

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1684

1 AN ACT TO AMEND SECTIONS 27-7-901 AND 27-7-903, MISSISSIPPI
2 CODE OF 1972, TO INCREASE THE TAX LEVIED ON AMOUNTS THAT ARE PAID
3 TO PATRONS BY GAMING ESTABLISHMENTS; TO AMEND SECTION 75-76-177,
4 MISSISSIPPI CODE OF 1972, TO INCREASE THE LICENSE FEE ON THE GROSS
5 REVENUE OF GAMING LICENSEES; TO AMEND SECTION 71-5-353,
6 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A REDUCTION IN THE
7 UNEMPLOYMENT COMPENSATION CONTRIBUTION RATE FOR CERTAIN EMPLOYERS;
8 TO PROVIDE FOR THE REPEAL OF THE RATE REDUCTION UNDER CERTAIN
9 CONDITIONS RELATING TO THE SIZE OF THE UNEMPLOYMENT COMPENSATION
10 TRUST FUND; TO PROVIDE FOR A WORKFORCE TRAINING ENHANCEMENT
11 CONTRIBUTION FOR CERTAIN EMPLOYERS SUBJECT TO THE UNEMPLOYMENT
12 COMPENSATION LAW; TO ESTABLISH THE WORKFORCE TRAINING ENHANCEMENT
13 FUND AND TO AUTHORIZE EXPENDITURES FROM THE FUND FOR EMPLOYEE
14 TRAINING TO BE ADMINISTERED BY THE STATE BOARD FOR COMMUNITY AND
15 JUNIOR COLLEGES AND THE GOVERNOR'S STATE WORKFORCE INVESTMENT
16 BOARD; TO PROVIDE FOR THE REPEAL OF THE WORKFORCE CONTRIBUTION
17 UNDER CERTAIN CONDITIONS RELATING TO THE SIZE OF THE UNEMPLOYMENT
18 COMPENSATION TRUST FUND; TO AMEND SECTION 71-5-355, MISSISSIPPI
19 CODE OF 1972, TO REVISE CERTAIN DEFINITIONS, REFERENCES AND TABLES
20 IN THE MISSISSIPPI EMPLOYMENT SECURITY LAW WHICH ARE APPLICABLE TO
21 EMPLOYER CONTRIBUTION COST RATE CRITERION AND SIZE OF FUND INDEX
22 TO CONFORM TO THE CONTRIBUTION RATE REDUCTION; TO AMEND SECTION
23 71-5-453, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A WORKFORCE
24 TRAINING ENHANCEMENT FUND HOLDING ACCOUNT MAINTAINED BY THE
25 MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY; TO AMEND SECTION
26 71-5-351, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED
27 PURPOSES.

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

29 **SECTION 1.** Section 27-7-901, Mississippi Code of 1972, is
30 amended as follows:

31 27-7-901. (1) There is hereby levied, assessed and shall be
32 collected a tax of five percent (5%) upon amounts that are paid or
33 credited by gaming establishments licensed under the provisions of
34 the Mississippi Gaming Control Act to their patrons. The tax
35 shall be collected by licensed gaming establishments and remitted
36 to the State Tax Commission in the manner provided for by
37 regulations promulgated by the Chairman of the State Tax
38 Commission.

39 (2) As used in this section, "amounts that are paid or
40 credited" means amounts or credits that are subject to the
41 withholding or reporting requirements of the Internal Revenue
42 Code.

43 (3) No credit shall be allowed under the Income Tax Law of
44 1952 for the tax collected by licensed gaming establishments
45 pursuant to this section.

46 **SECTION 2.** Section 27-7-903, Mississippi Code of 1972, is
47 amended as follows:

48 27-7-903. (1) There is hereby levied and assessed upon
49 patrons of gaming establishments located in this state that are
50 not licensed under the provisions of the Mississippi Gaming
51 Control Act, a tax of five percent (5%) of the amounts that are
52 paid or credited to such patrons by the gaming establishment,
53 which tax is the same in kind and rate as has heretofore been
54 imposed pursuant to Section 27-7-901 upon the patrons of gaming
55 establishments which are licensed under the Mississippi Gaming
56 Control Act. The legal incidence and duty to pay such taxes shall
57 fall upon the patron. The assessment of such tax is subject to
58 any exemptions as may exist under federal or state law. The State
59 Tax Commission may enter into tax collection agreements regarding
60 this tax.

61 (2) As used in this section, "amounts that are paid or
62 credited" means amounts or credits that are subject to the
63 withholding or reporting requirements of the Internal Revenue
64 Code.

65 (3) No credit shall be allowed under the Income Tax Law of
66 1952 for the tax collected by gaming establishments pursuant to
67 this section.

68 **SECTION 3.** Section 75-76-177, Mississippi Code of 1972, is
69 amended as follows:

70 75-76-177. (1) From and after August 1, 1990, there is
71 hereby imposed and levied on each gaming licensee a license fee
72 based upon all the gross revenue of the licensee as follows:

73 (a) Four percent (4%) of all the gross revenue of the
74 licensee which does not exceed Fifty Thousand Dollars (\$50,000.00)
75 per calendar month;

76 (b) Six percent (6%) of all the gross revenue of the
77 licensee which exceeds Fifty Thousand Dollars (\$50,000.00) per
78 calendar month and does not exceed One Hundred Thirty-four
79 Thousand Dollars (\$134,000.00) per calendar month; and

80 (c) Eight percent (8%) of all the gross revenue of the
81 licensee which exceeds One Hundred Thirty-four Thousand Dollars
82 (\$134,000.00) per calendar month.

83 (2) From and after July 1, 2005, there is imposed and levied
84 on each gaming licensee an additional license fee of one percent
85 (1%) of all the gross revenue of the licensee per calendar month.
86 Such license fee shall be in addition to the license fee imposed
87 and levied under subsection (1) of this section.

88 (3) All revenue received from any game or gaming device
89 which is leased for operation on the premises of the
90 licensee-owner to a person other than the owner thereof or which
91 is located in an area or space on such premises which is leased by
92 the licensee-owner to any such person, must be attributed to the
93 owner for the purposes of this section and be counted as part of
94 the gross revenue of the owner. The lessee is liable to the owner
95 for his proportionate share of such license fees.

96 (4) If the amount of license fees required to be reported
97 and paid pursuant to this section is later determined to be
98 greater or less than the amount actually reported and paid by the
99 licensee, the Chairman of the State Tax Commission shall:

100 (a) Assess and collect the additional license fees
101 determined to be due, with interest thereon until paid; or

102 (b) Refund any overpayment, with interest thereon, to
103 the licensee.

104 Interest must be computed, until paid, at the rate of one
105 percent (1%) per month from the first day of the first month
106 following either the due date of the additional license fees or
107 the date of overpayment.

108 (5) Failure to pay the fees provided for in this section
109 when they are due for continuation of a license shall be deemed a
110 surrender of the license.

111 **SECTION 4.** Section 71-5-353, Mississippi Code of 1972, is
112 amended as follows:

113 71-5-353. (1) Each employer shall pay contributions equal
114 to five and four-tenths percent (5.4%) of taxable wages paid by
115 him each calendar year, except as may be otherwise provided in
116 Section 71-5-361 and except that each newly subject employer shall
117 pay contributions at the rate of two and seven-tenths percent
118 (2.7%) of taxable wages until his experience-rating record has
119 been chargeable throughout not less than the twelve (12)
120 consecutive calendar months ending on the computation date;
121 thereafter his contribution rate shall be determined in accordance
122 with the provisions of Section 71-5-355.

123 (2) Unless eligible for a modified rate as described in
124 Section 71-5-355 of this chapter, each employer, as defined by
125 Section 71-5-11(H) of this chapter, engaged in an employee leasing
126 arrangement, with an employee leasing firm, on June 30, 1998, will
127 be assigned a contributions rate of one and five-tenths percent
128 (1.50%) for the calendar year 1999, and subsequent calendar years,
129 until the employer is eligible for a modified rate, as described
130 in Section 71-5-355 of this chapter, based on experience
131 accumulated subsequent to December 31, 1998.

132 The department shall notify all employers, active in the
133 department files and currently reporting, of the provisions of
134 this paragraph, at their last known mailing address on or before

135 August 15, 1998. All employee leasing firms shall report to the
136 department the name, the federal identification number, mailing
137 address, physical location address and telephone number of all
138 their clients on or before October 15, 1998. Any employee leasing
139 firm failing to comply with the provisions of this paragraph may
140 be assessed an amount equal to one-half of one percent (1/2 of 1%)
141 of total wages, or Five Hundred Dollars (\$500.00), whichever is
142 greater, for each client that the employee leasing firm fails to
143 report. Collection of the above mentioned penalty shall be in
144 conformity with department regulations.

145 (3) From and after January 1, 2005, contribution rates
146 assigned to employers by the department, as determined pursuant to
147 Sections 71-5-351, 71-5-353 and 71-5-355, shall be reduced by
148 three tenths of one percent (.3%). Such reduction shall only
149 apply to employers whose contribution rate, determined in
150 accordance with Sections 71-5-353 and 71-5-355, is equal to or
151 less than five and four tenths percent (5.4%), and shall include a
152 three tenths of one percent (.3%) reduction to the rate as a
153 result of violation of provisions of this chapter. The reduction
154 in rates provided for herein shall not apply to state boards,
155 instrumentalities and political subdivisions of the State of
156 Mississippi referred to in Sections 71-5-357 and 71-5-359, or to
157 nonprofit employers providing reimbursement to the department for
158 the unemployment fund pursuant to Section 71-5-357(a). This
159 reduction applies to all other employers. This subsection (3)
160 shall be repealed and the size of fund and cost rate criterion
161 shall be fixed for future years at the levels for the last rate
162 computation:

163 (a) The average high cost multiple is equal to or less
164 than 1.0. The average high cost multiple shall be computed as
165 follows: The result of the unobligated balance of the
166 Unemployment Compensation Fund at November 1 immediately preceding
167 the new rate year divided by the total wages for the twelve (12)

168 months ending on the June 30 immediately preceding the new rate
169 year shall be the numerator and shall be divided by the simple
170 average of the value of the three (3) highest cost rate criterion
171 computations since 1974. The result rounded to the next lower one
172 (1) decimal place will be the average high cost multiple; or
173 (b) The computed size of fund (average exposure
174 criterion divided by cost rate criterion) defined in Section
175 71-5-355 reaches 1.0 and the cost rate criterion reaches the
176 average for the highest value of the cost rate criterion
177 computations during each of the economic cycles (economic cycles
178 shall be those defined by the National Bureau of Economic
179 Research) subsequent to the calendar year 1974. The reduction
180 shall be accomplished as described in Section 71-5-355(1)(j) and
181 (k); or

182 (c) The Unemployment Compensation Fund falls below Five
183 Hundred Million Dollars (\$500,000,000.00).

184 (4) (a) From and after January 1, 2005, the workforce
185 enhancement contributions shall be applied at a rate of three
186 tenths of one percent (.3%) upon the taxable wages as defined by
187 Section 71-5-351, however, the workforce enhancement contribution
188 shall not be applied to state boards, instrumentalities and
189 political subdivisions of the State of Mississippi referred to in
190 Sections 71-5-357 and 71-5-359, or to nonprofit employers
191 providing reimbursement to the department for the unemployment
192 fund pursuant to Section 71-5-357(a) or employers who are assigned
193 a rate in accordance with Section 71-5-3.

194 (b) There is hereby created in the Treasury of the
195 State of Mississippi a special fund to be known as the "Workforce
196 Training Enhancement Fund," which consists of funds collected
197 pursuant to subsection (1) of this section. Funds collected shall
198 initially be deposited into the Clearing Account and subsequently
199 transferred to the Workforce Training Enhancement Fund described
200 in Section 71-5-453. In the event any employer pays an amount

201 insufficient to cover the total contributions due, the amounts due
202 shall be satisfied in the following order:

203 (i) Unemployment contributions; then

204 (ii) Workforce training enhancement contributions;

205 then

206 (iii) Interest and damages.

207 (c) All monies deposited in the Workforce Training
208 Enhancement Fund will be held by the Mississippi Department of
209 Employment Security in such account for a period of not less than
210 sixty (60) days. After such period, funds shall be transferred
211 within thirty (30) days to the Workforce Training Enhancement Fund
212 in a manner determined by the department. Interest earnings or
213 interest credits on deposit amounts shall be retained in the
214 account to pay the costs of the account. If after the period of
215 twelve (12) months interest earnings less banking costs exceeds
216 Ten Thousand Dollars (\$10,000.00), such excess amounts shall be
217 transferred to the Workforce Training Enhancement Fund within
218 thirty (30) days. Such transfers shall occur once annually,
219 during the month of January.

220 (d) All monies deposited into the Workforce Training
221 Enhancement Fund shall be used exclusively for the following
222 purposes: to provide training at no cost to employers in order to
223 enhance employee productivity. The initial priority of these
224 funds shall be for the benefit of existing businesses located
225 within the state. Twenty percent (20%) of the funds allocate in
226 the Workforce Training Enhancement Fund shall be utilized by the
227 State Board for Community and Junior Colleges for nontraditional
228 training, with an emphasis on short-term courses and flexible
229 scheduling. Employers may request training for existing employees
230 and/or newly hired employees from the State Board for Community
231 and Junior Colleges. The State Board for Community and Junior
232 Colleges will be responsible for providing the training. The

233 Governor's State Workforce Investment Board will approve the
234 annual plan and will review the results on a semiannual basis.

235 (e) All enforcement procedures for the collection of
236 delinquent contributions contained in Sections 71-5-363 through
237 71-5-383 shall be applicable in all respects for collections of
238 delinquent contributions designated for the Unemployment
239 Compensation Fund and the Workforce Training Enhancement Fund.

240 (f) This subsection (4) shall be repealed and the size
241 of fund and cost rate criterion shall be fixed at the levels
242 computed for the last rate computation at the end of any calendar
243 year in which the following has occurred:

244 (i) The average high cost multiple is equal to or
245 less than 1.0. The average high cost multiple shall be computed
246 as follows: The result of the unobligated balance of the
247 unemployment compensation at November 1 immediately preceding the
248 new rate year divided by the total wages for the twelve (12)
249 months ending on the June 30 immediately preceding the new rate
250 year shall be the numerator and shall be divided by the simple
251 average of the value of the three (3) highest cost rate criterion
252 computations since 1974. The result rounded to the next lower one
253 (1) decimal place will be the average high cost multiple; or

254 (ii) The computed size of fund (average exposure
255 criterion divided by cost rate criterion) defined in Section
256 71-5-355 reaches 1.0 and the cost rate criterion reaches the
257 average for the highest value of the cost rate criterion
258 computations during each of the economic cycles (economic cycles
259 shall be those defined by the National Bureau of Economic
260 Research) subsequent to the calendar year 1974. The reduction
261 shall be accomplished as described in Section 71-3-355(1)(j) and
262 (k); or

263 (iii) The Unemployment Compensation Fund falls
264 below Five Hundred Million Dollars (\$500,000,000.00).

265 **SECTION 5.** Section 71-5-355, Mississippi Code of 1972, is
266 amended as follows:

267 71-5-355. (1) As used in this section, the following words
268 and phrases shall have the following meanings, unless the context
269 clearly requires otherwise:

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

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

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

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

283 (e) For the computation of modified rates, "eligible
284 employer" means an employer whose experience-rating record has
285 been chargeable with benefits throughout the thirty-six (36)
286 consecutive calendar-month period ending on the computation date,
287 except that any employer who has not been subject to the
288 Mississippi Employment Security Law for a period of time
289 sufficient to meet the thirty-six (36) consecutive calendar-month
290 requirement shall be an eligible employer if his experience-rating
291 record has been chargeable throughout not less than the twelve
292 (12) consecutive calendar-month period ending on the computation
293 date. No employer shall be considered eligible for a contribution
294 rate less than five and four-tenths percent (5.4%) with respect to
295 any tax year, who has failed to file any two (2) quarterly reports
296 within the qualifying period by September 30 following the
297 computation date. No employer or employing unit shall be eligible

298 for a contribution rate of less than five and four-tenths percent
299 (5.4%) for the tax year in which the employing unit is found by
300 the department to be in violation of Section 71-5-19(2) or (3) and
301 for the next two (2) succeeding tax years. No representative of
302 such employing unit who was a party to a violation as described in
303 Section 71-5-19(2) or (3), if such representative was or is an
304 employing unit in this state, shall be eligible for a
305 contributions rate of less than five and four-tenths percent
306 (5.4%) for the tax year in which such violation was detected by
307 the department and for the next two (2) succeeding tax years.

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

318 (g) "Modified rates" means the rates of employer
319 contributions determined under the provisions of this chapter and
320 the rates of newly subject employers, as provided in Section
321 71-5-353.

322 (h) For the computation of modified rates, "qualifying
323 period" means a period of not less than the thirty-six (36)
324 consecutive calendar months ending on the computation date
325 throughout which an employer's experience-rating record has been
326 chargeable with benefits; except that with respect to any eligible
327 employer who has not been subject to this article for a period of
328 time sufficient to meet the thirty-six (36) consecutive
329 calendar-month requirement, "qualifying period" means the period
330 ending on the computation date throughout which his

331 experience-rating record has been chargeable with benefits, but in
332 no event less than the twelve (12) consecutive calendar-month
333 period ending on the computation date throughout which his
334 experience-rating record has been so chargeable.

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

343 (j) The "cost rate criterion" (CRC) is defined as
344 follows: Beginning with January 1974, the benefits paid for the
345 twelve-month period ending December 1974 are summed and divided by
346 the total wages for the twelve-month period ending on June 30,
347 1975. Similar ratios are computed by subtracting the earliest
348 month's benefit payments and adding the benefits of the next month
349 in the sequence and dividing each sum of twelve (12) months'
350 benefits by the total wages for the twelve-month period ending on
351 the June 30 which is nearest to the final month of the period used
352 to compute the numerator. If December is the final month of the
353 period used to compute the numerator, then the twelve-month period
354 ending the following June 30 will be used for the denominator.
355 The highest value of these ratios beginning with the ratio for
356 benefits paid in calendar year 1974 is the cost rate criterion.
357 The cost rate criterion shall be computed to four (4) decimal
358 places. Benefits and total wages used in the computation of the
359 cost rate criterion shall exclude all benefits and total wages
360 applicable to state agencies, political subdivisions, reimbursable
361 nonprofit corporations, and tax exempt PSE employment. For rate
362 years 2005 and 2006, the CRC shall be adjusted downward by an
363 amount necessary to satisfy one-half (1/2) the reductions required

364 to maintain a general experience rate of nine tenths of one
365 percent (.9%). For rate year 2007 and subsequent years, the CRC
366 shall be adjusted downward by an amount necessary to satisfy
367 one-half (1/2) the reductions required to maintain a general
368 experience rate of seven tenths of one percent (.7%) until such
369 time as the CRC equals the average for the highest value of the
370 cost rate criterion computations during each of the economic
371 cycles (economic cycles shall be those defined by the National
372 Bureau of Economic Research) since the calendar year 1974, except
373 as provided in subsection (3) of Section 71-5-353. When the
374 remaining reduction is insufficient to cause the reductions as
375 specified in this paragraph, additional reductions specified in
376 subsection (2)(k) of this section may be made to the size of fund
377 index to achieve the general experience rate specified in this
378 paragraph, except as provided in Section 71-3-353. The CRC shall
379 not be raised except as provided through annual computations and
380 additions of future economic cycles.

381 (k) "Size of fund index" (SOFI) is defined as the ratio
382 of the EC to the CRC. For the rate years 2005 and 2006, the SOFI
383 shall be adjusted downward by an amount necessary to satisfy
384 one-half (1/2) the reductions required to maintain a general
385 experience rate of nine tenths of one percent (.9%). For rate
386 year 2007 and subsequent years, the SOFI shall be adjusted
387 downward by an amount necessary to satisfy one-half (1/2) the
388 reductions required to maintain a minimum general experience rate
389 of seven tenths of one percent (.7%) until such time as the SOFI
390 is reduced from a target size of 1.5 to 1.0, except as provided in
391 subsection (3) of Section 71-5-353. The SOFI shall not be raised
392 in any event.

393 (1) No employer's contribution rate shall exceed five
394 and four-tenths percent (5.4%), nor be less than four-tenths of
395 one percent (.4%). However, from and after January 1, 2005, and
396 continuing until Section 71-5-353(3) shall be repealed, the

397 reduction shall be accomplished as described in Section
398 71-5-355(1)(j) and (k), no employer's unemployment contribution
399 rate shall be less than one tenth of one percent (.1%).

400 (2) Modified rates:

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

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

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

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

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

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

424 3. Refused an offer of suitable work by such
425 employer without good cause, and the department further finds that
426 such benefits are based on wages for employment for such employer
427 prior to such voluntary leaving, discharge or refusal of suitable
428 work, as the case may be; * * *

429 4. Had base period wages which included wages
430 for previously uncovered services as defined in Section
431 71-5-511(e) to the extent that the Unemployment Compensation Fund
432 is reimbursed for such benefits pursuant to Section 121 of Public
433 Law 94-566;

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

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

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

448 8. Was paid benefits during any week while in
449 training with the approval of the department, under the provisions
450 of Section 71-5-513B, or for any week while in training approved
451 under Section 236(a)(1) of the Trade Act of 1974, under the
452 provisions of Section 71-5-513C; or

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

457 (iii) The department shall compute a benefit ratio
458 for each eligible employer, which shall be the quotient obtained
459 by dividing the total benefits charged to his experience-rating
460 record during the period his experience-rating record has been
461 chargeable, but not less than the twelve (12) consecutive

462 calendar-month period nor more than the thirty-six (36)
 463 consecutive calendar-month period ending on the computation date,
 464 by his total taxable payroll for the same period on which all
 465 contributions due have been paid on or before the September 30
 466 immediately following the computation date. Such benefit ratio
 467 shall be computed to the tenth of a percent (.1%), rounding any
 468 remainder to the next higher tenth.

469 The following table shall be applied to reduce contribution
 470 rates until Section 71-5-353(3) and (4) is repealed:

471	<u>Benefit Ratio</u>	<u>Individual Experience Rate:</u>
472	<u>0.0%</u>	<u>- 0.3%</u>
473	<u>0.1</u>	<u>- 0.2</u>
474	<u>0.2</u>	<u>- 0.10</u>
475	<u>0.3</u>	<u>0.0</u>
476	<u>0.4</u>	<u>0.1</u>
477	<u>0.5</u>	<u>0.2</u>
478	<u>0.6</u>	<u>0.3</u>
479	<u>0.7</u>	<u>0.4</u>
480	<u>0.8</u>	<u>0.5</u>
481	<u>0.9</u>	<u>0.6</u>
482	<u>1.0</u>	<u>0.7</u>
483	<u>1.1</u>	<u>0.8</u>
484	<u>1.2</u>	<u>0.9</u>
485	<u>1.3</u>	<u>1.0</u>
486	<u>1.4</u>	<u>1.1</u>
487	<u>1.5</u>	<u>1.2</u>
488	<u>1.6</u>	<u>1.3</u>
489	<u>1.7</u>	<u>1.4</u>
490	<u>1.8</u>	<u>1.5</u>
491	<u>1.9</u>	<u>1.6</u>
492	<u>2.0</u>	<u>1.7</u>
493	<u>2.1</u>	<u>1.8</u>
494	<u>2.2</u>	<u>1.9</u>

495	<u>2.3</u>	<u>2.0</u>
496	<u>2.4</u>	<u>2.1</u>
497	<u>2.5</u>	<u>2.2</u>
498	<u>2.6</u>	<u>2.3</u>
499	<u>2.7</u>	<u>2.4</u>
500	<u>2.8</u>	<u>2.5</u>
501	<u>2.9</u>	<u>2.6</u>
502	<u>3.0</u>	<u>2.7</u>
503	<u>3.1</u>	<u>2.8</u>
504	<u>3.2</u>	<u>2.9</u>
505	<u>3.3</u>	<u>3.0</u>
506	<u>3.4</u>	<u>3.1</u>
507	<u>3.5</u>	<u>3.2</u>
508	<u>3.6</u>	<u>3.3</u>
509	<u>3.7</u>	<u>3.4</u>
510	<u>3.8</u>	<u>3.5</u>
511	<u>3.9</u>	<u>3.6</u>
512	<u>4.0</u>	<u>3.7</u>
513	<u>4.1</u>	<u>3.8</u>
514	<u>4.2</u>	<u>3.9</u>
515	<u>4.3</u>	<u>4.0</u>
516	<u>4.4</u>	<u>4.1</u>
517	<u>4.5</u>	<u>4.2</u>
518	<u>4.6</u>	<u>4.3</u>
519	<u>4.7</u>	<u>4.4</u>
520	<u>4.8</u>	<u>4.5</u>
521	<u>4.9</u>	<u>4.6</u>
522	<u>5.0</u>	<u>4.7</u>
523	<u>5.1</u>	<u>4.8</u>
524	<u>5.2</u>	<u>4.9</u>
525	<u>5.3</u>	<u>5.0</u>
526	<u>5.4</u>	<u>5.1</u>
527	<u>5.5</u>	<u>5.2</u>

528	<u>5.6</u>	<u>5.3</u>
529	<u>5.7 and above</u>	<u>5.4</u>

530 * * *

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

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

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

549 The total of the amounts of benefits charged to the
550 experience-rating records of all eligible employers which caused
551 their benefit ratios to exceed five and four-tenths percent
552 (5.4%), the total of the amounts of benefits charged to the
553 experience-rating records of all ineligible employers which would
554 cause their benefit ratios to exceed five and four-tenths percent
555 (5.4%) if they were eligible employers, and the total of the
556 amounts of benefits charged or chargeable to the experience-rating
557 record of any employer who has discontinued his business or whose
558 coverage has been terminated within such period; provided, that
559 solely for the purposes of determining the amounts of
560 ineffectively charged benefits as herein defined, a "benefit

561 ratio" shall be computed for each ineligible employer, which shall
562 be the quotient obtained by dividing the total benefits charged to
563 his experience-rating record throughout the period ending on the
564 computation date, during which his experience-rating record has
565 been chargeable with benefits, by his total taxable payroll for
566 the same period on which all contributions due have been paid on
567 or before the September 30 immediately following the computation
568 date; and provided further, that such benefit ratio shall be
569 computed to the tenth of one percent (.1%) and any remainder shall
570 be rounded to the next higher tenth. The ratio of the sum of
571 these amounts to the taxable wages paid during the same period by
572 all eligible employers whose benefit ratio did not exceed five and
573 four-tenths percent (5.4%), computed to the next higher tenth of
574 one percent (.1%), shall be the general experience rate.

575 4. The general experience rate shall be
576 adjusted by use of the size of fund index factor. This factor may
577 be positive or negative, and shall be determined as follows: From
578 the target SOFI, as defined in subsection (1)(k) of this section,
579 subtract the simple average of the current and preceding years'
580 exposure criterions divided by the cost rate criterion, as defined
581 in subsection (1)(j) of this section. The result is then
582 multiplied by the product of the CRC, as defined in subsection
583 (1)(j) of this section, and total wages for the twelve-month
584 period ending June 30 divided by the taxable wages for the
585 twelve-month period ending June 30. This is the percentage
586 positive or negative added to the general experience rate. This
587 percentage is computed to one (1) decimal place, and rounded to
588 the next higher tenth.

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

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

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

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

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

619 2. Approval of the department;

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

622 4. The execution and the filing with the
623 department by the predecessor employer of a waiver relinquishing
624 all rights to have the experience-rating and payroll records of

625 the transferred portion used for the purpose of determining
626 modified rates of contribution for such predecessor.

627 (vii) If the successor was an employer subject to
628 this chapter prior to the date of acquisition, it shall continue
629 to pay contributions at the rate applicable to it from the date
630 the acquisition occurred until the end of the then current tax
631 year. If the successor was not an employer prior to the date of
632 acquisition, it shall pay contributions at the rate applicable to
633 the predecessor or, if more than one (1) predecessor and the same
634 rate is applicable to both, the rate applicable to the predecessor
635 or predecessors, from the date the acquisition occurred until the
636 end of the then current tax year. If the successor was not an
637 employer prior to the date the acquisition occurred and
638 simultaneously acquires the businesses of two (2) or more
639 employers to whom different rates of contributions are applicable,
640 it shall pay contributions from the date of the acquisition until
641 the end of the current tax year at a rate computed on the basis of
642 the combined experience-rating and payroll records of the
643 predecessors as of the computation date for such tax year. In all
644 cases the rate of contributions applicable to such successor for
645 each succeeding tax year shall be computed on the basis of the
646 combined experience-rating and payroll records of the successor
647 and the predecessor or predecessors.

648 (viii) The department shall notify each employer
649 quarterly of the benefits paid and charged to his
650 experience-rating record; and such notification, in the absence of
651 an application for redetermination filed within thirty (30) days
652 after the date of the mailing of such notice, shall be final,
653 conclusive and binding upon the employer for all purposes. A
654 redetermination, made after notice and opportunity for a fair
655 hearing, by a hearing officer designated by the department who
656 shall consider and decide these and related applications and
657 protests; and the finding of fact in connection therewith may be

658 introduced into any subsequent administrative or judicial
659 proceedings involving the determination of the rate of
660 contributions of any employer for any tax year, and shall be
661 entitled to the same finality as is provided in this subsection
662 with respect to the findings of fact in proceedings to redetermine
663 the contribution rate of an employer.

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

691 appeal shall be on the record before said designated hearing
692 officer, and the decision of said department shall become final
693 unless, within thirty (30) days after the date of mailing of
694 notice thereof to the employer's last known address, there shall
695 be an appeal to the Circuit Court of the First Judicial District
696 of Hinds County, Mississippi, in accordance with the provisions of
697 law with respect to review of civil causes by certiorari.

698 **SECTION 6.** Section 71-5-453, Mississippi Code of 1972, is
699 amended as follows:

700 71-5-453. The State Treasurer shall be the ex officio
701 treasurer and custodian of the fund, and shall administer such
702 fund in accordance with the directions of the department, and
703 shall issue his warrants upon it in accordance with such
704 regulations as the department shall prescribe. He shall maintain
705 within the fund three (3) separate accounts: (a) a clearing
706 account, (b) an unemployment trust fund account, and (c) a benefit
707 account. All monies payable to the fund, upon receipt thereof by
708 the department, shall be forwarded to the Treasurer, who shall
709 immediately deposit them in the clearing account. Refunds payable
710 pursuant to Section 71-5-383 may be paid from the clearing account
711 upon warrants issued by the Treasurer under the direction of the
712 department. Transfers pursuant to Section 71-5-114 of all
713 interest, penalties and damages collected shall be made to the
714 Special Employment Security Administration Fund as soon as
715 practicable after the end of each calendar quarter. Workforce
716 training enhancement contributions shall be deposited into the
717 workforce training enhancement holding fund account as described
718 in this section. All other monies in the clearing account shall
719 be immediately deposited with the Secretary of the Treasury of the
720 United States of America to the credit of the account of this
721 state in the Unemployment Trust Fund, established and maintained
722 pursuant to Section 904 of the Social Security Act, as amended,
723 any provisions of law in this state relating to the deposit,

724 administration, release, or disbursement of monies in the
725 possession or custody of this state to the contrary
726 notwithstanding. The benefit account shall consist of all monies
727 requisitioned from this state's account in the Unemployment Trust
728 Fund. Except as herein otherwise provided, monies in the clearing
729 and benefit accounts may be deposited by the Treasurer, under the
730 direction of the department, in any bank or public depository in
731 which general funds of the state may be deposited, but no public
732 deposit insurance charge or premium shall be paid out of the fund.
733 The State Treasurer shall be liable on his official bond for the
734 faithful performance of his duties in connection with the
735 Unemployment Compensation Fund under this chapter. A Workforce
736 Training Enhancement Fund holding account shall be established by
737 and maintained under the control of the Mississippi Department of
738 Employment Security. The workforce training enhancement
739 contributions collected pursuant to the provisions in this chapter
740 shall be transferred from the clearing account into the Workforce
741 Training Enhancement Fund holding account on the same schedule and
742 under the same conditions as funds transferred to the Unemployment
743 Compensation Fund. Such funds shall remain on deposit in the
744 Workforce Training Enhancement Fund account for a period of sixty
745 (60) days. After such period, contributions will be transferred
746 to the Workforce Training Enhancement Fund by the Mississippi
747 Department of Employment Security, within thirty (30) days. One
748 such transfer shall be made monthly, but the department, in its
749 discretion, may make additional transfers in any month. In the
750 event such funds transferred are subsequently determined to be
751 erroneously paid or collected, or if deposit of such funds is
752 denied or rejected by the banking institution for any reason, or
753 deposits are unable to clear drawer's account for any reason, the
754 funds must be reimbursed by the recipient of such funds within
755 thirty (30) days of mailing of notice by the Mississippi
756 Department of Employment Security demanding such refund, unless

757 funds are available in the Workforce Training Enhancement Fund
758 holding account. In that event such amounts shall be immediately
759 withdrawn from the workforce training enhancement holding fund
760 account by the Mississippi Department of Employment Security and
761 redeposited into the clearing account.

762 **SECTION 7.** Section 71-5-351, Mississippi Code of 1972, is
763 amended as follows:

764 71-5-351. Contributions shall accrue and become payable by
765 each employer for each calendar year in which he is subject to
766 this chapter. Such contributions shall become due and be paid by
767 each employer to the department for the fund each calendar quarter
768 on or before the last day of the month next succeeding each
769 calendar quarter in which the contributions accrue. The
770 department may extend the due date of such contributions if the
771 due date falls on a Saturday, Sunday or state or federal holiday.
772 Such contributions shall not be deducted, in whole or in part,
773 from the wages of individuals in such employer's employ.

774 For purposes of payment of contributions on remuneration paid
775 to individuals, if two (2) or more related corporations
776 concurrently employ the same individual and compensate such
777 individual through a common paymaster which is one of such
778 corporations, each such corporation shall be considered to have
779 paid as remuneration to such individual only the amounts actually
780 disbursed by it to such individual and shall not be considered to
781 have paid as remuneration to such individual such amounts actually
782 disbursed to such individual by another of such corporations.

783 In the payment of any contributions, a fractional part of a
784 cent shall be disregarded unless it amounts to One-half Cent
785 (1/2¢) or more, in which case it shall be increased to One Cent
786 (1¢).

787 For the purposes of this section and Section 71-5-353,
788 taxable wages shall not include that part of remuneration which,
789 after remuneration equal to Seven Thousand Dollars (\$7,000.00) has

790 been paid in a calendar year to an individual by an employer or
791 his predecessor with respect to employment during any calendar
792 year, is paid to such individual by such employer during such
793 calendar year unless that part of the remuneration is subject to a
794 tax under a federal law imposing a tax against which credit may be
795 taken for contributions required to be paid into a state
796 employment fund. For the purposes of this section, the term
797 "employment" shall include service constituting employment under
798 any unemployment compensation law of another state.

799 Provided, however, that, absent evidence of willful or
800 fraudulent attempt to avoid taxation, the effective date of
801 liability of an employer or assessment of liability for covered
802 employment against an employer shall not occur for any period
803 preceding the three (3) calendar years before the date of
804 registration or assessment, unless said three-year limitations
805 period is waived by the employer.

806 **SECTION 8.** This act shall take effect and be in force from
807 and after July 1, 2005, except for Sections 4, 5, 6 and 7, which
808 shall take effect and be in force from and after January 1, 2005.