

By: Lee

To: Labor

SENATE BILL NO. 3126

1 AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO  
2 CLARIFY EMPLOYEE LEASING FIRM PROVISIONS FOR PURPOSES OF  
3 UNEMPLOYMENT COMPENSATION, AND TO REDEFINE "EMPLOYEE LEASING  
4 ARRANGEMENTS" AND "EMPLOYEE LEASING FIRM"; TO AMEND SECTION  
5 71-5-353, MISSISSIPPI CODE OF 1972, TO REQUIRE CERTAIN REPORTS FOR  
6 EMPLOYERS ENGAGED IN AN EMPLOYEE LEASING ARRANGEMENT; AND FOR  
7 RELATED PURPOSES.

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

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

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

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

16 B. "Benefits" means the money payments payable to an  
17 individual, as provided in this chapter, with respect to his  
18 unemployment.

19 C. "Benefit year" with respect to any individual means  
20 the period beginning with the first day of the first week with  
21 respect to which he first files a valid claim for benefits, and  
22 ending with the day preceding the same day of the same month in  
23 the next calendar year; and, thereafter, the period beginning with  
24 the first day of the first week with respect to which he next  
25 files his valid claim for benefits, and ending with the day  
26 preceding the same day of the same month in the next calendar  
27 year. Any claim for benefits made in accordance with Section  
28 71-5-515 shall be deemed to be a "valid claim" for purposes of

29 this subsection if the individual has been paid the wages for  
30 insured work required under Section 71-5-511(e).

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

33 E. "Calendar quarter" means the period of three (3)  
34 consecutive calendar months ending on March 31, June 30, September  
35 30, or December 31.

36 F. "Commission" means the Mississippi Employment  
37 Security Commission.

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

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

74 H. "Employer" means:

75 (1) Any employing unit which,

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

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

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

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

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

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

98 (5) Any individual or employing unit which

99 acquired the organization, trade, business, or substantially all  
100 the assets thereof, of another which at the time of such  
101 acquisition was an employer subject to this chapter;

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

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

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

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

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

132                   (10) All entities (hereafter referred to as  
133 worksite employer) utilizing the services of an employee leasing  
134 firm (hereafter referred to as the administrative employer) shall  
135 be considered the employer of the individuals leased from the  
136 employee leasing firm (administrative employer) in order to  
137 determine the experience rating record used in computing the  
138 contribution rate and then to maintain the experience rating. The  
139 commission shall view the administrative employer organization as  
140 the employer of the leased employees for all other matters  
141 pertaining to the rules and regulations governing unemployment  
142 compensation for the State of Mississippi. Temporary help firms  
143 shall be considered the employer of the individuals they provide  
144 to perform services for other individuals or organizations.

145                   I. "Employment" means and includes:

146                   (1) Any service performed, which was employment as  
147 defined in this section and, subject to the other provisions of  
148 this subsection, including service in interstate commerce,  
149 performed for wages or under any contract of hire, written or  
150 oral, express or implied.

151                   (2) Services performed for remuneration for a  
152 principal:

153                   (a) As an agent-driver or commission-driver  
154 engaged in distributing meat products, vegetable products, fruit  
155 products, bakery products, beverages (other than milk), or laundry  
156 or dry cleaning services;

157                   (b) As a traveling or city salesman, other  
158 than as an agent-driver or commission-driver, engaged upon a  
159 full-time basis in the solicitation on behalf of, and the  
160 transmission to, a principal (except for sideline sales activities  
161 on behalf of some other person) of orders from wholesalers,  
162 retailers, contractors, or operator of hotels, restaurants, or  
163 other similar establishments for merchandise for resale or  
164 supplies for use in their business operations.

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

168                            (i) The contract of service contemplates  
169 that substantially all of the services are to be performed  
170 personally by such individual;

171                            (ii) The individual does not have a  
172 substantial investment in facilities used in connection with the  
173 performance of the services (other than in facilities for  
174 transportation); and

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

178                            (3) Service performed in the employ of this state  
179 or any of its instrumentalities or any political subdivision  
180 thereof or any of its instrumentalities or any instrumentality of  
181 more than one (1) of the foregoing or any instrumentality of any  
182 of the foregoing and one or more other states or political  
183 subdivisions; provided that such service is excluded from  
184 "employment" as defined in the Federal Unemployment Tax Act by  
185 Section 3306(c)(7) of that act and is not excluded from  
186 "employment" under subsection I(5) of this section.

187                            (4) (a) Services performed in the employ of a  
188 religious, charitable, educational, or other organization, but  
189 only if the service is excluded from "employment" as defined in  
190 the Federal Unemployment Tax Act, 26 USCS Sec. 3306(c)(8), and

191    (b) The organization had four (4) or more  
192 individuals in employment for some portion of a day in each of  
193 twenty (20) different weeks, whether or not such weeks were  
194 consecutive, within the current or preceding calendar year,  
195 regardless of whether they were employed at the same moment of  
196 time.

197                            (5) For the purposes of subsections I(3) and (4)

198 of this section, the term "employment" does not apply to service  
199 performed:

200 (a) In the employ of:

201 (i) A church or convention or  
202 association of churches; or

203 (ii) An organization which is operated  
204 primarily for religious purposes and which is operated,  
205 supervised, controlled, or principally supported by a church or  
206 convention or association of churches; or

207 (b) By a duly ordained, commissioned, or  
208 licensed minister of a church in the exercise of his ministry, or  
209 by a member of a religious order in the exercise of duties  
210 required by such order; or

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

214 (i) As an elected official;

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

217 (iii) As a member of the State National  
218 Guard or Air National Guard;

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

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

224 1. A major nontenured policy-making  
225 or advisory position, or

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

229 (d) In a facility conducted for the purpose  
230 of carrying out a program of rehabilitation for individuals whose

231 earning capacity is impaired by age or physical or mental  
232 deficiency or injury, or providing remunerative work for  
233 individuals who because of their impaired physical or mental  
234 capacity cannot be readily absorbed in the competitive labor  
235 market, by an individual receiving such rehabilitation or  
236 remunerative work; or

237 (e) By an inmate of a custodial or penal  
238 institution; or

239 (f) As part of an unemployment work-relief or  
240 work-training program assisted or financed in whole or in part by  
241 any federal agency or agency of a state or political subdivision  
242 thereof, by an individual receiving such work relief or work  
243 training, unless coverage of such service is required by federal  
244 law or regulation.

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

248 (a) Such service is performed for a person  
249 who:

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

254 (ii) For some portion of a day in each  
255 of twenty (20) different calendar weeks, whether or not such weeks  
256 were consecutive, in either the current or the preceding calendar  
257 year, employed in agricultural labor ten (10) or more individuals,  
258 regardless of whether they were employed at the same moment of  
259 time.

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



264 (i) If such crew leader holds a valid  
265 certificate of registration under the Farm Labor Contractor  
266 Registration Act of 1963; or substantially all the members of such  
267 crew operate or maintain tractors, mechanized harvesting or crop  
268 dusting equipment, or any other mechanized equipment, which is  
269 provided by such crew leader; and

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

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

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

280 (ii) Such other person shall be treated  
281 as having paid cash remuneration to such individual in an amount  
282 equal to the amount of cash remuneration paid to such individual  
283 by the crew leader (either on his own behalf or on behalf of such  
284 other person) for the service in agricultural labor performed for  
285 such other person.

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

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

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

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

296 (7) The term "employment" shall include domestic

297 service in a private home, local college club or local chapter of  
298 a college fraternity or sorority performed for an employing unit  
299 which paid cash remuneration of One Thousand Dollars (\$1,000.00)  
300 or more in any calendar quarter in the current or the preceding  
301 calendar year to individuals employed in such domestic service.  
302 For the purpose of this subsection, the term "employment" does not  
303 apply to service performed as a "sitter" at a hospital in the  
304 employ of an individual.

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

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

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

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

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

318 (9) Services not covered under paragraph (8) of  
319 this subsection and performed entirely without this state, with  
320 respect to no part of which contributions are required and paid  
321 under an unemployment compensation law of any other state or of  
322 the federal government, shall be deemed to be employment subject  
323 to this chapter if the individual performing such services is a  
324 resident of this state and the commission approves the election of  
325 the employing unit for whom such services are performed that the  
326 entire service of such individual shall be deemed to be employment  
327 subject to this chapter.

328 (10) Service shall be deemed to be localized  
329 within a state if:

330 (a) The service is performed entirely within  
331 such state; or

332 (b) The service is performed both within and  
333 without such state, but the service performed without such state  
334 is incidental to the individual's service within the state; for  
335 example, is temporary or transitory in nature or consists of  
336 isolated transactions.

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

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

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

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

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

351 (iii) The employer is a partnership or a  
352 trust and the number of the partners or trustees who are residents  
353 of this state is greater than the number who are residents of any  
354 one (1) other state; or

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

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

362 (i) An individual who is a resident of

363 the United States; or

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

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

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

370 (12) All services performed by an officer or  
371 member of the crew of an American vessel on or in connection with  
372 such vessel, if the operating office from which the operations of  
373 such vessel operating on navigable waters within, or within and  
374 without, the United States are ordinarily and regularly  
375 supervised, managed, directed, and controlled is within this  
376 state; notwithstanding the provisions of subsection I(8).

377 (13) Service with respect to which a tax is  
378 required to be paid under any federal law imposing a tax against  
379 which credit may be taken for contributions required to be paid  
380 into a state unemployment fund, or which as a condition for full  
381 tax credit against the tax imposed by the Federal Unemployment Tax  
382 Act, 26 USCS Sec. 3301 et seq., is required to be covered under  
383 this chapter, notwithstanding any other provisions of this  
384 subsection.

385 (14) Services performed by an individual for wages  
386 shall be deemed to be employment subject to this chapter unless  
387 and until it is shown to the satisfaction of the commission that  
388 such individual has been and will continue to be free from control  
389 and direction over the performance of such services both under his  
390 contract of service and in fact; and the relationship of employer  
391 and employee shall be determined in accordance with the principles  
392 of the common law governing the relation of master and servant.

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

394 (a) Agricultural labor, except as provided in  
395 subsection I(6) of this section. The term "agricultural labor"

396 includes all services performed:

397 (i) On a farm or in a forest in the  
398 employ of any employing unit in connection with cultivating the  
399 soil, in connection with cutting, planting, deadening, marking or  
400 otherwise improving timber, or in connection with raising or  
401 harvesting any agricultural or horticultural commodity, including  
402 the raising, shearing, feeding, caring for, training, and  
403 management of livestock, bees, poultry, fur-bearing animals, and  
404 wildlife;

405 (ii) In the employ of the owner or  
406 tenant or other operator of a farm, in connection with the  
407 operation, management, conservation, improvement, or maintenance  
408 of such farm and its tools and equipment, or in salvaging timber  
409 or clearing land of brush and other debris left by a hurricane, if  
410 the major part of such service is performed on a farm;

411 (iii) In connection with the production  
412 or harvesting of naval stores products or any commodity defined in  
413 the Federal Agricultural Marketing Act, 12 USCS Sec. 1141j(g), or  
414 in connection with the raising or harvesting of mushrooms, or in  
415 connection with the ginning of cotton, or in connection with the  
416 operation or maintenance of ditches, canals, reservoirs, or  
417 waterways not owned or operated for profit, used exclusively for  
418 supplying and storing water for farming purposes;

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

426 (B) In the employ of a group of  
427 operators of farms (or a cooperative organization of which such  
428 operators are members) in the performance of service described in

429 subparagraph (A), but only if such operators produced more than  
430 one-half (1/2) of the commodity with respect to which such service  
431 is performed;

432 (C) The provisions of subparagraphs  
433 (A) and (B) shall not be deemed to be applicable with respect to  
434 service performed in connection with commercial canning or  
435 commercial freezing or in connection with any agricultural or  
436 horticultural commodity after its delivery to a terminal market  
437 for distribution for consumption;

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

441 (vi) As used in paragraph (15)(a) of  
442 this subsection, the term "farm" includes stock, dairy, poultry,  
443 fruit, fur-bearing animals, and truck farms, plantations, ranches,  
444 nurseries, ranges, greenhouses, or other similar structures used  
445 primarily for the raising of agricultural or horticultural  
446 commodities, and orchards.

447 (b) Domestic service in a private home, local  
448 college club, or local chapter of a college fraternity or  
449 sorority, except as provided in subsection I(7) of this section,  
450 or service performed as a "sitter" at a hospital in the employ of  
451 an individual.

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

454 (d) Service performed by an individual in the  
455 employ of his son, daughter, or spouse, and service performed by a  
456 child under the age of twenty-one (21) in the employ of his father  
457 or mother.

458 (e) Service performed in the employ of the  
459 United States Government or of an instrumentality wholly owned by  
460 the United States; except that if the Congress of the United  
461 States shall permit states to require any instrumentalities of the

462 United States to make payments into an unemployment fund under a  
463 state unemployment compensation act, then to the extent permitted  
464 by Congress and from and after the date as of which such  
465 permission becomes effective, all of the provisions of this  
466 chapter shall be applicable to such instrumentalities and to  
467 services performed by employees for such instrumentalities in the  
468 same manner, to the same extent, and on the same terms as to all  
469 other employers and employing units. If this state should not be  
470 certified under the Federal Unemployment Tax Act, 26 USCS Sec.  
471 3304(c), for any year, then the payment required by such  
472 instrumentality with respect to such year shall be deemed to have  
473 been erroneously collected and shall be refunded by the commission  
474 from the fund in accordance with the provisions of Section  
475 71-5-383.

476 (f) Service performed in the employ of an  
477 "employer" as defined by the Railroad Unemployment Insurance Act,  
478 45 USCS Sec. 351(a), or as an "employee representative" as defined  
479 by the Railroad Unemployment Insurance Act, 45 USCS Sec. 351(f),  
480 and service with respect to which unemployment compensation is  
481 payable under an unemployment compensation system for maritime  
482 employees, or under any other unemployment compensation system  
483 established by an act of Congress; provided that the commission is  
484 hereby authorized and directed to enter into agreements with the  
485 proper agencies under such act or acts of Congress, which  
486 agreements shall become effective ten (10) days after publication  
487 thereof in the manner provided in Section 71-5-117 for general  
488 rules, to provide reciprocal treatment to individuals who have,  
489 after acquiring potential rights to benefits under this chapter,  
490 acquired rights to unemployment compensation under such act or  
491 acts of Congress or who have, after acquiring potential rights to  
492 unemployment compensation under such act or acts of Congress,  
493 acquired rights to benefits under this chapter.

494 (g) Service performed in any calendar quarter

495 in the employ of any organization exempt from income tax under the  
496 Internal Revenue Code, 26 USCS Sec. 501(a) (other than an  
497 organization described in 26 USCS Sec. 401(a)), or exempt from  
498 income tax under 26 USCS Sec. 521 if the remuneration for such  
499 service is less than Fifty Dollars (\$50.00).

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

502 (i) By a student who is enrolled and is  
503 regularly attending classes at such school, college, or  
504 university, or

505 (ii) By the spouse of such a student if  
506 such spouse is advised, at the time such spouse commences to  
507 perform such service, that

508 (A) The employment of such spouse  
509 to perform such service is provided under a program to provide  
510 financial assistance to such student by such school, college, or  
511 university, and

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

514 (i) Service performed by an individual under  
515 the age of twenty-two (22) who is enrolled at a nonprofit or  
516 public educational institution which normally maintains a regular  
517 faculty and curriculum and normally has a regularly organized body  
518 of students in attendance at the place where its educational  
519 activities are carried on, as a student in a full-time program  
520 taken for credit at such institution, which combines academic  
521 instruction with work experience, if such service is an integral  
522 part of such program and such institution has so certified to the  
523 employer, except that this subparagraph shall not apply to service  
524 performed in a program established for or on behalf of an employer  
525 or group of employers.

526 (j) Service performed in the employ of a  
527 hospital, if such service is performed by a patient of the



528 hospital, as defined in subsection L of this section.

529 (k) Service performed as a student nurse in  
530 the employ of a hospital or a nurses' training school by an  
531 individual who is enrolled and is regularly attending classes in a  
532 nurses' training school chartered or approved pursuant to state  
533 law; and services performed as an intern in the employ of a  
534 hospital by an individual who has completed a four-year course in  
535 a medical school chartered or approved pursuant to state law.

536 (l) Service performed by an individual as an  
537 insurance agent or as an insurance solicitor, if all such service  
538 performed by such individual is performed for remuneration solely  
539 by way of commission.

540 (m) Service performed by an individual under  
541 the age of eighteen (18) in the delivery or distribution of  
542 newspapers or shopping news, not including delivery or  
543 distribution to any point for subsequent delivery or distribution.

544 (n) If the services performed during one-half  
545 (1/2) or more of any pay period by an employee for the employing  
546 unit employing him constitute employment, all the services of such  
547 employee for such period shall be deemed to be employment; but if  
548 the services performed during more than one-half (1/2) of any such  
549 pay period by an employee for the employing unit employing him do  
550 not constitute employment, then none of the services of such  
551 employee for such period shall be deemed to be employment. As  
552 used in this subsection the term "pay period" means a period (of  
553 not more than thirty-one (31) consecutive days) for which a  
554 payment of remuneration is ordinarily made to the employee by the  
555 employing unit employing him.

556 (o) Service performed by an individual who is  
557 a CETA/PSE (Comprehensive Employment Training Act/Public Service  
558 Employment) participant unless coverage of such service is  
559 required by federal law or regulation.

560 (p) Service performed by a barber or

561 beautician whose work station is leased to him or her by the owner  
562 of the shop in which he or she works and who is compensated  
563 directly by the patrons he or she serves and who is free from  
564 direction and control by the lessor.

565 J. "Employment office" means a free public employment  
566 office or branch thereof, operated by this state or maintained as  
567 a part of the state controlled system of public employment  
568 offices.

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

572 K. "Fund" means the Unemployment Compensation Fund  
573 established by this chapter, to which all contributions required  
574 and from which all benefits provided under this chapter shall be  
575 paid.

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

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

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

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

586 (3) Provides an educational program for which it  
587 awards a bachelor's or higher degree, or provides a program which  
588 is acceptable for full credit toward such a degree, a program of  
589 postgraduate or postdoctoral studies, or a program of training to  
590 prepare students for gainful employment in a recognized  
591 occupation;

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

593 (5) Notwithstanding any of the foregoing

594 provisions of this subsection, all colleges and universities in  
595 this state are institutions of higher learning for purposes of  
596 this section.

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

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

603                   (3) The provisions of subsections (1) and (2) of  
604 paragraph N, as including the Virgin Islands, shall become  
605 effective on the day after the day on which the United States  
606 Secretary of Labor approves for the first time under Section  
607 3304(a) of the Internal Revenue Code of 1954 an unemployment  
608 compensation law submitted to the secretary by the Virgin Islands  
609 for such approval.

610           O. "Unemployment."

611                   (1) An individual shall be deemed "unemployed" in  
612 any week during which he performs no services and with respect to  
613 which no wages are payable to him, or in any week of less than  
614 full-time work if the wages payable to him with respect to such  
615 week are less than his weekly benefit amount as computed and  
616 adjusted in Section 71-5-505. The commission shall prescribe  
617 regulations applicable to unemployed individuals, making such  
618 distinctions in the procedure as to total unemployment, part-total  
619 unemployment, partial unemployment of individuals attached to  
620 their regular jobs, and other forms of short-time work, as the  
621 commission deems necessary.

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

626           P. (1) "Wages" means all remuneration for personal

627 services, including commissions and bonuses and the cash value of  
628 all remuneration in any medium other than cash, except that  
629 "wages," for purposes of determining employer's coverage and  
630 payment of contributions for agricultural and domestic service  
631 means cash remuneration only. The reasonable cash value of  
632 remuneration in any medium other than cash shall be estimated and  
633 determined in accordance with rules prescribed by the commission;  
634 provided, that the term "wages" shall not include:

635 (a) The amount of any payment made to, or on  
636 behalf of, an employee under a plan or system established by an  
637 employer which makes provision for his employees generally or for  
638 a class or classes of his employees (including any amount paid by  
639 an employer for insurance or annuities, or into a fund, to provide  
640 for any such payment), on account of:

641 (i) Retirement, or  
642 (ii) Sickness or accident disability, or  
643 (iii) Medical or hospitalization

644 expenses in connection with sickness or actual disability, or

645 (iv) Death, provided the employee:

646 (A) Has not the option to receive,  
647 instead of provision for such death benefit, any part of such  
648 payment or, if such death benefit is insured, any part of the  
649 premiums (or contributions to premiums) paid by his employer, and

650 (B) Has not the right, under the  
651 provisions of the plan or system or policy of insurance providing  
652 for such death benefit, to assign such benefit or to receive a  
653 cash consideration in lieu of such benefit, either upon his  
654 withdrawal from the plan or system providing for such benefit or  
655 upon termination of such plan or system or policy of insurance or  
656 of his employment with such employer;

657 (b) Dismissal payments which the employer is  
658 not legally required to make;

659 (c) Payment by an employer (without deduction

660 from the remuneration of an employee) of the tax imposed by the  
661 Internal Revenue Code, 26 USCS Sec. 3101;

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

665 (i) Qualifies under Section 125 of the  
666 Internal Revenue Code;  
667 (ii) Covers only employees;  
668 (iii) Covers only noncash benefits;  
669 (iv) Does not include deferred  
670 compensation plans.

671 (2) [Not enacted].

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

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

678 S. The term "includes" and "including," when used in a  
679 definition contained in this chapter, shall not be deemed to  
680 exclude other things otherwise within the meaning of the term  
681 defined.

682 T. "Employee leasing arrangement" means any agreement  
683 between the client (referred to as the worksite employer) and a  
684 firm which engages in the business of employee leasing (referred  
685 to as the administrative employer) in which the duties and  
686 responsibilities of the employer to the employees is shared. The  
687 responsibility of the employer such as the preparation of wages,  
688 reporting of wages for unemployment insurance purposes, payment of  
689 unemployment insurance contributions, attending and defending  
690 unemployment hearings and all other administrative duties that may  
691 be required by the commission.

692 U. "Employee leasing firm" includes both a professional

693 employer organization (PEO) and an administrative employer  
694 organization (AEO) as well as any other entity which provides  
695 specified duties for the worksite employer and reports all  
696 performed by the employee leasing firm under the identification  
697 number of the employee leasing firm. These duties shall include,  
698 but are not limited to, preparation of wages, reporting of wages  
699 for unemployment insurance purposes, payment of unemployment  
700 insurance contributions and other administrative duties, in  
701 connection with the employees of the worksite employer. The  
702 worksite employer retains the right to hire and fire, direction  
703 and control, set the rate of pay, determine the order of  
704 production and all other tasks to be performed. Professional  
705 employer organizations and administrative employer organizations  
706 both perform the same services, however, a PEO assumes  
707 responsibility for the payment of wages and taxes regardless of  
708 whether payment was received from the worksite employer while an  
709 AEO requires payment before assuming responsibility for wages and  
710 taxes.

711           V. "Temporary help firm" means an entity which hires  
712 its own employees and provides those employees to other  
713 individuals or organizations to perform some service, to support  
714 or supplement the existing work force in special situations such  
715 as employee absences, temporary skill shortages, seasonal  
716 workloads and special assignments and projects, with the  
717 expectation that the worker's position will be terminated upon the  
718 completion of the specified task or function.

719           SECTION 2. Section 71-5-353, Mississippi Code of 1972, is  
720 amended as follows:

721           71-5-353. (1) Each employer shall pay contributions equal  
722 to five and four-tenths percent (5.4%) of taxable wages paid by  
723 him each calendar year, except as may be otherwise provided in  
724 Section 71-5-361 and except that each newly subject employer shall  
725 pay contributions at the rate of two and seven-tenths percent

726 (2.7%) of taxable wages until his experience-rating record has  
727 been chargeable throughout not less than the twelve (12)  
728 consecutive calendar months ending on the computation date;  
729 thereafter his contribution rate shall be determined in accordance  
730 with the provisions of Section 71-5-355.

731 (2) Unless eligible for a modified rate as described in  
732 Section 71-5-355 of this chapter, each employer, as defined by  
733 Section 71-5-11(H) of this chapter, engaged in an employee leasing  
734 arrangement, with an employee leasing firm, on June 30, 1998, will  
735 be assigned a contributions rate of one and five tenths percent  
736 (1.50%) for the calendar year 1999, and subsequent calendar years,  
737 until the employer is eligible for a modified rate, as described  
738 in Section 71-5-355 of this chapter, based on experience  
739 accumulated subsequent to December 31, 1998.

740 The commission shall notify all employers, active in the  
741 commission files and currently reporting, of the provisions of  
742 this paragraph, at their last known mailing address on or before  
743 August 15, 1998. All employee leasing firms shall report to the  
744 commission the name, the federal identification number, mailing  
745 address, physical location address and telephone number of all  
746 their clients on or before October 15, 1998. Any employee leasing  
747 firm failing to comply with the provisions of this paragraph may  
748 be assessed an amount equal to one-half of one percent (1/2 of 1%)  
749 of total wages, or Five Hundred Dollars (\$500.00), whichever is  
750 greater, for each client that the employee leasing firm fails to  
751 report. Collection of the above mentioned penalty shall be in  
752 conformity with commission regulations.

753 (3) All firms providing services utilizing the employee  
754 leasing arrangement shall provide to the commission written  
755 notification signed by the worksite and administrative employer  
756 that informs the commission of an arrangement. This notification  
757 may be in any form that the employee leasing firm may choose. The  
758 commission shall then provide an account number that reflects the

759 administrative employer account number and the client as a  
760 subnumber of the employee leasing firm. The administrative  
761 employer shall provide reports to the commission that reflect the  
762 employees of each worksite employer for the purpose of determining  
763 and maintaining an accurate experience rating for each individual  
764 worksite employer. The commission shall have the authority to  
765 develop penalties for violations of this section.

766 SECTION 3. This act shall take effect and be in force from  
767 and after July 1, 2000.