

By: Representative Bailey

To: Workforce Development;
Education

HOUSE BILL NO. 1091

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 GOVERNS THE DETERMINATION
29 OF THE AMOUNT OF TANF BENEFITS THAT MAY BE GRANTED TO ELIGIBLE
30 PERSONS; TO REENACT SECTION 43-19-45, MISSISSIPPI CODE OF 1972,
31 WHICH REQUIRES THE CHILD SUPPORT UNIT ESTABLISHED BY THE
32 DEPARTMENT OF HUMAN SERVICES TO ESTABLISH A STATE PARENT LOCATOR
33 SERVICE; TO REENACT SECTION 43-19-46, MISSISSIPPI CODE OF 1972,
34 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, 57-62-9, 57-75-5 AND 57-80-7, MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE MISSISSIPPI ADVANTAGE JOBS ACT, THE MISSISSIPPI MAJOR ECONOMIC IMPACT ACT, AND THE GROWTH AND PROSPERITY ACT, RESPECTIVELY; 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 REENACTED SECTION 43-17-5, MISSISSIPPI CODE OF 1972, TO INFORM THE CODE PUBLISHER OF CERTAIN NONSUBSTANTIVE LANGUAGE THAT SHOULD BE REVISED; TO REPEAL SECTION 60, CHAPTER 572, LAWS OF 2004, AS AMENDED BY SECTION 58, CHAPTER 30, LAWS OF THE FIRST EXTRAORDINARY SESSION OF 2008, AS AMENDED BY SECTION 58, CHAPTER 559, LAWS OF 2010 REGULAR SESSION, AS AMENDED BY CHAPTER 471, LAWS OF 2011, AS AMENDED BY SECTION 58, CHAPTER 515, LAWS OF 2012, WHICH REPEALS, EFFECTIVE JULY 1, 2019, STATUTES THAT ESTABLISH AND PRESCRIBE THE MEMBERSHIP OF THE MISSISSIPPI WORKFORCE INVESTMENT BOARD AND TRANSFER THE POWERS AND RESPONSIBILITIES OF THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION TO THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY (MDES); 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



73 services. This system shall reflect a consolidation of the
74 Mississippi Workforce Development Advisory Council and the
75 Mississippi State Workforce Investment Act Board. The purpose of
76 Chapter 572, Laws of 2004, is to provide workforce activities,
77 through a statewide system that maximizes cooperation among state
78 agencies, that increase the employment, retention and earnings of
79 participants, and increase occupational skill attainment by
80 participants and as a result, improve the quality of the
81 workforce, reduce welfare dependency and enhance the productivity
82 and competitiveness of the State of Mississippi.

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

85 37-153-5. For purposes of this chapter, the following words
86 and phrases shall have the meanings respectively ascribed in this
87 section unless the context clearly indicates otherwise:

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

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

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

95 **SECTION 4.** Section 37-153-7, Mississippi Code of 1972, is
96 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 members, of which a majority shall be representatives of business and industry in accordance with the federal Workforce Investment Act.

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

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

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

(iii) One (1) elected mayor;

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

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

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

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

(viii) One (1) representative from each of the four (4) workforce areas in the state, who has been nominated by the community colleges in each respective area, with the consent



of the elected county supervisors within the respective workforce area;

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

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

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

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

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

(iii) The State Superintendent of Public Education;

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

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

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

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



(c) The Governor, or his designee, shall serve as a 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:



170 (a) Develop and submit to the Governor a strategic plan
171 for an integrated state workforce development system that aligns
172 resources and structures the system to more effectively and
173 efficiently meet the demands of Mississippi's employers and job
174 seekers. This plan will comply with the federal Workforce
175 Investment Act of 1998, as amended, the federal Workforce
176 Innovation and Opportunity Act of 2014 and amendments and
177 successor legislation to these acts;

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

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

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

189 (c) Recommend the designation of local workforce
190 investment areas as required in Section 116 of the federal
191 Workforce Investment Act of 1998 and the Workforce Innovation and
192 Opportunity Act of 2014. There shall be four (4) workforce
193 investment areas that are generally aligned with the planning and
194 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 programs and activities as delivered by the one-stop employment and training system. The planning and development districts will perform this function through the provisions of the county cooperative service districts created under Sections 19-3-101 through 19-3-115; however, planning and development districts currently performing this function under the Interlocal Cooperation Act of 1974, Sections 17-13-1 through 17-13-17, may continue to do so;

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

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

(f) Assist the Governor in the establishment and management of a one-stop employment and training system conforming to the requirements of the federal Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014, as amended, recommending policy for implementing the Governor's approved plan for employment and training activities and services within the state. In developing this one-stop career operating



system, the Mississippi State Workforce Investment Board, in conjunction with local workforce investment boards, shall:

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

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

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

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

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

(g) Assist the Governor in reducing duplication of services by urging the local workforce investment boards to designate the local community/junior college as the operator of the WIN Job Center. Incentive grants of Two Hundred Thousand Dollars (\$200,000.00) from federal Workforce Investment Act funds may be awarded to the local workforce boards where the community/junior college district is designated as the WIN Job Center. These grants must be provided to the community and junior colleges for the extraordinary costs of coordinating with the Workforce Investment Act, advanced technology centers and advanced skills centers. In no case shall these funds be used to supplant



state resources being used for operation of workforce development 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.



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

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

285 (5) The State Workforce Investment Board shall establish a
286 Rules Committee. The Rules Committee, in consultation with the
287 full board, shall be designated as the body with the sole
288 authority to promulgate rules and regulations for distribution of
289 Mississippi Works Funds created in Section 71-5-353. The State
290 Workforce Investment Board Rules Committee shall develop and
291 submit rules and regulations in accordance with the Mississippi
292 Administrative Procedures Act, within sixty (60) days of March 21,
293 2016. The State Workforce Investment Board Rules Committee shall
294 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:



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

376 (2) Each workforce development center shall be staffed and
377 organized locally by the affiliated community college. The
378 workforce development center shall serve as staff to the
379 affiliated district council.

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

384 (a) For individuals needing training and retraining:

385 (i) Recruiting, assessing, counseling and
386 referring to training or jobs;

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

389 (iii) Basic literacy skills training and high
390 school equivalency education;

391 (iv) Vocational and technical training, full-time
392 or part-time; and



393 (v) Short-term skills training for educationally
394 and economically disadvantaged adults in cooperation with
395 federally established employment and training programs;
396 (b) For specific small businesses, industries or firms
397 within the district:
398 (i) Job analysis, testing and curriculum
399 development;
400 (ii) Development of specific long-range training
401 plans;
402 (iii) Industry or firm-related preemployment
403 training;
404 (iv) Workplace basic skills and literacy training;
405 (v) Customized skills training;
406 (vi) Assistance in developing the capacity for
407 total quality management training;
408 (vii) Technology transfer information and referral
409 services to business of local applications of new research in
410 cooperation with the University Research Center, the state's
411 universities and other laboratories; and
412 (viii) Development of business plans;
413 (c) For public schools within the district technical
414 assistance to secondary schools in curriculum coordination,
415 development of tech prep programs, instructional development and
416 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:



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

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

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

- (i) Training local staff in methods of recruiting, assessment and career counseling;
- (ii) Establishing rigorous and comprehensive local preemployment training programs;
- (iii) Developing local institutional capacity to deliver total quality management training;
- (iv) Developing local institutional capacity to transfer new technologists into the marketplace;
- (v) Expanding the Skills Enhancement Program and improving the quality of adult literacy programs; and
- (vi) Developing data for strategic planning;

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



464 (e) To administer presented and approved certification
465 programs by the community colleges for tax credits and partnership
466 funding for corporate training;

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

472 (g) To develop internal capacity to provide services
473 and to contract for services from universities and other providers
474 directly to local institutions;

475 (h) To develop and administer an incentive
476 certification program;

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

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



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

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



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

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

536 **SECTION 9.** Section 71-5-11, Mississippi Code of 1972, is
537 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.



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

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



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

604 H. "Employer" means:

605 (1) Any employing unit which,

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

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



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

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

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

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

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

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

630 (6) Any individual or employing unit which acquired its
631 organization, trade, business, or substantially all the assets
632 thereof, from another employing unit, if the employment record of
633 the acquiring individual or employing unit subsequent to such
634 acquisition, together with the employment record of the acquired
635 organization, trade, or business prior to such acquisition, both
636 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



662 firms shall be considered the employer of the individuals they
663 provide to perform services for other individuals or
664 organizations.

665 I. "Employment" means and includes:

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

671 (2) Services performed for remuneration for a
672 principal:

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

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



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

688 (i) The contract of service contemplates that
689 substantially all of the services are to be performed personally
690 by such individual;

691 (ii) The individual does not have a
692 substantial investment in facilities used in connection with the
693 performance of the services (other than in facilities for
694 transportation); and

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

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



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

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

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

723 (a) In the employ of:

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

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

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



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

(i) As an elected official;

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

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

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

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

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

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

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for 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.



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

849 (10) Service shall be deemed to be localized within a
850 state if:

851 (a) The service is performed entirely within such
852 state; or

853 (b) The service is performed both within and
854 without such state, but the service performed without such state
855 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



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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

951 (C) The provisions of subitems (A) and
952 (B) shall not be deemed to be applicable with respect to service
953 performed in connection with commercial canning or commercial
954 freezing or in connection with any agricultural or horticultural



955 commodity after its delivery to a terminal market for distribution
956 for consumption;

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

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

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

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

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

976 (e) Service performed in the employ of the United
977 States government or of an instrumentality wholly owned by the
978 United States; except that if the Congress of the United States
979 shall permit states to require any instrumentalities of the United



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

993 (f) Service performed in the employ of an
994 "employer" as defined by the Railroad Unemployment Insurance Act,
995 45 USCS Section 351(a), or as an "employee representative" as
996 defined by the Railroad Unemployment Insurance Act, 45 USCS
997 Section 351(f), and service with respect to which unemployment
998 compensation is payable under an unemployment compensation system
999 for maritime employees, or under any other unemployment
1000 compensation system established by an act of Congress; however,
1001 the department is authorized and directed to enter into agreements
1002 with the proper agencies under such act or acts of Congress, which
1003 agreements shall become effective ten (10) days after publication
1004 thereof in the manner provided in Section 71-5-117 for general



1005 rules, to provide reciprocal treatment to individuals who have,
1006 after acquiring potential rights to benefits under this chapter,
1007 acquired rights to unemployment compensation under such act or
1008 acts of Congress or who have, after acquiring potential rights to
1009 unemployment compensation under such act or acts of Congress,
1010 acquired rights to benefits under this chapter.

1011 (g) Service performed in any calendar quarter in
1012 the employ of any organization exempt from income tax under the
1013 Internal Revenue Code, 26 USCS Section 501(a) (other than an
1014 organization described in 26 USCS Section 401(a)), or exempt from
1015 income tax under 26 USCS Section 521 if the remuneration for such
1016 service is less than Fifty Dollars (\$50.00).

1017 (h) Service performed in the employ of a school,
1018 college, or university if such service is performed:

1019 (i) By a student who is enrolled and is
1020 regularly attending classes at such school, college or university,
1021 or

1022 (ii) By the spouse of such a student if such
1023 spouse is advised, at the time such spouse commences to perform
1024 such service, that

1025 (A) The employment of such spouse to
1026 perform such service is provided under a program to provide
1027 financial assistance to such student by such school, college, or
1028 university, and



1029 (B) Such employment will not be covered
1030 by any program of unemployment insurance.

1031 (i) Service performed by an individual under the
1032 age of twenty-two (22) who is enrolled at a nonprofit or public
1033 educational institution which normally maintains a regular faculty
1034 and curriculum and normally has a regularly organized body of
1035 students in attendance at the place where its educational
1036 activities are carried on, as a student in a full-time program
1037 taken for credit at such institution, which combines academic
1038 instruction with work experience, if such service is an integral
1039 part of such program and such institution has so certified to the
1040 employer, except that this subparagraph shall not apply to service
1041 performed in a program established for or on behalf of an employer
1042 or group of employers.

1043 (j) Service performed in the employ of a hospital,
1044 if such service is performed by a patient of the hospital, as
1045 defined in subsection M of this section.

1046 (k) Service performed as a student nurse in the
1047 employ of a hospital or a nurses' training school by an individual
1048 who is enrolled and is regularly attending classes in a nurses'
1049 training school chartered or approved pursuant to state law; and
1050 services performed as an intern in the employ of a hospital by an
1051 individual who has completed a four-year course in a medical
1052 school chartered or approved pursuant to state law.



1053 (1) Service performed by an individual as an
1054 insurance agent or as an insurance solicitor, if all such service
1055 performed by such individual is performed for remuneration solely
1056 by way of commission.

1057 (m) Service performed by an individual in the
1058 delivery or distribution of newspapers or shopping news, not
1059 including delivery or distribution to any point for subsequent
1060 delivery or distribution, except those employed by political
1061 subdivisions, state and local governments, nonprofit organizations
1062 and Indian tribes, as defined by this chapter, or any other
1063 entities for which coverage is required by federal statute and
1064 regulation.

1065 (n) If the services performed during one-half
1066 (1/2) or more of any pay period by an employee for the employing
1067 unit employing him constitute employment, all the services of such
1068 employee for such period shall be deemed to be employment; but if
1069 the services performed during more than one-half (1/2) of any such
1070 pay period by an employee for the employing unit employing him do
1071 not constitute employment, then none of the services of such
1072 employee for such period shall be deemed to be employment. As
1073 used in this subsection, the term "pay period" means a period (of
1074 not more than thirty-one (31) consecutive days) for which a
1075 payment of remuneration is ordinarily made to the employee by the
1076 employing unit employing him.



1077 (o) Service performed by a barber or beautician
1078 whose work station is leased to him or her by the owner of the
1079 shop in which he or she works and who is compensated directly by
1080 the patrons he or she serves and who is free from direction and
1081 control by the lessor.

1082 (p) Service performed by a "direct seller" if:

1083 (i) Such person is engaged in the trade or
1084 business of selling (or soliciting the sale of) consumer products
1085 to any buyer on a buy-sell basis, a deposit-commission basis, or
1086 any similar basis which the department prescribes by regulations,
1087 for resale (by the buyer or any other person) in the home or
1088 otherwise than in a permanent retail establishment; or such person
1089 is engaged in the trade or business of selling (or soliciting the
1090 sale of) consumer products in the home or otherwise than in a
1091 permanent retail establishment;

1092 (ii) Substantially all the remuneration
1093 (whether or not paid in cash) for the performance of the services
1094 described in item (i) of this subparagraph is directly related to
1095 sales or other output (including the performance of services)
1096 rather than to the number of hours worked; and

1097 (iii) The services performed by the person
1098 are performed pursuant to a written contract between such person
1099 and the person for whom the services are performed and such
1100 contract provides that the person will not be treated as an
1101 employee with respect to such services for federal tax purposes.



1102 J. "Employment office" means a free public employment office
1103 or branch thereof, operated by this state or maintained as a part
1104 of the state controlled system of public employment offices.

1105 K. "Public employment service" means the operation of a
1106 program that offers free placement and referral services to
1107 applicants and employers, including job development.

1108 L. "Fund" means the Unemployment Compensation Fund
1109 established by this chapter, to which all contributions required
1110 and from which all benefits provided under this chapter shall be
1111 paid.

1112 M. "Hospital" means an institution which has been licensed,
1113 certified, or approved by the State Department of Health as a
1114 hospital.

1115 N. "Institution of higher learning," for the purposes of
1116 this section, means an educational institution which:

1117 (1) Admits as regular students only individuals having
1118 a certificate of graduation from a high school, or the recognized
1119 equivalent of such a certificate;

1120 (2) Is legally authorized in this state to provide a
1121 program of education beyond high school;

1122 (3) Provides an educational program for which it awards
1123 a bachelor's or higher degree, or provides a program which is
1124 acceptable for full credit toward such a degree, a program of
1125 postgraduate or postdoctoral studies, or a program of training to



1126 prepare students for gainful employment in a recognized
1127 occupation;

1128 (4) Is a public or other nonprofit institution;

1129 (5) Notwithstanding any of the foregoing provisions of
1130 this subsection, all colleges and universities in this state are
1131 institutions of higher learning for purposes of this section.

1132 O. "Re-employment assistance" means money payments payable
1133 to an individual as provided in this chapter and in accordance
1134 with Section 3304(a)(4) and 3306(h) of the Federal Unemployment
1135 Tax Act and Section 303(a)(5) of the Social Security Act, with
1136 respect to his unemployment through no fault of his own. Wherever
1137 the terms "benefits" or "unemployment benefits" appear in this
1138 chapter, they shall mean re-employment assistance.

1139 P. (1) "State" includes, in addition to the states of the
1140 United States of America, the District of Columbia, Commonwealth
1141 of Puerto Rico and the Virgin Islands.

1142 (2) The term "United States" when used in a
1143 geographical sense includes the states, the District of Columbia,
1144 Commonwealth of Puerto Rico and the Virgin Islands.

1145 (3) The provisions of paragraphs (1) and (2) of
1146 subsection P, as including the Virgin Islands, shall become
1147 effective on the day after the day on which the United States
1148 Secretary of Labor approves for the first time under Section
1149 3304(a) of the Internal Revenue Code of 1954 an unemployment



1150 compensation law submitted to the secretary by the Virgin Islands
1151 for such approval.

1152 Q. "Unemployment."

1153 (1) An individual shall be deemed "unemployed" in any
1154 week during which he performs no services and with respect to
1155 which no wages are payable to him, or in any week of less than
1156 full-time work if the wages payable to him with respect to such
1157 week are less than his weekly benefit amount as computed and
1158 adjusted in Section 71-5-505. The department shall prescribe
1159 regulations applicable to unemployed individuals, making such
1160 distinctions in the procedure as to total unemployment, part-total
1161 unemployment, partial unemployment of individuals attached to
1162 their regular jobs, and other forms of short-time work, as the
1163 department deems necessary.

1164 (2) An individual's week of total unemployment shall be
1165 deemed to commence only after his registration at an employment
1166 office, except as the department may by regulation otherwise
1167 prescribe.

1168 R. (1) "Wages" means all remuneration for personal
1169 services, including commissions and bonuses and the cash value of
1170 all remuneration in any medium other than cash, except that
1171 "wages," for purposes of determining employer's coverage and
1172 payment of contributions for agricultural and domestic service
1173 means cash remuneration only. The reasonable cash value of
1174 remuneration in any medium other than cash shall be estimated and



1175 determined in accordance with rules prescribed by the department;
1176 however, that the term "wages" shall not include:

1177 (a) The amount of any payment made to, or on
1178 behalf of, an employee under a plan or system established by an
1179 employer which makes provision for his employees generally or for
1180 a class or classes of his employees (including any amount paid by
1181 an employer for insurance or annuities, or into a fund, to provide
1182 for any such payment), on account of:

1183 (i) Retirement, or

1184 (ii) Sickness or accident disability, or

1185 (iii) Medical or hospitalization expenses in
1186 connection with sickness or actual disability, or

1187 (iv) Death, provided the employee:

1188 (A) Has not the option to receive,
1189 instead of provision for such death benefit, any part of such
1190 payment or, if such death benefit is insured, any part of the
1191 premiums (or contributions to premiums) paid by his employer, and

1192 (B) Has not the right, under the
1193 provisions of the plan or system or policy of insurance providing
1194 for such death benefit, to assign such benefit or to receive a
1195 cash consideration in lieu of such benefit, either upon his
1196 withdrawal from the plan or system providing for such benefit or
1197 upon termination of such plan or system or policy of insurance or
1198 of his employment with such employer;



1199 (b) Dismissal payments which the employer is not
1200 legally required to make;

1201 (c) Payment by an employer (without deduction from
1202 the remuneration of an employee) of the tax imposed by the
1203 Internal Revenue Code, 26 USCS Section 3101;

1204 (d) From and after January 1, 1992, the amount of
1205 any payment made to or on behalf of an employee for a "cafeteria"
1206 plan, which meets the following requirements:

1207 (i) Qualifies under Section 125 of the
1208 Internal Revenue Code;

1209 (ii) Covers only employees;

1210 (iii) Covers only noncash benefits;

1211 (iv) Does not include deferred compensation
1212 plans.

1213 (2) [Not enacted].

1214 S. "Week" means calendar week or such period of seven (7)
1215 consecutive days as the department may by regulation prescribe.
1216 The department may by regulation prescribe that a week shall be
1217 deemed to be in, within, or during any benefit year which includes
1218 any part of such week.

1219 T. "Insured work" means "employment" for "employers."

1220 U. The term "includes" and "including," when used in a
1221 definition contained in this chapter, shall not be deemed to
1222 exclude other things otherwise within the meaning of the term
1223 defined.



1224 V. "Employee leasing arrangement" means any agreement
1225 between an employee leasing firm and a client, whereby specified
1226 client responsibilities such as payment of wages, reporting of
1227 wages for unemployment insurance purposes, payment of unemployment
1228 insurance contributions and other such administrative duties are
1229 to be performed by an employee leasing firm, on an ongoing basis.

1230 W. "Employee leasing firm" means any entity which provides
1231 specified duties for a client company such as payment of wages,
1232 reporting of wages for unemployment insurance purposes, payment of
1233 unemployment insurance contributions and other administrative
1234 duties, in connection with the client's employees, that are
1235 directed and controlled by the client and that are providing
1236 ongoing services for the client.

1237 X. (1) "Temporary help firm" means an entity which hires
1238 its own employees and provides those employees to other
1239 individuals or organizations to perform some service, to support
1240 or supplement the existing workforce in special situations such as
1241 employee absences, temporary skill shortages, seasonal workloads
1242 and special assignments and projects, with the expectation that
1243 the worker's position will be terminated upon the completion of
1244 the specified task or function.

1245 (2) "Temporary employee" means an employee assigned to
1246 work for the clients of a temporary help firm.

1247 Y. For the purposes of this chapter, the term "notice" shall
1248 include any official communication, statement or other



1249 correspondence required under the administration of this chapter,
1250 and sent by the department through the United States Postal
1251 Service or electronic or digital transfer, via modem or the
1252 Internet.

1253 **SECTION 10.** Section 71-5-19, Mississippi Code of 1972, is
1254 reenacted as follows:

1255 71-5-19. (1) Whoever makes a false statement or
1256 representation knowing it to be false, or knowingly fails to
1257 disclose a material fact, to obtain or increase any benefit or
1258 other payment under this chapter or under an employment security
1259 law of any other state, of the federal government or of a foreign
1260 government, either for himself or for any other person, shall be
1261 punished by a fine of not less than One Hundred Dollars (\$100.00)
1262 nor more than Five Hundred Dollars (\$500.00), or by imprisonment
1263 for not longer than thirty (30) days, or by both such fine and
1264 imprisonment; and each such false statement or representation or
1265 failure to disclose a material fact shall constitute a separate
1266 offense.

1267 (2) Any employing unit, any officer or agent of an employing
1268 unit or any other person who makes a false statement or
1269 representation knowing it to be false, or who knowingly fails to
1270 disclose a material fact, to prevent or reduce the payment of
1271 benefits to any individual entitled thereto, or to avoid becoming
1272 or remaining subject hereto, or to avoid or reduce any
1273 contribution or other payment required from any employing unit



1274 under this chapter, or who willfully fails or refuses to make any
1275 such contribution or other payment, or to furnish any reports
1276 required hereunder or to produce or permit the inspection or
1277 copying of records as required hereunder, shall be punished by a
1278 fine of not less than One Hundred Dollars (\$100.00) nor more than
1279 One Thousand Dollars (\$1,000.00), or by imprisonment for not
1280 longer than sixty (60) days, or by both such fine and
1281 imprisonment; and each such false statement, or representation, or
1282 failure to disclose a material fact, and each day of such failure
1283 or refusal shall constitute a separate offense. In lieu of such
1284 fine and imprisonment, the employing unit or representative, or
1285 both employing unit and representative, if such representative is
1286 an employing unit in this state and is found to be a party to such
1287 violation, shall not be eligible for a contributions rate of less
1288 than five and four-tenths percent (5.4%) for the tax year in which
1289 such violation is discovered by the department and for the next
1290 two (2) succeeding tax years.

1291 (3) Any person who shall willfully violate any provision of
1292 this chapter or any other rule or regulation thereunder, the
1293 violation of which is made unlawful or the observance of which is
1294 required under the terms of this chapter and for which a penalty
1295 is neither prescribed herein nor provided by any other applicable
1296 statute, shall be punished by a fine of not less than One Hundred
1297 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),
1298 or by imprisonment for not longer than sixty (60) days, or by both



1299 such fine and imprisonment; and each day such violation continues
1300 shall be deemed to be a separate offense. In lieu of such fine
1301 and imprisonment, the employing unit or representative, or both
1302 employing unit and representative, if such representative is an
1303 employing unit in this state and is found to be a party to such
1304 violation, shall not be eligible for a contributions rate of less
1305 than five and four-tenths percent (5.4%) for the tax year in which
1306 the violation is discovered by the department and for the next two
1307 (2) succeeding tax years.

1308 (4) (a) An overpayment of benefits occurs when a person
1309 receives benefits under this chapter:

1310 (i) While any conditions for the receipt of
1311 benefits imposed by this chapter were not fulfilled in his case;

1312 (ii) While he was disqualified from receiving
1313 benefits; or

1314 (iii) When such person receives benefits and is
1315 later found to be disqualified or ineligible for any reason,
1316 including, but not limited to, a redetermination or reversal by
1317 the department or the courts of a previous decision to award such
1318 person benefits.

1319 (b) Any person receiving an overpayment shall, in the
1320 discretion of the department, be liable to have such sum deducted
1321 from any future benefits payable to him under this chapter and
1322 shall be liable to repay to the department for the Unemployment
1323 Compensation Fund a sum equal to the overpayment amount so



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

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



1349 to expiration of the lien, the department must refile the notice
1350 of the lien prior to its expiration at the end of seven (7) years.
1351 There shall be no limit upon the number of times the department
1352 may refile notices of liens for collection of overpayments.

1353 (d) All warrants issued by the department for the
1354 collection of any unemployment tax or for an overpayment of
1355 benefits imposed by statute and collected by the department shall
1356 be used to levy on salaries, compensation or other monies due the
1357 delinquent employer or claimant. No such warrant shall be issued
1358 until after the delinquent employer or claimant has exhausted all
1359 appeal rights associated with the debt. The warrants shall be
1360 served by mail or by delivery by an agent of the department on the
1361 person or entity responsible or liable for the payment of the
1362 monies due the delinquent employer or claimant. Once served, the
1363 employer or other person owing compensation due the delinquent
1364 employer or claimant shall pay the monies over to the department
1365 in complete or partial satisfaction of the liability. An answer
1366 shall be made within thirty (30) days after service of the warrant
1367 in the form and manner determined satisfactory by the department.
1368 Failure to pay the money over to the department as required by
1369 this section shall result in the served party being personally
1370 liable for the full amount of the monies owed and the levy and
1371 collection process may be issued against the party in the same
1372 manner as other debts owed to the department. Except as otherwise
1373 provided by this section, the answer, the amount payable under the



1374 warrant and the obligation of the payor to continue payment shall
1375 be governed by the garnishment laws of this state but shall be
1376 payable to the department.

1377 (5) The department, by agreement with another state or the
1378 United States, as provided under Section 303(g) of the Social
1379 Security Act, may recover any overpayment of benefits paid to any
1380 individual under the laws of this state or of another state or
1381 under an unemployment benefit program of the United States. Any
1382 overpayments subject to this subsection may be deducted from any
1383 future benefits payable to the individual under the laws of this
1384 state or of another state or under an unemployment program of the
1385 United States.

1386 **SECTION 11.** Section 71-5-101, Mississippi Code of 1972, is
1387 reenacted as follows:

1388 71-5-101. There is established the Mississippi Department of
1389 Employment Security, Office of the Governor. The Department of
1390 Employment Security shall be the Mississippi Employment Security
1391 Commission and shall retain all powers and duties as granted to
1392 the Mississippi Employment Security Commission. Wherever the term
1393 "Employment Security Commission" appears in any law, the same
1394 shall mean the Mississippi Department of Employment Security,
1395 Office of the Governor. The Executive Director of the Department
1396 of Employment Security may assign to the appropriate offices such
1397 powers and duties deemed appropriate to carry out the lawful
1398 functions of the department.



1399 **SECTION 12.** Section 71-5-107, Mississippi Code of 1972, is
1400 reenacted as follows:

1401 71-5-107. The department shall administer this chapter
1402 through a full-time salaried executive director, to be appointed
1403 by the Governor, with the advice and consent of the Senate. He
1404 shall be responsible for the administration of this chapter under
1405 authority delegated to him by the Governor.

1406 **SECTION 13.** Section 71-5-109, Mississippi Code of 1972, is
1407 reenacted as follows:

1408 71-5-109. There is created a Board of Review consisting of
1409 three (3) members to be appointed by the executive director. The
1410 executive director shall designate one (1) member of the Board of
1411 Review as chairman. Each member shall be paid a salary or per
1412 diem at a rate to be determined by the executive director, and
1413 such expenses as may be allowed by the executive director. All
1414 salaries, per diem and expenses of the Board of Review shall be
1415 paid from the Employment Security Administration Fund.

1416 **SECTION 14.** Section 71-5-111, Mississippi Code of 1972, is
1417 reenacted as follows:

1418 71-5-111. There is created in the State Treasury a special
1419 fund to be known as the Employment Security Administration Fund.
1420 All monies which are deposited or paid into this fund are
1421 appropriated and made available to the department. All monies in
1422 this fund shall be expended solely for the purpose of defraying
1423 the cost of administration of this chapter, and for no other



1424 purpose whatsoever. The fund shall consist of all monies
1425 appropriated by this state and all monies received from the United
1426 States of America, or any agency thereof, or from any other source
1427 for such purpose. Notwithstanding any provision of this section,
1428 all monies requisitioned and deposited in this fund pursuant to
1429 Section 71-5-457 shall remain part of the Employment Security
1430 Administration Fund and shall be used only in accordance with the
1431 conditions specified in that section. All monies in this fund
1432 shall be deposited, administered and disbursed in the same manner
1433 and under the same conditions and requirements as is provided by
1434 law for other special funds in the State Treasury. The State
1435 Treasurer shall be liable on his official bond for the faithful
1436 performance of his duties in connection with the Employment
1437 Security Administration Fund under this chapter.

1438 **SECTION 15.** Section 71-5-112, Mississippi Code of 1972, is
1439 reenacted as follows:

1440 71-5-112. All funds received by the Mississippi Department
1441 of Employment Security shall clear through the State Treasury as
1442 provided and required by Sections 71-5-111 and 71-5-453. All
1443 expenditures from the administration fund of the department
1444 authorized by Section 71-5-111 shall be expended only pursuant to
1445 appropriation approved by the Legislature and as provided by law.

1446 **SECTION 16.** Section 71-5-113, Mississippi Code of 1972, is
1447 reenacted as follows:



1448 71-5-113. All monies received from the Social Security Board
1449 or its successors for the administration of this chapter shall be
1450 expended solely for the purposes and in the amounts found
1451 necessary by the Social Security Board or its successors for the
1452 proper and efficient administration of this chapter.

1453 It shall be the duty of the department to take appropriate
1454 action with respect to the replacement, within a reasonable time,
1455 of any monies received from the Social Security Board, or its
1456 successors, for the administration of this chapter, and monies
1457 used to match grants pursuant to the provisions of the
1458 Wagner-Peyser Act, which the board, or its successors, find,
1459 because of any action or contingency, have been lost or have been
1460 expended for purposes other than, or in amounts in excess of those
1461 found necessary by the Social Security Board, or its successors,
1462 for the proper administration of this chapter. Funds which have
1463 been expended by the department or its agents in accordance with
1464 the budget approved by the Social Security Board, or its
1465 successors, or in accordance with the general standards and
1466 limitations promulgated by the Social Security Board, or its
1467 successors, prior to such expenditure (where proposed expenditures
1468 have not been specifically disapproved by the Social Security
1469 Board, or its successors), shall not be deemed to require
1470 replacement. To effectuate the purposes of this paragraph, it
1471 shall be the duty of the department to take such action to
1472 safeguard the expenditure of the funds referred to herein as it



1473 deems necessary. In the event of a loss of such funds or an
1474 improper expenditure thereof as herein defined, it shall be the
1475 duty of the department to notify the Governor of any such loss or
1476 improper expenditure and submit to him a request for an
1477 appropriation in the amount thereof. The Governor shall transmit
1478 to the next regular session of the Legislature following such
1479 notification, the department's request for an appropriation in an
1480 amount necessary to replace funds which have been lost or
1481 improperly expended as defined above. Such request of the
1482 department for an appropriation shall not be subject to the
1483 provisions of Sections 27-103-101 through 27-103-139. The
1484 Legislature recognizes its obligation to replace such funds as may
1485 be necessary and shall make necessary appropriations in accordance
1486 with such requests.

1487 **SECTION 17.** Section 71-5-114, Mississippi Code of 1972, is
1488 reenacted as follows:

1489 71-5-114. There is created in the State Treasury a special
1490 fund, to be known as the "Special Employment Security
1491 Administration Fund," into which shall be deposited or transferred
1492 all interest, penalties and damages collected on and after July 1,
1493 1982, pursuant to Sections 71-5-363 through 71-5-379 and all
1494 interest and penalties required to be deposited into the fund
1495 pursuant to Section 71-5-19(4)(b). Interest, penalties and
1496 damages collected on delinquent payments deposited during any
1497 calendar quarter in the clearing account in the Unemployment Trust



1498 Fund shall, as soon as practicable after the close of such
1499 calendar quarter, be transferred to the Special Employment
1500 Security Administration Fund. All monies in this fund shall be
1501 deposited, administered and disbursed in the same manner and under
1502 the same conditions and requirements as is provided by law for
1503 other special funds in the State Treasury. The State Treasurer
1504 shall be liable on his official bond for the faithful performance
1505 of his duties in connection with the Special Employment Security
1506 Administration Fund under this chapter. Those monies may be
1507 expended for any programs for which the department has
1508 administrative responsibility but shall not be expended or made
1509 available for expenditure in any manner which would permit their
1510 substitution for (or permit a corresponding reduction in) federal
1511 funds which would, in the absence of those monies, be available to
1512 finance expenditures for the administration of the state
1513 unemployment compensation and employment service laws or any other
1514 laws directing the administration of any programs for which the
1515 department has the administrative responsibility. Nothing in this
1516 section shall prevent those monies in this fund from being used as
1517 a revolving fund to cover expenditures necessary and proper under
1518 the law for which federal funds have been duly requested but not
1519 yet received, subject to the charging of such expenditures against
1520 such funds when necessary. The monies in this fund may be used by
1521 the department for the payment of costs of administration of the
1522 employment security laws of this state which are found not to be



1523 or not to have been properly and validly chargeable against funds
1524 obtained from federal sources. All monies in this Special
1525 Employment Security Administration Fund shall be continuously
1526 available to the department for expenditure in accordance with the
1527 provisions of this chapter, and shall not lapse at any time. The
1528 monies in this fund are specifically made available to replace, as
1529 contemplated by Section 71-5-113, expenditures from the Employment
1530 Security Administration Fund established by Section 71-5-111,
1531 which have been found, because of any action or contingency, to
1532 have been lost or improperly expended.

1533 The department, whenever it is of the opinion that the money
1534 in the Special Employment Security Administration Fund is more
1535 than ample to pay for all foreseeable needs for which such special
1536 fund is set up, may, by written order, order the transfer
1537 therefrom to the Unemployment Compensation Fund of such amount of
1538 money in the Special Employment Security Administration Fund as it
1539 deems proper, and the same shall thereupon be immediately
1540 transferred to the Unemployment Compensation Fund.

1541 **SECTION 18.** Section 71-5-115, Mississippi Code of 1972, is
1542 reenacted as follows:

1543 71-5-115. It shall be the duty of the executive director to
1544 administer this chapter; and the executive director shall have the
1545 power and authority to adopt, amend or rescind such rules and
1546 regulations, to employ such persons, make such expenditures,
1547 require such reports, make such investigations, and take such



1548 other action as he deems necessary or suitable to that end. Such
1549 rules and regulations shall be effective upon publication in the
1550 manner, not inconsistent with the provisions of this chapter,
1551 which the executive director shall prescribe. The executive
1552 director shall determine the department's own organization and
1553 methods of procedure in accordance with the provisions of this
1554 chapter, and shall have an official seal which shall be judicially
1555 noticed. Not later than the first day of February in each year,
1556 the executive director shall submit to the Governor a report
1557 covering the administration and operation of this chapter during
1558 the preceding fiscal year and shall make such recommendations for
1559 amendments to this chapter as the executive director deems proper.
1560 Whenever the executive director believes that a change in
1561 contribution or benefit rates will become necessary to protect the
1562 solvency of the fund, he shall promptly so inform the Governor and
1563 the Legislature, and make recommendations with respect thereto.

1564 **SECTION 19.** Section 71-5-117, Mississippi Code of 1972, is
1565 reenacted as follows:

1566 71-5-117. General rules may be adopted, amended or rescinded
1567 by the executive director only after public hearing or opportunity
1568 to be heard thereon, of which proper notice has been given.
1569 General rules shall become effective ten (10) days after filing
1570 with the Secretary of State and publication in one or more
1571 newspapers of general circulation in this state. Regulations may
1572 be adopted, amended or rescinded by the executive director and



shall become effective in the manner and at the time prescribed by the executive director.

SECTION 20. Section 71-5-119, Mississippi Code of 1972, is reenacted as follows:

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

SECTION 21. Section 71-5-121, Mississippi Code of 1972, is reenacted as follows:

71-5-121. Subject to other provisions of this chapter, the executive director is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of department duties; however, all personnel who were former members of the Armed Forces of the United States of America shall be given credit regardless of rate, rank or commission. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis, in accordance with Section 25-9-101 et seq., that provides for a state service personnel system. The executive director shall not employ any person who is an officer or committee member of any political party organization. The executive director may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the



1598 effective administration of this chapter, and may in his
1599 discretion bond any person handling monies or signing checks
1600 hereunder. The veteran status of an individual shall be
1601 considered and preference given in accordance with the provisions
1602 of the State Personnel Board.

1603 The department and its employees are exempt from Sections
1604 25-15-101 and 25-15-103.

1605 The department may use federal granted funds to provide such
1606 group health, life, accident and hospitalization insurance for its
1607 employees as may be agreed upon by the department and the federal
1608 granting authorities.

1609 The department shall adopt a "layoff formula" to be used
1610 wherever it is determined that, because of reduced workload,
1611 budget reductions or in order to effect a more economical
1612 operation, a reduction in force shall occur in any group.

1613 In establishing this formula, the department shall give
1614 effect to the principle of seniority and shall provide that
1615 seniority points may be added for disabled veterans and veterans,
1616 with due regard to the efficiency of the service. Any such layoff
1617 formula shall be implemented according to the policies, rules and
1618 regulations of the State Personnel Board.

1619 **SECTION 22.** Section 71-5-123, Mississippi Code of 1972, is
1620 reenacted as follows:

1621 71-5-123. The executive director shall retain all powers and
1622 duties as granted to the state advisory council appointed by the



former Employment Security Commission. The executive director may appoint local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations, and of such members representing the general public as the executive director may designate. Such councils shall aid the department in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Members of the advisory councils shall receive a per diem in accordance with Section 25-3-69 for attendance upon meetings of the council, and 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 23. 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



1648 state in every other way that may be feasible; and to these ends
1649 to carry on and publish the results of investigation and research
1650 studies.

1651 **SECTION 24.** Section 71-5-127, Mississippi Code of 1972, is
1652 reenacted as follows:

1653 71-5-127. (1) Any information or records concerning an
1654 individual or employing unit obtained by the department pursuant
1655 to the administration of this chapter or any other federally
1656 funded programs for which the department has responsibility shall
1657 be private and confidential, except as otherwise provided in this
1658 article or by regulation. Information or records may be released
1659 by the department when the release is required by the federal
1660 government in connection with, or as a condition of funding for, a
1661 program being administered by the department.

1662 (2) Each employing unit shall keep true and accurate work
1663 records, containing such information as the department may
1664 prescribe. Such records shall be open to inspection and be
1665 subject to being copied by the department or its authorized
1666 representatives at any reasonable time and as often as may be
1667 necessary. The department, Board of Review and any referee may
1668 require from any employing unit any sworn or unsworn reports with
1669 respect to persons employed by it which they or any of them deem
1670 necessary for the effective administration of this chapter.
1671 Information, statements, transcriptions of proceedings,
1672 transcriptions of recordings, electronic recordings, letters,



1673 memoranda, and other documents and reports thus obtained or
1674 obtained from any individual pursuant to the administration of
1675 this chapter shall, except to the extent necessary for the proper
1676 administration of this chapter, be held confidential and shall not
1677 be published or be opened to public inspection (other than to
1678 public employees in the performance of their public duties) in any
1679 manner revealing the individual's or employing unit's identity.

1680 (3) Any claimant or his legal representative at a hearing
1681 before an appeal tribunal or the Board of Review shall be supplied
1682 with information from such records to the extent necessary for the
1683 proper presentation of his claim in any proceeding pursuant to
1684 this chapter.

1685 (4) Any employee or member of the Board of Review or any
1686 employee of the department who violates any provisions of this
1687 section shall be fined not less than Twenty Dollars (\$20.00) nor
1688 more than Two Hundred Dollars (\$200.00), or imprisoned for not
1689 longer than ninety (90) days, or both.

1690 (5) The department may make the state's records relating to
1691 the administration of this chapter available to the Railroad
1692 Retirement Board, and may furnish the Railroad Retirement Board,
1693 at the expense of such board, such copies thereof as the Railroad
1694 Retirement Board deems necessary for its purposes. The department
1695 may afford reasonable cooperation with every agency of the United
1696 States charged with the administration of any unemployment
1697 insurance law.



1698 **SECTION 25.** Section 71-5-129, Mississippi Code of 1972, is
1699 reenacted as follows:

1700 71-5-129. Records hereinafter designated, which are found by
1701 the department to be useless, may be disposed of in accordance
1702 with approved records control schedules.

1703 (a) Records which have been preserved by it for not
1704 less than three (3) years:

- 1705 (1) Initial claims for benefits,
- 1706 (2) Continued claims for benefits,
- 1707 (3) Correspondence and master index cards in
1708 connection with such claims for benefits, and
- 1709 (4) Individual wage slips filed by employers
1710 subject to the provisions of the Unemployment Compensation Law.

1711 (b) Records which have been preserved by it for not
1712 less than six (6) months after becoming inactive:

- 1713 (1) Work applications,
- 1714 (2) Cross-index cards for work applications,
- 1715 (3) Test records,
- 1716 (4) Employer records,
- 1717 (5) Work orders,
- 1718 (6) Clearance records,
- 1719 (7) Counseling records,
- 1720 (8) Farm placement records, and
- 1721 (9) Correspondence relating to all such records.



1722 Nothing herein contained shall be construed as authorizing
1723 the destruction or disposal of basic fiscal records reflecting the
1724 financial operations of the department and no records may be
1725 destroyed without the approval of the Director of the Department
1726 of Archives and History.

1727 **SECTION 26.** Section 71-5-131, Mississippi Code of 1972, is
1728 reenacted as follows:

1729 71-5-131. All letters, reports, communications, or any other
1730 matters, either oral or written, from the employer or employee to
1731 each other or to the department or any of its agents,
1732 representatives or employees, which shall have been written, sent,
1733 delivered or made in connection with the requirements and
1734 administration of this chapter shall be absolutely privileged and
1735 shall not be made the subject matter or basis of any suit for
1736 slander or libel in any court of the State of Mississippi unless
1737 the same be false in fact and maliciously written, sent, delivered
1738 or made for the purpose of causing a denial of benefits under this
1739 chapter.

1740 **SECTION 27.** Section 71-5-133, Mississippi Code of 1972, is
1741 reenacted as follows:

1742 71-5-133. In any case where an employing unit or any
1743 officer, member or agent thereof, or any other person having
1744 possession of the records thereof, shall fail or refuse upon
1745 demand by the department or its duly appointed agents to produce
1746 or permit the examination or copying of any book, paper, account,



1747 record or other data pertaining to payrolls or employment or
1748 ownership of interests or stock in any employing unit, or bearing
1749 upon the correctness of any report, or for the purpose of making a
1750 report as required by this chapter where none has been made, then
1751 and in that event the department or its duly authorized agents
1752 may, by the issuance of a subpoena, require the attendance of such
1753 employing unit or any officer, member or agent thereof, or any
1754 other person having possession of the records thereof, and take
1755 testimony with respect to any such matter and may require any such
1756 person to produce any books or records specified in such subpoena.
1757 The department or its authorized agents at any such hearing shall
1758 have power to administer oaths to any such person or persons.
1759 When any person called as a witness by a subpoena signed by the
1760 department or its agents and served upon him by the sheriff of a
1761 county of which such person is a resident, or wherein is located
1762 the principal office of such employing unit or wherein such
1763 records are located or kept, shall fail to obey such subpoena to
1764 appear before the department or its authorized agent, or shall
1765 refuse to testify or to answer any questions or to produce any
1766 book, record, paper or other data when required to do so, such
1767 failure or refusal shall be reported to the Attorney General, who
1768 shall thereupon institute proceedings by the filing of a petition
1769 in the name of the State of Mississippi, on the relation of the
1770 department, in the circuit court or other court of competent
1771 jurisdiction of the county where such witness resides, or wherein



1772 such records are located or kept, to compel the obedience of such
1773 witness. Such petition shall set forth the facts and
1774 circumstances of the demand for and refusal or failure to permit
1775 the examination or copying of such records, or the failure or
1776 refusal of such witness to testify in answer to such subpoena or
1777 to produce the records so required by such subpoena. Such court,
1778 upon the filing and docketing of such petition, shall thereupon
1779 promptly issue an order to the defendants named in the petition to
1780 produce forthwith in such court, or at a place in such county
1781 designated in such order for the examination or copying by the
1782 department or its duly appointed agents, the records, books or
1783 documents so described, and to testify concerning matters
1784 described in such petition. Unless such defendants to such
1785 petition shall appear in the court upon a day specified in such
1786 order, which day shall be not more than ten (10) days after the
1787 date of issuance of such order, and offer, under oath, good and
1788 sufficient reasons why such examination or copying should not be
1789 permitted, or why such subpoena should not be obeyed, such court
1790 shall thereupon deliver to the department or its agents, for
1791 examination or copying, the records, books and documents so
1792 described in the petition and so produced in such court, and shall
1793 order the defendants to appear in answer to the subpoena of the
1794 department or its agents, and to testify concerning matters
1795 inquired about by the department. Any employing unit or any
1796 officer, member or agent thereof, or any other person having



1797 possession of the records thereof, who shall willfully disobey
1798 such order of the court after the same shall have been served upon
1799 him shall be guilty of indirect contempt of such court from which
1800 such order shall have issued, and may be adjudged in contempt of
1801 the court and punished therefor as provided by law.

1802 **SECTION 28.** Section 71-5-135, Mississippi Code of 1972, is
1803 reenacted as follows:

1804 71-5-135. If any employing unit fails to make any report
1805 required by this chapter, the department or its authorized agents
1806 shall give notice to such employing unit to make and file such
1807 report within fifteen (15) days from the date of such notice. If
1808 such employing unit, by its proper members, officers or agents,
1809 shall fail or refuse to make and file such reports within such
1810 time, then and in that event such report shall be made by the
1811 department or its authorized agents from the best information
1812 available, and the amount of contributions due shall be computed
1813 thereon; and such report shall be prima facie correct for the
1814 purposes of this chapter.

1815 **SECTION 29.** Section 71-5-137, Mississippi Code of 1972, is
1816 reenacted as follows:

1817 71-5-137. In the discharge of the duties imposed by this
1818 chapter, the department, any referee, the members of the Board of
1819 Review, and any duly authorized representative of any of them
1820 shall have power to administer oaths and affirmations, to take
1821 depositions, certify to official acts, and issue subpoenas to



1822 compel the attendance of witnesses and the production of books,
1823 papers, correspondence, memoranda and other records deemed
1824 necessary as evidence in connection with a disputed claim or the
1825 administration of this chapter.

1826 **SECTION 30.** Section 71-5-139, Mississippi Code of 1972, is
1827 reenacted as follows:

1828 71-5-139. In case of contumacy or refusal to obey a subpoena
1829 issued to any person, any court in this state within the
1830 jurisdiction of which the inquiry is carried on, or within the
1831 jurisdiction of which the person guilty of contumacy or refusal to
1832 obey is found or resides or transacts business, upon application
1833 by the department, the Board of Review, any referee, or any duly
1834 authorized representative of any of them, shall have jurisdiction
1835 to issue to such person an order requiring such person to appear
1836 before the department, the Board of Review, any referee, or any
1837 duly authorized representative of any of them, there to produce
1838 evidence if so ordered or there to give testimony touching the
1839 matter under investigation or in question. Any failure to obey
1840 such order of the court may be punished by the court as a contempt
1841 thereof. Any person who shall, without just cause, fail or refuse
1842 to attend and testify or to answer any lawful inquiry or to
1843 produce books, papers, correspondence, memoranda and other records
1844 if it is in his power so to do, in obedience to a subpoena of the
1845 department, the Board of Review, any referee, or any duly
1846 authorized representative of any of them, shall be punished by a



1847 fine of not more than Two Hundred Dollars (\$200.00), or by
1848 imprisonment for not longer than sixty (60) days, or by both such
1849 fine and imprisonment; and each day such violation continues shall
1850 be deemed to be a separate offense.

1851 **SECTION 31.** Section 71-5-141, Mississippi Code of 1972, is
1852 reenacted as follows:

1853 71-5-141. No person shall be excused from attending and
1854 testifying or from producing books, papers, correspondence,
1855 memoranda and other records before the department, the Board of
1856 Review, any referee, or any duly authorized representative of any
1857 of them, or in obedience to the subpoena of any of them in any
1858 cause or proceeding before the department, the Board of Review or
1859 an appeal tribunal, on the ground that the testimony or evidence,
1860 documentary or otherwise, required of him may tend to incriminate
1861 him or subject him to a penalty or forfeiture; but no individual
1862 shall be prosecuted or subjected to any penalty or forfeiture for
1863 or on account of any transaction, matter or thing concerning which
1864 he is compelled, after having claimed his privilege against
1865 self-incrimination, to testify or produce evidence, documentary or
1866 otherwise, except that such individual so testifying shall not be
1867 exempt from prosecution and punishment for perjury committed in so
1868 testifying.

1869 **SECTION 32.** Section 71-5-143, Mississippi Code of 1972, is
1870 reenacted as follows:



1871 71-5-143. In the administration of this chapter, the
1872 department shall cooperate, to the fullest extent consistent with
1873 the provisions of this chapter, with the Social Security Board
1874 created by the Social Security Act, approved August 14, 1935, as
1875 amended; shall make such reports in such form and containing such
1876 information as the Social Security Board may from time to time
1877 require, and shall comply with such provisions as the Social
1878 Security Board may from time to time find necessary to assure the
1879 correctness and verification of such reports; and shall comply
1880 with the reasonable, valid and lawful regulations prescribed by
1881 the Social Security Board pursuant to and under the authority of
1882 the Social Security Act, governing the expenditures of such sums
1883 as may be allotted and paid to this state under Title III of the
1884 Social Security Act, as amended, for the purpose of assisting in
1885 the administration of this chapter.

1886 Upon request therefor, the department shall furnish to any
1887 agency of the United States charged with the administration of
1888 public works, or assistance through public employment, the name,
1889 address, ordinary occupation and employment status of each
1890 recipient of benefits, and such recipient's rights to further
1891 benefits under this chapter.

1892 **SECTION 33.** Section 71-5-201, Mississippi Code of 1972, is
1893 reenacted as follows:

1894 71-5-201. The Mississippi State Employment Service is
1895 established in the Mississippi Department of Employment Security,



1896 Office of the Governor. The department, in the conduct of such
1897 service, shall establish and maintain free public employment
1898 offices in such number and in such places as may be necessary for
1899 the proper administration of this article and for the purpose of
1900 performing such functions as are within the purview of the act of
1901 Congress entitled "An act to provide for the establishment of a
1902 national employment system and for cooperation with the states in
1903 the promotion of such system, and for other purposes" (29 USCS
1904 Section 49 et seq.). Any existing free public employment offices
1905 maintained by the state but not heretofore under the jurisdiction
1906 of the department shall be transferred to the jurisdiction of the
1907 department, and upon such transfer all duties and powers conferred
1908 upon any other department, agency or officers of this state
1909 relating to the establishment, maintenance and operation of free
1910 public employment offices shall be vested in the department. The
1911 Mississippi State Employment Service shall be administered by the
1912 department, which is charged with the duty to cooperate with any
1913 official or agency of the United States having powers or duties
1914 under the provisions of the act of Congress, as amended, and to do
1915 and perform all things necessary to secure to this state the
1916 benefits of that act of Congress, as amended, in the promotion and
1917 maintenance of a system of public employment offices. The
1918 provisions of that act of Congress, as amended, are accepted by
1919 this state, in conformity with 29 USCS Section 49c, and this state
1920 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 34. 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 1954 which is exempt from income tax under Section 501(a) of such code (26 USCS Section 501).

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



1945 (i) Any nonprofit organization which becomes
1946 subject to this chapter may elect to become liable for payments in
1947 lieu of contributions for a period of not less than twelve (12)
1948 months, beginning with the date on which such subjectivity begins,
1949 by filing a written notice of its election with the department not
1950 later than thirty (30) days immediately following the date of the
1951 determination of such subjectivity.

1952 (ii) Any nonprofit organization which makes an
1953 election in accordance with subparagraph (i) of this paragraph
1954 will continue to be liable for payments in lieu of contributions
1955 unless it files with the department a written termination notice
1956 not later than thirty (30) days prior to the beginning of the tax
1957 year for which such termination shall first be effective.

1958 (iii) Any nonprofit organization which has been
1959 paying contributions under this chapter may change to a
1960 reimbursable basis by filing with the department, not later than
1961 thirty (30) days prior to the beginning of any tax year, a written
1962 notice of election to become liable for payments in lieu of
1963 contributions. Such election shall not be terminable by the
1964 organization for that and the next tax year.

1965 (iv) The department may for good cause extend the
1966 period within which a notice of election or a notice of
1967 termination must be filed, and may permit an election to be
1968 retroactive.



1969 (v) The department, in accordance with such
1970 regulations as it may prescribe, shall notify each nonprofit
1971 organization of any determination which it may make of its status
1972 as an employer, of the effective date of any election which it
1973 makes and of any termination of such election. Such
1974 determinations shall be subject to reconsideration, appeal and
1975 review in accordance with the provisions of Sections 71-5-351
1976 through 71-5-355.

1977 (b) Payments in lieu of contributions shall be made in
1978 accordance with the provisions of subparagraph (i) of this
1979 paragraph.

1980 (i) At the end of each calendar quarter, or at the
1981 end of any other period as determined by the department, the
1982 department shall bill each nonprofit organization (or group of
1983 such organizations) which has elected to make payments in lieu of
1984 contributions, for an amount equal to the full amount of regular
1985 benefits plus one-half (1/2) of the amount of extended benefits
1986 paid during such quarter or other prescribed period that is
1987 attributable to service in the employ of such organization.

1988 (ii) Payment of any bill rendered under
1989 subparagraph (i) of this paragraph shall be made not later than
1990 forty-five (45) days after such bill was delivered to the
1991 nonprofit organization, unless there has been an application for
1992 review and redetermination in accordance with subparagraph (v) of
1993 this paragraph.



1994 1. All of the enforcement procedures for the
1995 collection of delinquent contributions contained in Sections
1996 71-5-363 through 71-5-383 shall be applicable in all respects for
1997 the collection of delinquent payments due by nonprofit
1998 organizations who have elected to become liable for payments in
1999 lieu of contributions.

2000 2. If any nonprofit organization is
2001 delinquent in making payments in lieu of contributions, the
2002 department may terminate such organization's election to make
2003 payments in lieu of contributions as of the beginning of the next
2004 tax year, and such termination shall be effective for the balance
2005 of such tax year.

2006 (iii) Payments made by any nonprofit organization
2007 under the provisions of this paragraph shall not be deducted or
2008 deductible, in whole or in part, from the remuneration of
2009 individuals in the employ of the organization.

2010 (iv) Payments due by employers who elect to
2011 reimburse the fund in lieu of contributions as provided in this
2012 paragraph may not be noncharged under any condition. The
2013 reimbursement must be on a dollar-for-dollar basis (One Dollar
2014 (\$1.00) reimbursement for each dollar paid in benefits) in every
2015 case, so that the trust fund shall be reimbursed in full, such
2016 reimbursement to include, but not be limited to, benefits or
2017 payments erroneously or incorrectly paid, or paid as a result of a
2018 determination of eligibility which is subsequently reversed, or



2019 paid as a result of claimant fraud. However, political
2020 subdivisions who are reimbursing employers may elect to pay to the
2021 fund an amount equal to five-tenths percent (.5%) through December
2022 31, 2010, and shall pay twenty-five one-hundredths percent (.25%)
2023 thereafter of the taxable wages paid during the calendar year with
2024 respect to employment, and those employers who so elect shall be
2025 relieved of liability for reimbursement of benefits paid under the
2026 same conditions that benefits are not charged to the
2027 experience-rating record of a contributing employer as provided in
2028 Section 71-5-355(2)(b)(ii) other than Clause 5 thereof. Benefits
2029 paid in such circumstances for which reimbursing employers are
2030 relieved of liability for reimbursement shall not be considered
2031 attributable to service in the employment of such reimbursing
2032 employer.

2033 (v) The amount due specified in any bill from the
2034 department shall be conclusive on the organization unless, not
2035 later than fifteen (15) days after the bill was delivered to it,
2036 the organization files an application for redetermination by the
2037 department, setting forth the grounds for such application or
2038 appeal. The department shall promptly review and reconsider the
2039 amount due specified in the bill and shall thereafter issue a
2040 redetermination in any case in which such application for
2041 redetermination has been filed. Any such redetermination shall be
2042 conclusive on the organization unless, not later than fifteen (15)
2043 days after the redetermination was delivered to it, the



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

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

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

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



2069 total benefits paid to the individual as the total base period
2070 wages paid to the individual by such employer bear to the total
2071 base period wages paid to the individual by all of his base period
2072 employers.

2073 (ii) If benefits paid to an individual are based
2074 on wages paid by two (2) or more employers that are liable for
2075 payments in lieu of contributions, the amount of benefits payable
2076 by each such employer shall be an amount which bears the same
2077 ratio to the total benefits paid to the individual as the total
2078 base period wages paid to the individual by such employer bear to
2079 the total base period wages paid to the individual by all of his
2080 base period employers.

2081 (d) In the discretion of the department, any nonprofit
2082 organization that elects to become liable for payments in lieu of
2083 contributions shall be required to execute and file with the
2084 department a surety bond approved by the department, or it may
2085 elect instead to deposit with the department money or securities.
2086 The amount of such bond or deposit shall be determined in
2087 accordance with the provisions of this paragraph.

2088 (i) The amount of the bond or deposit required by
2089 paragraph (d) shall be equal to two and seven-tenths percent
2090 (2.7%) thereafter to December 31, 2010, and one and thirty-five
2091 one-hundredths percent (1.35%) thereafter, of the organization's
2092 taxable wages paid for employment as defined in Section 71-5-11,
2093 subsection I(4), for the four (4) calendar quarters immediately



2094 preceding the effective date of the election, the renewal date in
2095 the case of a bond, or the biennial anniversary of the effective
2096 date of election in the case of a deposit of money or securities,
2097 whichever date shall be most recent and applicable. If the
2098 nonprofit organization did not pay wages in each of such four (4)
2099 calendar quarters, the amount of the bond or deposit shall be as
2100 determined by the department.

2101 (ii) Any bond deposited under paragraph (d) shall
2102 be in force for a period of not less than two (2) tax years and
2103 shall be renewed with the approval of the department at such times
2104 as the department may prescribe, but not less frequently than at
2105 intervals of two (2) years as long as the organization continues
2106 to be liable for payments in lieu of contributions. The
2107 department shall require adjustments to be made in a previously
2108 filed bond as it deems appropriate. If the bond is to be
2109 increased, the adjusted bond shall be filed by the organization
2110 within thirty (30) days of the date notice of the required
2111 adjustment was delivered to it. Failure by any organization
2112 covered by such bond to pay the full amount of payments in lieu of
2113 contributions when due, together with any applicable interest and
2114 penalties provided in paragraph (b) (v) of this section, shall
2115 render the surety liable on the bond to the extent of the bond, as
2116 though the surety was such organization.

2117 (iii) Any deposit of money or securities in
2118 accordance with paragraph (d) shall be retained by the department



2119 in an escrow account until liability under the election is
2120 terminated, at which time it shall be returned to the
2121 organization, less any deductions as hereinafter provided. The
2122 department may deduct from the money deposited under paragraph (d)
2123 by a nonprofit organization, or sell the securities it has so
2124 deposited, to the extent necessary to satisfy any due and unpaid
2125 payments in lieu of contributions and any applicable interest and
2126 penalties provided for in paragraph (b) (v) of this section. The
2127 department shall require the organization, within thirty (30) days
2128 following any deduction from a money deposit or sale of deposited
2129 securities under the provisions hereof, to deposit sufficient
2130 additional money or securities to make whole the organization's
2131 deposit at the prior level. Any cash remaining from the sale of
2132 such securities shall be a part of the organization's escrow
2133 account. The department may, at any time, review the adequacy of
2134 the deposit made by any organization. If, as a result of such
2135 review, it determines that an adjustment is necessary, it shall
2136 require the organization to make additional deposit within thirty
2137 (30) days of notice of its determination or shall return to it
2138 such portion of the deposit as it no longer considers necessary,
2139 whichever action is appropriate. Disposition of income from
2140 securities held in escrow shall be governed by the applicable
2141 provisions of the state law.

2142 (iv) If any nonprofit organization fails to file a
2143 bond or make a deposit, or to file a bond in an increased amount,



2144 or to increase or make whole the amount of a previously made
2145 deposit as provided under this subparagraph, the department may
2146 terminate such organization's election to make payments in lieu of
2147 contributions, and such termination shall continue for not less
2148 than the four (4) consecutive calendar-quarter periods beginning
2149 with the quarter in which such termination becomes effective;
2150 however, the department may extend for good cause the applicable
2151 filing, deposit or adjustment period by not more than thirty (30)
2152 days.

2153 (v) Group account shall be established according
2154 to regulations prescribed by the department.

2155 (e) Any employer which elects to make payments in lieu
2156 of contributions into the Unemployment Compensation Fund as
2157 provided in this paragraph shall not be liable to make such
2158 payments with respect to the benefits paid to any individual whose
2159 base period wages include wages for previously uncovered services
2160 as defined in Section 71-5-511(e) to the extent that the
2161 Unemployment Compensation Fund is reimbursed for such benefits
2162 pursuant to Section 121 of Public Law 94-566.

2163 **SECTION 35.** Section 71-5-359, Mississippi Code of 1972, is
2164 reenacted as follows:

2165 71-5-359. (1) The Department of Finance and Administration
2166 shall, in the manner provided in subsection (3) of this section,
2167 pay, upon notice issued by the department, to the department for
2168 the Unemployment Compensation Fund an amount equal to the regular



2169 benefits and one-half (1/2) of the extended benefits paid that are
2170 attributable to service in the employ of a state agency. The
2171 amount required to be reimbursed by a certain agency shall be
2172 billed to the Department of Finance and Administration and shall
2173 be paid from the Employment Compensation Revolving Fund pursuant
2174 to subsection (3) of this section not later than thirty (30) days
2175 after such bill was sent, unless there has been an application for
2176 review and redetermination in accordance with Section
2177 71-5-357(b) (v) .

2178 (2) The Department of Finance and Administration shall, in
2179 the manner provided in subsection (3) of this section, pay, upon a
2180 notice issued by the department, to the department for the
2181 Unemployment Compensation Fund an amount equal to the regular
2182 benefits and the extended benefits paid that are attributable to
2183 service in the employ of a state agency. The amount required to
2184 be reimbursed by a certain agency shall be billed to the
2185 Department of Finance and Administration and shall be paid from
2186 the Employment Compensation Revolving Fund pursuant to subsection
2187 (3) of this section not later than thirty (30) days after such
2188 bill was sent, unless there has been an application for review and
2189 redetermination in accordance with Section 71-5-357(b) (v) .

2190 (3) Each agency of state government shall deposit monthly
2191 for a period of twenty-four (24) months an amount equal to
2192 one-twelfth of one percent (1/12 of 1%) of the first Six Thousand
2193 Dollars (\$6,000.00) paid to each employee thereof during the next



2194 preceding year into the Employment Compensation Revolving Fund
2195 that is created in the State Treasury. The Department of Finance
2196 and Administration shall determine the percentage to be applied to
2197 the amount of covered wages paid in order to maintain a balance in
2198 the revolving fund of not less than the amount determined by an
2199 actuary through an annual actuarial evaluation. The State
2200 Treasurer shall invest all funds in the Employment Compensation
2201 Revolving Fund and all interest earned shall be credited to the
2202 Employment Compensation Revolving Fund.

2203 The reimbursement of benefits paid by the Mississippi
2204 Department of Employment Security shall be paid by the Department
2205 of Finance and Administration from the Employment Compensation
2206 Revolving Fund upon notice from the department; and the Department
2207 of Finance and Administration shall issue warrants or may contract
2208 for the performance of the duties prescribed by subsections (2)
2209 and (3) of this section, and other duties necessarily related
2210 thereto.

2211 (4) Any political subdivision of this state shall pay to the
2212 department for the unemployment compensation fund an amount equal
2213 to the regular benefits and the extended benefits paid that are
2214 attributable to service in the employ of such political
2215 subdivision unless it elects to make contributions to the
2216 unemployment fund as provided in subsection (9) of this section.
2217 The amount required to be reimbursed shall be billed and shall be



2218 paid as provided in Section 71-5-357, with respect to similar
2219 payments for nonprofit organizations.

2220 (5) Each political subdivision, unless it elects to make
2221 contributions to the unemployment compensation fund as provided in
2222 subsection (9) of this section, shall establish a revolving fund
2223 and deposit an amount equal to two percent (2%) of the first Six
2224 Thousand Dollars (\$6,000.00) paid to each employee thereof during
2225 the next preceding year. However, the department shall by
2226 regulation establish a procedure to allow reimbursing political
2227 subdivisions to elect to maintain the balance in the revolving
2228 fund as required under this paragraph or to annually execute a
2229 surety bond to be approved by the department in an amount not less
2230 than two percent (2%) of the covered wages paid during the next
2231 preceding year.

2232 (6) In the event any political subdivision becomes
2233 delinquent in payments due under this chapter, upon due notice,
2234 and upon certification of the delinquency by the department to the
2235 Department of Finance and Administration, the Department of
2236 Revenue, the Department of Environmental Quality and the
2237 Department of Insurance, or any of them, or any other agencies of
2238 the State of Mississippi that may be indebted to such delinquent
2239 political subdivision, such agencies shall direct the issuance of
2240 warrants which in the aggregate shall be the amount of such
2241 delinquency payable to the department and drawn upon any funds in
2242 the State Treasury which may be available to such political



2243 subdivision in satisfaction of any such delinquency. This remedy
2244 shall be in addition to any other collection remedies in this
2245 chapter or otherwise provided by law.

2246 (7) Payments made by any political subdivision under the
2247 provisions of this section shall not be deducted or deductible, in
2248 whole or in part, from the remuneration of individuals in the
2249 employ of the organization.

2250 (8) Any governmental entity shall not be liable to make
2251 payments to the unemployment fund with respect to the benefits
2252 paid to any individual whose base period wages include wages for
2253 previously uncovered services as defined in Section 71-5-511,
2254 subsection (e), to the extent that the Unemployment Compensation
2255 Fund is reimbursed for such benefits pursuant to Section 121 of
2256 Public Law 94-566.

2257 (9) Any political subdivision of this state may elect to
2258 make contributions to the unemployment fund instead of making
2259 reimbursement for benefits paid as provided in subsections (4) and
2260 (5) of this section. A political subdivision which makes this
2261 election shall so notify the department, not later than three (3)
2262 months after it is officially organized or is otherwise
2263 established, and shall be subject to the provisions of Section
2264 71-5-351, with regard to the payment of contributions. A
2265 political subdivision which makes this election shall pay
2266 contributions equal to two percent (2%) of taxable wages through
2267 calendar year 2010, and one percent (1%) of taxable wages



2268 thereafter paid by it during each calendar quarter it is subject
2269 to this chapter. The department shall by regulation establish a
2270 procedure to allow political subdivisions the option periodically
2271 to elect either the reimbursement or the contribution method of
2272 financing unemployment compensation coverage.

2273 **SECTION 36.** Section 71-5-451, Mississippi Code of 1972, is
2274 reenacted as follows:

2275 71-5-451. There is established as a special fund, separate
2276 and apart from all public monies or funds of this state, an
2277 Unemployment Compensation Fund, which shall be administered by the
2278 department exclusively for:

2279 (a) All contributions collected under this chapter;

2280 (b) Interest earned upon any monies in the fund;

2281 (c) Any property or securities acquired through the use
2282 of monies belonging to the fund;

2283 (d) All earnings of such property or securities;

2284 (e) All monies credited to this state's account in the
2285 Unemployment Trust Fund pursuant to the Social Security Act, 42
2286 USCS, Section 1104; and

2287 (f) By way of reimbursement in accordance with Section
2288 204 of the Federal-State Extended Unemployment Compensation Act of
2289 1970 (84 Stat. 711). All monies in the fund shall be mingled and
2290 undivided.

2291 **SECTION 37.** Section 71-5-457, Mississippi Code of 1972, is
2292 reenacted as follows:



2293 71-5-457. (1) Except as otherwise provided in subsection
2294 (5), money credited to the account of this state in the
2295 Unemployment Trust Fund by the Secretary of the Treasury of the
2296 United States of America pursuant to the Social Security Act, 42
2297 USCS Section 1103, may be requisitioned and used for the payment
2298 of expenses incurred for the administration of this law pursuant
2299 to a specific appropriation by the Legislature, provided that the
2300 expenses are incurred and the money is requisitioned after the
2301 enactment of an appropriation law which:

2302 (a) Specifies the purposes for which such money is
2303 appropriated and the amounts appropriated therefor;

2304 (b) Limits the period within which such money may be
2305 obligated to a period ending not more than two (2) years after the
2306 date of the enactment of the appropriation law; and

2307 (c) Limits the amount which may be obligated during a
2308 twelve-month period beginning on July 1 and ending on the next
2309 June 30 to an amount which does not exceed the amount by which:

2310 (i) The aggregate of the amounts credited to the
2311 account of this state pursuant to the Social Security Act, 42 USCS
2312 Section 1103, during the same twelve-month period and the
2313 thirty-four (34) preceding twelve-month periods exceeds.

2314 (ii) The aggregate of the amounts obligated
2315 pursuant to this section and charged against the amounts credited
2316 to the account of this state during such thirty-five (35)
2317 twelve-month periods.



2318 For the purposes of this section, amounts obligated during
2319 any such twelve-month period shall be charged against equivalent
2320 amounts which were first credited and which are not already so
2321 charged; except that no amount obligated for administration during
2322 any such twelve-month period may be charged against any amount
2323 credited during such a twelve-month period earlier than the
2324 thirty-fourth preceding such period.

2325 (2) Money credited to the account of this state pursuant to
2326 the Social Security Act, 42 USCS Section 1103, may not be
2327 withdrawn or used except for the payment of benefits and for the
2328 payment of expenses for the administration of this law and of
2329 public employment offices pursuant to this section.

2330 (3) Money appropriated as provided herein for the payment of
2331 expenses of administration shall be requisitioned as needed for
2332 the payment of obligations incurred under such appropriation and,
2333 upon requisition, shall be deposited in the Employment Security
2334 Administration Fund, from which such payments shall be made.
2335 Money so deposited shall, until expended, remain a part of the
2336 Unemployment Compensation Fund and, if it will not be expended,
2337 shall be returned promptly to the account of this state in the
2338 Unemployment Trust Fund.

2339 (4) The thirty-five-year limitation provided in this section
2340 is no longer in force, effective October 1, 1991.

2341 (5) Notwithstanding subsection (1), monies credited with
2342 respect to federal fiscal years 1999, 2000 and 2001 shall be used



2343 by the department solely for the administration of the
2344 unemployment compensation program.

2345 **SECTION 38.** Section 71-5-511, Mississippi Code of 1972, is
2346 reenacted as follows:

2347 71-5-511. An unemployed individual shall be eligible to
2348 receive benefits with respect to any week only if the department
2349 finds that:

2350 (a) (i) He has registered for work at and thereafter
2351 has continued to report to the department in accordance with such
2352 regulations as the department may prescribe; except that the
2353 department may, by regulation, waive or alter either or both of
2354 the requirements of this subparagraph as to such types of cases or
2355 situations with respect to which it finds that compliance with
2356 such requirements would be oppressive or would be inconsistent
2357 with the purposes of this chapter; and

2358 (ii) He participates in reemployment services,
2359 such as job search assistance services, if, in accordance with a
2360 profiling system established by the department, it has been
2361 determined that he is likely to exhaust regular benefits and needs
2362 reemployment services, unless the department determines that:

2363 1. The individual has completed such
2364 services; or

2365 2. There is justifiable cause for the
2366 claimant's failure to participate in such services.



2367 (b) He has made a claim for benefits in accordance with
2368 the provisions of Section 71-5-515 and in accordance with such
2369 regulations as the department may prescribe thereunder.

2370 (c) He is able to work, available for work and actively
2371 seeking work.

2372 (d) He has been unemployed for a waiting period of one
2373 (1) week. No week shall be counted as a week of unemployment for
2374 the purposes of this subsection:

2375 (i) Unless it occurs within the benefit year which
2376 includes the week with respect to which he claims payment of
2377 benefits;

2378 (ii) If benefits have been paid with respect
2379 thereto;

2380 (iii) Unless the individual was eligible for
2381 benefits with respect thereto, as provided in Sections 71-5-511
2382 and 71-5-513, except for the requirements of this subsection.

2383 (e) For weeks beginning on or before July 1, 1982, he
2384 has, during his base period, been paid wages for insured work
2385 equal to not less than thirty-six (36) times his weekly benefit
2386 amount; he has been paid wages for insured work during at least
2387 two (2) quarters of his base period; and he has, during that
2388 quarter of his base period in which his total wages were highest,
2389 been paid wages for insured work equal to not less than sixteen
2390 (16) times the minimum weekly benefit amount. For benefit years
2391 beginning after July 1, 1982, he has, during his base period, been



2392 paid wages for insured work equal to not less than forty (40)
2393 times his weekly benefit amount; he has been paid wages for
2394 insured work during at least two (2) quarters of his base period,
2395 and he has, during that quarter of his base period in which his
2396 total wages were highest, been paid wages for insured work equal
2397 to not less than twenty-six (26) times the minimum weekly benefit
2398 amount. For purposes of this subsection, wages shall be counted
2399 as "wages for insured work" for benefit purposes with respect to
2400 any benefit year only if such benefit year begins subsequent to
2401 the date on which the employing unit by which such wages were paid
2402 has satisfied the conditions of Section 71-5-11, subsection H, or
2403 Section 71-5-361, subsection (3), with respect to becoming an
2404 employer.

2405 (f) No individual may receive benefits in a benefit
2406 year unless, subsequent to the beginning of the next preceding
2407 benefit year during which he received benefits, he performed
2408 service in "employment" as defined in Section 71-5-11, subsection
2409 I, and earned remuneration for such service in an amount equal to
2410 not less than eight (8) times his weekly benefit amount applicable
2411 to his next preceding benefit year.

2412 (g) Benefits based on service in employment defined in
2413 Section 71-5-11, subsection I(3) and I(4), and Section 71-5-361,
2414 subsection (4) shall be payable in the same amount, on the same
2415 terms, and subject to the same conditions as compensation payable
2416 on the basis of other service subject to this chapter, except that



2417 benefits based on service in an instructional, research or
2418 principal administrative capacity in an institution of higher
2419 learning (as defined in Section 71-5-11, subsection N) with
2420 respect to service performed prior to January 1, 1978, shall not
2421 be paid to an individual for any week of unemployment which begins
2422 during the period between two (2) successive academic years, or
2423 during a similar period between two (2) regular terms, whether or
2424 not successive, or during a period of paid sabbatical leave
2425 provided for in the individual's contract, if the individual has a
2426 contract or contracts to perform services in any such capacity for
2427 any institution or institutions of higher learning for both such
2428 academic years or both such terms.

2429 (h) Benefits based on service in employment defined in
2430 Section 71-5-11, subsection I(3) and I(4), shall be payable in the
2431 same amount, on the same terms and subject to the same conditions
2432 as compensation payable on the basis of other service subject to
2433 this chapter, except that:

2434 (i) With respect to service performed in an
2435 instructional, research or principal administrative capacity for
2436 an educational institution, benefits shall not be paid based on
2437 such services for any week of unemployment commencing during the
2438 period between two (2) successive academic years, or during a
2439 similar period between two (2) regular but not successive terms,
2440 or during a period of paid sabbatical leave provided for in the
2441 individual's contract, to any individual, if such individual



2442 performs such services in the first of such academic years or
2443 terms and if there is a contract or a reasonable assurance that
2444 such individual will perform services in any such capacity for any
2445 educational institution in the second of such academic years or
2446 terms, and provided that subsection (g) of this section shall
2447 apply with respect to such services prior to January 1, 1978. In
2448 no event shall benefits be paid unless the individual employee was
2449 terminated by the employer.

2450 (ii) With respect to services performed in any
2451 other capacity for an educational institution, benefits shall not
2452 be paid on the basis of such services to any individual for any
2453 week which commences during a period between two (2) successive
2454 academic years or terms, if such individual performs such services
2455 in the first of such academic years or terms and there is a
2456 reasonable assurance that such individual will perform such
2457 services in the second of such academic years or terms, except
2458 that if compensation is denied to any individual under this
2459 subparagraph and such individual was not offered an opportunity to
2460 perform such services for the educational institution for the
2461 second of such academic years or terms, such individual shall be
2462 entitled to a retroactive payment of compensation for each week
2463 for which the individual filed a timely claim for compensation and
2464 for which compensation was denied solely by reason of this clause.
2465 In no event shall benefits be paid unless the individual employee
2466 was terminated by the employer.



2467 (iii) With respect to services described in
2468 subsection (h) (i) and (ii), benefits shall not be payable on the
2469 basis of services in any such capacities to any individual for any
2470 week which commences during an established and customary vacation
2471 period or holiday recess if such individual performs such services
2472 in the first of such academic years or terms, or in the period
2473 immediately before such vacation period or holiday recess, and
2474 there is a reasonable assurance that such individual will perform
2475 such services in the period immediately following such vacation
2476 period or holiday recess.

2477 (iv) With respect to any services described in
2478 subsection (h) (i) and (ii), benefits shall not be payable on the
2479 basis of services in any such capacities as specified in
2480 subsection (h) (i), (ii) and (iii) to any individual who performed
2481 such services in an educational institution while in the employ of
2482 an educational service agency. For purposes of this subsection,
2483 the term "educational service agency" means a governmental agency
2484 or governmental entity which is established and operated
2485 exclusively for the purpose of providing such services to one or
2486 more educational institutions.

2487 (v) With respect to services to which Sections
2488 71-5-357 and 71-5-359 apply, if such services are provided to or
2489 on behalf of an educational institution, benefits shall not be
2490 payable under the same circumstances and subject to the same terms



2491 and conditions as described in subsection (h)(i), (ii), (iii) and
2492 (iv).

2493 (i) Subsequent to December 31, 1977, benefits shall not
2494 be paid to any individual on the basis of any services
2495 substantially all of which consist of participating in sports or
2496 athletic events or training or preparing to so participate, for
2497 any week which commences during the period between two (2)
2498 successive sports seasons (or similar periods) if such individual
2499 performs such services in the first of such seasons (or similar
2500 periods) and there is a reasonable assurance that such individual
2501 will perform such services in the later of such seasons (or
2502 similar periods).

2503 (j) (i) Subsequent to December 31, 1977, benefits
2504 shall not be payable on the basis of services performed by an
2505 alien, unless such alien is an individual who was lawfully
2506 admitted for permanent residence at the time such services were
2507 performed, was lawfully present for purposes of performing such
2508 services, or was permanently residing in the United States under
2509 color of law at the time such services were performed (including
2510 an alien who was lawfully present in the United States as a result
2511 of the application of the provisions of Section 203(a)(7) or
2512 Section 212(d)(5) of the Immigration and Nationality Act).

2513 (ii) Any data or information required of
2514 individuals applying for benefits to determine whether benefits



2515 are not payable to them because of their alien status shall be
2516 uniformly required from all applicants for benefits.

2517 (iii) In the case of an individual whose
2518 application for benefits would otherwise be approved, no
2519 determination that benefits to such individual are not payable
2520 because of his alien status shall be made, except upon a
2521 preponderance of the evidence.

2522 (k) An individual shall be deemed prima facie
2523 unavailable for work, and therefore ineligible to receive
2524 benefits, during any period which, with respect to his employment
2525 status, is found by the department to be a holiday or vacation
2526 period.

2527 (l) A temporary employee of a temporary help firm is
2528 considered to have left the employee's last work voluntarily
2529 without good cause connected with the work if the temporary
2530 employee does not contact the temporary help firm for reassignment
2531 on completion of an assignment. A temporary employee is not
2532 considered to have left work voluntarily without good cause
2533 connected with the work under this paragraph unless the temporary
2534 employee has been advised in writing:

2535 (i) That the temporary employee is obligated to
2536 contact the temporary help firm on completion of assignments; and

2537 (ii) That unemployment benefits may be denied if
2538 the temporary employee fails to do so.



2539 **SECTION 39.** Section 71-5-513, Mississippi Code of 1972, is
2540 reenacted as follows:

2541 71-5-513. A. An individual shall be disqualified for
2542 benefits:

2543 (1) (a) For the week, or fraction thereof, which
2544 immediately follows the day on which he left work voluntarily
2545 without good cause, if so found by the department, and for each
2546 week thereafter until he has earned remuneration for personal
2547 services performed for an employer, as in this chapter defined,
2548 equal to not less than eight (8) times his weekly benefit amount,
2549 as determined in each case; however, marital, filial and domestic
2550 circumstances and obligations shall not be deemed good cause
2551 within the meaning of this subsection. Pregnancy shall not be
2552 deemed to be a marital, filial or domestic circumstance for the
2553 purpose of this subsection.

2554 (b) For the week, or fraction thereof, which
2555 immediately follows the day on which he was discharged for
2556 misconduct connected with his work, if so found by the department,
2557 and for each week thereafter until he has earned remuneration for
2558 personal services performed for an employer, as in this chapter
2559 defined, equal to not less than eight (8) times his weekly benefit
2560 amount, as determined in each case.

2561 (c) The burden of proof of good cause for leaving
2562 work shall be on the claimant, and the burden of proof of
2563 misconduct shall be on the employer.



2564 (2) For the week, or fraction thereof, with respect to
2565 which he willfully makes a false statement, a false representation
2566 of fact, or willfully fails to disclose a material fact for the
2567 purpose of obtaining or increasing benefits under the provisions
2568 of this law, if so found by the department, and such individual's
2569 maximum benefit allowance shall be reduced by the amount of
2570 benefits so paid to him during any such week of disqualification;
2571 and additional disqualification shall be imposed for a period not
2572 exceeding fifty-two (52) weeks, the length of such period of
2573 disqualification and the time when such period begins to be
2574 determined by the department, in its discretion, according to the
2575 circumstances in each case.

2576 (3) If the department finds that he has failed, without
2577 good cause, either to apply for available suitable work when so
2578 directed by the employment office or the department, to accept
2579 suitable work when offered him, or to return to his customary
2580 self-employment (if any) when so directed by the department, such
2581 disqualification shall continue for the week in which such failure
2582 occurred and for not more than the twelve (12) weeks which
2583 immediately follow such week, as determined by the department
2584 according to the circumstances in each case.

2585 (a) In determining whether or not any work is
2586 suitable for an individual, the department shall consider among
2587 other factors the degree of risk involved to his health, safety
2588 and morals, his physical fitness and prior training, his



2589 experience and prior earnings, his length of unemployment and
2590 prospects for securing local work in his customary occupation, and
2591 the distance of the available work from his residence; however,
2592 offered employment paying the minimum wage or higher, if such
2593 minimum or higher wage is that prevailing for his customary
2594 occupation or similar work in the locality, shall be deemed to be
2595 suitable employment after benefits have been paid to the
2596 individual for a period of eight (8) weeks.

2597 (b) Notwithstanding any other provisions of this
2598 chapter, no work shall be deemed suitable and benefits shall not
2599 be denied under this chapter to any otherwise eligible individual
2600 for refusing to accept new work under any of the following
2601 conditions:

2602 (i) If the position offered is vacant due
2603 directly to a strike, lockout or other labor dispute;

2604 (ii) If the wages, hours or other conditions
2605 of the work offered are substantially unfavorable or unreasonable
2606 to the individual's work. The department shall have the sole
2607 discretion to determine whether or not there has been an
2608 unfavorable or unreasonable condition placed on the individual's
2609 work. Moreover, the department may consider, but shall not be
2610 limited to a consideration of, whether or not the unfavorable
2611 condition was applied by the employer to all workers in the same
2612 or similar class or merely to this individual;



2613 (iii) If as a condition of being employed the
2614 individual would be required to join a company union or to resign
2615 from or refrain from joining any bona fide labor organization;

2616 (iv) If unsatisfactory or hazardous working
2617 conditions exist that could result in a danger to the physical or
2618 mental well-being of the worker. In any such determination the
2619 department shall consider, but shall not be limited to a
2620 consideration of, the following: the safety measures used or the
2621 lack thereof and the condition of equipment or lack of proper
2622 equipment. No work shall be considered hazardous if the working
2623 conditions surrounding a worker's employment are the same or
2624 substantially the same as the working conditions generally
2625 prevailing among workers performing the same or similar work for
2626 other employers engaged in the same or similar type of activity.

2627 (c) Pursuant to Section 303(1) of the Social
2628 Security Act (42 USCS 503), the department may conduct drug tests
2629 of applicants for unemployment compensation for the unlawful use
2630 of controlled substances as a condition for receiving such
2631 compensation, if such applicant:

2632 (i) Was terminated from employment with the
2633 claimant's most recent employer, as defined by Mississippi law,
2634 because of the unlawful use of controlled substances; or

2635 (ii) Is an individual for whom suitable work,
2636 as defined by Mississippi law, is only available in an occupation



2637 (as determined under regulations issued by the U.S. Secretary of
2638 Labor) that requires drug testing.

2639 The department may deny unemployment compensation to any
2640 applicant based on the result of a drug test conducted by the
2641 department in accordance with this subsection. A positive drug
2642 test result shall be deemed by the department to be a failure to
2643 accept suitable work, and shall subject the applicant to the
2644 disqualification provisions set forth in this subsection A(3).
2645 During the disqualification period imposed by the department under
2646 this subsection, the individual may provide information to end the
2647 disqualification period early by submitting acceptable proof to
2648 the department of a negative test result from a testing facility
2649 approved by the department.

2650 (iii) Pursuant to the provisions set forth in
2651 this subsection A(3)(c), the department shall have the authority
2652 to institute a random drug testing program for all individuals who
2653 meet the requirements set forth in this section. Moreover, the
2654 department shall have the authority to create the necessary
2655 regulations, policies rules, guidelines and procedures to
2656 implement such a program.

2657 Any term or provision set forth in this subsection A(3)(c)
2658 that otherwise conflicts with federal or state law shall be
2659 disregarded but shall not, in any way, affect the remaining
2660 provisions.



2661 (4) For any week with respect to which the department
2662 finds that his total unemployment is due to a stoppage of work
2663 which exists because of a labor dispute at a factory,
2664 establishment or other premises at which he is or was last
2665 employed; however, this subsection shall not apply if it is shown
2666 to the satisfaction of the department:

2667 (a) He is unemployed due to a stoppage of work
2668 occasioned by an unjustified lockout, if such lockout was not
2669 occasioned or brought about by such individual acting alone or
2670 with other workers in concert; or

2671 (b) He is not participating in or directly
2672 interested in the labor dispute which caused the stoppage of work;
2673 and

2674 (c) He does not belong to a grade or class of
2675 workers of which, immediately before the commencement of stoppage,
2676 there were members employed at the premises at which the stoppage
2677 occurs, any of whom are participating in or directly interested in
2678 the dispute.

2679 If in any case separate branches of work which are commonly
2680 conducted as separate businesses in separate premises are
2681 conducted in separate departments of the same premises, each such
2682 department shall, for the purposes of this subsection, be deemed
2683 to be a separate factory, establishment or other premises.

2684 (5) For any week with respect to which he has received
2685 or is seeking unemployment compensation under an unemployment



2686 compensation law of another state or of the United States.
2687 However, if the appropriate agency of such other state or of the
2688 United States finally determines that he is not entitled to such
2689 unemployment compensation benefits, this disqualification shall
2690 not apply. Nothing in this subsection contained shall be
2691 construed to include within its terms any law of the United States
2692 providing unemployment compensation or allowances for honorably
2693 discharged members of the Armed Forces.

2694 (6) For any week with respect to which he is receiving
2695 or has received remuneration in the form of payments under any
2696 governmental or private retirement or pension plan, system or
2697 policy which a base-period employer is maintaining or contributing
2698 to or has maintained or contributed to on behalf of the
2699 individual; however, if the amount payable with respect to any
2700 week is less than the benefits which would otherwise be due under
2701 Section 71-5-501, he shall be entitled to receive for such week,
2702 if otherwise eligible, benefits reduced by the amount of such
2703 remuneration. However, on or after the first Sunday immediately
2704 following July 1, 2001, no social security payments, to which the
2705 employee has made contributions, shall be deducted from
2706 unemployment benefits paid for any period of unemployment
2707 beginning on or after the first Sunday following July 1, 2001.
2708 This one hundred percent (100%) exclusion shall not apply to any
2709 other governmental or private retirement or pension plan, system
2710 or policy. If benefits payable under this section, after being



2711 reduced by the amount of such remuneration, are not a multiple of
2712 One Dollar (\$1.00), they shall be adjusted to the next lower
2713 multiple of One Dollar (\$1.00).

2714 (7) For any week with respect to which he is receiving
2715 or has received remuneration in the form of a back pay award, or
2716 other compensation allocable to any week, whether by settlement or
2717 otherwise. Any benefits previously paid for weeks of unemployment
2718 with respect to which back pay awards, or other such compensation,
2719 are made shall constitute an overpayment and such amounts shall be
2720 deducted from the award by the employer prior to payment to the
2721 employee, and shall be transmitted promptly to the department by
2722 the employer for application against the overpayment and credit to
2723 the claimant's maximum benefit amount and prompt deposit into the
2724 fund; however, the removal of any charges made against the
2725 employer as a result of such previously paid benefits shall be
2726 applied to the calendar year and the calendar quarter in which the
2727 overpayment is transmitted to the department, and no attempt shall
2728 be made to relate such a credit to the period to which the award
2729 applies. Any amount of overpayment so deducted by the employer
2730 and not transmitted to the department shall be subject to the same
2731 procedures for collection as is provided for contributions by
2732 Sections 71-5-363 through 71-5-381. Any amount of overpayment not
2733 deducted by the employer shall be established as an overpayment
2734 against the claimant and collected as provided above. It is the



purpose of this paragraph to assure equity in the situations to which it applies, and it shall be construed accordingly.

B. Notwithstanding any other provision in this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the department; nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the department by reason of the application of provisions in Section 71-5-511, subsection (c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

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

For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely



2760 affected employment (as defined for purposes of the Trade Act of
2761 1974), and wages for such work at not less than eighty percent
2762 (80%) of the individual's average weekly wage as determined for
2763 the purposes of the Trade Act of 1974.

2764 D. Notwithstanding any other provisions of this chapter, no
2765 otherwise eligible individual shall be denied benefits for any
2766 week in which they are engaged in the Self-Employment Assistance
2767 Program established in Section 71-5-545 by reason of the
2768 application of Section 71-5-511(c), relating to availability for
2769 work, or the provisions of subsection A(3) of this section,
2770 relating to failure to apply for, or a refusal to accept, suitable
2771 work.

2772 E. Any individual who is receiving benefits may participate
2773 in an approved training program under the Mississippi Employment
2774 Security Law to gain skills that may lead to employment while
2775 continuing to receive benefits. Authorization for participation
2776 of a recipient of unemployment benefits in such a program must be
2777 granted by the department and continuation of participation must
2778 be certified weekly by the participant recipient. While
2779 participating in such program approved by the department,
2780 availability and work search requirements will be waived. No
2781 individual will be allowed to participate in this program for more
2782 than twelve (12) weeks in any benefit year. Such participation
2783 shall not be considered employment for any purposes and shall not
2784 accrue benefits or wage credits. Participation in this training



2785 program shall meet the definition set forth in the U.S. Fair Labor
2786 Standards Act.

2787 **SECTION 40.** Section 71-5-517, Mississippi Code of 1972, is
2788 reenacted as follows:

2789 71-5-517. Upon the taking of a claim by the department, an
2790 initial determination thereon shall be made promptly and shall
2791 include a determination with respect to whether or not benefits
2792 are payable, the week with respect to which benefits shall
2793 commence, the weekly benefit amount payable and the maximum
2794 duration of benefits. In any case in which the payment or denial
2795 of benefits will be determined by the provisions of subsection
2796 A(4) of Section 71-5-513, the examiner shall promptly transmit all
2797 the evidence with respect to that subsection to the department,
2798 which, on the basis of evidence so submitted and such additional
2799 evidence as it may require, shall make an initial determination
2800 with respect thereto. An initial determination may for good cause
2801 be reconsidered. The claimant, his most recent employing unit and
2802 all employers whose experience-rating record would be charged with
2803 benefits pursuant to such determination shall be promptly notified
2804 of such initial determination or any amended initial determination
2805 and the reason therefor. Benefits shall be denied or, if the
2806 claimant is otherwise eligible, promptly paid in accordance with
2807 the initial determination or amended initial determination. The
2808 jurisdiction of the department over benefit claims which have not
2809 been appealed shall be continuous. The claimant or any party to



2810 the initial determination or amended initial determination may
2811 file an appeal from such initial determination or amended initial
2812 determination within fourteen (14) days after notification
2813 thereof, or after the date such notification was sent to his last
2814 known address.

2815 Notwithstanding any other provision of this section, benefits
2816 shall be paid promptly in accordance with a determination or
2817 redetermination, or the decision of an appeal tribunal, the Board
2818 of Review or a reviewing court upon the issuance of such
2819 determination, redetermination or decision in favor of the
2820 claimant (regardless of the pendency of the period to apply for
2821 reconsideration, file an appeal, or petition for judicial review,
2822 as the case may be, or the pendency of any such application,
2823 filing or petition), unless and until such determination,
2824 redetermination or decision has been modified or reversed by a
2825 subsequent redetermination or decision, in which event benefits
2826 shall be paid or denied in accordance with such modifying or
2827 reversing redetermination or decision. Any benefits finally
2828 determined to have been erroneously paid may be set up as an
2829 overpayment to the claimant and must be liquidated before any
2830 future benefits can be paid to the claimant. If, subsequent to
2831 such initial determination or amended initial determination,
2832 benefits with respect to any week for which a claim has been filed
2833 are denied for reasons other than matters included in the initial
2834 determination or amended initial determination, the claimant shall



2835 be promptly notified of the denial and the reason therefor and may
2836 appeal therefrom in accordance with the procedure herein described
2837 for appeals from initial determination or amended initial
2838 determination.

2839 **SECTION 41.** Section 71-5-519, Mississippi Code of 1972, is
2840 reenacted as follows:

2841 71-5-519. Unless such appeal is withdrawn, an appeal
2842 tribunal appointed by the executive director, after affording the
2843 parties reasonable opportunity for fair hearing, shall affirm,
2844 modify or reverse the findings of fact and initial determination
2845 or amended initial determination. The parties shall be duly
2846 notified of such tribunal's decision, together with its reasons
2847 therefor, which shall be deemed to be the final decision of the
2848 executive director unless, within fourteen (14) days after the
2849 date of notification of such decision, further appeal is initiated
2850 pursuant to Section 71-5-523.

2851 **SECTION 42.** Section 71-5-523, Mississippi Code of 1972, is
2852 reenacted as follows:

2853 71-5-523. The Board of Review may on its own motion affirm,
2854 modify, or set aside any decision of an appeal tribunal on the
2855 basis of the evidence previously submitted in such case, or direct
2856 the taking of additional evidence, or may permit any of the
2857 parties to such decision to initiate further appeals before it.
2858 The Board of Review shall permit such further appeal by any of the
2859 parties to a decision of an appeal tribunal which is not



2860 unanimous, and by the examiner whose decision has been overruled
2861 or modified by an appeal tribunal. The Board of Review may remove
2862 to itself or transfer to another appeal tribunal the proceedings
2863 on any claim pending before an appeal tribunal. Any proceedings
2864 so removed to the Board of Review shall be heard by a quorum
2865 thereof in accordance with the requirements of Section 71-5-519
2866 and within fifteen (15) days after notice of appeal has been
2867 received by the executive director. No notice of appeal shall be
2868 deemed to be received by the executive director, within the
2869 meaning of this section, until all prior appeals pending before
2870 the Board of Review have been heard. The Board of Review shall,
2871 within four (4) days after its decision, so notify the parties to
2872 any proceeding of its findings and decision.

2873 **SECTION 43.** Section 71-5-525, Mississippi Code of 1972, is
2874 reenacted as follows:

2875 71-5-525. The manner in which appealed claims shall be
2876 presented and the conduct of hearings and appeals shall be in
2877 accordance with regulations prescribed by the Board of Review for
2878 determining the rights of the parties, whether or not such
2879 regulations conform to common law or statutory rules of evidence
2880 and other technical rules of procedure. A full and complete
2881 record shall be kept of all proceedings in connection with an
2882 appealed claim. The department's entire file relative to the
2883 appealed claim shall be a part of such record and shall be
2884 considered as evidence. All testimony at any hearing upon an



2885 appealed claim shall be recorded, but need not be transcribed
2886 unless the claim is further appealed.

2887 **SECTION 44.** Section 71-5-529, Mississippi Code of 1972, is
2888 reenacted as follows:

2889 71-5-529. Any decision of the Board of Review, in the
2890 absence of an appeal therefrom as herein provided, shall become
2891 final ten (10) days after the date of notification; and judicial
2892 review thereof shall be permitted only after any party claiming to
2893 be aggrieved thereby has exhausted his administrative remedies as
2894 provided by this chapter. The department shall be deemed to be a
2895 party to any judicial action involving any such decision, and may
2896 be represented in any such judicial action by any qualified
2897 attorney employed by the department and designated by it for that
2898 purpose or, at the department's request, by the Attorney General.

2899 **SECTION 45.** Section 71-5-531, Mississippi Code of 1972, is
2900 reenacted as follows:

2901 71-5-531. Within ten (10) days after the decision of the
2902 Board of Review has become final, any party aggrieved thereby may
2903 secure judicial review thereof by commencing an action, in the
2904 circuit court of the county in which the plaintiff resides,
2905 against the department for the review of such decision, in which
2906 action any other party to the proceeding before the Board of
2907 Review shall be made a defendant. In cases wherein the plaintiff
2908 is not a resident of the State of Mississippi, such action may be
2909 filed in the circuit court of the county in which the employer



2910 resides, the county in which the cause of action arose, or in the
2911 county of employment. In such action, a petition which need not
2912 be verified, but which shall state the grounds upon which a review
2913 is sought, shall be served upon the department or upon such person
2914 as the department may designate, and such service shall be deemed
2915 completed service on all parties; but there shall be left with the
2916 party so served as many copies of the petition as there are
2917 defendants, and the department shall forthwith mail one (1) such
2918 copy to each such defendant. With its answer, the department
2919 shall certify and file with said court all documents and papers
2920 and a transcript of all testimony taken in the matter, together
2921 with the Board of Review's findings of fact and decision therein.
2922 The department may also, in its discretion, certify to such court
2923 questions of law involved in any decision. In any judicial
2924 proceedings under this section, the findings of the Board of
2925 Review as to the facts, if supported by evidence and in the
2926 absence of fraud, shall be conclusive, and the jurisdiction of the
2927 court shall be confined to questions of law. Such actions, and
2928 the questions so certified, shall be heard in a summary manner and
2929 shall be given precedence over all other civil cases. An appeal
2930 may be taken from the decision of the circuit court of the county
2931 in which the plaintiff resides to the Supreme Court of
2932 Mississippi, in the same manner, but not inconsistent with the
2933 provisions of this chapter, as is provided in civil cases. It
2934 shall not be necessary, in any judicial proceeding under this



2935 section, to enter exceptions to the rulings of the Board of
2936 Review, and no bond shall be required for entering such appeal.
2937 Upon the final determination of such judicial proceeding, the
2938 Board of Review shall enter an order in accordance with such
2939 determination. A petition for judicial review shall not act as a
2940 supersedeas or stay unless the Board of Review shall so order.

2941 **SECTION 46.** Section 71-5-541, Mississippi Code of 1972, is
2942 reenacted as follows:

2943 71-5-541. A. (1) In the administration of this chapter,
2944 the department shall cooperate with the Department of Labor to the
2945 fullest extent consistent with the provisions of this chapter and
2946 shall take such action, through the adoption of appropriate rules,
2947 regulations, administrative methods and standards, as may be
2948 necessary to secure to this state and its citizens all advantages
2949 available under the provisions of the Social Security Act that
2950 relate to unemployment compensation, the Federal Unemployment Tax
2951 Act, the Wagner-Peyser Act and the Federal-State Extended
2952 Unemployment Compensation Act of 1970, all as amended.

2953 (2) In the administration of the provisions of this
2954 section, which are enacted to conform with the requirements of the
2955 Federal-State Extended Unemployment Compensation Act of 1970, as
2956 amended, the department shall take such actions as may be
2957 necessary:

2958 (a) To ensure that the provisions are so
2959 interpreted and applied as to meet the requirements of such



2960 federal act as interpreted by the United States Department of
2961 Labor; and

2962 (b) To secure to this state the full reimbursement
2963 of the federal share of extended benefits paid under this chapter
2964 that are reimbursable under the federal act; and also

2965 (c) To limit the amount of extended benefits paid
2966 as may be necessary so that the reimbursement of the federal share
2967 of extended benefits paid shall remain at one-half (1/2) of the
2968 total extended benefits paid.

2969 B. As used in this section, unless the context clearly
2970 requires otherwise:

2971 (1) "Extended benefit period" means a period which:

2972 (a) Begins with the third week after a week for
2973 which there is a state "on" indicator; and

2974 (b) Ends with either of the following weeks,
2975 whichever occurs later:

2976 (i) The third week after the first week for
2977 which there is a state "off" indicator; or

2978 (ii) The thirteenth consecutive week of such
2979 period.

2980 No extended benefit period may begin by reason of a state
2981 "on" indicator before the fourteenth week following the end of a
2982 prior extended benefit period which was in effect with respect to
2983 this state.



2984 (2) For weeks beginning after September 25, 1982, there
2985 is a "state 'on' indicator" for a week if the rate of insured
2986 unemployment under this chapter for the period consisting of such
2987 week and the immediately preceding twelve (12) weeks:

2988 (a) Equalled or exceeded one hundred twenty percent
2989 (120%) of the average of such rates for the corresponding period
2990 of thirteen (13) weeks ending in each of the preceding two (2)
2991 calendar years; and

2992 (b) Equalled or exceeded five percent (5%).

2993 The determination of whether there has been a state "on" or
2994 "off" indicator beginning or ending any extended benefit period
2995 shall be made under this subsection as if (i) paragraph (2) did
2996 not contain subparagraph (a) thereof, and (ii) the figure "5"
2997 contained in subparagraph (b) thereof were "6"; except that,
2998 notwithstanding any such provision of this subsection, any week
2999 for which there would otherwise be a "state 'on' indicator" shall
3000 continue to be such week and shall not be determined to be a week
3001 for which there is a "state 'off' indicator."

3002 (3) There is a "state 'off' indicator" for a week if,
3003 for the period consisting of such week and the immediately
3004 preceding twelve (12) weeks, either subparagraph (a) or (b) of
3005 paragraph (2) was not satisfied.

3006 (4) "Rate of insured unemployment," for purposes of
3007 paragraphs (2) and (3) of this subsection, means the percentage
3008 derived by dividing:



3009 (a) The average number of continued weeks claimed
3010 for regular state compensation in this state for weeks of
3011 unemployment with respect to the most recent period of thirteen
3012 (13) consecutive weeks, as determined by the department on the
3013 basis of its reports to the United States Secretary of Labor; by

3014 (b) The average monthly employment covered under
3015 this chapter for the first four (4) of the most recent six (6)
3016 completed calendar quarters ending before the end of such period
3017 of thirteen (13) weeks.

3018 (5) "Regular benefits" means benefits payable to an
3019 individual under this chapter or under any other state law
3020 (including benefits payable to federal civilian employees and to
3021 ex-servicemen pursuant to 5 USCS Section 8501-8525) other than
3022 extended benefits.

3023 (6) "Extended benefits" means benefits (including
3024 benefits payable to federal civilian employees and to
3025 ex-servicemen pursuant to 5 USCS Section 8501-8525) payable to an
3026 individual under the provisions of this section for weeks of
3027 unemployment in his eligibility period.

3028 (7) "Eligibility period" of an individual means the
3029 period consisting of the weeks in his benefit year which begin in
3030 an extended benefit period and, if his benefit year ends within
3031 such extended benefit period, any weeks thereafter which begin in
3032 such period.



3033 (8) "Exhaustee" means an individual who, with respect
3034 to any week of unemployment in his eligibility period:

3035 (a) Has received, prior to such week, all of the
3036 regular benefits that were available to him under this chapter or
3037 any other state law (including dependents' allowances and benefits
3038 payable to federal civilian employees and ex-servicemen under 5
3039 USCS Section 8501-8525) in his current benefit year that includes
3040 such week.

3041 For the purposes of this subparagraph, an individual shall be
3042 deemed to have received all of the regular benefits that were
3043 available to him although, as a result of a pending appeal with
3044 respect to wages that were not considered in the original monetary
3045 determination in his benefit year, he may subsequently be
3046 determined to be entitled to added regular benefits; or

3047 (b) Has no, or insufficient, wages on the basis of
3048 which he could establish a new benefit year that would include
3049 such week, his benefit year having expired prior to such week; and

3050 (c) (i) Has no right to unemployment benefits or
3051 allowances, as the case may be, under the Railroad Unemployment
3052 Insurance Act, the Trade Expansion Act of 1962, the Automotive
3053 Products Trade Act of 1965, and such other federal laws as are
3054 specified in regulations issued by the United States Secretary of
3055 Labor; and

3056 (ii) Has not received and is not seeking
3057 unemployment benefits under the Unemployment Compensation Law of



3058 the Virgin Islands or of Canada; but if he is seeking such
3059 benefits and the appropriate agency finally determines that he is
3060 not entitled to benefits under such law, he is considered an
3061 exhaustee; however, the reference in this subsection to the Virgin
3062 Islands shall be inapplicable effective on the day on which the
3063 United States Secretary of Labor approves under Section 3304(a) of
3064 the Internal Revenue Code of 1954, an unemployment compensation
3065 law submitted to the Secretary by the Virgin Islands for approval.

3066 (9) "State law" means the unemployment insurance law of
3067 any state, approved by the United States Secretary of Labor under
3068 Section 3304 of the Internal Revenue Code of 1954 (26 USCS Section
3069 3304).

3070 C. Except when the result would be inconsistent with the
3071 other provisions of this section, as provided in the regulations
3072 of the department, the provisions of this chapter which apply to
3073 claims for, or the payment of, regular benefits shall apply to
3074 claims for, and the payment of, extended benefits.

3075 D. An individual shall be eligible to receive extended
3076 benefits with respect to any week of unemployment in his
3077 eligibility period only if the department finds that with respect
3078 to such week:

3079 (1) He is an "exhaustee" as defined in subsection B(8)
3080 of this section.

3081 (2) He has satisfied the requirements of this chapter
3082 for the receipt of regular benefits that are applicable to



3083 individuals claiming extended benefits, including not being
3084 subject to a disqualification for the receipt of benefits.

3085 (3) For a week beginning after September 25, 1982, he
3086 has, during his base period, been paid wages for insured work
3087 equal to not less than forty (40) times his weekly benefit amount;
3088 he has been paid wages for insured work during at least two (2)
3089 quarters of his base period, and he has, during that quarter of
3090 his base period in which his total wages were highest, been paid
3091 wages for insured work equal to not less than twenty-six (26)
3092 times the minimum weekly benefit amount.

3093 E. The weekly extended benefit amount payable to an
3094 individual for a week of total unemployment in his eligibility
3095 period shall be an amount equal to the weekly benefit amount
3096 payable to him during his applicable benefit year; however,
3097 benefits paid to individuals during eligibility periods beginning
3098 before October 1, 1983, shall be computed to the next higher
3099 multiple of One Dollar (\$1.00), if not a multiple of One Dollar
3100 (\$1.00); and benefits paid to individuals during eligibility
3101 periods beginning on or after October 1, 1983, shall be computed
3102 to the next lower multiple of One Dollar (\$1.00), if not a
3103 multiple of One Dollar (\$1.00). In no event shall the weekly
3104 extended benefit amount payable to an individual be more than two
3105 (2) times the amount of the reimbursement of the federal share of
3106 extended benefits paid.



3107 F. (1) The total extended benefit amount payable to any
3108 eligible individual with respect to his applicable benefit year
3109 shall be the least of the following amounts:

3110 (a) Fifty percent (50%) of the total amount of
3111 regular benefits which were payable to him under this chapter in
3112 his applicable benefit year; however, benefits paid to individuals
3113 during eligibility periods beginning before October 1, 1983, shall
3114 be computed to the next higher multiple of One Dollar (\$1.00), if
3115 not a multiple of One Dollar (\$1.00), and benefits paid to
3116 individuals during eligibility periods beginning on or after
3117 October 1, 1983, shall be computed to the next lower multiple of
3118 One Dollar (\$1.00), if not a multiple of One Dollar (\$1.00); or
3119 (b) Thirteen (13) times his weekly benefit amount
3120 which was payable to him under this chapter for a week of total
3121 unemployment in the applicable benefit year.

3122 (2) The total extended benefits otherwise payable to an
3123 individual who is filing an interstate claim under the interstate
3124 benefit payment plan shall not exceed two (2) weeks whenever an
3125 extended benefit period is not in effect for such week in the
3126 state where the claim is filed.

3127 (3) In no event shall the total extended benefit amount
3128 payable to any eligible individual with respect to his applicable
3129 benefit year be more than two (2) times the amount of the
3130 reimbursement of the federal share of extended benefits paid.



3131 G. (1) Whenever an extended benefit period is to become
3132 effective in this state as a result of a state "on" indicator, or
3133 an extended benefit period is to be terminated in this state as a
3134 result of state "off" indicators, the department shall make an
3135 appropriate public announcement.

3136 (2) Computations required by the provisions of
3137 subsection B(4) shall be made by the department, in accordance
3138 with regulations prescribed by the United States Secretary of
3139 Labor.

3140 H. Extended benefits paid under the provisions of this
3141 section which are not reimbursable from federal funds shall be
3142 charged to the experience-rating record of base period employers.

3143 I. (1) Notwithstanding the provisions of subsections C and
3144 D of this section, an individual shall be disqualified for receipt
3145 of extended benefits if the department finds that during any week
3146 of his eligibility period:

3147 (a) He has failed either to apply for or to accept
3148 an offer of suitable work (as defined under paragraph (3)) to
3149 which he was referred by the department; or

3150 (b) He has failed to furnish tangible evidence
3151 that he has actively engaged in a systematic and sustained effort
3152 to find work, unless such individual is not actively engaged in
3153 seeking work because such individual is:



3154 (i) Before any court of the United States or
3155 any state pursuant to a lawfully issued summons to appear for jury
3156 duty;

3157 (ii) Hospitalized for treatment of an
3158 emergency or a life-threatening condition.

3159 The entitlement to benefits of any individual who is
3160 determined not to be actively engaged in seeking work in any week
3161 for the foregoing reasons shall be decided pursuant to the able
3162 and available requirements in Section 71-5-511 without regard to
3163 the disqualification provisions otherwise applicable under Section
3164 71-5-541. The conditions prescribed in clauses (i) and (ii) of
3165 this subparagraph (b) must be applied in the same manner to
3166 individuals filing claims for regular benefits.

3167 (2) Such disqualification shall begin with the week in
3168 which such failure occurred and shall continue until he has been
3169 employed in each of eight (8) subsequent weeks (whether or not
3170 consecutive) and has earned remuneration for personal services
3171 performed for an employer, as in this chapter defined, equal to
3172 not less than eight (8) times his weekly extended benefit amount.

3173 (3) For the purpose of subparagraph (a) of paragraph
3174 (1) the term "suitable work" means any work which is within the
3175 individual's capabilities to perform, if:

3176 (a) The gross average weekly remuneration payable
3177 for the work exceeds the sum of the individual's weekly extended
3178 benefit amount plus the amount, if any, of supplemental



3179 unemployment benefits (as defined in Section 501(c)(17)(D) of the
3180 Internal Revenue Code of 1954) payable to such individual for such
3181 week;

3182 (b) The wages payable for the work equal the
3183 higher of the minimum wages provided by Section 6(a)(1) of the
3184 Fair Labor Standards Act of 1938 (without regard to any
3185 exemption), or the state or local minimum wage; and

3186 (c) The position was offered to the individual in
3187 writing or was listed with the state employment service; and

3188 (d) Such work otherwise meets the definition of
3189 "suitable work" for regular benefits contained in Section
3190 71-5-513A(4) to the extent that such criteria of suitability are
3191 not inconsistent with the provisions of this paragraph (3); and

3192 (e) The individual cannot furnish satisfactory
3193 evidence to the department that his prospects for obtaining work
3194 in his customary occupation within a reasonably short period are
3195 good. If such evidence is deemed satisfactory for this purpose,
3196 the determination of whether any work is suitable with respect to
3197 such individual shall be made in accordance with the definition of
3198 suitable work contained in Section 71-5-513A(4) without regard to
3199 the definition specified by this paragraph (3).

3200 (4) Notwithstanding any provisions of subsection I to
3201 the contrary, no work shall be deemed to be suitable work for an
3202 individual which does not accord with the labor standard
3203 provisions set forth herein under Section 71-5-513A(4).



3204 (5) The employment service shall refer any claimant
3205 entitled to extended benefits under this section to any suitable
3206 work which meets the criteria prescribed in paragraph (3).

3207 (6) An individual shall be disqualified for extended
3208 benefits for the week, or fraction thereof, which immediately
3209 follows the day on which he left work voluntarily without good
3210 cause (as defined in Section 71-5-513A(1)), was discharged for
3211 misconduct connected with his work, or refused suitable work
3212 (except as provided in subsection I of this section), and for each
3213 week thereafter until he has earned remuneration for personal
3214 services performed for an employer, as in this chapter defined,
3215 equal to not less than eight (8) times his weekly benefit amount,
3216 as determined in each case.

3217 (7) The provisions of paragraphs I(1) through (6) of
3218 this section shall not apply to claims for weeks of unemployment
3219 beginning after March 6, 1993, and before January 1, 1995, and
3220 during that period the provisions of this chapter applicable to
3221 claims for regular compensation shall apply.

3222 J. Notwithstanding any other provisions of this chapter, if
3223 the benefit year of any individual ends within an extended benefit
3224 period, the remaining balance of extended benefits that such
3225 individual would, but for this section, be entitled to receive in
3226 that extended benefit period, with respect to weeks of
3227 unemployment beginning after the end of the benefit year, shall be
3228 reduced (but not below zero) by the product of the number of weeks



3229 for which the individual received any amounts as trade
3230 readjustment allowances within that benefit year, multiplied by
3231 the individual's weekly benefit amount for extended benefits.

3232 **SECTION 47.** Section 73-30-25, Mississippi Code of 1972, is
3233 reenacted as follows:

3234 73-30-25. It is not the intent of this chapter to regulate
3235 against members of other duly regulated professions in this state
3236 who do counseling in the normal course of the practice of their
3237 own profession. This chapter does not apply to:

3238 (a) Any person registered, certified or licensed by the
3239 state to practice any other occupation or profession while
3240 rendering counseling services in the performance of the occupation
3241 or profession for which he or she is registered, certified or
3242 licensed;

3243 (b) Certified school counselors when they are
3244 practicing counseling within the scope of their employment;

3245 (c) Certified vocational counselors when they are
3246 practicing vocational counseling within the scope of their
3247 employment;

3248 (d) [Deleted]

3249 (e) Student interns or trainees in counseling pursuing
3250 a course of study in counseling in a regionally or nationally
3251 accredited institution of higher learning or training institution
3252 if activities and services constitute a part of the supervised



3253 course of study, provided that such persons be designated a
3254 counselor intern;

3255 (f) [Deleted]

3256 (g) [Deleted]

3257 (h) Duly ordained ministers or clergy while functioning
3258 in their ministerial capacity and duly accredited Christian
3259 Science practitioners;

3260 (i) Professional employees of regional mental health
3261 centers, state mental hospitals, vocational rehabilitation
3262 institutions, youth court counselors and employees of the
3263 Mississippi Department of Employment Security or other
3264 governmental agency so long as they practice within the scope of
3265 their employment;

3266 (j) Professional employees of alcohol or drug abuse
3267 centers or treatment facilities, whether privately or publicly
3268 funded, so long as they practice within the scope of their
3269 employment;

3270 (k) Private employment counselors;

3271 (l) Any nonresident temporarily employed in this state
3272 to render counseling services for not more than thirty (30) days
3273 in any year, if in the opinion of the board the person would
3274 qualify for a license under this chapter and if the person holds
3275 any license required for counselors in his or her home state or
3276 country; and

3277 (m) [Deleted]



3278 **SECTION 48.** Section 43-1-30, Mississippi Code of 1972, is
3279 reenacted as follows:

3280 43-1-30. (1) There is created the Mississippi TANF
3281 Implementation Council. It shall serve as the independent, single
3282 state advisory and review council for assuring Mississippi's
3283 compliance with the federal Personal Responsibility and Work
3284 Opportunity Reconciliation Act of 1996 (Public Law 104-193), as
3285 amended. The council shall further cooperation between
3286 government, education and the private sector in meeting the needs
3287 of the TANF program. It shall also further cooperation between
3288 the business and labor communities, education and training
3289 delivery systems, and between businesses in developing highly
3290 skilled workers for high skill, high paying jobs in Mississippi.

3291 (2) The council shall be comprised of thirteen (13) public
3292 members and certain ex officio nonvoting members. All public
3293 members of the council shall be appointed as follows by the
3294 Governor:

3295 Ten (10) members shall be representatives from business and
3296 industry, provided that no fewer than five (5) members are from
3297 the manufacturing and industry sector who are also serving as
3298 members of private industry councils established within the state,
3299 and one (1) member may be a representative of a nonprofit
3300 organization. Three (3) members shall be recipients or former
3301 recipients of TANF assistance appointed from the state at large.



3302 The ex officio nonvoting members of the council shall consist
3303 of the following, or their designees:

3304 (a) The Executive Director of the Mississippi
3305 Department of Human Services;

3306 (b) The Executive Director of the Mississippi
3307 Department of Employment Security;

3308 (c) The Executive Director of the Mississippi
3309 Development Authority;

3310 (d) The State Superintendent of Public Education;

3311 (e) The Director of the Mississippi Community College
3312 Board;

3313 (f) The Executive Director of the Division of Medicaid;

3314 (g) The Commissioner of the Mississippi Department of
3315 Corrections; and

3316 (h) The Director of the Mississippi Cooperative
3317 Extension Service.

3318 (3) The Governor shall designate one (1) public member to
3319 serve as chairman of the council for a term of two (2) years and
3320 until a successor as chairman is appointed and qualified.

3321 (4) The term of office for public members appointed by the
3322 Governor shall be four (4) years and until their successors are
3323 appointed and qualified.

3324 (5) Any vacancy shall be filled for the unexpired term by
3325 the Governor in the manner of the original appointment, unless
3326 otherwise specified in this section.



3327 (6) Public members shall receive a per diem as authorized in
3328 Section 25-3-69, for each day actually engaged in meetings of the
3329 council, and shall be reimbursed for mileage and necessary
3330 expenses incurred in the performance of their duties, as provided
3331 in Section 25-3-41.

3332 (7) The council shall:

3333 (a) Annually review and recommend policies and programs
3334 to the Governor and the Legislature that will implement and meet
3335 federal requirements under the TANF program.

3336 (b) Annually review and recommend policies and programs
3337 to the Governor and to the Legislature that will enable citizens
3338 of Mississippi to acquire the skills necessary to maximize their
3339 economic self-sufficiency.

3340 (c) Review the provision of services and the use of
3341 funds and resources under the TANF program, and under all
3342 state-financed job training and job retraining programs, and
3343 advise the Governor and the Legislature on methods of coordinating
3344 such provision of services and use of funds and resources
3345 consistent with the laws and regulations governing such programs.

3346 (d) Assist in developing outcome and output measures to
3347 measure the success of the Department of Human Services' efforts
3348 in implementing the TANF program. These recommendations shall be
3349 made to the Department of Human Services at such times as required
3350 in the event that the department implements new programs to comply
3351 with the TANF program requirements.



3352 (e) Collaborate with the Mississippi Development
3353 Authority, local planning and development districts and local
3354 industrial development boards, and shall develop an economic
3355 development plan for the creation of manufacturing jobs in each of
3356 the counties in the state that has an unemployment rate of ten
3357 percent (10%) or more, which shall include, but not be limited to,
3358 procedures for business development, entrepreneurship and
3359 financial and technical assistance.

3360 (8) A majority of the members of the council shall
3361 constitute a quorum for the conduct of meetings and all actions of
3362 the council shall be by a majority of the members present at a
3363 meeting.

3364 (9) The council shall adopt rules and regulations as it
3365 deems necessary to carry out its responsibilities under this
3366 section and under applicable federal human resources programs.

3367 (10) The council may make and enter into contracts and
3368 interagency agreements as may be necessary and proper.

3369 (11) The council is authorized to commit and expend monies
3370 appropriated to it by the Legislature for its authorized purposes.
3371 The council is authorized to solicit, accept and expend public and
3372 private gifts, grants, awards and contributions related to
3373 furtherance of its statutory duties.

3374 (12) Funds for the operations of the council shall be
3375 derived from federal funds for the operation of state councils



pursuant to applicable federal human resources programs and from such other monies appropriated to it by the Legislature.

SECTION 49. Section 43-17-5, Mississippi Code of 1972, is reenacted and amended as follows:

43-17-5. (1) The amount of Temporary Assistance for Needy Families (TANF) benefits which may be granted for any dependent child and a needy caretaker relative shall be determined by the county department with due regard to the resources and necessary expenditures of the family and the conditions existing in each case, and in accordance with the rules and regulations made by the 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



3401 physical disability. TANF benefits granted shall be specifically
3402 limited only (a) to children existing or conceived at the time the
3403 caretaker relative initially applies and qualifies for such
3404 assistance, unless this limitation is specifically waived by the
3405 department, or (b) to a child born following a
3406 twelve-consecutive-month period of discontinued benefits by the
3407 caretaker relative.

3408 (2) TANF benefits in Mississippi shall be provided to the
3409 recipient family by an online electronic benefits transfer system.

3410 (3) The Department of Human Services shall deny TANF
3411 benefits to the following categories of individuals, except for
3412 individuals and families specifically exempt or excluded for good
3413 cause as allowed by federal statute or regulation:

3414 (a) Families without a minor child residing with the
3415 custodial parent or other adult caretaker relative of the child;

3416 (b) Families which include an adult who has received
3417 TANF assistance for sixty (60) months after the commencement of
3418 the Mississippi TANF program, whether or not such period of time
3419 is consecutive;

3420 (c) Families not assigning to the state any rights a
3421 family member may have, on behalf of the family member or of any
3422 other person for whom the family member has applied for or is
3423 receiving such assistance, to support from any other person, as
3424 required by law;



3425 (d) Families who fail to cooperate in establishing
3426 paternity or obtaining child support, as required by law;

3427 (e) Any individual who has not attained eighteen (18)
3428 years of age, is not married to the head of household, has a minor
3429 child at least twelve (12) weeks of age in his or her care, and
3430 has not successfully completed a high school education or its
3431 equivalent, if such individual does not participate in educational
3432 activities directed toward the attainment of a high school diploma
3433 or its equivalent, or an alternative educational or training
3434 program approved by the department;

3435 (f) Any individual who has not attained eighteen (18)
3436 years of age, is not married, has a minor child in his or her
3437 care, and does not reside in a place or residence maintained by a
3438 parent, legal guardian or other adult relative or the individual
3439 as such parent's, guardian's or adult relative's own home;

3440 (g) Any minor child who has been, or is expected by a
3441 parent or other caretaker relative of the child to be, absent from
3442 the home for a period of more than thirty (30) days;

3443 (h) Any individual who is a parent or other caretaker
3444 relative of a minor child who fails to notify the department of
3445 the absence of the minor child from the home for the thirty-day
3446 period specified in paragraph (g), by the end of the five-day
3447 period that begins with the date that it becomes clear to the
3448 individual that the minor child will be absent for the thirty-day
3449 period;



3450 (i) Any individual who fails to comply with the
3451 provisions of the Employability Development Plan signed by the
3452 individual which prescribe those activities designed to help the
3453 individual become and remain employed, or to participate
3454 satisfactorily in the assigned work activity, as authorized under
3455 subsection (6)(c) and (d), or who does not engage in applicant job
3456 search activities within the thirty-day period for TANF
3457 application approval after receiving the advice and consultation
3458 of eligibility workers and/or caseworkers of the department
3459 providing a detailed description of available job search venues in
3460 the individual's county of residence or the surrounding counties;

3461 (j) A parent or caretaker relative who has not engaged
3462 in an allowable work activity once the department determines the
3463 parent or caretaker relative is ready to engage in work, or once
3464 the parent or caretaker relative has received TANF assistance
3465 under the program for twenty-four (24) months, whether or not
3466 consecutive, whichever is earlier;

3467 (k) Any individual who is fleeing to avoid prosecution,
3468 or custody or confinement after conviction, under the laws of the
3469 jurisdiction from which the individual flees, for a crime, or an
3470 attempt to commit a crime, which is a felony under the laws of the
3471 place from which the individual flees, or who is violating a
3472 condition of probation or parole imposed under federal or state
3473 law;

3474 (l) Aliens who are not qualified under federal law;



3475 (m) For a period of ten (10) years following
3476 conviction, individuals convicted in federal or state court of
3477 having made a fraudulent statement or representation with respect
3478 to the individual's place of residence in order to receive TANF,
3479 food stamps or Supplemental Security Income (SSI) assistance under
3480 Title XVI or Title XIX simultaneously from two (2) or more states;

3481 (n) Individuals who are recipients of federal
3482 Supplemental Security Income (SSI) assistance; and

3483 (o) Individuals who are eighteen (18) years of age or
3484 older who are not in compliance with the drug testing and
3485 substance use disorder treatment requirements of Section 43-17-6.

3486 (4) (a) Any person who is otherwise eligible for TANF
3487 benefits, including custodial and noncustodial parents, shall be
3488 required to attend school and meet the monthly attendance
3489 requirement as provided in this subsection if all of the following
3490 apply:

3491 (i) The person is under age twenty (20);

3492 (ii) The person has not graduated from a public or
3493 private high school or obtained a High School Equivalency Diploma
3494 equivalent;

3495 (iii) The person is physically able to attend
3496 school and is not excused from attending school; and

3497 (iv) If the person is a parent or caretaker
3498 relative with whom a dependent child is living, child care is
3499 available for the child.



3500 The monthly attendance requirement under this subsection
3501 shall be attendance at the school in which the person is enrolled
3502 for each day during a month that the school conducts classes in
3503 which the person is enrolled, with not more than two (2) absences
3504 during the month for reasons other than the reasons listed in
3505 paragraph (e)(iv) of this subsection. Persons who fail to meet
3506 participation requirements in this subsection shall be subject to
3507 sanctions as provided in paragraph (f) of this subsection.

3508 (b) As used in this subsection, "school" means any one
3509 (1) of the following:

3510 (i) A school as defined in Section 37-13-91(2);

3511 (ii) A vocational, technical and adult education
3512 program; or

3513 (iii) A course of study meeting the standards
3514 established by the State Department of Education for the granting
3515 of a declaration of equivalency of high school graduation.

3516 (c) If any compulsory-school-age child, as defined in
3517 Section 37-13-91(2), to which TANF eligibility requirements apply
3518 is not in compliance with the compulsory school attendance
3519 requirements of Section 37-13-91(6), the superintendent of schools
3520 of the school district in which the child is enrolled or eligible
3521 to attend shall notify the county department of human services of
3522 the child's noncompliance. The Department of Human Services shall
3523 review school attendance information as provided under this



paragraph at all initial eligibility determinations and upon subsequent report of unsatisfactory attendance.

(d) The signature of a person on an application for TANF benefits constitutes permission for the release of school attendance records for that person or for any child residing with that person. The department shall request information from the child's school district about the child's attendance in the school district's most recently completed semester of attendance. If information about the child's previous school attendance is not available or cannot be verified, the department shall require the child to meet the monthly attendance requirement for one (1) semester or until the information is obtained. The department shall use the attendance information provided by a school district to verify attendance for a child. The department shall review with the parent or caretaker relative a child's claim that he or she has a good cause for not attending school.

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



3549 If a school district fails to provide to the department the
3550 information about the school attendance of any child within
3551 fifteen (15) working days after a written request, the department
3552 shall notify the Department of Audit within three (3) working days
3553 of the school district's failure to comply with that requirement.
3554 The Department of Audit shall begin audit proceedings within five
3555 (5) working days of notification by the Department of Human
3556 Services to determine the school district's compliance with the
3557 requirements of this subsection (4). If the Department of Audit
3558 finds that the school district is not in compliance with the
3559 requirements of this subsection, the school district shall be
3560 penalized as follows: The Department of Audit shall notify the
3561 State Department of Education of the school district's
3562 noncompliance, and the Department of Education shall reduce the
3563 calculation of the school district's average daily attendance
3564 (ADA) that is used to determine the allocation of Mississippi
3565 Adequate Education Program funds by the number of children for
3566 which the district has failed to provide to the Department of
3567 Human Services the required information about the school
3568 attendance of those children. The reduction in the calculation of
3569 the school district's ADA under this paragraph shall be effective
3570 for a period of one (1) year.

3571 (e) A child who is required to attend school to meet
3572 the requirements under this subsection shall comply except when



3573 there is good cause, which shall be demonstrated by any of the
3574 following circumstances:

3575 (i) The minor parent is the caretaker of a child
3576 less than twelve (12) weeks old; or

3577 (ii) The department determines that child care
3578 services are necessary for the minor parent to attend school and
3579 there is no child care available; or

3580 (iii) The child is prohibited by the school
3581 district from attending school and an expulsion is pending. This
3582 exemption no longer applies once the teenager has been expelled;
3583 however, a teenager who has been expelled and is making
3584 satisfactory progress towards obtaining a High School Equivalency
3585 Diploma equivalent shall be eligible for TANF benefits; or

3586 (iv) The child failed to attend school for one or
3587 more of the following reasons:

3588 1. Illness, injury or incapacity of the child
3589 or the minor parent's child;

3590 2. Court-required appearances or temporary
3591 incarceration;

3592 3. Medical or dental appointments for the
3593 child or minor parent's child;

3594 4. Death of a close relative;

3595 5. Observance of a religious holiday;

3596 6. Family emergency;

3597 7. Breakdown in transportation;



3598 8. Suspension; or

3599 9. Any other circumstance beyond the control
3600 of the child, as defined in regulations of the department.

3601 (f) Upon determination that a child has failed without
3602 good cause to attend school as required, the department shall
3603 provide written notice to the parent or caretaker relative
3604 (whoever is the primary recipient of the TANF benefits) that
3605 specifies:

3606 (i) That the family will be sanctioned in the next
3607 possible payment month because the child who is required to attend
3608 school has failed to meet the attendance requirement of this
3609 subsection;

3610 (ii) The beginning date of the sanction, and the
3611 child to whom the sanction applies;

3612 (iii) The right of the child's parents or
3613 caretaker relative (whoever is the primary recipient of the TANF
3614 benefits) to request a fair hearing under this subsection.

3615 The child's parent or caretaker relative (whoever is the
3616 primary recipient of the TANF benefits) may request a fair hearing
3617 on the department's determination that the child has not been
3618 attending school. If the child's parents or caretaker relative
3619 does not request a fair hearing under this subsection, or if,
3620 after a fair hearing has been held, the hearing officer finds that
3621 the child without good cause has failed to meet the monthly
3622 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.

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



3673 deemed to have refused to accept a referral or offer of
3674 employment, training or education if he or she:

3675 (i) Willfully fails to report for an interview
3676 with respect to employment when requested to do so by the
3677 department; or

3678 (ii) Willfully fails to report to the department
3679 the result of a referral to employment; or

3680 (iii) Willfully fails to report for allowable work
3681 activities as prescribed in paragraphs (c) and (d) of this
3682 subsection.

3683 (b) The Department of Human Services shall operate a
3684 statewide work program for TANF recipients to provide work
3685 activities and supportive services to enable families to become
3686 self-sufficient and improve their competitive position in the
3687 workforce in accordance with the requirements of the federal
3688 Personal Responsibility and Work Opportunity Reconciliation Act of
3689 1996 (Public Law 104-193), as amended, and the regulations
3690 promulgated thereunder, and the Deficit Reduction Act of 2005
3691 (Public Law 109-171), as amended. Within sixty (60) days after
3692 the initial application for TANF benefits, the TANF recipient must
3693 participate in a job search skills training workshop or a job
3694 readiness program, which shall include resume writing, job search
3695 skills, employability skills and, if available at no charge, the
3696 General Aptitude Test Battery or its equivalent. All adults who
3697 are not specifically exempt shall be referred by the department



3698 for allowable work activities. An adult may be exempt from the
3699 mandatory work activity requirement for the following reasons:

- 3700 (i) Incapacity;
- 3701 (ii) Temporary illness or injury, verified by
3702 physician's certificate;
- 3703 (iii) Is in the third trimester of pregnancy, and
3704 there are complications verified by the certificate of a
3705 physician, nurse practitioner, physician assistant, or any other
3706 licensed health care professional practicing under a protocol with
3707 a licensed physician;
- 3708 (iv) Caretaker of a child under twelve (12)
3709 months, for not more than twelve (12) months of the sixty-month
3710 maximum benefit period;
- 3711 (v) Caretaker of an ill or incapacitated person,
3712 as verified by physician's certificate;
- 3713 (vi) Age, if over sixty (60) or under eighteen
3714 (18) years of age;
- 3715 (vii) Receiving treatment for substance abuse, if
3716 the person is in compliance with the substance abuse treatment
3717 plan;
- 3718 (viii) In a two-parent family, the caretaker of a
3719 severely disabled child, as verified by a physician's certificate;
3720 or
- 3721 (ix) History of having been a victim of domestic
3722 violence, which has been reported as required by state law and is



3723 substantiated by police reports or court records, and being at
3724 risk of further domestic violence, shall be exempt for a period as
3725 deemed necessary by the department but not to exceed a total of
3726 twelve (12) months, which need not be consecutive, in the
3727 sixty-month maximum benefit period. For the purposes of this
3728 subparagraph (ix), "domestic violence" means that an individual
3729 has been subjected to:

- 3730 1. Physical acts that resulted in, or
3731 threatened to result in, physical injury to the individual;
- 3732 2. Sexual abuse;
- 3733 3. Sexual activity involving a dependent
3734 child;
- 3735 4. Being forced as the caretaker relative of
3736 a dependent child to engage in nonconsensual sexual acts or
3737 activities;
- 3738 5. Threats of, or attempts at, physical or
3739 sexual abuse;
- 3740 6. Mental abuse; or
- 3741 7. Neglect or deprivation of medical care.

3742 (c) For all families, all adults who are not
3743 specifically exempt shall be required to participate in work
3744 activities for at least the minimum average number of hours per
3745 week specified by federal law or regulation, not fewer than twenty
3746 (20) hours per week (thirty-five (35) hours per week for



3747 two-parent families) of which are attributable to the following
3748 allowable work activities:

- 3749 (i) Unsubsidized employment;
- 3750 (ii) Subsidized private employment;
- 3751 (iii) Subsidized public employment;
- 3752 (iv) Work experience (including work associated
3753 with the refurbishing of publicly assisted housing), if sufficient
3754 private employment is not available;
- 3755 (v) On-the-job training;
- 3756 (vi) Job search and job readiness assistance
3757 consistent with federal TANF regulations;
- 3758 (vii) Community service programs;
- 3759 (viii) Vocational educational training (not to
3760 exceed twelve (12) months with respect to any individual);
- 3761 (ix) The provision of child care services to an
3762 individual who is participating in a community service program;
- 3763 (x) Satisfactory attendance at high school or in a
3764 course of study leading to a high school equivalency certificate,
3765 for heads of household under age twenty (20) who have not
3766 completed high school or received such certificate;
- 3767 (xi) Education directly related to employment, for
3768 heads of household under age twenty (20) who have not completed
3769 high school or received such equivalency certificate.



3770 (d) The following are allowable work activities which
3771 may be attributable to hours in excess of the minimum specified
3772 in * * * paragraph (c) of this subsection:

3773 (i) Job skills training directly related to
3774 employment;

3775 (ii) Education directly related to employment for
3776 individuals who have not completed high school or received a high
3777 school equivalency certificate;

3778 (iii) Satisfactory attendance at high school or in
3779 a course of study leading to a high school equivalency, for
3780 individuals who have not completed high school or received such
3781 equivalency certificate;

3782 (iv) Job search and job readiness assistance
3783 consistent with federal TANF regulations.

3784 (e) If any adult or caretaker relative refuses to
3785 participate in allowable work activity as required under this
3786 subsection (6), the following full family TANF benefit penalty
3787 will apply, subject to due process to include notification,
3788 conciliation and a hearing if requested by the recipient:

3789 (i) For the first violation, the department shall
3790 terminate the TANF assistance otherwise payable to the family for
3791 a two-month period or until the person has complied with the
3792 required work activity, whichever is longer;

3793 (ii) For the second violation, the department
3794 shall terminate the TANF assistance otherwise payable to the



3795 family for a six-month period or until the person has complied
3796 with the required work activity, whichever is longer;

3797 (iii) For the third violation, the department
3798 shall terminate the TANF assistance otherwise payable to the
3799 family for a twelve-month period or until the person has complied
3800 with the required work activity, whichever is longer;

3801 (iv) For the fourth violation, the person shall be
3802 permanently disqualified.

3803 For a two-parent family, unless prohibited by state or
3804 federal law, Medicaid assistance shall be terminated only for the
3805 person whose failure to participate in allowable work activity
3806 caused the family's TANF assistance to be sanctioned under
3807 this * * * paragraph (e), unless an individual is pregnant, but
3808 shall not be terminated for any other person in the family who is
3809 meeting that person's applicable work requirement or who is not
3810 required to work. Minor children shall continue to be eligible
3811 for Medicaid benefits regardless of the disqualification of their
3812 parent or caretaker relative for TANF assistance under this
3813 subsection (6), unless prohibited by state or federal law.

3814 (f) Any person enrolled in a two-year or four-year
3815 college program who meets the eligibility requirements to receive
3816 TANF benefits, and who is meeting the applicable work requirements
3817 and all other applicable requirements of the TANF program, shall
3818 continue to be eligible for TANF benefits while enrolled in the



3819 college program for as long as the person meets the requirements
3820 of the TANF program, unless prohibited by federal law.

3821 (g) No adult in a work activity required under this
3822 subsection (6) shall be employed or assigned (i) when any other
3823 individual is on layoff from the same or any substantially
3824 equivalent job within six (6) months before the date of the TANF
3825 recipient's employment or assignment; or (ii) if the employer has
3826 terminated the employment of any regular employee or otherwise
3827 caused an involuntary reduction of its workforce in order to fill
3828 the vacancy so created with an adult receiving TANF assistance.
3829 The Mississippi Department of Employment Security, established
3830 under Section 71-5-101, shall appoint one or more impartial
3831 hearing officers to hear and decide claims by employees of
3832 violations of this paragraph (g). The hearing officer shall hear
3833 all the evidence with respect to any claim made hereunder and such
3834 additional evidence as he may require and shall make a
3835 determination and the reason therefor. The claimant shall be
3836 promptly notified of the decision of the hearing officer and the
3837 reason therefor. Within ten (10) days after the decision of the
3838 hearing officer has become final, any party aggrieved thereby may
3839 secure judicial review thereof by commencing an action, in the
3840 circuit court of the county in which the claimant resides, against
3841 the department for the review of such decision, in which action
3842 any other party to the proceeding before the hearing officer shall
3843 be made a defendant. Any such appeal shall be on the record which



3844 shall be certified to the court by the department in the manner
3845 provided in Section 71-5-531, and the jurisdiction of the court
3846 shall be confined to questions of law which shall render its
3847 decision as provided in that section.

3848 (7) The Department of Human Services may provide child care
3849 for eligible participants who require such care so that they may
3850 accept employment or remain employed. The department may also
3851 provide child care for those participating in the TANF program
3852 when it is determined that they are satisfactorily involved in
3853 education, training or other allowable work activities. The
3854 department may contract with Head Start agencies to provide child
3855 care services to TANF recipients. The department may also arrange
3856 for child care by use of contract or vouchers, provide vouchers in
3857 advance to a caretaker relative, reimburse a child care provider,
3858 or use any other arrangement deemed appropriate by the department,
3859 and may establish different reimbursement rates for child care
3860 services depending on the category of the facility or home. Any
3861 center-based or group home child care facility under this
3862 subsection shall be licensed by the State Department of Health
3863 pursuant to law. When child care is being provided in the child's
3864 own home, in the home of a relative of the child, or in any other
3865 unlicensed setting, the provision of such child care may be
3866 monitored on a random basis by the Department of Human Services or
3867 the State Department of Health. Transitional child care
3868 assistance may be continued if it is necessary for parents to



3869 maintain employment once support has ended, unless prohibited
3870 under state or federal law. Transitional child care assistance
3871 may be provided for up to twenty-four (24) months after the last
3872 month during which the family was eligible for TANF assistance, if
3873 federal funds are available for such child care assistance.

3874 (8) The Department of Human Services may provide
3875 transportation or provide reasonable reimbursement for
3876 transportation expenses that are necessary for individuals to be
3877 able to participate in allowable work activity under the TANF
3878 program.

3879 (9) Medicaid assistance shall be provided to a family of
3880 TANF program participants for up to twenty-four (24) consecutive
3881 calendar months following the month in which the participating
3882 family would be ineligible for TANF benefits because of increased
3883 income, expiration of earned income disregards, or increased hours
3884 of employment of the caretaker relative; however, Medicaid
3885 assistance for more than twelve (12) months may be provided only
3886 if a federal waiver is obtained to provide such assistance for
3887 more than twelve (12) months and federal and state funds are
3888 available to provide such assistance.

3889 (10) The department shall require applicants for and
3890 recipients of public assistance from the department to sign a
3891 personal responsibility contract that will require the applicant
3892 or recipient to acknowledge his or her responsibilities to the
3893 state.



3894 (11) The department shall enter into an agreement with the
3895 State Personnel Board and other state agencies that will allow
3896 those TANF participants who qualify for vacant jobs within state
3897 agencies to be placed in state jobs. State agencies participating
3898 in the TANF work program shall receive any and all benefits
3899 received by employers in the private sector for hiring TANF
3900 recipients. This subsection (11) shall be effective only if the
3901 state obtains any necessary federal waiver or approval and if
3902 federal funds are available therefor.

3903 (12) Any unspent TANF funds remaining from the prior fiscal
3904 year may be expended for any TANF allowable activities.

3905 (13) The Mississippi Department of Human Services shall
3906 provide TANF applicants information and referral to programs that
3907 provide information about birth control, prenatal health care,
3908 abstinence education, marriage education, family preservation and
3909 fatherhood.

3910 (14) No new TANF program requirement or restriction
3911 affecting a person's eligibility for TANF assistance, or allowable
3912 work activity, which is not mandated by federal law or regulation
3913 may be implemented by the Department of Human Services after July
3914 1, 2004, unless such is specifically authorized by an amendment to
3915 this section by the Legislature.

3916 **SECTION 50.** Section 43-19-45, Mississippi Code of 1972, is
3917 reenacted as follows:



3918 43-19-45. (1) The Child Support Unit shall establish a
3919 state parent locator service for the purpose of locating absent
3920 and nonsupporting parents and alleged parents, which will utilize
3921 all appropriate public and private locator sources. In order to
3922 carry out the responsibilities imposed under Sections 43-19-31
3923 through 43-19-53, the Child Support Unit may secure, by
3924 administrative subpoena from the customer records of public
3925 utilities and cable television companies, the names and addresses
3926 of individuals and the names and addresses of employers of such
3927 individuals that would enable the location of parents or alleged
3928 parents who have a duty to provide support and maintenance for
3929 their children. The Child Support Unit may also administratively
3930 subpoena any and all financial information, including account
3931 numbers, names and social security numbers of record for assets,
3932 accounts, and account balances from any individual, financial
3933 institution, business or other entity, public or private, needed
3934 to establish, modify or enforce a support order. No entity
3935 complying with an administrative subpoena to supply the requested
3936 information of whatever nature shall be liable in any civil action
3937 or proceeding on account of such compliance. Full faith and
3938 credit shall be given to all uniform administrative subpoenas
3939 issued by other state child support units. The recipient of an
3940 administrative subpoena shall supply the Child Support Unit, other
3941 state and federal IV-D agencies, its attorneys, investigators,
3942 probation officers, county or district attorneys in this state,



3943 all information relative to the location, employment,
3944 employment-related benefits including, but not limited to,
3945 availability of medical insurance, income and property of such
3946 parents and alleged parents and with all information on hand
3947 relative to the location and prosecution of any person who has, by
3948 means of a false statement or misrepresentation or by
3949 impersonation or other fraudulent device, obtained Temporary
3950 Assistance for Needy Families (TANF) to which he or she was not
3951 entitled, notwithstanding any provision of law making such
3952 information confidential. The Mississippi Department of
3953 Information Technology Services and any other agency in this state
3954 using the facilities of the Mississippi Department of Information
3955 Technology Services are directed to permit the Child Support Unit
3956 access to their files, inclusive of those maintained for other
3957 state agencies, for the purpose of locating absent and
3958 nonsupporting parents and alleged parents, except to the extent
3959 that any such access would violate any valid federal statute or
3960 regulation issued pursuant thereto. The Child Support Unit, other
3961 state and federal IV-D agencies, its attorneys, investigators,
3962 probation officers, or county or district attorneys, shall use
3963 such information only for the purpose of investigating or
3964 enforcing the support liability of such absent parents or alleged
3965 parents or for the prosecution of other persons mentioned herein.
3966 Neither the Child Support Unit nor those authorities shall use the
3967 information, or disclose it, for any other purpose. All records



3968 maintained pursuant to the provisions of Sections 43-19-31 through
3969 43-19-53 shall be confidential and shall be available only to the
3970 Child Support Unit, other state and federal IV-D agencies, the
3971 attorneys, investigators and other staff employed or under
3972 contract under Sections 43-19-31 through 43-19-53, district or
3973 county attorneys, probation departments, child support units in
3974 other states, and courts having jurisdiction in paternity, support
3975 or abandonment proceedings. The Child Support Unit may release to
3976 the public the name, photo, last-known address, arrearage amount
3977 and other necessary information of a parent who has a judgment
3978 against him for child support and is currently in arrears in the
3979 payment of this support. Such release may be included in a "Most
3980 Wanted List" or other media in order to solicit assistance.

3981 (2) The Child Support Unit shall have the authority to
3982 secure information from the records of the Mississippi Department
3983 of Employment Security that may be necessary to locate absent and
3984 nonsupporting parents and alleged parents under the provisions of
3985 Sections 43-19-31 through 43-19-53. Upon request of the Child
3986 Support Unit, all departments, boards, bureaus and agencies of the
3987 state shall provide to the Child Support Unit verification of
3988 employment or payment and the address and social security number
3989 of any person designated as an absent or nonsupporting parent or
3990 alleged parent. In addition, upon request of the Child Support
3991 Unit, the Mississippi Department of Employment Security, or any
3992 private employer or payor of any income to a person designated as



3993 an absent or nonsupporting parent or alleged parent, shall provide
3994 to the Child Support Unit verification of employment or payment
3995 and the address and social security number of the person so
3996 designated. Full faith and credit shall be given to such notices
3997 issued by child support units in other states. All such records
3998 and information shall be confidential and shall not be used for
3999 any purposes other than those specified by Sections 43-19-31
4000 through 43-19-53. The violation of the provisions of this
4001 subsection shall be unlawful and any person convicted of violating
4002 the provisions of this subsection shall be guilty of a misdemeanor
4003 and shall pay a fine of not more than Two Hundred Dollars
4004 (\$200.00).

4005 (3) Federal and state IV-D agencies shall have access to the
4006 state parent locator service and any system used by the Child
4007 Support Unit to locate an individual for purposes relating to
4008 motor vehicles or law enforcement. No employer or other source of
4009 income who complies with this section shall be liable in any civil
4010 action or proceeding brought by the obligor or obligee on account
4011 of such compliance.

4012 **SECTION 51.** Section 43-19-46, Mississippi Code of 1972, is
4013 reenacted as follows:

4014 43-19-46. (1) Each employer paying wages, salary or
4015 commission and doing business in Mississippi shall report to the
4016 Directory of New Hires within the Mississippi Department of Human
4017 Services:



4018 (a) The hiring of any person who resides or works in
4019 this state to whom the employer anticipates paying wages, salary
4020 or commission; and

4021 (b) The hiring or return to work of any employee who
4022 was laid off, furloughed, separated, granted leave without pay or
4023 was terminated from employment.

4024 (2) Employers shall report, by mailing or by other means
4025 authorized by the Department of Human Services, a copy of the
4026 employee's W-4 form or its equivalent that will result in timely
4027 reporting. Each employer shall submit reports within fifteen (15)
4028 days of the hiring, rehiring or return to work of the employee.
4029 The report shall contain:

4030 (a) The employee's name, address, social security
4031 number and the date of birth;

4032 (b) The employer's name, address, and federal and state
4033 withholding tax identification numbers; and

4034 (c) The date upon which the employee began or resumed
4035 employment, or is scheduled to begin or otherwise resume
4036 employment.

4037 (3) The department shall retain the information, which shall
4038 be forwarded to the federal registry of new hires.

4039 (4) The Department of Human Services may operate the
4040 program, may enter into a mutual agreement with the Mississippi
4041 Department of Employment Security or the Department of Revenue, or
4042 both, for the operation of the Directory of New Hires Program, or



4043 the Department of Human Services may contract for that service, in
4044 which case the department shall maintain administrative control of
4045 the program.

4046 (5) In cases in which an employer fails to report
4047 information, as required by this section, an administratively
4048 levied civil penalty in an amount not to exceed Five Hundred
4049 Dollars (\$500.00) shall apply if the failure is the result of a
4050 conspiracy between the employer and employee to not supply the
4051 required report or to supply a false or incomplete report. The
4052 penalty shall otherwise not exceed Twenty-five Dollars (\$25.00).
4053 Appeal shall be as provided in Section 43-19-58.

4054 **SECTION 52.** Section 57-62-5, Mississippi Code of 1972, is
4055 reenacted as follows:

4056 **[For businesses or industries that received or applied for**
4057 **incentive payments prior to July 1, 2005, this section shall read**
4058 **as follows:]**

4059 57-62-5. As used in this chapter, the following words and
4060 phrases shall have the meanings ascribed in this section unless
4061 the context clearly indicates otherwise:

4062 (a) "Qualified business or industry" means any
4063 corporation, limited liability company, partnership, sole
4064 proprietorship, business trust or other legal entity and subunits
4065 or affiliates thereof, pursuant to rules and regulations of the
4066 MDA, which provides an average annual salary, excluding benefits
4067 which are not subject to Mississippi income taxes, of at least one



4068 hundred twenty-five percent (125%) of the most recently published
4069 state average annual wage or the most recently published average
4070 annual wage of the county in which the qualified business or
4071 industry is located as determined by the Mississippi Department of
4072 Employment Security, whichever is the lesser. An establishment
4073 shall not be considered to be a qualified business or industry
4074 unless it offers, or will offer within one hundred eighty (180)
4075 days of the date it receives the first incentive payment pursuant
4076 to the provisions of this chapter, a basic health benefits plan to
4077 the individuals it employs in new direct jobs in this state which
4078 is approved by the MDA. Qualified business or industry does not
4079 include retail business or gaming business;

4080 (b) "New direct job" means full-time employment in this
4081 state in a qualified business or industry that has qualified to
4082 receive an incentive payment pursuant to this chapter, which
4083 employment did not exist in this state before the date of approval
4084 by the MDA of the application of the qualified business or
4085 industry pursuant to the provisions of this chapter. "New direct
4086 job" shall include full-time employment in this state of employees
4087 who are employed by an entity other than the establishment that
4088 has qualified to receive an incentive payment and who are leased
4089 to the qualified business or industry, if such employment did not
4090 exist in this state before the date of approval by the MDA of the
4091 application of the establishment;



4092 (c) "Full-time job" means a job of at least thirty-five
4093 (35) hours per week;

4094 (d) "Estimated direct state benefits" means the tax
4095 revenues projected by the MDA to accrue to the state as a result
4096 of the qualified business or industry;

4097 (e) "Estimated direct state costs" means the costs
4098 projected by the MDA to accrue to the state as a result of the
4099 qualified business or industry;

4100 (f) "Estimated net direct state benefits" means the
4101 estimated direct state benefits less the estimated direct state
4102 costs;

4103 (g) "Net benefit rate" means the estimated net direct
4104 state benefits computed as a percentage of gross payroll, provided
4105 that:

4106 (i) Except as otherwise provided in this paragraph
4107 (g), the net benefit rate may be variable and shall not exceed
4108 four percent (4%) of the gross payroll; and shall be set in the
4109 sole discretion of the MDA;

4110 (ii) In no event shall incentive payments,
4111 cumulatively, exceed the estimated net direct state benefits;

4112 (h) "Gross payroll" means wages for new direct jobs of
4113 the qualified business or industry; and

4114 (i) "MDA" means the Mississippi Development Authority.



4115 **[For businesses or industries that received or applied for**
4116 **incentive payments from and after July 1, 2005, but prior to July**
4117 **1, 2010, this section shall read as follows:]**

4118 57-62-5. As used in this chapter, the following words and
4119 phrases shall have the meanings ascribed in this section unless
4120 the context clearly indicates otherwise:

4121 (a) "Qualified business or industry" means any
4122 corporation, limited liability company, partnership, sole
4123 proprietorship, business trust or other legal entity and subunits
4124 or affiliates thereof, pursuant to rules and regulations of the
4125 MDA, which:

4126 (i) Is a data/information processing enterprise
4127 meeting minimum criteria established by the MDA that provides an
4128 average annual salary, excluding benefits which are not subject to
4129 Mississippi income taxes, of at least one hundred percent (100%)
4130 of the most recently published state average annual wage or the
4131 most recently published average annual wage of the county in which
4132 the qualified business or industry is located as determined by the
4133 Mississippi Department of Employment Security, whichever is the
4134 lesser, and creates not less than two hundred (200) new direct
4135 jobs if the enterprise is located in a Tier One or Tier Two area
4136 (as such areas are designated in accordance with Section
4137 57-73-21), or which creates not less than one hundred (100) new
4138 jobs if the enterprise is located in a Tier Three area (as such
4139 areas are designated in accordance with Section 57-73-21);



4140 (ii) Is a manufacturing or distribution enterprise
4141 meeting minimum criteria established by the MDA that provides an
4142 average annual salary, excluding benefits which are not subject to
4143 Mississippi income taxes, of at least one hundred ten percent
4144 (110%) of the most recently published state average annual wage or
4145 the most recently published average annual wage of the county in
4146 which the qualified business or industry is located as determined
4147 by the Mississippi Department of Employment Security, whichever is
4148 the lesser, invests not less than Twenty Million Dollars
4149 (\$20,000,000.00) in land, buildings and equipment, and creates not
4150 less than fifty (50) new direct jobs if the enterprise is located
4151 in a Tier One or Tier Two area (as such areas are designated in
4152 accordance with Section 57-73-21), or which creates not less than
4153 twenty (20) new jobs if the enterprise is located in a Tier Three
4154 area (as such areas are designated in accordance with Section
4155 57-73-21);

4156 (iii) Is a corporation, limited liability company,
4157 partnership, sole proprietorship, business trust or other legal
4158 entity and subunits or affiliates thereof, pursuant to rules and
4159 regulations of the MDA, which provides an average annual salary,
4160 excluding benefits which are not subject to Mississippi income
4161 taxes, of at least one hundred twenty-five percent (125%) of the
4162 most recently published state average annual wage or the most
4163 recently published average annual wage of the county in which the
4164 qualified business or industry is located as determined by the



4165 Mississippi Department of Employment Security, whichever is the
4166 lesser, and creates not less than twenty-five (25) new direct jobs
4167 if the enterprise is located in a Tier One or Tier Two area (as
4168 such areas are designated in accordance with Section 57-73-21), or
4169 which creates not less than ten (10) new jobs if the enterprise is
4170 located in a Tier Three area (as such areas are designated in
4171 accordance with Section 57-73-21). An establishment shall not be
4172 considered to be a qualified business or industry unless it
4173 offers, or will offer within one hundred eighty (180) days of the
4174 date it receives the first incentive payment pursuant to the
4175 provisions of this chapter, a basic health benefits plan to the
4176 individuals it employs in new direct jobs in this state which is
4177 approved by the MDA. Qualified business or industry does not
4178 include retail business or gaming business; or
4179 (iv) Is a research and development or a technology
4180 intensive enterprise meeting minimum criteria established by the
4181 MDA that provides an average annual salary, excluding benefits
4182 which are not subject to Mississippi income taxes, of at least one
4183 hundred fifty percent (150%) of the most recently published state
4184 average annual wage or the most recently published average annual
4185 wage of the county in which the qualified business or industry is
4186 located as determined by the Mississippi Department of Employment
4187 Security, whichever is the lesser, and creates not less than ten
4188 (10) new direct jobs.



4189 An establishment shall not be considered to be a qualified
4190 business or industry unless it offers, or will offer within one
4191 hundred eighty (180) days of the date it receives the first
4192 incentive payment pursuant to the provisions of this chapter, a
4193 basic health benefits plan to the individuals it employs in new
4194 direct jobs in this state which is approved by the MDA. Qualified
4195 business or industry does not include retail business or gaming
4196 business.

4197 (b) "New direct job" means full-time employment in this
4198 state in a qualified business or industry that has qualified to
4199 receive an incentive payment pursuant to this chapter, which
4200 employment did not exist in this state before the date of approval
4201 by the MDA of the application of the qualified business or
4202 industry pursuant to the provisions of this chapter. "New direct
4203 job" shall include full-time employment in this state of employees
4204 who are employed by an entity other than the establishment that
4205 has qualified to receive an incentive payment and who are leased
4206 to the qualified business or industry, if such employment did not
4207 exist in this state before the date of approval by the MDA of the
4208 application of the establishment.

4209 (c) "Full-time job" or "full-time employment" means a
4210 job of at least thirty-five (35) hours per week.

4211 (d) "Estimated direct state benefits" means the tax
4212 revenues projected by the MDA to accrue to the state as a result
4213 of the qualified business or industry.



4214 (e) "Estimated direct state costs" means the costs
4215 projected by the MDA to accrue to the state as a result of the
4216 qualified business or industry.

4217 (f) "Estimated net direct state benefits" means the
4218 estimated direct state benefits less the estimated direct state
4219 costs.

4220 (g) "Net benefit rate" means the estimated net direct
4221 state benefits computed as a percentage of gross payroll, provided
4222 that:

4223 (i) Except as otherwise provided in this paragraph
4224 (g), the net benefit rate may be variable and shall not exceed
4225 four percent (4%) of the gross payroll; and shall be set in the
4226 sole discretion of the MDA;

4227 (ii) In no event shall incentive payments,
4228 cumulatively, exceed the estimated net direct state benefits.

4229 (h) "Gross payroll" means wages for new direct jobs of
4230 the qualified business or industry.

4231 (i) "MDA" means the Mississippi Development Authority.

4232 **[For businesses or industries that apply for incentive**
4233 **payments from and after July 1, 2010, this section shall read as**
4234 **follows:]**

4235 57-62-5. As used in this chapter, the following words and
4236 phrases shall have the meanings ascribed in this section unless
4237 the context clearly indicates otherwise:



4238 (a) "Qualified business or industry" means any
4239 corporation, limited liability company, partnership, sole
4240 proprietorship, business trust or other legal entity and subunits
4241 or affiliates thereof, pursuant to rules and regulations of the
4242 MDA, which:

4243 (i) Is a data/information processing enterprise
4244 meeting minimum criteria established by the MDA that provides an
4245 average annual salary, excluding benefits which are not subject to
4246 Mississippi income taxes, of at least one hundred percent (100%)
4247 of the most recently published state average annual wage or the
4248 most recently published average annual wage of the county in which
4249 the qualified business or industry is located as determined by the
4250 Mississippi Department of Employment Security, whichever is the
4251 lesser, and creates not less than two hundred (200) new direct
4252 jobs;

4253 (ii) Is a corporation, limited liability company,
4254 partnership, sole proprietorship, business trust or other legal
4255 entity and subunits or affiliates thereof, pursuant to rules and
4256 regulations of the MDA, which provides an average annual salary,
4257 excluding benefits which are not subject to Mississippi income
4258 taxes, of at least one hundred ten percent (110%) of the most
4259 recently published state average annual wage or the most recently
4260 published average annual wage of the county in which the qualified
4261 business or industry is located as determined by the Mississippi



4262 Department of Employment Security, whichever is the lesser, and
4263 creates not less than twenty-five (25) new direct jobs; or
4264 (iii) Is a corporation, limited liability company,
4265 partnership, sole proprietorship, business trust or other legal
4266 entity and subunits or affiliates thereof, pursuant to rules and
4267 regulations of the MDA, which is a manufacturer that:

4268 1. Provides an average annual salary,
4269 excluding benefits which are not subject to Mississippi income
4270 taxes, of at least one hundred ten percent (110%) of the most
4271 recently published state average annual wage or the most recently
4272 published average annual wage of the county in which the qualified
4273 business or industry is located as determined by the Mississippi
4274 Department of Employment Security, whichever is the lesser;

4275 2. Has a minimum of five thousand (5,000)
4276 existing employees as of the last day of the previous calendar
4277 year; and

4278 3. MDA determines will create not less than
4279 three thousand (3,000) new direct jobs within forty-eight (48)
4280 months of the date the MDA determines that the applicant is
4281 qualified to receive incentive payments.

4282 An establishment shall not be considered to be a qualified
4283 business or industry unless it offers, or will offer within one
4284 hundred eighty (180) days of the date it receives the first
4285 incentive payment pursuant to the provisions of this chapter, a
4286 basic health benefits plan to the individuals it employs in new



4287 direct jobs in this state which is approved by the MDA. Qualified
4288 business or industry does not include retail business or gaming
4289 business.

4290 (b) "New direct job" means full-time employment in this
4291 state in a qualified business or industry that has qualified to
4292 receive an incentive payment pursuant to this chapter, which
4293 employment did not exist in this state before the date of approval
4294 by the MDA of the application of the qualified business or
4295 industry pursuant to the provisions of this chapter. "New direct
4296 job" shall include full-time employment in this state of employees
4297 who are employed by an entity other than the establishment that
4298 has qualified to receive an incentive payment and who are leased
4299 to the qualified business or industry, if such employment did not
4300 exist in this state before the date of approval by the MDA of the
4301 application of the establishment.

4302 (c) "Full-time job" or "full-time employment" means a
4303 job of at least thirty-five (35) hours per week.

4304 (d) "Gross payroll" means wages for new direct jobs of
4305 the qualified business or industry.

4306 (e) "MDA" means the Mississippi Development Authority.

4307 **SECTION 53.** Section 57-62-9, Mississippi Code of 1972, is
4308 reenacted as follows:

4309 **[For businesses or industries that received or applied for**
4310 **incentive payments prior to July 1, 2005, this section shall read**
4311 **as follows:]**



4312 57-62-9. (1) Except as otherwise provided in this section,
4313 a qualified business or industry that meets the qualifications
4314 specified in this chapter may receive quarterly incentive payments
4315 for a period not to exceed ten (10) years from the Department of
4316 Revenue pursuant to the provisions of this chapter in an amount
4317 which shall be equal to the net benefit rate multiplied by the
4318 actual gross payroll of new direct jobs for a calendar quarter as
4319 verified by the Mississippi Department of Employment Security, but
4320 not to exceed the amount of money previously paid into the fund by
4321 the employer. A qualified business or industry that is a project
4322 as defined in Section 57-75-5(f)(iv)1 may elect the date upon
4323 which the ten-year period will begin. Such date may not be later
4324 than sixty (60) months after the date the business or industry
4325 applied for incentive payments.

4326 (2) (a) A qualified business or industry that is a project
4327 as defined in Section 57-75-5(f)(iv)1 may apply to the MDA to
4328 receive incentive payments for an additional period not to exceed
4329 five (5) years beyond the expiration date of the initial ten-year
4330 period if:

4331 (i) The qualified business or industry creates at
4332 least three thousand (3,000) new direct jobs within five (5) years
4333 after the date the business or industry commences commercial
4334 production;

4335 (ii) Within five (5) years after the date the
4336 business or industry commences commercial production, the average



4337 annual wage of the jobs is at least one hundred fifty percent
4338 (150%) of the most recently published state average annual wage or
4339 the most recently published average annual wage of the county in
4340 which the qualified business or industry is located as determined
4341 by the Mississippi Department of Employment Security, whichever is
4342 the lesser. The criteria for the average annual wage requirement
4343 shall be based upon the state average annual wage or the average
4344 annual wage of the county whichever is appropriate, at the time of
4345 creation of the minimum number of jobs, and the threshold
4346 established at that time will remain constant for the duration of
4347 the additional period; and

4348 (iii) The qualified business or industry meets and
4349 maintains the job and wage requirements of subparagraphs (i) and
4350 (ii) of this paragraph (a) for four (4) consecutive calendar
4351 quarters.

4352 (b) A qualified business or industry that is a project
4353 as defined in Section 57-75-5(f)(iv)1 and qualified to receive
4354 incentive payments for the additional period provided in paragraph
4355 (a) of this subsection (2) may apply to the MDA to receive
4356 incentive payments for an additional period not to exceed ten (10)
4357 years beyond the expiration date of the additional period provided
4358 in paragraph (a) of this subsection (2) if:

4359 (i) The qualified business or industry creates at
4360 least four thousand (4,000) new direct jobs after qualifying for
4361 the additional incentive period provided in paragraph (a) of this



4362 subsection (2) but before the expiration of the additional period.
4363 For purposes of determining whether the business or industry meets
4364 the minimum jobs requirement of this subparagraph (i), the number
4365 of jobs the business or industry created in order to meet the
4366 minimum jobs requirement of paragraph (a) of this subsection (2)
4367 shall be subtracted from the minimum jobs requirement of this
4368 subparagraph (i);

4369 (ii) The average annual wage of the jobs is at
4370 least one hundred fifty percent (150%) of the most recently
4371 published state average annual wage or the most recently published
4372 average annual wage of the county in which the qualified business
4373 or industry is located as determined by the Mississippi Department
4374 of Employment Security, whichever is the lesser. The criteria for
4375 the average annual wage requirement shall be based upon the state
4376 average annual wage or the average annual wage of the county
4377 whichever is appropriate, at the time of creation of the minimum
4378 number of jobs, and the threshold established at that time will
4379 remain constant for the duration of the additional period; and

4380 (iii) The qualified business or industry meets and
4381 maintains the job and wage requirements of subparagraphs (i) and
4382 (ii) of this paragraph (b) for four (4) consecutive calendar
4383 quarters.

4384 (3) In order to receive incentive payments, an establishment
4385 shall apply to the MDA. The application shall be on a form



prescribed by the MDA and shall contain such information as may be required by the MDA to determine if the applicant is qualified.

(4) In order to qualify to receive such payments, the establishment applying shall be required to:

(a) Be engaged in a qualified business or industry;

(b) Provide an average salary, excluding benefits which are not subject to Mississippi income taxes, of at least one hundred twenty-five percent (125%) of the most recently published state average annual wage or the most recently published average annual wage of the county in which the qualified business or industry is located as determined by the Mississippi Department of Employment Security, whichever is the lesser. The criteria for this requirement shall be based upon the state average annual wage or the average annual wage of the county whichever is appropriate, at the time of application, and the threshold established upon application will remain constant for the duration of the project;

(c) The business or industry must create and maintain a minimum of ten (10) full-time jobs in counties that have an average unemployment rate over the previous twelve-month period which is at least one hundred fifty percent (150%) of the most recently published state unemployment rate, as determined by the Mississippi Department of Employment Security or in Tier Three counties as determined under Section 57-73-21. In all other counties, the business or industry must create and maintain a minimum of twenty-five (25) full-time jobs. The criteria for this



4411 requirement shall be based on the designation of the county at the
4412 time of the application. The threshold established upon the
4413 application will remain constant for the duration of the project.
4414 The business or industry must meet its job creation commitment
4415 within twenty-four (24) months of the application approval.
4416 However, if the qualified business or industry is applying for
4417 incentive payments for an additional period under subsection (2)
4418 of this section, the business or industry must comply with the
4419 applicable job and wage requirements of subsection (2) of this
4420 section.

4421 (5) The MDA shall determine if the applicant is qualified to
4422 receive incentive payments. If the applicant is determined to be
4423 qualified by the MDA, the MDA shall conduct a cost/benefit
4424 analysis to determine the estimated net direct state benefits and
4425 the net benefit rate applicable for a period not to exceed ten
4426 (10) years and to estimate the amount of gross payroll for the
4427 period. If the applicant is determined to be qualified to receive
4428 incentive payments for an additional period under subsection (2)
4429 of this section, the MDA shall conduct a cost/benefit analysis to
4430 determine the estimated net direct state benefits and the net
4431 benefit rate applicable for the appropriate additional period and
4432 to estimate the amount of gross payroll for the additional period.
4433 In conducting such cost/benefit analysis, the MDA shall consider
4434 quantitative factors, such as the anticipated level of new tax
4435 revenues to the state along with the cost to the state of the



4436 qualified business or industry, and such other criteria as deemed
4437 appropriate by the MDA, including the adequacy of retirement
4438 benefits that the business or industry provides to individuals it
4439 employs in new direct jobs in this state. In no event shall
4440 incentive payments, cumulatively, exceed the estimated net direct
4441 state benefits. Once the qualified business or industry is
4442 approved by the MDA, an agreement shall be deemed to exist between
4443 the qualified business or industry and the State of Mississippi,
4444 requiring the continued incentive payment to be made as long as
4445 the qualified business or industry retains its eligibility.

4446 (6) Upon approval of such an application, the MDA shall
4447 notify the Department of Revenue and shall provide it with a copy
4448 of the approved application and the estimated net direct state
4449 benefits. The Department of Revenue may require the qualified
4450 business or industry to submit such additional information as may
4451 be necessary to administer the provisions of this chapter. The
4452 qualified business or industry shall report to the Department of
4453 Revenue periodically to show its continued eligibility for
4454 incentive payments. The qualified business or industry may be
4455 audited by the Department of Revenue to verify such eligibility.
4456 In addition, the State Auditor may conduct performance and
4457 compliance audits under this chapter according to Section
4458 7-7-211(o) and may bill the oversight agency.

4459 (7) If the qualified business or industry is located in an
4460 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 received or applied for incentive payments from and after July 1, 2005, but prior to July 1, 2010, this section shall read as follows:]

57-62-9. (1) (a) Except as otherwise provided in this section, a qualified business or industry that meets the qualifications specified in this chapter may receive quarterly incentive payments for a period not to exceed ten (10) years from the Department of Revenue pursuant to the provisions of this chapter in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Mississippi Department of Employment Security, but not to exceed:

(i) Ninety percent (90%) of the amount of money previously paid into the fund by the employer if the employer



4486 provides an average annual salary, excluding benefits which are
4487 not subject to Mississippi income taxes, of at least one hundred
4488 seventy-five percent (175%) of the most recently published state
4489 average annual wage or the most recently published average annual
4490 wage of the county in which the qualified business or industry is
4491 located as determined by the Mississippi Department of Employment
4492 Security, whichever is the lesser;

4493 (ii) Eighty percent (80%) of the amount of money
4494 previously paid into the fund by the employer if the employer
4495 provides an average annual salary, excluding benefits which are
4496 not subject to Mississippi income taxes, of at least one hundred
4497 twenty-five percent (125%) but less than one hundred seventy-five
4498 percent (175%) of the most recently published state average annual
4499 wage or the most recently published average annual wage of the
4500 county in which the qualified business or industry is located as
4501 determined by the Mississippi Department of Employment Security,
4502 whichever is the lesser; or

4503 (iii) Seventy percent (70%) of the amount of money
4504 previously paid into the fund by the employer if the employer
4505 provides an average annual salary, excluding benefits which are
4506 not subject to Mississippi income taxes, of less than one hundred
4507 twenty-five percent (125%) of the most recently published state
4508 average annual wage or the most recently published average annual
4509 wage of the county in which the qualified business or industry is



4510 located as determined by the Mississippi Department of Employment
4511 Security, whichever is the lesser.

4512 (b) A qualified business or industry that is a project
4513 as defined in Section 57-75-5(f)(iv)1 may elect the date upon
4514 which the ten-year period will begin. Such date may not be later
4515 than sixty (60) months after the date the business or industry
4516 applied for incentive payments.

4517 (2) (a) A qualified business or industry that is a project
4518 as defined in Section 57-75-5(f)(iv)1 may apply to the MDA to
4519 receive incentive payments for an additional period not to exceed
4520 five (5) years beyond the expiration date of the initial ten-year
4521 period if:

4522 (i) The qualified business or industry creates at
4523 least three thousand (3,000) new direct jobs within five (5) years
4524 after the date the business or industry commences commercial
4525 production;

4526 (ii) Within five (5) years after the date the
4527 business or industry commences commercial production, the average
4528 annual wage of the jobs is at least one hundred fifty percent
4529 (150%) of the most recently published state average annual wage or
4530 the most recently published average annual wage of the county in
4531 which the qualified business or industry is located as determined
4532 by the Mississippi Department of Employment Security, whichever is
4533 the lesser. The criteria for the average annual wage requirement
4534 shall be based upon the state average annual wage or the average



4535 annual wage of the county whichever is appropriate, at the time of
4536 creation of the minimum number of jobs, and the threshold
4537 established at that time will remain constant for the duration of
4538 the additional period; and

4539 (iii) The qualified business or industry meets and
4540 maintains the job and wage requirements of subparagraphs (i) and
4541 (ii) of this paragraph (a) for four (4) consecutive calendar
4542 quarters.

4543 (b) A qualified business or industry that is a project
4544 as defined in Section 57-75-5(f)(iv)1 and qualified to receive
4545 incentive payments for the additional period provided in paragraph
4546 (a) of this subsection (2) may apply to the MDA to receive
4547 incentive payments for an additional period not to exceed ten (10)
4548 years beyond the expiration date of the additional period provided
4549 in paragraph (a) of this subsection (2) if:

4550 (i) The qualified business or industry creates at
4551 least four thousand (4,000) new direct jobs after qualifying for
4552 the additional incentive period provided in paragraph (a) of this
4553 subsection (2) but before the expiration of the additional period.
4554 For purposes of determining whether the business or industry meets
4555 the minimum jobs requirement of this subparagraph (i), the number
4556 of jobs the business or industry created in order to meet the
4557 minimum jobs requirement of paragraph (a) of this subsection (2)
4558 shall be subtracted from the minimum jobs requirement of this
4559 subparagraph (i);



4560 (ii) The average annual wage of the jobs is at
4561 least one hundred fifty percent (150%) of the most recently
4562 published state average annual wage or the most recently published
4563 average annual wage of the county in which the qualified business
4564 or industry is located as determined by the Mississippi Department
4565 of Employment Security, whichever is the lesser. The criteria for
4566 the average annual wage requirement shall be based upon the state
4567 average annual wage or the average annual wage of the county
4568 whichever is appropriate, at the time of creation of the minimum
4569 number of jobs, and the threshold established at that time will
4570 remain constant for the duration of the additional period; and

4571 (iii) The qualified business or industry meets and
4572 maintains the job and wage requirements of subparagraphs (i) and
4573 (ii) of this paragraph (b) for four (4) consecutive calendar
4574 quarters.

4575 (3) In order to receive incentive payments, an establishment
4576 shall apply to the MDA. The application shall be on a form
4577 prescribed by the MDA and shall contain such information as may be
4578 required by the MDA to determine if the applicant is qualified.

4579 (4) (a) In order to qualify to receive such payments, the
4580 establishment applying shall be required to meet the definition of
4581 the term "qualified business or industry";

4582 (b) The criteria for the average annual salary
4583 requirement shall be based upon the state average annual wage or
4584 the average annual wage of the county whichever is appropriate, at



the time of application, and the threshold established upon application will remain constant for the duration of the project;

(c) The business or industry must meet its job creation commitment within twenty-four (24) months of the application approval. However, if the qualified business or industry is applying for incentive payments for an additional period under subsection (2) of this section, the business or industry must comply with the applicable job and wage requirements of subsection (2) of this section.

(5) (a) The MDA shall determine if the applicant is qualified to receive incentive payments.

(b) If the applicant is determined to be qualified to receive incentive payments for an additional period under subsection (2) of this section, the MDA shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for the appropriate additional period and to estimate the amount of gross payroll for the additional period. In conducting such cost/benefit analysis, the MDA shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the cost to the state of the qualified business or industry, and such other criteria as deemed appropriate by the MDA, including the adequacy of retirement benefits that the business or industry provides to individuals it employs in new direct jobs in this state. In no event shall incentive payments, cumulatively, exceed



4610 the estimated net direct state benefits. Once the qualified
4611 business or industry is approved by the MDA, an agreement shall be
4612 deemed to exist between the qualified business or industry and the
4613 State of Mississippi, requiring the continued incentive payment to
4614 be made as long as the qualified business or industry retains its
4615 eligibility.

4616 (6) Upon approval of such an application, the MDA shall
4617 notify the Department of Revenue and shall provide it with a copy
4618 of the approved application and the estimated net direct state
4619 benefits. The Department of Revenue may require the qualified
4620 business or industry to submit such additional information as may
4621 be necessary to administer the provisions of this chapter. The
4622 qualified business or industry shall report to the Department of
4623 Revenue periodically to show its continued eligibility for
4624 incentive payments. The qualified business or industry may be
4625 audited by the Department of Revenue to verify such eligibility.
4626 In addition, the State Auditor may conduct performance and
4627 compliance audits under this chapter according to Section
4628 7-7-211(o) and may bill the oversight agency.

4629 (7) If the qualified business or industry is located in an
4630 area that has been declared by the Governor to be a disaster area
4631 and as a result of the disaster the business or industry is unable
4632 to create or maintain the full-time jobs required by this section:



4633 (a) The Commissioner of Revenue may extend the period
4634 of time that the business or industry may receive incentive
4635 payments for a period of time not to exceed two (2) years;

4636 (b) The Commissioner of Revenue may waive the
4637 requirement that a certain number of jobs be maintained for a
4638 period of time not to exceed twenty-four (24) months; and

4639 (c) The MDA may extend the period of time within which
4640 the jobs must be created for a period of time not to exceed
4641 twenty-four (24) months.

4642 **[For businesses or industries that apply for incentive**
4643 **payments from and after July 1, 2010, this section shall read as**
4644 **follows:]**

4645 57-62-9. (1) (a) Except as otherwise provided in this
4646 section, a qualified business or industry that meets the
4647 qualifications specified in this chapter may receive quarterly
4648 incentive payments for a period not to exceed ten (10) years from
4649 the Department of Revenue pursuant to the provisions of this
4650 chapter in an amount which shall be equal to ninety percent (90%)
4651 of the amount of actual income tax withheld for employees with new
4652 direct jobs, but in no event more than four percent (4%) of the
4653 total annual salary paid for new direct jobs during such period,
4654 excluding benefits which are not subject to Mississippi income
4655 taxes.

4656 (b) A qualified business or industry that is a project
4657 as defined in Section 57-75-5(f)(iv)1 may elect the date upon



4658 which the ten-year period will begin. Such date may not be later
4659 than sixty (60) months after the date the business or industry
4660 applied for incentive payments.

4661 (c) A qualified business or industry as defined in
4662 Section 57-62-5(a)(iii) may elect the date upon which the ten-year
4663 period will begin and may elect to begin receiving incentive
4664 payments as early as the second quarter after that date.
4665 Incentive payments will be calculated on all jobs above the
4666 existing number of jobs as of the date the MDA determines that the
4667 applicant is qualified to receive incentive payments. In the
4668 event that the qualified business or industry falls below the
4669 number of existing jobs at the time of determination that the
4670 applicant is qualified to receive the incentive payment, the
4671 incentive payment shall cease until the qualified business or
4672 industry once again exceeds that number. If after forty-eight
4673 (48) months, the qualified business or industry has failed to
4674 create at least three thousand (3,000) new direct jobs, incentive
4675 payments shall cease and the qualified business or industry shall
4676 not be qualified to receive further incentive payments.

4677 (2) (a) A qualified business or industry that is a project
4678 as defined in Section 57-75-5(f)(iv)1 may apply to the MDA to
4679 receive incentive payments for an additional period not to exceed
4680 five (5) years beyond the expiration date of the initial ten-year
4681 period if:



4682 (i) The qualified business or industry creates at
4683 least three thousand (3,000) new direct jobs within five (5) years
4684 after the date the business or industry commences commercial
4685 production;

4686 (ii) Within five (5) years after the date the
4687 business or industry commences commercial production, the average
4688 annual wage of the jobs is at least one hundred fifty percent
4689 (150%) of the most recently published state average annual wage or
4690 the most recently published average annual wage of the county in
4691 which the qualified business or industry is located as determined
4692 by the Mississippi Department of Employment Security, whichever is
4693 the lesser. The criteria for the average annual wage requirement
4694 shall be based upon the state average annual wage or the average
4695 annual wage of the county whichever is appropriate, at the time of
4696 creation of the minimum number of jobs, and the threshold
4697 established at that time will remain constant for the duration of
4698 the additional period; and

4699 (iii) The qualified business or industry meets and
4700 maintains the job and wage requirements of subparagraphs (i) and
4701 (ii) of this paragraph (a) for four (4) consecutive calendar
4702 quarters.

4703 (b) A qualified business or industry that is a project
4704 as defined in Section 57-75-5(f)(iv)1 and qualified to receive
4705 incentive payments for the additional period provided in paragraph
4706 (a) of this subsection (2) may apply to the MDA to receive



4707 incentive payments for an additional period not to exceed ten (10)
4708 years beyond the expiration date of the additional period provided
4709 in paragraph (a) of this subsection (2) if:

4710 (i) The qualified business or industry creates at
4711 least four thousand (4,000) new direct jobs after qualifying for
4712 the additional incentive period provided in paragraph (a) of this
4713 subsection (2) but before the expiration of the additional period.
4714 For purposes of determining whether the business or industry meets
4715 the minimum jobs requirement of this subparagraph (i), the number
4716 of jobs the business or industry created in order to meet the
4717 minimum jobs requirement of paragraph (a) of this subsection (2)
4718 shall be subtracted from the minimum jobs requirement of this
4719 subparagraph (i);

4720 (ii) The average annual wage of the jobs is at
4721 least one hundred fifty percent (150%) of the most recently
4722 published state average annual wage or the most recently published
4723 average annual wage of the county in which the qualified business
4724 or industry is located as determined by the Mississippi Department
4725 of Employment Security, whichever is the lesser. The criteria for
4726 the average annual wage requirement shall be based upon the state
4727 average annual wage or the average annual wage of the county
4728 whichever is appropriate, at the time of creation of the minimum
4729 number of jobs, and the threshold established at that time will
4730 remain constant for the duration of the additional period; and



4731 (iii) The qualified business or industry meets and
4732 maintains the job and wage requirements of subparagraphs (i) and
4733 (ii) of this paragraph (b) for four (4) consecutive calendar
4734 quarters.

4735 (3) In order to receive incentive payments, an establishment
4736 shall apply to the MDA. The application shall be on a form
4737 prescribed by the MDA and shall contain such information as may be
4738 required by the MDA to determine if the applicant is qualified.

4739 (4) (a) In order to qualify to receive such payments, the
4740 establishment applying shall be required to meet the definition of
4741 the term "qualified business or industry";

4742 (b) The criteria for the average annual salary
4743 requirement shall be based upon the state average annual wage or
4744 the average annual wage of the county whichever is appropriate, at
4745 the time of application, and the threshold established upon
4746 application will remain constant for the duration of the project;

4747 (c) Except as otherwise provided for a qualified
4748 business or industry as defined in Section 57-62-5(a)(iii), the
4749 business or industry must meet its job creation commitment within
4750 twenty-four (24) months of the application approval. However, if
4751 the qualified business or industry is applying for incentive
4752 payments for an additional period under subsection (2) of this
4753 section, the business or industry must comply with the applicable
4754 job and wage requirements of subsection (2) of this section.



4755 (5) (a) The MDA shall determine if the applicant is
4756 qualified to receive incentive payments.

4757 (b) If the applicant is determined to be qualified to
4758 receive incentive payments for an additional period under
4759 subsection (2) of this section, the MDA shall conduct an analysis
4760 to estimate the amount of gross payroll for the appropriate
4761 additional period. Incentive payments, cumulatively, shall not
4762 exceed ninety percent (90%) of the amount of actual income tax
4763 withheld for employees with new direct jobs, but in no event more
4764 than four percent (4%) of the total annual salary paid for new
4765 direct jobs during the additional period, excluding benefits which
4766 are not subject to Mississippi income taxes. Once the qualified
4767 business or industry is approved by the MDA, an agreement shall be
4768 deemed to exist between the qualified business or industry and the
4769 State of Mississippi, requiring the continued incentive payment to
4770 be made as long as the qualified business or industry retains its
4771 eligibility.

4772 (6) Upon approval of such an application, the MDA shall
4773 notify the Department of Revenue and shall provide it with a copy
4774 of the approved application and the minimum job and salary
4775 requirements. The Department of Revenue may require the qualified
4776 business or industry to submit such additional information as may
4777 be necessary to administer the provisions of this chapter. The
4778 qualified business or industry shall report to the Department of
4779 Revenue periodically to show its continued eligibility for



4780 incentive payments. The qualified business or industry may be
4781 audited by the Department of Revenue to verify such eligibility.
4782 In addition, the State Auditor may conduct performance and
4783 compliance audits under this chapter according to Section
4784 7-7-211(o) and may bill the oversight agency.

4785 (7) If the qualified business or industry is located in an
4786 area that has been declared by the Governor to be a disaster area
4787 and as a result of the disaster the business or industry is unable
4788 to create or maintain the full-time jobs required by this section:

4789 (a) The Commissioner of Revenue may extend the period
4790 of time that the business or industry may receive incentive
4791 payments for a period of time not to exceed two (2) years;

4792 (b) The Commissioner of Revenue may waive the
4793 requirement that a certain number of jobs be maintained for a
4794 period of time not to exceed twenty-four (24) months; and

4795 (c) The MDA may extend the period of time within which
4796 the jobs must be created for a period of time not to exceed
4797 twenty-four (24) months.

4798 **SECTION 54.** Section 57-75-5, Mississippi Code of 1972, is
4799 reenacted as follows:

4800 57-75-5. Words and phrases used in this chapter shall have
4801 meanings as follows, unless the context clearly indicates a
4802 different meaning:

4803 (a) "Act" means the Mississippi Major Economic Impact
4804 Act as originally enacted or as hereafter amended.



4805 (b) "Authority" means the Mississippi Major Economic
4806 Impact Authority created pursuant to the act.

4807 (c) "Bonds" means general obligation bonds, interim
4808 notes and other evidences of debt of the State of Mississippi
4809 issued pursuant to this chapter.

4810 (d) "Facility related to the project" means and
4811 includes any of the following, as the same may pertain to the
4812 project within the project area: (i) facilities to provide
4813 potable and industrial water supply systems, sewage and waste
4814 disposal systems and water, natural gas and electric transmission
4815 systems to the site of the project; (ii) airports, airfields and
4816 air terminals; (iii) rail lines; (iv) port facilities; (v)
4817 highways, streets and other roadways; (vi) public school
4818 buildings, classrooms and instructional facilities, training
4819 facilities and equipment, including any functionally related
4820 facilities; (vii) parks, outdoor recreation facilities and
4821 athletic facilities; (viii) auditoriums, pavilions, campgrounds,
4822 art centers, cultural centers, folklore centers and other public
4823 facilities; (ix) health care facilities, public or private; and
4824 (x) fire protection facilities, equipment and elevated water
4825 tanks.

4826 (e) "Person" means any natural person, corporation,
4827 association, partnership, receiver, trustee, guardian, executor,
4828 administrator, fiduciary, governmental unit, public agency,



4829 political subdivision, or any other group acting as a unit, and
4830 the plural as well as the singular.

4831 (f) "Project" means:

4832 (i) Any industrial, commercial, research and
4833 development, warehousing, distribution, transportation,
4834 processing, mining, United States government or tourism enterprise
4835 together with all real property required for construction,
4836 maintenance and operation of the enterprise with an initial
4837 capital investment of not less than Three Hundred Million Dollars
4838 (\$300,000,000.00) from private or United States government sources
4839 together with all buildings, and other supporting land and
4840 facilities, structures or improvements of whatever kind required
4841 or useful for construction, maintenance and operation of the
4842 enterprise; or with an initial capital investment of not less than
4843 One Hundred Fifty Million Dollars (\$150,000,000.00) from private
4844 or United States government sources together with all buildings
4845 and other supporting land and facilities, structures or
4846 improvements of whatever kind required or useful for construction,
4847 maintenance and operation of the enterprise and which creates at
4848 least one thousand (1,000) net new full-time jobs; or which
4849 creates at least one thousand (1,000) net new full-time jobs which
4850 provides an average salary, excluding benefits which are not
4851 subject to Mississippi income taxation, of at least one hundred
4852 twenty-five percent (125%) of the most recently published average
4853 annual wage of the state as determined by the Mississippi



4854 Department of Employment Security. "Project" shall include any
4855 addition to or expansion of an existing enterprise if such
4856 addition or expansion has an initial capital investment of not
4857 less than Three Hundred Million Dollars (\$300,000,000.00) from
4858 private or United States government sources, or has an initial
4859 capital investment of not less than One Hundred Fifty Million
4860 Dollars (\$150,000,000.00) from private or United States government
4861 sources together with all buildings and other supporting land and
4862 facilities, structures or improvements of whatever kind required
4863 or useful for construction, maintenance and operation of the
4864 enterprise and which creates at least one thousand (1,000) net new
4865 full-time jobs; or which creates at least one thousand (1,000) net
4866 new full-time jobs which provides an average salary, excluding
4867 benefits which are not subject to Mississippi income taxation, of
4868 at least one hundred twenty-five percent (125%) of the most
4869 recently published average annual wage of the state as determined
4870 by the Mississippi Department of Employment Security. "Project"
4871 shall also include any ancillary development or business resulting
4872 from the enterprise, of which the authority is notified, within
4873 three (3) years from the date that the enterprise entered into
4874 commercial production, that the project area has been selected as
4875 the site for the ancillary development or business.

4876 (ii) 1. Any major capital project designed to
4877 improve, expand or otherwise enhance any active duty or reserve
4878 United States armed services bases and facilities or any major



4879 Mississippi National Guard training installations, their support
4880 areas or their military operations, upon designation by the
4881 authority that any such base was or is at risk to be recommended
4882 for closure or realignment pursuant to the Defense Base Closure
4883 and Realignment Act of 1990, as amended, or other applicable
4884 federal law; or any major development project determined by the
4885 authority to be necessary to acquire or improve base properties
4886 and to provide employment opportunities through construction of
4887 projects as defined in Section 57-3-5, which shall be located on
4888 or provide direct support service or access to such military
4889 installation property in the event of closure or reduction of
4890 military operations at the installation.

4891 2. Any major study or investigation related
4892 to such a facility, installation or base, upon a determination by
4893 the authority that the study or investigation is critical to the
4894 expansion, retention or reuse of the facility, installation or
4895 base.

4896 3. Any project as defined in Section 57-3-5,
4897 any business or enterprise determined to be in the furtherance of
4898 the public purposes of this act as determined by the authority or
4899 any facility related to such project each of which shall be,
4900 directly or indirectly, related to any military base or other
4901 military-related facility no longer operated by the United States
4902 armed services or the Mississippi National Guard.



4903 (iii) Any enterprise to be maintained, improved or
4904 constructed in Tishomingo County by or for a National Aeronautics
4905 and Space Administration facility in such county.

4906 (iv) 1. Any major capital project with an initial
4907 capital investment from private sources of not less than Seven
4908 Hundred Fifty Million Dollars (\$750,000,000.00) which will create
4909 at least three thousand (3,000) jobs meeting criteria established
4910 by the Mississippi Development Authority.

4911 2. "Project" shall also include any ancillary
4912 development or business resulting from an enterprise operating a
4913 project as defined in item 1 of this paragraph (f)(iv), of which
4914 the authority is notified, within three (3) years from the date
4915 that the enterprise entered into commercial production, that the
4916 state has been selected as the site for the ancillary development
4917 or business.

4918 (v) Any manufacturing, processing or industrial
4919 project determined by the authority, in its sole discretion, to
4920 contribute uniquely and significantly to the economic growth and
4921 development of the state, and which meets the following criteria:

4922 1. The project shall create at least two
4923 thousand (2,000) net new full-time jobs meeting criteria
4924 established by the authority, which criteria shall include, but
4925 not be limited to, the requirement that such jobs must be held by
4926 persons eligible for employment in the United States under
4927 applicable state and federal law.



4928 2. The project and any facility related to
4929 the project shall include a total investment from private sources
4930 of not less than Sixty Million Dollars (\$60,000,000.00), or from
4931 any combination of sources of not less than Eighty Million Dollars
4932 (\$80,000,000.00).

4933 (vi) Any real property owned or controlled by the
4934 National Aeronautics and Space Administration, the United States
4935 government, or any agency thereof, which is legally conveyed to
4936 the State of Mississippi or to the State of Mississippi for the
4937 benefit of the Mississippi Major Economic Impact Authority, its
4938 successors and assigns pursuant to Section 212 of Public Law
4939 104-99, enacted January 26, 1996 (110 Stat. 26 at 38).

4940 (vii) Any major capital project related to the
4941 establishment, improvement, expansion and/or other enhancement of
4942 any active duty military installation and having a minimum capital
4943 investment from any source or combination of sources other than
4944 the State of Mississippi of at least Forty Million Dollars
4945 (\$40,000,000.00), and which will create at least four hundred
4946 (400) military installation related full-time jobs, which jobs may
4947 be military jobs, civilian jobs or a combination of military and
4948 civilian jobs. The authority shall require that binding
4949 commitments be entered into requiring that the minimum
4950 requirements for the project provided for in this subparagraph
4951 shall be met not later than July 1, 2008.



4952 (viii) Any major capital project with an initial
4953 capital investment from any source or combination of sources of
4954 not less than Ten Million Dollars (\$10,000,000.00) which will
4955 create at least eighty (80) full-time jobs which provide an
4956 average annual salary, excluding benefits which are not subject to
4957 Mississippi income taxes, of at least one hundred thirty-five
4958 percent (135%) of the most recently published average annual wage
4959 of the state or the most recently published average annual wage of
4960 the county in which the project is located as determined by the
4961 Mississippi Department of Employment Security, whichever is the
4962 lesser. The authority shall require that binding commitments be
4963 entered into requiring that:

4964 1. The minimum requirements for the project
4965 provided for in this subparagraph shall be met; and

4966 2. That if such commitments are not met, all
4967 or a portion of the funds provided by the state for the project as
4968 determined by the authority shall be repaid.

4969 (ix) Any regional retail shopping mall with an
4970 initial capital investment from private sources in excess of One
4971 Hundred Fifty Million Dollars (\$150,000,000.00), with a square
4972 footage in excess of eight hundred thousand (800,000) square feet,
4973 which will create at least seven hundred (700) full-time jobs with
4974 an average hourly wage of Eleven Dollars (\$11.00) per hour. The
4975 authority shall require that binding commitments be entered into
4976 requiring that:



4977 1. The minimum requirements for the project
4978 provided for in this subparagraph shall be met; and

4979 2. That if such commitments are not met, all
4980 or a portion of the funds provided by the state for the project as
4981 determined by the authority shall be repaid.

4982 (x) Any major capital project with an initial
4983 capital investment from any source or combination of sources of
4984 not less than Seventy-five Million Dollars (\$75,000,000.00) which
4985 will create at least one hundred twenty-five (125) full-time jobs
4986 which provide an average annual salary, excluding benefits which
4987 are not subject to Mississippi income taxes, of at least one
4988 hundred thirty-five percent (135%) of the most recently published
4989 average annual wage of the state or the most recently published
4990 average annual wage of the county in which the project is located
4991 as determined by the Mississippi Department of Employment
4992 Security, whichever is the greater. The authority shall require
4993 that binding commitments be entered into requiring that:

4994 1. The minimum requirements for the project
4995 provided for in this subparagraph shall be met; and

4996 2. That if such commitments are not met, all
4997 or a portion of the funds provided by the state for the project as
4998 determined by the authority shall be repaid.

4999 (xi) Any potential major capital project that the
5000 authority has determined is feasible to recruit.



5001 (xii) Any project built according to the
5002 specifications and federal provisions set forth by the National
5003 Aeronautics and Space Administration Center Operations Directorate
5004 at Stennis Space Center for the purpose of consolidating common
5005 services from National Aeronautics and Space Administration
5006 centers in human resources, procurement, financial management and
5007 information technology located on land owned or controlled by the
5008 National Aeronautics and Space Administration, which will create
5009 at least four hundred seventy (470) full-time jobs.

5010 (xiii) Any major capital project with an initial
5011 capital investment from any source or combination of sources of
5012 not less than Ten Million Dollars (\$10,000,000.00) which will
5013 create at least two hundred fifty (250) full-time jobs. The
5014 authority shall require that binding commitments be entered into
5015 requiring that:

5016 1. The minimum requirements for the project
5017 provided for in this subparagraph shall be met; and

5018 2. That if such commitments are not met, all
5019 or a portion of the funds provided by the state for the project as
5020 determined by the authority shall be repaid.

5021 (xiv) Any major pharmaceutical facility with a
5022 capital investment of not less than Fifty Million Dollars
5023 (\$50,000,000.00) made after July 1, 2002, through four (4) years
5024 after the initial date of any loan or grant made by the authority
5025 for such project, which will maintain at least seven hundred fifty



5026 (750) full-time employees. The authority shall require that
5027 binding commitments be entered into requiring that:

5028 1. The minimum requirements for the project
5029 provided for in this subparagraph shall be met; and

5030 2. That if such commitments are not met, all
5031 or a portion of the funds provided by the state for the project as
5032 determined by the authority shall be repaid.

5033 (xv) Any pharmaceutical manufacturing, packaging
5034 and distribution facility with an initial capital investment from
5035 any local or federal sources of not less than Five Hundred
5036 Thousand Dollars (\$500,000.00) which will create at least ninety
5037 (90) full-time jobs. The authority shall require that binding
5038 commitments be entered into requiring that:

5039 1. The minimum requirements for the project
5040 provided for in this subparagraph shall be met; and

5041 2. That if such commitments are not met, all
5042 or a portion of the funds provided by the state for the project as
5043 determined by the authority shall be repaid.

5044 (xvi) Any major industrial wood processing
5045 facility with an initial capital investment of not less than One
5046 Hundred Million Dollars (\$100,000,000.00) which will create at
5047 least one hundred twenty-five (125) full-time jobs which provide
5048 an average annual salary, excluding benefits which are not subject
5049 to Mississippi income taxes, of at least Thirty Thousand Dollars



5050 (\$30,000.00). The authority shall require that binding

5051 commitments be entered into requiring that:

5052 1. The minimum requirements for the project
5053 provided for in this subparagraph shall be met; and

5054 2. That if such commitments are not met, all
5055 or a portion of the funds provided by the state for the project as
5056 determined by the authority shall be repaid.

5057 (xvii) Any technical, engineering,
5058 manufacturing-logistic service provider with an initial capital
5059 investment of not less than One Million Dollars (\$1,000,000.00)
5060 which will create at least ninety (90) full-time jobs. The
5061 authority shall require that binding commitments be entered into
5062 requiring that:

5063 1. The minimum requirements for the project
5064 provided for in this subparagraph shall be met; and

5065 2. That if such commitments are not met, all
5066 or a portion of the funds provided by the state for the project as
5067 determined by the authority shall be repaid.

5068 (xviii) Any major capital project with an initial
5069 capital investment from any source or combination of sources other
5070 than the State of Mississippi of not less than Six Hundred Million
5071 Dollars (\$600,000,000.00) which will create at least four hundred
5072 fifty (450) full-time jobs with an average annual salary,
5073 excluding benefits which are not subject to Mississippi income
5074 taxes, of at least Seventy Thousand Dollars (\$70,000.00). The



5075 authority shall require that binding commitments be entered into
5076 requiring that:

5077 1. The minimum requirements for the project
5078 provided for in this subparagraph shall be met; and

5079 2. That if such commitments are not met, all
5080 or a portion of the funds provided by the state for the project as
5081 determined by the authority shall be repaid.

5082 (xix) Any major coal and/or petroleum coke
5083 gasification project with an initial capital investment from any
5084 source or combination of sources other than the State of
5085 Mississippi of not less than Eight Hundred Million Dollars
5086 (\$800,000,000.00), which will create at least two hundred (200)
5087 full-time jobs with an average annual salary, excluding benefits
5088 which are not subject to Mississippi income taxes, of at least
5089 Forty-five Thousand Dollars (\$45,000.00). The authority shall
5090 require that binding commitments be entered into requiring that:

5091 1. The minimum requirements for the project
5092 provided for in this subparagraph shall be met; and

5093 2. That if such commitments are not met, all
5094 or a portion of the funds provided by the state for the project as
5095 determined by the authority shall be repaid.

5096 (xx) Any planned mixed use development located on
5097 not less than four thousand (4,000) acres of land that will
5098 consist of commercial, recreational, resort, tourism and
5099 residential development with a capital investment from private



5100 sources of not less than Four Hundred Seventy-five Million Dollars
5101 (\$475,000,000.00) in the aggregate in any one (1) or any
5102 combination of tourism projects that will create at least three
5103 thousand five hundred (3,500) jobs in the aggregate. For the
5104 purposes of this paragraph (f)(xx), the term "tourism project"
5105 means and has the same definition as that term has in Section
5106 57-28-1. In order to meet the minimum capital investment required
5107 under this paragraph (f)(xx), at least Two Hundred Thirty-seven
5108 Million Five Hundred Thousand Dollars (\$237,500,000.00) of such
5109 investment must be made not later than June 1, 2015, and the
5110 remainder of the minimum capital investment must be made not later
5111 than June 1, 2017. In order to meet the minimum number of jobs
5112 required to be created under this paragraph (f)(xx), at least one
5113 thousand seven hundred fifty (1,750) of such jobs must be created
5114 not later than June 1, 2015, and the remainder of the jobs must be
5115 created not later than June 1, 2017. The authority shall require
5116 that binding commitments be entered into requiring that:

5117 1. The minimum requirements for the project
5118 provided for in this subparagraph shall be met; and

5119 2. That if such commitments are not met, all
5120 or a portion of the funds provided by the state for the project as
5121 determined by the authority shall be repaid.

5122 (xxi) Any enterprise owning or operating an
5123 automotive manufacturing and assembly plant and its affiliates for
5124 which construction begins after March 2, 2007, and not later than



5125 December 1, 2007, with an initial capital investment from private
5126 sources of not less than Five Hundred Million Dollars
5127 (\$500,000,000.00) which will create at least one thousand five
5128 hundred (1,500) jobs meeting criteria established by the
5129 authority, which criteria shall include, but not be limited to,
5130 the requirement that such jobs must be held by persons eligible
5131 for employment in the United States under applicable state and
5132 federal law. The authority shall require that binding commitments
5133 be entered into requiring that:

5134 1. The minimum requirements for the project
5135 provided for in this subparagraph shall be met; and

5136 2. That if such commitments are not met, all
5137 or a portion of the funds provided by the state for the project as
5138 determined by the authority shall be repaid.

5139 (xxii) Any enterprise owning or operating a major
5140 powertrain component manufacturing and assembly plant for which
5141 construction begins after May 11, 2007, and not later than
5142 December 1, 2007, with an initial capital investment from private
5143 sources of not less than Three Hundred Million Dollars
5144 (\$300,000,000.00) which will create at least five hundred (500)
5145 new full-time jobs meeting criteria established by the authority,
5146 which criteria shall include, but not be limited to, the
5147 requirement that such jobs must be held by persons eligible for
5148 employment in the United States under applicable state and federal
5149 law, and the requirement that the average annual wages and taxable



5150 benefits of such jobs shall be at least one hundred twenty-five
5151 percent (125%) of the most recently published average annual wage
5152 of the state or the most recently published average annual wage of
5153 the county in which the project is located as determined by the
5154 Mississippi Department of Employment Security, whichever is the
5155 lesser. The authority shall require that binding commitments be
5156 entered into requiring that:

5157 1. The minimum requirements for the project
5158 provided for in this subparagraph shall be met; and

5159 2. That if such commitments are not met, all
5160 or a portion of the funds provided by the state for the project as
5161 determined by the authority shall be repaid.

5162 (xxiii) Any biological and agricultural defense
5163 project operated by an agency of the government of the United
5164 States with an initial capital investment of not less than Four
5165 Hundred Fifty Million Dollars (\$450,000,000.00) from any source
5166 other than the State of Mississippi and its subdivisions, which
5167 will create at least two hundred fifty (250) new full-time jobs.
5168 All jobs created by the project must be held by persons eligible
5169 for employment in the United States under applicable state and
5170 federal law.

5171 (xxiv) Any enterprise owning or operating an
5172 existing tire manufacturing plant which adds to such plant capital
5173 assets of not less than Twenty-five Million Dollars
5174 (\$25,000,000.00) after January 1, 2009, and that maintains at



5175 least one thousand two hundred (1,200) full-time jobs in this
5176 state at one (1) location with an average annual salary, excluding
5177 benefits which are not subject to Mississippi income taxes, of at
5178 least Forty-five Thousand Dollars (\$45,000.00). The authority
5179 shall require that binding commitments be entered into requiring
5180 that:

5181 1. The minimum requirements for the project
5182 provided for in this subparagraph shall be met; and

5183 2. That if such commitments are not met, all
5184 or a portion of the funds provided by the state for the project as
5185 determined by the authority shall be repaid.

5186 (xxv) Any enterprise owning or operating a
5187 facility for the manufacture of composite components for the
5188 aerospace industry which will have an investment from private
5189 sources of not less than One Hundred Seventy-five Million Dollars
5190 (\$175,000,000.00) by not later than December 31, 2015, and which
5191 will result in the full-time employment at the project site of not
5192 less than two hundred seventy-five (275) persons by December 31,
5193 2011, and not less than four hundred twenty-five (425) persons by
5194 December 31, 2013, and not less than eight hundred (800) persons
5195 by December 31, 2017, all with an average annual compensation,
5196 excluding benefits which are not subject to Mississippi income
5197 taxes, of at least Fifty-three Thousand Dollars (\$53,000.00). The
5198 authority shall require that binding commitments be entered into
5199 requiring that:



5200 1. The minimum requirements for the project
5201 provided for in this subparagraph shall be met; and

5202 2. That if such commitments are not met, all
5203 or a portion of the funds provided by the state for the project as
5204 determined by the authority shall be repaid.

5205 (xxvi) Any enterprise owning or operating a
5206 facility for the manufacture of pipe which will have an investment
5207 from any source other than the State of Mississippi and its
5208 subdivisions of not less than Three Hundred Million Dollars
5209 (\$300,000,000.00) by not later than December 31, 2015, and which
5210 will create at least five hundred (500) new full-time jobs within
5211 five (5) years after the start of commercial production and
5212 maintain such jobs for at least ten (10) years, all with an
5213 average annual compensation, excluding benefits which are not
5214 subject to Mississippi income taxes, of at least Thirty-two
5215 Thousand Dollars (\$32,000.00). The authority shall require that
5216 binding commitments be entered into requiring that:

5217 1. The minimum requirements for the project
5218 provided for in this subparagraph shall be met; and

5219 2. That if such commitments are not met, all
5220 or a portion of the funds provided by the state for the project as
5221 determined by the authority shall be repaid.

5222 (xxvii) Any enterprise owning or operating a
5223 facility for the manufacture of solar panels which will have an
5224 investment from any source other than the State of Mississippi and



5225 its subdivisions of not less than One Hundred Thirty-two Million
5226 Dollars (\$132,000,000.00) by not later than December 31, 2015, and
5227 which will create at least five hundred (500) new full-time jobs
5228 within five (5) years after the start of commercial production and
5229 maintain such jobs for at least ten (10) years, all with an
5230 average annual compensation, excluding benefits which are not
5231 subject to Mississippi income taxes, of at least Thirty-four
5232 Thousand Dollars (\$34,000.00). The authority shall require that
5233 binding commitments be entered into requiring that:

5234 1. The minimum requirements for the project
5235 provided for in this subparagraph shall be met; and

5236 2. That if such commitments are not met, all
5237 or a portion of the funds provided by the state for the project as
5238 determined by the authority shall be repaid.

5239 (xxviii) 1. Any enterprise owning or operating an
5240 automotive parts manufacturing plant and its affiliates for which
5241 construction begins after June 1, 2013, and not later than June
5242 30, 2014, with an initial capital investment of not less than
5243 Three Hundred Million Dollars (\$300,000,000.00) which will create
5244 at least five hundred (500) new full-time jobs meeting criteria
5245 established by the authority, which criteria shall include, but
5246 not be limited to, the requirement that such jobs must be held by
5247 persons eligible for employment in the United States under
5248 applicable state and federal law, and the requirement that the
5249 average annual wages and taxable benefits of such jobs shall be at



5250 least one hundred ten percent (110%) of the most recently
5251 published average annual wage of the state or the most recently
5252 published average annual wage of the county in which the project
5253 is located as determined by the Mississippi Department of
5254 Employment Security, whichever is the lesser. The authority shall
5255 require that binding commitments be entered into requiring that:

5256 a. The minimum requirements for the
5257 project provided for in this subparagraph shall be met; and

5258 b. That if such commitments are not met,
5259 all or a portion of the funds provided by the state for the
5260 project as determined by the authority shall be repaid.

5261 2. It is anticipated that the project defined
5262 in this subparagraph (xxviii) will expand in three (3) additional
5263 phases, will create an additional five hundred (500) full-time
5264 jobs meeting the above criteria in each phase, and will invest an
5265 additional Three Hundred Million Dollars (\$300,000,000.00) per
5266 phase.

5267 (xxix) Any enterprise engaged in the manufacture
5268 of tires or other related rubber or automotive products for which
5269 construction of a plant begins after January 1, 2016, and is
5270 substantially completed no later than December 31, 2022, and for
5271 which such enterprise commits to an aggregate capital investment
5272 by such enterprise and its affiliates of not less than One Billion
5273 Four Hundred Fifty Million Dollars (\$1,450,000,000.00) and the
5274 creation thereby of at least two thousand five hundred (2,500) new



5275 full-time jobs meeting criteria established by the authority,
5276 which criteria shall include, but not be limited to, the
5277 requirement that such jobs must be held by persons eligible for
5278 employment in the United States under applicable state and federal
5279 law, and the requirement that the average annual salary or wage,
5280 excluding the value of any benefits which are not subject to
5281 Mississippi income tax, of such jobs shall be at least Forty
5282 Thousand Dollars (\$40,000.00). The authority shall require that
5283 binding commitments be entered into requiring that:

5284 1. Minimum requirements for investment and
5285 jobs for the project shall be met; and

5286 2. If such requirements are not met, all or a
5287 portion of the funds provided by the state for the project may, as
5288 determined by the authority, be subject to repayment by such
5289 enterprise and/or its affiliates, together with any penalties or
5290 damages required by the authority in connection therewith.

5291 (xxx) Any enterprise owning or operating a
5292 maritime fabrication and assembly facility for which construction
5293 begins after February 1, 2016, and concludes not later than
5294 December 31, 2018, with an initial capital investment in land,
5295 buildings and equipment not less than Sixty-eight Million Dollars
5296 (\$68,000,000.00) and will create not less than one thousand
5297 (1,000) new full-time jobs meeting criteria established by the
5298 authority, which criteria shall include, but not be limited to,
5299 the requirement that such jobs must be held by persons eligible



5300 for employment in the United States under applicable state and
5301 federal law, and the requirement that the average annual
5302 compensation, excluding benefits which are not subject to
5303 Mississippi income taxes, of at least Forty Thousand Dollars
5304 (\$40,000.00). The authority shall require that binding
5305 commitments be entered into requiring that:

5306 1. The minimum requirements for the project
5307 provided for in this subparagraph shall be met; and

5308 2. If such commitments are not met, all or a
5309 portion of the funds provided by the state for the project may, as
5310 determined by the authority, be subject to repayment by such
5311 enterprise, together with any penalties or damages required by the
5312 authority in connection therewith.

5313 (g) (i) "Project area" means the project site,
5314 together with any area or territory within the state lying within
5315 sixty-five (65) miles of any portion of the project site whether
5316 or not such area or territory be contiguous; however, for the
5317 project defined in paragraph (f)(iv) of this section the term
5318 "project area" means any area or territory within the state. The
5319 project area shall also include all territory within a county if
5320 any portion of such county lies within sixty-five (65) miles of
5321 any portion of the project site. "Project site" means the real
5322 property on which the principal facilities of the enterprise will
5323 operate. The provisions of this subparagraph (i) shall not apply
5324 to a project as defined in paragraph (f)(xxi) of this section.



5325 (ii) For the purposes of a project as defined in
5326 paragraph (f)(xxi) of this section, the term "project area" means
5327 the acreage authorized in the certificate of convenience and
5328 necessity issued by the Mississippi Development Authority to a
5329 regional economic development alliance under Section 57-64-1 et
5330 seq.

5331 (h) "Public agency" means:

5332 (i) Any department, board, commission, institution
5333 or other agency or instrumentality of the state;

5334 (ii) Any city, town, county, political
5335 subdivision, school district or other district created or existing
5336 under the laws of the state or any public agency of any such city,
5337 town, county, political subdivision or district or any other
5338 public entity created or existing under local and private
5339 legislation;

5340 (iii) Any department, commission, agency or
5341 instrumentality of the United States of America; and

5342 (iv) Any other state of the United States of
5343 America which may be cooperating with respect to location of the
5344 project within the state, or any agency thereof.

5345 (i) "State" means State of Mississippi.

5346 (j) "Fee-in-lieu" means a negotiated fee to be paid by
5347 the project in lieu of any franchise taxes imposed on the project
5348 by Chapter 13, Title 27, Mississippi Code of 1972. The
5349 fee-in-lieu shall not be less than Twenty-five Thousand Dollars



(\$25,000.00) annually. A fee-in-lieu may be negotiated with an enterprise operating an existing project defined in paragraph (f)(iv)¹ of this section; however, a fee-in-lieu shall not be negotiated for other existing enterprises that fall within the definition of the term "project."

(k) "Affiliate" means a subsidiary or related business entity which shares a common direct or indirect ownership with the enterprise owning or operating a project as defined in paragraph (f)(xxi), paragraph (f)(xxviii) or paragraph (f)(xxix) of this section. The subsidiary or related business must provide services directly related to the core activities of the project.

(l) "Tier One supplier" means a supplier of a project as defined in paragraph (f)(xxi) of this section that is certified by the enterprise owning the project and creates a minimum of fifty (50) new full-time jobs.

SECTION 55. Section 57-80-7, Mississippi Code of 1972, is reenacted as follows:

57-80-7. (1) From and after December 31, 2000, the following counties may apply to the MDA for the issuance of a certificate of public convenience and necessity:

(a) Any county of this state which has an annualized unemployment rate that is at least two hundred percent (200%) of the state's unemployment rate as of December 31 of any year after December 31, 2000, as determined by the Mississippi Department of Employment Security's most recently published data;



5375 (b) Any county of this state in which thirty percent
5376 (30%) or more of the population of the county is at or below the
5377 federal poverty level according to the official data compiled by
5378 the United States Census Bureau as of August 30, 2000, for
5379 counties that apply before December 31, 2002, or the most recent
5380 official data compiled by the United States Census Bureau for
5381 counties that apply from and after December 31, 2002; or

5382 (c) Any county of this state having an eligible
5383 supervisors district.

5384 (2) The application, at a minimum, must contain (a) the
5385 Mississippi Department of Employment Security's most recently
5386 published figures that reflect the annualized unemployment rate of
5387 the applying county as of December 31 or the most recent official
5388 data by the United States Census Bureau required by subsection (1)
5389 of this section, as the case may be, and (b) an order or
5390 resolution of the county consenting to the designation of the
5391 county as a growth and prosperity county.

5392 (3) Any municipality of a designated growth and prosperity
5393 county or within an eligible supervisors district and not more
5394 than eight (8) miles from the boundary of the county that meets
5395 the criteria of subsection (1)(b) of this section may by order or
5396 resolution of the municipality consent to participation in the
5397 Growth and Prosperity Program.



5398 (4) No incentive or tax exemption shall be given under this
5399 chapter without the consent of the affected county or
5400 municipality.

5401 **SECTION 56.** Section 69-2-5, Mississippi Code of 1972, is
5402 reenacted as follows:

5403 69-2-5. (1) The Mississippi Cooperative Extension Service
5404 shall act as a clearinghouse for the dissemination of information
5405 regarding programs and services which may be available to help
5406 those persons and businesses which have been adversely affected by
5407 the present emergency in the agricultural community. The
5408 Cooperative Extension Service shall develop a plan of assistance
5409 which shall identify all programs and services available within
5410 the state which can be of assistance to those affected by the
5411 present emergency. The Department of Agriculture and Commerce,
5412 Department of Finance and Administration, Department of Human
5413 Services, Department of Mental Health, State Department of Health,
5414 Board of Trustees of State Institutions of Higher Learning,
5415 Mississippi Community College Board, Research and Development
5416 Center, Mississippi Development Authority, Department of
5417 Employment Security, Office of the Governor, Board of Vocational
5418 and Technical Education, Mississippi Authority for Educational
5419 Television, and other agencies of the state which have programs
5420 and services that can be of assistance to those affected by the
5421 present emergency, shall provide information regarding their
5422 programs and services to the Cooperative Extension Service for use



5423 in the clearinghouse. The types of programs and services shall
5424 include, but not be limited to, financial counseling, farm and
5425 small business management, employment services, labor market
5426 information, job retraining, vocational and technical training,
5427 food stamp programs, personal counseling, health services, and
5428 free or low cost legal services. The clearinghouse shall provide
5429 a single contact point to provide program information and referral
5430 services to individuals interested or needing services from
5431 state-funded assistance programs affecting agriculture,
5432 horticulture, aquaculture and other agribusinesses or related
5433 industries. Such assistance information shall identify all monies
5434 available under the Small Business Financing Act, the Business
5435 Investment Act, the Emerging Crops Fund legislation and any other
5436 sources which may be used singularly or combined, to provide a
5437 comprehensive financing package. The provisions of this section
5438 in establishing a single contact point for information and
5439 referral services shall not be construed to authorize the hiring
5440 of additional personnel.

5441 (2) The Cooperative Extension Service may accept monetary or
5442 in-kind contributions, gifts and grants for the establishment or
5443 operation of the clearinghouse.

5444 (3) The Cooperative Extension Service shall establish a
5445 method for the dissemination of information to those who can be
5446 benefited by the existing programs and services of the state.



5447 (4) The Cooperative Extension Service shall file an annual
5448 report with the Governor, Lieutenant Governor and Speaker of the
5449 House of Representatives regarding the efforts which have been
5450 made in the clearinghouse operation. The report shall also
5451 recommend any additional measures, including legislation, which
5452 may be needed or desired in providing programs and benefits to
5453 those affected by the agricultural emergency.

5454 **SECTION 57.** Section 7-1-355, Mississippi Code of 1972, is
5455 reenacted as follows:

5456 7-1-355. (1) The Mississippi Department of Employment
5457 Security, Office of the Governor, is designated as the sole
5458 administrator of all programs for which the state is the prime
5459 sponsor under Title 1(B) of Public Law 105-220, Workforce
5460 Investment Act of 1998, and the regulations promulgated
5461 thereunder, and may take all necessary action to secure to this
5462 state the benefits of that legislation. The Mississippi
5463 Department of Employment Security, Office of the Governor, may
5464 receive and disburse funds for those programs that become
5465 available to it from any source.

5466 (2) The Mississippi Department of Employment Security,
5467 Office of the Governor, shall establish guidelines on the amount
5468 and/or percentage of indirect and/or administrative expenses by
5469 the local fiscal agent or the Workforce Development Center
5470 operator. The Mississippi Department of Employment Security,
5471 Office of the Governor, shall develop an accountability system and



5472 make an annual report to the Legislature before December 31 of
5473 each year on Workforce Investment Act activities. The report
5474 shall include, but is not limited to, the following:

5475 (a) The total number of individuals served through the
5476 Workforce Development Centers and the percentage and number of
5477 individuals for which a quarterly follow-up is provided;

5478 (b) The number of individuals who receive core services
5479 by each center;

5480 (c) The number of individuals who receive intensive
5481 services by each center;

5482 (d) The number of Workforce Investment Act vouchers
5483 issued by the Workforce Development Centers including:

5484 (i) A list of schools and colleges to which these
5485 vouchers were issued and the average cost per school of the
5486 vouchers; and

5487 (ii) A list of the types of programs for which
5488 these vouchers were issued;

5489 (e) The number of individuals placed in a job through
5490 Workforce Development Centers;

5491 (f) The monies and the amount retained for
5492 administrative and other costs received from Workforce Investment
5493 Act funds for each agency or organization that Workforce
5494 Investment Act funds flow through as a percentage and actual
5495 dollar amount of all Workforce Investment Act funds received.



5496 **SECTION 58.** Section 60, Chapter 572, Laws of 2004, as
5497 amended by Section 58, Chapter 30, Laws of the First Extraordinary
5498 Session of 2008, as amended by Section 58, Chapter 559, Laws of
5499 2010 Regular Session, as amended by Section 59, Chapter 471, Laws
5500 of 2011, as amended by Section 58, Chapter 515, Laws of 2012,
5501 which repeals, effective July 1, 2019, statutes that establish and
5502 prescribe the membership of the Mississippi Workforce Investment
5503 Board and transfer the powers and responsibilities of the
5504 Mississippi Employment Security Commission to the Mississippi
5505 Department of Employment Security (MDES), is repealed.

5506 **SECTION 59.** This act shall take effect and be in force from
5507 and after its passage.

