AN ACT TO AMEND SECTION 37-155-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO PURCHASER OF A MISSISSIPPI PREPAID AFFORDABLE COLLEGE TUITION PROGRAM (MPACT) CONTRACT MAY REQUEST OR ACCEPT A FEE ON BEHALF OF A NONRESIDENT BENEFICIARY; TO AMEND SECTION 37-155-7, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT APPOINTMENTS TO THE MISSISSIPPI PREPAID AFFORDABLE COLLEGE TUITION PROGRAM (MPACT) BOARD OF DIRECTORS SHALL SERVE UNTIL A SUCCESSOR IS CHOSEN AND QUALIFIES, TO PROVIDE THAT EX OFFICIO MEMBERS OF THE BOARD OF DIRECTORS MAY DESIGNATE ALTERNATE MEMBERS TO ATTEND MEETINGS, AND TO CLARIFY WHAT CONSTITUTES A QUORUM OF THE BOARD TO CONDUCT BUSINESS; TO AMEND SECTION 37-155-9, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD TO ESTABLISH RULES REGARDING THE PURCHASE OF CONTRACTS FOR NONRESIDENT BENEFICIARIES AND TO AUTHORIZE THE PROGRAM TO PAY FOR GRADUATE SCHOOL TUITION BASED ON A WEIGHTED AVERAGE TUITION RATE; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 37-155-5, Mississippi Code of 1972, is amended as follows:

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

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

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

(c) **Purchaser.** A person, corporation, trust, charitable organization or other such entity that makes or is obligated to make advance payments in accordance with a prepaid tuition contract entered into pursuant to this article. However, no purchaser may request or accept any form of compensation, fee, commission, service charge or any other form of payment or remuneration for entering into a contract for the benefit of a nonresident beneficiary.

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

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

(iii) A beneficiary is considered a resident for purposes of tuition regardless of the beneficiary's residence on the date of enrollment. However, for contracts entered into after July 1, 2003, this provision only applies to nonresident beneficiaries if (A) the original purchaser was the parent, grandparent or legal guardian of the beneficiary; or (B) the beneficiary was a resident of Mississippi at the time the contract was purchased.

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

(f) **Tuition.** The quarter, semester or term charges and all required fees imposed by an institution of higher education as a condition of enrollment by all students.
(g) **Board or board of directors.** The Board of Directors of the College Savings Plans of Mississippi Trust Funds as provided in Section 37-155-7.

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

**SECTION 2.** Section 37-155-7, Mississippi Code of 1972, is amended as follows:

37-155-7. (1) The board of directors shall consist of thirteen (13) members as follows:

(a) Nine (9) voting members as follows: the State Treasurer; the Commissioner of Higher Education, or his designee; the Executive Director of the Community and Junior College Board, or his designee; the Department of Finance and Administration Executive Director, or his designee; and one (1) member from each congressional district to be appointed by the Governor with the advice and consent of the Senate. One (1) member shall be appointed for an initial term of one (1) year; one (1) member shall be appointed for an initial term of two (2) years; one (1) member for an initial term of three (3) years; one (1) member for an initial term of four (4) years; and one (1) member for an initial term of five (5) years. On the expiration of any of the terms of office, the Governor shall appoint successors by and with the advice and consent of the Senate for terms of five (5) years in each case. *Ex officio* members of the board may be represented at official meetings by their deputy, or other designee, and such designees shall have full voting privileges and shall be included in the determination of a quorum for conducting board business.

(b) Two (2) nonvoting, advisory members of the board shall be appointed by each of the following officers: the Lieutenant Governor and the Speaker of the House of Representatives.

(2) Successors to the appointed members shall serve for the length of the term for each appointing official and shall be eligible for reappointment, and shall serve until a successor is appointed.
appointed and qualified. Any person appointed to fill a vacancy
on the board shall be appointed in a like manner and shall serve
for only the unexpired term.

(3) Each member appointed shall possess knowledge, skill and
experience in business or financial matters commensurate with the
duties and responsibilities of the trust fund.

(4) Members of the board of directors shall serve without
compensation, but shall be reimbursed for each day’s official
duties of the board at the same per diem as established by Section
25-3-69 and actual travel and lodging expenses as established by
Section 25-3-41.

(5) The board of directors shall annually elect one (1)
member to serve as chairman of the board and one (1) member to
serve as vice chairman. The vice chairman shall act as chairman
in the absence of or upon the disability of the chairman or in the
event of a vacancy of the office of chairman.

(6) A majority of the currently serving members of the board
shall constitute a quorum for the purposes of conducting business
and exercising its official powers and duties. Any action taken
by the board shall be upon the vote of a majority of the members
present.

SECTION 3. Section 37-155-9, Mississippi Code of 1972, is
amended as follows:

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

(a) To adopt and amend bylaws;
(b) To adopt such rules and regulations as are
necessary to implement the provisions of this article;
(c) To invest any funds of the trust fund in any instrument, obligation, security or property that constitutes legal investments for public funds in the state and to name and use depositories for its investments and holdings;

(d) To execute contracts and other necessary instruments;

(e) To impose reasonable requirements for residency for beneficiaries at the time of purchase of the contract and to establish rules to govern purchase of contracts for beneficiaries who are nonresidents at the time the purchaser enters into the prepaid tuition contract;

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

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

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

(i) To define the terms and conditions under which payments may be withdrawn or refunded from the trust fund, including, but not limited to, the amount paid in and an additional amount in the nature of interest at a rate that corresponds, at a minimum, to the prevailing interest rates for savings accounts provided by banks and savings and loan associations and impose reasonable charges for such withdrawal or refund;
(j) To ensure applicability to private and out-of-state tuitions:

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

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

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

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

(m) To adopt an official seal and rules;

(n) To sue and be sued;

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

(p) To appear in its own behalf before boards, commissions or other governmental agencies;
(q) To segregate contributions and payments to the fund into various accounts and funds;

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

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

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

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

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

(i) Bonds, notes, certificates and other valid general obligations of the State of Mississippi, or of any county, or of any city, or of any supervisors district of any county of the State of Mississippi, or of any school district bonds of the State of Mississippi; notes or certificates of indebtedness issued by the Veterans’ Home Purchase Board of Mississippi, provided such notes or certificates of indebtedness are secured by the pledge of collateral equal to two hundred percent (200%) of the amount of the loan, which collateral is also guaranteed at least for fifty
percent (50%) of the face value by the United States government, and provided that not more than five percent (5%) of the total investment holdings of the system shall be in Veterans’ Home Purchase Board notes or certificates at any time; real estate mortgage loans one hundred percent (100%) insured by the Federal Housing Administration on single family homes located in the State of Mississippi, where monthly collections and all servicing matters are handled by Federal Housing Administration approved mortgagees authorized to make such loans in the State of Mississippi;

(ii) State of Mississippi highway bonds;

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

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

(v) Bonds of the Tennessee Valley Authority;

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

(vii) Bonds, notes, debentures and other securities issued by any federal instrumentality and fully guaranteed by the United States. Direct obligations issued by the United States of America shall be deemed to include securities of,
or other interests in, any open-end or closed-end management type investment company or investment trust registered under the provisions of 15 USCS Section 80(a)-1 et seq., provided that the portfolio of such investment company or investment trust is limited to direct obligations issued by the United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and to repurchase agreements fully collateralized by direct obligations of the United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and the investment company or investment trust takes delivery of such collateral for the repurchase agreement, either directly or through an authorized custodian. The State Treasurer and the Executive Director of the Department of Finance and Administration shall review and approve the investment companies and investment trusts in which funds may be invested;

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

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

(A) The maximum investments in stocks shall not exceed fifty percent (50%) of the book value of the total investment fund of the system;
(B) The stock of such corporation shall:

1. Be listed on a national stock exchange; or

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

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

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

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

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

(xi) Covered call and put options on securities traded on one or more of the regulated exchanges;
(xii) Institutional investment trusts managed by a corporate trustee or by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board of directors, and institutional class shares of investment companies and unit investment trusts registered under the Investment Company Act of 1940 where such funds or shares are comprised of common or preferred stocks, bonds, money market instruments or other investments authorized under this section. Any investment manager or managers approved by the board of directors shall invest such funds or shares as a fiduciary;

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

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

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

(y) Subject to the above terms, conditions, limitations and restrictions, the board shall have power to sell, assign, transfer and dispose of any of the securities and investments of the system, provided that the sale, assignment or transfer has the majority approval of the entire board. The board may employ or
contract with investment managers, evaluation services or other
such services as determined by the board to be necessary for the
effective and efficient operation of the system;

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

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

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

(cc) To annually prepare or cause to be prepared a
report setting forth in appropriate detail an accounting of the
fund and a description of the financial condition of the program
at the close of each fiscal year. Such report shall be submitted
to the Governor, the Lieutenant Governor, the President of the
Senate, the Speaker of the House of Representatives, and members
of the Board of Trustees of State Institutions of Higher Learning,
the State Board for Community and Junior Colleges and the State
Board of Education on or before March 31 each year. In addition,
the board shall make the report available to purchasers of advance
payment contracts. The board shall provide to the Board of
Trustees of State Institutions of Higher Learning and the State
Board for Community and Junior Colleges by March 31 each year
complete advance payment contract sales information including
projected postsecondary enrollments of beneficiaries. The
accounts of the fund shall be subject to annual audits by the
State Auditor or his designee;

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

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

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

SECTION 4. This act shall take effect and be in force from
and after July 1, 2003.