

By: Representative Bell

To: Appropriations

HOUSE BILL NO. 932

1 AN ACT TO AMEND SECTIONS 71-5-5, 71-5-7, 71-5-11, 71-5-19,
2 71-5-351, 71-5-353, 71-5-355, 71-5-367, 71-5-389, 71-5-453,
3 71-5-455, 71-5-505 AND 71-5-511, MISSISSIPPI CODE OF 1972, TO
4 PLACE ADMINISTRATIVE CONTROL OVER THE UNEMPLOYMENT TRUST FUND AND
5 THE UNEMPLOYMENT COMPENSATION FUND EXCLUSIVELY IN THE MISSISSIPPI
6 DEPARTMENT OF EMPLOYMENT SECURITY (MDES); TO REVISE CERTAIN TERMS
7 IN THE MISSISSIPPI EMPLOYMENT SECURITY LAW; TO GIVE THE MDES THE
8 AUTHORITY TO ADMINISTRATIVELY ISSUE GARNISHMENTS TO COLLECT
9 DELINQUENT EMPLOYER TAXES AND RECOVER UNEMPLOYMENT BENEFIT
10 OVERPAYMENTS; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE MDES TO
11 GRANT EXTENSIONS OF TIME TO FILE CERTAIN REPORTS UNDER CERTAIN
12 CIRCUMSTANCES; TO PROVIDE ADDITIONAL FUNDS FOR THE MISSISSIPPI
13 WORKFORCE ENHANCEMENT TRAINING FUND FOR ONE CALENDAR YEAR; TO
14 PROVIDE THAT AN EMPLOYER SHALL BE CHARGED AGAINST HIS EXPERIENCE
15 RATING IF THE EMPLOYER FAILS TO RESPOND ADEQUATELY OR TIMELY TO A
16 REQUEST OF THE MDES FOR INFORMATION RELATING TO AN UNEMPLOYMENT
17 CLAIM THAT WAS SUBSEQUENTLY DETERMINED IMPROPERLY PAID AND THE
18 EMPLOYER HAS DEMONSTRATED A PATTERN OF FAILING TO RESPOND TIMELY
19 OR ADEQUATELY TO SUCH REQUESTS; TO REVISE THE MANNER IN WHICH
20 NOTICE IS GIVEN TO A TAXPAYER OF A HEARING TO PROTEST A SETOFF
21 AGAINST THE TAXPAYER'S STATE INCOME TAX REFUND FOR DEBTS THE
22 TAXPAYER OWES THE MDES; TO PROVIDE THAT THE ONE WEEK WAITING
23 PERIOD FOR UNEMPLOYMENT BENEFITS MAY BE WAIVED ONLY UPON A
24 PRESIDENTIAL DISASTER DECLARATION AUTHORIZING ASSISTANCE TO
25 INDIVIDUALS AND ONLY IN AREAS IDENTIFIED IN THE DISASTER
26 DECLARATION FOR INDIVIDUAL ASSISTANCE; TO REQUIRE THAT AN
27 UNEMPLOYED INDIVIDUAL MUST BE ACTIVELY SEEKING WORK TO BE ELIGIBLE
28 TO RECEIVE BENEFITS; TO AMEND SECTIONS 71-5-13, 71-5-357, 71-5-361
29 AND 71-5-501, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND
30 FOR RELATED PURPOSES.

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



32 **SECTION 1.** Section 71-5-5, Mississippi Code of 1972, is
33 amended as follows:

34 71-5-5. The Legislature finds and declares that the
35 existence and continued operation of a federal tax upon employers,
36 against which some portion of the contributions required under
37 this chapter may be credited, will protect Mississippi employers
38 from undue disadvantages in their competition with employers in
39 other states. If at any time, upon a formal complaint to the
40 Governor, he shall find that Title IX of the Social Security Act
41 has been amended or repealed by Congress or has been held
42 unconstitutional by the Supreme Court of the United States, and
43 that, as a result thereof, the provisions of this chapter
44 requiring Mississippi employers to pay contributions will subject
45 them to a serious competitive disadvantage in relation to
46 employers in other states, he shall publish such findings and
47 proclaim that the operation of the provisions of this chapter
48 requiring the payment of contributions and benefits shall be
49 suspended for a period of not more than six (6) months. The
50 Department of Employment Security shall thereupon requisition from
51 the Unemployment Trust Fund all monies therein standing to its
52 credit, and shall * * * deposit such monies, together with any
53 other monies in the Unemployment Compensation Fund, as a special
54 fund in any banks or public depositories in this state in which
55 general funds of the state may be deposited.



56 In all other cases, and unless the Governor shall issue such
57 proclamation, this chapter shall remain in full force and effect.

58 If within the aforesaid six-month period the Governor shall
59 find that other federal legislation has been enacted which avoids
60 the competitive disadvantage herein described, he shall forthwith
61 publicly so proclaim, and upon the date of such proclamation, the
62 provisions of this chapter requiring the payment of contributions
63 and benefits shall again become fully operative as of the date of
64 such suspension with the same effect as if such suspension had not
65 occurred. If within such six-month period no such other federal
66 legislation is enacted or the Legislature of this state has not
67 otherwise prescribed, the Department of Employment Security shall,
68 under regulations prescribed by it, refund, without interest, to
69 each employer by whom contributions have been paid his pro rata
70 share of the total contributions paid under this chapter. Any
71 interest or earnings of the fund shall be available to the
72 Department of Employment Security to pay for the costs of making
73 such refunds. When the Department of Employment Security shall
74 have executed the duties herein prescribed and performed such
75 other acts as are incidental to the termination of its duties
76 under this chapter, the Governor shall, by public proclamation,
77 declare that the provisions of this chapter, in their entirety,
78 shall cease to be operative.

79 **SECTION 2.** Section 71-5-7, Mississippi Code of 1972, is
80 amended as follows:



81 71-5-7. If at any time the provisions of this chapter
82 requiring the payment of contributions and benefits shall be held
83 invalid under the Constitution of this state by the Supreme Court
84 of this state or invalid under the United States Constitution by
85 the Supreme Court of the United States, the * * * department shall
86 forthwith requisition from the unemployment trust fund all monies
87 therein standing to the credit of the * * * department, and
88 shall * * * deposit such monies, together with any other monies in
89 the unemployment compensation fund, in any banks or public
90 depositories in this state in which general funds of the state may
91 be deposited. If within six (6) months after the date of such
92 decision the Legislature of this state enacts a new unemployment
93 compensation law, such monies shall be paid into the unemployment
94 compensation fund established thereunder. If within such
95 six-month period the Legislature of this state has not enacted a
96 new unemployment compensation law, the * * * department shall,
97 under regulations prescribed by it, refund, without interest, to
98 each employer by whom contributions have been paid, his pro rata
99 share of the total contributions paid under this chapter. Any
100 interest or earnings of the fund shall be available to the * * *
101 department to pay for the costs of making such refunds. The
102 provisions of this chapter, so far as necessary to the execution
103 by the * * * department of the duties prescribed in this section
104 and to the performance of such other acts as are incidental to the



105 termination of its duties under this chapter, shall remain in full
106 force and effect until the completion thereof.

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

109 71-5-11. As used in this chapter, unless the context clearly
110 requires otherwise:

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

114 * * *

115 * * *B. "Benefit year" with respect to any individual means
116 the period beginning with the first day of the first week with
117 respect to which he first files a valid claim for benefits, and
118 ending with the day preceding the same day of the same month in
119 the next calendar year; and, thereafter, the period beginning with
120 the first day of the first week with respect to which he next
121 files his valid claim for benefits, and ending with the day
122 preceding the same day of the same month in the next calendar
123 year. Any claim for benefits made in accordance with Section
124 71-5-515 shall be deemed to be a "valid claim" for purposes of
125 this subsection if the individual has been paid the wages for
126 insured work required under Section 71-5-511(e).

127 * * *C. "Contributions" means the money payments to the
128 State Unemployment Compensation Fund required by this chapter.



129 * * *D. "Calendar quarter" means the period of three (3)
130 consecutive calendar months ending on March 31, June 30, September
131 30, or December 31.

132 * * *E. "Department" or "commission" means the Mississippi
133 Department of Employment Security, Office of the Governor.

134 * * *F. "Executive director" means the Executive Director
135 of the Mississippi Department of Employment Security, Office of
136 the Governor, appointed under Section 71-5-107.

137 * * *G. "Employing unit" means this state or another state
138 or any instrumentalities or any political subdivisions thereof or
139 any of their instrumentalities or any instrumentality of more than
140 one (1) of the foregoing or any instrumentality of any of the
141 foregoing and one or more other states or political subdivisions,
142 any Indian tribe as defined in Section 3306(u) of the Federal
143 Unemployment Tax Act (FUTA), which includes any subdivision,
144 subsidiary or business enterprise wholly owned by such Indian
145 tribe, any individual or type of organization, including any
146 partnership, association, trust, estate, joint-stock company,
147 insurance company, or corporation, whether domestic or foreign, or
148 the receiver, trustee in bankruptcy, trustee or successor thereof,
149 or the legal representative of a deceased person, which has or had
150 in its employ one or more individuals performing services for it
151 within this state. All individuals performing services within
152 this state for any employing unit which maintains two (2) or more
153 separate establishments within this state shall be deemed to be



154 employed by a single employing unit for all the purposes of this
155 chapter. Each individual employed to perform or to assist in
156 performing the work of any agent or employee of an employing unit
157 shall be deemed to be employed by such employing unit for all
158 purposes of this chapter, whether such individual was hired or
159 paid directly by such employing unit or by such agent or employee,
160 provided the employing unit had actual or constructive knowledge
161 of the work. All individuals performing services in the employ of
162 an elected fee-paid county official, other than those related by
163 blood or marriage within the third degree computed by the rule of
164 the civil law to such fee-paid county official, shall be deemed to
165 be employed by such county as the employing unit for all the
166 purposes of this chapter. For purposes of defining an "employing
167 unit" which shall pay contributions on remuneration paid to
168 individuals, if two (2) or more related corporations concurrently
169 employ the same individual and compensate such individual through
170 a common paymaster which is one (1) of such corporations, then
171 each such corporation shall be considered to have paid as
172 remuneration to such individual only the amounts actually
173 disbursed by it to such individual and shall not be considered to
174 have paid as remuneration to such individual such amounts actually
175 disbursed to such individual by another of such corporations.

176 * * *H. "Employer" means:

177 (1) Any employing unit which,



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

182 (b) For some portion of a day in each of twenty
183 (20) different calendar weeks, whether or not such weeks were
184 consecutive, in either the current or the preceding calendar year
185 had in employment at least one (1) individual (irrespective of
186 whether the same individual was in employment in each such day),
187 except as provided in paragraph (9) of this subsection;

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

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

192 (4) (a) Any employing unit for which agricultural
193 labor, as defined in subsection * * * I(6) of this section, is
194 performed;

195 (b) Any employing unit for which domestic service
196 in employment, as defined in subsection * * * I(7) of this
197 section, is performed;

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



202 (6) Any individual or employing unit which acquired its
203 organization, trade, business, or substantially all the assets
204 thereof, from another employing unit, if the employment record of
205 the acquiring individual or employing unit subsequent to such
206 acquisition, together with the employment record of the acquired
207 organization, trade, or business prior to such acquisition, both
208 within the same calendar year, would be sufficient to constitute
209 an employing unit as an employer subject to this chapter under
210 paragraph (1) or (3) of this subsection;

211 (7) Any employing unit which, having become an employer
212 under paragraph (1), (3), (5) or (6) of this subsection or under
213 any other provisions of this chapter, has not, under Section
214 71-5-361, ceased to be an employer subject to this chapter;

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

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

223 (b) In determining whether or not an employing
224 unit for which service other than agricultural labor is also
225 performed is an employer under paragraph (1) or (4)(b) of this
226 subsection, the wages earned or the employment of an employee



227 performing services in agricultural labor, shall not be taken into
228 account. If an employing unit is determined an employer of
229 agricultural labor, such employing unit shall be determined an
230 employer for purposes of paragraph (1) of this subsection;

231 (10) All entities utilizing the services of any
232 employee leasing firm shall be considered the employer of the
233 individuals leased from the employee leasing firm. Temporary help
234 firms shall be considered the employer of the individuals they
235 provide to perform services for other individuals or
236 organizations.

237 * * *I. "Employment" means and includes:

238 (1) Any service performed, which was employment as
239 defined in this section and, subject to the other provisions of
240 this subsection, including service in interstate commerce,
241 performed for wages or under any contract of hire, written or
242 oral, express or implied.

243 (2) Services performed for remuneration for a
244 principal:

245 (a) As an agent-driver or commission-driver
246 engaged in distributing meat products, vegetable products, fruit
247 products, bakery products, beverages (other than milk), or laundry
248 or dry_cleaning services;

249 (b) As a traveling or city salesman, other than as
250 an agent-driver or commission-driver, engaged upon a full-time
251 basis in the solicitation on behalf of, and the transmission to, a



252 principal (except for sideline sales activities on behalf of some
253 other person) of orders from wholesalers, retailers, contractors,
254 or operator of hotels, restaurants, or other similar
255 establishments for merchandise for resale or supplies for use in
256 their business operations.

257 However, for purposes of this subsection, the term
258 "employment" shall include services described in subsection * * *
259 I(2) (a) and (b) of this section, only if:

260 (i) The contract of service contemplates that
261 substantially all of the services are to be performed personally
262 by such individual;

263 (ii) The individual does not have a
264 substantial investment in facilities used in connection with the
265 performance of the services (other than in facilities for
266 transportation); and

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

270 (3) Service performed in the employ of this state or
271 any of its instrumentalities or any political subdivision thereof
272 or any of its instrumentalities or any instrumentality of more
273 than one (1) of the foregoing or any instrumentality of any of the
274 foregoing and one or more other states or political subdivisions
275 or any Indian tribe as defined in Section 3306(u) of the Federal
276 Unemployment Tax Act (FUTA), which includes any subdivision,



277 subsidiary or business enterprise wholly owned by such Indian
278 tribe; however, such service is excluded from "employment" as
279 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)
280 of that act and is not excluded from "employment" under
281 subsection * * * I(5) of this section.

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

286 (b) The organization had four (4) or more
287 individuals in employment for some portion of a day in each of
288 twenty (20) different weeks, whether or not such weeks were
289 consecutive, within the current or preceding calendar year,
290 regardless of whether they were employed at the same moment of
291 time.

292 (5) For the purposes of subsection * * * I(3) and (4)
293 of this section, the term "employment" does not apply to service
294 performed:

295 (a) In the employ of:

296 (i) A church or convention or association of
297 churches; or

298 (ii) An organization which is operated
299 primarily for religious purposes and which is operated,
300 supervised, controlled, or principally supported by a church or
301 convention or association of churches; or



302 (b) By a duly ordained, commissioned, or licensed
303 minister of a church in the exercise of his ministry, or by a
304 member of a religious order in the exercise of duties required by
305 such order; or

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

309 (i) As an elected official;

310 (ii) As a member of a legislative body, or a
311 member of the judiciary, of a state or political subdivision or a
312 member of an Indian tribal council;

313 (iii) As a member of the State National Guard
314 or Air National Guard;

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

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

321 1. A major nontenured policy-making or
322 advisory position, or

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



326 (d) In a facility conducted for the purpose of
327 carrying out a program of rehabilitation for individuals whose
328 earning capacity is impaired by age or physical or mental
329 deficiency or injury, or providing remunerative work for
330 individuals who because of their impaired physical or mental
331 capacity cannot be readily absorbed in the competitive labor
332 market, by an individual receiving such rehabilitation or
333 remunerative work; or

334 (e) By an inmate of a custodial or penal
335 institution; or

336 (f) As part of an unemployment work-relief or
337 work-training program assisted or financed in whole or in part by
338 any federal agency or agency of a state or political subdivision
339 thereof or of an Indian tribe, by an individual receiving such
340 work relief or work training, unless coverage of such service is
341 required by federal law or regulation.

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

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

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

349 (ii) For some portion of a day in each of
350 twenty (20) different calendar weeks, whether or not such weeks



351 were consecutive, in either the current or the preceding calendar
352 year, employed in agricultural labor ten (10) or more individuals,
353 regardless of whether they were employed at the same moment of
354 time.

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

359 (i) If such crew leader holds a valid
360 certificate of registration under the Farm Labor Contractor
361 Registration Act of 1963; or substantially all the members of such
362 crew operate or maintain tractors, mechanized harvesting or crop
363 dusting equipment, or any other mechanized equipment, which is
364 provided by such crew leader; and

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

367 (c) For the purpose of subsection * * * I(6), in
368 the case of any individual who is furnished by a crew leader to
369 perform service in agricultural labor for any other person and who
370 is not treated as an employee of such crew leader under paragraph
371 (6) (b) of this subsection:

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

374 (ii) Such other person shall be treated as
375 having paid cash remuneration to such individual in an amount



376 equal to the amount of cash remuneration paid to such individual
377 by the crew leader (either on his own behalf or on behalf of such
378 other person) for the service in agricultural labor performed for
379 such other person.

380 (d) For the purposes of subsection * * * I(6) the
381 term "crew leader" means an individual who:

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

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

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

390 (7) The term "employment" shall include domestic
391 service in a private home, local college club or local chapter of
392 a college fraternity or sorority performed for an employing unit
393 which paid cash remuneration of One Thousand Dollars (\$1,000.00)
394 or more in any calendar quarter in the current or the preceding
395 calendar year to individuals employed in such domestic service.
396 For the purpose of this subsection, the term "employment" does not
397 apply to service performed as a "sitter" at a hospital in the
398 employ of an individual.

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



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

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

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

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

411 (9) Services not covered under paragraph (8) of this
412 subsection and performed entirely without this state, with respect
413 to no part of which contributions are required and paid under an
414 unemployment compensation law of any other state or of the federal
415 government, shall be deemed to be employment subject to this
416 chapter if the individual performing such services is a resident
417 of this state and the department approves the election of the
418 employing unit for whom such services are performed that the
419 entire service of such individual shall be deemed to be employment
420 subject to this chapter.

421 (10) Service shall be deemed to be localized within a
422 state if:

423 (a) The service is performed entirely within such
424 state; or



425 (b) The service is performed both within and
426 without such state, but the service performed without such state
427 is incidental to the individual's service within the state; for
428 example, is temporary or transitory in nature or consists of
429 isolated transactions.

430 (11) The services of an individual who is a citizen of
431 the United States, performed outside the United States (except in
432 Canada), in the employ of an American employer (other than service
433 which is deemed "employment" under the provisions of paragraph
434 (8), (9) or (10) of this subsection or the parallel provisions of
435 another state's law), if:

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

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

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

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

444 (iii) The employer is a partnership or a
445 trust and the number of the partners or trustees who are residents
446 of this state is greater than the number who are residents of any
447 one (1) other state; or

448 (c) None of the criteria of subparagraphs (a) and
449 (b) of this paragraph are met but the employer has elected



450 coverage in this state or, the employer having failed to elect
451 coverage in any state, the individual has filed a claim for
452 benefits, based on such service, under the law of this state; or

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

455 (i) An individual who is a resident of the
456 United States; or

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

459 (iii) A trust if all of the trustees are
460 residents of the United States; or

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

463 (12) All services performed by an officer or member of
464 the crew of an American vessel on or in connection with such
465 vessel, if the operating office from which the operations of such
466 vessel operating on navigable waters within, or within and
467 without, the United States are ordinarily and regularly
468 supervised, managed, directed and controlled, is within this
469 state, notwithstanding the provisions of subsection * * * I(8).

470 (13) Service with respect to which a tax is required to
471 be paid under any federal law imposing a tax against which credit
472 may be taken for contributions required to be paid into a state
473 unemployment fund, or which as a condition for full tax credit
474 against the tax imposed by the Federal Unemployment Tax Act, 26



475 USCS Section 3301 et seq., is required to be covered under this
476 chapter, notwithstanding any other provisions of this subsection.

477 (14) Services performed by an individual for wages
478 shall be deemed to be employment subject to this chapter unless
479 and until it is shown to the satisfaction of the department that
480 such individual has been and will continue to be free from control
481 and direction over the performance of such services both under his
482 contract of service and in fact; and the relationship of employer
483 and employee shall be determined in accordance with the principles
484 of the common law governing the relation of master and servant.

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

486 (a) Agricultural labor, except as provided in
487 subsection * * * I(6) of this section. The term "agricultural
488 labor" includes all services performed:

489 (i) On a farm or in a forest in the employ of
490 any employing unit in connection with cultivating the soil, in
491 connection with cutting, planting, deadening, marking or otherwise
492 improving timber, or in connection with raising or harvesting any
493 agricultural or horticultural commodity, including the raising,
494 shearing, feeding, caring for, training, and management of
495 livestock, bees, poultry, fur-bearing animals and wildlife;

496 (ii) In the employ of the owner or tenant or
497 other operator of a farm, in connection with the operation,
498 management, conservation, improvement or maintenance of such farm
499 and its tools and equipment, or in salvaging timber or clearing



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

502 (iii) In connection with the production or
503 harvesting of naval stores products or any commodity defined in
504 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g),
505 or in connection with the raising or harvesting of mushrooms, or
506 in connection with the ginning of cotton, or in connection with
507 the operation or maintenance of ditches, canals, reservoirs, or
508 waterways not owned or operated for profit, used exclusively for
509 supplying and storing water for farming purposes;

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

517 (B) In the employ of a group of
518 operators of farms (or a cooperative organization of which such
519 operators are members) in the performance of service described in
520 subitem (A), but only if such operators produced more than
521 one-half (1/2) of the commodity with respect to which such service
522 is performed;

523 (C) The provisions of subitems (A) and
524 (B) shall not be deemed to be applicable with respect to service



525 performed in connection with commercial canning or commercial
526 freezing or in connection with any agricultural or horticultural
527 commodity after its delivery to a terminal market for distribution
528 for consumption;

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

531 (vi) As used in paragraph (15)(a) of this
532 subsection, the term "farm" includes stock, dairy, poultry, fruit,
533 fur-bearing animals, and truck farms, plantations, ranches,
534 nurseries, ranges, greenhouses, or other similar structures used
535 primarily for the raising of agricultural or horticultural
536 commodities, and orchards.

537 (b) Domestic service in a private home, local
538 college club, or local chapter of a college fraternity or
539 sorority, except as provided in subsection * * * I(7) of this
540 section, or service performed as a "sitter" at a hospital in the
541 employ of an individual.

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

544 (d) Service performed by an individual in the
545 employ of his son, daughter, or spouse, and service performed by a
546 child under the age of twenty-one (21) in the employ of his father
547 or mother.

548 (e) Service performed in the employ of the United
549 States government or of an instrumentality wholly owned by the



550 United States; except that if the Congress of the United States
551 shall permit states to require any instrumentalities of the United
552 States to make payments into an unemployment fund under a state
553 unemployment compensation act, then to the extent permitted by
554 Congress and from and after the date as of which such permission
555 becomes effective, all of the provisions of this chapter shall be
556 applicable to such instrumentalities and to services performed by
557 employees for such instrumentalities in the same manner, to the
558 same extent, and on the same terms as to all other employers and
559 employing units. If this state should not be certified under the
560 Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any
561 year, then the payment required by such instrumentality with
562 respect to such year shall be deemed to have been erroneously
563 collected and shall be refunded by the department from the fund in
564 accordance with the provisions of Section 71-5-383.

565 (f) Service performed in the employ of an
566 "employer" as defined by the Railroad Unemployment Insurance Act,
567 45 USCS Section 351(a), or as an "employee representative" as
568 defined by the Railroad Unemployment Insurance Act, 45 USCS
569 Section 351(f), and service with respect to which unemployment
570 compensation is payable under an unemployment compensation system
571 for maritime employees, or under any other unemployment
572 compensation system established by an act of Congress; however,
573 the department is authorized and directed to enter into agreements
574 with the proper agencies under such act or acts of Congress, which



575 agreements shall become effective ten (10) days after publication
576 thereof in the manner provided in Section 71-5-117 for general
577 rules, to provide reciprocal treatment to individuals who have,
578 after acquiring potential rights to benefits under this chapter,
579 acquired rights to unemployment compensation under such act or
580 acts of Congress or who have, after acquiring potential rights to
581 unemployment compensation under such act or acts of Congress,
582 acquired rights to benefits under this chapter.

583 (g) Service performed in any calendar quarter in
584 the employ of any organization exempt from income tax under the
585 Internal Revenue Code, 26 USCS Section 501(a) (other than an
586 organization described in 26 USCS Section 401(a)), or exempt from
587 income tax under 26 USCS Section 521 if the remuneration for such
588 service is less than Fifty Dollars (\$50.00).

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

591 (i) By a student who is enrolled and is
592 regularly attending classes at such school, college or university,
593 or

594 (ii) By the spouse of such a student if such
595 spouse is advised, at the time such spouse commences to perform
596 such service, that

597 (A) The employment of such spouse to
598 perform such service is provided under a program to provide



599 financial assistance to such student by such school, college, or
600 university, and

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

603 (i) Service performed by an individual under the
604 age of twenty-two (22) who is enrolled at a nonprofit or public
605 educational institution which normally maintains a regular faculty
606 and curriculum and normally has a regularly organized body of
607 students in attendance at the place where its educational
608 activities are carried on, as a student in a full-time program
609 taken for credit at such institution, which combines academic
610 instruction with work experience, if such service is an integral
611 part of such program and such institution has so certified to the
612 employer, except that this subparagraph shall not apply to service
613 performed in a program established for or on behalf of an employer
614 or group of employers.

615 (j) Service performed in the employ of a hospital,
616 if such service is performed by a patient of the hospital, as
617 defined in subsection * * * M of this section.

618 (k) Service performed as a student nurse in the
619 employ of a hospital or a nurses' training school by an individual
620 who is enrolled and is regularly attending classes in a nurses'
621 training school chartered or approved pursuant to state law; and
622 services performed as an intern in the employ of a hospital by an



623 individual who has completed a four-year course in a medical
624 school chartered or approved pursuant to state law.

625 (l) Service performed by an individual as an
626 insurance agent or as an insurance solicitor, if all such service
627 performed by such individual is performed for remuneration solely
628 by way of commission.

629 (m) Service performed by an individual in the
630 delivery or distribution of newspapers or shopping news, not
631 including delivery or distribution to any point for subsequent
632 delivery or distribution, except those employed by political
633 subdivisions, state and local governments, nonprofit organizations
634 and Indian tribes, as defined by this chapter, or any other
635 entities for which coverage is required by federal statute and
636 regulation.

637 (n) If the services performed during one-half
638 (1/2) or more of any pay period by an employee for the employing
639 unit employing him constitute employment, all the services of such
640 employee for such period shall be deemed to be employment; but if
641 the services performed during more than one-half (1/2) of any such
642 pay period by an employee for the employing unit employing him do
643 not constitute employment, then none of the services of such
644 employee for such period shall be deemed to be employment. As
645 used in this subsection, the term "pay period" means a period (of
646 not more than thirty-one (31) consecutive days) for which a



647 payment of remuneration is ordinarily made to the employee by the
648 employing unit employing him.

649 (o) Service performed by a barber or beautician
650 whose work station is leased to him or her by the owner of the
651 shop in which he or she works and who is compensated directly by
652 the patrons he or she serves and who is free from direction and
653 control by the lessor.

654 (p) Service performed by a "direct seller" if:

655 (i) Such person is engaged in the trade or
656 business of selling (or soliciting the sale of) consumer products
657 to any buyer on a buy-sell basis, a deposit-commission basis, or
658 any similar basis which the department prescribes by regulations,
659 for resale (by the buyer or any other person) in the home or
660 otherwise than in a permanent retail establishment; or such person
661 is engaged in the trade or business of selling (or soliciting the
662 sale of) consumer products in the home or otherwise than in a
663 permanent retail establishment;

664 (ii) Substantially all the remuneration
665 (whether or not paid in cash) for the performance of the services
666 described in item (i) of this subparagraph is directly related to
667 sales or other output (including the performance of services)
668 rather than to the number of hours worked; and

669 (iii) The services performed by the person
670 are performed pursuant to a written contract between such person
671 and the person for whom the services are performed and such



672 contract provides that the person will not be treated as an
673 employee with respect to such services for federal tax purposes.

674 * * *J. "Employment office" means a free public employment
675 office or branch thereof, operated by this state or maintained as
676 a part of the state controlled system of public employment
677 offices.

678 * * *K. "Public employment service" means the operation of
679 a program that offers free placement and referral services to
680 applicants and employers, including job development.

681 * * *L. "Fund" means the Unemployment Compensation Fund
682 established by this chapter, to which all contributions required
683 and from which all benefits provided under this chapter shall be
684 paid.

685 * * *M. "Hospital" means an institution which has been
686 licensed, certified, or approved by the State Department of Health
687 as a hospital.

688 * * *N. "Institution of higher learning," for the purposes
689 of this section, means an educational institution which:

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

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

695 (3) Provides an educational program for which it awards
696 a bachelor's or higher degree, or provides a program which is



697 acceptable for full credit toward such a degree, a program of
698 postgraduate or postdoctoral studies, or a program of training to
699 prepare students for gainful employment in a recognized
700 occupation;

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

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

705 O. "Re-employment assistance" means money payments payable
706 to an individual as provided in this chapter with respect to his
707 unemployment through no fault of his own in order to assist the
708 individual to purchase necessities while they are seeking
709 full-time employment. Wherever the terms "benefits" or
710 "unemployment benefits" appear in this chapter, they shall mean
711 re-employment assistance.

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

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

718 (3) The provisions of paragraphs (1) and (2) of
719 subsection P, as including the Virgin Islands, shall become
720 effective on the day after the day on which the United States
721 Secretary of Labor approves for the first time under Section



722 3304(a) of the Internal Revenue Code of 1954 an unemployment
723 compensation law submitted to the secretary by the Virgin Islands
724 for such approval.

725 Q. "Unemployment."

726 (1) An individual shall be deemed "unemployed" in any
727 week during which he performs no services and with respect to
728 which no wages are payable to him, or in any week of less than
729 full-time work if the wages payable to him with respect to such
730 week are less than his weekly benefit amount as computed and
731 adjusted in Section 71-5-505. The department shall prescribe
732 regulations applicable to unemployed individuals, making such
733 distinctions in the procedure as to total unemployment, part-total
734 unemployment, partial unemployment of individuals attached to
735 their regular jobs, and other forms of short-time work, as the
736 department deems necessary.

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

741 R. (1) "Wages" means all remuneration for personal
742 services, including commissions and bonuses and the cash value of
743 all remuneration in any medium other than cash, except that
744 "wages," for purposes of determining employer's coverage and
745 payment of contributions for agricultural and domestic service
746 means cash remuneration only. The reasonable cash value of



747 remuneration in any medium other than cash shall be estimated and
748 determined in accordance with rules prescribed by the department;
749 however, that the term "wages" shall not include:

750 (a) The amount of any payment made to, or on
751 behalf of, an employee under a plan or system established by an
752 employer which makes provision for his employees generally or for
753 a class or classes of his employees (including any amount paid by
754 an employer for insurance or annuities, or into a fund, to provide
755 for any such payment), on account of:

756 (i) Retirement, or

757 (ii) Sickness or accident disability, or

758 (iii) Medical or hospitalization expenses in
759 connection with sickness or actual disability, or

760 (iv) Death, provided the employee:

761 (A) Has not the option to receive,
762 instead of provision for such death benefit, any part of such
763 payment or, if such death benefit is insured, any part of the
764 premiums (or contributions to premiums) paid by his employer, and

765 (B) Has not the right, under the
766 provisions of the plan or system or policy of insurance providing
767 for such death benefit, to assign such benefit or to receive a
768 cash consideration in lieu of such benefit, either upon his
769 withdrawal from the plan or system providing for such benefit or
770 upon termination of such plan or system or policy of insurance or
771 of his employment with such employer;



772 (b) Dismissal payments which the employer is not
773 legally required to make;

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

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

780 (i) Qualifies under Section 125 of the
781 Internal Revenue Code;

782 (ii) Covers only employees;

783 (iii) Covers only noncash benefits;

784 (iv) Does not include deferred compensation
785 plans.

786 (2) [Not enacted].

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

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

793 U. The term "includes" and "including," when used in a
794 definition contained in this chapter, shall not be deemed to
795 exclude other things otherwise within the meaning of the term
796 defined.



797 V. "Employee leasing arrangement" means any agreement
798 between an employee leasing firm and a client, whereby specified
799 client responsibilities such as payment of wages, reporting of
800 wages for unemployment insurance purposes, payment of unemployment
801 insurance contributions and other such administrative duties are
802 to be performed by an employee leasing firm, on an ongoing basis.

803 W. "Employee leasing firm" means any entity which provides
804 specified duties for a client company such as payment of wages,
805 reporting of wages for unemployment insurance purposes, payment of
806 unemployment insurance contributions and other administrative
807 duties, in connection with the client's employees, that are
808 directed and controlled by the client and that are providing
809 ongoing services for the client.

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

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

820 Y. For the purposes of this chapter, the term "notice" shall
821 include any official communication, statement or other



822 correspondence required under the administration of this chapter,
823 and sent by the department through the United States Postal
824 Service or electronic or digital transfer, via modem or the
825 Internet.

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

828 71-5-19. (1) Whoever makes a false statement or
829 representation knowing it to be false, or knowingly fails to
830 disclose a material fact, to obtain or increase any benefit or
831 other payment under this chapter or under an employment security
832 law of any other state, of the federal government or of a foreign
833 government, either for himself or for any other person, shall be
834 punished by a fine of not less than One Hundred Dollars (\$100.00)
835 nor more than Five Hundred Dollars (\$500.00), or by imprisonment
836 for not longer than thirty (30) days, or by both such fine and
837 imprisonment; and each such false statement or representation or
838 failure to disclose a material fact shall constitute a separate
839 offense.

840 (2) Any employing unit, any officer or agent of an employing
841 unit or any other person who makes a false statement or
842 representation knowing it to be false, or who knowingly fails to
843 disclose a material fact, to prevent or reduce the payment of
844 benefits to any individual entitled thereto, or to avoid becoming
845 or remaining subject hereto, or to avoid or reduce any
846 contribution or other payment required from any employing unit



847 under this chapter, or who willfully fails or refuses to make any
848 such contribution or other payment, or to furnish any reports
849 required hereunder or to produce or permit the inspection or
850 copying of records as required hereunder, shall be punished by a
851 fine of not less than One Hundred Dollars (\$100.00) nor more than
852 One Thousand Dollars (\$1,000.00), or by imprisonment for not
853 longer than sixty (60) days, or by both such fine and
854 imprisonment; and each such false statement, or representation, or
855 failure to disclose a material fact, and each day of such failure
856 or refusal shall constitute a separate offense. In lieu of such
857 fine and imprisonment, the employing unit or representative, or
858 both employing unit and representative, if such representative is
859 an employing unit in this state and is found to be a party to such
860 violation, shall not be eligible for a contributions rate of less
861 than five and four-tenths percent (5.4%) for the tax year in which
862 such violation is discovered by the department and for the next
863 two (2) succeeding tax years.

864 (3) Any person who shall willfully violate any provision of
865 this chapter or any other rule or regulation thereunder, the
866 violation of which is made unlawful or the observance of which is
867 required under the terms of this chapter and for which a penalty
868 is neither prescribed herein nor provided by any other applicable
869 statute, shall be punished by a fine of not less than One Hundred
870 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),
871 or by imprisonment for not longer than sixty (60) days, or by both



872 such fine and imprisonment; and each day such violation continues
873 shall be deemed to be a separate offense. In lieu of such fine
874 and imprisonment, the employing unit or representative, or both
875 employing unit and representative, if such representative is an
876 employing unit in this state and is found to be a party to such
877 violation, shall not be eligible for a contributions rate of less
878 than five and four-tenths percent (5.4%) for the tax year in which
879 the violation is discovered by the department and for the next two
880 (2) succeeding tax years.

881 (4) (a) An overpayment of benefits occurs when a person
882 receives benefits under this chapter:

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

885 (ii) While he was disqualified from receiving
886 benefits; or

887 (iii) When such person receives benefits and is
888 later found to be disqualified or ineligible for any reason,
889 including, but not limited to, a redetermination or reversal by
890 the department or the courts of a previous decision to award such
891 person benefits.

892 (b) Any person receiving an overpayment shall, in the
893 discretion of the department, be liable to have such sum deducted
894 from any future benefits payable to him under this chapter and
895 shall be liable to repay to the department for the Unemployment
896 Compensation Fund a sum equal to the overpayment amount so



897 received by him; and such sum shall be collectible in the manner
898 provided in Sections 71-5-363 through 71-5-383 for the collection
899 of past-due contributions. In addition to Sections 71-5-363
900 through 71-5-383, the following shall apply to cases involving
901 damages for overpaid unemployment benefits which have been
902 obtained and/or received through fraud as defined by department
903 regulations and laws governing the department. By definition,
904 fraud can include failure to report earnings while filing for
905 unemployment benefits. In the event of fraud, a penalty of twenty
906 percent (20%) of the amount of the overpayment shall be assessed.
907 Three-fourths (3/4) of that twenty percent (20%) penalty shall be
908 deposited into the unemployment trust fund and shall be used only
909 for the purpose of payment of unemployment benefits. The
910 remainder of that twenty percent (20%) penalty shall be deposited
911 into the Special Employment Security Administrative Fund.
912 Interest on the overpayment balance shall accrue at a rate of one
913 percent (1%) per month on the unpaid balance until repaid and
914 shall be deposited into the Special Employment Security
915 Administration Fund. All interest, penalties and damages
916 deposited into the Special Employment Security Administration Fund
917 shall be used by the department for administration of the
918 Mississippi Department of Employment Security.

919 (c) Any such judgment against such person for
920 collection of such overpayment shall be in the form of a
921 seven-year renewable lien. Unless action be brought thereon prior



922 to expiration of the lien, the department must refile the notice
923 of the lien prior to its expiration at the end of seven (7) years.
924 There shall be no limit upon the number of times the department
925 may refile notices of liens for collection of overpayments.

926 (d) All warrants issued by the department for the
927 collection of any unemployment tax or for an overpayment of
928 benefits imposed by statute and collected by the department shall
929 be used to levy on salaries, compensation or other monies due the
930 delinquent employer or claimant. No such warrant shall be issued
931 until after the delinquent employer or claimant has exhausted all
932 appeal rights associated with the debt. The warrants shall be
933 served by mail or by delivery by an agent of the department on the
934 person or entity responsible or liable for the payment of the
935 monies due the delinquent employer or claimant. Once served, the
936 employer or other person owing compensation due the delinquent
937 employer or claimant shall pay the monies over to the department
938 in complete or partial satisfaction of the liability. An answer
939 shall be made within thirty (30) days after service of the warrant
940 in the form and manner determined satisfactory by the department.
941 Failure to pay the money over to the department as required by
942 this section shall result in the served party being personally
943 liable for the full amount of the monies owed and the levy and
944 collection process may be issued against the party in the same
945 manner as other debts owed to the department. Except as otherwise
946 provided by this section, the answer, the amount payable under the



947 warrant and the obligation of the payor to continue payment shall
948 be governed by the garnishment laws of this state but shall be
949 payable to the department.

950 (5) The department, by agreement with another state or the
951 United States, as provided under Section 303(g) of the Social
952 Security Act, may recover any overpayment of benefits paid to any
953 individual under the laws of this state or of another state or
954 under an unemployment benefit program of the United States. Any
955 overpayments subject to this subsection may be deducted from any
956 future benefits payable to the individual under the laws of this
957 state or of another state or under an unemployment program of the
958 United States.

959 **SECTION 5.** Section 71-5-351, Mississippi Code of 1972, is
960 amended as follows:

961 71-5-351. (1) Contributions shall accrue and become payable
962 by each employer for each calendar year in which he is subject to
963 this chapter. Such contributions shall become due and be paid by
964 each employer to the department for the fund each calendar quarter
965 on or before the last day of the month next succeeding each
966 calendar quarter in which the contributions accrue unless the
967 employer has filed an election with the department to participate
968 in the Mississippi Level Payment Plan (MLPP) and complies with the
969 provision of the MLPP. The department may extend the due date of
970 such contributions if the due date falls on a Saturday, Sunday or
971 state or federal holiday. Such contributions shall not be



972 deducted, in whole or in part, from the wages of individuals in
973 such employer's employ.

974 (2) (a) Any employer who is a newly subject employer or any
975 employer who meets the requirements of participation in the MLPP
976 shall be allowed one (1) participation election per year. The
977 department may by regulation establish exceptions to this rule as
978 appropriate. The department shall establish by regulation the
979 requirements for computation and adjustment of compensation and
980 shall compute the amount of payments that will be made quarterly
981 and notify each employer before the first tax payment is due for
982 the year. Equal payments will be made for calendar quarters
983 ending March, June and September and settlement will be made for
984 any overage or shortage at the time payment is due for the
985 December quarter.

986 (b) An employer who meets the following criteria may
987 participate in the MLPP:

988 (i) The employer has not been delinquent in filing
989 unemployment reports or paying unemployment taxes to the
990 department during the last two (2) calendar years and must make
991 current all other delinquent unemployment taxes and reports;

992 (ii) The employer has been an employer subject to
993 the unemployment laws of the State of Mississippi, or in
994 accordance with department regulations regarding MLPP, for at
995 least twelve (12) months prior to the year the employer starts
996 participating;



997 (iii) The employer must agree to file reports
998 through the department's online system or other agency prescribed
999 electronic facility and pay electronically;

1000 (iv) The employer remains current in filing and
1001 paying taxes; and

1002 (v) The employer must make the election by April 1
1003 of the year.

1004 (c) Employers who participate in the MLPP and pay their
1005 contribution by bank draft shall utilize the pay schedule provided
1006 for in this paragraph. The pay schedule shall be as follows:

1007 (i) January to March due date May 15;

1008 (ii) April to June due date August 15;

1009 (iii) July to September due date November 15; and

1010 (iv) October to December due date January 31.

1011 (d) In the event the computed Size of Fund Index (SOFI)
1012 for any rate year computation falls below one percent (1.0%), the
1013 additional fifteen (15) days' delay provided for bank draft
1014 customers will be suspended for that year.

1015 (3) For purposes of payment of contributions on remuneration
1016 paid to individuals, if two (2) or more related corporations
1017 concurrently employ the same individual and compensate such
1018 individual through a common paymaster which is one of such
1019 corporations, each such corporation shall be considered to have
1020 paid as remuneration to such individual only the amounts actually
1021 disbursed by it to such individual and shall not be considered to



1022 have paid as remuneration to such individual such amounts actually
1023 disbursed to such individual by another of such corporations.

1024 In the payment of any contributions, a fractional part of a
1025 cent shall be disregarded unless it amounts to One-half Cent
1026 (1/2¢) or more, in which case it shall be increased to One Cent
1027 (1¢).

1028 (4) For the purposes of this section and Sections 71-5-353,
1029 71-5-357 and 71-5-359, taxable wages shall not include that part
1030 of remuneration which, after remuneration equal to Seven Thousand
1031 Dollars (\$7,000.00) through December 31, 2010, and Fourteen
1032 Thousand Dollars (\$14,000.00) thereafter, has been paid in a
1033 calendar year to an individual by an employer or his predecessor
1034 with respect to employment during any calendar year, is paid to
1035 such individual by such employer during such calendar year unless
1036 that part of the remuneration is subject to a tax under a federal
1037 law imposing a tax against which credit may be taken for
1038 contributions required to be paid into a state employment fund.
1039 For the purposes of this section, the term "employment" shall
1040 include service constituting employment under any unemployment
1041 compensation law of another state.

1042 (5) Absent evidence of willful or fraudulent attempt to
1043 avoid taxation, the effective date of liability of an employer or
1044 assessment of liability for covered employment against an employer
1045 shall not occur for any period preceding the three (3) calendar



1046 years before the date of registration or assessment, unless said
1047 three-year limitations period is waived by the employer.

1048 (6) The executive director may grant a reasonable extension
1049 of time beyond the statutory due date within which to file any
1050 report required by this section when it is shown to the
1051 satisfaction of the executive director that good cause for such
1052 extension exists. The executive director may, in his discretion,
1053 automatically recognize extensions of time authorized and granted
1054 by the Internal Revenue Service for the filing of tax returns.

1055 **SECTION 6.** Section 71-5-353, Mississippi Code of 1972, is
1056 amended as follows:

1057 71-5-353. (1) Each employer shall pay contributions equal
1058 to five and four-tenths percent (5.4%) of taxable wages paid by
1059 him each calendar year, except as may be otherwise provided in
1060 Section 71-5-361 and except that each newly subject employer shall
1061 pay contributions at the rate of two and four-tenths percent
1062 (2.4%) of taxable wages through December 31, 2010, and thereafter
1063 one percent (1%) of taxable wages, for his first year of
1064 liability, one and one-tenth percent (1.1%) of taxable wages for
1065 his second year of liability, and one and two-tenths percent
1066 (1.2%) of taxable wages for his third and subsequent years of
1067 liability unless the employer's experience-rating record has been
1068 chargeable throughout at least the twelve (12) consecutive
1069 calendar months ending on the most recent computation date at the
1070 time the rate for a year is determined; thereafter the employer's



1071 contribution rate shall be determined in accordance with the
1072 provisions of Section 71-5-355.

1073 (2) From and after January 1, 2005, through December 31,
1074 2009, contribution rates assigned to employers by the department,
1075 as determined pursuant to Sections 71-5-351, 71-5-353 and
1076 71-5-355, shall be reduced by three-tenths of one percent (.3%).
1077 Such reduction shall only apply to employers whose contribution
1078 rate, determined in accordance with Sections 71-5-353 and
1079 71-5-355, is equal to or less than five and four-tenths percent
1080 (5.4%), and shall include a three-tenths of one percent (.3%)
1081 reduction to the rate as a result of violation of provisions of
1082 this chapter. The reduction in rates provided for herein shall
1083 not apply to state boards, instrumentalities and political
1084 subdivisions of the State of Mississippi referred to in Sections
1085 71-5-357 and 71-5-359, or to nonprofit employers providing
1086 reimbursement to the department for the unemployment fund pursuant
1087 to Section 71-5-357(a).

1088 (3) (a) From and after January 1, 2005, through December
1089 31, 2009, the workforce enhancement contributions shall be applied
1090 at a rate of three-tenths of one percent (.3%) upon the taxable
1091 wages, however, the workforce enhancement contribution shall not
1092 be applied to state boards, instrumentalities and political
1093 subdivisions of the State of Mississippi referred to in Sections
1094 71-5-357 and 71-5-359, or to nonprofit employers providing



1095 reimbursement to the department for the unemployment fund pursuant
1096 to Section 71-5-357(a).

1097 (b) There is hereby created in the Treasury of the
1098 State of Mississippi a special fund to be known as the
1099 "Mississippi Workforce Enhancement Training Fund," which consists
1100 of funds collected pursuant to this subsection (3) and subsection
1101 (4) of this section. Funds collected shall initially be deposited
1102 into the Mississippi Department of Employment Security tax bank
1103 account for clearing contribution collections and subsequently
1104 transferred to the Mississippi Workforce Enhancement Training Fund
1105 holding account described in Section 71-5-453. In the event any
1106 employer pays an amount insufficient to cover the total
1107 contributions due, the amounts due shall be satisfied in the
1108 following order:

- 1109 (i) Unemployment contributions;
- 1110 (ii) Workforce enhancement training contributions;
- 1111 (iii) Interest and damages; then
- 1112 (iv) Legal and processing costs.

1113 The amount of contributions due for any period will be the
1114 amount due according to the actual computations unless the
1115 employer is participating in the MLPP. In that event, the amount
1116 due is the MLPP amount computed by the department.

1117 Cost of collection and administration of the workforce
1118 enhancement training contribution shall be allocated based on a
1119 plan approved by the United States Department of Labor (USDOL) and



1120 shall be paid to the Mississippi Department of Employment Security
1121 semiannually by the State Board for Community and Junior Colleges
1122 for periods ending in December and June of each year. Payment
1123 shall be made to the department no later than sixty (60) days
1124 after the billing date.

1125 (c) All monies collected will be initially deposited
1126 into the Mississippi Department of Employment Security bank
1127 account for clearing contribution collections and subsequently
1128 transferred to the Mississippi Workforce Enhancement Training Fund
1129 holding account and will be held by the Mississippi Department of
1130 Employment Security in such account for a period of not less than
1131 sixty (60) days. After such period, funds shall be transferred
1132 within thirty (30) days to the Mississippi Workforce Enhancement
1133 Training Fund in a manner determined by the department. Interest
1134 earnings or interest credits on deposit amounts shall be retained
1135 in the holding account to pay the banking costs of the account.
1136 If after the period of twelve (12) months interest earnings less
1137 banking costs exceeds Ten Thousand Dollars (\$10,000.00), such
1138 excess amounts shall be transferred to the Mississippi Workforce
1139 Enhancement Training Fund treasury account within thirty (30)
1140 days. Such transfers shall occur once annually, during the month
1141 of January.

1142 (d) All enforcement procedures for the collection of
1143 delinquent contributions contained in Sections 71-5-363 through
1144 71-5-383 shall be applicable in all respects for collections of



1145 delinquent contributions designated for the Unemployment
1146 Compensation Fund and the Mississippi Workforce Enhancement
1147 Training Fund.

1148 (e) All monies deposited into the Mississippi Workforce
1149 Enhancement Training Fund shall be utilized exclusively by the
1150 State Board for Community and Junior Colleges in accordance with
1151 the Workforce Training Act of 1994 (Section 37-153-1 et seq.) and
1152 the annual plan developed by the State Workforce Investment Board
1153 for the following purposes: to provide training at no charge to
1154 employers and employees in order to enhance employee productivity.
1155 Such training may be subject to a minimal administrative fee to be
1156 paid from the Mississippi Workforce Enhancement Training Fund as
1157 established by the State Workforce Investment Board subject to the
1158 advice of the State Board for Community and Junior Colleges. The
1159 initial priority of these funds shall be for the benefit of
1160 existing businesses located within the state. Employers may
1161 request training for existing employees and/or newly hired
1162 employees from the State Board for Community and Junior Colleges.
1163 The State Board for Community and Junior Colleges will be
1164 responsible for approving the training.

1165 (4) The following procedure shall apply for tax years
1166 subsequent to December 31, 2009:

1167 (a) (i) Except as otherwise provide in this paragraph,
1168 workforce enhancement training contributions shall be collected at
1169 a rate of three-tenths of one percent (.3%) through December 31,



1170 2010, based upon taxable wages, and at a rate of fifteen
1171 one-hundredths of one percent (.15%) thereafter, based upon
1172 taxable wages.

1173 (ii) If this act becomes effective before March 1,
1174 2013, the contribution rate to the Workforce Enhancement Training
1175 Fund for calendar year 2013 only shall be twenty-two
1176 one-hundredths of one percent (.022%). If this act becomes from
1177 and after March 1, 2013, the contribution rate to the Workforce
1178 Enhancement Training Fund for calendar year 2014 shall be
1179 twenty-two one-hundredths of one percent (.022%). The
1180 contribution rate to the Workforce Enhancement Training Fund
1181 provided for in this subparagraph shall be effective for only one
1182 (1) calendar year.

1183 (iii) Training contributions shall be reduced by
1184 the amount necessary to prevent any employer from having a
1185 combined rate greater than five and four-tenths percent (5.4%).

1186 (b) All workforce enhancement training contributions
1187 collected shall be deposited initially into the Mississippi
1188 Department of Employment Security bank account for clearing
1189 contribution collections and shall within two (2) business days be
1190 transferred to the Workforce Enhancement Training Fund holding
1191 account. Any workforce enhancement training contribution
1192 transactions from the Mississippi Department of Employment
1193 Security account for clearing contribution collections that are
1194 deposited into the Workforce Enhancement Training Fund holding



1195 account and are not honored by a financial institution will be
1196 transferred back to the Mississippi Department of Employment
1197 Security account for clearing contribution collections out of
1198 funds in the Workforce Enhancement Training Fund holding account.

1199 (c) For rate years subsequent to December 31, 2009,
1200 suspension of the workforce enhancement training contributions
1201 required pursuant to this subsection (4) shall occur if the
1202 insured unemployment rate exceeds an average of five and
1203 five-tenths percent (5.5%) for the three (3) consecutive months
1204 immediately preceding the effective date of the new rate year and
1205 shall remain suspended throughout the duration of that rate year.
1206 Such suspension shall continue until such time as the three (3)
1207 consecutive months immediately preceding the effective date of any
1208 subsequent rate year has an insured unemployment rate of less than
1209 an average of four and five-tenths percent (4.5%).

1210 (5) All collections due or accrued prior to any suspension
1211 of the Workforce Enhancement Training Fund will be collected based
1212 upon the law at the time the contributions accrued, regardless of
1213 when they are actually due or collected.

1214 **SECTION 7.** Section 71-5-355, Mississippi Code of 1972, is
1215 amended as follows:

1216 71-5-355. (1) As used in this section, the following words
1217 and phrases shall have the following meanings, unless the context
1218 clearly requires otherwise:



1219 (a) "Tax year" means any period beginning on January 1
1220 and ending on December 31 of a year.

1221 (b) "Computation date" means June 30 of any calendar
1222 year immediately preceding the tax year during which the
1223 particular contribution rates are effective.

1224 (c) "Effective date" means January 1 of the tax year.

1225 (d) Except as hereinafter provided, "payroll" means the
1226 total of all wages paid for employment by an employer as defined
1227 in Section 71-5-11, subsection * * * H, plus the total of all
1228 remuneration paid by such employer excluded from the definition of
1229 wages by Section 71-5-351. For the computation of modified rates,
1230 "payroll" means the total of all wages paid for employment by an
1231 employer as defined in Section 71-5-11, subsection * * * H.

1232 (e) For the computation of modified rates, "eligible
1233 employer" means an employer whose experience-rating record has
1234 been chargeable with benefits throughout the thirty-six (36)
1235 consecutive calendar-month period ending on the computation date,
1236 except that any employer who has not been subject to the
1237 Mississippi Employment Security Law for a period of time
1238 sufficient to meet the thirty-six (36) consecutive calendar-month
1239 requirement shall be an eligible employer if his experience-rating
1240 record has been chargeable throughout not less than the twelve
1241 (12) consecutive calendar-month period ending on the computation
1242 date. No employer shall be considered eligible for a contribution
1243 rate less than five and four-tenths percent (5.4%) with respect to



1244 any tax year, who has failed to file any two (2) quarterly reports
1245 within the qualifying period by September 30 following the
1246 computation date. No employer or employing unit shall be eligible
1247 for a contribution rate of less than five and four-tenths percent
1248 (5.4%) for the tax year in which the employing unit is found by
1249 the department to be in violation of Section 71-5-19(2) or (3) and
1250 for the next two (2) succeeding tax years. No representative of
1251 such employing unit who was a party to a violation as described in
1252 Section 71-5-19(2) or (3), if such representative was or is an
1253 employing unit in this state, shall be eligible for a contribution
1254 rate of less than five and four-tenths percent (5.4%) for the tax
1255 year in which such violation was detected by the department and
1256 for the next two (2) succeeding tax years.

1257 (f) With respect to any tax year, "reserve ratio" means
1258 the ratio which the total amount available for the payment of
1259 benefits in the Unemployment Compensation Fund, excluding any
1260 amount which has been credited to the account of this state under
1261 Section 903 of the Social Security Act, as amended, and which has
1262 been appropriated for the expenses of administration pursuant to
1263 Section 71-5-457 whether or not withdrawn from such account, on
1264 October 31 (close of business) of each calendar year bears to the
1265 aggregate of the taxable payrolls of all employers for the twelve
1266 (12) calendar months ending on June 30 next preceding.

1267 (g) "Modified rates" means the rates of employer
1268 contributions determined under the provisions of this chapter and



1269 the rates of newly subject employers, as provided in Section
1270 71-5-353.

1271 (h) For the computation of modified rates, "qualifying
1272 period" means a period of not less than the thirty-six (36)
1273 consecutive calendar months ending on the computation date
1274 throughout which an employer's experience-rating record has been
1275 chargeable with benefits; except that with respect to any eligible
1276 employer who has not been subject to this article for a period of
1277 time sufficient to meet the thirty-six (36) consecutive
1278 calendar-month requirement, "qualifying period" means the period
1279 ending on the computation date throughout which his
1280 experience-rating record has been chargeable with benefits, but in
1281 no event less than the twelve (12) consecutive calendar-month
1282 period ending on the computation date throughout which his
1283 experience-rating record has been so chargeable.

1284 (i) The "exposure criterion" (EC) is defined as the
1285 cash balance of the Unemployment Compensation Fund which is
1286 available for the payment of benefits as of November 16 of each
1287 calendar year or the next working day if November 16 falls on a
1288 holiday or a weekend, divided by the total wages, exclusive of
1289 wages paid by all state agencies, all political subdivisions,
1290 reimbursable nonprofit corporations, and tax-exempt public service
1291 employment, for the twelve-month period ending June 30 immediately
1292 preceding such date. The EC shall be computed to four (4) decimal
1293 places and rounded up if any fraction remains.



1294 (j) The "cost rate criterion" (CRC) is defined as
1295 follows: Beginning with January 1974, the benefits paid for the
1296 twelve-month period ending December 1974 are summed and divided by
1297 the total wages for the twelve-month period ending on June 30,
1298 1975. Similar ratios are computed by subtracting the earliest
1299 month's benefit payments and adding the benefits of the next month
1300 in the sequence and dividing each sum of twelve (12) months'
1301 benefits by the total wages for the twelve-month period ending on
1302 the June 30 which is nearest to the final month of the period used
1303 to compute the numerator. If December is the final month of the
1304 period used to compute the numerator, then the twelve-month period
1305 ending the following June 30 will be used for the denominator.
1306 Benefits and total wages used in the computation of the cost rate
1307 criterion shall exclude all benefits and total wages applicable to
1308 state agencies, political subdivisions, reimbursable nonprofit
1309 corporations, and tax-exempt PSE employment.

1310 The CRC shall be computed as the average for the highest
1311 monthly value of the cost rate criterion computations during each
1312 of the economic cycles since the calendar year 1974 as defined by
1313 the National Bureau of Economic Research. The CRC shall be
1314 computed to four (4) decimal places and any remainder shall be
1315 rounded up.

1316 The CRC shall be adjusted only through annual computations
1317 and additions of future economic cycles.



1318 (k) "Size of fund index" (SOFI) is defined as the ratio
1319 of the exposure criterion (EC) to the cost rate criterion (CRC).
1320 For years following December 31, 2009, the target size of fund
1321 index will be fixed at 1.0. If the insured unemployment rate
1322 (IUR) exceeds a four and five-tenths percent (4.5%) average for
1323 the most recent completed July to June period, the target SOFI
1324 will be .8 and will remain at that level until the computed SOFI
1325 (the average exposure criterion of the current year and the
1326 preceding year divided by the average cost rate criterion) equals
1327 1.0 or the average IUR falls to four and five-tenths percent
1328 (4.5%) or less for any period July to June. However, if the IUR
1329 falls below two and five-tenths percent (2.5%) for any period July
1330 to June the target SOFI shall be 1.2 until such time as the
1331 computed SOFI is equal to or greater than 1.0 or the IUR is equal
1332 to or greater than two and five-tenths percent (2.5%), at which
1333 point the target SOFI shall return to 1.0.

1334 (l) No employer's contribution rate shall exceed five
1335 and four-tenths percent (5.4%), nor be less than four-tenths of
1336 one percent (.4%). However, from and after January 1, 2005,
1337 through December 31, 2009, no employer's unemployment contribution
1338 rate shall be less than one-tenth of one percent (.1%). For years
1339 subsequent to calendar year 2010 the general experience rate in no
1340 event shall be less than two-tenths of one percent (.2%). For any
1341 year the general experience rate computes as an amount less than
1342 two-tenths of one percent (.2%) the general experience rate shall



1343 be established at two-tenths of one percent (.2%). From and after
1344 January 1, 2012, accrual rules shall apply for purposes of
1345 computing contribution rates including associated functions.

1346 (m) The term "general experience rate" has the same
1347 meaning as the minimum tax rate.

1348 (2) Modified rates:

1349 (a) For any tax year, when the reserve ratio on the
1350 preceding November 16, in the case of any tax year, equals or
1351 exceeds three percent (3%), the modified rates, as hereinafter
1352 prescribed, shall be in effect. In computation of this reserve
1353 ratio, any remainder shall be rounded down.

1354 (b) Modified rates shall be determined for the tax year
1355 for each eligible employer on the basis of his experience-rating
1356 record in the following manner:

1357 (i) The department shall maintain an
1358 experience-rating record for each employer. Nothing in this
1359 chapter shall be construed to grant any employer or individuals
1360 performing services for him any prior claim or rights to the
1361 amounts paid by the employer into the fund.

1362 (ii) Benefits paid to an eligible individual shall
1363 be charged against the experience-rating record of his base period
1364 employers in the proportion to which the wages paid by each base
1365 period employer bears to the total wages paid to the individual by
1366 all the base period employers, provided that benefits shall not be



1367 charged to an employer's experience-rating record if the
1368 department finds that the individual:

1369 1. Voluntarily left the employ of such
1370 employer without good cause attributable to the employer;

1371 2. Was discharged by such employer for
1372 misconduct connected with his work;

1373 3. Refused an offer of suitable work by such
1374 employer without good cause, and the department further finds that
1375 such benefits are based on wages for employment for such employer
1376 prior to such voluntary leaving, discharge or refusal of suitable
1377 work, as the case may be;

1378 4. Had base period wages which included wages
1379 for previously uncovered services as defined in Section
1380 71-5-511(e) to the extent that the Unemployment Compensation Fund
1381 is reimbursed for such benefits pursuant to Section 121 of Public
1382 Law 94-566;

1383 5. Extended benefits paid under the
1384 provisions of Section 71-5-541 which are not reimbursable from
1385 federal funds shall be charged to the experience-rating record of
1386 base period employers;

1387 6. Is still working for such employer on a
1388 regular part-time basis under the same employment conditions as
1389 hired. Provided, however, that benefits shall be charged against
1390 an employer if an eligible individual is paid benefits who is
1391 still working for such employer on a part-time "as-needed" basis;



1392 7. Was hired to replace a United States
1393 serviceman or servicewoman called into active duty and was laid
1394 off upon the return to work by that serviceman or servicewoman,
1395 unless such employer is a state agency or other political
1396 subdivision or instrumentality of the state;

1397 8. Was paid benefits during any week while in
1398 training with the approval of the department, under the provisions
1399 of Section 71-5-513B, or for any week while in training approved
1400 under Section 236(a) (1) of the Trade Act of 1974, under the
1401 provisions of Section 71-5-513C; or

1402 9. Is not required to serve the one-week
1403 waiting period as described in Section 71-5-505(2). In that
1404 event, only the benefits paid in lieu of the waiting period week
1405 may be noncharged.

1406 (iii) An employer shall not be noncharged when the
1407 department finds that the employer was at fault for failing to
1408 respond timely or adequately to the request of the department for
1409 information relating to an unemployment claim that was
1410 subsequently determined to be improperly paid, unless the employer
1411 shall show good cause for having failed to respond timely or
1412 adequately to the request of the department for information.

1413 (* * *iv) The department shall compute a benefit
1414 ratio for each eligible employer, which shall be the quotient
1415 obtained by dividing the total benefits charged to his
1416 experience-rating record during the period his experience-rating



1417 record has been chargeable, but not less than the twelve (12)
1418 consecutive calendar-month period nor more than the thirty-six
1419 (36) consecutive calendar-month period ending on the computation
1420 date, by his total taxable payroll for the same period on which
1421 all contributions due have been paid on or before the September 30
1422 immediately following the computation date. Such benefit ratio
1423 shall be computed to the tenth of a percent (.1%), rounding any
1424 remainder to the next higher tenth.

1425 The following table shall be applied to reduce contribution
1426 rates from and after January 1, 2005, through December 31, 2009,
1427 and is not intended for use for any rate years subsequent to
1428 December 31, 2009:

| 1429 | Benefit Ratio | Individual Experience Rate: |
|------|---------------|-----------------------------|
| 1430 | 0.0% | - 0.3% |
| 1431 | 0.1 | - 0.2 |
| 1432 | 0.2 | - 0.10 |
| 1433 | 0.3 | 0.0 |
| 1434 | 0.4 | 0.1 |
| 1435 | 0.5 | 0.2 |
| 1436 | 0.6 | 0.3 |
| 1437 | 0.7 | 0.4 |
| 1438 | 0.8 | 0.5 |
| 1439 | 0.9 | 0.6 |
| 1440 | 1.0 | 0.7 |
| 1441 | 1.1 | 0.8 |



| | | |
|------|-----|-----|
| 1442 | 1.2 | 0.9 |
| 1443 | 1.3 | 1.0 |
| 1444 | 1.4 | 1.1 |
| 1445 | 1.5 | 1.2 |
| 1446 | 1.6 | 1.3 |
| 1447 | 1.7 | 1.4 |
| 1448 | 1.8 | 1.5 |
| 1449 | 1.9 | 1.6 |
| 1450 | 2.0 | 1.7 |
| 1451 | 2.1 | 1.8 |
| 1452 | 2.2 | 1.9 |
| 1453 | 2.3 | 2.0 |
| 1454 | 2.4 | 2.1 |
| 1455 | 2.5 | 2.2 |
| 1456 | 2.6 | 2.3 |
| 1457 | 2.7 | 2.4 |
| 1458 | 2.8 | 2.5 |
| 1459 | 2.9 | 2.6 |
| 1460 | 3.0 | 2.7 |
| 1461 | 3.1 | 2.8 |
| 1462 | 3.2 | 2.9 |
| 1463 | 3.3 | 3.0 |
| 1464 | 3.4 | 3.1 |
| 1465 | 3.5 | 3.2 |
| 1466 | 3.6 | 3.3 |



| | | |
|------|---------------|-----|
| 1467 | 3.7 | 3.4 |
| 1468 | 3.8 | 3.5 |
| 1469 | 3.9 | 3.6 |
| 1470 | 4.0 | 3.7 |
| 1471 | 4.1 | 3.8 |
| 1472 | 4.2 | 3.9 |
| 1473 | 4.3 | 4.0 |
| 1474 | 4.4 | 4.1 |
| 1475 | 4.5 | 4.2 |
| 1476 | 4.6 | 4.3 |
| 1477 | 4.7 | 4.4 |
| 1478 | 4.8 | 4.5 |
| 1479 | 4.9 | 4.6 |
| 1480 | 5.0 | 4.7 |
| 1481 | 5.1 | 4.8 |
| 1482 | 5.2 | 4.9 |
| 1483 | 5.3 | 5.0 |
| 1484 | 5.4 | 5.1 |
| 1485 | 5.5 | 5.2 |
| 1486 | 5.6 | 5.3 |
| 1487 | 5.7 and above | 5.4 |

1488 (* * *y) 1. The unemployment insurance
1489 contribution rate for each eligible employer shall be the sum of
1490 two (2) rates: his individual experience rate in the range from
1491 zero percent (0%) to five and four-tenths percent (5.4%), plus a



1492 general experience rate. In no event shall the resulting rate be
1493 in excess of five and four-tenths percent (5.4%), however, it is
1494 the intent of this section to provide the ability for employers to
1495 have a tax rate, the general experience rate plus the individual
1496 experience rate, of up to five and four-tenths percent (5.4%).

1497 2. The employer's individual experience rate
1498 shall be equal to his benefit ratio as computed under subsection
1499 (2) (b) (* * *iv) above.

1500 3. The general experience rate shall be
1501 determined in the following manner: The department shall
1502 determine annually, for the thirty-six (36) consecutive
1503 calendar-month period ending on the computation date, the amount
1504 of benefits which were not charged to the record of any employer
1505 and of benefits which were ineffectively charged to the employer's
1506 experience-rating record. For the purposes of this item 3, the
1507 term "ineffectively charged benefits" shall include:

1508 a. The total of the amounts of benefits
1509 charged to the experience-rating records of all eligible employers
1510 which caused their benefit ratios to exceed five and four-tenths
1511 percent (5.4%);

1512 b. The total of the amounts of benefits
1513 charged to the experience-rating records of all ineligible
1514 employers which would cause their benefit ratios to exceed five
1515 and four-tenths percent (5.4%) if they were eligible employers;
1516 and



1517 c. The total of the amounts of benefits
1518 charged or chargeable to the experience-rating record of any
1519 employer who has discontinued his business or whose coverage has
1520 been terminated within such period; provided, that solely for the
1521 purposes of determining the amounts of ineffectively charged
1522 benefits as herein defined, a "benefit ratio" shall be computed
1523 for each ineligible employer, which shall be the quotient obtained
1524 by dividing the total benefits charged to his experience-rating
1525 record throughout the period ending on the computation date,
1526 during which his experience-rating record has been chargeable with
1527 benefits, by his total taxable payroll for the same period on
1528 which all contributions due have been paid on or before the
1529 September 30 immediately following the computation date; and
1530 provided further, that such benefit ratio shall be computed to the
1531 tenth of one percent (.1%) and any remainder shall be rounded to
1532 the next higher tenth.

1533 The ratio of the sum of these amounts (subsection
1534 (2) (b) (* * *v) 3a, b and c) to the taxable wages paid during the
1535 same period divided by all eligible employers whose benefit ratio
1536 did not exceed five and four-tenths percent (5.4%), computed to
1537 the next higher tenth of one percent (.1%), shall be the general
1538 experience rate.

1539 4. a. Except as otherwise provided in this
1540 item 4, the general experience rate shall be adjusted by use of
1541 the size of fund index factor. This factor may be positive or



1542 negative, and shall be determined as follows: From the target
1543 SOFI, as defined in subsection (1)(k) of this section, subtract
1544 the simple average of the current and preceding years' exposure
1545 criterions divided by the cost rate criterion, as defined in
1546 subsection (1)(j) of this section. The result is then multiplied
1547 by the product of the CRC, as defined in subsection (1)(j) of this
1548 section, and total wages for the twelve-month period ending June
1549 30 divided by the taxable wages for the twelve-month period ending
1550 June 30. This is the percentage positive or negative added to the
1551 general experience rate. The sum of the general experience rate
1552 and the trust fund adjustment factor shall be multiplied by fifty
1553 percent (50%) and this product shall be computed to one (1)
1554 decimal place, and rounded to the next higher tenth.

1555 b. Notwithstanding the minimum rate
1556 provisions as set forth in Section 71-5-355(1)(1), if this act
1557 becomes effective before March 1, 2013, the general experience
1558 rate of all employers shall be reduced by seven one hundredths of
1559 one percent (.007%) for calendar year 2013 only. If this act
1560 becomes effective from and after March 1, 2013, the general
1561 experience rate of all employers shall be reduced by seven one
1562 hundredths of one percent (.007%) for calendar year 2014 only.
1563 The general experience rate decrease provided for in this sub-item
1564 b shall be effective for only one (1) calendar year.

1565 5. Notwithstanding any other provisions of
1566 subsection (2)(b) (* * *v), if the general experience rate for any



1567 tax year as computed and adjusted on the basis of the size of fund
1568 index is a negative percentage, it shall be disregarded and in no
1569 year shall the general experience rate be less than two-tenths of
1570 one percent (.2%).

1571 6. The department shall include in its annual
1572 rate notice to employers a brief explanation of the elements of
1573 the general experience rate, and shall include in its regular
1574 publications an annual analysis of benefits not charged to the
1575 record of any employer, and of the benefit experience of employers
1576 by industry group whose benefit ratio exceeds four percent (4%),
1577 and of any other factors which may affect the size of the general
1578 experience rate.

1579 (* * * vi) When any employing unit in any manner
1580 succeeds to or acquires the organization, trade, business or
1581 substantially all the assets thereof of an employer, excepting any
1582 assets retained by such employer incident to the liquidation of
1583 his obligations, whether or not such acquiring employing unit was
1584 an employer within the meaning of Section 71-5-11,
1585 subsection * * * H, prior to such acquisition, and continues such
1586 organization, trade or business, the experience-rating and payroll
1587 records of the predecessor employer shall be transferred as of the
1588 date of acquisition to the successor employer for the purpose of
1589 rate determination.

1590 (* * * vii) When any employing unit succeeds to or
1591 acquires a distinct and severable portion of an organization,



1592 trade or business, the experience-rating and payroll records of
1593 such portion, if separately identifiable, shall be transferred to
1594 the successor upon:

1595 1. The mutual consent of the predecessor and
1596 the successor;

1597 2. Approval of the department;

1598 3. Continued operation of the transferred
1599 portion by the successor after transfer; and

1600 4. The execution and the filing with the
1601 department by the predecessor employer of a waiver relinquishing
1602 all rights to have the experience-rating and payroll records of
1603 the transferred portion used for the purpose of determining
1604 modified rates of contribution for such predecessor.

1605 (* * *viii) If the successor was an employer
1606 subject to this chapter prior to the date of acquisition, it shall
1607 continue to pay contributions at the rate applicable to it from
1608 the date the acquisition occurred until the end of the then
1609 current tax year. If the successor was not an employer prior to
1610 the date of acquisition, it shall pay contributions at the rate
1611 applicable to the predecessor or, if more than one (1) predecessor
1612 and the same rate is applicable to both, the rate applicable to
1613 the predecessor or predecessors, from the date the acquisition
1614 occurred until the end of the then current tax year. If the
1615 successor was not an employer prior to the date the acquisition
1616 occurred and simultaneously acquires the businesses of two (2) or



1617 more employers to whom different rates of contributions are
1618 applicable, it shall pay contributions from the date of the
1619 acquisition until the end of the current tax year at a rate
1620 computed on the basis of the combined experience-rating and
1621 payroll records of the predecessors as of the computation date for
1622 such tax year. In all cases the rate of contributions applicable
1623 to such successor for each succeeding tax year shall be computed
1624 on the basis of the combined experience-rating and payroll records
1625 of the successor and the predecessor or predecessors.

1626 (* * *ix) The department shall notify each
1627 employer quarterly of the benefits paid and charged to his
1628 experience-rating record; and such notification, in the absence of
1629 an application for redetermination filed within thirty (30) days
1630 after the date of such notice, shall be final, conclusive and
1631 binding upon the employer for all purposes. A redetermination,
1632 made after notice and opportunity for a fair hearing, by a hearing
1633 officer designated by the department who shall consider and decide
1634 these and related applications and protests; and the finding of
1635 fact in connection therewith may be introduced into any subsequent
1636 administrative or judicial proceedings involving the determination
1637 of the rate of contributions of any employer for any tax year, and
1638 shall be entitled to the same finality as is provided in this
1639 subsection with respect to the findings of fact in proceedings to
1640 redetermine the contribution rate of an employer.



1641 (* * *x) The department shall notify each
1642 employer of his rate of contribution as determined for any tax
1643 year as soon as reasonably possible after September 1 of the
1644 preceding year. Such determination shall be final, conclusive and
1645 binding upon such employer unless, within thirty (30) days after
1646 the date of such notice to his last known address, the employer
1647 files with the department an application for review and
1648 redetermination of his contribution rate, setting forth his
1649 reasons therefor. If the department grants such review, the
1650 employer shall be promptly notified thereof and shall be afforded
1651 an opportunity for a fair hearing by a hearing officer designated
1652 by the department who shall consider and decide these and related
1653 applications and protests; but no employer shall be allowed, in
1654 any proceeding involving his rate of contributions or contribution
1655 liability, to contest the chargeability to his account of any
1656 benefits paid in accordance with a determination, redetermination
1657 or decision pursuant to Sections 71-5-515 through 71-5-533 except
1658 upon the ground that the services on the basis of which such
1659 benefits were found to be chargeable did not constitute services
1660 performed in employment for him, and then only in the event that
1661 he was not a party to such determination, redetermination,
1662 decision or to any other proceedings provided in this chapter in
1663 which the character of such services was determined. The employer
1664 shall be promptly notified of the denial of this application or of
1665 the redetermination, both of which shall become final unless,



1666 within ten (10) days after the date of notice thereof, there shall
1667 be an appeal to the department itself. Any such appeal shall be
1668 on the record before said designated hearing officer, and the
1669 decision of said department shall become final unless, within
1670 thirty (30) days after the date of notice thereof to the
1671 employer's last known address, there shall be an appeal to the
1672 Circuit Court of the First Judicial District of Hinds County,
1673 Mississippi, in accordance with the provisions of law with respect
1674 to review of civil causes by certiorari.

1675 (3) Notwithstanding any other provision of law, the
1676 following shall apply regarding assignment of rates and transfers
1677 of experience:

1678 (a) (i) If an employer transfers its trade or
1679 business, or a portion thereof, to another employer and, at the
1680 time of the transfer, there is substantially common ownership,
1681 management or control of the two (2) employers, then the
1682 unemployment experience attributable to the transferred trade or
1683 business shall be transferred to the employer to whom such
1684 business is so transferred. The rates of both employers shall be
1685 recalculated and made effective on January 1 of the year following
1686 the year the transfer occurred.

1687 (ii) If, following a transfer of experience under
1688 subparagraph (i) of this paragraph (a), the department determines
1689 that a substantial purpose of the transfer of trade or business
1690 was to obtain a reduced liability of contributions, then the



1691 experience-rating accounts of the employers involved shall be
1692 combined into a single account and a single rate assigned to such
1693 account.

1694 (b) Whenever a person who is not an employer or an
1695 employing unit under this chapter at the time it acquires the
1696 trade or business of an employer, the unemployment experience of
1697 the acquired business shall not be transferred to such person if
1698 the department finds that such person acquired the business solely
1699 or primarily for the purpose of obtaining a lower rate of
1700 contributions. Instead, such person shall be assigned the new
1701 employer rate under Section 71-5-353. In determining whether the
1702 business was acquired solely or primarily for the purpose of
1703 obtaining a lower rate of contributions, the department shall use
1704 objective factors which may include the cost of acquiring the
1705 business, whether the person continued the business enterprise of
1706 the acquired business, how long such business enterprise was
1707 continued, or whether a substantial number of new employees were
1708 hired for performance of duties unrelated to the business activity
1709 conducted prior to acquisition.

1710 (c) (i) If a person knowingly violates or attempts to
1711 violate paragraph (a) or (b) of this subsection or any other
1712 provision of this chapter related to determining the assignment of
1713 a contribution rate, or if a person knowingly advises another
1714 person in a way that results in a violation of such provision, the
1715 person shall be subject to the following penalties:



1716 1. If the person is an employer, then such
1717 employer shall be assigned the highest rate assignable under this
1718 chapter for the rate year during which such violation or attempted
1719 violation occurred and the three (3) rate years immediately
1720 following this rate year. However, if the person's business is
1721 already at such highest rate for any year, or if the amount of
1722 increase in the person's rate would be less than two percent (2%)
1723 for such year, then a penalty rate of contributions of two percent
1724 (2%) of taxable wages shall be imposed for such year. The penalty
1725 rate will apply to the successor business as well as the related
1726 entity from which the employees were transferred in an effort to
1727 obtain a lower rate of contributions.

1728 2. If the person is not an employer, such
1729 person shall be subject to a civil money penalty of not more than
1730 Five Thousand Dollars (\$5,000.00). Each such transaction for
1731 which advice was given and each occurrence or reoccurrence after
1732 notification being given by the department shall be a separate
1733 offense and punishable by a separate penalty. Any such fine shall
1734 be deposited in the penalty and interest account established under
1735 Section 71-5-114.

1736 (ii) For purposes of this paragraph (c), the term
1737 "knowingly" means having actual knowledge of or acting with
1738 deliberate ignorance or reckless disregard for the prohibition
1739 involved.



1740 (iii) For purposes of this paragraph (c), the term
1741 "violates or attempts to violate" includes, but is not limited to,
1742 intent to evade, misrepresentation or willful nondisclosure.

1743 (iv) In addition to the penalty imposed by
1744 subparagraph (i) of this paragraph (c), any violation of this
1745 subsection may be punishable by a fine of not more than Ten
1746 Thousand Dollars (\$10,000.00) or by imprisonment for not more than
1747 five (5) years, or by both such fine and imprisonment. This
1748 subsection shall prohibit prosecution under any other criminal
1749 statute of this state.

1750 (d) The department shall establish procedures to
1751 identify the transfer or acquisition of a business for purposes of
1752 this subsection.

1753 (e) For purposes of this subsection:

1754 (i) "Person" has the meaning given such term by
1755 Section 7701(a)(1) of the Internal Revenue Code of 1986; and

1756 (ii) "Employing unit" has the meaning as set forth
1757 in Section 71-5-11.

1758 (f) This subsection shall be interpreted and applied in
1759 such a manner as to meet the minimum requirements contained in any
1760 guidance or regulations issued by the United States Department of
1761 Labor.

1762 **SECTION 8.** Section 71-5-367, Mississippi Code of 1972, is
1763 amended as follows:



1764 71-5-367. If an employer shall file a report in proper form
1765 and in proper amount, but shall fail to pay the amount of
1766 contributions shown to be due thereby at the time of such filing,
1767 or if an employer shall fail to pay any assessment as provided and
1768 made under Section 71-5-365 within fifteen (15) days after such
1769 assessment has become final as herein provided, the * * *
1770 department may issue a warrant under its official seal, directed
1771 to the sheriff of any county of the state, commanding him to levy
1772 upon and sell the real and personal property of such employer as
1773 has defaulted in the payment of such contributions or assessments,
1774 which may be found within his county, for the payment of the
1775 amount thereof, together with interest, damages, if any, assessed
1776 for failure to make and file a report or a corrected or sufficient
1777 report, and an additional sum not exceeding one hundred percent
1778 (100%) of the amount of the unpaid contributions due, in the
1779 discretion of the * * * department, as damages for failure to pay,
1780 if not already assessed under Section 71-5-365 and the costs of
1781 executing the warrant and to return such warrant to the * * *
1782 department, and to pay to it the money collected by virtue thereof
1783 on the date specified therein. The * * * department shall cause
1784 to be delivered to the clerk of the circuit court a copy of such
1785 warrant issued to the sheriff. Such clerk shall enter in the
1786 judgment roll, in the column for judgment debtors, the name of the
1787 employer mentioned in the warrant and, in appropriate columns, the
1788 amount of contributions, interest and damages for which the



1789 warrant is issued, a notation that the lien covers all previous,
1790 current and future periods for the life of the lien, and the date
1791 when such copy is filed. Thereupon the amount of such warrant so
1792 filed and entered shall become a lien upon the title to and
1793 interest in all real and personal property, including choses in
1794 action against negotiable instruments not past due, of the
1795 employer against whom the warrant is issued in the same manner as
1796 a judgment duly enrolled in the office of such clerk. Any such
1797 liens shall cover all contributions, interest and damages owed to
1798 the * * * department from previous, current and future periods
1799 until the expiration of such lien or until the amount of the lien
1800 is fully satisfied. Such judgment shall not be a lien upon the
1801 property of the employer for a period of more than seven (7) years
1802 from the date of filing of the notice of the tax lien for failure
1803 to pay contributions, damages and interest unless action be
1804 brought thereon before the expiration of such time or unless
1805 the * * * department refiles such notice of tax lien before the
1806 expiration of such time. The judgment shall be a lien upon the
1807 property of the employer for a period of seven (7) years from the
1808 date of refileing such notice of tax lien unless action be brought
1809 thereon before the expiration of such time or unless the * * *
1810 department refiles such notice of tax lien before the expiration
1811 of such time. There shall be no limit upon the number of times
1812 the * * * department may refile notices of tax liens. The sheriff
1813 shall proceed upon the warrant in the same manner and with like



1814 effect as that provided by law in respect to executions issued
1815 against property upon judgments or in attachment proceedings of a
1816 court of record, and the remedies by garnishment shall apply; and
1817 for his services in executing the warrant the sheriff shall be
1818 entitled to the same fees, which he may collect in the same
1819 manner.

1820 The * * * department may elect to issue the warrant directly
1821 to the circuit clerk of any county of this state for enrollment
1822 upon the judgment rolls of the county. In such case, the clerk
1823 shall enter in the judgment roll, in the column for judgment
1824 debtors, the name of the employer mentioned in the warrant and, in
1825 appropriate columns, the amount of contributions, interest and
1826 damages for which the warrant is issued, a notation that the lien
1827 covers all previous, current and future periods for the life of
1828 the lien, and the date when such warrant is filed. The lien shall
1829 have the same effect and remedies as that provided by law in
1830 respect to executions issued against property upon judgments or in
1831 attachment proceedings of a court of record, and the remedies by
1832 garnishment shall apply.

1833 * * * All warrants issued by the department for the
1834 collection of any unemployment tax or for an overpayment of
1835 benefits imposed by statute and collected by the department shall
1836 be used to levy on salaries, compensation or other monies due the
1837 delinquent employer or claimant. No such warrant shall be issued
1838 until after the delinquent employer or claimant has exhausted all



1839 appeal rights associated with the debt. The warrants shall be
1840 served by mail or by delivery by an agent of the department on the
1841 person or entity responsible or liable for the payment of the
1842 monies due the delinquent employer or claimant. Once served, the
1843 employer or other person owing compensation due the delinquent
1844 employer or claimant shall pay the monies over to the department
1845 in complete or partial satisfaction of the liability. An answer
1846 shall be made within thirty (30) days after service of the warrant
1847 in the form and manner determined satisfactory by the department.
1848 Failure to pay the money over to the department as required by
1849 this section shall result in the served party being personally
1850 liable for the full amount of the monies owed and the levy and
1851 collection process may be issued against the party in the same
1852 manner as other debts owed to the department. Except as otherwise
1853 provided by this section, the answer, the amount payable under the
1854 warrant and the obligation of the payor to continue payment shall
1855 be governed by the garnishment laws of this state but shall be
1856 payable to the department.

1857 **SECTION 9.** Section 71-5-389, Mississippi Code of 1972, is
1858 amended as follows:

1859 71-5-389. (1) For the purposes of this section, the
1860 following terms shall have the respective meanings ascribed by
1861 this section:

1862 (a) "Claimant agency" means the Mississippi Department
1863 of Employment Security.



1864 (b) "Debtor" means any individual owing money or having
1865 a delinquent account with any claimant agency, which obligation
1866 has not been adjudicated satisfied by court order, set aside by
1867 court order, or discharged in bankruptcy.

1868 (c) "Debt" means any sum due and owing any claimant
1869 agency, including costs, court costs, fines, penalties and
1870 interest which have accrued through contract, subrogation, tort,
1871 operation of law, or any other legal theory regardless of whether
1872 there is an outstanding judgment for that sum which is legally
1873 collectible and for which a collection effort has been or is being
1874 made.

1875 (d) "Department" or "Department of Revenue" means the
1876 Department of Revenue of the State of Mississippi.

1877 (e) "Refund" means the Mississippi income tax refund
1878 which the department determines to be due any individual taxpayer.

1879 (2) The collection remedy authorized by this section is in
1880 addition to and is not substitution for any other remedy available
1881 by law.

1882 (3) (a) A claimant agency may submit debts in excess of
1883 Twenty-five Dollars (\$25.00) owed to it to the department for
1884 collection through setoff, under the procedure established by this
1885 section, except in cases where the validity of the debt is
1886 legitimately in dispute, an alternate means of collection is
1887 pending and believed to be adequate, or such collection would
1888 result in a loss of federal funds or federal assistance.



1889 (b) Upon the request of a claimant agency, the
1890 department shall set off any refund, as defined herein, against
1891 the sum certified by the claimant agency as provided in this
1892 section.

1893 (4) (a) Within the time frame specified by the department,
1894 a claimant agency seeking to collect a debt through setoff shall
1895 supply the information necessary to identify each debtor whose
1896 refund is sought to be set off and certify the amount of debt or
1897 debts owed by each such debtor.

1898 (b) If a debtor identified by a claimant agency is
1899 determined by the department to be entitled to a refund of at
1900 least Twenty-five Dollars (\$25.00), the department shall transfer
1901 an amount equal to the refund owed, not to exceed the amount of
1902 the claimed debt certified, to the claimant agency. The
1903 Department of Revenue shall send the excess amount to the debtor
1904 within a reasonable time after such excess is determined. At the
1905 time of the transfer of funds to a claimant agency pursuant to
1906 this paragraph (b), the Department of Revenue shall notify the
1907 taxpayer or taxpayers whose refund is sought to be set off that
1908 the transfer has been made. Such notice shall clearly set forth
1909 the name of the debtor, the manner in which the debt arose, the
1910 amount of the claimed debt, the transfer of funds to the claimant
1911 agency pursuant to this paragraph (b) and the intention to set off
1912 the refund against the debt, the amount of the refund in excess of
1913 the claimed debt, the taxpayer's opportunity to give written



1914 notice to contest the setoff within thirty (30) days of the date
1915 of mailing of the notice, the name and mailing address of the
1916 claimant agency to which the application for such a hearing must
1917 be sent, and the fact that the failure to apply for such a
1918 hearing, in writing, within the thirty-day period will be deemed a
1919 waiver of the opportunity to contest the setoff. In the case of a
1920 joint return or a joint refund, the notice shall also state the
1921 name of the taxpayer named in the return, if any, against whom no
1922 debt is claimed, the fact that a debt is not claimed against such
1923 taxpayer, the fact that such taxpayer is entitled to receive a
1924 refund if it is due him regardless of the debt asserted against
1925 his spouse, and that in order to obtain a refund due him such
1926 taxpayer must apply in writing for a hearing with the claimant
1927 agency named in the notice within thirty (30) days of the date of
1928 the mailing of the notice. If a taxpayer fails to apply in
1929 writing for such a hearing within thirty (30) days of the mailing
1930 of such notice, he will have waived his opportunity to contest the
1931 setoff.

1932 (c) Upon receipt of funds transferred from the
1933 Department of Revenue pursuant to paragraph (b) of this
1934 subsection, the claimant agency shall deposit and hold such funds
1935 in an escrow account until a final determination of the validity
1936 of the debt.

1937 (d) The claimant agency shall pay the Department of
1938 Revenue a fee, not to exceed Seventeen Dollars (\$17.00) in each



1939 case in which a tax refund is identified as being available for
1940 offset. Such fees shall be deposited by the Department of Revenue
1941 into a special fund hereby created in the State Treasury, out of
1942 which the Legislature shall appropriate monies to defray expenses
1943 of the Department of Revenue in employing personnel to administer
1944 the provisions of this section.

1945 (5) (a) When the claimant agency receives a protest or an
1946 application in writing from a taxpayer within thirty (30) days of
1947 the notice issued by the Department of Revenue, the claimant
1948 agency shall set a date to hear the protest and give notice to the
1949 taxpayer * * * through the United States Postal Service or
1950 electronic digital transfer of the date so set. The time and
1951 place of such hearing shall be designated in such notice and the
1952 date set shall not be less than fifteen (15) days from the date of
1953 such notice. If, at the hearing, the sum asserted as due and
1954 owing is found not to be correct, an adjustment to the claim may
1955 be made. The claimant agency shall give notice to the debtor of
1956 its final determination as provided in paragraph (c) of this
1957 subsection.

1958 (b) No issues shall be reconsidered at the hearing
1959 which have been previously litigated.

1960 (c) If any debtor is dissatisfied with the final
1961 determination made at the hearing by the claimant agency, he may
1962 appeal the final determination to the circuit court of the county
1963 in which the main office of the claimant agency is located by



1964 filing notice of appeal with the administrative head of the
1965 claimant agency and with the clerk of the circuit court of the
1966 county in which the appeal shall be taken within thirty (30) days
1967 from the date the notice of final determination was given by the
1968 claimant agency.

1969 (6) (a) Upon final determination of the amount of the debt
1970 due and owing by means of hearing or by the taxpayer's default
1971 through failure to comply with timely request for review, the
1972 claimant agency shall remove the amount of the debt due and owing
1973 from the escrow account and credit such amount to the debtor's
1974 obligation.

1975 (b) Upon transfer of the debt due and owing from the
1976 escrow account to the credit of the debtor's account, the claimant
1977 agency shall notify the debtor in writing of the finalization of
1978 the setoff. Such notice shall include a final accounting if the
1979 refund which was set off, including the amount of the refund to
1980 which the debtor was entitled prior to the setoff, the amount of
1981 the debt due and owing, the amount of the collection fee paid to
1982 the Department of Revenue, the amount of the refund in excess of
1983 the debt which was returned to the debtor by the Department of
1984 Revenue, and the amount of the funds transferred to the claimant
1985 agency in excess of the debt determined to be due and owing at a
1986 hearing, if such a hearing was held. At such time, the claimant
1987 agency shall refund to the debtor the amount of the claimed debt
1988 originally certified and transferred to it by the Department of



1989 Revenue in excess of the amount of debt finally found to be due
1990 and owing.

1991 (7) (a) Notwithstanding the provision that prohibits
1992 disclosure by the Department of Revenue of the contents of
1993 taxpayer records or information and notwithstanding any other
1994 confidentiality statute, the Department of Revenue may provide to
1995 a claimant agency all information necessary to accomplish and
1996 effectuate the intent of the section.

1997 (b) The information obtained by claimant agency from
1998 the Department of Revenue in accordance with the provisions of
1999 this section shall retain its confidentiality and shall only be
2000 used by a claimant agency in the pursuit of its debt collection
2001 duties and practices; and any employee or prior employee of any
2002 claimant agency who unlawfully discloses any such information for
2003 any other purpose, except as specifically authorized by law, shall
2004 be subject to the same penalties specified by law for unauthorized
2005 confidential information by an agent or employee of the Department
2006 of Revenue.

2007 **SECTION 10.** Section 71-5-453, Mississippi Code of 1972, is
2008 amended as follows:

2009 71-5-453. The * * * department shall be the * * * treasurer
2010 and custodian of the fund, and shall administer such fund in
2011 accordance with the directions of the department, and shall
2012 issue * * * its warrants upon it in accordance with such
2013 regulations as the department shall prescribe. * * * The



2014 department shall maintain within the fund three (3) separate
2015 accounts: (a) a clearing account, (b) an unemployment trust fund
2016 account, and (c) a benefit payment account. All monies payable to
2017 the fund, upon receipt thereof by the department, shall be * * *
2018 immediately * * * deposited in the clearing account. Refunds
2019 payable pursuant to Section 71-5-383 may be paid from the clearing
2020 account * * * by the * * * department. Transfers pursuant to
2021 Section 71-5-114 of all interest, penalties and damages collected
2022 shall be made to the Special Employment Security Administration
2023 Fund as soon as practicable after the end of each calendar
2024 quarter. Workforce training enhancement contributions shall be
2025 deposited into the workforce enhancement training holding fund
2026 account as described in this section. All other monies in the
2027 clearing account shall be immediately deposited with the Secretary
2028 of the Treasury of the United States of America to the * * *
2029 Unemployment Trust Fund account for the state of Mississippi,
2030 established and maintained pursuant to Section 904 of the Social
2031 Security Act, as amended, any provisions of law in this state
2032 relating to the deposit, administration, release or disbursement
2033 of monies in the possession or custody of this state to the
2034 contrary notwithstanding. The benefit account shall consist of
2035 all monies requisitioned from this state's account in the
2036 Unemployment Trust Fund. Except as herein otherwise provided,
2037 monies in the clearing and benefit accounts may be deposited by
2038 the * * * department, in any bank or public depository in which



2039 general funds of the state may be deposited, but no public deposit
2040 insurance charge or premium shall be paid out of the fund.
2041 The * * * department shall be liable * * * for the faithful
2042 performance of * * * its duties in connection with the
2043 Unemployment Compensation Fund under this chapter. A Mississippi
2044 Workforce Training Enhancement Fund holding account shall be
2045 established by and maintained under the control of the * * *
2046 department. The workforce training enhancement contributions
2047 collected pursuant to the provisions in this chapter shall be
2048 transferred from the clearing account into the Mississippi
2049 Workforce Training Enhancement Fund holding account on the same
2050 schedule and under the same conditions as funds transferred to the
2051 Unemployment Compensation Fund. Such funds shall remain on
2052 deposit in the workforce training enhancement fund account for a
2053 period of sixty (60) days. After such period, contributions will
2054 be transferred to the Mississippi Workforce Enhancement Training
2055 Fund by the * * * department, within thirty (30) days. One such
2056 transfer shall be made monthly, but the department, in its
2057 discretion, may make additional transfers in any month. In the
2058 event such funds transferred are subsequently determined to be
2059 erroneously paid or collected, or if deposit of such funds is
2060 denied or rejected by the banking institution for any reason, or
2061 deposits are unable to clear drawer's account for any reason, the
2062 funds must be reimbursed by the recipient of such funds within
2063 thirty (30) days of mailing of notice by the * * * department



2064 demanding such refund, unless funds are available in the workforce
2065 training enhancement fund holding account. In that event such
2066 amounts shall be immediately withdrawn from the workforce
2067 enhancement training holding fund account by the * * * department
2068 and redeposited into the clearing account.

2069 **SECTION 11.** Section 71-5-455, Mississippi Code of 1972, is
2070 amended as follows:

2071 71-5-455. Monies shall be requisitioned from this state's
2072 account in the Unemployment Trust Fund solely for the payment of
2073 benefits and in accordance with regulations prescribed by
2074 the * * * department, except that monies credited to this state's
2075 account pursuant to Section 903 of the Social Security Act, as
2076 amended, shall be used exclusively as provided in Section
2077 71-5-457. No monies in the Unemployment Compensation Fund shall
2078 be used to pay interest on any funds that might be borrowed for
2079 the purposes of this chapter, but any such interest that might be
2080 due shall be paid from other sources. The * * * department shall
2081 from time to time requisition from the Unemployment Trust Fund
2082 such amounts, not exceeding the amount standing to this state's
2083 account therein, as it deems necessary for the payment of benefits
2084 for a reasonable future period. * * * Such sums shall be
2085 immediately deposited by the * * * department in some bank within
2086 this state in an account to be known as the "benefit payment
2087 account," which shall be under the control of the * * * department
2088 and on which said benefit payment account the * * * department or



2089 its duly authorized representative is authorized to draw and issue
2090 its checks in payment of benefits to individuals entitled thereto
2091 under this chapter. Expenditures of such monies in the benefit
2092 account and benefit payment account and refunds from the clearing
2093 account shall not be subject to any provisions of law requiring
2094 specific appropriations or other formal release by state officers
2095 of money in their custody. All warrants * * * shall bear the
2096 signature of the * * * department's duly authorized agent for that
2097 purpose.

2098 * * *

2099 The department shall be subject to the applicable laws
2100 pertaining to security of public fund deposits as set forth in
2101 Sections 27-105-5 and 27-105-6.

2102 **SECTION 12.** Section 71-5-505, Mississippi Code of 1972, is
2103 amended as follows:

2104 71-5-505. (1) For weeks beginning on or after July 1, 1991,
2105 each eligible individual who is totally unemployed or part totally
2106 unemployed in any week shall be paid with respect to such week a
2107 benefit in an amount equal to his weekly benefit amount less that
2108 part of his wages, if any, payable to him with respect to such
2109 week which is in excess of Forty Dollars (\$40.00). Such
2110 individuals must have been totally unemployed or part totally
2111 unemployed for a waiting period of one (1) week during which he
2112 earned less than his weekly benefit amount plus Forty Dollars
2113 (\$40.00). Such benefit for a benefit year effective on or after



2114 October 1, 1983, if not a multiple of One Dollar (\$1.00), shall be
2115 computed to the next lower multiple of One Dollar (\$1.00).
2116 Provided, however, that remuneration for "inactive duty training"
2117 or "unit training assembly" payable to such eligible individual
2118 who is a member of any of the reserve components, or remuneration
2119 for jury duty pursuant to a lawfully issued summons therefor
2120 payable to such eligible individual, shall not be considered wages
2121 which serve to reduce the otherwise payable benefit amount.

2122 In determining whether an eligible individual is unemployed
2123 during a week, the date of commencing a shift shall determine the
2124 week for which the earnings are deducted.

2125 (2) However, the one-week waiting period described herein
2126 shall be waived if the President of the United States declares a
2127 major disaster with regard to individual assistance in accordance
2128 with Section 401 of The Robert T. Stafford Disaster Relief and
2129 Emergency Assistance Act. The department, in its discretion,
2130 shall have the authority to noncharge an employer account for any
2131 benefits paid for unemployment due directly to such disaster, but
2132 only in those counties and/or areas identified by the disaster
2133 area for individual assistance.

2134 **SECTION 13.** Section 71-5-511, Mississippi Code of 1972, is
2135 amended as follows:

2136 71-5-511. An unemployed individual shall be eligible to
2137 receive benefits with respect to any week only if the department
2138 finds that:



2139 (a) (i) He has registered for work at and thereafter
2140 has continued to report to the department in accordance with such
2141 regulations as the department may prescribe; except that the
2142 department may, by regulation, waive or alter either or both of
2143 the requirements of this subparagraph as to such types of cases or
2144 situations with respect to which it finds that compliance with
2145 such requirements would be oppressive or would be inconsistent
2146 with the purposes of this chapter; and

2147 (ii) He participates in reemployment services,
2148 such as job search assistance services, if, in accordance with a
2149 profiling system established by the department, it has been
2150 determined that he is likely to exhaust regular benefits and needs
2151 reemployment services, unless the department determines that:

2152 1. The individual has completed such
2153 services; or

2154 2. There is justifiable cause for the
2155 claimant's failure to participate in such services.

2156 (b) He has made a claim for benefits in accordance with
2157 the provisions of Section 71-5-515 and in accordance with such
2158 regulations as the department may prescribe thereunder.

2159 (c) He is able to work * * *, available for work and
2160 actively seeking work.

2161 (d) He has been unemployed for a waiting period of one
2162 (1) week. No week shall be counted as a week of unemployment for
2163 the purposes of this subsection:



2164 (i) Unless it occurs within the benefit year which
2165 includes the week with respect to which he claims payment of
2166 benefits;

2167 (ii) If benefits have been paid with respect
2168 thereto;

2169 (iii) Unless the individual was eligible for
2170 benefits with respect thereto, as provided in Sections 71-5-511
2171 and 71-5-513, except for the requirements of this subsection.

2172 (e) For weeks beginning on or before July 1, 1982, he
2173 has, during his base period, been paid wages for insured work
2174 equal to not less than thirty-six (36) times his weekly benefit
2175 amount; he has been paid wages for insured work during at least
2176 two (2) quarters of his base period; and he has, during that
2177 quarter of his base period in which his total wages were highest,
2178 been paid wages for insured work equal to not less than sixteen
2179 (16) times the minimum weekly benefit amount. For benefit years
2180 beginning after July 1, 1982, he has, during his base period, been
2181 paid wages for insured work equal to not less than forty (40)
2182 times his weekly benefit amount; he has been paid wages for
2183 insured work during at least two (2) quarters of his base period,
2184 and he has, during that quarter of his base period in which his
2185 total wages were highest, been paid wages for insured work equal
2186 to not less than twenty-six (26) times the minimum weekly benefit
2187 amount. For purposes of this subsection, wages shall be counted
2188 as "wages for insured work" for benefit purposes with respect to



2189 any benefit year only if such benefit year begins subsequent to
2190 the date on which the employing unit by which such wages were paid
2191 has satisfied the conditions of Section 71-5-11, subsection * * *
2192 H, or Section 71-5-361, subsection (3), with respect to becoming
2193 an employer.

2194 (f) No individual may receive benefits in a benefit
2195 year unless, subsequent to the beginning of the next preceding
2196 benefit year during which he received benefits, he performed
2197 service in "employment" as defined in Section 71-5-11,
2198 subsection * * * I, and earned remuneration for such service in an
2199 amount equal to not less than eight (8) times his weekly benefit
2200 amount applicable to his next preceding benefit year.

2201 (g) Benefits based on service in employment defined in
2202 Section 71-5-11, subsection * * * I(3) and * * * I(4), and Section
2203 71-5-361, subsection (4) shall be payable in the same amount, on
2204 the same terms, and subject to the same conditions as compensation
2205 payable on the basis of other service subject to this chapter,
2206 except that benefits based on service in an instructional,
2207 research or principal administrative capacity in an institution of
2208 higher learning (as defined in Section 71-5-11, subsection * * *
2209 N) with respect to service performed prior to January 1, 1978,
2210 shall not be paid to an individual for any week of unemployment
2211 which begins during the period between two (2) successive academic
2212 years, or during a similar period between two (2) regular terms,
2213 whether or not successive, or during a period of paid sabbatical



2214 leave provided for in the individual's contract, if the individual
2215 has a contract or contracts to perform services in any such
2216 capacity for any institution or institutions of higher learning
2217 for both such academic years or both such terms.

2218 (h) Benefits based on service in employment defined in
2219 Section 71-5-11, subsection * * * I(3) and * * * I(4), shall be
2220 payable in the same amount, on the same terms and subject to the
2221 same conditions as compensation payable on the basis of other
2222 service subject to this chapter, except that:

2223 (i) With respect to service performed in an
2224 instructional, research or principal administrative capacity for
2225 an educational institution, benefits shall not be paid based on
2226 such services for any week of unemployment commencing during the
2227 period between two (2) successive academic years, or during a
2228 similar period between two (2) regular but not successive terms,
2229 or during a period of paid sabbatical leave provided for in the
2230 individual's contract, to any individual, if such individual
2231 performs such services in the first of such academic years or
2232 terms and if there is a contract or a reasonable assurance that
2233 such individual will perform services in any such capacity for any
2234 educational institution in the second of such academic years or
2235 terms, and provided that subsection (g) of this section shall
2236 apply with respect to such services prior to January 1, 1978. In
2237 no event shall benefits be paid unless the individual employee was
2238 terminated by the employer.



2239 (ii) With respect to services performed in any
2240 other capacity for an educational institution, benefits shall not
2241 be paid on the basis of such services to any individual for any
2242 week which commences during a period between two (2) successive
2243 academic years or terms, if such individual performs such services
2244 in the first of such academic years or terms and there is a
2245 reasonable assurance that such individual will perform such
2246 services in the second of such academic years or terms, except
2247 that if compensation is denied to any individual under this
2248 subparagraph and such individual was not offered an opportunity to
2249 perform such services for the educational institution for the
2250 second of such academic years or terms, such individual shall be
2251 entitled to a retroactive payment of compensation for each week
2252 for which the individual filed a timely claim for compensation and
2253 for which compensation was denied solely by reason of this clause.
2254 In no event shall benefits be paid unless the individual employee
2255 was terminated by the employer.

2256 (iii) With respect to services described in
2257 subsection (h) (i) and (ii), benefits shall not be payable on the
2258 basis of services in any such capacities to any individual for any
2259 week which commences during an established and customary vacation
2260 period or holiday recess if such individual performs such services
2261 in the first of such academic years or terms, or in the period
2262 immediately before such vacation period or holiday recess, and
2263 there is a reasonable assurance that such individual will perform



2264 such services in the period immediately following such vacation
2265 period or holiday recess.

2266 (iv) With respect to any services described in
2267 subsection (h) (i) and (ii), benefits shall not be payable on the
2268 basis of services in any such capacities as specified in
2269 subsection (h) (i), (ii) and (iii) to any individual who performed
2270 such services in an educational institution while in the employ of
2271 an educational service agency. For purposes of this subsection,
2272 the term "educational service agency" means a governmental agency
2273 or governmental entity which is established and operated
2274 exclusively for the purpose of providing such services to one or
2275 more educational institutions.

2276 (v) With respect to services to which Sections
2277 71-5-357 and 71-5-359 apply, if such services are provided to or
2278 on behalf of an educational institution, benefits shall not be
2279 payable under the same circumstances and subject to the same terms
2280 and conditions as described in subsection (h) (i), (ii), (iii) and
2281 (iv).

2282 (i) Subsequent to December 31, 1977, benefits shall not
2283 be paid to any individual on the basis of any services
2284 substantially all of which consist of participating in sports or
2285 athletic events or training or preparing to so participate, for
2286 any week which commences during the period between two (2)
2287 successive sports seasons (or similar periods) if such individual
2288 performs such services in the first of such seasons (or similar



2289 periods) and there is a reasonable assurance that such individual
2290 will perform such services in the later of such seasons (or
2291 similar periods).

2292 (j) (i) Subsequent to December 31, 1977, benefits
2293 shall not be payable on the basis of services performed by an
2294 alien, unless such alien is an individual who was lawfully
2295 admitted for permanent residence at the time such services were
2296 performed, was lawfully present for purposes of performing such
2297 services, or was permanently residing in the United States under
2298 color of law at the time such services were performed (including
2299 an alien who was lawfully present in the United States as a result
2300 of the application of the provisions of Section 203(a) (7) or
2301 Section 212(d) (5) of the Immigration and Nationality Act).

2302 (ii) Any data or information required of
2303 individuals applying for benefits to determine whether benefits
2304 are not payable to them because of their alien status shall be
2305 uniformly required from all applicants for benefits.

2306 (iii) In the case of an individual whose
2307 application for benefits would otherwise be approved, no
2308 determination that benefits to such individual are not payable
2309 because of his alien status shall be made, except upon a
2310 preponderance of the evidence.

2311 (k) An individual shall be deemed prima facie
2312 unavailable for work, and therefore ineligible to receive
2313 benefits, during any period which, with respect to his employment



2314 status, is found by the department to be a holiday or vacation
2315 period.

2316 (1) A temporary employee of a temporary help firm is
2317 considered to have left the employee's last work voluntarily
2318 without good cause connected with the work if the temporary
2319 employee does not contact the temporary help firm for reassignment
2320 on completion of an assignment. A temporary employee is not
2321 considered to have left work voluntarily without good cause
2322 connected with the work under this paragraph unless the temporary
2323 employee has been advised in writing:

2324 (i) That the temporary employee is obligated to
2325 contact the temporary help firm on completion of assignments; and

2326 (ii) That unemployment benefits may be denied if
2327 the temporary employee fails to do so.

2328 **SECTION 14.** Section 71-5-13, Mississippi Code of 1972, is
2329 amended as follows:

2330 71-5-13. (1) The * * * department is hereby authorized to
2331 enter into arrangements with the appropriate agencies of other
2332 states or the federal government, whereby individuals performing
2333 services in this and other states for a single employing unit
2334 under circumstances not specifically provided for in Section
2335 71-5-11, subsection * * * I, or under similar provisions in the
2336 unemployment compensation laws of such other states, shall be
2337 deemed to be engaged in employment performed entirely within this
2338 state or within one (1) of such other states and whereby potential



2339 rights to benefits accumulated under the unemployment compensation
2340 laws of one or more states or under such a law of the federal
2341 government, or both, may constitute the basis for the payment of
2342 benefits through a single appropriate agency under terms which
2343 the * * * department finds will be fair and reasonable as to all
2344 affected interests and will not result in any substantial loss to
2345 the fund.

2346 (2) The * * * department is also authorized to enter into
2347 arrangements with the appropriate agencies of other states or of
2348 the federal government:

2349 (a) Whereby wages or services upon the basis of which
2350 an individual may become entitled to benefits under the
2351 unemployment compensation law of another state or of the federal
2352 government shall be deemed to be wages for employment by employers
2353 for the purposes of Sections 71-5-501 through 71-5-507 and Section
2354 71-5-511(e), provided such other state agency or agency of the
2355 federal government has agreed to reimburse the fund for such
2356 portion of benefits paid under this chapter upon the basis of such
2357 wages or services as the * * * department finds will be fair and
2358 reasonable as to all affected interests; and

2359 (b) Whereby the * * * department will reimburse other
2360 state or federal agencies charged with the administration of
2361 unemployment compensation laws with such reasonable portion of
2362 benefits paid under the law of any such other states or of the
2363 federal government, upon the basis of employment or wages for



2364 employment by employers, as the * * * department finds will be
2365 fair and reasonable as to all affected interests. Reimbursements
2366 so payable shall be deemed to be benefits for the purposes of
2367 Sections 71-5-451 through 71-5-459. The * * * department is
2368 hereby authorized to make to other state or federal agencies, and
2369 receive from such other state or federal agencies, reimbursements
2370 from or to the fund, in accordance with arrangements pursuant to
2371 this section.

2372 (3) The * * * department is also authorized, in its
2373 discretion, to enter into or cooperate in arrangements with any
2374 federal agency whereby the facilities and services of the
2375 personnel of the * * * department may be utilized for the taking
2376 of claims and the payment of unemployment compensation or
2377 allowances under any federal law enacted for the benefit of
2378 discharged members of the Armed Forces.

2379 (4) The * * * department shall participate in any
2380 arrangements for the payment of compensation on the basis of
2381 combining an individual's wages and employment covered under this
2382 chapter with his wages and employment covered under the
2383 unemployment compensation laws of other states which are approved
2384 by the United States Secretary of Labor in consultation with the
2385 state unemployment compensation agencies as reasonably calculated
2386 to assure the prompt and full payment of compensation in such
2387 situations and which include provisions for:



2388 (a) Applying the base period of a single state law to a
2389 claim involving the combining of an individual's wages and
2390 employment covered under two (2) or more state unemployment
2391 compensation laws * * *; and

2392 (b) Avoiding the duplicate use of wages and employment
2393 by reason of such combining.

2394 **SECTION 15.** Section 71-5-357, Mississippi Code of 1972, is
2395 amended as follows:

2396 71-5-357. Benefits paid to employees of nonprofit
2397 organizations shall be financed in accordance with the provisions
2398 of this section. For the purpose of this section, a nonprofit
2399 organization is an organization (or group of organizations)
2400 described in Section 501(c)(3) of the Internal Revenue Code of
2401 1954 which is exempt from income tax under Section 501(a) of such
2402 code (26 USCS Section 501).

2403 (a) Any nonprofit organization which, under Section
2404 71-5-11, subsection * * * H(3), is or becomes subject to this
2405 chapter shall pay contributions under the provisions of Sections
2406 71-5-351 through 71-5-355 unless it elects, in accordance with
2407 this paragraph, to pay to the department for the unemployment fund
2408 an amount equal to the amount of regular benefits and one-half
2409 (1/2) of the extended benefits paid, that is attributable to
2410 service in the employ of such nonprofit organization, to
2411 individuals for weeks of unemployment which begin during the
2412 effective period of such election.



2413 (i) Any nonprofit organization which becomes
2414 subject to this chapter may elect to become liable for payments in
2415 lieu of contributions for a period of not less than twelve (12)
2416 months, beginning with the date on which such subjectivity begins,
2417 by filing a written notice of its election with the department not
2418 later than thirty (30) days immediately following the date of the
2419 determination of such subjectivity.

2420 (ii) Any nonprofit organization which makes an
2421 election in accordance with subparagraph (i) of this paragraph
2422 will continue to be liable for payments in lieu of contributions
2423 unless it files with the department a written termination notice
2424 not later than thirty (30) days prior to the beginning of the tax
2425 year for which such termination shall first be effective.

2426 (iii) Any nonprofit organization which has been
2427 paying contributions under this chapter may change to a
2428 reimbursable basis by filing with the department, not later than
2429 thirty (30) days prior to the beginning of any tax year, a written
2430 notice of election to become liable for payments in lieu of
2431 contributions. Such election shall not be terminable by the
2432 organization for that and the next tax year.

2433 (iv) The department may for good cause extend the
2434 period within which a notice of election or a notice of
2435 termination must be filed, and may permit an election to be
2436 retroactive.



2437 (v) The department, in accordance with such
2438 regulations as it may prescribe, shall notify each nonprofit
2439 organization of any determination which it may make of its status
2440 as an employer, of the effective date of any election which it
2441 makes and of any termination of such election. Such
2442 determinations shall be subject to reconsideration, appeal and
2443 review in accordance with the provisions of Sections 71-5-351
2444 through 71-5-355.

2445 (b) Payments in lieu of contributions shall be made in
2446 accordance with the provisions of subparagraph (i) of this
2447 paragraph.

2448 (i) At the end of each calendar quarter, or at the
2449 end of any other period as determined by the department, the
2450 department shall bill each nonprofit organization (or group of
2451 such organizations) which has elected to make payments in lieu of
2452 contributions, for an amount equal to the full amount of regular
2453 benefits plus one-half (1/2) of the amount of extended benefits
2454 paid during such quarter or other prescribed period that is
2455 attributable to service in the employ of such organization.

2456 (ii) Payment of any bill rendered under
2457 subparagraph (i) of this paragraph shall be made not later than
2458 forty-five (45) days after such bill was delivered to the
2459 nonprofit organization, unless there has been an application for
2460 review and redetermination in accordance with subparagraph (v) of
2461 this paragraph.



2462 1. All of the enforcement procedures for the
2463 collection of delinquent contributions contained in Sections
2464 71-5-363 through 71-5-383 shall be applicable in all respects for
2465 the collection of delinquent payments due by nonprofit
2466 organizations who have elected to become liable for payments in
2467 lieu of contributions.

2468 2. If any nonprofit organization is
2469 delinquent in making payments in lieu of contributions, the
2470 department may terminate such organization's election to make
2471 payments in lieu of contributions as of the beginning of the next
2472 tax year, and such termination shall be effective for the balance
2473 of such tax year.

2474 (iii) Payments made by any nonprofit organization
2475 under the provisions of this paragraph shall not be deducted or
2476 deductible, in whole or in part, from the remuneration of
2477 individuals in the employ of the organization.

2478 (iv) Payments due by employers who elect to
2479 reimburse the fund in lieu of contributions as provided in this
2480 paragraph may not be noncharged under any condition. The
2481 reimbursement must be on a dollar-for-dollar basis (One Dollar
2482 (\$1.00) reimbursement for each dollar paid in benefits) in every
2483 case, so that the trust fund shall be reimbursed in full, such
2484 reimbursement to include, but not be limited to, benefits or
2485 payments erroneously or incorrectly paid, or paid as a result of a
2486 determination of eligibility which is subsequently reversed, or



2487 paid as a result of claimant fraud. However, political
2488 subdivisions who are reimbursing employers may elect to pay to the
2489 fund an amount equal to five-tenths percent (.5%) through December
2490 31, 2010, and shall pay twenty-five one-hundredths percent (.25%)
2491 thereafter of the taxable wages paid during the calendar year with
2492 respect to employment, and those employers who so elect shall be
2493 relieved of liability for reimbursement of benefits paid under the
2494 same conditions that benefits are not charged to the
2495 experience-rating record of a contributing employer as provided in
2496 Section 71-5-355(2) (b) (ii) other than Clause 5 thereof. Benefits
2497 paid in such circumstances for which reimbursing employers are
2498 relieved of liability for reimbursement shall not be considered
2499 attributable to service in the employment of such reimbursing
2500 employer.

2501 (v) The amount due specified in any bill from the
2502 department shall be conclusive on the organization unless, not
2503 later than fifteen (15) days after the bill was delivered to it,
2504 the organization files an application for redetermination by the
2505 department, setting forth the grounds for such application or
2506 appeal. The department shall promptly review and reconsider the
2507 amount due specified in the bill and shall thereafter issue a
2508 redetermination in any case in which such application for
2509 redetermination has been filed. Any such redetermination shall be
2510 conclusive on the organization unless, not later than fifteen (15)
2511 days after the redetermination was delivered to it, the



2512 organization files an appeal to the Circuit Court of the First
2513 Judicial District of Hinds County, Mississippi, in accordance with
2514 the provisions of law with respect to review of civil causes by
2515 certiorari.

2516 (vi) Past-due payments of amounts in lieu of
2517 contributions shall be subject to the same interest and penalties
2518 that, pursuant to Section 71-5-363, apply to past-due
2519 contributions.

2520 (c) Each employer that is liable for payments in lieu
2521 of contributions shall pay to the department for the fund the
2522 amount of regular benefits plus the amount of one-half (1/2) of
2523 extended benefits paid are attributable to service in the employ
2524 of such employer. If benefits paid to an individual are based on
2525 wages paid by more than one (1) employer and one or more of such
2526 employers are liable for payments in lieu of contributions, the
2527 amount payable to the fund by each employer that is liable for
2528 such payments shall be determined in accordance with the
2529 provisions of subparagraph (i) or subparagraph (ii) of this
2530 paragraph.

2531 (i) If benefits paid to an individual are based on
2532 wages paid by one or more employers that are liable for payment in
2533 lieu of contributions and on wages paid by one or more employers
2534 who are liable for contributions, the amount of benefits payable
2535 by each employer that is liable for payments in lieu of
2536 contributions shall be an amount which bears the same ratio to the



2537 total benefits paid to the individual as the total base period
2538 wages paid to the individual by such employer bear to the total
2539 base period wages paid to the individual by all of his base period
2540 employers.

2541 (ii) If benefits paid to an individual are based
2542 on wages paid by two (2) or more employers that are liable for
2543 payments in lieu of contributions, the amount of benefits payable
2544 by each such employer shall be an amount which bears the same
2545 ratio to the total benefits paid to the individual as the total
2546 base period wages paid to the individual by such employer bear to
2547 the total base period wages paid to the individual by all of his
2548 base period employers.

2549 (d) In the discretion of the department, any nonprofit
2550 organization that elects to become liable for payments in lieu of
2551 contributions shall be required to execute and file with the
2552 department a surety bond approved by the department, or it may
2553 elect instead to deposit with the department money or securities.
2554 The amount of such bond or deposit shall be determined in
2555 accordance with the provisions of this paragraph.

2556 (i) The amount of the bond or deposit required by
2557 paragraph (d) shall be equal to two and seven-tenths percent
2558 (2.7%) thereafter to December 31, 2010, and one and thirty-five
2559 one-hundredths percent (1.35%) thereafter, of the organization's
2560 taxable wages paid for employment as defined in Section 71-5-11,
2561 subsection * * * I(4), for the four (4) calendar quarters



2562 immediately preceding the effective date of the election, the
2563 renewal date in the case of a bond, or the biennial anniversary of
2564 the effective date of election in the case of a deposit of money
2565 or securities, whichever date shall be most recent and applicable.
2566 If the nonprofit organization did not pay wages in each of such
2567 four (4) calendar quarters, the amount of the bond or deposit
2568 shall be as determined by the department.

2569 (ii) Any bond deposited under paragraph (d) shall
2570 be in force for a period of not less than two (2) tax years and
2571 shall be renewed with the approval of the department at such times
2572 as the department may prescribe, but not less frequently than at
2573 intervals of two (2) years as long as the organization continues
2574 to be liable for payments in lieu of contributions. The
2575 department shall require adjustments to be made in a previously
2576 filed bond as it deems appropriate. If the bond is to be
2577 increased, the adjusted bond shall be filed by the organization
2578 within thirty (30) days of the date notice of the required
2579 adjustment was delivered to it. Failure by any organization
2580 covered by such bond to pay the full amount of payments in lieu of
2581 contributions when due, together with any applicable interest and
2582 penalties provided in paragraph (b) (v) of this section, shall
2583 render the surety liable on the bond to the extent of the bond, as
2584 though the surety was such organization.

2585 (iii) Any deposit of money or securities in
2586 accordance with paragraph (d) shall be retained by the department



2587 in an escrow account until liability under the election is
2588 terminated, at which time it shall be returned to the
2589 organization, less any deductions as hereinafter provided. The
2590 department may deduct from the money deposited under paragraph (d)
2591 by a nonprofit organization, or sell the securities it has so
2592 deposited, to the extent necessary to satisfy any due and unpaid
2593 payments in lieu of contributions and any applicable interest and
2594 penalties provided for in paragraph (b) (v) of this section. The
2595 department shall require the organization, within thirty (30) days
2596 following any deduction from a money deposit or sale of deposited
2597 securities under the provisions hereof, to deposit sufficient
2598 additional money or securities to make whole the organization's
2599 deposit at the prior level. Any cash remaining from the sale of
2600 such securities shall be a part of the organization's escrow
2601 account. The department may, at any time, review the adequacy of
2602 the deposit made by any organization. If, as a result of such
2603 review, it determines that an adjustment is necessary, it shall
2604 require the organization to make additional deposit within thirty
2605 (30) days of notice of its determination or shall return to it
2606 such portion of the deposit as it no longer considers necessary,
2607 whichever action is appropriate. Disposition of income from
2608 securities held in escrow shall be governed by the applicable
2609 provisions of the state law.

2610 (iv) If any nonprofit organization fails to file a
2611 bond or make a deposit, or to file a bond in an increased amount,



2612 or to increase or make whole the amount of a previously made
2613 deposit as provided under this subparagraph, the department may
2614 terminate such organization's election to make payments in lieu of
2615 contributions, and such termination shall continue for not less
2616 than the four (4) consecutive calendar-quarter periods beginning
2617 with the quarter in which such termination becomes effective;
2618 however, the department may extend for good cause the applicable
2619 filing, deposit or adjustment period by not more than thirty (30)
2620 days.

2621 (v) Group account shall be established according
2622 to regulations prescribed by the department.

2623 (e) Any employer which elects to make payments in lieu
2624 of contributions into the Unemployment Compensation Fund as
2625 provided in this paragraph shall not be liable to make such
2626 payments with respect to the benefits paid to any individual whose
2627 base period wages include wages for previously uncovered services
2628 as defined in Section 71-5-511(e) to the extent that the
2629 Unemployment Compensation Fund is reimbursed for such benefits
2630 pursuant to Section 121 of Public Law 94-566.

2631 **SECTION 16.** Section 71-5-361, Mississippi Code of 1972, is
2632 amended as follows:

2633 71-5-361. (1) Except as provided in subsection (3) of this
2634 section, any employing unit which is or becomes an employer
2635 subject to this chapter within any calendar year shall be deemed
2636 to be an employer during the whole of such calendar year.



2637 (2) Except as otherwise provided in subsection (3) of this
2638 section:

2639 (a) An employing unit (other than a state hospital,
2640 state institution of higher learning, state or state agency or
2641 other political subdivision or instrumentality) except as provided
2642 in subsections (b) and (c) of this subsection, shall cease to be
2643 an employer subject to this chapter only as of the first day of
2644 January of any calendar year, only if it files with the * * *
2645 department on or before the thirty-first day of May of such year a
2646 written application for termination of coverage, and the * * *
2647 department finds that during the preceding calendar year the
2648 employing unit did not pay wages of One Thousand Five Hundred
2649 Dollars (\$1,500.00) or more in any calendar quarter and that there
2650 were no twenty (20) days, each day being in a different week
2651 within the preceding calendar year, within which such employing
2652 unit employed one or more individuals in employment subject to
2653 this chapter, or four (4) or more in the case of nonprofit
2654 organizations, except if the * * * department finds that
2655 throughout a calendar year an employer has had no employment, it
2656 shall cease to be an employer subject to this chapter.

2657 (b) An agricultural employer as defined under Section
2658 71-5-11, subsection * * * H(4) (a) shall cease to be an
2659 agricultural employer subject to this chapter only as of the first
2660 day of January of any calendar year, only if it files with
2661 the * * * department on or before the thirty-first day of May of



2662 such year a written application for termination of coverage, and
2663 the * * * department finds that during the preceding calendar year
2664 the employing unit did not pay for agricultural employment wages
2665 as defined in Section 71-5-11, subsection * * * I(6) of Twenty
2666 Thousand Dollars (\$20,000.00) in any calendar quarter of the
2667 preceding calendar year and that there were no twenty (20) days,
2668 each day being in a different week, within such calendar year,
2669 within which such employing unit employed ten (10) or more
2670 individuals in employment subject to this chapter, except if
2671 the * * * department finds that throughout a calendar year an
2672 employer has had no employment, it shall cease to be an employer
2673 subject to this chapter.

2674 (c) A domestic employer, as defined in Section 71-5-11,
2675 subsection * * * H(4) (b), shall cease to be an employer subject to
2676 this chapter only as of the first day of January of any calendar
2677 year, only if it files with the * * * department on or before the
2678 thirty-first day of May of such year a written application for
2679 termination of coverage, and the * * * department finds that
2680 during the preceding calendar year the employing unit did not pay
2681 wages for domestic employment of One Thousand Dollars (\$1,000.00)
2682 or more in any calendar quarter of the preceding calendar year,
2683 except if the * * * department finds that throughout a calendar
2684 year an employer has had no employment, it shall cease to be an
2685 employer subject to this chapter.



2686 (d) For the purpose of this subsection, the two (2) or
2687 more employing units mentioned in Section 71-5-11,
2688 subsection * * * H(5) or (6), shall be treated as a single
2689 employing unit. The * * * department may, of its own motion,
2690 cancel and terminate the effect of registrations for purposes of
2691 its accounting records in cases where it has found that employing
2692 units, duly registered as covered employers under the chapter,
2693 have died, ceased business or removed from the state without
2694 applying for termination of coverage, provided that the rights of
2695 claimants for benefits shall not be affected thereby.

2696 (3) (a) An employing unit, not otherwise subject to this
2697 chapter, which files with the * * * department its written
2698 election to become an employer subject thereto for not less than
2699 two (2) calendar years shall, with the written approval of such
2700 election by the * * * department or the executive director, become
2701 an employer subject hereto to the same extent as all other
2702 employers as of the date stated in such approval, and shall cease
2703 to be subject hereto as of January 1 of any calendar year
2704 subsequent to such two (2) calendar years only if it files with
2705 the * * * department, on or before the thirty-first day of May of
2706 such year, a written application for termination of coverage
2707 thereunder.

2708 (b) Any employing unit, for which services that do not
2709 constitute employment as defined in this chapter are performed,
2710 may file with the * * * department a written election that all



2711 such services performed by individuals in its employ in one or
2712 more distinct establishments or places of business shall be deemed
2713 to constitute employment by an employer for all purposes of this
2714 chapter for not less than two (2) calendar years. Upon written
2715 approval of such election by the * * * department, such services
2716 shall be deemed to constitute employment subject to this chapter
2717 from and after the date stated in such approval. Such services
2718 shall cease to be deemed employment subject hereto as of January 1
2719 of any calendar year subsequent to such two (2) calendar years
2720 only if, prior to the thirty-first day of May of such year, such
2721 employing unit has filed with the * * * department a written
2722 notice to that effect.

2723 (4) (a) Prior to January 1, 1978, any political subdivision
2724 of this state may elect to cover under this chapter, for a period
2725 of not less than two (2) calendar years, services performed by
2726 employees in all of the hospitals and institutions of higher
2727 learning, as defined in Section 71-5-11, subsection * * * M
2728 or * * * N, operated by such political subdivision. Election is
2729 to be made by filing with the * * * department a notice of such
2730 election at least thirty (30) days prior to the effective date of
2731 such election. The election may exclude any services described in
2732 Section 71-5-11, subsection * * * I(5). Any political subdivision
2733 electing coverage under this subsection shall make payments in
2734 lieu of contributions with respect to benefits attributable to



2735 such employment as provided with respect to nonprofit
2736 organizations in subsections (b) and (c) of Section 71-5-357.

2737 (b) Prior to January 1, 1978, the provisions in Section
2738 71-5-511, subsection (g) with respect to benefit rights based on
2739 service for state and nonprofit institutions of higher learning
2740 shall be applicable also to service covered by an election under
2741 this section.

2742 (c) Prior to January 1, 1978, the amounts required to
2743 be paid in lieu of contributions by any political subdivision
2744 under this section shall be billed and payment made as provided in
2745 subsections (b) and (c) of Section 71-5-357.

2746 (d) Prior to January 1, 1978, an election under this
2747 section, after having been in effect for not less than two (2)
2748 calendar years, may be terminated by filing with the * * *
2749 department written notice not later than thirty (30) days
2750 preceding the last day of the calendar year in which the
2751 termination is to be effective. Such termination becomes
2752 effective as of the first day of the next ensuing calendar year
2753 with respect to services performed on and after that date.

2754 **SECTION 17.** Section 71-5-501, Mississippi Code of 1972, is
2755 amended as follows:

2756 71-5-501. Wages earned for services defined in Section
2757 71-5-11(* * *H) (15) (g), irrespective of when performed, shall not
2758 be included for purposes of determining eligibility under Section
2759 71-5-511(e) or weekly benefit amount under Section 71-5-503 nor



2760 shall any benefits with respect to unemployment be payable under
2761 Section 71-5-505 on the basis of such wages. All benefits shall
2762 be paid through employment offices or such other agency or
2763 agencies as the * * * department may, by regulation, designate, in
2764 accordance with such regulations as the * * * department may
2765 prescribe. The * * * department may, by regulation, prescribe
2766 that benefits due and payable to claimants who die prior to the
2767 receipt or cashing of benefits checks may be paid to the legal
2768 representative, dependents, or next of kin, of the deceased as may
2769 be found by it to be equitably entitled thereto, and every such
2770 payment shall be deemed a valid payment to the same extent as if
2771 made to the legal representative of the decedent.

2772 **SECTION 18.** This act shall take effect and be in force from
2773 and after its passage.

