

By: Representative Fleming

To: Labor; Insurance

HOUSE BILL NO. 271

1 AN ACT TO CREATE THE UNEMPLOYMENT INSURANCE FOR DOMESTIC  
2 VIOLENCE SURVIVORS ACT; TO AMEND SECTION 71-5-513, MISSISSIPPI  
3 CODE OF 1972, TO PROVIDE THAT A PERSON WHO LEAVES WORK DUE TO  
4 DOMESTIC VIOLENCE SHALL NOT BE DISQUALIFIED FROM RECEIVING  
5 UNEMPLOYMENT BENEFITS; TO REQUIRE THE MISSISSIPPI DEPARTMENT OF  
6 EMPLOYMENT SECURITY TO CREATE A CURRICULUM TO TRAIN EMPLOYEES IN  
7 THE NATURE AND DYNAMICS OF DOMESTIC VIOLENCE; AND FOR RELATED  
8 PURPOSES.

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

10 **SECTION 1.** This act shall be known as the "Unemployment  
11 Insurance for Domestic Violence Survivors Act."

12 **SECTION 2.** Section 71-5-513, Mississippi Code of 1972, is  
13 amended as follows:

14 71-5-513. A. An individual shall be disqualified for  
15 benefits:

16 (1) (a) For the week, or fraction thereof, which  
17 immediately follows the day on which he left work voluntarily  
18 without good cause, if so found by the department, and for each  
19 week thereafter until he has earned remuneration for personal  
20 services performed for an employer, as in this chapter defined,  
21 equal to not less than eight (8) times his weekly benefit amount,  
22 as determined in each case; however, marital, filial and domestic  
23 circumstances and obligations shall not be deemed good cause  
24 within the meaning of this subsection, except as otherwise  
25 provided in subsection D. of this section. Pregnancy shall not be  
26 deemed to be a marital, filial or domestic circumstance for the  
27 purpose of this subsection.

28 (b) For the week, or fraction thereof, which  
29 immediately follows the day on which he was discharged for  
30 misconduct connected with his work, if so found by the department,

31 and for each week thereafter until he has earned remuneration for  
32 personal services performed for an employer, as in this chapter  
33 defined, equal to not less than eight (8) times his weekly benefit  
34 amount, as determined in each case.

35 (c) The burden of proof of good cause for leaving  
36 work shall be on the claimant, and the burden of proof of  
37 misconduct shall be on the employer.

38 (2) For the week, or fraction thereof, with respect to  
39 which he willfully makes a false statement, a false representation  
40 of fact, or willfully fails to disclose a material fact for the  
41 purpose of obtaining or increasing benefits under the provisions  
42 of this law, if so found by the department, and such individual's  
43 maximum benefit allowance shall be reduced by the amount of  
44 benefits so paid to him during any such week of disqualification;  
45 and additional disqualification shall be imposed for a period not  
46 exceeding fifty-two (52) weeks, the length of such period of  
47 disqualification and the time when such period begins to be  
48 determined by the department, in its discretion, according to the  
49 circumstances in each case.

50 (3) If the department finds that he has failed, without  
51 good cause, either to apply for available suitable work when so  
52 directed by the employment office or the department, to accept  
53 suitable work when offered him, or to return to his customary  
54 self-employment (if any) when so directed by the department, such  
55 disqualification shall continue for the week in which such failure  
56 occurred and for not more than the twelve (12) weeks which  
57 immediately follow such week, as determined by the department  
58 according to the circumstances in each case.

59 (a) In determining whether or not any work is  
60 suitable for an individual, the department shall consider among  
61 other factors the degree of risk involved to his health, safety  
62 and morals, his physical fitness and prior training, his  
63 experience and prior earnings, his length of unemployment and

64 prospects for securing local work in his customary occupation, and  
65 the distance of the available work from his residence; however,  
66 offered employment paying the minimum wage or higher, if such  
67 minimum or higher wage is that prevailing for his customary  
68 occupation or similar work in the locality, shall be deemed to be  
69 suitable employment after benefits have been paid to the  
70 individual for a period of eight (8) weeks.

71 (b) Notwithstanding any other provisions of this  
72 chapter, no work shall be deemed suitable and benefits shall not  
73 be denied under this chapter to any otherwise eligible individual  
74 for refusing to accept new work under any of the following  
75 conditions:

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

78 (ii) If the wages, hours or other conditions  
79 of the work offered are substantially less favorable to the  
80 individual than those prevailing for similar work in the locality;

81 (iii) If as a condition of being employed the  
82 individual would be required to join a company union or to resign  
83 from or refrain from joining any bona fide labor organization.

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

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

94 (b) He is not participating in or directly  
95 interested in the labor dispute which caused the stoppage of work;  
96 and

97                   (c) He does not belong to a grade or class of  
98 workers of which, immediately before the commencement of stoppage,  
99 there were members employed at the premises at which the stoppage  
100 occurs, any of whom are participating in or directly interested in  
101 the dispute.

102           If in any case separate branches of work which are commonly  
103 conducted as separate businesses in separate premises are  
104 conducted in separate departments of the same premises, each such  
105 department shall, for the purposes of this subsection, be deemed  
106 to be a separate factory, establishment or other premises.

107           (5) For any week with respect to which he has received  
108 or is seeking unemployment compensation under an unemployment  
109 compensation law of another state or of the United States.  
110 However, if the appropriate agency of such other state or of the  
111 United States finally determines that he is not entitled to such  
112 unemployment compensation benefits, this disqualification shall  
113 not apply. Nothing in this subsection contained shall be  
114 construed to include within its terms any law of the United States  
115 providing unemployment compensation or allowances for honorably  
116 discharged members of the Armed Forces.

117           (6) For any week with respect to which he is receiving  
118 or has received remuneration in the form of payments under any  
119 governmental or private retirement or pension plan, system or  
120 policy which a base-period employer is maintaining or contributing  
121 to or has maintained or contributed to on behalf of the  
122 individual; however, if the amount payable with respect to any  
123 week is less than the benefits which would otherwise be due under  
124 Section 71-5-501, he shall be entitled to receive for such week,  
125 if otherwise eligible, benefits reduced by the amount of such  
126 remuneration. However, on or after the first Sunday immediately  
127 following July 1, 2001, no social security payments, to which the  
128 employee has made contributions, shall be deducted from  
129 unemployment benefits paid for any period of unemployment

130 beginning on or after the first Sunday following July 1, 2001.  
131 This one hundred percent (100%) exclusion shall not apply to any  
132 other governmental or private retirement or pension plan, system  
133 or policy. If benefits payable under this section, after being  
134 reduced by the amount of such remuneration, are not a multiple of  
135 One Dollar (\$1.00), they shall be adjusted to the next lower  
136 multiple of One Dollar (\$1.00).

137           (7) For any week with respect to which he is receiving  
138 or has received remuneration in the form of a back pay award, or  
139 other compensation allocable to any week, whether by settlement or  
140 otherwise. Any benefits previously paid for weeks of unemployment  
141 with respect to which back pay awards, or other such compensation,  
142 are made shall constitute an overpayment and such amounts shall be  
143 deducted from the award by the employer prior to payment to the  
144 employee, and shall be transmitted promptly to the department by  
145 the employer for application against the overpayment and credit to  
146 the claimant's maximum benefit amount and prompt deposit into the  
147 fund; however, the removal of any charges made against the  
148 employer as a result of such previously paid benefits shall be  
149 applied to the calendar year and the calendar quarter in which the  
150 overpayment is transmitted to the department, and no attempt shall  
151 be made to relate such a credit to the period to which the award  
152 applies. Any amount of overpayment so deducted by the employer  
153 and not transmitted to the department shall be subject to the same  
154 procedures for collection as is provided for contributions by  
155 Sections 71-5-363 through 71-5-381. Any amount of overpayment not  
156 deducted by the employer shall be established as an overpayment  
157 against the claimant and collected as provided above. It is the  
158 purpose of this paragraph to assure equity in the situations to  
159 which it applies, and it shall be construed accordingly.

160           B. Notwithstanding any other provision in this chapter, no  
161 otherwise eligible individual shall be denied benefits for any  
162 week because he is in training with the approval of the

163 department; nor shall such individual be denied benefits with  
164 respect to any week in which he is in training with the approval  
165 of the department by reason of the application of provisions in  
166 Section 71-5-511, subsection (c), relating to availability for  
167 work, or the provisions of subsection A(3) of this section,  
168 relating to failure to apply for, or a refusal to accept, suitable  
169 work.

170 C. Notwithstanding any other provisions of this chapter, no  
171 otherwise eligible individual shall be denied benefits for any  
172 week because he or she is in training approved under Section  
173 236(a)(1) of the Trade Act of 1974, nor shall such individual be  
174 denied benefits by reason of leaving work to enter such training,  
175 provided the work left is not suitable employment, or because of  
176 the application to any such week in training of provisions in this  
177 law (or any applicable federal unemployment compensation law),  
178 relating to availability for work, active search for work or  
179 refusal to accept work.

180 For purposes of this section, the term "suitable employment"  
181 means with respect to an individual, work of a substantially equal  
182 or higher skill level than the individual's past adversely  
183 affected employment (as defined for purposes of the Trade Act of  
184 1974), and wages for such work at not less than eighty percent  
185 (80%) of the individual's average weekly wage as determined for  
186 the purposes of the Trade Act of 1974.

187 D. (1) Notwithstanding any other provision in this chapter,  
188 no otherwise eligible individual shall be denied benefits if the  
189 individual establishes that the reason the individual left work  
190 was due to domestic violence. Domestic violence means abuse, as  
191 defined in Section 93-21-3, committed against an employee or an  
192 employee's dependent child, including:

193 (a) The individual's reasonable fear of future  
194 domestic violence at or en route to or from the individual's place  
195 of employment.

196                   (b) The individual's need to relocate to another  
197 geographic area in order to avoid future domestic violence.

198                   (c) The individual's need to address the physical,  
199 psychological and legal impacts of domestic violence.

200                   (d) The individual's need to leave employment as a  
201 condition of receiving services or shelter from an agency which  
202 provides support services or shelter to victims of domestic  
203 violence.

204                   (e) Any other situation in which domestic violence  
205 causes the individual to reasonably believe that termination of  
206 employment is necessary for the future safety of the individual or  
207 the individual's family.

208                   (2) An individual may demonstrate the existence of  
209 domestic violence by providing one of the following:

210                   (a) A restraining order or other documentation of  
211 equitable relief issued by a court of competent jurisdiction.

212                   (b) A police record documenting the abuse.

213                   (c) Documentation that the abuser has been  
214 convicted of violent offense where the employee or employee's  
215 dependent child was the victim.

216                   (d) Medical documentation of the abuse.

217                   (e) A statement provided by a counselor, social  
218 worker, health worker, member of the clergy, shelter worker, legal  
219 advocate or other professional who has assisted the individual in  
220 addressing the effects of the abuse on the individual or the  
221 individual's family.

222                   (f) A sworn statement from the individual  
223 attesting to the abuse.

224                   **SECTION 3.** The Mississippi Department of Employment Security  
225 shall create and implement a training curriculum approved by the  
226 Legislature.

227                   All personnel of the Mississippi Department of Employment  
228 Security shall be trained in this curriculum not later than sixty

229 (60) days from the effective date of this section. The department  
230 shall develop an ongoing plan for employees to be trained in the  
231 nature and dynamics of domestic violence so that an employee's  
232 absence from employment stemming from domestic violence is  
233 reliably screened and adjudicated and so that victims of domestic  
234 violence are able to take advantage of the full range of job  
235 services provided by the department

236 **SECTION 4.** This act shall take effect and be in force from  
237 and after July 1, 2007.