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Chapter No. 522
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SENATE BILL NO. 2576

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2576

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Temporary total disability: In case of disability, total in character but temporary in quality, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, shall be paid to the employee during the continuance of such disability not to exceed four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-2/3%) of the average weekly wage for the state. Provided, however, if there arises a conflict in medical opinions of whether or not the claimant has reached maximum medical recovery and the claimant's benefits have been terminated by the carrier, then the claimant may demand an immediate hearing before the commissioner upon five (5) days' notice to the carrier for a

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

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

Member Lost	Number Weeks Compensation
(1) Arm	200
(2) Leg	175
(3) Hand	150
(4) Foot	125
(5) Eye	100
(6) Thumb	60
(7) First finger	35
(8) Great toe	30
(9) Second finger	30
(10) Third finger	20
(11) Toe other than great toe	10
(12) Fourth finger	15
(13) Testicle, one	50
(14) Testicle, both	150
(15) Breast, female, one	50
(16) Breast, female, both	150

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

(18) Phalanges: Compensation for loss of more than one (1) phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71-3-121. * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. This act shall take effect and be in force from

and after July 1, 2012, and shall apply to injuries occurring on
or after July 1, 2012.

PASSED BY THE SENATE
April 30, 2012


PRESIDENT OF ~~THE SENATE~~

PASSED BY THE HOUSE OF REPRESENTATIVES
April 30, 2012


SPEAKER OF THE HOUSE OF REPRESENTATIVES

~~APPROVED BY THE GOVERNOR~~


GOVERNOR

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