

By: Senator(s) Huggins

To: Labor

SENATE BILL NO. 2378

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

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

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

8 71-5-513. A. An individual shall be disqualified for
9 benefits:

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

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



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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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



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

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

173 For purposes of this section, the term "suitable employment"
174 means with respect to an individual, work of a substantially equal
175 or higher skill level than the individual's past adversely
176 affected employment (as defined for purposes of the Trade Act of
177 1974), and wages for such work at not less than eighty percent
178 (80%) of the individual's average weekly wage as determined for
179 the purposes of the Trade Act of 1974.

180 D. Notwithstanding any other provisions of this chapter, no
181 otherwise eligible individual who has been discharged for gross
182 misconduct connected with his work, if so found by the commission
183 can ever, under any circumstances, receive unemployment
184 compensation that is charged against or from the employer that
185 discharged him for gross misconduct. For purposes of this
186 section, "gross misconduct" is shown when (1) an employee tests
187 positive to a confirmed drug test given in accordance with U.S.
188 Department of Transportation regulations in 49 C.F.R. Part 40 or
189 other standards shown by the employer to be otherwise reliable,
190 which positive test shall be a conclusive presumption of
191 impairment by illegal drugs or controlled drugs illegally



192 obtained; (2) an employee is involved in the theft on company
193 premises of company, employee, visitor or vendor property; (3)
194 when an employee is involved in fighting or physical abuse
195 occurring at work or on company premises; (4) an employee
196 intentionally falsifies company records; (5) an employee is found
197 to be in the possession of illegal or unauthorized firearms or
198 weapons on company premises; and (6) an employee is involved in
199 the commission of a criminal act while at work or connected to the
200 work.

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

