

By: Representative Haney

To: Workforce Development;
Appropriations

HOUSE BILL NO. 964

1 AN ACT TO AMEND SECTION 71-5-355, MISSISSIPPI CODE OF 1972,
2 TO REMOVE THE REQUIREMENT THAT THE EXPERIENCE RATING BE
3 TRANSFERRED TO AN EMPLOYING UNIT UPON TRANSFER OF AN ORGANIZATION,
4 TRADE OR BUSINESS; TO BRING FORWARD SECTIONS 71-5-11, 71-5-361,
5 71-5-377, 71-5-389 AND 71-5-541, MISSISSIPPI CODE OF 1972, FOR THE
6 PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 71-5-355, Mississippi Code of 1972, is
9 amended as follows:

10 71-5-355. (1) As used in this section, the following words
11 and phrases shall have the following meanings, unless the context
12 clearly requires otherwise:

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

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

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

19 (d) Except as hereinafter provided, "payroll" means the
20 total of all wages paid for employment by an employer as defined



21 in Section 71-5-11, subsection H, plus the total of all
22 remuneration paid by such employer excluded from the definition of
23 wages by Section 71-5-351. For the computation of modified rates,
24 "payroll" means the total of all wages paid for employment by an
25 employer as defined in Section 71-5-11, subsection H.

26 (e) For the computation of modified rates, "eligible
27 employer" means an employer whose experience-rating record has
28 been chargeable with benefits throughout the thirty-six (36)
29 consecutive calendar-month period ending on the computation date,
30 except that any employer who has not been subject to the
31 Mississippi Employment Security Law for a period of time
32 sufficient to meet the thirty-six (36) consecutive calendar-month
33 requirement shall be an eligible employer if his experience-rating
34 record has been chargeable throughout not less than the twelve
35 (12) consecutive calendar-month period ending on the computation
36 date. No employer shall be considered eligible for a contribution
37 rate less than five and four-tenths percent (5.4%) with respect to
38 any tax year, who has failed to file any two (2) quarterly reports
39 within the qualifying period by September 30 following the
40 computation date. No employer or employing unit shall be eligible
41 for a contribution rate of less than five and four-tenths percent
42 (5.4%) for the tax year in which the employing unit is found by
43 the department to be in violation of Section 71-5-19(2) or (3) and
44 for the next two (2) succeeding tax years. No representative of
45 such employing unit who was a party to a violation as described in



46 Section 71-5-19(2) or (3), if such representative was or is an
47 employing unit in this state, shall be eligible for a contribution
48 rate of less than five and four-tenths percent (5.4%) for the tax
49 year in which such violation was detected by the department and
50 for the next two (2) succeeding tax years.

51 (f) With respect to any tax year, "reserve ratio" means
52 the ratio which the total amount available for the payment of
53 benefits in the Unemployment Compensation Fund, excluding any
54 amount which has been credited to the account of this state under
55 Section 903 of the Social Security Act, as amended, and which has
56 been appropriated for the expenses of administration pursuant to
57 Section 71-5-457 whether or not withdrawn from such account, on
58 October 31 (close of business) of each calendar year bears to the
59 aggregate of the taxable payrolls of all employers for the twelve
60 (12) calendar months ending on June 30 next preceding.

61 (g) "Modified rates" means the rates of employer
62 unemployment insurance contributions determined under the
63 provisions of this chapter and the rates of newly subject
64 employers, as provided in Section 71-5-353.

65 (h) For the computation of modified rates, "qualifying
66 period" means a period of not less than the thirty-six (36)
67 consecutive calendar months ending on the computation date
68 throughout which an employer's experience-rating record has been
69 chargeable with benefits; except that with respect to any eligible
70 employer who has not been subject to this article for a period of



71 time sufficient to meet the thirty-six (36) consecutive
72 calendar-month requirement, "qualifying period" means the period
73 ending on the computation date throughout which his
74 experience-rating record has been chargeable with benefits, but in
75 no event less than the twelve (12) consecutive calendar-month
76 period ending on the computation date throughout which his
77 experience-rating record has been so chargeable.

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

88 (j) The "cost rate criterion" (CRC) is defined as
89 follows: Beginning with January 1974, the benefits paid for the
90 twelve-month period ending December 1974 are summed and divided by
91 the total wages for the twelve-month period ending on June 30,
92 1975. Similar ratios are computed by subtracting the earliest
93 month's benefit payments and adding the benefits of the next month
94 in the sequence and dividing each sum of twelve (12) months'
95 benefits by the total wages for the twelve-month period ending on



96 the June 30 which is nearest to the final month of the period used
97 to compute the numerator. If December is the final month of the
98 period used to compute the numerator, then the twelve-month period
99 ending the following June 30 will be used for the denominator.
100 Benefits and total wages used in the computation of the cost rate
101 criterion shall exclude all benefits and total wages applicable to
102 state agencies, political subdivisions, reimbursable nonprofit
103 corporations, and tax-exempt PSE employment.

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

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

112 (k) "Size of fund index" (SOFI) is defined as the ratio
113 of the exposure criterion (EC) to the cost rate criterion (CRC).
114 The target size of fund index will be fixed at 1.0. If the
115 insured unemployment rate (IUR) exceeds a four and five-tenths
116 percent (4.5%) average for the most recent completed July to June
117 period, the target SOFI will be .8 and will remain at that level
118 until the computed SOFI (the average exposure criterion of the
119 current year and the preceding year divided by the average cost
120 rate criterion) equals 1.0 or the average IUR falls to four and



121 five-tenths percent (4.5%) or less for any period July to June.
122 However, if the IUR falls below two and five-tenths percent (2.5%)
123 for any period July to June the target SOFI shall be 1.2 until
124 such time as the computed SOFI is equal to or greater than 1.0 or
125 the IUR is equal to or greater than two and five-tenths percent
126 (2.5%), at which point the target SOFI shall return to 1.0.

127 (1) No employer's unemployment contribution general
128 experience rate plus individual unemployment experience rate shall
129 exceed five and four-tenths percent (5.4%). Accrual rules shall
130 apply for purposes of computing contribution rates including
131 associated functions.

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

134 (2) Modified rates:

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

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

143 (i) The department shall maintain an
144 experience-rating record for each employer. Nothing in this
145 chapter shall be construed to grant any employer or individuals



146 performing services for him any prior claim or rights to the
147 amounts paid by the employer into the fund.

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

155 1. Voluntarily left the employ of such
156 employer without good cause attributable to the employer or to
157 accept other work;

158 2. Was discharged by such employer for
159 misconduct connected with his work;

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

165 4. Had base period wages which included wages
166 for previously uncovered services as defined in Section
167 71-5-511(e) to the extent that the Unemployment Compensation Fund
168 is reimbursed for such benefits pursuant to Section 121 of Public
169 Law 94-566;



170 5. Extended benefits paid under the
171 provisions of Section 71-5-541 which are not reimbursable from
172 federal funds shall be charged to the experience-rating record of
173 base period employers;

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

179 7. Was hired to replace a United States
180 serviceman or servicewoman called into active duty and was laid
181 off upon the return to work by that serviceman or servicewoman,
182 unless such employer is a state agency or other political
183 subdivision or instrumentality of the state;

184 8. Was paid benefits during any week while in
185 training with the approval of the department, under the provisions
186 of Section 71-5-513B, or for any week while in training approved
187 under Section 236(a)(1) of the Trade Act of 1974, under the
188 provisions of Section 71-5-513C;

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

193 10. Was paid benefits as a result of a
194 fraudulent claim, provided notification was made to the



195 Mississippi Department of Employment Security in writing or by
196 e-mail by the employer, within ten (10) days of the mailing of the
197 notice of claim filed to the employer's last-known address.

198 (iii) Notwithstanding any other provision
199 contained herein, an employer shall not be noncharged when the
200 department finds that the employer or the employer's agent of
201 record was at fault for failing to respond timely or adequately to
202 the request of the department for information relating to an
203 unemployment claim that was subsequently determined to be
204 improperly paid, unless the employer or the employer's agent of
205 record shows good cause for having failed to respond timely or
206 adequately to the request of the department for information. For
207 purposes of this subparagraph "good cause" means an event that
208 prevents the employer or employer's agent of record from timely
209 responding, and includes a natural disaster, emergency or similar
210 event, or an illness on the part of the employer, the employer's
211 agent of record, or their staff charged with responding to such
212 inquiries when there is no other individual who has the knowledge
213 or ability to respond. Any agency error that resulted in a delay
214 in, or the failure to deliver notice to, the employer or the
215 employer's agent of record shall also be considered good cause for
216 purposes of this subparagraph.

217 (iv) The department shall compute a benefit ratio
218 for each eligible employer, which shall be the quotient obtained
219 by dividing the total benefits charged to his experience-rating



220 record during the period his experience-rating record has been
221 chargeable, but not less than the twelve (12) consecutive
222 calendar-month period nor more than the thirty-six (36)
223 consecutive calendar-month period ending on the computation date,
224 by his total taxable payroll for the same period on which all
225 unemployment insurance contributions due have been paid on or
226 before the September 30 immediately following the computation
227 date. Such benefit ratio shall be computed to the tenth of a
228 percent (.1%), rounding any remainder to the next higher tenth.

229 (v) 1. The unemployment insurance contribution
230 rate for each eligible employer shall be the sum of two (2) rates:
231 his individual experience rate in the range from zero percent (0%)
232 to five and four-tenths percent (5.4%), plus a general experience
233 rate. In no event shall the resulting unemployment insurance rate
234 be in excess of five and four-tenths percent (5.4%), however, it
235 is the intent of this section to provide the ability for employers
236 to have a tax rate, the general experience rate plus the
237 individual experience rate, of up to five and four-tenths percent
238 (5.4%).

239 2. The employer's individual experience rate
240 shall be equal to his benefit ratio as computed under subsection
241 (2) (b) (iv) above.

242 3. The general experience rate shall be
243 determined in the following manner: The department shall
244 determine annually, for the thirty-six (36) consecutive



245 calendar-month period ending on the computation date, the amount
246 of benefits which were not charged to the record of any employer
247 and of benefits which were ineffectively charged to the employer's
248 experience-rating record. For the purposes of this item 3, the
249 term "ineffectively charged benefits" shall include:

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

254 b. The total of the amounts of benefits
255 charged to the experience-rating records of all ineligible
256 employers which would cause their benefit ratios to exceed five
257 and four-tenths percent (5.4%) if they were eligible employers;
258 and

259 c. The total of the amounts of benefits
260 charged or chargeable to the experience-rating record of any
261 employer who has discontinued his business or whose coverage has
262 been terminated within such period; provided, that solely for the
263 purposes of determining the amounts of ineffectively charged
264 benefits as herein defined, a "benefit ratio" shall be computed
265 for each ineligible employer, which shall be the quotient obtained
266 by dividing the total benefits charged to his experience-rating
267 record throughout the period ending on the computation date,
268 during which his experience-rating record has been chargeable with
269 benefits, by his total taxable payroll for the same period on



270 which all unemployment insurance contributions due have been paid
271 on or before the September 30 immediately following the
272 computation date; and provided further, that such benefit ratio
273 shall be computed to the tenth of one percent (.1%) and any
274 remainder shall be rounded to the next higher tenth.

275 The ratio of the sum of these amounts (subsection
276 (2) (b) (v) 3a, b and c) to the taxable wages paid during the same
277 period divided by all eligible employers whose benefit ratio did
278 not exceed five and four-tenths percent (5.4%), computed to the
279 next higher tenth of one percent (.1%), shall be the general
280 experience rate; however, the general experience rate for rate
281 year 2014 shall be two tenths of one percent (.2%) and to that
282 will be added the employer's individual experience rate for the
283 total unemployment insurance rate.

284 4. a. Except as otherwise provided in this
285 item 4, the general experience rate shall be adjusted by use of
286 the size of fund index factor. This factor may be positive or
287 negative, and shall be determined as follows: From the target
288 SOFI, as defined in subsection (1) (k) of this section, subtract
289 the simple average of the current and preceding years' exposure
290 criteria divided by the cost rate criterion, as defined in
291 subsection (1) (j) of this section. The result is then multiplied
292 by the product of the CRC, as defined in subsection (1) (j) of this
293 section, and total wages for the twelve-month period ending June
294 30 divided by the taxable wages for the twelve-month period ending



295 June 30. This is the percentage positive or negative added to the
296 general experience rate. The sum of the general experience rate
297 and the trust fund adjustment factor shall be multiplied by fifty
298 percent (50%) and this product shall be computed to one (1)
299 decimal place, and rounded to the next higher tenth.

300 b. Notwithstanding the minimum rate
301 provisions as set forth in subsection (1)(1) of this section, the
302 general experience rate of all employers shall be reduced by seven
303 one hundredths of one percent (.07%) for calendar year 2013 only.

304 5. The general experience rate shall be zero
305 percent (0%) unless the general experience ratio for any tax year
306 as computed and adjusted on the basis of the trust fund adjustment
307 factor and reduced by fifty percent (50%) is an amount equal to or
308 greater than two-tenths of one percent (.2%), then the general
309 experience rate shall be the computed general experience ratio and
310 adjusted on the basis of the trust fund adjustment factor and
311 reduced by fifty percent (50%); however, in no case shall the sum
312 of the general experience plus the individual experience
313 unemployment insurance rate exceed five and four-tenths percent
314 (5.4%). For rate years subsequent to 2014, Mississippi Workforce
315 Enhancement Training contribution rate, and/or State Workforce
316 Investment contribution rate, and/or Mississippi Works
317 contribution rate, when in effect, shall be added to the
318 unemployment contribution rate, regardless of whether the addition



319 of this contribution rate causes the total contribution rate for
320 the employer to exceed five and four-tenths percent (5.4%).

321 6. The department shall include in its annual
322 rate notice to employers a brief explanation of the elements of
323 the general experience rate, and shall include in its regular
324 publications an annual analysis of benefits not charged to the
325 record of any employer, and of the benefit experience of employers
326 by industry group whose benefit ratio exceeds four percent (4%),
327 and of any other factors which may affect the size of the general
328 experience rate.

329 (vi) * * * [Deleted]

330 (vii) When any employing unit succeeds to or
331 acquires a distinct and severable portion of an organization,
332 trade or business, the experience-rating and payroll records of
333 such portion, if separately identifiable, shall be transferred to
334 the successor upon:

335 1. The mutual consent of the predecessor and
336 the successor;

337 2. Approval of the department;

338 3. Continued operation of the transferred
339 portion by the successor after transfer; and

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



343 the transferred portion used for the purpose of determining
344 modified rates of contribution for such predecessor.

345 (viii) If the successor was an employer subject to
346 this chapter prior to the date of acquisition, it shall continue
347 to pay unemployment insurance contributions at the rate applicable
348 to it from the date the acquisition occurred until the end of the
349 then current tax year. If the successor was not an employer prior
350 to the date of acquisition, it shall pay unemployment insurance
351 contributions at the rate applicable to the predecessor or, if
352 more than one (1) predecessor and the same rate is applicable to
353 both, the rate applicable to the predecessor or predecessors, from
354 the date the acquisition occurred until the end of the then
355 current tax year. If the successor was not an employer prior to
356 the date the acquisition occurred and simultaneously acquires the
357 businesses of two (2) or more employers to whom different rates of
358 unemployment insurance contributions are applicable, it shall pay
359 unemployment insurance contributions from the date of the
360 acquisition until the end of the current tax year at a rate
361 computed on the basis of the combined experience-rating and
362 payroll records of the predecessors as of the computation date for
363 such tax year. In all cases the rate of unemployment insurance
364 contributions applicable to such successor for each succeeding tax
365 year shall be computed on the basis of the combined
366 experience-rating and payroll records of the successor and the
367 predecessor or predecessors.



368 (ix) The department shall notify each employer
369 quarterly of the benefits paid and charged to his
370 experience-rating record; and such notification, in the absence of
371 an application for redetermination filed within thirty (30) days
372 after the date of such notice, shall be final, conclusive and
373 binding upon the employer for all purposes. A redetermination,
374 made after notice and opportunity for a fair hearing, by a hearing
375 officer designated by the department who shall consider and decide
376 these and related applications and protests; and the finding of
377 fact in connection therewith may be introduced into any subsequent
378 administrative or judicial proceedings involving the determination
379 of the rate of unemployment insurance contributions of any
380 employer for any tax year, and shall be entitled to the same
381 finality as is provided in this subsection with respect to the
382 findings of fact in proceedings to redetermine the contribution
383 rate of an employer.

384 (x) The department shall notify each employer of
385 his rate of contribution as determined for any tax year as soon as
386 reasonably possible after September 1 of the preceding year. Such
387 determination shall be final, conclusive and binding upon such
388 employer unless, within thirty (30) days after the date of such
389 notice to his last-known address, the employer files with the
390 department an application for review and redetermination of his
391 contribution rate, setting forth his reasons therefor. If the
392 department grants such review, the employer shall be promptly



393 notified thereof and shall be afforded an opportunity for a fair
394 hearing by a hearing officer designated by the department who
395 shall consider and decide these and related applications and
396 protests; but no employer shall be allowed, in any proceeding
397 involving his rate of unemployment insurance contributions or
398 contribution liability, to contest the chargeability to his
399 account of any benefits paid in accordance with a determination,
400 redetermination or decision pursuant to Sections 71-5-515 through
401 71-5-533 except upon the ground that the services on the basis of
402 which such benefits were found to be chargeable did not constitute
403 services performed in employment for him, and then only in the
404 event that he was not a party to such determination,
405 redetermination, decision or to any other proceedings provided in
406 this chapter in which the character of such services was
407 determined. The employer shall be promptly notified of the denial
408 of this application or of the redetermination, both of which shall
409 become final unless, within ten (10) days after the date of notice
410 thereof, there shall be an appeal to the department itself. Any
411 such appeal shall be on the record before said designated hearing
412 officer, and the decision of said department shall become final
413 unless, within thirty (30) days after the date of notice thereof
414 to the employer's last-known address, there shall be an appeal to
415 the Circuit Court of the First Judicial District of Hinds County,
416 Mississippi, in accordance with the provisions of law with respect
417 to review of civil causes by certiorari.



418 (3) Notwithstanding any other provision of law, the
419 following shall apply regarding assignment of rates and transfers
420 of experience:

421 (a) (i) If an employer transfers its trade or
422 business, or a portion thereof, to another employer and, at the
423 time of the transfer, there is substantially common ownership,
424 management or control of the two (2) employers, then the
425 unemployment experience attributable to the transferred trade or
426 business shall be transferred to the employer to whom such
427 business is so transferred. The rates of both employers shall be
428 recalculated and made effective on January 1 of the year following
429 the year the transfer occurred.

430 (ii) If, following a transfer of experience under
431 subparagraph (i) of this paragraph (a), the department determines
432 that a substantial purpose of the transfer of trade or business
433 was to obtain a reduced liability of unemployment insurance
434 contributions, then the experience-rating accounts of the
435 employers involved shall be combined into a single account and a
436 single rate assigned to such account.

437 (b) Whenever a person who is not an employer or an
438 employing unit under this chapter at the time it acquires the
439 trade or business of an employer, the unemployment experience of
440 the acquired business shall not be transferred to such person if
441 the department finds that such person acquired the business solely
442 or primarily for the purpose of obtaining a lower rate of



443 unemployment insurance contributions. Instead, such person shall
444 be assigned the new employer rate under Section 71-5-353. In
445 determining whether the business was acquired solely or primarily
446 for the purpose of obtaining a lower rate of unemployment
447 insurance contributions, the department shall use objective
448 factors which may include the cost of acquiring the business,
449 whether the person continued the business enterprise of the
450 acquired business, how long such business enterprise was
451 continued, or whether a substantial number of new employees were
452 hired for performance of duties unrelated to the business activity
453 conducted prior to acquisition.

454 (c) (i) If a person knowingly violates or attempts to
455 violate paragraph (a) or (b) of this subsection or any other
456 provision of this chapter related to determining the assignment of
457 a contribution rate, or if a person knowingly advises another
458 person in a way that results in a violation of such provision, the
459 person shall be subject to the following penalties:

460 1. If the person is an employer, then such
461 employer shall be assigned the highest rate assignable under this
462 chapter for the rate year during which such violation or attempted
463 violation occurred and the three (3) rate years immediately
464 following this rate year. However, if the person's business is
465 already at such highest rate for any year, or if the amount of
466 increase in the person's rate would be less than two percent (2%)
467 for such year, then a penalty rate of unemployment insurance



468 contributions of two percent (2%) of taxable wages shall be
469 imposed for such year. The penalty rate will apply to the
470 successor business as well as the related entity from which the
471 employees were transferred in an effort to obtain a lower rate of
472 unemployment insurance contributions.

473 2. If the person is not an employer, such
474 person shall be subject to a civil money penalty of not more than
475 Five Thousand Dollars (\$5,000.00). Each such transaction for
476 which advice was given and each occurrence or reoccurrence after
477 notification being given by the department shall be a separate
478 offense and punishable by a separate penalty. Any such fine shall
479 be deposited in the penalty and interest account established under
480 Section 71-5-114.

481 (ii) For purposes of this paragraph (c), the term
482 "knowingly" means having actual knowledge of or acting with
483 deliberate ignorance or reckless disregard for the prohibition
484 involved.

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

488 (iv) In addition to the penalty imposed by
489 subparagraph (i) of this paragraph (c), any violation of this
490 subsection may be punishable by a fine of not more than Ten
491 Thousand Dollars (\$10,000.00) or by imprisonment for not more than
492 five (5) years, or by both such fine and imprisonment. This



493 subsection shall prohibit prosecution under any other criminal
494 statute of this state.

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

498 (e) For purposes of this subsection:

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

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

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

507 **SECTION 2.** Section 71-5-11, Mississippi Code of 1972, is
508 brought forward as follows:

509 71-5-11. As used in this chapter, unless the context clearly
510 requires otherwise:

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

514 B. "Benefit year" with respect to any individual means the
515 period beginning with the first day of the first week with respect
516 to which he first files a valid claim for benefits, and ending
517 with the day preceding the same day of the same month in the next



518 calendar year; and, thereafter, the period beginning with the
519 first day of the first week with respect to which he next files
520 his valid claim for benefits, and ending with the day preceding
521 the same day of the same month in the next calendar year. Any
522 claim for benefits made in accordance with Section 71-5-515 shall
523 be deemed to be a "valid claim" for purposes of this subsection if
524 the individual has been paid the wages for insured work required
525 under Section 71-5-511(e).

526 C. "Contributions" means the money payments to the State
527 Unemployment Compensation Fund required by this chapter.

528 D. "Calendar quarter" means the period of three (3)
529 consecutive calendar months ending on March 31, June 30, September
530 30, or December 31.

531 E. "Department" or "commission" means the Mississippi
532 Department of Employment Security, Office of the Governor.

533 F. "Executive director" means the Executive Director of the
534 Mississippi Department of Employment Security, Office of the
535 Governor, appointed under Section 71-5-107.

536 G. "Employing unit" means this state or another state or any
537 instrumentalities or any political subdivisions thereof or any of
538 their instrumentalities or any instrumentality of more than one
539 (1) of the foregoing or any instrumentality of any of the
540 foregoing and one or more other states or political subdivisions,
541 any Indian tribe as defined in Section 3306(u) of the Federal
542 Unemployment Tax Act (FUTA), which includes any subdivision,



543 subsidiary or business enterprise wholly owned by such Indian
544 tribe, any individual or type of organization, including any
545 partnership, association, trust, estate, joint-stock company,
546 insurance company, or corporation, whether domestic or foreign, or
547 the receiver, trustee in bankruptcy, trustee or successor thereof,
548 or the legal representative of a deceased person, which has or had
549 in its employ one or more individuals performing services for it
550 within this state. All individuals performing services within
551 this state for any employing unit which maintains two (2) or more
552 separate establishments within this state shall be deemed to be
553 employed by a single employing unit for all the purposes of this
554 chapter. Each individual employed to perform or to assist in
555 performing the work of any agent or employee of an employing unit
556 shall be deemed to be employed by such employing unit for all
557 purposes of this chapter, whether such individual was hired or
558 paid directly by such employing unit or by such agent or employee,
559 provided the employing unit had actual or constructive knowledge
560 of the work. All individuals performing services in the employ of
561 an elected fee-paid county official, other than those related by
562 blood or marriage within the third degree computed by the rule of
563 the civil law to such fee-paid county official, shall be deemed to
564 be employed by such county as the employing unit for all the
565 purposes of this chapter. For purposes of defining an "employing
566 unit" which shall pay contributions on remuneration paid to
567 individuals, if two (2) or more related corporations concurrently



568 employ the same individual and compensate such individual through
569 a common paymaster which is one (1) of such corporations, then
570 each such corporation shall be considered to have paid as
571 remuneration to such individual only the amounts actually
572 disbursed by it to such individual and shall not be considered to
573 have paid as remuneration to such individual such amounts actually
574 disbursed to such individual by another of such corporations.

575 H. "Employer" means:

576 (1) Any employing unit which,

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

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

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

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



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

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

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

601 (6) Any individual or employing unit which acquired its
602 organization, trade, business, or substantially all the assets
603 thereof, from another employing unit, if the employment record of
604 the acquiring individual or employing unit subsequent to such
605 acquisition, together with the employment record of the acquired
606 organization, trade, or business prior to such acquisition, both
607 within the same calendar year, would be sufficient to constitute
608 an employing unit as an employer subject to this chapter under
609 paragraph (1) or (3) of this subsection;

610 (7) Any employing unit which, having become an employer
611 under paragraph (1), (3), (5) or (6) of this subsection or under
612 any other provisions of this chapter, has not, under Section
613 71-5-361, ceased to be an employer subject to this chapter;



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

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

622 (b) In determining whether or not an employing
623 unit for which service other than agricultural labor is also
624 performed is an employer under paragraph (1) or (4)(b) of this
625 subsection, the wages earned or the employment of an employee
626 performing services in agricultural labor, shall not be taken into
627 account. If an employing unit is determined an employer of
628 agricultural labor, such employing unit shall be determined an
629 employer for purposes of paragraph (1) of this subsection;

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

636 I. "Employment" means and includes:

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



639 this subsection, including service in interstate commerce,
640 performed for wages or under any contract of hire, written or
641 oral, express or implied.

642 (2) Services performed for remuneration for a
643 principal:

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

648 (b) As a traveling or city salesman, other than as
649 an agent-driver or commission-driver, engaged upon a full-time
650 basis in the solicitation on behalf of, and the transmission to, a
651 principal (except for sideline sales activities on behalf of some
652 other person) of orders from wholesalers, retailers, contractors,
653 or operator of hotels, restaurants, or other similar
654 establishments for merchandise for resale or supplies for use in
655 their business operations.

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

659 (i) The contract of service contemplates that
660 substantially all of the services are to be performed personally
661 by such individual;

662 (ii) The individual does not have a
663 substantial investment in facilities used in connection with the



664 performance of the services (other than in facilities for
665 transportation); and

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

669 (3) Service performed in the employ of this state or
670 any of its instrumentalities or any political subdivision thereof
671 or any of its instrumentalities or any instrumentality of more
672 than one (1) of the foregoing or any instrumentality of any of the
673 foregoing and one or more other states or political subdivisions
674 or any Indian tribe as defined in Section 3306(u) of the Federal
675 Unemployment Tax Act (FUTA), which includes any subdivision,
676 subsidiary or business enterprise wholly owned by such Indian
677 tribe; however, such service is excluded from "employment" as
678 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)
679 of that act and is not excluded from "employment" under subsection
680 I(5) of this section.

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

685 (b) The organization had four (4) or more
686 individuals in employment for some portion of a day in each of
687 twenty (20) different weeks, whether or not such weeks were
688 consecutive, within the current or preceding calendar year,



689 regardless of whether they were employed at the same moment of
690 time.

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

694 (a) In the employ of:

695 (i) A church or convention or association of
696 churches; or

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

701 (b) By a duly ordained, commissioned, or licensed
702 minister of a church in the exercise of his ministry, or by a
703 member of a religious order in the exercise of duties required by
704 such order; or

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

708 (i) As an elected official;

709 (ii) As a member of a legislative body, or a
710 member of the judiciary, of a state or political subdivision or a
711 member of an Indian tribal council;

712 (iii) As a member of the State National Guard
713 or Air National Guard;



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

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

720 1. A major nontenured policy-making or
721 advisory position, or

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

725 (d) In a facility conducted for the purpose of
726 carrying out a program of rehabilitation for individuals whose
727 earning capacity is impaired by age or physical or mental
728 deficiency or injury, or providing remunerative work for
729 individuals who because of their impaired physical or mental
730 capacity cannot be readily absorbed in the competitive labor
731 market, by an individual receiving such rehabilitation or
732 remunerative work; or

733 (e) By an inmate of a custodial or penal
734 institution; or

735 (f) As part of an unemployment work-relief or
736 work-training program assisted or financed, in whole or in part,
737 by any federal agency or agency of a state or political
738 subdivision thereof or of an Indian tribe, by an individual



739 receiving such work relief or work training, unless coverage of
740 such service is required by federal law or regulation.

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

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

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

748 (ii) For some portion of a day in each of
749 twenty (20) different calendar weeks, whether or not such weeks
750 were consecutive, in either the current or the preceding calendar
751 year, employed in agricultural labor ten (10) or more individuals,
752 regardless of whether they were employed at the same moment of
753 time.

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

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



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

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

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

773 (ii) Such other person shall be treated as
774 having paid cash remuneration to such individual in an amount
775 equal to the amount of cash remuneration paid to such individual
776 by the crew leader (either on his own behalf or on behalf of such
777 other person) for the service in agricultural labor performed for
778 such other person.

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

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

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

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



789 (7) The term "employment" shall include domestic
790 service in a private home, local college club or local chapter of
791 a college fraternity or sorority performed for an employing unit
792 which paid cash remuneration of One Thousand Dollars (\$1,000.00)
793 or more in any calendar quarter in the current or the preceding
794 calendar year to individuals employed in such domestic service.
795 For the purpose of this subsection, the term "employment" does not
796 apply to service performed as a "sitter" at a hospital in the
797 employ of an individual.

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

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

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

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

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

810 (9) Services not covered under paragraph (8) of this
811 subsection and performed entirely without this state, with respect
812 to no part of which contributions are required and paid under an
813 unemployment compensation law of any other state or of the federal



814 government, shall be deemed to be employment subject to this
815 chapter if the individual performing such services is a resident
816 of this state and the department approves the election of the
817 employing unit for whom such services are performed that the
818 entire service of such individual shall be deemed to be employment
819 subject to this chapter.

820 (10) Service shall be deemed to be localized within a
821 state if:

822 (a) The service is performed entirely within such
823 state; or

824 (b) The service is performed both within and
825 without such state, but the service performed without such state
826 is incidental to the individual's service within the state; for
827 example, is temporary or transitory in nature or consists of
828 isolated transactions.

829 (11) The services of an individual who is a citizen of
830 the United States, performed outside the United States (except in
831 Canada), in the employ of an American employer (other than service
832 which is deemed "employment" under the provisions of paragraph
833 (8), (9) or (10) of this subsection or the parallel provisions of
834 another state's law), if:

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

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



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

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

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

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

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

854 (i) An individual who is a resident of the
855 United States; or

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

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

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

862 (12) All services performed by an officer or member of
863 the crew of an American vessel on or in connection with such



864 vessel, if the operating office from which the operations of such
865 vessel operating on navigable waters within, or within and
866 without, the United States are ordinarily and regularly
867 supervised, managed, directed and controlled, is within this
868 state, notwithstanding the provisions of subsection I(8).

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

876 (14) Services performed by an individual for wages
877 shall be deemed to be employment subject to this chapter unless
878 and until it is shown to the satisfaction of the department that
879 such individual has been and will continue to be free from control
880 and direction over the performance of such services both under his
881 contract of service and in fact; and the relationship of employer
882 and employee shall be determined in accordance with the principles
883 of the common law governing the relation of master and servant.

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

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



888 (i) On a farm or in a forest in the employ of
889 any employing unit in connection with cultivating the soil, in
890 connection with cutting, planting, deadening, marking or otherwise
891 improving timber, or in connection with raising or harvesting any
892 agricultural or horticultural commodity, including the raising,
893 shearing, feeding, caring for, training, and management of
894 livestock, bees, poultry, fur-bearing animals and wildlife;

895 (ii) In the employ of the owner or tenant or
896 other operator of a farm, in connection with the operation,
897 management, conservation, improvement or maintenance of such farm
898 and its tools and equipment, or in salvaging timber or clearing
899 land of brush and other debris left by a hurricane, if the major
900 part of such service is performed on a farm;

901 (iii) In connection with the production or
902 harvesting of naval stores products or any commodity defined in
903 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g),
904 or in connection with the raising or harvesting of mushrooms, or
905 in connection with the ginning of cotton, or in connection with
906 the operation or maintenance of ditches, canals, reservoirs, or
907 waterways not owned or operated for profit, used exclusively for
908 supplying and storing water for farming purposes;

909 (iv) (A) In the employ of the operator of a
910 farm in handling, planting, drying, packing, packaging,
911 processing, freezing, grading, storing or delivering to storage or
912 to market or to a carrier for transportation to market, in its



913 unmanufactured state, any agricultural or horticultural commodity;
914 but only if such operator produced more than one-half (1/2) of the
915 commodity with respect to which such service is performed;

916 (B) In the employ of a group of
917 operators of farms (or a cooperative organization of which such
918 operators are members) in the performance of service described in
919 subitem (A), but only if such operators produced more than
920 one-half (1/2) of the commodity with respect to which such service
921 is performed;

922 (C) The provisions of subitems (A) and
923 (B) shall not be deemed to be applicable with respect to service
924 performed in connection with commercial canning or commercial
925 freezing or in connection with any agricultural or horticultural
926 commodity after its delivery to a terminal market for distribution
927 for consumption;

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

930 (vi) As used in paragraph (15)(a) of this
931 subsection, the term "farm" includes stock, dairy, poultry, fruit,
932 fur-bearing animals, and truck farms, plantations, ranches,
933 nurseries, ranges, greenhouses, or other similar structures used
934 primarily for the raising of agricultural or horticultural
935 commodities, and orchards.

936 (b) Domestic service in a private home, local
937 college club, or local chapter of a college fraternity or



938 sorority, except as provided in subsection I(7) of this section,
939 or service performed as a "sitter" at a hospital in the employ of
940 an individual.

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

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

947 (e) Service performed in the employ of the United
948 States government or of an instrumentality wholly owned by the
949 United States; except that if the Congress of the United States
950 shall permit states to require any instrumentalities of the United
951 States to make payments into an unemployment fund under a state
952 unemployment compensation act, then to the extent permitted by
953 Congress and from and after the date as of which such permission
954 becomes effective, all of the provisions of this chapter shall be
955 applicable to such instrumentalities and to services performed by
956 employees for such instrumentalities in the same manner, to the
957 same extent, and on the same terms as to all other employers and
958 employing units. If this state should not be certified under the
959 Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any
960 year, then the payment required by such instrumentality with
961 respect to such year shall be deemed to have been erroneously



962 collected and shall be refunded by the department from the fund in
963 accordance with the provisions of Section 71-5-383.

964 (f) Service performed in the employ of an
965 "employer" as defined by the Railroad Unemployment Insurance Act,
966 45 USCS Section 351(a), or as an "employee representative" as
967 defined by the Railroad Unemployment Insurance Act, 45 USCS
968 Section 351(f), and service with respect to which unemployment
969 compensation is payable under an unemployment compensation system
970 for maritime employees, or under any other unemployment
971 compensation system established by an act of Congress; however,
972 the department is authorized and directed to enter into agreements
973 with the proper agencies under such act or acts of Congress, which
974 agreements shall become effective ten (10) days after publication
975 thereof in the manner provided in Section 71-5-117 for general
976 rules, to provide reciprocal treatment to individuals who have,
977 after acquiring potential rights to benefits under this chapter,
978 acquired rights to unemployment compensation under such act or
979 acts of Congress or who have, after acquiring potential rights to
980 unemployment compensation under such act or acts of Congress,
981 acquired rights to benefits under this chapter.

982 (g) Service performed in any calendar quarter in
983 the employ of any organization exempt from income tax under the
984 Internal Revenue Code, 26 USCS Section 501(a) (other than an
985 organization described in 26 USCS Section 401(a)), or exempt from



986 income tax under 26 USCS Section 521 if the remuneration for such
987 service is less than Fifty Dollars (\$50.00).

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

990 (i) By a student who is enrolled and is
991 regularly attending classes at such school, college or university,
992 or

993 (ii) By the spouse of such a student if such
994 spouse is advised, at the time such spouse commences to perform
995 such service, that

996 (A) The employment of such spouse to
997 perform such service is provided under a program to provide
998 financial assistance to such student by such school, college, or
999 university, and

1000 (B) Such employment will not be covered
1001 by any program of unemployment insurance.

1002 (i) Service performed by an individual under the
1003 age of twenty-two (22) who is enrolled at a nonprofit or public
1004 educational institution which normally maintains a regular faculty
1005 and curriculum and normally has a regularly organized body of
1006 students in attendance at the place where its educational
1007 activities are carried on, as a student in a full-time program
1008 taken for credit at such institution, which combines academic
1009 instruction with work experience, if such service is an integral
1010 part of such program and such institution has so certified to the



1011 employer, except that this subparagraph shall not apply to service
1012 performed in a program established for or on behalf of an employer
1013 or group of employers.

1014 (j) Service performed in the employ of a hospital,
1015 if such service is performed by a patient of the hospital, as
1016 defined in subsection M of this section.

1017 (k) Service performed as a student nurse in the
1018 employ of a hospital or a nurses' training school by an individual
1019 who is enrolled and is regularly attending classes in a nurses'
1020 training school chartered or approved pursuant to state law; and
1021 services performed as an intern in the employ of a hospital by an
1022 individual who has completed a four-year course in a medical
1023 school chartered or approved pursuant to state law.

1024 (l) Service performed by an individual as an
1025 insurance agent or as an insurance solicitor, if all such service
1026 performed by such individual is performed for remuneration solely
1027 by way of commission.

1028 (m) Service performed by an individual in the
1029 delivery or distribution of newspapers or shopping news, not
1030 including delivery or distribution to any point for subsequent
1031 delivery or distribution, except those employed by political
1032 subdivisions, state and local governments, nonprofit organizations
1033 and Indian tribes, as defined by this chapter, or any other
1034 entities for which coverage is required by federal statute and
1035 regulation.



1036 (n) If the services performed during one-half
1037 (1/2) or more of any pay period by an employee for the employing
1038 unit employing him constitute employment, all the services of such
1039 employee for such period shall be deemed to be employment; but if
1040 the services performed during more than one-half (1/2) of any such
1041 pay period by an employee for the employing unit employing him do
1042 not constitute employment, then none of the services of such
1043 employee for such period shall be deemed to be employment. As
1044 used in this subsection, the term "pay period" means a period (of
1045 not more than thirty-one (31) consecutive days) for which a
1046 payment of remuneration is ordinarily made to the employee by the
1047 employing unit employing him.

1048 (o) Service performed by a barber or beautician
1049 whose work station is leased to him or her by the owner of the
1050 shop in which he or she works and who is compensated directly by
1051 the patrons he or she serves and who is free from direction and
1052 control by the lessor.

1053 (p) Service performed by a "direct seller" if:

1054 (i) Such person is engaged in the trade or
1055 business of selling (or soliciting the sale of) consumer products
1056 to any buyer on a buy-sell basis, a deposit-commission basis, or
1057 any similar basis which the department prescribes by regulations,
1058 for resale (by the buyer or any other person) in the home or
1059 otherwise than in a permanent retail establishment; or such person
1060 is engaged in the trade or business of selling (or soliciting the



1061 sale of) consumer products in the home or otherwise than in a
1062 permanent retail establishment;

1063 (ii) Substantially all the remuneration
1064 (whether or not paid in cash) for the performance of the services
1065 described in item (i) of this subparagraph is directly related to
1066 sales or other output (including the performance of services)
1067 rather than to the number of hours worked; and

1068 (iii) The services performed by the person
1069 are performed pursuant to a written contract between such person
1070 and the person for whom the services are performed and such
1071 contract provides that the person will not be treated as an
1072 employee with respect to such services for federal tax purposes.

1073 J. "Employment office" means a free public employment office
1074 or branch thereof, operated by this state or maintained as a part
1075 of the state controlled system of public employment offices.

1076 K. "Public employment service" means the operation of a
1077 program that offers free placement and referral services to
1078 applicants and employers, including job development.

1079 L. "Fund" means the Unemployment Compensation Fund
1080 established by this chapter, to which all contributions required
1081 and from which all benefits provided under this chapter shall be
1082 paid.

1083 M. "Hospital" means an institution which has been licensed,
1084 certified, or approved by the State Department of Health as a
1085 hospital.



1086 N. "Institution of higher learning," for the purposes of
1087 this section, means an educational institution which:

1088 (1) Admits as regular students only individuals having
1089 a certificate of graduation from a high school, or the recognized
1090 equivalent of such a certificate;

1091 (2) Is legally authorized in this state to provide a
1092 program of education beyond high school;

1093 (3) Provides an educational program for which it awards
1094 a bachelor's or higher degree, or provides a program which is
1095 acceptable for full credit toward such a degree, a program of
1096 postgraduate or postdoctoral studies, or a program of training to
1097 prepare students for gainful employment in a recognized
1098 occupation;

1099 (4) Is a public or other nonprofit institution;

1100 (5) Notwithstanding any of the foregoing provisions of
1101 this subsection, all colleges and universities in this state are
1102 institutions of higher learning for purposes of this section.

1103 O. "Re-employment assistance" means money payments payable
1104 to an individual as provided in this chapter and in accordance
1105 with Section 3304(a)(4) and 3306(h) of the Federal Unemployment
1106 Tax Act and Section 303(a)(5) of the Social Security Act, with
1107 respect to his unemployment through no fault of his own. Wherever
1108 the terms "benefits" or "unemployment benefits" appear in this
1109 chapter, they shall mean re-employment assistance.



1110 P. (1) "State" includes, in addition to the states of the
1111 United States of America, the District of Columbia, Commonwealth
1112 of Puerto Rico and the Virgin Islands.

1113 (2) The term "United States" when used in a
1114 geographical sense includes the states, the District of Columbia,
1115 Commonwealth of Puerto Rico and the Virgin Islands.

1116 (3) The provisions of paragraphs (1) and (2) of
1117 subsection P, as including the Virgin Islands, shall become
1118 effective on the day after the day on which the United States
1119 Secretary of Labor approves for the first time under Section
1120 3304(a) of the Internal Revenue Code of 1954 an unemployment
1121 compensation law submitted to the secretary by the Virgin Islands
1122 for such approval.

1123 Q. "Unemployment."

1124 (1) An individual shall be deemed "unemployed" in any
1125 week during which he performs no services and with respect to
1126 which no wages are payable to him, or in any week of less than
1127 full-time work if the wages payable to him with respect to such
1128 week are less than his weekly benefit amount as computed and
1129 adjusted in Section 71-5-505. The department shall prescribe
1130 regulations applicable to unemployed individuals, making such
1131 distinctions in the procedure as to total unemployment, part-total
1132 unemployment, partial unemployment of individuals attached to
1133 their regular jobs, and other forms of short-time work, as the
1134 department deems necessary.



1135 (2) An individual's week of total unemployment shall be
1136 deemed to commence only after his registration at an employment
1137 office, except as the department may by regulation otherwise
1138 prescribe.

1139 R. (1) "Wages" means all remuneration for personal
1140 services, including commissions and bonuses and the cash value of
1141 all remuneration in any medium other than cash, except that
1142 "wages," for purposes of determining employer's coverage and
1143 payment of contributions for agricultural and domestic service
1144 means cash remuneration only. The reasonable cash value of
1145 remuneration in any medium other than cash shall be estimated and
1146 determined in accordance with rules prescribed by the department;
1147 however, that the term "wages" shall not include:

1148 (a) The amount of any payment made to, or on
1149 behalf of, an employee under a plan or system established by an
1150 employer which makes provision for his employees generally or for
1151 a class or classes of his employees (including any amount paid by
1152 an employer for insurance or annuities, or into a fund, to provide
1153 for any such payment), on account of:

- 1154 (i) Retirement, or
1155 (ii) Sickness or accident disability, or
1156 (iii) Medical or hospitalization expenses in
1157 connection with sickness or actual disability, or
1158 (iv) Death, provided the employee:



1159 (A) Has not the option to receive,
1160 instead of provision for such death benefit, any part of such
1161 payment or, if such death benefit is insured, any part of the
1162 premiums (or contributions to premiums) paid by his employer, and

1163 (B) Has not the right, under the
1164 provisions of the plan or system or policy of insurance providing
1165 for such death benefit, to assign such benefit or to receive a
1166 cash consideration in lieu of such benefit, either upon his
1167 withdrawal from the plan or system providing for such benefit or
1168 upon termination of such plan or system or policy of insurance or
1169 of his employment with such employer;

1170 (b) Dismissal payments which the employer is not
1171 legally required to make;

1172 (c) Payment by an employer (without deduction from
1173 the remuneration of an employee) of the tax imposed by the
1174 Internal Revenue Code, 26 USCS Section 3101;

1175 (d) From and after January 1, 1992, the amount of
1176 any payment made to or on behalf of an employee for a "cafeteria"
1177 plan, which meets the following requirements:

1178 (i) Qualifies under Section 125 of the
1179 Internal Revenue Code;

1180 (ii) Covers only employees;

1181 (iii) Covers only noncash benefits;

1182 (iv) Does not include deferred compensation
1183 plans.



1184 (2) [Not enacted].

1185 S. "Week" means calendar week or such period of seven (7)
1186 consecutive days as the department may by regulation prescribe.
1187 The department may by regulation prescribe that a week shall be
1188 deemed to be in, within, or during any benefit year which includes
1189 any part of such week.

1190 T. "Insured work" means "employment" for "employers."

1191 U. The term "includes" and "including," when used in a
1192 definition contained in this chapter, shall not be deemed to
1193 exclude other things otherwise within the meaning of the term
1194 defined.

1195 V. "Employee leasing arrangement" means any agreement
1196 between an employee leasing firm and a client, whereby specified
1197 client responsibilities such as payment of wages, reporting of
1198 wages for unemployment insurance purposes, payment of unemployment
1199 insurance contributions and other such administrative duties are
1200 to be performed by an employee leasing firm, on an ongoing basis.

1201 W. "Employee leasing firm" means any entity which provides
1202 specified duties for a client company such as payment of wages,
1203 reporting of wages for unemployment insurance purposes, payment of
1204 unemployment insurance contributions and other administrative
1205 duties, in connection with the client's employees, that are
1206 directed and controlled by the client and that are providing
1207 ongoing services for the client.



1208 X. (1) "Temporary help firm" means an entity which hires
1209 its own employees and provides those employees to other
1210 individuals or organizations to perform some service, to support
1211 or supplement the existing workforce in special situations such as
1212 employee absences, temporary skill shortages, seasonal workloads
1213 and special assignments and projects, with the expectation that
1214 the worker's position will be terminated upon the completion of
1215 the specified task or function.

1216 (2) "Temporary employee" means an employee assigned to
1217 work for the clients of a temporary help firm.

1218 Y. For the purposes of this chapter, the term "notice" shall
1219 include any official communication, statement or other
1220 correspondence required under the administration of this chapter,
1221 and sent by the department through the United States Postal
1222 Service or electronic or digital transfer, via modem or the
1223 Internet.

1224 **SECTION 3.** Section 71-5-361, Mississippi Code of 1972, is
1225 brought forward as follows:

1226 71-5-361. (1) Except as provided in subsection (3) of this
1227 section, any employing unit which is or becomes an employer
1228 subject to this chapter within any calendar year shall be deemed
1229 to be an employer during the whole of such calendar year.

1230 (2) Except as otherwise provided in subsection (3) of this
1231 section:



1232 (a) An employing unit (other than a state hospital,
1233 state institution of higher learning, state or state agency or
1234 other political subdivision or instrumentality) except as provided
1235 in subsections (b) and (c) of this subsection, shall cease to be
1236 an employer subject to this chapter only as of the first day of
1237 January of any calendar year, only if it files with the department
1238 on or before the thirty-first day of May of such year a written
1239 application for termination of coverage, and the department finds
1240 that during the preceding calendar year the employing unit did not
1241 pay wages of One Thousand Five Hundred Dollars (\$1,500.00) or more
1242 in any calendar quarter and that there were no twenty (20) days,
1243 each day being in a different week within the preceding calendar
1244 year, within which such employing unit employed one or more
1245 individuals in employment subject to this chapter, or four (4) or
1246 more in the case of nonprofit organizations, except if the
1247 department finds that throughout a calendar year an employer has
1248 had no employment, it shall cease to be an employer subject to
1249 this chapter.

1250 (b) An agricultural employer as defined under Section
1251 71-5-11, subsection H(4) (a) shall cease to be an agricultural
1252 employer subject to this chapter only as of the first day of
1253 January of any calendar year, only if it files with the department
1254 on or before the thirty-first day of May of such year a written
1255 application for termination of coverage, and the department finds
1256 that during the preceding calendar year the employing unit did not



1257 pay for agricultural employment wages as defined in Section
1258 71-5-11, subsection I(6) of Twenty Thousand Dollars (\$20,000.00)
1259 in any calendar quarter of the preceding calendar year and that
1260 there were no twenty (20) days, each day being in a different
1261 week, within such calendar year, within which such employing unit
1262 employed ten (10) or more individuals in employment subject to
1263 this chapter, except if the department finds that throughout a
1264 calendar year an employer has had no employment, it shall cease to
1265 be an employer subject to this chapter.

1266 (c) A domestic employer, as defined in Section 71-5-11,
1267 subsection H(4)(b), shall cease to be an employer subject to this
1268 chapter only as of the first day of January of any calendar year,
1269 only if it files with the department on or before the thirty-first
1270 day of May of such year a written application for termination of
1271 coverage, and the department finds that during the preceding
1272 calendar year the employing unit did not pay wages for domestic
1273 employment of One Thousand Dollars (\$1,000.00) or more in any
1274 calendar quarter of the preceding calendar year, except if the
1275 department finds that throughout a calendar year an employer has
1276 had no employment, it shall cease to be an employer subject to
1277 this chapter.

1278 (d) For the purpose of this subsection, the two (2) or
1279 more employing units mentioned in Section 71-5-11, subsection H(5)
1280 or (6), shall be treated as a single employing unit. The
1281 department may, of its own motion, cancel and terminate the effect



1282 of registrations for purposes of its accounting records in cases
1283 where it has found that employing units, duly registered as
1284 covered employers under the chapter, have died, ceased business or
1285 removed from the state without applying for termination of
1286 coverage, provided that the rights of claimants for benefits shall
1287 not be affected thereby.

1288 (3) (a) An employing unit, not otherwise subject to this
1289 chapter, which files with the department its written election to
1290 become an employer subject thereto for not less than two (2)
1291 calendar years shall, with the written approval of such election
1292 by the department or the executive director, become an employer
1293 subject hereto to the same extent as all other employers as of the
1294 date stated in such approval, and shall cease to be subject hereto
1295 as of January 1 of any calendar year subsequent to such two (2)
1296 calendar years only if it files with the department, on or before
1297 the thirty-first day of May of such year, a written application
1298 for termination of coverage thereunder.

1299 (b) Any employing unit, for which services that do not
1300 constitute employment as defined in this chapter are performed,
1301 may file with the department a written election that all such
1302 services performed by individuals in its employ in one or more
1303 distinct establishments or places of business shall be deemed to
1304 constitute employment by an employer for all purposes of this
1305 chapter for not less than two (2) calendar years. Upon written
1306 approval of such election by the department, such services shall



1307 be deemed to constitute employment subject to this chapter from
1308 and after the date stated in such approval. Such services shall
1309 cease to be deemed employment subject hereto as of January 1 of
1310 any calendar year subsequent to such two (2) calendar years only
1311 if, prior to the thirty-first day of May of such year, such
1312 employing unit has filed with the department a written notice to
1313 that effect.

1314 (4) (a) Prior to January 1, 1978, any political subdivision
1315 of this state may elect to cover under this chapter, for a period
1316 of not less than two (2) calendar years, services performed by
1317 employees in all of the hospitals and institutions of higher
1318 learning, as defined in Section 71-5-11, subsection M or N,
1319 operated by such political subdivision. Election is to be made by
1320 filing with the department a notice of such election at least
1321 thirty (30) days prior to the effective date of such election.
1322 The election may exclude any services described in Section
1323 71-5-11, subsection I(5). Any political subdivision electing
1324 coverage under this subsection shall make payments in lieu of
1325 contributions with respect to benefits attributable to such
1326 employment as provided with respect to nonprofit organizations in
1327 subsections (b) and (c) of Section 71-5-357.

1328 (b) Prior to January 1, 1978, the provisions in Section
1329 71-5-511, subsection (g) with respect to benefit rights based on
1330 service for state and nonprofit institutions of higher learning



1331 shall be applicable also to service covered by an election under
1332 this section.

1333 (c) Prior to January 1, 1978, the amounts required to
1334 be paid in lieu of contributions by any political subdivision
1335 under this section shall be billed and payment made as provided in
1336 subsections (b) and (c) of Section 71-5-357.

1337 (d) Prior to January 1, 1978, an election under this
1338 section, after having been in effect for not less than two (2)
1339 calendar years, may be terminated by filing with the department
1340 written notice not later than thirty (30) days preceding the last
1341 day of the calendar year in which the termination is to be
1342 effective. Such termination becomes effective as of the first day
1343 of the next ensuing calendar year with respect to services
1344 performed on and after that date.

1345 **SECTION 4.** Section 71-5-377, Mississippi Code of 1972, is
1346 brought forward as follows:

1347 71-5-377. In the event of any distribution of an employer's
1348 assets pursuant to an order of any court under the laws of this
1349 state, including any receivership, assignment for benefit of
1350 creditors, adjudicated insolvency, composition, or similar
1351 proceedings, contributions then or thereafter due shall be paid in
1352 full prior to all other claims except taxes, but on a parity with
1353 claims for wages of not more than Two Hundred and Fifty Dollars
1354 (\$250.00) to each claimant, earned within six (6) months of the
1355 commencement of the proceedings. In the event of an employer's



1356 adjudication in bankruptcy, judicially confirmed extension
1357 proposals, or composition under the Federal Bankruptcy Act of
1358 1898, as amended, contributions then or thereafter due shall be
1359 entitled to such priority as is provided therein for taxes due and
1360 owing this state.

1361 **SECTION 5.** Section 71-5-389, Mississippi Code of 1972, is
1362 brought forward as follows:

1363 71-5-389. (1) For the purposes of this section, the
1364 following terms shall have the respective meanings ascribed by
1365 this section:

1366 (a) "Claimant agency" means the Mississippi Department
1367 of Employment Security.

1368 (b) "Debtor" means any individual, corporation or
1369 partnership owing money or having a delinquent account with any
1370 claimant agency, which obligation has not been adjudicated
1371 satisfied by court order, set aside by court order, or discharged
1372 in bankruptcy.

1373 (c) "Debt" means any sum due and owing any claimant
1374 agency, including costs, court costs, fines, penalties and
1375 interest which have accrued through contract, subrogation, tort,
1376 operation of law, or any other legal theory regardless of whether
1377 there is an outstanding judgment for that sum which is legally
1378 collectible and for which a collection effort has been or is being
1379 made.



1380 (d) "Department" or "Department of Revenue" means the
1381 Department of Revenue of the State of Mississippi.

1382 (e) "Refund" means the Mississippi income tax refund
1383 which the department determines to be due any individual taxpayer,
1384 corporation or partnership.

1385 (2) The collection remedy authorized by this section is in
1386 addition to and is not substitution for any other remedy available
1387 by law.

1388 (3) (a) A claimant agency may submit debts in excess of
1389 Twenty-five Dollars (\$25.00) owed to it to the department for
1390 collection through setoff, under the procedure established by this
1391 section, except in cases where the validity of the debt is
1392 legitimately in dispute, an alternate means of collection is
1393 pending and believed to be adequate, or such collection would
1394 result in a loss of federal funds or federal assistance.

1395 (b) Upon the request of a claimant agency, the
1396 department shall set off any refund, as defined herein, against
1397 the sum certified by the claimant agency as provided in this
1398 section.

1399 (4) (a) Within the time frame specified by the department,
1400 a claimant agency seeking to collect a debt through setoff shall
1401 supply the information necessary to identify each debtor whose
1402 refund is sought to be set off and certify the amount of debt or
1403 debts owed by each such debtor.



1404 (b) If a debtor identified by a claimant agency is
1405 determined by the department to be entitled to a refund of at
1406 least Twenty-five Dollars (\$25.00), the department shall transfer
1407 an amount equal to the refund owed, not to exceed the amount of
1408 the claimed debt certified, to the claimant agency. The
1409 Department of Revenue shall send the excess amount to the debtor
1410 within a reasonable time after such excess is determined. At the
1411 time of the transfer of funds to a claimant agency pursuant to
1412 this paragraph (b), the Department of Revenue shall notify the
1413 taxpayer or taxpayers whose refund is sought to be set off that
1414 the transfer has been made. Such notice shall clearly set forth
1415 the name of the debtor, the manner in which the debt arose, the
1416 amount of the claimed debt, the transfer of funds to the claimant
1417 agency pursuant to this paragraph (b) and the intention to set off
1418 the refund against the debt, the amount of the refund in excess of
1419 the claimed debt, the taxpayer's opportunity to give written
1420 notice to contest the setoff within thirty (30) days of the date
1421 of mailing of the notice, the name and mailing address of the
1422 claimant agency to which the application for such a hearing must
1423 be sent, and the fact that the failure to apply for such a
1424 hearing, in writing, within the thirty-day period will be deemed a
1425 waiver of the opportunity to contest the setoff. In the case of a
1426 joint return or a joint refund, the notice shall also state the
1427 name of the taxpayer named in the return, if any, against whom no
1428 debt is claimed, the fact that a debt is not claimed against such



1429 taxpayer, the fact that such taxpayer is entitled to receive a
1430 refund if it is due him regardless of the debt asserted against
1431 his spouse, and that in order to obtain a refund due him such
1432 taxpayer must apply in writing for a hearing with the claimant
1433 agency named in the notice within thirty (30) days of the date of
1434 the mailing of the notice. If a taxpayer fails to apply in
1435 writing for such a hearing within thirty (30) days of the mailing
1436 of such notice, he will have waived his opportunity to contest the
1437 setoff.

1438 (c) Upon receipt of funds transferred from the
1439 Department of Revenue pursuant to paragraph (b) of this
1440 subsection, the claimant agency shall deposit and hold such funds
1441 in an escrow account until a final determination of the validity
1442 of the debt.

1443 (d) The claimant agency shall pay the Department of
1444 Revenue a fee, not to exceed Seventeen Dollars (\$17.00) in each
1445 case in which a tax refund is identified as being available for
1446 offset. Such fees shall be deposited by the Department of Revenue
1447 into a special fund hereby created in the State Treasury, out of
1448 which the Legislature shall appropriate monies to defray expenses
1449 of the Department of Revenue in employing personnel to administer
1450 the provisions of this section.

1451 (5) (a) When the claimant agency receives a protest or an
1452 application in writing from a taxpayer within thirty (30) days of
1453 the notice issued by the Department of Revenue, the claimant



1454 agency shall set a date to hear the protest and give notice to the
1455 taxpayer through the United States Postal Service or electronic
1456 digital transfer of the date so set. The time and place of such
1457 hearing shall be designated in such notice and the date set shall
1458 not be less than fifteen (15) days from the date of such notice.
1459 If, at the hearing, the sum asserted as due and owing is found not
1460 to be correct, an adjustment to the claim may be made. The
1461 claimant agency shall give notice to the debtor of its final
1462 determination as provided in paragraph (c) of this subsection.

1463 (b) No issues shall be reconsidered at the hearing
1464 which have been previously litigated.

1465 (c) If any debtor is dissatisfied with the final
1466 determination made at the hearing by the claimant agency, he may
1467 appeal the final determination to the circuit court of the county
1468 in which the main office of the claimant agency is located by
1469 filing notice of appeal with the administrative head of the
1470 claimant agency and with the clerk of the circuit court of the
1471 county in which the appeal shall be taken within thirty (30) days
1472 from the date the notice of final determination was given by the
1473 claimant agency.

1474 (6) (a) Upon final determination of the amount of the debt
1475 due and owing by means of hearing or by the taxpayer's default
1476 through failure to comply with timely request for review, the
1477 claimant agency shall remove the amount of the debt due and owing



1478 from the escrow account and credit such amount to the debtor's
1479 obligation.

1480 (b) Upon transfer of the debt due and owing from the
1481 escrow account to the credit of the debtor's account, the claimant
1482 agency shall notify the debtor in writing of the finalization of
1483 the setoff. Such notice shall include a final accounting if the
1484 refund which was set off, including the amount of the refund to
1485 which the debtor was entitled prior to the setoff, the amount of
1486 the debt due and owing, the amount of the collection fee paid to
1487 the Department of Revenue, the amount of the refund in excess of
1488 the debt which was returned to the debtor by the Department of
1489 Revenue, and the amount of the funds transferred to the claimant
1490 agency in excess of the debt determined to be due and owing at a
1491 hearing, if such a hearing was held. At such time, the claimant
1492 agency shall refund to the debtor the amount of the claimed debt
1493 originally certified and transferred to it by the Department of
1494 Revenue in excess of the amount of debt finally found to be due
1495 and owing.

1496 (7) (a) Notwithstanding the provision that prohibits
1497 disclosure by the Department of Revenue of the contents of
1498 taxpayer records or information and notwithstanding any other
1499 confidentiality statute, the Department of Revenue may provide to
1500 a claimant agency all information necessary to accomplish and
1501 effectuate the intent of the section.



1502 (b) The information obtained by claimant agency from
1503 the Department of Revenue in accordance with the provisions of
1504 this section shall retain its confidentiality and shall only be
1505 used by a claimant agency in the pursuit of its debt collection
1506 duties and practices; and any employee or prior employee of any
1507 claimant agency who unlawfully discloses any such information for
1508 any other purpose, except as specifically authorized by law, shall
1509 be subject to the same penalties specified by law for unauthorized
1510 confidential information by an agent or employee of the Department
1511 of Revenue.

1512 **SECTION 6.** Section 71-5-541, Mississippi Code of 1972, is
1513 brought forward as follows:

1514 71-5-541. A. (1) In the administration of this chapter,
1515 the department shall cooperate with the Department of Labor to the
1516 fullest extent consistent with the provisions of this chapter and
1517 shall take such action, through the adoption of appropriate rules,
1518 regulations, administrative methods and standards, as may be
1519 necessary to secure to this state and its citizens all advantages
1520 available under the provisions of the Social Security Act that
1521 relate to unemployment compensation, the Federal Unemployment Tax
1522 Act, the Wagner-Peyser Act and the Federal-State Extended
1523 Unemployment Compensation Act of 1970, all as amended.

1524 (2) In the administration of the provisions of this
1525 section, which are enacted to conform with the requirements of the
1526 Federal-State Extended Unemployment Compensation Act of 1970, as



1527 amended, the department shall take such actions as may be
1528 necessary:

1529 (a) To ensure that the provisions are so
1530 interpreted and applied as to meet the requirements of such
1531 federal act as interpreted by the United States Department of
1532 Labor; and

1533 (b) To secure to this state the full reimbursement
1534 of the federal share of extended benefits paid under this chapter
1535 that are reimbursable under the federal act; and also

1536 (c) To limit the amount of extended benefits paid
1537 as may be necessary so that the reimbursement of the federal share
1538 of extended benefits paid shall remain at one-half (1/2) of the
1539 total extended benefits paid.

1540 B. As used in this section, unless the context clearly
1541 requires otherwise:

1542 (1) "Extended benefit period" means a period which:

1543 (a) Begins with the third week after a week for
1544 which there is a state "on" indicator; and

1545 (b) Ends with either of the following weeks,
1546 whichever occurs later:

1547 (i) The third week after the first week for
1548 which there is a state "off" indicator; or

1549 (ii) The thirteenth consecutive week of such
1550 period.



1551 No extended benefit period may begin by reason of a state
1552 "on" indicator before the fourteenth week following the end of a
1553 prior extended benefit period which was in effect with respect to
1554 this state.

1555 (2) For weeks beginning after September 25, 1982, there
1556 is a "state 'on' indicator" for a week if the rate of insured
1557 unemployment under this chapter for the period consisting of such
1558 week and the immediately preceding twelve (12) weeks:

1559 (a) Equaled or exceeded one hundred twenty percent
1560 (120%) of the average of such rates for the corresponding period
1561 of thirteen (13) weeks ending in each of the preceding two (2)
1562 calendar years; and

1563 (b) Equaled or exceeded five percent (5%).

1564 The determination of whether there has been a state "on" or
1565 "off" indicator beginning or ending any extended benefit period
1566 shall be made under this subsection as if (i) paragraph (2) did
1567 not contain subparagraph (a) thereof, and (ii) the figure "5"
1568 contained in subparagraph (b) thereof were "6"; except that,
1569 notwithstanding any such provision of this subsection, any week
1570 for which there would otherwise be a "state 'on' indicator" shall
1571 continue to be such week and shall not be determined to be a week
1572 for which there is a "state 'off' indicator."

1573 (3) There is a "state 'off' indicator" for a week if,
1574 for the period consisting of such week and the immediately



1575 preceding twelve (12) weeks, either subparagraph (a) or (b) of
1576 paragraph (2) was not satisfied.

1577 (4) "Rate of insured unemployment," for purposes of
1578 paragraphs (2) and (3) of this subsection, means the percentage
1579 derived by dividing:

1580 (a) The average number of continued weeks claimed
1581 for regular state compensation in this state for weeks of
1582 unemployment with respect to the most recent period of thirteen
1583 (13) consecutive weeks, as determined by the department on the
1584 basis of its reports to the United States Secretary of Labor; by

1585 (b) The average monthly employment covered under
1586 this chapter for the first four (4) of the most recent six (6)
1587 completed calendar quarters ending before the end of such period
1588 of thirteen (13) weeks.

1589 (5) "Regular benefits" means benefits payable to an
1590 individual under this chapter or under any other state law
1591 (including benefits payable to federal civilian employees and to
1592 ex-servicemen pursuant to 5 USCS Section 8501-8525) other than
1593 extended benefits.

1594 (6) "Extended benefits" means benefits (including
1595 benefits payable to federal civilian employees and to
1596 ex-servicemen pursuant to 5 USCS Section 8501-8525) payable to an
1597 individual under the provisions of this section for weeks of
1598 unemployment in his eligibility period.



1599 (7) "Eligibility period" of an individual means the
1600 period consisting of the weeks in his benefit year which begin in
1601 an extended benefit period and, if his benefit year ends within
1602 such extended benefit period, any weeks thereafter which begin in
1603 such period.

1604 (8) "Exhaustee" means an individual who, with respect
1605 to any week of unemployment in his eligibility period:

1606 (a) Has received, prior to such week, all of the
1607 regular benefits that were available to him under this chapter or
1608 any other state law (including dependents' allowances and benefits
1609 payable to federal civilian employees and ex-servicemen under 5
1610 USCS Section 8501-8525) in his current benefit year that includes
1611 such week.

1612 For the purposes of this subparagraph, an individual shall be
1613 deemed to have received all of the regular benefits that were
1614 available to him although, as a result of a pending appeal with
1615 respect to wages that were not considered in the original monetary
1616 determination in his benefit year, he may subsequently be
1617 determined to be entitled to added regular benefits; or

1618 (b) Has no, or insufficient, wages on the basis of
1619 which he could establish a new benefit year that would include
1620 such week, his benefit year having expired prior to such week; and

1621 (c) (i) Has no right to unemployment benefits or
1622 allowances, as the case may be, under the Railroad Unemployment
1623 Insurance Act, the Trade Expansion Act of 1962, the Automotive



1624 Products Trade Act of 1965, and such other federal laws as are
1625 specified in regulations issued by the United States Secretary of
1626 Labor; and

1627 (ii) Has not received and is not seeking
1628 unemployment benefits under the Unemployment Compensation Law of
1629 the Virgin Islands or of Canada; but if he is seeking such
1630 benefits and the appropriate agency finally determines that he is
1631 not entitled to benefits under such law, he is considered an
1632 exhaustee; however, the reference in this subsection to the Virgin
1633 Islands shall be inapplicable effective on the day on which the
1634 United States Secretary of Labor approves under Section 3304(a) of
1635 the Internal Revenue Code of 1954, an unemployment compensation
1636 law submitted to the Secretary by the Virgin Islands for approval.

1637 (9) "State law" means the unemployment insurance law of
1638 any state, approved by the United States Secretary of Labor under
1639 Section 3304 of the Internal Revenue Code of 1954 (26 USCS Section
1640 3304).

1641 C. Except when the result would be inconsistent with the
1642 other provisions of this section, as provided in the regulations
1643 of the department, the provisions of this chapter which apply to
1644 claims for, or the payment of, regular benefits shall apply to
1645 claims for, and the payment of, extended benefits.

1646 D. An individual shall be eligible to receive extended
1647 benefits with respect to any week of unemployment in his



1648 eligibility period only if the department finds that with respect
1649 to such week:

1650 (1) He is an "exhaustee" as defined in subsection B(8)
1651 of this section.

1652 (2) He has satisfied the requirements of this chapter
1653 for the receipt of regular benefits that are applicable to
1654 individuals claiming extended benefits, including not being
1655 subject to a disqualification for the receipt of benefits.

1656 (3) For a week beginning after September 25, 1982, he
1657 has, during his base period, been paid wages for insured work
1658 equal to not less than forty (40) times his weekly benefit amount;
1659 he has been paid wages for insured work during at least two (2)
1660 quarters of his base period, and he has, during that quarter of
1661 his base period in which his total wages were highest, been paid
1662 wages for insured work equal to not less than twenty-six (26)
1663 times the minimum weekly benefit amount.

1664 E. The weekly extended benefit amount payable to an
1665 individual for a week of total unemployment in his eligibility
1666 period shall be an amount equal to the weekly benefit amount
1667 payable to him during his applicable benefit year; however,
1668 benefits paid to individuals during eligibility periods beginning
1669 before October 1, 1983, shall be computed to the next higher
1670 multiple of One Dollar (\$1.00), if not a multiple of One Dollar
1671 (\$1.00); and benefits paid to individuals during eligibility
1672 periods beginning on or after October 1, 1983, shall be computed



1673 to the next lower multiple of One Dollar (\$1.00), if not a
1674 multiple of One Dollar (\$1.00). In no event shall the weekly
1675 extended benefit amount payable to an individual be more than two
1676 (2) times the amount of the reimbursement of the federal share of
1677 extended benefits paid.

1678 F. (1) The total extended benefit amount payable to any
1679 eligible individual with respect to his applicable benefit year
1680 shall be the least of the following amounts:

1681 (a) Fifty percent (50%) of the total amount of
1682 regular benefits which were payable to him under this chapter in
1683 his applicable benefit year; however, benefits paid to individuals
1684 during eligibility periods beginning before October 1, 1983, shall
1685 be computed to the next higher multiple of One Dollar (\$1.00), if
1686 not a multiple of One Dollar (\$1.00), and benefits paid to
1687 individuals during eligibility periods beginning on or after
1688 October 1, 1983, shall be computed to the next lower multiple of
1689 One Dollar (\$1.00), if not a multiple of One Dollar (\$1.00); or

1690 (b) Thirteen (13) times his weekly benefit amount
1691 which was payable to him under this chapter for a week of total
1692 unemployment in the applicable benefit year.

1693 (2) The total extended benefits otherwise payable to an
1694 individual who is filing an interstate claim under the interstate
1695 benefit payment plan shall not exceed two (2) weeks whenever an
1696 extended benefit period is not in effect for such week in the
1697 state where the claim is filed.



1698 (3) In no event shall the total extended benefit amount
1699 payable to any eligible individual with respect to his applicable
1700 benefit year be more than two (2) times the amount of the
1701 reimbursement of the federal share of extended benefits paid.

1702 G. (1) Whenever an extended benefit period is to become
1703 effective in this state as a result of a state "on" indicator, or
1704 an extended benefit period is to be terminated in this state as a
1705 result of state "off" indicators, the department shall make an
1706 appropriate public announcement.

1707 (2) Computations required by the provisions of
1708 subsection B(4) shall be made by the department, in accordance
1709 with regulations prescribed by the United States Secretary of
1710 Labor.

1711 H. Extended benefits paid under the provisions of this
1712 section which are not reimbursable from federal funds shall be
1713 charged to the experience-rating record of base period employers.

1714 I. (1) Notwithstanding the provisions of subsections C and
1715 D of this section, an individual shall be disqualified for receipt
1716 of extended benefits if the department finds that during any week
1717 of his eligibility period:

1718 (a) He has failed either to apply for or to accept
1719 an offer of suitable work (as defined under paragraph (3)) to
1720 which he was referred by the department; or

1721 (b) He has failed to furnish tangible evidence
1722 that he has actively engaged in a systematic and sustained effort



1723 to find work, unless such individual is not actively engaged in
1724 seeking work because such individual is:

1725 (i) Before any court of the United States or
1726 any state pursuant to a lawfully issued summons to appear for jury
1727 duty;

1728 (ii) Hospitalized for treatment of an
1729 emergency or a life-threatening condition.

1730 The entitlement to benefits of any individual who is
1731 determined not to be actively engaged in seeking work in any week
1732 for the foregoing reasons shall be decided pursuant to the able
1733 and available requirements in Section 71-5-511 without regard to
1734 the disqualification provisions otherwise applicable under Section
1735 71-5-541. The conditions prescribed in clauses (i) and (ii) of
1736 this subparagraph (b) must be applied in the same manner to
1737 individuals filing claims for regular benefits.

1738 (2) Such disqualification shall begin with the week in
1739 which such failure occurred and shall continue until he has been
1740 employed in each of eight (8) subsequent weeks (whether or not
1741 consecutive) and has earned remuneration for personal services
1742 performed for an employer, as in this chapter defined, equal to
1743 not less than eight (8) times his weekly extended benefit amount.

1744 (3) For the purpose of subparagraph (a) of paragraph
1745 (1) the term "suitable work" means any work which is within the
1746 individual's capabilities to perform, if:



1747 (a) The gross average weekly remuneration payable
1748 for the work exceeds the sum of the individual's weekly extended
1749 benefit amount plus the amount, if any, of supplemental
1750 unemployment benefits (as defined in Section 501(c)(17)(D) of the
1751 Internal Revenue Code of 1954) payable to such individual for such
1752 week;

1753 (b) The wages payable for the work equal the
1754 higher of the minimum wages provided by Section 6(a)(1) of the
1755 Fair Labor Standards Act of 1938 (without regard to any
1756 exemption), or the state or local minimum wage; and

1757 (c) The position was offered to the individual in
1758 writing or was listed with the state employment service; and

1759 (d) Such work otherwise meets the definition of
1760 "suitable work" for regular benefits contained in Section
1761 71-5-513A(4) to the extent that such criteria of suitability are
1762 not inconsistent with the provisions of this paragraph (3); and

1763 (e) The individual cannot furnish satisfactory
1764 evidence to the department that his prospects for obtaining work
1765 in his customary occupation within a reasonably short period are
1766 good. If such evidence is deemed satisfactory for this purpose,
1767 the determination of whether any work is suitable with respect to
1768 such individual shall be made in accordance with the definition of
1769 suitable work contained in Section 71-5-513A(4) without regard to
1770 the definition specified by this paragraph (3).



1771 (4) Notwithstanding any provisions of subsection I to
1772 the contrary, no work shall be deemed to be suitable work for an
1773 individual which does not accord with the labor standard
1774 provisions set forth herein under Section 71-5-513A(4).

1775 (5) The employment service shall refer any claimant
1776 entitled to extended benefits under this section to any suitable
1777 work which meets the criteria prescribed in paragraph (3).

1778 (6) An individual shall be disqualified for extended
1779 benefits for the week, or fraction thereof, which immediately
1780 follows the day on which he left work voluntarily without good
1781 cause (as defined in Section 71-5-513A(1)), was discharged for
1782 misconduct connected with his work, or refused suitable work
1783 (except as provided in subsection I of this section), and for each
1784 week thereafter until he has earned remuneration for personal
1785 services performed for an employer, as in this chapter defined,
1786 equal to not less than eight (8) times his weekly benefit amount,
1787 as determined in each case.

1788 (7) The provisions of paragraphs I(1) through (6) of
1789 this section shall not apply to claims for weeks of unemployment
1790 beginning after March 6, 1993, and before January 1, 1995, and
1791 during that period the provisions of this chapter applicable to
1792 claims for regular compensation shall apply.

1793 J. Notwithstanding any other provisions of this chapter, if
1794 the benefit year of any individual ends within an extended benefit
1795 period, the remaining balance of extended benefits that such



1796 individual would, but for this section, be entitled to receive in
1797 that extended benefit period, with respect to weeks of
1798 unemployment beginning after the end of the benefit year, shall be
1799 reduced (but not below zero) by the product of the number of weeks
1800 for which the individual received any amounts as trade
1801 readjustment allowances within that benefit year, multiplied by
1802 the individual's weekly benefit amount for extended benefits.

1803 **SECTION 7.** This act shall take effect and be in force from
1804 and after July 1, 2018.

