

By: Senator(s) Longwitz

To: Insurance

SENATE BILL NO. 2576
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 71-3-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE MISSISSIPPI WORKERS' COMPENSATION LAW SHALL NOT
3 BE PRESUMED TO FAVOR ONE PARTY OVER ANOTHER; TO PROVIDE THE
4 PRIMARY PURPOSES OF THE WORKERS' COMPENSATION LAW; TO AMEND
5 SECTION 71-3-7, MISSISSIPPI CODE OF 1972, TO REQUIRE THE CLAIMANT
6 TO PROVIDE MEDICAL PROOF TO HIS EMPLOYER OF THE DIRECT CAUSAL
7 CONNECTION BETWEEN THE WORK PERFORMED AND THE ALLEGED WORK-RELATED
8 INJURY OR OCCUPATIONAL DISEASE; TO REQUIRE THE CLAIMANT, IN
9 CERTAIN CLAIMS, TO FILE MEDICAL PROOF OF THE DIRECT CAUSAL
10 CONNECTION BETWEEN THE WORK PERFORMED AND THE ALLEGED WORK-RELATED
11 INJURY OR OCCUPATIONAL DISEASE WHEN FILING A PETITION TO
12 CONTROVERT; TO PROVIDE THAT A PREEXISTING CONDITION DOES NOT HAVE
13 TO BE OCCUPATIONALLY DISABLING FOR APPORTIONMENT TO APPLY; TO
14 AMEND SECTION 71-3-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT,
15 IF THE EMPLOYEE IS TREATED FOR HIS ALLEGED WORK-RELATED INJURY OR
16 OCCUPATIONAL DISEASE BY A PHYSICIAN FOR SIX MONTHS OR LONGER, OR
17 IF THE EMPLOYEE HAS SURGERY FOR THE ALLEGED WORK-RELATED INJURY OR
18 OCCUPATIONAL DISEASE PERFORMED BY A PHYSICIAN, THEN THAT PHYSICIAN
19 SHALL BE DEEMED THE EMPLOYEE'S SELECTION; TO AMEND SECTION
20 71-3-17, MISSISSIPPI CODE OF 1972, TO INCREASE THE MAXIMUM AMOUNT
21 THE COMMISSION MAY AWARD THE EMPLOYEE FOR SERIOUS FACIAL OR HEAD
22 DISFIGUREMENT FROM \$2,000.00 TO \$5,000.00; TO AMEND SECTION
23 71-3-19, MISSISSIPPI CODE OF 1972, TO INCREASE THE MAXIMUM AMOUNT
24 THE COMMISSION MAY AWARD IN ADDITIONAL COMPENSATION FROM \$10.00
25 PER WEEK TO \$25.00 PER WEEK, UP TO A MAXIMUM OF 52 WEEKS, FOR AN
26 EMPLOYEE WHO AS A RESULT OF INJURY IS OR MAY BE EXPECTED TO BE
27 TOTALLY OR PARTIALLY INCAPACITATED FOR A REMUNERATIVE OCCUPATION
28 AND WHO, UNDER THE DIRECTION OF THE COMMISSION IS BEING RENDERED
29 FIT TO ENGAGE IN A REMUNERATIVE OCCUPATION; TO AMEND SECTION
30 71-3-25, MISSISSIPPI CODE OF 1972, TO INCREASE THE DEATH BENEFIT
31 IMMEDIATE LUMP-SUM PAYMENT FROM \$250.00 TO \$1,000.00; TO INCREASE
32 THE MAXIMUM DEATH BENEFIT FOR REASONABLE FUNERAL EXPENSES FROM
33 \$2,000.00 TO \$5,000.00; TO AMEND SECTION 71-3-63, MISSISSIPPI CODE
34 OF 1972, TO PROVIDE THAT ATTORNEYS MAY NOT RECOVER ATTORNEY'S FEES
35 BASED UPON BENEFITS VOLUNTARILY PAID TO AN INJURED EMPLOYEE FOR
36 TEMPORARY OR PERMANENT DISABILITY; TO AMEND SECTION 71-3-121,
37 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS REGARDING THE
38 RIGHT OF AN EMPLOYER TO ADMINISTER OR DEMAND THE EMPLOYEE SUBMIT
39 TO A DRUG AND ALCOHOL TEST; TO REVISE THE PROVISIONS REGARDING THE
40 ADMISSIBILITY OF DRUG AND ALCOHOL TESTS AS EVIDENCE; TO REVISE THE
41 PROVISIONS REGARDING THE BURDEN OF PROOF THAT THE EMPLOYEE'S USE
42 OF DRUGS ILLEGALLY, USE OF PRESCRIPTION DRUGS IMPROPERLY OR
43 INTOXICATION DUE TO THE USE OF ALCOHOL WAS A CONTRIBUTING CAUSE OF
44 THE ACCIDENT; TO AMEND SECTION 71-7-5, MISSISSIPPI CODE OF 1972,
45 TO CONFORM; TO CREATE A NEW SECTION OF LAW TO REQUIRE THE WORKERS'
46 COMPENSATION COMMISSION TO PROMULGATE A WRITTEN STATEMENT



47 SPECIFYING THE CHANGES MADE BY THIS ACT TO EVERY EMPLOYER IN THIS
48 STATE; TO REQUIRE EMPLOYERS TO POST SUCH STATEMENT FOR NOTICE TO
49 THEIR EMPLOYEES; AND FOR RELATED PURPOSES.

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

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

53 71-3-1. (1) This chapter shall be known and cited as
54 "Workers' Compensation Law," and shall be administered by the
55 Workers' Compensation Commission, hereinafter referred to as the
56 "commission," cooperating with other state and federal authorities
57 for the prevention of injuries and occupational diseases to
58 workers and, in event of injury or occupational disease, their
59 rehabilitation or restoration to health and vocational
60 opportunity; and this chapter shall be fairly and impartially
61 construed and applied according to the law and the evidence in the
62 record, and, notwithstanding any common law or case law to the
63 contrary, this chapter shall not be presumed to favor one party
64 over another and shall not be liberally construed in order to
65 fulfill any beneficent purposes.

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

69 (a) The words "workmen's compensation" shall mean
70 "workers' compensation"; and

71 (b) The word "commission" shall mean the Workers'
72 Compensation Commission.

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



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

82 71-3-7. (1) Compensation shall be payable for disability or
83 death of an employee from injury or occupational disease arising
84 out of and in the course of employment, without regard to fault as
85 to the cause of the injury or occupational disease. An
86 occupational disease shall be deemed to arise out of and in the
87 course of employment when there is evidence that there is a direct
88 causal connection between the work performed and the occupational
89 disease. In all claims in which no benefits, including
90 disability, death and medical benefits, have been paid, the
91 claimant shall file medical records in support of his claim for
92 benefits when filing a petition to controvert. If the claimant is
93 unable to file the medical records in support of his claim for
94 benefits at the time of filing the petition to controvert because
95 of a limitation of time established by Section 71-3-35 or Section
96 71-3-53, the claimant shall file medical records in support of his
97 claim within sixty (60) days after filing the petition to
98 controvert.

99 (2) Where a preexisting physical handicap, disease, or
100 lesion is shown by medical findings to be a material contributing
101 factor in the results following injury, the compensation which,
102 but for this subsection, would be payable shall be reduced by that
103 proportion which such preexisting physical handicap, disease, or
104 lesion contributed to the production of the results following the
105 injury. The preexisting condition does not have to be
106 occupationally disabling for this apportionment to apply.

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

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

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



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

115 (c) After the date the claimant reaches maximum medical
116 recovery, weekly compensation benefits and maximum recovery shall
117 be reduced by that proportion which the preexisting physical
118 handicap, disease, or lesion contributes to the results following
119 injury.

120 (d) If maximum medical recovery has occurred before the
121 hearing and order of the attorney-referee, credit for excess
122 payments shall be allowed in future payments. Such allowances and
123 method of accomplishment of the same shall be determined by the
124 attorney-referee, subject to review by the commission. However,
125 no actual repayment of such excess shall be made to the employer
126 or carrier.

127 (4) No compensation shall be payable if the use of drugs
128 illegally, or the use of a valid prescription medication(s) taken
129 contrary to the prescriber's instructions and/or contrary to label
130 warnings, or intoxication due to the use of alcohol of the
131 employee was the proximate cause of the injury, or if it was the
132 willful intention of the employee to injure or kill himself or
133 another.

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

137 (6) In the case of an employer who is a subcontractor, the
138 contractor shall be liable for and shall secure the payment of
139 such compensation to employees of the subcontractor, unless the
140 subcontractor has secured such payment.

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

143 71-3-15. (1) The employer shall furnish such medical,
144 surgical, and other attendance or treatment, nurse and hospital
145 service, medicine, crutches, artificial members, and other



146 apparatus for such period as the nature of the injury or the
147 process of recovery may require. The injured employee shall have
148 the right to accept the services furnished by the employer or, in
149 his discretion, to select one (1) competent physician of his
150 choosing and such other specialists to whom he is referred by his
151 chosen physician to administer medical treatment. Referrals by
152 the chosen physician shall be limited to one (1) physician within
153 a specialty or subspecialty area. Except in an emergency
154 requiring immediate medical attention, any additional selection of
155 physicians by the injured employee or further referrals must be
156 approved by the employer, if self-insured, or the carrier prior to
157 obtaining the services of the physician at the expense of the
158 employer or carrier. If denied, the injured employee may apply to
159 the commission for approval of the additional selection or
160 referral, and if the commission determines that such request is
161 reasonable, the employee may be authorized to obtain such
162 treatment at the expense of the employer or carrier. Approval by
163 the employer or carrier does not require approval by the
164 commission. A physician to whom the employee is referred by his
165 employer shall not constitute the employee's selection, unless the
166 employee, in writing, accepts the employer's referral as his own
167 selection. However, if the employee is treated for his alleged
168 work-related injury or occupational disease by a physician for six
169 (6) months or longer, or if the employee has surgery for the
170 alleged work-related injury or occupational disease performed by a
171 physician, then that physician shall be deemed the employee's
172 selection. Should the employer desire, he may have the employee
173 examined by a physician other than of the employee's choosing for
174 the purpose of evaluating temporary or permanent disability or
175 medical treatment being rendered under such reasonable terms and
176 conditions as may be prescribed by the commission. If at any time
177 during such period the employee unreasonably refuses to submit to
178 medical or surgical treatment, the commission shall, by order,



179 suspend the payment of further compensation during such time as
180 such refusal continues, and no compensation shall be paid at any
181 time during the period of such suspension; provided, that no claim
182 for medical or surgical treatment shall be valid and enforceable,
183 as against such employer, unless within twenty (20) days following
184 the first treatment the physician or provider giving such
185 treatment shall furnish to the employer, if self-insured, or its
186 carrier, a preliminary report of such injury and treatment, on a
187 form or in a format approved by the commission. Subsequent
188 reports of such injury and treatment must be submitted at least
189 every thirty (30) days thereafter until such time as a final
190 report shall have been made. Reports which are required to be
191 filed hereunder shall be furnished by the medical provider to the
192 employer or carrier, and it shall be the responsibility of the
193 employer or carrier receiving such reports to promptly furnish
194 copies to the commission. The commission may, in its discretion,
195 excuse the failure to furnish such reports within the time
196 prescribed herein if it finds good cause to do so, and may, upon
197 request of any party in interest, order or direct the employer or
198 carrier to pay the reasonable value of medical services rendered
199 to the employee.

200 (2) Whenever in the opinion of the commission a physician
201 has not correctly estimated the degree of permanent disability or
202 the extent of the temporary disability of an injured employee, the
203 commission shall have the power to cause such employee to be
204 examined by a physician selected by the commission, and to obtain
205 from such physician a report containing his estimate of such
206 disabilities. The commission shall have the power in its
207 discretion to charge the cost of such examination to the employer,
208 if he is a self-insurer, or to the insurance company which is
209 carrying the risk.

210 (3) In carrying out this section, the commission shall
211 establish an appropriate medical provider fee schedule, medical



212 cost containment system and utilization review which incorporates
213 one or more medical review panels to determine the reasonableness
214 of charges and the necessity for the services, and limitations on
215 fees to be charged by medical providers for testimony and copying
216 or completion of records and reports and other provisions which,
217 at the discretion of the commission, are necessary to encompass a
218 complete medical cost containment program. The commission may
219 contract with a private organization or organizations to establish
220 and implement such a medical cost containment system and fee
221 schedule with the cost for administering such a system to be paid
222 out of the administrative expense fund as provided in this
223 chapter. All fees and other charges for such treatment or service
224 shall be limited to such charges as prevail in the same community
225 for similar treatment and shall be subject to regulation by the
226 commission. No medical bill shall be paid to any doctor until all
227 forms and reports required by the commission have been filed. Any
228 employee receiving treatment or service under the provisions of
229 this chapter may not be held responsible for any charge for such
230 treatment or service, and no doctor, hospital or other recognized
231 medical provider shall attempt to bill, charge or otherwise
232 collect from the employee any amount greater than or in excess of
233 the amount paid by the employer, if self-insured, or its workers'
234 compensation carrier. Any dispute over the amount charged for
235 service rendered under the provisions of this chapter, or over the
236 amount of reimbursement for services rendered under the provisions
237 of this chapter, shall be limited to and resolved between the
238 provider and the employer or carrier in accordance with the fee
239 dispute resolution procedures adopted by the commission.

240 (4) The liability of an employer for medical treatment as
241 herein provided shall not be affected by the fact that his
242 employee was injured through the fault or negligence of a third
243 party, not in the same employ, provided the injured employee was
244 engaged in the scope of his employment when injured. The employer



245 shall, however, have a cause of action against such third party to
246 recover any amounts paid by him for such medical treatment.

247 (5) An injured worker who believes that his best interest
248 has been prejudiced by the findings of the physician designated by
249 the employer or carrier shall have the privilege of a medical
250 examination by a physician of his own choosing, at the expense of
251 the carrier or employer. Such examination may be had at any time
252 after injury and prior to the closing of the case, provided that
253 the charge shall not exceed One Hundred Dollars (\$100.00) and
254 shall be paid by the carrier or employer where the previous
255 medical findings are upset, but paid by the employee if previous
256 medical findings are confirmed.

257 (6) Medical and surgical treatment as provided in this
258 section shall not be deemed to be privileged insofar as carrying
259 out the provisions of this chapter is concerned. All findings
260 pertaining to a second opinion medical examination, at the
261 instance of the employer shall be reported as herein required
262 within fourteen (14) days of the examination, except that copies
263 thereof shall also be furnished by the employer or carrier to the
264 employee. All findings pertaining to an independent medical
265 examination by order of the commission shall be reported as
266 provided in the order for such examination.

267 (7) Any medical benefits paid by reason of any accident or
268 health insurance policy or plan paid for by the employer, which
269 were for expenses of medical treatment under this section, are,
270 upon notice to the carrier prior to payment by it, subject to
271 subrogation in favor of the accident or health insurance company
272 to the extent of its payment for medical treatment under this
273 section. Reimbursement to the accident or health insurance
274 company by the carrier or employer, to the extent of such
275 reimbursement, shall constitute payment by the employer or carrier
276 of medical expenses under this section. Under no circumstances,



277 shall any subrogation be had by any insurance company against any
278 compensation benefits paid under this chapter.

279 **SECTION 4.** Section 71-3-17, Mississippi Code of 1972, is
280 amended as follows:

281 71-3-17. Compensation for disability shall be paid to the
282 employee as follows:

283 (a) Permanent total disability: In case of total
284 disability adjudged to be permanent, sixty-six and two-thirds
285 percent (66-2/3%) of the average weekly wages of the injured
286 employee, subject to the maximum limitations as to weekly benefits
287 as set up in this chapter, shall be paid to the employee not to
288 exceed four hundred fifty (450) weeks or an amount greater than
289 the multiple of four hundred fifty (450) weeks times sixty-six and
290 two-thirds percent (66-2/3%) of the average weekly wage for the
291 state. Loss of both hands, or both arms, or both feet, or both
292 legs, or both eyes, or of any two (2) thereof shall constitute
293 permanent total disability. In all other cases, permanent total
294 disability shall be determined in accordance with the facts.

295 (b) Temporary total disability: In case of disability,
296 total in character but temporary in quality, sixty-six and
297 two-thirds percent (66-2/3%) of the average weekly wages of the
298 injured employee, subject to the maximum limitations as to weekly
299 benefits as set up in this chapter, shall be paid to the employee
300 during the continuance of such disability not to exceed four
301 hundred fifty (450) weeks or an amount greater than the multiple
302 of four hundred fifty (450) weeks times sixty-six and two-thirds
303 percent (66-2/3%) of the average weekly wage for the state.

304 Provided, however, if there arises a conflict in medical opinions
305 of whether or not the claimant has reached maximum medical
306 recovery and the claimant's benefits have been terminated by the
307 carrier, then the claimant may demand an immediate hearing before
308 the commissioner upon five (5) days' notice to the carrier for a



309 determination by the commission of whether or not in fact the
310 claimant has reached maximum recovery.

311 (c) Permanent partial disability: In case of
312 disability partial in character but permanent in quality, the
313 compensation shall be sixty-six and two-thirds percent (66-2/3%)
314 of the average weekly wages of the injured employee, subject to
315 the maximum limitations as to weekly benefits as set up in this
316 chapter, which shall be paid following compensation for temporary
317 total disability paid in accordance with paragraph (b) of this
318 section, and shall be paid to the employee as follows:

319	Member Lost	Number Weeks Compensation
320	(1) Arm	200
321	(2) Leg	175
322	(3) Hand	150
323	(4) Foot	125
324	(5) Eye	100
325	(6) Thumb	60
326	(7) First finger	35
327	(8) Great toe	30
328	(9) Second finger	30
329	(10) Third finger	20
330	(11) Toe other than great toe	10
331	(12) Fourth finger	15
332	(13) Testicle, one	50
333	(14) Testicle, both	150
334	(15) Breast, female, one	50
335	(16) Breast, female, both	150
336	(17) Loss of hearing: Compensation for loss of	
337	hearing of one (1) ear, forty (40) weeks. Compensation for loss	
338	of hearing of both ears, one hundred fifty (150) weeks.	
339	(18) Phalanges: Compensation for loss of more	
340	than one (1) phalange of a digit shall be the same as for loss of	
341	the entire digit. Compensation for loss of the first phalange	



342 shall be one-half (1/2) of the compensation for loss of the entire
343 digit.

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

347 (20) Binocular vision or percent of vision:
348 Compensation for loss of binocular vision or for eighty percent
349 (80%) or more of the vision of an eye shall be the same as for
350 loss of the eye.

351 (21) Two (2) or more digits: Compensation for
352 loss of two (2) or more digits, or one (1) or more phalanges of
353 two (2) or more digits, of a hand or foot may be proportioned to
354 the loss of the use of the hand or foot occasioned thereby, but
355 shall not exceed the compensation for loss of a hand or foot.

356 (22) Total loss of use: Compensation for
357 permanent total loss of use of a member shall be the same as for
358 loss of the member.

359 (23) Partial loss or partial loss of use:
360 Compensation for permanent partial loss or loss of use of a member
361 may be for proportionate loss or loss of use of the member.

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

368 (25) Other cases: In all other cases in this
369 class of disability, the compensation shall be sixty-six and
370 two-thirds percent (66-2/3%) of the difference between his average
371 weekly wages, subject to the maximum limitations as to weekly
372 benefits as set up in this chapter, and his wage-earning capacity
373 thereafter in the same employment or otherwise, payable during the
374 continuance of such partial disability, but subject to



375 reconsideration of the degree of such impairment by the commission
376 on its own motion or upon application of any party in interest.
377 Such payments shall in no case be made for a longer period than
378 four hundred fifty (450) weeks.

379 (26) In any case in which there shall be a loss
380 of, or loss of use of, more than one (1) member or parts of more
381 than one (1) member set forth in subparagraphs (1) through (23) of
382 this paragraph (c), not amounting to permanent total disability,
383 the award of compensation shall be for the loss of, or loss of use
384 of, each such member or parts thereof, which awards shall run
385 consecutively, except that where the injury affects only two (2)
386 or more digits of the same hand or foot, subparagraph (21) of this
387 paragraph (c) shall apply.

388 **SECTION 5.** Section 71-3-19, Mississippi Code of 1972, is
389 amended as follows:

390 71-3-19. An employee who as a result of injury is or may be
391 expected to be totally or partially incapacitated for a
392 remunerative occupation and who, under the direction of the
393 commission is being rendered fit to engage in a remunerative
394 occupation may, in the discretion of the commission under
395 regulations adopted by it, receive additional compensation
396 necessary for his maintenance, but such additional compensation
397 shall not exceed Twenty-five Dollars (\$25.00) a week for not more
398 than fifty-two (52) weeks.

399 **SECTION 6.** Section 71-3-25, Mississippi Code of 1972, is
400 amended as follows:

401 71-3-25. If the injury causes death, the compensation shall
402 be known as a death benefit and shall be payable in the amount and
403 to or for the benefit of the persons following:

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



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

410 (c) If there be a surviving spouse and no child of the
411 deceased, to such surviving spouse thirty-five percent (35%) of
412 the average wages of the deceased during widowhood or dependent
413 widowhood and, if there be a surviving child or children of the
414 deceased, the additional amount of ten percent (10%) of such wages
415 for each such child. In case of the death or remarriage of such
416 surviving spouse, any surviving child of the deceased employee
417 shall have his compensation increased to fifteen percent (15%) of
418 such wages, provided that the total amount payable shall in no
419 case exceed sixty-six and two-thirds percent (66-2/3%) of such
420 wages, subject to the maximum limitations as to weekly benefits as
421 set up in this chapter. The commission may, in its discretion,
422 require the appointment of a guardian for the purpose of receiving
423 the compensation of a minor dependent. In the absence of such a
424 requirement, the appointment of a guardian for such purposes shall
425 not be necessary, provided that if no legal guardian be appointed,
426 payment to the natural guardian shall be sufficient.

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

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



440 percent (15%) of such wages for the support of each such person;
441 and for the support of each parent or grandparent of the deceased,
442 if dependent upon him at the time of injury, fifteen percent (15%)
443 of such wages during such dependency. But in no case shall the
444 aggregate amount payable under this subsection exceed the
445 difference between sixty-six and two-thirds percent (66-2/3%) of
446 such wages and the amount payable as hereinbefore provided to
447 surviving spouse and for the support of surviving child or
448 children, subject to the maximum limitations as to weekly benefits
449 as set up in this chapter.

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

457 (g) All questions of dependency shall be determined as
458 of the time of the injury. A surviving spouse, child or children
459 shall be presumed to be wholly dependent. All other dependents
460 shall be considered on the basis of total or partial dependence as
461 the facts may warrant.

462 **SECTION 7.** Section 71-3-63, Mississippi Code of 1972, is
463 amended as follows:

464 71-3-63. (1) No claim for legal services or for any other
465 services rendered in respect of a claim or award for compensation,
466 to or on account of any person, shall be valid unless approved by
467 the commission or, if proceedings for review of the order of the
468 commission in respect of such claim or award are had before any
469 court, unless approved by such court. Any claim so approved
470 shall, in the manner and to the extent fixed by the commission or
471 such court, be a lien upon such compensation.



472 (2) Any person (a) who receives any fee, other
473 consideration, or any gratuity on account of services so rendered,
474 unless such consideration or gratuity is approved by the
475 commission or such court, or (b) who makes it a business to
476 solicit employment for a lawyer or for himself in respect of any
477 claim or award for compensation, shall be guilty of a misdemeanor
478 and, upon conviction thereof, shall for each offense be punished
479 by a fine of not more than One Thousand Dollars (\$1,000.00) or by
480 imprisonment not to exceed one (1) year, or by both such fine and
481 imprisonment.

482 (3) Representation of one other than himself or herself
483 before the commission shall be considered the practice of law, and
484 all statutes applying to and regulating the practice in all other
485 courts of law in this state shall likewise apply to practice
486 before the commission, insofar as the qualifications of those
487 practicing before the commission are concerned. This paragraph
488 shall not be construed as tightening the rules of evidence which
489 are otherwise relaxed in other sections of this chapter.

490 In no instance shall the amount recovered by an attorney for
491 an appearance before the commission exceed twenty-five percent
492 (25%) of the total award of compensation. Such limitations,
493 however, shall not be construed as applying to a fee awarded for
494 additional services by any superior court. Legal services
495 rendered where no motion to controvert has been filed by either
496 employer or employee shall be considered as consultation, and that
497 factor shall be taken into consideration in awarding a fee.
498 Attorneys may not recover attorney's fees based upon benefits
499 voluntarily paid to an injured employee for temporary or permanent
500 disability. Any settlement negotiated by an attorney shall not be
501 considered a voluntary payment. In all instances, fees shall be
502 awarded on the basis of fairness to both attorney and client.
503 Although exceptions may be made in the interest of justice, it
504 shall be deemed conducive to the best interest of all concerned



505 for the commission to approve contracts for attorney's fees
506 voluntarily entered into between attorney and client, within the
507 limitations hereinabove set out.

508 When an award of compensation becomes final and an attorney's
509 fee is outstanding, a partial lump-sum settlement sufficient to
510 cover the attorney's fee approved therein by the commission shall
511 be made immediately, from payments last to become due, and the
512 deductions allowed by the law shall be borne equally by the
513 attorney and the client.

514 **SECTION 8.** Section 71-3-121, Mississippi Code of 1972, is
515 amended as follows:

516 71-3-121. * * *

517 (1) In the event that an employee sustains an injury at work
518 or asserts a work-related injury, the employer shall have the
519 right to administer drug and alcohol testing or require that the
520 employee submit himself to drug and alcohol testing. If the
521 employee has a positive test indicating the presence, at the time
522 of injury, of any drug illegally used or the use of a valid
523 prescription medication(s) taken contrary to the prescriber's
524 instructions and/or contrary to label warnings, or eight
525 one-hundredths percent (.08%) or more by weight volume of alcohol
526 in the person's blood, it shall be presumed that the proximate
527 cause of the injury was the use of a drug illegally, or the use of
528 a valid prescription medication(s) taken contrary to the
529 prescriber's instructions and/or contrary to label warnings, or
530 the intoxication due to the use of alcohol by the employee. If
531 the employee refuses to submit himself to drug and alcohol testing
532 immediately after the alleged work-related injury, then it shall
533 be presumed that the employee was using a drug illegally, or was
534 using a valid prescription medication(s) contrary to the
535 prescriber's instructions and/or contrary to label warnings, or
536 was intoxicated due to the use of alcohol at the time of the
537 accident and that the proximate cause of the injury was the use of



538 a drug illegally, or the use of a valid prescription medication(s)
539 taken contrary to the prescriber's instructions and/or contrary to
540 label warnings, or the intoxication due to the use of alcohol of
541 the employee. The burden of proof will then be placed upon the
542 employee to prove that the use of drugs illegally, or the use of a
543 valid prescription medication(s) taken contrary to the
544 prescriber's instructions and/or contrary to label warnings, or
545 intoxication due to the use of alcohol was not a contributing
546 cause of the accident in order to defeat the defense of the
547 employer provided under Section 71-3-7.

548 (2) The results of the drug and alcohol tests,
549 employer-administered or otherwise, shall be considered admissible
550 evidence solely on the issue of causation in the determination of
551 the use of drugs illegally, or the use of a valid prescription
552 medication(s) taken contrary to the prescriber's instructions
553 and/or contrary to label warnings, or the intoxication due to the
554 use of alcohol of an employee at the time of injury for workers'
555 compensation purposes under Section 71-3-7.

556 (3) No cause of action for defamation of character, libel,
557 slander or damage to reputation arises in favor of any person
558 against an employer under the provisions of this section.

559 **SECTION 9.** Section 71-7-5, Mississippi Code of 1972, is
560 amended as follows:

561 71-7-5. (1) Except as otherwise provided in Section
562 71-7-27, all drug and alcohol testing conducted by employers shall
563 be in conformity with the standards established in this section,
564 other applicable provisions of this chapter, and all applicable
565 regulations promulgated pursuant to this chapter.

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

568 (a) Employers may require job applicants to submit to a
569 drug and alcohol test as a condition of the employment application



570 and may use a refusal to submit to a test or positive confirmed
571 test result as a basis for refusal to hire.

572 (b) An employer may require all employees to submit to
573 reasonable suspicion drug and alcohol testing. There is created a
574 rebuttable presumption that the employer had reasonable suspicion
575 to test for drugs if the specimen provided by the employee tested
576 positive for drugs in a confirmatory drug test.

577 (c) An employer may require all employees to submit to
578 neutral selection drug and alcohol testing pursuant to Section
579 71-7-9.

580 (d) An employer may administer drug and alcohol testing
581 or require that the employee submit himself to drug and alcohol
582 testing as provided under Section 71-3-121 in the event that the
583 employee sustains an injury at work or asserts a work-related
584 injury.

585 **SECTION 10.** The Workers' Compensation Commission shall
586 promulgate a written statement specifying the changes made to the
587 Workers' Compensation Law by this act to every employer in this
588 state subject to the Workers' Compensation Law. Within ten (10)
589 days of receipt of this written statement from the Commission,
590 every employer shall post the Commission's statement in a
591 conspicuous place or places in and about his place or places of
592 business and adjacent to the Notice of Coverage as required by
593 Section 71-3-81.

594 **SECTION 11.** This act shall take effect and be in force from
595 and after July 1, 2012, and shall apply to injuries occurring on
596 or after July 1, 2012.

