

By: Representative Moss

To: Labor

HOUSE BILL NO. 1579
(As Passed the House)

1 AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE DEFINITION OF "EMPLOYING UNIT" UNDER THE MISSISSIPPI
 3 EMPLOYMENT SECURITY LAW TO INCLUDE CERTAIN INDIAN TRIBES; TO AMEND
 4 SECTION 71-5-357, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE BY
 5 WHICH PAYMENTS REQUIRED OF CERTAIN NONPROFIT ORGANIZATIONS SHALL
 6 BE PAID TO THE UNEMPLOYMENT COMPENSATION FUND; TO CREATE NEW CODE
 7 SECTION 71-5-387, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 8 CERTAIN INDIAN TRIBES SHALL BE CONSIDERED EMPLOYERS AND SHALL PAY
 9 CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND IN THE SAME
 10 MANNER AS ALL OTHER EMPLOYERS UNLESS THE TRIBES ELECT TO MAKE
 11 PAYMENTS IN LIEU OF CONTRIBUTIONS; TO PROVIDE PENALTIES FOR
 12 FAILURE OF THE TRIBE TO MAKE THE REQUIRED PAYMENTS OR
 13 CONTRIBUTIONS WITHIN THE PRESCRIBED TIME FRAME; TO AMEND SECTION
 14 71-5-501, MISSISSIPPI CODE OF 1972, TO REMOVE THE TWENTY-FOUR
 15 MONTH WAITING PERIOD BEFORE UNEMPLOYMENT BENEFITS SHALL BECOME
 16 PAYABLE FROM THE FUND; TO AMEND SECTION 71-5-511, MISSISSIPPI CODE
 17 OF 1972, TO PROVIDE THAT UNTIL JULY 1, 2005, THE ONE-WEEK WAITING
 18 PERIOD REQUIRED FOR ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION
 19 BENEFITS SHALL BE ELIMINATED; AND FOR RELATED PURPOSES.

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

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

23 71-5-11. As used in this chapter, unless the context clearly
 24 requires otherwise:

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

28 B. "Benefits" means the money payments payable to an
 29 individual, as provided in this chapter, with respect to his
 30 unemployment.

31 C. "Benefit year" with respect to any individual means the
 32 period beginning with the first day of the first week with respect
 33 to which he first files a valid claim for benefits, and ending
 34 with the day preceding the same day of the same month in the next
 35 calendar year; and, thereafter, the period beginning with the



36 first day of the first week with respect to which he next files
37 his valid claim for benefits, and ending with the day preceding
38 the same day of the same month in the next calendar year. Any
39 claim for benefits made in accordance with Section 71-5-515 shall
40 be deemed to be a "valid claim" for purposes of this subsection if
41 the individual has been paid the wages for insured work required
42 under Section 71-5-511(e).

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

45 E. "Calendar quarter" means the period of three (3)
46 consecutive calendar months ending on March 31, June 30, September
47 30, or December 31.

48 F. "Commission" means the Mississippi Employment Security
49 Commission.

50 G. "Employing unit" means this state or another state or any
51 instrumentalities or any political subdivisions thereof or any of
52 their instrumentalities or any instrumentality of more than one
53 (1) of the foregoing or any instrumentality of any of the
54 foregoing and one or more other states or political subdivisions,
55 any Indian tribe as defined in Section 3306(u) of the Federal
56 Unemployment Tax Act (FUTA), which includes any subdivision,
57 subsidiary or business enterprise wholly owned by such Indian
58 tribe, any individual or type of organization, including any
59 partnership, association, trust, estate, joint-stock company,
60 insurance company, or corporation, whether domestic or foreign, or
61 the receiver, trustee in bankruptcy, trustee or successor thereof,
62 or the legal representative of a deceased person, which has or had
63 in its employ one or more individuals performing services for it
64 within this state. All individuals performing services within
65 this state for any employing unit which maintains two (2) or more
66 separate establishments within this state shall be deemed to be
67 employed by a single employing unit for all the purposes of this
68 chapter. Each individual employed to perform or to assist in



69 performing the work of any agent or employee of an employing unit
70 shall be deemed to be employed by such employing unit for all
71 purposes of this chapter, whether such individual was hired or
72 paid directly by such employing unit or by such agent or employee,
73 provided the employing unit had actual or constructive knowledge
74 of the work. All individuals performing services in the employ of
75 an elected fee-paid county official, other than those related by
76 blood or marriage within the third degree computed by the rule of
77 the civil law to such fee-paid county official, shall be deemed to
78 be employed by such county as the employing unit for all the
79 purposes of this chapter. For purposes of defining an "employing
80 unit" which shall pay contributions on remuneration paid to
81 individuals, if two (2) or more related corporations concurrently
82 employ the same individual and compensate such individual through
83 a common paymaster which is one (1) of such corporations, then
84 each such corporation shall be considered to have paid as
85 remuneration to such individual only the amounts actually
86 disbursed by it to such individual and shall not be considered to
87 have paid as remuneration to such individual such amounts actually
88 disbursed to such individual by another of such corporations.

89 H. "Employer" means:

90 (1) Any employing unit which,

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

95 (b) For some portion of a day in each of twenty
96 (20) different calendar weeks, whether or not such weeks were
97 consecutive, in either the current or the preceding calendar year
98 had in employment at least one (1) individual (irrespective of
99 whether the same individual was in employment in each such day),
100 except as provided in paragraph (9) of this subsection;



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

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

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

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

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

115 (6) Any individual or employing unit which acquired its
116 organization, trade, business, or substantially all the assets
117 thereof, from another employing unit, if the employment record of
118 the acquiring individual or employing unit subsequent to such
119 acquisition, together with the employment record of the acquired
120 organization, trade, or business prior to such acquisition, both
121 within the same calendar year, would be sufficient to constitute
122 an employing unit an employer subject to this chapter under
123 paragraph (1) or (3) of this subsection;

124 (7) Any employing unit which, having become an employer
125 under paragraph (1), (3), (5) or (6) of this subsection or under
126 any other provisions of this chapter, has not, under Section
127 71-5-361, ceased to be an employer subject to this chapter; * * *

128 (8) For the effective period of its election pursuant
129 to Section 71-5-361(3), any other employing unit which has elected
130 to become subject to this chapter;

131 (9) (a) In determining whether or not an employing
132 unit for which service other than domestic service is also
133 performed is an employer under paragraph (1) or (4)(a) of this



134 subsection, the wages earned or the employment of an employee
135 performing domestic service, shall not be taken into account;

136 (b) In determining whether or not an employing
137 unit for which service other than agricultural labor is also
138 performed is an employer under paragraph (1) or (4)(b) of this
139 subsection, the wages earned or the employment of an employee
140 performing services in agricultural labor, shall not be taken into
141 account. If an employing unit is determined an employer of
142 agricultural labor, such employing unit shall be determined an
143 employer for purposes of paragraph (1) of this subsection;

144 (10) All entities utilizing the services of any
145 employee leasing firm shall be considered the employer of the
146 individuals leased from the employee leasing firm. Temporary help
147 firms shall be considered the employer of the individuals they
148 provide to perform services for other individuals or
149 organizations.

150 I. "Employment" means and includes:

151 (1) Any service performed, which was employment as
152 defined in this section and, subject to the other provisions of
153 this subsection, including service in interstate commerce,
154 performed for wages or under any contract of hire, written or
155 oral, express or implied.

156 (2) Services performed for remuneration for a
157 principal:

158 (a) As an agent-driver or commission-driver
159 engaged in distributing meat products, vegetable products, fruit
160 products, bakery products, beverages (other than milk), or laundry
161 or dry cleaning services;

162 (b) As a traveling or city salesman, other than as
163 an agent-driver or commission-driver, engaged upon a full-time
164 basis in the solicitation on behalf of, and the transmission to, a
165 principal (except for sideline sales activities on behalf of some
166 other person) of orders from wholesalers, retailers, contractors,



167 or operator of hotels, restaurants, or other similar
168 establishments for merchandise for resale or supplies for use in
169 their business operations.

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

173 (i) The contract of service contemplates that
174 substantially all of the services are to be performed personally
175 by such individual;

176 (ii) The individual does not have a
177 substantial investment in facilities used in connection with the
178 performance of the services (other than in facilities for
179 transportation); and

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

183 (3) Service performed in the employ of this state or
184 any of its instrumentalities or any political subdivision thereof
185 or any of its instrumentalities or any instrumentality of more
186 than one (1) of the foregoing or any instrumentality of any of the
187 foregoing and one or more other states or political subdivisions
188 or any Indian tribe as defined in Section 3306(u) of the Federal
189 Unemployment Tax Act (FUTA), which includes any subdivision,
190 subsidiary or business enterprise wholly owned by such Indian
191 tribe; provided that such service is excluded from "employment" as
192 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)
193 of that act and is not excluded from "employment" under subsection
194 I(5) of this section.

195 (4) (a) Services performed in the employ of a
196 religious, charitable, educational, or other organization, but
197 only if the service is excluded from "employment" as defined in
198 the Federal Unemployment Tax Act, 26 USCS Section 3306(c)(8), and



199 (b) The organization had four (4) or more
200 individuals in employment for some portion of a day in each of
201 twenty (20) different weeks, whether or not such weeks were
202 consecutive, within the current or preceding calendar year,
203 regardless of whether they were employed at the same moment of
204 time.

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

208 (a) In the employ of:

209 (i) A church or convention or association of
210 churches; or

211 (ii) An organization which is operated
212 primarily for religious purposes and which is operated,
213 supervised, controlled, or principally supported by a church or
214 convention or association of churches; or

215 (b) By a duly ordained, commissioned, or licensed
216 minister of a church in the exercise of his ministry, or by a
217 member of a religious order in the exercise of duties required by
218 such order; or

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

222 (i) As an elected official;

223 (ii) As a member of a legislative body, or a
224 member of the judiciary, of a state or political subdivision or a
225 member of an Indian tribal council;

226 (iii) As a member of the State National Guard
227 or Air National Guard;

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



231 (v) In a position which, under or pursuant to
232 the laws of this state or laws of an Indian tribe, is designated
233 as:

234 1. A major nontenured policy-making or
235 advisory position, or

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

239 (d) In a facility conducted for the purpose of
240 carrying out a program of rehabilitation for individuals whose
241 earning capacity is impaired by age or physical or mental
242 deficiency or injury, or providing remunerative work for
243 individuals who because of their impaired physical or mental
244 capacity cannot be readily absorbed in the competitive labor
245 market, by an individual receiving such rehabilitation or
246 remunerative work; or

247 (e) By an inmate of a custodial or penal
248 institution; or

249 (f) As part of an unemployment work-relief or
250 work-training program assisted or financed in whole or in part by
251 any federal agency or agency of a state or political subdivision
252 thereof or of an Indian tribe, by an individual receiving such
253 work relief or work training, unless coverage of such service is
254 required by federal law or regulation.

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

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

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

262 (ii) For some portion of a day in each of
263 twenty (20) different calendar weeks, whether or not such weeks



264 were consecutive, in either the current or the preceding calendar
265 year, employed in agricultural labor ten (10) or more individuals,
266 regardless of whether they were employed at the same moment of
267 time.

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

272 (i) If such crew leader holds a valid
273 certificate of registration under the Farm Labor Contractor
274 Registration Act of 1963; or substantially all the members of such
275 crew operate or maintain tractors, mechanized harvesting or crop
276 dusting equipment, or any other mechanized equipment, which is
277 provided by such crew leader; and

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

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

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

287 (ii) Such other person shall be treated as
288 having paid cash remuneration to such individual in an amount
289 equal to the amount of cash remuneration paid to such individual
290 by the crew leader (either on his own behalf or on behalf of such
291 other person) for the service in agricultural labor performed for
292 such other person.

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

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



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

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

303 (7) The term "employment" shall include domestic
304 service in a private home, local college club or local chapter of
305 a college fraternity or sorority performed for an employing unit
306 which paid cash remuneration of One Thousand Dollars (\$1,000.00)
307 or more in any calendar quarter in the current or the preceding
308 calendar year to individuals employed in such domestic service.
309 For the purpose of this subsection, the term "employment" does not
310 apply to service performed as a "sitter" at a hospital in the
311 employ of an individual.

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

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

315 (b) The service is not localized in any state but
316 some of the service is performed in this state; and

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

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

324 (9) Services not covered under paragraph (8) of this
325 subsection and performed entirely without this state, with respect
326 to no part of which contributions are required and paid under an
327 unemployment compensation law of any other state or of the federal
328 government, shall be deemed to be employment subject to this
329 chapter if the individual performing such services is a resident



330 of this state and the commission approves the election of the
331 employing unit for whom such services are performed that the
332 entire service of such individual shall be deemed to be employment
333 subject to this chapter.

334 (10) Service shall be deemed to be localized within a
335 state if:

336 (a) The service is performed entirely within such
337 state; or

338 (b) The service is performed both within and
339 without such state, but the service performed without such state
340 is incidental to the individual's service within the state; for
341 example, is temporary or transitory in nature or consists of
342 isolated transactions.

343 (11) The services of an individual who is a citizen of
344 the United States, performed outside the United States (except in
345 Canada), in the employ of an American employer (other than service
346 which is deemed "employment" under the provisions of paragraph
347 (8), (9) or (10) of this subsection or the parallel provisions of
348 another state's law), if:

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

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

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

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

357 (iii) The employer is a partnership or a
358 trust and the number of the partners or trustees who are residents
359 of this state is greater than the number who are residents of any
360 one (1) other state; or

361 (c) None of the criteria of subparagraphs (a) and
362 (b) of this paragraph are met but the employer has elected



363 coverage in this state or, the employer having failed to elect
364 coverage in any state, the individual has filed a claim for
365 benefits, based on such service, under the law of this state; or

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

368 (i) An individual who is a resident of the
369 United States; or

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

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

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

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

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

390 (14) Services performed by an individual for wages
391 shall be deemed to be employment subject to this chapter unless
392 and until it is shown to the satisfaction of the commission that
393 such individual has been and will continue to be free from control
394 and direction over the performance of such services both under his
395 contract of service and in fact; and the relationship of employer



396 and employee shall be determined in accordance with the principles
397 of the common law governing the relation of master and servant.

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

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

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

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

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

423 (iv) (A) In the employ of the operator of a
424 farm in handling, planting, drying, packing, packaging,
425 processing, freezing, grading, storing, or delivering to storage
426 or to market or to a carrier for transportation to market, in its
427 unmanufactured state, any agricultural or horticultural commodity;



428 but only if such operator produced more than one-half (1/2) of the
429 commodity with respect to which such service is performed;

430 (B) In the employ of a group of
431 operators of farms (or a cooperative organization of which such
432 operators are members) in the performance of service described in
433 subparagraph (A), but only if such operators produced more than
434 one-half (1/2) of the commodity with respect to which such service
435 is performed;

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

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

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

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

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

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



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

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



494 potential rights to unemployment compensation under such act or
495 acts of Congress, acquired rights to benefits under this chapter.

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

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

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

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

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

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

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



526 performed in a program established for or on behalf of an employer
527 or group of employers.

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

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

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

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

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



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

562 (p) Service performed by a barber or beautician
563 whose work station is leased to him or her by the owner of the
564 shop in which he or she works and who is compensated directly by
565 the patrons he or she serves and who is free from direction and
566 control by the lessor.

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

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

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

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

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

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

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

587 (3) Provides an educational program for which it awards
588 a bachelor's or higher degree, or provides a program which is
589 acceptable for full credit toward such a degree, a program of
590 postgraduate or postdoctoral studies, or a program of training to



591 prepare students for gainful employment in a recognized
592 occupation;

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

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

597 N. (1) "State" includes, in addition to the states of the
598 United States of America, the District of Columbia, Commonwealth
599 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 any
612 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 shall be
623 deemed to commence only after his registration at an employment



624 office, except as the commission may by regulation otherwise
625 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 expenses in
644 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 not
658 legally required to make;

659 (c) Payment by an employer (without deduction from
660 the remuneration of an employee) of the tax imposed by the
661 Internal Revenue Code, 26 USCS Section 3101;

662 (d) From and after January 1, 1992, the amount of
663 any payment made to or on behalf of an employee for a "cafeteria"
664 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 compensation
670 plans.

671 (2) [Not enacted].

672 Q. "Week" means calendar week or such period of seven (7)
673 consecutive days as the commission may by regulation prescribe.
674 The commission may by regulation prescribe that a week shall be
675 deemed to be in, within, or during any benefit year which includes
676 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 an employee leasing firm and a client, whereby specified
684 client responsibilities such as payment of wages, reporting of
685 wages for unemployment insurance purposes, payment of unemployment
686 insurance contributions and other such administrative duties are
687 to be performed by an employee leasing firm, on an ongoing basis.

688 U. "Employee leasing firm" means any entity which provides
689 specified duties for a client company such as payment of wages,



690 reporting of wages for unemployment insurance purposes, payment of
691 unemployment insurance contributions and other administrative
692 duties, in connection with the client's employees, that are
693 directed and controlled by the client and that are providing
694 ongoing services for the client.

695 V. "Temporary help firm" means an entity which hires its own
696 employees and provides those employees to other individuals or
697 organizations to perform some service, to support or supplement
698 the existing work force in special situations such as employee
699 absences, temporary skill shortages, seasonal workloads and
700 special assignments and projects, with the expectation that the
701 worker's position will be terminated upon the completion of the
702 specified task or function.

703 **SECTION 2.** Section 71-5-357, Mississippi Code of 1972, is
704 amended as follows:

705 71-5-357. Benefits paid to employees of nonprofit
706 organizations shall be financed in accordance with the provisions
707 of this section. For the purpose of this section, a nonprofit
708 organization is an organization (or group of organizations)
709 described in Section 501(c)(3) of the Internal Revenue Code of
710 1954 which is exempt from income tax under Section 501(a) of such
711 code (26 USCS Section 501).

712 (a) Any nonprofit organization which, pursuant to
713 Section 71-5-11, subsection H(3), is or becomes subject to this
714 chapter shall pay contributions under the provisions of Sections
715 71-5-351 through 71-5-355 unless it elects, in accordance with
716 this paragraph, to pay to the commission for the unemployment fund
717 an amount equal to the amount of regular benefits and one-half
718 (1/2) of the extended benefits paid, that is attributable to
719 service in the employ of such nonprofit organization, to
720 individuals for weeks of unemployment which begin during the
721 effective period of such election.



722 (i) Any nonprofit organization which becomes
723 subject to this chapter may elect to become liable for payments in
724 lieu of contributions for a period of not less than twelve (12)
725 months, beginning with the date on which such subjectivity begins,
726 by filing a written notice of its election with the commission not
727 later than thirty (30) days immediately following the date of the
728 determination of such subjectivity.

729 (ii) Any nonprofit organization which makes an
730 election in accordance with subparagraph (i) of this subsection
731 will continue to be liable for payments in lieu of contributions
732 unless it files with the commission a written termination notice
733 not later than thirty (30) days prior to the beginning of the tax
734 year for which such termination shall first be effective.

735 (iii) Any nonprofit organization which has been
736 paying contributions under this chapter may change to a
737 reimbursable basis by filing with the commission, not later than
738 thirty (30) days prior to the beginning of any tax year, a written
739 notice of election to become liable for payments in lieu of
740 contributions. Such election shall not be terminable by the
741 organization for that and the next tax year.

742 (iv) The commission may for good cause extend the
743 period within which a notice of election or a notice of
744 termination must be filed, and may permit an election to be
745 retroactive.

746 (v) The commission, in accordance with such
747 regulations as it may prescribe, shall notify each nonprofit
748 organization of any determination which it may make of its status
749 as an employer, of the effective date of any election which it
750 makes and of any termination of such election. Such
751 determinations shall be subject to reconsideration, appeal and
752 review in accordance with the provisions of Sections 71-5-351
753 through 71-5-355.



754 (b) Payments in lieu of contributions shall be made in
755 accordance with the provisions of paragraph (i) of this
756 subsection.

757 (i) At the end of each calendar quarter, or at the
758 end of any other period as determined by the commission, the
759 commission shall bill each nonprofit organization (or group of
760 such organizations) which has elected to make payments in lieu of
761 contributions, for an amount equal to the full amount of regular
762 benefits plus one-half (1/2) of the amount of extended benefits
763 paid during such quarter or other prescribed period that is
764 attributable to service in the employ of such organization.

765 (ii) Payment of any bill rendered under paragraph
766 (i) of this subsection shall be made not later than forty-five
767 (45) days after such bill was mailed to the last known address of
768 the nonprofit organization or was otherwise delivered to it,
769 unless there has been an application for review and
770 redetermination in accordance with paragraph (v) of this
771 subsection.

772 1. All of the enforcement procedures for the
773 collection of delinquent contributions contained in Sections
774 71-5-363 through 71-5-383 shall be applicable in all respects for
775 the collection of delinquent payments due by nonprofit
776 organizations who have elected to become liable for payments in
777 lieu of contributions.

778 2. If any nonprofit organization is
779 delinquent in making payments in lieu of contributions, the
780 commission may terminate such organization's election to make
781 payments in lieu of contributions as of the beginning of the next
782 tax year, and such termination shall be effective for the balance
783 of such tax year.

784 (iii) Payments made by any nonprofit organization
785 under the provisions of this subsection shall not be deducted or



786 deductible, in whole or in part, from the remuneration of
787 individuals in the employ of the organization.

788 (iv) Payments due by employers who elect to
789 reimburse the fund in lieu of contributions as provided in this
790 subsection may not be noncharged under any condition. The
791 reimbursement must be on a dollar-for-dollar basis (One Dollar
792 (\$1.00) reimbursement for each dollar paid in benefits) in every
793 case, so that the trust fund shall be reimbursed in full, such
794 reimbursement to include, but not be limited to, benefits or
795 payments erroneously or incorrectly paid, or paid as a result of a
796 determination of eligibility which is subsequently reversed, or
797 paid as a result of claimant fraud. Provided that political
798 subdivisions who are reimbursing employers may elect to pay to the
799 fund an amount equal to five-tenths percent (.5%) of the taxable
800 wages paid during the calendar year with respect to employment,
801 and those employers who so elect shall be relieved of liability
802 for reimbursement of benefits paid under the same conditions that
803 benefits are not charged to the experience rating record of a
804 contributing employer as provided in Section 71-5-355(2)(b)(ii)
805 other than Clause 5 thereof. Benefits paid in such circumstances
806 for which reimbursing employers are relieved of liability for
807 reimbursement shall not be considered attributable to service in
808 the employment of such reimbursing employer.

809 (v) The amount due specified in any bill from the
810 commission shall be conclusive on the organization unless, not
811 later than fifteen (15) days after the bill was mailed to its last
812 known address or otherwise delivered to it, the organization files
813 an application for redetermination by the commission, setting
814 forth the grounds for such application or appeal. The commission
815 shall promptly review and reconsider the amount due specified in
816 the bill and shall thereafter issue a redetermination in any case
817 in which such application for redetermination has been filed. Any
818 such redetermination shall be conclusive on the organization



819 unless, not later than fifteen (15) days after the redetermination
820 was mailed to its last known address or otherwise delivered to it,
821 the organization files an appeal to the Circuit Court of the First
822 Judicial District of Hinds County, Mississippi, in accordance with
823 the provisions of law with respect to review of civil causes by
824 certiorari.

825 (vi) Past due payments of amounts in lieu of
826 contributions shall be subject to the same interest and penalties
827 that, pursuant to Section 71-5-363, apply to past due
828 contributions.

829 (c) Each employer that is liable for payments in lieu
830 of contributions shall pay to the commission for the fund the
831 amount of regular benefits plus the amount of one-half (1/2) of
832 extended benefits paid are attributable to service in the employ
833 of such employer. If benefits paid to an individual are based on
834 wages paid by more than one (1) employer and one or more of such
835 employers are liable for payments in lieu of contributions, the
836 amount payable to the fund by each employer that is liable for
837 such payments shall be determined in accordance with the
838 provisions of paragraph (i) or paragraph (ii) of this subsection.

839 (i) If benefits paid to an individual are based on
840 wages paid by one or more employers that are liable for payment in
841 lieu of contributions and on wages paid by one or more employers
842 who are liable for contributions, the amount of benefits payable
843 by each employer that is liable for payments in lieu of
844 contributions shall be an amount which bears the same ratio to the
845 total benefits paid to the individual as the total base-period
846 wages paid to the individual by such employer bear to the total
847 base-period wages paid to the individual by all of his base-period
848 employers.

849 (ii) If benefits paid to an individual are based
850 on wages paid by two (2) or more employers that are liable for
851 payments in lieu of contributions, the amount of benefits payable



852 by each such employer shall be an amount which bears the same
853 ratio to the total benefits paid to the individual as the total
854 base-period wages paid to the individual by such employer bear to
855 the total base-period wages paid to the individual by all of his
856 base-period employers.

857 (d) In the discretion of the commission, any nonprofit
858 organization that elects to become liable for payments in lieu of
859 contributions shall be required, within thirty (30) days after the
860 effective date of its election, to execute and file with the
861 commission a surety bond approved by the commission, or it may
862 elect instead to deposit with the commission money or securities.
863 The amount of such bond or deposit shall be determined in
864 accordance with the provisions of this subsection.

865 (i) The amount of the bond or deposit required by
866 subsection (d) shall be equal to two and seven-tenths percent
867 (2.7%) of the organization's taxable wages paid for employment as
868 defined in Section 71-5-11, subsection I(4), for the four (4)
869 calendar quarters immediately preceding the effective date of the
870 election, the renewal date in the case of a bond, or the biennial
871 anniversary of the effective date of election in the case of a
872 deposit of money or securities, whichever date shall be most
873 recent and applicable. If the nonprofit organization did not pay
874 wages in each of such four (4) calendar quarters, the amount of
875 the bond or deposit shall be as determined by the commission.

876 (ii) Any bond deposited under subsection (d) shall
877 be in force for a period of not less than two (2) tax years and
878 shall be renewed with the approval of the commission at such times
879 as the commission may prescribe, but not less frequently than at
880 intervals of two (2) years as long as the organization continues
881 to be liable for payments in lieu of contributions. The
882 commission shall require adjustments to be made in a previously
883 filed bond as it deems appropriate. If the bond is to be
884 increased, the adjusted bond shall be filed by the organization



885 within thirty (30) days of the date notice of the required
886 adjustment was mailed or otherwise delivered to it. Failure by
887 any organization covered by such bond to pay the full amount of
888 payments in lieu of contributions when due, together with any
889 applicable interest and penalties provided in subsection (b) (v) of
890 this section, shall render the surety liable on said bond to the
891 extent of the bond, as though the surety was such organization.

892 (iii) Any deposit of money or securities in
893 accordance with subsection (d) shall be retained by the commission
894 in an escrow account until liability under the election is
895 terminated, at which time it shall be returned to the
896 organization, less any deductions as hereinafter provided. The
897 commission may deduct from the money deposited under subsection
898 (d) by a nonprofit organization, or sell the securities it has so
899 deposited, to the extent necessary to satisfy any due and unpaid
900 payments in lieu of contributions and any applicable interest and
901 penalties provided for in subsection (b) (v) of this section. The
902 commission shall require the organization, within thirty (30) days
903 following any deduction from a money deposit or sale of deposited
904 securities under the provisions hereof, to deposit sufficient
905 additional money or securities to make whole the organization's
906 deposit at the prior level. Any cash remaining from the sale of
907 such securities shall be a part of the organization's escrow
908 account. The commission may, at any time, review the adequacy of
909 the deposit made by any organization. If, as a result of such
910 review, it determines that an adjustment is necessary, it shall
911 require the organization to make additional deposit within thirty
912 (30) days of written notice of its determination or shall return
913 to it such portion of the deposit as it no longer considers
914 necessary, whichever action is appropriate. Disposition of income
915 from securities held in escrow shall be governed by the applicable
916 provisions of the state law.



917 (iv) If any nonprofit organization fails to file a
918 bond or make a deposit, or to file a bond in an increased amount,
919 or to increase or make whole the amount of a previously made
920 deposit as provided under this paragraph, the commission may
921 terminate such organization's election to make payments in lieu of
922 contributions, and such termination shall continue for not less
923 than the four (4) consecutive calendar-quarter periods beginning
924 with the quarter in which such termination becomes effective;
925 provided, that the commission may extend for good cause the
926 applicable filing, deposit or adjustment period by not more than
927 thirty (30) days.

928 (v) Group account shall be established according
929 to regulations prescribed by the commission.

930 (e) Any employer which elects to make payments in lieu
931 of contributions into the Unemployment Compensation Fund as
932 provided in this paragraph shall not be liable to make such
933 payments with respect to the benefits paid to any individual whose
934 base-period wages include wages for previously uncovered services
935 as defined in Section 71-5-511(e) to the extent that the
936 Unemployment Compensation Fund is reimbursed for such benefits
937 pursuant to Section 121 of Public Law 94-566.

938 **SECTION 3.** The following section shall be codified as
939 Section 71-5-387, Mississippi Code of 1972:

940 71-5-387. (1) Indian tribe(s) as defined in Section
941 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes
942 any subdivision, subsidiary or business enterprise wholly owned by
943 such Indian tribe(s), subject to this chapter shall pay
944 contributions under the same terms and conditions as all other
945 subject employers, unless such Indian tribe elects to pay into the
946 State Unemployment Fund amounts equal to the amount of benefits
947 attributable to service in the employ of the Indian tribe.

948 (2) Tribal unit(s) means any subdivision, subsidiary or
949 business enterprise wholly owned by any Indian tribe as defined in



950 Section 3306(u) of the Federal Unemployment Tax Act (FUTA) or any
951 combination of any such subdivisions, subsidiaries or business
952 enterprises wholly owned by such Indian tribe as defined in
953 Section 3306(u) of the Federal Unemployment Tax Act (FUTA).

954 (3) Indian tribes electing to make payments in lieu of
955 contributions must make such election in the same manner and under
956 the same conditions as provided in Section 71-5-357 pertaining to
957 nonprofit organizations subject to this chapter, except the tribe
958 may determine if reimbursement for benefits paid will be elected
959 by the tribe as a whole, by individual tribal units or by
960 combinations of individual tribal units. Any tribal unit not
961 making such election, shall pay contributions as described in
962 Sections 71-5-351 through 71-5-355.

963 (4) Payments in lieu of contributions shall be made in
964 accordance with the provisions of Section 71-5-357.

965 (5) Failure of the Indian tribe or tribal unit to post any
966 bond as required by this chapter or to make payments in lieu of
967 contributions if so elected by the tribe or tribal unit, as
968 provided in subsection (3) of this section, including assessments
969 of interest and penalty, within ninety (90) days of mailing or
970 transmittal of the first delinquency notice to the last known
971 address, shall cause the Indian tribe to lose the option to make
972 payments in lieu of contributions, as described in Section
973 71-5-357, for the following tax year, unless payment in full is
974 received before January 1 of the next tax year.

975 (6) Any Indian tribe that loses the option to make payments
976 in lieu of contributions, as provided in subsection (5) of this
977 section, may have such options reinstated if, after a period of
978 one (1) year, all contributions have been made timely and no
979 contributions, payments in lieu of contributions for benefits
980 paid, penalties or interest remain unpaid.

981 (7) Failure of the Indian tribe or any tribal unit thereof
982 to make required payments, reimbursements or contributions



983 whichever may apply, including assessments of interest and
984 penalty, after all collection activities deemed necessary by the
985 commission have been exhausted, may cause services performed for
986 such tribe to not be treated as "employment" for purposes of
987 Section 71-5-11.

988 (8) If any Indian tribe fails to post any bond as required
989 by this chapter or make payments required under this chapter,
990 including contributions, reimbursements or assessments of interest
991 and penalty, within ninety (90) days of the mailing or transmittal
992 of a final notice, the commission shall immediately notify the
993 United States Internal Revenue Service and the United States
994 Department of Labor.

995 (9) The commission may determine that any Indian tribe that
996 loses coverage under subsection (7) of this section, may again
997 have services performed for such tribe included as "employment"
998 for purposes of Section 71-5-11 if all contributions, payments in
999 lieu of contributions, penalties and interest have been paid.

1000 (10) Notices of payment and reporting delinquency to any
1001 Indian tribe or tribal unit shall include information that failure
1002 to make full payment within the prescribed time frame:

1003 (a) Shall cause the Indian tribe to be liable for taxes
1004 under the Federal Unemployment Tax Act (FUTA);

1005 (b) Shall cause the Indian tribe to lose the option to
1006 make payments in lieu of contributions;

1007 (c) May cause the Indian tribe to be excepted from the
1008 definition of "employer," as provided in Section 71-5-11, and
1009 services in the employ of the Indian tribe, as provided in Section
1010 71-5-11, to be excepted from "employment."

1011 (11) Benefits based on service performed in employment with
1012 an Indian tribe as defined in Section 3306(u) of the Federal
1013 Unemployment Tax Act (FUTA), which includes any subdivision,
1014 subsidiary or business enterprise wholly owned by such Indian
1015 tribe, shall be payable in the same amount, on the same terms and



1016 subject to the same conditions, as benefits payable on the basis
1017 of other service subject to this chapter.

1018 (12) Extended benefits paid that are attributable to service
1019 in the employ of an Indian tribe, and not reimbursed by the
1020 federal government, shall be financed in their entirety by such
1021 Indian tribe.

1022 (13) Any non-FUTA exclusions, that are by reference included
1023 in this section, shall not apply to Indian tribes if federal law
1024 requires coverage of such services.

1025 **SECTION 4.** Section 71-5-501, Mississippi Code of 1972, is
1026 amended as follows:

1027 71-5-501. * * * Wages earned for services defined in Section
1028 71-5-11(I)(15)(g), irrespective of when performed, shall not be
1029 included for purposes of determining eligibility under Section
1030 71-5-511(e) or weekly benefit amount under Section 71-5-503 * * *
1031 nor shall any benefits with respect to unemployment * * * be
1032 payable under Section 71-5-505 on the basis of such wages. All
1033 benefits shall be paid through employment offices or such other
1034 agency or agencies as the commission may, by regulation,
1035 designate, in accordance with such regulations as the commission
1036 may prescribe. The commission may, by regulation, prescribe that
1037 benefits due and payable to claimants who die prior to the receipt
1038 or cashing of benefits checks may be paid to the legal
1039 representative, dependents, or next of kin, of the deceased as may
1040 be found by it to be equitably entitled thereto, and every such
1041 payment shall be deemed a valid payment to the same extent as if
1042 made to the legal representative of the decedent.

1043 **SECTION 5.** Section 71-5-511, Mississippi Code of 1972, is
1044 amended as follows:

1045 **[Until July 1, 2005, this section shall read as follows:]**

1046 71-5-511. An unemployed individual shall be eligible to
1047 receive benefits with respect to any week only if the commission
1048 finds that:



1049 (a) (i) He has registered for work at and thereafter
1050 has continued to report to an employment office in accordance with
1051 such regulations as the commission may prescribe; except that the
1052 commission may, by regulation, waive or alter either or both of
1053 the requirements of this subparagraph as to such types of cases or
1054 situations with respect to which it finds that compliance with
1055 such requirements would be oppressive or would be inconsistent
1056 with the purposes of this chapter; and

1057 (ii) He participates in reemployment services,
1058 such as job search assistance services, if, in accordance with a
1059 profiling system established by the commission, it has been
1060 determined that he is likely to exhaust regular benefits and needs
1061 reemployment services, unless the commission determines that:

1062 1. The individual has completed such
1063 services; or

1064 2. There is justifiable cause for the
1065 claimant's failure to participate in such services.

1066 (b) He has made a claim for benefits in accordance with
1067 the provisions of Section 71-5-515 and in accordance with such
1068 regulations as the commission may prescribe thereunder.

1069 (c) He is able to work and is available for work.

1070 * * *

1071 (d) For weeks beginning on or before July 1, 1982, he
1072 has, during his base period, been paid wages for insured work
1073 equal to not less than thirty-six (36) times his weekly benefit
1074 amount; he has been paid wages for insured work during at least
1075 two (2) quarters of his base period; and he has, during that
1076 quarter of his base period in which his total wages were highest,
1077 been paid wages for insured work equal to not less than sixteen
1078 (16) times the minimum weekly benefit amount. For benefit years
1079 beginning after July 1, 1982, he has, during his base period, been
1080 paid wages for insured work equal to not less than forty (40)
1081 times his weekly benefit amount; he has been paid wages for



1082 insured work during at least two (2) quarters of his base period,
1083 and he has, during that quarter of his base period in which his
1084 total wages were highest, been paid wages for insured work equal
1085 to not less than twenty-six (26) times the minimum weekly benefit
1086 amount. For purposes of this subsection, wages shall be counted
1087 as "wages for insured work" for benefit purposes with respect to
1088 any benefit year only if such benefit year begins subsequent to
1089 the date on which the employing unit by which such wages were paid
1090 has satisfied the conditions of Section 71-5-11, subsection H, or
1091 Section 71-5-361, subsection (3), with respect to becoming an
1092 employer.

1093 (e) No individual may receive benefits in a benefit
1094 year unless, subsequent to the beginning of the next preceding
1095 benefit year during which he received benefits, he performed
1096 service in "employment" as defined in Section 71-5-11, subsection
1097 I, and earned remuneration for such service in an amount equal to
1098 not less than eight (8) times his weekly benefit amount applicable
1099 to his said next preceding benefit year.

1100 (f) Benefits based on service in employment defined in
1101 Section 71-5-11, subsections I(3) and I(4), and Section 71-5-361,
1102 subsection (4) shall be payable in the same amount, on the same
1103 terms, and subject to the same conditions as compensation payable
1104 on the basis of other service subject to this chapter, except that
1105 benefits based on service in an instructional, research or
1106 principal administrative capacity in an institution of higher
1107 learning (as defined in Section 71-5-11, subsection M) with
1108 respect to service performed prior to January 1, 1978, shall not
1109 be paid to an individual for any week of unemployment which begins
1110 during the period between two (2) successive academic years, or
1111 during a similar period between two (2) regular terms, whether or
1112 not successive, or during a period of paid sabbatical leave
1113 provided for in the individual's contract, if the individual has a
1114 contract or contracts to perform services in any such capacity for



1115 any institution or institutions of higher learning for both such
1116 academic years or both such terms.

1117 (g) Benefits based on service in employment defined in
1118 Section 71-5-11, subsections I(3) and (4), shall be payable in the
1119 same amount, on the same terms and subject to the same conditions
1120 as compensation payable on the basis of other service subject to
1121 this chapter; except that:

1122 (i) With respect to service performed in an
1123 instructional, research or principal administrative capacity for
1124 an educational institution, benefits shall not be paid based on
1125 such services for any week of unemployment commencing during the
1126 period between two (2) successive academic years, or during a
1127 similar period between two (2) regular but not successive terms,
1128 or during a period of paid sabbatical leave provided for in the
1129 individual's contract, to any individual, if such individual
1130 performs such services in the first of such academic years or
1131 terms and if there is a contract or a reasonable assurance that
1132 such individual will perform services in any such capacity for any
1133 educational institution in the second of such academic years or
1134 terms, and provided that Section 71-5-511, subsection (g), shall
1135 apply with respect to such services prior to January 1, 1978. In
1136 no event shall benefits be paid unless the individual employee was
1137 terminated by the employer.

1138 (ii) With respect to services performed in any
1139 other capacity for an educational institution, benefits shall not
1140 be paid on the basis of such services to any individual for any
1141 week which commences during a period between two (2) successive
1142 academic years or terms, if such individual performs such services
1143 in the first of such academic years or terms and there is a
1144 reasonable assurance that such individual will perform such
1145 services in the second of such academic years or terms, except
1146 that if compensation is denied to any individual under this
1147 subparagraph and such individual was not offered an opportunity to



1148 perform such services for the educational institution for the
1149 second of such academic years or terms, such individual shall be
1150 entitled to a retroactive payment of compensation for each week
1151 for which the individual filed a timely claim for compensation and
1152 for which compensation was denied solely by reason of this clause.
1153 In no event shall benefits be paid unless the individual employee
1154 was terminated by the employer.

1155 (iii) With respect to services described in
1156 subsections (g)(i) and (ii), benefits shall not be payable on the
1157 basis of services in any such capacities to any individual for any
1158 week which commences during an established and customary vacation
1159 period or holiday recess if such individual performs such services
1160 in the first of such academic years or terms, or in the period
1161 immediately before such vacation period or holiday recess, and
1162 there is a reasonable assurance that such individual will perform
1163 such services in the period immediately following such vacation
1164 period or holiday recess.

1165 (iv) With respect to any services described in
1166 subsections (g)(i) and (ii), benefits shall not be payable on the
1167 basis of services in any such capacities as specified in
1168 subsections (g)(i), (ii) and (iii) to any individual who performed
1169 such services in an educational institution while in the employ of
1170 an educational service agency. For purposes of this subsection,
1171 the term "educational service agency" means a governmental agency
1172 or governmental entity which is established and operated
1173 exclusively for the purpose of providing such services to one or
1174 more educational institutions.

1175 (v) With respect to services to which Sections
1176 71-5-357 and 71-5-359 apply, if such services are provided to or
1177 on behalf of an educational institution, benefits shall not be
1178 payable under the same circumstances and subject to the same terms
1179 and conditions as described in subsections (g)(i), (ii), (iii) and
1180 (iv).



1181 (h) Subsequent to December 31, 1977, benefits shall not
1182 be paid to any individual on the basis of any services
1183 substantially all of which consist of participating in sports or
1184 athletic events or training or preparing to so participate, for
1185 any week which commences during the period between two (2)
1186 successive sports seasons (or similar periods) if such individual
1187 performs such services in the first of such seasons (or similar
1188 periods) and there is a reasonable assurance that such individual
1189 will perform such services in the later of such seasons (or
1190 similar periods).

1191 (i) (i) Subsequent to December 31, 1977, benefits
1192 shall not be payable on the basis of services performed by an
1193 alien, unless such alien is an individual who was lawfully
1194 admitted for permanent residence at the time such services were
1195 performed, was lawfully present for purposes of performing such
1196 services, or was permanently residing in the United States under
1197 color of law at the time such services were performed (including
1198 an alien who was lawfully present in the United States as a result
1199 of the application of the provisions of Section 203(a)(7) or
1200 Section 212(d)(5) of the Immigration and Nationality Act).

1201 (ii) Any data or information required of
1202 individuals applying for benefits to determine whether benefits
1203 are not payable to them because of their alien status shall be
1204 uniformly required from all applicants for benefits.

1205 (iii) In the case of an individual whose
1206 application for benefits would otherwise be approved, no
1207 determination that benefits to such individual are not payable
1208 because of his alien status shall be made, except upon a
1209 preponderance of the evidence.

1210 (j) An individual shall be deemed prima facie
1211 unavailable for work, and therefore ineligible to receive
1212 benefits, during any period which, with respect to his employment



1213 status, is found by the commission to be a holiday or vacation
1214 period.

1215 **[From and after July 1, 2005, this section shall read as**
1216 **follows:]**

1217 71-5-511. An unemployed individual shall be eligible to
1218 receive benefits with respect to any week only if the commission
1219 finds that:

1220 (a) (i) He has registered for work at and thereafter
1221 has continued to report to an employment office in accordance with
1222 such regulations as the commission may prescribe; except that the
1223 commission may, by regulation, waive or alter either or both of
1224 the requirements of this subparagraph as to such types of cases or
1225 situations with respect to which it finds that compliance with
1226 such requirements would be oppressive or would be inconsistent
1227 with the purposes of this chapter; and

1228 (ii) He participates in reemployment services,
1229 such as job search assistance services, if, in accordance with a
1230 profiling system established by the commission, it has been
1231 determined that he is likely to exhaust regular benefits and needs
1232 reemployment services, unless the commission determines that:

1233 1. The individual has completed such
1234 services; or

1235 2. There is justifiable cause for the
1236 claimant's failure to participate in such services.

1237 (b) He has made a claim for benefits in accordance with
1238 the provisions of Section 71-5-515 and in accordance with such
1239 regulations as the commission may prescribe thereunder.

1240 (c) He is able to work and is available for work.

1241 (d) He has been unemployed for a waiting period of one
1242 (1) week. No week shall be counted as a week of unemployment for
1243 the purposes of this subsection:



1244 (i) Unless it occurs within the benefit year which
1245 includes the week with respect to which he claims payment of
1246 benefits;

1247 (ii) If benefits have been paid with respect
1248 thereto;

1249 (iii) Unless the individual was eligible for
1250 benefits with respect thereto, as provided in Sections 71-5-511
1251 and 71-5-513, except for the requirements of this subsection.

1252 (e) For weeks beginning on or before July 1, 1982, he
1253 has, during his base period, been paid wages for insured work
1254 equal to not less than thirty-six (36) times his weekly benefit
1255 amount; he has been paid wages for insured work during at least
1256 two (2) quarters of his base period; and he has, during that
1257 quarter of his base period in which his total wages were highest,
1258 been paid wages for insured work equal to not less than sixteen
1259 (16) times the minimum weekly benefit amount. For benefit years
1260 beginning after July 1, 1982, he has, during his base period, been
1261 paid wages for insured work equal to not less than forty (40)
1262 times his weekly benefit amount; he has been paid wages for
1263 insured work during at least two (2) quarters of his base period,
1264 and he has, during that quarter of his base period in which his
1265 total wages were highest, been paid wages for insured work equal
1266 to not less than twenty-six (26) times the minimum weekly benefit
1267 amount. For purposes of this subsection, wages shall be counted
1268 as "wages for insured work" for benefit purposes with respect to
1269 any benefit year only if such benefit year begins subsequent to
1270 the date on which the employing unit by which such wages were paid
1271 has satisfied the conditions of Section 71-5-11, subsection H, or
1272 Section 71-5-361, subsection (3), with respect to becoming an
1273 employer.

1274 (f) No individual may receive benefits in a benefit
1275 year unless, subsequent to the beginning of the next preceding
1276 benefit year during which he received benefits, he performed



1277 service in "employment" as defined in Section 71-5-11, subsection
1278 I, and earned remuneration for such service in an amount equal to
1279 not less than eight (8) times his weekly benefit amount applicable
1280 to his said next preceding benefit year.

1281 (g) Benefits based on service in employment defined in
1282 Section 71-5-11, subsections I(3) and I(4), and Section 71-5-361,
1283 subsection (4) shall be payable in the same amount, on the same
1284 terms, and subject to the same conditions as compensation payable
1285 on the basis of other service subject to this chapter, except that
1286 benefits based on service in an instructional, research or
1287 principal administrative capacity in an institution of higher
1288 learning (as defined in Section 71-5-11, subsection M) with
1289 respect to service performed prior to January 1, 1978, shall not
1290 be paid to an individual for any week of unemployment which begins
1291 during the period between two (2) successive academic years, or
1292 during a similar period between two (2) regular terms, whether or
1293 not successive, or during a period of paid sabbatical leave
1294 provided for in the individual's contract, if the individual has a
1295 contract or contracts to perform services in any such capacity for
1296 any institution or institutions of higher learning for both such
1297 academic years or both such terms.

1298 (h) Benefits based on service in employment defined in
1299 Section 71-5-11, subsections I(3) and (4), shall be payable in the
1300 same amount, on the same terms and subject to the same conditions
1301 as compensation payable on the basis of other service subject to
1302 this chapter; except that:

1303 (i) With respect to service performed in an
1304 instructional, research or principal administrative capacity for
1305 an educational institution, benefits shall not be paid based on
1306 such services for any week of unemployment commencing during the
1307 period between two (2) successive academic years, or during a
1308 similar period between two (2) regular but not successive terms,
1309 or during a period of paid sabbatical leave provided for in the



1310 individual's contract, to any individual, if such individual
1311 performs such services in the first of such academic years or
1312 terms and if there is a contract or a reasonable assurance that
1313 such individual will perform services in any such capacity for any
1314 educational institution in the second of such academic years or
1315 terms, and provided that Section 71-5-511, subsection (g), shall
1316 apply with respect to such services prior to January 1, 1978. In
1317 no event shall benefits be paid unless the individual employee was
1318 terminated by the employer.

1319 (ii) With respect to services performed in any
1320 other capacity for an educational institution, benefits shall not
1321 be paid on the basis of such services to any individual for any
1322 week which commences during a period between two (2) successive
1323 academic years or terms, if such individual performs such services
1324 in the first of such academic years or terms and there is a
1325 reasonable assurance that such individual will perform such
1326 services in the second of such academic years or terms, except
1327 that if compensation is denied to any individual under this
1328 subparagraph and such individual was not offered an opportunity to
1329 perform such services for the educational institution for the
1330 second of such academic years or terms, such individual shall be
1331 entitled to a retroactive payment of compensation for each week
1332 for which the individual filed a timely claim for compensation and
1333 for which compensation was denied solely by reason of this clause.
1334 In no event shall benefits be paid unless the individual employee
1335 was terminated by the employer.

1336 (iii) With respect to services described in
1337 subsections (h)(i) and (ii), benefits shall not be payable on the
1338 basis of services in any such capacities to any individual for any
1339 week which commences during an established and customary vacation
1340 period or holiday recess if such individual performs such services
1341 in the first of such academic years or terms, or in the period
1342 immediately before such vacation period or holiday recess, and



1343 there is a reasonable assurance that such individual will perform
1344 such services in the period immediately following such vacation
1345 period or holiday recess.

1346 (iv) With respect to any services described in
1347 subsections (h)(i) and (ii), benefits shall not be payable on the
1348 basis of services in any such capacities as specified in
1349 subsections (h)(i), (ii) and (iii) to any individual who performed
1350 such services in an educational institution while in the employ of
1351 an educational service agency. For purposes of this subsection,
1352 the term "educational service agency" means a governmental agency
1353 or governmental entity which is established and operated
1354 exclusively for the purpose of providing such services to one or
1355 more educational institutions.

1356 (v) With respect to services to which Sections
1357 71-5-357 and 71-5-359 apply, if such services are provided to or
1358 on behalf of an educational institution, benefits shall not be
1359 payable under the same circumstances and subject to the same terms
1360 and conditions as described in subsections (h)(i), (ii), (iii) and
1361 (iv).

1362 (i) Subsequent to December 31, 1977, benefits shall not
1363 be paid to any individual on the basis of any services
1364 substantially all of which consist of participating in sports or
1365 athletic events or training or preparing to so participate, for
1366 any week which commences during the period between two (2)
1367 successive sports seasons (or similar periods) if such individual
1368 performs such services in the first of such seasons (or similar
1369 periods) and there is a reasonable assurance that such individual
1370 will perform such services in the later of such seasons (or
1371 similar periods).

1372 (j) (i) Subsequent to December 31, 1977, benefits
1373 shall not be payable on the basis of services performed by an
1374 alien, unless such alien is an individual who was lawfully
1375 admitted for permanent residence at the time such services were



1376 performed, was lawfully present for purposes of performing such
1377 services, or was permanently residing in the United States under
1378 color of law at the time such services were performed (including
1379 an alien who was lawfully present in the United States as a result
1380 of the application of the provisions of Section 203(a)(7) or
1381 Section 212(d)(5) of the Immigration and Nationality Act).

1382 (ii) Any data or information required of
1383 individuals applying for benefits to determine whether benefits
1384 are not payable to them because of their alien status shall be
1385 uniformly required from all applicants for benefits.

1386 (iii) In the case of an individual whose
1387 application for benefits would otherwise be approved, no
1388 determination that benefits to such individual are not payable
1389 because of his alien status shall be made, except upon a
1390 preponderance of the evidence.

1391 (k) An individual shall be deemed prima facie
1392 unavailable for work, and therefore ineligible to receive
1393 benefits, during any period which, with respect to his employment
1394 status, is found by the commission to be a holiday or vacation
1395 period.

1396 **SECTION 6.** This act shall take effect and be in force from
1397 and after July 1, 2002.

