

By: Perkins

To: Labor

HOUSE BILL NO. 438

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

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

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

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

16 C. "Benefit year" with respect to any individual means the
17 period beginning with the first day of the first week with respect
18 to which he first files a valid claim for benefits, and ending
19 with the day preceding the same day of the same month in the next
20 calendar year; and, thereafter, the period beginning with the
21 first day of the first week with respect to which he next files
22 his valid claim for benefits, and ending with the day preceding

23 the same day of the same month in the next calendar year. Any
24 claim for benefits made in accordance with Section 71-5-515 shall
25 be deemed to be a "valid claim" for purposes of this subsection if
26 the individual has been paid the wages for insured work required
27 under Section 71-5-511(e).

28 D. "Contributions" means the money payments to the State
29 Unemployment Compensation Fund required by this chapter.

30 E. "Calendar quarter" means the period of three (3)
31 consecutive calendar months ending on March 31, June 30, September
32 30, or December 31.

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

35 G. "Employing unit" means this state or another state or any
36 instrumentalities or any political subdivisions thereof or any of
37 their instrumentalities or any instrumentality of more than one
38 (1) of the foregoing or any instrumentality of any of the
39 foregoing and one or more other states or political subdivisions,
40 any individual or type of organization, including any partnership,
41 association, trust, estate, joint stock company, insurance
42 company, or corporation, whether domestic or foreign, or the
43 receiver, trustee in bankruptcy, trustee or successor thereof, or
44 the legal representative of a deceased person, which has or had in
45 its employ one or more individuals performing services for it
46 within this state. All individuals performing services within
47 this state for any employing unit which maintains two (2) or more
48 separate establishments within this state shall be deemed to be
49 employed by a single employing unit for all the purposes of this
50 chapter. Each individual employed to perform or to assist in
51 performing the work of any agent or employee of an employing unit
52 shall be deemed to be employed by such employing unit for all
53 purposes of this chapter, whether such individual was hired or

54 paid directly by such employing unit or by such agent or employee,
55 provided the employing unit had actual or constructive knowledge
56 of the work. All individuals performing services in the employ of
57 an elected fee-paid county official, other than those related by
58 blood or marriage within the third degree computed by the rule of
59 the civil law to such fee-paid county official, shall be deemed to
60 be employed by such county as the employing unit for all the
61 purposes of this chapter. For purposes of defining an "employing
62 unit" which shall pay contributions on remuneration paid to
63 individuals, if two (2) or more related corporations concurrently
64 employ the same individual and compensate such individual through
65 a common paymaster which is one of such corporations, then each
66 such corporation shall be considered to have paid as remuneration
67 to such individual only the amounts actually disbursed by it to
68 such individual and shall not be considered to have paid as
69 remuneration to such individual such amounts actually disbursed to
70 such individual by another of such corporations.

71 H. "Employer" means:

72 (1) Any employing unit which,

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

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

82 except as provided in paragraph (9) of this subsection;

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

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

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

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

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

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

106 (7) Any employing unit which, having become an employer
107 under paragraph (1), (3), (5) or (6) of this subsection or under
108 any other provisions of this chapter, has not, under Section
109 71-5-361, ceased to be an employer subject to this chapter; or

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

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

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

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

132 I. "Employment" means and includes:

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

138 (2) Services performed for remuneration for a
139 principal:

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

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

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

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

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

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

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

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

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

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

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

187 (a) In the employ of:

188 (i) A church or convention or association of
189 churches; or

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

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

198 (c) In the employ of a governmental entity
199 referred to in subsection I(3), if such service is performed by an
200 individual in the exercise of duties:

201 (i) As an elected official;

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

204 (iii) As a member of the State National Guard
205 or Air National Guard;

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

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

211 1. A major nontenured policy-making or
212 advisory position, or

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

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

222 market, by an individual receiving such rehabilitation or
223 remunerative work; or

224 (e) By an inmate of a custodial or penal
225 institution; or

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

232 (g) In a public nonprofit facility conducted for
233 the care of children if the employees of such facility are retired
234 teachers or college students or other individuals who are not
235 eligible for unemployment benefits under this chapter.

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

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

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

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

249 (b) For the purposes of subsection I(6) any individual

250 who is a member of a crew furnished by a crew leader to perform
251 service in agricultural labor for any other person shall be
252 treated as an employee of such crew leader:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

301 (ii) The base of operations or place from
302 which such service is directed or controlled is not in any state
303 in which some part of the service is performed, but the
304 individual's residence is in this state.

305 (9) Services not covered under paragraph (8) of this

306 subsection and performed entirely without this state, with respect
307 to no part of which contributions are required and paid under an
308 unemployment compensation law of any other state or of the federal
309 government, shall be deemed to be employment subject to this
310 chapter if the individual performing such services is a resident
311 of this state and the commission approves the election of the
312 employing unit for whom such services are performed that the
313 entire service of such individual shall be deemed to be employment
314 subject to this chapter.

315 (10) Service shall be deemed to be localized within a
316 state if:

317 (a) The service is performed entirely within such
318 state; or

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

324 (11) The services of an individual who is a citizen of
325 the United States, performed outside the United States (except in
326 Canada), in the employ of an American employer (other than service
327 which is deemed "employment" under the provisions of paragraph
328 (8), (9) or (10) of this subsection or the parallel provisions of
329 another state's law), if:

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

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

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

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

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

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

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

349 (i) An individual who is a resident of the
350 United States; or

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

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

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

357 (12) All services performed by an officer or member of
358 the crew of an American vessel on or in connection with such
359 vessel, if the operating office from which the operations of such
360 vessel operating on navigable waters within, or within and
361 without, the United States are ordinarily and regularly

362 supervised, managed, directed, and controlled is within this
363 state; notwithstanding the provisions of subsection I(8).

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

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

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

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

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

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

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

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

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

417 (C) The provisions of subparagraphs (A)

418 and (B) shall not be deemed to be applicable with respect to
419 service performed in connection with commercial canning or
420 commercial freezing or in connection with any agricultural or
421 horticultural commodity after its delivery to a terminal market
422 for distribution for consumption;

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

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

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

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

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

442 (e) Service performed in the employ of the United
443 States Government or of an instrumentality wholly owned by the
444 United States; except that if the Congress of the United States
445 shall permit states to require any instrumentalities of the United

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

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

474 acts of Congress or who have, after acquiring potential rights to
475 unemployment compensation under such act or acts of Congress,
476 acquired rights to benefits under this chapter.

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

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

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

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

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

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

497 (i) Service performed by an individual under the
498 age of twenty-two (22) who is enrolled at a nonprofit or public
499 educational institution which normally maintains a regular faculty
500 and curriculum and normally has a regularly organized body of
501 students in attendance at the place where its educational

502 activities are carried on, as a student in a full-time program
503 taken for credit at such institution, which combines academic
504 instruction with work experience, if such service is an integral
505 part of such program and such institution has so certified to the
506 employer, except that this subparagraph shall not apply to service
507 performed in a program established for or on behalf of an employer
508 or group of employers.

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

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

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

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

527 (n) If the services performed during one-half
528 (1/2) or more of any pay period by an employee for the employing
529 unit employing him constitute employment, all the services of such

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

539 (o) Service performed by an individual who is a
540 CETA/PSE (Comprehensive Employment Training Act/Public Service
541 Employment) participant unless coverage of such service is
542 required by federal law or regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

584 (3) The provisions of subsections (1) and (2) of
585 paragraph N, as including the Virgin Islands, shall become

586 effective on the day after the day on which the United States
587 Secretary of Labor approves for the first time under Section
588 3304(a) of the Internal Revenue Code of 1954 an unemployment
589 compensation law submitted to the secretary by the Virgin Islands
590 for such approval.

591 O. "Unemployment."

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

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

607 P. * * * "Wages" means all remuneration for personal
608 services, including commissions and bonuses and the cash value of
609 all remuneration in any medium other than cash, except that
610 "wages," for purposes of determining employer's coverage and
611 payment of contributions for agricultural and domestic service
612 means cash remuneration only. The reasonable cash value of
613 remuneration in any medium other than cash shall be estimated and

614 determined in accordance with rules prescribed by the commission;
615 provided, that the term "wages" shall not include:

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

622 (i) Retirement, or

623 (ii) Sickness or accident disability, or

624 (iii) Medical or hospitalization expenses in
625 connection with sickness or actual disability, or

626 (iv) Death, provided the employee:

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

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

638 (b) Dismissal payments which the employer is not
639 legally required to make;

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

642 Internal Revenue Code, 26 USCA Sec. 3101;

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

646 (i) Qualifies under Section 125 of the
647 Internal Revenue Code;

648 (ii) Covers only employees;

649 (iii) Covers only noncash benefits;

650 (iv) Does not include deferred compensation
651 plans.

652 * * *

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

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

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

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

669 U. "Employee leasing firm" means any entity which provides

670 specified duties for a client company such as payment of wages,
671 reporting of wages for unemployment insurance purposes, payment of
672 unemployment insurance contributions and other administrative
673 duties, in connection with the client's employees, that are
674 directed and controlled by the client and that are providing
675 ongoing services for the client.

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

684 SECTION 2. This act shall take effect and be in force from
685 and after July 1, 2000.