

By: Senator(s) Posey

To: Insurance

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 charged against or from 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.

