

By: Representatives Crawford, Wilson

To: Public Health and Human Services; Revenue and Expenditure General Bills

HOUSE BILL NO. 1019

1 AN ACT TO CREATE THE MISSISSIPPI ACHIEVING A BETTER LIFE
2 EXPERIENCE (ABLE) ACT; TO DEFINE CERTAIN TERMS AND PHRASES
3 RELATING TO THE MISSISSIPPI ABLE PROGRAM; TO ESTABLISH AND
4 PRESCRIBE THE POWERS OF THE MISSISSIPPI ABLE BOARD OF DIRECTORS
5 RELATING TO THE ADMINISTRATION OF THE MISSISSIPPI ABLE PROGRAM; TO
6 PRESCRIBE CERTAIN TERMS OF ABLE TRUST AGREEMENTS ENTERED INTO
7 UNDER THE PROGRAM; TO ESTABLISH THE ABLE TRUST FUND; TO EXEMPT
8 PROPERTY IN THE TRUST FUND FROM TAXATION AND TO ESTABLISH
9 DEDUCTIONS FOR PAYMENTS TO ABLE ACCOUNTS; TO PRESCRIBE THE
10 AUTHORITY OF THE BOARD OF DIRECTORS TO INVEST FUNDS IN THE TRUST
11 FUND; TO REQUIRE THE BOARD TO PROVIDE ANNUAL ACCOUNTING
12 STATEMENTS; TO REQUIRE THE BOARD TO ESTABLISH AND ADMINISTER THE
13 MISSISSIPPI ABLE PROGRAM BY JULY 1, 2017; TO SPECIFY THE
14 REQUIREMENTS THAT MUST BE MET BEFORE IMPLEMENTATION OF THE
15 PROGRAM; TO REQUIRE A PARTICIPATION AGREEMENT FOR THE PROGRAM
16 WHICH CONTAINS SPECIFIED PROVISIONS AUTHORIZING OTHER PROVISIONS
17 THAT MAY BE INCLUDED IN THE AGREEMENT; TO PROVIDE FOR THE
18 AMENDMENT OF THE AGREEMENT UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE
19 FOR THE USE OF THE BALANCE OF AN ABANDONED ABLE ACCOUNT BY THE
20 BOARD; TO PROVIDE THAT A CONTRACT OR PARTICIPATION AGREEMENT
21 ENTERED INTO BY THE BOARD OR AN OBLIGATION OF THE BOARD DOES NOT
22 CONSTITUTE A DEBT OR OBLIGATION OF THE STATE OF MISSISSIPPI; TO
23 AUTHORIZE THE BOARD TO CONTRACT WITH OTHER STATES FOR SPECIFIED
24 PURPOSES UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE FOR THE
25 TERMINATION OF THE PROGRAM UNDER CERTAIN CIRCUMSTANCES AND FOR THE
26 DISPOSITION OF CERTAIN ASSETS UPON TERMINATION; TO PROHIBIT THE
27 STATE FROM LIMITING OR ALTERING THE SPECIFIED VESTED RIGHTS OF
28 DESIGNATED BENEFICIARIES EXCEPT UNDER SPECIFIED CIRCUMSTANCES; TO
29 REQUIRE THE BOARD TO ESTABLISH A COMPREHENSIVE INVESTMENT PLAN FOR
30 THE PROGRAM; TO EXEMPT FUNDS PAID INTO THE PROGRAM'S TRUST FUND
31 FROM THE CLAIMS OF SPECIFIED CREDITORS; TO PROVIDE FOR RECOVERY BY
32 THE DIVISION OF MEDICAID OF CERTAIN MEDICAL ASSISTANCE PROVIDED TO
33 A DECEASED DESIGNATED BENEFICIARY; TO PROVIDE FOR THE DISTRIBUTION
34 OF THE BALANCE OF A DECEASED DESIGNATED BENEFICIARY'S ABLE



35 ACCOUNT; TO REQUIRE THE BOARD TO ASSIST AND COOPERATE WITH THE
36 APPROPRIATE AGENCY FOR HEALTH CARE ADMINISTRATION AND DIVISION OF
37 MEDICAID PROGRAM IN OTHER STATES BY PROVIDING SPECIFIED
38 INFORMATION; TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972,
39 TO EXCLUDE PAYMENTS TO AN ABLE ACCOUNT FROM THE DEFINITION OF
40 GROSS INCOME FOR INCOME TAX PURPOSES; TO AMEND SECTIONS 27-7-17
41 AND 27-7-18, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
42 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

44 **SECTION 1.** This article shall be known and may be cited as
45 the "Mississippi Achieving a Better Life Experience (ABLE) Act."

46 **SECTION 2.** It is the intent of the Legislature to establish
47 a qualified Achieving a Better Life Experience (ABLE) program in
48 this state which will encourage and assist the saving of private
49 funds in tax-exempt accounts in order to pay for the qualified
50 disability expenses of eligible individuals with disabilities.
51 The Legislature intends that the qualified ABLE program be
52 implemented in a manner that is consistent with federal law
53 authorizing the program and that maximizes program efficiency and
54 effectiveness.

55 **SECTION 3.** As used in this article the following words and
56 phrases have the meanings ascribed in this section unless the
57 context clearly indicates otherwise:

58 (a) "ABLE account" means an account established and
59 maintained under the Mississippi ABLE Program.

60 (b) "Board" or "board of directors" means the Mississippi
61 ABLE Board of Directors.



62 (c) "Contracting state" means a state that has entered into
63 a contract with Mississippi ABLE Board, to provide residents of
64 Mississippi or that state with access to a qualified ABLE program.

65 (d) "Designated beneficiary" means the eligible individual
66 who established an ABLE account or the eligible individual to whom
67 an ABLE account was transferred.

68 (e) "Eligible individual" has the same meaning as provided
69 in Section 529A of the Internal Revenue Code.

70 (f) "Mississippi ABLE program" means the qualified ABLE
71 program established and maintained under this section by
72 Mississippi ABLE Board, and administered through the Mississippi
73 Department of Rehabilitation Services.

74 (g) "Internal Revenue Code" means the United States Internal
75 Revenue Code of 1986, as amended, and regulations adopted pursuant
76 thereto.

77 (h) "Participation agreement" means the agreement between
78 Mississippi ABLE Board, and a participant in the Mississippi ABLE
79 Program.

80 (i) "Qualified ABLE program" means the program authorized
81 under Section 529A of the Internal Revenue Code which may be
82 established by a state or agency, or instrumentality thereof, to
83 allow a person to make contributions for a taxable year to an ABLE
84 account established for the purpose of meeting the qualified
85 disability expenses of the designated beneficiary of the ABLE
86 account.



87 (j) "Qualified disability expense" has the same meaning as
88 provided in Section 529A of the Internal Revenue Code.

89 (k) "Section 529A of the Internal Revenue Code" or "Section
90 529A" means 26 USCS Section 529A.

91 **SECTION 4.** (1) There is created the Mississippi Able Board
92 of Directors which shall consist of thirteen (13) members as
93 follows:

94 (a) The Executive Director of the Department of
95 Treasury, or his or her designee;

96 (b) The Executive Director of the Department of Finance
97 and Administration, or his or her designee;

98 (c) The Executive Director of the Department of
99 Rehabilitation Services, or his or her designee;

100 (d) The Executive Director of the Department of Mental
101 Health, or his or her designee;

102 (e) The Director of the Mississippi Association of
103 Community Mental Health Centers, or his or her designee;

104 (f) A member of the public who, by reason of their
105 education and experience relating to disabilities or financial
106 planning, are qualified to serve, to be appointed by the Governor;

107 (g) A member of the public who, by reason of their
108 education and experience relating to disabilities or financial
109 planning, are qualified to serve, to be appointed by the
110 Lieutenant Governor;



111 (h) A member of the public who, by reason of their
112 education and experience relating to disabilities or financial
113 planning, are qualified to serve, to be appointed by the Speaker
114 of the House of Representatives;

115 (i) The Executive Director or his or her designee of an
116 advocacy organization for citizens of all ages with cognitive,
117 intellectual and developmental disabilities and their families, to
118 be appointed by the Governor;

119 (j) The Executive Director or his or her designee of an
120 advocacy organization for citizens of all ages with cross
121 disabilities and their families, to be appointed by the Lieutenant
122 Governor; and

123 (k) The Executive Director or his or her designee of an
124 advocacy organization for citizens with mental health
125 disabilities, to be appointed by the Speaker of the House of
126 Representatives.

127 Of the six (6) appointed members by the Governor, Lieutenant
128 Governor and Speaker of the House of Representatives: One (1)
129 member shall be appointed for an initial term of one (1) year; one
130 (1) member shall be appointed for an initial term of two (2)
131 years; one (1) member for an initial term of three (3) years; one
132 (1) member for an initial term of four (4) years; one (1) member
133 for an initial term of five (5) years; and one (1) member shall be
134 appointed for an initial term of six (6) years. On the expiration
135 of any of the terms of office, the respective appointing official



136 shall appoint successors for terms of five (5) years in each case.
137 Ex officio members of the board may be represented at official
138 meetings by their deputy, or other designee, and such designees
139 shall have full voting privileges and shall be included in the
140 determination of a quorum for conducting board business.

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

145 (c) Members of the board shall be appointed within
146 thirty (30) days after the effective date of this act, and shall
147 meet at the state office of the Department of Rehabilitation
148 Services, at a date to be fixed by the Executive Director of the
149 Department of Rehabilitation Services, not later than thirty (30)
150 days after all appointments have been made, to organize and select
151 an active chairman and vice chairman, and develop an
152 implementation plan for the Mississippi ABLE Program, which shall
153 be completed on or before October 1, 2016. The active chairman
154 shall preside over all meetings, in the absence of the Governor.

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



161 (3) Each member appointed shall possess knowledge, skill and
162 experience in business or financial matters commensurate with the
163 duties and responsibilities of ABLE accounts.

164 (4) Members of the board of directors shall serve without
165 compensation, but shall be reimbursed for each day's official
166 duties of the board at the same per diem as established by Section
167 25-3-69 and actual travel and lodging expenses as established by
168 Section 25-3-41.

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

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

179 **SECTION 5.** In addition to those powers granted to the board
180 by any other provisions of this article, the Mississippi ABLE
181 Board shall have the powers necessary or convenient to carry out
182 the purposes and provisions of this article, the purposes and
183 objectives of ABLE accounts, and the powers delegated by any other
184 law or executive order of this state, including, but not limited
185 to, the following express powers:



186 (a) To adopt such rules and regulations as are
187 necessary to implement this article, subject to applicable federal
188 laws and regulations, including rules regarding transfers of funds
189 between ABLE accounts established under the provisions of this
190 article and independent personal bank accounts;

191 (b) To impose reasonable requirements for beneficiaries
192 or account owners at the time of enrollment in the Mississippi
193 ABLE Program;

194 (c) To consult with the Executive Director of the
195 Department of Rehabilitation Services for the employment of an
196 Mississippi ABLE Coordinator, who shall:

197 (i) Coordinate meetings of the board and keep
198 minutes of its actions;

199 (ii) Remain informed of developments in federal
200 rules and regulations affecting ABLE accounts and ensure that the
201 Mississippi ABLE Program remains in compliance;

202 (iii) Be authorized to enter into contracts with
203 records administrators, program managers, consultants and other
204 qualified persons and entities for administrative and technical
205 assistance in carrying out the responsibilities of the Mississippi
206 ABLE Program; and

207 (iv) Perform such other duties as the board may
208 prescribe;

209 (d) To contract for necessary goods and services, to
210 employ necessary personnel, and to engage the services of



211 consultants and other qualified persons and entities for
212 administrative and technical assistance in carrying out the
213 responsibilities of the ABLE account funds under terms and
214 conditions that the board deems reasonable, including contract
215 terms for periods up to ten (10) years at which time a contract
216 may be terminated, extended or renewed for a term determined by
217 the board, not to exceed a term of ten (10) years at any one time;

218 (e) To solicit and accept gifts, including bequests or
219 other testamentary gifts made by will, trust or other disposition
220 grants, loans and other aids from any personal source or to
221 participate in any other way in any federal, state or local
222 governmental programs in carrying out the purposes of this
223 article;

224 (f) To define the terms and conditions under which
225 payments may be withdrawn for qualifying expenses established
226 under this article and to impose reasonable transaction fees;

227 (g) To impose reasonable time limits on the use of
228 savings trust account distributions provided by the Mississippi
229 ABLE Program;

230 (h) To regulate the receipt of contributions or
231 payments to the ABLE Trust Fund;

232 (i) To segregate contributions and payments to the ABLE
233 Trust Fund into various accounts and funds;

234 (j) To require and collect administrative fees and
235 charges in connection with any transaction and to impose



236 reasonable penalties for withdrawal of funds for nonqualified
237 expenses or for entering into a ABLE account agreement on a
238 fraudulent basis;

239 (k) To procure insurance against any loss in connection
240 with the property, assets and activities of the ABLE Trust Fund or
241 the board;

242 (l) To require that account owners of ABLE account
243 agreements verify, under sworn attestation, any requests for
244 contract conversions, substitutions, transfers, cancellations,
245 refund requests or contract changes of any nature;

246 (m) To solicit proposals and to contract for the
247 marketing of the Mississippi ABLE Program, provided that: (i) any
248 materials produced by a marketing contractor for the purpose of
249 marketing the program must be approved by the board before being
250 made available to the public; and (ii) neither the state nor the
251 board shall be liable for misrepresentation of the program by a
252 marketing contractor;

253 (n) To delegate responsibility for administration of
254 the comprehensive investment plan to a contractor or contractors
255 or a consultant or consultants that the board determines is
256 qualified;

257 (o) To make all necessary and appropriate arrangements
258 with vendors, health care service providers, rehabilitation
259 specialists or other entities in order to fulfill its obligations
260 under ABLE account agreements;



261 (p) To establish other policies, procedures and
262 criteria necessary to implement and administer this article; and

263 (q) To authorize the Department of Rehabilitation
264 Services with the advice of the State Treasurer, to carry out any
265 or all of the powers and duties enumerated in this section for
266 efficient and effective administration of the Mississippi Able
267 Program and ABLE Trust Fund.

268 **SECTION 6.** (1) There is created a Mississippi Achieving a
269 Better Life Experience (ABLE) Trust Fund as an instrumentality of
270 the state to be administered by the Department of Rehabilitation
271 Services in consultation with the Treasury Department. The ABLE
272 Trust Fund shall consist of state appropriations, monies acquired
273 from other governmental or private sources and money remitted in
274 accordance with ABLE trust agreements and shall receive and hold
275 all payments, contributions and deposits intended for it as well
276 as gifts, bequests, endowments or federal, state or local grants
277 and any other public or private source of funds and all earnings
278 on the fund until disbursed as provided under this section. The
279 amounts on deposit in the trust fund shall not constitute property
280 of the state. Amounts on deposit in the trust fund may not be
281 commingled with state funds, and the state may have no claim to or
282 interest in such funds. ABLE trust agreements or any other
283 contract entered into by or on behalf of the trust do not
284 constitute a debt or obligation of the state, and no account owner



285 is entitled to any amounts except for those amounts on deposit in
286 or accrued to their account.

287 The ABLE Trust Fund shall continue in existence as long as it
288 holds any funds belonging to an account owner or otherwise has any
289 obligations to any person or entity until its existence is
290 terminated by the Legislature and remaining assets on deposit in
291 the fund are returned to account owners or transferred to the
292 state in accordance with unclaimed property laws.

293 (2) There are created the following three (3) separate
294 accounts within the ABLE Trust Fund:

295 (a) The administrative account, which shall accept,
296 deposit and disburse funds for the purpose of administering and
297 marketing the program;

298 (b) The endowment account, which shall receive and
299 deposit accounts received in connection with the sales of
300 interests in the ABLE Trust Fund other than amounts for the
301 administrative account and other than amounts received pursuant to
302 a savings trust agreement. Amounts on deposit in the endowment
303 account may be applied as specified by the board for any purpose
304 related to the program; and

305 (c) The program account, which shall receive, invest
306 and disburse amounts pursuant to savings trust agreements.

307 (3) The official location of the trust fund shall be the
308 Mississippi Department of Rehabilitation Services, and the
309 facilities of the department shall be used and employed in the



310 administration of the fund, including, but without limitation to,
311 the keeping of records, the management of bank accounts and other
312 investments, the transfer of funds and the safekeeping of
313 securities evidencing investments. These functions may be
314 administered pursuant to a management agreement with a qualified
315 entity or entities.

316 (4) Payments received by the board on behalf of
317 beneficiaries from account owners, other payors or from any other
318 source, public or private, shall be placed in the trust fund, and
319 the board shall cause there to be maintained separate records and
320 accounts for individual beneficiaries, as may be required under
321 Section 529 of the Internal Revenue Code of 1986, as amended, and
322 any other applicable federal law.

323 (5) Account owners and any other payors or contributors
324 shall be permitted only to contribute cash or any other form of
325 payment or contribution as is permitted under Section 529 of the
326 Internal Revenue Code of 1986, as amended, and approved by the
327 board. The board shall cause the program to maintain adequate
328 safeguards against contributions in excess of what may be required
329 for qualified disability expenses. The ABLE Trust Fund, through
330 the ABLE Coordinator, may receive and deposit into the trust fund
331 any gift of any nature, real or personal property, made by an
332 individual by testamentary disposition, including, without
333 limitation, any specific gift or bequeath made by will, trust or
334 other disposition to the extent permitted under Section 529 of the



335 Internal Revenue Code of 1986, as amended. The ABLE Trust Fund
336 may receive amounts transferred from an UGMA, UTMA or other
337 account established for the benefit of a minor if the trust
338 beneficiary of such an account is identified as the legal owner of
339 the ABLE Trust Fund account upon attaining majority age.

340 (6) The account owner retains ownership of all amounts on
341 deposit in his or her account with the program up to the date of
342 withdrawal or qualified disability expense transactions. Earnings
343 derived from investment of the contributions shall be considered
344 to be held in trust in the same manner as contributions, except as
345 applied for purposes of the designated beneficiary and for
346 purposes of maintaining and administering the program as provided
347 in this article. Amounts on deposit in an account owner's account
348 shall be available for expenses and penalties imposed by the board
349 for the program as disclosed in the ABLE trust agreement.

350 (7) The ABLE Trust Fund shall constitute a fund of an
351 instrumentality of the state, and its property and income shall be
352 exempt from all taxation by the state and by all of its political
353 subdivisions.

354 (8) The assets of the ABLE Trust Fund shall be preserved,
355 invested and expended solely pursuant to and for the purposes of
356 this article and shall not be loaned or otherwise transferred or
357 used by the state for any other purpose.



358 **SECTION 7.** (1) All property and income of the ABLE Trust
359 Fund, as an instrumentality of the state, is exempt from all
360 taxation by the state and by its political subdivisions.

361 (2) Any contributor or payor to a Mississippi ABLE Program
362 account may deduct from their Mississippi taxable income any
363 contributions or payments to an account or accounts in the ABLE
364 Trust Fund up to a maximum annual amount of Fourteen Thousand
365 Dollars (\$14,000.00) for single, joint and other filers.
366 Contributions or payments for such tax years may be made after
367 such calendar years but before the deadline for making
368 contributions to an individual retirement account under federal
369 law for such years. The earnings portion of any withdrawals from
370 an account that are not qualified withdrawals, as well as any
371 amounts included in such nonqualified withdrawals previously
372 deducted from taxable income under this section, shall be included
373 in the gross income of the recipient of the withdrawal for
374 purposes of the Mississippi Income Tax Law in the year of such
375 withdrawal.

376 **SECTION 8.** (1) The board has authority to establish a
377 comprehensive investment plan for the purposes of this article, to
378 invest any funds of the ABLE Trust Fund in any instrument,
379 obligation, security or property that constitutes legal
380 investments for public funds in the state, and to name and use
381 depositories for its investments and holdings. The comprehensive
382 investment plan shall specify the investment policies to be



383 utilized by the board in its administration of the funds. The
384 board may authorize investments in any investment vehicle
385 authorized for the Mississippi Achieving a Better Life Experience
386 Program. The program account, in its discretion, may invest in
387 obligations of the state or any political subdivision of the state
388 or in any business entity in the state.

389 Notwithstanding any state law to the contrary, the board
390 shall invest or cause to be invested amounts on deposit in the
391 ABLE Trust Fund, including the program account, in a manner
392 reasonable and appropriate to achieve the objectives of the
393 program, exercising the discretion and care of a prudent investor
394 in similar circumstances with similar objectives. The board shall
395 give due consideration to the risk, expected rate of return, term
396 or maturity, diversification of total investments, liquidity and
397 anticipated investments in and withdrawals from the ABLE Trust
398 Fund.

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

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

406 (4) Subject to the terms, conditions, limitations and
407 restrictions set forth in this section, the board may sell,



408 assign, transfer and dispose of any of the securities and
409 investments of the system if the sale, assignment or transfer has
410 the majority approval of the entire board. The board may employ
411 or contract with investment managers, evaluation services, or
412 other such services as determined by the board to be necessary for
413 the effective and efficient operation of the system.

414 (5) Except as otherwise provided in this section, no trustee
415 or employee of the board may have any direct or indirect interest
416 in the income, gains or profits of any investment made by the
417 board, and such person may not receive any pay or emolument for
418 his services in connection with any investment made by the board.
419 No trustee or employee of the board may become an endorser or
420 surety or in any manner an obligor for money loaned by or borrowed
421 from the system.

422 (6) Under the authority granted in Section 4, the board may
423 establish criteria for investment managers, mutual funds or other
424 such entities to act as contractors or consultants to the board.
425 The board may contract, either directly or through such
426 contractors or consultants, to provide such services as may be a
427 part of the comprehensive investment plan or as may be deemed
428 necessary or proper by the board, including, but not limited to,
429 providing consolidated billing, individual and collective record
430 keeping and accounting, and asset purchase, control and
431 safekeeping.



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

436 (8) The board may approve different investment plans and
437 options to be offered to participants to the extent permitted
438 under Section 529 of the Internal Revenue Code of 1986, as
439 amended, and consistent with the objectives of this article and
440 may require the assistance of investment counseling before
441 participation in different options.

442 **SECTION 9.** (1) On or before July 1, 2017, the Mississippi
443 ABLE Board shall establish and administer the Mississippi ABLE
444 Program. Before implementing the program, the board shall obtain
445 a written opinion from counsel specializing in:

446 (a) Federal tax matters which indicate that the
447 Mississippi ABLE Program is designed to comply with Section 529A
448 of the Internal Revenue Code; and

449 (b) Federal securities law which indicate that the
450 Mississippi ABLE Program and the offering of participation in the
451 program are designed to comply with applicable federal securities
452 law and qualify for the available tax exemptions under such law.

453 (2) The participation agreement must include provisions
454 specifying that:

455 (a) The participation agreement is only a debt or
456 obligation of the Mississippi ABLE Program and the ABLE Trust Fund



457 and, as provided under subsection (6) of this section, is not a
458 debt or obligation of the state;

459 (b) Participation in the Mississippi ABLE Program does
460 not guarantee that sufficient funds will be available to cover all
461 qualified disability expenses for any designated beneficiary and
462 does not guarantee the receipt or continuation of any product or
463 service for the designated beneficiary;

464 (c) The designated beneficiary must be a resident of
465 this state or a resident of a contracting state at the time the
466 ABLE account is established;

467 (d) The establishment of an ABLE account in violation
468 of federal law is prohibited;

469 (e) Contributions in excess of the limitations set
470 forth in Section 529A of the Internal Revenue Code are prohibited;

471 (f) The state is a creditor of ABLE accounts as, and to
472 the extent, set forth in Section 529A of the Internal Revenue
473 Code; and

474 (g) Material misrepresentations by a party to the
475 participation agreement, other than the board in the application
476 for the participation agreement or in any communication with the
477 board regarding the Mississippi ABLE Program may result in the
478 involuntary liquidation of the ABLE account. If an account is
479 involuntarily liquidated, the designated beneficiary is entitled
480 to a refund, subject to any fees or penalties provided by the
481 participation agreement and the Internal Revenue Code.



482 (3) The participation agreement may include provisions
483 specifying:

484 (a) The requirements and applicable restrictions for
485 opening an ABLE account;

486 (b) The eligibility requirements for a party to a
487 participation agreement and the rights of the party;

488 (c) The requirements and applicable restrictions for
489 making contributions to an ABLE account;

490 (d) The requirements and applicable restrictions for
491 directing the investment of the contributions or balance of the
492 ABLE account;

493 (e) The administrative fee and other fees and penalties
494 applicable to an ABLE account;

495 (f) The terms and conditions under which an ABLE
496 account or participation agreement may be modified, transferred or
497 terminated;

498 (g) The disposition of abandoned ABLE accounts; and

499 (h) Any other terms and conditions determined to be
500 necessary or proper.

501 (4) The participation agreement may be amended throughout
502 its term for purposes that include, but are not limited to,
503 allowing a participant to increase or decrease the level of
504 participation and to change designated beneficiaries and other
505 matters authorized by this section and Section 529A of the
506 Internal Revenue Code.



507 (5) If an ABLE account is determined to be abandoned
508 pursuant to rules adopted by the board, the Department of
509 Rehabilitation Services, may use the balance of the account to
510 operate the Mississippi ABLE Program.

511 (6) A contract or participation agreement entered into by or
512 an obligation of Mississippi ABLE Board, on behalf of and for the
513 benefit of the Mississippi ABLE Program does not constitute a debt
514 or obligation of the state, but is only a debt or obligation of
515 the Mississippi ABLE Program and the ABLE Trust Fund. The state
516 does not have an obligation to a designated beneficiary or any
517 other person as a result of the Mississippi ABLE Program. The
518 obligation of the Mississippi ABLE Program is limited solely to
519 amounts in the ABLE Trust Fund. All amounts obligated to be paid
520 from the ABLE Trust Fund are limited to the amounts available for
521 such obligation. The amounts held in the Mississippi ABLE Program
522 may be disbursed only in accordance with this section.

523 (7) Notwithstanding any other provision of law, the
524 Mississippi ABLE Board, acting through the ABLE Coordinator, may
525 enter into an agreement with a contracting state which allows the
526 board to participate under the design, operation, and rules of the
527 contracting state's qualified ABLE program or which allows the
528 contracting state to participate under the Mississippi ABLE
529 Program.

530 (8) The Mississippi ABLE Program shall continue in existence
531 until terminated by law. If the state determines that the program



532 is financially infeasible, the state may terminate the program.
533 Upon termination, amounts in the ABLE Trust Fund held for
534 designated beneficiaries shall be returned in accordance with the
535 participation agreement.

536 (9) The state pledges to the designated beneficiaries that
537 the state will not limit or alter their rights under this section
538 which are vested in the Mississippi ABLE Program until the
539 program's obligations are met and discharged. However, this
540 subsection does not preclude such limitation or alteration if
541 adequate provision is made by law for the protection of the
542 designated beneficiaries pursuant to the obligations of the board,
543 and does not preclude termination of the Mississippi ABLE Program
544 if the state determines that the program is not financially
545 feasible. This pledge and undertaking by the state may be
546 included in participation agreements.

547 **SECTION 10.** (1) The board shall furnish, without charge, to
548 each account owner an annual statement of the following:

549 (a) The amount contributed by the account owner under
550 the savings trust agreement;

551 (b) The annual earnings and accumulated earnings on the
552 savings trust account; and

553 (c) Any other terms and conditions that the board deems
554 by rule is necessary or appropriate, including those necessary to
555 conform the savings trust account with the requirements of Section



556 529 of the Internal Revenue Code of 1986, as amended, or other
557 applicable federal law or regulations.

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

562 (3) (a) On or before November 1, 2017, the board shall
563 prepare a report on the status of the establishment of the
564 Mississippi ABLE Program. The report must also include, if
565 warranted, recommendations for statutory changes to enhance the
566 effectiveness and efficiency of the program. The board shall
567 submit copies of the report to the Governor, the Lieutenant
568 Governor, the Speaker of the House of Representatives and to the
569 Executive Director of the Department of Rehabilitation Services.

570 (b) The board shall prepare or cause to be prepared an
571 annual report setting forth in appropriate detail an accounting of
572 the funds and a description of the financial condition of the
573 program at the close of each fiscal year. Such report shall be
574 submitted to the Governor, the Lieutenant Governor, the Speaker of
575 the House of Representatives and to the Executive Director of the
576 Department of Rehabilitation Services. The accounts of the fund
577 shall be subject to annual audits by the State Auditor or his
578 designee.

579 **SECTION 11.** The Mississippi ABLE Board and the Executive
580 Director of the Department of Rehabilitation Services, in



581 consultation with the Treasury Department, shall establish a
582 comprehensive investment plan for the Mississippi ABLE Program.
583 The comprehensive investment plan must specify the investment
584 policies to be used by the board in its administration of the
585 program. The board may place assets of the program in investment
586 products and in such proportions as may be designated or approved
587 in the comprehensive investment plan. Such products shall be
588 underwritten and offered in compliance with the applicable federal
589 and state laws or regulations or exemptions therefrom. A
590 designated beneficiary may not direct the investment of any
591 contributions to the Mississippi ABLE Program, unless specific
592 fund options are offered by the board. Directors, officers, and
593 employees of the Department of Rehabilitation Services, as well as
594 the Mississippi ABLE Coordinator, employed to administer the
595 program, may enter into participation agreements, notwithstanding
596 their fiduciary responsibilities or official duties related to the
597 Mississippi ABLE Program.

598 **SECTION 12.** Monies paid into or out of the ABLE Trust Fund
599 by or on behalf of a designated beneficiary are exempt from all
600 claims of creditors of the designated beneficiary if the
601 participation agreement has not been terminated. Monies paid into
602 the Mississippi ABLE Program and benefits accrued through the
603 program may not be pledged for the purpose of securing a loan.

604 **SECTION 13.** (1) Upon the death of the designated
605 beneficiary, the appropriate health care administration agency and



606 the Division of Medicaid for another state may file a claim with
607 the Mississippi ABLE Program for the total amount of medical
608 assistance provided for the designated beneficiary under the
609 Medicaid program, less any premiums paid by or on behalf of the
610 designated beneficiary to a Medicaid buy-in program. Funds in the
611 ABLE account of the deceased designated beneficiary must first be
612 distributed for qualified disability expenses followed by
613 distributions for the Medicaid claim authorized under this
614 paragraph. Any remaining amount shall be distributed as provided
615 in the participation agreement required under Section 10 of this
616 act.

617 (2) The Mississippi ABLE Coordinator, shall assist and
618 cooperate with the appropriate health care administration agency
619 and the Division of Medicaid in other states by providing the
620 agency and divisions with the information needed to accomplish the
621 purpose and objective of this section.

622 **SECTION 14.** The Mississippi Department of Health, the
623 Department of Rehabilitation Services, the Division of Medicaid,
624 the Department of Humans Services Division of Family and
625 Children's Services and the State Department of Education shall
626 assist, cooperate and coordinate with the Mississippi ABLE Board
627 in the provision of public information and outreach for the
628 Mississippi ABLE Program.

629 **SECTION 15.** The provisions of this article are severable.
630 If any part of this article is declared invalid or



631 unconstitutional, such declaration shall not affect the parts of
632 this article which remain.

633 **SECTION 16.** Section 27-7-15, Mississippi Code of 1972, is
634 amended as follows:

635 27-7-15. (1) For the purposes of this article, except as
636 otherwise provided, the term "gross income" means and includes the
637 income of a taxpayer derived from salaries, wages, fees or
638 compensation for service, of whatever kind and in whatever form
639 paid, including income from governmental agencies and subdivisions
640 thereof; or from professions, vocations, trades, businesses,
641 commerce or sales, or renting or dealing in property, or
642 reacquired property; also from annuities, interest, rents,
643 dividends, securities, insurance premiums, reinsurance premiums,
644 considerations for supplemental insurance contracts, or the
645 transaction of any business carried on for gain or profit, or
646 gains, or profits, and income derived from any source whatever and
647 in whatever form paid. The amount of all such items of income
648 shall be included in the gross income for the taxable year in
649 which received by the taxpayer. The amount by which an eligible
650 employee's salary is reduced pursuant to a salary reduction
651 agreement authorized under Section 25-17-5 shall be excluded from
652 the term "gross income" within the meaning of this article.

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



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

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

661 (i) Prior to January 1, 2001, federal rules,
662 regulations and revenue procedures shall be followed with respect
663 to installment sales except they shall be applied and administered
664 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
665 106th Congress, had not been enacted. This provision will
666 generally affect taxpayers, reporting on the accrual method of
667 accounting, entering into installment note agreements on or after
668 December 17, 1999. Any gain or profit resulting from the casual
669 sale of property will be recognized in the year of sale.

670 (ii) From and after January 1, 2001, federal
671 rules, regulations and revenue procedures shall be followed with
672 respect to installment sales except as provided in this
673 subparagraph (ii). Gain or profit from the casual sale of
674 property shall be recognized in the year of sale. When a taxpayer
675 recognizes gain on the casual sale of property in which the gain
676 is deferred for federal income tax purposes, a taxpayer may elect
677 to defer the payment of tax resulting from the gain as allowed and
678 to the extent provided under regulations prescribed by the
679 commissioner. If the payment of the tax is made on a deferred
680 basis, the tax shall be computed based on the applicable rate for



681 the income reported in the year the payment is made. Except as
682 otherwise provided in subparagraph (iii) of this paragraph (b),
683 deferring the payment of the tax shall not affect the liability
684 for the tax. If at any time the installment note is sold,
685 contributed, transferred or disposed of in any manner and for any
686 purpose by the original note holder, or the original note holder
687 is merged, liquidated, dissolved or withdrawn from this state,
688 then all deferred tax payments under this section shall
689 immediately become due and payable.

690 (iii) If the selling price of the property is
691 reduced by any alteration in the terms of an installment note,
692 including default by the purchaser, the gain to be recognized is
693 recomputed based on the adjusted selling price in the same manner
694 as for federal income tax purposes. The tax on this amount, less
695 the previously paid tax on the recognized gain, is payable over
696 the period of the remaining installments. If the tax on the
697 previously recognized gain has been paid in full to this state,
698 the return on which the payment was made may be amended for this
699 purpose only. The statute of limitations in Section 27-7-49 shall
700 not bar an amended return for this purpose.

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

704 (d) **Affiliated companies or persons.** As regards sales,
705 exchanges or payments for services from one to another of



706 affiliated companies or persons or under other circumstances where
707 the relation between the buyer and seller is such that gross
708 proceeds from the sale or the value of the exchange or the payment
709 for services are not indicative of the true value of the subject
710 matter of the sale, exchange or payment for services, the
711 commissioner shall prescribe uniform and equitable rules for
712 determining the true value of the gross income, gross sales,
713 exchanges or payment for services, or require consolidated returns
714 of affiliates.

715 (e) **Alimony and separate maintenance payments.** The
716 federal rules, regulations and revenue procedures in determining
717 the deductibility and taxability of alimony payments shall be
718 followed in this state.

719 (f) **Reimbursement for expenses of moving.** There shall
720 be included in gross income (as compensation for services) any
721 amount received or accrued, directly or indirectly, by an
722 individual as a payment for or reimbursement of expenses of moving
723 from one residence to another residence which is attributable to
724 employment or self-employment.

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

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



730 (a) The proceeds of life insurance policies and
731 contracts paid upon the death of the insured. However, the income
732 from the proceeds of such policies or contracts shall be included
733 in the gross income.

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

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

741 (d) Interest upon the obligations of the United States
742 or its possessions, or securities issued under the provisions of
743 the Federal Farm Loan Act of 1916, or bonds issued by the War
744 Finance Corporation, or obligations of the State of Mississippi or
745 political subdivisions thereof.

746 (e) The amounts received through accident or health
747 insurance as compensation for personal injuries or sickness, plus
748 the amount of any damages received for such injuries or such
749 sickness or injuries, or through the War Risk Insurance Act, or
750 any law for the benefit or relief of injured or disabled members
751 of the military or naval forces of the United States.

752 (f) Income received by any religious denomination or by
753 any institution or trust for moral or mental improvements,
754 religious, Bible, tract, charitable, benevolent, fraternal,



755 missionary, hospital, infirmary, educational, scientific,
756 literary, library, patriotic, historical or cemetery purposes or
757 for two (2) or more of such purposes, if such income be used
758 exclusively for carrying out one or more of such purposes.

759 (g) Income received by a domestic corporation which is
760 "taxable in another state" as this term is defined in this
761 article, derived from business activity conducted outside this
762 state. Domestic corporations taxable both within and without the
763 state shall determine Mississippi income on the same basis as
764 provided for foreign corporations under the provisions of this
765 article.

766 (h) In case of insurance companies, there shall be
767 excluded from gross income such portion of actual premiums
768 received from an individual policyholder as is paid back or
769 credited to or treated as an abatement of premiums of such
770 policyholder within the taxable year.

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

775 (j) Amounts paid by the United States to a person as
776 added compensation for hazardous duty pay as a member of the Armed
777 Forces of the United States in a combat zone designated by
778 Executive Order of the President of the United States.



779 (k) Amounts received as retirement allowances,
780 pensions, annuities or optional retirement allowances paid under
781 the federal Social Security Act, the Railroad Retirement Act, the
782 Federal Civil Service Retirement Act, or any other retirement
783 system of the United States government, retirement allowances paid
784 under the Mississippi Public Employees' Retirement System,
785 Mississippi Highway Safety Patrol Retirement System or any other
786 retirement system of the State of Mississippi or any political
787 subdivision thereof. The exemption allowed under this paragraph
788 (k) shall be available to the spouse or other beneficiary at the
789 death of the primary retiree.

790 (l) Amounts received as retirement allowances,
791 pensions, annuities or optional retirement allowances paid by any
792 public or governmental retirement system not designated in
793 paragraph (k) or any private retirement system or plan of which
794 the recipient was a member at any time during the period of his
795 employment. Amounts received as a distribution under a Roth
796 Individual Retirement Account shall be treated in the same manner
797 as provided under the Internal Revenue Code of 1986, as amended.
798 The exemption allowed under this paragraph (l) shall be available
799 to the spouse or other beneficiary at the death of the primary
800 retiree.

801 (m) National Guard or Reserve Forces of the United
802 States compensation not to exceed the aggregate sum of Five
803 Thousand Dollars (\$5,000.00) for any taxable year through the 2005



804 taxable year, and not to exceed the aggregate sum of Fifteen
805 Thousand Dollars (\$15,000.00) for any taxable year thereafter.

806 (n) Compensation received for active service as a
807 member below the grade of commissioned officer and so much of the
808 compensation as does not exceed the maximum enlisted amount
809 received for active service as a commissioned officer in the Armed
810 Forces of the United States for any month during any part of which
811 such members of the Armed Forces (i) served in a combat zone as
812 designated by Executive Order of the President of the United
813 States or a qualified hazardous duty area as defined by federal
814 law, or both; or (ii) was hospitalized as a result of wounds,
815 disease or injury incurred while serving in such combat zone. For
816 the purposes of this paragraph (n), the term "maximum enlisted
817 amount" means and has the same definition as that term has in 26
818 USCS 112.

819 (o) The proceeds received from federal and state
820 forestry incentive programs.

821 (p) The amount representing the difference between the
822 increase of gross income derived from sales for export outside the
823 United States as compared to the preceding tax year wherein gross
824 income from export sales was highest, and the net increase in
825 expenses attributable to such increased exports. In the absence
826 of direct accounting, the ratio of net profits to total sales may
827 be applied to the increase in export sales. This paragraph (p)
828 shall only apply to businesses located in this state engaging in



829 the international export of Mississippi goods and services. Such
830 goods or services shall have at least fifty percent (50%) of value
831 added at a location in Mississippi.

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

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

842 (s) Amounts paid by the Mississippi Soil and Water
843 Conservation Commission from the Mississippi Soil and Water
844 Cost-Share Program for the installation of water quality best
845 management practices.

846 (t) Dividends received by a holding corporation, as
847 defined in Section 27-13-1, from a subsidiary corporation, as
848 defined in Section 27-13-1.

849 (u) Interest, dividends, gains or income of any kind on
850 any account in the Mississippi Affordable College Savings Trust
851 Fund, as established in Sections 37-155-101 through 37-155-125, to
852 the extent that such amounts remain on deposit in the MACS Trust



853 Fund or are withdrawn pursuant to a qualified withdrawal, as
854 defined in Section 37-155-105.

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

858 (w) Income resulting from transactions with a related
859 member where the related member subject to tax under this chapter
860 was required to, and did in fact, add back the expense of such
861 transactions as required by Section 27-7-17(2). Under no
862 circumstances may the exclusion from income exceed the deduction
863 add-back of the related member, nor shall the exclusion apply to
864 any income otherwise excluded under this chapter.

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

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

872 (z) Interest, dividends, gains or income of any kind on
873 any account in a qualified tuition program and amounts received as
874 distributions under a qualified tuition program shall be treated
875 in the same manner as provided under the United States Internal
876 Revenue Code, as amended. For the purposes of this paragraph (z),



877 the term "qualified tuition program" means and has the same
878 definition as that term has in 26 USCS 529.

879 (aa) The amount deposited in a health savings account,
880 and any interest accrued thereon, that is a part of a health
881 savings account program as specified in the Health Savings
882 Accounts Act created in Sections 83-62-1 through 83-62-9; however,
883 any amount withdrawn from such account for purposes other than
884 paying qualified medical expenses or to procure health coverage
885 shall be included in gross income, except as otherwise provided by
886 Sections 83-62-7 and 83-62-9.

887 (bb) Amounts received as qualified disaster relief
888 payments shall be treated in the same manner as provided under the
889 United States Internal Revenue Code, as amended.

890 (cc) Amounts received as a "qualified Hurricane Katrina
891 distribution" as defined in the United States Internal Revenue
892 Code, as amended.

893 (dd) Amounts received by an individual which may be
894 excluded from income as foreign earned income for federal income
895 tax purposes.

896 (ee) Amounts received by a qualified individual,
897 directly or indirectly, from an employer or nonprofit housing
898 organization that are qualified housing expenses associated with
899 an employer-assisted housing program. For purposes of this
900 paragraph (ee):



901 (i) "Qualified individual" means any individual
902 whose household income does not exceed one hundred twenty percent
903 (120%) of the area median gross income (as defined by the United
904 States Department of Housing and Urban Development), adjusted for
905 household size, for the area in which the housing is located.

906 (ii) "Nonprofit housing organization" means an
907 organization that is organized as a not-for-profit organization
908 under the laws of this state or another state and has as one of
909 its purposes:

910 1. Homeownership education or counseling;
911 2. The development of affordable housing; or
912 3. The development or administration of
913 employer-assisted housing programs.

914 (iii) "Employer-assisted housing program" means a
915 separate written plan of any employer (including, without
916 limitation, tax-exempt organizations and public employers) for the
917 exclusive benefit of the employer's employees to pay qualified
918 housing expenses to assist the employer's employees in securing
919 affordable housing.

920 (iv) "Qualified housing expenses" means:

921 1. With respect to rental assistance, an
922 amount not to exceed Two Thousand Dollars (\$2,000.00) paid for the
923 purpose of assisting employees with security deposits and rental
924 subsidies; and



925 2. With respect to homeownership assistance,
926 an amount not to exceed the lesser of Ten Thousand Dollars
927 (\$10,000.00) or six percent (6%) of the purchase price of the
928 employee's principal residence that is paid for the purpose of
929 assisting employees with down payments, payment of closing costs,
930 reduced interest mortgages, mortgage guarantee programs, mortgage
931 forgiveness programs, equity contribution programs, or
932 contributions to home buyer education and/or homeownership
933 counseling of eligible employees.

934 (ff) For the 2010 taxable year and any taxable year
935 thereafter, amounts converted in accordance with the United States
936 Internal Revenue Code, as amended, from a traditional Individual
937 Retirement Account to a Roth Individual Retirement Account. The
938 exemption allowed under this paragraph (ff) shall be available to
939 the spouse or other beneficiary at the death of the primary
940 retiree.

941 (gg) Amounts received for the performance of disaster
942 or emergency-related work as defined in Section 27-113-5.

943 (hh) The amount deposited in a catastrophe savings
944 account established under Sections 27-7-1001 through 27-7-1007,
945 interest income earned on the catastrophe savings account, and
946 distributions from the catastrophe savings account; however, any
947 amount withdrawn from a catastrophe savings account for purposes
948 other than paying qualified catastrophe expenses shall be included



949 in gross income, except as otherwise provided by Sections
950 27-7-1001 through 27-7-1007.

951 (ii) Interest, dividends, gains or income of any kind
952 on any account in the Mississippi Achieving a Better Life
953 Experience (ABLE) Trust Fund, as established in Sections 1 through
954 15 of this act, to the extent that such amounts remain on deposit
955 in the ABLE Trust Fund or are withdrawn pursuant to a qualified
956 withdrawal, as defined in Section 6 of this act.

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

958 (a) **Members of the Armed Forces.** Gross income does not
959 include compensation received for active service as a member of
960 the Armed Forces of the United States for any month during any
961 part of which such member is in a missing status, as defined in
962 paragraph (d) of this subsection, during the Vietnam Conflict as a
963 result of such conflict.

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

968 (c) **Period of conflict.** For the purpose of this
969 subsection, the Vietnam Conflict began February 28, 1961, and ends
970 on the date designated by the President by Executive Order as the
971 date of the termination of combatant activities in Vietnam. For
972 the purpose of this subsection, an individual is in a missing
973 status as a result of the Vietnam Conflict if immediately before



974 such status began he was performing service in Vietnam or was
975 performing service in Southeast Asia in direct support of military
976 operations in Vietnam. "Southeast Asia," as used in this
977 paragraph, is defined to include Cambodia, Laos, Thailand and
978 waters adjacent thereto.

979 (d) "Missing status" means the status of an employee or
980 member of the Armed Forces who is in active service and is
981 officially carried or determined to be absent in a status of (i)
982 missing; (ii) missing in action; (iii) interned in a foreign
983 country; (iv) captured, beleaguered or besieged by a hostile
984 force; or (v) detained in a foreign country against his will; but
985 does not include the status of an employee or member of the Armed
986 Forces for a period during which he is officially determined to be
987 absent from his post of duty without authority.

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

991 (f) "Employee" means one who is a citizen or national
992 of the United States or an alien admitted to the United States for
993 permanent residence and is a resident of the State of Mississippi
994 and is employed in or under a federal executive agency or
995 department of the Armed Forces.

996 (g) "Compensation" means (i) basic pay; (ii) special
997 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)



998 basic allowance for subsistence; and (vi) station per diem
999 allowances for not more than ninety (90) days.

1000 (h) If refund or credit of any overpayment of tax for
1001 any taxable year resulting from the application of this subsection
1002 (5) * * * is prevented by the operation of any law or rule of law,
1003 such refund or credit of such overpayment of tax may,
1004 nevertheless, be made or allowed if claim therefor is filed with
1005 the Department of Revenue within three (3) years after the date of
1006 the enactment of this subsection.

1007 (i) The provisions of this subsection shall be
1008 effective for taxable years ending on or after February 28, 1961.

1009 (6) A shareholder of an S corporation, as defined in Section
1010 27-8-3(1)(g), shall take into account the income, loss, deduction
1011 or credit of the S corporation only to the extent provided in
1012 Section 27-8-7(2).

1013 **SECTION 17.** Section 27-7-17, Mississippi Code of 1972, is
1014 amended as follows:

1015 27-7-17. In computing taxable income, there shall be allowed
1016 as deductions:

1017 (1) **Business deductions.**

1018 (a) **Business expenses.** All the ordinary and necessary
1019 expenses paid or incurred during the taxable year in carrying on
1020 any trade or business, including a reasonable allowance for
1021 salaries or other compensation for personal services actually
1022 rendered; nonreimbursable traveling expenses incident to current



1023 employment, including a reasonable amount expended for meals and
1024 lodging while away from home in the pursuit of a trade or
1025 business; and rentals or other payments required to be made as a
1026 condition of the continued use or possession, for purposes of the
1027 trade or business of property to which the taxpayer has not taken
1028 or is not taking title or in which he had no equity. Expense
1029 incurred in connection with earning and distributing nontaxable
1030 income is not an allowable deduction. Limitations on
1031 entertainment expenses shall conform to the provisions of the
1032 Internal Revenue Code of 1986.

1033 (b) **Interest.** All interest paid or accrued during the
1034 taxable year on business indebtedness, except interest upon the
1035 indebtedness for the purchase of tax-free bonds, or any stocks,
1036 the dividends from which are nontaxable under the provisions of
1037 this article; provided, however, in the case of securities
1038 dealers, interest payments or accruals on loans, the proceeds of
1039 which are used to purchase tax-exempt securities, shall be
1040 deductible if income from otherwise tax-free securities is
1041 reported as income. Investment interest expense shall be limited
1042 to investment income. Interest expense incurred for the purchase
1043 of treasury stock, to pay dividends, or incurred as a result of an
1044 undercapitalized affiliated corporation may not be deducted unless
1045 an ordinary and necessary business purpose can be established to
1046 the satisfaction of the commissioner. For the purposes of this
1047 paragraph, the phrase "interest upon the indebtedness for the



1048 purchase of tax-free bonds" applies only to the indebtedness
1049 incurred for the purpose of directly purchasing tax-free bonds and
1050 does not apply to any other indebtedness incurred in the regular
1051 course of the taxpayer's business. Any corporation, association,
1052 organization or other entity taxable under Section 27-7-23(c)
1053 shall allocate interest expense as provided in Section
1054 27-7-23(c) (3) (I).

1055 (c) **Taxes.** Taxes paid or accrued within the taxable
1056 year, except state and federal income taxes, excise taxes based on
1057 or measured by net income, estate and inheritance taxes, gift
1058 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
1059 use taxes unless incurred as an item of expense in a trade or
1060 business or in the production of taxable income. In the case of
1061 an individual, taxes permitted as an itemized deduction under the
1062 provisions of subsection (3) (a) of this section are to be claimed
1063 thereunder.

1064 (d) **Business losses.**

1065 (i) Losses sustained during the taxable year not
1066 compensated for by insurance or otherwise, if incurred in trade or
1067 business, or nonbusiness transactions entered into for profit.

1068 (ii) Limitations on losses from passive activities
1069 and rental real estate shall conform to the provisions of the
1070 Internal Revenue Code of 1986.

1071 (e) **Bad debts.** Losses from debts ascertained to be
1072 worthless and charged off during the taxable year, if sustained in



1073 the conduct of the regular trade or business of the taxpayer;
1074 provided, that such losses shall be allowed only when the taxpayer
1075 has reported as income, on the accrual basis, the amount of such
1076 debt or account.

1077 (f) **Depreciation.** A reasonable allowance for
1078 exhaustion, wear and tear of property used in the trade or
1079 business, or rental property, and depreciation upon buildings
1080 based upon their reasonable value as of March 16, 1912, if
1081 acquired prior thereto, and upon cost if acquired subsequent to
1082 that date.

1083 (g) **Depletion.** In the case of mines, oil and gas
1084 wells, other natural deposits and timber, a reasonable allowance
1085 for depletion and for depreciation of improvements, based upon
1086 cost, including cost of development, not otherwise deducted, or
1087 fair market value as of March 16, 1912, if acquired prior to that
1088 date, such allowance to be made upon regulations prescribed by the
1089 commissioner, with the approval of the Governor.

1090 (h) **Contributions or gifts.** Except as otherwise
1091 provided in paragraph (p) of this subsection or subsection (3) (a)
1092 of this section for individuals, contributions or gifts made by
1093 corporations within the taxable year to corporations,
1094 organizations, associations or institutions, including Community
1095 Chest funds, foundations and trusts created solely and exclusively
1096 for religious, charitable, scientific or educational purposes, or
1097 for the prevention of cruelty to children or animals, no part of



1098 the net earnings of which inure to the benefit of any private
1099 stockholder or individual. This deduction shall be allowed in an
1100 amount not to exceed twenty percent (20%) of the net income. Such
1101 contributions or gifts shall be allowable as deductions only if
1102 verified under rules and regulations prescribed by the
1103 commissioner, with the approval of the Governor. Contributions
1104 made in any form other than cash shall be allowed as a deduction,
1105 subject to the limitations herein provided, in an amount equal to
1106 the actual market value of the contributions at the time the
1107 contribution is actually made and consummated.

1108 (i) **Reserve funds - insurance companies.** In the case
1109 of insurance companies the net additions required by law to be
1110 made within the taxable year to reserve funds when such reserve
1111 funds are maintained for the purpose of liquidating policies at
1112 maturity.

1113 (j) **Annuity income.** The sums, other than dividends,
1114 paid within the taxpayer year on policy or annuity contracts when
1115 such income has been included in gross income.

1116 (k) **Contributions to employee pension plans.**
1117 Contributions made by an employer to a plan or a trust forming
1118 part of a pension plan, stock bonus plan, disability or
1119 death-benefit plan, or profit-sharing plan of such employer for
1120 the exclusive benefit of some or all of his, their, or its
1121 employees, or their beneficiaries, shall be deductible from his,
1122 their, or its income only to the extent that, and for the taxable



1123 year in which, the contribution is deductible for federal income
1124 tax purposes under the Internal Revenue Code of 1986 and any other
1125 provisions of similar purport in the Internal Revenue Laws of the
1126 United States, and the rules, regulations, rulings and
1127 determinations promulgated thereunder, provided that:

1128 (i) The plan or trust be irrevocable.

1129 (ii) The plan or trust constitute a part of a
1130 pension plan, stock bonus plan, disability or death-benefit plan,
1131 or profit-sharing plan for the exclusive benefit of some or all of
1132 the employer's employees and/or officers, or their beneficiaries,
1133 for the purpose of distributing the corpus and income of the plan
1134 or trust to such employees and/or officers, or their
1135 beneficiaries.

1136 (iii) No part of the corpus or income of the plan
1137 or trust can be used for purposes other than for the exclusive
1138 benefit of employees and/or officers, or their beneficiaries.

1139 Contributions to all plans or to all trusts of real or
1140 personal property (or real and personal property combined) or to
1141 insured plans created under a retirement plan for which provision
1142 has been made under the laws of the United States of America,
1143 making such contributions deductible from income for federal
1144 income tax purposes, shall be deductible only to the same extent
1145 under the Income Tax Laws of the State of Mississippi.

1146 (1) **Net operating loss carrybacks and carryovers.** A
1147 net operating loss for any taxable year ending after December 31,



1148 1993, and taxable years thereafter, shall be a net operating loss
1149 carryback to each of the three (3) taxable years preceding the
1150 taxable year of the loss. If the net operating loss for any
1151 taxable year is not exhausted by carrybacks to the three (3)
1152 taxable years preceding the taxable year of the loss, then there
1153 shall be a net operating loss carryover to each of the fifteen
1154 (15) taxable years following the taxable year of the loss
1155 beginning with any taxable year after December 31, 1991.

1156 For any taxable year ending after December 31, 1997, the
1157 period for net operating loss carrybacks and net operating loss
1158 carryovers shall be the same as those established by the Internal
1159 Revenue Code and the rules, regulations, rulings and
1160 determinations promulgated thereunder as in effect at the taxable
1161 year end or on December 31, 2000, whichever is earlier.

1162 A net operating loss for any taxable year ending after
1163 December 31, 2001, and taxable years thereafter, shall be a net
1164 operating loss carryback to each of the two (2) taxable years
1165 preceding the taxable year of the loss. If the net operating loss
1166 for any taxable year is not exhausted by carrybacks to the two (2)
1167 taxable years preceding the taxable year of the loss, then there
1168 shall be a net operating loss carryover to each of the twenty (20)
1169 taxable years following the taxable year of the loss beginning
1170 with any taxable year after the taxable year of the loss.

1171 The term "net operating loss," for the purposes of this
1172 paragraph, shall be the excess of the deductions allowed over the



1173 gross income; provided, however, the following deductions shall
1174 not be allowed in computing same:

1175 (i) No net operating loss deduction shall be
1176 allowed.

1177 (ii) No personal exemption deduction shall be
1178 allowed.

1179 (iii) Allowable deductions which are not
1180 attributable to taxpayer's trade or business shall be allowed only
1181 to the extent of the amount of gross income not derived from such
1182 trade or business.

1183 Any taxpayer entitled to a carryback period as provided by
1184 this paragraph may elect to relinquish the entire carryback period
1185 with respect to a net operating loss for any taxable year ending
1186 after December 31, 1991. The election shall be made in the manner
1187 prescribed by the Department of Revenue and shall be made by the
1188 due date, including extensions of time, for filing the taxpayer's
1189 return for the taxable year of the net operating loss for which
1190 the election is to be in effect. The election, once made for any
1191 taxable year, shall be irrevocable for that taxable year.

1192 (m) **Amortization of pollution or environmental control**
1193 **facilities.** Allowance of deduction. Every taxpayer, at his
1194 election, shall be entitled to a deduction for pollution or
1195 environmental control facilities to the same extent as that
1196 allowed under the Internal Revenue Code and the rules,
1197 regulations, rulings and determinations promulgated thereunder.



1198 (n) **Dividend distributions - real estate investment**
1199 **trusts.** "Real estate investment trust" (hereinafter referred to
1200 as REIT) shall have the meaning ascribed to such term in Section
1201 856 of the federal Internal Revenue Code of 1986, as amended. A
1202 REIT is allowed a dividend distributed deduction if the dividend
1203 distributions meet the requirements of Section 857 or are
1204 otherwise deductible under Section 858 or 860, federal Internal
1205 Revenue Code of 1986, as amended. In addition:

1206 (i) A dividend distributed deduction shall only be
1207 allowed for dividends paid by a publicly traded REIT. A qualified
1208 REIT subsidiary shall be allowed a dividend distributed deduction
1209 if its owner is a publicly traded REIT.

1210 (ii) Income generated from real estate contributed
1211 or sold to a REIT by a shareholder or related party shall not give
1212 rise to a dividend distributed deduction, unless the shareholder
1213 or related party would have received the dividend distributed
1214 deduction under this chapter.

1215 (iii) A holding corporation receiving a dividend
1216 from a REIT shall not be allowed the deduction in Section
1217 27-7-15(4) (t).

1218 (iv) Any REIT not allowed the dividend distributed
1219 deduction in the federal Internal Revenue Code of 1986, as
1220 amended, shall not be allowed a dividend distributed deduction
1221 under this chapter.



1222 The commissioner is authorized to promulgate rules and
1223 regulations consistent with the provisions in Section 269 of the
1224 federal Internal Revenue Code of 1986, as amended, so as to
1225 prevent the evasion or avoidance of state income tax.

1226 (o) **Contributions to college savings trust fund**
1227 **accounts.** Contributions or payments to a Mississippi Affordable
1228 College Savings Program account are deductible as provided under
1229 Section 37-155-113. Payments made under a prepaid tuition
1230 contract entered into under the Mississippi Prepaid Affordable
1231 College Tuition Program are deductible as provided under Section
1232 37-155-17.

1233 (p) **Contributions of human pharmaceutical products.** To
1234 the extent that a "major supplier" as defined in Section
1235 27-13-13(2) (d) contributes human pharmaceutical products in excess
1236 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as
1237 determined under Section 170 of the Internal Revenue Code, the
1238 charitable contribution limitation associated with those donations
1239 shall follow the federal limitation but cannot result in the
1240 Mississippi net income being reduced below zero.

1241 (q) **Contributions to ABLE trust fund accounts.**
1242 Contributions or payments to a Mississippi Achieving a Better Life
1243 Experience (ABLE) Program account are deductible as provided under
1244 Section 7 of this act.

1245 (2) **Restrictions on the deductibility of certain intangible**
1246 **expenses and interest expenses with a related member.**



1247 (a) As used in this subsection (2):

1248 (i) "Intangible expenses and costs" include:

1249 1. Expenses, losses and costs for, related
1250 to, or in connection directly or indirectly with the direct or
1251 indirect acquisition, use, maintenance or management, ownership,
1252 sale, exchange or any other disposition of intangible property to
1253 the extent such amounts are allowed as deductions or costs in
1254 determining taxable income under this chapter;

1255 2. Expenses or losses related to or incurred
1256 in connection directly or indirectly with factoring transactions
1257 or discounting transactions;

1258 3. Royalty, patent, technical and copyright
1259 fees;

1260 4. Licensing fees; and

1261 5. Other similar expenses and costs.

1262 (ii) "Intangible property" means patents, patent
1263 applications, trade names, trademarks, service marks, copyrights
1264 and similar types of intangible assets.

1265 (iii) "Interest expenses and cost" means amounts
1266 directly or indirectly allowed as deductions for purposes of
1267 determining taxable income under this chapter to the extent such
1268 interest expenses and costs are directly or indirectly for,
1269 related to, or in connection with the direct or indirect
1270 acquisition, maintenance, management, ownership, sale, exchange or
1271 disposition of intangible property.



1272 (iv) "Related member" means an entity or person
1273 that, with respect to the taxpayer during all or any portion of
1274 the taxable year, is a related entity, a component member as
1275 defined in the Internal Revenue Code, or is an entity or a person
1276 to or from whom there is attribution of stock ownership in
1277 accordance with Section 1563(e) of the Internal Revenue Code.

1278 (v) "Related entity" means:

1279 1. A stockholder who is an individual or a
1280 member of the stockholder's family, as defined in regulations
1281 prescribed by the commissioner, if the stockholder and the members
1282 of the stockholder's family own, directly, indirectly,
1283 beneficially or constructively, in the aggregate, at least fifty
1284 percent (50%) of the value of the taxpayer's outstanding stock;

1285 2. A stockholder, or a stockholder's
1286 partnership, limited liability company, estate, trust or
1287 corporation, if the stockholder and the stockholder's
1288 partnerships, limited liability companies, estates, trusts and
1289 corporations own, directly, indirectly, beneficially or
1290 constructively, in the aggregate, at least fifty percent (50%) of
1291 the value of the taxpayer's outstanding stock;

1292 3. A corporation, or a party related to the
1293 corporation in a manner that would require an attribution of stock
1294 from the corporation to the party or from the party to the
1295 corporation, if the taxpayer owns, directly, indirectly,
1296 beneficially or constructively, at least fifty percent (50%) of



1297 the value of the corporation's outstanding stock under regulation
1298 prescribed by the commissioner;

1299 4. Any entity or person which would be a
1300 related member under this section if the taxpayer were considered
1301 a corporation for purposes of this section.

1302 (b) In computing net income, a taxpayer shall add back
1303 otherwise deductible interest expenses and costs and intangible
1304 expenses and costs directly or indirectly paid, accrued to or
1305 incurred, in connection directly or indirectly with one or more
1306 direct or indirect transactions with one or more related members.

1307 (c) The adjustments required by this subsection shall
1308 not apply to such portion of interest expenses and costs and
1309 intangible expenses and costs that the taxpayer can establish
1310 meets one (1) of the following:

1311 (i) The related member directly or indirectly
1312 paid, accrued or incurred such portion to a person during the same
1313 income year who is not a related member; or

1314 (ii) The transaction giving rise to the interest
1315 expenses and costs or intangible expenses and costs between the
1316 taxpayer and related member was done primarily for a valid
1317 business purpose other than the avoidance of taxes, and the
1318 related member is not primarily engaged in the acquisition, use,
1319 maintenance or management, ownership, sale, exchange or any other
1320 disposition of intangible property.



1321 (d) Nothing in this subsection shall require a taxpayer
1322 to add to its net income more than once any amount of interest
1323 expenses and costs or intangible expenses and costs that the
1324 taxpayer pays, accrues or incurs to a related member.

1325 (e) The commissioner may prescribe such regulations as
1326 necessary or appropriate to carry out the purposes of this
1327 subsection, including, but not limited to, clarifying definitions
1328 of terms, rules of stock attribution, factoring and discount
1329 transactions.

1330 (3) **Individual nonbusiness deductions.**

1331 (a) The amount allowable for individual nonbusiness
1332 itemized deductions for federal income tax purposes where the
1333 individual is eligible to elect, for the taxable year, to itemize
1334 deductions on his federal return except the following:

1335 (i) The deduction for state income taxes paid or
1336 other taxes allowed for federal purposes in lieu of state income
1337 taxes paid;

1338 (ii) The deduction for gaming losses from gaming
1339 establishments;

1340 (iii) The deduction for taxes collected by
1341 licensed gaming establishments pursuant to Section 27-7-901;

1342 (iv) The deduction for taxes collected by gaming
1343 establishments pursuant to Section 27-7-903.

1344 (b) In lieu of the individual nonbusiness itemized
1345 deductions authorized in paragraph (a), for all purposes other



1346 than ordinary and necessary expenses paid or incurred during the
1347 taxable year in carrying on any trade or business, an optional
1348 standard deduction of:

1349 (i) Three Thousand Four Hundred Dollars
1350 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1351 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1352 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
1353 in the case of married individuals filing a joint or combined
1354 return;

1355 (ii) One Thousand Seven Hundred Dollars
1356 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1357 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1358 Three Hundred Dollars (\$2,300.00) for each calendar year
1359 thereafter in the case of married individuals filing separate
1360 returns;

1361 (iii) Three Thousand Four Hundred Dollars
1362 (\$3,400.00) in the case of a head of family; or

1363 (iv) Two Thousand Three Hundred Dollars
1364 (\$2,300.00) in the case of an individual who is not married.

1365 In the case of a husband and wife living together, having
1366 separate incomes, and filing combined returns, the standard
1367 deduction authorized may be divided in any manner they choose. In
1368 the case of separate returns by a husband and wife, the standard
1369 deduction shall not be allowed to either if the taxable income of



1370 one of the spouses is determined without regard to the standard
1371 deduction.

1372 (c) A nonresident individual shall be allowed the same
1373 individual nonbusiness deductions as are authorized for resident
1374 individuals in paragraph (a) or (b) of this subsection; however,
1375 the nonresident individual is entitled only to that proportion of
1376 the individual nonbusiness deductions as his net income from
1377 sources within the State of Mississippi bears to his total or
1378 entire net income from all sources.

1379 (4) Nothing in this section shall permit the same item to be
1380 deducted more than once, either in fact or in effect.

1381 **SECTION 18.** Section 27-7-18, Mississippi Code of 1972, is
1382 amended as follows:

1383 27-7-18. (1) Alimony payments. In the case of a person
1384 described in Section 27-7-15(2) (e), there shall be allowed as a
1385 deduction from gross income amounts paid as periodic payments to
1386 the extent of such amounts as are includible in the gross income
1387 of the spouse as provided in Section 27-7-15(2) (e), payment of
1388 which is made within the person's taxable year.

1389 (2) Unreimbursed moving expenses incurred after December 31,
1390 1994, are deductible as an adjustment to gross income in
1391 accordance with provisions of the United States Internal Revenue
1392 Code, and rules, regulations and revenue procedures thereunder
1393 relating to moving expenses, not in direct conflict with the
1394 provisions of the Mississippi Income Tax Law.



1395 (3) Amounts paid after December 31, 1998, by a self-employed
1396 individual for insurance which constitute medical care for the
1397 taxpayer, his spouse and dependents, are deductible as an
1398 adjustment to gross income in accordance with provisions of the
1399 United States Internal Revenue Code, and rules, regulations and
1400 revenue procedures thereunder relating to such payments, not in
1401 direct conflict with the provisions of the Mississippi Income Tax
1402 Law.

1403 (4) Contributions or payments to a Mississippi Affordable
1404 College Savings (MACS) Program account are deductible from gross
1405 income as provided in Section 37-155-113. Payments made under a
1406 prepaid tuition contract entered into under the Mississippi
1407 Prepaid Affordable College Tuition Program are deductible as
1408 provided in Section 37-155-17.

1409 (5) (a) Unreimbursed travel expenses, lodging expenses and
1410 lost wages an individual incurred as a result of, and related to,
1411 the donation, while living, of one or more of his or her organs
1412 for human organ transplantation, are deductible from gross income.
1413 The deduction from gross income authorized by this subsection may
1414 be claimed for only once and may not exceed Ten Thousand Dollars
1415 (\$10,000.00).

1416 (b) As used in this subsection, "organ" means all or
1417 part of a liver, pancreas, kidney, intestine, lung or bone marrow.



1418 (6) Contributions or payments to a Mississippi Achieving a
1419 Better Life Experience (ABLE) Program account are deductible from
1420 gross income as provided in Section 7 of this act.

1421 **SECTION 19.** This act shall take effect and be in force from
1422 and after its passage.

