

By: Representative Beckett

To: Appropriations

HOUSE BILL NO. 876

1 AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE MISSISSIPPI EMPLOYMENT SECURITY LAW TO PROVIDE THAT THE
3 TERM "EMPLOYMENT" SHALL NOT INCLUDE LANDWORK PERFORMED BY A
4 PETROLEUM LANDMAN ON A CONTRACTUAL BASIS; TO PROVIDE DEFINITIONS
5 FOR "LANDWORK", "MINERALS" AND "OTHER ENERGY SOURCES"; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 71-5-11, Mississippi Code of 1972, is
9 amended as follows:

10 71-5-11. As used in this chapter, unless the context clearly
11 requires otherwise:

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

15 B. "Benefit year" with respect to any individual means the
16 period beginning with the first day of the first week with respect
17 to which he or she first files a valid claim for benefits, and
18 ending with the day preceding the same day of the same month in
19 the next calendar year; and, thereafter, the period beginning with
20 the first day of the first week with respect to which he or she



21 next files his or her valid claim for benefits, and ending with
22 the day preceding the same day of the same month in the next
23 calendar year. Any claim for benefits made in accordance with
24 Section 71-5-515 shall be deemed to be a "valid claim" for
25 purposes of this subsection if the individual has been paid the
26 wages for insured work required under Section 71-5-511(e).

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

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

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

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

37 G. "Employing unit" means this state or another state or any
38 instrumentalities or any political subdivisions thereof or any of
39 their instrumentalities or any instrumentality of more than one
40 (1) of the foregoing or any instrumentality of any of the
41 foregoing and one or more other states or political subdivisions,
42 any Indian tribe as defined in Section 3306(u) of the Federal
43 Unemployment Tax Act (FUTA), which includes any subdivision,
44 subsidiary or business enterprise wholly owned by such Indian
45 tribe, any individual or type of organization, including any



46 partnership, association, trust, estate, joint-stock company,
47 insurance company, or corporation, whether domestic or foreign, or
48 the receiver, trustee in bankruptcy, trustee or successor thereof,
49 or the legal representative of a deceased person, which has or had
50 in its employ one or more individuals performing services for it
51 within this state. All individuals performing services within
52 this state for any employing unit which maintains two (2) or more
53 separate establishments within this state shall be deemed to be
54 employed by a single employing unit for all the purposes of this
55 chapter. Each individual employed to perform or to assist in
56 performing the work of any agent or employee of an employing unit
57 shall be deemed to be employed by such employing unit for all
58 purposes of this chapter, whether such individual was hired or
59 paid directly by such employing unit or by such agent or employee,
60 provided the employing unit had actual or constructive knowledge
61 of the work. All individuals performing services in the employ of
62 an elected fee-paid county official, other than those related by
63 blood or marriage within the third degree computed by the rule of
64 the civil law to such fee-paid county official, shall be deemed to
65 be employed by such county as the employing unit for all the
66 purposes of this chapter. For purposes of defining an "employing
67 unit" which shall pay contributions on remuneration paid to
68 individuals, if two (2) or more related corporations concurrently
69 employ the same individual and compensate such individual through
70 a common paymaster which is one (1) of such corporations, then



71 each such corporation shall be considered to have paid as
72 remuneration to such individual only the amounts actually
73 disbursed by it to such individual and shall not be considered to
74 have paid as remuneration to such individual such amounts actually
75 disbursed to such individual by another of such corporations.

76 H. "Employer" means:

77 (1) Any employing unit which,

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

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

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

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

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



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

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

102 (6) Any individual or employing unit which acquired its
103 organization, trade, business, or substantially all the assets
104 thereof, from another employing unit, if the employment record of
105 the acquiring individual or employing unit subsequent to such
106 acquisition, together with the employment record of the acquired
107 organization, trade, or business prior to such acquisition, both
108 within the same calendar year, would be sufficient to constitute
109 an employing unit as an employer subject to this chapter under
110 paragraph (1) or (3) of this subsection;

111 (7) Any employing unit which, having become an employer
112 under paragraph (1), (3), (5) or (6) of this subsection or under
113 any other provisions of this chapter, has not, under Section
114 71-5-361, ceased to be an employer subject to this chapter;

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

118 (9) (a) In determining whether or not an employing
119 unit for which service other than domestic service is also



120 performed is an employer under paragraph (1) or (4)(a) of this
121 subsection, the wages earned or the employment of an employee
122 performing domestic service, shall not be taken into account;

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

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

137 I. "Employment" means and includes:

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

143 (2) Services performed for remuneration for a
144 principal:



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

149 (b) As a traveling or city salesman, other than as
150 an agent-driver or commission-driver, engaged upon a full-time
151 basis in the solicitation on behalf of, and the transmission to, a
152 principal (except for sideline sales activities on behalf of some
153 other person) of orders from wholesalers, retailers, contractors,
154 or operator of hotels, restaurants, or other similar
155 establishments for merchandise for resale or supplies for use in
156 their business operations.

157 However, for purposes of this subsection, the term
158 "employment" shall include services described in paragraphs (2)(a)
159 and (b) of this subsection, only if:

160 (i) The contract of service contemplates that
161 substantially all of the services are to be performed personally
162 by such individual;

163 (ii) The individual does not have a
164 substantial investment in facilities used in connection with the
165 performance of the services (other than in facilities for
166 transportation); and

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



170 (3) Service performed in the employ of this state or
171 any of its instrumentalities or any political subdivision thereof
172 or any of its instrumentalities or any instrumentality of more
173 than one (1) of the foregoing or any instrumentality of any of the
174 foregoing and one or more other states or political subdivisions
175 or any Indian tribe as defined in Section 3306(u) of the Federal
176 Unemployment Tax Act (FUTA), which includes any subdivision,
177 subsidiary or business enterprise wholly owned by such Indian
178 tribe; however, such service is excluded from "employment" as
179 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)
180 of that act and is not excluded from "employment" under paragraph
181 (5) of this subsection.

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

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

192 (5) For the purposes of paragraphs (3) and (4) of this
193 subsection, the term "employment" does not apply to service
194 performed:



195 (a) In the employ of:
196 (i) A church or convention or association of
197 churches; or
198 (ii) An organization which is operated
199 primarily for religious purposes and which is operated,
200 supervised, controlled, or principally supported by a church or
201 convention or association of churches; or
202 (b) By a duly ordained, commissioned, or licensed
203 minister of a church in the exercise of his or her ministry, or by
204 a member of a religious order in the exercise of duties required
205 by such order; or
206 (c) In the employ of a governmental entity
207 referred to in paragraph (3) of this subsection, if such service
208 is performed by an individual in the exercise of duties:
209 (i) As an elected official;
210 (ii) As a member of a legislative body, or a
211 member of the judiciary, of a state or political subdivision or a
212 member of an Indian tribal council;
213 (iii) As a member of the State National Guard
214 or Air National Guard;
215 (iv) As an employee serving on a temporary
216 basis in case of fire, storm, snow, earthquake, flood or similar
217 emergency;



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

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

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

226 (d) In a facility conducted for the purpose of
227 carrying out a program of rehabilitation for individuals whose
228 earning capacity is impaired by age or physical or mental
229 deficiency or injury, or providing remunerative work for
230 individuals who because of their impaired physical or mental
231 capacity cannot be readily absorbed in the competitive labor
232 market, by an individual receiving such rehabilitation or
233 remunerative work; or

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

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



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

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

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

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

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

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



265 (ii) If such individual is not an employee of
266 such other person within the meaning of paragraph (1) of this
267 subsection.

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

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

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

281 (d) For the purposes of this paragraph (6) the
282 term "crew leader" means an individual who:

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

285 (ii) Pays (either on his or her own behalf or
286 on behalf of such other person) the individuals so furnished by
287 him or her for the service in agricultural labor performed by
288 them; and



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

292 (7) The term "employment" shall include domestic
293 service in a private home, local college club or local chapter of
294 a college fraternity or sorority performed for an employing unit
295 which paid cash remuneration of One Thousand Dollars (\$1,000.00)
296 or more in any calendar quarter in the current or the preceding
297 calendar year to individuals employed in such domestic service.
298 For the purpose of this subsection, the term "employment" does not
299 apply to service performed as a "sitter" at a hospital in the
300 employ of an individual.

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

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

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

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

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



313 (9) Services not covered under paragraph (8) of this
314 subsection and performed entirely without this state, with respect
315 to no part of which contributions are required and paid under an
316 unemployment compensation law of any other state or of the federal
317 government, shall be deemed to be employment subject to this
318 chapter if the individual performing such services is a resident
319 of this state and the department approves the election of the
320 employing unit for whom such services are performed that the
321 entire service of such individual shall be deemed to be employment
322 subject to this chapter.

323 (10) Service shall be deemed to be localized within a
324 state if:

325 (a) The service is performed entirely within such
326 state; or

327 (b) The service is performed both within and
328 without such state, but the service performed without such state
329 is incidental to the individual's service within the state; for
330 example, is temporary or transitory in nature or consists of
331 isolated transactions.

332 (11) The services of an individual who is a citizen of
333 the United States, performed outside the United States (except in
334 Canada), in the employ of an American employer (other than service
335 which is deemed "employment" under the provisions of paragraph
336 (8), (9) or (10) of this subsection or the parallel provisions of
337 another state's law), if:



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

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

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

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

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

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

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

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

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

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



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

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

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

380 (14) Services performed by an individual for wages
381 shall be deemed to be employment subject to this chapter unless
382 and until it is shown to the satisfaction of the department that
383 such individual has been and will continue to be free from control
384 and direction over the performance of such services both under his
385 or her contract of service and in fact; and the relationship of
386 employer and employee shall be determined in accordance with the



387 principles of the common law governing the relation of master and
388 servant.

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

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

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

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

406 (iii) In connection with the production or
407 harvesting of naval stores products or any commodity defined in
408 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(f),
409 or in connection with the raising or harvesting of mushrooms, or
410 in connection with the ginning of cotton, or in connection with
411 the operation or maintenance of ditches, canals, reservoirs, or



412 waterways not owned or operated for profit, used exclusively for
413 supplying and storing water for farming purposes;

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

421 (B) In the employ of a group of
422 operators of farms (or a cooperative organization of which such
423 operators are members) in the performance of service described in
424 subitem (A), but only if such operators produced more than
425 one-half (1/2) of the commodity with respect to which such service
426 is performed;

427 (C) The provisions of subitems (A) and
428 (B) shall not be deemed to be applicable with respect to service
429 performed in connection with commercial canning or commercial
430 freezing or in connection with any agricultural or horticultural
431 commodity after its delivery to a terminal market for distribution
432 for consumption;

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

435 (vi) As used in paragraph (15) (a) of this
436 subsection, the term "farm" includes stock, dairy, poultry, fruit,



437 fur-bearing animals, and truck farms, plantations, ranches,
438 nurseries, ranges, greenhouses, or other similar structures used
439 primarily for the raising of agricultural or horticultural
440 commodities, and orchards.

441 (b) Domestic service in a private home, local
442 college club, or local chapter of a college fraternity or
443 sorority, except as provided in paragraph (7) of this subsection,
444 or service performed as a "sitter" at a hospital in the employ of
445 an individual.

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

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

452 (e) Service performed in the employ of the United
453 States government or of an instrumentality wholly owned by the
454 United States; except that if the Congress of the United States
455 shall permit states to require any instrumentalities of the United
456 States to make payments into an unemployment fund under a state
457 unemployment compensation act, then to the extent permitted by
458 Congress and from and after the date as of which such permission
459 becomes effective, all of the provisions of this chapter shall be
460 applicable to such instrumentalities and to services performed by
461 employees for such instrumentalities in the same manner, to the



462 same extent, and on the same terms as to all other employers and
463 employing units. If this state should not be certified under the
464 Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any
465 year, then the payment required by such instrumentality with
466 respect to such year shall be deemed to have been erroneously
467 collected and shall be refunded by the department from the fund in
468 accordance with the provisions of Section 71-5-383.

469 (f) Service performed in the employ of an
470 "employer" as defined by the Railroad Unemployment Insurance Act,
471 45 USCS Section 351(a), or as an "employee representative" as
472 defined by the Railroad Unemployment Insurance Act, 45 USCS
473 Section 351(f), and service with respect to which unemployment
474 compensation is payable under an unemployment compensation system
475 for maritime employees, or under any other unemployment
476 compensation system established by an act of Congress; however,
477 the department is authorized and directed to enter into agreements
478 with the proper agencies under such act or acts of Congress, which
479 agreements shall become effective ten (10) days after publication
480 thereof in the manner provided in Section 71-5-117 for general
481 rules, to provide reciprocal treatment to individuals who have,
482 after acquiring potential rights to benefits under this chapter,
483 acquired rights to unemployment compensation under such act or
484 acts of Congress or who have, after acquiring potential rights to
485 unemployment compensation under such act or acts of Congress,
486 acquired rights to benefits under this chapter.



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

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

495 (i) By a student who is enrolled and is
496 regularly attending classes at such school, college or university,
497 or

498 (ii) By the spouse of such a student if such
499 spouse is advised, at the time such spouse commences to perform
500 such service, that

501 (A) The employment of such spouse to
502 perform such service is provided under a program to provide
503 financial assistance to such student by such school, college, or
504 university, and

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

507 (i) Service performed by an individual under the
508 age of twenty-two (22) who is enrolled at a nonprofit or public
509 educational institution which normally maintains a regular faculty
510 and curriculum and normally has a regularly organized body of
511 students in attendance at the place where its educational



512 activities are carried on, as a student in a full-time program
513 taken for credit at such institution, which combines academic
514 instruction with work experience, if such service is an integral
515 part of such program and such institution has so certified to the
516 employer, except that this subparagraph shall not apply to service
517 performed in a program established for or on behalf of an employer
518 or group of employers.

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

522 (k) Service performed as a student nurse in the
523 employ of a hospital or a nurses' training school by an individual
524 who is enrolled and is regularly attending classes in a nurses'
525 training school chartered or approved pursuant to state law; and
526 services performed as an intern in the employ of a hospital by an
527 individual who has completed a four-year course in a medical
528 school chartered or approved pursuant to state law.

529 (l) Service performed by an individual as an
530 insurance agent or as an insurance solicitor, if all such service
531 performed by such individual is performed for remuneration solely
532 by way of commission.

533 (m) Service performed by an individual in the
534 delivery or distribution of newspapers or shopping news, not
535 including delivery or distribution to any point for subsequent
536 delivery or distribution, except those employed by political



537 subdivisions, state and local governments, nonprofit organizations
538 and Indian tribes, as defined by this chapter, or any other
539 entities for which coverage is required by federal statute and
540 regulation.

541 (n) If the services performed during one-half
542 (1/2) or more of any pay period by an employee for the employing
543 unit employing him or her constitute employment, all the services
544 of such employee for such period shall be deemed to be employment;
545 but if the services performed during more than one-half (1/2) of
546 any such pay period by an employee for the employing unit
547 employing him or her do not constitute employment, then none of
548 the services of such employee for such period shall be deemed to
549 be employment. As used in this subsection, the term "pay period"
550 means a period (of not more than thirty-one (31) consecutive days)
551 for which a payment of remuneration is ordinarily made to the
552 employee by the employing unit employing him or her.

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

558 (p) Service performed by a "direct seller" if:
559 (i) Such person is engaged in the trade or
560 business of selling (or soliciting the sale of) consumer products
561 to any buyer on a buy-sell basis, a deposit-commission basis, or



562 any similar basis which the department prescribes by regulations,
563 for resale (by the buyer or any other person) in the home or
564 otherwise than in a permanent retail establishment; or such person
565 is engaged in the trade or business of selling (or soliciting the
566 sale of) consumer products in the home or otherwise than in a
567 permanent retail establishment;

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

573 (iii) The services performed by the person
574 are performed pursuant to a written contract between such person
575 and the person for whom the services are performed and such
576 contract provides that the person will not be treated as an
577 employee with respect to such services for federal tax purposes.

578 (q) Landwork performed by a petroleum landman on a
579 contractual basis. As used in this subparagraph (q), "minerals"
580 shall be defined without limitation to include oil, gas, related
581 hydrocarbons, coal, lignite, uranium and substances classified as
582 base, industrial, precious or strategic minerals. As used in this
583 subparagraph (q), "other energy sources" shall be defined without
584 limitation to include wind energy, geothermal energy, solar energy
585 and hydrogen. "Landwork" shall mean the actual performance or
586 supervision of any one or more of the following functions:



587 (i) Negotiating for the acquisition or divestiture
588 of mineral rights or rights associated with other energy sources;
589 (ii) Negotiating business agreements that provide
590 for the exploration for and/or development of minerals or other
591 energy sources;
592 (iii) Ascertaining ownership in minerals or rights
593 associated with other energy sources, and related real property
594 interests through the research of public and private records;
595 (iv) Reviewing the status of title, curing title
596 defects, providing title due diligence and otherwise reducing
597 title risk associated with the ownership, acquisition or
598 divestiture of mineral rights or property associated with minerals
599 or rights associated with other energy sources, but shall exclude
600 administrative, division order or lease analyst functions;
601 (v) Managing rights and/or obligations derived from
602 ownership of interests in minerals or rights associated with other
603 energy sources; and
604 (vi) Unitizing or pooling of interests in minerals
605 or rights associated with other energy sources.

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

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



612 L. "Fund" means the Unemployment Compensation Fund
613 established by this chapter, to which all contributions required
614 and from which all benefits provided under this chapter shall be
615 paid.

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

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

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

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

626 (3) Provides an educational program for which it awards
627 a bachelor's or higher degree, or provides a program which is
628 acceptable for full credit toward such a degree, a program of
629 postgraduate or postdoctoral studies, or a program of training to
630 prepare students for gainful employment in a recognized
631 occupation;

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

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



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

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

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

649 (3) The provisions of paragraphs (1) and (2) of this
650 subsection P, as including the Virgin Islands, shall become
651 effective on the day after the day on which the United States
652 Secretary of Labor approves for the first time under Section
653 3304(a) of the Internal Revenue Code of 1954 an unemployment
654 compensation law submitted to the secretary by the Virgin Islands
655 for such approval.

656 Q. "Unemployment."

657 (1) An individual shall be deemed "unemployed" in any
658 week during which he or she performs no services and with respect
659 to which no wages are payable to him or her, or in any week of
660 less than full-time work if the wages payable to him or her with



661 respect to such week are less than his or her weekly benefit
662 amount as computed and adjusted in Section 71-5-505. This
663 definition shall exclude individuals receiving voluntary payments
664 from employers, from any source, that are in lieu of the worker's
665 regular wages. However, individuals receiving voluntary payments
666 of less than their set full weekly wage, as well as individuals
667 who do not work a specified number of hours each week resulting in
668 inconsistent weekly wages, and who are receiving voluntary
669 payments for partial wage substitution, may be considered
670 "unemployed," but would be required to report the gross amount of
671 the voluntary payments to be treated as wages so the appropriate
672 deductions to the weekly benefit amount can be made. The
673 department shall prescribe regulations applicable to unemployed
674 individuals, making such distinctions in the procedure as to total
675 unemployment, part-total unemployment, partial unemployment of
676 individuals attached to their regular jobs, and other forms of
677 short-time work, as the department deems necessary.

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

682 (3) Unemployment shall not include administrative leave
683 for any week with respect to which:

684 (a) An employer has designated their employee as
685 being on official administrative leave;



686 (b) The administrative leave is for a specified
687 period of time;

688 (c) There is no apparent permanent job separation;
689 and

690 (d) The employee has received compensation equal
691 to his or her standard compensation.

692 (4) If the individual on official administrative leave,
693 as designated by the employer, does not receive full compensation
694 in line with his or her standard hours or salary, the individual
695 may be eligible for unemployment insurance benefits as partially
696 unemployed for the wages they are missing.

697 (5) Any individual on official administrative leave is
698 required to report all compensation received.

699 R. (1) "Wages" means all remuneration for personal
700 services, including commissions and bonuses and the cash value of
701 all remuneration in any medium other than cash, except that
702 "wages," for purposes of determining employer's coverage and
703 payment of contributions for agricultural and domestic service
704 means cash remuneration only. Wages shall include payments from
705 employers, from any source, and for any reason, that are in lieu
706 of the employee's regular wages. The reasonable cash value of
707 remuneration in any medium other than cash shall be estimated and
708 determined in accordance with rules prescribed by the department;
709 however, that the term "wages" shall not include:



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

716 (i) Retirement, or

717 (ii) Sickness or accident disability, or

718 (iii) Medical or hospitalization expenses in
719 connection with sickness or actual disability, or

720 (iv) Death, provided the employee:

721 (A) Has not the option to receive,
722 instead of provision for such death benefit, any part of such
723 payment or, if such death benefit is insured, any part of the
724 premiums (or contributions to premiums) paid by his or her
725 employer, and

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

733 (b) Dismissal payments which the employer is not
734 legally required to make;



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

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

741 (i) Qualifies under Section 125 of the
742 Internal Revenue Code;

743 (ii) Covers only employees;

744 (iii) Covers only noncash benefits;

745 (iv) Does not include deferred compensation
746 plans.

747 (2) [Not enacted].

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

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

754 U. The term "includes" and "including," when used in a
755 definition contained in this chapter, shall not be deemed to
756 exclude other things otherwise within the meaning of the term
757 defined.

758 V. "Employee leasing arrangement" means any agreement
759 between an employee leasing firm and a client, whereby specified



760 client responsibilities such as payment of wages, reporting of
761 wages for unemployment insurance purposes, payment of unemployment
762 insurance contributions and other such administrative duties are
763 to be performed by an employee leasing firm, on an ongoing basis.

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

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

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

781 Y. For the purposes of this chapter, the term "notice" shall
782 include any official communication, statement or other
783 correspondence required under the administration of this chapter,
784 and sent by the department through the United States Postal



785 Service or electronic or digital transfer, via modem or the
786 Internet.

787 **SECTION 2.** This act shall take effect and be in force from
788 and after July 1, 2022.

