

By: Representative Fleming

To: Labor

HOUSE BILL NO. 461

1 AN ACT TO CREATE THE UNEMPLOYMENT INSURANCE FOR DOMESTIC
2 VIOLENCE SURVIVORS ACT; TO AMEND SECTION 71-5-513, MISSISSIPPI
3 CODE OF 1972, TO PROVIDE THAT A PERSON WHO LEAVES WORK DUE TO
4 DOMESTIC VIOLENCE SHALL NOT BE DISQUALIFIED FROM RECEIVING
5 UNEMPLOYMENT BENEFITS; TO REQUIRE THE MISSISSIPPI EMPLOYMENT
6 SECURITY COMMISSION TO CREATE A CURRICULUM TO TRAIN EMPLOYEES IN
7 THE NATURE AND DYNAMICS OF DOMESTIC VIOLENCE; AND FOR RELATED
8 PURPOSES.

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

10 **SECTION 1.** This act shall be known as the "Unemployment
11 Insurance for Domestic Violence Survivors Act."

12 **SECTION 2.** Section 71-5-513, Mississippi Code of 1972, is
13 amended as follows:

14 71-5-513. A. An individual shall be disqualified for
15 benefits:

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

28 (b) For the week, or fraction thereof, which
29 immediately follows the day on which he was discharged for
30 misconduct connected with his work, if so found by the commission,

31 and for each week thereafter until he has earned remuneration for
32 personal services performed for an employer, as in this chapter
33 defined, equal to not less than eight (8) times his weekly benefit
34 amount, as determined in each case.

35 (c) The burden of proof of good cause for leaving
36 work shall be on the claimant, and the burden of proof of
37 misconduct shall be on the employer.

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

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

59 (a) In determining whether or not any work is
60 suitable for an individual, the commission shall consider among
61 other factors the degree of risk involved to his health, safety
62 and morals, his physical fitness and prior training, his
63 experience and prior earnings, his length of unemployment and

64 prospects for securing local work in his customary occupation, and
65 the distance of the available work from his residence; provided,
66 however, that offered employment paying the minimum wage or
67 higher, if such minimum or higher wage is that prevailing for his
68 customary occupation or similar work in the locality, shall be
69 deemed to be suitable employment after benefits have been paid to
70 the individual for a period of eight (8) weeks.

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

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

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

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

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

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

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

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

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

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

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

117 (6) For any week with respect to which he is receiving
118 or has received remuneration in the form of payments under any
119 governmental or private retirement or pension plan, system or
120 policy which a base-period employer is maintaining or contributing
121 to or has maintained or contributed to on behalf of the
122 individual; provided, that if the amount payable with respect to
123 any week is less than the benefits which would otherwise be due
124 under Section 71-5-501, he shall be entitled to receive for such
125 week, if otherwise eligible, benefits reduced by the amount of
126 such remuneration. However, on or after the first Sunday
127 immediately following the effective date of this act, no social
128 security payments, to which the employee has made contributions,
129 shall be deducted from unemployment benefits paid for any period

130 of unemployment beginning on or after the first Sunday following
131 the effective date of this act. This one-hundred-percent
132 exclusion shall not apply to any other governmental or private
133 retirement or pension plan, system or policy. If benefits payable
134 under this section, after being reduced by the amount of such
135 remuneration, are not a multiple of One Dollar (\$1.00), they shall
136 be adjusted to the next lower multiple of One Dollar (\$1.00).

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

160 B. Notwithstanding any other provision in this chapter, no
161 otherwise eligible individual shall be denied benefits for any
162 week because he is in training with the approval of the

163 commission; nor shall such individual be denied benefits with
164 respect to any week in which he is in training with the approval
165 of the commission by reason of the application of provisions in
166 Section 71-5-511, subsection (c), relating to availability for
167 work, or the provisions of subsection A(3) of this section,
168 relating to failure to apply for, or a refusal to accept, suitable
169 work.

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

180 For purposes of this section, the term "suitable employment"
181 means with respect to an individual, work of a substantially equal
182 or higher skill level than the individual's past adversely
183 affected employment (as defined for purposes of the Trade Act of
184 1974), and wages for such work at not less than eighty percent
185 (80%) of the individual's average weekly wage as determined for
186 the purposes of the Trade Act of 1974.

187 D. (1) Notwithstanding any other provision in this chapter,
188 no otherwise eligible individual shall be denied benefits if the
189 individual establishes that the reason the individual left work
190 was due to domestic violence. Domestic violence means abuse, as
191 defined in Section 93-21-3, committed against an employee or an
192 employee's dependent child, including:

193 (a) The individual's reasonable fear of future
194 domestic violence at or en route to or from the individual's place
195 of employment.

196 (b) The individual's need to relocate to another
197 geographic area in order to avoid future domestic violence.

198 (c) The individual's need to address the physical,
199 psychological and legal impacts of domestic violence.

200 (d) The individual's need to leave employment as a
201 condition of receiving services or shelter from an agency which
202 provides support services or shelter to victims of domestic
203 violence.

204 (e) Any other situation in which domestic violence
205 causes the individual to reasonably believe that termination of
206 employment is necessary for the future safety of the individual or
207 the individual's family.

208 (2) An individual may demonstrate the existence of
209 domestic violence by providing one of the following:

210 (a) A restraining order or other documentation of
211 equitable relief issued by a court of competent jurisdiction.

212 (b) A police record documenting the abuse.

213 (c) Documentation that the abuser has been
214 convicted of violent offense where the employee or employee's
215 dependent child was the victim.

216 (d) Medical documentation of the abuse.

217 (e) A statement provided by a counselor, social
218 worker, health worker, member of the clergy, shelter worker, legal
219 advocate or other professional who has assisted the individual in
220 addressing the effects of the abuse on the individual or the
221 individual's family.

222 (f) A sworn statement from the individual
223 attesting to the abuse.

224 **SECTION 3.** The Mississippi Employment Security Commission
225 shall create and implement a training curriculum approved by the
226 Legislature.

227 All personnel of the Mississippi Employment Security
228 Commission shall be trained in this curriculum not later than

229 sixty (60) days from the effective date of this section. The
230 commission shall develop an ongoing plan for employees to be
231 trained in the nature and dynamics of domestic violence so that an
232 employee's absence from employment stemming from domestic violence
233 is reliably screened and adjudicated and so that victims of
234 domestic violence are able to take advantage of the full range of
235 job services provided by the commission.

236 **SECTION 4.** This act shall take effect and be in force from
237 and after July 1, 2005.