

By: Representative Paden

To: Workforce Development;
Appropriations

HOUSE BILL NO. 98

1 AN ACT TO AMEND SECTION 71-5-19, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT WHEN AN OVERPAYMENT OF UNEMPLOYMENT BENEFITS OCCURS
 3 THROUGH NO FAULT OF THE PERSON RECEIVING THE OVERPAYMENT, THE
 4 MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY SHALL NOT CHARGE
 5 INTEREST ON THE UNPAID BALANCE OF THE OVERPAYMENT AND SHALL WAIVE
 6 ANY PROCESSING FEES THAT RESULT FROM THE OVERPAYMENT OF BENEFITS;
 7 TO BRING FORWARD SECTIONS 71-5-363, 71-5-367 AND 71-5-543,
 8 MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT;
 9 AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 71-5-19, Mississippi Code of 1972, is
 12 amended as follows:

13 71-5-19. (1) Whoever makes a false statement or
 14 representation knowing it to be false, or knowingly fails to
 15 disclose a material fact, to obtain or increase any benefit or
 16 other payment under this chapter or under an employment security
 17 law of any other state, of the federal government or of a foreign
 18 government, either for himself or for any other person, shall be
 19 punished by a fine of not less than One Hundred Dollars (\$100.00)
 20 nor more than Five Hundred Dollars (\$500.00), or by imprisonment
 21 for not longer than thirty (30) days, or by both such fine and



22 imprisonment; and each such false statement or representation or
23 failure to disclose a material fact shall constitute a separate
24 offense.

25 (2) Any employing unit, any officer or agent of an employing
26 unit or any other person who makes a false statement or
27 representation knowing it to be false, or who knowingly fails to
28 disclose a material fact, to prevent or reduce the payment of
29 benefits to any individual entitled thereto, or to avoid becoming
30 or remaining subject hereto, or to avoid or reduce any
31 contribution or other payment required from any employing unit
32 under this chapter, or who willfully fails or refuses to make any
33 such contribution or other payment, or to furnish any reports
34 required hereunder or to produce or permit the inspection or
35 copying of records as required hereunder, shall be punished by a
36 fine of not less than One Hundred Dollars (\$100.00) nor more than
37 One Thousand Dollars (\$1,000.00), or by imprisonment for not
38 longer than sixty (60) days, or by both such fine and
39 imprisonment; and each such false statement, or representation, or
40 failure to disclose a material fact, and each day of such failure
41 or refusal shall constitute a separate offense. In lieu of such
42 fine and imprisonment, the employing unit or representative, or
43 both employing unit and representative, if such representative is
44 an employing unit in this state and is found to be a party to such
45 violation, shall not be eligible for a contributions rate of less
46 than five and four-tenths percent (5.4%) for the tax year in which



47 such violation is discovered by the department and for the next
48 two (2) succeeding tax years.

49 (3) Any person who shall willfully violate any provision of
50 this chapter or any other rule or regulation thereunder, the
51 violation of which is made unlawful or the observance of which is
52 required under the terms of this chapter and for which a penalty
53 is neither prescribed herein nor provided by any other applicable
54 statute, shall be punished by a fine of not less than One Hundred
55 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),
56 or by imprisonment for not longer than sixty (60) days, or by both
57 such fine and imprisonment; and each day such violation continues
58 shall be deemed to be a separate offense. In lieu of such fine
59 and imprisonment, the employing unit or representative, or both
60 employing unit and representative, if such representative is an
61 employing unit in this state and is found to be a party to such
62 violation, shall not be eligible for a contributions rate of less
63 than five and four-tenths percent (5.4%) for the tax year in which
64 the violation is discovered by the department and for the next two
65 (2) succeeding tax years.

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

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

70 (ii) While he was disqualified from receiving
71 benefits; or



72 (iii) When such person receives benefits and is
73 later found to be disqualified or ineligible for any reason,
74 including, but not limited to, a redetermination or reversal by
75 the department or the courts of a previous decision to award such
76 person benefits.

77 (b) Any person receiving an overpayment shall, in the
78 discretion of the department, be liable to have such sum deducted
79 from any future benefits payable to him under this chapter and
80 shall be liable to repay to the department for the Unemployment
81 Compensation Fund a sum equal to the overpayment amount so
82 received by him; and such sum shall be collectible in the manner
83 provided in Sections 71-5-363 through 71-5-383 for the collection
84 of past-due contributions. In addition to Sections 71-5-363
85 through 71-5-383, the following shall apply to cases involving
86 damages for overpaid unemployment benefits which have been
87 obtained and/or received through fraud as defined by department
88 regulations and laws governing the department. By definition,
89 fraud can include failure to report earnings while filing for
90 unemployment benefits. In the event of fraud, a penalty of twenty
91 percent (20%) of the amount of the overpayment shall be assessed.
92 Three-fourths (3/4) of that twenty percent (20%) penalty shall be
93 deposited into the unemployment trust fund and shall be used only
94 for the purpose of payment of unemployment benefits. The
95 remainder of that twenty percent (20%) penalty shall be deposited
96 into the Special Employment Security Administrative Fund. Except



97 as otherwise provided in this subsection, interest on the
98 overpayment balance shall accrue at a rate of one percent (1%) per
99 month on the unpaid balance until repaid and shall be deposited
100 into the Special Employment Security Administration Fund. All
101 interest, penalties and damages deposited into the Special
102 Employment Security Administration Fund shall be used by the
103 department for administration of the Mississippi Department of
104 Employment Security.

105 (c) Any such judgment against such person for
106 collection of such overpayment shall be in the form of a
107 seven-year renewable lien. Unless action be brought thereon prior
108 to expiration of the lien, the department must refile the notice
109 of the lien prior to its expiration at the end of seven (7) years.
110 There shall be no limit upon the number of times the department
111 may refile notices of liens for collection of overpayments.

112 (d) All warrants issued by the department for the
113 collection of any unemployment tax or for an overpayment of
114 benefits imposed by statute and collected by the department shall
115 be used to levy on salaries, compensation or other monies due the
116 delinquent employer or claimant. No such warrant shall be issued
117 until after the delinquent employer or claimant has exhausted all
118 appeal rights associated with the debt. The warrants shall be
119 served by mail or by delivery by an agent of the department on the
120 person or entity responsible or liable for the payment of the
121 monies due the delinquent employer or claimant. Once served, the



122 employer or other person owing compensation due the delinquent
123 employer or claimant shall pay the monies over to the department
124 in complete or partial satisfaction of the liability. An answer
125 shall be made within thirty (30) days after service of the warrant
126 in the form and manner determined satisfactory by the department.
127 Failure to pay the money over to the department as required by
128 this section shall result in the served party being personally
129 liable for the full amount of the monies owed and the levy and
130 collection process may be issued against the party in the same
131 manner as other debts owed to the department. Except as otherwise
132 provided by this section, the answer, the amount payable under the
133 warrant and the obligation of the payor to continue payment shall
134 be governed by the garnishment laws of this state but shall be
135 payable to the department.

136 (e) An overpayment of benefits that occurs through no
137 fault of the person receiving the overpayment, as determined by
138 the Mississippi Department of Employment Security, shall not be
139 subject to any interest accrual on the unpaid balance, and the
140 department shall waive any processing fees that result from such
141 overpayment. Upon the effective date of this act, a person who is
142 paying or has been assessed interest on the unpaid balance of his
143 or her overpayment of benefits or any processing fees as a result
144 of his or her overpayment of benefits shall no longer be required
145 to continue paying or to pay such interest and fees to the
146 department.



147 (5) The department, by agreement with another state or the
148 United States, as provided under Section 303(g) of the Social
149 Security Act, may recover any overpayment of benefits paid to any
150 individual under the laws of this state or of another state or
151 under an unemployment benefit program of the United States. Any
152 overpayments subject to this subsection may be deducted from any
153 future benefits payable to the individual under the laws of this
154 state or of another state or under an unemployment program of the
155 United States.

156 **SECTION 2.** Section 71-5-363, Mississippi Code of 1972, is
157 brought forward as follows:

158 71-5-363. (1) Contributions unpaid on the date on which
159 they are due and payable shall bear interest at the rate of one
160 percent (1%) per month from and after such date until payment plus
161 accrued interest is received by the department, provided that the
162 department may prescribe fair and reasonable general rules
163 pursuant to which such interest shall not accrue during the first
164 calendar year that any employer is subject to this chapter.
165 Interest collected pursuant to this section shall be paid into the
166 Special Employment Security Administration Fund established by
167 Section 71-5-114.

168 (2) Notwithstanding the provisions of subsection (1) of this
169 section, the executive director or his or her designee within the
170 department shall have the discretion, subject only to federal laws
171 and regulations, to abate interest accrued on past-due



172 contributions or overpayments, in part or in full, when
173 negotiating the settlements of past-due amounts owed to the
174 agency.

175 **SECTION 3.** Section 71-5-367, Mississippi Code of 1972, is
176 brought forward as follows:

177 71-5-367. If an employer shall file a report in proper form
178 and in proper amount, but shall fail to pay the amount of
179 contributions shown to be due thereby at the time of such filing,
180 or if an employer shall fail to pay any assessment as provided and
181 made under Section 71-5-365 within fifteen (15) days after such
182 assessment has become final as herein provided, the department may
183 issue a warrant under its official seal, directed to the sheriff
184 of any county of the state, commanding him to levy upon and sell
185 the real and personal property of such employer as has defaulted
186 in the payment of such contributions or assessments, which may be
187 found within his county, for the payment of the amount thereof,
188 together with interest, damages, if any, assessed for failure to
189 make and file a report or a corrected or sufficient report, and an
190 additional sum not exceeding one hundred percent (100%) of the
191 amount of the unpaid contributions due, in the discretion of the
192 department, as damages for failure to pay, if not already assessed
193 under Section 71-5-365 and the costs of executing the warrant and
194 to return such warrant to the department, and to pay to it the
195 money collected by virtue thereof on the date specified therein.
196 The department shall cause to be delivered to the clerk of the



197 circuit court a copy of such warrant issued to the sheriff. Such
198 clerk shall enter in the judgment roll, in the column for judgment
199 debtors, the name of the employer mentioned in the warrant and, in
200 appropriate columns, the amount of contributions, interest and
201 damages for which the warrant is issued, a notation that the lien
202 covers all previous, current and future periods for the life of
203 the lien, and the date when such copy is filed. Thereupon the
204 amount of such warrant so filed and entered shall become a lien
205 upon the title to and interest in all real and personal property,
206 including choses in action against negotiable instruments not past
207 due, of the employer against whom the warrant is issued in the
208 same manner as a judgment duly enrolled in the office of such
209 clerk. Any such liens shall cover all contributions, interest and
210 damages owed to the department from previous, current and future
211 periods until the expiration of such lien or until the amount of
212 the lien is fully satisfied. Such judgment shall not be a lien
213 upon the property of the employer for a period of more than seven
214 (7) years from the date of filing of the notice of the tax lien
215 for failure to pay contributions, damages and interest unless
216 action be brought thereon before the expiration of such time or
217 unless the department refiles such notice of tax lien before the
218 expiration of such time. The judgment shall be a lien upon the
219 property of the employer for a period of seven (7) years from the
220 date of refileing such notice of tax lien unless action be brought
221 thereon before the expiration of such time or unless the



222 department refiles such notice of tax lien before the expiration
223 of such time. There shall be no limit upon the number of times
224 the department may refile notices of tax liens. The sheriff shall
225 proceed upon the warrant in the same manner and with like effect
226 as that provided by law in respect to executions issued against
227 property upon judgments or in attachment proceedings of a court of
228 record, and the remedies by garnishment shall apply; and for his
229 services in executing the warrant the sheriff shall be entitled to
230 the same fees, which he may collect in the same manner.

231 The department may elect to issue the warrant directly to the
232 circuit clerk of any county of this state for enrollment upon the
233 judgment rolls of the county. In such case, the clerk shall enter
234 in the judgment roll, in the column for judgment debtors, the name
235 of the employer mentioned in the warrant and, in appropriate
236 columns, the amount of contributions, interest and damages for
237 which the warrant is issued, a notation that the lien covers all
238 previous, current and future periods for the life of the lien, and
239 the date when such warrant is filed. The lien shall have the same
240 effect and remedies as that provided by law in respect to
241 executions issued against property upon judgments or in attachment
242 proceedings of a court of record, and the remedies by garnishment
243 shall apply.

244 All warrants issued by the department for the collection of
245 any unemployment tax or for an overpayment of benefits imposed by
246 statute and collected by the department shall be used to levy on



247 salaries, compensation or other monies due the delinquent employer
248 or claimant. No such warrant shall be issued until after the
249 delinquent employer or claimant has exhausted all appeal rights
250 associated with the debt. The warrants shall be served by mail or
251 by delivery by an agent of the department on the person or entity
252 responsible or liable for the payment of the monies due the
253 delinquent employer or claimant. Once served, the employer or
254 other person owing compensation due the delinquent employer or
255 claimant shall pay the monies over to the department in complete
256 or partial satisfaction of the liability. An answer shall be made
257 within thirty (30) days after service of the warrant in the form
258 and manner determined satisfactory by the department. Failure to
259 pay the money over to the department as required by this section
260 shall result in the served party being personally liable for the
261 full amount of the monies owed and the levy and collection process
262 may be issued against the party in the same manner as other debts
263 owed to the department. Except as otherwise provided by this
264 section, the answer, the amount payable under the warrant and the
265 obligation of the payor to continue payment shall be governed by
266 the garnishment laws of this state but shall be payable to the
267 department.

268 **SECTION 4.** Section 71-5-543, Mississippi Code of 1972, is
269 brought forward as follows:

270 71-5-543. (1) Except as otherwise provided in this section,
271 the executive director of the department may waive recovery of



272 benefits paid under this chapter to a person if the person is
273 subsequently found to be ineligible for the benefit and the
274 benefits were paid as a direct result of unemployment caused by a
275 natural disaster which is declared by the President of the United
276 States in accordance with Section 401 of the Robert T. Stafford
277 Disaster Relief and Emergency Assistance Act. All waivers shall
278 be granted based upon a consistent methodology and shall include
279 consideration of ability to repay and other similar
280 considerations.

281 (2) The waiver authorized in subsection (1) of this section
282 shall not be granted if:

283 (a) The individual receiving the benefit is found to be
284 guilty of fraud involving filing for, or receipt of, the benefits;
285 or

286 (b) The size of fund index (as defined in Section
287 71-5-355) for the year in which a request for a waiver is made is
288 less than five-tenths (.5).

289 (3) All waiver requests shall be considered on a case by
290 case basis.

291 **SECTION 5.** This act shall take effect and be in force from
292 and after its passage.

