

By: Representative Pierce

To: Labor

HOUSE BILL NO. 463

1 AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF "EMPLOYMENT" UNDER THE UNEMPLOYMENT
3 COMPENSATION LAW TO EXCLUDE SERVICES PERFORMED BY CERTAIN
4 INDEPENDENT SERVICE PEOPLE FOR A FUNERAL HOME; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** Section 71-5-11, Mississippi Code of 1972, is
8 amended as follows:

9 71-5-11. As used in this chapter, unless the context clearly
10 requires otherwise:

11 A. "Base period" means the first four (4) of the last five
12 (5) completed calendar quarters immediately preceding the first
13 day of an individual's benefit year.

14 B. "Benefits" means the money payments payable to an
15 individual, as provided in this chapter, with respect to his
16 unemployment.

17 C. "Benefit year" with respect to any individual means the
18 period beginning with the first day of the first week with respect
19 to which he first files a valid claim for benefits, and ending
20 with the day preceding the same day of the same month in the next
21 calendar year; and, thereafter, the period beginning with the
22 first day of the first week with respect to which he next files
23 his valid claim for benefits, and ending with the day preceding
24 the same day of the same month in the next calendar year. Any
25 claim for benefits made in accordance with Section 71-5-515 shall
26 be deemed to be a "valid claim" for purposes of this subsection if
27 the individual has been paid the wages for insured work required
28 under Section 71-5-511(e).

29 D. "Contributions" means the money payments to the State
30 Unemployment Compensation Fund required by this chapter.

31 E. "Calendar quarter" means the period of three (3)
32 consecutive calendar months ending on March 31, June 30, September
33 30, or December 31.

34 F. "Department" or "commission" means the Mississippi
35 Department of Employment Security, Office of the Governor.

36 G. "Executive director" means the Executive Director of the
37 Mississippi Department of Employment Security, Office of the
38 Governor, appointed under Section 71-5-107.

39 H. "Employing unit" means this state or another state or any
40 instrumentalities or any political subdivisions thereof or any of
41 their instrumentalities or any instrumentality of more than one
42 (1) of the foregoing or any instrumentality of any of the
43 foregoing and one or more other states or political subdivisions,
44 any Indian tribe as defined in Section 3306(u) of the Federal
45 Unemployment Tax Act (FUTA), which includes any subdivision,
46 subsidiary or business enterprise wholly owned by such Indian
47 tribe, any individual or type of organization, including any
48 partnership, association, trust, estate, joint-stock company,
49 insurance company, or corporation, whether domestic or foreign, or
50 the receiver, trustee in bankruptcy, trustee or successor thereof,
51 or the legal representative of a deceased person, which has or had
52 in its employ one or more individuals performing services for it
53 within this state. All individuals performing services within
54 this state for any employing unit which maintains two (2) or more
55 separate establishments within this state shall be deemed to be
56 employed by a single employing unit for all the purposes of this
57 chapter. Each individual employed to perform or to assist in
58 performing the work of any agent or employee of an employing unit
59 shall be deemed to be employed by such employing unit for all
60 purposes of this chapter, whether such individual was hired or
61 paid directly by such employing unit or by such agent or employee,

62 provided the employing unit had actual or constructive knowledge
63 of the work. All individuals performing services in the employ of
64 an elected fee-paid county official, other than those related by
65 blood or marriage within the third degree computed by the rule of
66 the civil law to such fee-paid county official, shall be deemed to
67 be employed by such county as the employing unit for all the
68 purposes of this chapter. For purposes of defining an "employing
69 unit" which shall pay contributions on remuneration paid to
70 individuals, if two (2) or more related corporations concurrently
71 employ the same individual and compensate such individual through
72 a common paymaster which is one (1) of such corporations, then
73 each such corporation shall be considered to have paid as
74 remuneration to such individual only the amounts actually
75 disbursed by it to such individual and shall not be considered to
76 have paid as remuneration to such individual such amounts actually
77 disbursed to such individual by another of such corporations.

78 I. "Employer" means:

79 (1) Any employing unit which,

80 (a) In any calendar quarter in either the current
81 or preceding calendar year paid for service in employment wages of
82 One Thousand Five Hundred Dollars (\$1,500.00) or more, except as
83 provided in paragraph (9) of this subsection, or

84 (b) For some portion of a day in each of twenty
85 (20) different calendar weeks, whether or not such weeks were
86 consecutive, in either the current or the preceding calendar year
87 had in employment at least one (1) individual (irrespective of
88 whether the same individual was in employment in each such day),
89 except as provided in paragraph (9) of this subsection;

90 (2) Any employing unit for which service in employment,
91 as defined in subsection I(3) of this section, is performed;

92 (3) Any employing unit for which service in employment,
93 as defined in subsection I(4) of this section, is performed;

94 (4) (a) Any employing unit for which agricultural
95 labor, as defined in subsection I(6) of this section, is
96 performed;

97 (b) Any employing unit for which domestic service
98 in employment, as defined in subsection I(7) of this section, is
99 performed;

100 (5) Any individual or employing unit which acquired the
101 organization, trade, business, or substantially all the assets
102 thereof, of another which at the time of such acquisition was an
103 employer subject to this chapter;

104 (6) Any individual or employing unit which acquired its
105 organization, trade, business, or substantially all the assets
106 thereof, from another employing unit, if the employment record of
107 the acquiring individual or employing unit subsequent to such
108 acquisition, together with the employment record of the acquired
109 organization, trade, or business prior to such acquisition, both
110 within the same calendar year, would be sufficient to constitute
111 an employing unit as an employer subject to this chapter under
112 paragraph (1) or (3) of this subsection;

113 (7) Any employing unit which, having become an employer
114 under paragraph (1), (3), (5) or (6) of this subsection or under
115 any other provisions of this chapter, has not, under Section
116 71-5-361, ceased to be an employer subject to this chapter;

117 (8) For the effective period of its election pursuant
118 to Section 71-5-361(3), any other employing unit which has elected
119 to become subject to this chapter;

120 (9) (a) In determining whether or not an employing
121 unit for which service other than domestic service is also
122 performed is an employer under paragraph (1) or (4)(a) of this
123 subsection, the wages earned or the employment of an employee
124 performing domestic service, shall not be taken into account;

125 (b) In determining whether or not an employing
126 unit for which service other than agricultural labor is also

127 performed is an employer under paragraph (1) or (4)(b) of this
128 subsection, the wages earned or the employment of an employee
129 performing services in agricultural labor, shall not be taken into
130 account. If an employing unit is determined an employer of
131 agricultural labor, such employing unit shall be determined an
132 employer for purposes of paragraph (1) of this subsection;

133 (10) All entities utilizing the services of any
134 employee leasing firm shall be considered the employer of the
135 individuals leased from the employee leasing firm. Temporary help
136 firms shall be considered the employer of the individuals they
137 provide to perform services for other individuals or
138 organizations.

139 J. "Employment" means and includes:

140 (1) Any service performed, which was employment as
141 defined in this section and, subject to the other provisions of
142 this subsection, including service in interstate commerce,
143 performed for wages or under any contract of hire, written or
144 oral, express or implied.

145 (2) Services performed for remuneration for a
146 principal:

147 (a) As an agent-driver or commission-driver
148 engaged in distributing meat products, vegetable products, fruit
149 products, bakery products, beverages (other than milk), or laundry
150 or dry cleaning services;

151 (b) As a traveling or city salesman, other than as
152 an agent-driver or commission-driver, engaged upon a full-time
153 basis in the solicitation on behalf of, and the transmission to, a
154 principal (except for sideline sales activities on behalf of some
155 other person) of orders from wholesalers, retailers, contractors,
156 or operator of hotels, restaurants, or other similar
157 establishments for merchandise for resale or supplies for use in
158 their business operations.

159 However, for purposes of this subsection, the term
160 "employment" shall include services described in subsections
161 I(2)(a) and (b) of this section, only if:

162 (i) The contract of service contemplates that
163 substantially all of the services are to be performed personally
164 by such individual;

165 (ii) The individual does not have a
166 substantial investment in facilities used in connection with the
167 performance of the services (other than in facilities for
168 transportation); and

169 (iii) The services are not in the nature of a
170 single transaction that is not part of a continuing relationship
171 with the person for whom the services are performed.

172 (3) Service performed in the employ of this state or
173 any of its instrumentalities or any political subdivision thereof
174 or any of its instrumentalities or any instrumentality of more
175 than one (1) of the foregoing or any instrumentality of any of the
176 foregoing and one or more other states or political subdivisions
177 or any Indian tribe as defined in Section 3306(u) of the Federal
178 Unemployment Tax Act (FUTA), which includes any subdivision,
179 subsidiary or business enterprise wholly owned by such Indian
180 tribe; however, such service is excluded from "employment" as
181 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)
182 of that act and is not excluded from "employment" under subsection
183 I(5) of this section.

184 (4) (a) Services performed in the employ of a
185 religious, charitable, educational, or other organization, but
186 only if the service is excluded from "employment" as defined in
187 the Federal Unemployment Tax Act, 26 USCS Section 3306(c)(8), and

188 (b) The organization had four (4) or more
189 individuals in employment for some portion of a day in each of
190 twenty (20) different weeks, whether or not such weeks were
191 consecutive, within the current or preceding calendar year,

192 regardless of whether they were employed at the same moment of
193 time.

194 (5) For the purposes of subsection I(3) and (4) of this
195 section, the term "employment" does not apply to service
196 performed:

197 (a) In the employ of:

198 (i) A church or convention or association of
199 churches; or

200 (ii) An organization which is operated
201 primarily for religious purposes and which is operated,
202 supervised, controlled, or principally supported by a church or
203 convention or association of churches; or

204 (b) By a duly ordained, commissioned, or licensed
205 minister of a church in the exercise of his ministry, or by a
206 member of a religious order in the exercise of duties required by
207 such order; or

208 (c) In the employ of a governmental entity
209 referred to in subsection I(3), if such service is performed by an
210 individual in the exercise of duties:

211 (i) As an elected official;

212 (ii) As a member of a legislative body, or a
213 member of the judiciary, of a state or political subdivision or a
214 member of an Indian tribal council;

215 (iii) As a member of the State National Guard
216 or Air National Guard;

217 (iv) As an employee serving on a temporary
218 basis in case of fire, storm, snow, earthquake, flood or similar
219 emergency;

220 (v) In a position which, under or pursuant to
221 the laws of this state or laws of an Indian tribe, is designated
222 as:

223 1. A major nontenured policy-making or
224 advisory position, or

225 2. A policy-making or advisory position
226 the performance of the duties of which ordinarily does not require
227 more than eight (8) hours per week; or

228 (d) In a facility conducted for the purpose of
229 carrying out a program of rehabilitation for individuals whose
230 earning capacity is impaired by age or physical or mental
231 deficiency or injury, or providing remunerative work for
232 individuals who because of their impaired physical or mental
233 capacity cannot be readily absorbed in the competitive labor
234 market, by an individual receiving such rehabilitation or
235 remunerative work; or

236 (e) By an inmate of a custodial or penal
237 institution; or

238 (f) As part of an unemployment work-relief or
239 work-training program assisted or financed in whole or in part by
240 any federal agency or agency of a state or political subdivision
241 thereof or of an Indian tribe, by an individual receiving such
242 work relief or work training, unless coverage of such service is
243 required by federal law or regulation.

244 (6) Service performed by an individual in agricultural
245 labor as defined in paragraph (15)(a) of this subsection when:

246 (a) Such service is performed for a person who:

247 (i) During any calendar quarter in either the
248 current or the preceding calendar year paid remuneration in cash
249 of Twenty Thousand Dollars (\$20,000.00) or more to individuals
250 employed in agricultural labor, or

251 (ii) For some portion of a day in each of
252 twenty (20) different calendar weeks, whether or not such weeks
253 were consecutive, in either the current or the preceding calendar
254 year, employed in agricultural labor ten (10) or more individuals,
255 regardless of whether they were employed at the same moment of
256 time.

257 (b) For the purposes of subsection I(6) any
258 individual who is a member of a crew furnished by a crew leader to
259 perform service in agricultural labor for any other person shall
260 be treated as an employee of such crew leader:

261 (i) If such crew leader holds a valid
262 certificate of registration under the Farm Labor Contractor
263 Registration Act of 1963; or substantially all the members of such
264 crew operate or maintain tractors, mechanized harvesting or crop
265 dusting equipment, or any other mechanized equipment, which is
266 provided by such crew leader; and

267 (ii) If such individual is not an employee of
268 such other person within the meaning of subsection I(1).

269 (c) For the purpose of subsection I(6), in the
270 case of any individual who is furnished by a crew leader to
271 perform service in agricultural labor for any other person and who
272 is not treated as an employee of such crew leader under paragraph
273 (6)(b) of this subsection:

274 (i) Such other person and not the crew leader
275 shall be treated as the employer of such individual; and

276 (ii) Such other person shall be treated as
277 having paid cash remuneration to such individual in an amount
278 equal to the amount of cash remuneration paid to such individual
279 by the crew leader (either on his own behalf or on behalf of such
280 other person) for the service in agricultural labor performed for
281 such other person.

282 (d) For the purposes of subsection I(6) the term
283 "crew leader" means an individual who:

284 (i) Furnishes individuals to perform service
285 in agricultural labor for any other person;

286 (ii) Pays (either on his own behalf or on
287 behalf of such other person) the individuals so furnished by him
288 for the service in agricultural labor performed by them; and

289 (iii) Has not entered into a written
290 agreement with such other person under which such individual is
291 designated as an employee of such other person.

292 (7) The term "employment" shall include domestic
293 service in a private home, local college club or local chapter of
294 a college fraternity or sorority performed for an employing unit
295 which paid cash remuneration of One Thousand Dollars (\$1,000.00)
296 or more in any calendar quarter in the current or the preceding
297 calendar year to individuals employed in such domestic service.
298 For the purpose of this subsection, the term "employment" does not
299 apply to service performed as a "sitter" at a hospital in the
300 employ of an individual.

301 (8) An individual's entire service, performed within or
302 both within and without this state, if:

303 (a) The service is localized in this state; or

304 (b) The service is not localized in any state but
305 some of the service is performed in this state; and

306 (i) The base of operations or, if there is no
307 base of operations, the place from which such service is directed
308 or controlled is in this state; or

309 (ii) The base of operations or place from
310 which such service is directed or controlled is not in any state
311 in which some part of the service is performed, but the
312 individual's residence is in this state.

313 (9) Services not covered under paragraph (8) of this
314 subsection and performed entirely without this state, with respect
315 to no part of which contributions are required and paid under an
316 unemployment compensation law of any other state or of the federal
317 government, shall be deemed to be employment subject to this
318 chapter if the individual performing such services is a resident
319 of this state and the department approves the election of the
320 employing unit for whom such services are performed that the

321 entire service of such individual shall be deemed to be employment
322 subject to this chapter.

323 (10) Service shall be deemed to be localized within a
324 state if:

325 (a) The service is performed entirely within such
326 state; or

327 (b) The service is performed both within and
328 without such state, but the service performed without such state
329 is incidental to the individual's service within the state; for
330 example, is temporary or transitory in nature or consists of
331 isolated transactions.

332 (11) The services of an individual who is a citizen of
333 the United States, performed outside the United States (except in
334 Canada), in the employ of an American employer (other than service
335 which is deemed "employment" under the provisions of paragraph
336 (8), (9) or (10) of this subsection or the parallel provisions of
337 another state's law), if:

338 (a) The employer's principal place of business in
339 the United States is located in this state; or

340 (b) The employer has no place of business in the
341 United States; but

342 (i) The employer is an individual who is a
343 resident of this state; or

344 (ii) The employer is a corporation which is
345 organized under the laws of this state; or

346 (iii) The employer is a partnership or a
347 trust and the number of the partners or trustees who are residents
348 of this state is greater than the number who are residents of any
349 one (1) other state; or

350 (c) None of the criteria of subparagraphs (a) and
351 (b) of this paragraph are met but the employer has elected
352 coverage in this state or, the employer having failed to elect

353 coverage in any state, the individual has filed a claim for
354 benefits, based on such service, under the law of this state; or

355 (d) An "American employer," for purposes of this
356 paragraph, means a person who is:

357 (i) An individual who is a resident of the
358 United States; or

359 (ii) A partnership if two-thirds (2/3) or
360 more of the partners are residents of the United States; or

361 (iii) A trust, if all of the trustees are
362 residents of the United States; or

363 (iv) A corporation organized under the laws
364 of the United States or of any state.

365 (12) All services performed by an officer or member of
366 the crew of an American vessel on or in connection with such
367 vessel, if the operating office from which the operations of such
368 vessel operating on navigable waters within, or within and
369 without, the United States are ordinarily and regularly
370 supervised, managed, directed and controlled, is within this
371 state; notwithstanding the provisions of subsection I(8).

372 (13) Service with respect to which a tax is required to
373 be paid under any federal law imposing a tax against which credit
374 may be taken for contributions required to be paid into a state
375 unemployment fund, or which as a condition for full tax credit
376 against the tax imposed by the Federal Unemployment Tax Act, 26
377 USCS Section 3301 et seq., is required to be covered under this
378 chapter, notwithstanding any other provisions of this subsection.

379 (14) Services performed by an individual for wages
380 shall be deemed to be employment subject to this chapter unless
381 and until it is shown to the satisfaction of the department that
382 such individual has been and will continue to be free from control
383 and direction over the performance of such services both under his
384 contract of service and in fact; and the relationship of employer

385 and employee shall be determined in accordance with the principles
386 of the common law governing the relation of master and servant.

387 (15) The term "employment" shall not include:

388 (a) Agricultural labor, except as provided in
389 subsection I(6) of this section. The term "agricultural labor"
390 includes all services performed:

391 (i) On a farm or in a forest in the employ of
392 any employing unit in connection with cultivating the soil, in
393 connection with cutting, planting, deadening, marking or otherwise
394 improving timber, or in connection with raising or harvesting any
395 agricultural or horticultural commodity, including the raising,
396 shearing, feeding, caring for, training, and management of
397 livestock, bees, poultry, fur-bearing animals and wildlife;

398 (ii) In the employ of the owner or tenant or
399 other operator of a farm, in connection with the operation,
400 management, conservation, improvement or maintenance of such farm
401 and its tools and equipment, or in salvaging timber or clearing
402 land of brush and other debris left by a hurricane, if the major
403 part of such service is performed on a farm;

404 (iii) In connection with the production or
405 harvesting of naval stores products or any commodity defined in
406 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g),
407 or in connection with the raising or harvesting of mushrooms, or
408 in connection with the ginning of cotton, or in connection with
409 the operation or maintenance of ditches, canals, reservoirs, or
410 waterways not owned or operated for profit, used exclusively for
411 supplying and storing water for farming purposes;

412 (iv) (A) In the employ of the operator of a
413 farm in handling, planting, drying, packing, packaging,
414 processing, freezing, grading, storing or delivering to storage or
415 to market or to a carrier for transportation to market, in its
416 unmanufactured state, any agricultural or horticultural commodity;

417 but only if such operator produced more than one-half (1/2) of the
418 commodity with respect to which such service is performed;

419 (B) In the employ of a group of
420 operators of farms (or a cooperative organization of which such
421 operators are members) in the performance of service described in
422 subitem (A), but only if such operators produced more than
423 one-half (1/2) of the commodity with respect to which such service
424 is performed;

425 (C) The provisions of subitems (A) and
426 (B) shall not be deemed to be applicable with respect to service
427 performed in connection with commercial canning or commercial
428 freezing or in connection with any agricultural or horticultural
429 commodity after its delivery to a terminal market for distribution
430 for consumption;

431 (v) On a farm operated for profit if such
432 service is not in the course of the employer's trade or business;

433 (vi) As used in paragraph (15)(a) of this
434 subsection, the term "farm" includes stock, dairy, poultry, fruit,
435 fur-bearing animals, and truck farms, plantations, ranches,
436 nurseries, ranges, greenhouses, or other similar structures used
437 primarily for the raising of agricultural or horticultural
438 commodities, and orchards.

439 (b) Domestic service in a private home, local
440 college club, or local chapter of a college fraternity or
441 sorority, except as provided in subsection I(7) of this section,
442 or service performed as a "sitter" at a hospital in the employ of
443 an individual.

444 (c) Casual labor not in the usual course of the
445 employing unit's trade or business.

446 (d) Service performed by an individual in the
447 employ of his son, daughter, or spouse, and service performed by a
448 child under the age of twenty-one (21) in the employ of his father
449 or mother.

450 (e) Service performed in the employ of the United
451 States government or of an instrumentality wholly owned by the
452 United States; except that if the Congress of the United States
453 shall permit states to require any instrumentalities of the United
454 States to make payments into an unemployment fund under a state
455 unemployment compensation act, then to the extent permitted by
456 Congress and from and after the date as of which such permission
457 becomes effective, all of the provisions of this chapter shall be
458 applicable to such instrumentalities and to services performed by
459 employees for such instrumentalities in the same manner, to the
460 same extent, and on the same terms as to all other employers and
461 employing units. If this state should not be certified under the
462 Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any
463 year, then the payment required by such instrumentality with
464 respect to such year shall be deemed to have been erroneously
465 collected and shall be refunded by the department from the fund in
466 accordance with the provisions of Section 71-5-383.

467 (f) Service performed in the employ of an
468 "employer" as defined by the Railroad Unemployment Insurance Act,
469 45 USCS Section 351(a), or as an "employee representative" as
470 defined by the Railroad Unemployment Insurance Act, 45 USCS
471 Section 351(f), and service with respect to which unemployment
472 compensation is payable under an unemployment compensation system
473 for maritime employees, or under any other unemployment
474 compensation system established by an act of Congress; however,
475 the department is authorized and directed to enter into agreements
476 with the proper agencies under such act or acts of Congress, which
477 agreements shall become effective ten (10) days after publication
478 thereof in the manner provided in Section 71-5-117 for general
479 rules, to provide reciprocal treatment to individuals who have,
480 after acquiring potential rights to benefits under this chapter,
481 acquired rights to unemployment compensation under such act or
482 acts of Congress or who have, after acquiring potential rights to

483 unemployment compensation under such act or acts of Congress,
484 acquired rights to benefits under this chapter.

485 (g) Service performed in any calendar quarter in
486 the employ of any organization exempt from income tax under the
487 Internal Revenue Code, 26 USCS Section 501(a) (other than an
488 organization described in 26 USCS Section 401(a)), or exempt from
489 income tax under 26 USCS Section 521 if the remuneration for such
490 service is less than Fifty Dollars (\$50.00).

491 (h) Service performed in the employ of a school,
492 college, or university if such service is performed:

493 (i) By a student who is enrolled and is
494 regularly attending classes at such school, college or university,
495 or

496 (ii) By the spouse of such a student if such
497 spouse is advised, at the time such spouse commences to perform
498 such service, that

499 (A) The employment of such spouse to
500 perform such service is provided under a program to provide
501 financial assistance to such student by such school, college, or
502 university, and

503 (B) Such employment will not be covered
504 by any program of unemployment insurance.

505 (i) Service performed by an individual under the
506 age of twenty-two (22) who is enrolled at a nonprofit or public
507 educational institution which normally maintains a regular faculty
508 and curriculum and normally has a regularly organized body of
509 students in attendance at the place where its educational
510 activities are carried on, as a student in a full-time program
511 taken for credit at such institution, which combines academic
512 instruction with work experience, if such service is an integral
513 part of such program and such institution has so certified to the
514 employer, except that this subparagraph shall not apply to service

515 performed in a program established for or on behalf of an employer
516 or group of employers.

517 (j) Service performed in the employ of a hospital,
518 if such service is performed by a patient of the hospital, as
519 defined in subsection L of this section.

520 (k) Service performed as a student nurse in the
521 employ of a hospital or a nurses' training school by an individual
522 who is enrolled and is regularly attending classes in a nurses'
523 training school chartered or approved pursuant to state law; and
524 services performed as an intern in the employ of a hospital by an
525 individual who has completed a four-year course in a medical
526 school chartered or approved pursuant to state law.

527 (l) Service performed by an individual as an
528 insurance agent or as an insurance solicitor, if all such service
529 performed by such individual is performed for remuneration solely
530 by way of commission.

531 (m) Service performed by an individual under the
532 age of eighteen (18) in the delivery or distribution of newspapers
533 or shopping news, not including delivery or distribution to any
534 point for subsequent delivery or distribution.

535 (n) If the services performed during one-half
536 (1/2) or more of any pay period by an employee for the employing
537 unit employing him constitute employment, all the services of such
538 employee for such period shall be deemed to be employment; but if
539 the services performed during more than one-half (1/2) of any such
540 pay period by an employee for the employing unit employing him do
541 not constitute employment, then none of the services of such
542 employee for such period shall be deemed to be employment. As
543 used in this subsection the term "pay period" means a period (of
544 not more than thirty-one (31) consecutive days) for which a
545 payment of remuneration is ordinarily made to the employee by the
546 employing unit employing him.

547 (o) Service performed by a barber or beautician
548 whose work station is leased to him or her by the owner of the
549 shop in which he or she works and who is compensated directly by
550 the patrons he or she serves and who is free from direction and
551 control by the lessor.

552 (p) Service performed for a funeral home on an
553 intermittent basis only by a barber, beautician, organist, hostess
554 or other independent service people.

555 K. "Employment office" means a free public employment office
556 or branch thereof, operated by this state or maintained as a part
557 of the state controlled system of public employment offices.

558 L. "Public employment service" means the operation of a
559 program that offers free placement and referral services to
560 applicants and employers, including job development.

561 M. "Fund" means the Unemployment Compensation Fund
562 established by this chapter, to which all contributions required
563 and from which all benefits provided under this chapter shall be
564 paid.

565 N. "Hospital" means an institution which has been licensed,
566 certified, or approved by the State Department of Health as a
567 hospital.

568 O. "Institution of higher learning," for the purposes of
569 this section, means an educational institution which:

570 (1) Admits as regular students only individuals having
571 a certificate of graduation from a high school, or the recognized
572 equivalent of such a certificate;

573 (2) Is legally authorized in this state to provide a
574 program of education beyond high school;

575 (3) Provides an educational program for which it awards
576 a bachelor's or higher degree, or provides a program which is
577 acceptable for full credit toward such a degree, a program of
578 postgraduate or postdoctoral studies, or a program of training to

579 prepare students for gainful employment in a recognized
580 occupation;

581 (4) Is a public or other nonprofit institution;

582 (5) Notwithstanding any of the foregoing provisions of
583 this subsection, all colleges and universities in this state are
584 institutions of higher learning for purposes of this section.

585 P. (1) "State" includes, in addition to the states of the
586 United States of America, the District of Columbia, Commonwealth
587 of Puerto Rico and the Virgin Islands.

588 (2) The term "United States" when used in a
589 geographical sense includes the states, the District of Columbia,
590 Commonwealth of Puerto Rico and the Virgin Islands.

591 (3) The provisions of paragraphs (1) and (2) of
592 subsection P., as including the Virgin Islands, shall become
593 effective on the day after the day on which the United States
594 Secretary of Labor approves for the first time under Section
595 3304(a) of the Internal Revenue Code of 1954 an unemployment
596 compensation law submitted to the secretary by the Virgin Islands
597 for such approval.

598 Q. "Unemployment."

599 (1) An individual shall be deemed "unemployed" in any
600 week during which he performs no services and with respect to
601 which no wages are payable to him, or in any week of less than
602 full-time work if the wages payable to him with respect to such
603 week are less than his weekly benefit amount as computed and
604 adjusted in Section 71-5-505. The department shall prescribe
605 regulations applicable to unemployed individuals, making such
606 distinctions in the procedure as to total unemployment, part-total
607 unemployment, partial unemployment of individuals attached to
608 their regular jobs, and other forms of short-time work, as the
609 department deems necessary.

610 (2) An individual's week of total unemployment shall be
611 deemed to commence only after his registration at an employment

612 office, except as the department may by regulation otherwise
613 prescribe.

614 R. (1) "Wages" means all remuneration for personal
615 services, including commissions and bonuses and the cash value of
616 all remuneration in any medium other than cash, except that
617 "wages," for purposes of determining employer's coverage and
618 payment of contributions for agricultural and domestic service
619 means cash remuneration only. The reasonable cash value of
620 remuneration in any medium other than cash shall be estimated and
621 determined in accordance with rules prescribed by the department;
622 however, that the term "wages" shall not include:

623 (a) The amount of any payment made to, or on
624 behalf of, an employee under a plan or system established by an
625 employer which makes provision for his employees generally or for
626 a class or classes of his employees (including any amount paid by
627 an employer for insurance or annuities, or into a fund, to provide
628 for any such payment), on account of:

629 (i) Retirement, or

630 (ii) Sickness or accident disability, or

631 (iii) Medical or hospitalization expenses in
632 connection with sickness or actual disability, or

633 (iv) Death, provided the employee:

634 (A) Has not the option to receive,
635 instead of provision for such death benefit, any part of such
636 payment or, if such death benefit is insured, any part of the
637 premiums (or contributions to premiums) paid by his employer, and

638 (B) Has not the right, under the
639 provisions of the plan or system or policy of insurance providing
640 for such death benefit, to assign such benefit or to receive a
641 cash consideration in lieu of such benefit, either upon his
642 withdrawal from the plan or system providing for such benefit or
643 upon termination of such plan or system or policy of insurance or
644 of his employment with such employer;

645 (b) Dismissal payments which the employer is not
646 legally required to make;

647 (c) Payment by an employer (without deduction from
648 the remuneration of an employee) of the tax imposed by the
649 Internal Revenue Code, 26 USCS Section 3101;

650 (d) From and after January 1, 1992, the amount of
651 any payment made to or on behalf of an employee for a "cafeteria"
652 plan, which meets the following requirements:

653 (i) Qualifies under Section 125 of the
654 Internal Revenue Code;

655 (ii) Covers only employees;

656 (iii) Covers only noncash benefits;

657 (iv) Does not include deferred compensation
658 plans.

659 (2) [Not enacted].

660 S. "Week" means calendar week or such period of seven (7)
661 consecutive days as the department may by regulation prescribe.
662 The department may by regulation prescribe that a week shall be
663 deemed to be in, within, or during any benefit year which includes
664 any part of such week.

665 T. "Insured work" means "employment" for "employers."

666 U. The term "includes" and "including," when used in a
667 definition contained in this chapter, shall not be deemed to
668 exclude other things otherwise within the meaning of the term
669 defined.

670 V. "Employee leasing arrangement" means any agreement
671 between an employee leasing firm and a client, whereby specified
672 client responsibilities such as payment of wages, reporting of
673 wages for unemployment insurance purposes, payment of unemployment
674 insurance contributions and other such administrative duties are
675 to be performed by an employee leasing firm, on an ongoing basis.

676 W. "Employee leasing firm" means any entity which provides
677 specified duties for a client company such as payment of wages,

678 reporting of wages for unemployment insurance purposes, payment of
679 unemployment insurance contributions and other administrative
680 duties, in connection with the client's employees, that are
681 directed and controlled by the client and that are providing
682 ongoing services for the client.

683 X. "Temporary help firm" means an entity which hires its own
684 employees and provides those employees to other individuals or
685 organizations to perform some service, to support or supplement
686 the existing work force in special situations such as employee
687 absences, temporary skill shortages, seasonal workloads and
688 special assignments and projects, with the expectation that the
689 worker's position will be terminated upon the completion of the
690 specified task or function.

691 **SECTION 2.** This act shall take effect and be in force from
692 and after July 1, 2005.