

By: Representative Pierce

To: Labor

HOUSE BILL NO. 1115

1 AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE DEFINITION OF "EMPLOYMENT" UNDER THE UNEMPLOYMENT  
3 COMPENSATION LAW TO EXCLUDE SERVICES PERFORMED BY CERTAIN  
4 INDEPENDENT SERVICE PEOPLE FOR A FUNERAL HOME; AND FOR RELATED  
5 PURPOSES.

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

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

9 71-5-11. As used in this chapter, unless the context clearly  
10 requires otherwise:

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

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

17 C. "Benefit year" with respect to any individual means the  
18 period beginning with the first day of the first week with respect  
19 to which he first files a valid claim for benefits, and ending  
20 with the day preceding the same day of the same month in the next  
21 calendar year; and, thereafter, the period beginning with the  
22 first day of the first week with respect to which he next files  
23 his valid claim for benefits, and ending with the day preceding  
24 the same day of the same month in the next calendar year. Any  
25 claim for benefits made in accordance with Section 71-5-515 shall  
26 be deemed to be a "valid claim" for purposes of this subsection if  
27 the individual has been paid the wages for insured work required  
28 under Section 71-5-511(e).

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

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

34           F. "Commission" means the Mississippi Employment Security  
35 Commission.

36           G. "Employing unit" means this state or another state or any  
37 instrumentalities or any political subdivisions thereof or any of  
38 their instrumentalities or any instrumentality of more than one  
39 (1) of the foregoing or any instrumentality of any of the  
40 foregoing and one or more other states or political subdivisions,  
41 any Indian tribe as defined in Section 3306(u) of the Federal  
42 Unemployment Tax Act (FUTA), which includes any subdivision,  
43 subsidiary or business enterprise wholly owned by such Indian  
44 tribe, any individual or type of organization, including any  
45 partnership, association, trust, estate, joint-stock company,  
46 insurance company, or corporation, whether domestic or foreign, or  
47 the receiver, trustee in bankruptcy, trustee or successor thereof,  
48 or the legal representative of a deceased person, which has or had  
49 in its employ one or more individuals performing services for it  
50 within this state. All individuals performing services within  
51 this state for any employing unit which maintains two (2) or more  
52 separate establishments within this state shall be deemed to be  
53 employed by a single employing unit for all the purposes of this  
54 chapter. Each individual employed to perform or to assist in  
55 performing the work of any agent or employee of an employing unit  
56 shall be deemed to be employed by such employing unit for all  
57 purposes of this chapter, whether such individual was hired or  
58 paid directly by such employing unit or by such agent or employee,  
59 provided the employing unit had actual or constructive knowledge  
60 of the work. All individuals performing services in the employ of  
61 an elected fee-paid county official, other than those related by

62 blood or marriage within the third degree computed by the rule of  
63 the civil law to such fee-paid county official, shall be deemed to  
64 be employed by such county as the employing unit for all the  
65 purposes of this chapter. For purposes of defining an "employing  
66 unit" which shall pay contributions on remuneration paid to  
67 individuals, if two (2) or more related corporations concurrently  
68 employ the same individual and compensate such individual through  
69 a common paymaster which is one (1) of such corporations, then  
70 each such corporation shall be considered to have paid as  
71 remuneration to such individual only the amounts actually  
72 disbursed by it to such individual and shall not be considered to  
73 have paid as remuneration to such individual such amounts actually  
74 disbursed to such individual by another of such corporations.

75 H. "Employer" means:

76 (1) Any employing unit which,

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

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

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

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

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

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

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

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

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

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

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

122                   (b) In determining whether or not an employing  
123 unit for which service other than agricultural labor is also  
124 performed is an employer under paragraph (1) or (4)(b) of this  
125 subsection, the wages earned or the employment of an employee  
126 performing services in agricultural labor, shall not be taken into

127 account. If an employing unit is determined an employer of  
128 agricultural labor, such employing unit shall be determined an  
129 employer for purposes of paragraph (1) of this subsection;

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

136 I. "Employment" means and includes:

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

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

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

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

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

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

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

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

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

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

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

191           (5) For the purposes of subsections I(3) and (4) of  
192 this section, the term "employment" does not apply to service  
193 performed:

194                   (a) In the employ of:

195                           (i) A church or convention or association of  
196 churches; or

197                           (ii) An organization which is operated  
198 primarily for religious purposes and which is operated,  
199 supervised, controlled, or principally supported by a church or  
200 convention or association of churches; or

201                   (b) By a duly ordained, commissioned, or licensed  
202 minister of a church in the exercise of his ministry, or by a  
203 member of a religious order in the exercise of duties required by  
204 such order; or

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

208                           (i) As an elected official;

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

318 entire service of such individual shall be deemed to be employment  
319 subject to this chapter.

320 (10) Service shall be deemed to be localized within a  
321 state if:

322 (a) The service is performed entirely within such  
323 state; or

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

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

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

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

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

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

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

347 (c) None of the criteria of subparagraphs (a) and  
348 (b) of this paragraph are met but the employer has elected  
349 coverage in this state or, the employer having failed to elect

350 coverage in any state, the individual has filed a claim for  
351 benefits, based on such service, under the law of this state; or

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

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

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

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

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

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

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

376 (14) Services performed by an individual for wages  
377 shall be deemed to be employment subject to this chapter unless  
378 and until it is shown to the satisfaction of the commission that  
379 such individual has been and will continue to be free from control  
380 and direction over the performance of such services both under his  
381 contract of service and in fact; and the relationship of employer

382 and employee shall be determined in accordance with the principles  
383 of the common law governing the relation of master and servant.

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

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

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

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

401 (iii) In connection with the production or  
402 harvesting of naval stores products or any commodity defined in  
403 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g),  
404 or in connection with the raising or harvesting of mushrooms, or  
405 in connection with the ginning of cotton, or in connection with  
406 the operation or maintenance of ditches, canals, reservoirs, or  
407 waterways not owned or operated for profit, used exclusively for  
408 supplying and storing water for farming purposes;

409 (iv) (A) In the employ of the operator of a  
410 farm in handling, planting, drying, packing, packaging,  
411 processing, freezing, grading, storing, or delivering to storage  
412 or to market or to a carrier for transportation to market, in its  
413 unmanufactured state, any agricultural or horticultural commodity;

414 but only if such operator produced more than one-half (1/2) of the  
415 commodity with respect to which such service is performed;

416 (B) In the employ of a group of  
417 operators of farms (or a cooperative organization of which such  
418 operators are members) in the performance of service described in  
419 subparagraph (A), but only if such operators produced more than  
420 one-half (1/2) of the commodity with respect to which such service  
421 is performed;

422 (C) The provisions of subparagraphs (A)  
423 and (B) shall not be deemed to be applicable with respect to  
424 service performed in connection with commercial canning or  
425 commercial freezing or in connection with any agricultural or  
426 horticultural commodity after its delivery to a terminal market  
427 for distribution for consumption;

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

430 (vi) As used in paragraph (15)(a) of this  
431 subsection, the term "farm" includes stock, dairy, poultry, fruit,  
432 fur-bearing animals, and truck farms, plantations, ranches,  
433 nurseries, ranges, greenhouses, or other similar structures used  
434 primarily for the raising of agricultural or horticultural  
435 commodities, and orchards.

436 (b) Domestic service in a private home, local  
437 college club, or local chapter of a college fraternity or  
438 sorority, except as provided in subsection I(7) of this section,  
439 or service performed as a "sitter" at a hospital in the employ of  
440 an individual.

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

443 (d) Service performed by an individual in the  
444 employ of his son, daughter, or spouse, and service performed by a  
445 child under the age of twenty-one (21) in the employ of his father  
446 or mother.

447                   (e) Service performed in the employ of the United  
448 States government or of an instrumentality wholly owned by the  
449 United States; except that if the Congress of the United States  
450 shall permit states to require any instrumentalities of the United  
451 States to make payments into an unemployment fund under a state  
452 unemployment compensation act, then to the extent permitted by  
453 Congress and from and after the date as of which such permission  
454 becomes effective, all of the provisions of this chapter shall be  
455 applicable to such instrumentalities and to services performed by  
456 employees for such instrumentalities in the same manner, to the  
457 same extent, and on the same terms as to all other employers and  
458 employing units. If this state should not be certified under the  
459 Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any  
460 year, then the payment required by such instrumentality with  
461 respect to such year shall be deemed to have been erroneously  
462 collected and shall be refunded by the commission from the fund in  
463 accordance with the provisions of Section 71-5-383.

464                   (f) Service performed in the employ of an  
465 "employer" as defined by the Railroad Unemployment Insurance Act,  
466 45 USCS Section 351(a), or as an "employee representative" as  
467 defined by the Railroad Unemployment Insurance Act, 45 USCS  
468 Section 351(f), and service with respect to which unemployment  
469 compensation is payable under an unemployment compensation system  
470 for maritime employees, or under any other unemployment  
471 compensation system established by an act of Congress; provided  
472 that the commission is hereby authorized and directed to enter  
473 into agreements with the proper agencies under such act or acts of  
474 Congress, which agreements shall become effective ten (10) days  
475 after publication thereof in the manner provided in Section  
476 71-5-117 for general rules, to provide reciprocal treatment to  
477 individuals who have, after acquiring potential rights to benefits  
478 under this chapter, acquired rights to unemployment compensation  
479 under such act or acts of Congress or who have, after acquiring

480 potential rights to unemployment compensation under such act or  
481 acts of Congress, acquired rights to benefits under this chapter.

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

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

490 (i) By a student who is enrolled and is  
491 regularly attending classes at such school, college or university,  
492 or

493 (ii) By the spouse of such a student if such  
494 spouse is advised, at the time such spouse commences to perform  
495 such service, that

496 (A) The employment of such spouse to  
497 perform such service is provided under a program to provide  
498 financial assistance to such student by such school, college, or  
499 university, and

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

502 (i) Service performed by an individual under the  
503 age of twenty-two (22) who is enrolled at a nonprofit or public  
504 educational institution which normally maintains a regular faculty  
505 and curriculum and normally has a regularly organized body of  
506 students in attendance at the place where its educational  
507 activities are carried on, as a student in a full-time program  
508 taken for credit at such institution, which combines academic  
509 instruction with work experience, if such service is an integral  
510 part of such program and such institution has so certified to the  
511 employer, except that this subparagraph shall not apply to service



512 performed in a program established for or on behalf of an employer  
513 or group of employers.

514 (j) Service performed in the employ of a hospital,  
515 if such service is performed by a patient of the hospital, as  
516 defined in subsection L of this section.

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

524 (l) Service performed by an individual as an  
525 insurance agent or as an insurance solicitor, if all such service  
526 performed by such individual is performed for remuneration solely  
527 by way of commission.

528 (m) Service performed by an individual under the  
529 age of eighteen (18) in the delivery or distribution of newspapers  
530 or shopping news, not including delivery or distribution to any  
531 point for subsequent delivery or distribution.

532 (n) If the services performed during one-half  
533 (1/2) or more of any pay period by an employee for the employing  
534 unit employing him constitute employment, all the services of such  
535 employee for such period shall be deemed to be employment; but if  
536 the services performed during more than one-half (1/2) of any such  
537 pay period by an employee for the employing unit employing him do  
538 not constitute employment, then none of the services of such  
539 employee for such period shall be deemed to be employment. As  
540 used in this subsection the term "pay period" means a period (of  
541 not more than thirty-one (31) consecutive days) for which a  
542 payment of remuneration is ordinarily made to the employee by the  
543 employing unit employing him.

544                   (o) Service performed by an individual who is a  
545 CETA/PSE (Comprehensive Employment Training Act/Public Service  
546 Employment) participant unless coverage of such service is  
547 required by federal law or regulation.

548                   (p) Service performed by a barber or beautician  
549 whose work station is leased to him or her by the owner of the  
550 shop in which he or she works and who is compensated directly by  
551 the patrons he or she serves and who is free from direction and  
552 control by the lessor.

553                   (q) Service performed for a funeral home on an  
554 intermittent basis only by a barber, beautician, organist, hostess  
555 or other independent service people.

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

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

562           K. "Fund" means the Unemployment Compensation Fund  
563 established by this chapter, to which all contributions required  
564 and from which all benefits provided under this chapter shall be  
565 paid.

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

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

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

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

576           (3) Provides an educational program for which it awards  
577 a bachelor's or higher degree, or provides a program which is  
578 acceptable for full credit toward such a degree, a program of  
579 postgraduate or postdoctoral studies, or a program of training to  
580 prepare students for gainful employment in a recognized  
581 occupation;

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

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

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

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

592           (3) The provisions of subsections (1) and (2) of  
593 paragraph N, as including the Virgin Islands, shall become  
594 effective on the day after the day on which the United States  
595 Secretary of Labor approves for the first time under Section  
596 3304(a) of the Internal Revenue Code of 1954 an unemployment  
597 compensation law submitted to the secretary by the Virgin Islands  
598 for such approval.

599       O. "Unemployment."

600           (1) An individual shall be deemed "unemployed" in any  
601 week during which he performs no services and with respect to  
602 which no wages are payable to him, or in any week of less than  
603 full-time work if the wages payable to him with respect to such  
604 week are less than his weekly benefit amount as computed and  
605 adjusted in Section 71-5-505. The commission shall prescribe  
606 regulations applicable to unemployed individuals, making such  
607 distinctions in the procedure as to total unemployment, part-total  
608 unemployment, partial unemployment of individuals attached to

609 their regular jobs, and other forms of short-time work, as the  
610 commission deems necessary.

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

615 P. (1) "Wages" means all remuneration for personal  
616 services, including commissions and bonuses and the cash value of  
617 all remuneration in any medium other than cash, except that  
618 "wages," for purposes of determining employer's coverage and  
619 payment of contributions for agricultural and domestic service  
620 means cash remuneration only. The reasonable cash value of  
621 remuneration in any medium other than cash shall be estimated and  
622 determined in accordance with rules prescribed by the commission;  
623 provided, that the term "wages" shall not include:

624 (a) The amount of any payment made to, or on  
625 behalf of, an employee under a plan or system established by an  
626 employer which makes provision for his employees generally or for  
627 a class or classes of his employees (including any amount paid by  
628 an employer for insurance or annuities, or into a fund, to provide  
629 for any such payment), on account of:

630 (i) Retirement, or  
631 (ii) Sickness or accident disability, or  
632 (iii) Medical or hospitalization expenses in  
633 connection with sickness or actual disability, or

634 (iv) Death, provided the employee:

635 (A) Has not the option to receive,  
636 instead of provision for such death benefit, any part of such  
637 payment or, if such death benefit is insured, any part of the  
638 premiums (or contributions to premiums) paid by his employer, and

639 (B) Has not the right, under the  
640 provisions of the plan or system or policy of insurance providing  
641 for such death benefit, to assign such benefit or to receive a

642 cash consideration in lieu of such benefit, either upon his  
643 withdrawal from the plan or system providing for such benefit or  
644 upon termination of such plan or system or policy of insurance or  
645 of his employment with such employer;

646 (b) Dismissal payments which the employer is not  
647 legally required to make;

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

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

654 (i) Qualifies under Section 125 of the  
655 Internal Revenue Code;

656 (ii) Covers only employees;

657 (iii) Covers only noncash benefits;

658 (iv) Does not include deferred compensation  
659 plans.

660 (2) [Not enacted].

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

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

667 S. The term "includes" and "including," when used in a  
668 definition contained in this chapter, shall not be deemed to  
669 exclude other things otherwise within the meaning of the term  
670 defined.

671 T. "Employee leasing arrangement" means any agreement  
672 between an employee leasing firm and a client, whereby specified  
673 client responsibilities such as payment of wages, reporting of  
674 wages for unemployment insurance purposes, payment of unemployment

675 insurance contributions and other such administrative duties are  
676 to be performed by an employee leasing firm, on an ongoing basis.

677 U. "Employee leasing firm" means any entity which provides  
678 specified duties for a client company such as payment of wages,  
679 reporting of wages for unemployment insurance purposes, payment of  
680 unemployment insurance contributions and other administrative  
681 duties, in connection with the client's employees, that are  
682 directed and controlled by the client and that are providing  
683 ongoing services for the client.

684 V. "Temporary help firm" means an entity which hires its own  
685 employees and provides those employees to other individuals or  
686 organizations to perform some service, to support or supplement  
687 the existing work force in special situations such as employee  
688 absences, temporary skill shortages, seasonal workloads and  
689 special assignments and projects, with the expectation that the  
690 worker's position will be terminated upon the completion of the  
691 specified task or function.

692 **SECTION 2.** This act shall take effect and be in force from  
693 and after July 1, 2004.