

**Adopted
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 2633

BY: Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

11 SECTION 2. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

53 (iv) A plan shall not fail to be treated as a high
54 deductible health plan by reason of failing to have a deductible
55 for preventive care, or in the case of network plans, for having
56 limits for out-of-pocket expenses or annual deductibles for

57 services provided outside the network that exceed the limitations
58 in this section.

59 (f) "Health savings account" or "account" means a trust
60 or custodian established in this state pursuant to a health
61 savings account program exclusively to pay the qualified medical
62 expenses of an eligible individual or his or her dependents, but
63 only if the written governing instrument creating the account
64 meets the following requirements:

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

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

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

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

81 (v) Eligible individual's interest in the account
82 is nonforfeitable.

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

86 (vii) Eligible individuals who have attained age
87 fifty-five (55) before the end of the year may make additional

88 catch-up contributions into the account in the amount determined
89 in accordance with the following table:

90	2005.....	\$ 600.00
91	2006.....	\$ 700.00
92	2007.....	\$ 800.00
93	2008.....	\$ 900.00
94	2009 and thereafter.....	\$1,000.00

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

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

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

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

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

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

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

118 (b) Purchasing a health coverage policy certificate, or
119 contract, for an eligible individual who is receiving unemployment

120 compensation, is exercising continuation privileges under federal
121 law or is purchasing a long-term care insurance contract; or

122 (c) Paying for health insurance other than a Medicare
123 supplemental policy for those who are Medicare eligible. Funds
124 held in a health savings account shall not be used to cover
125 expenses of the eligible individual or his or her dependents that
126 are otherwise covered, including, but not limited to, medical
127 expense covered pursuant to an automobile insurance policy,
128 worker's compensation insurance policy or self-insured plan or
129 another employer-funded health coverage policy, certificate or
130 contract.

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

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

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

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

145 (3) The amount of disbursement of any assets of a health
146 savings account pursuant to a filing for protection under Title 11
147 of the United States Code, 11 USCS 101 et seq. by an eligible
148 individual or person for whose benefit the account was established
149 is not considered a withdrawal for purposes of this section. The
150 amount of a disbursement is not considered taxable gross income of

151 the account holder under Section 27-7-15 and subsection (2) of
152 this section does not apply.

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

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

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

169 **SECTION 6.** Section 27-7-15, Mississippi Code of 1972, is
170 amended as follows:

171 27-7-15. (1) For the purposes of this article, except as
172 otherwise provided, the term "gross income" means and includes the
173 income of a taxpayer derived from salaries, wages, fees or
174 compensation for service, of whatever kind and in whatever form
175 paid, including income from governmental agencies and subdivisions
176 thereof; or from professions, vocations, trades, businesses,
177 commerce or sales, or renting or dealing in property, or
178 reacquired property; also from annuities, interest, rents,
179 dividends, securities, insurance premiums, reinsurance premiums,
180 considerations for supplemental insurance contracts, or the
181 transaction of any business carried on for gain or profit, or
182 gains, or profits, and income derived from any source whatever and

183 in whatever form paid. The amount of all such items of income
184 shall be included in the gross income for the taxable year in
185 which received by the taxpayer. The amount by which an eligible
186 employee's salary is reduced pursuant to a salary reduction
187 agreement authorized under Section 25-17-5 shall be excluded from
188 the term "gross income" within the meaning of this article.

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

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

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

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

206 (ii) From and after January 1, 2001, federal
207 rules, regulations and revenue procedures shall be followed with
208 respect to installment sales except as provided in this
209 subparagraph (ii). Gain or profit from the casual sale of
210 property shall be recognized in the year of sale. When a taxpayer
211 recognizes gain on the casual sale of property in which the gain
212 is deferred for federal income tax purposes, a taxpayer may elect
213 to defer the payment of tax resulting from the gain as allowed and
214 to the extent provided under regulations prescribed by the

215 commissioner. If the payment of the tax is made on a deferred
216 basis, the tax shall be computed based on the applicable rate for
217 the income reported in the year the payment is made. Except as
218 otherwise provided in subparagraph (iii) of this paragraph (b),
219 deferring the payment of the tax shall not affect the liability
220 for the tax. If at any time the installment note is sold,
221 contributed, transferred or disposed of in any manner and for any
222 purpose by the original note holder, or the original note holder
223 is merged, liquidated, dissolved or withdrawn from this state,
224 then all deferred tax payments under this section shall
225 immediately become due and payable.

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

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

240 (d) **Affiliated companies or persons.** As regards sales,
241 exchanges or payments for services from one to another of
242 affiliated companies or persons or under other circumstances where
243 the relation between the buyer and seller is such that gross
244 proceeds from the sale or the value of the exchange or the payment
245 for services are not indicative of the true value of the subject
246 matter of the sale, exchange or payment for services, the

247 commissioner shall prescribe uniform and equitable rules for
248 determining the true value of the gross income, gross sales,
249 exchanges or payment for services, or require consolidated returns
250 of affiliates.

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

255 (f) **Reimbursement for expenses of moving.** There shall
256 be included in gross income (as compensation for services) any
257 amount received or accrued, directly or indirectly, by an
258 individual as a payment for or reimbursement of expenses of moving
259 from one residence to another residence which is attributable to
260 employment or self-employment.

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

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

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

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

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

277 (d) Interest upon the obligations of the United States
278 or its possessions, or securities issued under the provisions of

279 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
280 War Finance Corporation, or obligations of the State of
281 Mississippi or political subdivisions thereof.

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

288 (f) Income received by any religious denomination or by
289 any institution or trust for moral or mental improvements,
290 religious, Bible, tract, charitable, benevolent, fraternal,
291 missionary, hospital, infirmary, educational, scientific,
292 literary, library, patriotic, historical or cemetery purposes or
293 for two (2) or more of such purposes, if such income be used
294 exclusively for carrying out one or more of such purposes.

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

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

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

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

315 (k) Amounts received as retirement allowances,
316 pensions, annuities or optional retirement allowances paid under
317 the federal Social Security Act, the Railroad Retirement Act, the
318 Federal Civil Service Retirement Act, or any other retirement
319 system of the United States government, retirement allowances paid
320 under the Mississippi Public Employees' Retirement System,
321 Mississippi Highway Safety Patrol Retirement System or any other
322 retirement system of the State of Mississippi or any political
323 subdivision thereof. The exemption allowed under this paragraph
324 (k) shall be available to the spouse or other beneficiary at the
325 death of the primary retiree.

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

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

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

355 (o) The proceeds received from federal and state
356 forestry incentives programs.

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

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

371 (r) The amount deposited in a medical savings account,
372 and any interest accrued thereon, that is a part of a medical
373 savings account program as specified in the Medical Savings

374 Account Act under Sections 71-9-1 through 71-9-9; provided,
375 however, that any amount withdrawn from such account for purposes
376 other than paying eligible medical expense or to procure health
377 coverage shall be included in gross income.

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

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

385 (u) Interest, dividends, gains or income of any kind on
386 any account in the Mississippi Affordable College Savings Trust
387 Fund, as established in Sections 37-155-101 through 37-155-125, to
388 the extent that such amounts remain on deposit in the MACS Trust
389 Fund or are withdrawn pursuant to a qualified withdrawal, as
390 defined in Section 37-155-105.

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

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

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

404 (y) Amounts that are subject to the tax levied pursuant
405 to Section 27-7-903, and are paid to patrons by gaming

406 establishments not licensed under the Mississippi Gaming Control
407 Act.

408 (z) The amount deposited in a health savings account,
409 and any interest accrued thereon, that is a part of a health
410 savings account program as specified in the Health Savings
411 Accounts Act created in Sections 1 through 5 of Senate Bill No.
412 2633, 2005 Regular Session; however, any amount withdrawn from
413 such account for purposes other than paying qualified medical
414 expenses or to procure health coverage shall be included in gross
415 income, except as otherwise provided by Sections 4 and 5 of Senate
416 Bill No. 2633, 2005 Regular Session.

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

418 (a) **Members of the Armed Forces.** Gross income does not
419 include compensation received for active service as a member of
420 the Armed Forces of the United States for any month during any
421 part of which such member is in a missing status, as defined in
422 paragraph (d) of this subsection, during the Vietnam Conflict as a
423 result of such conflict.

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

428 (c) **Period of conflict.** For the purpose of this
429 subsection, the Vietnam Conflict began February 28, 1961, and ends
430 on the date designated by the President by Executive Order as the
431 date of the termination of combatant activities in Vietnam. For
432 the purpose of this subsection, an individual is in a missing
433 status as a result of the Vietnam Conflict if immediately before
434 such status began he was performing service in Vietnam or was
435 performing service in Southeast Asia in direct support of military
436 operations in Vietnam. "Southeast Asia," as used in this

437 paragraph, is defined to include Cambodia, Laos, Thailand and
438 waters adjacent thereto.

439 (d) "Missing status" means the status of an employee or
440 member of the Armed Forces who is in active service and is
441 officially carried or determined to be absent in a status of (i)
442 missing; (ii) missing in action; (iii) interned in a foreign
443 country; (iv) captured, beleaguered or besieged by a hostile
444 force; or (v) detained in a foreign country against his will; but
445 does not include the status of an employee or member of the Armed
446 Forces for a period during which he is officially determined to be
447 absent from his post of duty without authority.

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

451 (f) "Employee" means one who is a citizen or national
452 of the United States or an alien admitted to the United States for
453 permanent residence and is a resident of the State of Mississippi
454 and is employed in or under a federal executive agency or
455 department of the Armed Forces.

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

460 (h) If refund or credit of any overpayment of tax for
461 any taxable year resulting from the application of subsection (5)
462 of this section is prevented by the operation of any law or rule
463 of law, such refund or credit of such overpayment of tax may,
464 nevertheless, be made or allowed if claim therefor is filed with
465 the State Tax Commission within three (3) years after the date of
466 the enactment of this subsection.

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

469 (6) A shareholder of an S corporation, as defined in Section
470 27-8-3(1)(g), shall take into account the income, loss, deduction
471 or credit of the S corporation only to the extent provided in
472 Section 27-8-7(2).

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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, TO EXCLUDE THE AMOUNT DEPOSITED IN A
6 HEALTH SAVINGS ACCOUNT FROM GROSS INCOME UNDER THE STATE INCOME
7 TAX LAW; AND FOR RELATED PURPOSES.