

By: Representative White

To: Workforce Development

HOUSE BILL NO. 758

1 AN ACT TO REENACT SECTIONS 37-153-1 THROUGH 37-153-13,
2 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE MISSISSIPPI
3 COMPREHENSIVE WORKFORCE TRAINING AND EDUCATION CONSOLIDATION ACT
4 OF 2004; TO REENACT SECTIONS 71-5-5, 71-5-11 AND 71-5-19,
5 MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE MISSISSIPPI
6 EMPLOYMENT SECURITY LAW; TO REENACT SECTIONS 71-5-101 AND 71-5-107
7 THROUGH 71-5-143, MISSISSIPPI CODE OF 1972, WHICH TRANSFER THE
8 POWERS AND RESPONSIBILITIES OF THE MISSISSIPPI EMPLOYMENT SECURITY
9 COMMISSION TO THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY IN
10 THE OFFICE OF THE GOVERNOR AND PRESCRIBE THE DEPARTMENT'S POWERS
11 AND DUTIES; TO REENACT SECTION 71-5-201, MISSISSIPPI CODE OF 1972,
12 WHICH ESTABLISHES THE MISSISSIPPI STATE EMPLOYMENT SERVICE WITHIN
13 THE DEPARTMENT OF EMPLOYMENT SECURITY; TO REENACT SECTIONS
14 71-5-357 AND 71-5-359, MISSISSIPPI CODE OF 1972, WHICH PRESCRIBE
15 REGULATIONS GOVERNING NONPROFIT ORGANIZATIONS, STATE AGENCIES AND
16 POLITICAL SUBDIVISIONS UNDER THE EMPLOYMENT SECURITY LAW; TO
17 REENACT SECTIONS 71-5-451 AND 71-5-457, MISSISSIPPI CODE OF 1972,
18 WHICH RELATE TO THE UNEMPLOYMENT COMPENSATION FUND AND THE
19 UNEMPLOYMENT TRUST FUND; TO REENACT SECTIONS 71-5-511, 71-5-513,
20 71-5-517, 71-5-519, 71-5-523, 71-5-525, 71-5-529, 71-5-531 AND
21 71-5-541, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE PAYMENT
22 OF UNEMPLOYMENT COMPENSATION BENEFITS; TO REENACT SECTION
23 73-30-25, MISSISSIPPI CODE OF 1972, WHICH EXCLUDES CERTAIN
24 PROFESSIONALS FROM REGULATION UNDER THE LAWS GOVERNING LICENSED
25 PROFESSIONAL COUNSELORS; TO REENACT SECTION 43-1-30, MISSISSIPPI
26 CODE OF 1972, WHICH CREATES THE MISSISSIPPI TANF IMPLEMENTATION
27 COUNCIL AND PRESCRIBES ITS POWERS AND DUTIES; TO REENACT SECTION
28 43-17-5, MISSISSIPPI CODE OF 1972, WHICH PRESCRIBES THE AMOUNT OF
29 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BENEFITS WHICH MAY
30 BE GRANTED TO RECIPIENTS; TO AMEND REENACTED SECTION 43-17-5,
31 MISSISSIPPI CODE OF 1972, TO INFORM THE CODE PUBLISHER OF CERTAIN
32 NONSUBSTANTIVE LANGUAGE THAT SHOULD BE REVISED; TO REENACT SECTION
33 43-19-45, MISSISSIPPI CODE OF 1972, WHICH REQUIRES THE CHILD
34 SUPPORT UNIT ESTABLISHED BY THE DEPARTMENT OF HUMAN SERVICES TO



ESTABLISH A STATE PARENT LOCATOR SERVICE; TO REENACT SECTION 43-19-46, MISSISSIPPI CODE OF 1972, WHICH REQUIRES EMPLOYERS TO SUBMIT CERTAIN INFORMATION RELATING TO NEWLY HIRED EMPLOYEES TO THE DIRECTORY OF NEW HIRES WITHIN THE DEPARTMENT OF HUMAN SERVICES; TO REENACT SECTIONS 57-62-5 AND 57-62-9, MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE MISSISSIPPI ADVANTAGE JOBS ACT; TO REENACT SECTION 57-75-5, MISSISSIPPI CODE OF 1972, WHICH DEFINES CERTAIN TERMS USED UNDER THE MISSISSIPPI MAJOR ECONOMIC IMPACT ACT; TO REENACT SECTION 57-80-7, MISSISSIPPI CODE OF 1972, WHICH RELATES TO THE GROWTH AND PROSPERITY ACT; TO REENACT SECTION 69-2-5, MISSISSIPPI CODE OF 1972, WHICH PRESCRIBES CERTAIN DUTIES OF THE MISSISSIPPI COOPERATIVE EXTENSION SERVICE RELATING TO THE DISSEMINATION OF INFORMATION TO THE AGRICULTURAL COMMUNITY; TO REENACT SECTION 7-1-355, MISSISSIPPI CODE OF 1972, WHICH REQUIRES THE DEPARTMENT OF EMPLOYMENT SECURITY, OFFICE OF THE GOVERNOR, TO MAKE AN ANNUAL REPORT TO THE LEGISLATURE ON WORKFORCE INVESTMENT ACTIVITIES; TO AMEND SECTION 60, CHAPTER 572, LAWS OF 2004, AS LAST AMENDED BY SECTION 58, CHAPTER 515, LAWS OF 2012, TO EXTEND THE DATE OF THE REPEALER ON THOSE STATUTES REENACTED BY THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 37-153-1, Mississippi Code of 1972, is reenacted as follows:

37-153-1. This chapter shall be known and may be cited as the "Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004."

SECTION 2. Section 37-153-3, Mississippi Code of 1972, is reenacted as follows:

37-153-3. It is the intent of the Legislature by the passage of Chapter 572, Laws of 2004, to establish one (1) comprehensive workforce development system in the State of Mississippi that is focused on achieving results, using resources efficiently and ensuring that workers and employers can easily access needed services. This system shall reflect a consolidation of the Mississippi Workforce Development Advisory Council and the



Mississippi State Workforce Investment Act Board. The purpose of Chapter 572, Laws of 2004, is to provide workforce activities, through a statewide system that maximizes cooperation among state agencies, that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants and as a result, improve the quality of the workforce, reduce welfare dependency and enhance the productivity and competitiveness of the State of Mississippi.

SECTION 3. Section 37-153-5, Mississippi Code of 1972, is reenacted as follows:

37-153-5. For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed in this section unless the context clearly indicates otherwise:

(a) "State board" means the Mississippi State Workforce Investment Board;

(b) "District councils" means the Local Workforce Development Councils;

(c) "Local workforce investment board" means the board that oversees the workforce development activities of local workforce areas under the federal Workforce Investment Act.

SECTION 4. Section 37-153-7, Mississippi Code of 1972, is reenacted as follows:

37-153-7. (1) There is created the Mississippi State Workforce Investment Board. The Mississippi State Workforce Investment Board shall be composed of forty-one (41) voting



95 members, of which a majority shall be representatives of business
96 and industry in accordance with the federal Workforce Investment
97 Act.

98 (a) The Governor shall appoint the following members of
99 the board to serve a term of four (4) years:

100 (i) The Executive Director of the Mississippi
101 Association of Supervisors, or his/her designee;

102 (ii) The Executive Director of the Mississippi
103 Municipal League;

104 (iii) One (1) elected mayor;

105 (iv) One (1) representative of an apprenticeship
106 program in the state;

107 (v) One (1) representative of labor organizations,
108 who has been nominated by state labor federations;

109 (vi) One (1) representative of individuals and
110 organizations that has experience with respect to youth
111 activities;

112 (vii) One (1) representative of the Mississippi
113 Association of Planning and Development Districts;

114 (viii) One (1) representative from each of the
115 four (4) workforce areas in the state, who has been nominated by
116 the community colleges in each respective area, with the consent
117 of the elected county supervisors within the respective workforce
118 area;



119 (ix) The chair of the Mississippi Association of
120 Community and Junior Colleges; and

121 (x) Twenty-one (21) representatives of business
122 owners nominated by business and industry organizations, which may
123 include representatives of the various planning and development
124 districts in Mississippi.

125 (b) The following state officials shall be members of
126 the board:

127 (i) The Executive Director of the Mississippi
128 Department of Employment Security;

129 (ii) The Executive Director of the Department of
130 Rehabilitation Services;

131 (iii) The State Superintendent of Public
132 Education;

133 (iv) The Executive Director of the Mississippi
134 Development Authority;

135 (v) The Executive Director of the Mississippi
136 Department of Human Services;

137 (vi) The Executive Director of the Mississippi
138 Community College Board; and

139 (vii) The Commissioner of the Institutions of
140 Higher Learning.

141 (c) The Governor, or his designee, shall serve as a
142 member.



(d) Four (4) legislators, who shall serve in a nonvoting capacity, two (2) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate, and two (2) of whom shall be appointed by the Speaker of the House from the membership of the Mississippi House of Representatives.

(e) The membership of the board shall reflect the diversity of the State of Mississippi.

(f) The Governor shall designate the Chairman of the Mississippi State Workforce Investment Board from among the voting members of the board, and a quorum of the board shall consist of a majority of the voting members of the board.

(g) The voting members of the board who are not state employees shall be entitled to reimbursement of their reasonable expenses incurred in carrying out their duties under this chapter, from any funds available for that purpose.

(2) The Mississippi Department of Employment Security shall establish limits on administrative costs for each portion of Mississippi's workforce development system consistent with the federal Workforce Investment Act or any future federal workforce legislation.

(3) The Mississippi State Workforce Investment Board shall have the following duties:

(a) Develop and submit to the Governor a strategic plan for an integrated state workforce development system that aligns resources and structures the system to more effectively and



efficiently meet the demands of Mississippi's employers and job seekers. This plan will comply with the federal Workforce Investment Act of 1998, as amended, the federal Workforce Innovation and Opportunity Act of 2014 and amendments and successor legislation to these acts;

(b) Assist the Governor in the development and continuous improvement of the statewide workforce investment system that shall include:

(i) Development of linkages in order to assure coordination and nonduplication among programs and activities; and

(ii) Review local workforce development plans that reflect the use of funds from the federal Workforce Investment Act, Workforce Innovation and Opportunity Act, the Wagner-Peyser Act and the amendment or successor legislation to the acts, and the Mississippi Comprehensive Workforce Training and Education Consolidation Act;

(c) Recommend the designation of local workforce investment areas as required in Section 116 of the federal Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014. There shall be four (4) workforce investment areas that are generally aligned with the planning and development district structure in Mississippi. Planning and development districts will serve as the fiscal agents to manage Workforce Investment Act funds, oversee and support the local workforce investment boards aligned with the area and the local



193 programs and activities as delivered by the one-stop employment
194 and training system. The planning and development districts will
195 perform this function through the provisions of the county
196 cooperative service districts created under Sections 19-3-101
197 through 19-3-115; however, planning and development districts
198 currently performing this function under the Interlocal
199 Cooperation Act of 1974, Sections 17-13-1 through 17-13-17, may
200 continue to do so;

201 (d) Assist the Governor in the development of an
202 allocation formula for the distribution of funds for adult
203 employment and training activities and youth activities to local
204 workforce investment areas;

205 (e) Recommend comprehensive, results-oriented measures
206 that shall be applied to all of Mississippi's workforce
207 development system programs;

208 (f) Assist the Governor in the establishment and
209 management of a one-stop employment and training system conforming
210 to the requirements of the federal Workforce Investment Act of
211 1998 and the Workforce Innovation and Opportunity Act of 2014, as
212 amended, recommending policy for implementing the Governor's
213 approved plan for employment and training activities and services
214 within the state. In developing this one-stop career operating
215 system, the Mississippi State Workforce Investment Board, in
216 conjunction with local workforce investment boards, shall:



217 (i) Design broad guidelines for the delivery of
218 workforce development programs;

219 (ii) Identify all existing delivery agencies and
220 other resources;

221 (iii) Define appropriate roles of the various
222 agencies to include an analysis of service providers' strengths
223 and weaknesses;

224 (iv) Determine the best way to utilize the various
225 agencies to deliver services to recipients; and

226 (v) Develop a financial plan to support the
227 delivery system that shall, at a minimum, include an
228 accountability system;

229 (g) Assist the Governor in reducing duplication of
230 services by urging the local workforce investment boards to
231 designate the local community/junior college as the operator of
232 the WIN Job Center. Incentive grants of Two Hundred Thousand
233 Dollars (\$200,000.00) from federal Workforce Investment Act funds
234 may be awarded to the local workforce boards where the
235 community/junior college district is designated as the WIN Job
236 Center. These grants must be provided to the community and junior
237 colleges for the extraordinary costs of coordinating with the
238 Workforce Investment Act, advanced technology centers and advanced
239 skills centers. In no case shall these funds be used to supplant
240 state resources being used for operation of workforce development
241 programs;



(h) To provide authority, in accordance with any executive order of the Governor, for developing the necessary collaboration among state agencies at the highest level for accomplishing the purposes of this chapter;

(i) To monitor the effectiveness of the workforce development centers and WIN job centers;

(j) To advise the Governor, public schools, community/junior colleges and institutions of higher learning on effective school-to-work transition policies and programs that link students moving from high school to higher education and students moving between community colleges and four-year institutions in pursuit of academic and technical skills training;

(k) To work with industry to identify barriers that inhibit the delivery of quality workforce education and the responsiveness of educational institutions to the needs of industry;

(l) To provide periodic assessments on effectiveness and results of the overall Mississippi comprehensive workforce development system and district councils; and

(m) To assist the Governor in carrying out any other responsibility required by the federal Workforce Investment Act of 1998, as amended and the Workforce Innovation and Opportunity Act, successor legislation and amendments.



(4) The Mississippi State Workforce Investment Board shall coordinate all training programs and funds in the State of Mississippi.

Each state agency director responsible for workforce training activities shall advise the Mississippi State Workforce Investment Board of appropriate federal and state requirements. Each such state agency director shall remain responsible for the actions of his agency; however, each state agency and director shall work cooperatively, and shall be individually and collectively responsible to the Governor for the successful implementation of the statewide workforce investment system. The Governor, as the Chief Executive Officer of the state, shall have complete authority to enforce cooperation among all entities within the state that utilize federal or state funding for the conduct of workforce development activities.

(5) The State Workforce Investment Board shall establish a Rules Committee. The Rules Committee, in consultation with the full board, shall be designated as the body with the sole authority to promulgate rules and regulations for distribution of Mississippi Works Funds created in Section 71-5-353. The State Workforce Investment Board Rules Committee shall develop and submit rules and regulations in accordance with the Mississippi Administrative Procedures Act, within sixty (60) days of March 21, 2016. The State Workforce Investment Board Rules Committee shall consist of the following State Workforce Investment Board members:



(a) The Executive Director of the Mississippi Development Authority;

(b) The Executive Director of the Mississippi Department of Employment Security;

(c) The Executive Director of the Mississippi Community College Board;

(d) The Chair of the Mississippi Association of Community and Junior Colleges;

(e) The Chair of the State Workforce Investment Board;

(f) A representative from the workforce areas selected by the Mississippi Association of Workforce Areas, Inc.;

(g) A business representative currently serving on the board, selected by the Chairman of the State Workforce Investment Board; and

(h) Two (2) legislators, who shall serve in a nonvoting capacity, one (1) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate and one (1) of whom shall be appointed by the Speaker of the House of Representatives from the membership of the Mississippi House of Representatives.

(6) The Mississippi State Workforce Investment Board shall create and implement performance metrics for the Mississippi Works Fund to determine the added value to the local and state economy and the contribution to the future growth of the state economy. A report on the performance of the fund shall be made to the



Governor, Lieutenant Governor and Speaker of the House of Representatives annually, throughout the life of the fund.

SECTION 5. Section 37-153-9, Mississippi Code of 1972, is reenacted as follows:

37-153-9. (1) In accordance with the federal Workforce Investment Act of 1998, there shall be established, for each of the four (4) state workforce areas prescribed in Section 37-153-3 (2)(c), a local workforce investment board to set policy for the portion of the state workforce investment system within the local area and carry out the provisions of the Workforce Investment Act.

(2) Each community college district shall have an affiliated District Workforce Development Council. The district council shall be composed of a diverse group of fifteen (15) persons appointed by the board of trustees of the affiliated public community or junior college. The members of each district council shall be selected from persons recommended by the chambers of commerce, employee groups, industrial foundations, community organizations and local governments located in the community college district of the affiliated community college with one (1) appointee being involved in basic literacy training. However, at least eight (8) members of each district council shall be chief executive officers, plant managers that are representatives of employers in that district or service sector executives. The District Workforce Development Council affiliated with each respective community or junior college shall advise the president



of the community or junior college on the operation of its
workforce development center/one-stop center.

The Workforce Development Council shall have the following
advisory duties:

(a) To develop an integrated and coordinated district
workforce investment strategic plan that:

(i) Identifies workforce investment needs through
job and employee assessments of local business and industry;

(ii) Sets short-term and long-term goals for
industry-specific training and upgrading and for general
development of the workforce; and

(iii) Provides for coordination of all training
programs, including ABE/High School Equivalency Diploma, Skills
Enhancement and Industrial Services, and shall work
collaboratively with the State Literacy Resource Center;

(b) To coordinate and integrate delivery of training as
provided by the workforce development plan;

(c) To assist business and industry management in the
transition to a high-powered, quality organization;

(d) To encourage continuous improvement through
evaluation and assessment; and

(e) To oversee development of an extensive marketing
plan to the employer community.

SECTION 6. Section 37-153-11, Mississippi Code of 1972, is
reenacted as follows:



365 37-153-11. (1) There are created workforce development
366 centers to provide assessment, training and placement services to
367 individuals needing retraining, training and upgrading for small
368 business and local industry. Each workforce development center
369 shall be affiliated with a separate public community or junior
370 college district.

371 (2) Each workforce development center shall be staffed and
372 organized locally by the affiliated community college. The
373 workforce development center shall serve as staff to the
374 affiliated district council.

375 (3) Each workforce development center, working in concert
376 with its affiliated district council, shall offer and arrange
377 services to accomplish the purposes of this chapter, including,
378 but not limited to, the following:

379 (a) For individuals needing training and retraining:

380 (i) Recruiting, assessing, counseling and
381 referring to training or jobs;

382 (ii) Preemployment training for those with no
383 experience in the private enterprise system;

384 (iii) Basic literacy skills training and high
385 school equivalency education;

386 (iv) Vocational and technical training, full-time
387 or part-time; and



388 (v) Short-term skills training for educationally
389 and economically disadvantaged adults in cooperation with
390 federally established employment and training programs;

391 (b) For specific small businesses, industries or firms
392 within the district:

393 (i) Job analysis, testing and curriculum
394 development;

395 (ii) Development of specific long-range training
396 plans;

397 (iii) Industry or firm-related preemployment
398 training;

399 (iv) Workplace basic skills and literacy training;

400 (v) Customized skills training;

401 (vi) Assistance in developing the capacity for
402 total quality management training;

403 (vii) Technology transfer information and referral
404 services to business of local applications of new research in
405 cooperation with the University Research Center, the state's
406 universities and other laboratories; and

407 (viii) Development of business plans;

408 (c) For public schools within the district technical
409 assistance to secondary schools in curriculum coordination,
410 development of tech prep programs, instructional development and
411 resource coordination; and



(d) For economic development, a local forum and resource center for all local industrial development groups to meet and promote regional economic development.

(4) Each workforce development center shall compile and make accessible to the Mississippi Workforce Investment Board necessary information for use in evaluating outcomes of its efforts and in improving the quality of programs at each community college, and shall include information on literacy initiatives. Each workforce development center shall, through an interagency management information system, maintain records on new small businesses, placement, length of time on the job after placement and wage rates of those placed in a form containing such information as established by the state council.

(5) The Mississippi Community College Board is authorized to designate one or more workforce development centers at the request of affiliated community or junior colleges to provide skills training to individuals to enhance their ability to be employed in the motion picture industry in this state.

SECTION 7. Section 37-153-13, Mississippi Code of 1972, is reenacted as follows:

37-153-13. The Mississippi Community College Board is designated as the primary support agency to the workforce development centers. The Mississippi Community College Board may exercise the following powers:



436 (a) To provide the workforce development centers the
437 assistance necessary to accomplish the purposes of this chapter;

438 (b) To provide the workforce development centers
439 consistent standards and benchmarks to guide development of the
440 local workforce development system and to provide a means by which
441 the outcomes of local services can be measured;

442 (c) To develop the staff capacity to provide, broker or
443 contract for the provision of technical assistance to the
444 workforce development centers, including, but not limited to:

445 (i) Training local staff in methods of recruiting,
446 assessment and career counseling;

447 (ii) Establishing rigorous and comprehensive local
448 preemployment training programs;

449 (iii) Developing local institutional capacity to
450 deliver total quality management training;

451 (iv) Developing local institutional capacity to
452 transfer new technologists into the marketplace;

453 (v) Expanding the Skills Enhancement Program and
454 improving the quality of adult literacy programs; and

455 (vi) Developing data for strategic planning;

456 (d) To collaborate with the Mississippi Development
457 Authority and other economic development organizations to increase
458 the community college systems' economic development potential;



459 (e) To administer presented and approved certification
460 programs by the community colleges for tax credits and partnership
461 funding for corporate training;

462 (f) To create and maintain an evaluation team that
463 examines which kinds of curricula and programs and what forms of
464 quality control of training are most productive so that the
465 knowledge developed at one (1) institution of education can be
466 transferred to others;

467 (g) To develop internal capacity to provide services
468 and to contract for services from universities and other providers
469 directly to local institutions;

470 (h) To develop and administer an incentive
471 certification program;

472 (i) To develop and hire staff and purchase equipment
473 necessary to accomplish the goals set forth in this section; and

474 (j) To collaborate, partner and contract for services
475 with community-based organizations and disadvantaged businesses in
476 the delivery of workforce training and career information
477 especially to youth, as defined by the federal Workforce
478 Investment Act, and to those adults who are in low income jobs or
479 whose individual skill levels are so low as to be unable initially
480 to be aided by a workforce development center. Community-based
481 organizations and disadvantaged businesses must meet
482 performance-based certification requirements set by the
483 Mississippi Community College Board.



484 **SECTION 8.** Section 71-5-5, Mississippi Code of 1972, is
485 reenacted as follows:

486 71-5-5. The Legislature finds and declares that the
487 existence and continued operation of a federal tax upon employers,
488 against which some portion of the contributions required under
489 this chapter may be credited, will protect Mississippi employers
490 from undue disadvantages in their competition with employers in
491 other states. If at any time, upon a formal complaint to the
492 Governor, he shall find that Title IX of the Social Security Act
493 has been amended or repealed by Congress or has been held
494 unconstitutional by the Supreme Court of the United States, and
495 that, as a result thereof, the provisions of this chapter
496 requiring Mississippi employers to pay contributions will subject
497 them to a serious competitive disadvantage in relation to
498 employers in other states, he shall publish such findings and
499 proclaim that the operation of the provisions of this chapter
500 requiring the payment of contributions and benefits shall be
501 suspended for a period of not more than six (6) months. The
502 Department of Employment Security shall thereupon requisition from
503 the Unemployment Trust Fund all monies therein standing to its
504 credit, and shall deposit such monies, together with any other
505 monies in the Unemployment Compensation Fund, as a special fund in
506 any banks or public depositories in this state in which general
507 funds of the state may be deposited.



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

510 If within the aforesaid six-month period the Governor shall
511 find that other federal legislation has been enacted which avoids
512 the competitive disadvantage herein described, he shall forthwith
513 publicly so proclaim, and upon the date of such proclamation, the
514 provisions of this chapter requiring the payment of contributions
515 and benefits shall again become fully operative as of the date of
516 such suspension with the same effect as if such suspension had not
517 occurred. If within such six-month period no such other federal
518 legislation is enacted or the Legislature of this state has not
519 otherwise prescribed, the Department of Employment Security shall,
520 under regulations prescribed by it, refund, without interest, to
521 each employer by whom contributions have been paid his pro rata
522 share of the total contributions paid under this chapter. Any
523 interest or earnings of the fund shall be available to the
524 Department of Employment Security to pay for the costs of making
525 such refunds. When the Department of Employment Security shall
526 have executed the duties herein prescribed and performed such
527 other acts as are incidental to the termination of its duties
528 under this chapter, the Governor shall, by public proclamation,
529 declare that the provisions of this chapter, in their entirety,
530 shall cease to be operative.

531 **SECTION 9.** Section 71-5-11, Mississippi Code of 1972, is
532 reenacted as follows:



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

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

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

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

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

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



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

G. "Employing unit" means this state or another state or any instrumentalities or any political subdivisions thereof or any of their instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions, any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all purposes of this chapter, whether such individual was hired or



582 paid directly by such employing unit or by such agent or employee,
583 provided the employing unit had actual or constructive knowledge
584 of the work. All individuals performing services in the employ of
585 an elected fee-paid county official, other than those related by
586 blood or marriage within the third degree computed by the rule of
587 the civil law to such fee-paid county official, shall be deemed to
588 be employed by such county as the employing unit for all the
589 purposes of this chapter. For purposes of defining an "employing
590 unit" which shall pay contributions on remuneration paid to
591 individuals, if two (2) or more related corporations concurrently
592 employ the same individual and compensate such individual through
593 a common paymaster which is one (1) of such corporations, then
594 each such corporation shall be considered to have paid as
595 remuneration to such individual only the amounts actually
596 disbursed by it to such individual and shall not be considered to
597 have paid as remuneration to such individual such amounts actually
598 disbursed to such individual by another of such corporations.

599 H. "Employer" means:

600 (1) Any employing unit which,

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

605 (b) For some portion of a day in each of twenty
606 (20) different calendar weeks, whether or not such weeks were



607 consecutive, in either the current or the preceding calendar year
608 had in employment at least one (1) individual (irrespective of
609 whether the same individual was in employment in each such day),
610 except as provided in paragraph (9) of this subsection;

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

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

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

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

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

625 (6) Any individual or employing unit which acquired its
626 organization, trade, business, or substantially all the assets
627 thereof, from another employing unit, if the employment record of
628 the acquiring individual or employing unit subsequent to such
629 acquisition, together with the employment record of the acquired
630 organization, trade, or business prior to such acquisition, both
631 within the same calendar year, would be sufficient to constitute



an employing unit as an employer subject to this chapter under paragraph (1) or (3) of this subsection;

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

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

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

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

(10) All entities utilizing the services of any employee leasing firm shall be considered the employer of the individuals leased from the employee leasing firm. Temporary help



657 firms shall be considered the employer of the individuals they
658 provide to perform services for other individuals or
659 organizations.

660 I. "Employment" means and includes:

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

666 (2) Services performed for remuneration for a
667 principal:

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

672 (b) As a traveling or city salesman, other than as
673 an agent-driver or commission-driver, engaged upon a full-time
674 basis in the solicitation on behalf of, and the transmission to, a
675 principal (except for sideline sales activities on behalf of some
676 other person) of orders from wholesalers, retailers, contractors,
677 or operator of hotels, restaurants, or other similar
678 establishments for merchandise for resale or supplies for use in
679 their business operations.



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

683 (i) The contract of service contemplates that
684 substantially all of the services are to be performed personally
685 by such individual;

686 (ii) The individual does not have a
687 substantial investment in facilities used in connection with the
688 performance of the services (other than in facilities for
689 transportation); and

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

693 (3) Service performed in the employ of this state or
694 any of its instrumentalities or any political subdivision thereof
695 or any of its instrumentalities or any instrumentality of more
696 than one (1) of the foregoing or any instrumentality of any of the
697 foregoing and one or more other states or political subdivisions
698 or any Indian tribe as defined in Section 3306(u) of the Federal
699 Unemployment Tax Act (FUTA), which includes any subdivision,
700 subsidiary or business enterprise wholly owned by such Indian
701 tribe; however, such service is excluded from "employment" as
702 defined in the Federal Unemployment Tax Act by Section 3306(c) (7)
703 of that act and is not excluded from "employment" under subsection
704 I(5) of this section.



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

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

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

(a) In the employ of:

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

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

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



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

732 (i) As an elected official;

733 (ii) As a member of a legislative body, or a
734 member of the judiciary, of a state or political subdivision or a
735 member of an Indian tribal council;

736 (iii) As a member of the State National Guard
737 or Air National Guard;

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

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

744 1. A major nontenured policy-making or
745 advisory position, or

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

749 (d) In a facility conducted for the purpose of
750 carrying out a program of rehabilitation for individuals whose
751 earning capacity is impaired by age or physical or mental
752 deficiency or injury, or providing remunerative work for
753 individuals who because of their impaired physical or mental



capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

813 (7) The term "employment" shall include domestic
814 service in a private home, local college club or local chapter of
815 a college fraternity or sorority performed for an employing unit
816 which paid cash remuneration of One Thousand Dollars (\$1,000.00)
817 or more in any calendar quarter in the current or the preceding
818 calendar year to individuals employed in such domestic service.
819 For the purpose of this subsection, the term "employment" does not
820 apply to service performed as a "sitter" at a hospital in the
821 employ of an individual.

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

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

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



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

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

834 (9) Services not covered under paragraph (8) of this
835 subsection and performed entirely without this state, with respect
836 to no part of which contributions are required and paid under an
837 unemployment compensation law of any other state or of the federal
838 government, shall be deemed to be employment subject to this
839 chapter if the individual performing such services is a resident
840 of this state and the department approves the election of the
841 employing unit for whom such services are performed that the
842 entire service of such individual shall be deemed to be employment
843 subject to this chapter.

844 (10) Service shall be deemed to be localized within a
845 state if:

846 (a) The service is performed entirely within such
847 state; or

848 (b) The service is performed both within and
849 without such state, but the service performed without such state
850 is incidental to the individual's service within the state; for



example, is temporary or transitory in nature or consists of isolated transactions.

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

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

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

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

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

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

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



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

878 (i) An individual who is a resident of the
879 United States; or

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

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

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

886 (12) All services performed by an officer or member of
887 the crew of an American vessel on or in connection with such
888 vessel, if the operating office from which the operations of such
889 vessel operating on navigable waters within, or within and
890 without, the United States are ordinarily and regularly
891 supervised, managed, directed and controlled, is within this
892 state, notwithstanding the provisions of subsection I(8).

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



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

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

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

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

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



925 (iii) In connection with the production or
926 harvesting of naval stores products or any commodity defined in
927 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g),
928 or in connection with the raising or harvesting of mushrooms, or
929 in connection with the ginning of cotton, or in connection with
930 the operation or maintenance of ditches, canals, reservoirs, or
931 waterways not owned or operated for profit, used exclusively for
932 supplying and storing water for farming purposes;

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

940 (B) In the employ of a group of
941 operators of farms (or a cooperative organization of which such
942 operators are members) in the performance of service described in
943 subitem (A), but only if such operators produced more than
944 one-half (1/2) of the commodity with respect to which such service
945 is performed;

946 (C) The provisions of subitems (A) and
947 (B) shall not be deemed to be applicable with respect to service
948 performed in connection with commercial canning or commercial
949 freezing or in connection with any agricultural or horticultural



950 commodity after its delivery to a terminal market for distribution
951 for consumption;

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

954 (vi) As used in paragraph (15)(a) of this
955 subsection, the term "farm" includes stock, dairy, poultry, fruit,
956 fur-bearing animals, and truck farms, plantations, ranches,
957 nurseries, ranges, greenhouses, or other similar structures used
958 primarily for the raising of agricultural or horticultural
959 commodities, and orchards.

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

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

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

971 (e) Service performed in the employ of the United
972 States government or of an instrumentality wholly owned by the
973 United States; except that if the Congress of the United States
974 shall permit states to require any instrumentalities of the United



975 States to make payments into an unemployment fund under a state
976 unemployment compensation act, then to the extent permitted by
977 Congress and from and after the date as of which such permission
978 becomes effective, all of the provisions of this chapter shall be
979 applicable to such instrumentalities and to services performed by
980 employees for such instrumentalities in the same manner, to the
981 same extent, and on the same terms as to all other employers and
982 employing units. If this state should not be certified under the
983 Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any
984 year, then the payment required by such instrumentality with
985 respect to such year shall be deemed to have been erroneously
986 collected and shall be refunded by the department from the fund in
987 accordance with the provisions of Section 71-5-383.

988 (f) Service performed in the employ of an
989 "employer" as defined by the Railroad Unemployment Insurance Act,
990 45 USCS Section 351(a), or as an "employee representative" as
991 defined by the Railroad Unemployment Insurance Act, 45 USCS
992 Section 351(f), and service with respect to which unemployment
993 compensation is payable under an unemployment compensation system
994 for maritime employees, or under any other unemployment
995 compensation system established by an act of Congress; however,
996 the department is authorized and directed to enter into agreements
997 with the proper agencies under such act or acts of Congress, which
998 agreements shall become effective ten (10) days after publication
999 thereof in the manner provided in Section 71-5-117 for general



1000 rules, to provide reciprocal treatment to individuals who have,
1001 after acquiring potential rights to benefits under this chapter,
1002 acquired rights to unemployment compensation under such act or
1003 acts of Congress or who have, after acquiring potential rights to
1004 unemployment compensation under such act or acts of Congress,
1005 acquired rights to benefits under this chapter.

1006 (g) Service performed in any calendar quarter in
1007 the employ of any organization exempt from income tax under the
1008 Internal Revenue Code, 26 USCS Section 501(a) (other than an
1009 organization described in 26 USCS Section 401(a)), or exempt from
1010 income tax under 26 USCS Section 521 if the remuneration for such
1011 service is less than Fifty Dollars (\$50.00).

1012 (h) Service performed in the employ of a school,
1013 college, or university if such service is performed:

1014 (i) By a student who is enrolled and is
1015 regularly attending classes at such school, college or university,
1016 or

1017 (ii) By the spouse of such a student if such
1018 spouse is advised, at the time such spouse commences to perform
1019 such service, that

1020 (A) The employment of such spouse to
1021 perform such service is provided under a program to provide
1022 financial assistance to such student by such school, college, or
1023 university, and



1024 (B) Such employment will not be covered
1025 by any program of unemployment insurance.

1026 (i) Service performed by an individual under the
1027 age of twenty-two (22) who is enrolled at a nonprofit or public
1028 educational institution which normally maintains a regular faculty
1029 and curriculum and normally has a regularly organized body of
1030 students in attendance at the place where its educational
1031 activities are carried on, as a student in a full-time program
1032 taken for credit at such institution, which combines academic
1033 instruction with work experience, if such service is an integral
1034 part of such program and such institution has so certified to the
1035 employer, except that this subparagraph shall not apply to service
1036 performed in a program established for or on behalf of an employer
1037 or group of employers.

1038 (j) Service performed in the employ of a hospital,
1039 if such service is performed by a patient of the hospital, as
1040 defined in subsection M of this section.

1041 (k) Service performed as a student nurse in the
1042 employ of a hospital or a nurses' training school by an individual
1043 who is enrolled and is regularly attending classes in a nurses'
1044 training school chartered or approved pursuant to state law; and
1045 services performed as an intern in the employ of a hospital by an
1046 individual who has completed a four-year course in a medical
1047 school chartered or approved pursuant to state law.



1048 (1) Service performed by an individual as an
1049 insurance agent or as an insurance solicitor, if all such service
1050 performed by such individual is performed for remuneration solely
1051 by way of commission.

1052 (m) Service performed by an individual in the
1053 delivery or distribution of newspapers or shopping news, not
1054 including delivery or distribution to any point for subsequent
1055 delivery or distribution, except those employed by political
1056 subdivisions, state and local governments, nonprofit organizations
1057 and Indian tribes, as defined by this chapter, or any other
1058 entities for which coverage is required by federal statute and
1059 regulation.

1060 (n) If the services performed during one-half
1061 (1/2) or more of any pay period by an employee for the employing
1062 unit employing him constitute employment, all the services of such
1063 employee for such period shall be deemed to be employment; but if
1064 the services performed during more than one-half (1/2) of any such
1065 pay period by an employee for the employing unit employing him do
1066 not constitute employment, then none of the services of such
1067 employee for such period shall be deemed to be employment. As
1068 used in this subsection, the term "pay period" means a period (of
1069 not more than thirty-one (31) consecutive days) for which a
1070 payment of remuneration is ordinarily made to the employee by the
1071 employing unit employing him.



1072 (o) Service performed by a barber or beautician
1073 whose work station is leased to him or her by the owner of the
1074 shop in which he or she works and who is compensated directly by
1075 the patrons he or she serves and who is free from direction and
1076 control by the lessor.

1077 (p) Service performed by a "direct seller" if:

1078 (i) Such person is engaged in the trade or
1079 business of selling (or soliciting the sale of) consumer products
1080 to any buyer on a buy-sell basis, a deposit-commission basis, or
1081 any similar basis which the department prescribes by regulations,
1082 for resale (by the buyer or any other person) in the home or
1083 otherwise than in a permanent retail establishment; or such person
1084 is engaged in the trade or business of selling (or soliciting the
1085 sale of) consumer products in the home or otherwise than in a
1086 permanent retail establishment;

1087 (ii) Substantially all the remuneration
1088 (whether or not paid in cash) for the performance of the services
1089 described in item (i) of this subparagraph is directly related to
1090 sales or other output (including the performance of services)
1091 rather than to the number of hours worked; and

1092 (iii) The services performed by the person
1093 are performed pursuant to a written contract between such person
1094 and the person for whom the services are performed and such
1095 contract provides that the person will not be treated as an
1096 employee with respect to such services for federal tax purposes.



1097 J. "Employment office" means a free public employment office
1098 or branch thereof, operated by this state or maintained as a part
1099 of the state controlled system of public employment offices.

1100 K. "Public employment service" means the operation of a
1101 program that offers free placement and referral services to
1102 applicants and employers, including job development.

1103 L. "Fund" means the Unemployment Compensation Fund
1104 established by this chapter, to which all contributions required
1105 and from which all benefits provided under this chapter shall be
1106 paid.

1107 M. "Hospital" means an institution which has been licensed,
1108 certified, or approved by the State Department of Health as a
1109 hospital.

1110 N. "Institution of higher learning," for the purposes of
1111 this section, means an educational institution which:

1112 (1) Admits as regular students only individuals having
1113 a certificate of graduation from a high school, or the recognized
1114 equivalent of such a certificate;

1115 (2) Is legally authorized in this state to provide a
1116 program of education beyond high school;

1117 (3) Provides an educational program for which it awards
1118 a bachelor's or higher degree, or provides a program which is
1119 acceptable for full credit toward such a degree, a program of
1120 postgraduate or postdoctoral studies, or a program of training to



1121 prepare students for gainful employment in a recognized
1122 occupation;

1123 (4) Is a public or other nonprofit institution;

1124 (5) Notwithstanding any of the foregoing provisions of
1125 this subsection, all colleges and universities in this state are
1126 institutions of higher learning for purposes of this section.

1127 O. "Re-employment assistance" means money payments payable
1128 to an individual as provided in this chapter and in accordance
1129 with Section 3304(a)(4) and 3306(h) of the Federal Unemployment
1130 Tax Act and Section 303(a)(5) of the Social Security Act, with
1131 respect to his unemployment through no fault of his own. Wherever
1132 the terms "benefits" or "unemployment benefits" appear in this
1133 chapter, they shall mean re-employment assistance.

1134 P. (1) "State" includes, in addition to the states of the
1135 United States of America, the District of Columbia, Commonwealth
1136 of Puerto Rico and the Virgin Islands.

1137 (2) The term "United States" when used in a
1138 geographical sense includes the states, the District of Columbia,
1139 Commonwealth of Puerto Rico and the Virgin Islands.

1140 (3) The provisions of paragraphs (1) and (2) of
1141 subsection P, as including the Virgin Islands, shall become
1142 effective on the day after the day on which the United States
1143 Secretary of Labor approves for the first time under Section
1144 3304(a) of the Internal Revenue Code of 1954 an unemployment



1145 compensation law submitted to the secretary by the Virgin Islands
1146 for such approval.

1147 Q. "Unemployment."

1148 (1) An individual shall be deemed "unemployed" in any
1149 week during which he performs no services and with respect to
1150 which no wages are payable to him, or in any week of less than
1151 full-time work if the wages payable to him with respect to such
1152 week are less than his weekly benefit amount as computed and
1153 adjusted in Section 71-5-505. The department shall prescribe
1154 regulations applicable to unemployed individuals, making such
1155 distinctions in the procedure as to total unemployment, part-total
1156 unemployment, partial unemployment of individuals attached to
1157 their regular jobs, and other forms of short-time work, as the
1158 department deems necessary.

1159 (2) An individual's week of total unemployment shall be
1160 deemed to commence only after his registration at an employment
1161 office, except as the department may by regulation otherwise
1162 prescribe.

1163 R. (1) "Wages" means all remuneration for personal
1164 services, including commissions and bonuses and the cash value of
1165 all remuneration in any medium other than cash, except that
1166 "wages," for purposes of determining employer's coverage and
1167 payment of contributions for agricultural and domestic service
1168 means cash remuneration only. The reasonable cash value of
1169 remuneration in any medium other than cash shall be estimated and



1170 determined in accordance with rules prescribed by the department;
1171 however, that the term "wages" shall not include:

1172 (a) The amount of any payment made to, or on
1173 behalf of, an employee under a plan or system established by an
1174 employer which makes provision for his employees generally or for
1175 a class or classes of his employees (including any amount paid by
1176 an employer for insurance or annuities, or into a fund, to provide
1177 for any such payment), on account of:

1178 (i) Retirement, or

1179 (ii) Sickness or accident disability, or

1180 (iii) Medical or hospitalization expenses in
1181 connection with sickness or actual disability, or

1182 (iv) Death, provided the employee:

1183 (A) Has not the option to receive,
1184 instead of provision for such death benefit, any part of such
1185 payment or, if such death benefit is insured, any part of the
1186 premiums (or contributions to premiums) paid by his employer, and

1187 (B) Has not the right, under the
1188 provisions of the plan or system or policy of insurance providing
1189 for such death benefit, to assign such benefit or to receive a
1190 cash consideration in lieu of such benefit, either upon his
1191 withdrawal from the plan or system providing for such benefit or
1192 upon termination of such plan or system or policy of insurance or
1193 of his employment with such employer;



1194 (b) Dismissal payments which the employer is not
1195 legally required to make;

1196 (c) Payment by an employer (without deduction from
1197 the remuneration of an employee) of the tax imposed by the
1198 Internal Revenue Code, 26 USCS Section 3101;

1199 (d) From and after January 1, 1992, the amount of
1200 any payment made to or on behalf of an employee for a "cafeteria"
1201 plan, which meets the following requirements:

1202 (i) Qualifies under Section 125 of the
1203 Internal Revenue Code;

1204 (ii) Covers only employees;

1205 (iii) Covers only noncash benefits;

1206 (iv) Does not include deferred compensation
1207 plans.

1208 (2) [Not enacted].

1209 S. "Week" means calendar week or such period of seven (7)
1210 consecutive days as the department may by regulation prescribe.
1211 The department may by regulation prescribe that a week shall be
1212 deemed to be in, within, or during any benefit year which includes
1213 any part of such week.

1214 T. "Insured work" means "employment" for "employers."

1215 U. The term "includes" and "including," when used in a
1216 definition contained in this chapter, shall not be deemed to
1217 exclude other things otherwise within the meaning of the term
1218 defined.



1219 V. "Employee leasing arrangement" means any agreement
1220 between an employee leasing firm and a client, whereby specified
1221 client responsibilities such as payment of wages, reporting of
1222 wages for unemployment insurance purposes, payment of unemployment
1223 insurance contributions and other such administrative duties are
1224 to be performed by an employee leasing firm, on an ongoing basis.

1225 W. "Employee leasing firm" means any entity which provides
1226 specified duties for a client company such as payment of wages,
1227 reporting of wages for unemployment insurance purposes, payment of
1228 unemployment insurance contributions and other administrative
1229 duties, in connection with the client's employees, that are
1230 directed and controlled by the client and that are providing
1231 ongoing services for the client.

1232 X. (1) "Temporary help firm" means an entity which hires
1233 its own employees and provides those employees to other
1234 individuals or organizations to perform some service, to support
1235 or supplement the existing workforce in special situations such as
1236 employee absences, temporary skill shortages, seasonal workloads
1237 and special assignments and projects, with the expectation that
1238 the worker's position will be terminated upon the completion of
1239 the specified task or function.

1240 (2) "Temporary employee" means an employee assigned to
1241 work for the clients of a temporary help firm.

1242 Y. For the purposes of this chapter, the term "notice" shall
1243 include any official communication, statement or other



1244 correspondence required under the administration of this chapter,
1245 and sent by the department through the United States Postal
1246 Service or electronic or digital transfer, via modem or the
1247 Internet.

1248 **SECTION 10.** Section 71-5-19, Mississippi Code of 1972, is
1249 reenacted as follows:

1250 71-5-19. (1) Whoever makes a false statement or
1251 representation knowing it to be false, or knowingly fails to
1252 disclose a material fact, to obtain or increase any benefit or
1253 other payment under this chapter or under an employment security
1254 law of any other state, of the federal government or of a foreign
1255 government, either for himself or for any other person, shall be
1256 punished by a fine of not less than One Hundred Dollars (\$100.00)
1257 nor more than Five Hundred Dollars (\$500.00), or by imprisonment
1258 for not longer than thirty (30) days, or by both such fine and
1259 imprisonment; and each such false statement or representation or
1260 failure to disclose a material fact shall constitute a separate
1261 offense.

1262 (2) Any employing unit, any officer or agent of an employing
1263 unit or any other person who makes a false statement or
1264 representation knowing it to be false, or who knowingly fails to
1265 disclose a material fact, to prevent or reduce the payment of
1266 benefits to any individual entitled thereto, or to avoid becoming
1267 or remaining subject hereto, or to avoid or reduce any
1268 contribution or other payment required from any employing unit



1269 under this chapter, or who willfully fails or refuses to make any
1270 such contribution or other payment, or to furnish any reports
1271 required hereunder or to produce or permit the inspection or
1272 copying of records as required hereunder, shall be punished by a
1273 fine of not less than One Hundred Dollars (\$100.00) nor more than
1274 One Thousand Dollars (\$1,000.00), or by imprisonment for not
1275 longer than sixty (60) days, or by both such fine and
1276 imprisonment; and each such false statement, or representation, or
1277 failure to disclose a material fact, and each day of such failure
1278 or refusal shall constitute a separate offense. In lieu of such
1279 fine and imprisonment, the employing unit or representative, or
1280 both employing unit and representative, if such representative is
1281 an employing unit in this state and is found to be a party to such
1282 violation, shall not be eligible for a contributions rate of less
1283 than five and four-tenths percent (5.4%) for the tax year in which
1284 such violation is discovered by the department and for the next
1285 two (2) succeeding tax years.

1286 (3) Any person who shall willfully violate any provision of
1287 this chapter or any other rule or regulation thereunder, the
1288 violation of which is made unlawful or the observance of which is
1289 required under the terms of this chapter and for which a penalty
1290 is neither prescribed herein nor provided by any other applicable
1291 statute, shall be punished by a fine of not less than One Hundred
1292 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),
1293 or by imprisonment for not longer than sixty (60) days, or by both



1294 such fine and imprisonment; and each day such violation continues
1295 shall be deemed to be a separate offense. In lieu of such fine
1296 and imprisonment, the employing unit or representative, or both
1297 employing unit and representative, if such representative is an
1298 employing unit in this state and is found to be a party to such
1299 violation, shall not be eligible for a contributions rate of less
1300 than five and four-tenths percent (5.4%) for the tax year in which
1301 the violation is discovered by the department and for the next two
1302 (2) succeeding tax years.

1303 (4) (a) An overpayment of benefits occurs when a person
1304 receives benefits under this chapter:

1305 (i) While any conditions for the receipt of
1306 benefits imposed by this chapter were not fulfilled in his case;

1307 (ii) While he was disqualified from receiving
1308 benefits; or

1309 (iii) When such person receives benefits and is
1310 later found to be disqualified or ineligible for any reason,
1311 including, but not limited to, a redetermination or reversal by
1312 the department or the courts of a previous decision to award such
1313 person benefits.

1314 (b) Any person receiving an overpayment shall, in the
1315 discretion of the department, be liable to have such sum deducted
1316 from any future benefits payable to him under this chapter and
1317 shall be liable to repay to the department for the Unemployment
1318 Compensation Fund a sum equal to the overpayment amount so



1319 received by him; and such sum shall be collectible in the manner
1320 provided in Sections 71-5-363 through 71-5-383 for the collection
1321 of past-due contributions. In addition to Sections 71-5-363
1322 through 71-5-383, the following shall apply to cases involving
1323 damages for overpaid unemployment benefits which have been
1324 obtained and/or received through fraud as defined by department
1325 regulations and laws governing the department. By definition,
1326 fraud can include failure to report earnings while filing for
1327 unemployment benefits. In the event of fraud, a penalty of twenty
1328 percent (20%) of the amount of the overpayment shall be assessed.
1329 Three-fourths (3/4) of that twenty percent (20%) penalty shall be
1330 deposited into the unemployment trust fund and shall be used only
1331 for the purpose of payment of unemployment benefits. The
1332 remainder of that twenty percent (20%) penalty shall be deposited
1333 into the Special Employment Security Administrative Fund.
1334 Interest on the overpayment balance shall accrue at a rate of one
1335 percent (1%) per month on the unpaid balance until repaid and
1336 shall be deposited into the Special Employment Security
1337 Administration Fund. All interest, penalties and damages
1338 deposited into the Special Employment Security Administration Fund
1339 shall be used by the department for administration of the
1340 Mississippi Department of Employment Security.

1341 (c) Any such judgment against such person for
1342 collection of such overpayment shall be in the form of a
1343 seven-year renewable lien. Unless action be brought thereon prior



1344 to expiration of the lien, the department must refile the notice
1345 of the lien prior to its expiration at the end of seven (7) years.
1346 There shall be no limit upon the number of times the department
1347 may refile notices of liens for collection of overpayments.

1348 (d) All warrants issued by the department for the
1349 collection of any unemployment tax or for an overpayment of
1350 benefits imposed by statute and collected by the department shall
1351 be used to levy on salaries, compensation or other monies due the
1352 delinquent employer or claimant. No such warrant shall be issued
1353 until after the delinquent employer or claimant has exhausted all
1354 appeal rights associated with the debt. The warrants shall be
1355 served by mail or by delivery by an agent of the department on the
1356 person or entity responsible or liable for the payment of the
1357 monies due the delinquent employer or claimant. Once served, the
1358 employer or other person owing compensation due the delinquent
1359 employer or claimant shall pay the monies over to the department
1360 in complete or partial satisfaction of the liability. An answer
1361 shall be made within thirty (30) days after service of the warrant
1362 in the form and manner determined satisfactory by the department.
1363 Failure to pay the money over to the department as required by
1364 this section shall result in the served party being personally
1365 liable for the full amount of the monies owed and the levy and
1366 collection process may be issued against the party in the same
1367 manner as other debts owed to the department. Except as otherwise
1368 provided by this section, the answer, the amount payable under the



1369 warrant and the obligation of the payor to continue payment shall
1370 be governed by the garnishment laws of this state but shall be
1371 payable to the department.

1372 (5) The department, by agreement with another state or the
1373 United States, as provided under Section 303(g) of the Social
1374 Security Act, may recover any overpayment of benefits paid to any
1375 individual under the laws of this state or of another state or
1376 under an unemployment benefit program of the United States. Any
1377 overpayments subject to this subsection may be deducted from any
1378 future benefits payable to the individual under the laws of this
1379 state or of another state or under an unemployment program of the
1380 United States.

1381 **SECTION 11.** Section 71-5-101, Mississippi Code of 1972, is
1382 reenacted as follows:

1383 71-5-101. There is established the Mississippi Department of
1384 Employment Security, Office of the Governor. The Department of
1385 Employment Security shall be the Mississippi Employment Security
1386 Commission and shall retain all powers and duties as granted to
1387 the Mississippi Employment Security Commission. Wherever the term
1388 "Employment Security Commission" appears in any law, the same
1389 shall mean the Mississippi Department of Employment Security,
1390 Office of the Governor. The Executive Director of the Department
1391 of Employment Security may assign to the appropriate offices such
1392 powers and duties deemed appropriate to carry out the lawful
1393 functions of the department.



1394 **SECTION 12.** Section 71-5-107, Mississippi Code of 1972, is
1395 reenacted as follows:

1396 71-5-107. The department shall administer this chapter
1397 through a full-time salaried executive director, to be appointed
1398 by the Governor, with the advice and consent of the Senate. He
1399 shall be responsible for the administration of this chapter under
1400 authority delegated to him by the Governor.

1401 **SECTION 13.** Section 71-5-109, Mississippi Code of 1972, is
1402 reenacted as follows:

1403 71-5-109. There is created a Board of Review consisting of
1404 three (3) members to be appointed by the executive director. The
1405 executive director shall designate one (1) member of the Board of
1406 Review as chairman. Each member shall be paid a salary or per
1407 diem at a rate to be determined by the executive director, and
1408 such expenses as may be allowed by the executive director. All
1409 salaries, per diem and expenses of the Board of Review shall be
1410 paid from the Employment Security Administration Fund.

1411 **SECTION 14.** Section 71-5-111, Mississippi Code of 1972, is
1412 reenacted as follows:

1413 71-5-111. There is created in the State Treasury a special
1414 fund to be known as the Employment Security Administration Fund.
1415 All monies which are deposited or paid into this fund are
1416 appropriated and made available to the department. All monies in
1417 this fund shall be expended solely for the purpose of defraying
1418 the cost of administration of this chapter, and for no other



1419 purpose whatsoever. The fund shall consist of all monies
1420 appropriated by this state and all monies received from the United
1421 States of America, or any agency thereof, or from any other source
1422 for such purpose. Notwithstanding any provision of this section,
1423 all monies requisitioned and deposited in this fund pursuant to
1424 Section 71-5-457 shall remain part of the Employment Security
1425 Administration Fund and shall be used only in accordance with the
1426 conditions specified in that section. All monies in this fund
1427 shall be deposited, administered and disbursed in the same manner
1428 and under the same conditions and requirements as is provided by
1429 law for other special funds in the State Treasury. The State
1430 Treasurer shall be liable on his official bond for the faithful
1431 performance of his duties in connection with the Employment
1432 Security Administration Fund under this chapter.

1433 **SECTION 15.** Section 71-5-112, Mississippi Code of 1972, is
1434 reenacted as follows:

1435 71-5-112. All funds received by the Mississippi Department
1436 of Employment Security shall clear through the State Treasury as
1437 provided and required by Sections 71-5-111 and 71-5-453. All
1438 expenditures from the administration fund of the department
1439 authorized by Section 71-5-111 shall be expended only pursuant to
1440 appropriation approved by the Legislature and as provided by law.

1441 **SECTION 16.** Section 71-5-113, Mississippi Code of 1972, is
1442 reenacted as follows:



1443 71-5-113. All monies received from the Social Security Board
1444 or its successors for the administration of this chapter shall be
1445 expended solely for the purposes and in the amounts found
1446 necessary by the Social Security Board or its successors for the
1447 proper and efficient administration of this chapter.

1448 It shall be the duty of the department to take appropriate
1449 action with respect to the replacement, within a reasonable time,
1450 of any monies received from the Social Security Board, or its
1451 successors, for the administration of this chapter, and monies
1452 used to match grants pursuant to the provisions of the
1453 Wagner-Peyser Act, which the board, or its successors, find,
1454 because of any action or contingency, have been lost or have been
1455 expended for purposes other than, or in amounts in excess of those
1456 found necessary by the Social Security Board, or its successors,
1457 for the proper administration of this chapter. Funds which have
1458 been expended by the department or its agents in accordance with
1459 the budget approved by the Social Security Board, or its
1460 successors, or in accordance with the general standards and
1461 limitations promulgated by the Social Security Board, or its
1462 successors, prior to such expenditure (where proposed expenditures
1463 have not been specifically disapproved by the Social Security
1464 Board, or its successors), shall not be deemed to require
1465 replacement. To effectuate the purposes of this paragraph, it
1466 shall be the duty of the department to take such action to
1467 safeguard the expenditure of the funds referred to herein as it



1468 deems necessary. In the event of a loss of such funds or an
1469 improper expenditure thereof as herein defined, it shall be the
1470 duty of the department to notify the Governor of any such loss or
1471 improper expenditure and submit to him a request for an
1472 appropriation in the amount thereof. The Governor shall transmit
1473 to the next regular session of the Legislature following such
1474 notification, the department's request for an appropriation in an
1475 amount necessary to replace funds which have been lost or
1476 improperly expended as defined above. Such request of the
1477 department for an appropriation shall not be subject to the
1478 provisions of Sections 27-103-101 through 27-103-139. The
1479 Legislature recognizes its obligation to replace such funds as may
1480 be necessary and shall make necessary appropriations in accordance
1481 with such requests.

1482 **SECTION 17.** Section 71-5-114, Mississippi Code of 1972, is
1483 reenacted as follows:

1484 71-5-114. There is created in the State Treasury a special
1485 fund, to be known as the "Special Employment Security
1486 Administration Fund," into which shall be deposited or transferred
1487 all interest, penalties and damages collected on and after July 1,
1488 1982, pursuant to Sections 71-5-363 through 71-5-379 and all
1489 interest and penalties required to be deposited into the fund
1490 pursuant to Section 71-5-19(4)(b). Interest, penalties and
1491 damages collected on delinquent payments deposited during any
1492 calendar quarter in the clearing account in the Unemployment Trust



1493 Fund shall, as soon as practicable after the close of such
1494 calendar quarter, be transferred to the Special Employment
1495 Security Administration Fund. All monies in this fund shall be
1496 deposited, administered and disbursed in the same manner and under
1497 the same conditions and requirements as is provided by law for
1498 other special funds in the State Treasury. The State Treasurer
1499 shall be liable on his official bond for the faithful performance
1500 of his duties in connection with the Special Employment Security
1501 Administration Fund under this chapter. Those monies may be
1502 expended for any programs for which the department has
1503 administrative responsibility but shall not be expended or made
1504 available for expenditure in any manner which would permit their
1505 substitution for (or permit a corresponding reduction in) federal
1506 funds which would, in the absence of those monies, be available to
1507 finance expenditures for the administration of the state
1508 unemployment compensation and employment service laws or any other
1509 laws directing the administration of any programs for which the
1510 department has the administrative responsibility. Nothing in this
1511 section shall prevent those monies in this fund from being used as
1512 a revolving fund to cover expenditures necessary and proper under
1513 the law for which federal funds have been duly requested but not
1514 yet received, subject to the charging of such expenditures against
1515 such funds when necessary. The monies in this fund may be used by
1516 the department for the payment of costs of administration of the
1517 employment security laws of this state which are found not to be



1518 or not to have been properly and validly chargeable against funds
1519 obtained from federal sources. All monies in this Special
1520 Employment Security Administration Fund shall be continuously
1521 available to the department for expenditure in accordance with the
1522 provisions of this chapter, and shall not lapse at any time. The
1523 monies in this fund are specifically made available to replace, as
1524 contemplated by Section 71-5-113, expenditures from the Employment
1525 Security Administration Fund established by Section 71-5-111,
1526 which have been found, because of any action or contingency, to
1527 have been lost or improperly expended.

1528 The department, whenever it is of the opinion that the money
1529 in the Special Employment Security Administration Fund is more
1530 than ample to pay for all foreseeable needs for which such special
1531 fund is set up, may, by written order, order the transfer
1532 therefrom to the Unemployment Compensation Fund of such amount of
1533 money in the Special Employment Security Administration Fund as it
1534 deems proper, and the same shall thereupon be immediately
1535 transferred to the Unemployment Compensation Fund.

1536 **SECTION 18.** Section 71-5-115, Mississippi Code of 1972, is
1537 reenacted as follows:

1538 71-5-115. It shall be the duty of the executive director to
1539 administer this chapter; and the executive director shall have the
1540 power and authority to adopt, amend or rescind such rules and
1541 regulations, to employ such persons, make such expenditures,
1542 require such reports, make such investigations, and take such



1543 other action as he deems necessary or suitable to that end. Such
1544 rules and regulations shall be effective upon publication in the
1545 manner, not inconsistent with the provisions of this chapter,
1546 which the executive director shall prescribe. The executive
1547 director shall determine the department's own organization and
1548 methods of procedure in accordance with the provisions of this
1549 chapter, and shall have an official seal which shall be judicially
1550 noticed. Not later than the first day of February in each year,
1551 the executive director shall submit to the Governor a report
1552 covering the administration and operation of this chapter during
1553 the preceding fiscal year and shall make such recommendations for
1554 amendments to this chapter as the executive director deems proper.
1555 Whenever the executive director believes that a change in
1556 contribution or benefit rates will become necessary to protect the
1557 solvency of the fund, he shall promptly so inform the Governor and
1558 the Legislature, and make recommendations with respect thereto.

1559 **SECTION 19.** Section 71-5-116, Mississippi Code of 1972, is
1560 reenacted as follows:

1561 71-5-116. The Mississippi Department of Employment Security
1562 will develop an annual report which tracks data received from
1563 contractors. Contractors will cooperate with the Mississippi
1564 Department of Employment Security to accumulate relevant data.
1565 Collected data and reports are intended solely to allow the
1566 Mississippi Department of Employment Security to improve workforce



1567 training programs, tailoring trainings to employer needs and
1568 hiring trends for in-demand jobs in Mississippi.

1569 **SECTION 20.** Section 71-5-117, Mississippi Code of 1972, is
1570 reenacted as follows:

1571 71-5-117. General rules may be adopted, amended or rescinded
1572 by the executive director only after public hearing or opportunity
1573 to be heard thereon, of which proper notice has been given.
1574 General rules shall become effective ten (10) days after filing
1575 with the Secretary of State and publication in one or more
1576 newspapers of general circulation in this state. Regulations may
1577 be adopted, amended or rescinded by the executive director and
1578 shall become effective in the manner and at the time prescribed by
1579 the executive director.

1580 **SECTION 21.** Section 71-5-119, Mississippi Code of 1972, is
1581 reenacted as follows:

1582 71-5-119. The department shall cause to be available for
1583 distribution to the public the text of this chapter, its
1584 regulations and general rules, its reports to the Governor, and
1585 any other material it deems relevant and suitable, and shall
1586 furnish the same to any person upon application therefor.

1587 **SECTION 22.** Section 71-5-121, Mississippi Code of 1972, is
1588 reenacted as follows:

1589 71-5-121. Subject to other provisions of this chapter, the
1590 executive director is authorized to appoint, fix the compensation,
1591 and prescribe the duties and powers of such officers, accountants,



1592 attorneys, experts and other persons as may be necessary in the
1593 performance of department duties; however, all personnel who were
1594 former members of the Armed Forces of the United States of America
1595 shall be given credit regardless of rate, rank or commission. All
1596 positions shall be filled by persons selected and appointed on a
1597 nonpartisan merit basis, in accordance with Section 25-9-101 et
1598 seq., that provides for a state service personnel system. The
1599 executive director shall not employ any person who is an officer
1600 or committee member of any political party organization. The
1601 executive director may delegate to any such person so appointed
1602 such power and authority as he deems reasonable and proper for the
1603 effective administration of this chapter, and may in his
1604 discretion bond any person handling monies or signing checks
1605 hereunder. The veteran status of an individual shall be
1606 considered and preference given in accordance with the provisions
1607 of the State Personnel Board.

1608 The department and its employees are exempt from Sections
1609 25-15-101 and 25-15-103.

1610 The department may use federal granted funds to provide such
1611 group health, life, accident and hospitalization insurance for its
1612 employees as may be agreed upon by the department and the federal
1613 granting authorities.

1614 The department shall adopt a "layoff formula" to be used
1615 wherever it is determined that, because of reduced workload,



1616 budget reductions or in order to effect a more economical
1617 operation, a reduction in force shall occur in any group.

1618 In establishing this formula, the department shall give
1619 effect to the principle of seniority and shall provide that
1620 seniority points may be added for disabled veterans and veterans,
1621 with due regard to the efficiency of the service. Any such layoff
1622 formula shall be implemented according to the policies, rules and
1623 regulations of the State Personnel Board.

1624 **SECTION 23.** Section 71-5-123, Mississippi Code of 1972, is
1625 reenacted as follows:

1626 71-5-123. The executive director shall retain all powers and
1627 duties as granted to the state advisory council appointed by the
1628 former Employment Security Commission. The executive director may
1629 appoint local advisory councils, composed in each case of an equal
1630 number of employer representatives and employee representatives
1631 who may fairly be regarded as representative because of their
1632 vocation, employment or affiliations, and of such members
1633 representing the general public as the executive director may
1634 designate. Such councils shall aid the department in formulating
1635 policies and discussing problems related to the administration of
1636 this chapter and in assuring impartiality and freedom from
1637 political influence in the solution of such problems. Members of
1638 the advisory councils shall receive a per diem in accordance with
1639 Section 25-3-69 for attendance upon meetings of the council, and
1640 shall be reimbursed for actual and necessary traveling expenses.



The per diem and expenses herein authorized shall be paid from the
Employment Security Administration Fund.

SECTION 24. Section 71-5-125, Mississippi Code of 1972, is
reenacted as follows:

71-5-125. The department shall take all appropriate steps to
reduce and prevent unemployment; to encourage and assist in the
adoption of practical methods of vocational training, retraining
and vocational guidance; to investigate, recommend, advise and
assist in the establishment and operation, by municipalities,
counties, school districts and the state, of reserves for public
works to be used in times of business depression and unemployment;
to promote the reemployment of unemployed workers throughout the
state in every other way that may be feasible; and to these ends
to carry on and publish the results of investigation and research
studies.

SECTION 25. Section 71-5-127, Mississippi Code of 1972, is
reenacted as follows:

71-5-127. (1) Any information or records concerning an
individual or employing unit obtained by the department pursuant
to the administration of this chapter or any other federally
funded programs for which the department has responsibility shall
be private and confidential, except as otherwise provided in this
article or by regulation. Information or records may be released
by the department when the release is required by the federal



government in connection with, or as a condition of funding for, a program being administered by the department.

(2) Each employing unit shall keep true and accurate work records, containing such information as the department may prescribe. Such records shall be open to inspection and be subject to being copied by the department or its authorized representatives at any reasonable time and as often as may be necessary. The department, Board of Review and any referee may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which they or any of them deem necessary for the effective administration of this chapter. Information, statements, transcriptions of proceedings, transcriptions of recordings, electronic recordings, letters, memoranda, and other documents and reports thus obtained or obtained from any individual pursuant to the administration of this chapter shall, except to the extent necessary for the proper administration of this chapter, be held confidential and shall not be published or be opened to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity.

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



1690 (4) Any employee or member of the Board of Review or any
1691 employee of the department who violates any provisions of this
1692 section shall be fined not less than Twenty Dollars (\$20.00) nor
1693 more than Two Hundred Dollars (\$200.00), or imprisoned for not
1694 longer than ninety (90) days, or both.

1695 (5) The department may make the state's records relating to
1696 the administration of this chapter available to the Railroad
1697 Retirement Board, and may furnish the Railroad Retirement Board,
1698 at the expense of such board, such copies thereof as the Railroad
1699 Retirement Board deems necessary for its purposes. The department
1700 may afford reasonable cooperation with every agency of the United
1701 States charged with the administration of any unemployment
1702 insurance law.

1703 **SECTION 26.** Section 71-5-129, Mississippi Code of 1972, is
1704 reenacted as follows:

1705 71-5-129. Records hereinafter designated, which are found by
1706 the department to be useless, may be disposed of in accordance
1707 with approved records control schedules.

1708 (a) Records which have been preserved by it for not
1709 less than three (3) years:

1710 (1) Initial claims for benefits,
1711 (2) Continued claims for benefits,
1712 (3) Correspondence and master index cards in
1713 connection with such claims for benefits, and



1714 (4) Individual wage slips filed by employers
1715 subject to the provisions of the Unemployment Compensation Law.

1716 (b) Records which have been preserved by it for not
1717 less than six (6) months after becoming inactive:

- 1718 (1) Work applications,
- 1719 (2) Cross-index cards for work applications,
- 1720 (3) Test records,
- 1721 (4) Employer records,
- 1722 (5) Work orders,
- 1723 (6) Clearance records,
- 1724 (7) Counseling records,
- 1725 (8) Farm placement records, and
- 1726 (9) Correspondence relating to all such records.

1727 Nothing herein contained shall be construed as authorizing
1728 the destruction or disposal of basic fiscal records reflecting the
1729 financial operations of the department and no records may be
1730 destroyed without the approval of the Director of the Department
1731 of Archives and History.

1732 **SECTION 27.** Section 71-5-131, Mississippi Code of 1972, is
1733 reenacted as follows:

1734 71-5-131. All letters, reports, communications, or any other
1735 matters, either oral or written, from the employer or employee to
1736 each other or to the department or any of its agents,
1737 representatives or employees, which shall have been written, sent,
1738 delivered or made in connection with the requirements and



1739 administration of this chapter shall be absolutely privileged and
1740 shall not be made the subject matter or basis of any suit for
1741 slander or libel in any court of the State of Mississippi unless
1742 the same be false in fact and maliciously written, sent, delivered
1743 or made for the purpose of causing a denial of benefits under this
1744 chapter.

1745 **SECTION 28.** Section 71-5-133, Mississippi Code of 1972, is
1746 reenacted as follows:

1747 71-5-133. In any case where an employing unit or any
1748 officer, member or agent thereof, or any other person having
1749 possession of the records thereof, shall fail or refuse upon
1750 demand by the department or its duly appointed agents to produce
1751 or permit the examination or copying of any book, paper, account,
1752 record or other data pertaining to payrolls or employment or
1753 ownership of interests or stock in any employing unit, or bearing
1754 upon the correctness of any report, or for the purpose of making a
1755 report as required by this chapter where none has been made, then
1756 and in that event the department or its duly authorized agents
1757 may, by the issuance of a subpoena, require the attendance of such
1758 employing unit or any officer, member or agent thereof, or any
1759 other person having possession of the records thereof, and take
1760 testimony with respect to any such matter and may require any such
1761 person to produce any books or records specified in such subpoena.
1762 The department or its authorized agents at any such hearing shall
1763 have power to administer oaths to any such person or persons.



1764 When any person called as a witness by a subpoena signed by the
1765 department or its agents and served upon him by the sheriff of a
1766 county of which such person is a resident, or wherein is located
1767 the principal office of such employing unit or wherein such
1768 records are located or kept, shall fail to obey such subpoena to
1769 appear before the department or its authorized agent, or shall
1770 refuse to testify or to answer any questions or to produce any
1771 book, record, paper or other data when required to do so, such
1772 failure or refusal shall be reported to the Attorney General, who
1773 shall thereupon institute proceedings by the filing of a petition
1774 in the name of the State of Mississippi, on the relation of the
1775 department, in the circuit court or other court of competent
1776 jurisdiction of the county where such witness resides, or wherein
1777 such records are located or kept, to compel the obedience of such
1778 witness. Such petition shall set forth the facts and
1779 circumstances of the demand for and refusal or failure to permit
1780 the examination or copying of such records, or the failure or
1781 refusal of such witness to testify in answer to such subpoena or
1782 to produce the records so required by such subpoena. Such court,
1783 upon the filing and docketing of such petition, shall thereupon
1784 promptly issue an order to the defendants named in the petition to
1785 produce forthwith in such court, or at a place in such county
1786 designated in such order for the examination or copying by the
1787 department or its duly appointed agents, the records, books or
1788 documents so described, and to testify concerning matters



1789 described in such petition. Unless such defendants to such
1790 petition shall appear in the court upon a day specified in such
1791 order, which day shall be not more than ten (10) days after the
1792 date of issuance of such order, and offer, under oath, good and
1793 sufficient reasons why such examination or copying should not be
1794 permitted, or why such subpoena should not be obeyed, such court
1795 shall thereupon deliver to the department or its agents, for
1796 examination or copying, the records, books and documents so
1797 described in the petition and so produced in such court, and shall
1798 order the defendants to appear in answer to the subpoena of the
1799 department or its agents, and to testify concerning matters
1800 inquired about by the department. Any employing unit or any
1801 officer, member or agent thereof, or any other person having
1802 possession of the records thereof, who shall willfully disobey
1803 such order of the court after the same shall have been served upon
1804 him shall be guilty of indirect contempt of such court from which
1805 such order shall have issued, and may be adjudged in contempt of
1806 the court and punished therefor as provided by law.

1807 **SECTION 29.** Section 71-5-135, Mississippi Code of 1972, is
1808 reenacted as follows:

1809 71-5-135. If any employing unit fails to make any report
1810 required by this chapter, the department or its authorized agents
1811 shall give notice to such employing unit to make and file such
1812 report within fifteen (15) days from the date of such notice. If
1813 such employing unit, by its proper members, officers or agents,



1814 shall fail or refuse to make and file such reports within such
1815 time, then and in that event such report shall be made by the
1816 department or its authorized agents from the best information
1817 available, and the amount of contributions due shall be computed
1818 thereon; and such report shall be prima facie correct for the
1819 purposes of this chapter.

1820 **SECTION 30.** Section 71-5-137, Mississippi Code of 1972, is
1821 reenacted as follows:

1822 71-5-137. In the discharge of the duties imposed by this
1823 chapter, the department, any referee, the members of the Board of
1824 Review, and any duly authorized representative of any of them
1825 shall have power to administer oaths and affirmations, to take
1826 depositions, certify to official acts, and issue subpoenas to
1827 compel the attendance of witnesses and the production of books,
1828 papers, correspondence, memoranda and other records deemed
1829 necessary as evidence in connection with a disputed claim or the
1830 administration of this chapter.

1831 **SECTION 31.** Section 71-5-139, Mississippi Code of 1972, is
1832 reenacted as follows:

1833 71-5-139. In case of contumacy or refusal to obey a subpoena
1834 issued to any person, any court in this state within the
1835 jurisdiction of which the inquiry is carried on, or within the
1836 jurisdiction of which the person guilty of contumacy or refusal to
1837 obey is found or resides or transacts business, upon application
1838 by the department, the Board of Review, any referee, or any duly



1839 authorized representative of any of them, shall have jurisdiction
1840 to issue to such person an order requiring such person to appear
1841 before the department, the Board of Review, any referee, or any
1842 duly authorized representative of any of them, there to produce
1843 evidence if so ordered or there to give testimony touching the
1844 matter under investigation or in question. Any failure to obey
1845 such order of the court may be punished by the court as a contempt
1846 thereof. Any person who shall, without just cause, fail or refuse
1847 to attend and testify or to answer any lawful inquiry or to
1848 produce books, papers, correspondence, memoranda and other records
1849 if it is in his power so to do, in obedience to a subpoena of the
1850 department, the Board of Review, any referee, or any duly
1851 authorized representative of any of them, shall be punished by a
1852 fine of not more than Two Hundred Dollars (\$200.00), or by
1853 imprisonment for not longer than sixty (60) days, or by both such
1854 fine and imprisonment; and each day such violation continues shall
1855 be deemed to be a separate offense.

1856 **SECTION 32.** Section 71-5-141, Mississippi Code of 1972, is
1857 reenacted as follows:

1858 71-5-141. No person shall be excused from attending and
1859 testifying or from producing books, papers, correspondence,
1860 memoranda and other records before the department, the Board of
1861 Review, any referee, or any duly authorized representative of any
1862 of them, or in obedience to the subpoena of any of them in any
1863 cause or proceeding before the department, the Board of Review or



1864 an appeal tribunal, on the ground that the testimony or evidence,
1865 documentary or otherwise, required of him may tend to incriminate
1866 him or subject him to a penalty or forfeiture; but no individual
1867 shall be prosecuted or subjected to any penalty or forfeiture for
1868 or on account of any transaction, matter or thing concerning which
1869 he is compelled, after having claimed his privilege against
1870 self-incrimination, to testify or produce evidence, documentary or
1871 otherwise, except that such individual so testifying shall not be
1872 exempt from prosecution and punishment for perjury committed in so
1873 testifying.

1874 **SECTION 33.** Section 71-5-143, Mississippi Code of 1972, is
1875 reenacted as follows:

1876 71-5-143. In the administration of this chapter, the
1877 department shall cooperate, to the fullest extent consistent with
1878 the provisions of this chapter, with the Social Security Board
1879 created by the Social Security Act, approved August 14, 1935, as
1880 amended; shall make such reports in such form and containing such
1881 information as the Social Security Board may from time to time
1882 require, and shall comply with such provisions as the Social
1883 Security Board may from time to time find necessary to assure the
1884 correctness and verification of such reports; and shall comply
1885 with the reasonable, valid and lawful regulations prescribed by
1886 the Social Security Board pursuant to and under the authority of
1887 the Social Security Act, governing the expenditures of such sums
1888 as may be allotted and paid to this state under Title III of the



1889 Social Security Act, as amended, for the purpose of assisting in
1890 the administration of this chapter.

1891 Upon request therefor, the department shall furnish to any
1892 agency of the United States charged with the administration of
1893 public works, or assistance through public employment, the name,
1894 address, ordinary occupation and employment status of each
1895 recipient of benefits, and such recipient's rights to further
1896 benefits under this chapter.

1897 **SECTION 34.** Section 71-5-201, Mississippi Code of 1972, is
1898 reenacted as follows:

1899 71-5-201. The Mississippi State Employment Service is
1900 established in the Mississippi Department of Employment Security,
1901 Office of the Governor. The department, in the conduct of such
1902 service, shall establish and maintain free public employment
1903 offices in such number and in such places as may be necessary for
1904 the proper administration of this article and for the purpose of
1905 performing such functions as are within the purview of the act of
1906 Congress entitled "An act to provide for the establishment of a
1907 national employment system and for cooperation with the states in
1908 the promotion of such system, and for other purposes" (29 USCS
1909 Section 49 et seq.). Any existing free public employment offices
1910 maintained by the state but not heretofore under the jurisdiction
1911 of the department shall be transferred to the jurisdiction of the
1912 department, and upon such transfer all duties and powers conferred
1913 upon any other department, agency or officers of this state



relating to the establishment, maintenance and operation of free public employment offices shall be vested in the department. The Mississippi State Employment Service shall be administered by the department, which is charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of that act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of that act of Congress, as amended, are accepted by this state, in conformity with 29 USCS Section 49c, and this state will observe and comply with the requirements thereof. The department is designated and constituted the agency of this state for the purposes of that act. The department may cooperate with or enter into agreements with the Railroad Retirement Board or veteran's organization with respect to the establishment, maintenance and use of free employment service facilities.

SECTION 35. Section 71-5-357, Mississippi Code of 1972, is reenacted as follows:

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



1938 1954 which is exempt from income tax under Section 501(a) of such
1939 code (26 USCS Section 501).

1940 (a) Any nonprofit organization which, under Section
1941 71-5-11, subsection H(3), is or becomes subject to this chapter
1942 shall pay contributions under the provisions of Sections 71-5-351
1943 through 71-5-355 unless it elects, in accordance with this
1944 paragraph, to pay to the department for the unemployment fund an
1945 amount equal to the amount of regular benefits and one-half (1/2)
1946 of the extended benefits paid, that is attributable to service in
1947 the employ of such nonprofit organization, to individuals for
1948 weeks of unemployment which begin during the effective period of
1949 such election.

1950 (i) Any nonprofit organization which becomes
1951 subject to this chapter may elect to become liable for payments in
1952 lieu of contributions for a period of not less than twelve (12)
1953 months, beginning with the date on which such subjectivity begins,
1954 by filing a written notice of its election with the department not
1955 later than thirty (30) days immediately following the date of the
1956 determination of such subjectivity.

1957 (ii) Any nonprofit organization which makes an
1958 election in accordance with subparagraph (i) of this paragraph
1959 will continue to be liable for payments in lieu of contributions
1960 unless it files with the department a written termination notice
1961 not later than thirty (30) days prior to the beginning of the tax
1962 year for which such termination shall first be effective.



1963 (iii) Any nonprofit organization which has been
1964 paying contributions under this chapter may change to a
1965 reimbursable basis by filing with the department, not later than
1966 thirty (30) days prior to the beginning of any tax year, a written
1967 notice of election to become liable for payments in lieu of
1968 contributions. Such election shall not be terminable by the
1969 organization for that and the next tax year.

1970 (iv) The department may for good cause extend the
1971 period within which a notice of election or a notice of
1972 termination must be filed, and may permit an election to be
1973 retroactive.

1974 (v) The department, in accordance with such
1975 regulations as it may prescribe, shall notify each nonprofit
1976 organization of any determination which it may make of its status
1977 as an employer, of the effective date of any election which it
1978 makes and of any termination of such election. Such
1979 determinations shall be subject to reconsideration, appeal and
1980 review in accordance with the provisions of Sections 71-5-351
1981 through 71-5-355.

1982 (b) Payments in lieu of contributions shall be made in
1983 accordance with the provisions of subparagraph (i) of this
1984 paragraph.

1985 (i) At the end of each calendar quarter, or at the
1986 end of any other period as determined by the department, the
1987 department shall bill each nonprofit organization (or group of



such organizations) which has elected to make payments in lieu of contributions, for an amount equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

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

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

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

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



2013 deductible, in whole or in part, from the remuneration of
2014 individuals in the employ of the organization.

2015 (iv) Payments due by employers who elect to
2016 reimburse the fund in lieu of contributions as provided in this
2017 paragraph may not be noncharged under any condition. The
2018 reimbursement must be on a dollar-for-dollar basis (One Dollar
2019 (\$1.00) reimbursement for each dollar paid in benefits) in every
2020 case, so that the trust fund shall be reimbursed in full, such
2021 reimbursement to include, but not be limited to, benefits or
2022 payments erroneously or incorrectly paid, or paid as a result of a
2023 determination of eligibility which is subsequently reversed, or
2024 paid as a result of claimant fraud. However, political
2025 subdivisions who are reimbursing employers may elect to pay to the
2026 fund an amount equal to five-tenths percent (.5%) through December
2027 31, 2010, and shall pay twenty-five one-hundredths percent (.25%)
2028 thereafter of the taxable wages paid during the calendar year with
2029 respect to employment, and those employers who so elect shall be
2030 relieved of liability for reimbursement of benefits paid under the
2031 same conditions that benefits are not charged to the
2032 experience-rating record of a contributing employer as provided in
2033 Section 71-5-355(2) (b) (ii) other than Clause 5 thereof. Benefits
2034 paid in such circumstances for which reimbursing employers are
2035 relieved of liability for reimbursement shall not be considered
2036 attributable to service in the employment of such reimbursing
2037 employer.



2038 (v) The amount due specified in any bill from the
2039 department shall be conclusive on the organization unless, not
2040 later than fifteen (15) days after the bill was delivered to it,
2041 the organization files an application for redetermination by the
2042 department, setting forth the grounds for such application or
2043 appeal. The department shall promptly review and reconsider the
2044 amount due specified in the bill and shall thereafter issue a
2045 redetermination in any case in which such application for
2046 redetermination has been filed. Any such redetermination shall be
2047 conclusive on the organization unless, not later than fifteen (15)
2048 days after the redetermination was delivered to it, the
2049 organization files an appeal to the Circuit Court of the First
2050 Judicial District of Hinds County, Mississippi, in accordance with
2051 the provisions of law with respect to review of civil causes by
2052 certiorari.

2053 (vi) Past-due payments of amounts in lieu of
2054 contributions shall be subject to the same interest and penalties
2055 that, pursuant to Section 71-5-363, apply to past-due
2056 contributions.

2057 (c) Each employer that is liable for payments in lieu
2058 of contributions shall pay to the department for the fund the
2059 amount of regular benefits plus the amount of one-half (1/2) of
2060 extended benefits paid are attributable to service in the employ
2061 of such employer. If benefits paid to an individual are based on
2062 wages paid by more than one (1) employer and one or more of such



2063 employers are liable for payments in lieu of contributions, the
2064 amount payable to the fund by each employer that is liable for
2065 such payments shall be determined in accordance with the
2066 provisions of subparagraph (i) or subparagraph (ii) of this
2067 paragraph.

2068 (i) If benefits paid to an individual are based on
2069 wages paid by one or more employers that are liable for payment in
2070 lieu of contributions and on wages paid by one or more employers
2071 who are liable for contributions, the amount of benefits payable
2072 by each employer that is liable for payments in lieu of
2073 contributions shall be an amount which bears the same ratio to the
2074 total benefits paid to the individual as the total base period
2075 wages paid to the individual by such employer bear to the total
2076 base period wages paid to the individual by all of his base period
2077 employers.

2078 (ii) If benefits paid to an individual are based
2079 on wages paid by two (2) or more employers that are liable for
2080 payments in lieu of contributions, the amount of benefits payable
2081 by each such employer shall be an amount which bears the same
2082 ratio to the total benefits paid to the individual as the total
2083 base period wages paid to the individual by such employer bear to
2084 the total base period wages paid to the individual by all of his
2085 base period employers.

2086 (d) In the discretion of the department, any nonprofit
2087 organization that elects to become liable for payments in lieu of



2088 contributions shall be required to execute and file with the
2089 department a surety bond approved by the department, or it may
2090 elect instead to deposit with the department money or securities.
2091 The amount of such bond or deposit shall be determined in
2092 accordance with the provisions of this paragraph.

2093 (i) The amount of the bond or deposit required by
2094 paragraph (d) shall be equal to two and seven-tenths percent
2095 (2.7%) thereafter to December 31, 2010, and one and thirty-five
2096 one-hundredths percent (1.35%) thereafter, of the organization's
2097 taxable wages paid for employment as defined in Section 71-5-11,
2098 subsection I(4), for the four (4) calendar quarters immediately
2099 preceding the effective date of the election, the renewal date in
2100 the case of a bond, or the biennial anniversary of the effective
2101 date of election in the case of a deposit of money or securities,
2102 whichever date shall be most recent and applicable. If the
2103 nonprofit organization did not pay wages in each of such four (4)
2104 calendar quarters, the amount of the bond or deposit shall be as
2105 determined by the department.

2106 (ii) Any bond deposited under paragraph (d) shall
2107 be in force for a period of not less than two (2) tax years and
2108 shall be renewed with the approval of the department at such times
2109 as the department may prescribe, but not less frequently than at
2110 intervals of two (2) years as long as the organization continues
2111 to be liable for payments in lieu of contributions. The
2112 department shall require adjustments to be made in a previously



2113 filed bond as it deems appropriate. If the bond is to be
2114 increased, the adjusted bond shall be filed by the organization
2115 within thirty (30) days of the date notice of the required
2116 adjustment was delivered to it. Failure by any organization
2117 covered by such bond to pay the full amount of payments in lieu of
2118 contributions when due, together with any applicable interest and
2119 penalties provided in paragraph (b) (v) of this section, shall
2120 render the surety liable on the bond to the extent of the bond, as
2121 though the surety was such organization.

2122 (iii) Any deposit of money or securities in
2123 accordance with paragraph (d) shall be retained by the department
2124 in an escrow account until liability under the election is
2125 terminated, at which time it shall be returned to the
2126 organization, less any deductions as hereinafter provided. The
2127 department may deduct from the money deposited under paragraph (d)
2128 by a nonprofit organization, or sell the securities it has so
2129 deposited, to the extent necessary to satisfy any due and unpaid
2130 payments in lieu of contributions and any applicable interest and
2131 penalties provided for in paragraph (b) (v) of this section. The
2132 department shall require the organization, within thirty (30) days
2133 following any deduction from a money deposit or sale of deposited
2134 securities under the provisions hereof, to deposit sufficient
2135 additional money or securities to make whole the organization's
2136 deposit at the prior level. Any cash remaining from the sale of
2137 such securities shall be a part of the organization's escrow



2138 account. The department may, at any time, review the adequacy of
2139 the deposit made by any organization. If, as a result of such
2140 review, it determines that an adjustment is necessary, it shall
2141 require the organization to make additional deposit within thirty
2142 (30) days of notice of its determination or shall return to it
2143 such portion of the deposit as it no longer considers necessary,
2144 whichever action is appropriate. Disposition of income from
2145 securities held in escrow shall be governed by the applicable
2146 provisions of the state law.

2147 (iv) If any nonprofit organization fails to file a
2148 bond or make a deposit, or to file a bond in an increased amount,
2149 or to increase or make whole the amount of a previously made
2150 deposit as provided under this subparagraph, the department may
2151 terminate such organization's election to make payments in lieu of
2152 contributions, and such termination shall continue for not less
2153 than the four (4) consecutive calendar-quarter periods beginning
2154 with the quarter in which such termination becomes effective;
2155 however, the department may extend for good cause the applicable
2156 filing, deposit or adjustment period by not more than thirty (30)
2157 days.

2158 (v) Group account shall be established according
2159 to regulations prescribed by the department.

2160 (e) Any employer which elects to make payments in lieu
2161 of contributions into the Unemployment Compensation Fund as
2162 provided in this paragraph shall not be liable to make such



2163 payments with respect to the benefits paid to any individual whose
2164 base period wages include wages for previously uncovered services
2165 as defined in Section 71-5-511(e) to the extent that the
2166 Unemployment Compensation Fund is reimbursed for such benefits
2167 pursuant to Section 121 of Public Law 94-566.

2168 **SECTION 36.** Section 71-5-359, Mississippi Code of 1972, is
2169 reenacted as follows:

2170 71-5-359. (1) The Department of Finance and Administration
2171 shall, in the manner provided in subsection (3) of this section,
2172 pay, upon notice issued by the department, to the department for
2173 the Unemployment Compensation Fund an amount equal to the regular
2174 benefits and one-half (1/2) of the extended benefits paid that are
2175 attributable to service in the employ of a state agency. The
2176 amount required to be reimbursed by a certain agency shall be
2177 billed to the Department of Finance and Administration and shall
2178 be paid from the Employment Compensation Revolving Fund pursuant
2179 to subsection (3) of this section not later than thirty (30) days
2180 after such bill was sent, unless there has been an application for
2181 review and redetermination in accordance with Section
2182 71-5-357(b) (v) .

2183 (2) The Department of Finance and Administration shall, in
2184 the manner provided in subsection (3) of this section, pay, upon a
2185 notice issued by the department, to the department for the
2186 Unemployment Compensation Fund an amount equal to the regular
2187 benefits and the extended benefits paid that are attributable to



2188 service in the employ of a state agency. The amount required to
2189 be reimbursed by a certain agency shall be billed to the
2190 Department of Finance and Administration and shall be paid from
2191 the Employment Compensation Revolving Fund pursuant to subsection
2192 (3) of this section not later than thirty (30) days after such
2193 bill was sent, unless there has been an application for review and
2194 redetermination in accordance with Section 71-5-357(b) (v).

2195 (3) Each agency of state government shall deposit monthly
2196 for a period of twenty-four (24) months an amount equal to
2197 one-twelfth of one percent (1/12 of 1%) of the first Six Thousand
2198 Dollars (\$6,000.00) paid to each employee thereof during the next
2199 preceding year into the Employment Compensation Revolving Fund
2200 that is created in the State Treasury. The Department of Finance
2201 and Administration shall determine the percentage to be applied to
2202 the amount of covered wages paid in order to maintain a balance in
2203 the revolving fund of not less than the amount determined by an
2204 actuary through an annual actuarial evaluation. The State
2205 Treasurer shall invest all funds in the Employment Compensation
2206 Revolving Fund and all interest earned shall be credited to the
2207 Employment Compensation Revolving Fund.

2208 The reimbursement of benefits paid by the Mississippi
2209 Department of Employment Security shall be paid by the Department
2210 of Finance and Administration from the Employment Compensation
2211 Revolving Fund upon notice from the department; and the Department
2212 of Finance and Administration shall issue warrants or may contract



2213 for the performance of the duties prescribed by subsections (2)
2214 and (3) of this section, and other duties necessarily related
2215 thereto.

2216 (4) Any political subdivision of this state shall pay to the
2217 department for the unemployment compensation fund an amount equal
2218 to the regular benefits and the extended benefits paid that are
2219 attributable to service in the employ of such political
2220 subdivision unless it elects to make contributions to the
2221 unemployment fund as provided in subsection (9) of this section.
2222 The amount required to be reimbursed shall be billed and shall be
2223 paid as provided in Section 71-5-357, with respect to similar
2224 payments for nonprofit organizations.

2225 (5) Each political subdivision, unless it elects to make
2226 contributions to the unemployment compensation fund as provided in
2227 subsection (9) of this section, shall establish a revolving fund
2228 and deposit an amount equal to two percent (2%) of the first Six
2229 Thousand Dollars (\$6,000.00) paid to each employee thereof during
2230 the next preceding year. However, the department shall by
2231 regulation establish a procedure to allow reimbursing political
2232 subdivisions to elect to maintain the balance in the revolving
2233 fund as required under this paragraph or to annually execute a
2234 surety bond to be approved by the department in an amount not less
2235 than two percent (2%) of the covered wages paid during the next
2236 preceding year.



2237 (6) In the event any political subdivision becomes
2238 delinquent in payments due under this chapter, upon due notice,
2239 and upon certification of the delinquency by the department to the
2240 Department of Finance and Administration, the Department of
2241 Revenue, the Department of Environmental Quality and the
2242 Department of Insurance, or any of them, or any other agencies of
2243 the State of Mississippi that may be indebted to such delinquent
2244 political subdivision, such agencies shall direct the issuance of
2245 warrants which in the aggregate shall be the amount of such
2246 delinquency payable to the department and drawn upon any funds in
2247 the State Treasury which may be available to such political
2248 subdivision in satisfaction of any such delinquency. This remedy
2249 shall be in addition to any other collection remedies in this
2250 chapter or otherwise provided by law.

2251 (7) Payments made by any political subdivision under the
2252 provisions of this section shall not be deducted or deductible, in
2253 whole or in part, from the remuneration of individuals in the
2254 employ of the organization.

2255 (8) Any governmental entity shall not be liable to make
2256 payments to the unemployment fund with respect to the benefits
2257 paid to any individual whose base period wages include wages for
2258 previously uncovered services as defined in Section 71-5-511,
2259 subsection (e), to the extent that the Unemployment Compensation
2260 Fund is reimbursed for such benefits pursuant to Section 121 of
2261 Public Law 94-566.



2262 (9) Any political subdivision of this state may elect to
2263 make contributions to the unemployment fund instead of making
2264 reimbursement for benefits paid as provided in subsections (4) and
2265 (5) of this section. A political subdivision which makes this
2266 election shall so notify the department, not later than three (3)
2267 months after it is officially organized or is otherwise
2268 established, and shall be subject to the provisions of Section
2269 71-5-351, with regard to the payment of contributions. A
2270 political subdivision which makes this election shall pay
2271 contributions equal to two percent (2%) of taxable wages through
2272 calendar year 2010, and one percent (1%) of taxable wages
2273 thereafter paid by it during each calendar quarter it is subject
2274 to this chapter. The department shall by regulation establish a
2275 procedure to allow political subdivisions the option periodically
2276 to elect either the reimbursement or the contribution method of
2277 financing unemployment compensation coverage.

2278 **SECTION 37.** Section 71-5-451, Mississippi Code of 1972, is
2279 reenacted as follows:

2280 71-5-451. There is established as a special fund, separate
2281 and apart from all public monies or funds of this state, an
2282 Unemployment Compensation Fund, which shall be administered by the
2283 department exclusively for:

- 2284 (a) All contributions collected under this chapter;
2285 (b) Interest earned upon any monies in the fund;



2286 (c) Any property or securities acquired through the use
2287 of monies belonging to the fund;

2288 (d) All earnings of such property or securities;

2289 (e) All monies credited to this state's account in the
2290 Unemployment Trust Fund pursuant to the Social Security Act, 42
2291 USCS, Section 1104; and

2292 (f) By way of reimbursement in accordance with Section
2293 204 of the Federal-State Extended Unemployment Compensation Act of
2294 1970 (84 Stat. 711). All monies in the fund shall be mingled and
2295 undivided.

2296 **SECTION 38.** Section 71-5-457, Mississippi Code of 1972, is
2297 reenacted as follows:

2298 71-5-457. (1) Except as otherwise provided in subsection
2299 (5), money credited to the account of this state in the
2300 Unemployment Trust Fund by the Secretary of the Treasury of the
2301 United States of America pursuant to the Social Security Act, 42
2302 USCS Section 1103, may be requisitioned and used for the payment
2303 of expenses incurred for the administration of this law pursuant
2304 to a specific appropriation by the Legislature, provided that the
2305 expenses are incurred and the money is requisitioned after the
2306 enactment of an appropriation law which:

2307 (a) Specifies the purposes for which such money is
2308 appropriated and the amounts appropriated therefor;



2309 (b) Limits the period within which such money may be
2310 obligated to a period ending not more than two (2) years after the
2311 date of the enactment of the appropriation law; and

2312 (c) Limits the amount which may be obligated during a
2313 twelve-month period beginning on July 1 and ending on the next
2314 June 30 to an amount which does not exceed the amount by which:

2315 (i) The aggregate of the amounts credited to the
2316 account of this state pursuant to the Social Security Act, 42 USCS
2317 Section 1103, during the same twelve-month period and the
2318 thirty-four (34) preceding twelve-month periods exceeds.

2319 (ii) The aggregate of the amounts obligated
2320 pursuant to this section and charged against the amounts credited
2321 to the account of this state during such thirty-five (35)
2322 twelve-month periods.

2323 For the purposes of this section, amounts obligated during
2324 any such twelve-month period shall be charged against equivalent
2325 amounts which were first credited and which are not already so
2326 charged; except that no amount obligated for administration during
2327 any such twelve-month period may be charged against any amount
2328 credited during such a twelve-month period earlier than the
2329 thirty-fourth preceding such period.

2330 (2) Money credited to the account of this state pursuant to
2331 the Social Security Act, 42 USCS Section 1103, may not be
2332 withdrawn or used except for the payment of benefits and for the



2333 payment of expenses for the administration of this law and of
2334 public employment offices pursuant to this section.

2335 (3) Money appropriated as provided herein for the payment of
2336 expenses of administration shall be requisitioned as needed for
2337 the payment of obligations incurred under such appropriation and,
2338 upon requisition, shall be deposited in the Employment Security
2339 Administration Fund, from which such payments shall be made.
2340 Money so deposited shall, until expended, remain a part of the
2341 Unemployment Compensation Fund and, if it will not be expended,
2342 shall be returned promptly to the account of this state in the
2343 Unemployment Trust Fund.

2344 (4) The thirty-five-year limitation provided in this section
2345 is no longer in force, effective October 1, 1991.

2346 (5) Notwithstanding subsection (1), monies credited with
2347 respect to federal fiscal years 1999, 2000 and 2001 shall be used
2348 by the department solely for the administration of the
2349 unemployment compensation program.

2350 **SECTION 39.** Section 71-5-511, Mississippi Code of 1972, is
2351 reenacted as follows:

2352 71-5-511. An unemployed individual shall be eligible to
2353 receive benefits with respect to any week only if the department
2354 finds that:

2355 (a) (i) He has registered for work at and thereafter
2356 has continued to report to the department in accordance with such
2357 regulations as the department may prescribe; except that the



2358 department may, by regulation, waive or alter either or both of
2359 the requirements of this subparagraph as to such types of cases or
2360 situations with respect to which it finds that compliance with
2361 such requirements would be oppressive or would be inconsistent
2362 with the purposes of this chapter; and

2363 (ii) He participates in reemployment services,
2364 such as job search assistance services, if, in accordance with a
2365 profiling system established by the department, it has been
2366 determined that he is likely to exhaust regular benefits and needs
2367 reemployment services, unless the department determines that:

2368 1. The individual has completed such
2369 services; or

2370 2. There is justifiable cause for the
2371 claimant's failure to participate in such services.

2372 (b) He has made a claim for benefits in accordance with
2373 the provisions of Section 71-5-515 and in accordance with such
2374 regulations as the department may prescribe thereunder.

2375 (c) He is able to work, available for work and actively
2376 seeking work.

2377 (d) He has been unemployed for a waiting period of one
2378 (1) week. No week shall be counted as a week of unemployment for
2379 the purposes of this subsection:

2380 (i) Unless it occurs within the benefit year which
2381 includes the week with respect to which he claims payment of
2382 benefits;



2383 (ii) If benefits have been paid with respect
2384 thereto;

2385 (iii) Unless the individual was eligible for
2386 benefits with respect thereto, as provided in Sections 71-5-511
2387 and 71-5-513, except for the requirements of this subsection.

2388 (e) For weeks beginning on or before July 1, 1982, he
2389 has, during his base period, been paid wages for insured work
2390 equal to not less than thirty-six (36) times his weekly benefit
2391 amount; he has been paid wages for insured work during at least
2392 two (2) quarters of his base period; and he has, during that
2393 quarter of his base period in which his total wages were highest,
2394 been paid wages for insured work equal to not less than sixteen
2395 (16) times the minimum weekly benefit amount. For benefit years
2396 beginning after July 1, 1982, he has, during his base period, been
2397 paid wages for insured work equal to not less than forty (40)
2398 times his weekly benefit amount; he has been paid wages for
2399 insured work during at least two (2) quarters of his base period,
2400 and he has, during that quarter of his base period in which his
2401 total wages were highest, been paid wages for insured work equal
2402 to not less than twenty-six (26) times the minimum weekly benefit
2403 amount. For purposes of this subsection, wages shall be counted
2404 as "wages for insured work" for benefit purposes with respect to
2405 any benefit year only if such benefit year begins subsequent to
2406 the date on which the employing unit by which such wages were paid
2407 has satisfied the conditions of Section 71-5-11, subsection H, or



2408 Section 71-5-361, subsection (3), with respect to becoming an
2409 employer.

2410 (f) No individual may receive benefits in a benefit
2411 year unless, subsequent to the beginning of the next preceding
2412 benefit year during which he received benefits, he performed
2413 service in "employment" as defined in Section 71-5-11, subsection
2414 I, and earned remuneration for such service in an amount equal to
2415 not less than eight (8) times his weekly benefit amount applicable
2416 to his next preceding benefit year.

2417 (g) Benefits based on service in employment defined in
2418 Section 71-5-11, subsection I(3) and I(4), and Section 71-5-361,
2419 subsection (4) shall be payable in the same amount, on the same
2420 terms, and subject to the same conditions as compensation payable
2421 on the basis of other service subject to this chapter, except that
2422 benefits based on service in an instructional, research or
2423 principal administrative capacity in an institution of higher
2424 learning (as defined in Section 71-5-11, subsection N) with
2425 respect to service performed prior to January 1, 1978, shall not
2426 be paid to an individual for any week of unemployment which begins
2427 during the period between two (2) successive academic years, or
2428 during a similar period between two (2) regular terms, whether or
2429 not successive, or during a period of paid sabbatical leave
2430 provided for in the individual's contract, if the individual has a
2431 contract or contracts to perform services in any such capacity for



2432 any institution or institutions of higher learning for both such
2433 academic years or both such terms.

2434 (h) Benefits based on service in employment defined in
2435 Section 71-5-11, subsection I(3) and I(4), shall be payable in the
2436 same amount, on the same terms and subject to the same conditions
2437 as compensation payable on the basis of other service subject to
2438 this chapter, except that:

2439 (i) With respect to service performed in an
2440 instructional, research or principal administrative capacity for
2441 an educational institution, benefits shall not be paid based on
2442 such services for any week of unemployment commencing during the
2443 period between two (2) successive academic years, or during a
2444 similar period between two (2) regular but not successive terms,
2445 or during a period of paid sabbatical leave provided for in the
2446 individual's contract, to any individual, if such individual
2447 performs such services in the first of such academic years or
2448 terms and if there is a contract or a reasonable assurance that
2449 such individual will perform services in any such capacity for any
2450 educational institution in the second of such academic years or
2451 terms, and provided that subsection (g) of this section shall
2452 apply with respect to such services prior to January 1, 1978. In
2453 no event shall benefits be paid unless the individual employee was
2454 terminated by the employer.

2455 (ii) With respect to services performed in any
2456 other capacity for an educational institution, benefits shall not



2457 be paid on the basis of such services to any individual for any
2458 week which commences during a period between two (2) successive
2459 academic years or terms, if such individual performs such services
2460 in the first of such academic years or terms and there is a
2461 reasonable assurance that such individual will perform such
2462 services in the second of such academic years or terms, except
2463 that if compensation is denied to any individual under this
2464 subparagraph and such individual was not offered an opportunity to
2465 perform such services for the educational institution for the
2466 second of such academic years or terms, such individual shall be
2467 entitled to a retroactive payment of compensation for each week
2468 for which the individual filed a timely claim for compensation and
2469 for which compensation was denied solely by reason of this clause.
2470 In no event shall benefits be paid unless the individual employee
2471 was terminated by the employer.

2472 (iii) With respect to services described in
2473 subsection (h) (i) and (ii), benefits shall not be payable on the
2474 basis of services in any such capacities to any individual for any
2475 week which commences during an established and customary vacation
2476 period or holiday recess if such individual performs such services
2477 in the first of such academic years or terms, or in the period
2478 immediately before such vacation period or holiday recess, and
2479 there is a reasonable assurance that such individual will perform
2480 such services in the period immediately following such vacation
2481 period or holiday recess.



2482 (iv) With respect to any services described in
2483 subsection (h) (i) and (ii), benefits shall not be payable on the
2484 basis of services in any such capacities as specified in
2485 subsection (h) (i), (ii) and (iii) to any individual who performed
2486 such services in an educational institution while in the employ of
2487 an educational service agency. For purposes of this subsection,
2488 the term "educational service agency" means a governmental agency
2489 or governmental entity which is established and operated
2490 exclusively for the purpose of providing such services to one or
2491 more educational institutions.

2492 (v) With respect to services to which Sections
2493 71-5-357 and 71-5-359 apply, if such services are provided to or
2494 on behalf of an educational institution, benefits shall not be
2495 payable under the same circumstances and subject to the same terms
2496 and conditions as described in subsection (h) (i), (ii), (iii) and
2497 (iv).

2498 (i) Subsequent to December 31, 1977, benefits shall not
2499 be paid to any individual on the basis of any services
2500 substantially all of which consist of participating in sports or
2501 athletic events or training or preparing to so participate, for
2502 any week which commences during the period between two (2)
2503 successive sports seasons (or similar periods) if such individual
2504 performs such services in the first of such seasons (or similar
2505 periods) and there is a reasonable assurance that such individual



2506 will perform such services in the later of such seasons (or
2507 similar periods).

2508 (j) (i) Subsequent to December 31, 1977, benefits
2509 shall not be payable on the basis of services performed by an
2510 alien, unless such alien is an individual who was lawfully
2511 admitted for permanent residence at the time such services were
2512 performed, was lawfully present for purposes of performing such
2513 services, or was permanently residing in the United States under
2514 color of law at the time such services were performed (including
2515 an alien who was lawfully present in the United States as a result
2516 of the application of the provisions of Section 203(a)(7) or
2517 Section 212(d)(5) of the Immigration and Nationality Act).

2518 (ii) Any data or information required of
2519 individuals applying for benefits to determine whether benefits
2520 are not payable to them because of their alien status shall be
2521 uniformly required from all applicants for benefits.

2522 (iii) In the case of an individual whose
2523 application for benefits would otherwise be approved, no
2524 determination that benefits to such individual are not payable
2525 because of his alien status shall be made, except upon a
2526 preponderance of the evidence.

2527 (k) An individual shall be deemed prima facie
2528 unavailable for work, and therefore ineligible to receive
2529 benefits, during any period which, with respect to his employment



2530 status, is found by the department to be a holiday or vacation
2531 period.

2532 (1) A temporary employee of a temporary help firm is
2533 considered to have left the employee's last work voluntarily
2534 without good cause connected with the work if the temporary
2535 employee does not contact the temporary help firm for reassignment
2536 on completion of an assignment. A temporary employee is not
2537 considered to have left work voluntarily without good cause
2538 connected with the work under this paragraph unless the temporary
2539 employee has been advised in writing:

2540 (i) That the temporary employee is obligated to
2541 contact the temporary help firm on completion of assignments; and

2542 (ii) That unemployment benefits may be denied if
2543 the temporary employee fails to do so.

2544 **SECTION 40.** Section 71-5-513, Mississippi Code of 1972, is
2545 reenacted as follows:

2546 71-5-513. A. An individual shall be disqualified for
2547 benefits:

2548 (1) (a) For the week, or fraction thereof, which
2549 immediately follows the day on which he left work voluntarily
2550 without good cause, if so found by the department, and for each
2551 week thereafter until he has earned remuneration for personal
2552 services performed for an employer, as in this chapter defined,
2553 equal to not less than eight (8) times his weekly benefit amount,
2554 as determined in each case; however, marital, filial and domestic



2555 circumstances and obligations shall not be deemed good cause
2556 within the meaning of this subsection. Pregnancy shall not be
2557 deemed to be a marital, filial or domestic circumstance for the
2558 purpose of this subsection.

2559 (b) For the week, or fraction thereof, which
2560 immediately follows the day on which he was discharged for
2561 misconduct connected with his work, if so found by the department,
2562 and for each week thereafter until he has earned remuneration for
2563 personal services performed for an employer, as in this chapter
2564 defined, equal to not less than eight (8) times his weekly benefit
2565 amount, as determined in each case.

2566 (c) The burden of proof of good cause for leaving
2567 work shall be on the claimant, and the burden of proof of
2568 misconduct shall be on the employer.

2569 (2) For the week, or fraction thereof, with respect to
2570 which he willfully makes a false statement, a false representation
2571 of fact, or willfully fails to disclose a material fact for the
2572 purpose of obtaining or increasing benefits under the provisions
2573 of this law, if so found by the department, and such individual's
2574 maximum benefit allowance shall be reduced by the amount of
2575 benefits so paid to him during any such week of disqualification;
2576 and additional disqualification shall be imposed for a period not
2577 exceeding fifty-two (52) weeks, the length of such period of
2578 disqualification and the time when such period begins to be



2579 determined by the department, in its discretion, according to the
2580 circumstances in each case.

2581 (3) If the department finds that he has failed, without
2582 good cause, either to apply for available suitable work when so
2583 directed by the employment office or the department, to accept
2584 suitable work when offered him, or to return to his customary
2585 self-employment (if any) when so directed by the department, such
2586 disqualification shall continue for the week in which such failure
2587 occurred and for not more than the twelve (12) weeks which
2588 immediately follow such week, as determined by the department
2589 according to the circumstances in each case.

2590 (a) In determining whether or not any work is
2591 suitable for an individual, the department shall consider among
2592 other factors the degree of risk involved to his health, safety
2593 and morals, his physical fitness and prior training, his
2594 experience and prior earnings, his length of unemployment and
2595 prospects for securing local work in his customary occupation, and
2596 the distance of the available work from his residence; however,
2597 offered employment paying the minimum wage or higher, if such
2598 minimum or higher wage is that prevailing for his customary
2599 occupation or similar work in the locality, shall be deemed to be
2600 suitable employment after benefits have been paid to the
2601 individual for a period of eight (8) weeks.

2602 (b) Notwithstanding any other provisions of this
2603 chapter, no work shall be deemed suitable and benefits shall not



2604 be denied under this chapter to any otherwise eligible individual
2605 for refusing to accept new work under any of the following
2606 conditions:

2607 (i) If the position offered is vacant due
2608 directly to a strike, lockout or other labor dispute;

2609 (ii) If the wages, hours or other conditions
2610 of the work offered are substantially unfavorable or unreasonable
2611 to the individual's work. The department shall have the sole
2612 discretion to determine whether or not there has been an
2613 unfavorable or unreasonable condition placed on the individual's
2614 work. Moreover, the department may consider, but shall not be
2615 limited to a consideration of, whether or not the unfavorable
2616 condition was applied by the employer to all workers in the same
2617 or similar class or merely to this individual;

2618 (iii) If as a condition of being employed the
2619 individual would be required to join a company union or to resign
2620 from or refrain from joining any bona fide labor organization;

2621 (iv) If unsatisfactory or hazardous working
2622 conditions exist that could result in a danger to the physical or
2623 mental well-being of the worker. In any such determination the
2624 department shall consider, but shall not be limited to a
2625 consideration of, the following: the safety measures used or the
2626 lack thereof and the condition of equipment or lack of proper
2627 equipment. No work shall be considered hazardous if the working
2628 conditions surrounding a worker's employment are the same or



2629 substantially the same as the working conditions generally
2630 prevailing among workers performing the same or similar work for
2631 other employers engaged in the same or similar type of activity.

2632 (c) Pursuant to Section 303(1) of the Social
2633 Security Act (42 USCS 503), the department may conduct drug tests
2634 of applicants for unemployment compensation for the unlawful use
2635 of controlled substances as a condition for receiving such
2636 compensation, if such applicant:

2637 (i) Was terminated from employment with the
2638 claimant's most recent employer, as defined by Mississippi law,
2639 because of the unlawful use of controlled substances; or

2640 (ii) Is an individual for whom suitable work,
2641 as defined by Mississippi law, is only available in an occupation
2642 (as determined under regulations issued by the U.S. Secretary of
2643 Labor) that requires drug testing.

2644 The department may deny unemployment compensation to any
2645 applicant based on the result of a drug test conducted by the
2646 department in accordance with this subsection. A positive drug
2647 test result shall be deemed by the department to be a failure to
2648 accept suitable work, and shall subject the applicant to the
2649 disqualification provisions set forth in this subsection A(3).
2650 During the disqualification period imposed by the department under
2651 this subsection, the individual may provide information to end the
2652 disqualification period early by submitting acceptable proof to



2653 the department of a negative test result from a testing facility
2654 approved by the department.

2655 (iii) Pursuant to the provisions set forth in
2656 this subsection A(3)(c), the department shall have the authority
2657 to institute a random drug testing program for all individuals who
2658 meet the requirements set forth in this section. Moreover, the
2659 department shall have the authority to create the necessary
2660 regulations, policies rules, guidelines and procedures to
2661 implement such a program.

2662 Any term or provision set forth in this subsection A(3)(c)
2663 that otherwise conflicts with federal or state law shall be
2664 disregarded but shall not, in any way, affect the remaining
2665 provisions.

2666 (4) For any week with respect to which the department
2667 finds that his total unemployment is due to a stoppage of work
2668 which exists because of a labor dispute at a factory,
2669 establishment or other premises at which he is or was last
2670 employed; however, this subsection shall not apply if it is shown
2671 to the satisfaction of the department:

2672 (a) He is unemployed due to a stoppage of work
2673 occasioned by an unjustified lockout, if such lockout was not
2674 occasioned or brought about by such individual acting alone or
2675 with other workers in concert; or



2676 (b) He is not participating in or directly
2677 interested in the labor dispute which caused the stoppage of work;
2678 and

2679 (c) He does not belong to a grade or class of
2680 workers of which, immediately before the commencement of stoppage,
2681 there were members employed at the premises at which the stoppage
2682 occurs, any of whom are participating in or directly interested in
2683 the dispute.

2684 If in any case separate branches of work which are commonly
2685 conducted as separate businesses in separate premises are
2686 conducted in separate departments of the same premises, each such
2687 department shall, for the purposes of this subsection, be deemed
2688 to be a separate factory, establishment or other premises.

2689 (5) For any week with respect to which he has received
2690 or is seeking unemployment compensation under an unemployment
2691 compensation law of another state or of the United States.
2692 However, if the appropriate agency of such other state or of the
2693 United States finally determines that he is not entitled to such
2694 unemployment compensation benefits, this disqualification shall
2695 not apply. Nothing in this subsection contained shall be
2696 construed to include within its terms any law of the United States
2697 providing unemployment compensation or allowances for honorably
2698 discharged members of the Armed Forces.

2699 (6) For any week with respect to which he is receiving
2700 or has received remuneration in the form of payments under any



2701 governmental or private retirement or pension plan, system or
2702 policy which a base-period employer is maintaining or contributing
2703 to or has maintained or contributed to on behalf of the
2704 individual; however, if the amount payable with respect to any
2705 week is less than the benefits which would otherwise be due under
2706 Section 71-5-501, he shall be entitled to receive for such week,
2707 if otherwise eligible, benefits reduced by the amount of such
2708 remuneration. However, on or after the first Sunday immediately
2709 following July 1, 2001, no social security payments, to which the
2710 employee has made contributions, shall be deducted from
2711 unemployment benefits paid for any period of unemployment
2712 beginning on or after the first Sunday following July 1, 2001.
2713 This one hundred percent (100%) exclusion shall not apply to any
2714 other governmental or private retirement or pension plan, system
2715 or policy. If benefits payable under this section, after being
2716 reduced by the amount of such remuneration, are not a multiple of
2717 One Dollar (\$1.00), they shall be adjusted to the next lower
2718 multiple of One Dollar (\$1.00).

2719 (7) For any week with respect to which he is receiving
2720 or has received remuneration in the form of a back pay award, or
2721 other compensation allocable to any week, whether by settlement or
2722 otherwise. Any benefits previously paid for weeks of unemployment
2723 with respect to which back pay awards, or other such compensation,
2724 are made shall constitute an overpayment and such amounts shall be
2725 deducted from the award by the employer prior to payment to the



2726 employee, and shall be transmitted promptly to the department by
2727 the employer for application against the overpayment and credit to
2728 the claimant's maximum benefit amount and prompt deposit into the
2729 fund; however, the removal of any charges made against the
2730 employer as a result of such previously paid benefits shall be
2731 applied to the calendar year and the calendar quarter in which the
2732 overpayment is transmitted to the department, and no attempt shall
2733 be made to relate such a credit to the period to which the award
2734 applies. Any amount of overpayment so deducted by the employer
2735 and not transmitted to the department shall be subject to the same
2736 procedures for collection as is provided for contributions by
2737 Sections 71-5-363 through 71-5-381. Any amount of overpayment not
2738 deducted by the employer shall be established as an overpayment
2739 against the claimant and collected as provided above. It is the
2740 purpose of this paragraph to assure equity in the situations to
2741 which it applies, and it shall be construed accordingly.

2742 B. Notwithstanding any other provision in this chapter, no
2743 otherwise eligible individual shall be denied benefits for any
2744 week because he is in training with the approval of the
2745 department; nor shall such individual be denied benefits with
2746 respect to any week in which he is in training with the approval
2747 of the department by reason of the application of provisions in
2748 Section 71-5-511, subsection (c), relating to availability for
2749 work, or the provisions of subsection A(3) of this section,



2750 relating to failure to apply for, or a refusal to accept, suitable
2751 work.

2752 C. Notwithstanding any other provisions of this chapter, no
2753 otherwise eligible individual shall be denied benefits for any
2754 week because he or she is in training approved under Section
2755 236(a)(1) of the Trade Act of 1974, nor shall such individual be
2756 denied benefits by reason of leaving work to enter such training,
2757 provided the work left is not suitable employment, or because of
2758 the application to any such week in training of provisions in this
2759 law (or any applicable federal unemployment compensation law),
2760 relating to availability for work, active search for work or
2761 refusal to accept work.

2762 For purposes of this section, the term "suitable employment"
2763 means with respect to an individual, work of a substantially equal
2764 or higher skill level than the individual's past adversely
2765 affected employment (as defined for purposes of the Trade Act of
2766 1974), and wages for such work at not less than eighty percent
2767 (80%) of the individual's average weekly wage as determined for
2768 the purposes of the Trade Act of 1974.

2769 D. Notwithstanding any other provisions of this chapter, no
2770 otherwise eligible individual shall be denied benefits for any
2771 week in which they are engaged in the Self-Employment Assistance
2772 Program established in Section 71-5-545 by reason of the
2773 application of Section 71-5-511(c), relating to availability for
2774 work, or the provisions of subsection A(3) of this section,



2775 relating to failure to apply for, or a refusal to accept, suitable
2776 work.

2777 E. Any individual who is receiving benefits may participate
2778 in an approved training program under the Mississippi Employment
2779 Security Law to gain skills that may lead to employment while
2780 continuing to receive benefits. Authorization for participation
2781 of a recipient of unemployment benefits in such a program must be
2782 granted by the department and continuation of participation must
2783 be certified weekly by the participant recipient. While
2784 participating in such program approved by the department,
2785 availability and work search requirements will be waived. No
2786 individual will be allowed to participate in this program for more
2787 than twelve (12) weeks in any benefit year. Such participation
2788 shall not be considered employment for any purposes and shall not
2789 accrue benefits or wage credits. Participation in this training
2790 program shall meet the definition set forth in the U.S. Fair Labor
2791 Standards Act.

2792 **SECTION 41.** Section 71-5-517, Mississippi Code of 1972, is
2793 reenacted as follows:

2794 71-5-517. Upon the taking of a claim by the department, an
2795 initial determination thereon shall be made promptly and shall
2796 include a determination with respect to whether or not benefits
2797 are payable, the week with respect to which benefits shall
2798 commence, the weekly benefit amount payable and the maximum
2799 duration of benefits. In any case in which the payment or denial



2800 of benefits will be determined by the provisions of subsection
2801 A(4) of Section 71-5-513, the examiner shall promptly transmit all
2802 the evidence with respect to that subsection to the department,
2803 which, on the basis of evidence so submitted and such additional
2804 evidence as it may require, shall make an initial determination
2805 with respect thereto. An initial determination may for good cause
2806 be reconsidered. The claimant, his most recent employing unit and
2807 all employers whose experience-rating record would be charged with
2808 benefits pursuant to such determination shall be promptly notified
2809 of such initial determination or any amended initial determination
2810 and the reason therefor. Benefits shall be denied or, if the
2811 claimant is otherwise eligible, promptly paid in accordance with
2812 the initial determination or amended initial determination. The
2813 jurisdiction of the department over benefit claims which have not
2814 been appealed shall be continuous. The claimant or any party to
2815 the initial determination or amended initial determination may
2816 file an appeal from such initial determination or amended initial
2817 determination within fourteen (14) days after notification
2818 thereof, or after the date such notification was sent to his last
2819 known address.

2820 Notwithstanding any other provision of this section, benefits
2821 shall be paid promptly in accordance with a determination or
2822 redetermination, or the decision of an appeal tribunal, the Board
2823 of Review or a reviewing court upon the issuance of such
2824 determination, redetermination or decision in favor of the



2825 claimant (regardless of the pendency of the period to apply for
2826 reconsideration, file an appeal, or petition for judicial review,
2827 as the case may be, or the pendency of any such application,
2828 filing or petition), unless and until such determination,
2829 redetermination or decision has been modified or reversed by a
2830 subsequent redetermination or decision, in which event benefits
2831 shall be paid or denied in accordance with such modifying or
2832 reversing redetermination or decision. Any benefits finally
2833 determined to have been erroneously paid may be set up as an
2834 overpayment to the claimant and must be liquidated before any
2835 future benefits can be paid to the claimant. If, subsequent to
2836 such initial determination or amended initial determination,
2837 benefits with respect to any week for which a claim has been filed
2838 are denied for reasons other than matters included in the initial
2839 determination or amended initial determination, the claimant shall
2840 be promptly notified of the denial and the reason therefor and may
2841 appeal therefrom in accordance with the procedure herein described
2842 for appeals from initial determination or amended initial
2843 determination.

2844 **SECTION 42.** Section 71-5-519, Mississippi Code of 1972, is
2845 reenacted as follows:

2846 71-5-519. Unless such appeal is withdrawn, an appeal
2847 tribunal appointed by the executive director, after affording the
2848 parties reasonable opportunity for fair hearing, shall affirm,
2849 modify or reverse the findings of fact and initial determination



2850 or amended initial determination. The parties shall be duly
2851 notified of such tribunal's decision, together with its reasons
2852 therefor, which shall be deemed to be the final decision of the
2853 executive director unless, within fourteen (14) days after the
2854 date of notification of such decision, further appeal is initiated
2855 pursuant to Section 71-5-523.

2856 **SECTION 43.** Section 71-5-523, Mississippi Code of 1972, is
2857 reenacted as follows:

2858 71-5-523. The Board of Review may on its own motion affirm,
2859 modify, or set aside any decision of an appeal tribunal on the
2860 basis of the evidence previously submitted in such case, or direct
2861 the taking of additional evidence, or may permit any of the
2862 parties to such decision to initiate further appeals before it.
2863 The Board of Review shall permit such further appeal by any of the
2864 parties to a decision of an appeal tribunal which is not
2865 unanimous, and by the examiner whose decision has been overruled
2866 or modified by an appeal tribunal. The Board of Review may remove
2867 to itself or transfer to another appeal tribunal the proceedings
2868 on any claim pending before an appeal tribunal. Any proceedings
2869 so removed to the Board of Review shall be heard by a quorum
2870 thereof in accordance with the requirements of Section 71-5-519
2871 and within fifteen (15) days after notice of appeal has been
2872 received by the executive director. No notice of appeal shall be
2873 deemed to be received by the executive director, within the
2874 meaning of this section, until all prior appeals pending before



2875 the Board of Review have been heard. The Board of Review shall,
2876 within four (4) days after its decision, so notify the parties to
2877 any proceeding of its findings and decision.

2878 **SECTION 44.** Section 71-5-525, Mississippi Code of 1972, is
2879 reenacted as follows:

2880 71-5-525. The manner in which appealed claims shall be
2881 presented and the conduct of hearings and appeals shall be in
2882 accordance with regulations prescribed by the Board of Review for
2883 determining the rights of the parties, whether or not such
2884 regulations conform to common law or statutory rules of evidence
2885 and other technical rules of procedure. A full and complete
2886 record shall be kept of all proceedings in connection with an
2887 appealed claim. The department's entire file relative to the
2888 appealed claim shall be a part of such record and shall be
2889 considered as evidence. All testimony at any hearing upon an
2890 appealed claim shall be recorded, but need not be transcribed
2891 unless the claim is further appealed.

2892 **SECTION 45.** Section 71-5-529, Mississippi Code of 1972, is
2893 reenacted as follows:

2894 71-5-529. Any decision of the Board of Review, in the
2895 absence of an appeal therefrom as herein provided, shall become
2896 final ten (10) days after the date of notification; and judicial
2897 review thereof shall be permitted only after any party claiming to
2898 be aggrieved thereby has exhausted his administrative remedies as
2899 provided by this chapter. The department shall be deemed to be a



party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the department and designated by it for that purpose or, at the department's request, by the Attorney General.

SECTION 46. Section 71-5-531, Mississippi Code of 1972, is reenacted as follows:

71-5-531. Within ten (10) days after the decision of the Board of Review has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action, in the circuit court of the county in which the plaintiff resides, against the department for the review of such decision, in which action any other party to the proceeding before the Board of Review shall be made a defendant. In cases wherein the plaintiff is not a resident of the State of Mississippi, such action may be filed in the circuit court of the county in which the employer resides, the county in which the cause of action arose, or in the county of employment. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the department or upon such person as the department may designate, and such service shall be deemed completed service on all parties; but there shall be left with the party so served as many copies of the petition as there are defendants, and the department shall forthwith mail one (1) such copy to each such defendant. With its answer, the department shall certify and file with said court all documents and papers



and a transcript of all testimony taken in the matter, together with the Board of Review's findings of fact and decision therein. The department may also, in its discretion, certify to such court questions of law involved in any decision. In any judicial proceedings under this section, the findings of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases. An appeal may be taken from the decision of the circuit court of the county in which the plaintiff resides to the Supreme Court of Mississippi, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Board of Review, and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Board of Review shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the Board of Review shall so order.

SECTION 47. Section 71-5-541, Mississippi Code of 1972, is reenacted as follows:

71-5-541. A. (1) In the administration of this chapter, the department shall cooperate with the Department of Labor to the



2950 fullest extent consistent with the provisions of this chapter and
2951 shall take such action, through the adoption of appropriate rules,
2952 regulations, administrative methods and standards, as may be
2953 necessary to secure to this state and its citizens all advantages
2954 available under the provisions of the Social Security Act that
2955 relate to unemployment compensation, the Federal Unemployment Tax
2956 Act, the Wagner-Peyser Act and the Federal-State Extended
2957 Unemployment Compensation Act of 1970, all as amended.

2958 (2) In the administration of the provisions of this
2959 section, which are enacted to conform with the requirements of the
2960 Federal-State Extended Unemployment Compensation Act of 1970, as
2961 amended, the department shall take such actions as may be
2962 necessary:

2963 (a) To ensure that the provisions are so
2964 interpreted and applied as to meet the requirements of such
2965 federal act as interpreted by the United States Department of
2966 Labor; and

2967 (b) To secure to this state the full reimbursement
2968 of the federal share of extended benefits paid under this chapter
2969 that are reimbursable under the federal act; and also

2970 (c) To limit the amount of extended benefits paid
2971 as may be necessary so that the reimbursement of the federal share
2972 of extended benefits paid shall remain at one-half (1/2) of the
2973 total extended benefits paid.



2974 B. As used in this section, unless the context clearly
2975 requires otherwise:

2976 (1) "Extended benefit period" means a period which:

2977 (a) Begins with the third week after a week for
2978 which there is a state "on" indicator; and

2979 (b) Ends with either of the following weeks,
2980 whichever occurs later:

2981 (i) The third week after the first week for
2982 which there is a state "off" indicator; or

2983 (ii) The thirteenth consecutive week of such
2984 period.

2985 No extended benefit period may begin by reason of a state
2986 "on" indicator before the fourteenth week following the end of a
2987 prior extended benefit period which was in effect with respect to
2988 this state.

2989 (2) For weeks beginning after September 25, 1982, there
2990 is a "state 'on' indicator" for a week if the rate of insured
2991 unemployment under this chapter for the period consisting of such
2992 week and the immediately preceding twelve (12) weeks:

2993 (a) Equalled or exceeded one hundred twenty percent
2994 (120%) of the average of such rates for the corresponding period
2995 of thirteen (13) weeks ending in each of the preceding two (2)
2996 calendar years; and

2997 (b) Equalled or exceeded five percent (5%).



2998 The determination of whether there has been a state "on" or
2999 "off" indicator beginning or ending any extended benefit period
3000 shall be made under this subsection as if (i) paragraph (2) did
3001 not contain subparagraph (a) thereof, and (ii) the figure "5"
3002 contained in subparagraph (b) thereof were "6"; except that,
3003 notwithstanding any such provision of this subsection, any week
3004 for which there would otherwise be a "state 'on' indicator" shall
3005 continue to be such week and shall not be determined to be a week
3006 for which there is a "state 'off' indicator."

3007 (3) There is a "state 'off' indicator" for a week if,
3008 for the period consisting of such week and the immediately
3009 preceding twelve (12) weeks, either subparagraph (a) or (b) of
3010 paragraph (2) was not satisfied.

3011 (4) "Rate of insured unemployment," for purposes of
3012 paragraphs (2) and (3) of this subsection, means the percentage
3013 derived by dividing:

3014 (a) The average number of continued weeks claimed
3015 for regular state compensation in this state for weeks of
3016 unemployment with respect to the most recent period of thirteen
3017 (13) consecutive weeks, as determined by the department on the
3018 basis of its reports to the United States Secretary of Labor; by

3019 (b) The average monthly employment covered under
3020 this chapter for the first four (4) of the most recent six (6)
3021 completed calendar quarters ending before the end of such period
3022 of thirteen (13) weeks.



3023 (5) "Regular benefits" means benefits payable to an
3024 individual under this chapter or under any other state law
3025 (including benefits payable to federal civilian employees and to
3026 ex-servicemen pursuant to 5 USCS Section 8501-8525) other than
3027 extended benefits.

3028 (6) "Extended benefits" means benefits (including
3029 benefits payable to federal civilian employees and to
3030 ex-servicemen pursuant to 5 USCS Section 8501-8525) payable to an
3031 individual under the provisions of this section for weeks of
3032 unemployment in his eligibility period.

3033 (7) "Eligibility period" of an individual means the
3034 period consisting of the weeks in his benefit year which begin in
3035 an extended benefit period and, if his benefit year ends within
3036 such extended benefit period, any weeks thereafter which begin in
3037 such period.

3038 (8) "Exhaustee" means an individual who, with respect
3039 to any week of unemployment in his eligibility period:

3040 (a) Has received, prior to such week, all of the
3041 regular benefits that were available to him under this chapter or
3042 any other state law (including dependents' allowances and benefits
3043 payable to federal civilian employees and ex-servicemen under 5
3044 USCS Section 8501-8525) in his current benefit year that includes
3045 such week.

3046 For the purposes of this subparagraph, an individual shall be
3047 deemed to have received all of the regular benefits that were



3048 available to him although, as a result of a pending appeal with
3049 respect to wages that were not considered in the original monetary
3050 determination in his benefit year, he may subsequently be
3051 determined to be entitled to added regular benefits; or

3052 (b) Has no, or insufficient, wages on the basis of
3053 which he could establish a new benefit year that would include
3054 such week, his benefit year having expired prior to such week; and

3055 (c) (i) Has no right to unemployment benefits or
3056 allowances, as the case may be, under the Railroad Unemployment
3057 Insurance Act, the Trade Expansion Act of 1962, the Automotive
3058 Products Trade Act of 1965, and such other federal laws as are
3059 specified in regulations issued by the United States Secretary of
3060 Labor; and

3061 (ii) Has not received and is not seeking
3062 unemployment benefits under the Unemployment Compensation Law of
3063 the Virgin Islands or of Canada; but if he is seeking such
3064 benefits and the appropriate agency finally determines that he is
3065 not entitled to benefits under such law, he is considered an
3066 exhaustee; however, the reference in this subsection to the Virgin
3067 Islands shall be inapplicable effective on the day on which the
3068 United States Secretary of Labor approves under Section 3304(a) of
3069 the Internal Revenue Code of 1954, an unemployment compensation
3070 law submitted to the Secretary by the Virgin Islands for approval.

3071 (9) "State law" means the unemployment insurance law of
3072 any state, approved by the United States Secretary of Labor under



3073 Section 3304 of the Internal Revenue Code of 1954 (26 USCS Section
3074 3304) .

3075 C. Except when the result would be inconsistent with the
3076 other provisions of this section, as provided in the regulations
3077 of the department, the provisions of this chapter which apply to
3078 claims for, or the payment of, regular benefits shall apply to
3079 claims for, and the payment of, extended benefits.

3080 D. An individual shall be eligible to receive extended
3081 benefits with respect to any week of unemployment in his
3082 eligibility period only if the department finds that with respect
3083 to such week:

3084 (1) He is an "exhaustee" as defined in subsection B(8)
3085 of this section.

3086 (2) He has satisfied the requirements of this chapter
3087 for the receipt of regular benefits that are applicable to
3088 individuals claiming extended benefits, including not being
3089 subject to a disqualification for the receipt of benefits.

3090 (3) For a week beginning after September 25, 1982, he
3091 has, during his base period, been paid wages for insured work
3092 equal to not less than forty (40) times his weekly benefit amount;
3093 he has been paid wages for insured work during at least two (2)
3094 quarters of his base period, and he has, during that quarter of
3095 his base period in which his total wages were highest, been paid
3096 wages for insured work equal to not less than twenty-six (26)
3097 times the minimum weekly benefit amount.



3098 E. The weekly extended benefit amount payable to an
3099 individual for a week of total unemployment in his eligibility
3100 period shall be an amount equal to the weekly benefit amount
3101 payable to him during his applicable benefit year; however,
3102 benefits paid to individuals during eligibility periods beginning
3103 before October 1, 1983, shall be computed to the next higher
3104 multiple of One Dollar (\$1.00), if not a multiple of One Dollar
3105 (\$1.00); and benefits paid to individuals during eligibility
3106 periods beginning on or after October 1, 1983, shall be computed
3107 to the next lower multiple of One Dollar (\$1.00), if not a
3108 multiple of One Dollar (\$1.00). In no event shall the weekly
3109 extended benefit amount payable to an individual be more than two
3110 (2) times the amount of the reimbursement of the federal share of
3111 extended benefits paid.

3112 F. (1) The total extended benefit amount payable to any
3113 eligible individual with respect to his applicable benefit year
3114 shall be the least of the following amounts:

3115 (a) Fifty percent (50%) of the total amount of
3116 regular benefits which were payable to him under this chapter in
3117 his applicable benefit year; however, benefits paid to individuals
3118 during eligibility periods beginning before October 1, 1983, shall
3119 be computed to the next higher multiple of One Dollar (\$1.00), if
3120 not a multiple of One Dollar (\$1.00), and benefits paid to
3121 individuals during eligibility periods beginning on or after



3122 October 1, 1983, shall be computed to the next lower multiple of
3123 One Dollar (\$1.00), if not a multiple of One Dollar (\$1.00); or

3124 (b) Thirteen (13) times his weekly benefit amount
3125 which was payable to him under this chapter for a week of total
3126 unemployment in the applicable benefit year.

3127 (2) The total extended benefits otherwise payable to an
3128 individual who is filing an interstate claim under the interstate
3129 benefit payment plan shall not exceed two (2) weeks whenever an
3130 extended benefit period is not in effect for such week in the
3131 state where the claim is filed.

3132 (3) In no event shall the total extended benefit amount
3133 payable to any eligible individual with respect to his applicable
3134 benefit year be more than two (2) times the amount of the
3135 reimbursement of the federal share of extended benefits paid.

3136 G. (1) Whenever an extended benefit period is to become
3137 effective in this state as a result of a state "on" indicator, or
3138 an extended benefit period is to be terminated in this state as a
3139 result of state "off" indicators, the department shall make an
3140 appropriate public announcement.

3141 (2) Computations required by the provisions of
3142 subsection B(4) shall be made by the department, in accordance
3143 with regulations prescribed by the United States Secretary of
3144 Labor.



3145 H. Extended benefits paid under the provisions of this
3146 section which are not reimbursable from federal funds shall be
3147 charged to the experience-rating record of base period employers.

3148 I. (1) Notwithstanding the provisions of subsections C and
3149 D of this section, an individual shall be disqualified for receipt
3150 of extended benefits if the department finds that during any week
3151 of his eligibility period:

3152 (a) He has failed either to apply for or to accept
3153 an offer of suitable work (as defined under paragraph (3)) to
3154 which he was referred by the department; or

3155 (b) He has failed to furnish tangible evidence
3156 that he has actively engaged in a systematic and sustained effort
3157 to find work, unless such individual is not actively engaged in
3158 seeking work because such individual is:

3159 (i) Before any court of the United States or
3160 any state pursuant to a lawfully issued summons to appear for jury
3161 duty;

3162 (ii) Hospitalized for treatment of an
3163 emergency or a life-threatening condition.

3164 The entitlement to benefits of any individual who is
3165 determined not to be actively engaged in seeking work in any week
3166 for the foregoing reasons shall be decided pursuant to the able
3167 and available requirements in Section 71-5-511 without regard to
3168 the disqualification provisions otherwise applicable under Section
3169 71-5-541. The conditions prescribed in clauses (i) and (ii) of



3170 this subparagraph (b) must be applied in the same manner to
3171 individuals filing claims for regular benefits.

3172 (2) Such disqualification shall begin with the week in
3173 which such failure occurred and shall continue until he has been
3174 employed in each of eight (8) subsequent weeks (whether or not
3175 consecutive) and has earned remuneration for personal services
3176 performed for an employer, as in this chapter defined, equal to
3177 not less than eight (8) times his weekly extended benefit amount.

3178 (3) For the purpose of subparagraph (a) of paragraph
3179 (1) the term "suitable work" means any work which is within the
3180 individual's capabilities to perform, if:

3181 (a) The gross average weekly remuneration payable
3182 for the work exceeds the sum of the individual's weekly extended
3183 benefit amount plus the amount, if any, of supplemental
3184 unemployment benefits (as defined in Section 501(c)(17)(D) of the
3185 Internal Revenue Code of 1954) payable to such individual for such
3186 week;

3187 (b) The wages payable for the work equal the
3188 higher of the minimum wages provided by Section 6(a)(1) of the
3189 Fair Labor Standards Act of 1938 (without regard to any
3190 exemption), or the state or local minimum wage; and

3191 (c) The position was offered to the individual in
3192 writing or was listed with the state employment service; and

3193 (d) Such work otherwise meets the definition of
3194 "suitable work" for regular benefits contained in Section



3195 71-5-513A(4) to the extent that such criteria of suitability are
3196 not inconsistent with the provisions of this paragraph (3); and

3197 (e) The individual cannot furnish satisfactory
3198 evidence to the department that his prospects for obtaining work
3199 in his customary occupation within a reasonably short period are
3200 good. If such evidence is deemed satisfactory for this purpose,
3201 the determination of whether any work is suitable with respect to
3202 such individual shall be made in accordance with the definition of
3203 suitable work contained in Section 71-5-513A(4) without regard to
3204 the definition specified by this paragraph (3).

3205 (4) Notwithstanding any provisions of subsection I to
3206 the contrary, no work shall be deemed to be suitable work for an
3207 individual which does not accord with the labor standard
3208 provisions set forth herein under Section 71-5-513A(4).

3209 (5) The employment service shall refer any claimant
3210 entitled to extended benefits under this section to any suitable
3211 work which meets the criteria prescribed in paragraph (3).

3212 (6) An individual shall be disqualified for extended
3213 benefits for the week, or fraction thereof, which immediately
3214 follows the day on which he left work voluntarily without good
3215 cause (as defined in Section 71-5-513A(1)), was discharged for
3216 misconduct connected with his work, or refused suitable work
3217 (except as provided in subsection I of this section), and for each
3218 week thereafter until he has earned remuneration for personal
3219 services performed for an employer, as in this chapter defined,



3220 equal to not less than eight (8) times his weekly benefit amount,
3221 as determined in each case.

3222 (7) The provisions of paragraphs I(1) through (6) of
3223 this section shall not apply to claims for weeks of unemployment
3224 beginning after March 6, 1993, and before January 1, 1995, and
3225 during that period the provisions of this chapter applicable to
3226 claims for regular compensation shall apply.

3227 J. Notwithstanding any other provisions of this chapter, if
3228 the benefit year of any individual ends within an extended benefit
3229 period, the remaining balance of extended benefits that such
3230 individual would, but for this section, be entitled to receive in
3231 that extended benefit period, with respect to weeks of
3232 unemployment beginning after the end of the benefit year, shall be
3233 reduced (but not below zero) by the product of the number of weeks
3234 for which the individual received any amounts as trade
3235 readjustment allowances within that benefit year, multiplied by
3236 the individual's weekly benefit amount for extended benefits.

3237 **SECTION 48.** Section 73-30-25, Mississippi Code of 1972, is
3238 reenacted as follows:

3239 73-30-25. It is not the intent of this chapter to regulate
3240 against members of other duly regulated professions in this state
3241 who do counseling in the normal course of the practice of their
3242 own profession. This chapter does not apply to:

3243 (a) Any person registered, certified or licensed by the
3244 state to practice any other occupation or profession while



3245 rendering counseling services in the performance of the occupation
3246 or profession for which he or she is registered, certified or
3247 licensed;

3248 (b) Certified school counselors when they are
3249 practicing counseling within the scope of their employment;

3250 (c) Certified vocational counselors when they are
3251 practicing vocational counseling within the scope of their
3252 employment;

3253 (d) [Deleted]

3254 (e) Student interns or trainees in counseling pursuing
3255 a course of study in counseling in a regionally or nationally
3256 accredited institution of higher learning or training institution
3257 if activities and services constitute a part of the supervised
3258 course of study, provided that such persons be designated a
3259 counselor intern;

3260 (f) [Deleted]

3261 (g) [Deleted]

3262 (h) Duly ordained ministers or clergy while functioning
3263 in their ministerial capacity and duly accredited Christian
3264 Science practitioners;

3265 (i) Professional employees of regional mental health
3266 centers, state mental hospitals, vocational rehabilitation
3267 institutions, youth court counselors and employees of the
3268 Mississippi Department of Employment Security or other



3269 governmental agency so long as they practice within the scope of
3270 their employment;

3271 (j) Professional employees of alcohol or drug abuse
3272 centers or treatment facilities, whether privately or publicly
3273 funded, so long as they practice within the scope of their
3274 employment;

3275 (k) Private employment counselors;

3276 (l) Any nonresident temporarily employed in this state
3277 to render counseling services for not more than thirty (30) days
3278 in any year, if in the opinion of the board the person would
3279 qualify for a license under this chapter and if the person holds
3280 any license required for counselors in his or her home state or
3281 country; and

3282 (m) [Deleted]

3283 **SECTION 49.** Section 43-1-30, Mississippi Code of 1972, is
3284 reenacted as follows:

3285 43-1-30. (1) There is created the Mississippi TANF
3286 Implementation Council. It shall serve as the independent, single
3287 state advisory and review council for assuring Mississippi's
3288 compliance with the federal Personal Responsibility and Work
3289 Opportunity Reconciliation Act of 1996 (Public Law 104-193), as
3290 amended. The council shall further cooperation between
3291 government, education and the private sector in meeting the needs
3292 of the TANF program. It shall also further cooperation between
3293 the business and labor communities, education and training



3294 delivery systems, and between businesses in developing highly
3295 skilled workers for high skill, high paying jobs in Mississippi.

3296 (2) The council shall be comprised of thirteen (13) public
3297 members and certain ex officio nonvoting members. All public
3298 members of the council shall be appointed as follows by the
3299 Governor:

3300 Ten (10) members shall be representatives from business and
3301 industry, provided that no fewer than five (5) members are from
3302 the manufacturing and industry sector who are also serving as
3303 members of private industry councils established within the state,
3304 and one (1) member may be a representative of a nonprofit
3305 organization. Three (3) members shall be recipients or former
3306 recipients of TANF assistance appointed from the state at large.

3307 The ex officio nonvoting members of the council shall consist
3308 of the following, or their designees:

3309 (a) The Executive Director of the Mississippi
3310 Department of Human Services;

3311 (b) The Executive Director of the Mississippi
3312 Department of Employment Security;

3313 (c) The Executive Director of the Mississippi
3314 Development Authority;

3315 (d) The State Superintendent of Public Education;

3316 (e) The Director of the Mississippi Community College
3317 Board;

3318 (f) The Executive Director of the Division of Medicaid;



3319 (g) The Commissioner of the Mississippi Department of
3320 Corrections; and

3321 (h) The Director of the Mississippi Cooperative
3322 Extension Service.

3323 (3) The Governor shall designate one (1) public member to
3324 serve as chairman of the council for a term of two (2) years and
3325 until a successor as chairman is appointed and qualified.

3326 (4) The term of office for public members appointed by the
3327 Governor shall be four (4) years and until their successors are
3328 appointed and qualified.

3329 (5) Any vacancy shall be filled for the unexpired term by
3330 the Governor in the manner of the original appointment, unless
3331 otherwise specified in this section.

3332 (6) Public members shall receive a per diem as authorized in
3333 Section 25-3-69, for each day actually engaged in meetings of the
3334 council, and shall be reimbursed for mileage and necessary
3335 expenses incurred in the performance of their duties, as provided
3336 in Section 25-3-41.

3337 (7) The council shall:

3338 (a) Annually review and recommend policies and programs
3339 to the Governor and the Legislature that will implement and meet
3340 federal requirements under the TANF program.

3341 (b) Annually review and recommend policies and programs
3342 to the Governor and to the Legislature that will enable citizens



3343 of Mississippi to acquire the skills necessary to maximize their
3344 economic self-sufficiency.

3345 (c) Review the provision of services and the use of
3346 funds and resources under the TANF program, and under all
3347 state-financed job training and job retraining programs, and
3348 advise the Governor and the Legislature on methods of coordinating
3349 such provision of services and use of funds and resources
3350 consistent with the laws and regulations governing such programs.

3351 (d) Assist in developing outcome and output measures to
3352 measure the success of the Department of Human Services' efforts
3353 in implementing the TANF program. These recommendations shall be
3354 made to the Department of Human Services at such times as required
3355 in the event that the department implements new programs to comply
3356 with the TANF program requirements.

3357 (e) Collaborate with the Mississippi Development
3358 Authority, local planning and development districts and local
3359 industrial development boards, and shall develop an economic
3360 development plan for the creation of manufacturing jobs in each of
3361 the counties in the state that has an unemployment rate of ten
3362 percent (10%) or more, which shall include, but not be limited to,
3363 procedures for business development, entrepreneurship and
3364 financial and technical assistance.

3365 (8) A majority of the members of the council shall
3366 constitute a quorum for the conduct of meetings and all actions of



3367 the council shall be by a majority of the members present at a
3368 meeting.

3369 (9) The council shall adopt rules and regulations as it
3370 deems necessary to carry out its responsibilities under this
3371 section and under applicable federal human resources programs.

3372 (10) The council may make and enter into contracts and
3373 interagency agreements as may be necessary and proper.

3374 (11) The council is authorized to commit and expend monies
3375 appropriated to it by the Legislature for its authorized purposes.
3376 The council is authorized to solicit, accept and expend public and
3377 private gifts, grants, awards and contributions related to
3378 furtherance of its statutory duties.

3379 (12) Funds for the operations of the council shall be
3380 derived from federal funds for the operation of state councils
3381 pursuant to applicable federal human resources programs and from
3382 such other monies appropriated to it by the Legislature.

3383 **SECTION 50.** Section 43-17-5, Mississippi Code of 1972, is
3384 reenacted and amended as follows:

3385 43-17-5. (1) The amount of Temporary Assistance for Needy
3386 Families (TANF) benefits which may be granted for any dependent
3387 child and a needy caretaker relative shall be determined by the
3388 county department with due regard to the resources and necessary
3389 expenditures of the family and the conditions existing in each
3390 case, and in accordance with the rules and regulations made by the
3391 Department of Human Services which shall not be less than the



Standard of Need in effect for 1988, and shall be sufficient when added to all other income (except that any income specified in the federal Social Security Act, as amended, may be disregarded) and support available to the child to provide such child with a reasonable subsistence compatible with decency and health. The first family member in the dependent child's budget may receive an amount not to exceed One Hundred Ten Dollars (\$110.00) per month; the second family member in the dependent child's budget may receive an amount not to exceed Thirty-six Dollars (\$36.00) per month; and each additional family member in the dependent child's budget an amount not to exceed Twenty-four Dollars (\$24.00) per month. The maximum for any individual family member in the dependent child's budget may be exceeded for foster or medical care or in cases of children with an intellectual disability or a physical disability. TANF benefits granted shall be specifically limited only (a) to children existing or conceived at the time the caretaker relative initially applies and qualifies for such assistance, unless this limitation is specifically waived by the department, or (b) to a child born following a twelve-consecutive-month period of discontinued benefits by the caretaker relative.

(2) TANF benefits in Mississippi shall be provided to the recipient family by an online electronic benefits transfer system.

(3) The Department of Human Services shall deny TANF benefits to the following categories of individuals, except for



3417 individuals and families specifically exempt or excluded for good
3418 cause as allowed by federal statute or regulation:

3419 (a) Families without a minor child residing with the
3420 custodial parent or other adult caretaker relative of the child;

3421 (b) Families which include an adult who has received
3422 TANF assistance for sixty (60) months after the commencement of
3423 the Mississippi TANF program, whether or not such period of time
3424 is consecutive;

3425 (c) Families not assigning to the state any rights a
3426 family member may have, on behalf of the family member or of any
3427 other person for whom the family member has applied for or is
3428 receiving such assistance, to support from any other person, as
3429 required by law;

3430 (d) Families who fail to cooperate in establishing
3431 paternity or obtaining child support, as required by law;

3432 (e) Any individual who has not attained eighteen (18)
3433 years of age, is not married to the head of household, has a minor
3434 child at least twelve (12) weeks of age in his or her care, and
3435 has not successfully completed a high school education or its
3436 equivalent, if such individual does not participate in educational
3437 activities directed toward the attainment of a high school diploma
3438 or its equivalent, or an alternative educational or training
3439 program approved by the department;

3440 (f) Any individual who has not attained eighteen (18)
3441 years of age, is not married, has a minor child in his or her



3442 care, and does not reside in a place or residence maintained by a
3443 parent, legal guardian or other adult relative or the individual
3444 as such parent's, guardian's or adult relative's own home;

3445 (g) Any minor child who has been, or is expected by a
3446 parent or other caretaker relative of the child to be, absent from
3447 the home for a period of more than thirty (30) days;

3448 (h) Any individual who is a parent or other caretaker
3449 relative of a minor child who fails to notify the department of
3450 the absence of the minor child from the home for the thirty-day
3451 period specified in paragraph (g), by the end of the five-day
3452 period that begins with the date that it becomes clear to the
3453 individual that the minor child will be absent for the thirty-day
3454 period;

3455 (i) Any individual who fails to comply with the
3456 provisions of the Employability Development Plan signed by the
3457 individual which prescribe those activities designed to help the
3458 individual become and remain employed, or to participate
3459 satisfactorily in the assigned work activity, as authorized under
3460 subsection (6)(c) and (d), or who does not engage in applicant job
3461 search activities within the thirty-day period for TANF
3462 application approval after receiving the advice and consultation
3463 of eligibility workers and/or caseworkers of the department
3464 providing a detailed description of available job search venues in
3465 the individual's county of residence or the surrounding counties;



3466 (j) A parent or caretaker relative who has not engaged
3467 in an allowable work activity once the department determines the
3468 parent or caretaker relative is ready to engage in work, or once
3469 the parent or caretaker relative has received TANF assistance
3470 under the program for twenty-four (24) months, whether or not
3471 consecutive, whichever is earlier;

3472 (k) Any individual who is fleeing to avoid prosecution,
3473 or custody or confinement after conviction, under the laws of the
3474 jurisdiction from which the individual flees, for a crime, or an
3475 attempt to commit a crime, which is a felony under the laws of the
3476 place from which the individual flees, or who is violating a
3477 condition of probation or parole imposed under federal or state
3478 law;

3479 (l) Aliens who are not qualified under federal law;

3480 (m) For a period of ten (10) years following
3481 conviction, individuals convicted in federal or state court of
3482 having made a fraudulent statement or representation with respect
3483 to the individual's place of residence in order to receive TANF,
3484 food stamps or Supplemental Security Income (SSI) assistance under
3485 Title XVI or Title XIX simultaneously from two (2) or more states;

3486 (n) Individuals who are recipients of federal
3487 Supplemental Security Income (SSI) assistance; and

3488 (o) Individuals who are eighteen (18) years of age or
3489 older who are not in compliance with the drug testing and
3490 substance use disorder treatment requirements of Section 43-17-6.



3491 (4) (a) Any person who is otherwise eligible for TANF
3492 benefits, including custodial and noncustodial parents, shall be
3493 required to attend school and meet the monthly attendance
3494 requirement as provided in this subsection if all of the following
3495 apply:

3496 (i) The person is under age twenty (20);

3497 (ii) The person has not graduated from a public or
3498 private high school or obtained a High School Equivalency Diploma
3499 equivalent;

3500 (iii) The person is physically able to attend
3501 school and is not excused from attending school; and

3502 (iv) If the person is a parent or caretaker
3503 relative with whom a dependent child is living, child care is
3504 available for the child.

3505 The monthly attendance requirement under this subsection
3506 shall be attendance at the school in which the person is enrolled
3507 for each day during a month that the school conducts classes in
3508 which the person is enrolled, with not more than two (2) absences
3509 during the month for reasons other than the reasons listed in
3510 paragraph (e)(iv) of this subsection. Persons who fail to meet
3511 participation requirements in this subsection shall be subject to
3512 sanctions as provided in paragraph (f) of this subsection.

3513 (b) As used in this subsection, "school" means any one
3514 (1) of the following:

3515 (i) A school as defined in Section 37-13-91(2);



3516 (ii) A vocational, technical and adult education
3517 program; or

3518 (iii) A course of study meeting the standards
3519 established by the State Department of Education for the granting
3520 of a declaration of equivalency of high school graduation.

3521 (c) If any compulsory-school-age child, as defined in
3522 Section 37-13-91(2), to which TANF eligibility requirements apply
3523 is not in compliance with the compulsory school attendance
3524 requirements of Section 37-13-91(6), the superintendent of schools
3525 of the school district in which the child is enrolled or eligible
3526 to attend shall notify the county department of human services of
3527 the child's noncompliance. The Department of Human Services shall
3528 review school attendance information as provided under this
3529 paragraph at all initial eligibility determinations and upon
3530 subsequent report of unsatisfactory attendance.

3531 (d) The signature of a person on an application for
3532 TANF benefits constitutes permission for the release of school
3533 attendance records for that person or for any child residing with
3534 that person. The department shall request information from the
3535 child's school district about the child's attendance in the school
3536 district's most recently completed semester of attendance. If
3537 information about the child's previous school attendance is not
3538 available or cannot be verified, the department shall require the
3539 child to meet the monthly attendance requirement for one (1)
3540 semester or until the information is obtained. The department



3541 shall use the attendance information provided by a school district
3542 to verify attendance for a child. The department shall review
3543 with the parent or caretaker relative a child's claim that he or
3544 she has a good cause for not attending school.

3545 A school district shall provide information to the department
3546 about the attendance of a child who is enrolled in a public school
3547 in the district within five (5) working days of the receipt of a
3548 written request for that information from the department. The
3549 school district shall define how many hours of attendance count as
3550 a full day and shall provide that information, upon request, to
3551 the department. In reporting attendance, the school district may
3552 add partial days' absence together to constitute a full day's
3553 absence.

3554 If a school district fails to provide to the department the
3555 information about the school attendance of any child within
3556 fifteen (15) working days after a written request, the department
3557 shall notify the Department of Audit within three (3) working days
3558 of the school district's failure to comply with that requirement.
3559 The Department of Audit shall begin audit proceedings within five
3560 (5) working days of notification by the Department of Human
3561 Services to determine the school district's compliance with the
3562 requirements of this subsection (4). If the Department of Audit
3563 finds that the school district is not in compliance with the
3564 requirements of this subsection, the school district shall be
3565 penalized as follows: The Department of Audit shall notify the



3566 State Department of Education of the school district's
3567 noncompliance, and the Department of Education shall reduce the
3568 calculation of the school district's average daily attendance
3569 (ADA) that is used to determine the allocation of Mississippi
3570 Adequate Education Program funds by the number of children for
3571 which the district has failed to provide to the Department of
3572 Human Services the required information about the school
3573 attendance of those children. The reduction in the calculation of
3574 the school district's ADA under this paragraph shall be effective
3575 for a period of one (1) year.

3576 (e) A child who is required to attend school to meet
3577 the requirements under this subsection shall comply except when
3578 there is good cause, which shall be demonstrated by any of the
3579 following circumstances:

3580 (i) The minor parent is the caretaker of a child
3581 less than twelve (12) weeks old; or

3582 (ii) The department determines that child care
3583 services are necessary for the minor parent to attend school and
3584 there is no child care available; or

3585 (iii) The child is prohibited by the school
3586 district from attending school and an expulsion is pending. This
3587 exemption no longer applies once the teenager has been expelled;
3588 however, a teenager who has been expelled and is making
3589 satisfactory progress towards obtaining a High School Equivalency
3590 Diploma equivalent shall be eligible for TANF benefits; or



3591 (iv) The child failed to attend school for one or
3592 more of the following reasons:

- 3593 1. Illness, injury or incapacity of the child
3594 or the minor parent's child;
- 3595 2. Court-required appearances or temporary
3596 incarceration;
- 3597 3. Medical or dental appointments for the
3598 child or minor parent's child;
- 3599 4. Death of a close relative;
- 3600 5. Observance of a religious holiday;
- 3601 6. Family emergency;
- 3602 7. Breakdown in transportation;
- 3603 8. Suspension; or
- 3604 9. Any other circumstance beyond the control
3605 of the child, as defined in regulations of the department.

3606 (f) Upon determination that a child has failed without
3607 good cause to attend school as required, the department shall
3608 provide written notice to the parent or caretaker relative
3609 (whoever is the primary recipient of the TANF benefits) that
3610 specifies:

- 3611 (i) That the family will be sanctioned in the next
3612 possible payment month because the child who is required to attend
3613 school has failed to meet the attendance requirement of this
3614 subsection;



(ii) The beginning date of the sanction, and the child to whom the sanction applies;

(iii) The right of the child's parents or caretaker relative (whoever is the primary recipient of the TANF benefits) to request a fair hearing under this subsection.

The child's parent or caretaker relative (whoever is the primary recipient of the TANF benefits) may request a fair hearing on the department's determination that the child has not been attending school. If the child's parents or caretaker relative does not request a fair hearing under this subsection, or if, after a fair hearing has been held, the hearing officer finds that the child without good cause has failed to meet the monthly attendance requirement, the department shall discontinue or deny TANF benefits to the child thirteen (13) years old, or older, in the next possible payment month. The department shall discontinue or deny twenty-five percent (25%) of the family grant when a child six (6) through twelve (12) years of age without good cause has failed to meet the monthly attendance requirement. Both the child and family sanction may apply when children in both age groups fail to meet the attendance requirement without good cause. A sanction applied under this subsection shall be effective for one (1) month for each month that the child failed to meet the monthly attendance requirement. In the case of a dropout, the sanction shall remain in force until the parent or caretaker relative provides written proof from the school district that the child has



reenrolled and met the monthly attendance requirement for one (1) calendar month. Any month in which school is in session for at least ten (10) days during the month may be used to meet the attendance requirement under this subsection. This includes attendance at summer school. The sanction shall be removed the next possible payment month.

(5) All parents or caretaker relatives shall have their dependent children receive vaccinations and booster vaccinations against those diseases specified by the State Health Officer under Section 41-23-37 in accordance with the vaccination and booster vaccination schedule prescribed by the State Health Officer for children of that age, in order for the parents or caretaker relatives to be eligible or remain eligible to receive TANF benefits. Proof of having received such vaccinations and booster vaccinations shall be given by presenting the certificates of vaccination issued by any health care provider licensed to administer vaccinations, and submitted on forms specified by the State Board of Health. If the parents without good cause do not have their dependent children receive the vaccinations and booster vaccinations as required by this subsection and they fail to comply after thirty (30) days' notice, the department shall sanction the family's TANF benefits by twenty-five percent (25%) for the next payment month and each subsequent payment month until the requirements of this subsection are met.



3664 (6) (a) If the parent or caretaker relative applying for
3665 TANF assistance is work eligible, as determined by the Department
3666 of Human Services, the person shall be required to engage in an
3667 allowable work activity once the department determines the parent
3668 or caretaker relative is determined work eligible, or once the
3669 parent or caretaker relative has received TANF assistance under
3670 the program for twenty-four (24) months, whether or not
3671 consecutive, whichever is earlier. No TANF benefits shall be
3672 given to any person to whom this section applies who fails without
3673 good cause to comply with the Employability Development Plan
3674 prepared by the department for the person, or who has refused to
3675 accept a referral or offer of employment, training or education in
3676 which he or she is able to engage, subject to the penalties
3677 prescribed in paragraph (e) of this subsection. A person shall be
3678 deemed to have refused to accept a referral or offer of
3679 employment, training or education if he or she:

3680 (i) Willfully fails to report for an interview
3681 with respect to employment when requested to do so by the
3682 department; or

3683 (ii) Willfully fails to report to the department
3684 the result of a referral to employment; or

3685 (iii) Willfully fails to report for allowable work
3686 activities as prescribed in paragraphs (c) and (d) of this
3687 subsection.



3688 (b) The Department of Human Services shall operate a
3689 statewide work program for TANF recipients to provide work
3690 activities and supportive services to enable families to become
3691 self-sufficient and improve their competitive position in the
3692 workforce in accordance with the requirements of the federal
3693 Personal Responsibility and Work Opportunity Reconciliation Act of
3694 1996 (Public Law 104-193), as amended, and the regulations
3695 promulgated thereunder, and the Deficit Reduction Act of 2005
3696 (Public Law 109-171), as amended. Within sixty (60) days after
3697 the initial application for TANF benefits, the TANF recipient must
3698 participate in a job search skills training workshop or a job
3699 readiness program, which shall include resume writing, job search
3700 skills, employability skills and, if available at no charge, the
3701 General Aptitude Test Battery or its equivalent. All adults who
3702 are not specifically exempt shall be referred by the department
3703 for allowable work activities. An adult may be exempt from the
3704 mandatory work activity requirement for the following reasons:

3705 (i) Incapacity;

3706 (ii) Temporary illness or injury, verified by
3707 physician's certificate;

3708 (iii) Is in the third trimester of pregnancy, and
3709 there are complications verified by the certificate of a
3710 physician, nurse practitioner, physician assistant, or any other
3711 licensed health care professional practicing under a protocol with
3712 a licensed physician;



3713 (iv) Caretaker of a child under twelve (12)
3714 months, for not more than twelve (12) months of the sixty-month
3715 maximum benefit period;

3716 (v) Caretaker of an ill or incapacitated person,
3717 as verified by physician's certificate;

3718 (vi) Age, if over sixty (60) or under eighteen
3719 (18) years of age;

3720 (vii) Receiving treatment for substance abuse, if
3721 the person is in compliance with the substance abuse treatment
3722 plan;

3723 (viii) In a two-parent family, the caretaker of a
3724 severely disabled child, as verified by a physician's certificate;
3725 or

3726 (ix) History of having been a victim of domestic
3727 violence, which has been reported as required by state law and is
3728 substantiated by police reports or court records, and being at
3729 risk of further domestic violence, shall be exempt for a period as
3730 deemed necessary by the department but not to exceed a total of
3731 twelve (12) months, which need not be consecutive, in the
3732 sixty-month maximum benefit period. For the purposes of this
3733 subparagraph (ix), "domestic violence" means that an individual
3734 has been subjected to:

3735 1. Physical acts that resulted in, or
3736 threatened to result in, physical injury to the individual;

3737 2. Sexual abuse;



3738 3. Sexual activity involving a dependent
3739 child;

3740 4. Being forced as the caretaker relative of
3741 a dependent child to engage in nonconsensual sexual acts or
3742 activities;

3743 5. Threats of, or attempts at, physical or
3744 sexual abuse;

3745 6. Mental abuse; or

3746 7. Neglect or deprivation of medical care.

3747 (c) For all families, all adults who are not
3748 specifically exempt shall be required to participate in work
3749 activities for at least the minimum average number of hours per
3750 week specified by federal law or regulation, not fewer than twenty
3751 (20) hours per week (thirty-five (35) hours per week for
3752 two-parent families) of which are attributable to the following
3753 allowable work activities:

3754 (i) Unsubsidized employment;

3755 (ii) Subsidized private employment;

3756 (iii) Subsidized public employment;

3757 (iv) Work experience (including work associated
3758 with the refurbishing of publicly assisted housing), if sufficient
3759 private employment is not available;

3760 (v) On-the-job training;

3761 (vi) Job search and job readiness assistance

3762 consistent with federal TANF regulations;



3763 (vii) Community service programs;
3764 (viii) Vocational educational training (not to
3765 exceed twelve (12) months with respect to any individual);
3766 (ix) The provision of child care services to an
3767 individual who is participating in a community service program;
3768 (x) Satisfactory attendance at high school or in a
3769 course of study leading to a high school equivalency certificate,
3770 for heads of household under age twenty (20) who have not
3771 completed high school or received such certificate;
3772 (xi) Education directly related to employment, for
3773 heads of household under age twenty (20) who have not completed
3774 high school or received such equivalency certificate.
3775 (d) The following are allowable work activities which
3776 may be attributable to hours in excess of the minimum specified
3777 in * * * paragraph (c) of this subsection:
3778 (i) Job skills training directly related to
3779 employment;
3780 (ii) Education directly related to employment for
3781 individuals who have not completed high school or received a high
3782 school equivalency certificate;
3783 (iii) Satisfactory attendance at high school or in
3784 a course of study leading to a high school equivalency, for
3785 individuals who have not completed high school or received such
3786 equivalency certificate;



3787 (iv) Job search and job readiness assistance
3788 consistent with federal TANF regulations.

3789 (e) If any adult or caretaker relative refuses to
3790 participate in allowable work activity as required under this
3791 subsection (6), the following full family TANF benefit penalty
3792 will apply, subject to due process to include notification,
3793 conciliation and a hearing if requested by the recipient:

3794 (i) For the first violation, the department shall
3795 terminate the TANF assistance otherwise payable to the family for
3796 a two-month period or until the person has complied with the
3797 required work activity, whichever is longer;

3798 (ii) For the second violation, the department
3799 shall terminate the TANF assistance otherwise payable to the
3800 family for a six-month period or until the person has complied
3801 with the required work activity, whichever is longer;

3802 (iii) For the third violation, the department
3803 shall terminate the TANF assistance otherwise payable to the
3804 family for a twelve-month period or until the person has complied
3805 with the required work activity, whichever is longer;

3806 (iv) For the fourth violation, the person shall be
3807 permanently disqualified.

3808 For a two-parent family, unless prohibited by state or
3809 federal law, Medicaid assistance shall be terminated only for the
3810 person whose failure to participate in allowable work activity
3811 caused the family's TANF assistance to be sanctioned under



3812 this * * * paragraph (e), unless an individual is pregnant, but
3813 shall not be terminated for any other person in the family who is
3814 meeting that person's applicable work requirement or who is not
3815 required to work. Minor children shall continue to be eligible
3816 for Medicaid benefits regardless of the disqualification of their
3817 parent or caretaker relative for TANF assistance under this
3818 subsection (6), unless prohibited by state or federal law.

3819 (f) Any person enrolled in a two-year or four-year
3820 college program who meets the eligibility requirements to receive
3821 TANF benefits, and who is meeting the applicable work requirements
3822 and all other applicable requirements of the TANF program, shall
3823 continue to be eligible for TANF benefits while enrolled in the
3824 college program for as long as the person meets the requirements
3825 of the TANF program, unless prohibited by federal law.

3826 (g) No adult in a work activity required under this
3827 subsection (6) shall be employed or assigned (i) when any other
3828 individual is on layoff from the same or any substantially
3829 equivalent job within six (6) months before the date of the TANF
3830 recipient's employment or assignment; or (ii) if the employer has
3831 terminated the employment of any regular employee or otherwise
3832 caused an involuntary reduction of its workforce in order to fill
3833 the vacancy so created with an adult receiving TANF assistance.
3834 The Mississippi Department of Employment Security, established
3835 under Section 71-5-101, shall appoint one or more impartial
3836 hearing officers to hear and decide claims by employees of



3837 violations of this paragraph (g). The hearing officer shall hear
3838 all the evidence with respect to any claim made hereunder and such
3839 additional evidence as he may require and shall make a
3840 determination and the reason therefor. The claimant shall be
3841 promptly notified of the decision of the hearing officer and the
3842 reason therefor. Within ten (10) days after the decision of the
3843 hearing officer has become final, any party aggrieved thereby may
3844 secure judicial review thereof by commencing an action, in the
3845 circuit court of the county in which the claimant resides, against
3846 the department for the review of such decision, in which action
3847 any other party to the proceeding before the hearing officer shall
3848 be made a defendant. Any such appeal shall be on the record which
3849 shall be certified to the court by the department in the manner
3850 provided in Section 71-5-531, and the jurisdiction of the court
3851 shall be confined to questions of law which shall render its
3852 decision as provided in that section.

3853 (7) The Department of Human Services may provide child care
3854 for eligible participants who require such care so that they may
3855 accept employment or remain employed. The department may also
3856 provide child care for those participating in the TANF program
3857 when it is determined that they are satisfactorily involved in
3858 education, training or other allowable work activities. The
3859 department may contract with Head Start agencies to provide child
3860 care services to TANF recipients. The department may also arrange
3861 for child care by use of contract or vouchers, provide vouchers in



3862 advance to a caretaker relative, reimburse a child care provider,
3863 or use any other arrangement deemed appropriate by the department,
3864 and may establish different reimbursement rates for child care
3865 services depending on the category of the facility or home. Any
3866 center-based or group home child care facility under this
3867 subsection shall be licensed by the State Department of Health
3868 pursuant to law. When child care is being provided in the child's
3869 own home, in the home of a relative of the child, or in any other
3870 unlicensed setting, the provision of such child care may be
3871 monitored on a random basis by the Department of Human Services or
3872 the State Department of Health. Transitional child care
3873 assistance may be continued if it is necessary for parents to
3874 maintain employment once support has ended, unless prohibited
3875 under state or federal law. Transitional child care assistance
3876 may be provided for up to twenty-four (24) months after the last
3877 month during which the family was eligible for TANF assistance, if
3878 federal funds are available for such child care assistance.

3879 (8) The Department of Human Services may provide
3880 transportation or provide reasonable reimbursement for
3881 transportation expenses that are necessary for individuals to be
3882 able to participate in allowable work activity under the TANF
3883 program.

3884 (9) Medicaid assistance shall be provided to a family of
3885 TANF program participants for up to twenty-four (24) consecutive
3886 calendar months following the month in which the participating



3887 family would be ineligible for TANF benefits because of increased
3888 income, expiration of earned income disregards, or increased hours
3889 of employment of the caretaker relative; however, Medicaid
3890 assistance for more than twelve (12) months may be provided only
3891 if a federal waiver is obtained to provide such assistance for
3892 more than twelve (12) months and federal and state funds are
3893 available to provide such assistance.

3894 (10) The department shall require applicants for and
3895 recipients of public assistance from the department to sign a
3896 personal responsibility contract that will require the applicant
3897 or recipient to acknowledge his or her responsibilities to the
3898 state.

3899 (11) The department shall enter into an agreement with the
3900 State Personnel Board and other state agencies that will allow
3901 those TANF participants who qualify for vacant jobs within state
3902 agencies to be placed in state jobs. State agencies participating
3903 in the TANF work program shall receive any and all benefits
3904 received by employers in the private sector for hiring TANF
3905 recipients. This subsection (11) shall be effective only if the
3906 state obtains any necessary federal waiver or approval and if
3907 federal funds are available therefor.

3908 (12) Any unspent TANF funds remaining from the prior fiscal
3909 year may be expended for any TANF allowable activities.

3910 (13) The Mississippi Department of Human Services shall
3911 provide TANF applicants information and referral to programs that



3912 provide information about birth control, prenatal health care,
3913 abstinence education, marriage education, family preservation and
3914 fatherhood.

3915 (14) No new TANF program requirement or restriction
3916 affecting a person's eligibility for TANF assistance, or allowable
3917 work activity, which is not mandated by federal law or regulation
3918 may be implemented by the Department of Human Services after July
3919 1, 2004, unless such is specifically authorized by an amendment to
3920 this section by the Legislature.

3921 **SECTION 51.** Section 43-19-45, Mississippi Code of 1972, is
3922 reenacted as follows:

3923 43-19-45. (1) The Child Support Unit shall establish a
3924 state parent locator service for the purpose of locating absent
3925 and nonsupporting parents and alleged parents, which will utilize
3926 all appropriate public and private locator sources. In order to
3927 carry out the responsibilities imposed under Sections 43-19-31
3928 through 43-19-53, the Child Support Unit may secure, by
3929 administrative subpoena from the customer records of public
3930 utilities and cable television companies, the names and addresses
3931 of individuals and the names and addresses of employers of such
3932 individuals that would enable the location of parents or alleged
3933 parents who have a duty to provide support and maintenance for
3934 their children. The Child Support Unit may also administratively
3935 subpoena any and all financial information, including account
3936 numbers, names and social security numbers of record for assets,



3937 accounts, and account balances from any individual, financial
3938 institution, business or other entity, public or private, needed
3939 to establish, modify or enforce a support order. No entity
3940 complying with an administrative subpoena to supply the requested
3941 information of whatever nature shall be liable in any civil action
3942 or proceeding on account of such compliance. Full faith and
3943 credit shall be given to all uniform administrative subpoenas
3944 issued by other state child support units. The recipient of an
3945 administrative subpoena shall supply the Child Support Unit, other
3946 state and federal IV-D agencies, its attorneys, investigators,
3947 probation officers, county or district attorneys in this state,
3948 all information relative to the location, employment,
3949 employment-related benefits including, but not limited to,
3950 availability of medical insurance, income and property of such
3951 parents and alleged parents and with all information on hand
3952 relative to the location and prosecution of any person who has, by
3953 means of a false statement or misrepresentation or by
3954 impersonation or other fraudulent device, obtained Temporary
3955 Assistance for Needy Families (TANF) to which he or she was not
3956 entitled, notwithstanding any provision of law making such
3957 information confidential. The Mississippi Department of
3958 Information Technology Services and any other agency in this state
3959 using the facilities of the Mississippi Department of Information
3960 Technology Services are directed to permit the Child Support Unit
3961 access to their files, inclusive of those maintained for other



3962 state agencies, for the purpose of locating absent and
3963 nonsupporting parents and alleged parents, except to the extent
3964 that any such access would violate any valid federal statute or
3965 regulation issued pursuant thereto. The Child Support Unit, other
3966 state and federal IV-D agencies, its attorneys, investigators,
3967 probation officers, or county or district attorneys, shall use
3968 such information only for the purpose of investigating or
3969 enforcing the support liability of such absent parents or alleged
3970 parents or for the prosecution of other persons mentioned herein.
3971 Neither the Child Support Unit nor those authorities shall use the
3972 information, or disclose it, for any other purpose. All records
3973 maintained pursuant to the provisions of Sections 43-19-31 through
3974 43-19-53 shall be confidential and shall be available only to the
3975 Child Support Unit, other state and federal IV-D agencies, the
3976 attorneys, investigators and other staff employed or under
3977 contract under Sections 43-19-31 through 43-19-53, district or
3978 county attorneys, probation departments, child support units in
3979 other states, and courts having jurisdiction in paternity, support
3980 or abandonment proceedings. The Child Support Unit may release to
3981 the public the name, photo, last-known address, arrearage amount
3982 and other necessary information of a parent who has a judgment
3983 against him for child support and is currently in arrears in the
3984 payment of this support. Such release may be included in a "Most
3985 Wanted List" or other media in order to solicit assistance.



3986 (2) The Child Support Unit shall have the authority to
3987 secure information from the records of the Mississippi Department
3988 of Employment Security that may be necessary to locate absent and
3989 nonsupporting parents and alleged parents under the provisions of
3990 Sections 43-19-31 through 43-19-53. Upon request of the Child
3991 Support Unit, all departments, boards, bureaus and agencies of the
3992 state shall provide to the Child Support Unit verification of
3993 employment or payment and the address and social security number
3994 of any person designated as an absent or nonsupporting parent or
3995 alleged parent. In addition, upon request of the Child Support
3996 Unit, the Mississippi Department of Employment Security, or any
3997 private employer or payor of any income to a person designated as
3998 an absent or nonsupporting parent or alleged parent, shall provide
3999 to the Child Support Unit verification of employment or payment
4000 and the address and social security number of the person so
4001 designated. Full faith and credit shall be given to such notices
4002 issued by child support units in other states. All such records
4003 and information shall be confidential and shall not be used for
4004 any purposes other than those specified by Sections 43-19-31
4005 through 43-19-53. The violation of the provisions of this
4006 subsection shall be unlawful and any person convicted of violating
4007 the provisions of this subsection shall be guilty of a misdemeanor
4008 and shall pay a fine of not more than Two Hundred Dollars
4009 (\$200.00).



4010 (3) Federal and state IV-D agencies shall have access to the
4011 state parent locator service and any system used by the Child
4012 Support Unit to locate an individual for purposes relating to
4013 motor vehicles or law enforcement. No employer or other source of
4014 income who complies with this section shall be liable in any civil
4015 action or proceeding brought by the obligor or obligee on account
4016 of such compliance.

4017 **SECTION 52.** Section 43-19-46, Mississippi Code of 1972, is
4018 reenacted as follows:

4019 43-19-46. (1) Each employer paying wages, salary or
4020 commission and doing business in Mississippi shall report to the
4021 Directory of New Hires within the Mississippi Department of Human
4022 Services:

4023 (a) The hiring of any person who resides or works in
4024 this state to whom the employer anticipates paying wages, salary
4025 or commission; and

4026 (b) The hiring or return to work of any employee who
4027 was laid off, furloughed, separated, granted leave without pay or
4028 was terminated from employment.

4029 (2) Employers shall report, by mailing or by other means
4030 authorized by the Department of Human Services, a copy of the
4031 employee's W-4 form or its equivalent that will result in timely
4032 reporting. Each employer shall submit reports within fifteen (15)
4033 days of the hiring, rehiring or return to work of the employee.
4034 The report shall contain:



4035 (a) The employee's name, address, social security
4036 number and the date of birth;

4037 (b) The employer's name, address, and federal and state
4038 withholding tax identification numbers; and

4039 (c) The date upon which the employee began or resumed
4040 employment, or is scheduled to begin or otherwise resume
4041 employment.

4042 (3) The department shall retain the information, which shall
4043 be forwarded to the federal registry of new hires.

4044 (4) The Department of Human Services may operate the
4045 program, may enter into a mutual agreement with the Mississippi
4046 Department of Employment Security or the Department of Revenue, or
4047 both, for the operation of the Directory of New Hires Program, or
4048 the Department of Human Services may contract for that service, in
4049 which case the department shall maintain administrative control of
4050 the program.

4051 (5) In cases in which an employer fails to report
4052 information, as required by this section, an administratively
4053 levied civil penalty in an amount not to exceed Five Hundred
4054 Dollars (\$500.00) shall apply if the failure is the result of a
4055 conspiracy between the employer and employee to not supply the
4056 required report or to supply a false or incomplete report. The
4057 penalty shall otherwise not exceed Twenty-five Dollars (\$25.00).
4058 Appeal shall be as provided in Section 43-19-58.



4059 **SECTION 53.** Section 57-62-5, Mississippi Code of 1972, is
4060 reenacted as follows:

4061 **[For businesses or industries that received or applied for**
4062 **incentive payments prior to July 1, 2005, this section shall read**
4063 **as follows:]**

4064 57-62-5. As used in this chapter, the following words and
4065 phrases shall have the meanings ascribed in this section unless
4066 the context clearly indicates otherwise:

4067 (a) "Qualified business or industry" means any
4068 corporation, limited liability company, partnership, sole
4069 proprietorship, business trust or other legal entity and subunits
4070 or affiliates thereof, pursuant to rules and regulations of the
4071 MDA, which provides an average annual salary, excluding benefits
4072 which are not subject to Mississippi income taxes, of at least one
4073 hundred twenty-five percent (125%) of the most recently published
4074 state average annual wage or the most recently published average
4075 annual wage of the county in which the qualified business or
4076 industry is located as determined by the Mississippi Department of
4077 Employment Security, whichever is the lesser. An establishment
4078 shall not be considered to be a qualified business or industry
4079 unless it offers, or will offer within one hundred eighty (180)
4080 days of the date it receives the first incentive payment pursuant
4081 to the provisions of this chapter, a basic health benefits plan to
4082 the individuals it employs in new direct jobs in this state which



4083 is approved by the MDA. Qualified business or industry does not
4084 include retail business or gaming business;

4085 (b) "New direct job" means full-time employment in this
4086 state in a qualified business or industry that has qualified to
4087 receive an incentive payment pursuant to this chapter, which
4088 employment did not exist in this state before the date of approval
4089 by the MDA of the application of the qualified business or
4090 industry pursuant to the provisions of this chapter. "New direct
4091 job" shall include full-time employment in this state of employees
4092 who are employed by an entity other than the establishment that
4093 has qualified to receive an incentive payment and who are leased
4094 to the qualified business or industry, if such employment did not
4095 exist in this state before the date of approval by the MDA of the
4096 application of the establishment;

4097 (c) "Full-time job" means a job of at least thirty-five
4098 (35) hours per week;

4099 (d) "Estimated direct state benefits" means the tax
4100 revenues projected by the MDA to accrue to the state as a result
4101 of the qualified business or industry;

4102 (e) "Estimated direct state costs" means the costs
4103 projected by the MDA to accrue to the state as a result of the
4104 qualified business or industry;

4105 (f) "Estimated net direct state benefits" means the
4106 estimated direct state benefits less the estimated direct state
4107 costs;



4108 (g) "Net benefit rate" means the estimated net direct
4109 state benefits computed as a percentage of gross payroll, provided
4110 that:

4111 (i) Except as otherwise provided in this paragraph
4112 (g), the net benefit rate may be variable and shall not exceed
4113 four percent (4%) of the gross payroll; and shall be set in the
4114 sole discretion of the MDA;

4115 (ii) In no event shall incentive payments,
4116 cumulatively, exceed the estimated net direct state benefits;

4117 (h) "Gross payroll" means wages for new direct jobs of
4118 the qualified business or industry; and

4119 (i) "MDA" means the Mississippi Development Authority.

4120 **[For businesses or industries that received or applied for**
4121 **incentive payments from and after July 1, 2005, but prior to July**
4122 **1, 2010, this section shall read as follows:]**

4123 57-62-5. As used in this chapter, the following words and
4124 phrases shall have the meanings ascribed in this section unless
4125 the context clearly indicates otherwise:

4126 (a) "Qualified business or industry" means any
4127 corporation, limited liability company, partnership, sole
4128 proprietorship, business trust or other legal entity and subunits
4129 or affiliates thereof, pursuant to rules and regulations of the
4130 MDA, which:

4131 (i) Is a data/information processing enterprise
4132 meeting minimum criteria established by the MDA that provides an



4133 average annual salary, excluding benefits which are not subject to
4134 Mississippi income taxes, of at least one hundred percent (100%)
4135 of the most recently published state average annual wage or the
4136 most recently published average annual wage of the county in which
4137 the qualified business or industry is located as determined by the
4138 Mississippi Department of Employment Security, whichever is the
4139 lesser, and creates not less than two hundred (200) new direct
4140 jobs if the enterprise is located in a Tier One or Tier Two area
4141 (as such areas are designated in accordance with Section
4142 57-73-21), or which creates not less than one hundred (100) new
4143 jobs if the enterprise is located in a Tier Three area (as such
4144 areas are designated in accordance with Section 57-73-21);

4145 (ii) Is a manufacturing or distribution enterprise
4146 meeting minimum criteria established by the MDA that provides an
4147 average annual salary, excluding benefits which are not subject to
4148 Mississippi income taxes, of at least one hundred ten percent
4149 (110%) of the most recently published state average annual wage or
4150 the most recently published average annual wage of the county in
4151 which the qualified business or industry is located as determined
4152 by the Mississippi Department of Employment Security, whichever is
4153 the lesser, invests not less than Twenty Million Dollars
4154 (\$20,000,000.00) in land, buildings and equipment, and creates not
4155 less than fifty (50) new direct jobs if the enterprise is located
4156 in a Tier One or Tier Two area (as such areas are designated in
4157 accordance with Section 57-73-21), or which creates not less than



4158 twenty (20) new jobs if the enterprise is located in a Tier Three
4159 area (as such areas are designated in accordance with Section
4160 57-73-21);

4161 (iii) Is a corporation, limited liability company,
4162 partnership, sole proprietorship, business trust or other legal
4163 entity and subunits or affiliates thereof, pursuant to rules and
4164 regulations of the MDA, which provides an average annual salary,
4165 excluding benefits which are not subject to Mississippi income
4166 taxes, of at least one hundred twenty-five percent (125%) of the
4167 most recently published state average annual wage or the most
4168 recently published average annual wage of the county in which the
4169 qualified business or industry is located as determined by the
4170 Mississippi Department of Employment Security, whichever is the
4171 lesser, and creates not less than twenty-five (25) new direct jobs
4172 if the enterprise is located in a Tier One or Tier Two area (as
4173 such areas are designated in accordance with Section 57-73-21), or
4174 which creates not less than ten (10) new jobs if the enterprise is
4175 located in a Tier Three area (as such areas are designated in
4176 accordance with Section 57-73-21). An establishment shall not be
4177 considered to be a qualified business or industry unless it
4178 offers, or will offer within one hundred eighty (180) days of the
4179 date it receives the first incentive payment pursuant to the
4180 provisions of this chapter, a basic health benefits plan to the
4181 individuals it employs in new direct jobs in this state which is



4182 approved by the MDA. Qualified business or industry does not
4183 include retail business or gaming business; or
4184 (iv) Is a research and development or a technology
4185 intensive enterprise meeting minimum criteria established by the
4186 MDA that provides an average annual salary, excluding benefits
4187 which are not subject to Mississippi income taxes, of at least one
4188 hundred fifty percent (150%) of the most recently published state
4189 average annual wage or the most recently published average annual
4190 wage of the county in which the qualified business or industry is
4191 located as determined by the Mississippi Department of Employment
4192 Security, whichever is the lesser, and creates not less than ten
4193 (10) new direct jobs.

4194 An establishment shall not be considered to be a qualified
4195 business or industry unless it offers, or will offer within one
4196 hundred eighty (180) days of the date it receives the first
4197 incentive payment pursuant to the provisions of this chapter, a
4198 basic health benefits plan to the individuals it employs in new
4199 direct jobs in this state which is approved by the MDA. Qualified
4200 business or industry does not include retail business or gaming
4201 business.

4202 (b) "New direct job" means full-time employment in this
4203 state in a qualified business or industry that has qualified to
4204 receive an incentive payment pursuant to this chapter, which
4205 employment did not exist in this state before the date of approval
4206 by the MDA of the application of the qualified business or



4207 industry pursuant to the provisions of this chapter. "New direct
4208 job" shall include full-time employment in this state of employees
4209 who are employed by an entity other than the establishment that
4210 has qualified to receive an incentive payment and who are leased
4211 to the qualified business or industry, if such employment did not
4212 exist in this state before the date of approval by the MDA of the
4213 application of the establishment.

4214 (c) "Full-time job" or "full-time employment" means a
4215 job of at least thirty-five (35) hours per week.

4216 (d) "Estimated direct state benefits" means the tax
4217 revenues projected by the MDA to accrue to the state as a result
4218 of the qualified business or industry.

4219 (e) "Estimated direct state costs" means the costs
4220 projected by the MDA to accrue to the state as a result of the
4221 qualified business or industry.

4222 (f) "Estimated net direct state benefits" means the
4223 estimated direct state benefits less the estimated direct state
4224 costs.

4225 (g) "Net benefit rate" means the estimated net direct
4226 state benefits computed as a percentage of gross payroll, provided
4227 that:

4228 (i) Except as otherwise provided in this paragraph
4229 (g), the net benefit rate may be variable and shall not exceed
4230 four percent (4%) of the gross payroll; and shall be set in the
4231 sole discretion of the MDA;



4232 (ii) In no event shall incentive payments,
4233 cumulatively, exceed the estimated net direct state benefits.

4234 (h) "Gross payroll" means wages for new direct jobs of
4235 the qualified business or industry.

4236 (i) "MDA" means the Mississippi Development Authority.

4237 **[For businesses or industries that apply for incentive**
4238 **payments from and after July 1, 2010, this section shall read as**
4239 **follows:]**

4240 57-62-5. As used in this chapter, the following words and
4241 phrases shall have the meanings ascribed in this section unless
4242 the context clearly indicates otherwise:

4243 (a) "Qualified business or industry" means any
4244 corporation, limited liability company, partnership, sole
4245 proprietorship, business trust or other legal entity and subunits
4246 or affiliates thereof, pursuant to rules and regulations of the
4247 MDA, which:

4248 (i) Is a data/information processing enterprise
4249 meeting minimum criteria established by the MDA that provides an
4250 average annual salary, excluding benefits which are not subject to
4251 Mississippi income taxes, of at least one hundred percent (100%)
4252 of the most recently published state average annual wage or the
4253 most recently published average annual wage of the county in which
4254 the qualified business or industry is located as determined by the
4255 Mississippi Department of Employment Security, whichever is the



4256 lesser, and creates not less than two hundred (200) new direct
4257 jobs;

4258 (ii) Is a corporation, limited liability company,
4259 partnership, sole proprietorship, business trust or other legal
4260 entity and subunits or affiliates thereof, pursuant to rules and
4261 regulations of the MDA, which provides an average annual salary,
4262 excluding benefits which are not subject to Mississippi income
4263 taxes, of at least one hundred ten percent (110%) of the most
4264 recently published state average annual wage or the most recently
4265 published average annual wage of the county in which the qualified
4266 business or industry is located as determined by the Mississippi
4267 Department of Employment Security, whichever is the lesser, and
4268 creates not less than twenty-five (25) new direct jobs; or

4269 (iii) Is a corporation, limited liability company,
4270 partnership, sole proprietorship, business trust or other legal
4271 entity and subunits or affiliates thereof, pursuant to rules and
4272 regulations of the MDA, which is a manufacturer that:

4273 1. Provides an average annual salary,
4274 excluding benefits which are not subject to Mississippi income
4275 taxes, of at least one hundred ten percent (110%) of the most
4276 recently published state average annual wage or the most recently
4277 published average annual wage of the county in which the qualified
4278 business or industry is located as determined by the Mississippi
4279 Department of Employment Security, whichever is the lesser;



4280 2. Has a minimum of five thousand (5,000)
4281 existing employees as of the last day of the previous calendar
4282 year; and

4283 3. MDA determines will create not less than
4284 three thousand (3,000) new direct jobs within forty-eight (48)
4285 months of the date the MDA determines that the applicant is
4286 qualified to receive incentive payments.

4287 An establishment shall not be considered to be a qualified
4288 business or industry unless it offers, or will offer within one
4289 hundred eighty (180) days of the date it receives the first
4290 incentive payment pursuant to the provisions of this chapter, a
4291 basic health benefits plan to the individuals it employs in new
4292 direct jobs in this state which is approved by the MDA. Qualified
4293 business or industry does not include retail business or gaming
4294 business.

4295 (b) "New direct job" means full-time employment in this
4296 state in a qualified business or industry that has qualified to
4297 receive an incentive payment pursuant to this chapter, which
4298 employment did not exist in this state before the date of approval
4299 by the MDA of the application of the qualified business or
4300 industry pursuant to the provisions of this chapter. "New direct
4301 job" shall include full-time employment in this state of employees
4302 who are employed by an entity other than the establishment that
4303 has qualified to receive an incentive payment and who are leased
4304 to the qualified business or industry, if such employment did not



4305 exist in this state before the date of approval by the MDA of the
4306 application of the establishment.

4307 (c) "Full-time job" or "full-time employment" means a
4308 job of at least thirty-five (35) hours per week.

4309 (d) "Gross payroll" means wages for new direct jobs of
4310 the qualified business or industry.

4311 (e) "MDA" means the Mississippi Development Authority.

4312 **SECTION 54.** Section 57-62-9, Mississippi Code of 1972, is
4313 reenacted as follows:

4314 **[For businesses or industries that received or applied for**
4315 **incentive payments prior to July 1, 2005, this section shall read**
4316 **as follows:]**

4317 57-62-9. (1) Except as otherwise provided in this section,
4318 a qualified business or industry that meets the qualifications
4319 specified in this chapter may receive quarterly incentive payments
4320 for a period not to exceed ten (10) years from the Department of
4321 Revenue pursuant to the provisions of this chapter in an amount
4322 which shall be equal to the net benefit rate multiplied by the
4323 actual gross payroll of new direct jobs for a calendar quarter as
4324 verified by the Mississippi Department of Employment Security, but
4325 not to exceed the amount of money previously paid into the fund by
4326 the employer. A qualified business or industry that is a project
4327 as defined in Section 57-75-5(f)(iv)1 may elect the date upon
4328 which the ten-year period will begin. Such date may not be later



4329 than sixty (60) months after the date the business or industry
4330 applied for incentive payments.

4331 (2) (a) A qualified business or industry that is a project
4332 as defined in Section 57-75-5(f)(iv)1 may apply to the MDA to
4333 receive incentive payments for an additional period not to exceed
4334 five (5) years beyond the expiration date of the initial ten-year
4335 period if:

4336 (i) The qualified business or industry creates at
4337 least three thousand (3,000) new direct jobs within five (5) years
4338 after the date the business or industry commences commercial
4339 production;

4340 (ii) Within five (5) years after the date the
4341 business or industry commences commercial production, the average
4342 annual wage of the jobs is at least one hundred fifty percent
4343 (150%) of the most recently published state average annual wage or
4344 the most recently published average annual wage of the county in
4345 which the qualified business or industry is located as determined
4346 by the Mississippi Department of Employment Security, whichever is
4347 the lesser. The criteria for the average annual wage requirement
4348 shall be based upon the state average annual wage or the average
4349 annual wage of the county whichever is appropriate, at the time of
4350 creation of the minimum number of jobs, and the threshold
4351 established at that time will remain constant for the duration of
4352 the additional period; and



4353 (iii) The qualified business or industry meets and
4354 maintains the job and wage requirements of subparagraphs (i) and
4355 (ii) of this paragraph (a) for four (4) consecutive calendar
4356 quarters.

4357 (b) A qualified business or industry that is a project
4358 as defined in Section 57-75-5(f)(iv)1 and qualified to receive
4359 incentive payments for the additional period provided in paragraph
4360 (a) of this subsection (2) may apply to the MDA to receive
4361 incentive payments for an additional period not to exceed ten (10)
4362 years beyond the expiration date of the additional period provided
4363 in paragraph (a) of this subsection (2) if:

4364 (i) The qualified business or industry creates at
4365 least four thousand (4,000) new direct jobs after qualifying for
4366 the additional incentive period provided in paragraph (a) of this
4367 subsection (2) but before the expiration of the additional period.
4368 For purposes of determining whether the business or industry meets
4369 the minimum jobs requirement of this subparagraph (i), the number
4370 of jobs the business or industry created in order to meet the
4371 minimum jobs requirement of paragraph (a) of this subsection (2)
4372 shall be subtracted from the minimum jobs requirement of this
4373 subparagraph (i);

4374 (ii) The average annual wage of the jobs is at
4375 least one hundred fifty percent (150%) of the most recently
4376 published state average annual wage or the most recently published
4377 average annual wage of the county in which the qualified business



4378 or industry is located as determined by the Mississippi Department
4379 of Employment Security, whichever is the lesser. The criteria for
4380 the average annual wage requirement shall be based upon the state
4381 average annual wage or the average annual wage of the county
4382 whichever is appropriate, at the time of creation of the minimum
4383 number of jobs, and the threshold established at that time will
4384 remain constant for the duration of the additional period; and

4385 (iii) The qualified business or industry meets and
4386 maintains the job and wage requirements of subparagraphs (i) and
4387 (ii) of this paragraph (b) for four (4) consecutive calendar
4388 quarters.

4389 (3) In order to receive incentive payments, an establishment
4390 shall apply to the MDA. The application shall be on a form
4391 prescribed by the MDA and shall contain such information as may be
4392 required by the MDA to determine if the applicant is qualified.

4393 (4) In order to qualify to receive such payments, the
4394 establishment applying shall be required to:

4395 (a) Be engaged in a qualified business or industry;

4396 (b) Provide an average salary, excluding benefits which
4397 are not subject to Mississippi income taxes, of at least one
4398 hundred twenty-five percent (125%) of the most recently published
4399 state average annual wage or the most recently published average
4400 annual wage of the county in which the qualified business or
4401 industry is located as determined by the Mississippi Department of
4402 Employment Security, whichever is the lesser. The criteria for



4403 this requirement shall be based upon the state average annual wage
4404 or the average annual wage of the county whichever is appropriate,
4405 at the time of application, and the threshold established upon
4406 application will remain constant for the duration of the project;

4407 (c) The business or industry must create and maintain a
4408 minimum of ten (10) full-time jobs in counties that have an
4409 average unemployment rate over the previous twelve-month period
4410 which is at least one hundred fifty percent (150%) of the most
4411 recently published state unemployment rate, as determined by the
4412 Mississippi Department of Employment Security or in Tier Three
4413 counties as determined under Section 57-73-21. In all other
4414 counties, the business or industry must create and maintain a
4415 minimum of twenty-five (25) full-time jobs. The criteria for this
4416 requirement shall be based on the designation of the county at the
4417 time of the application. The threshold established upon the
4418 application will remain constant for the duration of the project.
4419 The business or industry must meet its job creation commitment
4420 within twenty-four (24) months of the application approval.
4421 However, if the qualified business or industry is applying for
4422 incentive payments for an additional period under subsection (2)
4423 of this section, the business or industry must comply with the
4424 applicable job and wage requirements of subsection (2) of this
4425 section.

4426 (5) The MDA shall determine if the applicant is qualified to
4427 receive incentive payments. If the applicant is determined to be



4428 qualified by the MDA, the MDA shall conduct a cost/benefit
4429 analysis to determine the estimated net direct state benefits and
4430 the net benefit rate applicable for a period not to exceed ten
4431 (10) years and to estimate the amount of gross payroll for the
4432 period. If the applicant is determined to be qualified to receive
4433 incentive payments for an additional period under subsection (2)
4434 of this section, the MDA shall conduct a cost/benefit analysis to
4435 determine the estimated net direct state benefits and the net
4436 benefit rate applicable for the appropriate additional period and
4437 to estimate the amount of gross payroll for the additional period.
4438 In conducting such cost/benefit analysis, the MDA shall consider
4439 quantitative factors, such as the anticipated level of new tax
4440 revenues to the state along with the cost to the state of the
4441 qualified business or industry, and such other criteria as deemed
4442 appropriate by the MDA, including the adequacy of retirement
4443 benefits that the business or industry provides to individuals it
4444 employs in new direct jobs in this state. In no event shall
4445 incentive payments, cumulatively, exceed the estimated net direct
4446 state benefits. Once the qualified business or industry is
4447 approved by the MDA, an agreement shall be deemed to exist between
4448 the qualified business or industry and the State of Mississippi,
4449 requiring the continued incentive payment to be made as long as
4450 the qualified business or industry retains its eligibility.

4451 (6) Upon approval of such an application, the MDA shall
4452 notify the Department of Revenue and shall provide it with a copy



4453 of the approved application and the estimated net direct state
4454 benefits. The Department of Revenue may require the qualified
4455 business or industry to submit such additional information as may
4456 be necessary to administer the provisions of this chapter. The
4457 qualified business or industry shall report to the Department of
4458 Revenue periodically to show its continued eligibility for
4459 incentive payments. The qualified business or industry may be
4460 audited by the Department of Revenue to verify such eligibility.
4461 In addition, the State Auditor may conduct performance and
4462 compliance audits under this chapter according to Section
4463 7-7-211(o) and may bill the oversight agency.

4464 (7) If the qualified business or industry is located in an
4465 area that has been declared by the Governor to be a disaster area
4466 and as a result of the disaster the business or industry is unable
4467 to create or maintain the full-time jobs required by this section:

4468 (a) The Commissioner of Revenue may extend the period
4469 of time that the business or industry may receive incentive
4470 payments for a period of time not to exceed two (2) years;

4471 (b) The Commissioner of Revenue may waive the
4472 requirement that a certain number of jobs be maintained for a
4473 period of time not to exceed twenty-four (24) months; and

4474 (c) The MDA may extend the period of time within which
4475 the jobs must be created for a period of time not to exceed
4476 twenty-four (24) months.



4477 **[For businesses or industries that received or applied for**
4478 **incentive payments from and after July 1, 2005, but prior to July**
4479 **1, 2010, this section shall read as follows:]**

4480 57-62-9. (1) (a) Except as otherwise provided in this
4481 section, a qualified business or industry that meets the
4482 qualifications specified in this chapter may receive quarterly
4483 incentive payments for a period not to exceed ten (10) years from
4484 the Department of Revenue pursuant to the provisions of this
4485 chapter in an amount which shall be equal to the net benefit rate
4486 multiplied by the actual gross payroll of new direct jobs for a
4487 calendar quarter as verified by the Mississippi Department of
4488 Employment Security, but not to exceed:

4489 (i) Ninety percent (90%) of the amount of money
4490 previously paid into the fund by the employer if the employer
4491 provides an average annual salary, excluding benefits which are
4492 not subject to Mississippi income taxes, of at least one hundred
4493 seventy-five percent (175%) of the most recently published state
4494 average annual wage or the most recently published average annual
4495 wage of the county in which the qualified business or industry is
4496 located as determined by the Mississippi Department of Employment
4497 Security, whichever is the lesser;

4498 (ii) Eighty percent (80%) of the amount of money
4499 previously paid into the fund by the employer if the employer
4500 provides an average annual salary, excluding benefits which are
4501 not subject to Mississippi income taxes, of at least one hundred



4502 twenty-five percent (125%) but less than one hundred seventy-five
4503 percent (175%) of the most recently published state average annual
4504 wage or the most recently published average annual wage of the
4505 county in which the qualified business or industry is located as
4506 determined by the Mississippi Department of Employment Security,
4507 whichever is the lesser; or

4508 (iii) Seventy percent (70%) of the amount of money
4509 previously paid into the fund by the employer if the employer
4510 provides an average annual salary, excluding benefits which are
4511 not subject to Mississippi income taxes, of less than one hundred
4512 twenty-five percent (125%) of the most recently published state
4513 average annual wage or the most recently published average annual
4514 wage of the county in which the qualified business or industry is
4515 located as determined by the Mississippi Department of Employment
4516 Security, whichever is the lesser.

4517 (b) A qualified business or industry that is a project
4518 as defined in Section 57-75-5(f)(iv)1 may elect the date upon
4519 which the ten-year period will begin. Such date may not be later
4520 than sixty (60) months after the date the business or industry
4521 applied for incentive payments.

4522 (2) (a) A qualified business or industry that is a project
4523 as defined in Section 57-75-5(f)(iv)1 may apply to the MDA to
4524 receive incentive payments for an additional period not to exceed
4525 five (5) years beyond the expiration date of the initial ten-year
4526 period if:



4527 (i) The qualified business or industry creates at
4528 least three thousand (3,000) new direct jobs within five (5) years
4529 after the date the business or industry commences commercial
4530 production;

4531 (ii) Within five (5) years after the date the
4532 business or industry commences commercial production, the average
4533 annual wage of the jobs is at least one hundred fifty percent
4534 (150%) of the most recently published state average annual wage or
4535 the most recently published average annual wage of the county in
4536 which the qualified business or industry is located as determined
4537 by the Mississippi Department of Employment Security, whichever is
4538 the lesser. The criteria for the average annual wage requirement
4539 shall be based upon the state average annual wage or the average
4540 annual wage of the county whichever is appropriate, at the time of
4541 creation of the minimum number of jobs, and the threshold
4542 established at that time will remain constant for the duration of
4543 the additional period; and

4544 (iii) The qualified business or industry meets and
4545 maintains the job and wage requirements of subparagraphs (i) and
4546 (ii) of this paragraph (a) for four (4) consecutive calendar
4547 quarters.

4548 (b) A qualified business or industry that is a project
4549 as defined in Section 57-75-5(f)(iv)1 and qualified to receive
4550 incentive payments for the additional period provided in paragraph
4551 (a) of this subsection (2) may apply to the MDA to receive



4552 incentive payments for an additional period not to exceed ten (10)
4553 years beyond the expiration date of the additional period provided
4554 in paragraph (a) of this subsection (2) if:

4555 (i) The qualified business or industry creates at
4556 least four thousand (4,000) new direct jobs after qualifying for
4557 the additional incentive period provided in paragraph (a) of this
4558 subsection (2) but before the expiration of the additional period.
4559 For purposes of determining whether the business or industry meets
4560 the minimum jobs requirement of this subparagraph (i), the number
4561 of jobs the business or industry created in order to meet the
4562 minimum jobs requirement of paragraph (a) of this subsection (2)
4563 shall be subtracted from the minimum jobs requirement of this
4564 subparagraph (i);

4565 (ii) The average annual wage of the jobs is at
4566 least one hundred fifty percent (150%) of the most recently
4567 published state average annual wage or the most recently published
4568 average annual wage of the county in which the qualified business
4569 or industry is located as determined by the Mississippi Department
4570 of Employment Security, whichever is the lesser. The criteria for
4571 the average annual wage requirement shall be based upon the state
4572 average annual wage or the average annual wage of the county
4573 whichever is appropriate, at the time of creation of the minimum
4574 number of jobs, and the threshold established at that time will
4575 remain constant for the duration of the additional period; and



4576 (iii) The qualified business or industry meets and
4577 maintains the job and wage requirements of subparagraphs (i) and
4578 (ii) of this paragraph (b) for four (4) consecutive calendar
4579 quarters.

4580 (3) In order to receive incentive payments, an establishment
4581 shall apply to the MDA. The application shall be on a form
4582 prescribed by the MDA and shall contain such information as may be
4583 required by the MDA to determine if the applicant is qualified.

4584 (4) (a) In order to qualify to receive such payments, the
4585 establishment applying shall be required to meet the definition of
4586 the term "qualified business or industry";

4587 (b) The criteria for the average annual salary
4588 requirement shall be based upon the state average annual wage or
4589 the average annual wage of the county whichever is appropriate, at
4590 the time of application, and the threshold established upon
4591 application will remain constant for the duration of the project;

4592 (c) The business or industry must meet its job creation
4593 commitment within twenty-four (24) months of the application
4594 approval. However, if the qualified business or industry is
4595 applying for incentive payments for an additional period under
4596 subsection (2) of this section, the business or industry must
4597 comply with the applicable job and wage requirements of subsection
4598 (2) of this section.

4599 (5) (a) The MDA shall determine if the applicant is
4600 qualified to receive incentive payments.



4601 (b) If the applicant is determined to be qualified to
4602 receive incentive payments for an additional period under
4603 subsection (2) of this section, the MDA shall conduct a
4604 cost/benefit analysis to determine the estimated net direct state
4605 benefits and the net benefit rate applicable for the appropriate
4606 additional period and to estimate the amount of gross payroll for
4607 the additional period. In conducting such cost/benefit analysis,
4608 the MDA shall consider quantitative factors, such as the
4609 anticipated level of new tax revenues to the state along with the
4610 cost to the state of the qualified business or industry, and such
4611 other criteria as deemed appropriate by the MDA, including the
4612 adequacy of retirement benefits that the business or industry
4613 provides to individuals it employs in new direct jobs in this
4614 state. In no event shall incentive payments, cumulatively, exceed
4615 the estimated net direct state benefits. Once the qualified
4616 business or industry is approved by the MDA, an agreement shall be
4617 deemed to exist between the qualified business or industry and the
4618 State of Mississippi, requiring the continued incentive payment to
4619 be made as long as the qualified business or industry retains its
4620 eligibility.

4621 (6) Upon approval of such an application, the MDA shall
4622 notify the Department of Revenue and shall provide it with a copy
4623 of the approved application and the estimated net direct state
4624 benefits. The Department of Revenue may require the qualified
4625 business or industry to submit such additional information as may



be necessary to administer the provisions of this chapter. The qualified business or industry shall report to the Department of Revenue periodically to show its continued eligibility for incentive payments. The qualified business or industry may be audited by the Department of Revenue to verify such eligibility. In addition, the State Auditor may conduct performance and compliance audits under this chapter according to Section 7-7-211(o) and may bill the oversight agency.

(7) If the qualified business or industry is located in an area that has been declared by the Governor to be a disaster area and as a result of the disaster the business or industry is unable to create or maintain the full-time jobs required by this section:

(a) The Commissioner of Revenue may extend the period of time that the business or industry may receive incentive payments for a period of time not to exceed two (2) years;

(b) The Commissioner of Revenue may waive the requirement that a certain number of jobs be maintained for a period of time not to exceed twenty-four (24) months; and

(c) The MDA may extend the period of time within which the jobs must be created for a period of time not to exceed twenty-four (24) months.

[For businesses or industries that apply for incentive payments from and after July 1, 2010, this section shall read as follows:]



4650 57-62-9. (1) (a) Except as otherwise provided in this
4651 section, a qualified business or industry that meets the
4652 qualifications specified in this chapter may receive quarterly
4653 incentive payments for a period not to exceed ten (10) years from
4654 the Department of Revenue pursuant to the provisions of this
4655 chapter in an amount which shall be equal to ninety percent (90%)
4656 of the amount of actual income tax withheld for employees with new
4657 direct jobs, but in no event more than four percent (4%) of the
4658 total annual salary paid for new direct jobs during such period,
4659 excluding benefits which are not subject to Mississippi income
4660 taxes.

4661 (b) A qualified business or industry that is a project
4662 as defined in Section 57-75-5(f)(iv)1 may elect the date upon
4663 which the ten-year period will begin. Such date may not be later
4664 than sixty (60) months after the date the business or industry
4665 applied for incentive payments.

4666 (c) A qualified business or industry as defined in
4667 Section 57-62-5(a)(iii) may elect the date upon which the ten-year
4668 period will begin and may elect to begin receiving incentive
4669 payments as early as the second quarter after that date.
4670 Incentive payments will be calculated on all jobs above the
4671 existing number of jobs as of the date the MDA determines that the
4672 applicant is qualified to receive incentive payments. In the
4673 event that the qualified business or industry falls below the
4674 number of existing jobs at the time of determination that the



4675 applicant is qualified to receive the incentive payment, the
4676 incentive payment shall cease until the qualified business or
4677 industry once again exceeds that number. If after forty-eight
4678 (48) months, the qualified business or industry has failed to
4679 create at least three thousand (3,000) new direct jobs, incentive
4680 payments shall cease and the qualified business or industry shall
4681 not be qualified to receive further incentive payments.

4682 (2) (a) A qualified business or industry that is a project
4683 as defined in Section 57-75-5(f)(iv)1 may apply to the MDA to
4684 receive incentive payments for an additional period not to exceed
4685 five (5) years beyond the expiration date of the initial ten-year
4686 period if:

4687 (i) The qualified business or industry creates at
4688 least three thousand (3,000) new direct jobs within five (5) years
4689 after the date the business or industry commences commercial
4690 production;

4691 (ii) Within five (5) years after the date the
4692 business or industry commences commercial production, the average
4693 annual wage of the jobs is at least one hundred fifty percent
4694 (150%) of the most recently published state average annual wage or
4695 the most recently published average annual wage of the county in
4696 which the qualified business or industry is located as determined
4697 by the Mississippi Department of Employment Security, whichever is
4698 the lesser. The criteria for the average annual wage requirement
4699 shall be based upon the state average annual wage or the average



4700 annual wage of the county whichever is appropriate, at the time of
4701 creation of the minimum number of jobs, and the threshold
4702 established at that time will remain constant for the duration of
4703 the additional period; and

4704 (iii) The qualified business or industry meets and
4705 maintains the job and wage requirements of subparagraphs (i) and
4706 (ii) of this paragraph (a) for four (4) consecutive calendar
4707 quarters.

4708 (b) A qualified business or industry that is a project
4709 as defined in Section 57-75-5(f)(iv)1 and qualified to receive
4710 incentive payments for the additional period provided in paragraph
4711 (a) of this subsection (2) may apply to the MDA to receive
4712 incentive payments for an additional period not to exceed ten (10)
4713 years beyond the expiration date of the additional period provided
4714 in paragraph (a) of this subsection (2) if:

4715 (i) The qualified business or industry creates at
4716 least four thousand (4,000) new direct jobs after qualifying for
4717 the additional incentive period provided in paragraph (a) of this
4718 subsection (2) but before the expiration of the additional period.
4719 For purposes of determining whether the business or industry meets
4720 the minimum jobs requirement of this subparagraph (i), the number
4721 of jobs the business or industry created in order to meet the
4722 minimum jobs requirement of paragraph (a) of this subsection (2)
4723 shall be subtracted from the minimum jobs requirement of this
4724 subparagraph (i);



4725 (ii) The average annual wage of the jobs is at
4726 least one hundred fifty percent (150%) of the most recently
4727 published state average annual wage or the most recently published
4728 average annual wage of the county in which the qualified business
4729 or industry is located as determined by the Mississippi Department
4730 of Employment Security, whichever is the lesser. The criteria for
4731 the average annual wage requirement shall be based upon the state
4732 average annual wage or the average annual wage of the county
4733 whichever is appropriate, at the time of creation of the minimum
4734 number of jobs, and the threshold established at that time will
4735 remain constant for the duration of the additional period; and

4736 (iii) The qualified business or industry meets and
4737 maintains the job and wage requirements of subparagraphs (i) and
4738 (ii) of this paragraph (b) for four (4) consecutive calendar
4739 quarters.

4740 (3) In order to receive incentive payments, an establishment
4741 shall apply to the MDA. The application shall be on a form
4742 prescribed by the MDA and shall contain such information as may be
4743 required by the MDA to determine if the applicant is qualified.

4744 (4) (a) In order to qualify to receive such payments, the
4745 establishment applying shall be required to meet the definition of
4746 the term "qualified business or industry";

4747 (b) The criteria for the average annual salary
4748 requirement shall be based upon the state average annual wage or
4749 the average annual wage of the county whichever is appropriate, at



4750 the time of application, and the threshold established upon
4751 application will remain constant for the duration of the project;

4752 (c) Except as otherwise provided for a qualified
4753 business or industry as defined in Section 57-62-5(a)(iii), the
4754 business or industry must meet its job creation commitment within
4755 twenty-four (24) months of the application approval. However, if
4756 the qualified business or industry is applying for incentive
4757 payments for an additional period under subsection (2) of this
4758 section, the business or industry must comply with the applicable
4759 job and wage requirements of subsection (2) of this section.

4760 (5) (a) The MDA shall determine if the applicant is
4761 qualified to receive incentive payments.

4762 (b) If the applicant is determined to be qualified to
4763 receive incentive payments for an additional period under
4764 subsection (2) of this section, the MDA shall conduct an analysis
4765 to estimate the amount of gross payroll for the appropriate
4766 additional period. Incentive payments, cumulatively, shall not
4767 exceed ninety percent (90%) of the amount of actual income tax
4768 withheld for employees with new direct jobs, but in no event more
4769 than four percent (4%) of the total annual salary paid for new
4770 direct jobs during the additional period, excluding benefits which
4771 are not subject to Mississippi income taxes. Once the qualified
4772 business or industry is approved by the MDA, an agreement shall be
4773 deemed to exist between the qualified business or industry and the
4774 State of Mississippi, requiring the continued incentive payment to



4775 be made as long as the qualified business or industry retains its
4776 eligibility.

4777 (6) Upon approval of such an application, the MDA shall
4778 notify the Department of Revenue and shall provide it with a copy
4779 of the approved application and the minimum job and salary
4780 requirements. The Department of Revenue may require the qualified
4781 business or industry to submit such additional information as may
4782 be necessary to administer the provisions of this chapter. The
4783 qualified business or industry shall report to the Department of
4784 Revenue periodically to show its continued eligibility for
4785 incentive payments. The qualified business or industry may be
4786 audited by the Department of Revenue to verify such eligibility.
4787 In addition, the State Auditor may conduct performance and
4788 compliance audits under this chapter according to Section
4789 7-7-211(o) and may bill the oversight agency.

4790 (7) If the qualified business or industry is located in an
4791 area that has been declared by the Governor to be a disaster area
4792 and as a result of the disaster the business or industry is unable
4793 to create or maintain the full-time jobs required by this section:

4794 (a) The Commissioner of Revenue may extend the period
4795 of time that the business or industry may receive incentive
4796 payments for a period of time not to exceed two (2) years;

4797 (b) The Commissioner of Revenue may waive the
4798 requirement that a certain number of jobs be maintained for a
4799 period of time not to exceed twenty-four (24) months; and



4800 (c) The MDA may extend the period of time within which
4801 the jobs must be created for a period of time not to exceed
4802 twenty-four (24) months.

4803 **SECTION 55.** Section 57-75-5, Mississippi Code of 1972, is
4804 reenacted as follows:

4805 57-75-5. Words and phrases used in this chapter shall have
4806 meanings as follows, unless the context clearly indicates a
4807 different meaning:

4808 (a) "Act" means the Mississippi Major Economic Impact
4809 Act as originally enacted or as hereafter amended.

4810 (b) "Authority" means the Mississippi Major Economic
4811 Impact Authority created pursuant to the act.

4812 (c) "Bonds" means general obligation bonds, interim
4813 notes and other evidences of debt of the State of Mississippi
4814 issued pursuant to this chapter.

4815 (d) "Facility related to the project" means and
4816 includes any of the following, as the same may pertain to the
4817 project within the project area: (i) facilities to provide
4818 potable and industrial water supply systems, sewage and waste
4819 disposal systems and water, natural gas and electric transmission
4820 systems to the site of the project; (ii) airports, airfields and
4821 air terminals; (iii) rail lines; (iv) port facilities; (v)
4822 highways, streets and other roadways; (vi) public school
4823 buildings, classrooms and instructional facilities, training
4824 facilities and equipment, including any functionally related



4825 facilities; (vii) parks, outdoor recreation facilities and
4826 athletic facilities; (viii) auditoriums, pavilions, campgrounds,
4827 art centers, cultural centers, folklore centers and other public
4828 facilities; (ix) health care facilities, public or private; and
4829 (x) fire protection facilities, equipment and elevated water
4830 tanks.

4831 (e) "Person" means any natural person, corporation,
4832 association, partnership, receiver, trustee, guardian, executor,
4833 administrator, fiduciary, governmental unit, public agency,
4834 political subdivision, or any other group acting as a unit, and
4835 the plural as well as the singular.

4836 (f) "Project" means:

4837 (i) Any industrial, commercial, research and
4838 development, warehousing, distribution, transportation,
4839 processing, mining, United States government or tourism enterprise
4840 together with all real property required for construction,
4841 maintenance and operation of the enterprise with an initial
4842 capital investment of not less than Three Hundred Million Dollars
4843 (\$300,000,000.00) from private or United States government sources
4844 together with all buildings, and other supporting land and
4845 facilities, structures or improvements of whatever kind required
4846 or useful for construction, maintenance and operation of the
4847 enterprise; or with an initial capital investment of not less than
4848 One Hundred Fifty Million Dollars (\$150,000,000.00) from private
4849 or United States government sources together with all buildings



4850 and other supporting land and facilities, structures or
4851 improvements of whatever kind required or useful for construction,
4852 maintenance and operation of the enterprise and which creates at
4853 least one thousand (1,000) net new full-time jobs; or which
4854 creates at least one thousand (1,000) net new full-time jobs which
4855 provides an average salary, excluding benefits which are not
4856 subject to Mississippi income taxation, of at least one hundred
4857 twenty-five percent (125%) of the most recently published average
4858 annual wage of the state as determined by the Mississippi
4859 Department of Employment Security. "Project" shall include any
4860 addition to or expansion of an existing enterprise if such
4861 addition or expansion has an initial capital investment of not
4862 less than Three Hundred Million Dollars (\$300,000,000.00) from
4863 private or United States government sources, or has an initial
4864 capital investment of not less than One Hundred Fifty Million
4865 Dollars (\$150,000,000.00) from private or United States government
4866 sources together with all buildings and other supporting land and
4867 facilities, structures or improvements of whatever kind required
4868 or useful for construction, maintenance and operation of the
4869 enterprise and which creates at least one thousand (1,000) net new
4870 full-time jobs; or which creates at least one thousand (1,000) net
4871 new full-time jobs which provides an average salary, excluding
4872 benefits which are not subject to Mississippi income taxation, of
4873 at least one hundred twenty-five percent (125%) of the most
4874 recently published average annual wage of the state as determined



4875 by the Mississippi Department of Employment Security. "Project"
4876 shall also include any ancillary development or business resulting
4877 from the enterprise, of which the authority is notified, within
4878 three (3) years from the date that the enterprise entered into
4879 commercial production, that the project area has been selected as
4880 the site for the ancillary development or business.

4881 (ii) 1. Any major capital project designed to
4882 improve, expand or otherwise enhance any active duty or reserve
4883 United States armed services bases and facilities or any major
4884 Mississippi National Guard training installations, their support
4885 areas or their military operations, upon designation by the
4886 authority that any such base was or is at risk to be recommended
4887 for closure or realignment pursuant to the Defense Base Closure
4888 and Realignment Act of 1990, as amended, or other applicable
4889 federal law; or any major development project determined by the
4890 authority to be necessary to acquire or improve base properties
4891 and to provide employment opportunities through construction of
4892 projects as defined in Section 57-3-5, which shall be located on
4893 or provide direct support service or access to such military
4894 installation property in the event of closure or reduction of
4895 military operations at the installation.

4896 2. Any major study or investigation related
4897 to such a facility, installation or base, upon a determination by
4898 the authority that the study or investigation is critical to the



4899 expansion, retention or reuse of the facility, installation or
4900 base.

4901 3. Any project as defined in Section 57-3-5,
4902 any business or enterprise determined to be in the furtherance of
4903 the public purposes of this act as determined by the authority or
4904 any facility related to such project each of which shall be,
4905 directly or indirectly, related to any military base or other
4906 military-related facility no longer operated by the United States
4907 armed services or the Mississippi National Guard.

4908 (iii) Any enterprise to be maintained, improved or
4909 constructed in Tishomingo County by or for a National Aeronautics
4910 and Space Administration facility in such county.

4911 (iv) 1. Any major capital project with an initial
4912 capital investment from private sources of not less than Seven
4913 Hundred Fifty Million Dollars (\$750,000,000.00) which will create
4914 at least three thousand (3,000) jobs meeting criteria established
4915 by the Mississippi Development Authority.

4916 2. "Project" shall also include any ancillary
4917 development or business resulting from an enterprise operating a
4918 project as defined in item 1 of this paragraph (f)(iv), of which
4919 the authority is notified, within three (3) years from the date
4920 that the enterprise entered into commercial production, that the
4921 state has been selected as the site for the ancillary development
4922 or business.



4923 (v) Any manufacturing, processing or industrial
4924 project determined by the authority, in its sole discretion, to
4925 contribute uniquely and significantly to the economic growth and
4926 development of the state, and which meets the following criteria:

4927 1. The project shall create at least two
4928 thousand (2,000) net new full-time jobs meeting criteria
4929 established by the authority, which criteria shall include, but
4930 not be limited to, the requirement that such jobs must be held by
4931 persons eligible for employment in the United States under
4932 applicable state and federal law.

4933 2. The project and any facility related to
4934 the project shall include a total investment from private sources
4935 of not less than Sixty Million Dollars (\$60,000,000.00), or from
4936 any combination of sources of not less than Eighty Million Dollars
4937 (\$80,000,000.00).

4938 (vi) Any real property owned or controlled by the
4939 National Aeronautics and Space Administration, the United States
4940 government, or any agency thereof, which is legally conveyed to
4941 the State of Mississippi or to the State of Mississippi for the
4942 benefit of the Mississippi Major Economic Impact Authority, its
4943 successors and assigns pursuant to Section 212 of Public Law
4944 104-99, enacted January 26, 1996 (110 Stat. 26 at 38).

4945 (vii) Any major capital project related to the
4946 establishment, improvement, expansion and/or other enhancement of
4947 any active duty military installation and having a minimum capital



4948 investment from any source or combination of sources other than
4949 the State of Mississippi of at least Forty Million Dollars
4950 (\$40,000,000.00), and which will create at least four hundred
4951 (400) military installation related full-time jobs, which jobs may
4952 be military jobs, civilian jobs or a combination of military and
4953 civilian jobs. The authority shall require that binding
4954 commitments be entered into requiring that the minimum
4955 requirements for the project provided for in this subparagraph
4956 shall be met not later than July 1, 2008.

4957 (viii) Any major capital project with an initial
4958 capital investment from any source or combination of sources of
4959 not less than Ten Million Dollars (\$10,000,000.00) which will
4960 create at least eighty (80) full-time jobs which provide an
4961 average annual salary, excluding benefits which are not subject to
4962 Mississippi income taxes, of at least one hundred thirty-five
4963 percent (135%) of the most recently published average annual wage
4964 of the state or the most recently published average annual wage of
4965 the county in which the project is located as determined by the
4966 Mississippi Department of Employment Security, whichever is the
4967 lesser. The authority shall require that binding commitments be
4968 entered into requiring that:

4969 1. The minimum requirements for the project
4970 provided for in this subparagraph shall be met; and



4971 2. That if such commitments are not met, all
4972 or a portion of the funds provided by the state for the project as
4973 determined by the authority shall be repaid.

4974 (ix) Any regional retail shopping mall with an
4975 initial capital investment from private sources in excess of One
4976 Hundred Fifty Million Dollars (\$150,000,000.00), with a square
4977 footage in excess of eight hundred thousand (800,000) square feet,
4978 which will create at least seven hundred (700) full-time jobs with
4979 an average hourly wage of Eleven Dollars (\$11.00) per hour. The
4980 authority shall require that binding commitments be entered into
4981 requiring that:

4982 1. The minimum requirements for the project
4983 provided for in this subparagraph shall be met; and

4984 2. That if such commitments are not met, all
4985 or a portion of the funds provided by the state for the project as
4986 determined by the authority shall be repaid.

4987 (x) Any major capital project with an initial
4988 capital investment from any source or combination of sources of
4989 not less than Seventy-five Million Dollars (\$75,000,000.00) which
4990 will create at least one hundred twenty-five (125) full-time jobs
4991 which provide an average annual salary, excluding benefits which
4992 are not subject to Mississippi income taxes, of at least one
4993 hundred thirty-five percent (135%) of the most recently published
4994 average annual wage of the state or the most recently published
4995 average annual wage of the county in which the project is located



4996 as determined by the Mississippi Department of Employment
4997 Security, whichever is the greater. The authority shall require
4998 that binding commitments be entered into requiring that:

4999 1. The minimum requirements for the project
5000 provided for in this subparagraph shall be met; and

5001 2. That if such commitments are not met, all
5002 or a portion of the funds provided by the state for the project as
5003 determined by the authority shall be repaid.

5004 (xi) Any potential major capital project that the
5005 authority has determined is feasible to recruit.

5006 (xii) Any project built according to the
5007 specifications and federal provisions set forth by the National
5008 Aeronautics and Space Administration Center Operations Directorate
5009 at Stennis Space Center for the purpose of consolidating common
5010 services from National Aeronautics and Space Administration
5011 centers in human resources, procurement, financial management and
5012 information technology located on land owned or controlled by the
5013 National Aeronautics and Space Administration, which will create
5014 at least four hundred seventy (470) full-time jobs.

5015 (xiii) Any major capital project with an initial
5016 capital investment from any source or combination of sources of
5017 not less than Ten Million Dollars (\$10,000,000.00) which will
5018 create at least two hundred fifty (250) full-time jobs. The
5019 authority shall require that binding commitments be entered into
5020 requiring that:



5021 1. The minimum requirements for the project
5022 provided for in this subparagraph shall be met; and

5023 2. That if such commitments are not met, all
5024 or a portion of the funds provided by the state for the project as
5025 determined by the authority shall be repaid.

5026 (xiv) Any major pharmaceutical facility with a
5027 capital investment of not less than Fifty Million Dollars
5028 (\$50,000,000.00) made after July 1, 2002, through four (4) years
5029 after the initial date of any loan or grant made by the authority
5030 for such project, which will maintain at least seven hundred fifty
5031 (750) full-time employees. The authority shall require that
5032 binding commitments be entered into requiring that:

5033 1. The minimum requirements for the project
5034 provided for in this subparagraph shall be met; and

5035 2. That if such commitments are not met, all
5036 or a portion of the funds provided by the state for the project as
5037 determined by the authority shall be repaid.

5038 (xv) Any pharmaceutical manufacturing, packaging
5039 and distribution facility with an initial capital investment from
5040 any local or federal sources of not less than Five Hundred
5041 Thousand Dollars (\$500,000.00) which will create at least ninety
5042 (90) full-time jobs. The authority shall require that binding
5043 commitments be entered into requiring that:

5044 1. The minimum requirements for the project
5045 provided for in this subparagraph shall be met; and



5046 2. That if such commitments are not met, all
5047 or a portion of the funds provided by the state for the project as
5048 determined by the authority shall be repaid.

5049 (xvi) Any major industrial wood processing
5050 facility with an initial capital investment of not less than One
5051 Hundred Million Dollars (\$100,000,000.00) which will create at
5052 least one hundred twenty-five (125) full-time jobs which provide
5053 an average annual salary, excluding benefits which are not subject
5054 to Mississippi income taxes, of at least Thirty Thousand Dollars
5055 (\$30,000.00). The authority shall require that binding
5056 commitments be entered into requiring that:

5057 1. The minimum requirements for the project
5058 provided for in this subparagraph shall be met; and

5059 2. That if such commitments are not met, all
5060 or a portion of the funds provided by the state for the project as
5061 determined by the authority shall be repaid.

5062 (xvii) Any technical, engineering,
5063 manufacturing-logistic service provider with an initial capital
5064 investment of not less than One Million Dollars (\$1,000,000.00)
5065 which will create at least ninety (90) full-time jobs. The
5066 authority shall require that binding commitments be entered into
5067 requiring that:

5068 1. The minimum requirements for the project
5069 provided for in this subparagraph shall be met; and



5070 2. That if such commitments are not met, all
5071 or a portion of the funds provided by the state for the project as
5072 determined by the authority shall be repaid.

5073 (xviii) Any major capital project with an initial
5074 capital investment from any source or combination of sources other
5075 than the State of Mississippi of not less than Six Hundred Million
5076 Dollars (\$600,000,000.00) which will create at least four hundred
5077 fifty (450) full-time jobs with an average annual salary,
5078 excluding benefits which are not subject to Mississippi income
5079 taxes, of at least Seventy Thousand Dollars (\$70,000.00). The
5080 authority shall require that binding commitments be entered into
5081 requiring that:

5082 1. The minimum requirements for the project
5083 provided for in this subparagraph shall be met; and

5084 2. That if such commitments are not met, all
5085 or a portion of the funds provided by the state for the project as
5086 determined by the authority shall be repaid.

5087 (xix) Any major coal and/or petroleum coke
5088 gasification project with an initial capital investment from any
5089 source or combination of sources other than the State of
5090 Mississippi of not less than Eight Hundred Million Dollars
5091 (\$800,000,000.00), which will create at least two hundred (200)
5092 full-time jobs with an average annual salary, excluding benefits
5093 which are not subject to Mississippi income taxes, of at least



5094 Forty-five Thousand Dollars (\$45,000.00). The authority shall
5095 require that binding commitments be entered into requiring that:

5096 1. The minimum requirements for the project
5097 provided for in this subparagraph shall be met; and

5098 2. That if such commitments are not met, all
5099 or a portion of the funds provided by the state for the project as
5100 determined by the authority shall be repaid.

5101 (xx) Any planned mixed use development located on
5102 not less than four thousand (4,000) acres of land that will
5103 consist of commercial, recreational, resort, tourism and
5104 residential development with a capital investment from private
5105 sources of not less than Four Hundred Seventy-five Million Dollars
5106 (\$475,000,000.00) in the aggregate in any one (1) or any
5107 combination of tourism projects that will create at least three
5108 thousand five hundred (3,500) jobs in the aggregate. For the
5109 purposes of this paragraph (f)(xx), the term "tourism project"
5110 means and has the same definition as that term has in Section
5111 57-28-1. In order to meet the minimum capital investment required
5112 under this paragraph (f)(xx), at least Two Hundred Thirty-seven
5113 Million Five Hundred Thousand Dollars (\$237,500,000.00) of such
5114 investment must be made not later than June 1, 2015, and the
5115 remainder of the minimum capital investment must be made not later
5116 than June 1, 2017. In order to meet the minimum number of jobs
5117 required to be created under this paragraph (f)(xx), at least one
5118 thousand seven hundred fifty (1,750) of such jobs must be created



5119 not later than June 1, 2015, and the remainder of the jobs must be
5120 created not later than June 1, 2017. The authority shall require
5121 that binding commitments be entered into requiring that:

5122 1. The minimum requirements for the project
5123 provided for in this subparagraph shall be met; and

5124 2. That if such commitments are not met, all
5125 or a portion of the funds provided by the state for the project as
5126 determined by the authority shall be repaid.

5127 (xxi) Any enterprise owning or operating an
5128 automotive manufacturing and assembly plant and its affiliates for
5129 which construction begins after March 2, 2007, and not later than
5130 December 1, 2007, with an initial capital investment from private
5131 sources of not less than Five Hundred Million Dollars
5132 (\$500,000,000.00) which will create at least one thousand five
5133 hundred (1,500) jobs meeting criteria established by the
5134 authority, which criteria shall include, but not be limited to,
5135 the requirement that such jobs must be held by persons eligible
5136 for employment in the United States under applicable state and
5137 federal law. The authority shall require that binding commitments
5138 be entered into requiring that:

5139 1. The minimum requirements for the project
5140 provided for in this subparagraph shall be met; and

5141 2. That if such commitments are not met, all
5142 or a portion of the funds provided by the state for the project as
5143 determined by the authority shall be repaid.



5144 (xxii) Any enterprise owning or operating a major
5145 powertrain component manufacturing and assembly plant for which
5146 construction begins after May 11, 2007, and not later than
5147 December 1, 2007, with an initial capital investment from private
5148 sources of not less than Three Hundred Million Dollars
5149 (\$300,000,000.00) which will create at least five hundred (500)
5150 new full-time jobs meeting criteria established by the authority,
5151 which criteria shall include, but not be limited to, the
5152 requirement that such jobs must be held by persons eligible for
5153 employment in the United States under applicable state and federal
5154 law, and the requirement that the average annual wages and taxable
5155 benefits of such jobs shall be at least one hundred twenty-five
5156 percent (125%) of the most recently published average annual wage
5157 of the state or the most recently published average annual wage of
5158 the county in which the project is located as determined by the
5159 Mississippi Department of Employment Security, whichever is the
5160 lesser. The authority shall require that binding commitments be
5161 entered into requiring that:

5162 1. The minimum requirements for the project
5163 provided for in this subparagraph shall be met; and

5164 2. That if such commitments are not met, all
5165 or a portion of the funds provided by the state for the project as
5166 determined by the authority shall be repaid.

5167 (xxiii) Any biological and agricultural defense
5168 project operated by an agency of the government of the United



5169 States with an initial capital investment of not less than Four
5170 Hundred Fifty Million Dollars (\$450,000,000.00) from any source
5171 other than the State of Mississippi and its subdivisions, which
5172 will create at least two hundred fifty (250) new full-time jobs.
5173 All jobs created by the project must be held by persons eligible
5174 for employment in the United States under applicable state and
5175 federal law.

5176 (xxiv) Any enterprise owning or operating an
5177 existing tire manufacturing plant which adds to such plant capital
5178 assets of not less than Twenty-five Million Dollars
5179 (\$25,000,000.00) after January 1, 2009, and that maintains at
5180 least one thousand two hundred (1,200) full-time jobs in this
5181 state at one (1) location with an average annual salary, excluding
5182 benefits which are not subject to Mississippi income taxes, of at
5183 least Forty-five Thousand Dollars (\$45,000.00). The authority
5184 shall require that binding commitments be entered into requiring
5185 that:

5186 1. The minimum requirements for the project
5187 provided for in this subparagraph shall be met; and

5188 2. That if such commitments are not met, all
5189 or a portion of the funds provided by the state for the project as
5190 determined by the authority shall be repaid.

5191 (xxv) Any enterprise owning or operating a
5192 facility for the manufacture of composite components for the
5193 aerospace industry which will have an investment from private



5194 sources of not less than One Hundred Seventy-five Million Dollars
5195 (\$175,000,000.00) by not later than December 31, 2015, and which
5196 will result in the full-time employment at the project site of not
5197 less than two hundred seventy-five (275) persons by December 31,
5198 2011, and not less than four hundred twenty-five (425) persons by
5199 December 31, 2013, and not less than eight hundred (800) persons
5200 by December 31, 2017, all with an average annual compensation,
5201 excluding benefits which are not subject to Mississippi income
5202 taxes, of at least Fifty-three Thousand Dollars (\$53,000.00). The
5203 authority shall require that binding commitments be entered into
5204 requiring that:

5205 1. The minimum requirements for the project
5206 provided for in this subparagraph shall be met; and

5207 2. That if such commitments are not met, all
5208 or a portion of the funds provided by the state for the project as
5209 determined by the authority shall be repaid.

5210 (xxvi) Any enterprise owning or operating a
5211 facility for the manufacture of pipe which will have an investment
5212 from any source other than the State of Mississippi and its
5213 subdivisions of not less than Three Hundred Million Dollars
5214 (\$300,000,000.00) by not later than December 31, 2015, and which
5215 will create at least five hundred (500) new full-time jobs within
5216 five (5) years after the start of commercial production and
5217 maintain such jobs for at least ten (10) years, all with an
5218 average annual compensation, excluding benefits which are not



5219 subject to Mississippi income taxes, of at least Thirty-two
5220 Thousand Dollars (\$32,000.00). The authority shall require that
5221 binding commitments be entered into requiring that:

5222 1. The minimum requirements for the project
5223 provided for in this subparagraph shall be met; and

5224 2. That if such commitments are not met, all
5225 or a portion of the funds provided by the state for the project as
5226 determined by the authority shall be repaid.

5227 (xxvii) Any enterprise owning or operating a
5228 facility for the manufacture of solar panels which will have an
5229 investment from any source other than the State of Mississippi and
5230 its subdivisions of not less than One Hundred Thirty-two Million
5231 Dollars (\$132,000,000.00) by not later than December 31, 2015, and
5232 which will create at least five hundred (500) new full-time jobs
5233 within five (5) years after the start of commercial production and
5234 maintain such jobs for at least ten (10) years, all with an
5235 average annual compensation, excluding benefits which are not
5236 subject to Mississippi income taxes, of at least Thirty-four
5237 Thousand Dollars (\$34,000.00). The authority shall require that
5238 binding commitments be entered into requiring that:

5239 1. The minimum requirements for the project
5240 provided for in this subparagraph shall be met; and

5241 2. That if such commitments are not met, all
5242 or a portion of the funds provided by the state for the project as
5243 determined by the authority shall be repaid.



5244 (xxviii) 1. Any enterprise owning or operating an
5245 automotive parts manufacturing plant and its affiliates for which
5246 construction begins after June 1, 2013, and not later than June
5247 30, 2014, with an initial capital investment of not less than
5248 Three Hundred Million Dollars (\$300,000,000.00) which will create
5249 at least five hundred (500) new full-time jobs meeting criteria
5250 established by the authority, which criteria shall include, but
5251 not be limited to, the requirement that such jobs must be held by
5252 persons eligible for employment in the United States under
5253 applicable state and federal law, and the requirement that the
5254 average annual wages and taxable benefits of such jobs shall be at
5255 least one hundred ten percent (110%) of the most recently
5256 published average annual wage of the state or the most recently
5257 published average annual wage of the county in which the project
5258 is located as determined by the Mississippi Department of
5259 Employment Security, whichever is the lesser. The authority shall
5260 require that binding commitments be entered into requiring that:

5261 a. The minimum requirements for the
5262 project provided for in this subparagraph shall be met; and

5263 b. That if such commitments are not met,
5264 all or a portion of the funds provided by the state for the
5265 project as determined by the authority shall be repaid.

5266 2. It is anticipated that the project defined
5267 in this subparagraph (xxviii) will expand in three (3) additional
5268 phases, will create an additional five hundred (500) full-time



5269 jobs meeting the above criteria in each phase, and will invest an
5270 additional Three Hundred Million Dollars (\$300,000,000.00) per
5271 phase.

5272 (xxix) Any enterprise engaged in the manufacture
5273 of tires or other related rubber or automotive products for which
5274 construction of a plant begins after January 1, 2016, and is
5275 substantially completed no later than December 31, 2022, and for
5276 which such enterprise commits to an aggregate capital investment
5277 by such enterprise and its affiliates of not less than One Billion
5278 Four Hundred Fifty Million Dollars (\$1,450,000,000.00) and the
5279 creation thereby of at least two thousand five hundred (2,500) new
5280 full-time jobs meeting criteria established by the authority,
5281 which criteria shall include, but not be limited to, the
5282 requirement that such jobs must be held by persons eligible for
5283 employment in the United States under applicable state and federal
5284 law, and the requirement that the average annual salary or wage,
5285 excluding the value of any benefits which are not subject to
5286 Mississippi income tax, of such jobs shall be at least Forty
5287 Thousand Dollars (\$40,000.00). The authority shall require that
5288 binding commitments be entered into requiring that:

5289 1. Minimum requirements for investment and
5290 jobs for the project shall be met; and

5291 2. If such requirements are not met, all or a
5292 portion of the funds provided by the state for the project may, as
5293 determined by the authority, be subject to repayment by such



5294 enterprise and/or its affiliates, together with any penalties or
5295 damages required by the authority in connection therewith.

5296 (xxx) Any enterprise owning or operating a
5297 maritime fabrication and assembly facility for which construction
5298 begins after February 1, 2016, and concludes not later than
5299 December 31, 2018, with an initial capital investment in land,
5300 buildings and equipment not less than Sixty-eight Million Dollars
5301 (\$68,000,000.00) and will create not less than one thousand
5302 (1,000) new full-time jobs meeting criteria established by the
5303 authority, which criteria shall include, but not be limited to,
5304 the requirement that such jobs must be held by persons eligible
5305 for employment in the United States under applicable state and
5306 federal law, and the requirement that the average annual
5307 compensation, excluding benefits which are not subject to
5308 Mississippi income taxes, of at least Forty Thousand Dollars
5309 (\$40,000.00). The authority shall require that binding
5310 commitments be entered into requiring that:

5311 1. The minimum requirements for the project
5312 provided for in this subparagraph shall be met; and

5313 2. If such commitments are not met, all or a
5314 portion of the funds provided by the state for the project may, as
5315 determined by the authority, be subject to repayment by such
5316 enterprise, together with any penalties or damages required by the
5317 authority in connection therewith.



5318 (g) (i) "Project area" means the project site,
5319 together with any area or territory within the state lying within
5320 sixty-five (65) miles of any portion of the project site whether
5321 or not such area or territory be contiguous; however, for the
5322 project defined in paragraph (f)(iv) of this section the term
5323 "project area" means any area or territory within the state. The
5324 project area shall also include all territory within a county if
5325 any portion of such county lies within sixty-five (65) miles of
5326 any portion of the project site. "Project site" means the real
5327 property on which the principal facilities of the enterprise will
5328 operate. The provisions of this subparagraph (i) shall not apply
5329 to a project as defined in paragraph (f)(xxi) of this section.

5330 (ii) For the purposes of a project as defined in
5331 paragraph (f)(xxi) of this section, the term "project area" means
5332 the acreage authorized in the certificate of convenience and
5333 necessity issued by the Mississippi Development Authority to a
5334 regional economic development alliance under Section 57-64-1 et
5335 seq.

5336 (h) "Public agency" means:

5337 (i) Any department, board, commission, institution
5338 or other agency or instrumentality of the state;

5339 (ii) Any city, town, county, political
5340 subdivision, school district or other district created or existing
5341 under the laws of the state or any public agency of any such city,
5342 town, county, political subdivision or district or any other



5343 public entity created or existing under local and private
5344 legislation;

5345 (iii) Any department, commission, agency or
5346 instrumentality of the United States of America; and

5347 (iv) Any other state of the United States of
5348 America which may be cooperating with respect to location of the
5349 project within the state, or any agency thereof.

5350 (i) "State" means State of Mississippi.

5351 (j) "Fee-in-lieu" means a negotiated fee to be paid by
5352 the project in lieu of any franchise taxes imposed on the project
5353 by Chapter 13, Title 27, Mississippi Code of 1972. The
5354 fee-in-lieu shall not be less than Twenty-five Thousand Dollars
5355 (\$25,000.00) annually. A fee-in-lieu may be negotiated with an
5356 enterprise operating an existing project defined in paragraph
5357 (f)(iv)¹ of this section; however, a fee-in-lieu shall not be
5358 negotiated for other existing enterprises that fall within the
5359 definition of the term "project."

5360 (k) "Affiliate" means a subsidiary or related business
5361 entity which shares a common direct or indirect ownership with the
5362 enterprise owning or operating a project as defined in paragraph
5363 (f)(xxi), paragraph (f)(xxviii) or paragraph (f)(xxix) of this
5364 section. The subsidiary or related business must provide services
5365 directly related to the core activities of the project.

5366 (l) "Tier One supplier" means a supplier of a project
5367 as defined in paragraph (f)(xxi) of this section that is certified



5368 by the enterprise owning the project and creates a minimum of
5369 fifty (50) new full-time jobs.

5370 **SECTION 56.** Section 57-80-7, Mississippi Code of 1972, is
5371 reenacted as follows:

5372 57-80-7. (1) From and after December 31, 2000, the
5373 following counties may apply to the MDA for the issuance of a
5374 certificate of public convenience and necessity:

5375 (a) Any county of this state which has an annualized
5376 unemployment rate that is at least two hundred percent (200%) of
5377 the state's unemployment rate as of December 31 of any year after
5378 December 31, 2000, as determined by the Mississippi Department of
5379 Employment Security's most recently published data;

5380 (b) Any county of this state in which thirty percent
5381 (30%) or more of the population of the county is at or below the
5382 federal poverty level according to the official data compiled by
5383 the United States Census Bureau as of August 30, 2000, for
5384 counties that apply before December 31, 2002, or the most recent
5385 official data compiled by the United States Census Bureau for
5386 counties that apply from and after December 31, 2002; or

5387 (c) Any county of this state having an eligible
5388 supervisors district.

5389 (2) The application, at a minimum, must contain (a) the
5390 Mississippi Department of Employment Security's most recently
5391 published figures that reflect the annualized unemployment rate of
5392 the applying county as of December 31 or the most recent official



5393 data by the United States Census Bureau required by subsection (1)
5394 of this section, as the case may be, and (b) an order or
5395 resolution of the county consenting to the designation of the
5396 county as a growth and prosperity county.

5397 (3) Any municipality of a designated growth and prosperity
5398 county or within an eligible supervisors district and not more
5399 than eight (8) miles from the boundary of the county that meets
5400 the criteria of subsection (1)(b) of this section may by order or
5401 resolution of the municipality consent to participation in the
5402 Growth and Prosperity Program.

5403 (4) No incentive or tax exemption shall be given under this
5404 chapter without the consent of the affected county or
5405 municipality.

5406 **SECTION 57.** Section 69-2-5, Mississippi Code of 1972, is
5407 reenacted as follows:

5408 69-2-5. (1) The Mississippi Cooperative Extension Service
5409 shall act as a clearinghouse for the dissemination of information
5410 regarding programs and services which may be available to help
5411 those persons and businesses which have been adversely affected by
5412 the present emergency in the agricultural community. The
5413 Cooperative Extension Service shall develop a plan of assistance
5414 which shall identify all programs and services available within
5415 the state which can be of assistance to those affected by the
5416 present emergency. The Department of Agriculture and Commerce,
5417 Department of Finance and Administration, Department of Human



5418 Services, Department of Mental Health, State Department of Health,
5419 Board of Trustees of State Institutions of Higher Learning,
5420 Mississippi Community College Board, Research and Development
5421 Center, Mississippi Development Authority, Department of
5422 Employment Security, Office of the Governor, Board of Vocational
5423 and Technical Education, Mississippi Authority for Educational
5424 Television, and other agencies of the state which have programs
5425 and services that can be of assistance to those affected by the
5426 present emergency, shall provide information regarding their
5427 programs and services to the Cooperative Extension Service for use
5428 in the clearinghouse. The types of programs and services shall
5429 include, but not be limited to, financial counseling, farm and
5430 small business management, employment services, labor market
5431 information, job retraining, vocational and technical training,
5432 food stamp programs, personal counseling, health services, and
5433 free or low cost legal services. The clearinghouse shall provide
5434 a single contact point to provide program information and referral
5435 services to individuals interested or needing services from
5436 state-funded assistance programs affecting agriculture,
5437 horticulture, aquaculture and other agribusinesses or related
5438 industries. Such assistance information shall identify all monies
5439 available under the Small Business Financing Act, the Business
5440 Investment Act, the Emerging Crops Fund legislation and any other
5441 sources which may be used singularly or combined, to provide a
5442 comprehensive financing package. The provisions of this section



5443 in establishing a single contact point for information and
5444 referral services shall not be construed to authorize the hiring
5445 of additional personnel.

5446 (2) The Cooperative Extension Service may accept monetary or
5447 in-kind contributions, gifts and grants for the establishment or
5448 operation of the clearinghouse.

5449 (3) The Cooperative Extension Service shall establish a
5450 method for the dissemination of information to those who can be
5451 benefited by the existing programs and services of the state.

5452 (4) The Cooperative Extension Service shall file an annual
5453 report with the Governor, Lieutenant Governor and Speaker of the
5454 House of Representatives regarding the efforts which have been
5455 made in the clearinghouse operation. The report shall also
5456 recommend any additional measures, including legislation, which
5457 may be needed or desired in providing programs and benefits to
5458 those affected by the agricultural emergency.

5459 **SECTION 58.** Section 7-1-355, Mississippi Code of 1972, is
5460 reenacted as follows:

5461 7-1-355. (1) The Mississippi Department of Employment
5462 Security, Office of the Governor, is designated as the sole
5463 administrator of all programs for which the state is the prime
5464 sponsor under Title 1(B) of Public Law 105-220, Workforce
5465 Investment Act of 1998, and the regulations promulgated
5466 thereunder, and may take all necessary action to secure to this
5467 state the benefits of that legislation. The Mississippi



5468 Department of Employment Security, Office of the Governor, may
5469 receive and disburse funds for those programs that become
5470 available to it from any source.

5471 (2) The Mississippi Department of Employment Security,
5472 Office of the Governor, shall establish guidelines on the amount
5473 and/or percentage of indirect and/or administrative expenses by
5474 the local fiscal agent or the Workforce Development Center
5475 operator. The Mississippi Department of Employment Security,
5476 Office of the Governor, shall develop an accountability system and
5477 make an annual report to the Legislature before December 31 of
5478 each year on Workforce Investment Act activities. The report
5479 shall include, but is not limited to, the following:

5480 (a) The total number of individuals served through the
5481 Workforce Development Centers and the percentage and number of
5482 individuals for which a quarterly follow-up is provided;

5483 (b) The number of individuals who receive core services
5484 by each center;

5485 (c) The number of individuals who receive intensive
5486 services by each center;

5487 (d) The number of Workforce Investment Act vouchers
5488 issued by the Workforce Development Centers including:

5489 (i) A list of schools and colleges to which these
5490 vouchers were issued and the average cost per school of the
5491 vouchers; and



5492 (ii) A list of the types of programs for which
5493 these vouchers were issued;

5494 (e) The number of individuals placed in a job through
5495 Workforce Development Centers;

5496 (f) The monies and the amount retained for
5497 administrative and other costs received from Workforce Investment
5498 Act funds for each agency or organization that Workforce
5499 Investment Act funds flow through as a percentage and actual
5500 dollar amount of all Workforce Investment Act funds received.

5501 **SECTION 59.** Section 60, Chapter 572, Laws of 2004, as
5502 amended by Section 58, Chapter 30, Laws of the First Extraordinary
5503 Session of 2008, as amended by Section 58, Chapter 559, Laws of
5504 2010, as amended by Section 59, Chapter 471, Laws of 2011, as
5505 amended by Section 58, Chapter 515, Laws of 2012, is amended as
5506 follows:

5507 Section 60. This act shall stand repealed on July 1, * * *
5508 2022.

5509 **SECTION 60.** This act shall take effect and be in force from
5510 and after July 1, 2019.

