MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Ford (54th) To: Insurance

HOUSE BILL NO. 839

AN ACT TO AMEND SECTION 71-3-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CLAIMANT'S FAILURE TO TIMELY FILE MEDICAL RECORDS IN SUPPORT OF A CONTROVERTED WORKERS' COMPENSATION CLAIM MAY RESULT IN DISMISSAL OF THE CLAIM; TO AMEND SECTION 71-3-35, MISSISSIPPI CODE OF 1972, TO REQUIRE THE EMPLOYER OR CARRIER IN CERTAIN INSTANCES TO NOTIFY THE EMPLOYEE THAT HIS RIGHT TO BENEFITS MAY BE BARRED BY THE STATUTE OF LIMITATIONS; TO AMEND SECTION 71-3-66, MISSISSIPPI CODE OF 1972, TO REVISE THE CONFIDENTIALITY OF WORKERS' COMPENSATION COMMISSION RECORDS; TO AMEND SECTION 71-3-77, MISSISSIPPI CODE OF 1972, TO ALLOW NOTICE TO THE INSURED OF CANCELLATIONS AND NONRENEWALS TO BE SERVED ELECTRONICALLY AS LONG AS RECEIPT IS ACKNOWLEDGED; TO AMEND SECTION 25-61-3, MISSISSIPPI CODE OF 1972, TO REVISE THE MISSISSIPPI PUBLIC RECORDS ACT OF 1983 TO EXEMPT FROM THE DEFINITION OF PUBLIC RECORDS CERTAIN RECORDS OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION; AND FOR RELATED PURPOSES.

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

SECTION 1. 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. Claimant's failure to timely file medical records in support of the claim may result in dismissal of the claim.

(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 2. Section 71-3-35, Mississippi Code of 1972, is amended as follows:

71-3-35. (1) No claim for compensation shall be maintained unless, within thirty (30) days after the occurrence of the injury, actual notice was received by the employer or by an officer, manager, or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior shall be sufficient. Absence of notice shall not bar recovery if it is found that the employer had knowledge of the injury and was not prejudiced by the employee's failure to give notice. Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two (2) years from the date of the injury or death, the right to compensation therefor shall be barred. However, if there has been no payment of disability benefits, and the employer or carrier approve medical treatment or pay medical expenses for a

pro se employee during the last six (6) months of the two-year period, then the employer or carrier shall notify the employee that his right to any further benefits may be barred by the statute of limitations. Notice may be made electronically as long as receipt is acknowledged by the employee, by personal service, registered mail or certified mail. Notice shall also be provided to the commission in such manner and on such form as the commission may prescribe or direct. If no payment of compensation, other than medical treatment or burial expense, is made and no application for benefits filed with the commission within two (2) years from the date of injury, the right to compensation shall be barred. This notice requirement does not extend the two-year statute of limitations. If the employer or carrier fails to give notice as directed by statute, the statute of limitations will be extended for sixty (60) days from the date notice is properly given to those employees who are still receiving medical treatment at the time late notice is given.

(2) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the limitation for filing application for benefits shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no

guardian is appointed before he becomes of age, from the date he becomes of age.

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

SECTION 3. Section 71-3-66, Mississippi Code of 1972, is amended as follows:

71-3-66. The commission's noncontroverted case medical reports, rehabilitation counselor reports * * *, psychological reports * * *, First Report of Injury Forms (MWCC Form B-3), and compilations of data from those documents, shall not be open to the public under the Mississippi Public Records Act of 1983, but only to the parties satisfying the commission of their interest in * * * the records and the right to inspect them. Under * * * rules and regulations * * * adopted by the commission * * *, employers and insurance carriers against whom an employee is making a claim for indemnity benefits, medical expenses and/or death benefits, shall be entitled to inspect and copy the commission's records pertaining to the employee's other workers' compensation claims. The commission may * * * charge * * * the

party requesting the records a reasonable fee for * * * copying and mailing.

SECTION 4. Section 71-3-77, Mississippi Code of 1972, is amended as follows:

71-3-77. (1) Every contract for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this chapter, and provisions thereof inconsistent with this chapter shall be void. Such contract shall be allowed to offer deductibles on all liability of the assured under and according to the provisions of this chapter, notwithstanding any agreement of the parties to the contrary. However, the payments of the claims, including the deductible amounts, shall be made directly from the insurance company to the employee, except for medical benefits which shall be paid to the medical provider. A copy of such payments shall be forwarded to the employer. The insurance company shall collect the deductible from the employer as shall be provided in the contract between the employer and the insurer. No such policy shall be subject to nonrenewal, or cancelled by the insurer within the policy period, until a notice in writing shall be given to the commission and to the insured, fixing the date on which it is proposed to cancel it or declaring that the company does not intend to renew the policy upon expiration date. Notice to the insured shall be served personally or by registered or certified mail, or electronically as long as receipt is acknowledged by the

insured. Notice to the commission shall be provided in such manner and on such form as the commission may prescribe or direct. No such cancellation or nonrenewal shall be effective until thirty (30) days after the service of such notice on the insured and the provision of notice to the commission, unless the employer has obtained other insurance coverage, in which case such policy shall be deemed cancelled as of the effective date of such other insurance, whether or not such notice has been given. The notice requirements of this section shall not apply when a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or when transfer of an insured to a licensed affiliate providing the same or substantially similar coverage occurs. Whenever a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or when a transfer of an insured to a licensed affiliate of the insurer providing the same or substantially similar coverage occurs, documents signed by the insured are applicable to the replacement policy and to coverage being transferred, and remain valid and enforceable.

The insured may also cancel such a policy on the day that the insured either (a) returns the policy to the agent, or (b) signs and delivers to the agent a "lost policy release." If the insured desires to cancel a policy before the policy has become effective, he may cancel the policy by written notice of cancellation to the agent or company without return of the policy or a release.

Whenever a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or by a licensed affiliate insurer, such insurer shall mail or deliver to the policyholder, at least thirty (30) days in advance of the effective date of renewal, written notice of any terms or conditions that are less favorable to the policyholder.

A transferring insurer shall notify the Mississippi Insurance Department and the Mississippi Workers' Compensation Commission at least forty-five (45) days in advance of notifying a policyholder that its personal or commercial lines insurance policies will be transferred to another licensed insurer within the same insurance group or same holding company. The notice shall include the name of insurer transferring the personal or commercial lines policies and the name and financial rating of the insurer receiving the transferred personal or commercial lines policies.

A transferring insurer shall provide the policyholder written notice of the policy transfer at least thirty (30) days prior to expiration of the policy term and shall include the financial rating of the insurer receiving the transferred policy. Such notice must be provided to the policyholder with the notice of renewal premium at least thirty (30) days before the effective date of the transfer.

(2) In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer and in order

that the administration of this chapter in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier or carriers for such employer, of such obligations and duties of the employer in respect of such liability imposed by this chapter upon the employer as it considers proper in order to effectuate the provisions of this chapter. For such purpose (a) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier or carriers; (b) jurisdiction of the employer by the commission or any court under this chapter shall be jurisdiction of the carrier or carriers; and (c) any requirement by the commission or any court under any compensation order, finding, or decision shall be binding upon the carrier or carriers in the same manner and to the same extent as upon the employer.

(3) As used in this section:

(a) "Affiliate transfer" is when an insurer transfers, at renewal or policy expiration, its personal or commercial lines insurance policies to an affiliated licensed insurer that is a member of the same insurance group or same holding company as the transferring insurer. The issuance of a replacement policy form providing the same or substantially similar coverage issued by the same insurer, or the transfer of personal or commercial insurance policies to a licensed affiliate insurer that will issue the same or substantially similar policy, are considered a renewal and will

not be treated as a cancellation or nonrenewal. The affiliate transfer must be to a licensed affiliate insurer that has been determined by the commissioner to have the same or better financial strength as the transferring insurer. The policy transfer must be selected on a nondiscriminatory basis.

(b) "Substantially similar" means a policy that provides the same basic coverages but may add, alter or eliminate incidental coverages and may provide coverages using different textual language.

SECTION 5. Section 25-61-3, Mississippi Code of 1972, is amended as follows:

25-61-3. The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Public body" shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. The term "public body" includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. Within the meaning of this chapter, the term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.

(b) "Public records" shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body. "Public records" shall not mean:

(i) "Personal information" as defined in Section 25-62-1 *** * ***; and

(ii) "Records of the Mississippi Workers' Compensation Commission that include personal, private or identifying information of any person with a claim or potential claim under the Workers' Compensation Law. This shall not apply to disclosures to a consumer reporting agency, as defined by 15 USC Section 1681 (f), pursuant to or in connection with an activity governed by the Fair Credit Reporting Act, Section 1681 et seq., Title 15 of the United States Code.

(c) "Data processing software" means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications and computer networking programs.

(d) "Proprietary software" means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.

(e) "Incident report" means a narrative description, if such narrative description exists and if such narrative description does not contain investigative information, of an alleged offense, and at a minimum shall include the name and identification of each person charged with and arrested for the alleged offense, the time, date and location of the alleged offense, and the property involved, to the extent this information is known.

(f) "Investigative report" means records of a law enforcement agency containing information beyond the scope of the matters contained in an incident report, and generally will include, but not be limited to, the following matters if beyond the scope of the matters contained in an incident report:

(i) Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;

(ii) Records that would reveal the identity of informants and/or witnesses;

(iii) Records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts;

(iv) Records that would disclose investigatory techniques and/or results of investigative techniques;

(v) Records that would deprive a person of a right to a fair trial or an impartial adjudication;

(vi) Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;

(vii) Records pertaining to quality control or PEER review activities; or

(viii) Records that would impede or jeopardize a prosecutor's ability to prosecute the alleged offense.

(g) "Law enforcement agency" means a public body that performs as one (1) of its principal functions activities pertaining to the enforcement of criminal laws, the apprehension and investigation of criminal offenders, or the investigation of criminal activities.

SECTION 6. This act shall take effect and be in force from and after July 1, 2021.