

By: Representative Perkins

To: Labor

HOUSE BILL NO. 229

1 AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO  
2 EXEMPT CERTAIN NONPROFIT FACILITIES FROM THE UNEMPLOYMENT  
3 COMPENSATION LAWS; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 71-5-11, Mississippi Code of 1972, is  
6 amended as follows:

7 71-5-11. As used in this chapter, unless the context clearly  
8 requires otherwise:

9 A. "Base period" means the first four (4) of the last five  
10 (5) completed calendar quarters immediately preceding the first  
11 day of an individual's benefit year.

12 B. "Benefits" means the money payments payable to an  
13 individual, as provided in this chapter, with respect to his  
14 unemployment.

15 C. "Benefit year" with respect to any individual means the  
16 period beginning with the first day of the first week with respect  
17 to which he first files a valid claim for benefits, and ending  
18 with the day preceding the same day of the same month in the next  
19 calendar year; and, thereafter, the period beginning with the  
20 first day of the first week with respect to which he next files  
21 his valid claim for benefits, and ending with the day preceding  
22 the same day of the same month in the next calendar year. Any  
23 claim for benefits made in accordance with Section 71-5-515 shall  
24 be deemed to be a "valid claim" for purposes of this subsection if  
25 the individual has been paid the wages for insured work required  
26 under Section 71-5-511(e).

27 D. "Contributions" means the money payments to the State

28 Unemployment Compensation Fund required by this chapter.

29 E. "Calendar quarter" means the period of three (3)  
30 consecutive calendar months ending on March 31, June 30, September  
31 30, or December 31.

32 F. "Commission" means the Mississippi Employment Security  
33 Commission.

34 G. "Employing unit" means this state or another state or any  
35 instrumentalities or any political subdivisions thereof or any of  
36 their instrumentalities or any instrumentality of more than one  
37 (1) of the foregoing or any instrumentality of any of the  
38 foregoing and one or more other states or political subdivisions,  
39 any individual or type of organization, including any partnership,  
40 association, trust, estate, joint stock company, insurance  
41 company, or corporation, whether domestic or foreign, or the  
42 receiver, trustee in bankruptcy, trustee or successor thereof, or  
43 the legal representative of a deceased person, which has or had in  
44 its employ one or more individuals performing services for it  
45 within this state. All individuals performing services within  
46 this state for any employing unit which maintains two (2) or more  
47 separate establishments within this state shall be deemed to be  
48 employed by a single employing unit for all the purposes of this  
49 chapter. Each individual employed to perform or to assist in  
50 performing the work of any agent or employee of an employing unit  
51 shall be deemed to be employed by such employing unit for all  
52 purposes of this chapter, whether such individual was hired or  
53 paid directly by such employing unit or by such agent or employee,  
54 provided the employing unit had actual or constructive knowledge  
55 of the work. All individuals performing services in the employ of  
56 an elected fee-paid county official, other than those related by  
57 blood or marriage within the third degree computed by the rule of  
58 the civil law to such fee-paid county official, shall be deemed to  
59 be employed by such county as the employing unit for all the  
60 purposes of this chapter. For purposes of defining an "employing  
61 unit" which shall pay contributions on remuneration paid to

62 individuals, if two (2) or more related corporations concurrently  
63 employ the same individual and compensate such individual through  
64 a common paymaster which is one of such corporations, then each  
65 such corporation shall be considered to have paid as remuneration  
66 to such individual only the amounts actually disbursed by it to  
67 such individual and shall not be considered to have paid as  
68 remuneration to such individual such amounts actually disbursed to  
69 such individual by another of such corporations.

70 H. "Employer" means:

71 (1) Any employing unit which,

72 (a) In any calendar quarter in either the current  
73 or preceding calendar year paid for service in employment wages of  
74 One Thousand Five Hundred Dollars (\$1,500.00) or more, except as  
75 provided in paragraph (9) of this subsection, or

76 (b) For some portion of a day in each of twenty  
77 (20) different calendar weeks, whether or not such weeks were  
78 consecutive, in either the current or the preceding calendar year  
79 had in employment at least one (1) individual (irrespective of  
80 whether the same individual was in employment in each such day),  
81 except as provided in paragraph (9) of this subsection;

82 (2) Any employing unit for which service in employment,  
83 as defined in subsection I(3) of this section, is performed;

84 (3) Any employing unit for which service in employment,  
85 as defined in subsection I(4) of this section, is performed;

86 (4) (a) Any employing unit for which agricultural  
87 labor, as defined in subsection I(6) of this section, is  
88 performed;

89 (b) Any employing unit for which domestic service  
90 in employment, as defined in subsection I(7) of this section, is  
91 performed;

92 (5) Any individual or employing unit which acquired the  
93 organization, trade, business, or substantially all the assets  
94 thereof, of another which at the time of such acquisition was an  
95 employer subject to this chapter;

96           (6) Any individual or employing unit which acquired its  
97 organization, trade, business, or substantially all the assets  
98 thereof, from another employing unit, if the employment record of  
99 the acquiring individual or employing unit subsequent to such  
100 acquisition, together with the employment record of the acquired  
101 organization, trade, or business prior to such acquisition, both  
102 within the same calendar year, would be sufficient to constitute  
103 an employing unit an employer subject to this chapter under  
104 paragraph (1) or (3) of this subsection;

105           (7) Any employing unit which, having become an employer  
106 under paragraph (1), (3), (5) or (6) of this subsection or under  
107 any other provisions of this chapter, has not, under Section  
108 71-5-361, ceased to be an employer subject to this chapter; or

109           (8) For the effective period of its election pursuant  
110 to Section 71-5-361(3), any other employing unit which has elected  
111 to become subject to this chapter.

112           (9) (a) In determining whether or not an employing  
113 unit for which service other than domestic service is also  
114 performed is an employer under paragraph (1) or (4)(a) of this  
115 subsection, the wages earned or the employment of an employee  
116 performing domestic service, shall not be taken into account.

117           (b) In determining whether or not an employing  
118 unit for which service other than agricultural labor is also  
119 performed is an employer under paragraph (1) or (4)(b) of this  
120 subsection, the wages earned or the employment of an employee  
121 performing services in agricultural labor, shall not be taken into  
122 account. If an employing unit is determined an employer of  
123 agricultural labor, such employing unit shall be determined an  
124 employer for purposes of paragraph (1) of this subsection.

125           (10) All entities utilizing the services of any employee  
126 leasing firm shall be considered the employer of the individuals  
127 leased from the employee leasing firm. Temporary help firms shall  
128 be considered the employer of the individuals they provide to  
129 perform services for other individuals or organizations.

130 I. "Employment" means and includes:

131 (1) Any service performed, which was employment as  
132 defined in this section and, subject to the other provisions of  
133 this subsection, including service in interstate commerce,  
134 performed for wages or under any contract of hire, written or  
135 oral, express or implied.

136 (2) Services performed for remuneration for a  
137 principal:

138 (a) As an agent-driver or commission-driver  
139 engaged in distributing meat products, vegetable products, fruit  
140 products, bakery products, beverages (other than milk), or laundry  
141 or dry cleaning services;

142 (b) As a traveling or city salesman, other than as  
143 an agent-driver or commission-driver, engaged upon a full-time  
144 basis in the solicitation on behalf of, and the transmission to, a  
145 principal (except for sideline sales activities on behalf of some  
146 other person) of orders from wholesalers, retailers, contractors,  
147 or operator of hotels, restaurants, or other similar  
148 establishments for merchandise for resale or supplies for use in  
149 their business operations.

150 Provided, that for purposes of this subsection, the term  
151 "employment" shall include services described in subsections  
152 I(2)(a) and (b) of this section, only if:

153 (i) The contract of service contemplates that  
154 substantially all of the services are to be performed personally  
155 by such individual;

156 (ii) The individual does not have a  
157 substantial investment in facilities used in connection with the  
158 performance of the services (other than in facilities for  
159 transportation); and

160 (iii) The services are not in the nature of a  
161 single transaction that is not part of a continuing relationship  
162 with the person for whom the services are performed.

163 (3) Service performed in the employ of this state or

164 any of its instrumentalities or any political subdivision thereof  
165 or any of its instrumentalities or any instrumentality of more  
166 than one (1) of the foregoing or any instrumentality of any of the  
167 foregoing and one or more other states or political subdivisions;  
168 provided that such service is excluded from "employment" as  
169 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)  
170 of that act and is not excluded from "employment" under subsection  
171 I(5) of this section.

172 (4) (a) Services performed in the employ of a  
173 religious, charitable, educational, or other organization, but  
174 only if the service is excluded from "employment" as defined in  
175 the Federal Unemployment Tax Act, 26 USCA Sec. 3306(c)(8), and

176 (b) The organization had four (4) or more  
177 individuals in employment for some portion of a day in each of  
178 twenty (20) different weeks, whether or not such weeks were  
179 consecutive, within the current or preceding calendar year,  
180 regardless of whether they were employed at the same moment of  
181 time.

182 (5) For the purposes of subsections I(3) and (4) of  
183 this section, the term "employment" does not apply to service  
184 performed:

185 (a) In the employ of:

186 (i) A church or convention or association of  
187 churches; or

188 (ii) An organization which is operated  
189 primarily for religious purposes and which is operated,  
190 supervised, controlled, or principally supported by a church or  
191 convention or association of churches; or

192 (b) By a duly ordained, commissioned, or licensed  
193 minister of a church in the exercise of his ministry, or by a  
194 member of a religious order in the exercise of duties required by  
195 such order; or

196 (c) In the employ of a governmental entity  
197 referred to in subsection I(3), if such service is performed by an

198 individual in the exercise of duties:

199 (i) As an elected official;

200 (ii) As a member of a legislative body, or a  
201 member of the judiciary, of a state or political subdivision;

202 (iii) As a member of the State National Guard  
203 or Air National Guard;

204 (iv) As an employee serving on a temporary  
205 basis in case of fire, storm, snow, earthquake, flood or similar  
206 emergency;

207 (v) In a position which, under or pursuant to  
208 the laws of this state, is designated as:

209 1. A major nontenured policy-making or  
210 advisory position, or

211 2. A policy-making or advisory position  
212 the performance of the duties of which ordinarily does not require  
213 more than eight (8) hours per week; or

214 (d) In a facility conducted for the purpose of  
215 carrying out a program of rehabilitation for individuals whose  
216 earning capacity is impaired by age or physical or mental  
217 deficiency or injury, or providing remunerative work for  
218 individuals who because of their impaired physical or mental  
219 capacity cannot be readily absorbed in the competitive labor  
220 market, by an individual receiving such rehabilitation or  
221 remunerative work; or

222 (e) By an inmate of a custodial or penal  
223 institution; or

224 (f) As part of an unemployment work-relief or  
225 work-training program assisted or financed in whole or in part by  
226 any federal agency or agency of a state or political subdivision  
227 thereof, by an individual receiving such work relief or work  
228 training, unless coverage of such service is required by federal  
229 law or regulation; or

230 (g) In a public nonprofit facility conducted for  
231 the care of children if the employees of such facility are retired

232 teachers or college students or other individuals who are not  
233 eligible for unemployment benefits under this chapter.

234 (6) Service performed by an individual in agricultural  
235 labor as defined in paragraph (15)(a) of this subsection when:

236 (a) Such service is performed for a person who:

237 (i) During any calendar quarter in either the  
238 current or the preceding calendar year paid remuneration in cash  
239 of Twenty Thousand Dollars (\$20,000.00) or more to individuals  
240 employed in agricultural labor, or

241 (ii) For some portion of a day in each of  
242 twenty (20) different calendar weeks, whether or not such weeks  
243 were consecutive, in either the current or the preceding calendar  
244 year, employed in agricultural labor ten (10) or more individuals,  
245 regardless of whether they were employed at the same moment of  
246 time.

247 (b) For the purposes of subsection I(6) any individual  
248 who is a member of a crew furnished by a crew leader to perform  
249 service in agricultural labor for any other person shall be  
250 treated as an employee of such crew leader:

251 (i) If such crew leader holds a valid  
252 certificate of registration under the Farm Labor Contractor  
253 Registration Act of 1963; or substantially all the members of such  
254 crew operate or maintain tractors, mechanized harvesting or crop  
255 dusting equipment, or any other mechanized equipment, which is  
256 provided by such crew leader; and

257 (ii) If such individual is not an employee of  
258 such other person within the meaning of subsection I(1).

259 (c) For the purpose of subsection I(6), in the  
260 case of any individual who is furnished by a crew leader to  
261 perform service in agricultural labor for any other person and who  
262 is not treated as an employee of such crew leader under paragraph  
263 (6)(b) of this subsection:

264 (i) Such other person and not the crew leader  
265 shall be treated as the employer of such individual; and



266                   (ii) Such other person shall be treated as  
267 having paid cash remuneration to such individual in an amount  
268 equal to the amount of cash remuneration paid to such individual  
269 by the crew leader (either on his own behalf or on behalf of such  
270 other person) for the service in agricultural labor performed for  
271 such other person.

272                   (d) For the purposes of subsection I(6) the term  
273 "crew leader" means an individual who:

274                   (i) Furnishes individuals to perform service  
275 in agricultural labor for any other person;

276                   (ii) Pays (either on his own behalf or on  
277 behalf of such other person) the individuals so furnished by him  
278 for the service in agricultural labor performed by them; and

279                   (iii) Has not entered into a written  
280 agreement with such other person under which such individual is  
281 designated as an employee of such other person.

282                   (7) The term "employment" shall include domestic  
283 service in a private home, local college club or local chapter of  
284 a college fraternity or sorority performed for an employing unit  
285 which paid cash remuneration of One Thousand Dollars (\$1,000.00)  
286 or more in any calendar quarter in the current or the preceding  
287 calendar year to individuals employed in such domestic service.  
288 For the purpose of this subsection, the term "employment" does not  
289 apply to service performed as a "sitter" at a hospital in the  
290 employ of an individual.

291                   (8) An individual's entire service, performed within or  
292 both within and without this state, if:

293                   (a) The service is localized in this state; or

294                   (b) The service is not localized in any state but  
295 some of the service is performed in this state, and

296                   (i) The base of operations or, if there is no  
297 base of operations, the place from which such service is directed  
298 or controlled is in this state; or

299                   (ii) The base of operations or place from

300 which such service is directed or controlled is not in any state  
301 in which some part of the service is performed, but the  
302 individual's residence is in this state.

303           (9) Services not covered under paragraph (8) of this  
304 subsection and performed entirely without this state, with respect  
305 to no part of which contributions are required and paid under an  
306 unemployment compensation law of any other state or of the federal  
307 government, shall be deemed to be employment subject to this  
308 chapter if the individual performing such services is a resident  
309 of this state and the commission approves the election of the  
310 employing unit for whom such services are performed that the  
311 entire service of such individual shall be deemed to be employment  
312 subject to this chapter.

313           (10) Service shall be deemed to be localized within a  
314 state if:

315                   (a) The service is performed entirely within such  
316 state; or

317                   (b) The service is performed both within and  
318 without such state, but the service performed without such state  
319 is incidental to the individual's service within the state; for  
320 example, is temporary or transitory in nature or consists of  
321 isolated transactions.

322           (11) The services of an individual who is a citizen of  
323 the United States, performed outside the United States (except in  
324 Canada), in the employ of an American employer (other than service  
325 which is deemed "employment" under the provisions of paragraph  
326 (8), (9) or (10) of this subsection or the parallel provisions of  
327 another state's law), if:

328                   (a) The employer's principal place of business in  
329 the United States is located in this state; or

330                   (b) The employer has no place of business in the  
331 United States, but

332                           (i) The employer is an individual who is a  
333 resident of this state; or

334 (ii) The employer is a corporation which is  
335 organized under the laws of this state; or

336 (iii) The employer is a partnership or a  
337 trust and the number of the partners or trustees who are residents  
338 of this state is greater than the number who are residents of any  
339 one (1) other state; or

340 (c) None of the criteria of subparagraphs (a) and  
341 (b) of this paragraph are met but the employer has elected  
342 coverage in this state or, the employer having failed to elect  
343 coverage in any state, the individual has filed a claim for  
344 benefits, based on such service, under the law of this state; or

345 (d) An "American employer," for purposes of this  
346 paragraph, means a person who is:

347 (i) An individual who is a resident of the  
348 United States; or

349 (ii) A partnership if two-thirds (2/3) or  
350 more of the partners are residents of the United States; or

351 (iii) A trust, if all of the trustees are  
352 residents of the United States; or

353 (iv) A corporation organized under the laws  
354 of the United States or of any state.

355 (12) All services performed by an officer or member of  
356 the crew of an American vessel on or in connection with such  
357 vessel, if the operating office from which the operations of such  
358 vessel operating on navigable waters within, or within and  
359 without, the United States are ordinarily and regularly  
360 supervised, managed, directed, and controlled is within this  
361 state; notwithstanding the provisions of subsection I(8).

362 (13) Service with respect to which a tax is required to  
363 be paid under any federal law imposing a tax against which credit  
364 may be taken for contributions required to be paid into a state  
365 unemployment fund, or which as a condition for full tax credit  
366 against the tax imposed by the Federal Unemployment Tax Act, 26  
367 USCA Sec. 3301 et seq., is required to be covered under this

368 chapter, notwithstanding any other provisions of this subsection.

369 (14) Services performed by an individual for wages  
370 shall be deemed to be employment subject to this chapter unless  
371 and until it is shown to the satisfaction of the commission that  
372 such individual has been and will continue to be free from control  
373 and direction over the performance of such services both under his  
374 contract of service and in fact; and the relationship of employer  
375 and employee shall be determined in accordance with the principles  
376 of the common law governing the relation of master and servant.

377 (15) The term "employment" shall not include:

378 (a) Agricultural labor, except as provided in  
379 subsection I(6) of this section. The term "agricultural labor"  
380 includes all services performed:

381 (i) On a farm or in a forest in the employ of  
382 any employing unit in connection with cultivating the soil, in  
383 connection with cutting, planting, deadening, marking or otherwise  
384 improving timber, or in connection with raising or harvesting any  
385 agricultural or horticultural commodity, including the raising,  
386 shearing, feeding, caring for, training, and management of  
387 livestock, bees, poultry, fur-bearing animals, and wildlife;

388 (ii) In the employ of the owner or tenant or  
389 other operator of a farm, in connection with the operation,  
390 management, conservation, improvement, or maintenance of such farm  
391 and its tools and equipment, or in salvaging timber or clearing  
392 land of brush and other debris left by a hurricane, if the major  
393 part of such service is performed on a farm;

394 (iii) In connection with the production or  
395 harvesting of naval stores products or any commodity defined in  
396 the Federal Agricultural Marketing Act, 12 USCA Sec. 1141j(g), or  
397 in connection with the raising or harvesting of mushrooms, or in  
398 connection with the ginning of cotton, or in connection with the  
399 operation or maintenance of ditches, canals, reservoirs, or  
400 waterways not owned or operated for profit, used exclusively for  
401 supplying and storing water for farming purposes;

402 (iv) (A) In the employ of the operator of a  
403 farm in handling, planting, drying, packing, packaging,  
404 processing, freezing, grading, storing, or delivering to storage  
405 or to market or to a carrier for transportation to market, in its  
406 unmanufactured state, any agricultural or horticultural commodity;  
407 but only if such operator produced more than one-half (1/2) of the  
408 commodity with respect to which such service is performed;

409 (B) In the employ of a group of  
410 operators of farms (or a cooperative organization of which such  
411 operators are members) in the performance of service described in  
412 subparagraph (A), but only if such operators produced more than  
413 one-half (1/2) of the commodity with respect to which such service  
414 is performed;

415 (C) The provisions of subparagraphs (A)  
416 and (B) shall not be deemed to be applicable with respect to  
417 service performed in connection with commercial canning or  
418 commercial freezing or in connection with any agricultural or  
419 horticultural commodity after its delivery to a terminal market  
420 for distribution for consumption;

421 (v) On a farm operated for profit if such  
422 service is not in the course of the employer's trade or business;

423 (vi) As used in paragraph (15)(a) of this  
424 subsection, the term "farm" includes stock, dairy, poultry, fruit,  
425 fur-bearing animals, and truck farms, plantations, ranches,  
426 nurseries, ranges, greenhouses, or other similar structures used  
427 primarily for the raising of agricultural or horticultural  
428 commodities, and orchards.

429 (b) Domestic service in a private home, local  
430 college club, or local chapter of a college fraternity or  
431 sorority, except as provided in subsection I(7) of this section,  
432 or service performed as a "sitter" at a hospital in the employ of  
433 an individual.

434 (c) Casual labor not in the usual course of the  
435 employing unit's trade or business.

436                   (d) Service performed by an individual in the  
437 employ of his son, daughter, or spouse, and service performed by a  
438 child under the age of twenty-one (21) in the employ of his father  
439 or mother.

440                   (e) Service performed in the employ of the United  
441 States Government or of an instrumentality wholly owned by the  
442 United States; except that if the Congress of the United States  
443 shall permit states to require any instrumentalities of the United  
444 States to make payments into an unemployment fund under a state  
445 unemployment compensation act, then to the extent permitted by  
446 Congress and from and after the date as of which such permission  
447 becomes effective, all of the provisions of this chapter shall be  
448 applicable to such instrumentalities and to services performed by  
449 employees for such instrumentalities in the same manner, to the  
450 same extent, and on the same terms as to all other employers and  
451 employing units. If this state should not be certified under the  
452 Federal Unemployment Tax Act, 26 USCA Sec. 3304(c), for any year,  
453 then the payment required by such instrumentality with respect to  
454 such year shall be deemed to have been erroneously collected and  
455 shall be refunded by the commission from the fund in accordance  
456 with the provisions of Section 71-5-383.

457                   (f) Service performed in the employ of an  
458 "employer" as defined by the Railroad Unemployment Insurance Act,  
459 45 USCA Sec. 351(a), or as an "employee representative" as defined  
460 by the Railroad Unemployment Insurance Act, 45 USCA Sec. 351(f),  
461 and service with respect to which unemployment compensation is  
462 payable under an unemployment compensation system for maritime  
463 employees, or under any other unemployment compensation system  
464 established by an act of Congress; provided that the commission is  
465 hereby authorized and directed to enter into agreements with the  
466 proper agencies under such act or acts of Congress, which  
467 agreements shall become effective ten (10) days after publication  
468 thereof in the manner provided in Section 71-5-117 for general  
469 rules, to provide reciprocal treatment to individuals who have,

470 after acquiring potential rights to benefits under this chapter,  
471 acquired rights to unemployment compensation under such act or  
472 acts of Congress or who have, after acquiring potential rights to  
473 unemployment compensation under such act or acts of Congress,  
474 acquired rights to benefits under this chapter.

475 (g) Service performed in any calendar quarter in  
476 the employ of any organization exempt from income tax under the  
477 Internal Revenue Code, 26 USCA Sec. 501(a) (other than an  
478 organization described in 26 USCA Sec. 401(a)), or exempt from  
479 income tax under 26 USCA Sec. 521 if the remuneration for such  
480 service is less than Fifty Dollars (\$50.00).

481 (h) Service performed in the employ of a school,  
482 college, or university if such service is performed:

483 (i) By a student who is enrolled and is  
484 regularly attending classes at such school, college, or  
485 university, or

486 (ii) By the spouse of such a student if such  
487 spouse is advised, at the time such spouse commences to perform  
488 such service, that

489 (A) The employment of such spouse to  
490 perform such service is provided under a program to provide  
491 financial assistance to such student by such school, college, or  
492 university, and

493 (B) Such employment will not be covered  
494 by any program of unemployment insurance.

495 (i) Service performed by an individual under the  
496 age of twenty-two (22) who is enrolled at a nonprofit or public  
497 educational institution which normally maintains a regular faculty  
498 and curriculum and normally has a regularly organized body of  
499 students in attendance at the place where its educational  
500 activities are carried on, as a student in a full-time program  
501 taken for credit at such institution, which combines academic  
502 instruction with work experience, if such service is an integral  
503 part of such program and such institution has so certified to the

504 employer, except that this subparagraph shall not apply to service  
505 performed in a program established for or on behalf of an employer  
506 or group of employers.

507           (j) Service performed in the employ of a hospital,  
508 if such service is performed by a patient of the hospital, as  
509 defined in subsection L of this section.

510           (k) Service performed as a student nurse in the  
511 employ of a hospital or a nurses' training school by an individual  
512 who is enrolled and is regularly attending classes in a nurses'  
513 training school chartered or approved pursuant to state law; and  
514 services performed as an intern in the employ of a hospital by an  
515 individual who has completed a four-year course in a medical  
516 school chartered or approved pursuant to state law.

517           (l) Service performed by an individual as an  
518 insurance agent or as an insurance solicitor, if all such service  
519 performed by such individual is performed for remuneration solely  
520 by way of commission.

521           (m) Service performed by an individual under the  
522 age of eighteen (18) in the delivery or distribution of newspapers  
523 or shopping news, not including delivery or distribution to any  
524 point for subsequent delivery or distribution.

525           (n) If the services performed during one-half  
526 (1/2) or more of any pay period by an employee for the employing  
527 unit employing him constitute employment, all the services of such  
528 employee for such period shall be deemed to be employment; but if  
529 the services performed during more than one-half (1/2) of any such  
530 pay period by an employee for the employing unit employing him do  
531 not constitute employment, then none of the services of such  
532 employee for such period shall be deemed to be employment. As  
533 used in this subsection the term "pay period" means a period (of  
534 not more than thirty-one (31) consecutive days) for which a  
535 payment of remuneration is ordinarily made to the employee by the  
536 employing unit employing him.

537           (o) Service performed by an individual who is a



538 CETA/PSE (Comprehensive Employment Training Act/Public Service  
539 Employment) participant unless coverage of such service is  
540 required by federal law or regulation.

541 (p) Service performed by a barber or beautician  
542 whose work station is leased to him or her by the owner of the  
543 shop in which he or she works and who is compensated directly by  
544 the patrons he or she serves and who is free from direction and  
545 control by the lessor.

546 J. "Employment office" means a free public employment office  
547 or branch thereof, operated by this state or maintained as a part  
548 of the state controlled system of public employment offices.

549 "Public employment service" means the operation of a program  
550 that offers free placement and referral services to applicants and  
551 employers, including job development.

552 K. "Fund" means the Unemployment Compensation Fund  
553 established by this chapter, to which all contributions required  
554 and from which all benefits provided under this chapter shall be  
555 paid.

556 L. "Hospital" means an institution which has been licensed,  
557 certified, or approved by the Mississippi Commission on Hospital  
558 Care as a hospital.

559 M. "Institution of higher learning," for the purposes of  
560 this section, means an educational institution which:

561 (1) Admits as regular students only individuals having a  
562 certificate of graduation from a high school, or the recognized  
563 equivalent of such a certificate;

564 (2) Is legally authorized in this state to provide a  
565 program of education beyond high school;

566 (3) Provides an educational program for which it awards  
567 a bachelor's or higher degree, or provides a program which is  
568 acceptable for full credit toward such a degree, a program of  
569 postgraduate or postdoctoral studies, or a program of training to  
570 prepare students for gainful employment in a recognized  
571 occupation;

572 (4) Is a public or other nonprofit institution;

573 (5) Notwithstanding any of the foregoing provisions of  
574 this subsection, all colleges and universities in this state are  
575 institutions of higher learning for purposes of this section.

576 N. (1) "State" includes, in addition to the states of the  
577 United States of America, the District of Columbia, Commonwealth  
578 of Puerto Rico and the Virgin Islands.

579 (2) The term "United States" when used in a geographical  
580 sense includes the states, the District of Columbia, Commonwealth  
581 of Puerto Rico and the Virgin Islands.

582 (3) The provisions of subsections (1) and (2) of  
583 paragraph N, as including the Virgin Islands, shall become  
584 effective on the day after the day on which the United States  
585 Secretary of Labor approves for the first time under Section  
586 3304(a) of the Internal Revenue Code of 1954 an unemployment  
587 compensation law submitted to the secretary by the Virgin Islands  
588 for such approval.

589 O. "Unemployment."

590 (1) An individual shall be deemed "unemployed" in any  
591 week during which he performs no services and with respect to  
592 which no wages are payable to him, or in any week of less than  
593 full-time work if the wages payable to him with respect to such  
594 week are less than his weekly benefit amount as computed and  
595 adjusted in Section 71-5-505. The commission shall prescribe  
596 regulations applicable to unemployed individuals, making such  
597 distinctions in the procedure as to total unemployment, part-total  
598 unemployment, partial unemployment of individuals attached to  
599 their regular jobs, and other forms of short-time work, as the  
600 commission deems necessary.

601 (2) An individual's week of total unemployment shall be  
602 deemed to commence only after his registration at an employment  
603 office, except as the commission may by regulation otherwise  
604 prescribe.

605 P. \* \* \* "Wages" means all remuneration for personal

606 services, including commissions and bonuses and the cash value of  
607 all remuneration in any medium other than cash, except that  
608 "wages," for purposes of determining employer's coverage and  
609 payment of contributions for agricultural and domestic service  
610 means cash remuneration only. The reasonable cash value of  
611 remuneration in any medium other than cash shall be estimated and  
612 determined in accordance with rules prescribed by the commission;  
613 provided, that the term "wages" shall not include:

614           (a) The amount of any payment made to, or on  
615 behalf of, an employee under a plan or system established by an  
616 employer which makes provision for his employees generally or for  
617 a class or classes of his employees (including any amount paid by  
618 an employer for insurance or annuities, or into a fund, to provide  
619 for any such payment), on account of:

620                   (i) Retirement, or

621                   (ii) Sickness or accident disability, or

622                   (iii) Medical or hospitalization expenses in  
623 connection with sickness or actual disability, or

624                   (iv) Death, provided the employee:

625                           (A) Has not the option to receive,  
626 instead of provision for such death benefit, any part of such  
627 payment or, if such death benefit is insured, any part of the  
628 premiums (or contributions to premiums) paid by his employer, and

629                           (B) Has not the right, under the  
630 provisions of the plan or system or policy of insurance providing  
631 for such death benefit, to assign such benefit or to receive a  
632 cash consideration in lieu of such benefit, either upon his  
633 withdrawal from the plan or system providing for such benefit or  
634 upon termination of such plan or system or policy of insurance or  
635 of his employment with such employer;

636           (b) Dismissal payments which the employer is not  
637 legally required to make;

638           (c) Payment by an employer (without deduction from  
639 the remuneration of an employee) of the tax imposed by the

640 Internal Revenue Code, 26 USCA Sec. 3101;

641 (d) From and after January 1, 1992, the amount of  
642 any payment made to or on behalf of an employee for a "cafeteria"  
643 plan, which meets the following requirements:

644 (i) Qualifies under Section 125 of the  
645 Internal Revenue Code;

646 (ii) Covers only employees;

647 (iii) Covers only noncash benefits;

648 (iv) Does not include deferred compensation  
649 plans.

650 \* \* \*

651 Q. "Week" means calendar week or such period of seven (7)  
652 consecutive days as the commission may by regulation prescribe.  
653 The commission may by regulation prescribe that a week shall be  
654 deemed to be in, within, or during any benefit year which includes  
655 any part of such week.

656 R. "Insured work" means "employment" for "employers."

657 S. The term "includes" and "including," when used in a  
658 definition contained in this chapter, shall not be deemed to  
659 exclude other things otherwise within the meaning of the term  
660 defined.

661 T. "Employee leasing arrangement" means any agreement  
662 between an employee leasing firm and a client, whereby specified  
663 client responsibilities such as payment of wages, reporting of  
664 wages for unemployment insurance purposes, payment of unemployment  
665 insurance contributions and other such administrative duties are  
666 to be performed by an employee leasing firm, on an ongoing basis.

667 U. "Employee leasing firm" means any entity which provides  
668 specified duties for a client company such as payment of wages,  
669 reporting of wages for unemployment insurance purposes, payment of  
670 unemployment insurance contributions and other administrative  
671 duties, in connection with the client's employees, that are  
672 directed and controlled by the client and that are providing  
673 ongoing services for the client.

674           V. "Temporary help firm" means an entity which hires its own  
675 employees and provides those employees to other individuals or  
676 organizations to perform some service, to support or supplement  
677 the existing work force in special situations such as employee  
678 absences, temporary skill shortages, seasonal workloads and  
679 special assignments and projects, with the expectation that the  
680 worker's position will be terminated upon the completion of the  
681 specified task or function.

682           SECTION 2. This act shall take effect and be in force from  
683 and after July 1, 1999.