

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2448

1 AN ACT RELATING TO THE ADMINISTRATION OF THE MISSISSIPPI
2 EMPLOYMENT SECURITY LAW BY THE MISSISSIPPI DEPARTMENT OF
3 EMPLOYMENT SECURITY; TO CREATE NEW SECTION 71-5-391, MISSISSIPPI
4 CODE OF 1972, TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE
5 DEPARTMENT OF EMPLOYMENT SECURITY TO USE AVAILABLE ADMINISTRATIVE
6 FUNDS FOR PAYMENT OF FEES ASSOCIATED WITH RECEIPT OF ELECTRONIC
7 PAYMENTS MADE TO THE DEPARTMENT; TO CREATE NEW SECTION 71-5-543,
8 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE EXECUTIVE DIRECTOR OF
9 THE DEPARTMENT OF EMPLOYMENT SECURITY TO WAIVE THE RECOVERY OF
10 BENEFITS PAID IF THE RECIPIENT IS SUBSEQUENTLY FOUND TO BE
11 INELIGIBLE FOR THE BENEFITS AND THE BENEFITS WERE PAID AS A DIRECT
12 RESULT OF UNEMPLOYMENT CAUSED BY A NATURAL DISASTER DECLARED BY
13 THE PRESIDENT OF THE UNITED STATES IN ACCORDANCE WITH THE ROBERT
14 T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT; TO AMEND
15 SECTIONS 71-5-11, 71-5-19, 71-5-119, 71-5-127, 71-5-135, 71-5-355,
16 71-5-357, 71-5-359, 71-5-365, 71-5-505, 71-5-511, 71-5-513,
17 71-5-517, 71-5-519 AND 71-5-529, MISSISSIPPI CODE OF 1972, TO
18 AUTHORIZE OFFICIAL NOTICE IN FORMS OTHER THAN MAIL; TO DEFINE THE
19 TERM "TEMPORARY EMPLOYEE"; TO INCREASE THE MAXIMUM OF TIME THAT A
20 JUDGMENT AGAINST A PERSON FOR COLLECTION OF OVERPAYMENTS OF
21 BENEFITS MAY BE A LIEN UPON THE PROPERTY OF THE PERSON; TO CLARIFY
22 THE AVAILABILITY OF THE UNEMPLOYMENT COMPENSATION LAW TO
23 BENEFICIARIES; TO REVISE THE PROVISION RELATING TO THE
24 CONFIDENTIALITY OF RECORDS AND REPORTS; TO CHANGE THE DATE FOR
25 CERTAIN DETERMINATIONS AND NOTIFICATIONS UNDER THE ACT; TO
26 AUTHORIZE THE DEPARTMENT ON ITS OWN MOTION TO ADJUST CONTRIBUTIONS
27 BY EMPLOYERS; TO AUTHORIZE THE DEPARTMENT ON ITS OWN MOTION TO
28 NONCHARGE AN EMPLOYER FOR BENEFITS PAID FOR UNEMPLOYMENT DUE TO A
29 DECLARED DISASTER; TO CLARIFY THAT A BENEFICIARY MUST REGISTER AND
30 REPORT FOR WORK WITH THE DEPARTMENT; TO PROVIDE WHEN A TEMPORARY
31 EMPLOYEE OF A TEMPORARY HELP FIRM IS CONSIDERED TO HAVE LEFT THE
32 EMPLOYEE'S LAST WORK VOLUNTARILY WITHOUT GOOD CAUSE; TO CLARIFY
33 THE CONSIDERATION OF CERTAIN UNFAVORABLE WORKING CONDITIONS BY THE
34 DEPARTMENT IN THE DISQUALIFICATION OF AN INDIVIDUAL FOR
35 UNEMPLOYMENT BENEFITS; TO CLARIFY THE PROCEDURE FOR TAKING CLAIMS
36 BY THE DEPARTMENT; TO AMEND SECTION 11-35-23, MISSISSIPPI CODE OF
37 1972, TO PROVIDE THAT IN CASES IN WHICH THE PLAINTIFF IN A
38 GARNISHMENT IS THE DEPARTMENT OF EMPLOYMENT SECURITY, THE
39 GARNISHEE SHALL MAKE MONTHLY PAYMENTS TO THE DEPARTMENT UNTIL SUCH
40 TIME AS THE TOTAL AMOUNT SHOWN DUE ON THE WRIT HAS BEEN
41 ACCUMULATED; AND FOR RELATED PURPOSES.

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

43 **SECTION 1.** The following provision shall be codified as

44 Section 71-5-391, Mississippi Code of 1972:

45 71-5-391. The executive director of the department may use
46 available administrative funds for payment of fees associated with

47 receipt of electronic payments made to the department. In the
48 event the fees are charged to an employer through a payment
49 process external to the department, amounts not to exceed the
50 charges for the electronic transaction may be credited to the
51 employer and used as an offset to future indebtedness.

52 **SECTION 2.** The following provision shall be codified as
53 Section 71-5-543, Mississippi Code of 1972:

54 71-5-543. (1) Except as otherwise provided in this section,
55 the executive director of the department may waive recovery of
56 benefits paid under this chapter to a person if the person is
57 subsequently found to be ineligible for the benefit and the
58 benefits were paid as a direct result of unemployment caused by a
59 natural disaster which is declared by the President of the United
60 States in accordance with Section 401 of the Robert T. Stafford
61 Disaster Relief and Emergency Assistance Act. All waivers shall
62 be granted based upon a consistent methodology and shall include
63 consideration of ability to repay and other similar
64 considerations.

65 (2) The waiver authorized in subsection (1) of this section
66 shall not be granted if:

67 (a) The individual receiving the benefit is found to be
68 guilty of fraud involving filing for, or receipt of, the benefits;
69 or

70 (b) The size of fund index (as defined in Section
71 71-5-355) for the year in which a request for a waiver is made is
72 less than five-tenths (.5)

73 (3) All waiver requests shall be considered on a case by
74 case basis.

75 **SECTION 3.** Section 71-5-11, Mississippi Code of 1972, is
76 amended as follows:

77 71-5-11. As used in this chapter, unless the context clearly
78 requires otherwise:

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

82 B. "Benefits" means the money payments payable to an
83 individual, as provided in this chapter, with respect to his
84 unemployment.

85 C. "Benefit year" with respect to any individual means the
86 period beginning with the first day of the first week with respect
87 to which he first files a valid claim for benefits, and ending
88 with the day preceding the same day of the same month in the next
89 calendar year; and, thereafter, the period beginning with the
90 first day of the first week with respect to which he next files
91 his valid claim for benefits, and ending with the day preceding
92 the same day of the same month in the next calendar year. Any
93 claim for benefits made in accordance with Section 71-5-515 shall
94 be deemed to be a "valid claim" for purposes of this subsection if
95 the individual has been paid the wages for insured work required
96 under Section 71-5-511(e).

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

99 E. "Calendar quarter" means the period of three (3)
100 consecutive calendar months ending on March 31, June 30, September
101 30, or December 31.

102 F. "Department" or "commission" means the Mississippi
103 Department of Employment Security, Office of the Governor.

104 G. "Executive director" means the Executive Director of the
105 Mississippi Department of Employment Security, Office of the
106 Governor, appointed under Section 71-5-107.

107 H. "Employing unit" means this state or another state or any
108 instrumentalities or any political subdivisions thereof or any of
109 their instrumentalities or any instrumentality of more than one
110 (1) of the foregoing or any instrumentality of any of the
111 foregoing and one or more other states or political subdivisions,

112 any Indian tribe as defined in Section 3306(u) of the Federal
113 Unemployment Tax Act (FUTA), which includes any subdivision,
114 subsidiary or business enterprise wholly owned by such Indian
115 tribe, any individual or type of organization, including any
116 partnership, association, trust, estate, joint-stock company,
117 insurance company, or corporation, whether domestic or foreign, or
118 the receiver, trustee in bankruptcy, trustee or successor thereof,
119 or the legal representative of a deceased person, which has or had
120 in its employ one or more individuals performing services for it
121 within this state. All individuals performing services within
122 this state for any employing unit which maintains two (2) or more
123 separate establishments within this state shall be deemed to be
124 employed by a single employing unit for all the purposes of this
125 chapter. Each individual employed to perform or to assist in
126 performing the work of any agent or employee of an employing unit
127 shall be deemed to be employed by such employing unit for all
128 purposes of this chapter, whether such individual was hired or
129 paid directly by such employing unit or by such agent or employee,
130 provided the employing unit had actual or constructive knowledge
131 of the work. All individuals performing services in the employ of
132 an elected fee-paid county official, other than those related by
133 blood or marriage within the third degree computed by the rule of
134 the civil law to such fee-paid county official, shall be deemed to
135 be employed by such county as the employing unit for all the
136 purposes of this chapter. For purposes of defining an "employing
137 unit" which shall pay contributions on remuneration paid to
138 individuals, if two (2) or more related corporations concurrently
139 employ the same individual and compensate such individual through
140 a common paymaster which is one (1) of such corporations, then
141 each such corporation shall be considered to have paid as
142 remuneration to such individual only the amounts actually
143 disbursed by it to such individual and shall not be considered to

144 have paid as remuneration to such individual such amounts actually
145 disbursed to such individual by another of such corporations.

146 I. "Employer" means:

147 (1) Any employing unit which,

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

152 (b) For some portion of a day in each of twenty
153 (20) different calendar weeks, whether or not such weeks were
154 consecutive, in either the current or the preceding calendar year
155 had in employment at least one (1) individual (irrespective of
156 whether the same individual was in employment in each such day),
157 except as provided in paragraph (9) of this subsection;

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

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

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

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

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

172 (6) Any individual or employing unit which acquired its
173 organization, trade, business, or substantially all the assets
174 thereof, from another employing unit, if the employment record of
175 the acquiring individual or employing unit subsequent to such
176 acquisition, together with the employment record of the acquired

177 organization, trade, or business prior to such acquisition, both
178 within the same calendar year, would be sufficient to constitute
179 an employing unit as an employer subject to this chapter under
180 paragraph (1) or (3) of this subsection;

181 (7) Any employing unit which, having become an employer
182 under paragraph (1), (3), (5) or (6) of this subsection or under
183 any other provisions of this chapter, has not, under Section
184 71-5-361, ceased to be an employer subject to this chapter;

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

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

193 (b) In determining whether or not an employing
194 unit for which service other than agricultural labor is also
195 performed is an employer under paragraph (1) or (4)(b) of this
196 subsection, the wages earned or the employment of an employee
197 performing services in agricultural labor, shall not be taken into
198 account. If an employing unit is determined an employer of
199 agricultural labor, such employing unit shall be determined an
200 employer for purposes of paragraph (1) of this subsection;

201 (10) All entities utilizing the services of any
202 employee leasing firm shall be considered the employer of the
203 individuals leased from the employee leasing firm. Temporary help
204 firms shall be considered the employer of the individuals they
205 provide to perform services for other individuals or
206 organizations.

207 J. "Employment" means and includes:

208 (1) Any service performed, which was employment as
209 defined in this section and, subject to the other provisions of

210 this subsection, including service in interstate commerce,
211 performed for wages or under any contract of hire, written or
212 oral, express or implied.

213 (2) Services performed for remuneration for a
214 principal:

215 (a) As an agent-driver or commission-driver
216 engaged in distributing meat products, vegetable products, fruit
217 products, bakery products, beverages (other than milk), or laundry
218 or dry cleaning services;

219 (b) As a traveling or city salesman, other than as
220 an agent-driver or commission-driver, engaged upon a full-time
221 basis in the solicitation on behalf of, and the transmission to, a
222 principal (except for sideline sales activities on behalf of some
223 other person) of orders from wholesalers, retailers, contractors,
224 or operator of hotels, restaurants, or other similar
225 establishments for merchandise for resale or supplies for use in
226 their business operations.

227 However, for purposes of this subsection, the term
228 "employment" shall include services described in subsection
229 I(2)(a) and (b) of this section, only if:

230 (i) The contract of service contemplates that
231 substantially all of the services are to be performed personally
232 by such individual;

233 (ii) The individual does not have a
234 substantial investment in facilities used in connection with the
235 performance of the services (other than in facilities for
236 transportation); and

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

240 (3) Service performed in the employ of this state or
241 any of its instrumentalities or any political subdivision thereof
242 or any of its instrumentalities or any instrumentality of more

243 than one (1) of the foregoing or any instrumentality of any of the
244 foregoing and one or more other states or political subdivisions
245 or any Indian tribe as defined in Section 3306(u) of the Federal
246 Unemployment Tax Act (FUTA), which includes any subdivision,
247 subsidiary or business enterprise wholly owned by such Indian
248 tribe; however, such service is excluded from "employment" as
249 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)
250 of that act and is not excluded from "employment" under subsection
251 I(5) of this section.

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

256 (b) The organization had four (4) or more
257 individuals in employment for some portion of a day in each of
258 twenty (20) different weeks, whether or not such weeks were
259 consecutive, within the current or preceding calendar year,
260 regardless of whether they were employed at the same moment of
261 time.

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

265 (a) In the employ of:

266 (i) A church or convention or association of
267 churches; or

268 (ii) An organization which is operated
269 primarily for religious purposes and which is operated,
270 supervised, controlled, or principally supported by a church or
271 convention or association of churches; or

272 (b) By a duly ordained, commissioned, or licensed
273 minister of a church in the exercise of his ministry, or by a
274 member of a religious order in the exercise of duties required by
275 such order; or

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

279 (i) As an elected official;

280 (ii) As a member of a legislative body, or a
281 member of the judiciary, of a state or political subdivision or a
282 member of an Indian tribal council;

283 (iii) As a member of the State National Guard
284 or Air National Guard;

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

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

291 1. A major nontenured policy-making or
292 advisory position, or

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

296 (d) In a facility conducted for the purpose of
297 carrying out a program of rehabilitation for individuals whose
298 earning capacity is impaired by age or physical or mental
299 deficiency or injury, or providing remunerative work for
300 individuals who because of their impaired physical or mental
301 capacity cannot be readily absorbed in the competitive labor
302 market, by an individual receiving such rehabilitation or
303 remunerative work; or

304 (e) By an inmate of a custodial or penal
305 institution; or

306 (f) As part of an unemployment work-relief or
307 work-training program assisted or financed in whole or in part by
308 any federal agency or agency of a state or political subdivision

309 thereof or of an Indian tribe, by an individual receiving such
310 work relief or work training, unless coverage of such service is
311 required by federal law or regulation.

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

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

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

319 (ii) For some portion of a day in each of
320 twenty (20) different calendar weeks, whether or not such weeks
321 were consecutive, in either the current or the preceding calendar
322 year, employed in agricultural labor ten (10) or more individuals,
323 regardless of whether they were employed at the same moment of
324 time.

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

329 (i) If such crew leader holds a valid
330 certificate of registration under the Farm Labor Contractor
331 Registration Act of 1963; or substantially all the members of such
332 crew operate or maintain tractors, mechanized harvesting or crop
333 dusting equipment, or any other mechanized equipment, which is
334 provided by such crew leader; and

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

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

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

344 (ii) Such other person shall be treated as
345 having paid cash remuneration to such individual in an amount
346 equal to the amount of cash remuneration paid to such individual
347 by the crew leader (either on his own behalf or on behalf of such
348 other person) for the service in agricultural labor performed for
349 such other person.

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

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

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

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

360 (7) The term "employment" shall include domestic
361 service in a private home, local college club or local chapter of
362 a college fraternity or sorority performed for an employing unit
363 which paid cash remuneration of One Thousand Dollars (\$1,000.00)
364 or more in any calendar quarter in the current or the preceding
365 calendar year to individuals employed in such domestic service.
366 For the purpose of this subsection, the term "employment" does not
367 apply to service performed as a "sitter" at a hospital in the
368 employ of an individual.

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

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

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

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

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

381 (9) Services not covered under paragraph (8) of this
382 subsection and performed entirely without this state, with respect
383 to no part of which contributions are required and paid under an
384 unemployment compensation law of any other state or of the federal
385 government, shall be deemed to be employment subject to this
386 chapter if the individual performing such services is a resident
387 of this state and the department approves the election of the
388 employing unit for whom such services are performed that the
389 entire service of such individual shall be deemed to be employment
390 subject to this chapter.

391 (10) Service shall be deemed to be localized within a
392 state if:

393 (a) The service is performed entirely within such
394 state; or

395 (b) The service is performed both within and
396 without such state, but the service performed without such state
397 is incidental to the individual's service within the state; for
398 example, is temporary or transitory in nature or consists of
399 isolated transactions.

400 (11) The services of an individual who is a citizen of
401 the United States, performed outside the United States (except in
402 Canada), in the employ of an American employer (other than service
403 which is deemed "employment" under the provisions of paragraph
404 (8), (9) or (10) of this subsection or the parallel provisions of
405 another state's law), if:

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

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

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

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

414 (iii) The employer is a partnership or a
415 trust and the number of the partners or trustees who are residents
416 of this state is greater than the number who are residents of any
417 one (1) other state; or

418 (c) None of the criteria of subparagraphs (a) and
419 (b) of this paragraph are met but the employer has elected
420 coverage in this state or, the employer having failed to elect
421 coverage in any state, the individual has filed a claim for
422 benefits, based on such service, under the law of this state; or

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

425 (i) An individual who is a resident of the
426 United States; or

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

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

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

433 (12) All services performed by an officer or member of
434 the crew of an American vessel on or in connection with such
435 vessel, if the operating office from which the operations of such
436 vessel operating on navigable waters within, or within and
437 without, the United States are ordinarily and regularly

438 supervised, managed, directed and controlled, is within this
439 state; notwithstanding the provisions of subsection I(8).

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

447 (14) Services performed by an individual for wages
448 shall be deemed to be employment subject to this chapter unless
449 and until it is shown to the satisfaction of the department that
450 such individual has been and will continue to be free from control
451 and direction over the performance of such services both under his
452 contract of service and in fact; and the relationship of employer
453 and employee shall be determined in accordance with the principles
454 of the common law governing the relation of master and servant.

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

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

459 (i) On a farm or in a forest in the employ of
460 any employing unit in connection with cultivating the soil, in
461 connection with cutting, planting, deadening, marking or otherwise
462 improving timber, or in connection with raising or harvesting any
463 agricultural or horticultural commodity, including the raising,
464 shearing, feeding, caring for, training, and management of
465 livestock, bees, poultry, fur-bearing animals and wildlife;

466 (ii) In the employ of the owner or tenant or
467 other operator of a farm, in connection with the operation,
468 management, conservation, improvement or maintenance of such farm
469 and its tools and equipment, or in salvaging timber or clearing

470 land of brush and other debris left by a hurricane, if the major
471 part of such service is performed on a farm;

472 (iii) In connection with the production or
473 harvesting of naval stores products or any commodity defined in
474 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g),
475 or in connection with the raising or harvesting of mushrooms, or
476 in connection with the ginning of cotton, or in connection with
477 the operation or maintenance of ditches, canals, reservoirs, or
478 waterways not owned or operated for profit, used exclusively for
479 supplying and storing water for farming purposes;

480 (iv) (A) In the employ of the operator of a
481 farm in handling, planting, drying, packing, packaging,
482 processing, freezing, grading, storing or delivering to storage or
483 to market or to a carrier for transportation to market, in its
484 unmanufactured state, any agricultural or horticultural commodity;
485 but only if such operator produced more than one-half (1/2) of the
486 commodity with respect to which such service is performed;

487 (B) In the employ of a group of
488 operators of farms (or a cooperative organization of which such
489 operators are members) in the performance of service described in
490 subitem (A), but only if such operators produced more than
491 one-half (1/2) of the commodity with respect to which such service
492 is performed;

493 (C) The provisions of subitems (A) and
494 (B) shall not be deemed to be applicable with respect to service
495 performed in connection with commercial canning or commercial
496 freezing or in connection with any agricultural or horticultural
497 commodity after its delivery to a terminal market for distribution
498 for consumption;

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

501 (vi) As used in paragraph (15)(a) of this
502 subsection, the term "farm" includes stock, dairy, poultry, fruit,

503 fur-bearing animals, and truck farms, plantations, ranches,
504 nurseries, ranges, greenhouses, or other similar structures used
505 primarily for the raising of agricultural or horticultural
506 commodities, and orchards.

507 (b) Domestic service in a private home, local
508 college club, or local chapter of a college fraternity or
509 sorority, except as provided in subsection I(7) of this section,
510 or service performed as a "sitter" at a hospital in the employ of
511 an individual.

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

514 (d) Service performed by an individual in the
515 employ of his son, daughter, or spouse, and service performed by a
516 child under the age of twenty-one (21) in the employ of his father
517 or mother.

518 (e) Service performed in the employ of the United
519 States government or of an instrumentality wholly owned by the
520 United States; except that if the Congress of the United States
521 shall permit states to require any instrumentalities of the United
522 States to make payments into an unemployment fund under a state
523 unemployment compensation act, then to the extent permitted by
524 Congress and from and after the date as of which such permission
525 becomes effective, all of the provisions of this chapter shall be
526 applicable to such instrumentalities and to services performed by
527 employees for such instrumentalities in the same manner, to the
528 same extent, and on the same terms as to all other employers and
529 employing units. If this state should not be certified under the
530 Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any
531 year, then the payment required by such instrumentality with
532 respect to such year shall be deemed to have been erroneously
533 collected and shall be refunded by the department from the fund in
534 accordance with the provisions of Section 71-5-383.

535 (f) Service performed in the employ of an
536 "employer" as defined by the Railroad Unemployment Insurance Act,
537 45 USCS Section 351(a), or as an "employee representative" as
538 defined by the Railroad Unemployment Insurance Act, 45 USCS
539 Section 351(f), and service with respect to which unemployment
540 compensation is payable under an unemployment compensation system
541 for maritime employees, or under any other unemployment
542 compensation system established by an act of Congress; however,
543 the department is authorized and directed to enter into agreements
544 with the proper agencies under such act or acts of Congress, which
545 agreements shall become effective ten (10) days after publication
546 thereof in the manner provided in Section 71-5-117 for general
547 rules, to provide reciprocal treatment to individuals who have,
548 after acquiring potential rights to benefits under this chapter,
549 acquired rights to unemployment compensation under such act or
550 acts of Congress or who have, after acquiring potential rights to
551 unemployment compensation under such act or acts of Congress,
552 acquired rights to benefits under this chapter.

553 (g) Service performed in any calendar quarter in
554 the employ of any organization exempt from income tax under the
555 Internal Revenue Code, 26 USCS Section 501(a) (other than an
556 organization described in 26 USCS Section 401(a)), or exempt from
557 income tax under 26 USCS Section 521 if the remuneration for such
558 service is less than Fifty Dollars (\$50.00).

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

561 (i) By a student who is enrolled and is
562 regularly attending classes at such school, college or university,
563 or

564 (ii) By the spouse of such a student if such
565 spouse is advised, at the time such spouse commences to perform
566 such service, that

567 (A) The employment of such spouse to
568 perform such service is provided under a program to provide
569 financial assistance to such student by such school, college, or
570 university, and

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

573 (i) Service performed by an individual under the
574 age of twenty-two (22) who is enrolled at a nonprofit or public
575 educational institution which normally maintains a regular faculty
576 and curriculum and normally has a regularly organized body of
577 students in attendance at the place where its educational
578 activities are carried on, as a student in a full-time program
579 taken for credit at such institution, which combines academic
580 instruction with work experience, if such service is an integral
581 part of such program and such institution has so certified to the
582 employer, except that this subparagraph shall not apply to service
583 performed in a program established for or on behalf of an employer
584 or group of employers.

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

588 (k) Service performed as a student nurse in the
589 employ of a hospital or a nurses' training school by an individual
590 who is enrolled and is regularly attending classes in a nurses'
591 training school chartered or approved pursuant to state law; and
592 services performed as an intern in the employ of a hospital by an
593 individual who has completed a four-year course in a medical
594 school chartered or approved pursuant to state law.

595 (l) Service performed by an individual as an
596 insurance agent or as an insurance solicitor, if all such service
597 performed by such individual is performed for remuneration solely
598 by way of commission.

599 (m) Service performed by an individual under the
600 age of eighteen (18) in the delivery or distribution of newspapers
601 or shopping news, not including delivery or distribution to any
602 point for subsequent delivery or distribution.

603 (n) If the services performed during one-half
604 (1/2) or more of any pay period by an employee for the employing
605 unit employing him constitute employment, all the services of such
606 employee for such period shall be deemed to be employment; but if
607 the services performed during more than one-half (1/2) of any such
608 pay period by an employee for the employing unit employing him do
609 not constitute employment, then none of the services of such
610 employee for such period shall be deemed to be employment. As
611 used in this subsection the term "pay period" means a period (of
612 not more than thirty-one (31) consecutive days) for which a
613 payment of remuneration is ordinarily made to the employee by the
614 employing unit employing him.

615 (o) Service performed by a barber or beautician
616 whose work station is leased to him or her by the owner of the
617 shop in which he or she works and who is compensated directly by
618 the patrons he or she serves and who is free from direction and
619 control by the lessor.

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

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

626 M. "Fund" means the Unemployment Compensation Fund
627 established by this chapter, to which all contributions required
628 and from which all benefits provided under this chapter shall be
629 paid.

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

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

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

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

640 (3) Provides an educational program for which it awards
641 a bachelor's or higher degree, or provides a program which is
642 acceptable for full credit toward such a degree, a program of
643 postgraduate or postdoctoral studies, or a program of training to
644 prepare students for gainful employment in a recognized
645 occupation;

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

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

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

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

656 (3) The provisions of paragraphs (1) and (2) of
657 subsection P, as including the Virgin Islands, shall become
658 effective on the day after the day on which the United States
659 Secretary of Labor approves for the first time under Section
660 3304(a) of the Internal Revenue Code of 1954 an unemployment
661 compensation law submitted to the secretary by the Virgin Islands
662 for such approval.

663 Q. "Unemployment."

664 (1) An individual shall be deemed "unemployed" in any
665 week during which he performs no services and with respect to
666 which no wages are payable to him, or in any week of less than
667 full-time work if the wages payable to him with respect to such
668 week are less than his weekly benefit amount as computed and
669 adjusted in Section 71-5-505. The department shall prescribe
670 regulations applicable to unemployed individuals, making such
671 distinctions in the procedure as to total unemployment, part-total
672 unemployment, partial unemployment of individuals attached to
673 their regular jobs, and other forms of short-time work, as the
674 department deems necessary.

675 (2) An individual's week of total unemployment shall be
676 deemed to commence only after his registration at an employment
677 office, except as the department may by regulation otherwise
678 prescribe.

679 R. (1) "Wages" means all remuneration for personal
680 services, including commissions and bonuses and the cash value of
681 all remuneration in any medium other than cash, except that
682 "wages," for purposes of determining employer's coverage and
683 payment of contributions for agricultural and domestic service
684 means cash remuneration only. The reasonable cash value of
685 remuneration in any medium other than cash shall be estimated and
686 determined in accordance with rules prescribed by the department;
687 however, that the term "wages" shall not include:

688 (a) The amount of any payment made to, or on
689 behalf of, an employee under a plan or system established by an
690 employer which makes provision for his employees generally or for
691 a class or classes of his employees (including any amount paid by
692 an employer for insurance or annuities, or into a fund, to provide
693 for any such payment), on account of:

694 (i) Retirement, or

695 (ii) Sickness or accident disability, or

696 (iii) Medical or hospitalization expenses in
697 connection with sickness or actual disability, or
698 (iv) Death, provided the employee:
699 (A) Has not the option to receive,
700 instead of provision for such death benefit, any part of such
701 payment or, if such death benefit is insured, any part of the
702 premiums (or contributions to premiums) paid by his employer, and
703 (B) Has not the right, under the
704 provisions of the plan or system or policy of insurance providing
705 for such death benefit, to assign such benefit or to receive a
706 cash consideration in lieu of such benefit, either upon his
707 withdrawal from the plan or system providing for such benefit or
708 upon termination of such plan or system or policy of insurance or
709 of his employment with such employer;
710 (b) Dismissal payments which the employer is not
711 legally required to make;
712 (c) Payment by an employer (without deduction from
713 the remuneration of an employee) of the tax imposed by the
714 Internal Revenue Code, 26 USCS Section 3101;
715 (d) From and after January 1, 1992, the amount of
716 any payment made to or on behalf of an employee for a "cafeteria"
717 plan, which meets the following requirements:
718 (i) Qualifies under Section 125 of the
719 Internal Revenue Code;
720 (ii) Covers only employees;
721 (iii) Covers only noncash benefits;
722 (iv) Does not include deferred compensation
723 plans.
724 (2) [Not enacted].
725 S. "Week" means calendar week or such period of seven (7)
726 consecutive days as the department may by regulation prescribe.
727 The department may by regulation prescribe that a week shall be

728 deemed to be in, within, or during any benefit year which includes
729 any part of such week.

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

731 U. The term "includes" and "including," when used in a
732 definition contained in this chapter, shall not be deemed to
733 exclude other things otherwise within the meaning of the term
734 defined.

735 V. "Employee leasing arrangement" means any agreement
736 between an employee leasing firm and a client, whereby specified
737 client responsibilities such as payment of wages, reporting of
738 wages for unemployment insurance purposes, payment of unemployment
739 insurance contributions and other such administrative duties are
740 to be performed by an employee leasing firm, on an ongoing basis.

741 W. "Employee leasing firm" means any entity which provides
742 specified duties for a client company such as payment of wages,
743 reporting of wages for unemployment insurance purposes, payment of
744 unemployment insurance contributions and other administrative
745 duties, in connection with the client's employees, that are
746 directed and controlled by the client and that are providing
747 ongoing services for the client.

748 X. (1) "Temporary help firm" means an entity which hires
749 its own employees and provides those employees to other
750 individuals or organizations to perform some service, to support
751 or supplement the existing work force in special situations such
752 as employee absences, temporary skill shortages, seasonal
753 workloads and special assignments and projects, with the
754 expectation that the worker's position will be terminated upon the
755 completion of the specified task or function.

756 (2) "Temporary employee" means an employee assigned to
757 work for the clients of a temporary help firm.

758 Y. For the purposes of this chapter, the term "notice" shall
759 include any official communication, statement or other
760 correspondence required under the administration of this chapter,

761 and sent by the department through the United States Postal
762 Service or electronic or digital transfer, via modem or the
763 Internet.

764 **SECTION 4.** Section 71-5-19, Mississippi Code of 1972, is
765 amended as follows:

766 71-5-19. (1) Whoever makes a false statement or
767 representation knowing it to be false, or knowingly fails to
768 disclose a material fact, to obtain or increase any benefit or
769 other payment under this chapter or under an employment security
770 law of any other state, of the federal government or of a foreign
771 government, either for himself or for any other person, shall be
772 punished by a fine of not less than One Hundred Dollars (\$100.00)
773 nor more than Five Hundred Dollars (\$500.00), or by imprisonment
774 for not longer than thirty (30) days, or by both such fine and
775 imprisonment; and each such false statement or representation or
776 failure to disclose a material fact shall constitute a separate
777 offense.

778 (2) Any employing unit, any officer or agent of an employing
779 unit or any other person who makes a false statement or
780 representation knowing it to be false, or who knowingly fails to
781 disclose a material fact, to prevent or reduce the payment of
782 benefits to any individual entitled thereto, or to avoid becoming
783 or remaining subject hereto, or to avoid or reduce any
784 contribution or other payment required from any employing unit
785 under this chapter, or who willfully fails or refuses to make any
786 such contribution or other payment, or to furnish any reports
787 required hereunder or to produce or permit the inspection or
788 copying of records as required hereunder, shall be punished by a
789 fine of not less than One Hundred Dollars (\$100.00) nor more than
790 One Thousand Dollars (\$1,000.00), or by imprisonment for not
791 longer than sixty (60) days, or by both such fine and
792 imprisonment; and each such false statement, or representation, or
793 failure to disclose a material fact, and each day of such failure

794 or refusal shall constitute a separate offense. In lieu of such
795 fine and imprisonment, the employing unit or representative, or
796 both employing unit and representative, if such representative is
797 an employing unit in this state and is found to be a party to such
798 violation, shall not be eligible for a contributions rate of less
799 than five and four-tenths percent (5.4%) for the tax year in which
800 such violation is discovered by the department and for the next
801 two (2) succeeding tax years.

802 (3) Any person who shall willfully violate any provision of
803 this chapter or any other rule or regulation thereunder, the
804 violation of which is made unlawful or the observance of which is
805 required under the terms of this chapter and for which a penalty
806 is neither prescribed herein nor provided by any other applicable
807 statute, shall be punished by a fine of not less than One Hundred
808 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),
809 or by imprisonment for not longer than sixty (60) days, or by both
810 such fine and imprisonment; and each day such violation continues
811 shall be deemed to be a separate offense. In lieu of such fine
812 and imprisonment, the employing unit or representative, or both
813 employing unit and representative, if such representative is an
814 employing unit in this state and is found to be a party to such
815 violation, shall not be eligible for a contributions rate of less
816 than five and four-tenths percent (5.4%) for the tax year in which
817 the violation is discovered by the department and for the next two
818 (2) succeeding tax years.

819 (4) Any person who, by reason of the nondisclosure or
820 misrepresentation by him or by another of a material fact,
821 irrespective of whether such nondisclosure or misrepresentation
822 was known or fraudulent, or who, for any other reason has received
823 any such benefits under this chapter, while any conditions for the
824 receipt of benefits imposed by this chapter were not fulfilled in
825 his case, or while he was disqualified from receiving benefits,
826 shall, in the discretion of the department, either be liable to

827 have such sum deducted from any future benefits payable to him
828 under this chapter or shall be liable to repay to the department
829 for the Unemployment Compensation Fund a sum equal to the amount
830 so received by him; and such sum shall be collectible in the
831 manner provided in Sections 71-5-363 through 71-5-383 for the
832 collection of past-due contributions. However, no such deduction
833 shall be made, nor shall any action be taken for the collection of
834 any such overpayments, after five (5) years have elapsed from the
835 date of the receipt of the benefits at issue; and any such
836 judgment against such person for collection of such overpayments
837 shall not be a lien upon the property of the person for a longer
838 period than seven (7) years from the date of the filing of the
839 lien, and any such notice of lien shall not be refiled by the
840 department.

841 (5) The department, by agreement with another state or the
842 United States, as provided under Section 303(g) of the Social
843 Security Act, may recover any overpayment of benefits paid to any
844 individual under the laws of this state or of another state or
845 under an unemployment benefit program of the United States. Any
846 overpayments subject to this subsection may be deducted from any
847 future benefits payable to the individual under the laws of this
848 state or of another state or under an unemployment program of the
849 United States.

850 **SECTION 5.** Section 71-5-119, Mississippi Code of 1972, is
851 amended as follows:

852 71-5-119. The department shall cause to be available for
853 distribution to the public the text of this chapter, its
854 regulations and general rules, its reports to the Governor, and
855 any other material it deems relevant and suitable, and shall
856 furnish the same to any person upon application therefor.

857 **SECTION 6.** Section 71-5-127, Mississippi Code of 1972, is
858 amended as follows:

859 71-5-127. (1) Any information or records concerning an
860 individual or employing unit obtained by the department pursuant
861 to the administration of this chapter or any other federally
862 funded programs for which the department has responsibility shall
863 be private and confidential, except as otherwise provided in this
864 article or by regulation. Information or records may be released
865 by the department when the release is required by the federal
866 government in connection with, or as a condition of funding for, a
867 program being administered by the department.

868 (2) Each employing unit shall keep true and accurate work
869 records, containing such information as the department may
870 prescribe. Such records shall be open to inspection and be
871 subject to being copied by the department or its authorized
872 representatives at any reasonable time and as often as may be
873 necessary. The department, Board of Review and any referee may
874 require from any employing unit any sworn or unsworn reports with
875 respect to persons employed by it which they or any of them deem
876 necessary for the effective administration of this chapter.
877 Information, statements, transcriptions of proceedings,
878 transcriptions of recordings, electronic recordings, letters,
879 memoranda, and other documents and reports thus obtained or
880 obtained from any individual pursuant to the administration of
881 this chapter shall, except to the extent necessary for the proper
882 administration of this chapter, be held confidential and shall not
883 be published or be opened to public inspection (other than to
884 public employees in the performance of their public duties) in any
885 manner revealing the individual's or employing unit's identity.

886 (3) * * * Any claimant or his legal representative at a
887 hearing before an appeal tribunal or the Board of Review shall be
888 supplied with information from such records to the extent
889 necessary for the proper presentation of his claim in any
890 proceeding pursuant to this chapter.

891 (4) Any employee or member of the Board of Review or any
892 employee of the department who violates any provisions of this
893 section shall be fined not less than Twenty Dollars (\$20.00) nor
894 more than Two Hundred Dollars (\$200.00), or imprisoned for not
895 longer than ninety (90) days, or both.

896 (5) The department may make the state's records relating to
897 the administration of this chapter available to the Railroad
898 Retirement Board, and may furnish the Railroad Retirement Board,
899 at the expense of such board, such copies thereof as the Railroad
900 Retirement Board deems necessary for its purposes. The department
901 may afford reasonable cooperation with every agency of the United
902 States charged with the administration of any unemployment
903 insurance law.

904 **SECTION 7.** Section 71-5-135, Mississippi Code of 1972, is
905 amended as follows:

906 71-5-135. If any employing unit fails to make any report
907 required by this chapter, the department or its authorized agents
908 shall give * * * notice * * * to such employing unit to make and
909 file such report within fifteen (15) days from the date of such
910 notice. If such employing unit, by its proper members, officers
911 or agents, shall fail or refuse to make and file such reports
912 within such time, then and in that event such report shall be made
913 by the department or its authorized agents from the best
914 information available, and the amount of contributions due shall
915 be computed thereon; and such report shall be prima facie correct
916 for the purposes of this chapter.

917 **SECTION 8.** Section 71-5-355, Mississippi Code of 1972, is
918 amended as follows:

919 71-5-355. (1) As used in this section, the following words
920 and phrases shall have the following meanings, unless the context
921 clearly requires otherwise:

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

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

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

928 (d) Except as hereinafter provided, "payroll" means the
929 total of all wages paid for employment by an employer as defined
930 in Section 71-5-11, subsection H, plus the total of all
931 remuneration paid by such employer excluded from the definition of
932 wages by Section 71-5-351. For the computation of modified rates,
933 "payroll" means the total of all wages paid for employment by an
934 employer as defined in Section 71-5-11, subsection H.

935 (e) For the computation of modified rates, "eligible
936 employer" means an employer whose experience-rating record has
937 been chargeable with benefits throughout the thirty-six (36)
938 consecutive calendar-month period ending on the computation date,
939 except that any employer who has not been subject to the
940 Mississippi Employment Security Law for a period of time
941 sufficient to meet the thirty-six (36) consecutive calendar-month
942 requirement shall be an eligible employer if his experience-rating
943 record has been chargeable throughout not less than the twelve
944 (12) consecutive calendar-month period ending on the computation
945 date. No employer shall be considered eligible for a contribution
946 rate less than five and four-tenths percent (5.4%) with respect to
947 any tax year, who has failed to file any two (2) quarterly reports
948 within the qualifying period by September 30 following the
949 computation date. No employer or employing unit shall be eligible
950 for a contribution rate of less than five and four-tenths percent
951 (5.4%) for the tax year in which the employing unit is found by
952 the department to be in violation of Section 71-5-19(2) or (3) and
953 for the next two (2) succeeding tax years. No representative of
954 such employing unit who was a party to a violation as described in
955 Section 71-5-19(2) or (3), if such representative was or is an
956 employing unit in this state, shall be eligible for a contribution

957 rate of less than five and four-tenths percent (5.4%) for the tax
958 year in which such violation was detected by the department and
959 for the next two (2) succeeding tax years.

960 (f) With respect to any tax year, "reserve ratio" means
961 the ratio which the total amount available for the payment of
962 benefits in the Unemployment Compensation Fund, excluding any
963 amount which has been credited to the account of this state under
964 Section 903 of the Social Security Act, as amended, and which has
965 been appropriated for the expenses of administration pursuant to
966 Section 71-5-457 whether or not withdrawn from such account, on
967 September 1 of each calendar year bears to the aggregate of the
968 taxable payrolls of all employers for the twelve (12) calendar
969 months ending on June 30 next preceding.

970 (g) "Modified rates" means the rates of employer
971 contributions determined under the provisions of this chapter and
972 the rates of newly subject employers, as provided in Section
973 71-5-353.

974 (h) For the computation of modified rates, "qualifying
975 period" means a period of not less than the thirty-six (36)
976 consecutive calendar months ending on the computation date
977 throughout which an employer's experience-rating record has been
978 chargeable with benefits; except that with respect to any eligible
979 employer who has not been subject to this article for a period of
980 time sufficient to meet the thirty-six (36) consecutive
981 calendar-month requirement, "qualifying period" means the period
982 ending on the computation date throughout which his
983 experience-rating record has been chargeable with benefits, but in
984 no event less than the twelve (12) consecutive calendar-month
985 period ending on the computation date throughout which his
986 experience-rating record has been so chargeable.

987 (i) The "exposure criterion" (EC) is defined as the
988 cash balance of the Unemployment Compensation Fund which is
989 available for the payment of benefits as of September 1 of each

990 calendar year, divided by the total wages, exclusive of wages paid
991 by all state agencies, all political subdivisions, reimbursable
992 nonprofit corporations, and tax exempt public service employment,
993 for the twelve-month period ending June 30 immediately preceding
994 such date. The EC shall be computed to four (4) decimal places.

995 (j) The "cost rate criterion" (CRC) is defined as
996 follows: Beginning with January 1974, the benefits paid for the
997 twelve-month period ending December 1974 are summed and divided by
998 the total wages for the twelve-month period ending on June 30,
999 1975. Similar ratios are computed by subtracting the earliest
1000 month's benefit payments and adding the benefits of the next month
1001 in the sequence and dividing each sum of twelve (12) months'
1002 benefits by the total wages for the twelve-month period ending on
1003 the June 30 which is nearest to the final month of the period used
1004 to compute the numerator. If December is the final month of the
1005 period used to compute the numerator, then the twelve-month period
1006 ending the following June 30 will be used for the denominator.
1007 The highest value of these ratios beginning with the ratio for
1008 benefits paid in calendar year 1974 is the cost rate criterion.
1009 The cost rate criterion shall be computed to four (4) decimal
1010 places. Benefits and total wages used in the computation of the
1011 cost rate criterion shall exclude all benefits and total wages
1012 applicable to state agencies, political subdivisions, reimbursable
1013 nonprofit corporations, and tax exempt PSE employment. For rate
1014 years 2005 and 2006, the CRC shall be adjusted downward by an
1015 amount necessary to satisfy one-half (1/2) the reductions required
1016 to maintain a general experience rate of nine-tenths of one
1017 percent (.9%). For rate year 2007 and subsequent years, the CRC
1018 shall be adjusted downward by an amount necessary to satisfy
1019 one-half (1/2) the reductions required to maintain a general
1020 experience rate of seven-tenths of one percent (.7%) until such
1021 time as the CRC equals the average for the highest value of the
1022 cost rate criterion computations during each of the economic

1023 cycles (economic cycles shall be those defined by the National
1024 Bureau of Economic Research) since the calendar year 1974, except
1025 as provided in subsection (3) of Section 71-5-353. When the
1026 remaining reduction is insufficient to cause the reductions as
1027 specified in this paragraph, additional reductions specified in
1028 subsection (1)(k) of this section may be made to the size of fund
1029 index to achieve the general experience rate specified in this
1030 paragraph, except as provided in Section 71-3-353. The CRC shall
1031 not be raised except as provided through annual computations and
1032 additions of future economic cycles.

1033 (k) "Size of fund index" (SOFI) is defined as the ratio
1034 of the EC to the CRC. For the rate years 2005 and 2006, the SOFI
1035 shall be adjusted downward by an amount necessary to satisfy
1036 one-half (1/2) the reductions required to maintain a general
1037 experience rate of nine-tenths of one percent (.9%). For rate
1038 year 2007 and subsequent years, the SOFI shall be adjusted
1039 downward by an amount necessary to satisfy one-half (1/2) the
1040 reductions required to maintain a minimum general experience rate
1041 of seven-tenths of one percent (.7%) until such time as the SOFI
1042 is reduced from a target size of 1.5 to 1.0, except as provided in
1043 subsection (3) of Section 71-5-353. The SOFI shall not be raised
1044 in any event. In the event Section 71-5-353 is suspended, the
1045 SOFI shall remain at the current level until the suspension is
1046 lifted.

1047 (l) No employer's contribution rate shall exceed five
1048 and four-tenths percent (5.4%), nor be less than four-tenths of
1049 one percent (.4%). However, from and after January 1, 2005, and
1050 continuing unless Section 71-5-353(3) shall be suspended, the
1051 reduction shall be accomplished as described in Section
1052 71-5-355(1)(j) and (k), no employer's unemployment contribution
1053 rate shall be less than one-tenth of one percent (.1%).

1054 (2) Modified rates:

1055 (a) For any tax year, when the reserve ratio on the
1056 preceding November 1, in the case of any tax year, equals or
1057 exceeds four percent (4%), the modified rates, as hereinafter
1058 prescribed, shall be in effect.

1059 (b) Modified rates shall be determined for the tax year
1060 for each eligible employer on the basis of his experience-rating
1061 record in the following manner:

1062 (i) The department shall maintain an
1063 experience-rating record for each employer. Nothing in this
1064 chapter shall be construed to grant any employer or individuals
1065 performing services for him any prior claim or rights to the
1066 amounts paid by the employer into the fund.

1067 (ii) Benefits paid to an eligible individual shall
1068 be charged against the experience-rating record of his base period
1069 employers in the proportion to which the wages paid by each base
1070 period employer bears to the total wages paid to the individual by
1071 all the base period employers, provided that benefits shall not be
1072 charged to an employer's experience-rating record if the
1073 department finds that the individual:

1074 1. Voluntarily left the employ of such
1075 employer without good cause attributable to the employer;

1076 2. Was discharged by such employer for
1077 misconduct connected with his work;

1078 3. Refused an offer of suitable work by such
1079 employer without good cause, and the department further finds that
1080 such benefits are based on wages for employment for such employer
1081 prior to such voluntary leaving, discharge or refusal of suitable
1082 work, as the case may be;

1083 4. Had base period wages which included wages
1084 for previously uncovered services as defined in Section
1085 71-5-511(e) to the extent that the Unemployment Compensation Fund
1086 is reimbursed for such benefits pursuant to Section 121 of Public
1087 Law 94-566;

1088 5. Extended benefits paid under the
1089 provisions of Section 71-5-541 which are not reimbursable from
1090 federal funds shall be charged to the experience-rating record of
1091 base period employers;

1092 6. Is still working for such employer on a
1093 regular part-time basis under the same employment conditions as
1094 hired. Provided, however, that benefits shall be charged against
1095 an employer if an eligible individual is paid benefits who is
1096 still working for such employer on a part-time "as-needed" basis;

1097 7. Was hired to replace a United States
1098 serviceman or servicewoman called into active duty and was laid
1099 off upon the return to work by that serviceman or servicewoman,
1100 unless such employer is a state agency or other political
1101 subdivision or instrumentality of the state;

1102 8. Was paid benefits during any week while in
1103 training with the approval of the department, under the provisions
1104 of Section 71-5-513B, or for any week while in training approved
1105 under Section 236(a)(1) of the Trade Act of 1974, under the
1106 provisions of Section 71-5-513C; or

1107 9. Is not required to serve the one-week
1108 waiting period as described in Section 71-5-505(2). In that
1109 event, only the benefits paid in lieu of the waiting period week
1110 may be noncharged.

1111 (iii) The department shall compute a benefit ratio
1112 for each eligible employer, which shall be the quotient obtained
1113 by dividing the total benefits charged to his experience-rating
1114 record during the period his experience-rating record has been
1115 chargeable, but not less than the twelve (12) consecutive
1116 calendar-month period nor more than the thirty-six (36)
1117 consecutive calendar-month period ending on the computation date,
1118 by his total taxable payroll for the same period on which all
1119 contributions due have been paid on or before the September 30
1120 immediately following the computation date. Such benefit ratio

1121 shall be computed to the tenth of a percent (.1%), rounding any
1122 remainder to the next higher tenth.

1123 The following table shall be applied to reduce contribution
1124 rates until Section 71-5-353(3) and (4) is suspended:

1125	Benefit Ratio	Individual Experience Rate:
1126	0.0%	- 0.3%
1127	0.1	- 0.2
1128	0.2	- 0.10
1129	0.3	0.0
1130	0.4	0.1
1131	0.5	0.2
1132	0.6	0.3
1133	0.7	0.4
1134	0.8	0.5
1135	0.9	0.6
1136	1.0	0.7
1137	1.1	0.8
1138	1.2	0.9
1139	1.3	1.0
1140	1.4	1.1
1141	1.5	1.2
1142	1.6	1.3
1143	1.7	1.4
1144	1.8	1.5
1145	1.9	1.6
1146	2.0	1.7
1147	2.1	1.8
1148	2.2	1.9
1149	2.3	2.0
1150	2.4	2.1
1151	2.5	2.2
1152	2.6	2.3
1153	2.7	2.4

1154	2.8	2.5
1155	2.9	2.6
1156	3.0	2.7
1157	3.1	2.8
1158	3.2	2.9
1159	3.3	3.0
1160	3.4	3.1
1161	3.5	3.2
1162	3.6	3.3
1163	3.7	3.4
1164	3.8	3.5
1165	3.9	3.6
1166	4.0	3.7
1167	4.1	3.8
1168	4.2	3.9
1169	4.3	4.0
1170	4.4	4.1
1171	4.5	4.2
1172	4.6	4.3
1173	4.7	4.4
1174	4.8	4.5
1175	4.9	4.6
1176	5.0	4.7
1177	5.1	4.8
1178	5.2	4.9
1179	5.3	5.0
1180	5.4	5.1
1181	5.5	5.2
1182	5.6	5.3
1183	5.7 and above	5.4

1184 (iv) 1. The contribution rate for each eligible
1185 employer shall be the sum of two (2) rates: his individual
1186 experience rate in the range from zero percent (0%) to five and

1187 four-tenths percent (5.4%), plus a general experience rate. In no
1188 event shall the resulting rate be in excess of five and
1189 four-tenths percent (5.4%).

1190 2. The employer's individual experience rate
1191 shall be equal to his benefit ratio as computed under subsection
1192 (2)(b)(iii) above.

1193 3. The general experience rate shall be
1194 determined in the following manner: The department shall
1195 determine annually, for the thirty-six (36) consecutive
1196 calendar-month period ending on the computation date, the amount
1197 of benefits which were not charged to the record of any employer
1198 and of benefits which were ineffectively charged to the employer's
1199 experience-rating record. For the purposes of subsection
1200 (2)(b)(iv)3, the term "ineffectively charged benefits" shall
1201 include:

1202 The total of the amounts of benefits charged to the
1203 experience-rating records of all eligible employers which caused
1204 their benefit ratios to exceed five and four-tenths percent
1205 (5.4%), the total of the amounts of benefits charged to the
1206 experience-rating records of all ineligible employers which would
1207 cause their benefit ratios to exceed five and four-tenths percent
1208 (5.4%) if they were eligible employers, and the total of the
1209 amounts of benefits charged or chargeable to the experience-rating
1210 record of any employer who has discontinued his business or whose
1211 coverage has been terminated within such period; provided, that
1212 solely for the purposes of determining the amounts of
1213 ineffectively charged benefits as herein defined, a "benefit
1214 ratio" shall be computed for each ineligible employer, which shall
1215 be the quotient obtained by dividing the total benefits charged to
1216 his experience-rating record throughout the period ending on the
1217 computation date, during which his experience-rating record has
1218 been chargeable with benefits, by his total taxable payroll for
1219 the same period on which all contributions due have been paid on

1220 or before the September 30 immediately following the computation
1221 date; and provided further, that such benefit ratio shall be
1222 computed to the tenth of one percent (.1%) and any remainder shall
1223 be rounded to the next higher tenth. The ratio of the sum of
1224 these amounts to the taxable wages paid during the same period by
1225 all eligible employers whose benefit ratio did not exceed five and
1226 four-tenths percent (5.4%), computed to the next higher tenth of
1227 one percent (.1%), shall be the general experience rate.

1228 4. The general experience rate shall be
1229 adjusted by use of the size of fund index factor. This factor may
1230 be positive or negative, and shall be determined as follows: From
1231 the target SOFI, as defined in subsection (1)(k) of this section,
1232 subtract the simple average of the current and preceding years'
1233 exposure criteria divided by the cost rate criterion, as defined
1234 in subsection (1)(j) of this section. The result is then
1235 multiplied by the product of the CRC, as defined in subsection
1236 (1)(j) of this section, and total wages for the twelve-month
1237 period ending June 30 divided by the taxable wages for the
1238 twelve-month period ending June 30. This is the percentage
1239 positive or negative added to the general experience rate. This
1240 percentage is computed to one (1) decimal place, and rounded to
1241 the next higher tenth.

1242 5. Notwithstanding any other provisions of
1243 subsection (2)(b)(iv), if the general experience rate for any tax
1244 year as computed and adjusted on the basis of the size of fund
1245 index is a negative percentage, it shall be disregarded.

1246 6. The department shall include in its annual
1247 rate notice to employers a brief explanation of the elements of
1248 the general experience rate, and shall include in its regular
1249 publications an annual analysis of benefits not charged to the
1250 record of any employer, and of the benefit experience of employers
1251 by industry group whose benefit ratio exceeds four percent (4%),

1252 and of any other factors which may affect the size of the general
1253 experience rate.

1254 (v) When any employing unit in any manner succeeds
1255 to or acquires the organization, trade, business or substantially
1256 all the assets thereof of an employer, excepting any assets
1257 retained by such employer incident to the liquidation of his
1258 obligations, whether or not such acquiring employing unit was an
1259 employer within the meaning of Section 71-5-11, subsection H,
1260 prior to such acquisition, and continues such organization, trade
1261 or business, the experience-rating and payroll records of the
1262 predecessor employer shall be transferred as of the date of
1263 acquisition to the successor employer for the purpose of rate
1264 determination.

1265 (vi) When any employing unit succeeds to or
1266 acquires a distinct and severable portion of an organization,
1267 trade or business, the experience-rating and payroll records of
1268 such portion, if separately identifiable, shall be transferred to
1269 the successor upon:

1270 1. The mutual consent of the predecessor and
1271 the successor;

1272 2. Approval of the department;

1273 3. Continued operation of the transferred
1274 portion by the successor after transfer; and

1275 4. The execution and the filing with the
1276 department by the predecessor employer of a waiver relinquishing
1277 all rights to have the experience-rating and payroll records of
1278 the transferred portion used for the purpose of determining
1279 modified rates of contribution for such predecessor.

1280 (vii) If the successor was an employer subject to
1281 this chapter prior to the date of acquisition, it shall continue
1282 to pay contributions at the rate applicable to it from the date
1283 the acquisition occurred until the end of the then current tax
1284 year. If the successor was not an employer prior to the date of

1285 acquisition, it shall pay contributions at the rate applicable to
1286 the predecessor or, if more than one (1) predecessor and the same
1287 rate is applicable to both, the rate applicable to the predecessor
1288 or predecessors, from the date the acquisition occurred until the
1289 end of the then current tax year. If the successor was not an
1290 employer prior to the date the acquisition occurred and
1291 simultaneously acquires the businesses of two (2) or more
1292 employers to whom different rates of contributions are applicable,
1293 it shall pay contributions from the date of the acquisition until
1294 the end of the current tax year at a rate computed on the basis of
1295 the combined experience-rating and payroll records of the
1296 predecessors as of the computation date for such tax year. In all
1297 cases the rate of contributions applicable to such successor for
1298 each succeeding tax year shall be computed on the basis of the
1299 combined experience-rating and payroll records of the successor
1300 and the predecessor or predecessors.

1301 (viii) The department shall notify each employer
1302 quarterly of the benefits paid and charged to his
1303 experience-rating record; and such notification, in the absence of
1304 an application for redetermination filed within thirty (30) days
1305 after the date of * * * such notice, shall be final, conclusive
1306 and binding upon the employer for all purposes. A
1307 redetermination, made after notice and opportunity for a fair
1308 hearing, by a hearing officer designated by the department who
1309 shall consider and decide these and related applications and
1310 protests; and the finding of fact in connection therewith may be
1311 introduced into any subsequent administrative or judicial
1312 proceedings involving the determination of the rate of
1313 contributions of any employer for any tax year, and shall be
1314 entitled to the same finality as is provided in this subsection
1315 with respect to the findings of fact in proceedings to redetermine
1316 the contribution rate of an employer.

1317 (ix) The department shall notify each employer of
1318 his rate of contribution as determined for any tax year as soon as
1319 reasonably possible after September 1 of the preceding year. Such
1320 determination shall be final, conclusive and binding upon such
1321 employer unless, within thirty (30) days after the date of * * *
1322 such notice to his last known address, the employer files with the
1323 department an application for review and redetermination of his
1324 contribution rate, setting forth his reasons therefor. If the
1325 department grants such review, the employer shall be promptly
1326 notified thereof and shall be afforded an opportunity for a fair
1327 hearing by a hearing officer designated by the department who
1328 shall consider and decide these and related applications and
1329 protests; but no employer shall be allowed, in any proceeding
1330 involving his rate of contributions or contribution liability, to
1331 contest the chargeability to his account of any benefits paid in
1332 accordance with a determination, redetermination or decision
1333 pursuant to Sections 71-5-515 through 71-5-533 except upon the
1334 ground that the services on the basis of which such benefits were
1335 found to be chargeable did not constitute services performed in
1336 employment for him, and then only in the event that he was not a
1337 party to such determination, redetermination, decision or to any
1338 other proceedings provided in this chapter in which the character
1339 of such services was determined. The employer shall be promptly
1340 notified of the denial of this application or of the
1341 redetermination, both of which shall become final unless, within
1342 ten (10) days after the date of * * * notice thereof, there shall
1343 be an appeal to the department itself. Any such appeal shall be
1344 on the record before said designated hearing officer, and the
1345 decision of said department shall become final unless, within
1346 thirty (30) days after the date of * * * notice thereof to the
1347 employer's last known address, there shall be an appeal to the
1348 Circuit Court of the First Judicial District of Hinds County,

1349 Mississippi, in accordance with the provisions of law with respect
1350 to review of civil causes by certiorari.

1351 (3) Notwithstanding any other provision of law, the
1352 following shall apply regarding assignment of rates and transfers
1353 of experience:

1354 (a) (i) If an employer transfers its trade or
1355 business, or a portion thereof, to another employer and, at the
1356 time of the transfer, there is substantially common ownership,
1357 management or control of the two (2) employers, then the
1358 unemployment experience attributable to the transferred trade or
1359 business shall be transferred to the employer to whom such
1360 business is so transferred. The rates of both employers shall be
1361 recalculated and made effective on January 1 of the year following
1362 the year the transfer occurred.

1363 (ii) If, following a transfer of experience under
1364 subparagraph (i) of this paragraph (a), the department determines
1365 that a substantial purpose of the transfer of trade or business
1366 was to obtain a reduced liability of contributions, then the
1367 experience-rating accounts of the employers involved shall be
1368 combined into a single account and a single rate assigned to such
1369 account.

1370 (b) Whenever a person who is not an employer or an
1371 employing unit under this chapter at the time it acquires the
1372 trade or business of an employer, the unemployment experience of
1373 the acquired business shall not be transferred to such person if
1374 the department finds that such person acquired the business solely
1375 or primarily for the purpose of obtaining a lower rate of
1376 contributions. Instead, such person shall be assigned the new
1377 employer rate under Section 71-5-353. In determining whether the
1378 business was acquired solely or primarily for the purpose of
1379 obtaining a lower rate of contributions, the department shall use
1380 objective factors which may include the cost of acquiring the
1381 business, whether the person continued the business enterprise of

1382 the acquired business, how long such business enterprise was
1383 continued, or whether a substantial number of new employees were
1384 hired for performance of duties unrelated to the business activity
1385 conducted prior to acquisition.

1386 (c) (i) If a person knowingly violates or attempts to
1387 violate paragraph (a) or (b) of this subsection or any other
1388 provision of this chapter related to determining the assignment of
1389 a contribution rate, or if a person knowingly advises another
1390 person in a way that results in a violation of such provision, the
1391 person shall be subject to the following penalties:

1392 1. If the person is an employer, then such
1393 employer shall be assigned the highest rate assignable under this
1394 chapter for the rate year during which such violation or attempted
1395 violation occurred and the three (3) rate years immediately
1396 following this rate year. However, if the person's business is
1397 already at such highest rate for any year, or if the amount of
1398 increase in the person's rate would be less than two percent (2%)
1399 for such year, then a penalty rate of contributions of two percent
1400 (2%) of taxable wages shall be imposed for such year. The penalty
1401 rate will apply to the successor business as well as the related
1402 entity from which the employees were transferred in an effort to
1403 obtain a lower rate of contributions.

1404 2. If the person is not an employer, such
1405 person shall be subject to a civil money penalty of not more than
1406 Five Thousand Dollars (\$5,000.00). Each such transaction for
1407 which advice was given and each occurrence or reoccurrence after
1408 notification being given by the department shall be a separate
1409 offense and punishable by a separate penalty. Any such fine shall
1410 be deposited in the penalty and interest account established under
1411 Section 71-5-114.

1412 (ii) For purposes of this paragraph (c), the term
1413 "knowingly" means having actual knowledge of or acting with

1414 deliberate ignorance or reckless disregard for the prohibition
1415 involved.

1416 (iii) For purposes of this paragraph (c), the term
1417 "violates or attempts to violate" includes, but is not limited to,
1418 intent to evade, misrepresentation or willful nondisclosure.

1419 (iv) In addition to the penalty imposed by
1420 subparagraph (i) of this paragraph (c), any violation of this
1421 subsection may be punishable by a fine of not more than Ten
1422 Thousand Dollars (\$10,000.00) or by imprisonment for not more than
1423 five (5) years, or by both such fine and imprisonment. This
1424 subsection shall prohibit prosecution under any other criminal
1425 statute of this state.

1426 (d) The department shall establish procedures to
1427 identify the transfer or acquisition of a business for purposes of
1428 this subsection.

1429 (e) For purposes of this subsection:

1430 (i) "Person" has the meaning given such term by
1431 Section 7701(a)(1) of the Internal Revenue Code of 1986; and

1432 (ii) "Employing unit" has the meaning as set forth
1433 in Section 71-5-11.

1434 (f) This subsection shall be interpreted and applied in
1435 such a manner as to meet the minimum requirements contained in any
1436 guidance or regulations issued by the United States Department of
1437 Labor.

1438 **SECTION 9.** Section 71-5-357, Mississippi Code of 1972, is
1439 amended as follows:

1440 71-5-357. Benefits paid to employees of nonprofit
1441 organizations shall be financed in accordance with the provisions
1442 of this section. For the purpose of this section, a nonprofit
1443 organization is an organization (or group of organizations)
1444 described in Section 501(c)(3) of the Internal Revenue Code of
1445 1954 which is exempt from income tax under Section 501(a) of such
1446 code (26 USCS Section 501).

1447 (a) Any nonprofit organization which, under Section
1448 71-5-11, subsection I(3), is or becomes subject to this chapter
1449 shall pay contributions under the provisions of Sections 71-5-351
1450 through 71-5-355 unless it elects, in accordance with this
1451 paragraph, to pay to the department for the unemployment fund an
1452 amount equal to the amount of regular benefits and one-half (1/2)
1453 of the extended benefits paid, that is attributable to service in
1454 the employ of such nonprofit organization, to individuals for
1455 weeks of unemployment which begin during the effective period of
1456 such election.

1457 (i) Any nonprofit organization which becomes
1458 subject to this chapter may elect to become liable for payments in
1459 lieu of contributions for a period of not less than twelve (12)
1460 months, beginning with the date on which such subjectivity begins,
1461 by filing a written notice of its election with the department not
1462 later than thirty (30) days immediately following the date of the
1463 determination of such subjectivity.

1464 (ii) Any nonprofit organization which makes an
1465 election in accordance with subparagraph (i) of this paragraph
1466 will continue to be liable for payments in lieu of contributions
1467 unless it files with the department a written termination notice
1468 not later than thirty (30) days prior to the beginning of the tax
1469 year for which such termination shall first be effective.

1470 (iii) Any nonprofit organization which has been
1471 paying contributions under this chapter may change to a
1472 reimbursable basis by filing with the department, not later than
1473 thirty (30) days prior to the beginning of any tax year, a written
1474 notice of election to become liable for payments in lieu of
1475 contributions. Such election shall not be terminable by the
1476 organization for that and the next tax year.

1477 (iv) The department may for good cause extend the
1478 period within which a notice of election or a notice of

1479 termination must be filed, and may permit an election to be
1480 retroactive.

1481 (v) The department, in accordance with such
1482 regulations as it may prescribe, shall notify each nonprofit
1483 organization of any determination which it may make of its status
1484 as an employer, of the effective date of any election which it
1485 makes and of any termination of such election. Such
1486 determinations shall be subject to reconsideration, appeal and
1487 review in accordance with the provisions of Sections 71-5-351
1488 through 71-5-355.

1489 (b) Payments in lieu of contributions shall be made in
1490 accordance with the provisions of subparagraph (i) of this
1491 paragraph.

1492 (i) At the end of each calendar quarter, or at the
1493 end of any other period as determined by the department, the
1494 department shall bill each nonprofit organization (or group of
1495 such organizations) which has elected to make payments in lieu of
1496 contributions, for an amount equal to the full amount of regular
1497 benefits plus one-half (1/2) of the amount of extended benefits
1498 paid during such quarter or other prescribed period that is
1499 attributable to service in the employ of such organization.

1500 (ii) Payment of any bill rendered under
1501 subparagraph (i) of this paragraph shall be made not later than
1502 forty-five (45) days after such bill was delivered to the * * *
1503 nonprofit organization * * *, unless there has been an application
1504 for review and redetermination in accordance with subparagraph (v)
1505 of this paragraph.

1506 1. All of the enforcement procedures for the
1507 collection of delinquent contributions contained in Sections
1508 71-5-363 through 71-5-383 shall be applicable in all respects for
1509 the collection of delinquent payments due by nonprofit
1510 organizations who have elected to become liable for payments in
1511 lieu of contributions.

1512 2. If any nonprofit organization is
1513 delinquent in making payments in lieu of contributions, the
1514 department may terminate such organization's election to make
1515 payments in lieu of contributions as of the beginning of the next
1516 tax year, and such termination shall be effective for the balance
1517 of such tax year.

1518 (iii) Payments made by any nonprofit organization
1519 under the provisions of this paragraph shall not be deducted or
1520 deductible, in whole or in part, from the remuneration of
1521 individuals in the employ of the organization.

1522 (iv) Payments due by employers who elect to
1523 reimburse the fund in lieu of contributions as provided in this
1524 paragraph may not be noncharged under any condition. The
1525 reimbursement must be on a dollar-for-dollar basis (One Dollar
1526 (\$1.00) reimbursement for each dollar paid in benefits) in every
1527 case, so that the trust fund shall be reimbursed in full, such
1528 reimbursement to include, but not be limited to, benefits or
1529 payments erroneously or incorrectly paid, or paid as a result of a
1530 determination of eligibility which is subsequently reversed, or
1531 paid as a result of claimant fraud. However, political
1532 subdivisions who are reimbursing employers may elect to pay to the
1533 fund an amount equal to five-tenths percent (.5%) of the taxable
1534 wages paid during the calendar year with respect to employment,
1535 and those employers who so elect shall be relieved of liability
1536 for reimbursement of benefits paid under the same conditions that
1537 benefits are not charged to the experience rating record of a
1538 contributing employer as provided in Section 71-5-355(2)(b)(ii)
1539 other than Clause 5 thereof. Benefits paid in such circumstances
1540 for which reimbursing employers are relieved of liability for
1541 reimbursement shall not be considered attributable to service in
1542 the employment of such reimbursing employer.

1543 (v) The amount due specified in any bill from the
1544 department shall be conclusive on the organization unless, not

1545 later than fifteen (15) days after the bill was * * * delivered to
1546 it, the organization files an application for redetermination by
1547 the department, setting forth the grounds for such application or
1548 appeal. The department shall promptly review and reconsider the
1549 amount due specified in the bill and shall thereafter issue a
1550 redetermination in any case in which such application for
1551 redetermination has been filed. Any such redetermination shall be
1552 conclusive on the organization unless, not later than fifteen (15)
1553 days after the redetermination was * * * delivered to it, the
1554 organization files an appeal to the Circuit Court of the First
1555 Judicial District of Hinds County, Mississippi, in accordance with
1556 the provisions of law with respect to review of civil causes by
1557 certiorari.

1558 (vi) Past due payments of amounts in lieu of
1559 contributions shall be subject to the same interest and penalties
1560 that, pursuant to Section 71-5-363, apply to past due
1561 contributions.

1562 (c) Each employer that is liable for payments in lieu
1563 of contributions shall pay to the department for the fund the
1564 amount of regular benefits plus the amount of one-half (1/2) of
1565 extended benefits paid are attributable to service in the employ
1566 of such employer. If benefits paid to an individual are based on
1567 wages paid by more than one (1) employer and one or more of such
1568 employers are liable for payments in lieu of contributions, the
1569 amount payable to the fund by each employer that is liable for
1570 such payments shall be determined in accordance with the
1571 provisions of subparagraph (i) or subparagraph (ii) of this
1572 paragraph.

1573 (i) If benefits paid to an individual are based on
1574 wages paid by one or more employers that are liable for payment in
1575 lieu of contributions and on wages paid by one or more employers
1576 who are liable for contributions, the amount of benefits payable
1577 by each employer that is liable for payments in lieu of

1578 contributions shall be an amount which bears the same ratio to the
1579 total benefits paid to the individual as the total base-period
1580 wages paid to the individual by such employer bear to the total
1581 base-period wages paid to the individual by all of his base-period
1582 employers.

1583 (ii) If benefits paid to an individual are based
1584 on wages paid by two (2) or more employers that are liable for
1585 payments in lieu of contributions, the amount of benefits payable
1586 by each such employer shall be an amount which bears the same
1587 ratio to the total benefits paid to the individual as the total
1588 base-period wages paid to the individual by such employer bear to
1589 the total base-period wages paid to the individual by all of his
1590 base-period employers.

1591 (d) In the discretion of the department, any nonprofit
1592 organization that elects to become liable for payments in lieu of
1593 contributions shall be required * * * to execute and file with the
1594 department a surety bond approved by the department, or it may
1595 elect instead to deposit with the department money or securities.
1596 The amount of such bond or deposit shall be determined in
1597 accordance with the provisions of this paragraph.

1598 (i) The amount of the bond or deposit required by
1599 paragraph (d) shall be equal to two and seven-tenths percent
1600 (2.7%) of the organization's taxable wages paid for employment as
1601 defined in Section 71-5-11, subsection J(4), for the four (4)
1602 calendar quarters immediately preceding the effective date of the
1603 election, the renewal date in the case of a bond, or the biennial
1604 anniversary of the effective date of election in the case of a
1605 deposit of money or securities, whichever date shall be most
1606 recent and applicable. If the nonprofit organization did not pay
1607 wages in each of such four (4) calendar quarters, the amount of
1608 the bond or deposit shall be as determined by the department.

1609 (ii) Any bond deposited under paragraph (d) shall
1610 be in force for a period of not less than two (2) tax years and

1611 shall be renewed with the approval of the department at such times
1612 as the department may prescribe, but not less frequently than at
1613 intervals of two (2) years as long as the organization continues
1614 to be liable for payments in lieu of contributions. The
1615 department shall require adjustments to be made in a previously
1616 filed bond as it deems appropriate. If the bond is to be
1617 increased, the adjusted bond shall be filed by the organization
1618 within thirty (30) days of the date notice of the required
1619 adjustment was * * * delivered to it. Failure by any organization
1620 covered by such bond to pay the full amount of payments in lieu of
1621 contributions when due, together with any applicable interest and
1622 penalties provided in paragraph (b)(v) of this section, shall
1623 render the surety liable on the bond to the extent of the bond, as
1624 though the surety was such organization.

1625 (iii) Any deposit of money or securities in
1626 accordance with paragraph (d) shall be retained by the department
1627 in an escrow account until liability under the election is
1628 terminated, at which time it shall be returned to the
1629 organization, less any deductions as hereinafter provided. The
1630 department may deduct from the money deposited under paragraph (d)
1631 by a nonprofit organization, or sell the securities it has so
1632 deposited, to the extent necessary to satisfy any due and unpaid
1633 payments in lieu of contributions and any applicable interest and
1634 penalties provided for in paragraph (b)(v) of this section. The
1635 department shall require the organization, within thirty (30) days
1636 following any deduction from a money deposit or sale of deposited
1637 securities under the provisions hereof, to deposit sufficient
1638 additional money or securities to make whole the organization's
1639 deposit at the prior level. Any cash remaining from the sale of
1640 such securities shall be a part of the organization's escrow
1641 account. The department may, at any time, review the adequacy of
1642 the deposit made by any organization. If, as a result of such
1643 review, it determines that an adjustment is necessary, it shall

1644 require the organization to make additional deposit within thirty
1645 (30) days of * * * notice of its determination or shall return to
1646 it such portion of the deposit as it no longer considers
1647 necessary, whichever action is appropriate. Disposition of income
1648 from securities held in escrow shall be governed by the applicable
1649 provisions of the state law.

1650 (iv) If any nonprofit organization fails to file a
1651 bond or make a deposit, or to file a bond in an increased amount,
1652 or to increase or make whole the amount of a previously made
1653 deposit as provided under this subparagraph, the department may
1654 terminate such organization's election to make payments in lieu of
1655 contributions, and such termination shall continue for not less
1656 than the four (4) consecutive calendar-quarter periods beginning
1657 with the quarter in which such termination becomes effective;
1658 however, the department may extend for good cause the applicable
1659 filing, deposit or adjustment period by not more than thirty (30)
1660 days.

1661 (v) Group account shall be established according
1662 to regulations prescribed by the department.

1663 (e) Any employer which elects to make payments in lieu
1664 of contributions into the Unemployment Compensation Fund as
1665 provided in this paragraph shall not be liable to make such
1666 payments with respect to the benefits paid to any individual whose
1667 base-period wages include wages for previously uncovered services
1668 as defined in Section 71-5-511(e) to the extent that the
1669 Unemployment Compensation Fund is reimbursed for such benefits
1670 pursuant to Section 121 of Public Law 94-566.

1671 **SECTION 10.** Section 71-5-359, Mississippi Code of 1972, is
1672 amended as follows:

1673 71-5-359. (1) (a) Before January 1, 1978, each state board
1674 or other instrumentality of this state or one or more other states
1675 covered under Section 71-5-11, subsection I(3), shall pay
1676 contributions under the provisions of Sections 71-5-351 through

1677 71-5-355 for all of the hospitals or institutions of higher
1678 learning under its jurisdiction unless it elects, in the same
1679 manner and under the same conditions as provided for nonprofit
1680 organizations in subsections (a), (b) and (c) of Section 71-5-357,
1681 to pay to the department for the unemployment fund an amount equal
1682 to the regular benefits and one-half (1/2) of the extended
1683 benefits paid that are attributable to service in the employ of
1684 such hospitals or institutions. When an election is made, the
1685 amounts required to be paid in lieu of contributions shall be
1686 billed and payment made as provided in Section 71-5-357 with
1687 respect to similar payments by nonprofit organizations. A state
1688 board having jurisdiction over two (2) or more state-owned
1689 hospitals or state-owned institutions of higher learning shall be
1690 treated as a single employer for the employment in all of those
1691 hospitals or institutions of higher learning for purposes of
1692 computing contribution rates and payment of contributions, or for
1693 purposes of reimbursing the fund, unless it elects, in accordance
1694 with this section, to have one or more of those hospitals or
1695 institutions of higher learning treated as a separate employer.

1696 (b) A state board may elect to have one or more
1697 state-owned hospitals or one or more state-owned institutions of
1698 higher learning under its jurisdiction treated as a separate
1699 employer for the purposes of this section, provided it files with
1700 the department, not later than thirty (30) days prior to the
1701 beginning of any tax year, a written notice of such election. Any
1702 such election shall be effective throughout such tax year, and
1703 shall continue in effect unless the state board files with the
1704 department a written notice of termination of such election not
1705 less than thirty (30) days prior to the beginning of the tax year
1706 for which such termination is to be effective.

1707 (2) (a) From January 1, 1978, through December 31, 1978,
1708 the Commission of Budget and Accounting shall, in the manner
1709 provided in subsection (2)(c) of this section, pay, upon warrant

1710 issued by the State Auditor of Public Accounts, to the department
1711 for the Unemployment Compensation Fund an amount equal to the
1712 regular benefits and one-half (1/2) of the extended benefits paid
1713 that are attributable to service in the employ of a state agency.
1714 The amount required to be reimbursed by a certain agency shall be
1715 billed to the Commission of Budget and Accounting and shall be
1716 paid from the Employment Compensation Revolving Fund pursuant to
1717 subsection (2)(c) of this section not later than thirty (30) days
1718 after such bill was sent, unless there has been an application for
1719 review and redetermination in accordance with Section
1720 71-5-357(b)(v).

1721 (b) The Department of Finance and Administration shall,
1722 in the manner provided in subsection (2)(c) of this section, pay,
1723 upon warrant issued by the State Auditor, or the successor to
1724 these duties, to the department for the Unemployment Compensation
1725 Fund an amount equal to the regular benefits and the extended
1726 benefits paid that are attributable to service in the employ of a
1727 state agency. The amount required to be reimbursed by a certain
1728 agency shall be billed to the Department of Finance and
1729 Administration and shall be paid from the Employment Compensation
1730 Revolving Fund pursuant to subsection (2)(c) of this section not
1731 later than thirty (30) days after such bill was sent, unless there
1732 has been an application for review and redetermination in
1733 accordance with Section 71-5-357(b)(v).

1734 (c) Each agency of state government shall deposit
1735 monthly for a period of twenty-four (24) months an amount equal to
1736 one-twelfth of one percent (1/12 of 1%) of the first Six Thousand
1737 Dollars (\$6,000.00) paid to each employee thereof during the next
1738 preceding year into the Employment Compensation Revolving Fund
1739 that is created in the State Treasury. The Department of Finance
1740 and Administration shall determine the percentage to be applied to
1741 the amount of covered wages paid in order to maintain a balance in
1742 the revolving fund of not less than two percent (2%) of the

1743 covered wages paid during the next preceding year. The State
1744 Treasurer shall invest all funds in the Employment Compensation
1745 Revolving Fund and all interest earned shall be credited to the
1746 Employment Compensation Revolving Fund.

1747 The reimbursement of benefits paid by the Mississippi
1748 Department of Employment Security shall be paid by the Department
1749 of Finance and Administration from the Employment Compensation
1750 Revolving Fund upon warrants issued by the State Auditor of Public
1751 Accounts, or the successor to these duties; and the auditor shall
1752 issue his warrants upon requisitions signed by the Department of
1753 Finance and Administration. However, the Department of Finance and
1754 Administration may, if it so elects, contract for the performance
1755 of the duties prescribed by subsection (2)(b) and (c), and other
1756 duties necessarily related thereto.

1757 (d) From January 1, 1978, through December 31, 1978,
1758 any political subdivision of this state shall pay to the
1759 department for the unemployment fund an amount equal to the
1760 regular benefits and one-half (1/2) of the extended benefits paid
1761 that are attributable to service in the employ of such political
1762 subdivision unless it elects to make contributions to the
1763 unemployment fund as provided in subsection (2)(j) of this
1764 section. The amount required to be reimbursed shall be billed and
1765 shall be paid as provided in Section 71-5-357, with respect to
1766 similar payments for nonprofit organizations.

1767 (e) On and after January 1, 1979, any political
1768 subdivision of this state shall pay to the department for the
1769 unemployment fund an amount equal to the regular benefits and the
1770 extended benefits paid that are attributable to service in the
1771 employ of such political subdivision unless it elects to make
1772 contributions to the unemployment fund as provided in subsection
1773 (2)(j) of this section. The amount required to be reimbursed
1774 shall be billed and shall be paid as provided in Section 71-5-357,
1775 with respect to similar payments for nonprofit organizations.

1776 (f) Each political subdivision unless it elects to make
1777 contributions to the unemployment fund as provided in subsection
1778 (2)(j) of this section, shall establish a revolving fund and
1779 deposit therein monthly for a period of twenty-four (24) months an
1780 amount equal to one-twelfth of one percent (1/12 of 1%) of the
1781 first Six Thousand Dollars (\$6,000.00) paid to each employee
1782 thereof during the next preceding year plus an amount each month
1783 equal to one-third (1/3) of any reimbursement paid to the
1784 department for the next preceding quarter. After January 1, 1980,
1785 the balance in the revolving fund shall be maintained at an amount
1786 not less than two percent (2%) of the covered wages paid during
1787 the next preceding year. However, the department shall by
1788 regulation establish a procedure to allow reimbursing political
1789 subdivisions to elect to maintain the balance in the revolving
1790 fund as required under this paragraph or to annually execute a
1791 surety bond to be approved by the department in an amount not less
1792 than two percent (2%) of the covered wages paid during the next
1793 preceding year.

1794 (g) In the event any political subdivision becomes
1795 delinquent in payments due under this chapter, upon due notice,
1796 and upon certification of the delinquency by the department to the
1797 Department of Finance and Administration, the State Tax
1798 Commission, the Department of Environmental Quality and the
1799 Department of Insurance, or any of them, such agencies shall
1800 direct the issuance of warrants which in the aggregate shall be
1801 the amount of such delinquency payable to the department and drawn
1802 upon any funds in the State Treasury which may be available to
1803 such political subdivision in satisfaction of any such
1804 delinquency. This remedy shall be in addition to any other
1805 collection remedies in this chapter or otherwise provided by law.

1806 (h) Payments made by any political subdivision under
1807 the provisions of this section shall not be deducted or

1808 deductible, in whole or in part, from the remuneration of
1809 individuals in the employ of the organization.

1810 (i) Any governmental entity shall not be liable to make
1811 payments to the unemployment fund with respect to the benefits
1812 paid to any individual whose base-period wages include wages for
1813 previously uncovered services as defined in Section 71-5-511,
1814 subsection (e), to the extent that the Unemployment Compensation
1815 Fund is reimbursed for such benefits pursuant to Section 121 of
1816 Public Law 94-566.

1817 (j) Any political subdivision of this state may elect
1818 to make contributions to the unemployment fund instead of making
1819 reimbursement for benefits paid as provided in subsection (2)(d),
1820 (e) and (f) of this section. A political subdivision which makes
1821 this election shall so notify the department, not later than July
1822 1, 1978; and shall be subject to the provisions of Section
1823 71-5-351, with regard to the payment of contributions. A
1824 political subdivision which makes this election shall pay
1825 contributions equal to two percent (2%) of wages paid by it during
1826 each calendar quarter it is subject to this chapter. The
1827 department shall by regulation establish a procedure to allow
1828 political subdivisions the option periodically to elect either the
1829 reimbursement or the contribution method of financing unemployment
1830 compensation coverage.

1831 **SECTION 11.** Section 71-5-365, Mississippi Code of 1972, is
1832 amended as follows:

1833 71-5-365. If any employer fails to make and file any report
1834 as and when required by the terms and provisions of this chapter
1835 or by any rule or regulation of the commission for the purpose of
1836 determining the amount of contributions due by him under this
1837 chapter, or if any report which has been filed is deemed by the
1838 executive director to be incorrect or insufficient, and such
1839 employer, after having been given * * * notice * * * by the
1840 executive director to file such report, or a corrected or

1841 sufficient report, as the case may be, shall fail to file such
1842 report within fifteen (15) days after the date of * * * such
1843 notice, the executive director may (a) determine the amount of
1844 contributions due from such employer on the basis of such
1845 information as may be readily available to him, which said
1846 determination shall be prima facie correct, (b) assess such
1847 employer with the amount of contribution so determined, to which
1848 amount may be added and assessed by the executive director in his
1849 discretion, as damages, an amount equal to ten percent (10%) of
1850 said amount, and (c) immediately give * * * notice * * * to such
1851 employer of such determination, assessment, and damages, if any,
1852 added and assessed, demanding payment of same together with
1853 interest, as herein provided, on the amount of contributions from
1854 the date when same were due and payable. Such determination and
1855 assessment by the executive director shall be final at the
1856 expiration of fifteen (15) days from the date * * * of such * * *
1857 notice thereof demanding payment, unless:

1858 (a) Such employer shall have filed with the department
1859 a written protest and petition for a hearing, specifying his
1860 objections thereto. Upon receipt of such petition within the
1861 fifteen (15) days allowed, the department shall fix the time and
1862 place for a hearing and shall notify the petitioner thereof. At
1863 any hearing held before the department as herein provided,
1864 evidence may be offered to support such determination and
1865 assessment or to prove that it is incorrect, and the commission
1866 shall have all the power provided in Sections 71-5-137 and
1867 71-5-139. Immediately after such hearing a final decision in the
1868 matter shall be made by the commission, and any contributions or
1869 deficiencies in contributions found and determined by the
1870 commission to be due shall be assessed and paid, together with
1871 interest, within fifteen (15) days after notice of such final
1872 decision and assessment, and demand for payment thereof by the
1873 department shall have been sent to such employer.

1874 (b) The department, in its discretion, determines on
1875 the basis of information submitted by the employer that such
1876 assessment should be amended and adjusted to reflect the correct
1877 amount of taxes.

1878 Sixty (60) days after the due date of the contributions,
1879 together with interest and damages, or upon issuance of a warrant,
1880 whichever occurs first, the department, in its discretion, may
1881 assess an additional sum not exceeding one hundred percent (100%)
1882 of the amount of the unpaid contributions due as damages for
1883 failure to pay.

1884 **SECTION 12.** Section 71-5-505, Mississippi Code of 1972, is
1885 amended as follows:

1886 71-5-505. (1) For weeks beginning on or after July 1, 1991,
1887 each eligible individual who is totally unemployed or part totally
1888 unemployed in any week shall be paid with respect to such week a
1889 benefit in an amount equal to his weekly benefit amount less that
1890 part of his wages, if any, payable to him with respect to such
1891 week which is in excess of Forty Dollars (\$40.00). Such
1892 individuals must have been totally unemployed or part totally
1893 unemployed for a waiting period of one (1) week during which he
1894 earned less than his weekly benefit amount plus Forty Dollars
1895 (\$40.00). Such benefit for a benefit year effective on or after
1896 October 1, 1983, if not a multiple of One Dollar (\$1.00), shall be
1897 computed to the next lower multiple of One Dollar (\$1.00).

1898 Provided, however, that remuneration for "inactive duty training"
1899 or "unit training assembly" payable to such eligible individual
1900 who is a member of any of the reserve components, or remuneration
1901 for jury duty pursuant to a lawfully issued summons therefor
1902 payable to such eligible individual, shall not be considered wages
1903 which serve to reduce the otherwise payable benefit amount.

1904 In determining whether an eligible individual is unemployed
1905 during a week, the date of commencing a shift shall determine the
1906 week for which the earnings are deducted.

1907 (2) However, the one-week waiting period described herein
1908 shall be waived if the President of the United States declares a
1909 major disaster in accordance with Section 401 of The Robert T.
1910 Stafford Disaster Relief and Emergency Assistance Act. The
1911 department, in its discretion, shall have the authority to
1912 noncharge an employer account for any benefits paid for
1913 unemployment due directly to such disaster.

1914 **SECTION 13.** Section 71-5-511, Mississippi Code of 1972, is
1915 amended as follows:

1916 71-5-511. An unemployed individual shall be eligible to
1917 receive benefits with respect to any week only if the department
1918 finds that:

1919 (a) (i) He has registered for work at and thereafter
1920 has continued to report to the department in accordance with such
1921 regulations as the department may prescribe; except that the
1922 department may, by regulation, waive or alter either or both of
1923 the requirements of this subparagraph as to such types of cases or
1924 situations with respect to which it finds that compliance with
1925 such requirements would be oppressive or would be inconsistent
1926 with the purposes of this chapter; and

1927 (ii) He participates in reemployment services,
1928 such as job search assistance services, if, in accordance with a
1929 profiling system established by the department, it has been
1930 determined that he is likely to exhaust regular benefits and needs
1931 reemployment services, unless the department determines that:

1932 1. The individual has completed such
1933 services; or

1934 2. There is justifiable cause for the
1935 claimant's failure to participate in such services.

1936 (b) He has made a claim for benefits in accordance with
1937 the provisions of Section 71-5-515 and in accordance with such
1938 regulations as the department may prescribe thereunder.

1939 (c) He is able to work and is available for work.

1940 (d) He has been unemployed for a waiting period of one
1941 (1) week. No week shall be counted as a week of unemployment for
1942 the purposes of this subsection:

1943 (i) Unless it occurs within the benefit year which
1944 includes the week with respect to which he claims payment of
1945 benefits;

1946 (ii) If benefits have been paid with respect
1947 thereto;

1948 (iii) Unless the individual was eligible for
1949 benefits with respect thereto, as provided in Sections 71-5-511
1950 and 71-5-513, except for the requirements of this subsection.

1951 (e) For weeks beginning on or before July 1, 1982, he
1952 has, during his base period, been paid wages for insured work
1953 equal to not less than thirty-six (36) times his weekly benefit
1954 amount; he has been paid wages for insured work during at least
1955 two (2) quarters of his base period; and he has, during that
1956 quarter of his base period in which his total wages were highest,
1957 been paid wages for insured work equal to not less than sixteen
1958 (16) times the minimum weekly benefit amount. For benefit years
1959 beginning after July 1, 1982, he has, during his base period, been
1960 paid wages for insured work equal to not less than forty (40)
1961 times his weekly benefit amount; he has been paid wages for
1962 insured work during at least two (2) quarters of his base period,
1963 and he has, during that quarter of his base period in which his
1964 total wages were highest, been paid wages for insured work equal
1965 to not less than twenty-six (26) times the minimum weekly benefit
1966 amount. For purposes of this subsection, wages shall be counted
1967 as "wages for insured work" for benefit purposes with respect to
1968 any benefit year only if such benefit year begins subsequent to
1969 the date on which the employing unit by which such wages were paid
1970 has satisfied the conditions of Section 71-5-11, subsection I, or
1971 Section 71-5-361, subsection (3), with respect to becoming an
1972 employer.

1973 (f) No individual may receive benefits in a benefit
1974 year unless, subsequent to the beginning of the next preceding
1975 benefit year during which he received benefits, he performed
1976 service in "employment" as defined in Section 71-5-11, subsection
1977 J, and earned remuneration for such service in an amount equal to
1978 not less than eight (8) times his weekly benefit amount applicable
1979 to his next preceding benefit year.

1980 (g) Benefits based on service in employment defined in
1981 Section 71-5-11, subsection J(3) and J(4), and Section 71-5-361,
1982 subsection (4) shall be payable in the same amount, on the same
1983 terms, and subject to the same conditions as compensation payable
1984 on the basis of other service subject to this chapter, except that
1985 benefits based on service in an instructional, research or
1986 principal administrative capacity in an institution of higher
1987 learning (as defined in Section 71-5-11, subsection O) with
1988 respect to service performed prior to January 1, 1978, shall not
1989 be paid to an individual for any week of unemployment which begins
1990 during the period between two (2) successive academic years, or
1991 during a similar period between two (2) regular terms, whether or
1992 not successive, or during a period of paid sabbatical leave
1993 provided for in the individual's contract, if the individual has a
1994 contract or contracts to perform services in any such capacity for
1995 any institution or institutions of higher learning for both such
1996 academic years or both such terms.

1997 (h) Benefits based on service in employment defined in
1998 Section 71-5-11, subsection J(3) and J(4), shall be payable in the
1999 same amount, on the same terms and subject to the same conditions
2000 as compensation payable on the basis of other service subject to
2001 this chapter; except that:

2002 (i) With respect to service performed in an
2003 instructional, research or principal administrative capacity for
2004 an educational institution, benefits shall not be paid based on
2005 such services for any week of unemployment commencing during the

2006 period between two (2) successive academic years, or during a
2007 similar period between two (2) regular but not successive terms,
2008 or during a period of paid sabbatical leave provided for in the
2009 individual's contract, to any individual, if such individual
2010 performs such services in the first of such academic years or
2011 terms and if there is a contract or a reasonable assurance that
2012 such individual will perform services in any such capacity for any
2013 educational institution in the second of such academic years or
2014 terms, and provided that Section 71-5-511, subsection (g), shall
2015 apply with respect to such services prior to January 1, 1978. In
2016 no event shall benefits be paid unless the individual employee was
2017 terminated by the employer.

2018 (ii) With respect to services performed in any
2019 other capacity for an educational institution, benefits shall not
2020 be paid on the basis of such services to any individual for any
2021 week which commences during a period between two (2) successive
2022 academic years or terms, if such individual performs such services
2023 in the first of such academic years or terms and there is a
2024 reasonable assurance that such individual will perform such
2025 services in the second of such academic years or terms, except
2026 that if compensation is denied to any individual under this
2027 subparagraph and such individual was not offered an opportunity to
2028 perform such services for the educational institution for the
2029 second of such academic years or terms, such individual shall be
2030 entitled to a retroactive payment of compensation for each week
2031 for which the individual filed a timely claim for compensation and
2032 for which compensation was denied solely by reason of this clause.
2033 In no event shall benefits be paid unless the individual employee
2034 was terminated by the employer.

2035 (iii) With respect to services described in
2036 subsection (h)(i) and (ii), benefits shall not be payable on the
2037 basis of services in any such capacities to any individual for any
2038 week which commences during an established and customary vacation

2039 period or holiday recess if such individual performs such services
2040 in the first of such academic years or terms, or in the period
2041 immediately before such vacation period or holiday recess, and
2042 there is a reasonable assurance that such individual will perform
2043 such services in the period immediately following such vacation
2044 period or holiday recess.

2045 (iv) With respect to any services described in
2046 subsection (h)(i) and (ii), benefits shall not be payable on the
2047 basis of services in any such capacities as specified in
2048 subsection (h)(i), (ii) and (iii) to any individual who performed
2049 such services in an educational institution while in the employ of
2050 an educational service agency. For purposes of this subsection,
2051 the term "educational service agency" means a governmental agency
2052 or governmental entity which is established and operated
2053 exclusively for the purpose of providing such services to one or
2054 more educational institutions.

2055 (v) With respect to services to which Sections
2056 71-5-357 and 71-5-359 apply, if such services are provided to or
2057 on behalf of an educational institution, benefits shall not be
2058 payable under the same circumstances and subject to the same terms
2059 and conditions as described in subsection (h)(i), (ii), (iii) and
2060 (iv).

2061 (i) Subsequent to December 31, 1977, benefits shall not
2062 be paid to any individual on the basis of any services
2063 substantially all of which consist of participating in sports or
2064 athletic events or training or preparing to so participate, for
2065 any week which commences during the period between two (2)
2066 successive sports seasons (or similar periods) if such individual
2067 performs such services in the first of such seasons (or similar
2068 periods) and there is a reasonable assurance that such individual
2069 will perform such services in the later of such seasons (or
2070 similar periods).

2071 (j) (i) Subsequent to December 31, 1977, benefits
2072 shall not be payable on the basis of services performed by an
2073 alien, unless such alien is an individual who was lawfully
2074 admitted for permanent residence at the time such services were
2075 performed, was lawfully present for purposes of performing such
2076 services, or was permanently residing in the United States under
2077 color of law at the time such services were performed (including
2078 an alien who was lawfully present in the United States as a result
2079 of the application of the provisions of Section 203(a)(7) or
2080 Section 212(d)(5) of the Immigration and Nationality Act).

2081 (ii) Any data or information required of
2082 individuals applying for benefits to determine whether benefits
2083 are not payable to them because of their alien status shall be
2084 uniformly required from all applicants for benefits.

2085 (iii) In the case of an individual whose
2086 application for benefits would otherwise be approved, no
2087 determination that benefits to such individual are not payable
2088 because of his alien status shall be made, except upon a
2089 preponderance of the evidence.

2090 (k) An individual shall be deemed prima facie
2091 unavailable for work, and therefore ineligible to receive
2092 benefits, during any period which, with respect to his employment
2093 status, is found by the department to be a holiday or vacation
2094 period.

2095 (1) A temporary employee of a temporary help firm is
2096 considered to have left the employee's last work voluntarily
2097 without good cause connected with the work if the temporary
2098 employee does not contact the temporary help firm for reassignment
2099 on completion of an assignment. A temporary employee is not
2100 considered to have left work voluntarily without good cause
2101 connected with the work under this paragraph unless the temporary
2102 employee has been advised in writing:

2103 (i) That the temporary employee is obligated to
2104 contact the temporary help firm on completion of assignments; and

2105 (ii) That unemployment benefits may be denied if
2106 the temporary employee fails to do so.

2107 **SECTION 14.** Section 71-5-513, Mississippi Code of 1972, is
2108 amended as follows:

2109 71-5-513. A. An individual shall be disqualified for
2110 benefits:

2111 (1) (a) For the week, or fraction thereof, which
2112 immediately follows the day on which he left work voluntarily
2113 without good cause, if so found by the department, and for each
2114 week thereafter until he has earned remuneration for personal
2115 services performed for an employer, as in this chapter defined,
2116 equal to not less than eight (8) times his weekly benefit amount,
2117 as determined in each case; however, marital, filial and domestic
2118 circumstances and obligations shall not be deemed good cause
2119 within the meaning of this subsection. Pregnancy shall not be
2120 deemed to be a marital, filial or domestic circumstance for the
2121 purpose of this subsection.

2122 (b) For the week, or fraction thereof, which
2123 immediately follows the day on which he was discharged for
2124 misconduct connected with his work, if so found by the department,
2125 and for each week thereafter until he has earned remuneration for
2126 personal services performed for an employer, as in this chapter
2127 defined, equal to not less than eight (8) times his weekly benefit
2128 amount, as determined in each case.

2129 (c) The burden of proof of good cause for leaving
2130 work shall be on the claimant, and the burden of proof of
2131 misconduct shall be on the employer.

2132 (2) For the week, or fraction thereof, with respect to
2133 which he willfully makes a false statement, a false representation
2134 of fact, or willfully fails to disclose a material fact for the
2135 purpose of obtaining or increasing benefits under the provisions

2136 of this law, if so found by the department, and such individual's
2137 maximum benefit allowance shall be reduced by the amount of
2138 benefits so paid to him during any such week of disqualification;
2139 and additional disqualification shall be imposed for a period not
2140 exceeding fifty-two (52) weeks, the length of such period of
2141 disqualification and the time when such period begins to be
2142 determined by the department, in its discretion, according to the
2143 circumstances in each case.

2144 (3) If the department finds that he has failed, without
2145 good cause, either to apply for available suitable work when so
2146 directed by the employment office or the department, to accept
2147 suitable work when offered him, or to return to his customary
2148 self-employment (if any) when so directed by the department, such
2149 disqualification shall continue for the week in which such failure
2150 occurred and for not more than the twelve (12) weeks which
2151 immediately follow such week, as determined by the department
2152 according to the circumstances in each case.

2153 (a) In determining whether or not any work is
2154 suitable for an individual, the department shall consider among
2155 other factors the degree of risk involved to his health, safety
2156 and morals, his physical fitness and prior training, his
2157 experience and prior earnings, his length of unemployment and
2158 prospects for securing local work in his customary occupation, and
2159 the distance of the available work from his residence; however,
2160 offered employment paying the minimum wage or higher, if such
2161 minimum or higher wage is that prevailing for his customary
2162 occupation or similar work in the locality, shall be deemed to be
2163 suitable employment after benefits have been paid to the
2164 individual for a period of eight (8) weeks.

2165 (b) Notwithstanding any other provisions of this
2166 chapter, no work shall be deemed suitable and benefits shall not
2167 be denied under this chapter to any otherwise eligible individual

2168 for refusing to accept new work under any of the following
2169 conditions:

2170 (i) If the position offered is vacant due
2171 directly to a strike, lockout or other labor dispute;

2172 (ii) If the wages, hours or other conditions
2173 of the work offered are substantially unfavorable or unreasonable
2174 to the individual's work. * * * The department shall have the
2175 sole discretion to determine whether or not there has been an
2176 unfavorable or unreasonable condition placed on the individual's
2177 work. Moreover, the department may consider, but shall not be
2178 limited to a consideration of, whether or not the unfavorable
2179 condition was applied by the employer to all workers in the same
2180 or similar class or merely to this individual;

2181 (iii) If as a condition of being employed the
2182 individual would be required to join a company union or to resign
2183 from or refrain from joining any bona fide labor organization;

2184 (iv) If unsatisfactory or hazardous working
2185 conditions exist that could result in a danger to the physical or
2186 mental well-being of the worker. In any such determination the
2187 department shall consider, but shall not be limited to a
2188 consideration of, the following: the safety measures used or the
2189 lack thereof and the condition of equipment or lack of proper
2190 equipment. No work shall be considered hazardous if the working
2191 conditions surrounding a worker's employment are the same or
2192 substantially the same as the working conditions generally
2193 prevailing among workers performing the same or similar work for
2194 other employers engaged in the same or similar type of activity.

2195 (4) For any week with respect to which the department
2196 finds that his total unemployment is due to a stoppage of work
2197 which exists because of a labor dispute at a factory,
2198 establishment or other premises at which he is or was last
2199 employed; however, this subsection shall not apply if it is shown
2200 to the satisfaction of the department:

2201 (a) He is unemployed due to a stoppage of work
2202 occasioned by an unjustified lockout, if such lockout was not
2203 occasioned or brought about by such individual acting alone or
2204 with other workers in concert; or

2205 (b) He is not participating in or directly
2206 interested in the labor dispute which caused the stoppage of work;
2207 and

2208 (c) He does not belong to a grade or class of
2209 workers of which, immediately before the commencement of stoppage,
2210 there were members employed at the premises at which the stoppage
2211 occurs, any of whom are participating in or directly interested in
2212 the dispute.

2213 If in any case separate branches of work which are commonly
2214 conducted as separate businesses in separate premises are
2215 conducted in separate departments of the same premises, each such
2216 department shall, for the purposes of this subsection, be deemed
2217 to be a separate factory, establishment or other premises.

2218 (5) For any week with respect to which he has received
2219 or is seeking unemployment compensation under an unemployment
2220 compensation law of another state or of the United States.
2221 However, if the appropriate agency of such other state or of the
2222 United States finally determines that he is not entitled to such
2223 unemployment compensation benefits, this disqualification shall
2224 not apply. Nothing in this subsection contained shall be
2225 construed to include within its terms any law of the United States
2226 providing unemployment compensation or allowances for honorably
2227 discharged members of the Armed Forces.

2228 (6) For any week with respect to which he is receiving
2229 or has received remuneration in the form of payments under any
2230 governmental or private retirement or pension plan, system or
2231 policy which a base-period employer is maintaining or contributing
2232 to or has maintained or contributed to on behalf of the
2233 individual; however, if the amount payable with respect to any

2234 week is less than the benefits which would otherwise be due under
2235 Section 71-5-501, he shall be entitled to receive for such week,
2236 if otherwise eligible, benefits reduced by the amount of such
2237 remuneration. However, on or after the first Sunday immediately
2238 following July 1, 2001, no social security payments, to which the
2239 employee has made contributions, shall be deducted from
2240 unemployment benefits paid for any period of unemployment
2241 beginning on or after the first Sunday following July 1, 2001.
2242 This one hundred percent (100%) exclusion shall not apply to any
2243 other governmental or private retirement or pension plan, system
2244 or policy. If benefits payable under this section, after being
2245 reduced by the amount of such remuneration, are not a multiple of
2246 One Dollar (\$1.00), they shall be adjusted to the next lower
2247 multiple of One Dollar (\$1.00).

2248 (7) For any week with respect to which he is receiving
2249 or has received remuneration in the form of a back pay award, or
2250 other compensation allocable to any week, whether by settlement or
2251 otherwise. Any benefits previously paid for weeks of unemployment
2252 with respect to which back pay awards, or other such compensation,
2253 are made shall constitute an overpayment and such amounts shall be
2254 deducted from the award by the employer prior to payment to the
2255 employee, and shall be transmitted promptly to the department by
2256 the employer for application against the overpayment and credit to
2257 the claimant's maximum benefit amount and prompt deposit into the
2258 fund; however, the removal of any charges made against the
2259 employer as a result of such previously paid benefits shall be
2260 applied to the calendar year and the calendar quarter in which the
2261 overpayment is transmitted to the department, and no attempt shall
2262 be made to relate such a credit to the period to which the award
2263 applies. Any amount of overpayment so deducted by the employer
2264 and not transmitted to the department shall be subject to the same
2265 procedures for collection as is provided for contributions by
2266 Sections 71-5-363 through 71-5-381. Any amount of overpayment not

2267 deducted by the employer shall be established as an overpayment
2268 against the claimant and collected as provided above. It is the
2269 purpose of this paragraph to assure equity in the situations to
2270 which it applies, and it shall be construed accordingly.

2271 B. Notwithstanding any other provision in this chapter, no
2272 otherwise eligible individual shall be denied benefits for any
2273 week because he is in training with the approval of the
2274 department; nor shall such individual be denied benefits with
2275 respect to any week in which he is in training with the approval
2276 of the department by reason of the application of provisions in
2277 Section 71-5-511, subsection (c), relating to availability for
2278 work, or the provisions of subsection A(3) of this section,
2279 relating to failure to apply for, or a refusal to accept, suitable
2280 work.

2281 C. Notwithstanding any other provisions of this chapter, no
2282 otherwise eligible individual shall be denied benefits for any
2283 week because he or she is in training approved under Section
2284 236(a)(1) of the Trade Act of 1974, nor shall such individual be
2285 denied benefits by reason of leaving work to enter such training,
2286 provided the work left is not suitable employment, or because of
2287 the application to any such week in training of provisions in this
2288 law (or any applicable federal unemployment compensation law),
2289 relating to availability for work, active search for work or
2290 refusal to accept work.

2291 For purposes of this section, the term "suitable employment"
2292 means with respect to an individual, work of a substantially equal
2293 or higher skill level than the individual's past adversely
2294 affected employment (as defined for purposes of the Trade Act of
2295 1974), and wages for such work at not less than eighty percent
2296 (80%) of the individual's average weekly wage as determined for
2297 the purposes of the Trade Act of 1974.

2298 **SECTION 15.** Section 71-5-517, Mississippi Code of 1972, is
2299 amended as follows:

2300 71-5-517. Upon the taking of a claim by the department, an
2301 initial determination thereon shall be made promptly and shall
2302 include a determination with respect to whether or not benefits
2303 are payable, the week with respect to which benefits shall
2304 commence, the weekly benefit amount payable and the maximum
2305 duration of benefits. In any case in which the payment or denial
2306 of benefits will be determined by the provisions of subsection
2307 A(4) of Section 71-5-513, the examiner shall promptly transmit all
2308 the evidence with respect to that subsection to the department,
2309 which, on the basis of evidence so submitted and such additional
2310 evidence as it may require, shall make an initial determination
2311 with respect thereto. An initial determination may for good cause
2312 be reconsidered. The claimant, his most recent employing unit and
2313 all employers whose experience-rating record would be charged with
2314 benefits pursuant to such determination shall be promptly notified
2315 of such initial determination or any amended initial determination
2316 and the reason therefor. Benefits shall be denied or, if the
2317 claimant is otherwise eligible, promptly paid in accordance with
2318 the initial determination or amended initial determination. The
2319 jurisdiction of the department over benefit claims which have not
2320 been appealed shall be continuous. The claimant or any party to
2321 the initial determination or amended initial determination may
2322 file an appeal from such initial determination or amended initial
2323 determination within fourteen (14) days after notification
2324 thereof, or after the date such notification was sent to his last
2325 known address.

2326 Notwithstanding any other provision of this section, benefits
2327 shall be paid promptly in accordance with a determination or
2328 redetermination, or the decision of an appeal tribunal, the Board
2329 of Review or a reviewing court upon the issuance of such
2330 determination, redetermination or decision in favor of the
2331 claimant (regardless of the pendency of the period to apply for
2332 reconsideration, file an appeal, or petition for judicial review,

2333 as the case may be, or the pendency of any such application,
2334 filing or petition), unless and until such determination,
2335 redetermination or decision has been modified or reversed by a
2336 subsequent redetermination or decision, in which event benefits
2337 shall be paid or denied in accordance with such modifying or
2338 reversing redetermination or decision. Any benefits finally
2339 determined to have been erroneously paid may be set up as an
2340 overpayment to the claimant and must be liquidated before any
2341 future benefits can be paid to the claimant. If, subsequent to
2342 such initial determination or amended initial determination,
2343 benefits with respect to any week for which a claim has been filed
2344 are denied for reasons other than matters included in the initial
2345 determination or amended initial determination, the claimant shall
2346 be promptly notified of the denial and the reason therefor and may
2347 appeal therefrom in accordance with the procedure herein described
2348 for appeals from initial determination or amended initial
2349 determination.

2350 **SECTION 16.** Section 71-5-519, Mississippi Code of 1972, is
2351 amended as follows:

2352 71-5-519. Unless such appeal is withdrawn, an appeal
2353 tribunal appointed by the executive director, after affording the
2354 parties reasonable opportunity for fair hearing, shall affirm,
2355 modify or reverse the findings of fact and initial determination
2356 or amended initial determination. The parties shall be duly
2357 notified of such tribunal's decision, together with its reasons
2358 therefor, which shall be deemed to be the final decision of the
2359 executive director unless, within fourteen (14) days after the
2360 date of notification * * * of such decision, further appeal is
2361 initiated pursuant to Section 71-5-523.

2362 **SECTION 17.** Section 71-5-529, Mississippi Code of 1972, is
2363 amended as follows:

2364 71-5-529. Any decision of the Board of Review, in the
2365 absence of an appeal therefrom as herein provided, shall become

2366 final ten (10) days after the date of notification * * *; and
2367 judicial review thereof shall be permitted only after any party
2368 claiming to be aggrieved thereby has exhausted his administrative
2369 remedies as provided by this chapter. The department shall be
2370 deemed to be a party to any judicial action involving any such
2371 decision, and may be represented in any such judicial action by
2372 any qualified attorney employed by the department and designated
2373 by it for that purpose or, at the department's request, by the
2374 Attorney General.

2375 **SECTION 18.** Section 11-35-23, Mississippi Code of 1972, is
2376 amended as follows:

2377 11-35-23. (1) Except for wages, salary or other
2378 compensation, all property in the hands of the garnishee belonging
2379 to the defendant at the time of the service of the writ of
2380 garnishment shall be bound by and subject to the lien of the
2381 judgment, decree or attachment on which the writ shall have been
2382 issued. If the garnishee shall surrender such property to the
2383 sheriff or other officer serving the writ, the officer shall
2384 receive the same and, in case the garnishment issued on a judgment
2385 or decree, shall make sale thereof as if levied on by virtue of an
2386 execution, and return the money arising therefrom to satisfy the
2387 judgment; and if the garnishment issued on an attachment, the
2388 officer shall dispose of the property as if it were levied upon by
2389 a writ of attachment. And any indebtedness of the garnishee to
2390 the defendant, except for wages, salary or other compensation,
2391 shall be bound from the time of the service of the writ of
2392 garnishment, and be appropriable to the satisfaction of the
2393 judgment or decree, or liable to be condemned in the attachment.

2394 (2) The court issuing any writ of garnishment shall show
2395 thereon the amount of the claim of the plaintiff and the court
2396 costs in the proceedings and should at any time during the
2397 pendency of said proceedings in the court a judgment be rendered

2398 for a different amount, then the court shall notify the garnishee
2399 of the correct amount due by the defendant under said writ.

2400 (3) (a) Except for judgments, liens, attachments, fees or
2401 charges owed to the state or its political subdivisions; wages,
2402 salary or other compensation in the hands of the garnishee
2403 belonging to the defendant at the time of the service of the writ
2404 of garnishment shall not be bound by nor subject to the lien of
2405 the judgment, decree or attachment on which the writ shall have
2406 been issued when the writ of garnishment is issued on a judgment
2407 based upon a claim or debt that is less than One Hundred Dollars
2408 (\$100.00), excluding court costs.

2409 (b) If the garnishee be indebted or shall become
2410 indebted to the defendant for wages, salary or other compensation
2411 during the first thirty (30) days after service of a proper writ
2412 of garnishment, the garnishee shall pay over to the employee all
2413 of such indebtedness, and thereafter, the garnishee shall retain
2414 and the writ shall bind the nonexempt percentage of disposable
2415 earnings, as provided by Section 85-3-4, for such period of time
2416 as is necessary to accumulate a sum equal to the amount shown on
2417 the writ as due * * *, even if such period of time extends beyond
2418 the return day of the writ. Unless the court otherwise authorizes
2419 the garnishee to make earlier payments or releases and except as
2420 otherwise provided in this section, the garnishee shall retain all
2421 sums collected pursuant to the writ and make only one (1) payment
2422 into court at such time as the total amount shown due on the writ
2423 has been accumulated, provided that, at least one (1) payment per
2424 year shall be made to the court of the amount that has been
2425 withheld during the preceding year. Should the employment of the
2426 defendant for any reason be terminated with the garnishee, then
2427 the garnishee shall not later than fifteen (15) days after the
2428 termination of such employment, report such termination to the
2429 court and pay into the court all sums as have been withheld from
2430 the defendant's disposable earnings. If the plaintiff in

2431 garnishment contest the answer of the garnishee, as now provided
2432 by law in such cases, and proves to the court the deficiency or
2433 untruth of the garnishee's answer, then the court shall render
2434 judgment against the garnishee for such amount as would have been
2435 subject to the writ had the said sum not been released to the
2436 defendant; provided, however, any garnishee who files a timely and
2437 complete answer shall not be liable for any error made in good
2438 faith in determining or withholding the amount of wages, salary or
2439 other compensation of a defendant which are subject to the writ.

2440 (4) Wages, salaries or other compensation as used in this
2441 section shall mean wages, salaries, commissions, bonuses or other
2442 compensation paid for employment purposes only.

2443 (5) The circuit clerk may, in his or her discretion, spread
2444 on the minutes of the county or circuit court, as the case may be,
2445 an instruction that all garnishment defendants shall send all
2446 garnishment monies to the attorney of record or in the case where
2447 there is more than one (1) attorney of record, then to the
2448 first-named attorney of record, and not to the clerk. The payment
2449 schedule shall be the same as subsection (3)(b) of this section.

2450 (6) All payments made pursuant to a garnishment issued out
2451 of the justice court shall be made directly to the plaintiff or to
2452 the plaintiff's attorney as indicated by the plaintiff in his or
2453 her suggestion for writ of garnishment. The employer shall notify
2454 the court and the plaintiff or the plaintiff's attorney when a
2455 judgment is satisfied or when the employee is no longer employed
2456 by the employer.

2457 (7) If the plaintiff in a garnishment is the Department of
2458 Employment Security, the garnishee shall make monthly payments to
2459 the department until such time as the total amount shown due on
2460 the writ has been accumulated.

2461 **SECTION 19.** This act shall take effect and be in force from
2462 and after July 1, 2007.