MISSISSIPPI LEGISLATURE

REGULAR SESSION 2013

By: Representative Bell

To: Appropriations

HOUSE BILL NO. 932 (As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 71-5-5, 71-5-7, 71-5-11, 71-5-19, 71-5-351, 71-5-353, 71-5-355, 71-5-367, 71-5-389, 71-5-453, 2 71-5-455, 71-5-505 AND 71-5-511, MISSISSIPPI CODE OF 1972, TO 3 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 AUTHORITY TO ADMINISTRATIVELY ISSUE GARNISHMENTS TO COLLECT 8 9 DELINOUENT 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 FAILED TO RESPOND TIMELY OR ADEQUATELY TO SUCH 19 REQUESTS; TO EXPAND THE DEFINITION OF THE TERM "DEBTOR" AND 20 "REFUND" UNDER THE PROVISIONS THAT ALLOW MDES TO COLLECT DEBTS 21 THROUGH SETOFFS AGAINST A TAXPAYER'S INCOME TAX REFUND; TO REVISE 22 THE MANNER IN WHICH NOTICE IS GIVEN TO A TAXPAYER OF A HEARING TO 23 PROTEST A SETOFF AGAINST THE TAXPAYER'S STATE INCOME TAX REFUND 24 FOR DEBTS THE TAXPAYER OWES MDES; TO PROVIDE THAT THE ONE WEEK WAITING PERIOD FOR UNEMPLOYMENT BENEFITS MAY BE WAIVED ONLY UPON A 25 PRESIDENTIAL DISASTER DECLARATION AUTHORIZING ASSISTANCE TO 26 27 INDIVIDUALS AND ONLY IN AREAS IDENTIFIED IN THE DISASTER 28 DECLARATION FOR INDIVIDUAL ASSISTANCE; TO REQUIRE THAT AN UNEMPLOYED INDIVIDUAL MUST BE ACTIVELY SEEKING WORK TO BE ELIGIBLE 29 30 TO RECEIVE BENEFITS; TO AMEND SECTIONS 71-5-13, 71-5-357, 71-5-361 31 AND 71-5-501, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND 32 FOR RELATED PURPOSES.

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

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H. B. No. 932 13/HR40/R1677SG PAGE 1 (RF\BD) 34 **SECTION 1.** Section 71-5-5, Mississippi Code of 1972, is 35 amended as follows:

36 71-5-5. The Legislature finds and declares that the existence and continued operation of a federal tax upon employers, 37 38 against which some portion of the contributions required under 39 this chapter may be credited, will protect Mississippi employers from undue disadvantages in their competition with employers in 40 41 If at any time, upon a formal complaint to the other states. 42 Governor, he shall find that Title IX of the Social Security Act 43 has been amended or repealed by Congress or has been held 44 unconstitutional by the Supreme Court of the United States, and that, as a result thereof, the provisions of this chapter 45 46 requiring Mississippi employers to pay contributions will subject 47 them to a serious competitive disadvantage in relation to employers in other states, he shall publish such findings and 48 49 proclaim that the operation of the provisions of this chapter 50 requiring the payment of contributions and benefits shall be suspended for a period of not more than six (6) months. 51 The 52 Department of Employment Security shall thereupon requisition from 53 the Unemployment Trust Fund all monies therein standing to its 54 credit, and shall * * * deposit such monies, together with any 55 other monies in the Unemployment Compensation Fund, as a special fund in any banks or public depositories in this state in which 56 57 general funds of the state may be deposited.

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

60 If within the aforesaid six-month period the Governor shall find that other federal legislation has been enacted which avoids 61 62 the competitive disadvantage herein described, he shall forthwith 63 publicly so proclaim, and upon the date of such proclamation, the 64 provisions of this chapter requiring the payment of contributions 65 and benefits shall again become fully operative as of the date of 66 such suspension with the same effect as if such suspension had not If within such six-month period no such other federal 67 occurred. 68 legislation is enacted or the Legislature of this state has not 69 otherwise prescribed, the Department of Employment Security shall, 70 under regulations prescribed by it, refund, without interest, to 71 each employer by whom contributions have been paid his pro rata 72 share of the total contributions paid under this chapter. Any 73 interest or earnings of the fund shall be available to the 74 Department of Employment Security to pay for the costs of making 75 When the Department of Employment Security shall such refunds. 76 have executed the duties herein prescribed and performed such 77 other acts as are incidental to the termination of its duties 78 under this chapter, the Governor shall, by public proclamation, 79 declare that the provisions of this chapter, in their entirety, 80 shall cease to be operative.

81 SECTION 2. Section 71-5-7, Mississippi Code of 1972, is 82 amended as follows:

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83 71-5-7. If at any time the provisions of this chapter 84 requiring the payment of contributions and benefits shall be held 85 invalid under the Constitution of this state by the Supreme Court of this state or invalid under the United States Constitution by 86 87 the Supreme Court of the United States, the * * * department shall 88 forthwith requisition from the unemployment trust fund all monies therein standing to the credit of the * * * department, and 89 shall * * * deposit such monies, together with any other monies in 90 91 the unemployment compensation fund, in any banks or public depositories in this state in which general funds of the state may 92 be deposited. If within six (6) months after the date of such 93 94 decision the Legislature of this state enacts a new unemployment 95 compensation law, such monies shall be paid into the unemployment 96 compensation fund established thereunder. If within such 97 six-month period the Legislature of this state has not enacted a 98 new unemployment compensation law, the * * * department shall, 99 under regulations prescribed by it, refund, without interest, to 100 each employer by whom contributions have been paid, his pro rata 101 share of the total contributions paid under this chapter. Any 102 interest or earnings of the fund shall be available to the * * * department to pay for the costs of making such refunds. 103 The 104 provisions of this chapter, so far as necessary to the execution 105 by the *** * *** department of the duties prescribed in this section 106 and to the performance of such other acts as are incidental to the

H. B. No. 932 13/HR40/R1677SG PAGE 4 (RF\BD) 107 termination of its duties under this chapter, shall remain in full 108 force and effect until the completion thereof.

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

111 71-5-11. As used in this chapter, unless the context clearly 112 requires otherwise:

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

116 * * *

* * *B. "Benefit year" with respect to any individual means 117 the period beginning with the first day of the first week with 118 119 respect to which he first files a valid claim for benefits, and 120 ending with the day preceding the same day of the same month in 121 the next calendar year; and, thereafter, the period beginning with 122 the first day of the first week with respect to which he next 123 files his valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar 124 125 year. Any claim for benefits made in accordance with Section 126 71-5-515 shall be deemed to be a "valid claim" for purposes of 127 this subsection if the individual has been paid the wages for 128 insured work required under Section 71-5-511(e).

129 * * *<u>C</u>. "Contributions" means the money payments to the
130 State Unemployment Compensation Fund required by this chapter.

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132 consecutive calendar months ending on March 31, June 30, September
133 30, or December 31.

134 * * <u>E</u>. "Department" or "commission" means the Mississippi
135 Department of Employment Security, Office of the Governor.

136 $\star \star \star \underline{F}$. "Executive director" means the Executive Director 137 of the Mississippi Department of Employment Security, Office of 138 the Governor, appointed under Section 71-5-107.

139 * * *G. "Employing unit" means this state or another state 140 or any instrumentalities or any political subdivisions thereof or 141 any of their instrumentalities or any instrumentality of more than 142 one (1) of the foregoing or any instrumentality of any of the 143 foregoing and one or more other states or political subdivisions, any Indian tribe as defined in Section 3306(u) of the Federal 144 Unemployment Tax Act (FUTA), which includes any subdivision, 145 146 subsidiary or business enterprise wholly owned by such Indian 147 tribe, any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, 148 149 insurance company, or corporation, whether domestic or foreign, or 150 the receiver, trustee in bankruptcy, trustee or successor thereof, 151 or the legal representative of a deceased person, which has or had 152 in its employ one or more individuals performing services for it within this state. All individuals performing services within 153 154 this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be 155

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156 employed by a single employing unit for all the purposes of this 157 chapter. Each individual employed to perform or to assist in 158 performing the work of any agent or employee of an employing unit 159 shall be deemed to be employed by such employing unit for all 160 purposes of this chapter, whether such individual was hired or 161 paid directly by such employing unit or by such agent or employee, 162 provided the employing unit had actual or constructive knowledge 163 of the work. All individuals performing services in the employ of 164 an elected fee-paid county official, other than those related by blood or marriage within the third degree computed by the rule of 165 the civil law to such fee-paid county official, shall be deemed to 166 167 be employed by such county as the employing unit for all the purposes of this chapter. For purposes of defining an "employing 168 169 unit" which shall pay contributions on remuneration paid to 170 individuals, if two (2) or more related corporations concurrently 171 employ the same individual and compensate such individual through 172 a common paymaster which is one (1) of such corporations, then each such corporation shall be considered to have paid as 173 174 remuneration to such individual only the amounts actually 175 disbursed by it to such individual and shall not be considered to 176 have paid as remuneration to such individual such amounts actually 177 disbursed to such individual by another of such corporations.

178 179 * * *<u>H</u>. "Employer" means:

Any employing unit which, (1)

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 7 (RF\BD) 180 (a) In any calendar quarter in either the current
181 or preceding calendar year paid for service in employment wages of
182 One Thousand Five Hundred Dollars (\$1,500.00) or more, except as
183 provided in paragraph (9) of this subsection, or

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

190 (2) Any employing unit for which service in employment, as defined in subsection * * * I(3) of this section, is performed; 191 192 Any employing unit for which service in employment, (3) as defined in subsection *** * *** I(4) of this section, is performed; 193 194 (4)(a) Any employing unit for which agricultural 195 labor, as defined in subsection * * * I(6) of this section, is 196 performed;

197 (b) Any employing unit for which domestic service 198 in employment, as defined in subsection $\star \star \pm \underline{I}(7)$ of this 199 section, is performed;

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 8 (RF\BD) 204 (6) Any individual or employing unit which acquired its 205 organization, trade, business, or substantially all the assets 206 thereof, from another employing unit, if the employment record of 207 the acquiring individual or employing unit subsequent to such 208 acquisition, together with the employment record of the acquired 209 organization, trade, or business prior to such acquisition, both 210 within the same calendar year, would be sufficient to constitute an employing unit as an employer subject to this chapter under 211 212 paragraph (1) or (3) of this subsection;

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

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

220 (9) In determining whether or not an employing (a) 221 unit for which service other than domestic service is also 222 performed is an employer under paragraph (1) or (4)(a) of this 223 subsection, the wages earned or the employment of an employee 224 performing domestic service, shall not be taken into account; 225 In determining whether or not an employing (b) 226 unit for which service other than agricultural labor is also performed is an employer under paragraph (1) or (4)(b) of this 227

228 subsection, the wages earned or the employment of an employee

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 9 (RF\BD) performing services in agricultural labor, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of paragraph (1) of this subsection;

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

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

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

245 (2) Services performed for remuneration for a246 principal:

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

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 10 (RF\BD) 254 principal (except for sideline sales activities on behalf of some 255 other person) of orders from wholesalers, retailers, contractors, 256 or operator of hotels, restaurants, or other similar 257 establishments for merchandise for resale or supplies for use in 258 their business operations. 259 However, for purposes of this subsection, the term "employment" shall include services described in subsection * * * 260 I(2)(a) and (b) of this section, only if: 261 262 (i) The contract of service contemplates that 263 substantially all of the services are to be performed personally 264 by such individual; 265 The individual does not have a (ii)

266 substantial investment in facilities used in connection with the 267 performance of the services (other than in facilities for 268 transportation); and

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

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

H. B. No. 932 **~ OFFICIAL ~** 13/hR40/R1677SG PAGE 11 (RF\BD) 279 subsidiary or business enterprise wholly owned by such Indian 280 tribe; however, such service is excluded from "employment" as 281 defined in the Federal Unemployment Tax Act by Section 3306(c)(7) 282 of that act and is not excluded from "employment" under 283 subsection * * * I(5) of this section.

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

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

(5) For the purposes of subsection $* * * \underline{I}(3)$ and (4) of this section, the term "employment" does not apply to service performed:

297

(a) In the employ of:

298 (i) A church or convention or association of 299 churches; or

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 12 (RF\BD) 304 (b) By a duly ordained, commissioned, or licensed 305 minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by 306 307 such order; or 308 In the employ of a governmental entity (C) 309 referred to in subsection * * * I(3), if such service is performed by an individual in the exercise of duties: 310 311 As an elected official; (i) 312 (ii) As a member of a legislative body, or a 313 member of the judiciary, of a state or political subdivision or a member of an Indian tribal council; 314 315 (iii) As a member of the State National Guard 316 or Air National Guard; 317 As an employee serving on a temporary (iv) 318 basis in case of fire, storm, snow, earthquake, flood or similar 319 emergency; 320 In a position which, under or pursuant to (V) the laws of this state or laws of an Indian tribe, is designated 321 322 as: 323 1. A major nontenured policy-making or 324 advisory position, or 325 2. A policy-making or advisory position 326 the performance of the duties of which ordinarily does not require 327 more than eight (8) hours per week; or

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 13 (RF\BD) 328 (d) In a facility conducted for the purpose of 329 carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental 330 331 deficiency or injury, or providing remunerative work for 332 individuals who because of their impaired physical or mental 333 capacity cannot be readily absorbed in the competitive labor 334 market, by an individual receiving such rehabilitation or remunerative work; or 335

336 (e) By an inmate of a custodial or penal337 institution; or

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

344 Service performed by an individual in agricultural (6) labor as defined in paragraph (15)(a) of this subsection when: 345 346 Such service is performed for a person who: (a) 347 During any calendar guarter in either the (i) 348 current or the preceding calendar year paid remuneration in cash of Twenty Thousand Dollars (\$20,000.00) or more to individuals 349 employed in agricultural labor, or 350

351 (ii) For some portion of a day in each of352 twenty (20) different calendar weeks, whether or not such weeks

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357 (b) For the purposes of subsection $* * * \underline{I}(6)$ any 358 individual who is a member of a crew furnished by a crew leader to 359 perform service in agricultural labor for any other person shall 360 be treated as an employee of such crew leader:

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

367 (ii) If such individual is not an employee of 368 such other person within the meaning of subsection $* * * \underline{I}(1)$. 369 (c) For the purpose of subsection $* * * \underline{I}(6)$, in 370 the case of any individual who is furnished by a crew leader to 371 perform service in agricultural labor for any other person and who

is not treated as an employee of such crew leader under paragraph

373 (6) (b) of this subsection:
374 (i) Such other person and not the crew leader
375 shall be treated as the employer of such individual; and
376 (ii) Such other person shall be treated as
377 having paid cash remuneration to such individual in an amount

378 equal to the amount of cash remuneration paid to such individual 379 by the crew leader (either on his own behalf or on behalf of such 380 other person) for the service in agricultural labor performed for 381 such other person.

382 (d) For the purposes of subsection $* * * \underline{I}(6)$ the 383 term "crew leader" means an individual who:

384 (i) Furnishes individuals to perform service385 in agricultural labor for any other person;

(ii) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and (iii) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

392 The term "employment" shall include domestic (7)393 service in a private home, local college club or local chapter of 394 a college fraternity or sorority performed for an employing unit which paid cash remuneration of One Thousand Dollars (\$1,000.00) 395 396 or more in any calendar quarter in the current or the preceding 397 calendar year to individuals employed in such domestic service. 398 For the purpose of this subsection, the term "employment" does not apply to service performed as a "sitter" at a hospital in the 399 400 employ of an individual.

401 (8) An individual's entire service, performed within or402 both within and without this state, if:

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 16 (RF\BD) 403 (a) The service is localized in this state; or
404 (b) The service is not localized in any state but
405 some of the service is performed in this state; and

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

409 (ii) The base of operations or place from 410 which such service is directed or controlled is not in any state 411 in which some part of the service is performed, but the 412 individual's residence is in this state.

413 (9) Services not covered under paragraph (8) of this subsection and performed entirely without this state, with respect 414 415 to no part of which contributions are required and paid under an 416 unemployment compensation law of any other state or of the federal 417 government, shall be deemed to be employment subject to this 418 chapter if the individual performing such services is a resident 419 of this state and the department approves the election of the 420 employing unit for whom such services are performed that the 421 entire service of such individual shall be deemed to be employment 422 subject to this chapter.

423 (10) Service shall be deemed to be localized within a 424 state if:

425 (a) The service is performed entirely within such426 state; or

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 17 (RF\BD) (b) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

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

438 (a) The employer's principal place of business in439 the United States is located in this state; or

(b) The employer has no place of business in theUnited States; but

442 (i) The employer is an individual who is a443 resident of this state; or

444 (ii) The employer is a corporation which is445 organized under the laws of this state; or

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

450 (c) None of the criteria of subparagraphs (a) and451 (b) of this paragraph are met but the employer has elected

452 coverage in this state or, the employer having failed to elect 453 coverage in any state, the individual has filed a claim for 454 benefits, based on such service, under the law of this state; or 455 An "American employer," for purposes of this (d) 456 paragraph, means a person who is: 457 (i) An individual who is a resident of the 458 United States; or 459 (ii) A partnership if two-thirds (2/3) or 460 more of the partners are residents of the United States; or 461 (iii) A trust if all of the trustees are 462 residents of the United States; or 463 (iv) A corporation organized under the laws 464 of the United States or of any state. 465 All services performed by an officer or member of (12)466 the crew of an American vessel on or in connection with such 467 vessel, if the operating office from which the operations of such 468 vessel operating on navigable waters within, or within and 469 without, the United States are ordinarily and regularly 470 supervised, managed, directed and controlled, is within this 471 state, notwithstanding the provisions of subsection $\star \star \star I(8)$. 472 (13)Service with respect to which a tax is required to 473 be paid under any federal law imposing a tax against which credit 474 may be taken for contributions required to be paid into a state 475 unemployment fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 476

477 USCS Section 3301 et seq., is required to be covered under this478 chapter, notwithstanding any other provisions of this subsection.

479 Services performed by an individual for wages (14)480 shall be deemed to be employment subject to this chapter unless 481 and until it is shown to the satisfaction of the department that 482 such individual has been and will continue to be free from control 483 and direction over the performance of such services both under his 484 contract of service and in fact; and the relationship of employer 485 and employee shall be determined in accordance with the principles 486 of the common law governing the relation of master and servant.

487 (15) The term "employment" shall not include:
488 (a) Agricultural labor, except as provided in
489 subsection * * * <u>I</u>(6) of this section. The term "agricultural
490 labor" includes all services performed:

491 (i) On a farm or in a forest in the employ of 492 any employing unit in connection with cultivating the soil, in 493 connection with cutting, planting, deadening, marking or otherwise 494 improving timber, or in connection with raising or harvesting any 495 agricultural or horticultural commodity, including the raising, 496 shearing, feeding, caring for, training, and management of 497 livestock, bees, poultry, fur-bearing animals and wildlife; 498 In the employ of the owner or tenant or (ii) 499 other operator of a farm, in connection with the operation, 500 management, conservation, improvement or maintenance of such farm

and its tools and equipment, or in salvaging timber or clearing

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502 land of brush and other debris left by a hurricane, if the major 503 part of such service is performed on a farm;

504 In connection with the production or (iii) 505 harvesting of naval stores products or any commodity defined in 506 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g), 507 or in connection with the raising or harvesting of mushrooms, or 508 in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or 509 510 waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; 511

512 (iv) (A) In the employ of the operator of a 513 farm in handling, planting, drying, packing, packaging, 514 processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its 515 unmanufactured state, any agricultural or horticultural commodity; 516 517 but only if such operator produced more than one-half (1/2) of the 518 commodity with respect to which such service is performed; In the employ of a group of 519 (B) 520 operators of farms (or a cooperative organization of which such 521 operators are members) in the performance of service described in 522 subitem (A), but only if such operators produced more than 523 one-half (1/2) of the commodity with respect to which such service 524 is performed;

525 (C) The provisions of subitems (A) and 526 (B) shall not be deemed to be applicable with respect to service

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531 (v) On a farm operated for profit if such 532 service is not in the course of the employer's trade or business; (vi) As used in paragraph (15)(a) of this 533 534 subsection, the term "farm" includes stock, dairy, poultry, fruit, 535 fur-bearing animals, and truck farms, plantations, ranches, 536 nurseries, ranges, greenhouses, or other similar structures used 537 primarily for the raising of agricultural or horticultural 538 commodities, and orchards.

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

544 (c) Casual labor not in the usual course of the 545 employing unit's trade or business.

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

550 (e) Service performed in the employ of the United 551 States government or of an instrumentality wholly owned by the

552 United States; except that if the Congress of the United States 553 shall permit states to require any instrumentalities of the United 554 States to make payments into an unemployment fund under a state 555 unemployment compensation act, then to the extent permitted by Congress and from and after the date as of which such permission 556 557 becomes effective, all of the provisions of this chapter shall be 558 applicable to such instrumentalities and to services performed by 559 employees for such instrumentalities in the same manner, to the 560 same extent, and on the same terms as to all other employers and employing units. If this state should not be certified under the 561 562 Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any 563 year, then the payment required by such instrumentality with 564 respect to such year shall be deemed to have been erroneously 565 collected and shall be refunded by the department from the fund in 566 accordance with the provisions of Section 71-5-383.

567 (f) Service performed in the employ of an 568 "employer" as defined by the Railroad Unemployment Insurance Act, 569 45 USCS Section 351(a), or as an "employee representative" as 570 defined by the Railroad Unemployment Insurance Act, 45 USCS 571 Section 351(f), and service with respect to which unemployment 572 compensation is payable under an unemployment compensation system 573 for maritime employees, or under any other unemployment 574 compensation system established by an act of Congress; however, 575 the department is authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which 576

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577 agreements shall become effective ten (10) days after publication 578 thereof in the manner provided in Section 71-5-117 for general 579 rules, to provide reciprocal treatment to individuals who have, 580 after acquiring potential rights to benefits under this chapter, 581 acquired rights to unemployment compensation under such act or 582 acts of Congress or who have, after acquiring potential rights to 583 unemployment compensation under such act or acts of Congress, 584 acquired rights to benefits under this chapter.

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

591 (h) Service performed in the employ of a school, 592 college, or university if such service is performed: 593 By a student who is enrolled and is (i) regularly attending classes at such school, college or university, 594 595 or 596 By the spouse of such a student if such (ii) 597 spouse is advised, at the time such spouse commences to perform 598 such service, that

599(A) The employment of such spouse to600perform such service is provided under a program to provide

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 24 (RF\BD) 601 financial assistance to such student by such school, college, or 602 university, and

603 (B) Such employment will not be covered 604 by any program of unemployment insurance.

605 Service performed by an individual under the (i) 606 age of twenty-two (22) who is enrolled at a nonprofit or public 607 educational institution which normally maintains a regular faculty 608 and curriculum and normally has a regularly organized body of 609 students in attendance at the place where its educational 610 activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic 611 instruction with work experience, if such service is an integral 612 613 part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service 614 615 performed in a program established for or on behalf of an employer 616 or group of employers.

617 (j) Service performed in the employ of a hospital,
618 if such service is performed by a patient of the hospital, as
619 defined in subsection * * * <u>M</u> of this section.

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 25 (RF\BD) 625 individual who has completed a four-year course in a medical626 school chartered or approved pursuant to state law.

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

631 Service performed by an individual in the (m) 632 delivery or distribution of newspapers or shopping news, not 633 including delivery or distribution to any point for subsequent delivery or distribution, except those employed by political 634 subdivisions, state and local governments, nonprofit organizations 635 636 and Indian tribes, as defined by this chapter, or any other 637 entities for which coverage is required by federal statute and 638 regulation.

639 If the services performed during one-half (n) 640 (1/2) or more of any pay period by an employee for the employing 641 unit employing him constitute employment, all the services of such 642 employee for such period shall be deemed to be employment; but if 643 the services performed during more than one-half (1/2) of any such 644 pay period by an employee for the employing unit employing him do 645 not constitute employment, then none of the services of such 646 employee for such period shall be deemed to be employment. As 647 used in this subsection, the term "pay period" means a period (of 648 not more than thirty-one (31) consecutive days) for which a

H. B. No. 932 13/HR40/R1677SG PAGE 26 (RF\BD) ~ OFFICIAL ~

649 payment of remuneration is ordinarily made to the employee by the 650 employing unit employing him.

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

656 Service performed by a "direct seller" if: (p) 657 Such person is engaged in the trade or (i) 658 business of selling (or soliciting the sale of) consumer products 659 to any buyer on a buy-sell basis, a deposit-commission basis, or 660 any similar basis which the department prescribes by regulations, 661 for resale (by the buyer or any other person) in the home or 662 otherwise than in a permanent retail establishment; or such person is engaged in the trade or business of selling (or soliciting the 663 664 sale of) consumer products in the home or otherwise than in a 665 permanent retail establishment;

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

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 27 (RF\BD) 674 contract provides that the person will not be treated as an675 employee with respect to such services for federal tax purposes.

676 $\star \star \star J$. "Employment office" means a free public employment 677 office or branch thereof, operated by this state or maintained as 678 a part of the state controlled system of public employment 679 offices.

680 $\star \star \star K$. "Public employment service" means the operation of 681 a program that offers free placement and referral services to 682 applicants and employers, including job development.

683 $\star \star \star \underline{L}$. "Fund" means the Unemployment Compensation Fund 684 established by this chapter, to which all contributions required 685 and from which all benefits provided under this chapter shall be 686 paid.

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

690 * * *<u>N</u>. "Institution of higher learning," for the purposes
691 of this section, means an educational institution which:

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

695 (2) Is legally authorized in this state to provide a696 program of education beyond high school;

697 (3) Provides an educational program for which it awards698 a bachelor's or higher degree, or provides a program which is

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 28 (RF\BD) 699 acceptable for full credit toward such a degree, a program of 700 postgraduate or postdoctoral studies, or a program of training to 701 prepare students for gainful employment in a recognized 702 occupation;

703

(4) Is a public or other nonprofit institution;

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

0. "Re-employment assistance" means money payments payable
to an individual as provided in this chapter and in accordance
with Section 3304(a)(4) and 3306(h) of the Federal Unemployment
Tax Act and Section 303(a)(5) of the Social Security Act, with
respect to his unemployment through no fault of his own. Wherever
the terms "benefits" or "unemployment benefits" appear in this
chapter, they shall mean re-employment assistance.

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

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

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

724 3304(a) of the Internal Revenue Code of 1954 an unemployment 725 compensation law submitted to the secretary by the Virgin Islands 726 for such approval.

727

Q. "Unemployment."

728 (1)An individual shall be deemed "unemployed" in any 729 week during which he performs no services and with respect to 730 which no wages are payable to him, or in any week of less than 731 full-time work if the wages payable to him with respect to such 732 week are less than his weekly benefit amount as computed and 733 adjusted in Section 71-5-505. The department shall prescribe 734 regulations applicable to unemployed individuals, making such 735 distinctions in the procedure as to total unemployment, part-total 736 unemployment, partial unemployment of individuals attached to 737 their regular jobs, and other forms of short-time work, as the 738 department deems necessary.

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

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 30 (RF\BD) 749 remuneration in any medium other than cash shall be estimated and 750 determined in accordance with rules prescribed by the department; 751 however, that the term "wages" shall not include:

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

758

763

(i) Retirement, or

(ii) Sickness or accident disability, or (iii) Medical or hospitalization expenses in connection with sickness or actual disability, or

762 (iv) Death, provided the employee:

(A)

764 instead of provision for such death benefit, any part of such 765 payment or, if such death benefit is insured, any part of the 766 premiums (or contributions to premiums) paid by his employer, and

Has not the option to receive,

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 31 (RF\BD) 774 Dismissal payments which the employer is not (b) 775 legally required to make; 776 Payment by an employer (without deduction from (C) the remuneration of an employee) of the tax imposed by the 777 778 Internal Revenue Code, 26 USCS Section 3101; 779 (d) From and after January 1, 1992, the amount of 780 any payment made to or on behalf of an employee for a "cafeteria" 781 plan, which meets the following requirements: 782 (i) Oualifies under Section 125 of the 783 Internal Revenue Code; 784 (ii) Covers only employees; 785 (iii) Covers only noncash benefits; 786 (iv) Does not include deferred compensation 787 plans. 788 (2) [Not enacted]. 789 S. "Week" means calendar week or such period of seven (7) 790 consecutive days as the department may by regulation prescribe. 791 The department may by regulation prescribe that a week shall be 792 deemed to be in, within, or during any benefit year which includes 793 any part of such week. 794 т. "Insured work" means "employment" for "employers." 795 The term "includes" and "including," when used in a U. 796 definition contained in this chapter, shall not be deemed to 797 exclude other things otherwise within the meaning of the term 798 defined.

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 32 (RF\BD) V. "Employee leasing arrangement" means any agreement between an employee leasing firm and a client, whereby specified client responsibilities such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other such administrative duties are to be performed by an employee leasing firm, on an ongoing basis.

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

812 "Temporary help firm" means an entity which hires Х. (1)813 its own employees and provides those employees to other 814 individuals or organizations to perform some service, to support 815 or supplement the existing workforce in special situations such as 816 employee absences, temporary skill shortages, seasonal workloads 817 and special assignments and projects, with the expectation that 818 the worker's position will be terminated upon the completion of 819 the specified task or function.

820 (2) "Temporary employee" means an employee assigned to 821 work for the clients of a temporary help firm.

Y. For the purposes of this chapter, the term "notice" shallinclude any official communication, statement or other

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 33 (RF\BD) 824 correspondence required under the administration of this chapter, 825 and sent by the department through the United States Postal 826 Service or electronic or digital transfer, via modem or the 827 Internet.

828 **SECTION 4.** Section 71-5-19, Mississippi Code of 1972, is 829 amended as follows:

71 - 5 - 19. (1) 830 Whoever makes a false statement or 831 representation knowing it to be false, or knowingly fails to 832 disclose a material fact, to obtain or increase any benefit or 833 other payment under this chapter or under an employment security 834 law of any other state, of the federal government or of a foreign 835 government, either for himself or for any other person, shall be 836 punished by a fine of not less than One Hundred Dollars (\$100.00) 837 nor more than Five Hundred Dollars (\$500.00), or by imprisonment 838 for not longer than thirty (30) days, or by both such fine and 839 imprisonment; and each such false statement or representation or 840 failure to disclose a material fact shall constitute a separate 841 offense.

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 34 (RF\BD) 849 under this chapter, or who willfully fails or refuses to make any 850 such contribution or other payment, or to furnish any reports 851 required hereunder or to produce or permit the inspection or 852 copying of records as required hereunder, shall be punished by a 853 fine of not less than One Hundred Dollars (\$100.00) nor more than 854 One Thousand Dollars (\$1,000.00), or by imprisonment for not 855 longer than sixty (60) days, or by both such fine and 856 imprisonment; and each such false statement, or representation, or failure to disclose a material fact, and each day of such failure 857 858 or refusal shall constitute a separate offense. In lieu of such 859 fine and imprisonment, the employing unit or representative, or 860 both employing unit and representative, if such representative is 861 an employing unit in this state and is found to be a party to such 862 violation, shall not be eligible for a contributions rate of less 863 than five and four-tenths percent (5.4%) for the tax year in which 864 such violation is discovered by the department and for the next 865 two (2) succeeding tax years.

866 (3) Any person who shall willfully violate any provision of 867 this chapter or any other rule or regulation thereunder, the 868 violation of which is made unlawful or the observance of which is 869 required under the terms of this chapter and for which a penalty 870 is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than One Hundred 871 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), 872 or by imprisonment for not longer than sixty (60) days, or by both 873

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H. B. No. 932 13/HR40/R1677SG PAGE 35 (RF\BD) 874 such fine and imprisonment; and each day such violation continues 875 shall be deemed to be a separate offense. In lieu of such fine 876 and imprisonment, the employing unit or representative, or both 877 employing unit and representative, if such representative is an 878 employing unit in this state and is found to be a party to such 879 violation, shall not be eligible for a contributions rate of less 880 than five and four-tenths percent (5.4%) for the tax year in which 881 the violation is discovered by the department and for the next two 882 (2) succeeding tax years.

883 (4) (a) An overpayment of benefits occurs when a person884 receives benefits under this chapter:

885 (i) While any conditions for the receipt of886 benefits imposed by this chapter were not fulfilled in his case;

887 (ii) While he was disqualified from receiving888 benefits; or

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

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 36 (RF\BD) 899 received by him; and such sum shall be collectible in the manner 900 provided in Sections 71-5-363 through 71-5-383 for the collection 901 of past-due contributions. In addition to Sections 71-5-363 902 through 71-5-383, the following shall apply to cases involving 903 damages for overpaid unemployment benefits which have been 904 obtained and/or received through fraud as defined by department 905 regulations and laws governing the department. By definition, 906 fraud can include failure to report earnings while filing for 907 unemployment benefits. In the event of fraud, a penalty of twenty percent (20%) of the amount of the overpayment shall be assessed. 908 909 Three-fourths (3/4) of that twenty percent (20%) penalty shall be 910 deposited into the unemployment trust fund and shall be used only 911 for the purpose of payment of unemployment benefits. The 912 remainder of that twenty percent (20%) penalty shall be deposited 913 into the Special Employment Security Administrative Fund. 914 Interest on the overpayment balance shall accrue at a rate of one 915 percent (1%) per month on the unpaid balance until repaid and 916 shall be deposited into the Special Employment Security 917 Administration Fund. All interest, penalties and damages 918 deposited into the Special Employment Security Administration Fund 919 shall be used by the department for administration of the 920 Mississippi Department of Employment Security.

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 37 (RF\BD) 924 to expiration of the lien, the department must refile the notice 925 of the lien prior to its expiration at the end of seven (7) years. 926 There shall be no limit upon the number of times the department 927 may refile notices of liens for collection of overpayments. 928 (d) All warrants issued by the department for the 929 collection of any unemployment tax or for an overpayment of 930 benefits imposed by statute and collected by the department shall 931 be used to levy on salaries, compensation or other monies due the 932 delinquent employer or claimant. No such warrant shall be issued 933 until after the delinquent employer or claimant has exhausted all 934 appeal rights associated with the debt. The warrants shall be 935 served by mail or by delivery by an agent of the department on the 936 person or entity responsible or liable for the payment of the 937 monies due the delinquent employer or claimant. Once served, the 938 employer or other person owing compensation due the delinquent 939 employer or claimant shall pay the monies over to the department 940 in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant 941 942 in the form and manner determined satisfactory by the department. 943 Failure to pay the money over to the department as required by 944 this section shall result in the served party being personally 945 liable for the full amount of the monies owed and the levy and 946 collection process may be issued against the party in the same

947 <u>manner as other debts owed to the department.</u> Except as otherwise

948 provided by this section, the answer, the amount payable under the

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949 warrant and the obligation of the payor to continue payment shall

950 be governed by the garnishment laws of this state but shall be

951 payable to the department.

952 (5) The department, by agreement with another state or the 953 United States, as provided under Section 303(g) of the Social 954 Security Act, may recover any overpayment of benefits paid to any 955 individual under the laws of this state or of another state or 956 under an unemployment benefit program of the United States. Any 957 overpayments subject to this subsection may be deducted from any 958 future benefits payable to the individual under the laws of this 959 state or of another state or under an unemployment program of the 960 United States.

961 SECTION 5. Section 71-5-351, Mississippi Code of 1972, is 962 amended as follows:

963 71-5-351. (1) Contributions shall accrue and become payable 964 by each employer for each calendar year in which he is subject to 965 this chapter. Such contributions shall become due and be paid by 966 each employer to the department for the fund each calendar quarter 967 on or before the last day of the month next succeeding each 968 calendar guarter in which the contributions accrue unless the 969 employer has filed an election with the department to participate 970 in the Mississippi Level Payment Plan (MLPP) and complies with the provision of the MLPP. The department may extend the due date of 971 972 such contributions if the due date falls on a Saturday, Sunday or state or federal holiday. Such contributions shall not be 973

H. B. No. 932 13/HR40/R1677SG PAGE 39 (RF\BD) 974 deducted, in whole or in part, from the wages of individuals in 975 such employer's employ.

976 Any employer who is a newly subject employer or any (2)(a) 977 employer who meets the requirements of participation in the MLPP 978 shall be allowed one (1) participation election per year. The 979 department may by regulation establish exceptions to this rule as 980 appropriate. The department shall establish by regulation the 981 requirements for computation and adjustment of compensation and 982 shall compute the amount of payments that will be made quarterly 983 and notify each employer before the first tax payment is due for 984 the year. Equal payments will be made for calendar quarters 985 ending March, June and September and settlement will be made for 986 any overage or shortage at the time payment is due for the 987 December quarter.

988 (b) An employer who meets the following criteria may 989 participate in the MLPP:

(i) The employer has not been delinquent in filing
unemployment reports or paying unemployment taxes to the
department during the last two (2) calendar years and must make
current all other delinquent unemployment taxes and reports;
(ii) The employer has been an employer subject to
the unemployment laws of the State of Mississippi, or in

996 accordance with department regulations regarding MLPP, for at 997 least twelve (12) months prior to the year the employer starts 998 participating;

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 40 (RF\BD) 999 (iii) The employer must agree to file reports 1000 through the department's online system or other agency prescribed 1001 electronic facility and pay electronically;

1002 (iv) The employer remains current in filing and 1003 paying taxes; and

1004 (v) The employer must make the election by April 1 1005 of the year.

1006 (c) Employers who participate in the MLPP and pay their 1007 contribution by bank draft shall utilize the pay schedule provided 1008 for in this paragraph. The pay schedule shall be as follows:

1009 (i) January to March due date May 15;
1010 (ii) April to June due date August 15;
1011 (iii) July to September due date November 15; and
1012 (iv) October to December due date January 31.

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

1017 (3) For purposes of payment of contributions on remuneration 1018 paid to individuals, if two (2) or more related corporations 1019 concurrently employ the same individual and compensate such 1020 individual through a common paymaster which is one of such 1021 corporations, each such corporation shall be considered to have 1022 paid as remuneration to such individual only the amounts actually 1023 disbursed by it to such individual and shall not be considered to

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 41 (RF\BD) 1024 have paid as remuneration to such individual such amounts actually 1025 disbursed to such individual by another of such corporations.

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

1030 For the purposes of this section and Sections 71-5-353, (4) 1031 71-5-357 and 71-5-359, taxable wages shall not include that part 1032 of remuneration which, after remuneration equal to Seven Thousand Dollars (\$7,000.00) through December 31, 2010, and Fourteen 1033 Thousand Dollars (\$14,000.00) thereafter, has been paid in a 1034 1035 calendar year to an individual by an employer or his predecessor 1036 with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless 1037 1038 that part of the remuneration is subject to a tax under a federal 1039 law imposing a tax against which credit may be taken for 1040 contributions required to be paid into a state employment fund. For the purposes of this section, the term "employment" shall 1041 1042 include service constituting employment under any unemployment 1043 compensation law of another state.

1044 (5) Absent evidence of willful or fraudulent attempt to 1045 avoid taxation, the effective date of liability of an employer or 1046 assessment of liability for covered employment against an employer 1047 shall not occur for any period preceding the three (3) calendar

1048 years before the date of registration or assessment, unless said 1049 three-year limitations period is waived by the employer.

1050 (6) The executive director may grant a reasonable extension
1051 of time beyond the statutory due date within which to file any
1052 report required by this section to an employer located in an area
1053 included in a declaration of an emergency or disaster by the
1054 President or the Governor. The executive director may, in his
1055 discretion, recognize extensions of time authorized and granted by
1056 the Internal Revenue Service for the filing of tax returns.

1057 SECTION 6. Section 71-5-353, Mississippi Code of 1972, is
1058 amended as follows:

1059 71-5-353. (1)(a) Each employer shall pay contributions 1060 equal to five and four-tenths percent (5.4%) of taxable wages paid by him each calendar year, except as may be otherwise provided in 1061 1062 Section 71-5-361 and except that each newly subject employer shall 1063 pay contributions at the rate of two and four-tenths percent 1064 (2.4%) of taxable wages through December 31, 2010, and thereafter 1065 one percent (1%) of taxable wages, for his first year of 1066 liability, one and one-tenth percent (1.1%) of taxable wages for 1067 his second year of liability, and one and two-tenths percent 1068 (1.2%) of taxable wages for his third and subsequent years of 1069 liability unless the employer's experience-rating record has been 1070 chargeable throughout at least the twelve (12) consecutive 1071 calendar months ending on the most recent computation date at the time the rate for a year is determined; thereafter the employer's 1072

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1073 contribution rate shall be determined in accordance with the

1074 provisions of Section 71-5-355. 1075 (b) Notwithstanding the newly subject employer 1076 contribution rate provided for in paragraph (a) of this 1077 subsection, if this act becomes effective before March 8, 2013, 1078 the contribution rate of all newly subject employers shall be reduced by seven one-hundredths of one percent (.07%) for calendar 1079 1080 year 2013 only. If this act becomes effective from and after 1081 March 8, 2013, the contribution rate of all newly subject 1082 employers shall be reduced by seven one-hundredths of one percent (.07%) for calendar year 2014 only. The general experience rate 1083 decrease provided for in this paragraph (b) shall be effective for 1084 only one (1) calendar year. For purposes of this paragraph (b), 1085 "newly subject employers" means employers whose unemployment 1086 1087 insurance experience-rating record has been chargeable throughout 1088 at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the contribution rate for 1089 1090 a year is determined.

(2) From and after January 1, 2005, through December 31,
2009, contribution rates assigned to employers by the department,
as determined pursuant to Sections 71-5-351, 71-5-353 and
71-5-355, shall be reduced by three-tenths of one percent (.3%).
Such reduction shall only apply to employers whose contribution
rate, determined in accordance with Sections 71-5-353 and
71-5-355, is equal to or less than five and four-tenths percent

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 44 (RF\BD) 1098 (5.4%), and shall include a three-tenths of one percent (.3%)1099 reduction to the rate as a result of violation of provisions of 1100 this chapter. The reduction in rates provided for herein shall 1101 not apply to state boards, instrumentalities and political 1102 subdivisions of the State of Mississippi referred to in Sections 1103 71-5-357 and 71-5-359, or to nonprofit employers providing 1104 reimbursement to the department for the unemployment fund pursuant 1105 to Section 71-5-357(a).

1106 From and after January 1, 2005, through December (3) (a) 1107 31, 2009, the workforce enhancement contributions shall be applied 1108 at a rate of three-tenths of one percent (.3%) upon the taxable 1109 wages, however, the workforce enhancement contribution shall not 1110 be applied to state boards, instrumentalities and political subdivisions of the State of Mississippi referred to in Sections 1111 1112 71-5-357 and 71-5-359, or to nonprofit employers providing 1113 reimbursement to the department for the unemployment fund pursuant to Section 71-5-357(a). 1114

1115 (b) There is hereby created in the Treasury of the 1116 State of Mississippi a special fund to be known as the 1117 "Mississippi Workforce Enhancement Training Fund," which consists 1118 of funds collected pursuant to this subsection (3) and subsection 1119 (4) of this section. Funds collected shall initially be deposited 1120 into the Mississippi Department of Employment Security tax bank account for clearing contribution collections and subsequently 1121 1122 transferred to the Mississippi Workforce Enhancement Training Fund

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 45 (RF\BD) 1123 holding account described in Section 71-5-453. In the event any 1124 employer pays an amount insufficient to cover the total 1125 contributions due, the amounts due shall be satisfied in the 1126 following order:

1127 (i) Unemployment contributions;1128 (ii) Workforce enhancement training contributions;

1129 (iii) Interest and damages; then

1130 (iv) Legal and processing costs.

1131 The amount of contributions due for any period will be the 1132 amount due according to the actual computations unless the 1133 employer is participating in the MLPP. In that event, the amount 1134 due is the MLPP amount computed by the department.

1135 Cost of collection and administration of the workforce enhancement training contribution shall be allocated based on a 1136 1137 plan approved by the United States Department of Labor (USDOL) and 1138 shall be paid to the Mississippi Department of Employment Security 1139 semiannually by the * * * Mississippi Community College Board for periods ending in December and June of each year. Payment shall 1140 1141 be made to the department no later than sixty (60) days after the 1142 billing date.

(c) All monies collected will be initially deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently transferred to the Mississippi Workforce Enhancement Training Fund holding account and will be held by the Mississippi Department of

1148 Employment Security in such account for a period of not less than 1149 sixty (60) days. After such period, funds shall be transferred within thirty (30) days to the Mississippi Workforce Enhancement 1150 1151 Training Fund in a manner determined by the department. Interest 1152 earnings or interest credits on deposit amounts shall be retained 1153 in the holding account to pay the banking costs of the account. If after the period of twelve (12) months interest earnings less 1154 1155 banking costs exceeds Ten Thousand Dollars (\$10,000.00), such 1156 excess amounts shall be transferred to the Mississippi Workforce 1157 Enhancement Training Fund treasury account within thirty (30) 1158 days. Such transfers shall occur once annually, during the month 1159 of January.

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

(e) All monies deposited into the Mississippi Workforce Enhancement Training Fund shall be utilized exclusively by the Mississippi Community College Board in accordance with the Workforce Training Act of 1994 (Section 37-153-1 et seq.) and the annual plan developed by the State Workforce Investment Board for the following purposes: to provide training at no charge to

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employers and employees in order to enhance employee productivity.

1172

13/HR40/R1677SG PAGE 47 (RF\BD) 1173 Such training may be subject to a minimal administrative fee to be 1174 paid from the Mississippi Workforce Enhancement Training Fund as established by the State Workforce Investment Board subject to the 1175 advice of the * * * Mississippi Community College Board. 1176 The 1177 initial priority of these funds shall be for the benefit of 1178 existing businesses located within the state. Employers may request training for existing employees and/or newly hired 1179 1180 employees from the * * * Mississippi Community College Board. 1181 The * * * Mississippi Community College Board will be responsible 1182 for approving the training.

1183 (4) The following procedure shall apply for tax years 1184 subsequent to December 31, 2009:

(a) (i) Except as otherwise provided in this
paragraph, workforce enhancement training contributions shall be
collected at a rate of three-tenths of one percent (.3%) through
December 31, 2010, based upon taxable wages, and at a rate of
fifteen one-hundredths of one percent (.15%) thereafter, based
upon taxable wages.

(ii) If this act becomes effective before <u>March 8</u>, 2013, the contribution rate to the Workforce Enhancement Training Fund for calendar year 2013 only shall be twenty-two

1194 one-hundredths of one percent (.22%). If this act becomes

1195 effective from and after March 8, 2013, the contribution rate to

1196 the Workforce Enhancement Training Fund for calendar year 2014

1197 shall be twenty-two one-hundredths of one percent (.22%). The

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1198 contribution rate to the Workforce Enhancement Training Fund

1199 provided for in this subparagraph shall be effective for only one

1200 (1) calendar year.

1201 (iii) Training contributions shall be reduced by 1202 the amount necessary to prevent any employer from having a 1203 combined rate greater than five and four-tenths percent (5.4%).

1204 All workforce enhancement training contributions (b) 1205 collected shall be deposited initially into the Mississippi 1206 Department of Employment Security bank account for clearing 1207 contribution collections and shall within two (2) business days be 1208 transferred to the Workforce Enhancement Training Fund holding 1209 account. Any workforce enhancement training contribution 1210 transactions from the Mississippi Department of Employment Security account for clearing contribution collections that are 1211 1212 deposited into the Workforce Enhancement Training Fund holding 1213 account and are not honored by a financial institution will be 1214 transferred back to the Mississippi Department of Employment Security account for clearing contribution collections out of 1215 1216 funds in the Workforce Enhancement Training Fund holding account. 1217 For rate years subsequent to December 31, 2009, (C)

1218 suspension of the workforce enhancement training contributions 1219 required pursuant to this subsection (4) shall occur if the 1220 insured unemployment rate exceeds an average of five and 1221 five-tenths percent (5.5%) for the three (3) consecutive months 1222 immediately preceding the effective date of the new rate year and

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1223 shall remain suspended throughout the duration of that rate year.
1224 Such suspension shall continue until such time as the three (3)
1225 consecutive months immediately preceding the effective date of any
1226 subsequent rate year has an insured unemployment rate of less than
1227 an average of four and five-tenths percent (4.5%).

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

1232 SECTION 7. Section 71-5-355, Mississippi Code of 1972, is 1233 amended as follows:

1234 71-5-355. (1) As used in this section, the following words 1235 and phrases shall have the following meanings, unless the context 1236 clearly requires otherwise:

1237 (a) "Tax year" means any period beginning on January 1 1238 and ending on December 31 of a year.

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

(c) "Effective date" means January 1 of the tax year.
(d) Except as hereinafter provided, "payroll" means the
total of all wages paid for employment by an employer as defined
in Section 71-5-11, subsection * * * <u>H</u>, plus the total of all
remuneration paid by such employer excluded from the definition of
wages by Section 71-5-351. For the computation of modified rates,

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 50 (RF\BD) 1248 "payroll" means the total of all wages paid for employment by an 1249 employer as defined in Section 71-5-11, subsection * * * H.

1250 For the computation of modified rates, "eligible (e) 1251 employer" means an employer whose experience-rating record has 1252 been chargeable with benefits throughout the thirty-six (36) 1253 consecutive calendar-month period ending on the computation date, 1254 except that any employer who has not been subject to the 1255 Mississippi Employment Security Law for a period of time 1256 sufficient to meet the thirty-six (36) consecutive calendar-month requirement shall be an eligible employer if his experience-rating 1257 1258 record has been chargeable throughout not less than the twelve 1259 (12) consecutive calendar-month period ending on the computation 1260 date. No employer shall be considered eligible for a contribution rate less than five and four-tenths percent (5.4%) with respect to 1261 any tax year, who has failed to file any two (2) quarterly reports 1262 1263 within the qualifying period by September 30 following the 1264 computation date. No employer or employing unit shall be eligible 1265 for a contribution rate of less than five and four-tenths percent 1266 (5.4%) for the tax year in which the employing unit is found by 1267 the department to be in violation of Section 71-5-19(2) or (3) and 1268 for the next two (2) succeeding tax years. No representative of 1269 such employing unit who was a party to a violation as described in Section 71-5-19(2) or (3), if such representative was or is an 1270 1271 employing unit in this state, shall be eligible for a contribution 1272 rate of less than five and four-tenths percent (5.4%) for the tax

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H. B. No. 932 13/HR40/R1677SG PAGE 51 (RF\BD) 1273 year in which such violation was detected by the department and 1274 for the next two (2) succeeding tax years.

1275 With respect to any tax year, "reserve ratio" means (f) 1276 the ratio which the total amount available for the payment of 1277 benefits in the Unemployment Compensation Fund, excluding any 1278 amount which has been credited to the account of this state under 1279 Section 903 of the Social Security Act, as amended, and which has 1280 been appropriated for the expenses of administration pursuant to 1281 Section 71-5-457 whether or not withdrawn from such account, on October 31 (close of business) of each calendar year bears to the 1282 1283 aggregate of the taxable payrolls of all employers for the twelve 1284 (12) calendar months ending on June 30 next preceding.

1285 (g) "Modified rates" means the rates of employer 1286 contributions determined under the provisions of this chapter and 1287 the rates of newly subject employers, as provided in Section 1288 71-5-353.

1289 For the computation of modified rates, "qualifying (h) period" means a period of not less than the thirty-six (36) 1290 1291 consecutive calendar months ending on the computation date 1292 throughout which an employer's experience-rating record has been 1293 chargeable with benefits; except that with respect to any eligible 1294 employer who has not been subject to this article for a period of 1295 time sufficient to meet the thirty-six (36) consecutive 1296 calendar-month requirement, "qualifying period" means the period ending on the computation date throughout which his 1297

1298 experience-rating record has been chargeable with benefits, but in 1299 no event less than the twelve (12) consecutive calendar-month 1300 period ending on the computation date throughout which his 1301 experience-rating record has been so chargeable.

The "exposure criterion" (EC) is defined as the 1302 (i) 1303 cash balance of the Unemployment Compensation Fund which is 1304 available for the payment of benefits as of November 16 of each 1305 calendar year or the next working day if November 16 falls on a 1306 holiday or a weekend, divided by the total wages, exclusive of 1307 wages paid by all state agencies, all political subdivisions, 1308 reimbursable nonprofit corporations, and tax-exempt public service employment, for the twelve-month period ending June 30 immediately 1309 1310 preceding such date. The EC shall be computed to four (4) decimal places and rounded up if any fraction remains. 1311

The "cost rate criterion" (CRC) is defined as 1312 (i) 1313 follows: Beginning with January 1974, the benefits paid for the 1314 twelve-month period ending December 1974 are summed and divided by the total wages for the twelve-month period ending on June 30, 1315 1316 1975. Similar ratios are computed by subtracting the earliest 1317 month's benefit payments and adding the benefits of the next month 1318 in the sequence and dividing each sum of twelve (12) months' 1319 benefits by the total wages for the twelve-month period ending on the June 30 which is nearest to the final month of the period used 1320 1321 to compute the numerator. If December is the final month of the 1322 period used to compute the numerator, then the twelve-month period

H. B. No. 932 13/HR40/R1677SG PAGE 53 (RF\BD) ending the following June 30 will be used for the denominator.
Benefits and total wages used in the computation of the cost rate
criterion shall exclude all benefits and total wages applicable to
state agencies, political subdivisions, reimbursable nonprofit
corporations, and tax-exempt PSE employment.

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

1334 The CRC shall be adjusted only through annual computations 1335 and additions of future economic cycles.

"Size of fund index" (SOFI) is defined as the ratio 1336 (k) 1337 of the exposure criterion (EC) to the cost rate criterion (CRC). 1338 For years following December 31, 2009, the target size of fund 1339 index will be fixed at 1.0. If the insured unemployment rate (IUR) exceeds a four and five-tenths percent (4.5%) average for 1340 1341 the most recent completed July to June period, the target SOFI 1342 will be .8 and will remain at that level until the computed SOFI 1343 (the average exposure criterion of the current year and the 1344 preceding year divided by the average cost rate criterion) equals 1.0 or the average IUR falls to four and five-tenths percent 1345 1346 (4.5%) or less for any period July to June. However, if the IUR falls below two and five-tenths percent (2.5%) for any period July 1347

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 54 (RF\bd) to June the target SOFI shall be 1.2 until such time as the computed SOFI is equal to or greater than 1.0 or the IUR is equal to or greater than two and five-tenths percent (2.5%), at which point the target SOFI shall return to 1.0.

1352 No employer's contribution rate shall exceed five (1) 1353 and four-tenths percent (5.4%), nor be less than four-tenths of 1354 one percent (.4%). However, from and after January 1, 2005, through December 31, 2009, no employer's unemployment contribution 1355 1356 rate shall be less than one-tenth of one percent (.1%). For years 1357 subsequent to calendar year 2010 the general experience rate in no 1358 event shall be less than two-tenths of one percent (.2%). For any 1359 year the general experience rate computes as an amount less than 1360 two-tenths of one percent (.2%) the general experience rate shall be established at two-tenths of one percent (.2%). From and after 1361 1362 January 1, 2012, accrual rules shall apply for purposes of 1363 computing contribution rates including associated functions.

1364 (m) The term "general experience rate" has the same 1365 meaning as the minimum tax rate.

1366 (2) Modified rates:

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

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 55 (RF\BD) (b) Modified rates shall be determined for the tax year for each eligible employer on the basis of his experience-rating record in the following manner:

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

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

13871. Voluntarily left the employ of such1388employer without good cause attributable to the employer;13892. Was discharged by such employer for1390misconduct connected with his work;

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

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

1401 5. Extended benefits paid under the 1402 provisions of Section 71-5-541 which are not reimbursable from 1403 federal funds shall be charged to the experience-rating record of 1404 base period employers;

1405 6. Is still working for such employer on a 1406 regular part-time basis under the same employment conditions as 1407 Provided, however, that benefits shall be charged against hired. 1408 an employer if an eligible individual is paid benefits who is 1409 still working for such employer on a part-time "as-needed" basis; 7. Was hired to replace a United States 1410 1411 serviceman or servicewoman called into active duty and was laid 1412 off upon the return to work by that serviceman or servicewoman, unless such employer is a state agency or other political 1413 1414 subdivision or instrumentality of the state; 1415 Was paid benefits during any week while in 8. 1416 training with the approval of the department, under the provisions 1417 of Section 71-5-513B, or for any week while in training approved under Section 236(a)(1) of the Trade Act of 1974, under the 1418

1419 provisions of Section 71-5-513C; or

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

1424 Notwithstanding any other provision (iii) 1425 contained herein, an employer shall not be noncharged when the 1426 department finds that the employer or the employer's agent of 1427 record was at fault for failing to respond timely or adequately to 1428 the request of the department for information relating to an 1429 unemployment claim that was subsequently determined to be 1430 improperly paid, unless the employer or the employer's agent of 1431 record shows good cause for having failed to respond timely or 1432 adequately to the request of the department for information. For purposes of this subparagraph "good cause" means an event that 1433 1434 prevents the employer or employer's agent of record from timely 1435 responding, and includes a natural disaster, emergency or similar 1436 event, or an illness on the part of the employer, the employer's 1437 agent of record, or their staff charged with responding to such 1438 inquiries when there is no other individual who has the knowledge 1439 or ability to respond. Any agency error that resulted in a delay 1440 in, or the failure to deliver notice to, the employer or the 1441 employer's agent of record shall also be considered good cause for 1442 purposes of this subparagraph. 1443 (* * *iv) The department shall compute a benefit

1444 ratio for each eligible employer, which shall be the quotient

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 58 (RF\BD) 1445 obtained by dividing the total benefits charged to his 1446 experience-rating record during the period his experience-rating record has been chargeable, but not less than the twelve (12) 1447 consecutive calendar-month period nor more than the thirty-six 1448 1449 (36) consecutive calendar-month period ending on the computation 1450 date, by his total taxable payroll for the same period on which 1451 all contributions due have been paid on or before the September 30 1452 immediately following the computation date. Such benefit ratio 1453 shall be computed to the tenth of a percent (.1%), rounding any 1454 remainder to the next higher tenth.

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

1459	Benefit Ratio	Individual Experience Rate:
1460	0.0%	- 0.3%
1461	0.1	- 0.2
1462	0.2	- 0.10
1463	0.3	0.0
1464	0.4	0.1
1465	0.5	0.2
1466	0.6	0.3
1467	0.7	0.4
1468	0.8	0.5
1469	0.9	0.6

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1.0	0.7
1.1	0.8
1.2	0.9
1.3	1.0
1.4	1.1
1.5	1.2
1.6	1.3
1.7	1.4
1.8	1.5
1.9	1.6
2.0	1.7
2.1	1.8
2.2	1.9
2.3	2.0
2.4	2.1
2.5	2.2
2.6	2.3
2.7	2.4
2.8	2.5
2.9	2.6
3.0	2.7
3.1	2.8
3.2	2.9
3.3	3.0
3.4	3.1
	 1.1 1.2 1.3 1.4 1.5 1.6 1.7 1.8 1.9 2.0 2.1 2.2 2.3 2.4 2.5 2.6 2.7 2.8 2.9 3.0 3.1 3.2 3.3

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1495	3.5	3.2
1496	3.6	3.3
1497	3.7	3.4
1498	3.8	3.5
1499	3.9	3.6
1500	4.0	3.7
1501	4.1	3.8
1502	4.2	3.9
1503	4.3	4.0
1504	4.4	4.1
1505	4.5	4.2
1506	4.6	4.3
1507	4.7	4.4
1508	4.8	4.5
1509	4.9	4.6
1510	5.0	4.7
1511	5.1	4.8
1512	5.2	4.9
1513	5.3	5.0
1514	5.4	5.1
1515	5.5	5.2
1516	5.6	5.3
1517	5.7 and above	5.4
1518	(* * * <u>v</u>)	1. The unemployment insurance
1519	contribution rate for each	eligible employer shall be the sum of

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1520 two (2) rates: his individual experience rate in the range from 1521 zero percent (0%) to five and four-tenths percent (5.4%), plus a 1522 general experience rate. In no event shall the resulting rate be 1523 in excess of five and four-tenths percent (5.4%), however, it is 1524 the intent of this section to provide the ability for employers to 1525 have a tax rate, the general experience rate plus the individual experience rate, of up to five and four-tenths percent (5.4%). 1526 1527 2. The employer's individual experience rate 1528 shall be equal to his benefit ratio as computed under subsection (2)(b)(*** * ***iv) above. 1529

1530 3. The general experience rate shall be 1531 determined in the following manner: The department shall 1532 determine annually, for the thirty-six (36) consecutive 1533 calendar-month period ending on the computation date, the amount 1534 of benefits which were not charged to the record of any employer 1535 and of benefits which were ineffectively charged to the employer's 1536 experience-rating record. For the purposes of this item 3, the term "ineffectively charged benefits" shall include: 1537

1538a. The total of the amounts of benefits1539charged to the experience-rating records of all eligible employers1540which caused their benefit ratios to exceed five and four-tenths1541percent (5.4%);

b. The total of the amounts of benefits charged to the experience-rating records of all ineligible employers which would cause their benefit ratios to exceed five

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 62 (RF\BD) 1545 and four-tenths percent (5.4%) if they were eligible employers; 1546 and

1547 The total of the amounts of benefits с. 1548 charged or chargeable to the experience-rating record of any 1549 employer who has discontinued his business or whose coverage has 1550 been terminated within such period; provided, that solely for the purposes of determining the amounts of ineffectively charged 1551 benefits as herein defined, a "benefit ratio" shall be computed 1552 1553 for each ineligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating 1554 1555 record throughout the period ending on the computation date, 1556 during which his experience-rating record has been chargeable with 1557 benefits, by his total taxable payroll for the same period on which all contributions due have been paid on or before the 1558 1559 September 30 immediately following the computation date; and 1560 provided further, that such benefit ratio shall be computed to the 1561 tenth of one percent (.1%) and any remainder shall be rounded to 1562 the next higher tenth.

The ratio of the sum of these amounts (subsection 1564 (2)(b)($\star \star \star v$)3a, b and c) to the taxable wages paid during the 1565 same period divided by all eligible employers whose benefit ratio 1566 did not exceed five and four-tenths percent (5.4%), computed to 1567 the next higher tenth of one percent (.1%), shall be the general 1568 experience rate.

H. B. No. 932 13/HR40/R1677SG PAGE 63 (RF\BD) 1569 a. Except as otherwise provided in this 4. 1570 item 4, the general experience rate shall be adjusted by use of the size of fund index factor. This factor may be positive or 1571 1572 negative, and shall be determined as follows: From the target 1573 SOFI, as defined in subsection (1)(k) of this section, subtract 1574 the simple average of the current and preceding years' exposure criterions divided by the cost rate criterion, as defined in 1575 1576 subsection (1)(j) of this section. The result is then multiplied 1577 by the product of the CRC, as defined in subsection (1)(j) of this 1578 section, and total wages for the twelve-month period ending June 1579 30 divided by the taxable wages for the twelve-month period ending 1580 June 30. This is the percentage positive or negative added to the 1581 general experience rate. The sum of the general experience rate and the trust fund adjustment factor shall be multiplied by fifty 1582 1583 percent (50%) and this product shall be computed to one (1)1584 decimal place, and rounded to the next higher tenth. 1585 b. Notwithstanding the minimum rate 1586 provisions as set forth in Section 71-5-355(1)(1), if this act 1587 becomes effective before March 8, 2013, the general experience 1588 rate of all employers shall be reduced by seven one hundredths of 1589 one percent (.07%) for calendar year 2013 only. If this act 1590 becomes effective from and after March 8, 2013, the general 1591 experience rate of all employers shall be reduced by seven one 1592 hundredths of one percent (.07%) for calendar year 2014 only. The

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 64 (RF\BD) 1593 general experience rate decrease provided for in this sub-item b 1594 shall be effective for only one (1) calendar year.

5. Notwithstanding any other provisions of subsection (2) (b) ($\star \star \star v$), if the general experience rate for any tax year as computed and adjusted on the basis of the size of fund index is a negative percentage, it shall be disregarded and in no year shall the general experience rate be less than two-tenths of one percent (.2%).

1601 The department shall include in its annual 6. 1602 rate notice to employers a brief explanation of the elements of 1603 the general experience rate, and shall include in its regular 1604 publications an annual analysis of benefits not charged to the 1605 record of any employer, and of the benefit experience of employers by industry group whose benefit ratio exceeds four percent (4%), 1606 and of any other factors which may affect the size of the general 1607 1608 experience rate.

1609 (***<u>vi</u>) When any employing unit in any manner 1610 succeeds to or acquires the organization, trade, business or 1611 substantially all the assets thereof of an employer, excepting any 1612 assets retained by such employer incident to the liquidation of 1613 his obligations, whether or not such acquiring employing unit was 1614 an employer within the meaning of Section 71-5-11,

1615 subsection $* * * \underline{H}$, prior to such acquisition, and continues such 1616 organization, trade or business, the experience-rating and payroll 1617 records of the predecessor employer shall be transferred as of the

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 65 (RF\BD) 1618 date of acquisition to the successor employer for the purpose of 1619 rate determination.

1620 (* * *<u>vii</u>) When any employing unit succeeds to or 1621 acquires a distinct and severable portion of an organization, 1622 trade or business, the experience-rating and payroll records of 1623 such portion, if separately identifiable, shall be transferred to 1624 the successor upon:

1625 1. The mutual consent of the predecessor and 1626 the successor;

1627 2. Approval of the department;
1628 3. Continued operation of the transferred
1629 portion by the successor after transfer; and

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

1635 (* * *viii) If the successor was an employer 1636 subject to this chapter prior to the date of acquisition, it shall 1637 continue to pay contributions at the rate applicable to it from 1638 the date the acquisition occurred until the end of the then 1639 current tax year. If the successor was not an employer prior to the date of acquisition, it shall pay contributions at the rate 1640 applicable to the predecessor or, if more than one (1) predecessor 1641 and the same rate is applicable to both, the rate applicable to 1642

1643 the predecessor or predecessors, from the date the acquisition 1644 occurred until the end of the then current tax year. If the successor was not an employer prior to the date the acquisition 1645 1646 occurred and simultaneously acquires the businesses of two (2) or 1647 more employers to whom different rates of contributions are 1648 applicable, it shall pay contributions from the date of the acquisition until the end of the current tax year at a rate 1649 1650 computed on the basis of the combined experience-rating and 1651 payroll records of the predecessors as of the computation date for 1652 such tax year. In all cases the rate of contributions applicable 1653 to such successor for each succeeding tax year shall be computed 1654 on the basis of the combined experience-rating and payroll records 1655 of the successor and the predecessor or predecessors.

1656 (* * *ix) The department shall notify each 1657 employer quarterly of the benefits paid and charged to his 1658 experience-rating record; and such notification, in the absence of 1659 an application for redetermination filed within thirty (30) days 1660 after the date of such notice, shall be final, conclusive and 1661 binding upon the employer for all purposes. A redetermination, 1662 made after notice and opportunity for a fair hearing, by a hearing 1663 officer designated by the department who shall consider and decide 1664 these and related applications and protests; and the finding of fact in connection therewith may be introduced into any subsequent 1665 administrative or judicial proceedings involving the determination 1666 1667 of the rate of contributions of any employer for any tax year, and

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1668 shall be entitled to the same finality as is provided in this 1669 subsection with respect to the findings of fact in proceedings to 1670 redetermine the contribution rate of an employer.

1671 (* * *x) The department shall notify each 1672 employer of his rate of contribution as determined for any tax 1673 year as soon as reasonably possible after September 1 of the 1674 preceding year. Such determination shall be final, conclusive and 1675 binding upon such employer unless, within thirty (30) days after 1676 the date of such notice to his last known address, the employer 1677 files with the department an application for review and 1678 redetermination of his contribution rate, setting forth his 1679 reasons therefor. If the department grants such review, the 1680 employer shall be promptly notified thereof and shall be afforded 1681 an opportunity for a fair hearing by a hearing officer designated by the department who shall consider and decide these and related 1682 1683 applications and protests; but no employer shall be allowed, in 1684 any proceeding involving his rate of contributions or contribution 1685 liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination 1686 1687 or decision pursuant to Sections 71-5-515 through 71-5-533 except 1688 upon the ground that the services on the basis of which such 1689 benefits were found to be chargeable did not constitute services 1690 performed in employment for him, and then only in the event that 1691 he was not a party to such determination, redetermination, decision or to any other proceedings provided in this chapter in 1692

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H. B. No. 932 13/HR40/R1677SG PAGE 68 (RF\BD) 1693 which the character of such services was determined. The employer 1694 shall be promptly notified of the denial of this application or of the redetermination, both of which shall become final unless, 1695 1696 within ten (10) days after the date of notice thereof, there shall 1697 be an appeal to the department itself. Any such appeal shall be 1698 on the record before said designated hearing officer, and the 1699 decision of said department shall become final unless, within 1700 thirty (30) days after the date of notice thereof to the 1701 employer's last known address, there shall be an appeal to the Circuit Court of the First Judicial District of Hinds County, 1702 1703 Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari. 1704

1705 (3) Notwithstanding any other provision of law, the 1706 following shall apply regarding assignment of rates and transfers 1707 of experience:

1708 (a) (i) If an employer transfers its trade or 1709 business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, 1710 1711 management or control of the two (2) employers, then the 1712 unemployment experience attributable to the transferred trade or 1713 business shall be transferred to the employer to whom such 1714 business is so transferred. The rates of both employers shall be 1715 recalculated and made effective on January 1 of the year following 1716 the year the transfer occurred.

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(ii) If, following a transfer of experience under 1718 subparagraph (i) of this paragraph (a), the department determines that a substantial purpose of the transfer of trade or business 1719 was to obtain a reduced liability of contributions, then the 1720 1721 experience-rating accounts of the employers involved shall be 1722 combined into a single account and a single rate assigned to such 1723 account.

1724 (b) Whenever a person who is not an employer or an 1725 employing unit under this chapter at the time it acquires the 1726 trade or business of an employer, the unemployment experience of 1727 the acquired business shall not be transferred to such person if 1728 the department finds that such person acquired the business solely 1729 or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the new 1730 employer rate under Section 71-5-353. In determining whether the 1731 1732 business was acquired solely or primarily for the purpose of 1733 obtaining a lower rate of contributions, the department shall use 1734 objective factors which may include the cost of acquiring the 1735 business, whether the person continued the business enterprise of 1736 the acquired business, how long such business enterprise was 1737 continued, or whether a substantial number of new employees were 1738 hired for performance of duties unrelated to the business activity 1739 conducted prior to acquisition.

1740 If a person knowingly violates or attempts to (C) (i) 1741 violate paragraph (a) or (b) of this subsection or any other

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1742 provision of this chapter related to determining the assignment of 1743 a contribution rate, or if a person knowingly advises another 1744 person in a way that results in a violation of such provision, the 1745 person shall be subject to the following penalties:

1746 1. If the person is an employer, then such 1747 employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted 1748 1749 violation occurred and the three (3) rate years immediately 1750 following this rate year. However, if the person's business is 1751 already at such highest rate for any year, or if the amount of 1752 increase in the person's rate would be less than two percent (2%) 1753 for such year, then a penalty rate of contributions of two percent 1754 (2%) of taxable wages shall be imposed for such year. The penalty rate will apply to the successor business as well as the related 1755 1756 entity from which the employees were transferred in an effort to 1757 obtain a lower rate of contributions.

1758 2. If the person is not an employer, such person shall be subject to a civil money penalty of not more than 1759 1760 Five Thousand Dollars (\$5,000.00). Each such transaction for 1761 which advice was given and each occurrence or reoccurrence after 1762 notification being given by the department shall be a separate 1763 offense and punishable by a separate penalty. Any such fine shall 1764 be deposited in the penalty and interest account established under 1765 Section 71-5-114.

H. B. No. 932 13/HR40/R1677SG PAGE 71 (RF\BD) (ii) For purposes of this paragraph (c), the term knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

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

1773 In addition to the penalty imposed by (iv) 1774 subparagraph (i) of this paragraph (c), any violation of this 1775 subsection may be punishable by a fine of not more than Ten 1776 Thousand Dollars (\$10,000.00) or by imprisonment for not more than 1777 five (5) years, or by both such fine and imprisonment. This 1778 subsection shall prohibit prosecution under any other criminal statute of this state. 1779

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

1783 (e) For purposes of this subsection:

1784(i) "Person" has the meaning given such term by1785Section 7701(a)(1) of the Internal Revenue Code of 1986; and

1786 (ii) "Employing unit" has the meaning as set forth
1787 in Section 71-5-11.

1788 (f) This subsection shall be interpreted and applied in 1789 such a manner as to meet the minimum requirements contained in any

1790 guidance or regulations issued by the United States Department of 1791 Labor.

1792 SECTION 8. Section 71-5-367, Mississippi Code of 1972, is 1793 amended as follows:

1794 71-5-367. If an employer shall file a report in proper form 1795 and in proper amount, but shall fail to pay the amount of 1796 contributions shown to be due thereby at the time of such filing, 1797 or if an employer shall fail to pay any assessment as provided and 1798 made under Section 71-5-365 within fifteen (15) days after such 1799 assessment has become final as herein provided, the * * * 1800 department may issue a warrant under its official seal, directed 1801 to the sheriff of any county of the state, commanding him to levy 1802 upon and sell the real and personal property of such employer as has defaulted in the payment of such contributions or assessments, 1803 which may be found within his county, for the payment of the 1804 1805 amount thereof, together with interest, damages, if any, assessed 1806 for failure to make and file a report or a corrected or sufficient 1807 report, and an additional sum not exceeding one hundred percent 1808 (100%) of the amount of the unpaid contributions due, in the discretion of the * * * department, as damages for failure to pay, 1809 1810 if not already assessed under Section 71-5-365 and the costs of 1811 executing the warrant and to return such warrant to the * * * 1812 department, and to pay to it the money collected by virtue thereof 1813 on the date specified therein. The * * * department shall cause to be delivered to the clerk of the circuit court a copy of such 1814

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1815 warrant issued to the sheriff. Such clerk shall enter in the 1816 judgment roll, in the column for judgment debtors, the name of the 1817 employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the 1818 1819 warrant is issued, a notation that the lien covers all previous, 1820 current and future periods for the life of the lien, and the date when such copy is filed. Thereupon the amount of such warrant so 1821 1822 filed and entered shall become a lien upon the title to and 1823 interest in all real and personal property, including choses in 1824 action against negotiable instruments not past due, of the 1825 employer against whom the warrant is issued in the same manner as 1826 a judgment duly enrolled in the office of such clerk. Any such 1827 liens shall cover all contributions, interest and damages owed to the *** * *** department from previous, current and future periods 1828 until the expiration of such lien or until the amount of the lien 1829 1830 is fully satisfied. Such judgment shall not be a lien upon the 1831 property of the employer for a period of more than seven (7) years from the date of filing of the notice of the tax lien for failure 1832 1833 to pay contributions, damages and interest unless action be 1834 brought thereon before the expiration of such time or unless 1835 the * * * department refiles such notice of tax lien before the 1836 expiration of such time. The judgment shall be a lien upon the property of the employer for a period of seven (7) years from the 1837 1838 date of refiling such notice of tax lien unless action be brought thereon before the expiration of such time or unless the * * * 1839

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H. B. No. 932 13/HR40/R1677SG PAGE 74 (RF\BD) 1840 department refiles such notice of tax lien before the expiration 1841 of such time. There shall be no limit upon the number of times the *** * *** department may refile notices of tax liens. The sheriff 1842 1843 shall proceed upon the warrant in the same manner and with like 1844 effect as that provided by law in respect to executions issued 1845 against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply; and 1846 1847 for his services in executing the warrant the sheriff shall be 1848 entitled to the same fees, which he may collect in the same 1849 manner.

1850 The *** * *** department may elect to issue the warrant directly to the circuit clerk of any county of this state for enrollment 1851 1852 upon the judgment rolls of the county. In such case, the clerk shall enter in the judgment roll, in the column for judgment 1853 1854 debtors, the name of the employer mentioned in the warrant and, in 1855 appropriate columns, the amount of contributions, interest and 1856 damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of 1857 1858 the lien, and the date when such warrant is filed. The lien shall 1859 have the same effect and remedies as that provided by law in 1860 respect to executions issued against property upon judgments or in 1861 attachment proceedings of a court of record, and the remedies by 1862 garnishment shall apply.

1863 * * * All warrants issued by the department for the 1864 collection of any unemployment tax or for an overpayment of

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 75 (RF\BD) 1865 benefits imposed by statute and collected by the department shall 1866 be used to levy on salaries, compensation or other monies due the 1867 delinquent employer or claimant. No such warrant shall be issued 1868 until after the delinquent employer or claimant has exhausted all 1869 appeal rights associated with the debt. The warrants shall be 1870 served by mail or by delivery by an agent of the department on the 1871 person or entity responsible or liable for the payment of the 1872 monies due the delinquent employer or claimant. Once served, the 1873 employer or other person owing compensation due the delinquent 1874 employer or claimant shall pay the monies over to the department 1875 in complete or partial satisfaction of the liability. An answer 1876 shall be made within thirty (30) days after service of the warrant 1877 in the form and manner determined satisfactory by the department. 1878 Failure to pay the money over to the department as required by 1879 this section shall result in the served party being personally 1880 liable for the full amount of the monies owed and the levy and 1881 collection process may be issued against the party in the same 1882 manner as other debts owed to the department. Except as otherwise 1883 provided by this section, the answer, the amount payable under the 1884 warrant and the obligation of the payor to continue payment shall 1885 be governed by the garnishment laws of this state but shall be 1886 payable to the department. 1887 SECTION 9. Section 71-5-389, Mississippi Code of 1972, is

1888 amended as follows:

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 76 (RF\BD) 1889 71-5-389. (1) For the purposes of this section, the 1890 following terms shall have the respective meanings ascribed by 1891 this section:

1892 (a) "Claimant agency" means the Mississippi Department1893 of Employment Security.

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

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

1906 (d) "Department" or "Department of Revenue" means the1907 Department of Revenue of the State of Mississippi.

(e) "Refund" means the Mississippi income tax refund
which the department determines to be due any individual taxpayer,
<u>corporation or partnership</u>.

1911 (2) The collection remedy authorized by this section is in 1912 addition to and is not substitution for any other remedy available 1913 by law.

1914 (3)A claimant agency may submit debts in excess of (a) 1915 Twenty-five Dollars (\$25.00) owed to it to the department for collection through setoff, under the procedure established by this 1916 1917 section, except in cases where the validity of the debt is 1918 legitimately in dispute, an alternate means of collection is 1919 pending and believed to be adequate, or such collection would 1920 result in a loss of federal funds or federal assistance.

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

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

1930 If a debtor identified by a claimant agency is (b) determined by the department to be entitled to a refund of at 1931 1932 least Twenty-five Dollars (\$25.00), the department shall transfer 1933 an amount equal to the refund owed, not to exceed the amount of 1934 the claimed debt certified, to the claimant agency. The 1935 Department of Revenue shall send the excess amount to the debtor 1936 within a reasonable time after such excess is determined. At the 1937 time of the transfer of funds to a claimant agency pursuant to 1938 this paragraph (b), the Department of Revenue shall notify the

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H. B. No. 932 13/HR40/R1677SG PAGE 78 (RF\bD) 1939 taxpayer or taxpayers whose refund is sought to be set off that 1940 the transfer has been made. Such notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the 1941 amount of the claimed debt, the transfer of funds to the claimant 1942 1943 agency pursuant to this paragraph (b) and the intention to set off 1944 the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written 1945 1946 notice to contest the setoff within thirty (30) days of the date 1947 of mailing of the notice, the name and mailing address of the 1948 claimant agency to which the application for such a hearing must 1949 be sent, and the fact that the failure to apply for such a 1950 hearing, in writing, within the thirty-day period will be deemed a 1951 waiver of the opportunity to contest the setoff. In the case of a 1952 joint return or a joint refund, the notice shall also state the 1953 name of the taxpayer named in the return, if any, against whom no 1954 debt is claimed, the fact that a debt is not claimed against such 1955 taxpayer, the fact that such taxpayer is entitled to receive a 1956 refund if it is due him regardless of the debt asserted against 1957 his spouse, and that in order to obtain a refund due him such 1958 taxpayer must apply in writing for a hearing with the claimant 1959 agency named in the notice within thirty (30) days of the date of 1960 the mailing of the notice. If a taxpayer fails to apply in writing for such a hearing within thirty (30) days of the mailing 1961 1962 of such notice, he will have waived his opportunity to contest the 1963 setoff.

H. B. No. 932 13/HR40/R1677SG PAGE 79 (RF\BD) (c) Upon receipt of funds transferred from the Department of Revenue pursuant to paragraph (b) of this subsection, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt.

1969 (d) The claimant agency shall pay the Department of 1970 Revenue a fee, not to exceed Seventeen Dollars (\$17.00) in each 1971 case in which a tax refund is identified as being available for 1972 Such fees shall be deposited by the Department of Revenue offset. 1973 into a special fund hereby created in the State Treasury, out of 1974 which the Legislature shall appropriate monies to defray expenses 1975 of the Department of Revenue in employing personnel to administer 1976 the provisions of this section.

1977 When the claimant agency receives a protest or an (5)(a) 1978 application in writing from a taxpayer within thirty (30) days of 1979 the notice issued by the Department of Revenue, the claimant 1980 agency shall set a date to hear the protest and give notice to the taxpayer * * * through the United States Postal Service or 1981 1982 electronic digital transfer of the date so set. The time and 1983 place of such hearing shall be designated in such notice and the 1984 date set shall not be less than fifteen (15) days from the date of 1985 such notice. If, at the hearing, the sum asserted as due and owing is found not to be correct, an adjustment to the claim may 1986 1987 The claimant agency shall give notice to the debtor of be made.

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1988 its final determination as provided in paragraph (c) of this 1989 subsection.

1990 (b) No issues shall be reconsidered at the hearing1991 which have been previously litigated.

If any debtor is dissatisfied with the final 1992 (C) 1993 determination made at the hearing by the claimant agency, he may 1994 appeal the final determination to the circuit court of the county 1995 in which the main office of the claimant agency is located by 1996 filing notice of appeal with the administrative head of the claimant agency and with the clerk of the circuit court of the 1997 1998 county in which the appeal shall be taken within thirty (30) days 1999 from the date the notice of final determination was given by the 2000 claimant agency.

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

(b) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency shall notify the debtor in writing of the finalization of the setoff. Such notice shall include a final accounting if the refund which was set off, including the amount of the refund to which the debtor was entitled prior to the setoff, the amount of

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2013 the debt due and owing, the amount of the collection fee paid to 2014 the Department of Revenue, the amount of the refund in excess of the debt which was returned to the debtor by the Department of 2015 2016 Revenue, and the amount of the funds transferred to the claimant 2017 agency in excess of the debt determined to be due and owing at a 2018 hearing, if such a hearing was held. At such time, the claimant 2019 agency shall refund to the debtor the amount of the claimed debt 2020 originally certified and transferred to it by the Department of 2021 Revenue in excess of the amount of debt finally found to be due 2022 and owing.

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

2029 The information obtained by claimant agency from (b) 2030 the Department of Revenue in accordance with the provisions of 2031 this section shall retain its confidentiality and shall only be 2032 used by a claimant agency in the pursuit of its debt collection 2033 duties and practices; and any employee or prior employee of any 2034 claimant agency who unlawfully discloses any such information for any other purpose, except as specifically authorized by law, shall 2035 2036 be subject to the same penalties specified by law for unauthorized

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H. B. No. 932 13/HR40/R1677SG PAGE 82 (RF\BD) 2037 confidential information by an agent or employee of the Department 2038 of Revenue.

2039 SECTION 10. Section 71-5-453, Mississippi Code of 1972, is 2040 amended as follows:

2041 71-5-453. The * * * department shall be the * * * treasurer 2042 and custodian of the fund, and shall administer such fund in 2043 accordance with the directions of the department, and shall 2044 issue * * * its warrants upon it in accordance with such 2045 regulations as the department shall prescribe. * * * The 2046 department shall maintain within the fund three (3) separate 2047 accounts: (a) a clearing account, (b) an unemployment trust fund 2048 account, and (c) a benefit payment account. All monies payable to 2049 the fund, upon receipt thereof by the department, shall be * * * 2050 immediately * * * deposited in the clearing account. Refunds 2051 payable pursuant to Section 71-5-383 may be paid from the clearing 2052 account * * * by the * * * department. Transfers pursuant to 2053 Section 71-5-114 of all interest, penalties and damages collected 2054 shall be made to the Special Employment Security Administration 2055 Fund as soon as practicable after the end of each calendar 2056 quarter. Workforce training enhancement contributions shall be 2057 deposited into the workforce enhancement training holding fund 2058 account as described in this section. All other monies in the 2059 clearing account shall be immediately deposited with the Secretary 2060 of the Treasury of the United States of America to the * * * Unemployment Trust Fund account for the state of Mississippi, 2061

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2062 established and maintained pursuant to Section 904 of the Social 2063 Security Act, as amended, any provisions of law in this state 2064 relating to the deposit, administration, release or disbursement 2065 of monies in the possession or custody of this state to the 2066 contrary notwithstanding. The benefit account shall consist of 2067 all monies requisitioned from this state's account in the 2068 Unemployment Trust Fund. Except as herein otherwise provided, 2069 monies in the clearing and benefit accounts may be deposited by 2070 the *** * *** department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit 2071 2072 insurance charge or premium shall be paid out of the fund. 2073 The *** * *** department shall be liable *** * *** for the faithful 2074 performance of * * * its duties in connection with the 2075 Unemployment Compensation Fund under this chapter. A Mississippi 2076 Workforce Training Enhancement Fund holding account shall be 2077 established by and maintained under the control of the * * * 2078 department. The workforce training enhancement contributions 2079 collected pursuant to the provisions in this chapter shall be 2080 transferred from the clearing account into the Mississippi 2081 Workforce Training Enhancement Fund holding account on the same 2082 schedule and under the same conditions as funds transferred to the 2083 Unemployment Compensation Fund. Such funds shall remain on 2084 deposit in the workforce training enhancement fund account for a 2085 period of sixty (60) days. After such period, contributions will 2086 be transferred to the Mississippi Workforce Enhancement Training

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Fund by the * * * department, within thirty (30) days. One such 2087 transfer shall be made monthly, but the department, in its 2088 discretion, may make additional transfers in any month. 2089 In the 2090 event such funds transferred are subsequently determined to be 2091 erroneously paid or collected, or if deposit of such funds is 2092 denied or rejected by the banking institution for any reason, or 2093 deposits are unable to clear drawer's account for any reason, the 2094 funds must be reimbursed by the recipient of such funds within 2095 thirty (30) days of mailing of notice by the *** * *** department demanding such refund, unless funds are available in the workforce 2096 2097 training enhancement fund holding account. In that event such 2098 amounts shall be immediately withdrawn from the workforce 2099 enhancement training holding fund account by the * * * department 2100 and redeposited into the clearing account.

2101 SECTION 11. Section 71-5-455, Mississippi Code of 1972, is 2102 amended as follows:

2103 71-5-455. Monies shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of 2104 2105 benefits and in accordance with regulations prescribed by 2106 the * * * department, except that monies credited to this state's 2107 account pursuant to Section 903 of the Social Security Act, as 2108 amended, shall be used exclusively as provided in Section 2109 71-5-457. No monies in the Unemployment Compensation Fund shall 2110 be used to pay interest on any funds that might be borrowed for the purposes of this chapter, but any such interest that might be 2111

due shall be paid from other sources. The * * * department shall 2112 2113 from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amount standing to this state's 2114 2115 account therein, as it deems necessary for the payment of benefits 2116 for a reasonable future period. * * * Such sums shall be 2117 immediately deposited by the * * * department in some bank within this state in an account to be known as the "benefit payment 2118 2119 account," which shall be under the control of the * * * department 2120 and on which said benefit payment account the * * * department or 2121 its duly authorized representative is authorized to draw and issue 2122 its checks in payment of benefits to individuals entitled thereto 2123 under this chapter. Expenditures of such monies in the benefit 2124 account and benefit payment account and refunds from the clearing 2125 account shall not be subject to any provisions of law requiring 2126 specific appropriations or other formal release by state officers 2127 of money in their custody. All warrants * * * shall bear the 2128 signature of the * * * department's duly authorized agent for that 2129 purpose.

2130 * * *

2131The department shall be subject to the applicable laws2132pertaining to security of public fund deposits as set forth in2133Sections 27-105-5 and 27-105-6.

2134 SECTION 12. Section 71-5-505, Mississippi Code of 1972, is 2135 amended as follows:

2136 71-5-505. (1) For weeks beginning on or after July 1, 1991, 2137 each eligible individual who is totally unemployed or part totally unemployed in any week shall be paid with respect to such week a 2138 2139 benefit in an amount equal to his weekly benefit amount less that 2140 part of his wages, if any, payable to him with respect to such 2141 week which is in excess of Forty Dollars (\$40.00). Such 2142 individuals must have been totally unemployed or part totally 2143 unemployed for a waiting period of one (1) week during which he 2144 earned less than his weekly benefit amount plus Forty Dollars (\$40.00). Such benefit for a benefit year effective on or after 2145 2146 October 1, 1983, if not a multiple of One Dollar (\$1.00), shall be computed to the next lower multiple of One Dollar (\$1.00). 2147 Provided, however, that remuneration for "inactive duty training" 2148 or "unit training assembly" payable to such eligible individual 2149 2150 who is a member of any of the reserve components, or remuneration 2151 for jury duty pursuant to a lawfully issued summons therefor 2152 payable to such eligible individual, shall not be considered wages 2153 which serve to reduce the otherwise payable benefit amount.

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

(2) However, the one-week waiting period described herein shall be waived if the President of the United States declares a major disaster with regard to individual assistance in accordance with Section 401 of The Robert T. Stafford Disaster Relief and

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 87 (RF\BD) Emergency Assistance Act. The department, in its discretion, shall have the authority to noncharge an employer account for any benefits paid for unemployment due directly to such disaster, but only in those counties and/or areas identified by the disaster area for individual assistance.

2166 **SECTION 13.** Section 71-5-511, Mississippi Code of 1972, is 2167 amended as follows:

2168 71-5-511. An unemployed individual shall be eligible to 2169 receive benefits with respect to any week only if the department 2170 finds that:

2171 (a) (i) He has registered for work at and thereafter 2172 has continued to report to the department in accordance with such 2173 regulations as the department may prescribe; except that the department may, by regulation, waive or alter either or both of 2174 2175 the requirements of this subparagraph as to such types of cases or 2176 situations with respect to which it finds that compliance with 2177 such requirements would be oppressive or would be inconsistent with the purposes of this chapter; and 2178

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

The individual has completed such

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2185 services; or

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13/HR40/R1677SG PAGE 88 (RF\BD) 2186 2. There is justifiable cause for the 2187 claimant's failure to participate in such services. He has made a claim for benefits in accordance with 2188 (b) the provisions of Section 71-5-515 and in accordance with such 2189 2190 regulations as the department may prescribe thereunder. 2191 (C) He is able to work * * *, available for work and 2192 actively seeking work. 2193 He has been unemployed for a waiting period of one (d) 2194 (1) week. No week shall be counted as a week of unemployment for the purposes of this subsection: 2195 2196 (i) Unless it occurs within the benefit year which 2197 includes the week with respect to which he claims payment of 2198 benefits; 2199 If benefits have been paid with respect (ii) 2200 thereto; 2201 (iii) Unless the individual was eligible for 2202 benefits with respect thereto, as provided in Sections 71-5-511 2203 and 71-5-513, except for the requirements of this subsection. 2204 For weeks beginning on or before July 1, 1982, he (e) 2205 has, during his base period, been paid wages for insured work 2206 equal to not less than thirty-six (36) times his weekly benefit 2207 amount; he has been paid wages for insured work during at least 2208 two (2) guarters of his base period; and he has, during that 2209 quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than sixteen 2210

2211 (16) times the minimum weekly benefit amount. For benefit years 2212 beginning after July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) 2213 2214 times his weekly benefit amount; he has been paid wages for 2215 insured work during at least two (2) quarters of his base period, 2216 and he has, during that quarter of his base period in which his 2217 total wages were highest, been paid wages for insured work equal 2218 to not less than twenty-six (26) times the minimum weekly benefit 2219 amount. For purposes of this subsection, wages shall be counted 2220 as "wages for insured work" for benefit purposes with respect to 2221 any benefit year only if such benefit year begins subsequent to 2222 the date on which the employing unit by which such wages were paid has satisfied the conditions of Section 71-5-11, subsection * * * 2223 2224 H, or Section 71-5-361, subsection (3), with respect to becoming 2225 an employer.

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

(g) Benefits based on service in employment defined in Section 71-5-11, subsection $\star \star \star \underline{I}(3)$ and $\star \star \star \underline{I}(4)$, and Section 71-5-361, subsection (4) shall be payable in the same amount, on

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2236 the same terms, and subject to the same conditions as compensation 2237 payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, 2238 2239 research or principal administrative capacity in an institution of higher learning (as defined in Section 71-5-11, subsection * * * 2240 2241 N) with respect to service performed prior to January 1, 1978, 2242 shall not be paid to an individual for any week of unemployment 2243 which begins during the period between two (2) successive academic 2244 years, or during a similar period between two (2) regular terms, 2245 whether or not successive, or during a period of paid sabbatical 2246 leave provided for in the individual's contract, if the individual 2247 has a contract or contracts to perform services in any such 2248 capacity for any institution or institutions of higher learning for both such academic years or both such terms. 2249

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

(i) With respect to service performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) regular but not successive terms,

H. B. No. 932 13/HR40/R1677SG PAGE 91 (RF\BD) 2261 or during a period of paid sabbatical leave provided for in the 2262 individual's contract, to any individual, if such individual performs such services in the first of such academic years or 2263 2264 terms and if there is a contract or a reasonable assurance that 2265 such individual will perform services in any such capacity for any 2266 educational institution in the second of such academic years or 2267 terms, and provided that subsection (q) of this section shall 2268 apply with respect to such services prior to January 1, 1978. In 2269 no event shall benefits be paid unless the individual employee was 2270 terminated by the employer.

2271 (ii) With respect to services performed in any 2272 other capacity for an educational institution, benefits shall not 2273 be paid on the basis of such services to any individual for any 2274 week which commences during a period between two (2) successive academic years or terms, if such individual performs such services 2275 2276 in the first of such academic years or terms and there is a 2277 reasonable assurance that such individual will perform such 2278 services in the second of such academic years or terms, except 2279 that if compensation is denied to any individual under this 2280 subparagraph and such individual was not offered an opportunity to 2281 perform such services for the educational institution for the 2282 second of such academic years or terms, such individual shall be 2283 entitled to a retroactive payment of compensation for each week 2284 for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause. 2285

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H. B. No. 932 13/HR40/R1677SG PAGE 92 (RF\BD) 2286 In no event shall benefits be paid unless the individual employee
2287 was terminated by the employer.

With respect to services described in 2288 (iii) 2289 subsection (h)(i) and (ii), benefits shall not be payable on the 2290 basis of services in any such capacities to any individual for any 2291 week which commences during an established and customary vacation period or holiday recess if such individual performs such services 2292 2293 in the first of such academic years or terms, or in the period 2294 immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform 2295 2296 such services in the period immediately following such vacation 2297 period or holiday recess.

2298 (iv) With respect to any services described in 2299 subsection (h)(i) and (ii), benefits shall not be payable on the 2300 basis of services in any such capacities as specified in 2301 subsection (h)(i), (ii) and (iii) to any individual who performed 2302 such services in an educational institution while in the employ of an educational service agency. For purposes of this subsection, 2303 2304 the term "educational service agency" means a governmental agency 2305 or governmental entity which is established and operated 2306 exclusively for the purpose of providing such services to one or more educational institutions. 2307

(v) With respect to services to which Sections
71-5-357 and 71-5-359 apply, if such services are provided to or
on behalf of an educational institution, benefits shall not be

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2314 Subsequent to December 31, 1977, benefits shall not (i) 2315 be paid to any individual on the basis of any services 2316 substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for 2317 2318 any week which commences during the period between two (2) 2319 successive sports seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar 2320 2321 periods) and there is a reasonable assurance that such individual 2322 will perform such services in the later of such seasons (or 2323 similar periods).

2324 Subsequent to December 31, 1977, benefits (ij) (i) 2325 shall not be payable on the basis of services performed by an 2326 alien, unless such alien is an individual who was lawfully 2327 admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such 2328 2329 services, or was permanently residing in the United States under 2330 color of law at the time such services were performed (including 2331 an alien who was lawfully present in the United States as a result 2332 of the application of the provisions of Section 203(a)(7) or 2333 Section 212(d)(5) of the Immigration and Nationality Act). 2334 Any data or information required of (ii)

2335 individuals applying for benefits to determine whether benefits

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 94 (RF\BD) 2336 are not payable to them because of their alien status shall be 2337 uniformly required from all applicants for benefits.

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

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

2348 A temporary employee of a temporary help firm is (1) 2349 considered to have left the employee's last work voluntarily 2350 without good cause connected with the work if the temporary 2351 employee does not contact the temporary help firm for reassignment 2352 on completion of an assignment. A temporary employee is not 2353 considered to have left work voluntarily without good cause 2354 connected with the work under this paragraph unless the temporary 2355 employee has been advised in writing:

(i) That the temporary employee is obligated to contact the temporary help firm on completion of assignments; and (ii) That unemployment benefits may be denied if the temporary employee fails to do so.

2360 **SECTION 14.** Section 71-5-13, Mississippi Code of 1972, is 2361 amended as follows:

The *** * *** department is hereby authorized to 2362 71-5-13. (1) 2363 enter into arrangements with the appropriate agencies of other 2364 states or the federal government, whereby individuals performing 2365 services in this and other states for a single employing unit 2366 under circumstances not specifically provided for in Section 2367 71-5-11, subsection * * * I, or under similar provisions in the 2368 unemployment compensation laws of such other states, shall be 2369 deemed to be engaged in employment performed entirely within this 2370 state or within one (1) of such other states and whereby potential 2371 rights to benefits accumulated under the unemployment compensation 2372 laws of one or more states or under such a law of the federal 2373 government, or both, may constitute the basis for the payment of 2374 benefits through a single appropriate agency under terms which 2375 the * * * department finds will be fair and reasonable as to all 2376 affected interests and will not result in any substantial loss to 2377 the fund.

2378 (2) The * * <u>department</u> is also authorized to enter into 2379 arrangements with the appropriate agencies of other states or of 2380 the federal government:

(a) Whereby wages or services upon the basis of which
an individual may become entitled to benefits under the
unemployment compensation law of another state or of the federal
government shall be deemed to be wages for employment by employers

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 96 (RF\BD) for the purposes of Sections 71-5-501 through 71-5-507 and Section 71-5-511(e), provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the *** * *** <u>department</u> finds will be fair and reasonable as to all affected interests; and

2391 Whereby the * * * department will reimburse other (b) 2392 state or federal agencies charged with the administration of 2393 unemployment compensation laws with such reasonable portion of 2394 benefits paid under the law of any such other states or of the 2395 federal government, upon the basis of employment or wages for 2396 employment by employers, as the * * * department finds will be 2397 fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of 2398 Sections 71-5-451 through 71-5-459. The * * * department is 2399 2400 hereby authorized to make to other state or federal agencies, and 2401 receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to 2402 2403 this section.

(3) The * * <u>department</u> is also authorized, in its discretion, to enter into or cooperate in arrangements with any federal agency whereby the facilities and services of the personnel of the * * <u>department</u> may be utilized for the taking of claims and the payment of unemployment compensation or

2409 allowances under any federal law enacted for the benefit of 2410 discharged members of the Armed Forces.

2411 The *** * *** department shall participate in any (4)2412 arrangements for the payment of compensation on the basis of 2413 combining an individual's wages and employment covered under this 2414 chapter with his wages and employment covered under the 2415 unemployment compensation laws of other states which are approved 2416 by the United States Secretary of Labor in consultation with the 2417 state unemployment compensation agencies as reasonably calculated 2418 to assure the prompt and full payment of compensation in such 2419 situations and which include provisions for:

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

(b) Avoiding the duplicate use of wages and employmentby reason of such combining.

2426 **SECTION 15.** Section 71-5-357, Mississippi Code of 1972, is 2427 amended as follows:

2428 71-5-357. Benefits paid to employees of nonprofit 2429 organizations shall be financed in accordance with the provisions 2430 of this section. For the purpose of this section, a nonprofit 2431 organization is an organization (or group of organizations) 2432 described in Section 501(c)(3) of the Internal Revenue Code of

2433 1954 which is exempt from income tax under Section 501(a) of such 2434 code (26 USCS Section 501).

2435 Any nonprofit organization which, under Section (a) 71-5-11, subsection * * * H(3), is or becomes subject to this 2436 2437 chapter shall pay contributions under the provisions of Sections 2438 71-5-351 through 71-5-355 unless it elects, in accordance with 2439 this paragraph, to pay to the department for the unemployment fund 2440 an amount equal to the amount of regular benefits and one-half 2441 (1/2) of the extended benefits paid, that is attributable to 2442 service in the employ of such nonprofit organization, to 2443 individuals for weeks of unemployment which begin during the effective period of such election. 2444

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

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

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

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

2469 The department, in accordance with such (v) 2470 regulations as it may prescribe, shall notify each nonprofit 2471 organization of any determination which it may make of its status as an employer, of the effective date of any election which it 2472 2473 makes and of any termination of such election. Such 2474 determinations shall be subject to reconsideration, appeal and 2475 review in accordance with the provisions of Sections 71-5-351 2476 through 71-5-355.

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

(i) At the end of each calendar quarter, or at the end of any other period as determined by the department, the department shall bill each nonprofit organization (or group of

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 100 (RF\BD) such organizations) which has elected to make payments in lieu of contributions, for an amount equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

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

2494 1. All of the enforcement procedures for the 2495 collection of delinquent contributions contained in Sections 2496 71-5-363 through 71-5-383 shall be applicable in all respects for 2497 the collection of delinquent payments due by nonprofit 2498 organizations who have elected to become liable for payments in 2499 lieu of contributions.

2500 2. If any nonprofit organization is 2501 delinquent in making payments in lieu of contributions, the 2502 department may terminate such organization's election to make 2503 payments in lieu of contributions as of the beginning of the next 2504 tax year, and such termination shall be effective for the balance 2505 of such tax year.

(iii) Payments made by any nonprofit organizationunder the provisions of this paragraph shall not be deducted or

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 101 (RF\BD) 2508 deductible, in whole or in part, from the remuneration of 2509 individuals in the employ of the organization.

2510 Payments due by employers who elect to (iv) 2511 reimburse the fund in lieu of contributions as provided in this 2512 paragraph may not be noncharged under any condition. The 2513 reimbursement must be on a dollar-for-dollar basis (One Dollar 2514 (\$1.00) reimbursement for each dollar paid in benefits) in every case, so that the trust fund shall be reimbursed in full, such 2515 2516 reimbursement to include, but not be limited to, benefits or 2517 payments erroneously or incorrectly paid, or paid as a result of a 2518 determination of eligibility which is subsequently reversed, or 2519 paid as a result of claimant fraud. However, political 2520 subdivisions who are reimbursing employers may elect to pay to the 2521 fund an amount equal to five-tenths percent (.5%) through December 2522 31, 2010, and shall pay twenty-five one-hundredths percent (.25%) 2523 thereafter of the taxable wages paid during the calendar year with 2524 respect to employment, and those employers who so elect shall be 2525 relieved of liability for reimbursement of benefits paid under the 2526 same conditions that benefits are not charged to the 2527 experience-rating record of a contributing employer as provided in 2528 Section 71-5-355(2)(b)(ii) other than Clause 5 thereof. Benefits 2529 paid in such circumstances for which reimbursing employers are 2530 relieved of liability for reimbursement shall not be considered 2531 attributable to service in the employment of such reimbursing 2532 employer.

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2533 (V) The amount due specified in any bill from the 2534 department shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was delivered to it, 2535 2536 the organization files an application for redetermination by the 2537 department, setting forth the grounds for such application or 2538 appeal. The department shall promptly review and reconsider the 2539 amount due specified in the bill and shall thereafter issue a 2540 redetermination in any case in which such application for 2541 redetermination has been filed. Any such redetermination shall be 2542 conclusive on the organization unless, not later than fifteen (15) 2543 days after the redetermination was delivered to it, the 2544 organization files an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with 2545 2546 the provisions of law with respect to review of civil causes by 2547 certiorari.

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

(c) Each employer that is liable for payments in lieu of contributions shall pay to the department for the fund the amount of regular benefits plus the amount of one-half (1/2) of extended benefits paid are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one (1) employer and one or more of such

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 103 (RF\BD) employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (i) or subparagraph (ii) of this paragraph.

2563 (i) If benefits paid to an individual are based on 2564 wages paid by one or more employers that are liable for payment in 2565 lieu of contributions and on wages paid by one or more employers 2566 who are liable for contributions, the amount of benefits payable 2567 by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the 2568 2569 total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total 2570 2571 base period wages paid to the individual by all of his base period 2572 employers.

2573 (ii) If benefits paid to an individual are based 2574 on wages paid by two (2) or more employers that are liable for 2575 payments in lieu of contributions, the amount of benefits payable 2576 by each such employer shall be an amount which bears the same 2577 ratio to the total benefits paid to the individual as the total 2578 base period wages paid to the individual by such employer bear to 2579 the total base period wages paid to the individual by all of his 2580 base period employers.

2581 (d) In the discretion of the department, any nonprofit 2582 organization that elects to become liable for payments in lieu of

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 104 (RF\BD) 2583 contributions shall be required to execute and file with the 2584 department a surety bond approved by the department, or it may 2585 elect instead to deposit with the department money or securities. 2586 The amount of such bond or deposit shall be determined in 2587 accordance with the provisions of this paragraph.

2588 (i) The amount of the bond or deposit required by 2589 paragraph (d) shall be equal to two and seven-tenths percent 2590 (2.7%) thereafter to December 31, 2010, and one and thirty-five 2591 one-hundredths percent (1.35%) thereafter, of the organization's taxable wages paid for employment as defined in Section 71-5-11, 2592 2593 subsection * * I(4), for the four (4) calendar quarters 2594 immediately preceding the effective date of the election, the 2595 renewal date in the case of a bond, or the biennial anniversary of 2596 the effective date of election in the case of a deposit of money 2597 or securities, whichever date shall be most recent and applicable. 2598 If the nonprofit organization did not pay wages in each of such 2599 four (4) calendar quarters, the amount of the bond or deposit shall be as determined by the department. 2600

2601 Any bond deposited under paragraph (d) shall (ii) 2602 be in force for a period of not less than two (2) tax years and 2603 shall be renewed with the approval of the department at such times 2604 as the department may prescribe, but not less frequently than at intervals of two (2) years as long as the organization continues 2605 2606 to be liable for payments in lieu of contributions. The 2607 department shall require adjustments to be made in a previously

H. B. No. 932 13/HR40/R1677SG PAGE 105 (RF\BD) 2608 filed bond as it deems appropriate. If the bond is to be 2609 increased, the adjusted bond shall be filed by the organization within thirty (30) days of the date notice of the required 2610 adjustment was delivered to it. Failure by any organization 2611 2612 covered by such bond to pay the full amount of payments in lieu of 2613 contributions when due, together with any applicable interest and 2614 penalties provided in paragraph (b) (v) of this section, shall render the surety liable on the bond to the extent of the bond, as 2615 2616 though the surety was such organization.

2617 (iii) Any deposit of money or securities in 2618 accordance with paragraph (d) shall be retained by the department 2619 in an escrow account until liability under the election is 2620 terminated, at which time it shall be returned to the 2621 organization, less any deductions as hereinafter provided. The 2622 department may deduct from the money deposited under paragraph (d) 2623 by a nonprofit organization, or sell the securities it has so 2624 deposited, to the extent necessary to satisfy any due and unpaid 2625 payments in lieu of contributions and any applicable interest and 2626 penalties provided for in paragraph (b) (v) of this section. The 2627 department shall require the organization, within thirty (30) days 2628 following any deduction from a money deposit or sale of deposited 2629 securities under the provisions hereof, to deposit sufficient additional money or securities to make whole the organization's 2630 2631 deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow 2632

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2633 account. The department may, at any time, review the adequacy of 2634 the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, it shall 2635 require the organization to make additional deposit within thirty 2636 2637 (30) days of notice of its determination or shall return to it 2638 such portion of the deposit as it no longer considers necessary, 2639 whichever action is appropriate. Disposition of income from 2640 securities held in escrow shall be governed by the applicable 2641 provisions of the state law.

2642 (iv) If any nonprofit organization fails to file a 2643 bond or make a deposit, or to file a bond in an increased amount, 2644 or to increase or make whole the amount of a previously made 2645 deposit as provided under this subparagraph, the department may 2646 terminate such organization's election to make payments in lieu of 2647 contributions, and such termination shall continue for not less 2648 than the four (4) consecutive calendar-quarter periods beginning 2649 with the quarter in which such termination becomes effective; 2650 however, the department may extend for good cause the applicable 2651 filing, deposit or adjustment period by not more than thirty (30) 2652 days.

(v) Group account shall be established accordingto regulations prescribed by the department.

(e) Any employer which elects to make payments in lieu
of contributions into the Unemployment Compensation Fund as
provided in this paragraph shall not be liable to make such

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 107 (RF\BD) payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

2663 **SECTION 16.** Section 71-5-361, Mississippi Code of 1972, is 2664 amended as follows:

2665 71-5-361. (1) Except as provided in subsection (3) of this2666 section, any employing unit which is or becomes an employer2667 subject to this chapter within any calendar year shall be deemed2668 to be an employer during the whole of such calendar year.

2669 (2) Except as otherwise provided in subsection (3) of this 2670 section:

2671 An employing unit (other than a state hospital, (a) state institution of higher learning, state or state agency or 2672 other political subdivision or instrumentality) except as provided 2673 2674 in subsections (b) and (c) of this subsection, shall cease to be 2675 an employer subject to this chapter only as of the first day of 2676 January of any calendar year, only if it files with the * * * 2677 department on or before the thirty-first day of May of such year a 2678 written application for termination of coverage, and the * * * 2679 department finds that during the preceding calendar year the 2680 employing unit did not pay wages of One Thousand Five Hundred 2681 Dollars (\$1,500.00) or more in any calendar quarter and that there were no twenty (20) days, each day being in a different week 2682

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within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this chapter, or four (4) or more in the case of nonprofit organizations, except if the *** * *** <u>department</u> finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

2689 An agricultural employer as defined under Section (b) 2690 71-5-11, subsection * * * H(4)(a) shall cease to be an 2691 agricultural employer subject to this chapter only as of the first 2692 day of January of any calendar year, only if it files with 2693 the *** * *** department on or before the thirty-first day of May of 2694 such year a written application for termination of coverage, and 2695 the * * * department finds that during the preceding calendar year 2696 the employing unit did not pay for agricultural employment wages as defined in Section 71-5-11, subsection *** * *** I(6) of Twenty 2697 2698 Thousand Dollars (\$20,000.00) in any calendar quarter of the 2699 preceding calendar year and that there were no twenty (20) days, each day being in a different week, within such calendar year, 2700 2701 within which such employing unit employed ten (10) or more 2702 individuals in employment subject to this chapter, except if 2703 the *** * *** department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer 2704 2705 subject to this chapter.

2706 (c) A domestic employer, as defined in Section 71-5-11,
2707 subsection * * * H(4)(b), shall cease to be an employer subject to

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13/HR40/R1677SG PAGE 109 (RF\BD) 2708 this chapter only as of the first day of January of any calendar 2709 year, only if it files with the * * * department on or before the thirty-first day of May of such year a written application for 2710 termination of coverage, and the * * * department finds that 2711 2712 during the preceding calendar year the employing unit did not pay 2713 wages for domestic employment of One Thousand Dollars (\$1,000.00) or more in any calendar quarter of the preceding calendar year, 2714 except if the * * * department finds that throughout a calendar 2715 2716 year an employer has had no employment, it shall cease to be an 2717 employer subject to this chapter.

2718 (d) For the purpose of this subsection, the two (2) or more employing units mentioned in Section 71-5-11, 2719 2720 subsection * * * H(5) or (6), shall be treated as a single 2721 employing unit. The * * * department may, of its own motion, 2722 cancel and terminate the effect of registrations for purposes of 2723 its accounting records in cases where it has found that employing units, duly registered as covered employers under the chapter, 2724 have died, ceased business or removed from the state without 2725 2726 applying for termination of coverage, provided that the rights of 2727 claimants for benefits shall not be affected thereby.

(3) (a) An employing unit, not otherwise subject to this
chapter, which files with the * * * department its written
election to become an employer subject thereto for not less than
two (2) calendar years shall, with the written approval of such
election by the * * * department or the executive director, become

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 110 (RF\BD) an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years only if it files with the * * * <u>department</u>, on or before the thirty-first day of May of such year, a written application for termination of coverage thereunder.

2740 (b) Any employing unit, for which services that do not 2741 constitute employment as defined in this chapter are performed, may file with the * * * department a written election that all 2742 2743 such services performed by individuals in its employ in one or 2744 more distinct establishments or places of business shall be deemed 2745 to constitute employment by an employer for all purposes of this 2746 chapter for not less than two (2) calendar years. Upon written approval of such election by the * * * department, such services 2747 2748 shall be deemed to constitute employment subject to this chapter 2749 from and after the date stated in such approval. Such services 2750 shall cease to be deemed employment subject hereto as of January 1 2751 of any calendar year subsequent to such two (2) calendar years 2752 only if, prior to the thirty-first day of May of such year, such 2753 employing unit has filed with the * * * department a written 2754 notice to that effect.

(4) (a) Prior to January 1, 1978, any political subdivision of this state may elect to cover under this chapter, for a period of not less than two (2) calendar years, services performed by

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 111 (RF\BD) 2758 employees in all of the hospitals and institutions of higher learning, as defined in Section 71-5-11, subsection * * * M 2759 or *** * *** N, operated by such political subdivision. Election is 2760 to be made by filing with the * * * department a notice of such 2761 2762 election at least thirty (30) days prior to the effective date of 2763 such election. The election may exclude any services described in 2764 Section 71-5-11, subsection * * * I(5). Any political subdivision 2765 electing coverage under this subsection shall make payments in 2766 lieu of contributions with respect to benefits attributable to 2767 such employment as provided with respect to nonprofit organizations in subsections (b) and (c) of Section 71-5-357. 2768

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

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

(d) Prior to January 1, 1978, an election under this
section, after having been in effect for not less than two (2)
calendar years, may be terminated by filing with the * * *
<u>department</u> written notice not later than thirty (30) days
preceding the last day of the calendar year in which the

H. B. No. 932 **~ OFFICIAL ~** 13/HR40/R1677SG PAGE 112 (RF\BD) 2783 termination is to be effective. Such termination becomes 2784 effective as of the first day of the next ensuing calendar year 2785 with respect to services performed on and after that date.

2786 SECTION 17. Section 71-5-501, Mississippi Code of 1972, is 2787 amended as follows:

2788 71-5-501. Wages earned for services defined in Section 2789 71-5-11(* * *H)(15)(g), irrespective of when performed, shall not 2790 be included for purposes of determining eligibility under Section 2791 71-5-511(e) or weekly benefit amount under Section 71-5-503 nor 2792 shall any benefits with respect to unemployment be payable under 2793 Section 71-5-505 on the basis of such wages. All benefits shall 2794 be paid through employment offices or such other agency or 2795 agencies as the * * * department may, by regulation, designate, in 2796 accordance with such regulations as the * * * department may 2797 prescribe. The * * * department may, by regulation, prescribe 2798 that benefits due and payable to claimants who die prior to the 2799 receipt or cashing of benefits checks may be paid to the legal 2800 representative, dependents, or next of kin, of the deceased as may 2801 be found by it to be equitably entitled thereto, and every such 2802 payment shall be deemed a valid payment to the same extent as if 2803 made to the legal representative of the decedent.

2804 SECTION 18. This act shall take effect and be in force from 2805 and after its passage.

H. B. No. 932 13/HR40/R1677SG PAGE 113 (RF\BD) H. B. No. 932 ST: Mississippi Department of Employment Security; expand authority of.