

By: Senator(s) Fillingane, Burton, Hale,  
Polk

To: Finance

## SENATE BILL NO. 2722

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

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



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

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



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

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

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



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



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

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

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

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

114 \* \* \*

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

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



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

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

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

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



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

176 \* \* \*H. "Employer" means:

177 (1) Any employing unit which,



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

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

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

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

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

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

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





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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

295 (a) In the employ of:

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

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



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

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

309 (i) As an elected official;

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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





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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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



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

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

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

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

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

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





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

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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

725 Q. "Unemployment."

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

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

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



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

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

756 (i) Retirement, or

757 (ii) Sickness or accident disability, or

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

760 (iv) Death, provided the employee:

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

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



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

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

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

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

782 (ii) Covers only employees;

783 (iii) Covers only noncash benefits;

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

786 (2) [Not enacted].

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

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

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





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

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

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

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

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



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

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

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

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



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

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



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

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

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

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

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

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



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

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



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

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



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

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

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

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



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

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

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

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

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





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

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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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



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

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

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

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

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



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

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

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



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

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

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

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



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

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

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

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





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

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

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

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

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



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

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

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

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

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



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

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

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



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

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

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



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

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

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



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

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



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

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

1348 (2) Modified rates:

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

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

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

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



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

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

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

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

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

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

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





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

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

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

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

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



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

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

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



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



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

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



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

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

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

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

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



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

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

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



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

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

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



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

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

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

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





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

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

1597                   2. Approval of the department;

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

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

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



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

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



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



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

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

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

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



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

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

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



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

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

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



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

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

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

1753 (e) For purposes of this subsection:

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

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

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

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



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





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



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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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



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

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

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



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

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

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

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



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

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

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





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

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

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

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

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



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



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



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

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

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



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

2098 \* \* \*

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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





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

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

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



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

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

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



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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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





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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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



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

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

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

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



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

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

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

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



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

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

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





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

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



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

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

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

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

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



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

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

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



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

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



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

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

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



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

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



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

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

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

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

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

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



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

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

