

By: Moss

To: Labor

HOUSE BILL NO. 1479

1 AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY EMPLOYEE LEASING FIRM PROVISIONS FOR PURPOSES OF
3 UNEMPLOYMENT COMPENSATION, AND TO REDEFINE "EMPLOYEE LEASING
4 ARRANGEMENTS" AND "EMPLOYEE LEASING FIRM"; TO AMEND SECTION
5 71-5-353, MISSISSIPPI CODE OF 1972, TO REQUIRE CERTAIN REPORTS FOR
6 EMPLOYERS ENGAGED IN AN EMPLOYEE LEASING ARRANGEMENT; AND FOR
7 RELATED PURPOSES.

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

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

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

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

16 B. "Benefits" means the money payments payable to an
17 individual, as provided in this chapter, with respect to his
18 unemployment.

19 C. "Benefit year" with respect to any individual means
20 the period beginning with the first day of the first week with
21 respect to which he first files a valid claim for benefits, and
22 ending with the day preceding the same day of the same month in
23 the next calendar year; and, thereafter, the period beginning with
24 the first day of the first week with respect to which he next
25 files his valid claim for benefits, and ending with the day
26 preceding the same day of the same month in the next calendar
27 year. Any claim for benefits made in accordance with Section
28 71-5-515 shall be deemed to be a "valid claim" for purposes of

29 this subsection if the individual has been paid the wages for
30 insured work required under Section 71-5-511(e).

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

33 E. "Calendar quarter" means the period of three (3)
34 consecutive calendar months ending on March 31, June 30, September
35 30, or December 31.

36 F. "Commission" means the Mississippi Employment
37 Security Commission.

38 G. "Employing unit" means this state or another state
39 or any instrumentalities or any political subdivisions thereof or
40 any of their instrumentalities or any instrumentality of more than
41 one (1) of the foregoing or any instrumentality of any of the
42 foregoing and one or more other states or political subdivisions,
43 any individual or type of organization, including any partnership,
44 association, trust, estate, joint stock company, insurance
45 company, or corporation, whether domestic or foreign, or the
46 receiver, trustee in bankruptcy, trustee or successor thereof, or
47 the legal representative of a deceased person, which has or had in
48 its employ one or more individuals performing services for it
49 within this state. All individuals performing services within
50 this state for any employing unit which maintains two (2) or more
51 separate establishments within this state shall be deemed to be
52 employed by a single employing unit for all the purposes of this
53 chapter. Each individual employed to perform or to assist in
54 performing the work of any agent or employee of an employing unit
55 shall be deemed to be employed by such employing unit for all
56 purposes of this chapter, whether such individual was hired or
57 paid directly by such employing unit or by such agent or employee,
58 provided the employing unit had actual or constructive knowledge
59 of the work. All individuals performing services in the employ of
60 an elected fee-paid county official, other than those related by
61 blood or marriage within the third degree computed by the rule of
62 the civil law to such fee-paid county official, shall be deemed to
63 be employed by such county as the employing unit for all the
64 purposes of this chapter. For purposes of defining an "employing
65 unit" which shall pay contributions on remuneration paid to

66 individuals, if two (2) or more related corporations concurrently
67 employ the same individual and compensate such individual through
68 a common paymaster which is one of such corporations, then each
69 such corporation shall be considered to have paid as remuneration
70 to such individual only the amounts actually disbursed by it to
71 such individual and shall not be considered to have paid as
72 remuneration to such individual such amounts actually disbursed to
73 such individual by another of such corporations.

74 H. "Employer" means:

75 (1) Any employing unit which,

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

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

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

89 (3) Any employing unit for which service in
90 employment, as defined in subsection I(4) of this section, is
91 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
96 service in employment, as defined in subsection I(7) of this
97 section, is performed;

98 (5) Any individual or employing unit which

99 acquired the organization, trade, business, or substantially all
100 the assets thereof, of another which at the time of such
101 acquisition was an employer subject to this chapter;

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

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

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

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

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

132 (10) All entities (hereafter referred to as
133 worksite employer) utilizing the services of an employee leasing
134 firm (hereafter referred to as the administrative employer) shall
135 be considered the employer of the individuals leased from the
136 employee leasing firm (administrative employer) in order to
137 determine the experience rating record used in computing the
138 contribution rate and then to maintain the experience rating. The
139 commission shall view the administrative employer organization as
140 the employer of the leased employees for all other matters
141 pertaining to the rules and regulations governing unemployment
142 compensation for the State of Mississippi. Temporary help firms
143 shall be considered the employer of the individuals they provide
144 to perform services for other individuals or organizations.

145 I. "Employment" means and includes:

146 (1) Any service performed, which was employment as
147 defined in this section and, subject to the other provisions of
148 this subsection, including service in interstate commerce,
149 performed for wages or under any contract of hire, written or
150 oral, express or implied.

151 (2) Services performed for remuneration for a
152 principal:

153 (a) As an agent-driver or commission-driver
154 engaged in distributing meat products, vegetable products, fruit
155 products, bakery products, beverages (other than milk), or laundry
156 or dry cleaning services;

157 (b) As a traveling or city salesman, other
158 than as an agent-driver or commission-driver, engaged upon a
159 full-time basis in the solicitation on behalf of, and the
160 transmission to, a principal (except for sideline sales activities
161 on behalf of some other person) of orders from wholesalers,
162 retailers, contractors, or operator of hotels, restaurants, or
163 other similar establishments for merchandise for resale or
164 supplies for use in their business operations.

165 Provided, that for purposes of this subsection, the term
166 "employment" shall include services described in subsections
167 I(2)(a) and (b) of this section, only if:

168 (i) The contract of service contemplates
169 that substantially all of the services are to be performed
170 personally by such individual;

171 (ii) The individual does not have a
172 substantial investment in facilities used in connection with the
173 performance of the services (other than in facilities for
174 transportation); and

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

178 (3) Service performed in the employ of this state
179 or any of its instrumentalities or any political subdivision
180 thereof or any of its instrumentalities or any instrumentality of
181 more than one (1) of the foregoing or any instrumentality of any
182 of the foregoing and one or more other states or political
183 subdivisions; provided that such service is excluded from
184 "employment" as defined in the Federal Unemployment Tax Act by
185 Section 3306(c)(7) of that act and is not excluded from
186 "employment" under subsection I(5) of this section.

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

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

197 (5) For the purposes of subsections I(3) and (4)

198 of this section, the term "employment" does not apply to service
199 performed:

200 (a) In the employ of:

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

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

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

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

214 (i) As an elected official;

215 (ii) As a member of a legislative body,
216 or a member of the judiciary, of a state or political subdivision;

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

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

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

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

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

229 (d) In a facility conducted for the purpose
230 of carrying out a program of rehabilitation for individuals whose

231 earning capacity is impaired by age or physical or mental
232 deficiency or injury, or providing remunerative work for
233 individuals who because of their impaired physical or mental
234 capacity cannot be readily absorbed in the competitive labor
235 market, by an individual receiving such rehabilitation or
236 remunerative work; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

296 (7) The term "employment" shall include domestic

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

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

307 (a) The service is localized in this state;

308 or

309 (b) The service is not localized in any state
310 but some of the service is performed in this state, and

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

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

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

328 (10) Service shall be deemed to be localized
329 within a state if:

330 (a) The service is performed entirely within
331 such state; or

332 (b) The service is performed both within and
333 without such state, but the service performed without such state
334 is incidental to the individual's service within the state; for
335 example, is temporary or transitory in nature or consists of
336 isolated transactions.

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

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

345 (b) The employer has no place of business in
346 the United States, but

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

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

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

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

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

362 (i) An individual who is a resident of

363 the United States; or

364 (ii) A partnership if two-thirds (2/3)

365 or more of the partners are residents of the United States; or

366 (iii) A trust, if all of the trustees

367 are residents of the United States; or

368 (iv) A corporation organized under the

369 laws of the United States or of any state.

370 (12) All services performed by an officer or

371 member of the crew of an American vessel on or in connection with

372 such vessel, if the operating office from which the operations of

373 such vessel operating on navigable waters within, or within and

374 without, the United States are ordinarily and regularly

375 supervised, managed, directed, and controlled is within this

376 state; notwithstanding the provisions of subsection I(8).

377 (13) Service with respect to which a tax is

378 required to be paid under any federal law imposing a tax against

379 which credit may be taken for contributions required to be paid

380 into a state unemployment fund, or which as a condition for full

381 tax credit against the tax imposed by the Federal Unemployment Tax

382 Act, 26 USCS Sec. 3301 et seq., is required to be covered under

383 this chapter, notwithstanding any other provisions of this

384 subsection.

385 (14) Services performed by an individual for wages

386 shall be deemed to be employment subject to this chapter unless

387 and until it is shown to the satisfaction of the commission that

388 such individual has been and will continue to be free from control

389 and direction over the performance of such services both under his

390 contract of service and in fact; and the relationship of employer

391 and employee shall be determined in accordance with the principles

392 of the common law governing the relation of master and servant.

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

394 (a) Agricultural labor, except as provided in

395 subsection I(6) of this section. The term "agricultural labor"

396 includes all services performed:

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

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

411 (iii) In connection with the production
412 or harvesting of naval stores products or any commodity defined in
413 the Federal Agricultural Marketing Act, 12 USCS Sec. 1141j(g), or
414 in connection with the raising or harvesting of mushrooms, or in
415 connection with the ginning of cotton, or in connection with the
416 operation or maintenance of ditches, canals, reservoirs, or
417 waterways not owned or operated for profit, used exclusively for
418 supplying and storing water for farming purposes;

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

426 (B) In the employ of a group of
427 operators of farms (or a cooperative organization of which such
428 operators are members) in the performance of service described in

429 subparagraph (A), but only if such operators produced more than
430 one-half (1/2) of the commodity with respect to which such service
431 is performed;

432 (C) The provisions of subparagraphs
433 (A) and (B) shall not be deemed to be applicable with respect to
434 service performed in connection with commercial canning or
435 commercial freezing or in connection with any agricultural or
436 horticultural commodity after its delivery to a terminal market
437 for distribution for consumption;

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

441 (vi) As used in paragraph (15)(a) of
442 this subsection, the term "farm" includes stock, dairy, poultry,
443 fruit, fur-bearing animals, and truck farms, plantations, ranches,
444 nurseries, ranges, greenhouses, or other similar structures used
445 primarily for the raising of agricultural or horticultural
446 commodities, and orchards.

447 (b) Domestic service in a private home, local
448 college club, or local chapter of a college fraternity or
449 sorority, except as provided in subsection I(7) of this section,
450 or service performed as a "sitter" at a hospital in the employ of
451 an individual.

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

454 (d) Service performed by an individual in the
455 employ of his son, daughter, or spouse, and service performed by a
456 child under the age of twenty-one (21) in the employ of his father
457 or mother.

458 (e) Service performed in the employ of the
459 United States Government or of an instrumentality wholly owned by
460 the United States; except that if the Congress of the United
461 States shall permit states to require any instrumentalities of the

462 United States to make payments into an unemployment fund under a
463 state unemployment compensation act, then to the extent permitted
464 by Congress and from and after the date as of which such
465 permission becomes effective, all of the provisions of this
466 chapter shall be applicable to such instrumentalities and to
467 services performed by employees for such instrumentalities in the
468 same manner, to the same extent, and on the same terms as to all
469 other employers and employing units. If this state should not be
470 certified under the Federal Unemployment Tax Act, 26 USCS Sec.
471 3304(c), for any year, then the payment required by such
472 instrumentality with respect to such year shall be deemed to have
473 been erroneously collected and shall be refunded by the commission
474 from the fund in accordance with the provisions of Section
475 71-5-383.

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

494 (g) Service performed in any calendar quarter

495 in the employ of any organization exempt from income tax under the
496 Internal Revenue Code, 26 USCS Sec. 501(a) (other than an
497 organization described in 26 USCS Sec. 401(a)), or exempt from
498 income tax under 26 USCS Sec. 521 if the remuneration for such
499 service is less than Fifty Dollars (\$50.00).

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

502 (i) By a student who is enrolled and is
503 regularly attending classes at such school, college, or
504 university, or

505 (ii) By the spouse of such a student if
506 such spouse is advised, at the time such spouse commences to
507 perform such service, that

508 (A) The employment of such spouse
509 to perform such service is provided under a program to provide
510 financial assistance to such student by such school, college, or
511 university, and

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

514 (i) Service performed by an individual under
515 the age of twenty-two (22) who is enrolled at a nonprofit or
516 public educational institution which normally maintains a regular
517 faculty and curriculum and normally has a regularly organized body
518 of students in attendance at the place where its educational
519 activities are carried on, as a student in a full-time program
520 taken for credit at such institution, which combines academic
521 instruction with work experience, if such service is an integral
522 part of such program and such institution has so certified to the
523 employer, except that this subparagraph shall not apply to service
524 performed in a program established for or on behalf of an employer
525 or group of employers.

526 (j) Service performed in the employ of a
527 hospital, if such service is performed by a patient of the

528 hospital, as defined in subsection L of this section.

529 (k) Service performed as a student nurse in
530 the employ of a hospital or a nurses' training school by an
531 individual who is enrolled and is regularly attending classes in a
532 nurses' training school chartered or approved pursuant to state
533 law; and services performed as an intern in the employ of a
534 hospital by an individual who has completed a four-year course in
535 a medical school chartered or approved pursuant to state law.

536 (l) Service performed by an individual as an
537 insurance agent or as an insurance solicitor, if all such service
538 performed by such individual is performed for remuneration solely
539 by way of commission.

540 (m) Service performed by an individual under
541 the age of eighteen (18) in the delivery or distribution of
542 newspapers or shopping news, not including delivery or
543 distribution to any point for subsequent delivery or distribution.

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

556 (o) Service performed by an individual who is
557 a CETA/PSE (Comprehensive Employment Training Act/Public Service
558 Employment) participant unless coverage of such service is
559 required by federal law or regulation.

560 (p) Service performed by a barber or

561 beautician whose work station is leased to him or her by the owner
562 of the shop in which he or she works and who is compensated
563 directly by the patrons he or she serves and who is free from
564 direction and control by the lessor.

565 J. "Employment office" means a free public employment
566 office or branch thereof, operated by this state or maintained as
567 a part of the state controlled system of public employment
568 offices.

569 "Public employment service" means the operation of a program
570 that offers free placement and referral services to applicants and
571 employers, including job development.

572 K. "Fund" means the Unemployment Compensation Fund
573 established by this chapter, to which all contributions required
574 and from which all benefits provided under this chapter shall be
575 paid.

576 L. "Hospital" means an institution which has been
577 licensed, certified, or approved by the Mississippi Commission on
578 Hospital Care as a hospital.

579 M. "Institution of higher learning," for the purposes
580 of this section, means an educational institution which:

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

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

586 (3) Provides an educational program for which it
587 awards a bachelor's or higher degree, or provides a program which
588 is acceptable for full credit toward such a degree, a program of
589 postgraduate or postdoctoral studies, or a program of training to
590 prepare students for gainful employment in a recognized
591 occupation;

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

593 (5) Notwithstanding any of the foregoing

594 provisions of this subsection, all colleges and universities in
595 this state are institutions of higher learning for purposes of
596 this section.

597 N. (1) "State" includes, in addition to the states of
598 the United States of America, the District of Columbia,
599 Commonwealth of Puerto Rico and the Virgin Islands.

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

603 (3) The provisions of subsections (1) and (2) of
604 paragraph N, as including the Virgin Islands, shall become
605 effective on the day after the day on which the United States
606 Secretary of Labor approves for the first time under Section
607 3304(a) of the Internal Revenue Code of 1954 an unemployment
608 compensation law submitted to the secretary by the Virgin Islands
609 for such approval.

610 O. "Unemployment."

611 (1) An individual shall be deemed "unemployed" in
612 any week during which he performs no services and with respect to
613 which no wages are payable to him, or in any week of less than
614 full-time work if the wages payable to him with respect to such
615 week are less than his weekly benefit amount as computed and
616 adjusted in Section 71-5-505. The commission shall prescribe
617 regulations applicable to unemployed individuals, making such
618 distinctions in the procedure as to total unemployment, part-total
619 unemployment, partial unemployment of individuals attached to
620 their regular jobs, and other forms of short-time work, as the
621 commission deems necessary.

622 (2) An individual's week of total unemployment
623 shall be deemed to commence only after his registration at an
624 employment office, except as the commission may by regulation
625 otherwise prescribe.

626 P. (1) "Wages" means all remuneration for personal

627 services, including commissions and bonuses and the cash value of
628 all remuneration in any medium other than cash, except that
629 "wages," for purposes of determining employer's coverage and
630 payment of contributions for agricultural and domestic service
631 means cash remuneration only. The reasonable cash value of
632 remuneration in any medium other than cash shall be estimated and
633 determined in accordance with rules prescribed by the commission;
634 provided, that the term "wages" shall not include:

635 (a) The amount of any payment made to, or on
636 behalf of, an employee under a plan or system established by an
637 employer which makes provision for his employees generally or for
638 a class or classes of his employees (including any amount paid by
639 an employer for insurance or annuities, or into a fund, to provide
640 for any such payment), on account of:

641 (i) Retirement, or

642 (ii) Sickness or accident disability, or

643 (iii) Medical or hospitalization

644 expenses in connection with sickness or actual disability, or

645 (iv) Death, provided the employee:

646 (A) Has not the option to receive,
647 instead of provision for such death benefit, any part of such
648 payment or, if such death benefit is insured, any part of the
649 premiums (or contributions to premiums) paid by his employer, and

650 (B) Has not the right, under the
651 provisions of the plan or system or policy of insurance providing
652 for such death benefit, to assign such benefit or to receive a
653 cash consideration in lieu of such benefit, either upon his
654 withdrawal from the plan or system providing for such benefit or
655 upon termination of such plan or system or policy of insurance or
656 of his employment with such employer;

657 (b) Dismissal payments which the employer is
658 not legally required to make;

659 (c) Payment by an employer (without deduction

660 from the remuneration of an employee) of the tax imposed by the
661 Internal Revenue Code, 26 USCS Sec. 3101;

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

665 (i) Qualifies under Section 125 of the
666 Internal Revenue Code;
667 (ii) Covers only employees;
668 (iii) Covers only noncash benefits;
669 (iv) Does not include deferred
670 compensation plans.

671 (2) [Not enacted].

672 Q. "Week" means calendar week or such period of seven
673 (7) consecutive days as the commission may by regulation
674 prescribe. The commission may by regulation prescribe that a week
675 shall be deemed to be in, within, or during any benefit year which
676 includes any part of such week.

677 R. "Insured work" means "employment" for "employers."

678 S. The term "includes" and "including," when used in a
679 definition contained in this chapter, shall not be deemed to
680 exclude other things otherwise within the meaning of the term
681 defined.

682 T. "Employee leasing arrangement" means any agreement
683 between the client (referred to as the worksite employer) and a
684 firm which engages in the business of employee leasing (referred
685 to as the administrative employer) in which the duties and
686 responsibilities of the employer to the employees is shared. The
687 responsibilities of the employer includes duties such as the
688 preparation of wages, reporting of wages for unemployment
689 insurance purposes, payment of unemployment insurance
690 contributions, attending and defending unemployment hearings and
691 all other administrative duties that may be required by the
692 commission.

693 U. "Employee leasing firm" includes both a professional
694 employer organization (PEO) and an administrative employer
695 organization (AEO) as well as any other entity which provides
696 specified duties for the worksite employer and reports all duties
697 performed by the employee leasing firm under the identification
698 number of the employee leasing firm. These duties shall include,
699 but are not limited to, preparation of wages, reporting of wages
700 for unemployment insurance purposes, payment of unemployment
701 insurance contributions and other administrative duties in
702 connection with the employees of the worksite employer. The
703 worksite employer retains the right to hire and fire, direction
704 and control, set the rate of pay, determine the order of
705 production and all other tasks to be performed. Professional
706 employer organizations and administrative employer organizations
707 both perform the same services; however, a PEO assumes
708 responsibility for the payment of wages and taxes regardless of
709 whether payment was received from the worksite employer while an
710 AEO requires payment before assuming responsibility for wages and
711 taxes.

712 V. "Temporary help firm" means an entity which hires
713 its own employees and provides those employees to other
714 individuals or organizations to perform some service, to support
715 or supplement the existing work force in special situations such
716 as employee absences, temporary skill shortages, seasonal
717 workloads and special assignments and projects, with the
718 expectation that the worker's position will be terminated upon the
719 completion of the specified task or function.

720 SECTION 2. Section 71-5-353, Mississippi Code of 1972, is
721 amended as follows:

722 71-5-353. (1) Each employer shall pay contributions equal
723 to five and four-tenths percent (5.4%) of taxable wages paid by
724 him each calendar year, except as may be otherwise provided in
725 Section 71-5-361 and except that each newly subject employer shall

726 pay contributions at the rate of two and seven-tenths percent
727 (2.7%) of taxable wages until his experience-rating record has
728 been chargeable throughout not less than the twelve (12)
729 consecutive calendar months ending on the computation date;
730 thereafter his contribution rate shall be determined in accordance
731 with the provisions of Section 71-5-355.

732 (2) Unless eligible for a modified rate as described in
733 Section 71-5-355 of this chapter, each employer, as defined by
734 Section 71-5-11(H) of this chapter, engaged in an employee leasing
735 arrangement, with an employee leasing firm, on June 30, 1998, will
736 be assigned a contributions rate of one and five tenths percent
737 (1.50%) for the calendar year 1999, and subsequent calendar years,
738 until the employer is eligible for a modified rate, as described
739 in Section 71-5-355 of this chapter, based on experience
740 accumulated subsequent to December 31, 1998.

741 The commission shall notify all employers, active in the
742 commission files and currently reporting, of the provisions of
743 this paragraph, at their last known mailing address on or before
744 August 15, 1998. All employee leasing firms shall report to the
745 commission the name, the federal identification number, mailing
746 address, physical location address and telephone number of all
747 their clients on or before October 15, 1998. Any employee leasing
748 firm failing to comply with the provisions of this paragraph may
749 be assessed an amount equal to one-half of one percent (1/2 of 1%)
750 of total wages, or Five Hundred Dollars (\$500.00), whichever is
751 greater, for each client that the employee leasing firm fails to
752 report. Collection of the above mentioned penalty shall be in
753 conformity with commission regulations.

754 (3) All firms providing services utilizing the employee
755 leasing arrangement shall provide to the commission written
756 notification signed by the worksite and administrative employer
757 that informs the commission of an arrangement. This notification
758 may be in any form that the employee leasing firm may choose. The

759 commission shall then provide an account number that reflects the
760 administrative employer account number and the client as a
761 subnumber of the employee leasing firm. The administrative
762 employer shall provide reports to the commission that reflect the
763 employees of each worksite employer for the purpose of determining
764 and maintaining an accurate experience rating for each individual
765 worksite employer. The commission shall have the authority to
766 develop penalties for violations of this section.

767 SECTION 3. This act shall take effect and be in force from
768 and after July 1, 2000.