

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2469

1 AN ACT RELATING TO THE ADMINISTRATION OF THE UNEMPLOYMENT
2 COMPENSATION LAW BY THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT
3 SECURITY; TO AMEND SECTIONS 71-5-11, 71-5-135, 71-5-355, 71-5-357,
4 71-5-359, 71-5-519 AND 71-5-529, MISSISSIPPI CODE OF 1972, TO
5 AUTHORIZE OFFICIAL NOTICE IN FORMS OTHER THAN MAIL; TO AMEND
6 SECTION 71-5-19, MISSISSIPPI CODE OF 1972, TO DELETE THE
7 LIMITATION ON THE AUTHORITY OF THE DEPARTMENT TO SEEK REPAYMENT OF
8 OVERPAID UNEMPLOYMENT BENEFITS; TO AMEND SECTION 71-5-119,
9 MISSISSIPPI CODE OF 1972, TO CLARIFY THE AVAILABILITY OF THE
10 UNEMPLOYMENT COMPENSATION LAW TO BENEFICIARIES; TO AMEND SECTION
11 71-5-127, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISION
12 RELATING TO THE CONFIDENTIALITY OF RECORDS AND REPORTS; TO AMEND
13 SECTION 71-5-365, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
14 DEPARTMENT ON ITS OWN MOTION TO ADJUST CONTRIBUTIONS BY EMPLOYERS;
15 TO AMEND SECTION 71-5-505, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
16 THE DEPARTMENT ON ITS OWN MOTION TO NONCHARGE AN EMPLOYER FOR
17 BENEFITS PAID FOR UNEMPLOYMENT DUE TO A DECLARED DISASTER; TO
18 AMEND SECTION 71-5-511, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT
19 A BENEFICIARY MUST REGISTER AND REPORT FOR WORK WITH THE
20 DEPARTMENT; TO AMEND SECTION 71-5-513, MISSISSIPPI CODE OF 1972,
21 TO CLARIFY THE CONSIDERATION OF CERTAIN UNFAVORABLE WORKING
22 CONDITIONS BY THE DEPARTMENT IN THE DISQUALIFICATION OF AN
23 INDIVIDUAL FOR UNEMPLOYMENT BENEFITS; TO AMEND SECTION 71-5-517,
24 MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR TAKING
25 CLAIMS BY THE DEPARTMENT; AND FOR RELATED PURPOSES.

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

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

29 71-5-11. As used in this chapter, unless the context clearly
30 requires otherwise:

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

34 B. "Benefits" means the money payments payable to an
35 individual, as provided in this chapter, with respect to his
36 unemployment.

37 C. "Benefit year" with respect to any individual means the
38 period beginning with the first day of the first week with respect

39 to which he first files a valid claim for benefits, and ending
40 with the day preceding the same day of the same month in the next
41 calendar year; and, thereafter, the period beginning with the
42 first day of the first week with respect to which he next files
43 his valid claim for benefits, and ending with the day preceding
44 the same day of the same month in the next calendar year. Any
45 claim for benefits made in accordance with Section 71-5-515 shall
46 be deemed to be a "valid claim" for purposes of this subsection if
47 the individual has been paid the wages for insured work required
48 under Section 71-5-511(e).

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

51 E. "Calendar quarter" means the period of three (3)
52 consecutive calendar months ending on March 31, June 30, September
53 30, or December 31.

54 F. "Department" or "commission" means the Mississippi
55 Department of Employment Security, Office of the Governor.

56 G. "Executive director" means the Executive Director of the
57 Mississippi Department of Employment Security, Office of the
58 Governor, appointed under Section 71-5-107.

59 H. "Employing unit" means this state or another state or any
60 instrumentalities or any political subdivisions thereof or any of
61 their instrumentalities or any instrumentality of more than one
62 (1) of the foregoing or any instrumentality of any of the
63 foregoing and one or more other states or political subdivisions,
64 any Indian tribe as defined in Section 3306(u) of the Federal
65 Unemployment Tax Act (FUTA), which includes any subdivision,
66 subsidiary or business enterprise wholly owned by such Indian
67 tribe, any individual or type of organization, including any
68 partnership, association, trust, estate, joint-stock company,
69 insurance company, or corporation, whether domestic or foreign, or
70 the receiver, trustee in bankruptcy, trustee or successor thereof,
71 or the legal representative of a deceased person, which has or had

72 in its employ one or more individuals performing services for it
73 within this state. All individuals performing services within
74 this state for any employing unit which maintains two (2) or more
75 separate establishments within this state shall be deemed to be
76 employed by a single employing unit for all the purposes of this
77 chapter. Each individual employed to perform or to assist in
78 performing the work of any agent or employee of an employing unit
79 shall be deemed to be employed by such employing unit for all
80 purposes of this chapter, whether such individual was hired or
81 paid directly by such employing unit or by such agent or employee,
82 provided the employing unit had actual or constructive knowledge
83 of the work. All individuals performing services in the employ of
84 an elected fee-paid county official, other than those related by
85 blood or marriage within the third degree computed by the rule of
86 the civil law to such fee-paid county official, shall be deemed to
87 be employed by such county as the employing unit for all the
88 purposes of this chapter. For purposes of defining an "employing
89 unit" which shall pay contributions on remuneration paid to
90 individuals, if two (2) or more related corporations concurrently
91 employ the same individual and compensate such individual through
92 a common paymaster which is one (1) of such corporations, then
93 each such corporation shall be considered to have paid as
94 remuneration to such individual only the amounts actually
95 disbursed by it to such individual and shall not be considered to
96 have paid as remuneration to such individual such amounts actually
97 disbursed to such individual by another of such corporations.

98 I. "Employer" means:

99 (1) Any employing unit which,

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

104 (b) For some portion of a day in each of twenty
105 (20) different calendar weeks, whether or not such weeks were
106 consecutive, in either the current or the preceding calendar year
107 had in employment at least one (1) individual (irrespective of
108 whether the same individual was in employment in each such day),
109 except as provided in paragraph (9) of this subsection;

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

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

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

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

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

124 (6) Any individual or employing unit which acquired its
125 organization, trade, business, or substantially all the assets
126 thereof, from another employing unit, if the employment record of
127 the acquiring individual or employing unit subsequent to such
128 acquisition, together with the employment record of the acquired
129 organization, trade, or business prior to such acquisition, both
130 within the same calendar year, would be sufficient to constitute
131 an employing unit as an employer subject to this chapter under
132 paragraph (1) or (3) of this subsection;

133 (7) Any employing unit which, having become an employer
134 under paragraph (1), (3), (5) or (6) of this subsection or under
135 any other provisions of this chapter, has not, under Section
136 71-5-361, ceased to be an employer subject to this chapter;

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

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

145 (b) In determining whether or not an employing
146 unit for which service other than agricultural labor is also
147 performed is an employer under paragraph (1) or (4)(b) of this
148 subsection, the wages earned or the employment of an employee
149 performing services in agricultural labor, shall not be taken into
150 account. If an employing unit is determined an employer of
151 agricultural labor, such employing unit shall be determined an
152 employer for purposes of paragraph (1) of this subsection;

153 (10) All entities utilizing the services of any
154 employee leasing firm shall be considered the employer of the
155 individuals leased from the employee leasing firm. Temporary help
156 firms shall be considered the employer of the individuals they
157 provide to perform services for other individuals or
158 organizations.

159 J. "Employment" means and includes:

160 (1) Any service performed, which was employment as
161 defined in this section and, subject to the other provisions of
162 this subsection, including service in interstate commerce,
163 performed for wages or under any contract of hire, written or
164 oral, express or implied.

165 (2) Services performed for remuneration for a
166 principal:

167 (a) As an agent-driver or commission-driver
168 engaged in distributing meat products, vegetable products, fruit

169 products, bakery products, beverages (other than milk), or laundry
170 or dry cleaning services;

171 (b) As a traveling or city salesman, other than as
172 an agent-driver or commission-driver, engaged upon a full-time
173 basis in the solicitation on behalf of, and the transmission to, a
174 principal (except for sideline sales activities on behalf of some
175 other person) of orders from wholesalers, retailers, contractors,
176 or operator of hotels, restaurants, or other similar
177 establishments for merchandise for resale or supplies for use in
178 their business operations.

179 However, for purposes of this subsection, the term
180 "employment" shall include services described in subsection
181 I(2)(a) and (b) of this section, only if:

182 (i) The contract of service contemplates that
183 substantially all of the services are to be performed personally
184 by such individual;

185 (ii) The individual does not have a
186 substantial investment in facilities used in connection with the
187 performance of the services (other than in facilities for
188 transportation); and

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

192 (3) Service performed in the employ of this state or
193 any of its instrumentalities or any political subdivision thereof
194 or any of its instrumentalities or any instrumentality of more
195 than one (1) of the foregoing or any instrumentality of any of the
196 foregoing and one or more other states or political subdivisions
197 or any Indian tribe as defined in Section 3306(u) of the Federal
198 Unemployment Tax Act (FUTA), which includes any subdivision,
199 subsidiary or business enterprise wholly owned by such Indian
200 tribe; however, such service is excluded from "employment" as
201 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)

202 of that act and is not excluded from "employment" under subsection
203 I(5) of this section.

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

208 (b) The organization had four (4) or more
209 individuals in employment for some portion of a day in each of
210 twenty (20) different weeks, whether or not such weeks were
211 consecutive, within the current or preceding calendar year,
212 regardless of whether they were employed at the same moment of
213 time.

214 (5) For the purposes of subsection I(3) and (4) of this
215 section, the term "employment" does not apply to service
216 performed:

217 (a) In the employ of:

218 (i) A church or convention or association of
219 churches; or

220 (ii) An organization which is operated
221 primarily for religious purposes and which is operated,
222 supervised, controlled, or principally supported by a church or
223 convention or association of churches; or

224 (b) By a duly ordained, commissioned, or licensed
225 minister of a church in the exercise of his ministry, or by a
226 member of a religious order in the exercise of duties required by
227 such order; or

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

231 (i) As an elected official;

232 (ii) As a member of a legislative body, or a
233 member of the judiciary, of a state or political subdivision or a
234 member of an Indian tribal council;

235 (iii) As a member of the State National Guard
236 or Air National Guard;

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

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

243 1. A major nontenured policy-making or
244 advisory position, or

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

248 (d) In a facility conducted for the purpose of
249 carrying out a program of rehabilitation for individuals whose
250 earning capacity is impaired by age or physical or mental
251 deficiency or injury, or providing remunerative work for
252 individuals who because of their impaired physical or mental
253 capacity cannot be readily absorbed in the competitive labor
254 market, by an individual receiving such rehabilitation or
255 remunerative work; or

256 (e) By an inmate of a custodial or penal
257 institution; or

258 (f) As part of an unemployment work-relief or
259 work-training program assisted or financed in whole or in part by
260 any federal agency or agency of a state or political subdivision
261 thereof or of an Indian tribe, by an individual receiving such
262 work relief or work training, unless coverage of such service is
263 required by federal law or regulation.

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

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

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

271 (ii) For some portion of a day in each of
272 twenty (20) different calendar weeks, whether or not such weeks
273 were consecutive, in either the current or the preceding calendar
274 year, employed in agricultural labor ten (10) or more individuals,
275 regardless of whether they were employed at the same moment of
276 time.

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

281 (i) If such crew leader holds a valid
282 certificate of registration under the Farm Labor Contractor
283 Registration Act of 1963; or substantially all the members of such
284 crew operate or maintain tractors, mechanized harvesting or crop
285 dusting equipment, or any other mechanized equipment, which is
286 provided by such crew leader; and

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

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

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

296 (ii) Such other person shall be treated as
297 having paid cash remuneration to such individual in an amount
298 equal to the amount of cash remuneration paid to such individual
299 by the crew leader (either on his own behalf or on behalf of such

300 other person) for the service in agricultural labor performed for
301 such other person.

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

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

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

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

312 (7) The term "employment" shall include domestic
313 service in a private home, local college club or local chapter of
314 a college fraternity or sorority performed for an employing unit
315 which paid cash remuneration of One Thousand Dollars (\$1,000.00)
316 or more in any calendar quarter in the current or the preceding
317 calendar year to individuals employed in such domestic service.
318 For the purpose of this subsection, the term "employment" does not
319 apply to service performed as a "sitter" at a hospital in the
320 employ of an individual.

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

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

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

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

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

333 (9) Services not covered under paragraph (8) of this
334 subsection and performed entirely without this state, with respect
335 to no part of which contributions are required and paid under an
336 unemployment compensation law of any other state or of the federal
337 government, shall be deemed to be employment subject to this
338 chapter if the individual performing such services is a resident
339 of this state and the department approves the election of the
340 employing unit for whom such services are performed that the
341 entire service of such individual shall be deemed to be employment
342 subject to this chapter.

343 (10) Service shall be deemed to be localized within a
344 state if:

345 (a) The service is performed entirely within such
346 state; or

347 (b) The service is performed both within and
348 without such state, but the service performed without such state
349 is incidental to the individual's service within the state; for
350 example, is temporary or transitory in nature or consists of
351 isolated transactions.

352 (11) The services of an individual who is a citizen of
353 the United States, performed outside the United States (except in
354 Canada), in the employ of an American employer (other than service
355 which is deemed "employment" under the provisions of paragraph
356 (8), (9) or (10) of this subsection or the parallel provisions of
357 another state's law), if:

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

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

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

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

366 (iii) The employer is a partnership or a
367 trust and the number of the partners or trustees who are residents
368 of this state is greater than the number who are residents of any
369 one (1) other state; or

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

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

377 (i) An individual who is a resident of the
378 United States; or

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

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

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

385 (12) All services performed by an officer or member of
386 the crew of an American vessel on or in connection with such
387 vessel, if the operating office from which the operations of such
388 vessel operating on navigable waters within, or within and
389 without, the United States are ordinarily and regularly
390 supervised, managed, directed and controlled, is within this
391 state; notwithstanding the provisions of subsection I(8).

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

399 (14) Services performed by an individual for wages
400 shall be deemed to be employment subject to this chapter unless
401 and until it is shown to the satisfaction of the department that
402 such individual has been and will continue to be free from control
403 and direction over the performance of such services both under his
404 contract of service and in fact; and the relationship of employer
405 and employee shall be determined in accordance with the principles
406 of the common law governing the relation of master and servant.

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

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

411 (i) On a farm or in a forest in the employ of
412 any employing unit in connection with cultivating the soil, in
413 connection with cutting, planting, deadening, marking or otherwise
414 improving timber, or in connection with raising or harvesting any
415 agricultural or horticultural commodity, including the raising,
416 shearing, feeding, caring for, training, and management of
417 livestock, bees, poultry, fur-bearing animals and wildlife;

418 (ii) In the employ of the owner or tenant or
419 other operator of a farm, in connection with the operation,
420 management, conservation, improvement or maintenance of such farm
421 and its tools and equipment, or in salvaging timber or clearing
422 land of brush and other debris left by a hurricane, if the major
423 part of such service is performed on a farm;

424 (iii) In connection with the production or
425 harvesting of naval stores products or any commodity defined in
426 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g),
427 or in connection with the raising or harvesting of mushrooms, or
428 in connection with the ginning of cotton, or in connection with
429 the operation or maintenance of ditches, canals, reservoirs, or
430 waterways not owned or operated for profit, used exclusively for
431 supplying and storing water for farming purposes;

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

439 (B) In the employ of a group of
440 operators of farms (or a cooperative organization of which such
441 operators are members) in the performance of service described in
442 subitem (A), but only if such operators produced more than
443 one-half (1/2) of the commodity with respect to which such service
444 is performed;

445 (C) The provisions of subitems (A) and
446 (B) shall not be deemed to be applicable with respect to service
447 performed in connection with commercial canning or commercial
448 freezing or in connection with any agricultural or horticultural
449 commodity after its delivery to a terminal market for distribution
450 for consumption;

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

453 (vi) As used in paragraph (15)(a) of this
454 subsection, the term "farm" includes stock, dairy, poultry, fruit,
455 fur-bearing animals, and truck farms, plantations, ranches,
456 nurseries, ranges, greenhouses, or other similar structures used
457 primarily for the raising of agricultural or horticultural
458 commodities, and orchards.

459 (b) Domestic service in a private home, local
460 college club, or local chapter of a college fraternity or
461 sorority, except as provided in subsection I(7) of this section,
462 or service performed as a "sitter" at a hospital in the employ of
463 an individual.

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

466 (d) Service performed by an individual in the
467 employ of his son, daughter, or spouse, and service performed by a
468 child under the age of twenty-one (21) in the employ of his father
469 or mother.

470 (e) Service performed in the employ of the United
471 States government or of an instrumentality wholly owned by the
472 United States; except that if the Congress of the United States
473 shall permit states to require any instrumentalities of the United
474 States to make payments into an unemployment fund under a state
475 unemployment compensation act, then to the extent permitted by
476 Congress and from and after the date as of which such permission
477 becomes effective, all of the provisions of this chapter shall be
478 applicable to such instrumentalities and to services performed by
479 employees for such instrumentalities in the same manner, to the
480 same extent, and on the same terms as to all other employers and
481 employing units. If this state should not be certified under the
482 Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any
483 year, then the payment required by such instrumentality with
484 respect to such year shall be deemed to have been erroneously
485 collected and shall be refunded by the department from the fund in
486 accordance with the provisions of Section 71-5-383.

487 (f) Service performed in the employ of an
488 "employer" as defined by the Railroad Unemployment Insurance Act,
489 45 USCS Section 351(a), or as an "employee representative" as
490 defined by the Railroad Unemployment Insurance Act, 45 USCS
491 Section 351(f), and service with respect to which unemployment
492 compensation is payable under an unemployment compensation system
493 for maritime employees, or under any other unemployment
494 compensation system established by an act of Congress; however,
495 the department is authorized and directed to enter into agreements
496 with the proper agencies under such act or acts of Congress, which

497 agreements shall become effective ten (10) days after publication
498 thereof in the manner provided in Section 71-5-117 for general
499 rules, to provide reciprocal treatment to individuals who have,
500 after acquiring potential rights to benefits under this chapter,
501 acquired rights to unemployment compensation under such act or
502 acts of Congress or who have, after acquiring potential rights to
503 unemployment compensation under such act or acts of Congress,
504 acquired rights to benefits under this chapter.

505 (g) Service performed in any calendar quarter in
506 the employ of any organization exempt from income tax under the
507 Internal Revenue Code, 26 USCS Section 501(a) (other than an
508 organization described in 26 USCS Section 401(a)), or exempt from
509 income tax under 26 USCS Section 521 if the remuneration for such
510 service is less than Fifty Dollars (\$50.00).

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

513 (i) By a student who is enrolled and is
514 regularly attending classes at such school, college or university,
515 or

516 (ii) By the spouse of such a student if such
517 spouse is advised, at the time such spouse commences to perform
518 such service, that

519 (A) The employment of such spouse to
520 perform such service is provided under a program to provide
521 financial assistance to such student by such school, college, or
522 university, and

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

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

530 activities are carried on, as a student in a full-time program
531 taken for credit at such institution, which combines academic
532 instruction with work experience, if such service is an integral
533 part of such program and such institution has so certified to the
534 employer, except that this subparagraph shall not apply to service
535 performed in a program established for or on behalf of an employer
536 or group of employers.

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

540 (k) Service performed as a student nurse in the
541 employ of a hospital or a nurses' training school by an individual
542 who is enrolled and is regularly attending classes in a nurses'
543 training school chartered or approved pursuant to state law; and
544 services performed as an intern in the employ of a hospital by an
545 individual who has completed a four-year course in a medical
546 school chartered or approved pursuant to state law.

547 (l) Service performed by an individual as an
548 insurance agent or as an insurance solicitor, if all such service
549 performed by such individual is performed for remuneration solely
550 by way of commission.

551 (m) Service performed by an individual under the
552 age of eighteen (18) in the delivery or distribution of newspapers
553 or shopping news, not including delivery or distribution to any
554 point for subsequent delivery or distribution.

555 (n) If the services performed during one-half
556 (1/2) or more of any pay period by an employee for the employing
557 unit employing him constitute employment, all the services of such
558 employee for such period shall be deemed to be employment; but if
559 the services performed during more than one-half (1/2) of any such
560 pay period by an employee for the employing unit employing him do
561 not constitute employment, then none of the services of such
562 employee for such period shall be deemed to be employment. As

563 used in this subsection the term "pay period" means a period (of
564 not more than thirty-one (31) consecutive days) for which a
565 payment of remuneration is ordinarily made to the employee by the
566 employing unit employing him.

567 (o) Service performed by a barber or beautician
568 whose work station is leased to him or her by the owner of the
569 shop in which he or she works and who is compensated directly by
570 the patrons he or she serves and who is free from direction and
571 control by the lessor.

572 K. "Employment office" means a free public employment office
573 or branch thereof, operated by this state or maintained as a part
574 of the state controlled system of public employment offices.

575 L. "Public employment service" means the operation of a
576 program that offers free placement and referral services to
577 applicants and employers, including job development.

578 M. "Fund" means the Unemployment Compensation Fund
579 established by this chapter, to which all contributions required
580 and from which all benefits provided under this chapter shall be
581 paid.

582 N. "Hospital" means an institution which has been licensed,
583 certified, or approved by the State Department of Health as a
584 hospital.

585 O. "Institution of higher learning," for the purposes of
586 this section, means an educational institution which:

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

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

592 (3) Provides an educational program for which it awards
593 a bachelor's or higher degree, or provides a program which is
594 acceptable for full credit toward such a degree, a program of
595 postgraduate or postdoctoral studies, or a program of training to

596 prepare students for gainful employment in a recognized
597 occupation;

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

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

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

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

608 (3) The provisions of paragraphs (1) and (2) of
609 subsection P, as including the Virgin Islands, shall become
610 effective on the day after the day on which the United States
611 Secretary of Labor approves for the first time under Section
612 3304(a) of the Internal Revenue Code of 1954 an unemployment
613 compensation law submitted to the secretary by the Virgin Islands
614 for such approval.

615 Q. "Unemployment."

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

627 (2) An individual's week of total unemployment shall be
628 deemed to commence only after his registration at an employment

629 office, except as the department may by regulation otherwise
630 prescribe.

631 R. (1) "Wages" means all remuneration for personal
632 services, including commissions and bonuses and the cash value of
633 all remuneration in any medium other than cash, except that
634 "wages," for purposes of determining employer's coverage and
635 payment of contributions for agricultural and domestic service
636 means cash remuneration only. The reasonable cash value of
637 remuneration in any medium other than cash shall be estimated and
638 determined in accordance with rules prescribed by the department;
639 however, that the term "wages" shall not include:

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

646 (i) Retirement, or
647 (ii) Sickness or accident disability, or
648 (iii) Medical or hospitalization expenses in
649 connection with sickness or actual disability, or
650 (iv) Death, provided the employee:

651 (A) Has not the option to receive,
652 instead of provision for such death benefit, any part of such
653 payment or, if such death benefit is insured, any part of the
654 premiums (or contributions to premiums) paid by his employer, and

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

662 (b) Dismissal payments which the employer is not
663 legally required to make;

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

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

670 (i) Qualifies under Section 125 of the
671 Internal Revenue Code;

672 (ii) Covers only employees;

673 (iii) Covers only noncash benefits;

674 (iv) Does not include deferred compensation
675 plans.

676 (2) [Not enacted].

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

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

683 U. The term "includes" and "including," when used in a
684 definition contained in this chapter, shall not be deemed to
685 exclude other things otherwise within the meaning of the term
686 defined.

687 V. "Employee leasing arrangement" means any agreement
688 between an employee leasing firm and a client, whereby specified
689 client responsibilities such as payment of wages, reporting of
690 wages for unemployment insurance purposes, payment of unemployment
691 insurance contributions and other such administrative duties are
692 to be performed by an employee leasing firm, on an ongoing basis.

693 W. "Employee leasing firm" means any entity which provides
694 specified duties for a client company such as payment of wages,

695 reporting of wages for unemployment insurance purposes, payment of
696 unemployment insurance contributions and other administrative
697 duties, in connection with the client's employees, that are
698 directed and controlled by the client and that are providing
699 ongoing services for the client.

700 X. "Temporary help firm" means an entity which hires its own
701 employees and provides those employees to other individuals or
702 organizations to perform some service, to support or supplement
703 the existing work force in special situations such as employee
704 absences, temporary skill shortages, seasonal workloads and
705 special assignments and projects, with the expectation that the
706 worker's position will be terminated upon the completion of the
707 specified task or function.

708 Y. For the purposes of this chapter, the term "notice" shall
709 include any official communication, statement or other
710 correspondence required under the administration of this chapter,
711 and sent by the department through the United States Postal
712 Service or electronic or digital transfer, via modem or the
713 Internet.

714 **SECTION 2.** Section 71-5-19, Mississippi Code of 1972, is
715 amended as follows:

716 71-5-19. (1) Whoever makes a false statement or
717 representation knowing it to be false, or knowingly fails to
718 disclose a material fact, to obtain or increase any benefit or
719 other payment under this chapter or under an employment security
720 law of any other state, of the federal government or of a foreign
721 government, either for himself or for any other person, shall be
722 punished by a fine of not less than One Hundred Dollars (\$100.00)
723 nor more than Five Hundred Dollars (\$500.00), or by imprisonment
724 for not longer than thirty (30) days, or by both such fine and
725 imprisonment; and each such false statement or representation or
726 failure to disclose a material fact shall constitute a separate
727 offense.

728 (2) Any employing unit, any officer or agent of an employing
729 unit or any other person who makes a false statement or
730 representation knowing it to be false, or who knowingly fails to
731 disclose a material fact, to prevent or reduce the payment of
732 benefits to any individual entitled thereto, or to avoid becoming
733 or remaining subject hereto, or to avoid or reduce any
734 contribution or other payment required from any employing unit
735 under this chapter, or who willfully fails or refuses to make any
736 such contribution or other payment, or to furnish any reports
737 required hereunder or to produce or permit the inspection or
738 copying of records as required hereunder, shall be punished by a
739 fine of not less than One Hundred Dollars (\$100.00) nor more than
740 One Thousand Dollars (\$1,000.00), or by imprisonment for not
741 longer than sixty (60) days, or by both such fine and
742 imprisonment; and each such false statement, or representation, or
743 failure to disclose a material fact, and each day of such failure
744 or refusal shall constitute a separate offense. In lieu of such
745 fine and imprisonment, the employing unit or representative, or
746 both employing unit and representative, if such representative is
747 an employing unit in this state and is found to be a party to such
748 violation, shall not be eligible for a contributions rate of less
749 than five and four-tenths percent (5.4%) for the tax year in which
750 such violation is discovered by the department and for the next
751 two (2) succeeding tax years.

752 (3) Any person who shall willfully violate any provision of
753 this chapter or any other rule or regulation thereunder, the
754 violation of which is made unlawful or the observance of which is
755 required under the terms of this chapter and for which a penalty
756 is neither prescribed herein nor provided by any other applicable
757 statute, shall be punished by a fine of not less than One Hundred
758 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),
759 or by imprisonment for not longer than sixty (60) days, or by both
760 such fine and imprisonment; and each day such violation continues

761 shall be deemed to be a separate offense. In lieu of such fine
762 and imprisonment, the employing unit or representative, or both
763 employing unit and representative, if such representative is an
764 employing unit in this state and is found to be a party to such
765 violation, shall not be eligible for a contributions rate of less
766 than five and four-tenths percent (5.4%) for the tax year in which
767 the violation is discovered by the department and for the next two
768 (2) succeeding tax years.

769 (4) Any person who, by reason of the nondisclosure or
770 misrepresentation by him or by another of a material fact,
771 irrespective of whether such nondisclosure or misrepresentation
772 was known or fraudulent, or who, for any other reason has received
773 any such benefits under this chapter, while any conditions for the
774 receipt of benefits imposed by this chapter were not fulfilled in
775 his case, or while he was disqualified from receiving benefits,
776 shall, in the discretion of the department, either be liable to
777 have such sum deducted from any future benefits payable to him
778 under this chapter or shall be liable to repay to the department
779 for the Unemployment Compensation Fund a sum equal to the amount
780 so received by him; and such sum shall be collectible in the
781 manner provided in Sections 71-5-363 through 71-5-383 for the
782 collection of past-due contributions. * * *

783 (5) The department, by agreement with another state or the
784 United States, as provided under Section 303(g) of the Social
785 Security Act, may recover any overpayment of benefits paid to any
786 individual under the laws of this state or of another state or
787 under an unemployment benefit program of the United States. Any
788 overpayments subject to this subsection may be deducted from any
789 future benefits payable to the individual under the laws of this
790 state or of another state or under an unemployment program of the
791 United States.

792 **SECTION 3.** Section 71-5-119, Mississippi Code of 1972, is
793 amended as follows:

794 71-5-119. The department shall cause to be available for
795 distribution to the public the text of this chapter, its
796 regulations and general rules, its reports to the Governor, and
797 any other material it deems relevant and suitable, and shall
798 furnish the same to any person upon application therefor.

799 **SECTION 4.** Section 71-5-127, Mississippi Code of 1972, is
800 amended as follows:

801 71-5-127. (1) Any information or records concerning an
802 individual or employing unit obtained by the department pursuant
803 to the administration of this chapter or any other federally
804 funded programs for which the department has responsibility shall
805 be private and confidential, except as otherwise provided in this
806 article or by regulation. Information or records may be released
807 by the department when the release is required by the federal
808 government in connection with, or as a condition of funding for, a
809 program being administered by the department.

810 (2) Each employing unit shall keep true and accurate work
811 records, containing such information as the department may
812 prescribe. Such records shall be open to inspection and be
813 subject to being copied by the department or its authorized
814 representatives at any reasonable time and as often as may be
815 necessary. The department, Board of Review and any referee may
816 require from any employing unit any sworn or unsworn reports with
817 respect to persons employed by it which they or any of them deem
818 necessary for the effective administration of this chapter.
819 Information, statements, transcriptions of proceedings,
820 transcriptions of recordings, electronic recordings, letters,
821 memoranda, and other documents and reports thus obtained or
822 obtained from any individual pursuant to the administration of
823 this chapter shall, except to the extent necessary for the proper
824 administration of this chapter, be held confidential and shall not
825 be published or be opened to public inspection (other than to

826 public employees in the performance of their public duties) in any
827 manner revealing the individual's or employing unit's identity.

828 (3) * * * Any claimant or his legal representative at a
829 hearing before an appeal tribunal or the Board of Review shall be
830 supplied with information from such records to the extent
831 necessary for the proper presentation of his claim in any
832 proceeding pursuant to this chapter.

833 (4) Any employee or member of the Board of Review or any
834 employee of the department who violates any provisions of this
835 section shall be fined not less than Twenty Dollars (\$20.00) nor
836 more than Two Hundred Dollars (\$200.00), or imprisoned for not
837 longer than ninety (90) days, or both.

838 (5) The department may make the state's records relating to
839 the administration of this chapter available to the Railroad
840 Retirement Board, and may furnish the Railroad Retirement Board,
841 at the expense of such board, such copies thereof as the Railroad
842 Retirement Board deems necessary for its purposes. The department
843 may afford reasonable cooperation with every agency of the United
844 States charged with the administration of any unemployment
845 insurance law.

846 **SECTION 5.** Section 71-5-135, Mississippi Code of 1972, is
847 amended as follows:

848 71-5-135. If any employing unit fails to make any report
849 required by this chapter, the department or its authorized agents
850 shall give * * * notice * * * to such employing unit to make and
851 file such report within fifteen (15) days from the date of such
852 notice. If such employing unit, by its proper members, officers
853 or agents, shall fail or refuse to make and file such reports
854 within such time, then and in that event such report shall be made
855 by the department or its authorized agents from the best
856 information available, and the amount of contributions due shall
857 be computed thereon; and such report shall be prima facie correct
858 for the purposes of this chapter.

859 **SECTION 6.** Section 71-5-355, Mississippi Code of 1972, is
860 amended as follows:

861 71-5-355. (1) As used in this section, the following words
862 and phrases shall have the following meanings, unless the context
863 clearly requires otherwise:

864 (a) "Tax year" means any period beginning on January 1
865 and ending on December 31 of a year.

866 (b) "Computation date" means June 30 of any calendar
867 year immediately preceding the tax year during which the
868 particular contribution rates are effective.

869 (c) "Effective date" means January 1 of the tax year.

870 (d) Except as hereinafter provided, "payroll" means the
871 total of all wages paid for employment by an employer as defined
872 in Section 71-5-11, subsection H, plus the total of all
873 remuneration paid by such employer excluded from the definition of
874 wages by Section 71-5-351. For the computation of modified rates,
875 "payroll" means the total of all wages paid for employment by an
876 employer as defined in Section 71-5-11, subsection H.

877 (e) For the computation of modified rates, "eligible
878 employer" means an employer whose experience-rating record has
879 been chargeable with benefits throughout the thirty-six (36)
880 consecutive calendar-month period ending on the computation date,
881 except that any employer who has not been subject to the
882 Mississippi Employment Security Law for a period of time
883 sufficient to meet the thirty-six (36) consecutive calendar-month
884 requirement shall be an eligible employer if his experience-rating
885 record has been chargeable throughout not less than the twelve
886 (12) consecutive calendar-month period ending on the computation
887 date. No employer shall be considered eligible for a contribution
888 rate less than five and four-tenths percent (5.4%) with respect to
889 any tax year, who has failed to file any two (2) quarterly reports
890 within the qualifying period by September 30 following the
891 computation date. No employer or employing unit shall be eligible

892 for a contribution rate of less than five and four-tenths percent
893 (5.4%) for the tax year in which the employing unit is found by
894 the department to be in violation of Section 71-5-19(2) or (3) and
895 for the next two (2) succeeding tax years. No representative of
896 such employing unit who was a party to a violation as described in
897 Section 71-5-19(2) or (3), if such representative was or is an
898 employing unit in this state, shall be eligible for a contribution
899 rate of less than five and four-tenths percent (5.4%) for the tax
900 year in which such violation was detected by the department and
901 for the next two (2) succeeding tax years.

902 (f) With respect to any tax year, "reserve ratio" means
903 the ratio which the total amount available for the payment of
904 benefits in the Unemployment Compensation Fund, excluding any
905 amount which has been credited to the account of this state under
906 Section 903 of the Social Security Act, as amended, and which has
907 been appropriated for the expenses of administration pursuant to
908 Section 71-5-457 whether or not withdrawn from such account, on
909 November 1 of each calendar year bears to the aggregate of the
910 taxable payrolls of all employers for the twelve (12) calendar
911 months ending on June 30 next preceding.

912 (g) "Modified rates" means the rates of employer
913 contributions determined under the provisions of this chapter and
914 the rates of newly subject employers, as provided in Section
915 71-5-353.

916 (h) For the computation of modified rates, "qualifying
917 period" means a period of not less than the thirty-six (36)
918 consecutive calendar months ending on the computation date
919 throughout which an employer's experience-rating record has been
920 chargeable with benefits; except that with respect to any eligible
921 employer who has not been subject to this article for a period of
922 time sufficient to meet the thirty-six (36) consecutive
923 calendar-month requirement, "qualifying period" means the period
924 ending on the computation date throughout which his

925 experience-rating record has been chargeable with benefits, but in
926 no event less than the twelve (12) consecutive calendar-month
927 period ending on the computation date throughout which his
928 experience-rating record has been so chargeable.

929 (i) The "exposure criterion" (EC) is defined as the
930 cash balance of the Unemployment Compensation Fund which is
931 available for the payment of benefits as of November 1 of each
932 calendar year, divided by the total wages, exclusive of wages paid
933 by all state agencies, all political subdivisions, reimbursable
934 nonprofit corporations, and tax exempt public service employment,
935 for the twelve-month period ending June 30 immediately preceding
936 such date. The EC shall be computed to four (4) decimal places.

937 (j) The "cost rate criterion" (CRC) is defined as
938 follows: Beginning with January 1974, the benefits paid for the
939 twelve-month period ending December 1974 are summed and divided by
940 the total wages for the twelve-month period ending on June 30,
941 1975. Similar ratios are computed by subtracting the earliest
942 month's benefit payments and adding the benefits of the next month
943 in the sequence and dividing each sum of twelve (12) months'
944 benefits by the total wages for the twelve-month period ending on
945 the June 30 which is nearest to the final month of the period used
946 to compute the numerator. If December is the final month of the
947 period used to compute the numerator, then the twelve-month period
948 ending the following June 30 will be used for the denominator.
949 The highest value of these ratios beginning with the ratio for
950 benefits paid in calendar year 1974 is the cost rate criterion.
951 The cost rate criterion shall be computed to four (4) decimal
952 places. Benefits and total wages used in the computation of the
953 cost rate criterion shall exclude all benefits and total wages
954 applicable to state agencies, political subdivisions, reimbursable
955 nonprofit corporations, and tax exempt PSE employment. For rate
956 years 2005 and 2006, the CRC shall be adjusted downward by an
957 amount necessary to satisfy one-half (1/2) the reductions required

958 to maintain a general experience rate of nine-tenths of one
959 percent (.9%). For rate year 2007 and subsequent years, the CRC
960 shall be adjusted downward by an amount necessary to satisfy
961 one-half (1/2) the reductions required to maintain a general
962 experience rate of seven-tenths of one percent (.7%) until such
963 time as the CRC equals the average for the highest value of the
964 cost rate criterion computations during each of the economic
965 cycles (economic cycles shall be those defined by the National
966 Bureau of Economic Research) since the calendar year 1974, except
967 as provided in subsection (3) of Section 71-5-353. When the
968 remaining reduction is insufficient to cause the reductions as
969 specified in this paragraph, additional reductions specified in
970 subsection (1)(k) of this section may be made to the size of fund
971 index to achieve the general experience rate specified in this
972 paragraph, except as provided in Section 71-3-353. The CRC shall
973 not be raised except as provided through annual computations and
974 additions of future economic cycles.

975 (k) "Size of fund index" (SOFI) is defined as the ratio
976 of the EC to the CRC. For the rate years 2005 and 2006, the SOFI
977 shall be adjusted downward by an amount necessary to satisfy
978 one-half (1/2) the reductions required to maintain a general
979 experience rate of nine-tenths of one percent (.9%). For rate
980 year 2007 and subsequent years, the SOFI shall be adjusted
981 downward by an amount necessary to satisfy one-half (1/2) the
982 reductions required to maintain a minimum general experience rate
983 of seven-tenths of one percent (.7%) until such time as the SOFI
984 is reduced from a target size of 1.5 to 1.0, except as provided in
985 subsection (3) of Section 71-5-353. The SOFI shall not be raised
986 in any event. In the event Section 71-5-353 is suspended, the
987 SOFI shall remain at the current level until the suspension is
988 lifted.

989 (l) No employer's contribution rate shall exceed five
990 and four-tenths percent (5.4%), nor be less than four-tenths of

991 one percent (.4%). However, from and after January 1, 2005, and
992 continuing unless Section 71-5-353(3) shall be suspended, the
993 reduction shall be accomplished as described in Section
994 71-5-355(1)(j) and (k), no employer's unemployment contribution
995 rate shall be less than one-tenth of one percent (.1%).

996 (2) Modified rates:

997 (a) For any tax year, when the reserve ratio on the
998 preceding November 1, in the case of any tax year, equals or
999 exceeds four percent (4%), the modified rates, as hereinafter
1000 prescribed, shall be in effect.

1001 (b) Modified rates shall be determined for the tax year
1002 for each eligible employer on the basis of his experience-rating
1003 record in the following manner:

1004 (i) The department shall maintain an
1005 experience-rating record for each employer. Nothing in this
1006 chapter shall be construed to grant any employer or individuals
1007 performing services for him any prior claim or rights to the
1008 amounts paid by the employer into the fund.

1009 (ii) Benefits paid to an eligible individual shall
1010 be charged against the experience-rating record of his base period
1011 employers in the proportion to which the wages paid by each base
1012 period employer bears to the total wages paid to the individual by
1013 all the base period employers, provided that benefits shall not be
1014 charged to an employer's experience-rating record if the
1015 department finds that the individual:

1016 1. Voluntarily left the employ of such
1017 employer without good cause attributable to the employer;

1018 2. Was discharged by such employer for
1019 misconduct connected with his work;

1020 3. Refused an offer of suitable work by such
1021 employer without good cause, and the department further finds that
1022 such benefits are based on wages for employment for such employer

1023 prior to such voluntary leaving, discharge or refusal of suitable
1024 work, as the case may be;

1025 4. Had base period wages which included wages
1026 for previously uncovered services as defined in Section
1027 71-5-511(e) to the extent that the Unemployment Compensation Fund
1028 is reimbursed for such benefits pursuant to Section 121 of Public
1029 Law 94-566;

1030 5. Extended benefits paid under the
1031 provisions of Section 71-5-541 which are not reimbursable from
1032 federal funds shall be charged to the experience-rating record of
1033 base period employers;

1034 6. Is still working for such employer on a
1035 regular part-time basis under the same employment conditions as
1036 hired. Provided, however, that benefits shall be charged against
1037 an employer if an eligible individual is paid benefits who is
1038 still working for such employer on a part-time "as-needed" basis;

1039 7. Was hired to replace a United States
1040 serviceman or servicewoman called into active duty and was laid
1041 off upon the return to work by that serviceman or servicewoman,
1042 unless such employer is a state agency or other political
1043 subdivision or instrumentality of the state;

1044 8. Was paid benefits during any week while in
1045 training with the approval of the department, under the provisions
1046 of Section 71-5-513B, or for any week while in training approved
1047 under Section 236(a)(1) of the Trade Act of 1974, under the
1048 provisions of Section 71-5-513C; or

1049 9. Is not required to serve the one-week
1050 waiting period as described in Section 71-5-505(2). In that
1051 event, only the benefits paid in lieu of the waiting period week
1052 may be noncharged.

1053 (iii) The department shall compute a benefit ratio
1054 for each eligible employer, which shall be the quotient obtained
1055 by dividing the total benefits charged to his experience-rating

1056 record during the period his experience-rating record has been
 1057 chargeable, but not less than the twelve (12) consecutive
 1058 calendar-month period nor more than the thirty-six (36)
 1059 consecutive calendar-month period ending on the computation date,
 1060 by his total taxable payroll for the same period on which all
 1061 contributions due have been paid on or before the September 30
 1062 immediately following the computation date. Such benefit ratio
 1063 shall be computed to the tenth of a percent (.1%), rounding any
 1064 remainder to the next higher tenth.

1065 The following table shall be applied to reduce contribution
 1066 rates until Section 71-5-353(3) and (4) is suspended:

1067	Benefit Ratio	Individual Experience Rate:
1068	0.0%	- 0.3%
1069	0.1	- 0.2
1070	0.2	- 0.10
1071	0.3	0.0
1072	0.4	0.1
1073	0.5	0.2
1074	0.6	0.3
1075	0.7	0.4
1076	0.8	0.5
1077	0.9	0.6
1078	1.0	0.7
1079	1.1	0.8
1080	1.2	0.9
1081	1.3	1.0
1082	1.4	1.1
1083	1.5	1.2
1084	1.6	1.3
1085	1.7	1.4
1086	1.8	1.5
1087	1.9	1.6
1088	2.0	1.7

1089	2.1	1.8
1090	2.2	1.9
1091	2.3	2.0
1092	2.4	2.1
1093	2.5	2.2
1094	2.6	2.3
1095	2.7	2.4
1096	2.8	2.5
1097	2.9	2.6
1098	3.0	2.7
1099	3.1	2.8
1100	3.2	2.9
1101	3.3	3.0
1102	3.4	3.1
1103	3.5	3.2
1104	3.6	3.3
1105	3.7	3.4
1106	3.8	3.5
1107	3.9	3.6
1108	4.0	3.7
1109	4.1	3.8
1110	4.2	3.9
1111	4.3	4.0
1112	4.4	4.1
1113	4.5	4.2
1114	4.6	4.3
1115	4.7	4.4
1116	4.8	4.5
1117	4.9	4.6
1118	5.0	4.7
1119	5.1	4.8
1120	5.2	4.9
1121	5.3	5.0

1122	5.4	5.1
1123	5.5	5.2
1124	5.6	5.3
1125	5.7 and above	5.4

1126 (iv) 1. The contribution rate for each eligible
1127 employer shall be the sum of two (2) rates: his individual
1128 experience rate in the range from zero percent (0%) to five and
1129 four-tenths percent (5.4%), plus a general experience rate. In no
1130 event shall the resulting rate be in excess of five and
1131 four-tenths percent (5.4%).

1132 2. The employer's individual experience rate
1133 shall be equal to his benefit ratio as computed under subsection
1134 (2)(b)(iii) above.

1135 3. The general experience rate shall be
1136 determined in the following manner: The department shall
1137 determine annually, for the thirty-six (36) consecutive
1138 calendar-month period ending on the computation date, the amount
1139 of benefits which were not charged to the record of any employer
1140 and of benefits which were ineffectively charged to the employer's
1141 experience-rating record. For the purposes of subsection
1142 (2)(b)(iv)3, the term "ineffectively charged benefits" shall
1143 include:

1144 The total of the amounts of benefits charged to the
1145 experience-rating records of all eligible employers which caused
1146 their benefit ratios to exceed five and four-tenths percent
1147 (5.4%), the total of the amounts of benefits charged to the
1148 experience-rating records of all ineligible employers which would
1149 cause their benefit ratios to exceed five and four-tenths percent
1150 (5.4%) if they were eligible employers, and the total of the
1151 amounts of benefits charged or chargeable to the experience-rating
1152 record of any employer who has discontinued his business or whose
1153 coverage has been terminated within such period; provided, that
1154 solely for the purposes of determining the amounts of

1155 ineffectively charged benefits as herein defined, a "benefit
1156 ratio" shall be computed for each ineligible employer, which shall
1157 be the quotient obtained by dividing the total benefits charged to
1158 his experience-rating record throughout the period ending on the
1159 computation date, during which his experience-rating record has
1160 been chargeable with benefits, by his total taxable payroll for
1161 the same period on which all contributions due have been paid on
1162 or before the September 30 immediately following the computation
1163 date; and provided further, that such benefit ratio shall be
1164 computed to the tenth of one percent (.1%) and any remainder shall
1165 be rounded to the next higher tenth. The ratio of the sum of
1166 these amounts to the taxable wages paid during the same period by
1167 all eligible employers whose benefit ratio did not exceed five and
1168 four-tenths percent (5.4%), computed to the next higher tenth of
1169 one percent (.1%), shall be the general experience rate.

1170 4. The general experience rate shall be
1171 adjusted by use of the size of fund index factor. This factor may
1172 be positive or negative, and shall be determined as follows: From
1173 the target SOFI, as defined in subsection (1)(k) of this section,
1174 subtract the simple average of the current and preceding years'
1175 exposure criterions divided by the cost rate criterion, as defined
1176 in subsection (1)(j) of this section. The result is then
1177 multiplied by the product of the CRC, as defined in subsection
1178 (1)(j) of this section, and total wages for the twelve-month
1179 period ending June 30 divided by the taxable wages for the
1180 twelve-month period ending June 30. This is the percentage
1181 positive or negative added to the general experience rate. This
1182 percentage is computed to one (1) decimal place, and rounded to
1183 the next higher tenth.

1184 5. Notwithstanding any other provisions of
1185 subsection (2)(b)(iv), if the general experience rate for any tax
1186 year as computed and adjusted on the basis of the size of fund
1187 index is a negative percentage, it shall be disregarded.

1188 6. The department shall include in its annual
1189 rate notice to employers a brief explanation of the elements of
1190 the general experience rate, and shall include in its regular
1191 publications an annual analysis of benefits not charged to the
1192 record of any employer, and of the benefit experience of employers
1193 by industry group whose benefit ratio exceeds four percent (4%),
1194 and of any other factors which may affect the size of the general
1195 experience rate.

1196 (v) When any employing unit in any manner succeeds
1197 to or acquires the organization, trade, business or substantially
1198 all the assets thereof of an employer, excepting any assets
1199 retained by such employer incident to the liquidation of his
1200 obligations, whether or not such acquiring employing unit was an
1201 employer within the meaning of Section 71-5-11, subsection H,
1202 prior to such acquisition, and continues such organization, trade
1203 or business, the experience-rating and payroll records of the
1204 predecessor employer shall be transferred as of the date of
1205 acquisition to the successor employer for the purpose of rate
1206 determination.

1207 (vi) When any employing unit succeeds to or
1208 acquires a distinct and severable portion of an organization,
1209 trade or business, the experience-rating and payroll records of
1210 such portion, if separately identifiable, shall be transferred to
1211 the successor upon:

1212 1. The mutual consent of the predecessor and
1213 the successor;

1214 2. Approval of the department;

1215 3. Continued operation of the transferred
1216 portion by the successor after transfer; and

1217 4. The execution and the filing with the
1218 department by the predecessor employer of a waiver relinquishing
1219 all rights to have the experience-rating and payroll records of

1220 the transferred portion used for the purpose of determining
1221 modified rates of contribution for such predecessor.

1222 (vii) If the successor was an employer subject to
1223 this chapter prior to the date of acquisition, it shall continue
1224 to pay contributions at the rate applicable to it from the date
1225 the acquisition occurred until the end of the then current tax
1226 year. If the successor was not an employer prior to the date of
1227 acquisition, it shall pay contributions at the rate applicable to
1228 the predecessor or, if more than one (1) predecessor and the same
1229 rate is applicable to both, the rate applicable to the predecessor
1230 or predecessors, from the date the acquisition occurred until the
1231 end of the then current tax year. If the successor was not an
1232 employer prior to the date the acquisition occurred and
1233 simultaneously acquires the businesses of two (2) or more
1234 employers to whom different rates of contributions are applicable,
1235 it shall pay contributions from the date of the acquisition until
1236 the end of the current tax year at a rate computed on the basis of
1237 the combined experience-rating and payroll records of the
1238 predecessors as of the computation date for such tax year. In all
1239 cases the rate of contributions applicable to such successor for
1240 each succeeding tax year shall be computed on the basis of the
1241 combined experience-rating and payroll records of the successor
1242 and the predecessor or predecessors.

1243 (viii) The department shall notify each employer
1244 quarterly of the benefits paid and charged to his
1245 experience-rating record; and such notification, in the absence of
1246 an application for redetermination filed within thirty (30) days
1247 after the date of * * * such notice, shall be final, conclusive
1248 and binding upon the employer for all purposes. A
1249 redetermination, made after notice and opportunity for a fair
1250 hearing, by a hearing officer designated by the department who
1251 shall consider and decide these and related applications and
1252 protests; and the finding of fact in connection therewith may be

1253 introduced into any subsequent administrative or judicial
1254 proceedings involving the determination of the rate of
1255 contributions of any employer for any tax year, and shall be
1256 entitled to the same finality as is provided in this subsection
1257 with respect to the findings of fact in proceedings to redetermine
1258 the contribution rate of an employer.

1259 (ix) The department shall notify each employer of
1260 his rate of contribution as determined for any tax year as soon as
1261 reasonably possible after November 1 of the preceding year. Such
1262 determination shall be final, conclusive and binding upon such
1263 employer unless, within thirty (30) days after the date of * * *
1264 such notice to his last known address, the employer files with the
1265 department an application for review and redetermination of his
1266 contribution rate, setting forth his reasons therefor. If the
1267 department grants such review, the employer shall be promptly
1268 notified thereof and shall be afforded an opportunity for a fair
1269 hearing by a hearing officer designated by the department who
1270 shall consider and decide these and related applications and
1271 protests; but no employer shall be allowed, in any proceeding
1272 involving his rate of contributions or contribution liability, to
1273 contest the chargeability to his account of any benefits paid in
1274 accordance with a determination, redetermination or decision
1275 pursuant to Sections 71-5-515 through 71-5-533 except upon the
1276 ground that the services on the basis of which such benefits were
1277 found to be chargeable did not constitute services performed in
1278 employment for him, and then only in the event that he was not a
1279 party to such determination, redetermination, decision or to any
1280 other proceedings provided in this chapter in which the character
1281 of such services was determined. The employer shall be promptly
1282 notified of the denial of this application or of the
1283 redetermination, both of which shall become final unless, within
1284 ten (10) days after the date of * * * notice thereof, there shall
1285 be an appeal to the department itself. Any such appeal shall be

1286 on the record before said designated hearing officer, and the
1287 decision of said department shall become final unless, within
1288 thirty (30) days after the date of * * * notice thereof to the
1289 employer's last known address, there shall be an appeal to the
1290 Circuit Court of the First Judicial District of Hinds County,
1291 Mississippi, in accordance with the provisions of law with respect
1292 to review of civil causes by certiorari.

1293 (3) Notwithstanding any other provision of law, the
1294 following shall apply regarding assignment of rates and transfers
1295 of experience:

1296 (a) (i) If an employer transfers its trade or
1297 business, or a portion thereof, to another employer and, at the
1298 time of the transfer, there is substantially common ownership,
1299 management or control of the two (2) employers, then the
1300 unemployment experience attributable to the transferred trade or
1301 business shall be transferred to the employer to whom such
1302 business is so transferred. The rates of both employers shall be
1303 recalculated and made effective on January 1 of the year following
1304 the year the transfer occurred.

1305 (ii) If, following a transfer of experience under
1306 subparagraph (i) of this paragraph (a), the department determines
1307 that a substantial purpose of the transfer of trade or business
1308 was to obtain a reduced liability of contributions, then the
1309 experience-rating accounts of the employers involved shall be
1310 combined into a single account and a single rate assigned to such
1311 account.

1312 (b) Whenever a person who is not an employer or an
1313 employing unit under this chapter at the time it acquires the
1314 trade or business of an employer, the unemployment experience of
1315 the acquired business shall not be transferred to such person if
1316 the department finds that such person acquired the business solely
1317 or primarily for the purpose of obtaining a lower rate of
1318 contributions. Instead, such person shall be assigned the new

1319 employer rate under Section 71-5-353. In determining whether the
1320 business was acquired solely or primarily for the purpose of
1321 obtaining a lower rate of contributions, the department shall use
1322 objective factors which may include the cost of acquiring the
1323 business, whether the person continued the business enterprise of
1324 the acquired business, how long such business enterprise was
1325 continued, or whether a substantial number of new employees were
1326 hired for performance of duties unrelated to the business activity
1327 conducted prior to acquisition.

1328 (c) (i) If a person knowingly violates or attempts to
1329 violate paragraph (a) or (b) of this subsection or any other
1330 provision of this chapter related to determining the assignment of
1331 a contribution rate, or if a person knowingly advises another
1332 person in a way that results in a violation of such provision, the
1333 person shall be subject to the following penalties:

1334 1. If the person is an employer, then such
1335 employer shall be assigned the highest rate assignable under this
1336 chapter for the rate year during which such violation or attempted
1337 violation occurred and the three (3) rate years immediately
1338 following this rate year. However, if the person's business is
1339 already at such highest rate for any year, or if the amount of
1340 increase in the person's rate would be less than two percent (2%)
1341 for such year, then a penalty rate of contributions of two percent
1342 (2%) of taxable wages shall be imposed for such year. The penalty
1343 rate will apply to the successor business as well as the related
1344 entity from which the employees were transferred in an effort to
1345 obtain a lower rate of contributions.

1346 2. If the person is not an employer, such
1347 person shall be subject to a civil money penalty of not more than
1348 Five Thousand Dollars (\$5,000.00). Each such transaction for
1349 which advice was given and each occurrence or reoccurrence after
1350 notification being given by the department shall be a separate
1351 offense and punishable by a separate penalty. Any such fine shall

1352 be deposited in the penalty and interest account established under
1353 Section 71-5-114.

1354 (ii) For purposes of this paragraph (c), the term
1355 "knowingly" means having actual knowledge of or acting with
1356 deliberate ignorance or reckless disregard for the prohibition
1357 involved.

1358 (iii) For purposes of this paragraph (c), the term
1359 "violates or attempts to violate" includes, but is not limited to,
1360 intent to evade, misrepresentation or willful nondisclosure.

1361 (iv) In addition to the penalty imposed by
1362 subparagraph (i) of this paragraph (c), any violation of this
1363 subsection may be punishable by a fine of not more than Ten
1364 Thousand Dollars (\$10,000.00) or by imprisonment for not more than
1365 five (5) years, or by both such fine and imprisonment. This
1366 subsection shall prohibit prosecution under any other criminal
1367 statute of this state.

1368 (d) The department shall establish procedures to
1369 identify the transfer or acquisition of a business for purposes of
1370 this subsection.

1371 (e) For purposes of this subsection:

1372 (i) "Person" has the meaning given such term by
1373 Section 7701(a)(1) of the Internal Revenue Code of 1986; and

1374 (ii) "Employing unit" has the meaning as set forth
1375 in Section 71-5-11.

1376 (f) This subsection shall be interpreted and applied in
1377 such a manner as to meet the minimum requirements contained in any
1378 guidance or regulations issued by the United States Department of
1379 Labor.

1380 **SECTION 7.** Section 71-5-357, Mississippi Code of 1972, is
1381 amended as follows:

1382 71-5-357. Benefits paid to employees of nonprofit
1383 organizations shall be financed in accordance with the provisions
1384 of this section. For the purpose of this section, a nonprofit

1385 organization is an organization (or group of organizations)
1386 described in Section 501(c)(3) of the Internal Revenue Code of
1387 1954 which is exempt from income tax under Section 501(a) of such
1388 code (26 USCS Section 501).

1389 (a) Any nonprofit organization which, under Section
1390 71-5-11, subsection I(3), is or becomes subject to this chapter
1391 shall pay contributions under the provisions of Sections 71-5-351
1392 through 71-5-355 unless it elects, in accordance with this
1393 paragraph, to pay to the department for the unemployment fund an
1394 amount equal to the amount of regular benefits and one-half (1/2)
1395 of the extended benefits paid, that is attributable to service in
1396 the employ of such nonprofit organization, to individuals for
1397 weeks of unemployment which begin during the effective period of
1398 such election.

1399 (i) Any nonprofit organization which becomes
1400 subject to this chapter may elect to become liable for payments in
1401 lieu of contributions for a period of not less than twelve (12)
1402 months, beginning with the date on which such subjectivity begins,
1403 by filing a written notice of its election with the department not
1404 later than thirty (30) days immediately following the date of the
1405 determination of such subjectivity.

1406 (ii) Any nonprofit organization which makes an
1407 election in accordance with subparagraph (i) of this paragraph
1408 will continue to be liable for payments in lieu of contributions
1409 unless it files with the department a written termination notice
1410 not later than thirty (30) days prior to the beginning of the tax
1411 year for which such termination shall first be effective.

1412 (iii) Any nonprofit organization which has been
1413 paying contributions under this chapter may change to a
1414 reimbursable basis by filing with the department, not later than
1415 thirty (30) days prior to the beginning of any tax year, a written
1416 notice of election to become liable for payments in lieu of

1417 contributions. Such election shall not be terminable by the
1418 organization for that and the next tax year.

1419 (iv) The department may for good cause extend the
1420 period within which a notice of election or a notice of
1421 termination must be filed, and may permit an election to be
1422 retroactive.

1423 (v) The department, in accordance with such
1424 regulations as it may prescribe, shall notify each nonprofit
1425 organization of any determination which it may make of its status
1426 as an employer, of the effective date of any election which it
1427 makes and of any termination of such election. Such
1428 determinations shall be subject to reconsideration, appeal and
1429 review in accordance with the provisions of Sections 71-5-351
1430 through 71-5-355.

1431 (b) Payments in lieu of contributions shall be made in
1432 accordance with the provisions of subparagraph (i) of this
1433 paragraph.

1434 (i) At the end of each calendar quarter, or at the
1435 end of any other period as determined by the department, the
1436 department shall bill each nonprofit organization (or group of
1437 such organizations) which has elected to make payments in lieu of
1438 contributions, for an amount equal to the full amount of regular
1439 benefits plus one-half (1/2) of the amount of extended benefits
1440 paid during such quarter or other prescribed period that is
1441 attributable to service in the employ of such organization.

1442 (ii) Payment of any bill rendered under
1443 subparagraph (i) of this paragraph shall be made not later than
1444 forty-five (45) days after such bill was delivered to the * * *
1445 nonprofit organization * * *, unless there has been an application
1446 for review and redetermination in accordance with subparagraph (v)
1447 of this paragraph.

1448 1. All of the enforcement procedures for the
1449 collection of delinquent contributions contained in Sections

1450 71-5-363 through 71-5-383 shall be applicable in all respects for
1451 the collection of delinquent payments due by nonprofit
1452 organizations who have elected to become liable for payments in
1453 lieu of contributions.

1454 2. If any nonprofit organization is
1455 delinquent in making payments in lieu of contributions, the
1456 department may terminate such organization's election to make
1457 payments in lieu of contributions as of the beginning of the next
1458 tax year, and such termination shall be effective for the balance
1459 of such tax year.

1460 (iii) Payments made by any nonprofit organization
1461 under the provisions of this paragraph shall not be deducted or
1462 deductible, in whole or in part, from the remuneration of
1463 individuals in the employ of the organization.

1464 (iv) Payments due by employers who elect to
1465 reimburse the fund in lieu of contributions as provided in this
1466 paragraph may not be noncharged under any condition. The
1467 reimbursement must be on a dollar-for-dollar basis (One Dollar
1468 (\$1.00) reimbursement for each dollar paid in benefits) in every
1469 case, so that the trust fund shall be reimbursed in full, such
1470 reimbursement to include, but not be limited to, benefits or
1471 payments erroneously or incorrectly paid, or paid as a result of a
1472 determination of eligibility which is subsequently reversed, or
1473 paid as a result of claimant fraud. However, political
1474 subdivisions who are reimbursing employers may elect to pay to the
1475 fund an amount equal to five-tenths percent (.5%) of the taxable
1476 wages paid during the calendar year with respect to employment,
1477 and those employers who so elect shall be relieved of liability
1478 for reimbursement of benefits paid under the same conditions that
1479 benefits are not charged to the experience rating record of a
1480 contributing employer as provided in Section 71-5-355(2)(b)(ii)
1481 other than Clause 5 thereof. Benefits paid in such circumstances
1482 for which reimbursing employers are relieved of liability for

1483 reimbursement shall not be considered attributable to service in
1484 the employment of such reimbursing employer.

1485 (v) The amount due specified in any bill from the
1486 department shall be conclusive on the organization unless, not
1487 later than fifteen (15) days after the bill was * * * delivered to
1488 it, the organization files an application for redetermination by
1489 the department, setting forth the grounds for such application or
1490 appeal. The department shall promptly review and reconsider the
1491 amount due specified in the bill and shall thereafter issue a
1492 redetermination in any case in which such application for
1493 redetermination has been filed. Any such redetermination shall be
1494 conclusive on the organization unless, not later than fifteen (15)
1495 days after the redetermination was * * * delivered to it, the
1496 organization files an appeal to the Circuit Court of the First
1497 Judicial District of Hinds County, Mississippi, in accordance with
1498 the provisions of law with respect to review of civil causes by
1499 certiorari.

1500 (vi) Past due payments of amounts in lieu of
1501 contributions shall be subject to the same interest and penalties
1502 that, pursuant to Section 71-5-363, apply to past due
1503 contributions.

1504 (c) Each employer that is liable for payments in lieu
1505 of contributions shall pay to the department for the fund the
1506 amount of regular benefits plus the amount of one-half (1/2) of
1507 extended benefits paid are attributable to service in the employ
1508 of such employer. If benefits paid to an individual are based on
1509 wages paid by more than one (1) employer and one or more of such
1510 employers are liable for payments in lieu of contributions, the
1511 amount payable to the fund by each employer that is liable for
1512 such payments shall be determined in accordance with the
1513 provisions of subparagraph (i) or subparagraph (ii) of this
1514 paragraph.

1515 (i) If benefits paid to an individual are based on
1516 wages paid by one or more employers that are liable for payment in
1517 lieu of contributions and on wages paid by one or more employers
1518 who are liable for contributions, the amount of benefits payable
1519 by each employer that is liable for payments in lieu of
1520 contributions shall be an amount which bears the same ratio to the
1521 total benefits paid to the individual as the total base-period
1522 wages paid to the individual by such employer bear to the total
1523 base-period wages paid to the individual by all of his base-period
1524 employers.

1525 (ii) If benefits paid to an individual are based
1526 on wages paid by two (2) or more employers that are liable for
1527 payments in lieu of contributions, the amount of benefits payable
1528 by each such employer shall be an amount which bears the same
1529 ratio to the total benefits paid to the individual as the total
1530 base-period wages paid to the individual by such employer bear to
1531 the total base-period wages paid to the individual by all of his
1532 base-period employers.

1533 (d) In the discretion of the department, any nonprofit
1534 organization that elects to become liable for payments in lieu of
1535 contributions shall be required * * * to execute and file with the
1536 department a surety bond approved by the department, or it may
1537 elect instead to deposit with the department money or securities.
1538 The amount of such bond or deposit shall be determined in
1539 accordance with the provisions of this paragraph.

1540 (i) The amount of the bond or deposit required by
1541 paragraph (d) shall be equal to two and seven-tenths percent
1542 (2.7%) of the organization's taxable wages paid for employment as
1543 defined in Section 71-5-11, subsection J(4), for the four (4)
1544 calendar quarters immediately preceding the effective date of the
1545 election, the renewal date in the case of a bond, or the biennial
1546 anniversary of the effective date of election in the case of a
1547 deposit of money or securities, whichever date shall be most

1548 recent and applicable. If the nonprofit organization did not pay
1549 wages in each of such four (4) calendar quarters, the amount of
1550 the bond or deposit shall be as determined by the department.

1551 (ii) Any bond deposited under paragraph (d) shall
1552 be in force for a period of not less than two (2) tax years and
1553 shall be renewed with the approval of the department at such times
1554 as the department may prescribe, but not less frequently than at
1555 intervals of two (2) years as long as the organization continues
1556 to be liable for payments in lieu of contributions. The
1557 department shall require adjustments to be made in a previously
1558 filed bond as it deems appropriate. If the bond is to be
1559 increased, the adjusted bond shall be filed by the organization
1560 within thirty (30) days of the date notice of the required
1561 adjustment was * * * delivered to it. Failure by any organization
1562 covered by such bond to pay the full amount of payments in lieu of
1563 contributions when due, together with any applicable interest and
1564 penalties provided in paragraph (b)(v) of this section, shall
1565 render the surety liable on the bond to the extent of the bond, as
1566 though the surety was such organization.

1567 (iii) Any deposit of money or securities in
1568 accordance with paragraph (d) shall be retained by the department
1569 in an escrow account until liability under the election is
1570 terminated, at which time it shall be returned to the
1571 organization, less any deductions as hereinafter provided. The
1572 department may deduct from the money deposited under paragraph (d)
1573 by a nonprofit organization, or sell the securities it has so
1574 deposited, to the extent necessary to satisfy any due and unpaid
1575 payments in lieu of contributions and any applicable interest and
1576 penalties provided for in paragraph (b)(v) of this section. The
1577 department shall require the organization, within thirty (30) days
1578 following any deduction from a money deposit or sale of deposited
1579 securities under the provisions hereof, to deposit sufficient
1580 additional money or securities to make whole the organization's

1581 deposit at the prior level. Any cash remaining from the sale of
1582 such securities shall be a part of the organization's escrow
1583 account. The department may, at any time, review the adequacy of
1584 the deposit made by any organization. If, as a result of such
1585 review, it determines that an adjustment is necessary, it shall
1586 require the organization to make additional deposit within thirty
1587 (30) days of * * * notice of its determination or shall return to
1588 it such portion of the deposit as it no longer considers
1589 necessary, whichever action is appropriate. Disposition of income
1590 from securities held in escrow shall be governed by the applicable
1591 provisions of the state law.

1592 (iv) If any nonprofit organization fails to file a
1593 bond or make a deposit, or to file a bond in an increased amount,
1594 or to increase or make whole the amount of a previously made
1595 deposit as provided under this subparagraph, the department may
1596 terminate such organization's election to make payments in lieu of
1597 contributions, and such termination shall continue for not less
1598 than the four (4) consecutive calendar-quarter periods beginning
1599 with the quarter in which such termination becomes effective;
1600 however, the department may extend for good cause the applicable
1601 filing, deposit or adjustment period by not more than thirty (30)
1602 days.

1603 (v) Group account shall be established according
1604 to regulations prescribed by the department.

1605 (e) Any employer which elects to make payments in lieu
1606 of contributions into the Unemployment Compensation Fund as
1607 provided in this paragraph shall not be liable to make such
1608 payments with respect to the benefits paid to any individual whose
1609 base-period wages include wages for previously uncovered services
1610 as defined in Section 71-5-511(e) to the extent that the
1611 Unemployment Compensation Fund is reimbursed for such benefits
1612 pursuant to Section 121 of Public Law 94-566.

1613 **SECTION 8.** Section 71-5-359, Mississippi Code of 1972, is
1614 amended as follows:

1615 71-5-359. (1) (a) Before January 1, 1978, each state board
1616 or other instrumentality of this state or one or more other states
1617 covered under Section 71-5-11, subsection I(3), shall pay
1618 contributions under the provisions of Sections 71-5-351 through
1619 71-5-355 for all of the hospitals or institutions of higher
1620 learning under its jurisdiction unless it elects, in the same
1621 manner and under the same conditions as provided for nonprofit
1622 organizations in subsections (a), (b) and (c) of Section 71-5-357,
1623 to pay to the department for the unemployment fund an amount equal
1624 to the regular benefits and one-half (1/2) of the extended
1625 benefits paid that are attributable to service in the employ of
1626 such hospitals or institutions. When an election is made, the
1627 amounts required to be paid in lieu of contributions shall be
1628 billed and payment made as provided in Section 71-5-357 with
1629 respect to similar payments by nonprofit organizations. A state
1630 board having jurisdiction over two (2) or more state-owned
1631 hospitals or state-owned institutions of higher learning shall be
1632 treated as a single employer for the employment in all of those
1633 hospitals or institutions of higher learning for purposes of
1634 computing contribution rates and payment of contributions, or for
1635 purposes of reimbursing the fund, unless it elects, in accordance
1636 with this section, to have one or more of those hospitals or
1637 institutions of higher learning treated as a separate employer.

1638 (b) A state board may elect to have one or more
1639 state-owned hospitals or one or more state-owned institutions of
1640 higher learning under its jurisdiction treated as a separate
1641 employer for the purposes of this section, provided it files with
1642 the department, not later than thirty (30) days prior to the
1643 beginning of any tax year, a written notice of such election. Any
1644 such election shall be effective throughout such tax year, and
1645 shall continue in effect unless the state board files with the

1646 department a written notice of termination of such election not
1647 less than thirty (30) days prior to the beginning of the tax year
1648 for which such termination is to be effective.

1649 (2) (a) From January 1, 1978, through December 31, 1978,
1650 the Commission of Budget and Accounting shall, in the manner
1651 provided in subsection (2)(c) of this section, pay, upon warrant
1652 issued by the State Auditor of Public Accounts, to the department
1653 for the Unemployment Compensation Fund an amount equal to the
1654 regular benefits and one-half (1/2) of the extended benefits paid
1655 that are attributable to service in the employ of a state agency.
1656 The amount required to be reimbursed by a certain agency shall be
1657 billed to the Commission of Budget and Accounting and shall be
1658 paid from the Employment Compensation Revolving Fund pursuant to
1659 subsection (2)(c) of this section not later than thirty (30) days
1660 after such bill was sent, unless there has been an application for
1661 review and redetermination in accordance with Section
1662 71-5-357(b)(v).

1663 (b) The Department of Finance and Administration shall,
1664 in the manner provided in subsection (2)(c) of this section, pay,
1665 upon warrant issued by the State Auditor, or the successor to
1666 these duties, to the department for the Unemployment Compensation
1667 Fund an amount equal to the regular benefits and the extended
1668 benefits paid that are attributable to service in the employ of a
1669 state agency. The amount required to be reimbursed by a certain
1670 agency shall be billed to the Department of Finance and
1671 Administration and shall be paid from the Employment Compensation
1672 Revolving Fund pursuant to subsection (2)(c) of this section not
1673 later than thirty (30) days after such bill was sent, unless there
1674 has been an application for review and redetermination in
1675 accordance with Section 71-5-357(b)(v).

1676 (c) Each agency of state government shall deposit
1677 monthly for a period of twenty-four (24) months an amount equal to
1678 one-twelfth of one percent (1/12 of 1%) of the first Six Thousand

1679 Dollars (\$6,000.00) paid to each employee thereof during the next
1680 preceding year into the Employment Compensation Revolving Fund
1681 that is created in the State Treasury. The Department of Finance
1682 and Administration shall determine the percentage to be applied to
1683 the amount of covered wages paid in order to maintain a balance in
1684 the revolving fund of not less than two percent (2%) of the
1685 covered wages paid during the next preceding year. The State
1686 Treasurer shall invest all funds in the Employment Compensation
1687 Revolving Fund and all interest earned shall be credited to the
1688 Employment Compensation Revolving Fund.

1689 The reimbursement of benefits paid by the Mississippi
1690 Department of Employment Security shall be paid by the Department
1691 of Finance and Administration from the Employment Compensation
1692 Revolving Fund upon warrants issued by the State Auditor of Public
1693 Accounts, or the successor to these duties; and the auditor shall
1694 issue his warrants upon requisitions signed by the Department of
1695 Finance and Administration. However, the Department of Finance and
1696 Administration may, if it so elects, contract for the performance
1697 of the duties prescribed by subsection (2)(b) and (c), and other
1698 duties necessarily related thereto.

1699 (d) From January 1, 1978, through December 31, 1978,
1700 any political subdivision of this state shall pay to the
1701 department for the unemployment fund an amount equal to the
1702 regular benefits and one-half (1/2) of the extended benefits paid
1703 that are attributable to service in the employ of such political
1704 subdivision unless it elects to make contributions to the
1705 unemployment fund as provided in subsection (2)(j) of this
1706 section. The amount required to be reimbursed shall be billed and
1707 shall be paid as provided in Section 71-5-357, with respect to
1708 similar payments for nonprofit organizations.

1709 (e) On and after January 1, 1979, any political
1710 subdivision of this state shall pay to the department for the
1711 unemployment fund an amount equal to the regular benefits and the

1712 extended benefits paid that are attributable to service in the
1713 employ of such political subdivision unless it elects to make
1714 contributions to the unemployment fund as provided in subsection
1715 (2)(j) of this section. The amount required to be reimbursed
1716 shall be billed and shall be paid as provided in Section 71-5-357,
1717 with respect to similar payments for nonprofit organizations.

1718 (f) Each political subdivision unless it elects to make
1719 contributions to the unemployment fund as provided in subsection
1720 (2)(j) of this section, shall establish a revolving fund and
1721 deposit therein monthly for a period of twenty-four (24) months an
1722 amount equal to one-twelfth of one percent (1/12 of 1%) of the
1723 first Six Thousand Dollars (\$6,000.00) paid to each employee
1724 thereof during the next preceding year plus an amount each month
1725 equal to one-third (1/3) of any reimbursement paid to the
1726 department for the next preceding quarter. After January 1, 1980,
1727 the balance in the revolving fund shall be maintained at an amount
1728 not less than two percent (2%) of the covered wages paid during
1729 the next preceding year. However, the department shall by
1730 regulation establish a procedure to allow reimbursing political
1731 subdivisions to elect to maintain the balance in the revolving
1732 fund as required under this paragraph or to annually execute a
1733 surety bond to be approved by the department in an amount not less
1734 than two percent (2%) of the covered wages paid during the next
1735 preceding year.

1736 (g) In the event any political subdivision becomes
1737 delinquent in payments due under this chapter, upon due notice,
1738 and upon certification of the delinquency by the department to the
1739 Department of Finance and Administration, the State Tax
1740 Commission, the Department of Environmental Quality and the
1741 Department of Insurance, or any of them, such agencies shall
1742 direct the issuance of warrants which in the aggregate shall be
1743 the amount of such delinquency payable to the department and drawn
1744 upon any funds in the State Treasury which may be available to

1745 such political subdivision in satisfaction of any such
1746 delinquency. This remedy shall be in addition to any other
1747 collection remedies in this chapter or otherwise provided by law.

1748 (h) Payments made by any political subdivision under
1749 the provisions of this section shall not be deducted or
1750 deductible, in whole or in part, from the remuneration of
1751 individuals in the employ of the organization.

1752 (i) Any governmental entity shall not be liable to make
1753 payments to the unemployment fund with respect to the benefits
1754 paid to any individual whose base-period wages include wages for
1755 previously uncovered services as defined in Section 71-5-511,
1756 subsection (e), to the extent that the Unemployment Compensation
1757 Fund is reimbursed for such benefits pursuant to Section 121 of
1758 Public Law 94-566.

1759 (j) Any political subdivision of this state may elect
1760 to make contributions to the unemployment fund instead of making
1761 reimbursement for benefits paid as provided in subsection (2)(d),
1762 (e) and (f) of this section. A political subdivision which makes
1763 this election shall so notify the department, not later than July
1764 1, 1978; and shall be subject to the provisions of Section
1765 71-5-351, with regard to the payment of contributions. A
1766 political subdivision which makes this election shall pay
1767 contributions equal to two percent (2%) of wages paid by it during
1768 each calendar quarter it is subject to this chapter. The
1769 department shall by regulation establish a procedure to allow
1770 political subdivisions the option periodically to elect either the
1771 reimbursement or the contribution method of financing unemployment
1772 compensation coverage.

1773 **SECTION 9.** Section 71-5-365, Mississippi Code of 1972, is
1774 amended as follows:

1775 71-5-365. If any employer fails to make and file any report
1776 as and when required by the terms and provisions of this chapter
1777 or by any rule or regulation of the commission for the purpose of

1778 determining the amount of contributions due by him under this
1779 chapter, or if any report which has been filed is deemed by the
1780 executive director to be incorrect or insufficient, and such
1781 employer, after having been given * * * notice * * * by the
1782 executive director to file such report, or a corrected or
1783 sufficient report, as the case may be, shall fail to file such
1784 report within fifteen (15) days after the date of * * * such
1785 notice, the executive director may (a) determine the amount of
1786 contributions due from such employer on the basis of such
1787 information as may be readily available to him, which said
1788 determination shall be prima facie correct, (b) assess such
1789 employer with the amount of contribution so determined, to which
1790 amount may be added and assessed by the executive director in his
1791 discretion, as damages, an amount equal to ten percent (10%) of
1792 said amount, and (c) immediately give * * * notice * * * to such
1793 employer of such determination, assessment, and damages, if any,
1794 added and assessed, demanding payment of same together with
1795 interest, as herein provided, on the amount of contributions from
1796 the date when same were due and payable. Such determination and
1797 assessment by the executive director shall be final at the
1798 expiration of fifteen (15) days from the date * * * of such * * *
1799 notice thereof demanding payment, unless:

1800 (a) Such employer shall have filed with the department
1801 a written protest and petition for a hearing, specifying his
1802 objections thereto. Upon receipt of such petition within the
1803 fifteen (15) days allowed, the department shall fix the time and
1804 place for a hearing and shall notify the petitioner thereof. At
1805 any hearing held before the department as herein provided,
1806 evidence may be offered to support such determination and
1807 assessment or to prove that it is incorrect, and the commission
1808 shall have all the power provided in Sections 71-5-137 and
1809 71-5-139. Immediately after such hearing a final decision in the
1810 matter shall be made by the commission, and any contributions or

1811 deficiencies in contributions found and determined by the
1812 commission to be due shall be assessed and paid, together with
1813 interest, within fifteen (15) days after notice of such final
1814 decision and assessment, and demand for payment thereof by the
1815 department shall have been sent to such employer.

1816 (b) The department, in its discretion, determines on
1817 the basis of information submitted by the employer that such
1818 assessment should be amended and adjusted to reflect the correct
1819 amount of taxes.

1820 Sixty (60) days after the due date of the contributions,
1821 together with interest and damages, or upon issuance of a warrant,
1822 whichever occurs first, the department, in its discretion, may
1823 assess an additional sum not exceeding one hundred percent (100%)
1824 of the amount of the unpaid contributions due as damages for
1825 failure to pay.

1826 **SECTION 10.** Section 71-5-505, Mississippi Code of 1972, is
1827 amended as follows:

1828 71-5-505. (1) For weeks beginning on or after July 1, 1991,
1829 each eligible individual who is totally unemployed or part totally
1830 unemployed in any week shall be paid with respect to such week a
1831 benefit in an amount equal to his weekly benefit amount less that
1832 part of his wages, if any, payable to him with respect to such
1833 week which is in excess of Forty Dollars (\$40.00). Such
1834 individuals must have been totally unemployed or part totally
1835 unemployed for a waiting period of one (1) week during which he
1836 earned less than his weekly benefit amount plus Forty Dollars
1837 (\$40.00). Such benefit for a benefit year effective on or after
1838 October 1, 1983, if not a multiple of One Dollar (\$1.00), shall be
1839 computed to the next lower multiple of One Dollar (\$1.00).

1840 Provided, however, that remuneration for "inactive duty training"
1841 or "unit training assembly" payable to such eligible individual
1842 who is a member of any of the reserve components, or remuneration
1843 for jury duty pursuant to a lawfully issued summons therefor

1844 payable to such eligible individual, shall not be considered wages
1845 which serve to reduce the otherwise payable benefit amount.

1846 In determining whether an eligible individual is unemployed
1847 during a week, the date of commencing a shift shall determine the
1848 week for which the earnings are deducted.

1849 (2) However, the one-week waiting period described herein
1850 shall be waived if the President of the United States declares a
1851 major disaster in accordance with Section 401 of The Robert T.
1852 Stafford Disaster Relief and Emergency Assistance Act. The
1853 department, in its discretion, shall have the authority to
1854 noncharge an employer account for any benefits paid for
1855 unemployment due directly to such disaster.

1856 **SECTION 11.** Section 71-5-511, Mississippi Code of 1972, is
1857 amended as follows:

1858 71-5-511. An unemployed individual shall be eligible to
1859 receive benefits with respect to any week only if the department
1860 finds that:

1861 (a) (i) He has registered for work at and thereafter
1862 has continued to report to the department in accordance with such
1863 regulations as the department may prescribe; except that the
1864 department may, by regulation, waive or alter either or both of
1865 the requirements of this subparagraph as to such types of cases or
1866 situations with respect to which it finds that compliance with
1867 such requirements would be oppressive or would be inconsistent
1868 with the purposes of this chapter; and

1869 (ii) He participates in reemployment services,
1870 such as job search assistance services, if, in accordance with a
1871 profiling system established by the department, it has been
1872 determined that he is likely to exhaust regular benefits and needs
1873 reemployment services, unless the department determines that:

1874 1. The individual has completed such
1875 services; or

1876 2. There is justifiable cause for the
1877 claimant's failure to participate in such services.

1878 (b) He has made a claim for benefits in accordance with
1879 the provisions of Section 71-5-515 and in accordance with such
1880 regulations as the department may prescribe thereunder.

1881 (c) He is able to work and is available for work.

1882 (d) He has been unemployed for a waiting period of one
1883 (1) week. No week shall be counted as a week of unemployment for
1884 the purposes of this subsection:

1885 (i) Unless it occurs within the benefit year which
1886 includes the week with respect to which he claims payment of
1887 benefits;

1888 (ii) If benefits have been paid with respect
1889 thereto;

1890 (iii) Unless the individual was eligible for
1891 benefits with respect thereto, as provided in Sections 71-5-511
1892 and 71-5-513, except for the requirements of this subsection.

1893 (e) For weeks beginning on or before July 1, 1982, he
1894 has, during his base period, been paid wages for insured work
1895 equal to not less than thirty-six (36) times his weekly benefit
1896 amount; he has been paid wages for insured work during at least
1897 two (2) quarters of his base period; and he has, during that
1898 quarter of his base period in which his total wages were highest,
1899 been paid wages for insured work equal to not less than sixteen
1900 (16) times the minimum weekly benefit amount. For benefit years
1901 beginning after July 1, 1982, he has, during his base period, been
1902 paid wages for insured work equal to not less than forty (40)
1903 times his weekly benefit amount; he has been paid wages for
1904 insured work during at least two (2) quarters of his base period,
1905 and he has, during that quarter of his base period in which his
1906 total wages were highest, been paid wages for insured work equal
1907 to not less than twenty-six (26) times the minimum weekly benefit
1908 amount. For purposes of this subsection, wages shall be counted

1909 as "wages for insured work" for benefit purposes with respect to
1910 any benefit year only if such benefit year begins subsequent to
1911 the date on which the employing unit by which such wages were paid
1912 has satisfied the conditions of Section 71-5-11, subsection I, or
1913 Section 71-5-361, subsection (3), with respect to becoming an
1914 employer.

1915 (f) No individual may receive benefits in a benefit
1916 year unless, subsequent to the beginning of the next preceding
1917 benefit year during which he received benefits, he performed
1918 service in "employment" as defined in Section 71-5-11, subsection
1919 J, and earned remuneration for such service in an amount equal to
1920 not less than eight (8) times his weekly benefit amount applicable
1921 to his next preceding benefit year.

1922 (g) Benefits based on service in employment defined in
1923 Section 71-5-11, subsection J(3) and J(4), and Section 71-5-361,
1924 subsection (4) shall be payable in the same amount, on the same
1925 terms, and subject to the same conditions as compensation payable
1926 on the basis of other service subject to this chapter, except that
1927 benefits based on service in an instructional, research or
1928 principal administrative capacity in an institution of higher
1929 learning (as defined in Section 71-5-11, subsection O) with
1930 respect to service performed prior to January 1, 1978, shall not
1931 be paid to an individual for any week of unemployment which begins
1932 during the period between two (2) successive academic years, or
1933 during a similar period between two (2) regular terms, whether or
1934 not successive, or during a period of paid sabbatical leave
1935 provided for in the individual's contract, if the individual has a
1936 contract or contracts to perform services in any such capacity for
1937 any institution or institutions of higher learning for both such
1938 academic years or both such terms.

1939 (h) Benefits based on service in employment defined in
1940 Section 71-5-11, subsection J(3) and J(4), shall be payable in the
1941 same amount, on the same terms and subject to the same conditions

1942 as compensation payable on the basis of other service subject to
1943 this chapter; except that:

1944 (i) With respect to service performed in an
1945 instructional, research or principal administrative capacity for
1946 an educational institution, benefits shall not be paid based on
1947 such services for any week of unemployment commencing during the
1948 period between two (2) successive academic years, or during a
1949 similar period between two (2) regular but not successive terms,
1950 or during a period of paid sabbatical leave provided for in the
1951 individual's contract, to any individual, if such individual
1952 performs such services in the first of such academic years or
1953 terms and if there is a contract or a reasonable assurance that
1954 such individual will perform services in any such capacity for any
1955 educational institution in the second of such academic years or
1956 terms, and provided that Section 71-5-511, subsection (g), shall
1957 apply with respect to such services prior to January 1, 1978. In
1958 no event shall benefits be paid unless the individual employee was
1959 terminated by the employer.

1960 (ii) With respect to services performed in any
1961 other capacity for an educational institution, benefits shall not
1962 be paid on the basis of such services to any individual for any
1963 week which commences during a period between two (2) successive
1964 academic years or terms, if such individual performs such services
1965 in the first of such academic years or terms and there is a
1966 reasonable assurance that such individual will perform such
1967 services in the second of such academic years or terms, except
1968 that if compensation is denied to any individual under this
1969 subparagraph and such individual was not offered an opportunity to
1970 perform such services for the educational institution for the
1971 second of such academic years or terms, such individual shall be
1972 entitled to a retroactive payment of compensation for each week
1973 for which the individual filed a timely claim for compensation and
1974 for which compensation was denied solely by reason of this clause.

1975 In no event shall benefits be paid unless the individual employee
1976 was terminated by the employer.

1977 (iii) With respect to services described in
1978 subsection (h)(i) and (ii), benefits shall not be payable on the
1979 basis of services in any such capacities to any individual for any
1980 week which commences during an established and customary vacation
1981 period or holiday recess if such individual performs such services
1982 in the first of such academic years or terms, or in the period
1983 immediately before such vacation period or holiday recess, and
1984 there is a reasonable assurance that such individual will perform
1985 such services in the period immediately following such vacation
1986 period or holiday recess.

1987 (iv) With respect to any services described in
1988 subsection (h)(i) and (ii), benefits shall not be payable on the
1989 basis of services in any such capacities as specified in
1990 subsection (h)(i), (ii) and (iii) to any individual who performed
1991 such services in an educational institution while in the employ of
1992 an educational service agency. For purposes of this subsection,
1993 the term "educational service agency" means a governmental agency
1994 or governmental entity which is established and operated
1995 exclusively for the purpose of providing such services to one or
1996 more educational institutions.

1997 (v) With respect to services to which Sections
1998 71-5-357 and 71-5-359 apply, if such services are provided to or
1999 on behalf of an educational institution, benefits shall not be
2000 payable under the same circumstances and subject to the same terms
2001 and conditions as described in subsection (h)(i), (ii), (iii) and
2002 (iv).

2003 (i) Subsequent to December 31, 1977, benefits shall not
2004 be paid to any individual on the basis of any services
2005 substantially all of which consist of participating in sports or
2006 athletic events or training or preparing to so participate, for
2007 any week which commences during the period between two (2)

2008 successive sports seasons (or similar periods) if such individual
2009 performs such services in the first of such seasons (or similar
2010 periods) and there is a reasonable assurance that such individual
2011 will perform such services in the later of such seasons (or
2012 similar periods).

2013 (j) (i) Subsequent to December 31, 1977, benefits
2014 shall not be payable on the basis of services performed by an
2015 alien, unless such alien is an individual who was lawfully
2016 admitted for permanent residence at the time such services were
2017 performed, was lawfully present for purposes of performing such
2018 services, or was permanently residing in the United States under
2019 color of law at the time such services were performed (including
2020 an alien who was lawfully present in the United States as a result
2021 of the application of the provisions of Section 203(a)(7) or
2022 Section 212(d)(5) of the Immigration and Nationality Act).

2023 (ii) Any data or information required of
2024 individuals applying for benefits to determine whether benefits
2025 are not payable to them because of their alien status shall be
2026 uniformly required from all applicants for benefits.

2027 (iii) In the case of an individual whose
2028 application for benefits would otherwise be approved, no
2029 determination that benefits to such individual are not payable
2030 because of his alien status shall be made, except upon a
2031 preponderance of the evidence.

2032 (k) An individual shall be deemed prima facie
2033 unavailable for work, and therefore ineligible to receive
2034 benefits, during any period which, with respect to his employment
2035 status, is found by the department to be a holiday or vacation
2036 period.

2037 **SECTION 12.** Section 71-5-513, Mississippi Code of 1972, is
2038 amended as follows:

2039 71-5-513. A. An individual shall be disqualified for
2040 benefits:

2041 (1) (a) For the week, or fraction thereof, which
2042 immediately follows the day on which he left work voluntarily
2043 without good cause, if so found by the department, and for each
2044 week thereafter until he has earned remuneration for personal
2045 services performed for an employer, as in this chapter defined,
2046 equal to not less than eight (8) times his weekly benefit amount,
2047 as determined in each case; however, marital, filial and domestic
2048 circumstances and obligations shall not be deemed good cause
2049 within the meaning of this subsection. Pregnancy shall not be
2050 deemed to be a marital, filial or domestic circumstance for the
2051 purpose of this subsection.

2052 (b) For the week, or fraction thereof, which
2053 immediately follows the day on which he was discharged for
2054 misconduct connected with his work, if so found by the department,
2055 and for each week thereafter until he has earned remuneration for
2056 personal services performed for an employer, as in this chapter
2057 defined, equal to not less than eight (8) times his weekly benefit
2058 amount, as determined in each case.

2059 (c) The burden of proof of good cause for leaving
2060 work shall be on the claimant, and the burden of proof of
2061 misconduct shall be on the employer.

2062 (2) For the week, or fraction thereof, with respect to
2063 which he willfully makes a false statement, a false representation
2064 of fact, or willfully fails to disclose a material fact for the
2065 purpose of obtaining or increasing benefits under the provisions
2066 of this law, if so found by the department, and such individual's
2067 maximum benefit allowance shall be reduced by the amount of
2068 benefits so paid to him during any such week of disqualification;
2069 and additional disqualification shall be imposed for a period not
2070 exceeding fifty-two (52) weeks, the length of such period of
2071 disqualification and the time when such period begins to be
2072 determined by the department, in its discretion, according to the
2073 circumstances in each case.

2074 (3) If the department finds that he has failed, without
2075 good cause, either to apply for available suitable work when so
2076 directed by the employment office or the department, to accept
2077 suitable work when offered him, or to return to his customary
2078 self-employment (if any) when so directed by the department, such
2079 disqualification shall continue for the week in which such failure
2080 occurred and for not more than the twelve (12) weeks which
2081 immediately follow such week, as determined by the department
2082 according to the circumstances in each case.

2083 (a) In determining whether or not any work is
2084 suitable for an individual, the department shall consider among
2085 other factors the degree of risk involved to his health, safety
2086 and morals, his physical fitness and prior training, his
2087 experience and prior earnings, his length of unemployment and
2088 prospects for securing local work in his customary occupation, and
2089 the distance of the available work from his residence; however,
2090 offered employment paying the minimum wage or higher, if such
2091 minimum or higher wage is that prevailing for his customary
2092 occupation or similar work in the locality, shall be deemed to be
2093 suitable employment after benefits have been paid to the
2094 individual for a period of eight (8) weeks.

2095 (b) Notwithstanding any other provisions of this
2096 chapter, no work shall be deemed suitable and benefits shall not
2097 be denied under this chapter to any otherwise eligible individual
2098 for refusing to accept new work under any of the following
2099 conditions:

2100 (i) If the position offered is vacant due
2101 directly to a strike, lockout or other labor dispute;

2102 (ii) If the wages, hours or other conditions
2103 of the work offered are substantially unfavorable or unreasonable
2104 to the individual's work. * * * The department shall have the
2105 sole discretion to determine whether or not there has been an
2106 unfavorable or unreasonable condition placed on the individual's

2107 work. Moreover, the department may consider, but shall not be
2108 limited to a consideration of, whether or not the unfavorable
2109 condition was applied by the employer to all workers in the same
2110 or similar class or merely to this individual;

2111 (iii) If as a condition of being employed the
2112 individual would be required to join a company union or to resign
2113 from or refrain from joining any bona fide labor organization;

2114 (iv) If unsatisfactory or hazardous working
2115 conditions exist that could result in a danger to the physical or
2116 mental well-being of the worker. In any such determination the
2117 department shall consider, but shall not be limited to a
2118 consideration of, the following: the safety measures used or the
2119 lack thereof and the condition of equipment or lack of proper
2120 equipment. No work shall be considered hazardous if the working
2121 conditions surrounding a worker's employment are the same or
2122 substantially the same as the working conditions generally
2123 prevailing among workers performing the same or similar work for
2124 other employers engaged in the same or similar type of activity.

2125 (4) For any week with respect to which the department
2126 finds that his total unemployment is due to a stoppage of work
2127 which exists because of a labor dispute at a factory,
2128 establishment or other premises at which he is or was last
2129 employed; however, this subsection shall not apply if it is shown
2130 to the satisfaction of the department:

2131 (a) He is unemployed due to a stoppage of work
2132 occasioned by an unjustified lockout, if such lockout was not
2133 occasioned or brought about by such individual acting alone or
2134 with other workers in concert; or

2135 (b) He is not participating in or directly
2136 interested in the labor dispute which caused the stoppage of work;
2137 and

2138 (c) He does not belong to a grade or class of
2139 workers of which, immediately before the commencement of stoppage,

2140 there were members employed at the premises at which the stoppage
2141 occurs, any of whom are participating in or directly interested in
2142 the dispute.

2143 If in any case separate branches of work which are commonly
2144 conducted as separate businesses in separate premises are
2145 conducted in separate departments of the same premises, each such
2146 department shall, for the purposes of this subsection, be deemed
2147 to be a separate factory, establishment or other premises.

2148 (5) For any week with respect to which he has received
2149 or is seeking unemployment compensation under an unemployment
2150 compensation law of another state or of the United States.
2151 However, if the appropriate agency of such other state or of the
2152 United States finally determines that he is not entitled to such
2153 unemployment compensation benefits, this disqualification shall
2154 not apply. Nothing in this subsection contained shall be
2155 construed to include within its terms any law of the United States
2156 providing unemployment compensation or allowances for honorably
2157 discharged members of the Armed Forces.

2158 (6) For any week with respect to which he is receiving
2159 or has received remuneration in the form of payments under any
2160 governmental or private retirement or pension plan, system or
2161 policy which a base-period employer is maintaining or contributing
2162 to or has maintained or contributed to on behalf of the
2163 individual; however, if the amount payable with respect to any
2164 week is less than the benefits which would otherwise be due under
2165 Section 71-5-501, he shall be entitled to receive for such week,
2166 if otherwise eligible, benefits reduced by the amount of such
2167 remuneration. However, on or after the first Sunday immediately
2168 following July 1, 2001, no social security payments, to which the
2169 employee has made contributions, shall be deducted from
2170 unemployment benefits paid for any period of unemployment
2171 beginning on or after the first Sunday following July 1, 2001.
2172 This one hundred percent (100%) exclusion shall not apply to any

2173 other governmental or private retirement or pension plan, system
2174 or policy. If benefits payable under this section, after being
2175 reduced by the amount of such remuneration, are not a multiple of
2176 One Dollar (\$1.00), they shall be adjusted to the next lower
2177 multiple of One Dollar (\$1.00).

2178 (7) For any week with respect to which he is receiving
2179 or has received remuneration in the form of a back pay award, or
2180 other compensation allocable to any week, whether by settlement or
2181 otherwise. Any benefits previously paid for weeks of unemployment
2182 with respect to which back pay awards, or other such compensation,
2183 are made shall constitute an overpayment and such amounts shall be
2184 deducted from the award by the employer prior to payment to the
2185 employee, and shall be transmitted promptly to the department by
2186 the employer for application against the overpayment and credit to
2187 the claimant's maximum benefit amount and prompt deposit into the
2188 fund; however, the removal of any charges made against the
2189 employer as a result of such previously paid benefits shall be
2190 applied to the calendar year and the calendar quarter in which the
2191 overpayment is transmitted to the department, and no attempt shall
2192 be made to relate such a credit to the period to which the award
2193 applies. Any amount of overpayment so deducted by the employer
2194 and not transmitted to the department shall be subject to the same
2195 procedures for collection as is provided for contributions by
2196 Sections 71-5-363 through 71-5-381. Any amount of overpayment not
2197 deducted by the employer shall be established as an overpayment
2198 against the claimant and collected as provided above. It is the
2199 purpose of this paragraph to assure equity in the situations to
2200 which it applies, and it shall be construed accordingly.

2201 B. Notwithstanding any other provision in this chapter, no
2202 otherwise eligible individual shall be denied benefits for any
2203 week because he is in training with the approval of the
2204 department; nor shall such individual be denied benefits with
2205 respect to any week in which he is in training with the approval

2206 of the department by reason of the application of provisions in
2207 Section 71-5-511, subsection (c), relating to availability for
2208 work, or the provisions of subsection A(3) of this section,
2209 relating to failure to apply for, or a refusal to accept, suitable
2210 work.

2211 C. Notwithstanding any other provisions of this chapter, no
2212 otherwise eligible individual shall be denied benefits for any
2213 week because he or she is in training approved under Section
2214 236(a)(1) of the Trade Act of 1974, nor shall such individual be
2215 denied benefits by reason of leaving work to enter such training,
2216 provided the work left is not suitable employment, or because of
2217 the application to any such week in training of provisions in this
2218 law (or any applicable federal unemployment compensation law),
2219 relating to availability for work, active search for work or
2220 refusal to accept work.

2221 For purposes of this section, the term "suitable employment"
2222 means with respect to an individual, work of a substantially equal
2223 or higher skill level than the individual's past adversely
2224 affected employment (as defined for purposes of the Trade Act of
2225 1974), and wages for such work at not less than eighty percent
2226 (80%) of the individual's average weekly wage as determined for
2227 the purposes of the Trade Act of 1974.

2228 **SECTION 13.** Section 71-5-517, Mississippi Code of 1972, is
2229 amended as follows:

2230 71-5-517. Upon the taking of a claim by the department, an
2231 initial determination thereon shall be made promptly and shall
2232 include a determination with respect to whether or not benefits
2233 are payable, the week with respect to which benefits shall
2234 commence, the weekly benefit amount payable and the maximum
2235 duration of benefits. In any case in which the payment or denial
2236 of benefits will be determined by the provisions of subsection
2237 A(4) of Section 71-5-513, the examiner shall promptly transmit all
2238 the evidence with respect to that subsection to the department,

2239 which, on the basis of evidence so submitted and such additional
2240 evidence as it may require, shall make an initial determination
2241 with respect thereto. An initial determination may for good cause
2242 be reconsidered. The claimant, his most recent employing unit and
2243 all employers whose experience-rating record would be charged with
2244 benefits pursuant to such determination shall be promptly notified
2245 of such initial determination or any amended initial determination
2246 and the reason therefor. Benefits shall be denied or, if the
2247 claimant is otherwise eligible, promptly paid in accordance with
2248 the initial determination or amended initial determination. The
2249 jurisdiction of the department over benefit claims which have not
2250 been appealed shall be continuous. The claimant or any party to
2251 the initial determination or amended initial determination may
2252 file an appeal from such initial determination or amended initial
2253 determination within fourteen (14) days after notification
2254 thereof, or after the date such notification was sent to his last
2255 known address.

2256 Notwithstanding any other provision of this section, benefits
2257 shall be paid promptly in accordance with a determination or
2258 redetermination, or the decision of an appeal tribunal, the Board
2259 of Review or a reviewing court upon the issuance of such
2260 determination, redetermination or decision in favor of the
2261 claimant (regardless of the pendency of the period to apply for
2262 reconsideration, file an appeal, or petition for judicial review,
2263 as the case may be, or the pendency of any such application,
2264 filing or petition), unless and until such determination,
2265 redetermination or decision has been modified or reversed by a
2266 subsequent redetermination or decision, in which event benefits
2267 shall be paid or denied in accordance with such modifying or
2268 reversing redetermination or decision. Any benefits finally
2269 determined to have been erroneously paid may be set up as an
2270 overpayment to the claimant and must be liquidated before any
2271 future benefits can be paid to the claimant. If, subsequent to

2272 such initial determination or amended initial determination,
2273 benefits with respect to any week for which a claim has been filed
2274 are denied for reasons other than matters included in the initial
2275 determination or amended initial determination, the claimant shall
2276 be promptly notified of the denial and the reason therefor and may
2277 appeal therefrom in accordance with the procedure herein described
2278 for appeals from initial determination or amended initial
2279 determination.

2280 **SECTION 14.** Section 71-5-519, Mississippi Code of 1972, is
2281 amended as follows:

2282 71-5-519. Unless such appeal is withdrawn, an appeal
2283 tribunal appointed by the executive director, after affording the
2284 parties reasonable opportunity for fair hearing, shall affirm,
2285 modify or reverse the findings of fact and initial determination
2286 or amended initial determination. The parties shall be duly
2287 notified of such tribunal's decision, together with its reasons
2288 therefor, which shall be deemed to be the final decision of the
2289 executive director unless, within fourteen (14) days after the
2290 date of notification * * * of such decision, further appeal is
2291 initiated pursuant to Section 71-5-523.

2292 **SECTION 15.** Section 71-5-529, Mississippi Code of 1972, is
2293 amended as follows:

2294 71-5-529. Any decision of the Board of Review, in the
2295 absence of an appeal therefrom as herein provided, shall become
2296 final ten (10) days after the date of notification * * *; and
2297 judicial review thereof shall be permitted only after any party
2298 claiming to be aggrieved thereby has exhausted his administrative
2299 remedies as provided by this chapter. The department shall be
2300 deemed to be a party to any judicial action involving any such
2301 decision, and may be represented in any such judicial action by
2302 any qualified attorney employed by the department and designated
2303 by it for that purpose or, at the department's request, by the
2304 Attorney General.

2305 **SECTION 16.** This act shall take effect and be in force from
2306 and after July 1, 2006.