

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2469
(As Passed the Senate)

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 DEFINE THE
6 TERM "TEMPORARY EMPLOYEE"; TO AMEND SECTION 71-5-19, MISSISSIPPI
7 CODE OF 1972, TO DELETE THE LIMITATION ON THE AUTHORITY OF THE
8 DEPARTMENT TO SEEK REPAYMENT OF OVERPAID UNEMPLOYMENT BENEFITS; TO
9 AMEND SECTION 71-5-119, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
10 AVAILABILITY OF THE UNEMPLOYMENT COMPENSATION LAW TO
11 BENEFICIARIES; TO AMEND SECTION 71-5-127, MISSISSIPPI CODE OF
12 1972, TO REVISE THE PROVISION RELATING TO THE CONFIDENTIALITY OF
13 RECORDS AND REPORTS; TO AMEND SECTION 71-5-365, MISSISSIPPI CODE
14 OF 1972, TO AUTHORIZE THE DEPARTMENT ON ITS OWN MOTION TO ADJUST
15 CONTRIBUTIONS BY EMPLOYERS; TO AMEND SECTION 71-5-505, MISSISSIPPI
16 CODE OF 1972, TO AUTHORIZE THE DEPARTMENT ON ITS OWN MOTION TO
17 NONCHARGE AN EMPLOYER FOR BENEFITS PAID FOR UNEMPLOYMENT DUE TO A
18 DECLARED DISASTER; TO AMEND SECTION 71-5-511, MISSISSIPPI CODE OF
19 1972, TO CLARIFY THAT A BENEFICIARY MUST REGISTER AND REPORT FOR
20 WORK WITH THE DEPARTMENT; TO AMEND SECTION 71-5-513, MISSISSIPPI
21 CODE OF 1972, TO CLARIFY THE CONSIDERATION OF CERTAIN UNFAVORABLE
22 WORKING 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; TO BRING FORWARD SECTION 71-5-353,
26 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT; AND FOR
27 RELATED PURPOSES.

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

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

31 71-5-11. As used in this chapter, unless the context clearly
32 requires otherwise:

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

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

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

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

53 E. "Calendar quarter" means the period of three (3)
54 consecutive calendar months ending on March 31, June 30, September
55 30, or December 31.

56 F. "Department" or "commission" means the Mississippi
57 Department of Employment Security, Office of the Governor.

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

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

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

100 I. "Employer" means:

101 (1) Any employing unit which,

102 (a) In any calendar quarter in either the current

103 or preceding calendar year paid for service in employment wages of

104 One Thousand Five Hundred Dollars (\$1,500.00) or more, except as
105 provided in paragraph (9) of this subsection, or

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

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

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

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

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

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

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

135 (7) Any employing unit which, having become an employer
136 under paragraph (1), (3), (5) or (6) of this subsection or under

137 any other provisions of this chapter, has not, under Section
138 71-5-361, ceased to be an employer subject to this chapter;

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

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

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

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

161 J. "Employment" means and includes:

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

167 (2) Services performed for remuneration for a
168 principal:

169 (a) As an agent-driver or commission-driver
170 engaged in distributing meat products, vegetable products, fruit
171 products, bakery products, beverages (other than milk), or laundry
172 or dry cleaning services;

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

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

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

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

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

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

202 tribe; however, such service is excluded from "employment" as
203 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)
204 of that act and is not excluded from "employment" under subsection
205 I(5) of this section.

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

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

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

219 (a) In the employ of:

220 (i) A church or convention or association of
221 churches; or

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

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

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

233 (i) As an elected official;

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

237 (iii) As a member of the State National Guard
238 or Air National Guard;

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

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

245 1. A major nontenured policy-making or
246 advisory position, or

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

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

258 (e) By an inmate of a custodial or penal
259 institution; or

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

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

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

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

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

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

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

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

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

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

298 (ii) Such other person shall be treated as
299 having paid cash remuneration to such individual in an amount
300 equal to the amount of cash remuneration paid to such individual
301 by the crew leader (either on his own behalf or on behalf of such
302 other person) for the service in agricultural labor performed for
303 such other person.

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

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

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

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

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

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

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

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

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

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

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

345 (10) Service shall be deemed to be localized within a
346 state if:

347 (a) The service is performed entirely within such
348 state; or

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

354 (11) The services of an individual who is a citizen of
355 the United States, performed outside the United States (except in
356 Canada), in the employ of an American employer (other than service
357 which is deemed "employment" under the provisions of paragraph
358 (8), (9) or (10) of this subsection or the parallel provisions of
359 another state's law), if:

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

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

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

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

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

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

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

379 (i) An individual who is a resident of the
380 United States; or

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

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

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

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

394 (13) Service with respect to which a tax is required to
395 be paid under any federal law imposing a tax against which credit
396 may be taken for contributions required to be paid into a state

397 unemployment fund, or which as a condition for full tax credit
398 against the tax imposed by the Federal Unemployment Tax Act, 26
399 USCS Section 3301 et seq., is required to be covered under this
400 chapter, notwithstanding any other provisions of this subsection.

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

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

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

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

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

426 (iii) In connection with the production or
427 harvesting of naval stores products or any commodity defined in
428 the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g),
429 or in connection with the raising or harvesting of mushrooms, or

430 in connection with the ginning of cotton, or in connection with
431 the operation or maintenance of ditches, canals, reservoirs, or
432 waterways not owned or operated for profit, used exclusively for
433 supplying and storing water for farming purposes;

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

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

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

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

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

461 (b) Domestic service in a private home, local
462 college club, or local chapter of a college fraternity or

463 sorority, except as provided in subsection I(7) of this section,
464 or service performed as a "sitter" at a hospital in the employ of
465 an individual.

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

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

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

489 (f) Service performed in the employ of an
490 "employer" as defined by the Railroad Unemployment Insurance Act,
491 45 USCS Section 351(a), or as an "employee representative" as
492 defined by the Railroad Unemployment Insurance Act, 45 USCS
493 Section 351(f), and service with respect to which unemployment
494 compensation is payable under an unemployment compensation system
495 for maritime employees, or under any other unemployment

496 compensation system established by an act of Congress; however,
497 the department is authorized and directed to enter into agreements
498 with the proper agencies under such act or acts of Congress, which
499 agreements shall become effective ten (10) days after publication
500 thereof in the manner provided in Section 71-5-117 for general
501 rules, to provide reciprocal treatment to individuals who have,
502 after acquiring potential rights to benefits under this chapter,
503 acquired rights to unemployment compensation under such act or
504 acts of Congress or who have, after acquiring potential rights to
505 unemployment compensation under such act or acts of Congress,
506 acquired rights to benefits under this chapter.

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

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

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

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

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

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

527 (i) Service performed by an individual under the
528 age of twenty-two (22) who is enrolled at a nonprofit or public

529 educational institution which normally maintains a regular faculty
530 and curriculum and normally has a regularly organized body of
531 students in attendance at the place where its educational
532 activities are carried on, as a student in a full-time program
533 taken for credit at such institution, which combines academic
534 instruction with work experience, if such service is an integral
535 part of such program and such institution has so certified to the
536 employer, except that this subparagraph shall not apply to service
537 performed in a program established for or on behalf of an employer
538 or group of employers.

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

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

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

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

557 (n) If the services performed during one-half
558 (1/2) or more of any pay period by an employee for the employing
559 unit employing him constitute employment, all the services of such
560 employee for such period shall be deemed to be employment; but if
561 the services performed during more than one-half (1/2) of any such

562 pay period by an employee for the employing unit employing him do
563 not constitute employment, then none of the services of such
564 employee for such period shall be deemed to be employment. As
565 used in this subsection the term "pay period" means a period (of
566 not more than thirty-one (31) consecutive days) for which a
567 payment of remuneration is ordinarily made to the employee by the
568 employing unit employing him.

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

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

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

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

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

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

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

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

594 (3) Provides an educational program for which it awards
595 a bachelor's or higher degree, or provides a program which is
596 acceptable for full credit toward such a degree, a program of
597 postgraduate or postdoctoral studies, or a program of training to
598 prepare students for gainful employment in a recognized
599 occupation;

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

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

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

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

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

617 Q. "Unemployment."

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

627 their regular jobs, and other forms of short-time work, as the
628 department deems necessary.

629 (2) An individual's week of total unemployment shall be
630 deemed to commence only after his registration at an employment
631 office, except as the department may by regulation otherwise
632 prescribe.

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

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

648 (i) Retirement, or

649 (ii) Sickness or accident disability, or

650 (iii) Medical or hospitalization expenses in
651 connection with sickness or actual disability, or

652 (iv) Death, provided the employee:

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

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

660 cash consideration in lieu of such benefit, either upon his
661 withdrawal from the plan or system providing for such benefit or
662 upon termination of such plan or system or policy of insurance or
663 of his employment with such employer;

664 (b) Dismissal payments which the employer is not
665 legally required to make;

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

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

672 (i) Qualifies under Section 125 of the
673 Internal Revenue Code;

674 (ii) Covers only employees;

675 (iii) Covers only noncash benefits;

676 (iv) Does not include deferred compensation
677 plans.

678 (2) [Not enacted].

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

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

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

689 V. "Employee leasing arrangement" means any agreement
690 between an employee leasing firm and a client, whereby specified
691 client responsibilities such as payment of wages, reporting of
692 wages for unemployment insurance purposes, payment of unemployment

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

695 W. "Employee leasing firm" means any entity which provides
696 specified duties for a client company such as payment of wages,
697 reporting of wages for unemployment insurance purposes, payment of
698 unemployment insurance contributions and other administrative
699 duties, in connection with the client's employees, that are
700 directed and controlled by the client and that are providing
701 ongoing services for the client.

702 X. (1) "Temporary help firm" means an entity which hires
703 its own employees and provides those employees to other
704 individuals or organizations to perform some service, to support
705 or supplement the existing work force in special situations such
706 as employee absences, temporary skill shortages, seasonal
707 workloads and special assignments and projects, with the
708 expectation that the worker's position will be terminated upon the
709 completion of the specified task or function.

710 (2) "Temporary employee" means an employee assigned to
711 work for the clients of a temporary help firm.

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

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

720 71-5-19. (1) Whoever makes a false statement or
721 representation knowing it to be false, or knowingly fails to
722 disclose a material fact, to obtain or increase any benefit or
723 other payment under this chapter or under an employment security
724 law of any other state, of the federal government or of a foreign
725 government, either for himself or for any other person, shall be

726 punished by a fine of not less than One Hundred Dollars (\$100.00)
727 nor more than Five Hundred Dollars (\$500.00), or by imprisonment
728 for not longer than thirty (30) days, or by both such fine and
729 imprisonment; and each such false statement or representation or
730 failure to disclose a material fact shall constitute a separate
731 offense.

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

756 (3) Any person who shall willfully violate any provision of
757 this chapter or any other rule or regulation thereunder, the
758 violation of which is made unlawful or the observance of which is

759 required under the terms of this chapter and for which a penalty
760 is neither prescribed herein nor provided by any other applicable
761 statute, shall be punished by a fine of not less than One Hundred
762 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00),
763 or by imprisonment for not longer than sixty (60) days, or by both
764 such fine and imprisonment; and each day such violation continues
765 shall be deemed to be a separate offense. In lieu of such fine
766 and imprisonment, the employing unit or representative, or both
767 employing unit and representative, if such representative is an
768 employing unit in this state and is found to be a party to such
769 violation, shall not be eligible for a contributions rate of less
770 than five and four-tenths percent (5.4%) for the tax year in which
771 the violation is discovered by the department and for the next two
772 (2) succeeding tax years.

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

787 (5) The department, by agreement with another state or the
788 United States, as provided under Section 303(g) of the Social
789 Security Act, may recover any overpayment of benefits paid to any
790 individual under the laws of this state or of another state or
791 under an unemployment benefit program of the United States. Any

792 overpayments subject to this subsection may be deducted from any
793 future benefits payable to the individual under the laws of this
794 state or of another state or under an unemployment program of the
795 United States.

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

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

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

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

814 (2) Each employing unit shall keep true and accurate work
815 records, containing such information as the department may
816 prescribe. Such records shall be open to inspection and be
817 subject to being copied by the department or its authorized
818 representatives at any reasonable time and as often as may be
819 necessary. The department, Board of Review and any referee may
820 require from any employing unit any sworn or unsworn reports with
821 respect to persons employed by it which they or any of them deem
822 necessary for the effective administration of this chapter.
823 Information, statements, transcriptions of proceedings,
824 transcriptions of recordings, electronic recordings, letters,

825 memoranda, and other documents and reports thus obtained or
826 obtained from any individual pursuant to the administration of
827 this chapter shall, except to the extent necessary for the proper
828 administration of this chapter, be held confidential and shall not
829 be published or be opened to public inspection (other than to
830 public employees in the performance of their public duties) in any
831 manner revealing the individual's or employing unit's identity.

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

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

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

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

852 71-5-135. If any employing unit fails to make any report
853 required by this chapter, the department or its authorized agents
854 shall give * * * notice * * * to such employing unit to make and
855 file such report within fifteen (15) days from the date of such
856 notice. If such employing unit, by its proper members, officers
857 or agents, shall fail or refuse to make and file such reports

858 within such time, then and in that event such report shall be made
859 by the department or its authorized agents from the best
860 information available, and the amount of contributions due shall
861 be computed thereon; and such report shall be prima facie correct
862 for the purposes of this chapter.

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

865 71-5-355. (1) As used in this section, the following words
866 and phrases shall have the following meanings, unless the context
867 clearly requires otherwise:

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

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

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

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

881 (e) For the computation of modified rates, "eligible
882 employer" means an employer whose experience-rating record has
883 been chargeable with benefits throughout the thirty-six (36)
884 consecutive calendar-month period ending on the computation date,
885 except that any employer who has not been subject to the
886 Mississippi Employment Security Law for a period of time
887 sufficient to meet the thirty-six (36) consecutive calendar-month
888 requirement shall be an eligible employer if his experience-rating
889 record has been chargeable throughout not less than the twelve
890 (12) consecutive calendar-month period ending on the computation

891 date. No employer shall be considered eligible for a contribution
892 rate less than five and four-tenths percent (5.4%) with respect to
893 any tax year, who has failed to file any two (2) quarterly reports
894 within the qualifying period by September 30 following the
895 computation date. No employer or employing unit shall be eligible
896 for a contribution rate of less than five and four-tenths percent
897 (5.4%) for the tax year in which the employing unit is found by
898 the department to be in violation of Section 71-5-19(2) or (3) and
899 for the next two (2) succeeding tax years. No representative of
900 such employing unit who was a party to a violation as described in
901 Section 71-5-19(2) or (3), if such representative was or is an
902 employing unit in this state, shall be eligible for a contribution
903 rate of less than five and four-tenths percent (5.4%) for the tax
904 year in which such violation was detected by the department and
905 for the next two (2) succeeding tax years.

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

916 (g) "Modified rates" means the rates of employer
917 contributions determined under the provisions of this chapter and
918 the rates of newly subject employers, as provided in Section
919 71-5-353.

920 (h) For the computation of modified rates, "qualifying
921 period" means a period of not less than the thirty-six (36)
922 consecutive calendar months ending on the computation date
923 throughout which an employer's experience-rating record has been

924 chargeable with benefits; except that with respect to any eligible
925 employer who has not been subject to this article for a period of
926 time sufficient to meet the thirty-six (36) consecutive
927 calendar-month requirement, "qualifying period" means the period
928 ending on the computation date throughout which his
929 experience-rating record has been chargeable with benefits, but in
930 no event less than the twelve (12) consecutive calendar-month
931 period ending on the computation date throughout which his
932 experience-rating record has been so chargeable.

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

941 (j) The "cost rate criterion" (CRC) is defined as
942 follows: Beginning with January 1974, the benefits paid for the
943 twelve-month period ending December 1974 are summed and divided by
944 the total wages for the twelve-month period ending on June 30,
945 1975. Similar ratios are computed by subtracting the earliest
946 month's benefit payments and adding the benefits of the next month
947 in the sequence and dividing each sum of twelve (12) months'
948 benefits by the total wages for the twelve-month period ending on
949 the June 30 which is nearest to the final month of the period used
950 to compute the numerator. If December is the final month of the
951 period used to compute the numerator, then the twelve-month period
952 ending the following June 30 will be used for the denominator.
953 The highest value of these ratios beginning with the ratio for
954 benefits paid in calendar year 1974 is the cost rate criterion.
955 The cost rate criterion shall be computed to four (4) decimal
956 places. Benefits and total wages used in the computation of the

957 cost rate criterion shall exclude all benefits and total wages
958 applicable to state agencies, political subdivisions, reimbursable
959 nonprofit corporations, and tax exempt PSE employment. For rate
960 years 2005 and 2006, the CRC shall be adjusted downward by an
961 amount necessary to satisfy one-half (1/2) the reductions required
962 to maintain a general experience rate of nine-tenths of one
963 percent (.9%). For rate year 2007 and subsequent years, the CRC
964 shall be adjusted downward by an amount necessary to satisfy
965 one-half (1/2) the reductions required to maintain a general
966 experience rate of seven-tenths of one percent (.7%) until such
967 time as the CRC equals the average for the highest value of the
968 cost rate criterion computations during each of the economic
969 cycles (economic cycles shall be those defined by the National
970 Bureau of Economic Research) since the calendar year 1974, except
971 as provided in subsection (3) of Section 71-5-353. When the
972 remaining reduction is insufficient to cause the reductions as
973 specified in this paragraph, additional reductions specified in
974 subsection (1)(k) of this section may be made to the size of fund
975 index to achieve the general experience rate specified in this
976 paragraph, except as provided in Section 71-3-353. The CRC shall
977 not be raised except as provided through annual computations and
978 additions of future economic cycles.

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

990 in any event. In the event Section 71-5-353 is suspended, the
991 SOFI shall remain at the current level until the suspension is
992 lifted.

993 (1) No employer's contribution rate shall exceed five
994 and four-tenths percent (5.4%), nor be less than four-tenths of
995 one percent (.4%). However, from and after January 1, 2005, and
996 continuing unless Section 71-5-353(3) shall be suspended, the
997 reduction shall be accomplished as described in Section
998 71-5-355(1)(j) and (k), no employer's unemployment contribution
999 rate shall be less than one-tenth of one percent (.1%).

1000 (2) Modified rates:

1001 (a) For any tax year, when the reserve ratio on the
1002 preceding November 1, in the case of any tax year, equals or
1003 exceeds four percent (4%), the modified rates, as hereinafter
1004 prescribed, shall be in effect.

1005 (b) Modified rates shall be determined for the tax year
1006 for each eligible employer on the basis of his experience-rating
1007 record in the following manner:

1008 (i) The department shall maintain an
1009 experience-rating record for each employer. Nothing in this
1010 chapter shall be construed to grant any employer or individuals
1011 performing services for him any prior claim or rights to the
1012 amounts paid by the employer into the fund.

1013 (ii) Benefits paid to an eligible individual shall
1014 be charged against the experience-rating record of his base period
1015 employers in the proportion to which the wages paid by each base
1016 period employer bears to the total wages paid to the individual by
1017 all the base period employers, provided that benefits shall not be
1018 charged to an employer's experience-rating record if the
1019 department finds that the individual:

1020 1. Voluntarily left the employ of such
1021 employer without good cause attributable to the employer;

1022 2. Was discharged by such employer for
1023 misconduct connected with his work;

1024 3. Refused an offer of suitable work by such
1025 employer without good cause, and the department further finds that
1026 such benefits are based on wages for employment for such employer
1027 prior to such voluntary leaving, discharge or refusal of suitable
1028 work, as the case may be;

1029 4. Had base period wages which included wages
1030 for previously uncovered services as defined in Section
1031 71-5-511(e) to the extent that the Unemployment Compensation Fund
1032 is reimbursed for such benefits pursuant to Section 121 of Public
1033 Law 94-566;

1034 5. Extended benefits paid under the
1035 provisions of Section 71-5-541 which are not reimbursable from
1036 federal funds shall be charged to the experience-rating record of
1037 base period employers;

1038 6. Is still working for such employer on a
1039 regular part-time basis under the same employment conditions as
1040 hired. Provided, however, that benefits shall be charged against
1041 an employer if an eligible individual is paid benefits who is
1042 still working for such employer on a part-time "as-needed" basis;

1043 7. Was hired to replace a United States
1044 serviceman or servicewoman called into active duty and was laid
1045 off upon the return to work by that serviceman or servicewoman,
1046 unless such employer is a state agency or other political
1047 subdivision or instrumentality of the state;

1048 8. Was paid benefits during any week while in
1049 training with the approval of the department, under the provisions
1050 of Section 71-5-513B, or for any week while in training approved
1051 under Section 236(a)(1) of the Trade Act of 1974, under the
1052 provisions of Section 71-5-513C; or

1053 9. Is not required to serve the one-week
1054 waiting period as described in Section 71-5-505(2). In that

1055 event, only the benefits paid in lieu of the waiting period week
1056 may be noncharged.

1057 (iii) The department shall compute a benefit ratio
1058 for each eligible employer, which shall be the quotient obtained
1059 by dividing the total benefits charged to his experience-rating
1060 record during the period his experience-rating record has been
1061 chargeable, but not less than the twelve (12) consecutive
1062 calendar-month period nor more than the thirty-six (36)
1063 consecutive calendar-month period ending on the computation date,
1064 by his total taxable payroll for the same period on which all
1065 contributions due have been paid on or before the September 30
1066 immediately following the computation date. Such benefit ratio
1067 shall be computed to the tenth of a percent (.1%), rounding any
1068 remainder to the next higher tenth.

1069 The following table shall be applied to reduce contribution
1070 rates until Section 71-5-353(3) and (4) is suspended:

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

1088	1.6	1.3
1089	1.7	1.4
1090	1.8	1.5
1091	1.9	1.6
1092	2.0	1.7
1093	2.1	1.8
1094	2.2	1.9
1095	2.3	2.0
1096	2.4	2.1
1097	2.5	2.2
1098	2.6	2.3
1099	2.7	2.4
1100	2.8	2.5
1101	2.9	2.6
1102	3.0	2.7
1103	3.1	2.8
1104	3.2	2.9
1105	3.3	3.0
1106	3.4	3.1
1107	3.5	3.2
1108	3.6	3.3
1109	3.7	3.4
1110	3.8	3.5
1111	3.9	3.6
1112	4.0	3.7
1113	4.1	3.8
1114	4.2	3.9
1115	4.3	4.0
1116	4.4	4.1
1117	4.5	4.2
1118	4.6	4.3
1119	4.7	4.4
1120	4.8	4.5

1121	4.9	4.6
1122	5.0	4.7
1123	5.1	4.8
1124	5.2	4.9
1125	5.3	5.0
1126	5.4	5.1
1127	5.5	5.2
1128	5.6	5.3
1129	5.7 and above	5.4

1130 (iv) 1. The contribution rate for each eligible
1131 employer shall be the sum of two (2) rates: his individual
1132 experience rate in the range from zero percent (0%) to five and
1133 four-tenths percent (5.4%), plus a general experience rate. In no
1134 event shall the resulting rate be in excess of five and
1135 four-tenths percent (5.4%).

1136 2. The employer's individual experience rate
1137 shall be equal to his benefit ratio as computed under subsection
1138 (2)(b)(iii) above.

1139 3. The general experience rate shall be
1140 determined in the following manner: The department shall
1141 determine annually, for the thirty-six (36) consecutive
1142 calendar-month period ending on the computation date, the amount
1143 of benefits which were not charged to the record of any employer
1144 and of benefits which were ineffectively charged to the employer's
1145 experience-rating record. For the purposes of subsection
1146 (2)(b)(iv)3, the term "ineffectively charged benefits" shall
1147 include:

1148 The total of the amounts of benefits charged to the
1149 experience-rating records of all eligible employers which caused
1150 their benefit ratios to exceed five and four-tenths percent
1151 (5.4%), the total of the amounts of benefits charged to the
1152 experience-rating records of all ineligible employers which would
1153 cause their benefit ratios to exceed five and four-tenths percent

1154 (5.4%) if they were eligible employers, and the total of the
1155 amounts of benefits charged or chargeable to the experience-rating
1156 record of any employer who has discontinued his business or whose
1157 coverage has been terminated within such period; provided, that
1158 solely for the purposes of determining the amounts of
1159 ineffectively charged benefits as herein defined, a "benefit
1160 ratio" shall be computed for each ineligible employer, which shall
1161 be the quotient obtained by dividing the total benefits charged to
1162 his experience-rating record throughout the period ending on the
1163 computation date, during which his experience-rating record has
1164 been chargeable with benefits, by his total taxable payroll for
1165 the same period on which all contributions due have been paid on
1166 or before the September 30 immediately following the computation
1167 date; and provided further, that such benefit ratio shall be
1168 computed to the tenth of one percent (.1%) and any remainder shall
1169 be rounded to the next higher tenth. The ratio of the sum of
1170 these amounts to the taxable wages paid during the same period by
1171 all eligible employers whose benefit ratio did not exceed five and
1172 four-tenths percent (5.4%), computed to the next higher tenth of
1173 one percent (.1%), shall be the general experience rate.

1174 4. The general experience rate shall be
1175 adjusted by use of the size of fund index factor. This factor may
1176 be positive or negative, and shall be determined as follows: From
1177 the target SOFI, as defined in subsection (1)(k) of this section,
1178 subtract the simple average of the current and preceding years'
1179 exposure criteria divided by the cost rate criterion, as defined
1180 in subsection (1)(j) of this section. The result is then
1181 multiplied by the product of the CRC, as defined in subsection
1182 (1)(j) of this section, and total wages for the twelve-month
1183 period ending June 30 divided by the taxable wages for the
1184 twelve-month period ending June 30. This is the percentage
1185 positive or negative added to the general experience rate. This

1186 percentage is computed to one (1) decimal place, and rounded to
1187 the next higher tenth.

1188 5. Notwithstanding any other provisions of
1189 subsection (2)(b)(iv), if the general experience rate for any tax
1190 year as computed and adjusted on the basis of the size of fund
1191 index is a negative percentage, it shall be disregarded.

1192 6. The department shall include in its annual
1193 rate notice to employers a brief explanation of the elements of
1194 the general experience rate, and shall include in its regular
1195 publications an annual analysis of benefits not charged to the
1196 record of any employer, and of the benefit experience of employers
1197 by industry group whose benefit ratio exceeds four percent (4%),
1198 and of any other factors which may affect the size of the general
1199 experience rate.

1200 (v) When any employing unit in any manner succeeds
1201 to or acquires the organization, trade, business or substantially
1202 all the assets thereof of an employer, excepting any assets
1203 retained by such employer incident to the liquidation of his
1204 obligations, whether or not such acquiring employing unit was an
1205 employer within the meaning of Section 71-5-11, subsection H,
1206 prior to such acquisition, and continues such organization, trade
1207 or business, the experience-rating and payroll records of the
1208 predecessor employer shall be transferred as of the date of
1209 acquisition to the successor employer for the purpose of rate
1210 determination.

1211 (vi) When any employing unit succeeds to or
1212 acquires a distinct and severable portion of an organization,
1213 trade or business, the experience-rating and payroll records of
1214 such portion, if separately identifiable, shall be transferred to
1215 the successor upon:

1216 1. The mutual consent of the predecessor and
1217 the successor;

1218 2. Approval of the department;

1219 3. Continued operation of the transferred
1220 portion by the successor after transfer; and

1221 4. The execution and the filing with the
1222 department by the predecessor employer of a waiver relinquishing
1223 all rights to have the experience-rating and payroll records of
1224 the transferred portion used for the purpose of determining
1225 modified rates of contribution for such predecessor.

1226 (vii) If the successor was an employer subject to
1227 this chapter prior to the date of acquisition, it shall continue
1228 to pay contributions at the rate applicable to it from the date
1229 the acquisition occurred until the end of the then current tax
1230 year. If the successor was not an employer prior to the date of
1231 acquisition, it shall pay contributions at the rate applicable to
1232 the predecessor or, if more than one (1) predecessor and the same
1233 rate is applicable to both, the rate applicable to the predecessor
1234 or predecessors, from the date the acquisition occurred until the
1235 end of the then current tax year. If the successor was not an
1236 employer prior to the date the acquisition occurred and
1237 simultaneously acquires the businesses of two (2) or more
1238 employers to whom different rates of contributions are applicable,
1239 it shall pay contributions from the date of the acquisition until
1240 the end of the current tax year at a rate computed on the basis of
1241 the combined experience-rating and payroll records of the
1242 predecessors as of the computation date for such tax year. In all
1243 cases the rate of contributions applicable to such successor for
1244 each succeeding tax year shall be computed on the basis of the
1245 combined experience-rating and payroll records of the successor
1246 and the predecessor or predecessors.

1247 (viii) The department shall notify each employer
1248 quarterly of the benefits paid and charged to his
1249 experience-rating record; and such notification, in the absence of
1250 an application for redetermination filed within thirty (30) days
1251 after the date of * * * such notice, shall be final, conclusive

1252 and binding upon the employer for all purposes. A
1253 redetermination, made after notice and opportunity for a fair
1254 hearing, by a hearing officer designated by the department who
1255 shall consider and decide these and related applications and
1256 protests; and the finding of fact in connection therewith may be
1257 introduced into any subsequent administrative or judicial
1258 proceedings involving the determination of the rate of
1259 contributions of any employer for any tax year, and shall be
1260 entitled to the same finality as is provided in this subsection
1261 with respect to the findings of fact in proceedings to redetermine
1262 the contribution rate of an employer.

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

1285 of such services was determined. The employer shall be promptly
1286 notified of the denial of this application or of the
1287 redetermination, both of which shall become final unless, within
1288 ten (10) days after the date of * * * notice thereof, there shall
1289 be an appeal to the department itself. Any such appeal shall be
1290 on the record before said designated hearing officer, and the
1291 decision of said department shall become final unless, within
1292 thirty (30) days after the date of * * * notice thereof to the
1293 employer's last known address, there shall be an appeal to the
1294 Circuit Court of the First Judicial District of Hinds County,
1295 Mississippi, in accordance with the provisions of law with respect
1296 to review of civil causes by certiorari.

1297 (3) Notwithstanding any other provision of law, the
1298 following shall apply regarding assignment of rates and transfers
1299 of experience:

1300 (a) (i) If an employer transfers its trade or
1301 business, or a portion thereof, to another employer and, at the
1302 time of the transfer, there is substantially common ownership,
1303 management or control of the two (2) employers, then the
1304 unemployment experience attributable to the transferred trade or
1305 business shall be transferred to the employer to whom such
1306 business is so transferred. The rates of both employers shall be
1307 recalculated and made effective on January 1 of the year following
1308 the year the transfer occurred.

1309 (ii) If, following a transfer of experience under
1310 subparagraph (i) of this paragraph (a), the department determines
1311 that a substantial purpose of the transfer of trade or business
1312 was to obtain a reduced liability of contributions, then the
1313 experience-rating accounts of the employers involved shall be
1314 combined into a single account and a single rate assigned to such
1315 account.

1316 (b) Whenever a person who is not an employer or an
1317 employing unit under this chapter at the time it acquires the

1318 trade or business of an employer, the unemployment experience of
1319 the acquired business shall not be transferred to such person if
1320 the department finds that such person acquired the business solely
1321 or primarily for the purpose of obtaining a lower rate of
1322 contributions. Instead, such person shall be assigned the new
1323 employer rate under Section 71-5-353. In determining whether the
1324 business was acquired solely or primarily for the purpose of
1325 obtaining a lower rate of contributions, the department shall use
1326 objective factors which may include the cost of acquiring the
1327 business, whether the person continued the business enterprise of
1328 the acquired business, how long such business enterprise was
1329 continued, or whether a substantial number of new employees were
1330 hired for performance of duties unrelated to the business activity
1331 conducted prior to acquisition.

1332 (c) (i) If a person knowingly violates or attempts to
1333 violate paragraph (a) or (b) of this subsection or any other
1334 provision of this chapter related to determining the assignment of
1335 a contribution rate, or if a person knowingly advises another
1336 person in a way that results in a violation of such provision, the
1337 person shall be subject to the following penalties:

1338 1. If the person is an employer, then such
1339 employer shall be assigned the highest rate assignable under this
1340 chapter for the rate year during which such violation or attempted
1341 violation occurred and the three (3) rate years immediately
1342 following this rate year. However, if the person's business is
1343 already at such highest rate for any year, or if the amount of
1344 increase in the person's rate would be less than two percent (2%)
1345 for such year, then a penalty rate of contributions of two percent
1346 (2%) of taxable wages shall be imposed for such year. The penalty
1347 rate will apply to the successor business as well as the related
1348 entity from which the employees were transferred in an effort to
1349 obtain a lower rate of contributions.

1350 2. If the person is not an employer, such
1351 person shall be subject to a civil money penalty of not more than
1352 Five Thousand Dollars (\$5,000.00). Each such transaction for
1353 which advice was given and each occurrence or reoccurrence after
1354 notification being given by the department shall be a separate
1355 offense and punishable by a separate penalty. Any such fine shall
1356 be deposited in the penalty and interest account established under
1357 Section 71-5-114.

1358 (ii) For purposes of this paragraph (c), the term
1359 "knowingly" means having actual knowledge of or acting with
1360 deliberate ignorance or reckless disregard for the prohibition
1361 involved.

1362 (iii) For purposes of this paragraph (c), the term
1363 "violates or attempts to violate" includes, but is not limited to,
1364 intent to evade, misrepresentation or willful nondisclosure.

1365 (iv) In addition to the penalty imposed by
1366 subparagraph (i) of this paragraph (c), any violation of this
1367 subsection may be punishable by a fine of not more than Ten
1368 Thousand Dollars (\$10,000.00) or by imprisonment for not more than
1369 five (5) years, or by both such fine and imprisonment. This
1370 subsection shall prohibit prosecution under any other criminal
1371 statute of this state.

1372 (d) The department shall establish procedures to
1373 identify the transfer or acquisition of a business for purposes of
1374 this subsection.

1375 (e) For purposes of this subsection:

1376 (i) "Person" has the meaning given such term by
1377 Section 7701(a)(1) of the Internal Revenue Code of 1986; and

1378 (ii) "Employing unit" has the meaning as set forth
1379 in Section 71-5-11.

1380 (f) This subsection shall be interpreted and applied in
1381 such a manner as to meet the minimum requirements contained in any

1382 guidance or regulations issued by the United States Department of
1383 Labor.

1384 **SECTION 7.** Section 71-5-357, Mississippi Code of 1972, is
1385 amended as follows:

1386 71-5-357. Benefits paid to employees of nonprofit
1387 organizations shall be financed in accordance with the provisions
1388 of this section. For the purpose of this section, a nonprofit
1389 organization is an organization (or group of organizations)
1390 described in Section 501(c)(3) of the Internal Revenue Code of
1391 1954 which is exempt from income tax under Section 501(a) of such
1392 code (26 USCS Section 501).

1393 (a) Any nonprofit organization which, under Section
1394 71-5-11, subsection I(3), is or becomes subject to this chapter
1395 shall pay contributions under the provisions of Sections 71-5-351
1396 through 71-5-355 unless it elects, in accordance with this
1397 paragraph, to pay to the department for the unemployment fund an
1398 amount equal to the amount of regular benefits and one-half (1/2)
1399 of the extended benefits paid, that is attributable to service in
1400 the employ of such nonprofit organization, to individuals for
1401 weeks of unemployment which begin during the effective period of
1402 such election.

1403 (i) Any nonprofit organization which becomes
1404 subject to this chapter may elect to become liable for payments in
1405 lieu of contributions for a period of not less than twelve (12)
1406 months, beginning with the date on which such subjectivity begins,
1407 by filing a written notice of its election with the department not
1408 later than thirty (30) days immediately following the date of the
1409 determination of such subjectivity.

1410 (ii) Any nonprofit organization which makes an
1411 election in accordance with subparagraph (i) of this paragraph
1412 will continue to be liable for payments in lieu of contributions
1413 unless it files with the department a written termination notice

1414 not later than thirty (30) days prior to the beginning of the tax
1415 year for which such termination shall first be effective.

1416 (iii) Any nonprofit organization which has been
1417 paying contributions under this chapter may change to a
1418 reimbursable basis by filing with the department, not later than
1419 thirty (30) days prior to the beginning of any tax year, a written
1420 notice of election to become liable for payments in lieu of
1421 contributions. Such election shall not be terminable by the
1422 organization for that and the next tax year.

1423 (iv) The department may for good cause extend the
1424 period within which a notice of election or a notice of
1425 termination must be filed, and may permit an election to be
1426 retroactive.

1427 (v) The department, in accordance with such
1428 regulations as it may prescribe, shall notify each nonprofit
1429 organization of any determination which it may make of its status
1430 as an employer, of the effective date of any election which it
1431 makes and of any termination of such election. Such
1432 determinations shall be subject to reconsideration, appeal and
1433 review in accordance with the provisions of Sections 71-5-351
1434 through 71-5-355.

1435 (b) Payments in lieu of contributions shall be made in
1436 accordance with the provisions of subparagraph (i) of this
1437 paragraph.

1438 (i) At the end of each calendar quarter, or at the
1439 end of any other period as determined by the department, the
1440 department shall bill each nonprofit organization (or group of
1441 such organizations) which has elected to make payments in lieu of
1442 contributions, for an amount equal to the full amount of regular
1443 benefits plus one-half (1/2) of the amount of extended benefits
1444 paid during such quarter or other prescribed period that is
1445 attributable to service in the employ of such organization.

1446 (ii) Payment of any bill rendered under
1447 subparagraph (i) of this paragraph shall be made not later than
1448 forty-five (45) days after such bill was delivered to the * * *
1449 nonprofit organization * * *, unless there has been an application
1450 for review and redetermination in accordance with subparagraph (v)
1451 of this paragraph.

1452 1. All of the enforcement procedures for the
1453 collection of delinquent contributions contained in Sections
1454 71-5-363 through 71-5-383 shall be applicable in all respects for
1455 the collection of delinquent payments due by nonprofit
1456 organizations who have elected to become liable for payments in
1457 lieu of contributions.

1458 2. If any nonprofit organization is
1459 delinquent in making payments in lieu of contributions, the
1460 department may terminate such organization's election to make
1461 payments in lieu of contributions as of the beginning of the next
1462 tax year, and such termination shall be effective for the balance
1463 of such tax year.

1464 (iii) Payments made by any nonprofit organization
1465 under the provisions of this paragraph shall not be deducted or
1466 deductible, in whole or in part, from the remuneration of
1467 individuals in the employ of the organization.

1468 (iv) Payments due by employers who elect to
1469 reimburse the fund in lieu of contributions as provided in this
1470 paragraph may not be noncharged under any condition. The
1471 reimbursement must be on a dollar-for-dollar basis (One Dollar
1472 (\$1.00) reimbursement for each dollar paid in benefits) in every
1473 case, so that the trust fund shall be reimbursed in full, such
1474 reimbursement to include, but not be limited to, benefits or
1475 payments erroneously or incorrectly paid, or paid as a result of a
1476 determination of eligibility which is subsequently reversed, or
1477 paid as a result of claimant fraud. However, political
1478 subdivisions who are reimbursing employers may elect to pay to the

1479 fund an amount equal to five-tenths percent (.5%) of the taxable
1480 wages paid during the calendar year with respect to employment,
1481 and those employers who so elect shall be relieved of liability
1482 for reimbursement of benefits paid under the same conditions that
1483 benefits are not charged to the experience rating record of a
1484 contributing employer as provided in Section 71-5-355(2)(b)(ii)
1485 other than Clause 5 thereof. Benefits paid in such circumstances
1486 for which reimbursing employers are relieved of liability for
1487 reimbursement shall not be considered attributable to service in
1488 the employment of such reimbursing employer.

1489 (v) The amount due specified in any bill from the
1490 department shall be conclusive on the organization unless, not
1491 later than fifteen (15) days after the bill was * * * delivered to
1492 it, the organization files an application for redetermination by
1493 the department, setting forth the grounds for such application or
1494 appeal. The department shall promptly review and reconsider the
1495 amount due specified in the bill and shall thereafter issue a
1496 redetermination in any case in which such application for
1497 redetermination has been filed. Any such redetermination shall be
1498 conclusive on the organization unless, not later than fifteen (15)
1499 days after the redetermination was * * * delivered to it, the
1500 organization files an appeal to the Circuit Court of the First
1501 Judicial District of Hinds County, Mississippi, in accordance with
1502 the provisions of law with respect to review of civil causes by
1503 certiorari.

1504 (vi) Past due payments of amounts in lieu of
1505 contributions shall be subject to the same interest and penalties
1506 that, pursuant to Section 71-5-363, apply to past due
1507 contributions.

1508 (c) Each employer that is liable for payments in lieu
1509 of contributions shall pay to the department for the fund the
1510 amount of regular benefits plus the amount of one-half (1/2) of
1511 extended benefits paid are attributable to service in the employ

1512 of such employer. If benefits paid to an individual are based on
1513 wages paid by more than one (1) employer and one or more of such
1514 employers are liable for payments in lieu of contributions, the
1515 amount payable to the fund by each employer that is liable for
1516 such payments shall be determined in accordance with the
1517 provisions of subparagraph (i) or subparagraph (ii) of this
1518 paragraph.

1519 (i) If benefits paid to an individual are based on
1520 wages paid by one or more employers that are liable for payment in
1521 lieu of contributions and on wages paid by one or more employers
1522 who are liable for contributions, the amount of benefits payable
1523 by each employer that is liable for payments in lieu of
1524 contributions shall be an amount which bears the same ratio to the
1525 total benefits paid to the individual as the total base-period
1526 wages paid to the individual by such employer bear to the total
1527 base-period wages paid to the individual by all of his base-period
1528 employers.

1529 (ii) If benefits paid to an individual are based
1530 on wages paid by two (2) or more employers that are liable for
1531 payments in lieu of contributions, the amount of benefits payable
1532 by each such employer shall be an amount which bears the same
1533 ratio to the total benefits paid to the individual as the total
1534 base-period wages paid to the individual by such employer bear to
1535 the total base-period wages paid to the individual by all of his
1536 base-period employers.

1537 (d) In the discretion of the department, any nonprofit
1538 organization that elects to become liable for payments in lieu of
1539 contributions shall be required * * * to execute and file with the
1540 department a surety bond approved by the department, or it may
1541 elect instead to deposit with the department money or securities.
1542 The amount of such bond or deposit shall be determined in
1543 accordance with the provisions of this paragraph.

1544 (i) The amount of the bond or deposit required by
1545 paragraph (d) shall be equal to two and seven-tenths percent
1546 (2.7%) of the organization's taxable wages paid for employment as
1547 defined in Section 71-5-11, subsection J(4), for the four (4)
1548 calendar quarters immediately preceding the effective date of the
1549 election, the renewal date in the case of a bond, or the biennial
1550 anniversary of the effective date of election in the case of a
1551 deposit of money or securities, whichever date shall be most
1552 recent and applicable. If the nonprofit organization did not pay
1553 wages in each of such four (4) calendar quarters, the amount of
1554 the bond or deposit shall be as determined by the department.

1555 (ii) Any bond deposited under paragraph (d) shall
1556 be in force for a period of not less than two (2) tax years and
1557 shall be renewed with the approval of the department at such times
1558 as the department may prescribe, but not less frequently than at
1559 intervals of two (2) years as long as the organization continues
1560 to be liable for payments in lieu of contributions. The
1561 department shall require adjustments to be made in a previously
1562 filed bond as it deems appropriate. If the bond is to be
1563 increased, the adjusted bond shall be filed by the organization
1564 within thirty (30) days of the date notice of the required
1565 adjustment was * * * delivered to it. Failure by any organization
1566 covered by such bond to pay the full amount of payments in lieu of
1567 contributions when due, together with any applicable interest and
1568 penalties provided in paragraph (b)(v) of this section, shall
1569 render the surety liable on the bond to the extent of the bond, as
1570 though the surety was such organization.

1571 (iii) Any deposit of money or securities in
1572 accordance with paragraph (d) shall be retained by the department
1573 in an escrow account until liability under the election is
1574 terminated, at which time it shall be returned to the
1575 organization, less any deductions as hereinafter provided. The
1576 department may deduct from the money deposited under paragraph (d)

1577 by a nonprofit organization, or sell the securities it has so
1578 deposited, to the extent necessary to satisfy any due and unpaid
1579 payments in lieu of contributions and any applicable interest and
1580 penalties provided for in paragraph (b)(v) of this section. The
1581 department shall require the organization, within thirty (30) days
1582 following any deduction from a money deposit or sale of deposited
1583 securities under the provisions hereof, to deposit sufficient
1584 additional money or securities to make whole the organization's
1585 deposit at the prior level. Any cash remaining from the sale of
1586 such securities shall be a part of the organization's escrow
1587 account. The department may, at any time, review the adequacy of
1588 the deposit made by any organization. If, as a result of such
1589 review, it determines that an adjustment is necessary, it shall
1590 require the organization to make additional deposit within thirty
1591 (30) days of * * * notice of its determination or shall return to
1592 it such portion of the deposit as it no longer considers
1593 necessary, whichever action is appropriate. Disposition of income
1594 from securities held in escrow shall be governed by the applicable
1595 provisions of the state law.

1596 (iv) If any nonprofit organization fails to file a
1597 bond or make a deposit, or to file a bond in an increased amount,
1598 or to increase or make whole the amount of a previously made
1599 deposit as provided under this subparagraph, the department may
1600 terminate such organization's election to make payments in lieu of
1601 contributions, and such termination shall continue for not less
1602 than the four (4) consecutive calendar-quarter periods beginning
1603 with the quarter in which such termination becomes effective;
1604 however, the department may extend for good cause the applicable
1605 filing, deposit or adjustment period by not more than thirty (30)
1606 days.

1607 (v) Group account shall be established according
1608 to regulations prescribed by the department.

1609 (e) Any employer which elects to make payments in lieu
1610 of contributions into the Unemployment Compensation Fund as
1611 provided in this paragraph shall not be liable to make such
1612 payments with respect to the benefits paid to any individual whose
1613 base-period wages include wages for previously uncovered services
1614 as defined in Section 71-5-511(e) to the extent that the
1615 Unemployment Compensation Fund is reimbursed for such benefits
1616 pursuant to Section 121 of Public Law 94-566.

1617 **SECTION 8.** Section 71-5-359, Mississippi Code of 1972, is
1618 amended as follows:

1619 71-5-359. (1) (a) Before January 1, 1978, each state board
1620 or other instrumentality of this state or one or more other states
1621 covered under Section 71-5-11, subsection I(3), shall pay
1622 contributions under the provisions of Sections 71-5-351 through
1623 71-5-355 for all of the hospitals or institutions of higher
1624 learning under its jurisdiction unless it elects, in the same
1625 manner and under the same conditions as provided for nonprofit
1626 organizations in subsections (a), (b) and (c) of Section 71-5-357,
1627 to pay to the department for the unemployment fund an amount equal
1628 to the regular benefits and one-half (1/2) of the extended
1629 benefits paid that are attributable to service in the employ of
1630 such hospitals or institutions. When an election is made, the
1631 amounts required to be paid in lieu of contributions shall be
1632 billed and payment made as provided in Section 71-5-357 with
1633 respect to similar payments by nonprofit organizations. A state
1634 board having jurisdiction over two (2) or more state-owned
1635 hospitals or state-owned institutions of higher learning shall be
1636 treated as a single employer for the employment in all of those
1637 hospitals or institutions of higher learning for purposes of
1638 computing contribution rates and payment of contributions, or for
1639 purposes of reimbursing the fund, unless it elects, in accordance
1640 with this section, to have one or more of those hospitals or
1641 institutions of higher learning treated as a separate employer.

1642 (b) A state board may elect to have one or more
1643 state-owned hospitals or one or more state-owned institutions of
1644 higher learning under its jurisdiction treated as a separate
1645 employer for the purposes of this section, provided it files with
1646 the department, not later than thirty (30) days prior to the
1647 beginning of any tax year, a written notice of such election. Any
1648 such election shall be effective throughout such tax year, and
1649 shall continue in effect unless the state board files with the
1650 department a written notice of termination of such election not
1651 less than thirty (30) days prior to the beginning of the tax year
1652 for which such termination is to be effective.

1653 (2) (a) From January 1, 1978, through December 31, 1978,
1654 the Commission of Budget and Accounting shall, in the manner
1655 provided in subsection (2)(c) of this section, pay, upon warrant
1656 issued by the State Auditor of Public Accounts, to the department
1657 for the Unemployment Compensation Fund an amount equal to the
1658 regular benefits and one-half (1/2) of the extended benefits paid
1659 that are attributable to service in the employ of a state agency.
1660 The amount required to be reimbursed by a certain agency shall be
1661 billed to the Commission of Budget and Accounting and shall be
1662 paid from the Employment Compensation Revolving Fund pursuant to
1663 subsection (2)(c) of this section not later than thirty (30) days
1664 after such bill was sent, unless there has been an application for
1665 review and redetermination in accordance with Section
1666 71-5-357(b)(v).

1667 (b) The Department of Finance and Administration shall,
1668 in the manner provided in subsection (2)(c) of this section, pay,
1669 upon warrant issued by the State Auditor, or the successor to
1670 these duties, to the department for the Unemployment Compensation
1671 Fund an amount equal to the regular benefits and the extended
1672 benefits paid that are attributable to service in the employ of a
1673 state agency. The amount required to be reimbursed by a certain
1674 agency shall be billed to the Department of Finance and

1675 Administration and shall be paid from the Employment Compensation
1676 Revolving Fund pursuant to subsection (2)(c) of this section not
1677 later than thirty (30) days after such bill was sent, unless there
1678 has been an application for review and redetermination in
1679 accordance with Section 71-5-357(b)(v).

1680 (c) Each agency of state government shall deposit
1681 monthly for a period of twenty-four (24) months an amount equal to
1682 one-twelfth of one percent (1/12 of 1%) of the first Six Thousand
1683 Dollars (\$6,000.00) paid to each employee thereof during the next
1684 preceding year into the Employment Compensation Revolving Fund
1685 that is created in the State Treasury. The Department of Finance
1686 and Administration shall determine the percentage to be applied to
1687 the amount of covered wages paid in order to maintain a balance in
1688 the revolving fund of not less than two percent (2%) of the
1689 covered wages paid during the next preceding year. The State
1690 Treasurer shall invest all funds in the Employment Compensation
1691 Revolving Fund and all interest earned shall be credited to the
1692 Employment Compensation Revolving Fund.

1693 The reimbursement of benefits paid by the Mississippi
1694 Department of Employment Security shall be paid by the Department
1695 of Finance and Administration from the Employment Compensation
1696 Revolving Fund upon warrants issued by the State Auditor of Public
1697 Accounts, or the successor to these duties; and the auditor shall
1698 issue his warrants upon requisitions signed by the Department of
1699 Finance and Administration. However, the Department of Finance and
1700 Administration may, if it so elects, contract for the performance
1701 of the duties prescribed by subsection (2)(b) and (c), and other
1702 duties necessarily related thereto.

1703 (d) From January 1, 1978, through December 31, 1978,
1704 any political subdivision of this state shall pay to the
1705 department for the unemployment fund an amount equal to the
1706 regular benefits and one-half (1/2) of the extended benefits paid
1707 that are attributable to service in the employ of such political

1708 subdivision unless it elects to make contributions to the
1709 unemployment fund as provided in subsection (2)(j) of this
1710 section. The amount required to be reimbursed shall be billed and
1711 shall be paid as provided in Section 71-5-357, with respect to
1712 similar payments for nonprofit organizations.

1713 (e) On and after January 1, 1979, any political
1714 subdivision of this state shall pay to the department for the
1715 unemployment fund an amount equal to the regular benefits and the
1716 extended benefits paid that are attributable to service in the
1717 employ of such political subdivision unless it elects to make
1718 contributions to the unemployment fund as provided in subsection
1719 (2)(j) of this section. The amount required to be reimbursed
1720 shall be billed and shall be paid as provided in Section 71-5-357,
1721 with respect to similar payments for nonprofit organizations.

1722 (f) Each political subdivision unless it elects to make
1723 contributions to the unemployment fund as provided in subsection
1724 (2)(j) of this section, shall establish a revolving fund and
1725 deposit therein monthly for a period of twenty-four (24) months an
1726 amount equal to one-twelfth of one percent (1/12 of 1%) of the
1727 first Six Thousand Dollars (\$6,000.00) paid to each employee
1728 thereof during the next preceding year plus an amount each month
1729 equal to one-third (1/3) of any reimbursement paid to the
1730 department for the next preceding quarter. After January 1, 1980,
1731 the balance in the revolving fund shall be maintained at an amount
1732 not less than two percent (2%) of the covered wages paid during
1733 the next preceding year. However, the department shall by
1734 regulation establish a procedure to allow reimbursing political
1735 subdivisions to elect to maintain the balance in the revolving
1736 fund as required under this paragraph or to annually execute a
1737 surety bond to be approved by the department in an amount not less
1738 than two percent (2%) of the covered wages paid during the next
1739 preceding year.

1740 (g) In the event any political subdivision becomes
1741 delinquent in payments due under this chapter, upon due notice,
1742 and upon certification of the delinquency by the department to the
1743 Department of Finance and Administration, the State Tax
1744 Commission, the Department of Environmental Quality and the
1745 Department of Insurance, or any of them, such agencies shall
1746 direct the issuance of warrants which in the aggregate shall be
1747 the amount of such delinquency payable to the department and drawn
1748 upon any funds in the State Treasury which may be available to
1749 such political subdivision in satisfaction of any such
1750 delinquency. This remedy shall be in addition to any other
1751 collection remedies in this chapter or otherwise provided by law.

1752 (h) Payments made by any political subdivision under
1753 the provisions of this section shall not be deducted or
1754 deductible, in whole or in part, from the remuneration of
1755 individuals in the employ of the organization.

1756 (i) Any governmental entity shall not be liable to make
1757 payments to the unemployment fund with respect to the benefits
1758 paid to any individual whose base-period wages include wages for
1759 previously uncovered services as defined in Section 71-5-511,
1760 subsection (e), to the extent that the Unemployment Compensation
1761 Fund is reimbursed for such benefits pursuant to Section 121 of
1762 Public Law 94-566.

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

1773 department shall by regulation establish a procedure to allow
1774 political subdivisions the option periodically to elect either the
1775 reimbursement or the contribution method of financing unemployment
1776 compensation coverage.

1777 **SECTION 9.** Section 71-5-365, Mississippi Code of 1972, is
1778 amended as follows:

1779 71-5-365. If any employer fails to make and file any report
1780 as and when required by the terms and provisions of this chapter
1781 or by any rule or regulation of the commission for the purpose of
1782 determining the amount of contributions due by him under this
1783 chapter, or if any report which has been filed is deemed by the
1784 executive director to be incorrect or insufficient, and such
1785 employer, after having been given * * * notice * * * by the
1786 executive director to file such report, or a corrected or
1787 sufficient report, as the case may be, shall fail to file such
1788 report within fifteen (15) days after the date of * * * such
1789 notice, the executive director may (a) determine the amount of
1790 contributions due from such employer on the basis of such
1791 information as may be readily available to him, which said
1792 determination shall be prima facie correct, (b) assess such
1793 employer with the amount of contribution so determined, to which
1794 amount may be added and assessed by the executive director in his
1795 discretion, as damages, an amount equal to ten percent (10%) of
1796 said amount, and (c) immediately give * * * notice * * * to such
1797 employer of such determination, assessment, and damages, if any,
1798 added and assessed, demanding payment of same together with
1799 interest, as herein provided, on the amount of contributions from
1800 the date when same were due and payable. Such determination and
1801 assessment by the executive director shall be final at the
1802 expiration of fifteen (15) days from the date * * * of such * * *
1803 notice thereof demanding payment, unless:

1804 (a) Such employer shall have filed with the department
1805 a written protest and petition for a hearing, specifying his

1806 objections thereto. Upon receipt of such petition within the
1807 fifteen (15) days allowed, the department shall fix the time and
1808 place for a hearing and shall notify the petitioner thereof. At
1809 any hearing held before the department as herein provided,
1810 evidence may be offered to support such determination and
1811 assessment or to prove that it is incorrect, and the commission
1812 shall have all the power provided in Sections 71-5-137 and
1813 71-5-139. Immediately after such hearing a final decision in the
1814 matter shall be made by the commission, and any contributions or
1815 deficiencies in contributions found and determined by the
1816 commission to be due shall be assessed and paid, together with
1817 interest, within fifteen (15) days after notice of such final
1818 decision and assessment, and demand for payment thereof by the
1819 department shall have been sent to such employer.

1820 (b) The department, in its discretion, determines on
1821 the basis of information submitted by the employer that such
1822 assessment should be amended and adjusted to reflect the correct
1823 amount of taxes.

1824 Sixty (60) days after the due date of the contributions,
1825 together with interest and damages, or upon issuance of a warrant,
1826 whichever occurs first, the department, in its discretion, may
1827 assess an additional sum not exceeding one hundred percent (100%)
1828 of the amount of the unpaid contributions due as damages for
1829 failure to pay.

1830 **SECTION 10.** Section 71-5-505, Mississippi Code of 1972, is
1831 amended as follows:

1832 71-5-505. (1) For weeks beginning on or after July 1, 1991,
1833 each eligible individual who is totally unemployed or part totally
1834 unemployed in any week shall be paid with respect to such week a
1835 benefit in an amount equal to his weekly benefit amount less that
1836 part of his wages, if any, payable to him with respect to such
1837 week which is in excess of Forty Dollars (\$40.00). Such
1838 individuals must have been totally unemployed or part totally

1839 unemployed for a waiting period of one (1) week during which he
1840 earned less than his weekly benefit amount plus Forty Dollars
1841 (\$40.00). Such benefit for a benefit year effective on or after
1842 October 1, 1983, if not a multiple of One Dollar (\$1.00), shall be
1843 computed to the next lower multiple of One Dollar (\$1.00).
1844 Provided, however, that remuneration for "inactive duty training"
1845 or "unit training assembly" payable to such eligible individual
1846 who is a member of any of the reserve components, or remuneration
1847 for jury duty pursuant to a lawfully issued summons therefor
1848 payable to such eligible individual, shall not be considered wages
1849 which serve to reduce the otherwise payable benefit amount.

1850 In determining whether an eligible individual is unemployed
1851 during a week, the date of commencing a shift shall determine the
1852 week for which the earnings are deducted.

1853 (2) However, the one-week waiting period described herein
1854 shall be waived if the President of the United States declares a
1855 major disaster in accordance with Section 401 of The Robert T.
1856 Stafford Disaster Relief and Emergency Assistance Act. The
1857 department, in its discretion, shall have the authority to
1858 noncharge an employer account for any benefits paid for
1859 unemployment due directly to such disaster.

1860 **SECTION 11.** Section 71-5-511, Mississippi Code of 1972, is
1861 amended as follows:

1862 71-5-511. An unemployed individual shall be eligible to
1863 receive benefits with respect to any week only if the department
1864 finds that:

1865 (a) (i) He has registered for work at and thereafter
1866 has continued to report to the department in accordance with such
1867 regulations as the department may prescribe; except that the
1868 department may, by regulation, waive or alter either or both of
1869 the requirements of this subparagraph as to such types of cases or
1870 situations with respect to which it finds that compliance with

1871 such requirements would be oppressive or would be inconsistent
1872 with the purposes of this chapter; and

1873 (ii) He participates in reemployment services,
1874 such as job search assistance services, if, in accordance with a
1875 profiling system established by the department, it has been
1876 determined that he is likely to exhaust regular benefits and needs
1877 reemployment services, unless the department determines that:

1878 1. The individual has completed such
1879 services; or

1880 2. There is justifiable cause for the
1881 claimant's failure to participate in such services.

1882 (b) He has made a claim for benefits in accordance with
1883 the provisions of Section 71-5-515 and in accordance with such
1884 regulations as the department may prescribe thereunder.

1885 (c) He is able to work and is available for work.

1886 (d) He has been unemployed for a waiting period of one
1887 (1) week. No week shall be counted as a week of unemployment for
1888 the purposes of this subsection:

1889 (i) Unless it occurs within the benefit year which
1890 includes the week with respect to which he claims payment of
1891 benefits;

1892 (ii) If benefits have been paid with respect
1893 thereto;

1894 (iii) Unless the individual was eligible for
1895 benefits with respect thereto, as provided in Sections 71-5-511
1896 and 71-5-513, except for the requirements of this subsection.

1897 (e) For weeks beginning on or before July 1, 1982, he
1898 has, during his base period, been paid wages for insured work
1899 equal to not less than thirty-six (36) times his weekly benefit
1900 amount; he has been paid wages for insured work during at least
1901 two (2) quarters of his base period; and he has, during that
1902 quarter of his base period in which his total wages were highest,
1903 been paid wages for insured work equal to not less than sixteen

1904 (16) times the minimum weekly benefit amount. For benefit years
1905 beginning after July 1, 1982, he has, during his base period, been
1906 paid wages for insured work equal to not less than forty (40)
1907 times his weekly benefit amount; he has been paid wages for
1908 insured work during at least two (2) quarters of his base period,
1909 and he has, during that quarter of his base period in which his
1910 total wages were highest, been paid wages for insured work equal
1911 to not less than twenty-six (26) times the minimum weekly benefit
1912 amount. For purposes of this subsection, wages shall be counted
1913 as "wages for insured work" for benefit purposes with respect to
1914 any benefit year only if such benefit year begins subsequent to
1915 the date on which the employing unit by which such wages were paid
1916 has satisfied the conditions of Section 71-5-11, subsection I, or
1917 Section 71-5-361, subsection (3), with respect to becoming an
1918 employer.

1919 (f) No individual may receive benefits in a benefit
1920 year unless, subsequent to the beginning of the next preceding
1921 benefit year during which he received benefits, he performed
1922 service in "employment" as defined in Section 71-5-11, subsection
1923 J, and earned remuneration for such service in an amount equal to
1924 not less than eight (8) times his weekly benefit amount applicable
1925 to his next preceding benefit year.

1926 (g) Benefits based on service in employment defined in
1927 Section 71-5-11, subsection J(3) and J(4), and Section 71-5-361,
1928 subsection (4) shall be payable in the same amount, on the same
1929 terms, and subject to the same conditions as compensation payable
1930 on the basis of other service subject to this chapter, except that
1931 benefits based on service in an instructional, research or
1932 principal administrative capacity in an institution of higher
1933 learning (as defined in Section 71-5-11, subsection O) with
1934 respect to service performed prior to January 1, 1978, shall not
1935 be paid to an individual for any week of unemployment which begins
1936 during the period between two (2) successive academic years, or

1937 during a similar period between two (2) regular terms, whether or
1938 not successive, or during a period of paid sabbatical leave
1939 provided for in the individual's contract, if the individual has a
1940 contract or contracts to perform services in any such capacity for
1941 any institution or institutions of higher learning for both such
1942 academic years or both such terms.

1943 (h) Benefits based on service in employment defined in
1944 Section 71-5-11, subsection J(3) and J(4), shall be payable in the
1945 same amount, on the same terms and subject to the same conditions
1946 as compensation payable on the basis of other service subject to
1947 this chapter; except that:

1948 (i) With respect to service performed in an
1949 instructional, research or principal administrative capacity for
1950 an educational institution, benefits shall not be paid based on
1951 such services for any week of unemployment commencing during the
1952 period between two (2) successive academic years, or during a
1953 similar period between two (2) regular but not successive terms,
1954 or during a period of paid sabbatical leave provided for in the
1955 individual's contract, to any individual, if such individual
1956 performs such services in the first of such academic years or
1957 terms and if there is a contract or a reasonable assurance that
1958 such individual will perform services in any such capacity for any
1959 educational institution in the second of such academic years or
1960 terms, and provided that Section 71-5-511, subsection (g), shall
1961 apply with respect to such services prior to January 1, 1978. In
1962 no event shall benefits be paid unless the individual employee was
1963 terminated by the employer.

1964 (ii) With respect to services performed in any
1965 other capacity for an educational institution, benefits shall not
1966 be paid on the basis of such services to any individual for any
1967 week which commences during a period between two (2) successive
1968 academic years or terms, if such individual performs such services
1969 in the first of such academic years or terms and there is a

1970 reasonable assurance that such individual will perform such
1971 services in the second of such academic years or terms, except
1972 that if compensation is denied to any individual under this
1973 subparagraph and such individual was not offered an opportunity to
1974 perform such services for the educational institution for the
1975 second of such academic years or terms, such individual shall be
1976 entitled to a retroactive payment of compensation for each week
1977 for which the individual filed a timely claim for compensation and
1978 for which compensation was denied solely by reason of this clause.
1979 In no event shall benefits be paid unless the individual employee
1980 was terminated by the employer.

1981 (iii) With respect to services described in
1982 subsection (h)(i) and (ii), benefits shall not be payable on the
1983 basis of services in any such capacities to any individual for any
1984 week which commences during an established and customary vacation
1985 period or holiday recess if such individual performs such services
1986 in the first of such academic years or terms, or in the period
1987 immediately before such vacation period or holiday recess, and
1988 there is a reasonable assurance that such individual will perform
1989 such services in the period immediately following such vacation
1990 period or holiday recess.

1991 (iv) With respect to any services described in
1992 subsection (h)(i) and (ii), benefits shall not be payable on the
1993 basis of services in any such capacities as specified in
1994 subsection (h)(i), (ii) and (iii) to any individual who performed
1995 such services in an educational institution while in the employ of
1996 an educational service agency. For purposes of this subsection,
1997 the term "educational service agency" means a governmental agency
1998 or governmental entity which is established and operated
1999 exclusively for the purpose of providing such services to one or
2000 more educational institutions.

2001 (v) With respect to services to which Sections
2002 71-5-357 and 71-5-359 apply, if such services are provided to or

2003 on behalf of an educational institution, benefits shall not be
2004 payable under the same circumstances and subject to the same terms
2005 and conditions as described in subsection (h)(i), (ii), (iii) and
2006 (iv).

2007 (i) Subsequent to December 31, 1977, benefits shall not
2008 be paid to any individual on the basis of any services
2009 substantially all of which consist of participating in sports or
2010 athletic events or training or preparing to so participate, for
2011 any week which commences during the period between two (2)
2012 successive sports seasons (or similar periods) if such individual
2013 performs such services in the first of such seasons (or similar
2014 periods) and there is a reasonable assurance that such individual
2015 will perform such services in the later of such seasons (or
2016 similar periods).

2017 (j) (i) Subsequent to December 31, 1977, benefits
2018 shall not be payable on the basis of services performed by an
2019 alien, unless such alien is an individual who was lawfully
2020 admitted for permanent residence at the time such services were
2021 performed, was lawfully present for purposes of performing such
2022 services, or was permanently residing in the United States under
2023 color of law at the time such services were performed (including
2024 an alien who was lawfully present in the United States as a result
2025 of the application of the provisions of Section 203(a)(7) or
2026 Section 212(d)(5) of the Immigration and Nationality Act).

2027 (ii) Any data or information required of
2028 individuals applying for benefits to determine whether benefits
2029 are not payable to them because of their alien status shall be
2030 uniformly required from all applicants for benefits.

2031 (iii) In the case of an individual whose
2032 application for benefits would otherwise be approved, no
2033 determination that benefits to such individual are not payable
2034 because of his alien status shall be made, except upon a
2035 preponderance of the evidence.

2036 (k) An individual shall be deemed prima facie
2037 unavailable for work, and therefore ineligible to receive
2038 benefits, during any period which, with respect to his employment
2039 status, is found by the department to be a holiday or vacation
2040 period.

2041 (1) A temporary employee of a temporary help firm, as
2042 defined in Section 71-5-11, subsection X, is considered to have
2043 left the employee's last work voluntarily without good cause
2044 connected with the work if the temporary employee does not contact
2045 the temporary help firm for reassignment on completion of an
2046 assignment. A temporary employee is not considered to have left
2047 work voluntarily without good cause connected with the work under
2048 this paragraph unless the temporary employee has been advised in
2049 writing:

2050 (i) That the temporary employee is obligated to
2051 contact the temporary help firm on completion of assignments; and

2052 (ii) That unemployment benefits may be denied if
2053 the temporary employee fails to do so.

2054 **SECTION 12.** Section 71-5-513, Mississippi Code of 1972, is
2055 amended as follows:

2056 71-5-513. A. An individual shall be disqualified for
2057 benefits:

2058 (1) (a) For the week, or fraction thereof, which
2059 immediately follows the day on which he left work voluntarily
2060 without good cause, if so found by the department, and for each
2061 week thereafter until he has earned remuneration for personal
2062 services performed for an employer, as in this chapter defined,
2063 equal to not less than eight (8) times his weekly benefit amount,
2064 as determined in each case; however, marital, filial and domestic
2065 circumstances and obligations shall not be deemed good cause
2066 within the meaning of this subsection. Pregnancy shall not be
2067 deemed to be a marital, filial or domestic circumstance for the
2068 purpose of this subsection.

2069 (b) For the week, or fraction thereof, which
2070 immediately follows the day on which he was discharged for
2071 misconduct connected with his work, if so found by the department,
2072 and for each week thereafter until he has earned remuneration for
2073 personal services performed for an employer, as in this chapter
2074 defined, equal to not less than eight (8) times his weekly benefit
2075 amount, as determined in each case.

2076 (c) The burden of proof of good cause for leaving
2077 work shall be on the claimant, and the burden of proof of
2078 misconduct shall be on the employer.

2079 (2) For the week, or fraction thereof, with respect to
2080 which he willfully makes a false statement, a false representation
2081 of fact, or willfully fails to disclose a material fact for the
2082 purpose of obtaining or increasing benefits under the provisions
2083 of this law, if so found by the department, and such individual's
2084 maximum benefit allowance shall be reduced by the amount of
2085 benefits so paid to him during any such week of disqualification;
2086 and additional disqualification shall be imposed for a period not
2087 exceeding fifty-two (52) weeks, the length of such period of
2088 disqualification and the time when such period begins to be
2089 determined by the department, in its discretion, according to the
2090 circumstances in each case.

2091 (3) If the department finds that he has failed, without
2092 good cause, either to apply for available suitable work when so
2093 directed by the employment office or the department, to accept
2094 suitable work when offered him, or to return to his customary
2095 self-employment (if any) when so directed by the department, such
2096 disqualification shall continue for the week in which such failure
2097 occurred and for not more than the twelve (12) weeks which
2098 immediately follow such week, as determined by the department
2099 according to the circumstances in each case.

2100 (a) In determining whether or not any work is
2101 suitable for an individual, the department shall consider among

2102 other factors the degree of risk involved to his health, safety
2103 and morals, his physical fitness and prior training, his
2104 experience and prior earnings, his length of unemployment and
2105 prospects for securing local work in his customary occupation, and
2106 the distance of the available work from his residence; however,
2107 offered employment paying the minimum wage or higher, if such
2108 minimum or higher wage is that prevailing for his customary
2109 occupation or similar work in the locality, shall be deemed to be
2110 suitable employment after benefits have been paid to the
2111 individual for a period of eight (8) weeks.

2112 (b) Notwithstanding any other provisions of this
2113 chapter, no work shall be deemed suitable and benefits shall not
2114 be denied under this chapter to any otherwise eligible individual
2115 for refusing to accept new work under any of the following
2116 conditions:

2117 (i) If the position offered is vacant due
2118 directly to a strike, lockout or other labor dispute;

2119 (ii) If the wages, hours or other conditions
2120 of the work offered are substantially unfavorable or unreasonable
2121 to the individual's work. * * * The department shall have the
2122 sole discretion to determine whether or not there has been an
2123 unfavorable or unreasonable condition placed on the individual's
2124 work. Moreover, the department may consider, but shall not be
2125 limited to a consideration of, whether or not the unfavorable
2126 condition was applied by the employer to all workers in the same
2127 or similar class or merely to this individual;

2128 (iii) If as a condition of being employed the
2129 individual would be required to join a company union or to resign
2130 from or refrain from joining any bona fide labor organization;

2131 (iv) If unsatisfactory or hazardous working
2132 conditions exist that could result in a danger to the physical or
2133 mental well-being of the worker. In any such determination the
2134 department shall consider, but shall not be limited to a

2135 consideration of, the following: the safety measures used or the
2136 lack thereof and the condition of equipment or lack of proper
2137 equipment. No work shall be considered hazardous if the working
2138 conditions surrounding a worker's employment are the same or
2139 substantially the same as the working conditions generally
2140 prevailing among workers performing the same or similar work for
2141 other employers engaged in the same or similar type of activity.

2142 (4) For any week with respect to which the department
2143 finds that his total unemployment is due to a stoppage of work
2144 which exists because of a labor dispute at a factory,
2145 establishment or other premises at which he is or was last
2146 employed; however, this subsection shall not apply if it is shown
2147 to the satisfaction of the department:

2148 (a) He is unemployed due to a stoppage of work
2149 occasioned by an unjustified lockout, if such lockout was not
2150 occasioned or brought about by such individual acting alone or
2151 with other workers in concert; or

2152 (b) He is not participating in or directly
2153 interested in the labor dispute which caused the stoppage of work;
2154 and

2155 (c) He does not belong to a grade or class of
2156 workers of which, immediately before the commencement of stoppage,
2157 there were members employed at the premises at which the stoppage
2158 occurs, any of whom are participating in or directly interested in
2159 the dispute.

2160 If in any case separate branches of work which are commonly
2161 conducted as separate businesses in separate premises are
2162 conducted in separate departments of the same premises, each such
2163 department shall, for the purposes of this subsection, be deemed
2164 to be a separate factory, establishment or other premises.

2165 (5) For any week with respect to which he has received
2166 or is seeking unemployment compensation under an unemployment
2167 compensation law of another state or of the United States.

2168 However, if the appropriate agency of such other state or of the
2169 United States finally determines that he is not entitled to such
2170 unemployment compensation benefits, this disqualification shall
2171 not apply. Nothing in this subsection contained shall be
2172 construed to include within its terms any law of the United States
2173 providing unemployment compensation or allowances for honorably
2174 discharged members of the Armed Forces.

2175 (6) For any week with respect to which he is receiving
2176 or has received remuneration in the form of payments under any
2177 governmental or private retirement or pension plan, system or
2178 policy which a base-period employer is maintaining or contributing
2179 to or has maintained or contributed to on behalf of the
2180 individual; however, if the amount payable with respect to any
2181 week is less than the benefits which would otherwise be due under
2182 Section 71-5-501, he shall be entitled to receive for such week,
2183 if otherwise eligible, benefits reduced by the amount of such
2184 remuneration. However, on or after the first Sunday immediately
2185 following July 1, 2001, no social security payments, to which the
2186 employee has made contributions, shall be deducted from
2187 unemployment benefits paid for any period of unemployment
2188 beginning on or after the first Sunday following July 1, 2001.
2189 This one hundred percent (100%) exclusion shall not apply to any
2190 other governmental or private retirement or pension plan, system
2191 or policy. If benefits payable under this section, after being
2192 reduced by the amount of such remuneration, are not a multiple of
2193 One Dollar (\$1.00), they shall be adjusted to the next lower
2194 multiple of One Dollar (\$1.00).

2195 (7) For any week with respect to which he is receiving
2196 or has received remuneration in the form of a back pay award, or
2197 other compensation allocable to any week, whether by settlement or
2198 otherwise. Any benefits previously paid for weeks of unemployment
2199 with respect to which back pay awards, or other such compensation,
2200 are made shall constitute an overpayment and such amounts shall be

2201 deducted from the award by the employer prior to payment to the
2202 employee, and shall be transmitted promptly to the department by
2203 the employer for application against the overpayment and credit to
2204 the claimant's maximum benefit amount and prompt deposit into the
2205 fund; however, the removal of any charges made against the
2206 employer as a result of such previously paid benefits shall be
2207 applied to the calendar year and the calendar quarter in which the
2208 overpayment is transmitted to the department, and no attempt shall
2209 be made to relate such a credit to the period to which the award
2210 applies. Any amount of overpayment so deducted by the employer
2211 and not transmitted to the department shall be subject to the same
2212 procedures for collection as is provided for contributions by
2213 Sections 71-5-363 through 71-5-381. Any amount of overpayment not
2214 deducted by the employer shall be established as an overpayment
2215 against the claimant and collected as provided above. It is the
2216 purpose of this paragraph to assure equity in the situations to
2217 which it applies, and it shall be construed accordingly.

2218 B. Notwithstanding any other provision in this chapter, no
2219 otherwise eligible individual shall be denied benefits for any
2220 week because he is in training with the approval of the
2221 department; nor shall such individual be denied benefits with
2222 respect to any week in which he is in training with the approval
2223 of the department by reason of the application of provisions in
2224 Section 71-5-511, subsection (c), relating to availability for
2225 work, or the provisions of subsection A(3) of this section,
2226 relating to failure to apply for, or a refusal to accept, suitable
2227 work.

2228 C. Notwithstanding any other provisions of this chapter, no
2229 otherwise eligible individual shall be denied benefits for any
2230 week because he or she is in training approved under Section
2231 236(a)(1) of the Trade Act of 1974, nor shall such individual be
2232 denied benefits by reason of leaving work to enter such training,
2233 provided the work left is not suitable employment, or because of

2234 the application to any such week in training of provisions in this
2235 law (or any applicable federal unemployment compensation law),
2236 relating to availability for work, active search for work or
2237 refusal to accept work.

2238 For purposes of this section, the term "suitable employment"
2239 means with respect to an individual, work of a substantially equal
2240 or higher skill level than the individual's past adversely
2241 affected employment (as defined for purposes of the Trade Act of
2242 1974), and wages for such work at not less than eighty percent
2243 (80%) of the individual's average weekly wage as determined for
2244 the purposes of the Trade Act of 1974.

2245 **SECTION 13.** Section 71-5-517, Mississippi Code of 1972, is
2246 amended as follows:

2247 71-5-517. Upon the taking of a claim by the department, an
2248 initial determination thereon shall be made promptly and shall
2249 include a determination with respect to whether or not benefits
2250 are payable, the week with respect to which benefits shall
2251 commence, the weekly benefit amount payable and the maximum
2252 duration of benefits. In any case in which the payment or denial
2253 of benefits will be determined by the provisions of subsection
2254 A(4) of Section 71-5-513, the examiner shall promptly transmit all
2255 the evidence with respect to that subsection to the department,
2256 which, on the basis of evidence so submitted and such additional
2257 evidence as it may require, shall make an initial determination
2258 with respect thereto. An initial determination may for good cause
2259 be reconsidered. The claimant, his most recent employing unit and
2260 all employers whose experience-rating record would be charged with
2261 benefits pursuant to such determination shall be promptly notified
2262 of such initial determination or any amended initial determination
2263 and the reason therefor. Benefits shall be denied or, if the
2264 claimant is otherwise eligible, promptly paid in accordance with
2265 the initial determination or amended initial determination. The
2266 jurisdiction of the department over benefit claims which have not

2267 been appealed shall be continuous. The claimant or any party to
2268 the initial determination or amended initial determination may
2269 file an appeal from such initial determination or amended initial
2270 determination within fourteen (14) days after notification
2271 thereof, or after the date such notification was sent to his last
2272 known address.

2273 Notwithstanding any other provision of this section, benefits
2274 shall be paid promptly in accordance with a determination or
2275 redetermination, or the decision of an appeal tribunal, the Board
2276 of Review or a reviewing court upon the issuance of such
2277 determination, redetermination or decision in favor of the
2278 claimant (regardless of the pendency of the period to apply for
2279 reconsideration, file an appeal, or petition for judicial review,
2280 as the case may be, or the pendency of any such application,
2281 filing or petition), unless and until such determination,
2282 redetermination or decision has been modified or reversed by a
2283 subsequent redetermination or decision, in which event benefits
2284 shall be paid or denied in accordance with such modifying or
2285 reversing redetermination or decision. Any benefits finally
2286 determined to have been erroneously paid may be set up as an
2287 overpayment to the claimant and must be liquidated before any
2288 future benefits can be paid to the claimant. If, subsequent to
2289 such initial determination or amended initial determination,
2290 benefits with respect to any week for which a claim has been filed
2291 are denied for reasons other than matters included in the initial
2292 determination or amended initial determination, the claimant shall
2293 be promptly notified of the denial and the reason therefor and may
2294 appeal therefrom in accordance with the procedure herein described
2295 for appeals from initial determination or amended initial
2296 determination.

2297 **SECTION 14.** Section 71-5-519, Mississippi Code of 1972, is
2298 amended as follows:

2299 71-5-519. Unless such appeal is withdrawn, an appeal
2300 tribunal appointed by the executive director, after affording the
2301 parties reasonable opportunity for fair hearing, shall affirm,
2302 modify or reverse the findings of fact and initial determination
2303 or amended initial determination. The parties shall be duly
2304 notified of such tribunal's decision, together with its reasons
2305 therefor, which shall be deemed to be the final decision of the
2306 executive director unless, within fourteen (14) days after the
2307 date of notification * * * of such decision, further appeal is
2308 initiated pursuant to Section 71-5-523.

2309 **SECTION 15.** Section 71-5-529, Mississippi Code of 1972, is
2310 amended as follows:

2311 71-5-529. Any decision of the Board of Review, in the
2312 absence of an appeal therefrom as herein provided, shall become
2313 final ten (10) days after the date of notification * * *; and
2314 judicial review thereof shall be permitted only after any party
2315 claiming to be aggrieved thereby has exhausted his administrative
2316 remedies as provided by this chapter. The department shall be
2317 deemed to be a party to any judicial action involving any such
2318 decision, and may be represented in any such judicial action by
2319 any qualified attorney employed by the department and designated
2320 by it for that purpose or, at the department's request, by the
2321 Attorney General.

2322 **SECTION 16.** Section 71-5-353, Mississippi Code of 1972, is
2323 brought forward as follows:

2324 71-5-353. (1) Each employer shall pay contributions equal
2325 to five and four-tenths percent (5.4%) of taxable wages paid by
2326 him each calendar year, except as may be otherwise provided in
2327 Section 71-5-361 and except that each newly subject employer shall
2328 pay contributions at the rate of two and seven-tenths percent
2329 (2.7%) of taxable wages until his experience-rating record has
2330 been chargeable throughout not less than the twelve (12)
2331 consecutive calendar months ending on the computation date;

2332 thereafter his contribution rate shall be determined in accordance
2333 with the provisions of Section 71-5-355.

2334 (2) Unless eligible for a modified rate as described in
2335 Section 71-5-355 of this chapter, each employer, as defined by
2336 Section 71-5-11(H) of this chapter, engaged in an employee leasing
2337 arrangement, with an employee leasing firm, on June 30, 1998, will
2338 be assigned a contributions rate of one and five-tenths percent
2339 (1.5%) for the calendar year 1999, and subsequent calendar years,
2340 until the employer is eligible for a modified rate, as described
2341 in Section 71-5-355 of this chapter, based on experience
2342 accumulated subsequent to December 31, 1998.

2343 The department shall notify all employers, active in the
2344 department files and currently reporting, of the provisions of
2345 this paragraph, at their last known mailing address on or before
2346 August 15, 1998. All employee leasing firms shall report to the
2347 department the name, the federal identification number, mailing
2348 address, physical location address and telephone number of all
2349 their clients on or before October 15, 1998. Any employee leasing
2350 firm failing to comply with the provisions of this paragraph may
2351 be assessed an amount equal to one-half of one percent (1/2 of 1%)
2352 of total wages, or Five Hundred Dollars (\$500.00), whichever is
2353 greater, for each client that the employee leasing firm fails to
2354 report. Collection of the above mentioned penalty shall be in
2355 conformity with department regulations.

2356 (3) From and after January 1, 2005, contribution rates
2357 assigned to employers by the department, as determined pursuant to
2358 Sections 71-5-351, 71-5-353 and 71-5-355, shall be reduced by
2359 three tenths of one percent (.3%). Such reduction shall only
2360 apply to employers whose contribution rate, determined in
2361 accordance with Sections 71-5-353 and 71-5-355, is equal to or
2362 less than five and four tenths percent (5.4%), and shall include a
2363 three tenths of one percent (.3%) reduction to the rate as a
2364 result of violation of provisions of this chapter. The reduction

2365 in rates provided for herein shall not apply to state boards,
2366 instrumentalities and political subdivisions of the State of
2367 Mississippi referred to in Sections 71-5-357 and 71-5-359, or to
2368 nonprofit employers providing reimbursement to the department for
2369 the unemployment fund pursuant to Section 71-5-357(a). This
2370 subsection (3) shall be suspended and the size of fund and cost
2371 rate criterion shall be fixed for future years at the levels for
2372 the last rate computation, if any of the following occur:

2373 (a) The average high cost multiple is equal to or less
2374 than 1.0. The average high cost multiple shall be computed as
2375 follows: The result of the unobligated balance of the
2376 Unemployment Compensation Fund at November 1, immediately
2377 preceding the new rate year, divided by the total wages for the
2378 twelve (12) months ending on the June 30, immediately preceding
2379 the new rate year, shall be the numerator and shall be divided by
2380 the simple average of the value of the three (3) highest cost rate
2381 criterion computations since 1974. The result rounded to the next
2382 lower one (1) decimal place will be the average high cost
2383 multiple; or

2384 (b) The computed size of fund (average exposure
2385 criterion divided by cost rate criterion) described in Section
2386 71-5-355 reaches 1.0 and the cost rate criterion reaches the
2387 average for the highest value of the cost rate criterion
2388 computations during each of the economic cycles (economic cycles
2389 shall be those defined by the National Bureau of Economic
2390 Research) subsequent to the calendar year 1974. The reduction to
2391 the size of the fund index and the cost rate criteria shall be
2392 accomplished as described in Section 71-5-355(1)(j) and (k); or

2393 (c) The Unemployment Compensation Fund falls below Five
2394 Hundred Million Dollars (\$500,000,000.00).

2395 (4) (a) From and after January 1, 2005, the workforce
2396 enhancement contributions shall be applied at a rate of three
2397 tenths of one percent (.3%) upon the taxable wages as defined by

2398 Section 71-5-351, however, the workforce enhancement contribution
2399 shall not be applied to state boards, instrumentalities and
2400 political subdivisions of the State of Mississippi referred to in
2401 Sections 71-5-357 and 71-5-359, or to nonprofit employers
2402 providing reimbursement to the department for the unemployment
2403 fund pursuant to Section 71-5-357(a).

2404 (b) There is hereby created in the Treasury of the
2405 State of Mississippi a special fund to be known as the
2406 "Mississippi Workforce Training Enhancement Fund," which consists
2407 of funds collected pursuant to subsection (1) of this section.
2408 Funds collected shall initially be deposited into the Clearing
2409 Account and subsequently transferred to the Mississippi Workforce
2410 Training Enhancement Fund described in Section 71-5-453. In the
2411 event any employer pays an amount insufficient to cover the total
2412 contributions due, the amounts due shall be satisfied in the
2413 following order:

- 2414 (i) Unemployment contributions; then
- 2415 (ii) Workforce training enhancement contributions;
- 2416 then
- 2417 (iii) Interest and damages.

2418 Cost of collection and administration of the workforce
2419 enhancement training contribution shall be allocated based on a
2420 plan approved by the United States Department of Labor (USDOL) and
2421 shall be paid to the Mississippi Department of Employment Security
2422 semiannually by the State Board for Community and Junior Colleges
2423 for periods ending in December and June of each year. Payment
2424 shall be made to the department no later than sixty (60) days
2425 after the billing date.

2426 (c) All monies deposited in the Mississippi Workforce
2427 Training Enhancement Fund will be held by the Mississippi
2428 Department of Employment Security in such account for a period of
2429 not less than sixty (60) days. After such period, funds shall be
2430 transferred within thirty (30) days to the Mississippi Workforce

2431 Enhancement Training Fund in a manner determined by the
2432 department. Interest earnings or interest credits on deposit
2433 amounts shall be retained in the account to pay the costs of the
2434 account. If after the period of twelve (12) months interest
2435 earnings less banking costs exceeds Ten Thousand Dollars
2436 (\$10,000.00), such excess amounts shall be transferred to the
2437 Mississippi Workforce Enhancement Training Fund within thirty (30)
2438 days. Such transfers shall occur once annually, during the month
2439 of January.

2440 (d) All enforcement procedures for the collection of
2441 delinquent contributions contained in Sections 71-5-363 through
2442 71-5-383 shall be applicable in all respects for collections of
2443 delinquent contributions designated for the Unemployment
2444 Compensation Fund and the Mississippi Workforce Training
2445 Enhancement Fund.

2446 (e) All monies deposited into the Mississippi Workforce
2447 Enhancement Training Fund shall be utilized exclusively by the
2448 State Board for Community and Junior Colleges in accordance with
2449 the Workforce Training Act of 1994 (Section 37-153-1 et seq.) and
2450 the annual plan developed by the State Workforce Investment Board
2451 for the following purposes: to provide training at no charge to
2452 employers and employees in order to enhance employee productivity.
2453 Such training may be subject to a minimal administrative fee to be
2454 paid from the Mississippi Workforce Enhancement Trust Fund as
2455 established by the State Workforce Investment Board subject to the
2456 advice of the State Board for Community and Junior Colleges. The
2457 initial priority of these funds shall be for the benefit of
2458 existing businesses located within the state. Employers may
2459 request training for existing employees and/or newly hired
2460 employees from the State Board for Community and Junior Colleges.
2461 The State Board for Community and Junior Colleges will be
2462 responsible for approving the training.

2463 (f) This subsection (4) shall be suspended and the size
2464 of fund and cost rate criterion shall be fixed at the levels
2465 computed for the last rate computation at the end of any calendar
2466 year in which the following has occurred:

2467 (i) The average high cost multiple is equal to or
2468 less than 1.0. The average high cost multiple shall be computed
2469 as follows: The result of the unobligated balance of the
2470 unemployment compensation at November 1, immediately preceding the
2471 new rate year, divided by the total wages for the twelve (12)
2472 months ending on the June 30, immediately preceding the new rate
2473 year, shall be the numerator and shall be divided by the simple
2474 average of the value of the three (3) highest cost rate criterion
2475 computations since 1974. The result rounded to the next lower one
2476 (1) decimal place will be the average high cost multiple; or

2477 (ii) The computed size of fund (average exposure
2478 criterion divided by cost rate criterion) described in Section
2479 71-5-355 reaches 1.0 and the cost rate criterion reaches the
2480 average for the highest value of the cost rate criterion
2481 computations during each of the economic cycles (economic cycles
2482 shall be those defined by the National Bureau of Economic
2483 Research) subsequent to the calendar year 1974. The reduction to
2484 the size of the fund index and the cost rate criteria shall be
2485 accomplished as described in Section 71-3-355(1)(j) and (k); or

2486 (iii) The Unemployment Compensation Fund falls
2487 below Five Hundred Million Dollars (\$500,000,000.00).

2488 **SECTION 17.** This act shall take effect and be in force from
2489 and after July 1, 2006.