SENATE BILL NO. 2378

AN ACT TO AMEND SECTION 71-5-513, MISSISSIPPI CODE OF 1972, TO DENY UNEMPLOYMENT COMPENSATION BENEFITS TO ANY EMPLOYEES WHO HAVE BEEN TERMINATED FOR CERTAIN DEFINED GROSS MISCONDUCT; AND FOR RELATED PURPOSES.

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

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

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

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

(b) For the week, or fraction thereof, which immediately follows the day on which he was discharged for misconduct connected with his work, if so found by the commission, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.
(c) The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer.

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

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

(a) In determining whether or not any work is suitable for an individual, the commission shall consider among other factors the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence; provided, however, that offered employment paying the minimum wage or higher, if such minimum or higher wage is that prevailing for his
customary occupation or similar work in the locality, shall be deemed to be suitable employment after benefits have been paid to the individual for a period of eight (8) weeks.

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

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

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

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

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

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

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

(c) He does not belong to a grade or class of workers of which, immediately before the commencement of stoppage, there were members employed at the premises at which the stoppage
occurs, any of whom are participating in or directly interested in
the dispute.

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

(5) For any week with respect to which he has received
or is seeking unemployment compensation under an unemployment
compensation law of another state or of the United States.
Provided, that if the appropriate agency of such other state or of
the United States finally determines that he is not entitled to
such unemployment compensation benefits, this disqualification
shall not apply. Nothing in this subsection contained shall be
construed to include within its terms any law of the United States
providing unemployment compensation or allowances for honorably
discharged members of the Armed Forces.

(6) For any week with respect to which he is receiving
or has received remuneration in the form of payments under any
governmental or private retirement or pension plan, system or
policy which a base-period employer is maintaining or contributing
to or has maintained or contributed to on behalf of the
individual; provided, that if the amount payable with respect to
any week is less than the benefits which would otherwise be due
under Section 71-5-501, he shall be entitled to receive for such
week, if otherwise eligible, benefits reduced by the amount of
such remuneration. However, on or after the first Sunday
immediately following July 1, 2001, no social security payments,
to which the employee has made contributions, shall be deducted
from unemployment benefits paid for any period of unemployment
beginning on or after the first Sunday following July 1, 2001.
This one-hundred-percent exclusion shall not apply to any other
governmental or private retirement or pension plan, system or
policy. If benefits payable under this section, after being reduced by the amount of such remuneration, are not a multiple of One Dollar ($1.00), they shall be adjusted to the next lower multiple of One Dollar ($1.00).

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

B. Notwithstanding any other provision in this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the commission; nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the commission by reason of the application of provisions in
Section 71-5-511, subsection (c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

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

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

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

SECTION 2. This act shall take effect and be in force from and after July 1, 2003.