

By: Senator(s) Posey

To: Insurance

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2802

1 AN ACT TO AMEND SECTION 71-5-513, MISSISSIPPI CODE OF 1972,  
2 TO PROHIBIT AN OTHERWISE ELIGIBLE INDIVIDUAL WHO HAS BEEN  
3 DISCHARGED FOR MISCONDUCT CONNECTED WITH HIS WORK FROM RECEIVING  
4 UNEMPLOYMENT COMPENSATION FOR THE PERIOD OF TIME HE IS UNEMPLOYED  
5 AS A RESULT OF THE TERMINATION; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 71-5-513, Mississippi Code of 1972, is  
8 amended as follows:

9 71-5-513. A. An individual shall be disqualified for  
10 benefits:

11 (1) (a) For the week, or fraction thereof, which  
12 immediately follows the day on which he left work voluntarily  
13 without good cause, if so found by the commission, and for each  
14 week thereafter until he has earned remuneration for personal  
15 services performed for an employer, as in this chapter defined,  
16 equal to not less than eight (8) times his weekly benefit amount,  
17 as determined in each case, provided that marital, filial and  
18 domestic circumstances and obligations shall not be deemed good  
19 cause within the meaning of this subsection. Pregnancy shall not  
20 be deemed to be a marital, filial or domestic circumstance for the  
21 purpose of this subsection.

22 (b) For the week, or fraction thereof, which  
23 immediately follows the day on which he was discharged for  
24 misconduct connected with his work, if so found by the commission,  
25 and for each week thereafter until he has earned remuneration for  
26 personal services performed for an employer, as in this chapter  
27 defined, equal to not less than eight (8) times his weekly benefit  
28 amount, as determined in each case.



29                   (c) The burden of proof of good cause for leaving  
30 work shall be on the claimant, and the burden of proof of  
31 misconduct shall be on the employer.

32                   (2) For the week, or fraction thereof, with respect to  
33 which he willfully makes a false statement, a false representation  
34 of fact, or willfully fails to disclose a material fact for the  
35 purpose of obtaining or increasing benefits under the provisions  
36 of this law, if so found by the commission, and such individual's  
37 maximum benefit allowance shall be reduced by the amount of  
38 benefits so paid to him during any such week of disqualification;  
39 and additional disqualification shall be imposed for a period not  
40 exceeding fifty-two (52) weeks, the length of such period of  
41 disqualification and the time when such period begins to be  
42 determined by the commission, in its discretion, according to the  
43 circumstances in each case.

44                   (3) If the commission finds that he has failed, without  
45 good cause, either to apply for available suitable work when so  
46 directed by the employment office or the commission, to accept  
47 suitable work when offered him, or to return to his customary  
48 self-employment (if any) when so directed by the commission, such  
49 disqualification shall continue for the week in which such failure  
50 occurred and for not more than the twelve (12) weeks which  
51 immediately follow such week, as determined by the commission  
52 according to the circumstances in each case.

53                   (a) In determining whether or not any work is  
54 suitable for an individual, the commission shall consider among  
55 other factors the degree of risk involved to his health, safety  
56 and morals, his physical fitness and prior training, his  
57 experience and prior earnings, his length of unemployment and  
58 prospects for securing local work in his customary occupation, and  
59 the distance of the available work from his residence; provided,  
60 however, that offered employment paying the minimum wage or  
61 higher, if such minimum or higher wage is that prevailing for his



62 customary occupation or similar work in the locality, shall be  
63 deemed to be suitable employment after benefits have been paid to  
64 the individual for a period of eight (8) weeks.

65 (b) Notwithstanding any other provisions of this  
66 chapter, no work shall be deemed suitable and benefits shall not  
67 be denied under this chapter to any otherwise eligible individual  
68 for refusing to accept new work under any of the following  
69 conditions:

70 (i) If the position offered is vacant due  
71 directly to a strike, lockout or other labor dispute;

72 (ii) If the wages, hours or other conditions  
73 of the work offered are substantially less favorable to the  
74 individual than those prevailing for similar work in the locality;

75 (iii) If as a condition of being employed the  
76 individual would be required to join a company union or to resign  
77 from or refrain from joining any bona fide labor organization.

78 (4) For any week with respect to which the commission  
79 finds that his total unemployment is due to a stoppage of work  
80 which exists because of a labor dispute at a factory,  
81 establishment or other premises at which he is or was last  
82 employed; provided, that this subsection shall not apply if it is  
83 shown to the satisfaction of the commission:

84 (a) He is unemployed due to a stoppage of work  
85 occasioned by an unjustified lockout, provided such lockout was  
86 not occasioned or brought about by such individual acting alone or  
87 with other workers in concert; or

88 (b) He is not participating in or directly  
89 interested in the labor dispute which caused the stoppage of work;  
90 and

91 (c) He does not belong to a grade or class of  
92 workers of which, immediately before the commencement of stoppage,  
93 there were members employed at the premises at which the stoppage



94 occurs, any of whom are participating in or directly interested in  
95 the dispute.

96         Provided, that if in any case separate branches of work which  
97 are commonly conducted as separate businesses in separate premises  
98 are conducted in separate departments of the same premises, each  
99 such department shall, for the purposes of this subsection, be  
100 deemed to be a separate factory, establishment or other premises.

101             (5) For any week with respect to which he has received  
102 or is seeking unemployment compensation under an unemployment  
103 compensation law of another state or of the United States.

104         Provided, that if the appropriate agency of such other state or of  
105 the United States finally determines that he is not entitled to  
106 such unemployment compensation benefits, this disqualification  
107 shall not apply. Nothing in this subsection contained shall be  
108 construed to include within its terms any law of the United States  
109 providing unemployment compensation or allowances for honorably  
110 discharged members of the Armed Forces.

111             (6) For any week with respect to which he is receiving  
112 or has received remuneration in the form of payments under any  
113 governmental or private retirement or pension plan, system or  
114 policy which a base-period employer is maintaining or contributing  
115 to or has maintained or contributed to on behalf of the  
116 individual; provided, that if the amount payable with respect to  
117 any week is less than the benefits which would otherwise be due  
118 under Section 71-5-501, he shall be entitled to receive for such  
119 week, if otherwise eligible, benefits reduced by the amount of  
120 such remuneration. However, on or after the first Sunday  
121 immediately following July 1, 2001, no social security payments,  
122 to which the employee has made contributions, shall be deducted  
123 from unemployment benefits paid for any period of unemployment  
124 beginning on or after the first Sunday following July 1, 2001.  
125 This one-hundred-percent exclusion shall not apply to any other  
126 governmental or private retirement or pension plan, system or



127 policy. If benefits payable under this section, after being  
128 reduced by the amount of such remuneration, are not a multiple of  
129 One Dollar (\$1.00), they shall be adjusted to the next lower  
130 multiple of One Dollar (\$1.00).

131 (7) For any week with respect to which he is receiving  
132 or has received remuneration in the form of a back pay award, or  
133 other compensation allocable to any week, whether by settlement or  
134 otherwise. Any benefits previously paid for weeks of unemployment  
135 with respect to which back pay awards, or other such compensation,  
136 are made shall constitute an overpayment and such amounts shall be  
137 deducted from the award by the employer prior to payment to the  
138 employee, and shall be transmitted promptly to the commission by  
139 the employer for application against the overpayment and credit to  
140 the claimant's maximum benefit amount and prompt deposit into the  
141 fund; provided, however, the removal of any charges made against  
142 the employer as a result of such previously paid benefits shall be  
143 applied to the calendar year and the calendar quarter in which the  
144 overpayment is transmitted to the commission, and no attempt shall  
145 be made to relate such a credit to the period to which the award  
146 applies. Any amount of overpayment so deducted by the employer  
147 and not transmitted to the commission shall be subject to the same  
148 procedures for collection as is provided for contributions by  
149 Sections 71-5-363 through 71-5-381. Any amount of overpayment not  
150 deducted by the employer shall be established as an overpayment  
151 against the claimant and collected as provided above. It is the  
152 purpose of this paragraph to assure equity in the situations to  
153 which it applies, and it shall be construed accordingly.

154 B. Notwithstanding any other provision in this chapter, no  
155 otherwise eligible individual shall be denied benefits for any  
156 week because he is in training with the approval of the  
157 commission; nor shall such individual be denied benefits with  
158 respect to any week in which he is in training with the approval  
159 of the commission by reason of the application of provisions in



160 Section 71-5-511, subsection (c), relating to availability for  
161 work, or the provisions of subsection A(3) of this section,  
162 relating to failure to apply for, or a refusal to accept, suitable  
163 work.

164 C. Notwithstanding any other provisions of this chapter, no  
165 otherwise eligible individual shall be denied benefits for any  
166 week because he or she is in training approved under Section  
167 236(a)(1) of the Trade Act of 1974, nor shall such individual be  
168 denied benefits by reason of leaving work to enter such training,  
169 provided the work left is not suitable employment, or because of  
170 the application to any such week in training of provisions in this  
171 law (or any applicable federal unemployment compensation law),  
172 relating to availability for work, active search for work or  
173 refusal to accept work.

174 D. Notwithstanding any other provisions of this chapter, no  
175 otherwise eligible individual who has been discharged for gross  
176 misconduct connected with his work, if so found by the commission,  
177 can ever, under any circumstances, receive unemployment  
178 compensation that is based on wages earned with the employer that  
179 discharged him for gross misconduct. For purposes of this  
180 section, "gross misconduct" is shown when (1) an employee tests  
181 positive to a confirmed drug test given in accordance with U.S.  
182 Department of Transportation regulations in 49 C.F.R. Part 40 or  
183 other standards shown by the employer to be otherwise reliable,  
184 which positive test shall be a conclusive presumption of  
185 impairment by illegal drugs or controlled drugs illegally  
186 obtained; (2) an employee is involved in the theft on company  
187 premises of company, employee, visitor or vendor property; (3)  
188 when an employee is involved in fighting or physical abuse  
189 occurring at work or on company premises; (4) an employee  
190 intentionally falsifies company records; (5) an employee is found  
191 to be in the possession of illegal or unauthorized firearms or  
192 weapons on company premises; and (6) an employee is involved in



193 the commission of a criminal act while at work or connected to the  
194 work.

195         For purposes of this section, the term "suitable employment"  
196 means with respect to an individual, work of a substantially equal  
197 or higher skill level than the individual's past adversely  
198 affected employment (as defined for purposes of the Trade Act of  
199 1974), and wages for such work at not less than eighty percent  
200 (80%) of the individual's average weekly wage as determined for  
201 the purposes of the Trade Act of 1974.

202         **SECTION 2.** This act shall take effect and be in force from  
203 and after July 1, 2002.

