

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2448
(As Sent to Governor)

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 CLARIFY WHEN AN OVERPAYMENT OF
20 BENEFITS OCCURS; TO INCREASE THE MAXIMUM OF TIME THAT A JUDGMENT
21 AGAINST A PERSON FOR COLLECTION OF OVERPAYMENTS OF BENEFITS MAY BE
22 A LIEN UPON THE PROPERTY OF THE PERSON; TO CLARIFY THE
23 AVAILABILITY OF THE UNEMPLOYMENT COMPENSATION LAW TO
24 BENEFICIARIES; TO REVISE THE PROVISION RELATING TO THE
25 CONFIDENTIALITY OF RECORDS AND REPORTS; TO CHANGE THE DATE FOR
26 CERTAIN DETERMINATIONS AND NOTIFICATIONS UNDER THE ACT; TO
27 AUTHORIZE THE DEPARTMENT ON ITS OWN MOTION TO ADJUST CONTRIBUTIONS
28 BY EMPLOYERS; TO AUTHORIZE THE DEPARTMENT ON ITS OWN MOTION TO
29 NONCHARGE AN EMPLOYER FOR BENEFITS PAID FOR UNEMPLOYMENT DUE TO A
30 DECLARED DISASTER; TO CLARIFY THAT A BENEFICIARY MUST REGISTER AND
31 REPORT FOR WORK WITH THE DEPARTMENT; TO PROVIDE WHEN A TEMPORARY
32 EMPLOYEE OF A TEMPORARY HELP FIRM IS CONSIDERED TO HAVE LEFT THE
33 EMPLOYEE'S LAST WORK VOLUNTARILY WITHOUT GOOD CAUSE; TO CLARIFY
34 THE CONSIDERATION OF CERTAIN UNFAVORABLE WORKING CONDITIONS BY THE
35 DEPARTMENT IN THE DISQUALIFICATION OF AN INDIVIDUAL FOR
36 UNEMPLOYMENT BENEFITS; TO CLARIFY THE PROCEDURE FOR TAKING CLAIMS
37 BY THE DEPARTMENT; TO AMEND SECTION 11-35-23, MISSISSIPPI CODE OF
38 1972, TO PROVIDE THAT IN CASES IN WHICH THE PLAINTIFF IN A
39 GARNISHMENT IS THE DEPARTMENT OF EMPLOYMENT SECURITY, THE
40 GARNISHEE SHALL MAKE MONTHLY PAYMENTS TO THE DEPARTMENT UNTIL SUCH
41 TIME AS THE TOTAL AMOUNT SHOWN DUE ON THE WRIT HAS BEEN
42 ACCUMULATED; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 E. "Calendar quarter" means the period of three (3)
101 consecutive calendar months ending on March 31, June 30, September
102 30, or December 31.

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

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

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

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

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

147 I. "Employer" means:

148 (1) Any employing unit which,

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

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

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

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

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

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

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

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

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

182 (7) Any employing unit which, having become an employer
183 under paragraph (1), (3), (5) or (6) of this subsection or under
184 any other provisions of this chapter, has not, under Section
185 71-5-361, ceased to be an employer subject to this chapter;

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

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

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

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

208 J. "Employment" means and includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

266 (a) In the employ of:

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

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

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

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

280 (i) As an elected official;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

664 Q. "Unemployment."

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

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

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

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

695 (i) Retirement, or

696 (ii) Sickness or accident disability, or

697 (iii) Medical or hospitalization expenses in
698 connection with sickness or actual disability, or

699 (iv) Death, provided the employee:

700 (A) Has not the option to receive,
701 instead of provision for such death benefit, any part of such
702 payment or, if such death benefit is insured, any part of the
703 premiums (or contributions to premiums) paid by his employer, and

704 (B) Has not the right, under the
705 provisions of the plan or system or policy of insurance providing
706 for such death benefit, to assign such benefit or to receive a
707 cash consideration in lieu of such benefit, either upon his
708 withdrawal from the plan or system providing for such benefit or
709 upon termination of such plan or system or policy of insurance or
710 of his employment with such employer;

711 (b) Dismissal payments which the employer is not
712 legally required to make;

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

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

719 (i) Qualifies under Section 125 of the
720 Internal Revenue Code;

721 (ii) Covers only employees;

722 (iii) Covers only noncash benefits;

723 (iv) Does not include deferred compensation
724 plans.

725 (2) [Not enacted].

726 S. "Week" means calendar week or such period of seven (7)
727 consecutive days as the department may by regulation prescribe.
728 The department may by regulation prescribe that a week shall be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

820 (4) (a) * * * An overpayment of benefits occurs when a
821 person receives benefits under this chapter:

822 (i) While any conditions for the receipt of
823 benefits imposed by this chapter were not fulfilled in his case;

824 * * *

825 (ii) While he was disqualified from receiving
826 benefits; or

827 (iii) When such person receives benefits and is
828 later found to be disqualified or ineligible for any reason,
829 including, but not limited to, a redetermination or reversal by
830 the department or the courts of a previous decision to award such
831 person benefits.

832 (b) Any person receiving an overpayment shall, in the
833 discretion of the department, * * * be liable to have such sum
834 deducted from any future benefits payable to him under this
835 chapter and shall be liable to repay to the department for the
836 Unemployment Compensation Fund a sum equal to the overpayment
837 amount so received by him; and such sum shall be collectible in
838 the manner provided in Sections 71-5-363 through 71-5-383 for the
839 collection of past-due contributions.

840 (c) * * * Any such judgment against such person for
841 collection of such overpayment shall * * * be in the form of a
842 seven-year renewable lien * * *. Unless action be brought thereon
843 prior to expiration of the lien, the department must refile the
844 notice of the lien prior to its expiration at the end of seven (7)
845 years. There shall be no limit upon the number of times the
846 department may refile notices of liens for collection of
847 overpayments.

848 (5) The department, by agreement with another state or the
849 United States, as provided under Section 303(g) of the Social
850 Security Act, may recover any overpayment of benefits paid to any
851 individual under the laws of this state or of another state or
852 under an unemployment benefit program of the United States. Any
853 overpayments subject to this subsection may be deducted from any
854 future benefits payable to the individual under the laws of this
855 state or of another state or under an unemployment program of the
856 United States.

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

859 71-5-119. The department shall cause to be available for
860 distribution to the public the text of this chapter, its
861 regulations and general rules, its reports to the Governor, and
862 any other material it deems relevant and suitable, and shall
863 furnish the same to any person upon application therefor.

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

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

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

891 public employees in the performance of their public duties) in any
892 manner revealing the individual's or employing unit's identity.

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

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

903 (5) The department may make the state's records relating to
904 the administration of this chapter available to the Railroad
905 Retirement Board, and may furnish the Railroad Retirement Board,
906 at the expense of such board, such copies thereof as the Railroad
907 Retirement Board deems necessary for its purposes. The department
908 may afford reasonable cooperation with every agency of the United
909 States charged with the administration of any unemployment
910 insurance law.

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

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

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

926 71-5-355. (1) As used in this section, the following words
927 and phrases shall have the following meanings, unless the context
928 clearly requires otherwise:

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

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

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

935 (d) Except as hereinafter provided, "payroll" means the
936 total of all wages paid for employment by an employer as defined
937 in Section 71-5-11, subsection H, plus the total of all
938 remuneration paid by such employer excluded from the definition of
939 wages by Section 71-5-351. For the computation of modified rates,
940 "payroll" means the total of all wages paid for employment by an
941 employer as defined in Section 71-5-11, subsection H.

942 (e) For the computation of modified rates, "eligible
943 employer" means an employer whose experience-rating record has
944 been chargeable with benefits throughout the thirty-six (36)
945 consecutive calendar-month period ending on the computation date,
946 except that any employer who has not been subject to the
947 Mississippi Employment Security Law for a period of time
948 sufficient to meet the thirty-six (36) consecutive calendar-month
949 requirement shall be an eligible employer if his experience-rating
950 record has been chargeable throughout not less than the twelve
951 (12) consecutive calendar-month period ending on the computation
952 date. No employer shall be considered eligible for a contribution
953 rate less than five and four-tenths percent (5.4%) with respect to
954 any tax year, who has failed to file any two (2) quarterly reports
955 within the qualifying period by September 30 following the
956 computation date. No employer or employing unit shall be eligible

957 for a contribution rate of less than five and four-tenths percent
958 (5.4%) for the tax year in which the employing unit is found by
959 the department to be in violation of Section 71-5-19(2) or (3) and
960 for the next two (2) succeeding tax years. No representative of
961 such employing unit who was a party to a violation as described in
962 Section 71-5-19(2) or (3), if such representative was or is an
963 employing unit in this state, shall be eligible for a contribution
964 rate of less than five and four-tenths percent (5.4%) for the tax
965 year in which such violation was detected by the department and
966 for the next two (2) succeeding tax years.

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

977 (g) "Modified rates" means the rates of employer
978 contributions determined under the provisions of this chapter and
979 the rates of newly subject employers, as provided in Section
980 71-5-353.

981 (h) For the computation of modified rates, "qualifying
982 period" means a period of not less than the thirty-six (36)
983 consecutive calendar months ending on the computation date
984 throughout which an employer's experience-rating record has been
985 chargeable with benefits; except that with respect to any eligible
986 employer who has not been subject to this article for a period of
987 time sufficient to meet the thirty-six (36) consecutive
988 calendar-month requirement, "qualifying period" means the period
989 ending on the computation date throughout which his

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

994 (i) The "exposure criterion" (EC) is defined as the
995 cash balance of the Unemployment Compensation Fund which is
996 available for the payment of benefits as of September 1 of each
997 calendar year, divided by the total wages, exclusive of wages paid
998 by all state agencies, all political subdivisions, reimbursable
999 nonprofit corporations, and tax exempt public service employment,
1000 for the twelve-month period ending June 30 immediately preceding
1001 such date. The EC shall be computed to four (4) decimal places.

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

1023 to maintain a general experience rate of nine-tenths of one
1024 percent (.9%). For rate year 2007 and subsequent years, the CRC
1025 shall be adjusted downward by an amount necessary to satisfy
1026 one-half (1/2) the reductions required to maintain a general
1027 experience rate of seven-tenths of one percent (.7%) until such
1028 time as the CRC equals the average for the highest value of the
1029 cost rate criterion computations during each of the economic
1030 cycles (economic cycles shall be those defined by the National
1031 Bureau of Economic Research) since the calendar year 1974, except
1032 as provided in subsection (3) of Section 71-5-353. When the
1033 remaining reduction is insufficient to cause the reductions as
1034 specified in this paragraph, additional reductions specified in
1035 subsection (1)(k) of this section may be made to the size of fund
1036 index to achieve the general experience rate specified in this
1037 paragraph, except as provided in Section 71-3-353. The CRC shall
1038 not be raised except as provided through annual computations and
1039 additions of future economic cycles.

1040 (k) "Size of fund index" (SOFI) is defined as the ratio
1041 of the EC to the CRC. For the rate years 2005 and 2006, the SOFI
1042 shall be adjusted downward by an amount necessary to satisfy
1043 one-half (1/2) the reductions required to maintain a general
1044 experience rate of nine-tenths of one percent (.9%). For rate
1045 year 2007 and subsequent years, the SOFI shall be adjusted
1046 downward by an amount necessary to satisfy one-half (1/2) the
1047 reductions required to maintain a minimum general experience rate
1048 of seven-tenths of one percent (.7%) until such time as the SOFI
1049 is reduced from a target size of 1.5 to 1.0, except as provided in
1050 subsection (3) of Section 71-5-353. The SOFI shall not be raised
1051 in any event. In the event Section 71-5-353 is suspended, the
1052 SOFI shall remain at the current level until the suspension is
1053 lifted.

1054 (l) No employer's contribution rate shall exceed five
1055 and four-tenths percent (5.4%), nor be less than four-tenths of

1056 one percent (.4%). However, from and after January 1, 2005, and
1057 continuing unless Section 71-5-353(3) shall be suspended, the
1058 reduction shall be accomplished as described in Section
1059 71-5-355(1)(j) and (k), no employer's unemployment contribution
1060 rate shall be less than one-tenth of one percent (.1%).

1061 (2) Modified rates:

1062 (a) For any tax year, when the reserve ratio on the
1063 preceding November 1, in the case of any tax year, equals or
1064 exceeds four percent (4%), the modified rates, as hereinafter
1065 prescribed, shall be in effect.

1066 (b) Modified rates shall be determined for the tax year
1067 for each eligible employer on the basis of his experience-rating
1068 record in the following manner:

1069 (i) The department shall maintain an
1070 experience-rating record for each employer. Nothing in this
1071 chapter shall be construed to grant any employer or individuals
1072 performing services for him any prior claim or rights to the
1073 amounts paid by the employer into the fund.

1074 (ii) Benefits paid to an eligible individual shall
1075 be charged against the experience-rating record of his base period
1076 employers in the proportion to which the wages paid by each base
1077 period employer bears to the total wages paid to the individual by
1078 all the base period employers, provided that benefits shall not be
1079 charged to an employer's experience-rating record if the
1080 department finds that the individual:

1081 1. Voluntarily left the employ of such
1082 employer without good cause attributable to the employer;

1083 2. Was discharged by such employer for
1084 misconduct connected with his work;

1085 3. Refused an offer of suitable work by such
1086 employer without good cause, and the department further finds that
1087 such benefits are based on wages for employment for such employer

1088 prior to such voluntary leaving, discharge or refusal of suitable
1089 work, as the case may be;

1090 4. Had base period wages which included wages
1091 for previously uncovered services as defined in Section
1092 71-5-511(e) to the extent that the Unemployment Compensation Fund
1093 is reimbursed for such benefits pursuant to Section 121 of Public
1094 Law 94-566;

1095 5. Extended benefits paid under the
1096 provisions of Section 71-5-541 which are not reimbursable from
1097 federal funds shall be charged to the experience-rating record of
1098 base period employers;

1099 6. Is still working for such employer on a
1100 regular part-time basis under the same employment conditions as
1101 hired. Provided, however, that benefits shall be charged against
1102 an employer if an eligible individual is paid benefits who is
1103 still working for such employer on a part-time "as-needed" basis;

1104 7. Was hired to replace a United States
1105 serviceman or servicewoman called into active duty and was laid
1106 off upon the return to work by that serviceman or servicewoman,
1107 unless such employer is a state agency or other political
1108 subdivision or instrumentality of the state;

1109 8. Was paid benefits during any week while in
1110 training with the approval of the department, under the provisions
1111 of Section 71-5-513B, or for any week while in training approved
1112 under Section 236(a)(1) of the Trade Act of 1974, under the
1113 provisions of Section 71-5-513C; or

1114 9. Is not required to serve the one-week
1115 waiting period as described in Section 71-5-505(2). In that
1116 event, only the benefits paid in lieu of the waiting period week
1117 may be noncharged.

1118 (iii) The department shall compute a benefit ratio
1119 for each eligible employer, which shall be the quotient obtained
1120 by dividing the total benefits charged to his experience-rating

1121 record during the period his experience-rating record has been
 1122 chargeable, but not less than the twelve (12) consecutive
 1123 calendar-month period nor more than the thirty-six (36)
 1124 consecutive calendar-month period ending on the computation date,
 1125 by his total taxable payroll for the same period on which all
 1126 contributions due have been paid on or before the September 30
 1127 immediately following the computation date. Such benefit ratio
 1128 shall be computed to the tenth of a percent (.1%), rounding any
 1129 remainder to the next higher tenth.

1130 The following table shall be applied to reduce contribution
 1131 rates until Section 71-5-353(3) and (4) is suspended:

1132	Benefit Ratio	Individual Experience Rate:
1133	0.0%	- 0.3%
1134	0.1	- 0.2
1135	0.2	- 0.10
1136	0.3	0.0
1137	0.4	0.1
1138	0.5	0.2
1139	0.6	0.3
1140	0.7	0.4
1141	0.8	0.5
1142	0.9	0.6
1143	1.0	0.7
1144	1.1	0.8
1145	1.2	0.9
1146	1.3	1.0
1147	1.4	1.1
1148	1.5	1.2
1149	1.6	1.3
1150	1.7	1.4
1151	1.8	1.5
1152	1.9	1.6
1153	2.0	1.7

1154	2.1	1.8
1155	2.2	1.9
1156	2.3	2.0
1157	2.4	2.1
1158	2.5	2.2
1159	2.6	2.3
1160	2.7	2.4
1161	2.8	2.5
1162	2.9	2.6
1163	3.0	2.7
1164	3.1	2.8
1165	3.2	2.9
1166	3.3	3.0
1167	3.4	3.1
1168	3.5	3.2
1169	3.6	3.3
1170	3.7	3.4
1171	3.8	3.5
1172	3.9	3.6
1173	4.0	3.7
1174	4.1	3.8
1175	4.2	3.9
1176	4.3	4.0
1177	4.4	4.1
1178	4.5	4.2
1179	4.6	4.3
1180	4.7	4.4
1181	4.8	4.5
1182	4.9	4.6
1183	5.0	4.7
1184	5.1	4.8
1185	5.2	4.9
1186	5.3	5.0

1187	5.4	5.1
1188	5.5	5.2
1189	5.6	5.3
1190	5.7 and above	5.4

1191 (iv) 1. The contribution rate for each eligible
 1192 employer shall be the sum of two (2) rates: his individual
 1193 experience rate in the range from zero percent (0%) to five and
 1194 four-tenths percent (5.4%), plus a general experience rate. In no
 1195 event shall the resulting rate be in excess of five and
 1196 four-tenths percent (5.4%).

1197 2. The employer's individual experience rate
 1198 shall be equal to his benefit ratio as computed under subsection
 1199 (2)(b)(iii) above.

1200 3. The general experience rate shall be
 1201 determined in the following manner: The department shall
 1202 determine annually, for the thirty-six (36) consecutive
 1203 calendar-month period ending on the computation date, the amount
 1204 of benefits which were not charged to the record of any employer
 1205 and of benefits which were ineffectively charged to the employer's
 1206 experience-rating record. For the purposes of subsection
 1207 (2)(b)(iv)3, the term "ineffectively charged benefits" shall
 1208 include:

1209 The total of the amounts of benefits charged to the
 1210 experience-rating records of all eligible employers which caused
 1211 their benefit ratios to exceed five and four-tenths percent
 1212 (5.4%), the total of the amounts of benefits charged to the
 1213 experience-rating records of all ineligible employers which would
 1214 cause their benefit ratios to exceed five and four-tenths percent
 1215 (5.4%) if they were eligible employers, and the total of the
 1216 amounts of benefits charged or chargeable to the experience-rating
 1217 record of any employer who has discontinued his business or whose
 1218 coverage has been terminated within such period; provided, that
 1219 solely for the purposes of determining the amounts of

1220 ineffectively charged benefits as herein defined, a "benefit
1221 ratio" shall be computed for each ineligible employer, which shall
1222 be the quotient obtained by dividing the total benefits charged to
1223 his experience-rating record throughout the period ending on the
1224 computation date, during which his experience-rating record has
1225 been chargeable with benefits, by his total taxable payroll for
1226 the same period on which all contributions due have been paid on
1227 or before the September 30 immediately following the computation
1228 date; and provided further, that such benefit ratio shall be
1229 computed to the tenth of one percent (.1%) and any remainder shall
1230 be rounded to the next higher tenth. The ratio of the sum of
1231 these amounts to the taxable wages paid during the same period by
1232 all eligible employers whose benefit ratio did not exceed five and
1233 four-tenths percent (5.4%), computed to the next higher tenth of
1234 one percent (.1%), shall be the general experience rate.

1235 4. The general experience rate shall be
1236 adjusted by use of the size of fund index factor. This factor may
1237 be positive or negative, and shall be determined as follows: From
1238 the target SOFI, as defined in subsection (1)(k) of this section,
1239 subtract the simple average of the current and preceding years'
1240 exposure criteria divided by the cost rate criterion, as defined
1241 in subsection (1)(j) of this section. The result is then
1242 multiplied by the product of the CRC, as defined in subsection
1243 (1)(j) of this section, and total wages for the twelve-month
1244 period ending June 30 divided by the taxable wages for the
1245 twelve-month period ending June 30. This is the percentage
1246 positive or negative added to the general experience rate. This
1247 percentage is computed to one (1) decimal place, and rounded to
1248 the next higher tenth.

1249 5. Notwithstanding any other provisions of
1250 subsection (2)(b)(iv), if the general experience rate for any tax
1251 year as computed and adjusted on the basis of the size of fund
1252 index is a negative percentage, it shall be disregarded.

1253 6. The department shall include in its annual
1254 rate notice to employers a brief explanation of the elements of
1255 the general experience rate, and shall include in its regular
1256 publications an annual analysis of benefits not charged to the
1257 record of any employer, and of the benefit experience of employers
1258 by industry group whose benefit ratio exceeds four percent (4%),
1259 and of any other factors which may affect the size of the general
1260 experience rate.

1261 (v) When any employing unit in any manner succeeds
1262 to or acquires the organization, trade, business or substantially
1263 all the assets thereof of an employer, excepting any assets
1264 retained by such employer incident to the liquidation of his
1265 obligations, whether or not such acquiring employing unit was an
1266 employer within the meaning of Section 71-5-11, subsection H,
1267 prior to such acquisition, and continues such organization, trade
1268 or business, the experience-rating and payroll records of the
1269 predecessor employer shall be transferred as of the date of
1270 acquisition to the successor employer for the purpose of rate
1271 determination.

1272 (vi) When any employing unit succeeds to or
1273 acquires a distinct and severable portion of an organization,
1274 trade or business, the experience-rating and payroll records of
1275 such portion, if separately identifiable, shall be transferred to
1276 the successor upon:

1277 1. The mutual consent of the predecessor and
1278 the successor;

1279 2. Approval of the department;

1280 3. Continued operation of the transferred
1281 portion by the successor after transfer; and

1282 4. The execution and the filing with the
1283 department by the predecessor employer of a waiver relinquishing
1284 all rights to have the experience-rating and payroll records of

1285 the transferred portion used for the purpose of determining
1286 modified rates of contribution for such predecessor.

1287 (vii) If the successor was an employer subject to
1288 this chapter prior to the date of acquisition, it shall continue
1289 to pay contributions at the rate applicable to it from the date
1290 the acquisition occurred until the end of the then current tax
1291 year. If the successor was not an employer prior to the date of
1292 acquisition, it shall pay contributions at the rate applicable to
1293 the predecessor or, if more than one (1) predecessor and the same
1294 rate is applicable to both, the rate applicable to the predecessor
1295 or predecessors, from the date the acquisition occurred until the
1296 end of the then current tax year. If the successor was not an
1297 employer prior to the date the acquisition occurred and
1298 simultaneously acquires the businesses of two (2) or more
1299 employers to whom different rates of contributions are applicable,
1300 it shall pay contributions from the date of the acquisition until
1301 the end of the current tax year at a rate computed on the basis of
1302 the combined experience-rating and payroll records of the
1303 predecessors as of the computation date for such tax year. In all
1304 cases the rate of contributions applicable to such successor for
1305 each succeeding tax year shall be computed on the basis of the
1306 combined experience-rating and payroll records of the successor
1307 and the predecessor or predecessors.

1308 (viii) The department shall notify each employer
1309 quarterly of the benefits paid and charged to his
1310 experience-rating record; and such notification, in the absence of
1311 an application for redetermination filed within thirty (30) days
1312 after the date of * * * such notice, shall be final, conclusive
1313 and binding upon the employer for all purposes. A
1314 redetermination, made after notice and opportunity for a fair
1315 hearing, by a hearing officer designated by the department who
1316 shall consider and decide these and related applications and
1317 protests; and the finding of fact in connection therewith may be

1318 introduced into any subsequent administrative or judicial
1319 proceedings involving the determination of the rate of
1320 contributions of any employer for any tax year, and shall be
1321 entitled to the same finality as is provided in this subsection
1322 with respect to the findings of fact in proceedings to redetermine
1323 the contribution rate of an employer.

1324 (ix) The department shall notify each employer of
1325 his rate of contribution as determined for any tax year as soon as
1326 reasonably possible after September 1 of the preceding year. Such
1327 determination shall be final, conclusive and binding upon such
1328 employer unless, within thirty (30) days after the date of * * *
1329 such notice to his last known address, the employer files with the
1330 department an application for review and redetermination of his
1331 contribution rate, setting forth his reasons therefor. If the
1332 department grants such review, the employer shall be promptly
1333 notified thereof and shall be afforded an opportunity for a fair
1334 hearing by a hearing officer designated by the department who
1335 shall consider and decide these and related applications and
1336 protests; but no employer shall be allowed, in any proceeding
1337 involving his rate of contributions or contribution liability, to
1338 contest the chargeability to his account of any benefits paid in
1339 accordance with a determination, redetermination or decision
1340 pursuant to Sections 71-5-515 through 71-5-533 except upon the
1341 ground that the services on the basis of which such benefits were
1342 found to be chargeable did not constitute services performed in
1343 employment for him, and then only in the event that he was not a
1344 party to such determination, redetermination, decision or to any
1345 other proceedings provided in this chapter in which the character
1346 of such services was determined. The employer shall be promptly
1347 notified of the denial of this application or of the
1348 redetermination, both of which shall become final unless, within
1349 ten (10) days after the date of * * * notice thereof, there shall
1350 be an appeal to the department itself. Any such appeal shall be

1351 on the record before said designated hearing officer, and the
1352 decision of said department shall become final unless, within
1353 thirty (30) days after the date of * * * notice thereof to the
1354 employer's last known address, there shall be an appeal to the
1355 Circuit Court of the First Judicial District of Hinds County,
1356 Mississippi, in accordance with the provisions of law with respect
1357 to review of civil causes by certiorari.

1358 (3) Notwithstanding any other provision of law, the
1359 following shall apply regarding assignment of rates and transfers
1360 of experience:

1361 (a) (i) If an employer transfers its trade or
1362 business, or a portion thereof, to another employer and, at the
1363 time of the transfer, there is substantially common ownership,
1364 management or control of the two (2) employers, then the
1365 unemployment experience attributable to the transferred trade or
1366 business shall be transferred to the employer to whom such
1367 business is so transferred. The rates of both employers shall be
1368 recalculated and made effective on January 1 of the year following
1369 the year the transfer occurred.

1370 (ii) If, following a transfer of experience under
1371 subparagraph (i) of this paragraph (a), the department determines
1372 that a substantial purpose of the transfer of trade or business
1373 was to obtain a reduced liability of contributions, then the
1374 experience-rating accounts of the employers involved shall be
1375 combined into a single account and a single rate assigned to such
1376 account.

1377 (b) Whenever a person who is not an employer or an
1378 employing unit under this chapter at the time it acquires the
1379 trade or business of an employer, the unemployment experience of
1380 the acquired business shall not be transferred to such person if
1381 the department finds that such person acquired the business solely
1382 or primarily for the purpose of obtaining a lower rate of
1383 contributions. Instead, such person shall be assigned the new

1384 employer rate under Section 71-5-353. In determining whether the
1385 business was acquired solely or primarily for the purpose of
1386 obtaining a lower rate of contributions, the department shall use
1387 objective factors which may include the cost of acquiring the
1388 business, whether the person continued the business enterprise of
1389 the acquired business, how long such business enterprise was
1390 continued, or whether a substantial number of new employees were
1391 hired for performance of duties unrelated to the business activity
1392 conducted prior to acquisition.

1393 (c) (i) If a person knowingly violates or attempts to
1394 violate paragraph (a) or (b) of this subsection or any other
1395 provision of this chapter related to determining the assignment of
1396 a contribution rate, or if a person knowingly advises another
1397 person in a way that results in a violation of such provision, the
1398 person shall be subject to the following penalties:

1399 1. If the person is an employer, then such
1400 employer shall be assigned the highest rate assignable under this
1401 chapter for the rate year during which such violation or attempted
1402 violation occurred and the three (3) rate years immediately
1403 following this rate year. However, if the person's business is
1404 already at such highest rate for any year, or if the amount of
1405 increase in the person's rate would be less than two percent (2%)
1406 for such year, then a penalty rate of contributions of two percent
1407 (2%) of taxable wages shall be imposed for such year. The penalty
1408 rate will apply to the successor business as well as the related
1409 entity from which the employees were transferred in an effort to
1410 obtain a lower rate of contributions.

1411 2. If the person is not an employer, such
1412 person shall be subject to a civil money penalty of not more than
1413 Five Thousand Dollars (\$5,000.00). Each such transaction for
1414 which advice was given and each occurrence or reoccurrence after
1415 notification being given by the department shall be a separate
1416 offense and punishable by a separate penalty. Any such fine shall

1417 be deposited in the penalty and interest account established under
1418 Section 71-5-114.

1419 (ii) For purposes of this paragraph (c), the term
1420 "knowingly" means having actual knowledge of or acting with
1421 deliberate ignorance or reckless disregard for the prohibition
1422 involved.

1423 (iii) For purposes of this paragraph (c), the term
1424 "violates or attempts to violate" includes, but is not limited to,
1425 intent to evade, misrepresentation or willful nondisclosure.

1426 (iv) In addition to the penalty imposed by
1427 subparagraph (i) of this paragraph (c), any violation of this
1428 subsection may be punishable by a fine of not more than Ten
1429 Thousand Dollars (\$10,000.00) or by imprisonment for not more than
1430 five (5) years, or by both such fine and imprisonment. This
1431 subsection shall prohibit prosecution under any other criminal
1432 statute of this state.

1433 (d) The department shall establish procedures to
1434 identify the transfer or acquisition of a business for purposes of
1435 this subsection.

1436 (e) For purposes of this subsection:

1437 (i) "Person" has the meaning given such term by
1438 Section 7701(a)(1) of the Internal Revenue Code of 1986; and

1439 (ii) "Employing unit" has the meaning as set forth
1440 in Section 71-5-11.

1441 (f) This subsection shall be interpreted and applied in
1442 such a manner as to meet the minimum requirements contained in any
1443 guidance or regulations issued by the United States Department of
1444 Labor.

1445 **SECTION 9.** Section 71-5-357, Mississippi Code of 1972, is
1446 amended as follows:

1447 71-5-357. Benefits paid to employees of nonprofit
1448 organizations shall be financed in accordance with the provisions
1449 of this section. For the purpose of this section, a nonprofit

1450 organization is an organization (or group of organizations)
1451 described in Section 501(c)(3) of the Internal Revenue Code of
1452 1954 which is exempt from income tax under Section 501(a) of such
1453 code (26 USCS Section 501).

1454 (a) Any nonprofit organization which, under Section
1455 71-5-11, subsection I(3), is or becomes subject to this chapter
1456 shall pay contributions under the provisions of Sections 71-5-351
1457 through 71-5-355 unless it elects, in accordance with this
1458 paragraph, to pay to the department for the unemployment fund an
1459 amount equal to the amount of regular benefits and one-half (1/2)
1460 of the extended benefits paid, that is attributable to service in
1461 the employ of such nonprofit organization, to individuals for
1462 weeks of unemployment which begin during the effective period of
1463 such election.

1464 (i) Any nonprofit organization which becomes
1465 subject to this chapter may elect to become liable for payments in
1466 lieu of contributions for a period of not less than twelve (12)
1467 months, beginning with the date on which such subjectivity begins,
1468 by filing a written notice of its election with the department not
1469 later than thirty (30) days immediately following the date of the
1470 determination of such subjectivity.

1471 (ii) Any nonprofit organization which makes an
1472 election in accordance with subparagraph (i) of this paragraph
1473 will continue to be liable for payments in lieu of contributions
1474 unless it files with the department a written termination notice
1475 not later than thirty (30) days prior to the beginning of the tax
1476 year for which such termination shall first be effective.

1477 (iii) Any nonprofit organization which has been
1478 paying contributions under this chapter may change to a
1479 reimbursable basis by filing with the department, not later than
1480 thirty (30) days prior to the beginning of any tax year, a written
1481 notice of election to become liable for payments in lieu of

1482 contributions. Such election shall not be terminable by the
1483 organization for that and the next tax year.

1484 (iv) The department may for good cause extend the
1485 period within which a notice of election or a notice of
1486 termination must be filed, and may permit an election to be
1487 retroactive.

1488 (v) The department, in accordance with such
1489 regulations as it may prescribe, shall notify each nonprofit
1490 organization of any determination which it may make of its status
1491 as an employer, of the effective date of any election which it
1492 makes and of any termination of such election. Such
1493 determinations shall be subject to reconsideration, appeal and
1494 review in accordance with the provisions of Sections 71-5-351
1495 through 71-5-355.

1496 (b) Payments in lieu of contributions shall be made in
1497 accordance with the provisions of subparagraph (i) of this
1498 paragraph.

1499 (i) At the end of each calendar quarter, or at the
1500 end of any other period as determined by the department, the
1501 department shall bill each nonprofit organization (or group of
1502 such organizations) which has elected to make payments in lieu of
1503 contributions, for an amount equal to the full amount of regular
1504 benefits plus one-half (1/2) of the amount of extended benefits
1505 paid during such quarter or other prescribed period that is
1506 attributable to service in the employ of such organization.

1507 (ii) Payment of any bill rendered under
1508 subparagraph (i) of this paragraph shall be made not later than
1509 forty-five (45) days after such bill was delivered to the * * *
1510 nonprofit organization * * *, unless there has been an application
1511 for review and redetermination in accordance with subparagraph (v)
1512 of this paragraph.

1513 1. All of the enforcement procedures for the
1514 collection of delinquent contributions contained in Sections

1515 71-5-363 through 71-5-383 shall be applicable in all respects for
1516 the collection of delinquent payments due by nonprofit
1517 organizations who have elected to become liable for payments in
1518 lieu of contributions.

1519 2. If any nonprofit organization is
1520 delinquent in making payments in lieu of contributions, the
1521 department may terminate such organization's election to make
1522 payments in lieu of contributions as of the beginning of the next
1523 tax year, and such termination shall be effective for the balance
1524 of such tax year.

1525 (iii) Payments made by any nonprofit organization
1526 under the provisions of this paragraph shall not be deducted or
1527 deductible, in whole or in part, from the remuneration of
1528 individuals in the employ of the organization.

1529 (iv) Payments due by employers who elect to
1530 reimburse the fund in lieu of contributions as provided in this
1531 paragraph may not be noncharged under any condition. The
1532 reimbursement must be on a dollar-for-dollar basis (One Dollar
1533 (\$1.00) reimbursement for each dollar paid in benefits) in every
1534 case, so that the trust fund shall be reimbursed in full, such
1535 reimbursement to include, but not be limited to, benefits or
1536 payments erroneously or incorrectly paid, or paid as a result of a
1537 determination of eligibility which is subsequently reversed, or
1538 paid as a result of claimant fraud. However, political
1539 subdivisions who are reimbursing employers may elect to pay to the
1540 fund an amount equal to five-tenths percent (.5%) of the taxable
1541 wages paid during the calendar year with respect to employment,
1542 and those employers who so elect shall be relieved of liability
1543 for reimbursement of benefits paid under the same conditions that
1544 benefits are not charged to the experience-rating record of a
1545 contributing employer as provided in Section 71-5-355(2)(b)(ii)
1546 other than Clause 5 thereof. Benefits paid in such circumstances
1547 for which reimbursing employers are relieved of liability for

1548 reimbursement shall not be considered attributable to service in
1549 the employment of such reimbursing employer.

1550 (v) The amount due specified in any bill from the
1551 department shall be conclusive on the organization unless, not
1552 later than fifteen (15) days after the bill was * * * delivered to
1553 it, the organization files an application for redetermination by
1554 the department, setting forth the grounds for such application or
1555 appeal. The department shall promptly review and reconsider the
1556 amount due specified in the bill and shall thereafter issue a
1557 redetermination in any case in which such application for
1558 redetermination has been filed. Any such redetermination shall be
1559 conclusive on the organization unless, not later than fifteen (15)
1560 days after the redetermination was * * * delivered to it, the
1561 organization files an appeal to the Circuit Court of the First
1562 Judicial District of Hinds County, Mississippi, in accordance with
1563 the provisions of law with respect to review of civil causes by
1564 certiorari.

1565 (vi) Past due payments of amounts in lieu of
1566 contributions shall be subject to the same interest and penalties
1567 that, pursuant to Section 71-5-363, apply to past due
1568 contributions.

1569 (c) Each employer that is liable for payments in lieu
1570 of contributions shall pay to the department for the fund the
1571 amount of regular benefits plus the amount of one-half (1/2) of
1572 extended benefits paid are attributable to service in the employ
1573 of such employer. If benefits paid to an individual are based on
1574 wages paid by more than one (1) employer and one or more of such
1575 employers are liable for payments in lieu of contributions, the
1576 amount payable to the fund by each employer that is liable for
1577 such payments shall be determined in accordance with the
1578 provisions of subparagraph (i) or subparagraph (ii) of this
1579 paragraph.

1580 (i) If benefits paid to an individual are based on
1581 wages paid by one or more employers that are liable for payment in
1582 lieu of contributions and on wages paid by one or more employers
1583 who are liable for contributions, the amount of benefits payable
1584 by each employer that is liable for payments in lieu of
1585 contributions shall be an amount which bears the same ratio to the
1586 total benefits paid to the individual as the total base-period
1587 wages paid to the individual by such employer bear to the total
1588 base-period wages paid to the individual by all of his base-period
1589 employers.

1590 (ii) If benefits paid to an individual are based
1591 on wages paid by two (2) or more employers that are liable for
1592 payments in lieu of contributions, the amount of benefits payable
1593 by each such employer shall be an amount which bears the same
1594 ratio to the total benefits paid to the individual as the total
1595 base-period wages paid to the individual by such employer bear to
1596 the total base-period wages paid to the individual by all of his
1597 base-period employers.

1598 (d) In the discretion of the department, any nonprofit
1599 organization that elects to become liable for payments in lieu of
1600 contributions shall be required * * * to execute and file with the
1601 department a surety bond approved by the department, or it may
1602 elect instead to deposit with the department money or securities.
1603 The amount of such bond or deposit shall be determined in
1604 accordance with the provisions of this paragraph.

1605 (i) The amount of the bond or deposit required by
1606 paragraph (d) shall be equal to two and seven-tenths percent
1607 (2.7%) of the organization's taxable wages paid for employment as
1608 defined in Section 71-5-11, subsection J(4), for the four (4)
1609 calendar quarters immediately preceding the effective date of the
1610 election, the renewal date in the case of a bond, or the biennial
1611 anniversary of the effective date of election in the case of a
1612 deposit of money or securities, whichever date shall be most

1613 recent and applicable. If the nonprofit organization did not pay
1614 wages in each of such four (4) calendar quarters, the amount of
1615 the bond or deposit shall be as determined by the department.

1616 (ii) Any bond deposited under paragraph (d) shall
1617 be in force for a period of not less than two (2) tax years and
1618 shall be renewed with the approval of the department at such times
1619 as the department may prescribe, but not less frequently than at
1620 intervals of two (2) years as long as the organization continues
1621 to be liable for payments in lieu of contributions. The
1622 department shall require adjustments to be made in a previously
1623 filed bond as it deems appropriate. If the bond is to be
1624 increased, the adjusted bond shall be filed by the organization
1625 within thirty (30) days of the date notice of the required
1626 adjustment was * * * delivered to it. Failure by any organization
1627 covered by such bond to pay the full amount of payments in lieu of
1628 contributions when due, together with any applicable interest and
1629 penalties provided in paragraph (b)(v) of this section, shall
1630 render the surety liable on the bond to the extent of the bond, as
1631 though the surety was such organization.

1632 (iii) Any deposit of money or securities in
1633 accordance with paragraph (d) shall be retained by the department
1634 in an escrow account until liability under the election is
1635 terminated, at which time it shall be returned to the
1636 organization, less any deductions as hereinafter provided. The
1637 department may deduct from the money deposited under paragraph (d)
1638 by a nonprofit organization, or sell the securities it has so
1639 deposited, to the extent necessary to satisfy any due and unpaid
1640 payments in lieu of contributions and any applicable interest and
1641 penalties provided for in paragraph (b)(v) of this section. The
1642 department shall require the organization, within thirty (30) days
1643 following any deduction from a money deposit or sale of deposited
1644 securities under the provisions hereof, to deposit sufficient
1645 additional money or securities to make whole the organization's

1646 deposit at the prior level. Any cash remaining from the sale of
1647 such securities shall be a part of the organization's escrow
1648 account. The department may, at any time, review the adequacy of
1649 the deposit made by any organization. If, as a result of such
1650 review, it determines that an adjustment is necessary, it shall
1651 require the organization to make additional deposit within thirty
1652 (30) days of * * * notice of its determination or shall return to
1653 it such portion of the deposit as it no longer considers
1654 necessary, whichever action is appropriate. Disposition of income
1655 from securities held in escrow shall be governed by the applicable
1656 provisions of the state law.

1657 (iv) If any nonprofit organization fails to file a
1658 bond or make a deposit, or to file a bond in an increased amount,
1659 or to increase or make whole the amount of a previously made
1660 deposit as provided under this subparagraph, the department may
1661 terminate such organization's election to make payments in lieu of
1662 contributions, and such termination shall continue for not less
1663 than the four (4) consecutive calendar-quarter periods beginning
1664 with the quarter in which such termination becomes effective;
1665 however, the department may extend for good cause the applicable
1666 filing, deposit or adjustment period by not more than thirty (30)
1667 days.

1668 (v) Group account shall be established according
1669 to regulations prescribed by the department.

1670 (e) Any employer which elects to make payments in lieu
1671 of contributions into the Unemployment Compensation Fund as
1672 provided in this paragraph shall not be liable to make such
1673 payments with respect to the benefits paid to any individual whose
1674 base-period wages include wages for previously uncovered services
1675 as defined in Section 71-5-511(e) to the extent that the
1676 Unemployment Compensation Fund is reimbursed for such benefits
1677 pursuant to Section 121 of Public Law 94-566.

1678 **SECTION 10.** Section 71-5-359, Mississippi Code of 1972, is
1679 amended as follows:

1680 71-5-359. (1) (a) Before January 1, 1978, each state board
1681 or other instrumentality of this state or one or more other states
1682 covered under Section 71-5-11, subsection I(3), shall pay
1683 contributions under the provisions of Sections 71-5-351 through
1684 71-5-355 for all of the hospitals or institutions of higher
1685 learning under its jurisdiction unless it elects, in the same
1686 manner and under the same conditions as provided for nonprofit
1687 organizations in subsections (a), (b) and (c) of Section 71-5-357,
1688 to pay to the department for the unemployment fund an amount equal
1689 to the regular benefits and one-half (1/2) of the extended
1690 benefits paid that are attributable to service in the employ of
1691 such hospitals or institutions. When an election is made, the
1692 amounts required to be paid in lieu of contributions shall be
1693 billed and payment made as provided in Section 71-5-357 with
1694 respect to similar payments by nonprofit organizations. A state
1695 board having jurisdiction over two (2) or more state-owned
1696 hospitals or state-owned institutions of higher learning shall be
1697 treated as a single employer for the employment in all of those
1698 hospitals or institutions of higher learning for purposes of
1699 computing contribution rates and payment of contributions, or for
1700 purposes of reimbursing the fund, unless it elects, in accordance
1701 with this section, to have one or more of those hospitals or
1702 institutions of higher learning treated as a separate employer.

1703 (b) A state board may elect to have one or more
1704 state-owned hospitals or one or more state-owned institutions of
1705 higher learning under its jurisdiction treated as a separate
1706 employer for the purposes of this section, provided it files with
1707 the department, not later than thirty (30) days prior to the
1708 beginning of any tax year, a written notice of such election. Any
1709 such election shall be effective throughout such tax year, and
1710 shall continue in effect unless the state board files with the

1711 department a written notice of termination of such election not
1712 less than thirty (30) days prior to the beginning of the tax year
1713 for which such termination is to be effective.

1714 (2) (a) From January 1, 1978, through December 31, 1978,
1715 the Commission of Budget and Accounting shall, in the manner
1716 provided in subsection (2)(c) of this section, pay, upon warrant
1717 issued by the State Auditor of Public Accounts, to the department
1718 for the Unemployment Compensation Fund an amount equal to the
1719 regular benefits and one-half (1/2) of the extended benefits paid
1720 that are attributable to service in the employ of a state agency.
1721 The amount required to be reimbursed by a certain agency shall be
1722 billed to the Commission of Budget and Accounting and shall be
1723 paid from the Employment Compensation Revolving Fund pursuant to
1724 subsection (2)(c) of this section not later than thirty (30) days
1725 after such bill was sent, unless there has been an application for
1726 review and redetermination in accordance with Section
1727 71-5-357(b)(v).

1728 (b) The Department of Finance and Administration shall,
1729 in the manner provided in subsection (2)(c) of this section, pay,
1730 upon warrant issued by the State Auditor, or the successor to
1731 these duties, to the department for the Unemployment Compensation
1732 Fund an amount equal to the regular benefits and the extended
1733 benefits paid that are attributable to service in the employ of a
1734 state agency. The amount required to be reimbursed by a certain
1735 agency shall be billed to the Department of Finance and
1736 Administration and shall be paid from the Employment Compensation
1737 Revolving Fund pursuant to subsection (2)(c) of this section not
1738 later than thirty (30) days after such bill was sent, unless there
1739 has been an application for review and redetermination in
1740 accordance with Section 71-5-357(b)(v).

1741 (c) Each agency of state government shall deposit
1742 monthly for a period of twenty-four (24) months an amount equal to
1743 one-twelfth of one percent (1/12 of 1%) of the first Six Thousand

1744 Dollars (\$6,000.00) paid to each employee thereof during the next
1745 preceding year into the Employment Compensation Revolving Fund
1746 that is created in the State Treasury. The Department of Finance
1747 and Administration shall determine the percentage to be applied to
1748 the amount of covered wages paid in order to maintain a balance in
1749 the revolving fund of not less than two percent (2%) of the
1750 covered wages paid during the next preceding year. The State
1751 Treasurer shall invest all funds in the Employment Compensation
1752 Revolving Fund and all interest earned shall be credited to the
1753 Employment Compensation Revolving Fund.

1754 The reimbursement of benefits paid by the Mississippi
1755 Department of Employment Security shall be paid by the Department
1756 of Finance and Administration from the Employment Compensation
1757 Revolving Fund upon warrants issued by the State Auditor of Public
1758 Accounts, or the successor to these duties; and the auditor shall
1759 issue his warrants upon requisitions signed by the Department of
1760 Finance and Administration. However, the Department of Finance and
1761 Administration may, if it so elects, contract for the performance
1762 of the duties prescribed by subsection (2)(b) and (c), and other
1763 duties necessarily related thereto.

1764 (d) From January 1, 1978, through December 31, 1978,
1765 any political subdivision of this state shall pay to the
1766 department for the unemployment fund an amount equal to the
1767 regular benefits and one-half (1/2) of the extended benefits paid
1768 that are attributable to service in the employ of such political
1769 subdivision unless it elects to make contributions to the
1770 unemployment fund as provided in subsection (2)(j) of this
1771 section. The amount required to be reimbursed shall be billed and
1772 shall be paid as provided in Section 71-5-357, with respect to
1773 similar payments for nonprofit organizations.

1774 (e) On and after January 1, 1979, any political
1775 subdivision of this state shall pay to the department for the
1776 unemployment fund an amount equal to the regular benefits and the

1777 extended benefits paid that are attributable to service in the
1778 employ of such political subdivision unless it elects to make
1779 contributions to the unemployment fund as provided in subsection
1780 (2)(j) of this section. The amount required to be reimbursed
1781 shall be billed and shall be paid as provided in Section 71-5-357,
1782 with respect to similar payments for nonprofit organizations.

1783 (f) Each political subdivision unless it elects to make
1784 contributions to the unemployment fund as provided in subsection
1785 (2)(j) of this section, shall establish a revolving fund and
1786 deposit therein monthly for a period of twenty-four (24) months an
1787 amount equal to one-twelfth of one percent (1/12 of 1%) of the
1788 first Six Thousand Dollars (\$6,000.00) paid to each employee
1789 thereof during the next preceding year plus an amount each month
1790 equal to one-third (1/3) of any reimbursement paid to the
1791 department for the next preceding quarter. After January 1, 1980,
1792 the balance in the revolving fund shall be maintained at an amount
1793 not less than two percent (2%) of the covered wages paid during
1794 the next preceding year. However, the department shall by
1795 regulation establish a procedure to allow reimbursing political
1796 subdivisions to elect to maintain the balance in the revolving
1797 fund as required under this paragraph or to annually execute a
1798 surety bond to be approved by the department in an amount not less
1799 than two percent (2%) of the covered wages paid during the next
1800 preceding year.

1801 (g) In the event any political subdivision becomes
1802 delinquent in payments due under this chapter, upon due notice,
1803 and upon certification of the delinquency by the department to the
1804 Department of Finance and Administration, the State Tax
1805 Commission, the Department of Environmental Quality and the
1806 Department of Insurance, or any of them, such agencies shall
1807 direct the issuance of warrants which in the aggregate shall be
1808 the amount of such delinquency payable to the department and drawn
1809 upon any funds in the State Treasury which may be available to

1810 such political subdivision in satisfaction of any such
1811 delinquency. This remedy shall be in addition to any other
1812 collection remedies in this chapter or otherwise provided by law.

1813 (h) Payments made by any political subdivision under
1814 the provisions of this section shall not be deducted or
1815 deductible, in whole or in part, from the remuneration of
1816 individuals in the employ of the organization.

1817 (i) Any governmental entity shall not be liable to make
1818 payments to the unemployment fund with respect to the benefits
1819 paid to any individual whose base-period wages include wages for
1820 previously uncovered services as defined in Section 71-5-511,
1821 subsection (e), to the extent that the Unemployment Compensation
1822 Fund is reimbursed for such benefits pursuant to Section 121 of
1823 Public Law 94-566.

1824 (j) Any political subdivision of this state may elect
1825 to make contributions to the unemployment fund instead of making
1826 reimbursement for benefits paid as provided in subsection (2)(d),
1827 (e) and (f) of this section. A political subdivision which makes
1828 this election shall so notify the department, not later than July
1829 1, 1978; and shall be subject to the provisions of Section
1830 71-5-351, with regard to the payment of contributions. A
1831 political subdivision which makes this election shall pay
1832 contributions equal to two percent (2%) of wages paid by it during
1833 each calendar quarter it is subject to this chapter. The
1834 department shall by regulation establish a procedure to allow
1835 political subdivisions the option periodically to elect either the
1836 reimbursement or the contribution method of financing unemployment
1837 compensation coverage.

1838 **SECTION 11.** Section 71-5-365, Mississippi Code of 1972, is
1839 amended as follows:

1840 71-5-365. If any employer fails to make and file any report
1841 as and when required by the terms and provisions of this chapter
1842 or by any rule or regulation of the commission for the purpose of

1843 determining the amount of contributions due by him under this
1844 chapter, or if any report which has been filed is deemed by the
1845 executive director to be incorrect or insufficient, and such
1846 employer, after having been given * * * notice * * * by the
1847 executive director to file such report, or a corrected or
1848 sufficient report, as the case may be, shall fail to file such
1849 report within fifteen (15) days after the date of * * * such
1850 notice, the executive director may (a) determine the amount of
1851 contributions due from such employer on the basis of such
1852 information as may be readily available to him, which said
1853 determination shall be prima facie correct, (b) assess such
1854 employer with the amount of contribution so determined, to which
1855 amount may be added and assessed by the executive director in his
1856 discretion, as damages, an amount equal to ten percent (10%) of
1857 said amount, and (c) immediately give * * * notice * * * to such
1858 employer of such determination, assessment, and damages, if any,
1859 added and assessed, demanding payment of same together with
1860 interest, as herein provided, on the amount of contributions from
1861 the date when same were due and payable. Such determination and
1862 assessment by the executive director shall be final at the
1863 expiration of fifteen (15) days from the date * * * of such * * *
1864 notice thereof demanding payment, unless:

1865 (a) Such employer shall have filed with the department
1866 a written protest and petition for a hearing, specifying his
1867 objections thereto. Upon receipt of such petition within the
1868 fifteen (15) days allowed, the department shall fix the time and
1869 place for a hearing and shall notify the petitioner thereof. At
1870 any hearing held before the department as herein provided,
1871 evidence may be offered to support such determination and
1872 assessment or to prove that it is incorrect, and the commission
1873 shall have all the power provided in Sections 71-5-137 and
1874 71-5-139. Immediately after such hearing a final decision in the
1875 matter shall be made by the commission, and any contributions or

1876 deficiencies in contributions found and determined by the
1877 commission to be due shall be assessed and paid, together with
1878 interest, within fifteen (15) days after notice of such final
1879 decision and assessment, and demand for payment thereof by the
1880 department shall have been sent to such employer.

1881 (b) The department, in its discretion, determines on
1882 the basis of information submitted by the employer that such
1883 assessment should be amended and adjusted to reflect the correct
1884 amount of taxes.

1885 Sixty (60) days after the due date of the contributions,
1886 together with interest and damages, or upon issuance of a warrant,
1887 whichever occurs first, the department, in its discretion, may
1888 assess an additional sum not exceeding one hundred percent (100%)
1889 of the amount of the unpaid contributions due as damages for
1890 failure to pay.

1891 **SECTION 12.** Section 71-5-505, Mississippi Code of 1972, is
1892 amended as follows:

1893 71-5-505. (1) For weeks beginning on or after July 1, 1991,
1894 each eligible individual who is totally unemployed or part totally
1895 unemployed in any week shall be paid with respect to such week a
1896 benefit in an amount equal to his weekly benefit amount less that
1897 part of his wages, if any, payable to him with respect to such
1898 week which is in excess of Forty Dollars (\$40.00). Such
1899 individuals must have been totally unemployed or part totally
1900 unemployed for a waiting period of one (1) week during which he
1901 earned less than his weekly benefit amount plus Forty Dollars
1902 (\$40.00). Such benefit for a benefit year effective on or after
1903 October 1, 1983, if not a multiple of One Dollar (\$1.00), shall be
1904 computed to the next lower multiple of One Dollar (\$1.00).

1905 Provided, however, that remuneration for "inactive duty training"
1906 or "unit training assembly" payable to such eligible individual
1907 who is a member of any of the reserve components, or remuneration
1908 for jury duty pursuant to a lawfully issued summons therefor

1909 payable to such eligible individual, shall not be considered wages
1910 which serve to reduce the otherwise payable benefit amount.

1911 In determining whether an eligible individual is unemployed
1912 during a week, the date of commencing a shift shall determine the
1913 week for which the earnings are deducted.

1914 (2) However, the one-week waiting period described herein
1915 shall be waived if the President of the United States declares a
1916 major disaster in accordance with Section 401 of The Robert T.
1917 Stafford Disaster Relief and Emergency Assistance Act. The
1918 department, in its discretion, shall have the authority to
1919 noncharge an employer account for any benefits paid for
1920 unemployment due directly to such disaster.

1921 **SECTION 13.** Section 71-5-511, Mississippi Code of 1972, is
1922 amended as follows:

1923 71-5-511. An unemployed individual shall be eligible to
1924 receive benefits with respect to any week only if the department
1925 finds that:

1926 (a) (i) He has registered for work at and thereafter
1927 has continued to report to the department in accordance with such
1928 regulations as the department may prescribe; except that the
1929 department may, by regulation, waive or alter either or both of
1930 the requirements of this subparagraph as to such types of cases or
1931 situations with respect to which it finds that compliance with
1932 such requirements would be oppressive or would be inconsistent
1933 with the purposes of this chapter; and

1934 (ii) He participates in reemployment services,
1935 such as job search assistance services, if, in accordance with a
1936 profiling system established by the department, it has been
1937 determined that he is likely to exhaust regular benefits and needs
1938 reemployment services, unless the department determines that:

1939 1. The individual has completed such
1940 services; or

1941 2. There is justifiable cause for the
1942 claimant's failure to participate in such services.

1943 (b) He has made a claim for benefits in accordance with
1944 the provisions of Section 71-5-515 and in accordance with such
1945 regulations as the department may prescribe thereunder.

1946 (c) He is able to work and is available for work.

1947 (d) He has been unemployed for a waiting period of one
1948 (1) week. No week shall be counted as a week of unemployment for
1949 the purposes of this subsection:

1950 (i) Unless it occurs within the benefit year which
1951 includes the week with respect to which he claims payment of
1952 benefits;

1953 (ii) If benefits have been paid with respect
1954 thereto;

1955 (iii) Unless the individual was eligible for
1956 benefits with respect thereto, as provided in Sections 71-5-511
1957 and 71-5-513, except for the requirements of this subsection.

1958 (e) For weeks beginning on or before July 1, 1982, he
1959 has, during his base period, been paid wages for insured work
1960 equal to not less than thirty-six (36) times his weekly benefit
1961 amount; he has been paid wages for insured work during at least
1962 two (2) quarters of his base period; and he has, during that
1963 quarter of his base period in which his total wages were highest,
1964 been paid wages for insured work equal to not less than sixteen
1965 (16) times the minimum weekly benefit amount. For benefit years
1966 beginning after July 1, 1982, he has, during his base period, been
1967 paid wages for insured work equal to not less than forty (40)
1968 times his weekly benefit amount; he has been paid wages for
1969 insured work during at least two (2) quarters of his base period,
1970 and he has, during that quarter of his base period in which his
1971 total wages were highest, been paid wages for insured work equal
1972 to not less than twenty-six (26) times the minimum weekly benefit
1973 amount. For purposes of this subsection, wages shall be counted

1974 as "wages for insured work" for benefit purposes with respect to
1975 any benefit year only if such benefit year begins subsequent to
1976 the date on which the employing unit by which such wages were paid
1977 has satisfied the conditions of Section 71-5-11, subsection I, or
1978 Section 71-5-361, subsection (3), with respect to becoming an
1979 employer.

1980 (f) No individual may receive benefits in a benefit
1981 year unless, subsequent to the beginning of the next preceding
1982 benefit year during which he received benefits, he performed
1983 service in "employment" as defined in Section 71-5-11, subsection
1984 J, and earned remuneration for such service in an amount equal to
1985 not less than eight (8) times his weekly benefit amount applicable
1986 to his next preceding benefit year.

1987 (g) Benefits based on service in employment defined in
1988 Section 71-5-11, subsection J(3) and J(4), and Section 71-5-361,
1989 subsection (4) shall be payable in the same amount, on the same
1990 terms, and subject to the same conditions as compensation payable
1991 on the basis of other service subject to this chapter, except that
1992 benefits based on service in an instructional, research or
1993 principal administrative capacity in an institution of higher
1994 learning (as defined in Section 71-5-11, subsection O) with
1995 respect to service performed prior to January 1, 1978, shall not
1996 be paid to an individual for any week of unemployment which begins
1997 during the period between two (2) successive academic years, or
1998 during a similar period between two (2) regular terms, whether or
1999 not successive, or during a period of paid sabbatical leave
2000 provided for in the individual's contract, if the individual has a
2001 contract or contracts to perform services in any such capacity for
2002 any institution or institutions of higher learning for both such
2003 academic years or both such terms.

2004 (h) Benefits based on service in employment defined in
2005 Section 71-5-11, subsection J(3) and J(4), shall be payable in the
2006 same amount, on the same terms and subject to the same conditions

2007 as compensation payable on the basis of other service subject to
2008 this chapter; except that:

2009 (i) With respect to service performed in an
2010 instructional, research or principal administrative capacity for
2011 an educational institution, benefits shall not be paid based on
2012 such services for any week of unemployment commencing during the
2013 period between two (2) successive academic years, or during a
2014 similar period between two (2) regular but not successive terms,
2015 or during a period of paid sabbatical leave provided for in the
2016 individual's contract, to any individual, if such individual
2017 performs such services in the first of such academic years or
2018 terms and if there is a contract or a reasonable assurance that
2019 such individual will perform services in any such capacity for any
2020 educational institution in the second of such academic years or
2021 terms, and provided that Section 71-5-511, subsection (g), shall
2022 apply with respect to such services prior to January 1, 1978. In
2023 no event shall benefits be paid unless the individual employee was
2024 terminated by the employer.

2025 (ii) With respect to services performed in any
2026 other capacity for an educational institution, benefits shall not
2027 be paid on the basis of such services to any individual for any
2028 week which commences during a period between two (2) successive
2029 academic years or terms, if such individual performs such services
2030 in the first of such academic years or terms and there is a
2031 reasonable assurance that such individual will perform such
2032 services in the second of such academic years or terms, except
2033 that if compensation is denied to any individual under this
2034 subparagraph and such individual was not offered an opportunity to
2035 perform such services for the educational institution for the
2036 second of such academic years or terms, such individual shall be
2037 entitled to a retroactive payment of compensation for each week
2038 for which the individual filed a timely claim for compensation and
2039 for which compensation was denied solely by reason of this clause.

2040 In no event shall benefits be paid unless the individual employee
2041 was terminated by the employer.

2042 (iii) With respect to services described in
2043 subsection (h)(i) and (ii), benefits shall not be payable on the
2044 basis of services in any such capacities to any individual for any
2045 week which commences during an established and customary vacation
2046 period or holiday recess if such individual performs such services
2047 in the first of such academic years or terms, or in the period
2048 immediately before such vacation period or holiday recess, and
2049 there is a reasonable assurance that such individual will perform
2050 such services in the period immediately following such vacation
2051 period or holiday recess.

2052 (iv) With respect to any services described in
2053 subsection (h)(i) and (ii), benefits shall not be payable on the
2054 basis of services in any such capacities as specified in
2055 subsection (h)(i), (ii) and (iii) to any individual who performed
2056 such services in an educational institution while in the employ of
2057 an educational service agency. For purposes of this subsection,
2058 the term "educational service agency" means a governmental agency
2059 or governmental entity which is established and operated
2060 exclusively for the purpose of providing such services to one or
2061 more educational institutions.

2062 (v) With respect to services to which Sections
2063 71-5-357 and 71-5-359 apply, if such services are provided to or
2064 on behalf of an educational institution, benefits shall not be
2065 payable under the same circumstances and subject to the same terms
2066 and conditions as described in subsection (h)(i), (ii), (iii) and
2067 (iv).

2068 (i) Subsequent to December 31, 1977, benefits shall not
2069 be paid to any individual on the basis of any services
2070 substantially all of which consist of participating in sports or
2071 athletic events or training or preparing to so participate, for
2072 any week which commences during the period between two (2)

2073 successive sports seasons (or similar periods) if such individual
2074 performs such services in the first of such seasons (or similar
2075 periods) and there is a reasonable assurance that such individual
2076 will perform such services in the later of such seasons (or
2077 similar periods).

2078 (j) (i) Subsequent to December 31, 1977, benefits
2079 shall not be payable on the basis of services performed by an
2080 alien, unless such alien is an individual who was lawfully
2081 admitted for permanent residence at the time such services were
2082 performed, was lawfully present for purposes of performing such
2083 services, or was permanently residing in the United States under
2084 color of law at the time such services were performed (including
2085 an alien who was lawfully present in the United States as a result
2086 of the application of the provisions of Section 203(a)(7) or
2087 Section 212(d)(5) of the Immigration and Nationality Act).

2088 (ii) Any data or information required of
2089 individuals applying for benefits to determine whether benefits
2090 are not payable to them because of their alien status shall be
2091 uniformly required from all applicants for benefits.

2092 (iii) In the case of an individual whose
2093 application for benefits would otherwise be approved, no
2094 determination that benefits to such individual are not payable
2095 because of his alien status shall be made, except upon a
2096 preponderance of the evidence.

2097 (k) An individual shall be deemed prima facie
2098 unavailable for work, and therefore ineligible to receive
2099 benefits, during any period which, with respect to his employment
2100 status, is found by the department to be a holiday or vacation
2101 period.

2102 (l) A temporary employee of a temporary help firm is
2103 considered to have left the employee's last work voluntarily
2104 without good cause connected with the work if the temporary
2105 employee does not contact the temporary help firm for reassignment

2106 on completion of an assignment. A temporary employee is not
2107 considered to have left work voluntarily without good cause
2108 connected with the work under this paragraph unless the temporary
2109 employee has been advised in writing:

2110 (i) That the temporary employee is obligated to
2111 contact the temporary help firm on completion of assignments; and

2112 (ii) That unemployment benefits may be denied if
2113 the temporary employee fails to do so.

2114 **SECTION 14.** Section 71-5-513, Mississippi Code of 1972, is
2115 amended as follows:

2116 71-5-513. A. An individual shall be disqualified for
2117 benefits:

2118 (1) (a) For the week, or fraction thereof, which
2119 immediately follows the day on which he left work voluntarily
2120 without good cause, if so found by the department, and for each
2121 week thereafter until he has earned remuneration for personal
2122 services performed for an employer, as in this chapter defined,
2123 equal to not less than eight (8) times his weekly benefit amount,
2124 as determined in each case; however, marital, filial and domestic
2125 circumstances and obligations shall not be deemed good cause
2126 within the meaning of this subsection. Pregnancy shall not be
2127 deemed to be a marital, filial or domestic circumstance for the
2128 purpose of this subsection.

2129 (b) For the week, or fraction thereof, which
2130 immediately follows the day on which he was discharged for
2131 misconduct connected with his work, if so found by the department,
2132 and for each week thereafter until he has earned remuneration for
2133 personal services performed for an employer, as in this chapter
2134 defined, equal to not less than eight (8) times his weekly benefit
2135 amount, as determined in each case.

2136 (c) The burden of proof of good cause for leaving
2137 work shall be on the claimant, and the burden of proof of
2138 misconduct shall be on the employer.

2139 (2) For the week, or fraction thereof, with respect to
2140 which he willfully makes a false statement, a false representation
2141 of fact, or willfully fails to disclose a material fact for the
2142 purpose of obtaining or increasing benefits under the provisions
2143 of this law, if so found by the department, and such individual's
2144 maximum benefit allowance shall be reduced by the amount of
2145 benefits so paid to him during any such week of disqualification;
2146 and additional disqualification shall be imposed for a period not
2147 exceeding fifty-two (52) weeks, the length of such period of
2148 disqualification and the time when such period begins to be
2149 determined by the department, in its discretion, according to the
2150 circumstances in each case.

2151 (3) If the department finds that he has failed, without
2152 good cause, either to apply for available suitable work when so
2153 directed by the employment office or the department, to accept
2154 suitable work when offered him, or to return to his customary
2155 self-employment (if any) when so directed by the department, such
2156 disqualification shall continue for the week in which such failure
2157 occurred and for not more than the twelve (12) weeks which
2158 immediately follow such week, as determined by the department
2159 according to the circumstances in each case.

2160 (a) In determining whether or not any work is
2161 suitable for an individual, the department shall consider among
2162 other factors the degree of risk involved to his health, safety
2163 and morals, his physical fitness and prior training, his
2164 experience and prior earnings, his length of unemployment and
2165 prospects for securing local work in his customary occupation, and
2166 the distance of the available work from his residence; however,
2167 offered employment paying the minimum wage or higher, if such
2168 minimum or higher wage is that prevailing for his customary
2169 occupation or similar work in the locality, shall be deemed to be
2170 suitable employment after benefits have been paid to the
2171 individual for a period of eight (8) weeks.

2172 (b) Notwithstanding any other provisions of this
2173 chapter, no work shall be deemed suitable and benefits shall not
2174 be denied under this chapter to any otherwise eligible individual
2175 for refusing to accept new work under any of the following
2176 conditions:

2177 (i) If the position offered is vacant due
2178 directly to a strike, lockout or other labor dispute;

2179 (ii) If the wages, hours or other conditions
2180 of the work offered are substantially unfavorable or unreasonable
2181 to the individual's work. * * * The department shall have the
2182 sole discretion to determine whether or not there has been an
2183 unfavorable or unreasonable condition placed on the individual's
2184 work. Moreover, the department may consider, but shall not be
2185 limited to a consideration of, whether or not the unfavorable
2186 condition was applied by the employer to all workers in the same
2187 or similar class or merely to this individual;

2188 (iii) If as a condition of being employed the
2189 individual would be required to join a company union or to resign
2190 from or refrain from joining any bona fide labor organization;

2191 (iv) If unsatisfactory or hazardous working
2192 conditions exist that could result in a danger to the physical or
2193 mental well-being of the worker. In any such determination the
2194 department shall consider, but shall not be limited to a
2195 consideration of, the following: the safety measures used or the
2196 lack thereof and the condition of equipment or lack of proper
2197 equipment. No work shall be considered hazardous if the working
2198 conditions surrounding a worker's employment are the same or
2199 substantially the same as the working conditions generally
2200 prevailing among workers performing the same or similar work for
2201 other employers engaged in the same or similar type of activity.

2202 (4) For any week with respect to which the department
2203 finds that his total unemployment is due to a stoppage of work
2204 which exists because of a labor dispute at a factory,

2205 establishment or other premises at which he is or was last
2206 employed; however, this subsection shall not apply if it is shown
2207 to the satisfaction of the department:

2208 (a) He is unemployed due to a stoppage of work
2209 occasioned by an unjustified lockout, if such lockout was not
2210 occasioned or brought about by such individual acting alone or
2211 with other workers in concert; or

2212 (b) He is not participating in or directly
2213 interested in the labor dispute which caused the stoppage of work;
2214 and

2215 (c) He does not belong to a grade or class of
2216 workers of which, immediately before the commencement of stoppage,
2217 there were members employed at the premises at which the stoppage
2218 occurs, any of whom are participating in or directly interested in
2219 the dispute.

2220 If in any case separate branches of work which are commonly
2221 conducted as separate businesses in separate premises are
2222 conducted in separate departments of the same premises, each such
2223 department shall, for the purposes of this subsection, be deemed
2224 to be a separate factory, establishment or other premises.

2225 (5) For any week with respect to which he has received
2226 or is seeking unemployment compensation under an unemployment
2227 compensation law of another state or of the United States.

2228 However, if the appropriate agency of such other state or of the
2229 United States finally determines that he is not entitled to such
2230 unemployment compensation benefits, this disqualification shall
2231 not apply. Nothing in this subsection contained shall be
2232 construed to include within its terms any law of the United States
2233 providing unemployment compensation or allowances for honorably
2234 discharged members of the Armed Forces.

2235 (6) For any week with respect to which he is receiving
2236 or has received remuneration in the form of payments under any
2237 governmental or private retirement or pension plan, system or

2238 policy which a base-period employer is maintaining or contributing
2239 to or has maintained or contributed to on behalf of the
2240 individual; however, if the amount payable with respect to any
2241 week is less than the benefits which would otherwise be due under
2242 Section 71-5-501, he shall be entitled to receive for such week,
2243 if otherwise eligible, benefits reduced by the amount of such
2244 remuneration. However, on or after the first Sunday immediately
2245 following July 1, 2001, no social security payments, to which the
2246 employee has made contributions, shall be deducted from
2247 unemployment benefits paid for any period of unemployment
2248 beginning on or after the first Sunday following July 1, 2001.
2249 This one hundred percent (100%) exclusion shall not apply to any
2250 other governmental or private retirement or pension plan, system
2251 or policy. If benefits payable under this section, after being
2252 reduced by the amount of such remuneration, are not a multiple of
2253 One Dollar (\$1.00), they shall be adjusted to the next lower
2254 multiple of One Dollar (\$1.00).

2255 (7) For any week with respect to which he is receiving
2256 or has received remuneration in the form of a back pay award, or
2257 other compensation allocable to any week, whether by settlement or
2258 otherwise. Any benefits previously paid for weeks of unemployment
2259 with respect to which back pay awards, or other such compensation,
2260 are made shall constitute an overpayment and such amounts shall be
2261 deducted from the award by the employer prior to payment to the
2262 employee, and shall be transmitted promptly to the department by
2263 the employer for application against the overpayment and credit to
2264 the claimant's maximum benefit amount and prompt deposit into the
2265 fund; however, the removal of any charges made against the
2266 employer as a result of such previously paid benefits shall be
2267 applied to the calendar year and the calendar quarter in which the
2268 overpayment is transmitted to the department, and no attempt shall
2269 be made to relate such a credit to the period to which the award
2270 applies. Any amount of overpayment so deducted by the employer

2271 and not transmitted to the department shall be subject to the same
2272 procedures for collection as is provided for contributions by
2273 Sections 71-5-363 through 71-5-381. Any amount of overpayment not
2274 deducted by the employer shall be established as an overpayment
2275 against the claimant and collected as provided above. It is the
2276 purpose of this paragraph to assure equity in the situations to
2277 which it applies, and it shall be construed accordingly.

2278 B. Notwithstanding any other provision in this chapter, no
2279 otherwise eligible individual shall be denied benefits for any
2280 week because he is in training with the approval of the
2281 department; nor shall such individual be denied benefits with
2282 respect to any week in which he is in training with the approval
2283 of the department by reason of the application of provisions in
2284 Section 71-5-511, subsection (c), relating to availability for
2285 work, or the provisions of subsection A(3) of this section,
2286 relating to failure to apply for, or a refusal to accept, suitable
2287 work.

2288 C. Notwithstanding any other provisions of this chapter, no
2289 otherwise eligible individual shall be denied benefits for any
2290 week because he or she is in training approved under Section
2291 236(a)(1) of the Trade Act of 1974, nor shall such individual be
2292 denied benefits by reason of leaving work to enter such training,
2293 provided the work left is not suitable employment, or because of
2294 the application to any such week in training of provisions in this
2295 law (or any applicable federal unemployment compensation law),
2296 relating to availability for work, active search for work or
2297 refusal to accept work.

2298 For purposes of this section, the term "suitable employment"
2299 means with respect to an individual, work of a substantially equal
2300 or higher skill level than the individual's past adversely
2301 affected employment (as defined for purposes of the Trade Act of
2302 1974), and wages for such work at not less than eighty percent

2303 (80%) of the individual's average weekly wage as determined for
2304 the purposes of the Trade Act of 1974.

2305 **SECTION 15.** Section 71-5-517, Mississippi Code of 1972, is
2306 amended as follows:

2307 71-5-517. Upon the taking of a claim by the department, an
2308 initial determination thereon shall be made promptly and shall
2309 include a determination with respect to whether or not benefits
2310 are payable, the week with respect to which benefits shall
2311 commence, the weekly benefit amount payable and the maximum
2312 duration of benefits. In any case in which the payment or denial
2313 of benefits will be determined by the provisions of subsection
2314 A(4) of Section 71-5-513, the examiner shall promptly transmit all
2315 the evidence with respect to that subsection to the department,
2316 which, on the basis of evidence so submitted and such additional
2317 evidence as it may require, shall make an initial determination
2318 with respect thereto. An initial determination may for good cause
2319 be reconsidered. The claimant, his most recent employing unit and
2320 all employers whose experience-rating record would be charged with
2321 benefits pursuant to such determination shall be promptly notified
2322 of such initial determination or any amended initial determination
2323 and the reason therefor. Benefits shall be denied or, if the
2324 claimant is otherwise eligible, promptly paid in accordance with
2325 the initial determination or amended initial determination. The
2326 jurisdiction of the department over benefit claims which have not
2327 been appealed shall be continuous. The claimant or any party to
2328 the initial determination or amended initial determination may
2329 file an appeal from such initial determination or amended initial
2330 determination within fourteen (14) days after notification
2331 thereof, or after the date such notification was sent to his last
2332 known address.

2333 Notwithstanding any other provision of this section, benefits
2334 shall be paid promptly in accordance with a determination or
2335 redetermination, or the decision of an appeal tribunal, the Board

2336 of Review or a reviewing court upon the issuance of such
2337 determination, redetermination or decision in favor of the
2338 claimant (regardless of the pendency of the period to apply for
2339 reconsideration, file an appeal, or petition for judicial review,
2340 as the case may be, or the pendency of any such application,
2341 filing or petition), unless and until such determination,
2342 redetermination or decision has been modified or reversed by a
2343 subsequent redetermination or decision, in which event benefits
2344 shall be paid or denied in accordance with such modifying or
2345 reversing redetermination or decision. Any benefits finally
2346 determined to have been erroneously paid may be set up as an
2347 overpayment to the claimant and must be liquidated before any
2348 future benefits can be paid to the claimant. If, subsequent to
2349 such initial determination or amended initial determination,
2350 benefits with respect to any week for which a claim has been filed
2351 are denied for reasons other than matters included in the initial
2352 determination or amended initial determination, the claimant shall
2353 be promptly notified of the denial and the reason therefor and may
2354 appeal therefrom in accordance with the procedure herein described
2355 for appeals from initial determination or amended initial
2356 determination.

2357 **SECTION 16.** Section 71-5-519, Mississippi Code of 1972, is
2358 amended as follows:

2359 71-5-519. Unless such appeal is withdrawn, an appeal
2360 tribunal appointed by the executive director, after affording the
2361 parties reasonable opportunity for fair hearing, shall affirm,
2362 modify or reverse the findings of fact and initial determination
2363 or amended initial determination. The parties shall be duly
2364 notified of such tribunal's decision, together with its reasons
2365 therefor, which shall be deemed to be the final decision of the
2366 executive director unless, within fourteen (14) days after the
2367 date of notification * * * of such decision, further appeal is
2368 initiated pursuant to Section 71-5-523.

2369 **SECTION 17.** Section 71-5-529, Mississippi Code of 1972, is
2370 amended as follows:

2371 71-5-529. Any decision of the Board of Review, in the
2372 absence of an appeal therefrom as herein provided, shall become
2373 final ten (10) days after the date of notification * * *; and
2374 judicial review thereof shall be permitted only after any party
2375 claiming to be aggrieved thereby has exhausted his administrative
2376 remedies as provided by this chapter. The department shall be
2377 deemed to be a party to any judicial action involving any such
2378 decision, and may be represented in any such judicial action by
2379 any qualified attorney employed by the department and designated
2380 by it for that purpose or, at the department's request, by the
2381 Attorney General.

2382 **SECTION 18.** Section 11-35-23, Mississippi Code of 1972, is
2383 amended as follows:

2384 11-35-23. (1) Except for wages, salary or other
2385 compensation, all property in the hands of the garnishee belonging
2386 to the defendant at the time of the service of the writ of
2387 garnishment shall be bound by and subject to the lien of the
2388 judgment, decree or attachment on which the writ shall have been
2389 issued. If the garnishee shall surrender such property to the
2390 sheriff or other officer serving the writ, the officer shall
2391 receive the same and, in case the garnishment issued on a judgment
2392 or decree, shall make sale thereof as if levied on by virtue of an
2393 execution, and return the money arising therefrom to satisfy the
2394 judgment; and if the garnishment issued on an attachment, the
2395 officer shall dispose of the property as if it were levied upon by
2396 a writ of attachment. And any indebtedness of the garnishee to
2397 the defendant, except for wages, salary or other compensation,
2398 shall be bound from the time of the service of the writ of
2399 garnishment, and be appropriable to the satisfaction of the
2400 judgment or decree, or liable to be condemned in the attachment.

2401 (2) The court issuing any writ of garnishment shall show
2402 thereon the amount of the claim of the plaintiff and the court
2403 costs in the proceedings and should at any time during the
2404 pendency of said proceedings in the court a judgment be rendered
2405 for a different amount, then the court shall notify the garnishee
2406 of the correct amount due by the defendant under said writ.

2407 (3) (a) Except for judgments, liens, attachments, fees or
2408 charges owed to the state or its political subdivisions; wages,
2409 salary or other compensation in the hands of the garnishee
2410 belonging to the defendant at the time of the service of the writ
2411 of garnishment shall not be bound by nor subject to the lien of
2412 the judgment, decree or attachment on which the writ shall have
2413 been issued when the writ of garnishment is issued on a judgment
2414 based upon a claim or debt that is less than One Hundred Dollars
2415 (\$100.00), excluding court costs.

2416 (b) If the garnishee be indebted or shall become
2417 indebted to the defendant for wages, salary or other compensation
2418 during the first thirty (30) days after service of a proper writ
2419 of garnishment, the garnishee shall pay over to the employee all
2420 of such indebtedness, and thereafter, the garnishee shall retain
2421 and the writ shall bind the nonexempt percentage of disposable
2422 earnings, as provided by Section 85-3-4, for such period of time
2423 as is necessary to accumulate a sum equal to the amount shown on
2424 the writ as due * * *, even if such period of time extends beyond
2425 the return day of the writ. Unless the court otherwise authorizes
2426 the garnishee to make earlier payments or releases and except as
2427 otherwise provided in this section, the garnishee shall retain all
2428 sums collected pursuant to the writ and make only one (1) payment
2429 into court at such time as the total amount shown due on the writ
2430 has been accumulated, provided that, at least one (1) payment per
2431 year shall be made to the court of the amount that has been
2432 withheld during the preceding year. Should the employment of the
2433 defendant for any reason be terminated with the garnishee, then

2434 the garnishee shall not later than fifteen (15) days after the
2435 termination of such employment, report such termination to the
2436 court and pay into the court all sums as have been withheld from
2437 the defendant's disposable earnings. If the plaintiff in
2438 garnishment contest the answer of the garnishee, as now provided
2439 by law in such cases, and proves to the court the deficiency or
2440 untruth of the garnishee's answer, then the court shall render
2441 judgment against the garnishee for such amount as would have been
2442 subject to the writ had the said sum not been released to the
2443 defendant; provided, however, any garnishee who files a timely and
2444 complete answer shall not be liable for any error made in good
2445 faith in determining or withholding the amount of wages, salary or
2446 other compensation of a defendant which are subject to the writ.

2447 (4) Wages, salaries or other compensation as used in this
2448 section shall mean wages, salaries, commissions, bonuses or other
2449 compensation paid for employment purposes only.

2450 (5) The circuit clerk may, in his or her discretion, spread
2451 on the minutes of the county or circuit court, as the case may be,
2452 an instruction that all garnishment defendants shall send all
2453 garnishment monies to the attorney of record or in the case where
2454 there is more than one (1) attorney of record, then to the
2455 first-named attorney of record, and not to the clerk. The payment
2456 schedule shall be the same as subsection (3)(b) of this section.

2457 (6) All payments made pursuant to a garnishment issued out
2458 of the justice court shall be made directly to the plaintiff or to
2459 the plaintiff's attorney as indicated by the plaintiff in his or
2460 her suggestion for writ of garnishment. The employer shall notify
2461 the court and the plaintiff or the plaintiff's attorney when a
2462 judgment is satisfied or when the employee is no longer employed
2463 by the employer.

2464 (7) If the plaintiff in a garnishment is the Department of
2465 Employment Security, the garnishee shall make monthly payments to

2466 the department until such time as the total amount shown due on
2467 the writ has been accumulated.

2468 **SECTION 19.** This act shall take effect and be in force from
2469 and after July 1, 2007.