MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002

By: Representative Moss
To: Labor

HOUSE BILL NO. 1579
(As Sent to Governor)

AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF "EMPLOYING UNIT" UNDER THE MISSISSIPPI EMPLOYMENT SECURITY LAW TO INCLUDE CERTAIN INDIAN TRIBES; TO AMEND SECTION 71-5-357, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE BY WHICH PAYMENTS REQUIRED OF CERTAIN NONPROFIT ORGANIZATIONS SHALL BE PAID TO THE UNEMPLOYMENT COMPENSATION FUND; TO CREATE NEW CODE SECTION 71-5-387, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN INDIAN TRIBES SHALL BE CONSIDERED EMPLOYERS AND SHALL PAY CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND IN THE SAME MANNER AS ALL OTHER EMPLOYERS UNLESS THE TRIBES ELECT TO MAKE PAYMENTS IN LIEU OF CONTRIBUTIONS; TO PROVIDE PENALTIES FOR FAILURE OF THE TRIBE TO MAKE THE REQUIRED PAYMENTS OR CONTRIBUTIONS WITHIN THE PRESCRIBED TIME FRAME; TO AMEND SECTION 71-5-501, MISSISSIPPI CODE OF 1972, TO REMOVE THE TWENTY-FOUR MONTH WAITING PERIOD BEFORE UNEMPLOYMENT BENEFITS SHALL BECOME PAYABLE FROM THE FUND; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

G. "Employing unit" means this state or another state or any
instrumentalities or any political subdivisions thereof or any of
their instrumentalities or any instrumentality of more than one
(1) of the foregoing or any instrumentality of any of the
foregoing and one or more other states or political subdivisions,
any Indian tribe as defined in Section 3306(u) of the Federal
Unemployment Tax Act (FUTA), which includes any subdivision,
subsidiary or business enterprise wholly owned by such Indian
tribe, any individual or type of organization, including any
partnership, association, trust, estate, joint-stock company,
insurance company, or corporation, whether domestic or foreign, or
the receiver, trustee in bankruptcy, trustee or successor thereof,
or the legal representative of a deceased person, which has or had
in its employ one or more individuals performing services for it
within this state. All individuals performing services within
this state for any employing unit which maintains two (2) or more
separate establishments within this state shall be deemed to be
employed by a single employing unit for all the purposes of this
chapter. Each individual employed to perform or to assist in
performing the work of any agent or employee of an employing unit
shall be deemed to be employed by such employing unit for all
purposes of this chapter, whether such individual was hired or
paid directly by such employing unit or by such agent or employee,
provided the employing unit had actual or constructive knowledge
of the work. All individuals performing services in the employ of
an elected fee-paid county official, other than those related by
blood or marriage within the third degree computed by the rule of
the civil law to such fee-paid county official, shall be deemed to
be employed by such county as the employing unit for all the
purposes of this chapter. For purposes of defining an "employing
unit" which shall pay contributions on remuneration paid to
individuals, if two (2) or more related corporations concurrently
employ the same individual and compensate such individual through
a common paymaster which is one (1) of such corporations, then
each such corporation shall be considered to have paid as
remuneration to such individual only the amounts actually
disbursed by it to such individual and shall not be considered to
have paid as remuneration to such individual such amounts actually
disbursed to such individual by another of such corporations.

H. "Employer" means:

(1) Any employing unit which,

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

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

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

(4) (a) Any employing unit for which agricultural labor, as defined in subsection I(6) of this section, is performed;
(b) Any employing unit for which domestic service in employment, as defined in subsection I(7) of this section, is performed;

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

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

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

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

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

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

I. "Employment" means and includes:

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

(2) Services performed for remuneration for a principal:

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

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

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

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

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

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

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

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

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

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

(a) In the employ of:

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

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

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

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

(i) As an elected official;

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

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

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

(v) In a position which, under or pursuant to the laws of this state or laws of an Indian tribe, is designated as:
1. A major nontenured policy-making or advisory position, or
2. A policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Furnishes individuals to perform service
in agricultural labor for any other person;
(ii) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) None of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected
coverage in this state or, the employer having failed to elect
coverage in any state, the individual has filed a claim for
benefits, based on such service, under the law of this state; or
(d) An "American employer," for purposes of this
paragraph, means a person who is:
   (i) An individual who is a resident of the United States; or
   (ii) A partnership if two-thirds (2/3) or
more of the partners are residents of the United States; or
   (iii) A trust, if all of the trustees are
residents of the United States; or
   (iv) A corporation organized under the laws
of the United States or of any state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother.
(e) Service performed in the employ of the United States government or of an instrumentality wholly owned by the United States; except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, then to the extent permitted by Congress and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed by employees for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers and employing units. If this state should not be certified under the Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any year, then the payment required by such instrumentality with respect to such year shall be deemed to have been erroneously collected and shall be refunded by the commission from the fund in accordance with the provisions of Section 71-5-383.

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

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

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

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

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

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

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

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

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

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

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

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

(n) If the services performed during one-half (1/2) or more of any pay period by an employee for the employing unit employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half (1/2) of any such pay period by an employee for the employing unit employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him.
(o) Service performed by an individual who is a CETA/PSE (Comprehensive Employment Training Act/Public Service Employment) participant unless coverage of such service is required by federal law or regulation.

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

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

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

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

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

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

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

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

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

(4) is a public or other nonprofit institution;

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

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

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

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

O. "Unemployment."

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

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

P. (1) "Wages" means all remuneration for personal
services, including commissions and bonuses and the cash value of
all remuneration in any medium other than cash, except that
"wages," for purposes of determining employer's coverage and
payment of contributions for agricultural and domestic service
means cash remuneration only. The reasonable cash value of
remuneration in any medium other than cash shall be estimated and
determined in accordance with rules prescribed by the commission;
provided, that the term "wages" shall not include:

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

(i) Retirement, or

(ii) Sickness or accident disability, or

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

(iv) Death, provided the employee:

(A) Has not the option to receive,

payment or, if such death benefit is insured, any part of the
 premiums (or contributions to premiums) paid by his employer, and

(B) Has not the right, under the
provisions of the plan or system or policy of insurance providing
for such death benefit, to assign such benefit or to receive a
cash consideration in lieu of such benefit, either upon his
withdrawal from the plan or system providing for such benefit or
upon termination of such plan or system or policy of insurance or
of his employment with such employer;
(b) Dismissal payments which the employer is not legally required to make;

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

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

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

(ii) Covers only employees;

(iii) Covers only noncash benefits;

(iv) Does not include deferred compensation plans.

(2) [Not enacted].

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

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

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

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

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

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

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

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

(a) Any nonprofit organization which, pursuant to
Section 71-5-11, subsection H(3), is or becomes subject to this
chapter shall pay contributions under the provisions of Sections
71-5-351 through 71-5-355 unless it elects, in accordance with
this paragraph, to pay to the commission for the unemployment fund
an amount equal to the amount of regular benefits and one-half
(1/2) of the extended benefits paid, that is attributable to
service in the employ of such nonprofit organization, to
individuals for weeks of unemployment which begin during the
effective period of such election.
(i) Any nonprofit organization which becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than twelve (12) months, beginning with the date on which such subjectivity begins, by filing a written notice of its election with the commission not later than thirty (30) days immediately following the date of the determination of such subjectivity.

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

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

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

(v) The commission, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer, of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of Sections 71-5-351 through 71-5-355.
(b) Payments in lieu of contributions shall be made in accordance with the provisions of paragraph (i) of this subsection.

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

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

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

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

(iii) Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or
deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(iv) Payments due by employers who elect to reimburse the fund in lieu of contributions as provided in this subsection may not be noncharged under any condition. The reimbursement must be on a dollar-for-dollar basis (One Dollar ($1.00) reimbursement for each dollar paid in benefits) in every case, so that the trust fund shall be reimbursed in full, such reimbursement to include, but not be limited to, benefits or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility which is subsequently reversed, or paid as a result of claimant fraud. Provided that political subdivisions who are reimbursing employers may elect to pay to the fund an amount equal to five-tenths percent (0.5%) of the taxable wages paid during the calendar year with respect to employment, and those employers who so elect shall be relieved of liability for reimbursement of benefits paid under the same conditions that benefits are not charged to the experience rating record of a contributing employer as provided in Section 71-5-355(2)(b)(ii) other than Clause 5 thereof. Benefits paid in such circumstances for which reimbursing employers are relieved of liability for reimbursement shall not be considered attributable to service in the employment of such reimbursing employer.

(v) The amount due specified in any bill from the commission shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the commission, setting forth the grounds for such application or appeal. The commission shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization.
unless, not later than fifteen (15) days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

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

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

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

(ii) If benefits paid to an individual are based on wages paid by two (2) or more employers that are liable for payments in lieu of contributions, the amount of benefits payable
by each such employer shall be an amount which bears the same
ratio to the total benefits paid to the individual as the total
base-period wages paid to the individual by such employer bear to
the total base-period wages paid to the individual by all of his
base-period employers.

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

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

(ii) Any bond deposited under subsection (d) shall
be in force for a period of not less than two (2) tax years and
shall be renewed with the approval of the commission at such times
as the commission may prescribe, but not less frequently than at
intervals of two (2) years as long as the organization continues
to be liable for payments in lieu of contributions. The
commission shall require adjustments to be made in a previously
filed bond as it deems appropriate. If the bond is to be
increased, the adjusted bond shall be filed by the organization
within thirty (30) days of the date notice of the required
adjustment was mailed or otherwise delivered to it. Failure by
any organization covered by such bond to pay the full amount of
payments in lieu of contributions when due, together with any
applicable interest and penalties provided in subsection (b)(v) of
this section, shall render the surety liable on said bond to the
extent of the bond, as though the surety was such organization.

(iii) Any deposit of money or securities in
accordance with subsection (d) shall be retained by the commission
in an escrow account until liability under the election is
terminated, at which time it shall be returned to the
organization, less any deductions as hereinafter provided. The
commission may deduct from the money deposited under subsection
(d) by a nonprofit organization, or sell the securities it has so
deposited, to the extent necessary to satisfy any due and unpaid
payments in lieu of contributions and any applicable interest and
penalties provided for in subsection (b)(v) of this section. The
commission shall require the organization, within thirty (30) days
following any deduction from a money deposit or sale of deposited
securities under the provisions hereof, to deposit sufficient
additional money or securities to make whole the organization's
deposit at the prior level. Any cash remaining from the sale of
such securities shall be a part of the organization's escrow
account. The commission may, at any time, review the adequacy of
the deposit made by any organization. If, as a result of such
review, it determines that an adjustment is necessary, it shall
require the organization to make additional deposit within thirty
(30) days of written notice of its determination or shall return
to it such portion of the deposit as it no longer considers
necessary, whichever action is appropriate. Disposition of income
from securities held in escrow shall be governed by the applicable
provisions of the state law.
(iv) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount, or to increase or make whole the amount of a previously made deposit as provided under this paragraph, the commission may terminate such organization's election to make payments in lieu of contributions, and such termination shall continue for not less than the four (4) consecutive calendar-quarter periods beginning with the quarter in which such termination becomes effective; provided, that the commission may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty (30) days.

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

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

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

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

(2) Tribal unit(s) means any subdivision, subsidiary or business enterprise wholly owned by any Indian tribe as defined in
Section 3306(u) of the Federal Unemployment Tax Act (FUTA) or any combination of any such subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA).

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

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

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

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

(7) Failure of the Indian tribe or any tribal unit thereof to make required payments, reimbursements or contributions
whichever may apply, including assessments of interest and penalty, after all collection activities deemed necessary by the commission have been exhausted, may cause services performed for such tribe to not be treated as "employment" for purposes of Section 71-5-11.

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

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

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

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

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

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

(11) Benefits based on service performed in employment with an Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, shall be payable in the same amount, on the same terms and
subject to the same conditions, as benefits payable on the basis
of other service subject to this chapter.

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

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

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

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

SECTION 5. This act shall take effect and be in force from
and after July 1, 2002.