HOUSE BILL NO. 759

AN ACT TO AMEND SECTION 71-5-511, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT UNTIL JULY 1, 2005, THE ONE-WEEK WAITING PERIOD REQUIRED FOR ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION BENEFITS SHALL BE ELIMINATED; TO AMEND SECTIONS 71-5-11, 71-5-13, 71-5-355, 71-5-357 AND 71-5-501, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 71-5-511, Mississippi Code of 1972, is amended as follows:

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

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

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

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

1. The individual has completed such services; or
2. There is justifiable cause for the claimant's failure to participate in such services.

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

[j] An individual shall be deemed prima facie
unavailable for work, and therefore ineligible to receive
benefits, during any period which, with respect to his employment
status, is found by the commission to be a holiday or vacation
period.

[From and after July 1, 2005, this section shall read as
follows:] 71-5-511. An unemployed individual shall be eligible to
receive benefits with respect to any week only if the commission
finds that:

(a) (i) He has registered for work at and thereafter
has continued to report to an employment office in accordance with
such regulations as the commission may prescribe; except that the
commission may, by regulation, waive or alter either or both of
the requirements of this subparagraph as to such types of cases or
situations with respect to which it finds that compliance with
such requirements would be oppressive or would be inconsistent
with the purposes of this chapter; and
(ii) He participates in reemployment services, such as job search assistance services, if, in accordance with a profiling system established by the commission, it has been determined that he is likely to exhaust regular benefits and needs reemployment services, unless the commission determines that:

1. The individual has completed such services; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. 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 71-5-515(d).

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),
extcept 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 performed 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 (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.
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,
(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,

instead of provision for such death benefit, any part of such
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 3. Section 71-5-13, Mississippi Code of 1972, is amended as follows:
71-5-13. (1) The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 71-5-11, subsection I, or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one (1) of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The commission is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government:

(a) Whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government shall be deemed to be wages for employment by employers for the purposes of Sections 71-5-501 through 71-5-507 and Section 71-5-511(d), provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the commission finds will be fair and reasonable as to all affected interests; and

(b) Whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government, upon the basis of employment or wages for...
employment by employers, as the commission finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of Sections 71-5-451 through 71-5-459. The commission is hereby authorized to make to other state or federal agencies, and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

(3) The commission is also authorized, in its discretion, to enter into or cooperate in arrangements with any federal agency whereby the facilities and services of the personnel of the commission may be utilized for the taking of claims and the payment of unemployment compensation or allowances under any federal law enacted for the benefit of discharged members of the Armed Forces.

(4) The commission shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

(a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws; and

(b) Avoiding the duplicate use of wages and employment by reason of such combining.

SECTION 4. Section 71-5-355, Mississippi Code of 1972, is amended as follows:
71-5-355. (1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) "Tax year" means any period beginning on January 1 and ending on December 31 of a year.

(b) "Computation date" means June 30 of any calendar year immediately preceding the tax year during which the particular contribution rates are effective.

(c) "Effective date" means January 1 of the tax year.

(d) Except as hereinafter provided, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H, plus the total of all remuneration paid by such employer excluded from the definition of wages by Section 71-5-351. For the computation of modified rates, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H.

(e) For the computation of modified rates, "eligible employer" means an employer whose experience-rating record has been chargeable with benefits throughout the thirty-six (36) consecutive calendar-month period ending on the computation date, except that any employer who has not been subject to the Mississippi Employment Security Law for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement shall be an eligible employer if his experience-rating record has been chargeable throughout not less than the twelve (12) consecutive calendar-month period ending on the computation date. No employer shall be considered eligible for a contribution rate less than five and four-tenths percent (5.4%) with respect to any tax year, who has failed to file any two (2) quarterly reports within the qualifying period by September 30 following the computation date. No employer or employing unit shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which the employing unit is found by
the commission to be in violation of Section 71-5-19(2) or (3) and
for the next two (2) succeeding tax years. No representative of
such employing unit who was a party to a violation as described in
Section 71-5-19(2) or (3), if such representative was or is an
employing unit in this state, shall be eligible for a
contributions rate of less than five and four-tenths percent
(5.4%) for the tax year in which such violation was detected by
the commission and for the next two (2) succeeding tax years.

(f) With respect to any tax year, "reserve ratio" means
the ratio which the total amount available for the payment of
benefits in the Unemployment Compensation Fund, excluding any
amount which has been credited to the account of this state under
Section 903 of the Social Security Act, as amended, and which has
been appropriated for the expenses of administration pursuant to
Section 71-5-457 whether or not withdrawn from such account, on
November 1 of each calendar year bears to the aggregate of the
taxable payrolls of all employers for the twelve (12) calendar
months ending on June 30 next preceding.

(g) "Modified rates" means the rates of employer
contributions determined under the provisions of this chapter and
the rates of newly subject employers, as provided in Section
71-5-353.

(h) For the computation of modified rates, "qualifying
period" means a period of not less than the thirty-six (36)
consecutive calendar months ending on the computation date
throughout which an employer's experience-rating record has been
chargeable with benefits; except that with respect to any eligible
employer who has not been subject to this article for a period of
time sufficient to meet the thirty-six (36) consecutive
calendar-month requirement, "qualifying period" means the period
ending on the computation date throughout which his
experience-rating record has been chargeable with benefits, but in
no event less than the twelve (12) consecutive calendar-month
period ending on the computation date throughout which his experience-rating record has been so chargeable.

(i) The "exposure criterion" (EC) is defined as the cash balance of the Unemployment Compensation Fund which is available for the payment of benefits as of November 1 of each calendar year, divided by the total wages, exclusive of wages paid by all state agencies, all political subdivisions, reimbursable nonprofit corporations, and tax exempt public service employment, for the twelve-month period ending June 30 immediately preceding such date. The EC shall be computed to four (4) decimal places.

(j) The "cost rate criterion" (CRC) is defined as follows: Beginning with January 1974, the benefits paid for the twelve-month period ending December 1974 are summed and divided by the total wages for the twelve-month period ending on June 30, 1975. Similar ratios are computed by subtracting the earliest month's benefit payments and adding the benefits of the next month in the sequence and dividing each sum of twelve (12) months' benefits by the total wages for the twelve-month period ending on the June 30 which is nearest to the final month of the period used to compute the numerator. If December is the final month of the period used to compute the numerator, then the twelve-month period ending the following June 30 will be used for the denominator. The highest value of these ratios beginning with the ratio for benefits paid in calendar year 1974 is the cost rate criterion. The cost rate criterion shall be computed to four (4) decimal places. Benefits and total wages used in the computation of the cost rate criterion shall exclude all benefits and total wages applicable to state agencies, political subdivisions, reimbursable nonprofit corporations, and tax exempt PSE employment.

(k) "Size of fund index" (SOFI) is defined as the ratio of the EC to the CRC.
(1) No employer's contribution rate shall exceed five and four-tenths percent (5.4%), nor be less than four-tenths of one percent (.4%).

(2) Modified rates:

(a) For any tax year, when the reserve ratio on the preceding November 1, in the case of any tax year, equals or exceeds four percent (4%), the modified rates, as hereinafter prescribed, shall be in effect.

(b) Modified rates shall be determined for the tax year for each eligible employer on the basis of his experience-rating record in the following manner:

(i) The commission shall maintain an experience-rating record for each employer. Nothing in this chapter shall be construed to grant any employer or individuals performing services for him any prior claim or rights to the amounts paid by the employer into the fund.

(ii) Benefits paid to an eligible individual shall be charged against the experience-rating record of his base period employers in the proportion to which the wages paid by each base period employer bears to the total wages paid to the individual by all the base period employers, provided that benefits shall not be charged to an employer's experience-rating record if the commission finds that the individual:

1. Voluntarily left the employ of such employer without good cause attributable to the employer;

2. Was discharged by such employer for misconduct connected with his work;

3. Refused an offer of suitable work by such employer without good cause, and the commission further finds that such benefits are based on wages for employment for such employer prior to such voluntary leaving, discharge or refusal of suitable work, as the case may be.
4. Had base period wages which included wages for previously uncovered services as defined in Section 71-5-511(d) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566;

5. Extended benefits paid under the provisions of Section 71-5-541 which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers;

6. Is still working for such employer on a regular part-time basis under the same employment conditions as hired. Provided, however, that benefits shall be charged against an employer if an eligible individual is paid benefits who is still working for such employer on a part-time "as-needed" basis;

7. Was hired to replace a United States serviceman or servicewoman called into active duty and was laid off upon the return to work by that serviceman or servicewoman, unless such employer is a state agency or other political subdivision or instrumentality of the state;

8. Was paid benefits during any week while in training with the approval of the commission, under the provisions of Section 71-5-B, or for any week while in training approved under Section 236(a)(1) of the Trade Act of 1974, under the provisions of Section 71-5-C; or

9. Is not required to serve the one-week waiting period as described in Section 71-5-505(2). In that event, only the benefits paid in lieu of the waiting period week may be noncharged.

(iii) The commission shall compute a benefit ratio for each eligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record during the period his experience-rating record has been chargeable, but not less than the twelve (12) consecutive
calendar-month period nor more than the thirty-six (36)
consecutive calendar-month period ending on the computation date,
by his total taxable payroll for the same period on which all
contributions due have been paid on or before the September 30
immediately following the computation date. Such benefit ratio
shall be computed to the tenth of a percent (.1%), rounding any
remainder to the next higher tenth.

If for the calendar year 1995, or any calendar year
thereafter, the size of fund index (SOFI), as defined in this
section, shall have computed for such calendar year at 1.75 or
above, for purposes of adjustment of the general experience rate
for such calendar year, then Table 6 or one of the tables
subsequent to Table 6 shall be applied, according to their
provisions:

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<th>TABLE 1</th>
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<td>ILLUSTRATES A .10% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE</td>
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<td>BASED ON A SOFI FACTOR OF 1.51 OR ABOVE BUT LESS THAN 1.55</td>
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<th>If Benefit Ratio is</th>
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**TABLE 2**

**ILLUSTRATES A .20% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE BASED ON A SOFI FACTOR OF 1.55 OR ABOVE BUT LESS THAN 1.60**

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**TABLE 3**

ILLUSTRATES A .30% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE BASED ON A SOFI FACTOR OF 1.60 OR ABOVE BUT LESS THAN 1.65

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Note: The table entries are in the format of 'Value | Description', where 'Value' is a number and 'Description' is another number.
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TABLE 5

ILLUSTRATES A .50% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE BASED ON A SOFI FACTOR OF 1.70 OR ABOVE BUT LESS THAN 1.75

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ILLUSTRATES A .70% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE

BASED ON A SOFI FACTOR OF 1.80 OR ABOVE BUT LESS THAN 1.85

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<td>Benefit Ratio</td>
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**TABLE 10**

ILLUSTRATES A 1.00% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE

BASED ON A SOFI FACTOR OF 1.95 OR ABOVE
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</table>
5.6  4.601932
5.7  4.701933
5.8  4.801934
5.9  4.901935
6.0  5.001936
6.1  5.101937
6.2  5.201938
6.3  5.301939
6.4 and above  5.401940

(iv) 1. The contribution rate for each eligible employer shall be the sum of two (2) rates: His individual experience rate in the range from zero percent (0%) to five and four-tenths percent (5.4%), plus a general experience rate. In no event shall the resulting rate be in excess of five and four-tenths percent (5.4%).

2. The employer's individual experience rate shall be equal to his benefit ratio as computed under subsection (2)(b)(iii) above.

3. The general experience rate shall be determined in the following manner: The commission shall determine annually, for the thirty-six (36) consecutive calendar-month period ending on the computation date, the amount of benefits which were not charged to the record of any employer and of benefits which were ineffectively charged to the employer's experience-rating record. For the purposes of subsection (2)(b)(iv)3, the term "ineffectively charged benefits" shall include:

The total of the amounts of benefits charged to the experience-rating records of all eligible employers which caused their benefit ratios to exceed five and four-tenths percent (5.4%), the total of the amounts of benefits charged to the experience-rating records of all ineligible employers which would cause their benefit ratios to exceed five and four-tenths percent.
(5.4%) if they were eligible employers, and the total of the
amounts of benefits charged or chargeable to the experience-rating
record of any employer who has discontinued his business or whose
coverage has been terminated within such period; provided, that
solely for the purposes of determining the amounts of
ineffectively charged benefits as herein defined, a "benefit
ratio" shall be computed for each ineligible employer, which shall
be the quotient obtained by dividing the total benefits charged to
his experience-rating record throughout the period ending on the
computation date, during which his experience-rating record has
been chargeable with benefits, by his total taxable payroll for
the same period on which all contributions due have been paid on
or before the September 30 immediately following the computation
date; and provided further, that such benefit ratio shall be
computed to the tenth of one percent (.1%) and any remainder shall
be rounded to the next higher tenth. The ratio of the sum of
these amounts to the taxable wages paid during the same period by
all eligible employers whose benefit ratio did not exceed five and
four-tenths percent (5.4%), computed to the next higher tenth of
one percent (.1%), shall be the general experience rate.

4. The general experience rate shall be
adjusted by use of the size of fund index factor. This factor may
be positive or negative, and shall be determined as follows: From
the target SOFI of 1.50, subtract the simple average of the
current and preceding years' exposure criterions divided by the
cost rate criterion. The result is then multiplied by the product
of the CRC and total wages for the twelve-month period ending June
30 divided by the taxable wages for the twelve-month period ending
June 30. This is the percentage positive or negative added to the
general experience rate. This percentage is computed to one (1)
decimal place, and rounded to the next higher tenth.

5. Notwithstanding any other provisions of
subsection (2)(b)(iv), if the general experience rate for any tax
year as computed and adjusted on the basis of the size of fund
index is a negative percentage, it shall be disregarded.

6. The commission shall include in its annual rate notice to employers a brief explanation of the elements of the general experience rate, and shall include in its regular publications an annual analysis of benefits not charged to the record of any employer, and of the benefit experience of employers by industry group whose benefit ratio exceeds four percent (4%), and of any other factors which may affect the size of the general experience rate.

(v) When any employing unit in any manner succeeds to or acquires the organization, trade, business or substantially all the assets thereof of an employer, excepting any assets retained by such employer incident to the liquidation of his obligations, whether or not such acquiring employing unit was an employer within the meaning of Section 71-5-11, subsection H, prior to such acquisition, and continues such organization, trade or business, the experience-rating and payroll records of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(vi) When any employing unit succeeds to or acquires a distinct and severable portion of an organization, trade or business, the experience-rating and payroll records of such portion, if separately identifiable, shall be transferred to the successor upon:

1. The mutual consent of the predecessor and the successor;

2. Approval of the commission;

3. Continued operation of the transferred portion by the successor after transfer; and

4. The execution and the filing with the commission by the predecessor employer of a waiver relinquishing
all rights to have the experience-rating and payroll records of
the transferred portion used for the purpose of determining
modified rates of contribution for such predecessor.

(vii) If the successor was an employer subject to
this chapter prior to the date of acquisition, it shall continue
to pay contributions at the rate applicable to it from the date
the acquisition occurred until the end of the then current tax
year. If the successor was not an employer prior to the date of
acquisition, it shall pay contributions at the rate applicable to
the predecessor or, if more than one (1) predecessor and the same
rate is applicable to both, the rate applicable to the predecessor
or predecessors, from the date the acquisition occurred until the
end of the then current tax year. If the successor was not an
employer prior to the date the acquisition occurred and
simultaneously acquires the businesses of two (2) or more
employers to whom different rates of contributions are applicable,
it shall pay contributions from the date of the acquisition until
the end of the current tax year at a rate computed on the basis of
the combined experience-rating and payroll records of the
predecessors as of the computation date for such tax year. In all
cases the rate of contributions applicable to such successor for
each succeeding tax year shall be computed on the basis of the
combined experience-rating and payroll records of the successor
and the predecessor or predecessors.

(viii) The commission shall notify each employer
quarterly of the benefits paid and charged to his
experience-rating record; and such notification, in the absence of
an application for redetermination filed within thirty (30) days
after the date of the mailing of such notice, shall be final,
conclusive and binding upon the employer for all purposes. A
redetermination, made after notice and opportunity for a fair
hearing, by a hearing officer designated by the commission who
shall consider and decide these and related applications and
protests; and the finding of fact in connection therewith may be introduced into any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any tax year, and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact in proceedings to redetermine the contribution rate of an employer.

(ix) The commission shall notify each employer of his rate of contribution as determined for any tax year as soon as reasonably possible after November 1 of the preceding year. Such determination shall be final, conclusive and binding upon such employer unless, within thirty (30) days after the date of the mailing of such notice to his last known address, the employer files with the commission an application for review and redetermination of his contribution rate, setting forth his reasons therefor. If the commission grants such review, the employer shall be promptly notified thereof and shall be afforded an opportunity for a fair hearing by a hearing officer designated by the commission who shall consider and decide these and related applications and protests; but no employer shall be allowed, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Sections 71-5-515 through 71-5-533 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him, and then only in the event that he was not a party to such determination, redetermination, decision or to any other proceedings provided in this chapter in which the character of such services was determined. The employer shall be promptly notified of the denial of this application or of the redetermination, both of which shall become final unless, within ten (10) days after the date of mailing of notice thereof,
there shall be an appeal to the commission itself. Any such appeal shall be on the record before said designated hearing officer, and the decision of said commission shall become final unless, within thirty (30) days after the date of mailing of notice thereof to the employer's last known address, there shall be 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.

**SECTION 5.** 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 paragraph
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 subparagraph (i) of this
paragraph.

   (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 subparagraph (i) of this paragraph 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 subparagraph (v) of this paragraph.

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 paragraph 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 paragraph 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 (.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.
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.

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 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 subparagraph (i) or subparagraph (ii) of this paragraph.

(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 paragraph.

(i) The amount of the bond or deposit required by paragraph (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 paragraph (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 paragraph (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 paragraph (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 paragraph (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 paragraph (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 subparagraph, 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(d) to the extent that the
Unemployment Compensation Fund is reimbursed for such benefits
pursuant to Section 121 of Public Law 94-566.

SECTION 6. 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)(d), 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 7. This act shall take effect and be in force from and after July 1, 2003.