

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2472  
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 71-5-355, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE FOR THE UNEMPLOYMENT EXPERIENCE AND RATES ATTRIBUTABLE  
3 TO THE TRANSFER OF A TRADE OR BUSINESS WHERE COMMON OWNERSHIP OR  
4 MANAGEMENT IS RETAINED, PURSUANT TO FEDERAL LAW; TO PROVIDE CIVIL  
5 PENALTIES FOR CERTAIN VIOLATIONS RELATING TO THE ASSIGNMENT OF AN  
6 UNEMPLOYMENT CONTRIBUTION RATE; TO CODIFY SECTION 71-5-389,  
7 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A SETOFF AGAINST TAX  
8 REFUNDS FOR DEBTS OWED TO THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT  
9 SECURITY, TO PROVIDE FOR THE SUBMISSION OF SUCH DEBTS TO THE STATE  
10 TAX COMMISSION, TO PROVIDE FOR NOTICE TO THE DEBTOR, TO PROVIDE  
11 FOR THE TRANSFER OF SUCH FUNDS TO THE DEPARTMENT, TO AUTHORIZE  
12 HEARINGS AND PROVIDE FOR APPEALS, TO PROVIDE FOR CONFIDENTIALITY;  
13 AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 71-5-355, Mississippi Code of 1972, is  
16 amended as follows:

17 71-5-355. (1) As used in this section, the following words  
18 and phrases shall have the following meanings, unless the context  
19 clearly requires otherwise:

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

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

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

26 (d) Except as hereinafter provided, "payroll" means the  
27 total of all wages paid for employment by an employer as defined  
28 in Section 71-5-11, subsection H, plus the total of all  
29 remuneration paid by such employer excluded from the definition of  
30 wages by Section 71-5-351. For the computation of modified rates,  
31 "payroll" means the total of all wages paid for employment by an  
32 employer as defined in Section 71-5-11, subsection H.

33           (e) For the computation of modified rates, "eligible  
34 employer" means an employer whose experience-rating record has  
35 been chargeable with benefits throughout the thirty-six (36)  
36 consecutive calendar-month period ending on the computation date,  
37 except that any employer who has not been subject to the  
38 Mississippi Employment Security Law for a period of time  
39 sufficient to meet the thirty-six (36) consecutive calendar-month  
40 requirement shall be an eligible employer if his experience-rating  
41 record has been chargeable throughout not less than the twelve  
42 (12) consecutive calendar-month period ending on the computation  
43 date. No employer shall be considered eligible for a contribution  
44 rate less than five and four-tenths percent (5.4%) with respect to  
45 any tax year, who has failed to file any two (2) quarterly reports  
46 within the qualifying period by September 30 following the  
47 computation date. No employer or employing unit shall be eligible  
48 for a contribution rate of less than five and four-tenths percent  
49 (5.4%) for the tax year in which the employing unit is found by  
50 the commission to be in violation of Section 71-5-19(2) or (3) and  
51 for the next two (2) succeeding tax years. No representative of  
52 such employing unit who was a party to a violation as described in  
53 Section 71-5-19(2) or (3), if such representative was or is an  
54 employing unit in this state, shall be eligible for a  
55 contributions rate of less than five and four-tenths percent  
56 (5.4%) for the tax year in which such violation was detected by  
57 the commission and for the next two (2) succeeding tax years.

58           (f) With respect to any tax year, "reserve ratio" means  
59 the ratio which the total amount available for the payment of  
60 benefits in the Unemployment Compensation Fund, excluding any  
61 amount which has been credited to the account of this state under  
62 Section 903 of the Social Security Act, as amended, and which has  
63 been appropriated for the expenses of administration pursuant to  
64 Section 71-5-457 whether or not withdrawn from such account, on  
65 November 1 of each calendar year bears to the aggregate of the

66 taxable payrolls of all employers for the twelve (12) calendar  
67 months ending on June 30 next preceding.

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

72 (h) For the computation of modified rates, "qualifying  
73 period" means a period of not less than the thirty-six (36)  
74 consecutive calendar months ending on the computation date  
75 throughout which an employer's experience-rating record has been  
76 chargeable with benefits; except that with respect to any eligible  
77 employer who has not been subject to this article for a period of  
78 time sufficient to meet the thirty-six (36) consecutive  
79 calendar-month requirement, "qualifying period" means the period  
80 ending on the computation date throughout which his  
81 experience-rating record has been chargeable with benefits, but in  
82 no event less than the twelve (12) consecutive calendar-month  
83 period ending on the computation date throughout which his  
84 experience-rating record has been so chargeable.

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

93 (j) The "cost rate criterion" (CRC) is defined as  
94 follows: Beginning with January 1974, the benefits paid for the  
95 twelve-month period ending December 1974 are summed and divided by  
96 the total wages for the twelve-month period ending on June 30,  
97 1975. Similar ratios are computed by subtracting the earliest  
98 month's benefit payments and adding the benefits of the next month

99 in the sequence and dividing each sum of twelve (12) months'  
100 benefits by the total wages for the twelve-month period ending on  
101 the June 30 which is nearest to the final month of the period used  
102 to compute the numerator. If December is the final month of the  
103 period used to compute the numerator, then the twelve-month period  
104 ending the following June 30 will be used for the denominator.  
105 The highest value of these ratios beginning with the ratio for  
106 benefits paid in calendar year 1974 is the cost rate criterion.  
107 The cost rate criterion shall be computed to four (4) decimal  
108 places. Benefits and total wages used in the computation of the  
109 cost rate criterion shall exclude all benefits and total wages  
110 applicable to state agencies, political subdivisions, reimbursable  
111 nonprofit corporations, and tax exempt PSE employment.

112 (k) "Size of fund index" (SOFI) is defined as the ratio  
113 of the EC to the CRC.

114 (l) No employer's contribution rate shall exceed five  
115 and four-tenths percent (5.4%), nor be less than four-tenths of  
116 one percent (.4%).

117 (2) Modified rates:

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

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

125 (i) The commission shall maintain an  
126 experience-rating record for each employer. Nothing in this  
127 chapter shall be construed to grant any employer or individuals  
128 performing services for him any prior claim or rights to the  
129 amounts paid by the employer into the fund.

130 (ii) Benefits paid to an eligible individual shall  
131 be charged against the experience-rating record of his base period

132 employers in the proportion to which the wages paid by each base  
133 period employer bears to the total wages paid to the individual by  
134 all the base period employers, provided that benefits shall not be  
135 charged to an employer's experience-rating record if the  
136 commission finds that the individual:

137           1. Voluntarily left the employ of such  
138 employer without good cause attributable to the employer;

139           2. Was discharged by such employer for  
140 misconduct connected with his work;

141           3. Refused an offer of suitable work by such  
142 employer without good cause, and the commission further finds that  
143 such benefits are based on wages for employment for such employer  
144 prior to such voluntary leaving, discharge or refusal of suitable  
145 work, as the case may be; \* \* \*

146           4. Had base period wages which included wages  
147 for previously uncovered services as defined in Section  
148 71-5-511(e) to the extent that the Unemployment Compensation Fund  
149 is reimbursed for such benefits pursuant to Section 121 of Public  
150 Law 94-566;

151           5. Extended benefits paid under the  
152 provisions of Section 71-5-541 which are not reimbursable from  
153 federal funds shall be charged to the experience-rating record of  
154 base period employers;

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

160           7. Was hired to replace a United States  
161 serviceman or servicewoman called into active duty and was laid  
162 off upon the return to work by that serviceman or servicewoman,  
163 unless such employer is a state agency or other political  
164 subdivision or instrumentality of the state;

165                   8. Was paid benefits during any week while in  
166 training with the approval of the commission, under the provisions  
167 of Section 71-5-513B, or for any week while in training approved  
168 under Section 236(a)(1) of the Trade Act of 1974, under the  
169 provisions of Section 71-5-513C; or

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

174                   (iii) The commission shall compute a benefit ratio  
175 for each eligible employer, which shall be the quotient obtained  
176 by dividing the total benefits charged to his experience-rating  
177 record during the period his experience-rating record has been  
178 chargeable, but not less than the twelve (12) consecutive  
179 calendar-month period nor more than the thirty-six (36)  
180 consecutive calendar-month period ending on the computation date,  
181 by his total taxable payroll for the same period on which all  
182 contributions due have been paid on or before the September 30  
183 immediately following the computation date. Such benefit ratio  
184 shall be computed to the tenth of a percent (.1%), rounding any  
185 remainder to the next higher tenth.

186           If for the calendar year 1995, or any calendar year  
187 thereafter, the size of fund index (SOFI), as defined in this  
188 section, shall have computed for such calendar year at 1.75 or  
189 above, for purposes of adjustment of the general experience rate  
190 for such calendar year, then Table 6 or one of the tables  
191 subsequent to Table 6 shall be applied, according to their  
192 provisions:

193   TABLE 1

194           ILLUSTRATES A .10% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
195           BASED ON A SOFI FACTOR OF 1.51 OR ABOVE BUT LESS THAN 1.55

| 196   A | B                                 |
|---|-----------------------------------|
| 197           If Benefit Ratio is               | The Individual Experience Rate is |

|     |      |       |
|-----|------|-------|
| 198 | 0.0% | 0.10% |
| 199 | 0.1  | 0.10  |
| 200 | 0.2  | 0.10  |
| 201 | 0.3  | 0.20  |
| 202 | 0.4  | 0.30  |
| 203 | 0.5  | 0.40  |
| 204 | 0.6  | 0.50  |
| 205 | 0.7  | 0.60  |
| 206 | 0.8  | 0.70  |
| 207 | 0.9  | 0.80  |
| 208 | 1.0  | 0.90  |
| 209 | 1.1  | 1.00  |
| 210 | 1.2  | 1.10  |
| 211 | 1.3  | 1.20  |
| 212 | 1.4  | 1.30  |
| 213 | 1.5  | 1.40  |
| 214 | 1.6  | 1.50  |
| 215 | 1.7  | 1.60  |
| 216 | 1.8  | 1.70  |
| 217 | 1.9  | 1.80  |
| 218 | 2.0  | 1.90  |
| 219 | 2.1  | 2.00  |
| 220 | 2.2  | 2.10  |
| 221 | 2.3  | 2.20  |
| 222 | 2.4  | 2.30  |
| 223 | 2.5  | 2.40  |
| 224 | 2.6  | 2.50  |
| 225 | 2.7  | 2.60  |
| 226 | 2.8  | 2.70  |
| 227 | 2.9  | 2.80  |
| 228 | 3.0  | 2.90  |
| 229 | 3.1  | 3.00  |
| 230 | 3.2  | 3.10  |

|     |               |      |
|-----|---------------|------|
| 231 | 3.3           | 3.20 |
| 232 | 3.4           | 3.30 |
| 233 | 3.5           | 3.40 |
| 234 | 3.6           | 3.50 |
| 235 | 3.7           | 3.60 |
| 236 | 3.8           | 3.70 |
| 237 | 3.9           | 3.80 |
| 238 | 4.0           | 3.90 |
| 239 | 4.1           | 4.00 |
| 240 | 4.2           | 4.10 |
| 241 | 4.3           | 4.20 |
| 242 | 4.4           | 4.30 |
| 243 | 4.5           | 4.40 |
| 244 | 4.6           | 4.50 |
| 245 | 4.7           | 4.60 |
| 246 | 4.8           | 4.70 |
| 247 | 4.9           | 4.80 |
| 248 | 5.0           | 4.90 |
| 249 | 5.1           | 5.00 |
| 250 | 5.2           | 5.10 |
| 251 | 5.3           | 5.20 |
| 252 | 5.4           | 5.30 |
| 253 | 5.5 and above | 5.40 |

TABLE 2

ILLUSTRATES A .20% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
BASED ON A SOFI FACTOR OF 1.55 OR ABOVE BUT LESS THAN 1.60

|     | A                   | B                                 |
|-----|---------------------|-----------------------------------|
|     | If Benefit Ratio is | The Individual Experience Rate is |
| 257 |                     |                                   |
| 258 |                     |                                   |
| 259 | 0.0%                | 0.10%                             |
| 260 | 0.1                 | 0.10                              |
| 261 | 0.2                 | 0.10                              |
| 262 | 0.3                 | 0.10                              |
| 263 | 0.4                 | 0.20                              |



|     |     |      |
|-----|-----|------|
| 264 | 0.5 | 0.30 |
| 265 | 0.6 | 0.40 |
| 266 | 0.7 | 0.50 |
| 267 | 0.8 | 0.60 |
| 268 | 0.9 | 0.70 |
| 269 | 1.0 | 0.80 |
| 270 | 1.1 | 0.90 |
| 271 | 1.2 | 1.00 |
| 272 | 1.3 | 1.10 |
| 273 | 1.4 | 1.20 |
| 274 | 1.5 | 1.30 |
| 275 | 1.6 | 1.40 |
| 276 | 1.7 | 1.50 |
| 277 | 1.8 | 1.60 |
| 278 | 1.9 | 1.70 |
| 279 | 2.0 | 1.80 |
| 280 | 2.1 | 1.90 |
| 281 | 2.2 | 2.00 |
| 282 | 2.3 | 2.10 |
| 283 | 2.4 | 2.20 |
| 284 | 2.5 | 2.30 |
| 285 | 2.6 | 2.40 |
| 286 | 2.7 | 2.50 |
| 287 | 2.8 | 2.60 |
| 288 | 2.9 | 2.70 |
| 289 | 3.0 | 2.80 |
| 290 | 3.1 | 2.90 |
| 291 | 3.2 | 3.00 |
| 292 | 3.3 | 3.10 |
| 293 | 3.4 | 3.20 |
| 294 | 3.5 | 3.30 |
| 295 | 3.6 | 3.40 |
| 296 | 3.7 | 3.50 |

|     |               |      |
|-----|---------------|------|
| 297 | 3.8           | 3.60 |
| 298 | 3.9           | 3.70 |
| 299 | 4.0           | 3.80 |
| 300 | 4.1           | 3.90 |
| 301 | 4.2           | 4.00 |
| 302 | 4.3           | 4.10 |
| 303 | 4.4           | 4.20 |
| 304 | 4.5           | 4.30 |
| 305 | 4.6           | 4.40 |
| 306 | 4.7           | 4.50 |
| 307 | 4.8           | 4.60 |
| 308 | 4.9           | 4.70 |
| 309 | 5.0           | 4.80 |
| 310 | 5.1           | 4.90 |
| 311 | 5.2           | 5.00 |
| 312 | 5.3           | 5.10 |
| 313 | 5.4           | 5.20 |
| 314 | 5.5           | 5.30 |
| 315 | 5.6 and above | 5.40 |

TABLE 3

ILLUSTRATES A .30% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
BASED ON A SOFI FACTOR OF 1.60 OR ABOVE BUT LESS THAN 1.65

|     | A                   | B                                 |
|-----|---------------------|-----------------------------------|
|     | If Benefit Ratio is | The Individual Experience Rate is |
| 321 | 0.0%                | 0.10%                             |
| 322 | 0.1                 | 0.10                              |
| 323 | 0.2                 | 0.10                              |
| 324 | 0.3                 | 0.10                              |
| 325 | 0.4                 | 0.10                              |
| 326 | 0.5                 | 0.20                              |
| 327 | 0.6                 | 0.30                              |
| 328 | 0.7                 | 0.40                              |
| 329 | 0.8                 | 0.50                              |

|     |     |      |
|-----|-----|------|
| 330 | 0.9 | 0.60 |
| 331 | 1.0 | 0.70 |
| 332 | 1.1 | 0.80 |
| 333 | 1.2 | 0.90 |
| 334 | 1.3 | 1.00 |
| 335 | 1.4 | 1.10 |
| 336 | 1.5 | 1.20 |
| 337 | 1.6 | 1.30 |
| 338 | 1.7 | 1.40 |
| 339 | 1.8 | 1.50 |
| 340 | 1.9 | 1.60 |
| 341 | 2.0 | 1.70 |
| 342 | 2.1 | 1.80 |
| 343 | 2.2 | 1.90 |
| 344 | 2.3 | 2.00 |
| 345 | 2.4 | 2.10 |
| 346 | 2.5 | 2.20 |
| 347 | 2.6 | 2.30 |
| 348 | 2.7 | 2.40 |
| 349 | 2.8 | 2.50 |
| 350 | 2.9 | 2.60 |
| 351 | 3.0 | 2.70 |
| 352 | 3.1 | 2.80 |
| 353 | 3.2 | 2.90 |
| 354 | 3.3 | 3.00 |
| 355 | 3.4 | 3.10 |
| 356 | 3.5 | 3.20 |
| 357 | 3.6 | 3.30 |
| 358 | 3.7 | 3.40 |
| 359 | 3.8 | 3.50 |
| 360 | 3.9 | 3.60 |
| 361 | 4.0 | 3.70 |
| 362 | 4.1 | 3.80 |

|     |               |      |
|-----|---------------|------|
| 363 | 4.2           | 3.90 |
| 364 | 4.3           | 4.00 |
| 365 | 4.4           | 4.10 |
| 366 | 4.5           | 4.20 |
| 367 | 4.6           | 4.30 |
| 368 | 4.7           | 4.40 |
| 369 | 4.8           | 4.50 |
| 370 | 4.9           | 4.60 |
| 371 | 5.0           | 4.70 |
| 372 | 5.1           | 4.80 |
| 373 | 5.2           | 4.90 |
| 374 | 5.3           | 5.00 |
| 375 | 5.4           | 5.10 |
| 376 | 5.5           | 5.20 |
| 377 | 5.6           | 5.30 |
| 378 | 5.7 and above | 5.40 |

TABLE 4

ILLUSTRATES A .40% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
BASED ON A SOFI FACTOR OF 1.65 OR ABOVE BUT LESS THAN 1.70

|     | A                   | B                                 |
|-----|---------------------|-----------------------------------|
|     | If Benefit Ratio is | The Individual Experience Rate is |
| 382 |                     |                                   |
| 383 |                     |                                   |
| 384 | 0.0%                | 0.10%                             |
| 385 | 0.1                 | 0.10                              |
| 386 | 0.2                 | 0.10                              |
| 387 | 0.3                 | 0.10                              |
| 388 | 0.4                 | 0.10                              |
| 389 | 0.5                 | 0.10                              |
| 390 | 0.6                 | 0.20                              |
| 391 | 0.7                 | 0.30                              |
| 392 | 0.8                 | 0.40                              |
| 393 | 0.9                 | 0.50                              |
| 394 | 1.0                 | 0.60                              |
| 395 | 1.1                 | 0.70                              |

|     |     |      |
|-----|-----|------|
| 396 | 1.2 | 0.80 |
| 397 | 1.3 | 0.90 |
| 398 | 1.4 | 1.00 |
| 399 | 1.5 | 1.10 |
| 400 | 1.6 | 1.20 |
| 401 | 1.7 | 1.30 |
| 402 | 1.8 | 1.40 |
| 403 | 1.9 | 1.50 |
| 404 | 2.0 | 1.60 |
| 405 | 2.1 | 1.70 |
| 406 | 2.2 | 1.80 |
| 407 | 2.3 | 1.90 |
| 408 | 2.4 | 2.00 |
| 409 | 2.5 | 2.10 |
| 410 | 2.6 | 2.20 |
| 411 | 2.7 | 2.30 |
| 412 | 2.8 | 2.40 |
| 413 | 2.9 | 2.50 |
| 414 | 3.0 | 2.60 |
| 415 | 3.1 | 2.70 |
| 416 | 3.2 | 2.80 |
| 417 | 3.3 | 2.90 |
| 418 | 3.4 | 3.00 |
| 419 | 3.5 | 3.10 |
| 420 | 3.6 | 3.20 |
| 421 | 3.7 | 3.30 |
| 422 | 3.8 | 3.40 |
| 423 | 3.9 | 3.50 |
| 424 | 4.0 | 3.60 |
| 425 | 4.1 | 3.70 |
| 426 | 4.2 | 3.80 |
| 427 | 4.3 | 3.90 |
| 428 | 4.4 | 4.00 |

|     |               |      |
|-----|---------------|------|
| 429 | 4.5           | 4.10 |
| 430 | 4.6           | 4.20 |
| 431 | 4.7           | 4.30 |
| 432 | 4.8           | 4.40 |
| 433 | 4.9           | 4.50 |
| 434 | 5.0           | 4.60 |
| 435 | 5.1           | 4.70 |
| 436 | 5.2           | 4.80 |
| 437 | 5.3           | 4.90 |
| 438 | 5.4           | 5.00 |
| 439 | 5.5           | 5.10 |
| 440 | 5.6           | 5.20 |
| 441 | 5.7           | 5.30 |
| 442 | 5.8 and above | 5.40 |

TABLE 5

ILLUSTRATES A .50% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
BASED ON A SOFI FACTOR OF 1.70 OR ABOVE BUT LESS THAN 1.75

|     | A                   | B                                 |
|-----|---------------------|-----------------------------------|
|     | If Benefit Ratio is | The Individual Experience Rate is |
| 446 |                     |                                   |
| 447 |                     |                                   |
| 448 | 0.0%                | 0.10%                             |
| 449 | 0.1                 | 0.10                              |
| 450 | 0.2                 | 0.10                              |
| 451 | 0.3                 | 0.10                              |
| 452 | 0.4                 | 0.10                              |
| 453 | 0.5                 | 0.10                              |
| 454 | 0.6                 | 0.10                              |
| 455 | 0.7                 | 0.20                              |
| 456 | 0.8                 | 0.30                              |
| 457 | 0.9                 | 0.40                              |
| 458 | 1.0                 | 0.50                              |
| 459 | 1.1                 | 0.60                              |
| 460 | 1.2                 | 0.70                              |
| 461 | 1.3                 | 0.80                              |

|     |     |      |
|-----|-----|------|
| 462 | 1.4 | 0.90 |
| 463 | 1.5 | 1.00 |
| 464 | 1.6 | 1.10 |
| 465 | 1.7 | 1.20 |
| 466 | 1.8 | 1.30 |
| 467 | 1.9 | 1.40 |
| 468 | 2.0 | 1.50 |
| 469 | 2.1 | 1.60 |
| 470 | 2.2 | 1.70 |
| 471 | 2.3 | 1.80 |
| 472 | 2.4 | 1.90 |
| 473 | 2.5 | 2.00 |
| 474 | 2.6 | 2.10 |
| 475 | 2.7 | 2.20 |
| 476 | 2.8 | 2.30 |
| 477 | 2.9 | 2.40 |
| 478 | 3.0 | 2.50 |
| 479 | 3.1 | 2.60 |
| 480 | 3.2 | 2.70 |
| 481 | 3.3 | 2.80 |
| 482 | 3.4 | 2.90 |
| 483 | 3.5 | 3.00 |
| 484 | 3.6 | 3.10 |
| 485 | 3.7 | 3.20 |
| 486 | 3.8 | 3.30 |
| 487 | 3.9 | 3.40 |
| 488 | 4.0 | 3.50 |
| 489 | 4.1 | 3.60 |
| 490 | 4.2 | 3.70 |
| 491 | 4.3 | 3.80 |
| 492 | 4.4 | 3.90 |
| 493 | 4.5 | 4.00 |
| 494 | 4.6 | 4.10 |

|     |               |      |
|-----|---------------|------|
| 495 | 4.7           | 4.20 |
| 496 | 4.8           | 4.30 |
| 497 | 4.9           | 4.40 |
| 498 | 5.0           | 4.50 |
| 499 | 5.1           | 4.60 |
| 500 | 5.2           | 4.70 |
| 501 | 5.3           | 4.80 |
| 502 | 5.4           | 4.90 |
| 503 | 5.5           | 5.00 |
| 504 | 5.6           | 5.10 |
| 505 | 5.7           | 5.20 |
| 506 | 5.8           | 5.30 |
| 507 | 5.9 and above | 5.40 |

TABLE 6

ILLUSTRATES A .60% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
BASED ON A SOFI FACTOR OF 1.75 OR ABOVE BUT LESS THAN 1.80

|     | A                   | B                                 |
|-----|---------------------|-----------------------------------|
|     | If Benefit Ratio is | The Individual Experience Rate is |
| 511 |                     |                                   |
| 512 |                     |                                   |
| 513 | 0.0%                | 0.10%                             |
| 514 | 0.1                 | 0.10                              |
| 515 | 0.2                 | 0.10                              |
| 516 | 0.3                 | 0.10                              |
| 517 | 0.4                 | 0.10                              |
| 518 | 0.5                 | 0.10                              |
| 519 | 0.6                 | 0.10                              |
| 520 | 0.7                 | 0.10                              |
| 521 | 0.8                 | 0.20                              |
| 522 | 0.9                 | 0.30                              |
| 523 | 1.0                 | 0.40                              |
| 524 | 1.1                 | 0.50                              |
| 525 | 1.2                 | 0.60                              |
| 526 | 1.3                 | 0.70                              |
| 527 | 1.4                 | 0.80                              |



|     |     |      |
|-----|-----|------|
| 528 | 1.5 | 0.90 |
| 529 | 1.6 | 1.00 |
| 530 | 1.7 | 1.10 |
| 531 | 1.8 | 1.20 |
| 532 | 1.9 | 1.30 |
| 533 | 2.0 | 1.40 |
| 534 | 2.1 | 1.50 |
| 535 | 2.2 | 1.60 |
| 536 | 2.3 | 1.70 |
| 537 | 2.4 | 1.80 |
| 538 | 2.5 | 1.90 |
| 539 | 2.6 | 2.00 |
| 540 | 2.7 | 2.10 |
| 541 | 2.8 | 2.20 |
| 542 | 2.9 | 2.30 |
| 543 | 3.0 | 2.40 |
| 544 | 3.1 | 2.50 |
| 545 | 3.2 | 2.60 |
| 546 | 3.3 | 2.70 |
| 547 | 3.4 | 2.80 |
| 548 | 3.5 | 2.90 |
| 549 | 3.6 | 3.00 |
| 550 | 3.7 | 3.10 |
| 551 | 3.8 | 3.20 |
| 552 | 3.9 | 3.30 |
| 553 | 4.0 | 3.40 |
| 554 | 4.1 | 3.50 |
| 555 | 4.2 | 3.60 |
| 556 | 4.3 | 3.70 |
| 557 | 4.4 | 3.80 |
| 558 | 4.5 | 3.90 |
| 559 | 4.6 | 4.00 |
| 560 | 4.7 | 4.10 |

|     |               |      |
|-----|---------------|------|
| 561 | 4.8           | 4.20 |
| 562 | 4.9           | 4.30 |
| 563 | 5.0           | 4.40 |
| 564 | 5.1           | 4.50 |
| 565 | 5.2           | 4.60 |
| 566 | 5.3           | 4.70 |
| 567 | 5.4           | 4.80 |
| 568 | 5.5           | 4.90 |
| 569 | 5.6           | 5.00 |
| 570 | 5.7           | 5.10 |
| 571 | 5.8           | 5.20 |
| 572 | 5.9           | 5.30 |
| 573 | 6.0 and above | 5.40 |

TABLE 7

ILLUSTRATES A .70% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
BASED ON A SOFI FACTOR OF 1.80 OR ABOVE BUT LESS THAN 1.85

|     | A                   | B                                 |
|-----|---------------------|-----------------------------------|
|     | If Benefit Ratio is | The Individual Experience Rate is |
| 577 |                     |                                   |
| 578 |                     |                                   |
| 579 | 0.0%                | 0.10%                             |
| 580 | 0.1                 | 0.10                              |
| 581 | 0.2                 | 0.10                              |
| 582 | 0.3                 | 0.10                              |
| 583 | 0.4                 | 0.10                              |
| 584 | 0.5                 | 0.10                              |
| 585 | 0.6                 | 0.10                              |
| 586 | 0.7                 | 0.10                              |
| 587 | 0.8                 | 0.10                              |
| 588 | 0.9                 | 0.20                              |
| 589 | 1.0                 | 0.30                              |
| 590 | 1.1                 | 0.40                              |
| 591 | 1.2                 | 0.50                              |
| 592 | 1.3                 | 0.60                              |
| 593 | 1.4                 | 0.70                              |

|     |     |      |
|-----|-----|------|
| 594 | 1.5 | 0.80 |
| 595 | 1.6 | 0.90 |
| 596 | 1.7 | 1.00 |
| 597 | 1.8 | 1.10 |
| 598 | 1.9 | 1.20 |
| 599 | 2.0 | 1.30 |
| 600 | 2.1 | 1.40 |
| 601 | 2.2 | 1.50 |
| 602 | 2.3 | 1.60 |
| 603 | 2.4 | 1.70 |
| 604 | 2.5 | 1.80 |
| 605 | 2.6 | 1.90 |
| 606 | 2.7 | 2.00 |
| 607 | 2.8 | 2.10 |
| 608 | 2.9 | 2.20 |
| 609 | 3.0 | 2.30 |
| 610 | 3.1 | 2.40 |
| 611 | 3.2 | 2.50 |
| 612 | 3.3 | 2.60 |
| 613 | 3.4 | 2.70 |
| 614 | 3.5 | 2.80 |
| 615 | 3.6 | 2.90 |
| 616 | 3.7 | 3.00 |
| 617 | 3.8 | 3.10 |
| 618 | 3.9 | 3.20 |
| 619 | 4.0 | 3.30 |
| 620 | 4.1 | 3.40 |
| 621 | 4.2 | 3.50 |
| 622 | 4.3 | 3.60 |
| 623 | 4.4 | 3.70 |
| 624 | 4.5 | 3.80 |
| 625 | 4.6 | 3.90 |
| 626 | 4.7 | 4.00 |

|     |               |      |
|-----|---------------|------|
| 627 | 4.8           | 4.10 |
| 628 | 4.9           | 4.20 |
| 629 | 5.0           | 4.30 |
| 630 | 5.1           | 4.40 |
| 631 | 5.2           | 4.50 |
| 632 | 5.3           | 4.60 |
| 633 | 5.4           | 4.70 |
| 634 | 5.5           | 4.80 |
| 635 | 5.6           | 4.90 |
| 636 | 5.7           | 5.00 |
| 637 | 5.8           | 5.10 |
| 638 | 5.9           | 5.20 |
| 639 | 6.0           | 5.30 |
| 640 | 6.1 and above | 5.40 |

TABLE 8

ILLUSTRATES A .80% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
BASED ON A SOFI FACTOR OF 1.85 OR ABOVE BUT LESS THAN 1.90

|     | A                   | B                                 |
|-----|---------------------|-----------------------------------|
|     | If Benefit Ratio is | The Individual Experience Rate is |
| 644 |                     |                                   |
| 645 |                     |                                   |
| 646 | 0.0%                | 0.10%                             |
| 647 | 0.1                 | 0.10                              |
| 648 | 0.2                 | 0.10                              |
| 649 | 0.3                 | 0.10                              |
| 650 | 0.4                 | 0.10                              |
| 651 | 0.5                 | 0.10                              |
| 652 | 0.6                 | 0.10                              |
| 653 | 0.7                 | 0.10                              |
| 654 | 0.8                 | 0.10                              |
| 655 | 0.9                 | 0.10                              |
| 656 | 1.0                 | 0.20                              |
| 657 | 1.1                 | 0.30                              |
| 658 | 1.2                 | 0.40                              |
| 659 | 1.3                 | 0.50                              |

|     |     |      |
|-----|-----|------|
| 660 | 1.4 | 0.60 |
| 661 | 1.5 | 0.70 |
| 662 | 1.6 | 0.80 |
| 663 | 1.7 | 0.90 |
| 664 | 1.8 | 1.00 |
| 665 | 1.9 | 1.10 |
| 666 | 2.0 | 1.20 |
| 667 | 2.1 | 1.30 |
| 668 | 2.2 | 1.40 |
| 669 | 2.3 | 1.50 |
| 670 | 2.4 | 1.60 |
| 671 | 2.5 | 1.70 |
| 672 | 2.6 | 1.80 |
| 673 | 2.7 | 1.90 |
| 674 | 2.8 | 2.00 |
| 675 | 2.9 | 2.10 |
| 676 | 3.0 | 2.20 |
| 677 | 3.1 | 2.30 |
| 678 | 3.2 | 2.40 |
| 679 | 3.3 | 2.50 |
| 680 | 3.4 | 2.60 |
| 681 | 3.5 | 2.70 |
| 682 | 3.6 | 2.80 |
| 683 | 3.7 | 2.90 |
| 684 | 3.8 | 3.00 |
| 685 | 3.9 | 3.10 |
| 686 | 4.0 | 3.20 |
| 687 | 4.1 | 3.30 |
| 688 | 4.2 | 3.40 |
| 689 | 4.3 | 3.50 |
| 690 | 4.4 | 3.60 |
| 691 | 4.5 | 3.70 |
| 692 | 4.6 | 3.80 |

|     |               |      |
|-----|---------------|------|
| 693 | 4.7           | 3.90 |
| 694 | 4.8           | 4.00 |
| 695 | 4.9           | 4.10 |
| 696 | 5.0           | 4.20 |
| 697 | 5.1           | 4.30 |
| 698 | 5.2           | 4.40 |
| 699 | 5.3           | 4.50 |
| 700 | 5.4           | 4.60 |
| 701 | 5.5           | 4.70 |
| 702 | 5.6           | 4.80 |
| 703 | 5.7           | 4.90 |
| 704 | 5.8           | 5.00 |
| 705 | 5.9           | 5.10 |
| 706 | 6.0           | 5.20 |
| 707 | 6.1           | 5.30 |
| 708 | 6.2 and above | 5.40 |

TABLE 9

ILLUSTRATES A .90% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
BASED ON A SOFI FACTOR OF 1.90 OR ABOVE BUT LESS THAN 1.95

|     | A                   | B                                 |
|-----|---------------------|-----------------------------------|
|     | If Benefit Ratio is | The Individual Experience Rate is |
| 714 | 0.0%                | 0.10%                             |
| 715 | 0.1                 | 0.10                              |
| 716 | 0.2                 | 0.10                              |
| 717 | 0.3                 | 0.10                              |
| 718 | 0.4                 | 0.10                              |
| 719 | 0.5                 | 0.10                              |
| 720 | 0.6                 | 0.10                              |
| 721 | 0.7                 | 0.10                              |
| 722 | 0.8                 | 0.10                              |
| 723 | 0.9                 | 0.10                              |
| 724 | 1.0                 | 0.10                              |
| 725 | 1.1                 | 0.20                              |

|     |     |      |
|-----|-----|------|
| 726 | 1.2 | 0.30 |
| 727 | 1.3 | 0.40 |
| 728 | 1.4 | 0.50 |
| 729 | 1.5 | 0.60 |
| 730 | 1.6 | 0.70 |
| 731 | 1.7 | 0.80 |
| 732 | 1.8 | 0.90 |
| 733 | 1.9 | 1.00 |
| 734 | 2.0 | 1.10 |
| 735 | 2.1 | 1.20 |
| 736 | 2.2 | 1.30 |
| 737 | 2.3 | 1.40 |
| 738 | 2.4 | 1.50 |
| 739 | 2.5 | 1.60 |
| 740 | 2.6 | 1.70 |
| 741 | 2.7 | 1.80 |
| 742 | 2.8 | 1.90 |
| 743 | 2.9 | 2.00 |
| 744 | 3.0 | 2.10 |
| 745 | 3.1 | 2.20 |
| 746 | 3.2 | 2.30 |
| 747 | 3.3 | 2.40 |
| 748 | 3.4 | 2.50 |
| 749 | 3.5 | 2.60 |
| 750 | 3.6 | 2.70 |
| 751 | 3.7 | 2.80 |
| 752 | 3.8 | 2.90 |
| 753 | 3.9 | 3.00 |
| 754 | 4.0 | 3.10 |
| 755 | 4.1 | 3.20 |
| 756 | 4.2 | 3.30 |
| 757 | 4.3 | 3.40 |
| 758 | 4.4 | 3.50 |

|     |               |      |
|-----|---------------|------|
| 759 | 4.5           | 3.60 |
| 760 | 4.6           | 3.70 |
| 761 | 4.7           | 3.80 |
| 762 | 4.8           | 3.90 |
| 763 | 4.9           | 4.00 |
| 764 | 5.0           | 4.10 |
| 765 | 5.1           | 4.20 |
| 766 | 5.2           | 4.30 |
| 767 | 5.3           | 4.40 |
| 768 | 5.4           | 4.50 |
| 769 | 5.5           | 4.60 |
| 770 | 5.6           | 4.70 |
| 771 | 5.7           | 4.80 |
| 772 | 5.8           | 4.90 |
| 773 | 5.9           | 5.00 |
| 774 | 6.0           | 5.10 |
| 775 | 6.1           | 5.20 |
| 776 | 6.2           | 5.30 |
| 777 | 6.3 and above | 5.40 |

TABLE 10

ILLUSTRATES A 1.00% REDUCTION OF THE INDIVIDUAL EXPERIENCE RATE  
BASED ON A SOFI FACTOR OF 1.95 OR ABOVE

|     | A                   | B                                 |
|-----|---------------------|-----------------------------------|
|     | If Benefit Ratio is | The Individual Experience Rate is |
| 781 |                     |                                   |
| 782 |                     |                                   |
| 783 | 0.0%                | 0.10%                             |
| 784 | 0.1                 | 0.10                              |
| 785 | 0.2                 | 0.10                              |
| 786 | 0.3                 | 0.10                              |
| 787 | 0.4                 | 0.10                              |
| 788 | 0.5                 | 0.10                              |
| 789 | 0.6                 | 0.10                              |
| 790 | 0.7                 | 0.10                              |
| 791 | 0.8                 | 0.10                              |



|     |     |      |
|-----|-----|------|
| 792 | 0.9 | 0.10 |
| 793 | 1.0 | 0.10 |
| 794 | 1.1 | 0.10 |
| 795 | 1.2 | 0.20 |
| 796 | 1.3 | 0.30 |
| 797 | 1.4 | 0.40 |
| 798 | 1.5 | 0.50 |
| 799 | 1.6 | 0.60 |
| 800 | 1.7 | 0.70 |
| 801 | 1.8 | 0.80 |
| 802 | 1.9 | 0.90 |
| 803 | 2.0 | 1.00 |
| 804 | 2.1 | 1.10 |
| 805 | 2.2 | 1.20 |
| 806 | 2.3 | 1.30 |
| 807 | 2.4 | 1.40 |
| 808 | 2.5 | 1.50 |
| 809 | 2.6 | 1.60 |
| 810 | 2.7 | 1.70 |
| 811 | 2.8 | 1.80 |
| 812 | 2.9 | 1.90 |
| 813 | 3.0 | 2.00 |
| 814 | 3.1 | 2.10 |
| 815 | 3.2 | 2.20 |
| 816 | 3.3 | 2.30 |
| 817 | 3.4 | 2.40 |
| 818 | 3.5 | 2.50 |
| 819 | 3.6 | 2.60 |
| 820 | 3.7 | 2.70 |
| 821 | 3.8 | 2.80 |
| 822 | 3.9 | 2.90 |
| 823 | 4.0 | 3.00 |
| 824 | 4.1 | 3.10 |

|     |               |      |
|-----|---------------|------|
| 825 | 4.2           | 3.20 |
| 826 | 4.3           | 3.30 |
| 827 | 4.4           | 3.40 |
| 828 | 4.5           | 3.50 |
| 829 | 4.6           | 3.60 |
| 830 | 4.7           | 3.70 |
| 831 | 4.8           | 3.80 |
| 832 | 4.9           | 3.90 |
| 833 | 5.0           | 4.00 |
| 834 | 5.1           | 4.10 |
| 835 | 5.2           | 4.20 |
| 836 | 5.3           | 4.30 |
| 837 | 5.4           | 4.40 |
| 838 | 5.5           | 4.50 |
| 839 | 5.6           | 4.60 |
| 840 | 5.7           | 4.70 |
| 841 | 5.8           | 4.80 |
| 842 | 5.9           | 4.90 |
| 843 | 6.0           | 5.00 |
| 844 | 6.1           | 5.10 |
| 845 | 6.2           | 5.20 |
| 846 | 6.3           | 5.30 |
| 847 | 6.4 and above | 5.40 |

848 (iv) 1. The contribution rate for each eligible  
849 employer shall be the sum of two (2) rates: his individual  
850 experience rate in the range from zero percent (0%) to five and  
851 four-tenths percent (5.4%), plus a general experience rate. In no  
852 event shall the resulting rate be in excess of five and  
853 four-tenths percent (5.4%).

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

857                   3. The general experience rate shall be  
858 determined in the following manner: The commission shall  
859 determine annually, for the thirty-six (36) consecutive  
860 calendar-month period ending on the computation date, the amount  
861 of benefits which were not charged to the record of any employer  
862 and of benefits which were ineffectively charged to the employer's  
863 experience-rating record. For the purposes of subsection  
864 (2)(b)(iv)3, the term "ineffectively charged benefits" shall  
865 include:

866           The total of the amounts of benefits charged to the  
867 experience-rating records of all eligible employers which caused  
868 their benefit ratios to exceed five and four-tenths percent  
869 (5.4%), the total of the amounts of benefits charged to the  
870 experience-rating records of all ineligible employers which would  
871 cause their benefit ratios to exceed five and four-tenths percent  
872 (5.4%) if they were eligible employers, and the total of the  
873 amounts of benefits charged or chargeable to the experience-rating  
874 record of any employer who has discontinued his business or whose  
875 coverage has been terminated within such period; provided, that  
876 solely for the purposes of determining the amounts of  
877 ineffectively charged benefits as herein defined, a "benefit  
878 ratio" shall be computed for each ineligible employer, which shall  
879 be the quotient obtained by dividing the total benefits charged to  
880 his experience-rating record throughout the period ending on the  
881 computation date, during which his experience-rating record has  
882 been chargeable with benefits, by his total taxable payroll for  
883 the same period on which all contributions due have been paid on  
884 or before the September 30 immediately following the computation  
885 date; and provided further, that such benefit ratio shall be  
886 computed to the tenth of one percent (.1%) and any remainder shall  
887 be rounded to the next higher tenth. The ratio of the sum of  
888 these amounts to the taxable wages paid during the same period by  
889 all eligible employers whose benefit ratio did not exceed five and

890 four-tenths percent (5.4%), computed to the next higher tenth of  
891 one percent (.1%), shall be the general experience rate.

892                   4. The general experience rate shall be  
893 adjusted by use of the size of fund index factor. This factor may  
894 be positive or negative, and shall be determined as follows: From  
895 the target SOFI of 1.50, subtract the simple average of the  
896 current and preceding years' exposure criterions divided by the  
897 cost rate criterion. The result is then multiplied by the product  
898 of the CRC and total wages for the twelve-month period ending June  
899 30 divided by the taxable wages for the twelve-month period ending  
900 June 30. This is the percentage positive or negative added to the  
901 general experience rate. This percentage is computed to one (1)  
902 decimal place, and rounded to the next higher tenth.

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

907                   6. The commission shall include in its annual  
908 rate notice to employers a brief explanation of the elements of  
909 the general experience rate, and shall include in its regular  
910 publications an annual analysis of benefits not charged to the  
911 record of any employer, and of the benefit experience of employers  
912 by industry group whose benefit ratio exceeds four percent (4%),  
913 and of any other factors which may affect the size of the general  
914 experience rate.

915                   (v) When any employing unit in any manner succeeds  
916 to or acquires the organization, trade, business or substantially  
917 all the assets thereof of an employer, excepting any assets  
918 retained by such employer incident to the liquidation of his  
919 obligations, whether or not such acquiring employing unit was an  
920 employer within the meaning of Section 71-5-11, subsection H,  
921 prior to such acquisition, and continues such organization, trade  
922 or business, the experience-rating and payroll records of the

923 predecessor employer shall be transferred as of the date of  
924 acquisition to the successor employer for the purpose of rate  
925 determination.

926 (vi) When any employing unit succeeds to or  
927 acquires a distinct and severable portion of an organization,  
928 trade or business, the experience-rating and payroll records of  
929 such portion, if separately identifiable, shall be transferred to  
930 the successor upon:

931 1. The mutual consent of the predecessor and  
932 the successor;

933 2. Approval of the commission;

934 3. Continued operation of the transferred  
935 portion by the successor after transfer; and

936 4. The execution and the filing with the  
937 commission by the predecessor employer of a waiver relinquishing  
938 all rights to have the experience-rating and payroll records of  
939 the transferred portion used for the purpose of determining  
940 modified rates of contribution for such predecessor.

941 (vii) If the successor was an employer subject to  
942 this chapter prior to the date of acquisition, it shall continue  
943 to pay contributions at the rate applicable to it from the date  
944 the acquisition occurred until the end of the then current tax  
945 year. If the successor was not an employer prior to the date of  
946 acquisition, it shall pay contributions at the rate applicable to  
947 the predecessor or, if more than one (1) predecessor and the same  
948 rate is applicable to both, the rate applicable to the predecessor  
949 or predecessors, from the date the acquisition occurred until the  
950 end of the then current tax year. If the successor was not an  
951 employer prior to the date the acquisition occurred and  
952 simultaneously acquires the businesses of two (2) or more  
953 employers to whom different rates of contributions are applicable,  
954 it shall pay contributions from the date of the acquisition until  
955 the end of the current tax year at a rate computed on the basis of

956 the combined experience-rating and payroll records of the  
957 predecessors as of the computation date for such tax year. In all  
958 cases the rate of contributions applicable to such successor for  
959 each succeeding tax year shall be computed on the basis of the  
960 combined experience-rating and payroll records of the successor  
961 and the predecessor or predecessors.

962 (viii) The commission shall notify each employer  
963 quarterly of the benefits paid and charged to his  
964 experience-rating record; and such notification, in the absence of  
965 an application for redetermination filed within thirty (30) days  
966 after the date of the mailing of such notice, shall be final,  
967 conclusive and binding upon the employer for all purposes. A  
968 redetermination, made after notice and opportunity for a fair  
969 hearing, by a hearing officer designated by the commission who  
970 shall consider and decide these and related applications and  
971 protests; and the finding of fact in connection therewith may be  
972 introduced into any subsequent administrative or judicial  
973 proceedings involving the determination of the rate of  
974 contributions of any employer for any tax year, and shall be  
975 entitled to the same finality as is provided in this subsection  
976 with respect to the findings of fact in proceedings to redetermine  
977 the contribution rate of an employer.

978 (ix) The commission shall notify each employer of  
979 his rate of contribution as determined for any tax year as soon as  
980 reasonably possible after November 1 of the preceding year. Such  
981 determination shall be final, conclusive and binding upon such  
982 employer unless, within thirty (30) days after the date of the  
983 mailing of such notice to his last known address, the employer  
984 files with the commission an application for review and  
985 redetermination of his contribution rate, setting forth his  
986 reasons therefor. If the commission grants such review, the  
987 employer shall be promptly notified thereof and shall be afforded  
988 an opportunity for a fair hearing by a hearing officer designated

989 by the commission who shall consider and decide these and related  
990 applications and protests; but no employer shall be allowed, in  
991 any proceeding involving his rate of contributions or contribution  
992 liability, to contest the chargeability to his account of any  
993 benefits paid in accordance with a determination, redetermination  
994 or decision pursuant to Sections 71-5-515 through 71-5-533 except  
995 upon the ground that the services on the basis of which such  
996 benefits were found to be chargeable did not constitute services  
997 performed in employment for him, and then only in the event that  
998 he was not a party to such determination, redetermination,  
999 decision or to any other proceedings provided in this chapter in  
1000 which the character of such services was determined. The employer  
1001 shall be promptly notified of the denial of this application or of  
1002 the redetermination, both of which shall become final unless,  
1003 within ten (10) days after the date of mailing of notice thereof,  
1004 there shall be an appeal to the commission itself. Any such  
1005 appeal shall be on the record before said designated hearing  
1006 officer, and the decision of said commission shall become final  
1007 unless, within thirty (30) days after the date of mailing of  
1008 notice thereof to the employer's last known address, there shall  
1009 be an appeal to the Circuit Court of the First Judicial District  
1010 of Hinds County, Mississippi, in accordance with the provisions of  
1011 law with respect to review of civil causes by certiorari.

1012 (3) Notwithstanding any other provision of law, the  
1013 following shall apply regarding assignment of rates and transfers  
1014 of experience:

1015 (a) (i) If an employer transfers its trade or  
1016 business, or a portion thereof, to another employer and, at the  
1017 time of the transfer, there is substantially common ownership,  
1018 management or control of the two (2) employers, then the  
1019 unemployment experience attributable to the transferred trade or  
1020 business shall be transferred to the employer to whom such  
1021 business is so transferred. The rates of both employers shall be

1022 recalculated and made effective on January 1 of the year following  
1023 the year the transfer occurred.

1024 (ii) If, following a transfer of experience under  
1025 subparagraph (i) of this paragraph (a), the department determines  
1026 that a substantial purpose of the transfer of trade or business  
1027 was to obtain a reduced liability of contributions, then the  
1028 experience-rating accounts of the employers involved shall be  
1029 combined into a single account and a single rate assigned to such  
1030 account.

1031 (b) Whenever a person who is not an employer or an  
1032 employing unit under this chapter at the time it acquires the  
1033 trade or business of an employer, the unemployment experience of  
1034 the acquired business shall not be transferred to such person if  
1035 the department finds that such person acquired the business solely  
1036 or primarily for the purpose of obtaining a lower rate of  
1037 contributions. Instead, such person shall be assigned the new  
1038 employer rate under Section 71-5-353. In determining whether the  
1039 business was acquired solely or primarily for the purpose of  
1040 obtaining a lower rate of contributions, the department shall use  
1041 objective factors which may include the cost of acquiring the  
1042 business, whether the person continued the business enterprise of  
1043 the acquired business, how long such business enterprise was  
1044 continued, or whether a substantial number of new employees were  
1045 hired for performance of duties unrelated to the business activity  
1046 conducted prior to acquisition.

1047 (c) (i) If a person knowingly violates or attempts to  
1048 violate paragraph (a) or (b) of this subsection or any other  
1049 provision of this chapter related to determining the assignment of  
1050 a contribution rate, or if a person knowingly advises another  
1051 person in a way that results in a violation of such provision, the  
1052 person shall be subject to the following penalties:

1053 1. If the person is an employer, then such  
1054 employer shall be assigned the highest rate assignable under this



1055 chapter for the rate year during which such violation or attempted  
1056 violation occurred and the three (3) rate years immediately  
1057 following this rate year. However, if the person's business is  
1058 already at such highest rate for any year, or if the amount of  
1059 increase in the person's rate would be less than two percent (2%)  
1060 for such year, then a penalty rate of contributions of two percent  
1061 (2%) of taxable wages shall be imposed for such year. The penalty  
1062 rate will apply to the successor business as well as the related  
1063 entity from which the employees were transferred in an effort to  
1064 obtain a lower rate of contributions.

1065 2. If the person is not an employer, such  
1066 person shall be subject to a civil money penalty of not more than  
1067 Five Thousand Dollars (\$5,000.00). Each such transaction for  
1068 which advice was given and each occurrence or reoccurrence after  
1069 notification being given by the department shall be a separate  
1070 offense and punishable by a separate penalty. Any such fine shall  
1071 be deposited in the penalty and interest account established under  
1072 Section 71-5-114.

1073 (ii) For purposes of this paragraph (c), the term  
1074 "knowingly" means having actual knowledge of or acting with  
1075 deliberate ignorance or reckless disregard for the prohibition  
1076 involved.

1077 (iii) For purposes of this paragraph (c), the term  
1078 "violates or attempts to violate" includes, but is not limited to,  
1079 intent to evade, misrepresentation or willful nondisclosure.

1080 (iv) In addition to the penalty imposed by  
1081 subparagraph (i) of this paragraph (c), any violation of this  
1082 subsection may be punishable by a fine of not more than Ten  
1083 Thousand Dollars (\$10,000.00) or by imprisonment for not more than  
1084 five (5) years, or by both such fine and imprisonment. This  
1085 subsection shall prohibit prosecution under any other criminal  
1086 statute of this state.

1087           (d) The department shall establish procedures to  
1088 identify the transfer or acquisition of a business for purposes of  
1089 this subsection.

1090           (e) For purposes of this subsection:

1091                   (i) "Person" has the meaning given such term by  
1092 Section 7701(a)(1) of the Internal Revenue Code of 1986; and

1093                   (ii) "Employing unit" has the meaning as set forth  
1094 in Section 71-5-11.

1095           (f) This subsection shall be interpreted and applied in  
1096 such a manner as to meet the minimum requirements contained in any  
1097 guidance or regulations issued by the United States Department of  
1098 Labor.

1099           **SECTION 2.** The following provision shall be codified as  
1100 Section 71-5-389, Mississippi Code of 1972:

1101           71-5-389. (1) For the purposes of this section, the  
1102 following terms shall have the respective meanings ascribed by  
1103 this section:

1104                   (a) "Claimant agency" means the Mississippi Department  
1105 of Employment Security.

1106                   (b) "Debtor" means any individual owing money or having  
1107 a delinquent account with any claimant agency, which obligation  
1108 has not been adjudicated satisfied by court order, set aside by  
1109 court order, or discharged in bankruptcy.

1110                   (c) "Debt" means any sum due and owing any claimant  
1111 agency, including costs, court costs, fines, penalties and  
1112 interest which have accrued through contract, subrogation, tort,  
1113 operation of law, or any other legal theory regardless of whether  
1114 there is an outstanding judgment for that sum which is legally  
1115 collectible and for which a collection effort has been or is being  
1116 made.

1117                   (d) "Commission" means the State Tax Commission of the  
1118 State of Mississippi.

1119 (e) "Refund" means the Mississippi income tax refund  
1120 which the commission determines to be due any individual taxpayer.

1121 (2) The collection remedy authorized by this section is in  
1122 addition to and is not substitution for any other remedy available  
1123 by law.

1124 (3) (a) A claimant agency may submit debts in excess of  
1125 Twenty-five Dollars (\$25.00) owed to it to the commission for  
1126 collection through setoff, under the procedure established by this  
1127 section, except in cases where the validity of the debt is  
1128 legitimately in dispute, an alternate means of collection is  
1129 pending and believed to be adequate, or such collection would  
1130 result in a loss of federal funds or federal assistance.

1131 (b) Upon the request of a claimant agency, the  
1132 commission shall set off any refund, as defined herein, against  
1133 the sum certified by the claimant agency as provided in this  
1134 section.

1135 (4) (a) Within the time frame specified by the commission,  
1136 a claimant agency seeking to collect a debt through setoff shall  
1137 supply the information necessary to identify each debtor whose  
1138 refund is sought to be set off and certify the amount of debt or  
1139 debts owed by each such debtor.

1140 (b) If a debtor identified by a claimant agency is  
1141 determined by the commission to be entitled to a refund of at  
1142 least Twenty-five Dollars (\$25.00), the commission shall transfer  
1143 an amount equal to the refund owed, not to exceed the amount of  
1144 the claimed debt certified, to the claimant agency. The State Tax  
1145 Commission shall send the excess amount to the debtor within a  
1146 reasonable time after such excess is determined. At the time of  
1147 the transfer of funds to a claimant agency pursuant to this  
1148 paragraph (b), the commission shall notify the taxpayer or  
1149 taxpayers whose refund is sought to be set off that the transfer  
1150 has been made. Such notice shall clearly set forth the name of  
1151 the debtor, the manner in which the debt arose, the amount of the

1152 claimed debt, the transfer of funds to the claimant agency  
1153 pursuant to this paragraph (b) and the intention to set off the  
1154 refund against the debt, the amount of the refund in excess of the  
1155 claimed debt, the taxpayer's opportunity to give written notice to  
1156 contest the setoff within thirty (30) days of the date of mailing  
1157 of the notice, the name and mailing address of the claimant agency  
1158 to which the application for such a hearing must be sent, and the  
1159 fact that the failure to apply for such a hearing, in writing,  
1160 within the thirty-day period will be deemed a waiver of the  
1161 opportunity to contest the setoff. In the case of a joint return  
1162 or a joint refund, the notice shall also state the name of the  
1163 taxpayer named in the return, if any, against whom no debt is  
1164 claimed, the fact that a debt is not claimed against such  
1165 taxpayer, the fact that such taxpayer is entitled to receive a  
1166 refund if it is due him regardless of the debt asserted against  
1167 his spouse, and that in order to obtain a refund due him such  
1168 taxpayer must apply in writing for a hearing with the claimant  
1169 agency named in the notice within thirty (30) days of the date of  
1170 the mailing of the notice. If a taxpayer fails to apply in  
1171 writing for such a hearing within thirty (30) days of the mailing  
1172 of such notice, he will have waived his opportunity to contest the  
1173 setoff.

1174 (c) Upon receipt of funds transferred from the  
1175 commission pursuant to paragraph (b) of this subsection, the  
1176 claimant agency shall deposit and hold such funds in an escrow  
1177 account until a final determination of the validity of the debt.

1178 (d) The claimant agency shall pay the commission a fee,  
1179 not to exceed Seventeen Dollars (\$17.00) in each case in which a  
1180 tax refund is identified as being available for offset. Such fees  
1181 shall be deposited by the commission into a special fund hereby  
1182 created in the State Treasury, out of which the Legislature shall  
1183 appropriate monies to defray expenses of the commission in  
1184 employing personnel to administer the provisions of this section.

1185           (5) (a) When the claimant agency receives a protest or an  
1186 application in writing from a taxpayer within thirty (30) days of  
1187 the notice issued by the commission, the claimant agency shall set  
1188 a date to hear the protest and give notice to the taxpayer by  
1189 registered or certified mail of the date so set. The time and  
1190 place of such hearing shall be designated in such notice and the  
1191 date set shall not be less than fifteen (15) days from the date of  
1192 such notice. If, at the hearing, the sum asserted as due and  
1193 owing is found not to be correct, an adjustment to the claim may  
1194 be made. The claimant agency shall give notice to the debtor of  
1195 its final determination as provided in paragraph (c) of this  
1196 subsection.

1197           (b) No issues shall be reconsidered at the hearing  
1198 which have been previously litigated.

1199           (c) If any debtor is dissatisfied with the final  
1200 determination made at the hearing by the claimant agency, he may  
1201 appeal the final determination to the circuit court of the county  
1202 in which the main office of the claimant agency is located by  
1203 filing notice of appeal with the administrative head of the  
1204 claimant agency and with the clerk of the circuit court of the  
1205 county in which the appeal shall be taken within thirty (30) days  
1206 from the date the notice of final determination was given by the  
1207 claimant agency.

1208           (6) (a) Upon final determination of the amount of the debt  
1209 due and owing by means of hearing or by the taxpayer's default  
1210 through failure to comply with timely request for review, the  
1211 claimant agency shall remove the amount of the debt due and owing  
1212 from the escrow account and credit such amount to the debtor's  
1213 obligation.

1214           (b) Upon transfer of the debt due and owing from the  
1215 escrow account to the credit of the debtor's account, the claimant  
1216 agency shall notify the debtor in writing of the finalization of  
1217 the setoff. Such notice shall include a final accounting if the

1218 refund which was set off, including the amount of the refund to  
1219 which the debtor was entitled prior to the setoff, the amount of  
1220 the debt due and owing, the amount of the commission's collection  
1221 fee, the amount of the refund in excess of the debt which was  
1222 returned to the debtor by the commission, and the amount of the  
1223 funds transferred to the claimant agency in excess of the debt  
1224 determined to be due and owing at a hearing, if such a hearing was  
1225 held. At such time, the claimant agency shall refund to the  
1226 debtor the amount of the claimed debt originally certified and  
1227 transferred to it by the commission in excess of the amount of  
1228 debt finally found to be due and owing.

1229       (7) (a) Notwithstanding the provision that prohibits  
1230 disclosure by the commission of the contents of taxpayer records  
1231 or information and notwithstanding any other confidentiality  
1232 statute, the State Tax Commission may provide to a claimant agency  
1233 all information necessary to accomplish and effectuate the intent  
1234 of the section.

1235       (b) The information obtained by claimant agency from  
1236 the commission in accordance with the provisions of this section  
1237 shall retain its confidentiality and shall only be used by a  
1238 claimant agency in the pursuit of its debt collection duties and  
1239 practices; and any employee or prior employee of any claimant  
1240 agency who unlawfully discloses any such information for any other  
1241 purpose, except as specifically authorized by law, shall be  
1242 subject to the same penalties specified by law for unauthorized  
1243 confidential information by an agent or employee of the State Tax  
1244 Commission.

1245       **SECTION 3.** This act shall take effect and be in force from  
1246 and after January 1, 2005.