

By: Representative Paden

To: Workforce Development;  
Appropriations A

HOUSE BILL NO. 598

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.

