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To: Universities and
Colleges;
Appropriations

SENATE BILL NO. 2298
(As Sent to Governor)

1 AN ACT TO CREATE THE MISSISSIPPI AFFORDABLE COLLEGE SAVINGS
2 (MACS) PROGRAM; TO DEFINE CERTAIN TERMS AND PHRASES RELATING TO
3 THE MACS PROGRAM; TO PRESCRIBE THE POWERS OF THE BOARD OF
4 DIRECTORS OF THE COLLEGE SAVINGS PLANS OF MISSISSIPPI TRUST FUNDS
5 RELATING TO THE ADMINISTRATION OF THE MACS PROGRAM; TO PRESCRIBE
6 CERTAIN TERMS OF SAVINGS TRUST AGREEMENTS ENTERED INTO UNDER THE
7 PROGRAM; TO ESTABLISH THE MISSISSIPPI AFFORDABLE COLLEGE SAVINGS
8 (MACS) TRUST FUND; TO EXEMPT PROPERTY IN THE TRUST FUND FROM
9 TAXATION AND TO ESTABLISH DEDUCTIONS FOR PAYMENTS TO MACS
10 ACCOUNTS; TO PRESCRIBE THE AUTHORITY OF THE BOARD OF DIRECTORS TO
11 INVEST FUNDS IN THE TRUST FUND; TO REQUIRE THE BOARD TO PROVIDE
12 ANNUAL ACCOUNTING STATEMENTS; TO AMEND SECTION 37-155-5,
13 MISSISSIPPI CODE OF 1972, TO CHANGE THE NAME OF THE BOARD OF
14 DIRECTORS OF THE MISSISSIPPI PREPAID AFFORDABLE COLLEGE TUITION
15 PROGRAM TRUST FUND TO THE "BOARD OF DIRECTORS OF THE COLLEGE
16 SAVINGS PLANS OF MISSISSIPPI TRUST FUNDS"; TO AMEND SECTION
17 37-155-9, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO AND TO
18 EXPAND THE BOARD'S INVESTMENT AUTHORITY; TO AMEND SECTION 27-7-15,
19 MISSISSIPPI CODE OF 1972, TO EXCLUDE PAYMENTS TO A MACS ACCOUNT
20 FROM THE DEFINITION OF GROSS INCOME FOR INCOME TAX PURPOSES; TO
21 AMEND SECTIONS 27-7-17, 27-7-18, 75-71-113 AND 75-71-401,
22 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
23 ACT; AND FOR RELATED PURPOSES.

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

25 SECTION 1. This article shall be known and may be cited as
26 the "Mississippi Affordable College Savings Program."

27 SECTION 2. The following are the purposes of this article:

28 (a) To provide a program of savings trust agreements to
29 apply distributions toward qualified higher education expenses at
30 eligible educational institutions, as defined in Section 529 of
31 the Internal Revenue Code, as amended, or other applicable federal
32 law.

33 (b) To provide for the creation of a trust fund, as an
34 instrumentality of the State of Mississippi, to assist qualified
35 students in financing costs of attending institutions of higher
36 education.

37 (c) To encourage timely financial planning for higher
38 education by the creation of savings trust accounts.

39 (d) To provide a choice of programs to persons who
40 determine that the overall educational needs of their families are
41 best suited to a prepaid tuition contract under the Mississippi
42 Prepaid Affordable College Tuition (MPACT) Program, a savings
43 trust agreement under this article, or both.

44 (e) To provide a savings program for those persons who
45 wish to save to meet post secondary educational needs beyond the
46 traditional baccalaureate curriculum.

47 SECTION 3. As used in this article, the following words and
48 phrases have the meanings ascribed in this section unless the
49 context clearly indicates otherwise:

50 (a) "MACS Program" means the Mississippi Affordable
51 College Savings Program established under this article.

52 (b) "MACS Trust Fund" means a special fund in the State
53 Treasury established under Section 6 of Senate Bill No. 2298, 2000
54 Regular Session, and administered by the Treasury Department.

55 (c) "Account owner" means a resident or nonresident
56 person, corporation, trust, charitable organization or other
57 entity which contributes to or invests money in a savings trust
58 account under the MACS Program on behalf of a beneficiary and
59 which is listed as the owner of the savings trust account.

60 (d) "Beneficiary" means a resident or nonresident
61 beneficiary of a savings trust agreement who meets the
62 requirements of Section 529 of the Internal Revenue Code of 1986,
63 as amended, or other applicable federal law, and any regulations
64 established by the board.

65 (e) "Institution of higher education" means an eligible
66 educational institution as defined in Section 529 of the Internal
67 Revenue Code of 1986, as amended, or any other applicable federal
68 law.

69 (f) "Tuition" means the quarter, semester or term

70 charges and all required fees imposed by an institution of higher
71 education as a condition of enrollment by all students.

72 (g) "Board" means the Board of Directors of the College
73 Savings Plans of Mississippi Trust Funds established under Section
74 37-155-7.

75 (h) "Payor" means a person, corporation, trust,
76 charitable organization or other such entity which contributes
77 money or makes a payment to either a savings trust account
78 established pursuant to this article or a prepaid tuition account
79 established under Sections 37-155-1 through 37-155-27 on behalf of
80 a beneficiary.

81 (i) "Savings trust account" means an account
82 established by an account owner pursuant to this article on behalf
83 of a beneficiary in order to apply distributions from the account
84 toward qualified higher education expenses at eligible educational
85 institutions, as defined in Section 529 of the Internal Revenue
86 Code of 1986, as amended, or other applicable federal law.

87 (j) "Savings trust agreement" means the agreement
88 entered into between the board and the account owner establishing
89 a savings trust account.

90 (k) "Qualified higher education expense" means any
91 higher education expense, as defined in Section 529 of the
92 Internal Revenue Code of 1986, as amended, or other applicable
93 federal law.

94 (l) "Qualified withdrawal" means a withdrawal by an
95 account owner or beneficiary for qualified higher education
96 expenses or as otherwise permitted under Section 529 of the
97 Internal Revenue Code of 1986, as amended, without a penalty
98 required under the Internal Revenue Code.

99 SECTION 4. In addition to those powers granted to the board
100 by Section 37-155-1 through 37-155-27 and any other provisions of
101 this article, the board shall have the powers necessary or
102 convenient to carry out the purposes and provisions of this

103 article, the purposes and objectives of the trust fund, and the
104 powers delegated by any other law or executive order of this
105 state, including, but not limited to, the following express
106 powers:

107 (a) To adopt such rules and regulations as are
108 necessary to implement this article, subject to applicable federal
109 laws and regulations, including rules regarding transfers of funds
110 between accounts established under prepaid tuition contracts and
111 savings trust agreements;

112 (b) To impose reasonable requirements for residency for
113 beneficiaries or account owners at the time of purchase of the
114 savings trust agreement;

115 (c) To contract for necessary goods and services, to
116 employ necessary personnel, and to engage the services of
117 consultants and other qualified persons and entities for
118 administrative and technical assistance in carrying out the
119 responsibilities of the trust funds under terms and conditions of
120 that the board deems reasonable, including contract terms for
121 periods up to ten (10) years at which time a contract may be
122 terminated, extended or renewed for a term determined by the
123 board, not to exceed a term of ten (10) years at any one time;

124 (d) To solicit and accept gifts, including bequests or
125 other testamentary gifts made by will, trust or other disposition
126 grants, loans and other aids from any personal source or to
127 participate in any other way in any federal, state or local
128 governmental programs in carrying out the purposes of this
129 article;

130 (e) To define the terms and conditions under which
131 payments may be withdrawn or refunded from the trust fund
132 established under this article to impose reasonable charges for a
133 withdrawal or refund;

134 (f) To impose reasonable time limits on the use of
135 savings trust account distributions provided by the MACS Program;

- 136 (g) To regulate the receipt of contributions or
137 payments to the MACS Trust Fund;
- 138 (h) To segregate contributions and payments to the MACS
139 Trust Fund into various accounts and funds;
- 140 (i) To require and collect administrative fees and
141 charges in connection with any transaction and to impose
142 reasonable penalties for withdrawal of funds for nonqualified
143 higher educational expenses or for entering into a savings trust
144 agreement on a fraudulent basis;
- 145 (j) To procure insurance against any loss in connection
146 with the property, assets and activities of the MACS Trust Fund or
147 the board;
- 148 (k) To require that account owners of savings trust
149 agreements or purchasers of Mississippi Prepaid Affordable College
150 Tuition (MPACT) contracts under Sections 37-155-1 through
151 37-155-27 verify, under oath, any requests for contract
152 conversions, substitutions, transfers, cancellations, refund
153 requests or contract changes of any nature;
- 154 (l) To solicit proposals and to contract for the
155 marketing of the MACS Program, provided that: (i) any materials
156 produced by a marketing contractor for the purpose of marketing
157 the program must be approved by the board before being made
158 available to the public; and (ii) neither the state nor the board
159 shall be liable for misrepresentation of the program by a
160 marketing contractor;
- 161 (m) To delegate responsibility for administration of
162 the comprehensive investment plan to a contractor or contractors
163 or a consultant or consultants that the board determines is
164 qualified;
- 165 (n) To make all necessary and appropriate arrangements
166 with colleges and universities or other entities in order to
167 fulfill its obligations under savings trust agreements;
- 168 (o) To establish other policies, procedures and

169 criteria necessary to implement and administer this article; and

170 (p) To authorize the Treasury Department or the State
171 Treasurer, or both, to carry out any or all of the powers and
172 duties enumerated in this section for efficient and effective
173 administration of the MACS Program and MACS Trust Fund.

174 SECTION 5. (1) The board shall make savings trust
175 agreements available to the public, under which account owners or
176 other payors may make contributions on behalf of qualified
177 beneficiaries. Contributions and investment earnings on the
178 contributions may be used for any qualified higher educational
179 expenses of a designated beneficiary. The state does not
180 guarantee that such contributions, together with the investment
181 return on such contributions, if any, will be adequate to pay for
182 qualified education expenses in full.

183 (2) Each savings trust agreement made pursuant to this
184 article shall include the following terms and provisions:

185 (a) The maximum and minimum contribution allowed on
186 behalf of each beneficiary for the payment of qualified higher
187 education expenses at eligible institutions, both as defined in
188 Section 529 of the Internal Revenue Code of 1986, as amended, or
189 other applicable federal law;

190 (b) Provisions for withdrawals, refunds, transfers and
191 any penalties;

192 (c) The name, address and date of birth of the
193 beneficiary on whose behalf the savings trust account is opened;

194 (d) Terms and conditions for a substitution of the
195 beneficiary originally named;

196 (e) Terms and conditions for termination of the
197 account, including any refunds, withdrawals or transfers, and
198 applicable penalties, and the name of the person or persons
199 entitled to terminate the account;

200 (f) The time period during which the beneficiary must
201 use benefits from the savings trust account;

202 (g) All other rights and obligations of the account
203 owner and the MACS Trust Fund; and

204 (h) Any other terms and conditions that the board deems
205 necessary or appropriate, including those necessary to conform the
206 savings trust account with the requirements of Section 529 of the
207 Internal Revenue Code of 1986, as amended, or other applicable
208 federal law or regulations.

209 SECTION 6. (1) There is created a Mississippi Affordable
210 College Savings Trust Fund as an instrumentality of the state to
211 be administered by the Treasury Department. The MACS Trust Fund
212 shall consist of state appropriations, monies acquired from other
213 governmental or private sources and money remitted in accordance
214 with savings trust agreements and shall receive and hold all
215 payments, contributions and deposits intended for it as well as
216 gifts, bequests, endowments or federal, state or local grants and
217 any other public or private source of funds and all earnings on
218 the fund until disbursed as provided under this section. The
219 amounts on deposit on the trust fund shall not constitute property
220 of the state. Amounts on deposit in the trust fund may not be
221 commingled with state funds, and the state may have no claim to or
222 interest in such funds. Savings trust agreements or any other
223 contract entered into by or on behalf of the trust do not
224 constitute a debt or obligation of the state, and no account owner
225 is entitled to any amounts except for those amounts on deposit in
226 or accrued to their account.

227 The MACS Trust Fund shall continue in existence as long as it
228 holds any funds belonging to an account owner or otherwise has any
229 obligations to any person or entity until its existence is
230 terminated by the Legislature and remaining assets on deposit in
231 the fund are returned to account owners or transferred to the
232 state in accordance with unclaimed property laws.

233 (2) There are created the following three (3) separate
234 accounts within the MACS Trust Fund: (a) the administrative

235 account; (b) the endowment account; and (c) the program account.

236 The administrative account shall accept, deposit and disburse
237 funds for the purpose of administering and marketing the program.

238 The endowment account shall receive and deposit accounts received
239 in connection with the sales of interests in the MACS Trust Fund
240 other than amounts for the administrative account and other than
241 amounts received pursuant to a savings trust agreement. Amounts
242 on deposit in the endowment account may be applied as specified by
243 the board for any purpose related to the program or to otherwise
244 assist Mississippi residents to attain a postsecondary education.

245 The program account shall receive, invest and disburse amounts
246 pursuant to savings trust agreements.

247 (3) The official location of the trust fund shall be the
248 State of Mississippi Treasury Department, and the facilities of
249 the Treasury Department shall be used and employed in the
250 administration of the fund, including, but without limitation to,
251 the keeping of records, the management of bank accounts and other
252 investments, the transfer of funds and the safekeeping of
253 securities evidencing investments. These functions may be
254 administered pursuant to a management agreement with a qualified
255 entity or entities.

256 (4) Payments received by the board on behalf of
257 beneficiaries from account owners, other payors or from any other
258 source, public or private, shall be placed in the trust fund, and
259 the board shall cause there to be maintained separate records and
260 accounts for individual beneficiaries, as may be required under
261 Section 529 of the Internal Revenue Code of 1986, as amended, and
262 any other applicable federal law.

263 (5) Account owners and any other payors or contributors
264 shall be permitted only to contribute cash or any other form of
265 payment or contribution as is permitted under Section 529 of the
266 Internal Revenue Code of 1986, as amended, and approved by the
267 board. The board shall cause the program to maintain adequate

268 safeguards against contributions in excess of what may be required
269 for qualified higher education expenses. The MACS Trust Fund,
270 through the Treasurer, may receive and deposit into the trust fund
271 any gift of any nature, real or personal property, made by an
272 individual by testamentary disposition, including, without
273 limitation, any specific gift or bequeath made by will, trust or
274 other disposition to the extent permitted under Section 529 of the
275 Internal Revenue Code of 1986, as amended. The MACS Trust Fund
276 may receive amounts transferred from an UGMA, UTMA or other
277 account established for the benefit of a minor if the trust
278 beneficiary of such an account is identified as the legal owner of
279 the MACS Trust Fund account upon attaining majority age.

280 (6) The account owner retains ownership of all amounts on
281 deposit in his or her account with the program up to the date of
282 distribution on behalf of a designated beneficiary. Earnings
283 derived from investment of the contributions shall be considered
284 to be held in trust in the same manner as contributions, except as
285 applied for purposes of the designated beneficiary and for
286 purposes of maintaining and administrating the program as provided
287 in this article. Amounts on deposit in an account owner's
288 account shall be available for expenses and penalties imposed by
289 the board for the program as disclosed in the savings trust
290 agreement.

291 (7) The MACS Trust Fund shall constitute a fund of an
292 instrumentality of the state, and its property and income shall be
293 exempt from all taxation by the state and by all of its political
294 subdivisions.

295 (8) The assets of the MACS Trust Fund shall be preserved,
296 invested and expended solely pursuant to and for the purposes of
297 this article and shall not be loaned or otherwise transferred or
298 used by the state for any other purpose.

299 SECTION 7. (1) All property and income of the MACS Trust
300 Fund, as an instrumentality of the state, is exempt from all

301 taxation by the state and by its political subdivisions.

302 (2) Any contributor or payor to a MACS Program account may
303 deduct from their Mississippi taxable income any contributions or
304 payments to an account or accounts in the MACS Trust Fund up to a
305 maximum annual amount of Twenty Thousand Dollars (\$20,000.00) for
306 joint filers and Ten Thousand Dollars (\$10,000.00) for single and
307 other filers. Contributions or payments for such tax years may be
308 made after such calendar years but before the deadline for making
309 contributions to an individual retirement account under federal
310 law for such years. The earnings portion of any withdrawals from
311 an account that are not qualified withdrawals, as well as any
312 amounts included in such nonqualified withdrawals previously
313 deducted from taxable income under this section, shall be included
314 in the gross income of the resident recipient of the withdrawal
315 for purposes of the Mississippi Income Tax Law in the year of such
316 withdrawal.

317 SECTION 8. (1) The board has authority to establish a
318 comprehensive investment plan for the purposes of this article, to
319 invest any funds of the MACS Trust Fund in any instrument,
320 obligation, security or property that constitutes legal
321 investments for public funds in the state, and to name and use
322 depositories for its investments and holdings. The comprehensive
323 investment plan shall specify the investment policies to be
324 utilized by the board in its administration of the funds. The
325 board may authorize investments in any investment vehicle
326 authorized for the Mississippi Prepaid Affordable College Tuition
327 (MPACT) Program under Section 37-155-9. However, the restrictions
328 in Section 37-155-9 as to percentages of the total fund that may
329 be invested in any category of authorized investment shall not
330 apply to the MACS Trust Fund. The program account, in its
331 discretion, may invest in obligations of the state or any
332 political subdivision of the state or in any business entity in
333 the state.

334 Notwithstanding any state law to the contrary, the board
335 shall invest or cause to be invested amounts on deposit in the
336 MACS Trust Fund, including the program account, in a manner
337 reasonable and appropriate to achieve the objectives of the
338 program, exercising the discretion and care of a prudent person in
339 similar circumstances with similar objectives. The board shall
340 give due consideration to the risk, expected rate of return, term
341 or maturity, diversification of total investments, liquidity and
342 anticipated investments in and withdrawals from the MACS Trust
343 Fund.

344 (2) All investments shall be acquired by the board at prices
345 not exceeding the prevailing market values for such securities.

346 (3) Any limitations set forth in this section shall be
347 applicable only at the time of purchase and shall not require the
348 liquidation of any investment at any time. All investments shall
349 be marked clearly to indicate ownership by the system and, to the
350 extent possible, shall be registered in the name of the system.

351 (4) Subject to the terms, conditions, limitations and
352 restrictions set forth in this section, the board may sell,
353 assign, transfer and dispose of any of the securities and
354 investments of the system if the sale, assignment or transfer has
355 the majority approval of the entire board. The board may employ
356 or contract with investment managers, evaluation services, or
357 other such services as determined by the board to be necessary for
358 the effective and efficient operation of the system.

359 (5) Except as otherwise provided in this section, no trustee
360 or employee of the board may have any direct or indirect interest
361 in the income, gains or profits of any investment made by the
362 board, and such person may not receive any pay or emolument for
363 his services in connection with any investment made by the board.

364 No trustee or employee of the board may become an endorser or
365 surety or in any manner an obligor for money loaned by or borrowed
366 from the system.

367 (6) Under the authority granted in Section 4 of Senate Bill
368 No. 2298, 2000 Regular Session, the board may establish criteria
369 for investment managers, mutual funds or other such entities to
370 act as contractors or consultants to the board. The board may
371 contract, either directly or through such contractors or
372 consultants, to provide such services as may be a part of the
373 comprehensive investment plan or as may be deemed necessary or
374 proper by the board, including, but not limited to, providing
375 consolidated billing, individual and collective record keeping and
376 accounting, and asset purchase, control and safekeeping.

377 (7) No account owner, contributor, payor or beneficiary may
378 directly or indirectly direct the investment of any account except
379 as may be permitted under Section 529 of the Internal Revenue Code
380 of 1986, as amended.

381 (8) The board may approve different investment plans and
382 options to be offered to participants to the extent permitted
383 under Section 529 of the Internal Revenue Code of 1986, as
384 amended, and consistent with the objectives of this article and
385 may require the assistance of investment counseling before
386 participation in different options.

387 (9) Interests or accounts in the MACS Trust Fund and
388 transactions in such interests or accounts shall be exempt from
389 Sections 75-71-113 and 75-71-401.

390 SECTION 9. (1) The board shall furnish, without charge, to
391 each account owner an annual statement of the following:

392 (a) The amount contributed by the account owner under
393 the savings trust agreement;

394 (b) The annual earnings and accumulated earnings on the
395 savings trust account; and

396 (c) Any other terms and conditions that the board deems
397 by rule is necessary or appropriate, including those necessary to
398 conform the savings trust account with the requirements of Section
399 529 of the Internal Revenue Code of 1986, as amended, or other

400 applicable federal law or regulations.

401 (2) The board shall furnish an additional statement
402 complying with subsection (1) to an account owner or beneficiary
403 on written request. The board may charge a reasonable fee for
404 each statement furnished under this subsection.

405 (3) The board shall prepare or cause to be prepared an
406 annual report setting forth in appropriate detail an accounting of
407 the funds and a description of the financial condition of the
408 program at the close of each fiscal year. Such report shall be
409 submitted to the Governor, the Lieutenant Governor, the Speaker of
410 the House of Representatives and members of the Board of Trustees
411 of State Institutions of Higher Learning, the State Board for
412 Community and Junior Colleges and the State Board of Education.
413 In addition, the board shall make the report available to account
414 owners of savings trust agreements. The accounts of the fund
415 shall be subject to annual audits by the State Auditor or his
416 designee.

417 SECTION 10. This article is not a promise or guarantee that
418 the beneficiary will be:

419 (a) Admitted to any institution of higher education;

420 (b) Admitted to a particular institution of higher
421 education after admission;

422 (c) Allowed to continue enrollment at an institution of
423 higher education; or

424 (d) Graduated from an institution of higher education.

425 SECTION 11. Nothing in this article or in any savings trust
426 agreement entered into pursuant to this article shall be construed
427 as a promise or guarantee by the state or any agency or
428 instrumentality of the state that either qualified higher
429 education expenses in general or any specific qualified higher
430 education expense shall be covered in full by contributions or
431 earnings on any savings trust account. Savings trust accounts and
432 agreements entered into pursuant to this article are not

433 guaranteed by the full faith and credit of the State of
434 Mississippi.

435 SECTION 12. Notwithstanding any state law to the contrary,
436 no monies on deposit in either the MACS or MPACT Programs shall be
437 considered an asset of the parent, guardian or student for
438 purposes of determining an individual's eligibility for a
439 need-based grant, need-based scholarship or need-based work
440 opportunity offered or administered by any state agency except as
441 may be required by the funding source of such financial aid.

442 SECTION 13. The provisions of this article are severable.
443 If any part of this article is declared invalid or
444 unconstitutional, such declaration shall not affect the parts of
445 this article which remain.

446 SECTION 14. Section 37-155-5, Mississippi Code of 1972, is
447 amended as follows:[LH1]

448 37-155-5. As used in this article, the following terms have
449 the meanings ascribed to them in this section, unless the context
450 clearly indicates otherwise:

451 (a) **Prepaid Tuition Contract.** A contract entered into
452 between the Board of Directors of the College Savings Plans of
453 Mississippi Trust Funds and a purchaser pursuant to this chapter.

454 (b) **Trust fund.** There is created a special fund in the
455 State of Mississippi Treasury Department to be designated as the
456 "Mississippi Prepaid Affordable College Tuition Trust Fund"
457 (hereinafter referred to as the trust fund or fund) and to be
458 administered by the State of Mississippi Treasury Department. The
459 fund shall consist of state appropriations, monies acquired from
460 other governmental or private sources, and money remitted in
461 accordance with prepaid tuition contracts. In the event that
462 dividends, interest and gains exceed the amount necessary for
463 program administration and disbursements, the board may designate
464 a percentage of the fund to serve as a contingency fund.

465 (c) **Purchaser.** A person, corporation, trust,

466 charitable organization or other such entity that makes or is
467 obligated to make advance payments in accordance with a prepaid
468 tuition contract entered into pursuant to this chapter.

469 (d) **Beneficiary.** (i) The beneficiary of a prepaid
470 tuition contract must be eighteen (18) years of age or younger at
471 the time the purchaser enters into the contract and must be: (A)
472 a resident of this state at the time the purchaser enters into the
473 contract; or (B) a nonresident if the purchaser is a resident of
474 this state at the time that the contract is entered into.

475 (ii) The board may require a reasonable period of
476 residence in this state for a beneficiary or the purchaser.

477 (iii) A beneficiary is considered a resident for
478 purposes of tuition regardless of the beneficiary's residence on
479 the date of enrollment.

480 (e) **Institution of higher education.** Any public
481 institution of higher learning or public community or junior
482 college located in Mississippi.

483 (f) **Tuition.** The quarter, semester or term charges and
484 all required fees imposed by an institution of higher education as
485 a condition of enrollment by all students.

486 (g) **Board or board of directors.** The Board of
487 Directors of the College Savings Plans of Mississippi * * * Trust
488 Funds as provided in Section 37-155-7.

489 (h) **Legislature.** The Legislature of Mississippi.

490 SECTION 15. Section 37-155-9, Mississippi Code of 1972, is
491 amended as follows:[LH2]

492 37-155-9. In addition to the powers granted by any other
493 provision of this chapter, the board of directors shall have the
494 powers necessary or convenient to carry out the purposes and
495 provisions of this chapter, the purposes and objectives of the
496 trust fund and the powers delegated by any other law of the state
497 or any executive order thereof, including, but not limited to, the
498 following express powers:

499 (a) To adopt and amend bylaws;

500 (b) To adopt such rules and regulations as are
501 necessary to implement the provisions of this chapter;

502 (c) To invest any funds of the trust fund in any
503 instrument, obligation, security or property that constitutes
504 legal investments for public funds in the state and to name and
505 use depositories for its investments and holdings;

506 (d) To execute contracts and other necessary
507 instruments;

508 (e) To impose reasonable requirements for residency for
509 beneficiaries at the time of purchase of the contract;

510 (f) To impose reasonable limits on the number of
511 contract participants in the trust fund at any given period of
512 time;

513 (g) To contract for necessary goods and services, to
514 employ necessary personnel, and to engage the services of
515 consultants for administrative and technical assistance in
516 carrying out the responsibilities of the trust fund;

517 (h) To solicit and accept gifts, including
518 bequeathments or other testamentary gifts made by will, trust or
519 other disposition, grants, loans and other aids from any personal
520 source or to participate in any other way in any federal, state or
521 local governmental programs in carrying out the purposes of this
522 chapter. Any gifts made to the board under this subsection * * *
523 shall be deductible from taxable income of the state in the tax
524 year;

525 (i) To define the terms and conditions under which
526 payments may be withdrawn or refunded from the trust fund,
527 including, but not limited to, the amount paid in and an
528 additional amount in the nature of interest at a rate that
529 corresponds, at a minimum, to the prevailing interest rates for
530 savings accounts provided by banks and savings and loan
531 associations and impose reasonable charges for such withdrawal or

532 refund;

533 (j) To ensure applicability to private and out-of-state
534 tuitions:

535 (i) Under the program, a state purchaser may enter
536 into a prepaid tuition contract with the board under which the
537 purchaser agrees to attend a public institution of higher
538 education in Mississippi;

539 (ii) If the beneficiary of a plan described by
540 Section 37-155-11 enrolls in any in-state or out-of-state
541 regionally accredited private four- or two-year college or an
542 out-of-state regionally accredited, state-supported, nonprofit
543 four- or two-year college or university, the board shall pay to
544 the institution an amount up to, but not greater than, the tuition
545 and required fees that the board would have paid had the
546 beneficiary enrolled in an institution of higher education covered
547 by the plan selected in the prepaid tuition contract. The
548 beneficiary is responsible for paying a private institution or an
549 out-of-state public institution the amount by which the tuition
550 and required fees of the institution exceed the tuition and
551 required fees paid by the board;

552 (k) To impose reasonable time limits on the use of the
553 tuition benefits provided by the program;

554 (l) To provide for the receipt of contributions to the
555 trust fund in lump sums or installment payments;

556 (m) To adopt an official seal and rules;

557 (n) To sue and be sued;

558 (o) To establish agreements or other transactions with
559 federal, state and local agencies, including state universities
560 and community colleges;

561 (p) To appear in its own behalf before boards,
562 commissions or other governmental agencies;

563 (q) To segregate contributions and payments to the fund
564 into various accounts and funds;

565 (r) To require and collect administrative fees and
566 charges in connection with any transaction and impose reasonable
567 penalties, including default, for delinquent payments or for
568 entering into an advance payment contract on a fraudulent basis;

569 (s) To procure insurance against any loss in connection
570 with the property, assets and activities of the fund or the board;

571 (t) To require that purchasers of advance payment
572 contracts verify, under oath, any requests for contract
573 conversions, substitutions, transfers, cancellations, refund
574 requests or contract changes of any nature;

575 (u) To administer the fund in a manner that is
576 sufficiently actuarially sound to meet the obligations of the
577 program. The board shall annually evaluate or cause to be
578 evaluated the actuarial soundness of the fund. If the board
579 perceives a need for additional assets in order to preserve
580 actuarial soundness, the board may adjust the terms of subsequent
581 advance payment contracts to ensure such soundness;

582 (v) To establish a comprehensive investment plan for
583 the purposes of this section. The comprehensive investment plan
584 shall specify the investment policies to be utilized by the board
585 in its administration of the fund. The board may authorize
586 investments in:

587 (i) Bonds, notes, certificates and other valid
588 general obligations of the State of Mississippi, or of any county,
589 or of any city, or of any supervisors district of any county of
590 the State of Mississippi, or of any school district bonds of the
591 State of Mississippi; notes or certificates of indebtedness issued
592 by the Veterans' Home Purchase Board of Mississippi, provided such
593 notes or certificates of indebtedness are secured by the pledge of
594 collateral equal to two hundred percent (200%) of the amount of
595 the loan, which collateral is also guaranteed at least for fifty
596 percent (50%) of the face value by the United States government,
597 and provided that not more than five percent (5%) of the total

598 investment holdings of the system shall be in Veterans' Home
599 Purchase Board notes or certificates at any time; real estate
600 mortgage loans one hundred percent (100%) insured by the Federal
601 Housing Administration on single family homes located in the State
602 of Mississippi, where monthly collections and all servicing
603 matters are handled by Federal Housing Administration approved
604 mortgagees authorized to make such loans in the State of
605 Mississippi;

606 (ii) State of Mississippi highway bonds;

607 (iii) Funds may be deposited in federally insured
608 institutions domiciled in the State of Mississippi or a custodial
609 bank which appears on the State of Mississippi Treasury
610 Department's approved depository list and/or safekeeper list;

611 (iv) Corporate bonds of investment grade as rated
612 by Standard & Poor's or by Moody's Investment Service, with bonds
613 rated BAA/BBB not to exceed five percent (5%) of the book value of
614 the total fixed income investments; or corporate short-term
615 obligations of corporations or of wholly owned subsidiaries of
616 corporations, whose short-term obligations are rated A-3 or better
617 by Standard and Poor's or rated P-3 or better by Moody's
618 Investment Service;

619 (v) Bonds of the Tennessee Valley Authority;

620 (vi) Bonds, notes, certificates and other valid
621 obligations of the United States, and other valid obligations of
622 any federal instrumentality that issues securities under authority
623 of an act of Congress and are exempt from registration with the
624 Securities and Exchange Commission;

625 (vii) Bonds, notes, debentures and other
626 securities issued by any federal instrumentality and fully
627 guaranteed by the United States. Direct obligations issued by the
628 United States of America shall be deemed to include securities of,
629 or other interests in, any open-end or closed-end management type
630 investment company or investment trust registered under the

631 provisions of 15 USCS Section 80(a)-1 et seq., provided that the
632 portfolio of such investment company or investment trust is
633 limited to direct obligations issued by the United States of
634 America, United States government agencies, United States
635 government instrumentalities or United States government sponsored
636 enterprises, and to repurchase agreements fully collateralized by
637 direct obligations of the United States of America, United States
638 government agencies, United States government instrumentalities or
639 United States government sponsored enterprises, and the investment
640 company or investment trust takes delivery of such collateral for
641 the repurchase agreement, either directly or through an authorized
642 custodian. The State Treasurer and the Executive Director of the
643 Department of Finance and Administration shall review and approve
644 the investment companies and investment trusts in which funds may
645 be invested * * *;

646 (viii) Interest-bearing bonds or notes which are
647 general obligations of any other state in the United States or of
648 any city or county therein, provided such city or county had a
649 population as shown by the federal census next preceding such
650 investment of not less than twenty-five thousand (25,000)
651 inhabitants and provided that such state, city or county has not
652 defaulted for a period longer than thirty (30) days in the payment
653 of principal or interest on any of its general obligation
654 indebtedness during a period of ten (10) calendar years
655 immediately preceding such investment;

656 (ix) Shares of stocks, common and/or preferred, of
657 corporations created by or existing under the laws of the United
658 States or any state, district or territory thereof; provided:

659 (A) The maximum investments in stocks shall
660 not exceed fifty percent (50%) of the book value of the total
661 investment fund of the system;

662 (B) The stock of such corporation shall:

663 1. Be listed on a national stock

664 exchange, or

665 2. Be traded in the over-the-counter
666 market, provided price quotations for such over-the-counter stocks
667 are quoted by the National Association of Securities Dealers
668 Automated Quotation System (NASDAQ);

669 (C) The outstanding shares of such
670 corporation shall have a total market value of not less than Fifty
671 Million Dollars (\$50,000,000.00);

672 (D) The amount of investment in any one (1)
673 corporation shall not exceed three percent (3%) of the book value
674 of the assets of the system; and

675 (E) The shares of any one (1) corporation
676 owned by the system shall not exceed five percent (5%) of that
677 corporation's outstanding stock;

678 (x) Bonds rated Single A or better, stocks and
679 convertible securities of established non-United States companies,
680 which companies are listed on only primary national stock
681 exchanges of foreign nations; and in foreign government securities
682 rated Single A or better by a recognized rating agency; provided
683 that the total book value of investments under this paragraph
684 shall at no time exceed twenty percent (20%) of the total book
685 value of all investments of the system. The board may take
686 requisite action to effectuate or hedge such transactions through
687 foreign banks, including the purchase and sale, transfer, exchange
688 or otherwise disposal of, and generally deal in foreign exchange
689 through the use of foreign currency, interbank forward contracts,
690 futures contracts, options contracts, swaps and other related
691 derivative instruments, notwithstanding any other provisions of
692 this chapter to the contrary;

693 (xi) Covered call and put options on securities
694 traded on one or more of the regulated exchanges;

695 (xii) Institutional investment trusts managed by a
696 corporate trustee or by a Securities and Exchange Commission

697 registered investment advisory firm retained as an investment
698 manager by the board of directors, and institutional class shares
699 of investment companies and unit investment trusts registered
700 under the Investment Company Act of 1940 where such * * * funds or
701 shares are comprised of common or preferred stocks, bonds, money
702 market instruments or other investments authorized under this
703 section. * * * Any investment manager or managers approved by the
704 board of directors shall invest such * * * funds or shares as a
705 fiduciary;

706 (xiii) Pooled or commingled real estate funds or
707 real estate securities managed by a corporate trustee or by a
708 Securities and Exchange Commission registered investment advisory
709 firm retained as an investment manager by the board of directors.
710 Such investment in commingled funds or shares shall be held in
711 trust; provided that the total book value of investments under
712 this paragraph shall at no time exceed five percent (5%) of the
713 total book value of all investments of the system. Any investment
714 manager approved by the board of directors shall invest such
715 commingled funds or shares as a fiduciary * * *;

716 (w) All investments shall be acquired by the board at
717 prices not exceeding the prevailing market values for such
718 securities;

719 (x) Any limitations herein set forth shall be
720 applicable only at the time of purchase and shall not require the
721 liquidation of any investment at any time. All investments shall
722 be clearly marked to indicate ownership by the system and to the
723 extent possible shall be registered in the name of the system;

724 (y) Subject to the above terms, conditions, limitations
725 and restrictions, the board shall have power to sell, assign,
726 transfer and dispose of any of the securities and investments of
727 the system, provided that the sale, assignment or transfer has the
728 majority approval of the entire board. The board may employ or
729 contract with investment managers, evaluation services or other

730 such services as determined by the board to be necessary for the
731 effective and efficient operation of the system;

732 (z) Except as otherwise provided herein, no trustee and
733 no employee of the board shall have any direct or indirect
734 interest in the income, gains or profits of any investment made by
735 the board, nor shall any such person receive any pay or emolument
736 for his services in connection with any investment made by the
737 board. No trustee or employee of the board shall become an
738 endorser or surety, or in any manner an obligor for money loaned
739 by or borrowed from the system;

740 (aa) All interest derived from investments and any
741 gains from the sale or exchange of investments shall be credited
742 by the board to the account of the system;

743 (bb) To delegate responsibility for administration of
744 the comprehensive investment plan to a consultant the board
745 determines to be qualified. Such consultant shall be compensated
746 by the board. Directly or through such consultant, the board may
747 contract to provide such services as may be a part of the
748 comprehensive investment plan or as may be deemed necessary or
749 proper by the board or such consultant, including, but not limited
750 to, providing consolidated billing, individual and collective
751 record keeping and accounting, and asset purchase, control and
752 safekeeping;

753 (cc) To annually prepare or cause to be prepared a
754 report setting forth in appropriate detail an accounting of the
755 fund and a description of the financial condition of the program
756 at the close of each fiscal year. Such report shall be submitted
757 to the Governor, the Lieutenant Governor, the President of the
758 Senate, the Speaker of the House of Representatives, and members
759 of the Board of Trustees of State Institutions of Higher Learning,
760 the State Board for Community and Junior Colleges and the State
761 Board of Education on or before March 31 each year. In addition,
762 the board shall make the report available to purchasers of advance

763 payment contracts. The board shall provide to the Board of
764 Trustees of State Institutions of Higher Learning and the State
765 Board for Community and Junior Colleges by March 31 each year
766 complete advance payment contract sales information including
767 projected postsecondary enrollments of beneficiaries. The
768 accounts of the fund shall be subject to annual audits by the
769 State Auditor or his designee;

770 (dd) To solicit proposals for the marketing of the
771 Mississippi Prepaid Affordable College Tuition Program. The
772 entity designated pursuant to this paragraph shall serve as a
773 centralized marketing agent for the program and shall solely be
774 responsible for the marketing of the program. Any materials
775 produced for the purpose of marketing the programs shall be
776 submitted to the board for review. No such materials shall be
777 made available to the public before the materials are approved by
778 the board. Any educational institution may distribute marketing
779 materials produced for the program; however, all such materials
780 shall have been approved by the board prior to distribution.
781 Neither the state nor the board shall be liable for
782 misrepresentation of the program by a marketing agent; and

783 (ee) To establish other policies, procedures and
784 criteria necessary to implement and administer the provisions of
785 this chapter.

786 For efficient and effective administration of the program and
787 trust fund, the board may authorize the State of Mississippi
788 Treasury Department and/or the State Treasurer to carry out any or
789 all of the powers and duties enumerated above.

790 SECTION 16. Section 27-7-15, Mississippi Code of 1972, is
791 amended as follows:[LH3]

792 27-7-15. (1) For the purposes of this article, except as
793 otherwise provided, the term "gross income" means and includes the
794 income of a taxpayer derived from salaries, wages, fees or
795 compensation for service, of whatever kind and in whatever form

796 paid, including income from governmental agencies and subdivisions
797 thereof; or from professions, vocations, trades, businesses,
798 commerce or sales, or renting or dealing in property, or
799 reacquired property; also from annuities, interest, rents,
800 dividends, securities, insurance premiums, reinsurance premiums,
801 considerations for supplemental insurance contracts, or the
802 transaction of any business carried on for gain or profit, or
803 gains, or profits, and income derived from any source whatever and
804 in whatever form paid. The amount of all such items of income
805 shall be included in the gross income for the taxable year in
806 which received by the taxpayer. The amount by which an eligible
807 employee's salary is reduced pursuant to a salary reduction
808 agreement authorized under Section 25-17-5 shall be excluded from
809 the term "gross income" within the meaning of this article.

810 (2) In determining gross income for the purpose of this
811 section, the following, under regulations prescribed by the
812 commissioner, shall be applicable:

813 (a) Dealers in property. Federal rules, regulations
814 and revenue procedures shall be followed with respect to
815 installment sales.

816 (b) Casual sales of property. Federal rules,
817 regulations and revenue procedures shall be followed with respect
818 to installment sales.

819 (i) The term "installment sale" means a
820 disposition of property where at least one (1) payment is to be
821 received after the close of the taxable year in which the
822 disposition occurs.

823 (ii) The term "installment method" means a method
824 under which the income recognized for any taxable year from the
825 disposition is that proportion of the payments received in that
826 year which the gross profit (realized or to be realized when
827 payment is completed) bears to the total contract price.

828 (c) Reserves of insurance companies. In the case of

829 insurance companies, any amounts in excess of the legally required
830 reserves shall be included as gross income.

831 (d) Affiliated companies or persons. As regards sales,
832 exchanges or payments for services from one to another of
833 affiliated companies or persons or under other circumstances where
834 the relation between the buyer and seller is such that gross
835 proceeds from the sale or the value of the exchange or the payment
836 for services are not indicative of the true value of the subject
837 matter of the sale, exchange or payment for services, the
838 commissioner shall prescribe uniform and equitable rules for
839 determining the true value of the gross income, gross sales,
840 exchanges or payment for services, or require consolidated returns
841 of affiliates.

842 (e) Alimony and separate maintenance payments. The
843 federal rules, regulations and revenue procedures in determining
844 the deductibility and taxability of alimony payments shall be
845 followed in this state.

846 (f) Reimbursement for expenses of moving. There shall
847 be included in gross income (as compensation for services) any
848 amount received or accrued, directly or indirectly, by an
849 individual as a payment for or reimbursement of expenses of moving
850 from one residence to another residence which is attributable to
851 employment or self-employment.

852 (3) In the case of taxpayers other than residents, gross
853 income includes gross income from sources within this state.

854 (4) The words "gross income" do not include the following
855 items of income which shall be exempt from taxation under this
856 article:

857 (a) The proceeds of life insurance policies and
858 contracts paid upon the death of the insured. However, the income
859 from the proceeds of such policies or contracts shall be included
860 in the gross income.

861 (b) The amount received by the insured as a return of

862 premium or premiums paid by him under life insurance policies,
863 endowment, or annuity contracts, either during the term or at
864 maturity or upon surrender of the contract.

865 (c) The value of property acquired by gift, bequest,
866 devise or descent, but the income from such property shall be
867 included in the gross income.

868 (d) Interest upon the obligations of the United States
869 or its possessions, or securities issued under the provisions of
870 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
871 War Finance Corporation, or obligations of the State of
872 Mississippi or political subdivisions thereof.

873 (e) The amounts received through accident or health
874 insurance as compensation for personal injuries or sickness, plus
875 the amount of any damages received for such injuries or such
876 sickness or injuries, or through the War Risk Insurance Act, or
877 any law for the benefit or relief of injured or disabled members
878 of the military or naval forces of the United States.

879 (f) Income received by any religious denomination or by
880 any institution or trust for moral or mental improvements,
881 religious, Bible, tract, charitable, benevolent, fraternal,
882 missionary, hospital, infirmary, educational, scientific,
883 literary, library, patriotic, historical or cemetery purposes or
884 for two (2) or more of such purposes, if such income be used
885 exclusively for carrying out one or more of such purposes.

886 (g) Income received by a domestic corporation which is
887 "taxable in another state" as this term is defined in this
888 article, derived from business activity conducted outside this
889 state. Domestic corporations taxable both within and without the
890 state shall determine Mississippi income on the same basis as
891 provided for foreign corporations under the provisions of this
892 article.

893 (h) In case of insurance companies, there shall be
894 excluded from gross income such portion of actual premiums

895 received from an individual policyholder as is paid back or
896 credited to or treated as an abatement of premiums of such
897 policyholder within the taxable year.

898 (i) Income from dividends that has already borne a tax
899 as dividend income under the provisions of this article, when such
900 dividends may be specifically identified in the possession of the
901 recipient.

902 (j) Amounts paid by the United States to a person as
903 added compensation for hazardous duty pay as a member of the Armed
904 Forces of the United States in a combat zone designated by
905 Executive Order of the President of the United States.

906 (k) Amounts received as retirement allowances,
907 pensions, annuities or optional retirement allowances paid under
908 the federal Social Security Act, the Railroad Retirement Act, the
909 Federal Civil Service Retirement Act, or any other retirement
910 system of the United States government, retirement allowances paid
911 under the Mississippi Public Employees' Retirement System,
912 Mississippi Highway Safety Patrol Retirement System or any other
913 retirement system of the State of Mississippi or any political
914 subdivision thereof. The exemption allowed under this paragraph
915 (k) shall be available to the spouse or other beneficiary at the
916 death of the primary retiree.

917 (l) Amounts received as retirement allowances,
918 pensions, annuities or optional retirement allowances paid by any
919 public or governmental retirement system not designated in
920 subsection (k) or any private retirement system or plan of which
921 the recipient was a member at any time during the period of his
922 employment. Amounts received as a distribution under a Roth
923 individual retirement account shall be treated in the same manner
924 as provided under the Internal Revenue Code of 1986, as amended.
925 The exemption allowed under this paragraph (l) shall be available
926 to the spouse or other beneficiary at the death of the primary
927 retiree.

928 (m) Compensation not to exceed the aggregate sum of
929 Five Thousand Dollars (\$5,000.00) for any taxable year received by
930 a member of the National Guard or Reserve Forces of the United
931 States as payment for inactive duty training, active duty training
932 and state active duty.

933 (n) Compensation received for active service as a
934 member below the grade of commissioned officer and so much of the
935 compensation as does not exceed the aggregate sum of Five Hundred
936 Dollars (\$500.00) per month received for active service as a
937 commissioned officer in the Armed Forces of the United States for
938 any month during any part of which such members of the Armed
939 Forces (i) served in a combat zone as designated by Executive
940 Order of the President of the United States; or (ii) was
941 hospitalized as a result of wounds, disease or injury incurred
942 while serving in such combat zone.

943 (o) The proceeds received from federal and state
944 forestry incentives programs.

945 (p) The amount representing the difference between the
946 increase of gross income derived from sales for export outside the
947 United States as compared to the preceding tax year wherein gross
948 income from export sales was highest, and the net increase in
949 expenses attributable to such increased exports. In the absence
950 of direct accounting the ratio of net profits to total sales may
951 be applied to the increase in export sales. This item (p) shall
952 only apply to businesses located in this state engaging in the
953 international export of Mississippi goods and services. Such
954 goods or services shall have at least fifty percent (50%) of value
955 added at a location in Mississippi.

956 (q) Amounts paid by the federal government for the
957 construction of soil conservation systems as required by a
958 conservation plan adopted pursuant to 16 USCS 3801 et seq.

959 (r) The amount deposited in a medical savings account,
960 and any interest accrued thereon, that is a part of a medical

961 savings account program as specified in the Medical Savings
962 Account Act under Sections 71-9-1 through 71-9-9; provided,
963 however, that any amount withdrawn from such account for purposes
964 other than paying eligible medical expense or to procure health
965 coverage, shall be included in gross income.

966 (s) Amounts paid by the Mississippi Soil and Water
967 Conservation Commission from the Mississippi Soil and Water
968 Cost-Share Program for the installation of water quality best
969 management practices.

970 (t) Dividends received by a holding corporation, as
971 defined in Section 27-13-1, from a subsidiary corporation, as
972 defined in Section 27-13-1.

973 (u) Interest, dividends, gains or income of any kind on
974 any account in the Mississippi Affordable College Savings Trust
975 Fund, as established under Senate Bill No. 2298, 2000 Regular
976 Session, to the extent that such amounts remain on deposit in the
977 MACS Trust Fund or are withdrawn pursuant to a qualified
978 withdrawal, as defined in Section 3 of Senate Bill No. 2298, 2000
979 Regular Session.

980 (v) Interest, dividends or gains accruing on the
981 payments made pursuant to a prepaid tuition contract, as provided
982 for in Section 37-155-17.

983 (5) Prisoners of war, missing in action-taxable status.

984 (a) Members of the Armed Forces. Gross income does not
985 include compensation received for active service as a member of
986 the Armed Forces of the United States for any month during any
987 part of which such member is in a missing status, as defined in
988 paragraph (d) of this subsection, during the Vietnam Conflict as a
989 result of such conflict.

990 (b) Civilian employees. Gross income does not include
991 compensation received for active service as an employee for any
992 month during any part of which such employee is in a missing
993 status during the Vietnam Conflict as a result of such conflict.

994 (c) Period of conflict. For the purpose of this
995 subsection, the Vietnam Conflict began February 28, 1961, and ends
996 on the date designated by the President by Executive Order as the
997 date of the termination of combatant activities in Vietnam. For
998 the purpose of this subsection, an individual is in a missing
999 status as a result of the Vietnam Conflict if immediately before
1000 such status began he was performing service in Vietnam or was
1001 performing service in Southeast Asia in direct support of military
1002 operations in Vietnam. "Southeast Asia" as used in this paragraph
1003 is defined to include Cambodia, Laos, Thailand and waters adjacent
1004 thereto.

1005 (d) "Missing status" means the status of an employee or
1006 member of the Armed Forces who is in active service and is
1007 officially carried or determined to be absent in a status of (i)
1008 missing; (ii) missing in action; (iii) interned in a foreign
1009 country; (iv) captured, beleaguered or besieged by a hostile
1010 force; or (v) detained in a foreign country against his will; but
1011 does not include the status of an employee or member of the Armed
1012 Forces for a period during which he is officially determined to be
1013 absent from his post of duty without authority.

1014 (e) "Active service" means active federal service by an
1015 employee or member of the Armed Forces of the United States in an
1016 active duty status.

1017 (f) "Employee" means one who is a citizen or national
1018 of the United States or an alien admitted to the United States for
1019 permanent residence and is a resident of the State of Mississippi
1020 and is employed in or under a federal executive agency or
1021 department of the Armed Forces.

1022 (g) "Compensation" means (i) basic pay; (ii) special
1023 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)
1024 basic allowance for subsistence; and (vi) station per diem
1025 allowances for not more than ninety (90) days.

1026 (h) If refund or credit of any overpayment of tax for

1027 any taxable year resulting from the application of subsection (5)
1028 of this section is prevented by the operation of any law or rule
1029 of law, such refund or credit of such overpayment of tax may,
1030 nevertheless, be made or allowed if claim therefor is filed with
1031 the State Tax Commission within three (3) years after the date of
1032 the enactment of this subsection.

1033 (i) The provisions of this subsection shall be
1034 effective for taxable years ending on or after February 28, 1961.

1035 (6) A shareholder of an S corporation, as defined in Section
1036 27-8-3(1)(g), shall take into account the income, loss, deduction
1037 or credit of the S corporation only to the extent provided in
1038 Section 27-8-7(2).

1039 SECTION 17. Section 27-7-17, Mississippi Code of 1972, is
1040 amended as follows:[LH4]

1041 27-7-17. In computing taxable income, there shall be allowed
1042 as deductions:

1043 (1) **Business deductions.**

1044 (a) Business expenses. All the ordinary and necessary
1045 expenses paid or incurred during the taxable year in carrying on
1046 any trade or business, including a reasonable allowance for
1047 salaries or other compensation for personal services actually
1048 rendered; nonreimbursable traveling expenses incident to current
1049 employment, including a reasonable amount expended for meals and
1050 lodging while away from home in the pursuit of a trade or
1051 business; and rentals or other payments required to be made as a
1052 condition of the continued use or possession, for purposes of the
1053 trade or business of property to which the taxpayer has not taken
1054 or is not taking title or in which he had no equity. Expense
1055 incurred in connection with earning and distributing nontaxable
1056 income is not an allowable deduction. Limitations on
1057 entertainment expenses shall conform to the provisions of the
1058 Internal Revenue Code of 1986.

1059 (b) Interest. All interest paid or accrued during the

1060 taxable year on business indebtedness, except interest upon the
1061 indebtedness for the purchase of tax-free bonds, or any stocks,
1062 the dividends from which are nontaxable under the provisions of
1063 this article; provided, however, in the case of securities
1064 dealers, interest payments or accruals on loans, the proceeds of
1065 which are used to purchase tax-exempt securities, shall be
1066 deductible if income from otherwise tax-free securities is
1067 reported as income. Investment interest expense shall be limited
1068 to investment income. Interest expense incurred for the purchase
1069 of treasury stock, to pay dividends, or incurred as a result of an
1070 undercapitalized affiliated corporation may not be deducted unless
1071 an ordinary and necessary business purpose can be established to
1072 the satisfaction of the commissioner. For the purposes of this
1073 paragraph, the phrase "interest upon the indebtedness for the
1074 purchase of tax-free bonds" applies only to the indebtedness
1075 incurred for the purpose of directly purchasing tax-free bonds and
1076 does not apply to any other indebtedness incurred in the regular
1077 course of the taxpayer's business. Any corporation, association,
1078 organization or other entity taxable under Section 27-7-23(c)
1079 shall allocate interest expense as provided in Section
1080 27-7-23(c)(4)(H).

1081 (c) Taxes. Taxes paid or accrued within the taxable
1082 year, except state and federal income taxes, excise taxes based on
1083 or measured by net income, estate and inheritance taxes, gift
1084 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
1085 use taxes unless incurred as an item of expense in a trade or
1086 business or in the production of taxable income. In the case of
1087 an individual, taxes permitted as an itemized deduction under the
1088 provisions of subsection (2)(a) of this section are to be claimed
1089 thereunder.

1090 (d) Business losses.

1091 (i) Losses sustained during the taxable year not
1092 compensated for by insurance or otherwise, if incurred in trade or

1093 business, or nonbusiness transactions entered into for profit.

1094 (ii) Limitations on losses from passive activities
1095 and rental real estate shall conform to the provisions of the
1096 Internal Revenue Code of 1986.

1097 (e) Bad debts. Losses from debts ascertained to be
1098 worthless and charged off during the taxable year, if sustained in
1099 the conduct of the regular trade or business of the taxpayer;
1100 provided, that such losses shall be allowed only when the taxpayer
1101 has reported as income, on the accrual basis, the amount of such
1102 debt or account.

1103 (f) Depreciation. A reasonable allowance for
1104 exhaustion, wear and tear of property used in the trade or
1105 business, or rental property, and depreciation upon buildings
1106 based upon their reasonable value as of March 16, 1912, if
1107 acquired prior thereto, and upon cost if acquired subsequent to
1108 that date.

1109 (g) Depletion. In the case of mines, oil and gas
1110 wells, other natural deposits and timber, a reasonable allowance
1111 for depletion and for depreciation of improvements, based upon
1112 cost, including cost of development, not otherwise deducted, or
1113 fair market value as of March 16, 1912, if acquired prior to that
1114 date, such allowance to be made upon regulations prescribed by the
1115 commissioner, with the approval of the Governor.

1116 (h) Contributions or gifts. Except as otherwise
1117 provided in subsection (2)(a) of this section for individuals,
1118 contributions or gifts made by corporations within the taxable
1119 year to corporations, organizations, associations or institutions,
1120 including Community Chest funds, foundations and trusts created
1121 solely and exclusively for religious, charitable, scientific or
1122 educational purposes, or for the prevention of cruelty to children
1123 or animals, no part of the net earnings of which inure to the
1124 benefit of any private stockholder or individual. This deduction
1125 shall be allowed in an amount not to exceed twenty percent (20%)

1126 of the net income. Such contributions or gifts shall be allowable
1127 as deductions only if verified under rules and regulations
1128 prescribed by the commissioner, with the approval of the Governor.

1129 Contributions made in any form other than cash shall be allowed
1130 as a deduction, subject to the limitations herein provided, in an
1131 amount equal to the actual market value of the contributions at
1132 the time the contribution is actually made and consummated.

1133 (i) Reserve funds - insurance companies. In the case
1134 of insurance companies the net additions required by law to be
1135 made within the taxable year to reserve funds when such reserve
1136 funds are maintained for the purpose of liquidating policies at
1137 maturity.

1138 (j) Annuity income. The sums, other than dividends,
1139 paid within the taxpayer year on policy or annuity contracts when
1140 such income has been included in gross income.

1141 (k) Contributions to employee pension plans.
1142 Contributions made by an employer to a plan or a trust forming
1143 part of a pension plan, stock bonus plan, disability or
1144 death-benefit plan, or profit-sharing plan of such employer for
1145 the exclusive benefit of some or all of his, their, or its
1146 employees, or their beneficiaries, shall be deductible from his,
1147 their, or its income only to the extent that, and for the taxable
1148 year in which, the contribution is deductible for federal income
1149 tax purposes under the Internal Revenue Code of 1986 and any other
1150 provisions of similar purport in the Internal Revenue Laws of the
1151 United States, and the rules, regulations, rulings and
1152 determinations promulgated thereunder, provided that:

1153 (i) The plan or trust be irrevocable.

1154 (ii) The plan or trust constitute a part of a
1155 pension plan, stock bonus plan, disability or death-benefit plan,
1156 or profit-sharing plan for the exclusive benefit of some or all of
1157 the employer's employees and/or officers, or their beneficiaries,
1158 for the purpose of distributing the corpus and income of the plan

1159 or trust to such employees and/or officers, or their
1160 beneficiaries.

1161 (iii) No part of the corpus or income of the plan
1162 or trust can be used for purposes other than for the exclusive
1163 benefit of employees and/or officers, or their beneficiaries.

1164 Contributions to all plans or to all trusts of real or
1165 personal property (or real and personal property combined) or to
1166 insured plans created under a retirement plan for which provision
1167 has been made under the laws of the United States of America,
1168 making such contributions deductible from income for federal
1169 income tax purposes, shall be deductible only to the same extent
1170 under the Income Tax Laws of the State of Mississippi.

1171 (1) Net operating loss carrybacks and carryovers. A
1172 net operating loss for any taxable year ending after December 31,
1173 1993, and taxable years thereafter, shall be a net operating loss
1174 carryback to each of the three (3) taxable years preceding the
1175 taxable year of the loss. If the net operating loss for any
1176 taxable year is not exhausted by carrybacks to the three (3)
1177 taxable years preceding the taxable year of the loss, then there
1178 shall be a net operating loss carryover to each of the fifteen
1179 (15) taxable years following the taxable year of the loss
1180 beginning with any taxable year after December 31, 1991.

1181 For any taxable year ending after December 31, 1997, the
1182 period for net operating loss carrybacks and net operating loss
1183 carryovers shall be the same as those established by the Internal
1184 Revenue Code and the rules, regulations, rulings and
1185 determinations promulgated thereunder.

1186 The term "net operating loss," for the purposes of this
1187 paragraph, shall be the excess of the deductions allowed over the
1188 gross income; provided, however, the following deductions shall
1189 not be allowed in computing same:

1190 (i) No net operating loss deduction shall be
1191 allowed.

1192 (ii) No personal exemption deduction shall be
1193 allowed.

1194 (iii) Allowable deductions which are not
1195 attributable to taxpayer's trade or business shall be allowed only
1196 to the extent of the amount of gross income not derived from such
1197 trade or business.

1198 Any taxpayer entitled to a carryback period as provided by
1199 this paragraph may elect to relinquish the entire carryback period
1200 with respect to a net operating loss for any taxable year ending
1201 after December 31, 1991. The election shall be made in the manner
1202 prescribed by the State Tax Commission and shall be made by the
1203 due date, including extensions of time, for filing the taxpayer's
1204 return for the taxable year of the net operating loss for which
1205 the election is to be in effect. The election, once made for any
1206 taxable year, shall be irrevocable for that taxable year.

1207 (m) Amortization of pollution or environmental control
1208 facilities.

1209 Allowance of deduction. Every taxpayer, at his election,
1210 shall be entitled to a deduction for pollution or environmental
1211 control facilities to the same extent as that allowed under the
1212 Internal Revenue Code and the rules, regulations, rulings and
1213 determinations promulgated thereunder.

1214 (n) Dividend distributions - investment trusts.
1215 Dividends distributed by an investment trust defined in Section
1216 79-15-3, if the dividend distributions meet the requirements of
1217 Section 857 or are otherwise deductible under Section 858 or 860,
1218 federal Internal Revenue Code of 1986, as amended. The deductions
1219 allowed in this paragraph shall be effective for the 1985 taxable
1220 year of the investment trust and for each taxable year thereafter.

1221 (o) Contributions to College Savings Trust Fund
1222 Accounts Contributions or payments to a Mississippi Affordable
1223 College Savings Program account are deductible as provided under
1224 Section 7, Senate Bill No. 2298, 2000 Regular Session. Payments

1225 made under a prepaid tuition contract entered into under the
1226 Mississippi Prepaid Affordable College Tuition Program are
1227 deductible as provided under Section 37-155-17.

1228 (2) **Individual nonbusiness deductions.**

1229 (a) The amount allowable for individual nonbusiness
1230 itemized deductions for federal income tax purposes, except the
1231 deduction for state income taxes paid, where the individual is
1232 eligible to elect, for the taxable year, to itemize deductions on
1233 his federal return; or

1234 (b) In lieu of the individual nonbusiness itemized
1235 deductions authorized in paragraph (a), for all purposes other
1236 than ordinary and necessary expenses paid or incurred during the
1237 taxable year in carrying on any trade or business, an optional
1238 standard deduction of:

1239 (i) Three Thousand Four Hundred Dollars
1240 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1241 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1242 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
1243 in the case of married individuals filing a joint or combined
1244 return;

1245 (ii) One Thousand Seven Hundred Dollars
1246 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1247 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1248 Three Hundred Dollars (\$2,300.00) for each calendar year
1249 thereafter in the case of married individuals filing separate
1250 returns;

1251 (iii) Three Thousand Four Hundred Dollars
1252 (\$3,400.00) in the case of a head of family; or

1253 (iv) Two Thousand Three Hundred Dollars
1254 (\$2,300.00) in the case of an individual who is not married.

1255 In the case of a husband and wife living together, having
1256 separate incomes, and filing combined returns, the standard
1257 deduction authorized may be divided in any manner they choose. In

1258 the case of separate returns by a husband and wife, the standard
1259 deduction shall not be allowed to either if the taxable income of
1260 one of the spouses is determined without regard to the standard
1261 deduction.

1262 (c) A nonresident individual shall be allowed the same
1263 individual nonbusiness deductions as are authorized for resident
1264 individuals in paragraph (a) or (b) of this subsection; however,
1265 the nonresident individual is entitled only to that proportion of
1266 the individual nonbusiness deductions as his net income from
1267 sources within the State of Mississippi bears to his total or
1268 entire net income from all sources.

1269 (3) Nothing in this section shall permit the same item to be
1270 deducted more than once, either in fact or in effect.

1271 SECTION 18. Section 27-7-18, Mississippi Code of 1972, is
1272 amended as follows:[LH5]

1273 27-7-18. (1) Alimony payments. In the case of a person
1274 described in Section 27-7-15(2)(e), there shall be allowed as a
1275 deduction from gross income amounts paid as periodic payments to
1276 the extent of such amounts as are includible in the gross income
1277 of the spouse as provided in Section 27-7-15(2)(e), payment of
1278 which is made within the person's taxable year.

1279 (2) Unreimbursed moving expenses incurred after December 31,
1280 1994, are deductible as an adjustment to gross income in
1281 accordance with provisions of the United States Internal Revenue
1282 Code, and rules, regulations and revenue procedures thereunder
1283 relating to moving expenses, not in direct conflict with the
1284 provisions of the Mississippi Income Tax Law.

1285 (3) Amounts paid after December 31, 1998, by a self-employed
1286 individual for insurance which constitute medical care for the
1287 taxpayer, his spouse and dependents, are deductible as an
1288 adjustment to gross income in accordance with provisions of the
1289 United States Internal Revenue Code, and rules, regulations and
1290 revenue procedures thereunder relating to such payments, not in

1291 direct conflict with the provisions of the Mississippi Income Tax
1292 Law.

1293 (4) Contributions or payments to a Mississippi Affordable
1294 College Savings (MACS) Program account are deductible from gross
1295 income as provided in Section 7, Senate Bill No. 2298, 2000
1296 Regular Session. Payments made under a prepaid tuition contract
1297 entered into under the Mississippi Prepaid Affordable College
1298 Tuition Program are deductible as provided in Section 37-155-17.

1299 SECTION 19. Section 75-71-113, Mississippi Code of 1972, is
1300 amended as follows:

1301 75-71-113. The Secretary of State, by rule or order, may
1302 require the filing of any prospectus, pamphlet, circular, form
1303 letter, advertisement, or other sales literature or advertising
1304 communication addressed or intended for distribution to
1305 prospective investors, including clients or prospective clients of
1306 an investment adviser, unless the security or transaction is
1307 exempted under Article 3 of this chapter or Section 8 of Senate
1308 Bill No. 2298, 2000 Regular Session, or is a federal covered
1309 security.

1310 SECTION 20. Section 75-71-401, Mississippi Code of 1972, is
1311 amended as follows:

1312 75-71-401. Except as provided for in Section 75-71-109(a),
1313 it is unlawful for any person to offer or sell any security in the
1314 State of Mississippi unless: (1) it is registered under this
1315 chapter or Section 8 of Senate Bill No. 2298, 2000 Regular
1316 Session; (2) the security or transaction is exempted under Article
1317 3 of this chapter, or (3) it is a federal covered security.

1318 SECTION 21. Sections 1 through 13 of this act shall be
1319 codified as a separate article in Chapter 155, Title 37,
1320 Mississippi Code of 1972.

1321 SECTION 22. Nothing in this act shall affect or defeat any
1322 claim, assessment, appeal, suit, right or cause of action for
1323 taxes due or accrued under the income tax laws before the date on

1324 which Sections 16 through 18 of this act become effective, whether
1325 such claims, assessments, appeals, suits or actions have been
1326 begun before the date on which Sections 16 through 18 of this act
1327 become effective or are begun thereafter; and the provisions of
1328 the income tax laws are expressly continued in full force, effect
1329 and operation for the purpose of the assessment, collection and
1330 enrollment of liens for any taxes due or accrued and the execution
1331 of any warrant under such laws before the date on which Sections
1332 16 through 18 of this act become effective, and for the imposition
1333 of any penalties, forfeitures or claims for failure to comply with
1334 such laws.

1335 SECTION 23. Sections 1 through 15 and 19 through 23 of this
1336 act shall take effect and be in force from and after July 1, 2000.

1337 Sections 16 through 18 of this act shall take effect and be in
1338 force from and after January 1, 2000.