **SECTION 13.** Section 71-3-53, Mississippi Code of 1972, is  
621 amended as follows:

622 71-3-53. Upon its own initiative or upon the application of  
623 any party in interest on the ground of a change in conditions or  
624 because of a mistake in a determination of fact, the commission  
625 may, at any time prior to one (1) year after date of the last  
626 payment of compensation, whether or not a compensation order has  
627 been issued, or at any time prior to one (1) year after the  
628 rejection of a claim, review a compensation case, issue a new  
629 compensation order which may terminate, continue, reinstate,  
630 increase, or decrease such compensation, or award compensation.  
631 Such new order shall not affect any compensation previously paid,  
632 except that an award increasing the compensation rate may be made  
633 effective from the date of the injury; and if any part of the  
634 compensation due or to become due is unpaid, an award decreasing  
635 the compensation rate may be made effective from the date of the  
636 injury, and any payment made prior thereto in excess of such  
637 decreased rate shall be deducted from any unpaid compensation in  
638 such manner and by such method as may be determined by the



639 commission. This section shall not be construed to limit, reduce,  
640 alter or affect the statute of limitations for filing a workers'  
641 compensation claim as stated in Section 71-3-35.

642 **SECTION 14.** Section 71-3-55, Mississippi Code of 1972, is  
643 amended as follows:

644 71-3-55. (1) In making an investigation or inquiry or  
645 conducting a hearing, the commission shall not be bound by common  
646 law or statutory rules of evidence or by technical or formal rules  
647 or procedure, except as provided by this chapter, but may make  
648 such investigation or inquiry or conduct such hearing in such  
649 manner as best to ascertain the rights of the parties.

650 Declarations of a deceased employee concerning the injury in  
651 respect of which the investigation or inquiry is being made or the  
652 hearing conducted shall be received in evidence and shall, if  
653 corroborated by other evidence, be sufficient to establish the  
654 injury.

655 (2) Hearings before the commission shall be open to the  
656 public and shall be stenographically reported or recorded and  
657 transcribed. The commission shall by regulations provide for the  
658 preparation of a record of the hearings and other proceedings.

659 (3) Unless otherwise ordered by the commission, hearings  
660 shall be conducted in the county where the injury occurred  
661 or at the headquarters of the commission located in Hinds County  
662 should the claimant so elect and should the commission find such  
663 hearing location to be the most efficient and convenient location



664 considering the interests of all parties and the time and  
665 resources of the commission.

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

668 71-3-71. The acceptance of compensation benefits from or the  
669 making of a claim for compensation against an employer or insurer  
670 for the injury or death of an employee shall not affect the right  
671 of the employee or his dependents to sue any other party at law  
672 for such injury or death, but the employer or his insurer shall be  
673 entitled to reasonable notice and opportunity to join in any such  
674 action or may intervene therein. If such employer or insurer join  
675 in such action, they shall be entitled to repayment of the amount  
676 paid by them as compensation and medical expenses from the \* \* \*  
677 proceeds of such action \* \* \* less a pro rata share of the costs  
678 of collection as hereinafter provided.

679 The commencement of an action by an employee or his  
680 dependents (or legal representative) against a third party for  
681 damages by reason of the injury, or the adjustment of any such  
682 claim, shall not affect the right of the injured employee or his  
683 dependents (or legal representative) to recover compensation, but  
684 any amount recovered by the injured employee or his dependents (or  
685 legal representative) from a third party shall be applied as  
686 follows: reasonable costs of collection as approved and allowed  
687 by the court in which such action is pending, or by the commission  
688 of this state in case of settlement without suit, shall be



689 deducted; the remainder, or so much thereof as is necessary, shall  
690 be used to discharge the legal liability of the employer or  
691 insurer less a pro rata share of the costs of collection; and any  
692 excess shall belong to the injured employee or his dependents.  
693 The employee or his dependents bringing suit against the third  
694 party must notify the employer or carrier within fifteen (15) days  
695 of the filing of such suit.

696 An employer or compensation insurer who shall have paid  
697 compensation benefits under this chapter for the injury or death  
698 of the employee shall have the right to maintain an action at law  
699 against any other party responsible for such injury or death, in  
700 the name of such injured employee or his beneficiaries, or in the  
701 name of such employer or insurer, or any or all of them. If  
702 reasonable notice and opportunity to be represented in such action  
703 by counsel shall have been given to the compensation beneficiary,  
704 all claims of such compensation beneficiary shall be determined in  
705 such action, as well as the claim of the employer or insurer. If  
706 recovery shall be had against such other party, by suit or  
707 otherwise, the compensation beneficiary shall be entitled to any  
708 amount recovered over and above the amount that the employer and  
709 insurer shall have paid or are liable for in compensation or other  
710 benefits, after deducting the reasonable costs of collection.

711 In case of settlement of any action before the trial thereof,  
712 such settlement shall be subject to the approval of the court  
713 wherein such action is pending, and settlement before an action is



714 brought shall be subject to the approval of the commission.  
715 Distribution of the portion belonging to the dependents shall be  
716 made among such dependents in the manner provided in this chapter.

717 In case of liability of the employer or insurer to make  
718 payment to the State Treasury under the Second Injury Fund  
719 provisions, if the injury or death creates a legal liability  
720 against a third party, the employer or insurer shall have a right  
721 of action against such third party for reimbursement of any sum so  
722 paid into the State Treasury, which right may be enforced in the  
723 action heretofore provided or by an independent action.

724 **SECTION 16.** Section 71-3-85, Mississippi Code of 1972, is  
725 amended as follows:

726 71-3-85. (1) There is hereby created a commission to be  
727 known as the \* \* \* Workers' Compensation Commission, consisting of  
728 three (3) members, who shall devote their entire time to the  
729 duties of the office. The Governor shall appoint the members of  
730 the commission, by and with the consent of the Mississippi State  
731 Senate, one (1) for a term of two (2) years, one (1) for a term of  
732 four (4) years, and one (1) for a term of six (6) years. Upon the  
733 expiration of each term as above set forth, the Governor shall  
734 appoint a successor for a term of six (6) years, and thereafter  
735 the term of office of each commissioner shall be for six (6)  
736 years. One (1) member shall be a person who by reason of his  
737 previous vocation or affiliation can be classed as a  
738 representative of employers and who has at least five (5) years of



739 experience dealing with workers' compensation claims, and one (1)  
740 member shall be a person who by reason of his previous vocation or  
741 affiliation can be classed as a representative of employees and  
742 who has at least five (5) years of experience dealing with  
743 workers' compensation claims. One (1) member shall be an  
744 attorney-at-law of recognized ability with at least five (5)  
745 years' active practice in Mississippi with a substantial portion  
746 of such practice in the area of Workers' Compensation prior to his  
747 appointment. If possible by way of qualification and experience,  
748 at least one (1) of the three (3) members should have previous  
749 experience as an administrative law judge for the commission. The  
750 Governor shall designate the chairman of the commission, whose  
751 term of chairman shall run concurrently with his appointment as a  
752 commissioner.

753 The chairman shall be the administrative head of the  
754 commission and shall have the final authority in all matters  
755 relating to assignment of cases for hearing and trial and the  
756 administrative work of the commission and its employees, except in  
757 the promulgation of rules and regulations wherein the commission  
758 shall act as a body, and in the trial and determination of cases  
759 as otherwise provided.

760 Upon the expiration of the term of a commissioner, he shall  
761 continue to serve until his successor has been appointed. Because  
762 cumulative experience is conspicuously essential to the proper  
763 administration of a \* \* \* Workers' Compensation Law, it is



764 declared to be in the public interest to continue \* \* \* workers'  
765 compensation commissioners in office as long as efficiency is  
766 demonstrated. A commissioner may be removed for cause prior to  
767 the expiration of his term, but shall be furnished a written copy  
768 of the charges against him and shall be accorded a public hearing.

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

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

775 (3) The commission shall have the powers and duties  
776 necessary for effecting the purposes of this chapter, including  
777 the powers of a court of record for compelling the attendance of  
778 witnesses, examining them under oath, and compelling the  
779 production of books, papers, documents and objects relevant to the  
780 determination of a claim for compensation, and the power to adopt  
781 rules and regulations and make or approve the forms relating to  
782 notices of injuries, payment of claims and other purposes. The  
783 authority of the commission and its duly authorized  
784 representatives to investigate and determine claims for  
785 compensation shall include the right to enter the premises where  
786 an injury occurred, to ascertain its causes and circumstances.

787 (4) The office of the commission shall be situated in the  
788 City of Jackson, but hearings may be held at such places as it may



789 deem most convenient for the proper and speedy performance of its  
790 duties. The commission is authorized, if it deems it necessary  
791 for the convenient and efficient dispatch of business, to lease  
792 office space and facilities in other than publicly owned  
793 buildings.

794 (5) The commission shall adopt detailed rules and  
795 regulations for implementing the purposes of this chapter at  
796 hearings attended by the main parties interested. Such rules,  
797 upon adoption, shall be published and be at all reasonable times  
798 made available to the public and, if not inconsistent with law,  
799 shall be binding upon those participating in the responsibilities  
800 and benefits of the \* \* \* Workers' Compensation Law.

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

806 **SECTION 17.** (1) Any person having a claim against an  
807 insurer under any provision in an insurance policy other than a  
808 policy of an insolvent insurer, that is also a covered claim,  
809 shall be required to exhaust first his right under such policy.  
810 Any amount payable on a covered claim under Sections 71-3-151  
811 through 71-3-181 shall be reduced by the amount of any recovery  
812 under such insurance policy.





813           (2) Any person having a claim that may be recovered under  
814 more than one (1) insurance guaranty association or its equivalent  
815 shall seek recovery first from the association of the place of  
816 residence of the claimant. Any amount payable on a covered claim  
817 under Sections 71-3-151 through 71-3-181 shall be reduced by the  
818 amount of any recovery from any other insurance guaranty  
819 association or its equivalent.

820           **SECTION 18.** Section 17 of this act shall be codified as a  
821 new section within Chapter 3, Title 71, Mississippi Code of 1972.

822           **SECTION 19.** This act shall take effect and be in force from  
823 and after July 1, 2015.

