

By: Senator(s) Hewes, Michel, Nunnelee,
Doxey, White, Flowers, Pickering, Brown,
Clarke

To: Finance

SENATE BILL NO. 2633
(As Sent to Governor)

1 AN ACT TO PERMIT THE ESTABLISHMENT AND MAINTENANCE OF HEALTH
2 SAVINGS ACCOUNTS; TO EXEMPT CONTRIBUTIONS FROM GROSS INCOME UNDER
3 THE STATE INCOME TAX LAW; TO PRESCRIBE THE REQUIREMENTS OF AND
4 RESTRICTIONS ON HEALTH SAVINGS ACCOUNTS; TO AMEND SECTION 27-7-15,
5 MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1601, 2005
6 REGULAR SESSION, TO EXCLUDE THE AMOUNT DEPOSITED IN A HEALTH
7 SAVINGS ACCOUNT FROM GROSS INCOME UNDER THE STATE INCOME TAX LAW;
8 AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** This act shall be known and may be cited as the
11 "Health Savings Accounts Act."

12 **SECTION 2.** As used in this act:

13 (a) "Eligible individual" means the individual
14 taxpayer, including employees of an employer who contributes to
15 health savings accounts on the employees' behalf, who:

16 (i) Is covered by a high deductible health plan
17 individually or with his or her dependents as defined in this act;

18 (ii) Is not covered under any health plan that is
19 not a high deductible health plan, except for coverage for
20 accidents, disability, dental care, vision care, long-term care,
21 workers' compensation insurance, insurance for a specified disease
22 or illness, insurance paying a fixed amount per day per
23 hospitalization and coverage for tort liabilities or liabilities
24 relating to ownership or use of property; and

25 (iii) Establishes, or on whose behalf is
26 established, a health savings account.

27 (b) "Deductible" means the total deductible for an
28 eligible individual and all the dependents of that eligible
29 individual for a calendar year.

30 (c) "Dependent" means the spouse or child of the
31 eligible individual as defined in Section 152 of the Internal
32 Revenue Code subject to any additional modifications imposed by
33 Section 223(d)(2) of the Internal Revenue Code.

34 (d) "Qualified medical expense" means an expense paid
35 by the taxpayer for medical care described in Section 213(d) of
36 the Internal Revenue Code.

37 (e) "High deductible health plan" means a health plan
38 with:

39 (i) In the case of self-only coverage, an annual
40 deductible which is not less than One Thousand Dollars (\$1,000.00)
41 and the sum of the annual deductible and other annual
42 out-of-pocket expenses required to be paid under the plan for
43 covered benefits does not exceed Five Thousand One Hundred Dollars
44 (\$5,100.00).

45 (ii) In the case of family coverage, an annual
46 deductible of not less than Two Thousand Dollars (\$2,000.00) and
47 the sum of the annual deductible and other annual out-of-pocket
48 expenses required to be paid under the plan for covered benefits
49 does not exceed Ten Thousand Two Hundred Dollars (\$10,200.00).

50 (iii) The minimum annual deductible amounts and
51 maximum annual out-of-pocket expense limits may be adjusted each
52 year according to a cost-of-living adjustment as determined under
53 Section 223(g) of the Internal Revenue Code.

54 (iv) A plan shall not fail to be treated as a high
55 deductible health plan by reason of failing to have a deductible
56 for preventive care, or in the case of network plans, for having
57 limits for out-of-pocket expenses or annual deductibles for
58 services provided outside the network that exceed the limitations
59 in this section.

60 (f) "Health savings account" or "account" means a trust
61 or custodian established in this state pursuant to a health
62 savings account program exclusively to pay the qualified medical

63 expenses of an eligible individual or his or her dependents, but
64 only if the written governing instrument creating the account
65 meets the following requirements:

66 (i) Except in the case of a rollover contribution,
67 no contribution will be accepted unless it is in cash; or, to the
68 extent such contribution, when added to the previous contributions
69 to the account for the calendar year, exceeds one hundred percent
70 (100%) of the eligible individual's deductible or Two Thousand Six
71 Hundred Fifty Dollars (\$2,650.00) for an individual or Five
72 Thousand Two Hundred Fifty Dollars (\$5,250.00) per family,
73 whichever is lower;

74 (ii) The trustee or custodian is a bank, an
75 insurance company or another person approved by the United States
76 Department of Treasury and the Commissioner of Insurance;

77 (iii) No part of the trust assets will be invested
78 in life insurance contracts;

79 (iv) The assets of the account will not be
80 commingled with other property except as allowed for under
81 Individual Retirement Accounts; and

82 (v) The eligible individual's interest in the
83 account is nonforfeitable.

84 The maximum dollar amounts in this paragraph may be adjusted
85 each year according to a cost-of-living adjustment as determined
86 under Section 223(g) of the Internal Revenue Code.

87 Eligible individuals who have attained age fifty-five (55)
88 before the end of the year may make additional catch-up
89 contributions into the account in the amount determined in
90 accordance with the following table:

91	2005.....	\$ 600.00
92	2006.....	\$ 700.00
93	2007.....	\$ 800.00
94	2008.....	\$ 900.00
95	2009 and thereafter.....	\$1,000.00

96 (g) "Health savings account program" or "program" means
97 a program that includes all of the following:

98 (i) The purchase by an eligible individual or by
99 an employer of a high deductible health plan; and

100 (ii) The contribution into a health savings
101 account by or on behalf of an eligible individual or on behalf of
102 an employee by his or her employer. The total annual contribution
103 may not exceed the amount of the plan's higher deductible or the
104 amounts listed herein.

105 **SECTION 3.** (1) For taxable years beginning after January 1,
106 2005, contributions may be made into a health savings account by
107 or on behalf of a resident of Mississippi pursuant to Section 2(f)
108 of this act.

109 (2) Except as provided in Section 5 of this act, or except
110 as otherwise provided by law, the principal contributed to and the
111 interest earned on a health savings account and money reimbursed
112 to an eligible individual or an employee for qualified medical
113 expenses shall be excluded from the taxable gross income of the
114 account holder under Section 27-7-15.

115 **SECTION 4.** The trustee or custodian shall utilize the funds
116 held in a health savings account solely for the purpose of:

117 (a) Paying the qualified medical expenses of the
118 eligible individual or his or her dependents;

119 (b) Purchasing a health coverage policy certificate, or
120 contract, for an eligible individual who is receiving unemployment
121 compensation, is exercising continuation privileges under federal
122 law or is purchasing a long-term care insurance contract; or

123 (c) Paying for health insurance other than a Medicare
124 supplemental policy for those who are Medicare eligible. Funds
125 held in a health savings account shall not be used to cover
126 expenses of the eligible individual or his or her dependents that
127 are otherwise covered, including, but not limited to, medical
128 expense covered pursuant to an automobile insurance policy,

129 workers' compensation insurance policy or self-insured plan or
130 another employer-funded health coverage policy, certificate or
131 contract.

132 **SECTION 5.** (1) Notwithstanding subsection (3), (4), (5) or
133 (6) of this section, an eligible individual may withdraw money
134 from his or her health savings account for any purpose other than
135 a purpose described in Section 4.

136 (2) Subject to subsection (3) of this section, if the
137 eligible individual withdraws money for any purpose other than a
138 purpose described in Section 4 at any other time, all of the
139 following apply:

140 (a) The amount of the withdrawal is considered taxable
141 gross income of the account holder under Section 27-7-15 in the
142 tax year of the withdrawal.

143 (b) Interest earned on the account during the tax year
144 in which a withdrawal under this subsection is made is considered
145 taxable gross income of the account holder under Section 27-7-15.

146 (3) The amount of disbursement of any assets of a health
147 savings account pursuant to a filing for protection under Title 11
148 of the United States Code, 11 USCS 101 et seq., by an eligible
149 individual or person for whose benefit the account was established
150 is not considered a withdrawal for purposes of this section. The
151 amount of a disbursement is not considered taxable gross income of
152 the account holder under Section 27-7-15 and subsection (2) of
153 this section does not apply.

154 (4) The transfer of an eligible individual's interest in a
155 health savings account to an eligible individual's spouse or
156 former spouse under a divorce or separation instrument shall not
157 be considered a taxable transfer made by such eligible individual,
158 and such interest shall, after such transfer, be treated as a
159 health savings account with respect to which such spouse is the
160 eligible individual.

161 (5) Upon the death of the eligible individual, the trustee
162 or custodian shall distribute the principal and accumulated
163 interest of the health savings account to the estate of the
164 deceased.

165 (6) If an employee becomes employed with a different
166 employer that participates in a health savings account program,
167 the employee may transfer his or her health savings account to
168 that new employer's trustee or custodian or to an individually
169 purchased account program.

170 **SECTION 6.** Section 27-7-15, Mississippi Code of 1972, as
171 amended by House Bill No. 1601, 2005 Regular Session, is amended
172 as follows:

173 27-7-15. (1) For the purposes of this article, except as
174 otherwise provided, the term "gross income" means and includes the
175 income of a taxpayer derived from salaries, wages, fees or
176 compensation for service, of whatever kind and in whatever form
177 paid, including income from governmental agencies and subdivisions
178 thereof; or from professions, vocations, trades, businesses,
179 commerce or sales, or renting or dealing in property, or
180 reacquired property; also from annuities, interest, rents,
181 dividends, securities, insurance premiums, reinsurance premiums,
182 considerations for supplemental insurance contracts, or the
183 transaction of any business carried on for gain or profit, or
184 gains, or profits, and income derived from any source whatever and
185 in whatever form paid. The amount of all such items of income
186 shall be included in the gross income for the taxable year in
187 which received by the taxpayer. The amount by which an eligible
188 employee's salary is reduced pursuant to a salary reduction
189 agreement authorized under Section 25-17-5 shall be excluded from
190 the term "gross income" within the meaning of this article.

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

194 (a) **Dealers in property.** Federal rules, regulations
195 and revenue procedures shall be followed with respect to
196 installment sales unless a transaction results in the shifting of
197 income from inside the state to outside the state.

198 (b) **Casual sales of property.**

199 (i) Prior to January 1, 2001, federal rules,
200 regulations and revenue procedures shall be followed with respect
201 to installment sales except they shall be applied and administered
202 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
203 106th Congress, had not been enacted. This provision will
204 generally affect taxpayers, reporting on the accrual method of
205 accounting, entering into installment note agreements on or after
206 December 17, 1999. Any gain or profit resulting from the casual
207 sale of property will be recognized in the year of sale.

208 (ii) From and after January 1, 2001, federal
209 rules, regulations and revenue procedures shall be followed with
210 respect to installment sales except as provided in this
211 subparagraph (ii). Gain or profit from the casual sale of
212 property shall be recognized in the year of sale. When a taxpayer
213 recognizes gain on the casual sale of property in which the gain
214 is deferred for federal income tax purposes, a taxpayer may elect
215 to defer the payment of tax resulting from the gain as allowed and
216 to the extent provided under regulations prescribed by the
217 commissioner. If the payment of the tax is made on a deferred
218 basis, the tax shall be computed based on the applicable rate for
219 the income reported in the year the payment is made. Except as
220 otherwise provided in subparagraph (iii) of this paragraph (b),
221 deferring the payment of the tax shall not affect the liability
222 for the tax. If at any time the installment note is sold,
223 contributed, transferred or disposed of in any manner and for any
224 purpose by the original note holder, or the original note holder
225 is merged, liquidated, dissolved or withdrawn from this state,

226 then all deferred tax payments under this section shall
227 immediately become due and payable.

228 (iii) If the selling price of the property is
229 reduced by any alteration in the terms of an installment note,
230 including default by the purchaser, the gain to be recognized is
231 recomputed based on the adjusted selling price in the same manner
232 as for federal income tax purposes. The tax on this amount, less
233 the previously paid tax on the recognized gain, is payable over
234 the period of the remaining installments. If the tax on the
235 previously recognized gain has been paid in full to this state,
236 the return on which the payment was made may be amended for this
237 purpose only. The statute of limitations in Section 27-7-49 shall
238 not bar an amended return for this purpose.

239 (c) **Reserves of insurance companies.** In the case of
240 insurance companies, any amounts in excess of the legally required
241 reserves shall be included as gross income.

242 (d) **Affiliated companies or persons.** As regards sales,
243 exchanges or payments for services from one to another of
244 affiliated companies or persons or under other circumstances where
245 the relation between the buyer and seller is such that gross
246 proceeds from the sale or the value of the exchange or the payment
247 for services are not indicative of the true value of the subject
248 matter of the sale, exchange or payment for services, the
249 commissioner shall prescribe uniform and equitable rules for
250 determining the true value of the gross income, gross sales,
251 exchanges or payment for services, or require consolidated returns
252 of affiliates.

253 (e) **Alimony and separate maintenance payments.** The
254 federal rules, regulations and revenue procedures in determining
255 the deductibility and taxability of alimony payments shall be
256 followed in this state.

257 (f) **Reimbursement for expenses of moving.** There shall
258 be included in gross income (as compensation for services) any

259 amount received or accrued, directly or indirectly, by an
260 individual as a payment for or reimbursement of expenses of moving
261 from one residence to another residence which is attributable to
262 employment or self-employment.

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

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

268 (a) The proceeds of life insurance policies and
269 contracts paid upon the death of the insured. However, the income
270 from the proceeds of such policies or contracts shall be included
271 in the gross income.

272 (b) The amount received by the insured as a return of
273 premium or premiums paid by him under life insurance policies,
274 endowment, or annuity contracts, either during the term or at
275 maturity or upon surrender of the contract.

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

279 (d) Interest upon the obligations of the United States
280 or its possessions, or securities issued under the provisions of
281 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
282 War Finance Corporation, or obligations of the State of
283 Mississippi or political subdivisions thereof.

284 (e) The amounts received through accident or health
285 insurance as compensation for personal injuries or sickness, plus
286 the amount of any damages received for such injuries or such
287 sickness or injuries, or through the War Risk Insurance Act, or
288 any law for the benefit or relief of injured or disabled members
289 of the military or naval forces of the United States.

290 (f) Income received by any religious denomination or by
291 any institution or trust for moral or mental improvements,

292 religious, Bible, tract, charitable, benevolent, fraternal,
293 missionary, hospital, infirmary, educational, scientific,
294 literary, library, patriotic, historical or cemetery purposes or
295 for two (2) or more of such purposes, if such income be used
296 exclusively for carrying out one or more of such purposes.

297 (g) Income received by a domestic corporation which is
298 "taxable in another state" as this term is defined in this
299 article, derived from business activity conducted outside this
300 state. Domestic corporations taxable both within and without the
301 state shall determine Mississippi income on the same basis as
302 provided for foreign corporations under the provisions of this
303 article.

304 (h) In case of insurance companies, there shall be
305 excluded from gross income such portion of actual premiums
306 received from an individual policyholder as is paid back or
307 credited to or treated as an abatement of premiums of such
308 policyholder within the taxable year.

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

313 (j) Amounts paid by the United States to a person as
314 added compensation for hazardous duty pay as a member of the Armed
315 Forces of the United States in a combat zone designated by
316 Executive Order of the President of the United States.

317 (k) Amounts received as retirement allowances,
318 pensions, annuities or optional retirement allowances paid under
319 the federal Social Security Act, the Railroad Retirement Act, the
320 Federal Civil Service Retirement Act, or any other retirement
321 system of the United States government, retirement allowances paid
322 under the Mississippi Public Employees' Retirement System,
323 Mississippi Highway Safety Patrol Retirement System or any other
324 retirement system of the State of Mississippi or any political

325 subdivision thereof. The exemption allowed under this paragraph
326 (k) shall be available to the spouse or other beneficiary at the
327 death of the primary retiree.

328 (l) Amounts received as retirement allowances,
329 pensions, annuities or optional retirement allowances paid by any
330 public or governmental retirement system not designated in
331 paragraph (k) or any private retirement system or plan of which
332 the recipient was a member at any time during the period of his
333 employment. Amounts received as a distribution under a Roth
334 Individual Retirement Account shall be treated in the same manner
335 as provided under the Internal Revenue Code of 1986, as amended.
336 The exemption allowed under this paragraph (l) shall be available
337 to the spouse or other beneficiary at the death of the primary
338 retiree.

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

344 (n) Compensation received for active service as a
345 member below the grade of commissioned officer and so much of the
346 compensation as does not exceed the maximum enlisted amount
347 received for active service as a commissioned officer in the Armed
348 Forces of the United States for any month during any part of which
349 such members of the Armed Forces (i) served in a combat zone as
350 designated by Executive Order of the President of the United
351 States or a qualified hazardous duty area as defined by federal
352 law, or both; or (ii) was hospitalized as a result of wounds,
353 disease or injury incurred while serving in such combat zone. For
354 the purposes of this paragraph (n), the term "maximum enlisted
355 amount" means and has the same definition as that term has in 26
356 USCS 112.

357 (o) The proceeds received from federal and state
358 forestry incentives programs.

359 (p) The amount representing the difference between the
360 increase of gross income derived from sales for export outside the
361 United States as compared to the preceding tax year wherein gross
362 income from export sales was highest, and the net increase in
363 expenses attributable to such increased exports. In the absence
364 of direct accounting the ratio of net profits to total sales may
365 be applied to the increase in export sales. This paragraph (p)
366 shall only apply to businesses located in this state engaging in
367 the international export of Mississippi goods and services. Such
368 goods or services shall have at least fifty percent (50%) of value
369 added at a location in Mississippi.

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

373 (r) The amount deposited in a medical savings account,
374 and any interest accrued thereon, that is a part of a medical
375 savings account program as specified in the Medical Savings
376 Account Act under Sections 71-9-1 through 71-9-9; provided,
377 however, that any amount withdrawn from such account for purposes
378 other than paying eligible medical expense or to procure health
379 coverage shall be included in gross income.

380 (s) Amounts paid by the Mississippi Soil and Water
381 Conservation Commission from the Mississippi Soil and Water
382 Cost-Share Program for the installation of water quality best
383 management practices.

384 (t) Dividends received by a holding corporation, as
385 defined in Section 27-13-1, from a subsidiary corporation, as
386 defined in Section 27-13-1.

387 (u) Interest, dividends, gains or income of any kind on
388 any account in the Mississippi Affordable College Savings Trust
389 Fund, as established in Sections 37-155-101 through 37-155-125, to

390 the extent that such amounts remain on deposit in the MACS Trust
391 Fund or are withdrawn pursuant to a qualified withdrawal, as
392 defined in Section 37-155-105.

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

396 (w) Income resulting from transactions with a related
397 member where the related member subject to tax under this chapter
398 was required to, and did in fact, add back the expense of such
399 transactions as required by Section 27-7-17(2). Under no
400 circumstances may the exclusion from income exceed the deduction
401 add-back of the related member, nor shall the exclusion apply to
402 any income otherwise excluded under this chapter.

403 (x) Amounts that are subject to the tax levied pursuant
404 to Section 27-7-901, and are paid to patrons by gaming
405 establishments licensed under the Mississippi Gaming Control Act.

406 (y) Amounts that are subject to the tax levied pursuant
407 to Section 27-7-903, and are paid to patrons by gaming
408 establishments not licensed under the Mississippi Gaming Control
409 Act.

410 (z) Interest, dividends, gains or income of any kind on
411 any account in a qualified tuition program and amounts received as
412 distributions under a qualified tuition program shall be treated
413 in the same manner as provided under the United States Internal
414 Revenue Code, as amended. For the purposes of this paragraph (z),
415 the term "qualified tuition program" means and has the same
416 definition as that term has in 26 USCS 529.

417 (aa) The amount deposited in a health savings account,
418 and any interest accrued thereon, that is a part of a health
419 savings account program as specified in the Health Savings
420 Accounts Act created in Sections 1 through 5 of Senate Bill No.
421 2633, 2005 Regular Session; however, any amount withdrawn from
422 such account for purposes other than paying qualified medical

423 expenses or to procure health coverage shall be included in gross
424 income, except as otherwise provided by Sections 4 and 5 of Senate
425 Bill No. 2633, 2005 Regular Session.

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

427 (a) **Members of the Armed Forces.** Gross income does not
428 include compensation received for active service as a member of
429 the Armed Forces of the United States for any month during any
430 part of which such member is in a missing status, as defined in
431 paragraph (d) of this subsection, during the Vietnam Conflict as a
432 result of such conflict.

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

437 (c) **Period of conflict.** For the purpose of this
438 subsection, the Vietnam Conflict began February 28, 1961, and ends
439 on the date designated by the President by Executive Order as the
440 date of the termination of combatant activities in Vietnam. For
441 the purpose of this subsection, an individual is in a missing
442 status as a result of the Vietnam Conflict if immediately before
443 such status began he was performing service in Vietnam or was
444 performing service in Southeast Asia in direct support of military
445 operations in Vietnam. "Southeast Asia," as used in this
446 paragraph, is defined to include Cambodia, Laos, Thailand and
447 waters adjacent thereto.

448 (d) "Missing status" means the status of an employee or
449 member of the Armed Forces who is in active service and is
450 officially carried or determined to be absent in a status of (i)
451 missing; (ii) missing in action; (iii) interned in a foreign
452 country; (iv) captured, beleaguered or besieged by a hostile
453 force; or (v) detained in a foreign country against his will; but
454 does not include the status of an employee or member of the Armed

455 Forces for a period during which he is officially determined to be
456 absent from his post of duty without authority.

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

460 (f) "Employee" means one who is a citizen or national
461 of the United States or an alien admitted to the United States for
462 permanent residence and is a resident of the State of Mississippi
463 and is employed in or under a federal executive agency or
464 department of the Armed Forces.

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

469 (h) If refund or credit of any overpayment of tax for
470 any taxable year resulting from the application of subsection (5)
471 of this section is prevented by the operation of any law or rule
472 of law, such refund or credit of such overpayment of tax may,
473 nevertheless, be made or allowed if claim therefor is filed with
474 the State Tax Commission within three (3) years after the date of
475 the enactment of this subsection.

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

478 (6) A shareholder of an S corporation, as defined in Section
479 27-8-3(1)(g), shall take into account the income, loss, deduction
480 or credit of the S corporation only to the extent provided in
481 Section 27-8-7(2).

482 **SECTION 7.** This act shall take effect and be in force from
483 and after January 1, 2005.