

By: Senator(s) Blackwell, Michel,
Fillingane, Parker, Barnett, Massey,
Caughman, McMahan, DeBar, Younger, Dearing

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2311

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 PARTICIPATION AGREEMENTS ENTERED
7 INTO UNDER THE PROGRAM; TO ESTABLISH THE ABLE TRUST FUND; TO
8 EXEMPT 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 OR TO ENTER INTO A CONSORTIUM WITH
14 ANOTHER STATE OR STATES TO PROVIDE MISSISSIPPI RESIDENTS ACCESS TO
15 ABLE ENROLLMENT BY JULY 1, 2018; TO SPECIFY THE REQUIREMENTS THAT
16 MUST BE MET BEFORE IMPLEMENTATION OF THE PROGRAM; TO REQUIRE A
17 PARTICIPATION AGREEMENT FOR THE PROGRAM WHICH CONTAINS SPECIFIED
18 PROVISIONS AUTHORIZING OTHER PROVISIONS THAT MAY BE INCLUDED IN
19 THE AGREEMENT; TO PROVIDE FOR THE AMENDMENT OF THE AGREEMENT UNDER
20 CERTAIN CIRCUMSTANCES; TO PROVIDE THAT A CONTRACT OR PARTICIPATION
21 AGREEMENT ENTERED INTO BY THE BOARD OR AN OBLIGATION OF THE BOARD
22 DOES NOT CONSTITUTE AN 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 EXEMPT FUNDS PAID INTO THE PROGRAM'S TRUST FUND FROM THE CLAIMS OF
30 SPECIFIED CREDITORS; TO PROVIDE FOR RECOVERY BY THE DIVISION OF
31 MEDICAID OF CERTAIN MEDICAL ASSISTANCE PROVIDED TO A DECEASED
32 DESIGNATED BENEFICIARY; TO PROVIDE FOR THE DISTRIBUTION OF THE
33 BALANCE OF A DECEASED DESIGNATED BENEFICIARY'S ABLE ACCOUNT; TO
34 REQUIRE THE BOARD TO ASSIST AND COOPERATE WITH THE APPROPRIATE



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

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

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

45 **SECTION 2.** It is the intent of the Legislature to establish
46 a qualified Achieving a Better Life Experience (ABLE) Program in
47 this state which will encourage and assist the saving of private
48 funds in tax-exempt accounts in order to pay for the qualified
49 disability expenses of eligible individuals with disabilities.

50 The Legislature intends that the qualified ABLE Program be
51 implemented in a manner that is consistent with federal law
52 authorizing the program and that maximizes program efficiency and
53 effectiveness.

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

57 (a) "Mississippi ABLE account" means an account established
58 and maintained under the Mississippi ABLE Program or entered into
59 through a participation agreement with another state that has
60 contracted with the Mississippi ABLE Board, or a consortium of
61 states that have agreed to provide ABLE accounts to the residents
62 of participating states.



63 (b) "Board" or "board of directors" means the Mississippi
64 ABLE Board of Directors.

65 (c) "Contracting state" or "consortium" means a state or
66 group of states that have entered into a contract with the
67 Mississippi ABLE Board or a multistate Compact with the ABLE
68 Boards of several states to provide residents of Mississippi or,
69 in the case of a consortium, residents of participating states
70 with access to a qualified ABLE Program.

71 (d) "Designated beneficiary" means the eligible individual
72 who established an ABLE account or the eligible individual to whom
73 an ABLE account was transferred.

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

76 (f) "Mississippi ABLE Program" means the qualified ABLE
77 Program established and maintained under this section by the
78 Mississippi ABLE Board, and administered through the Mississippi
79 Department of Rehabilitation Services.

80 (g) "Internal Revenue Code" means the United States Internal
81 Revenue Code of 1986, as amended, and regulations adopted pursuant
82 thereto.

83 (h) "Participation agreement" means the agreement between
84 the Mississippi ABLE Board, and a participant in the Mississippi
85 ABLE Program.

86 (i) "Qualified ABLE Program" means the program authorized
87 under Section 529A of the Internal Revenue Code which may be



88 established by a state or agency, or instrumentality thereof, to
89 allow a person to make contributions for a taxable year to an ABLE
90 account established for the purpose of meeting the qualified
91 disability expenses of the designated beneficiary of the ABLE
92 account.

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

95 (k) "Section 529A of the Internal Revenue Code" or "Section
96 529A" means 26 USCS Section 529A.

97 **SECTION 4.** (1) There is created the Mississippi ABLE Board
98 of Directors which shall consist of nine (9) members as follows:

99 (a) The State Treasurer, or his or her designee;

100 (b) The Executive Director of the Department of
101 Rehabilitation Services, or his or her designee;

102 (c) The Executive Director of the Department of Mental
103 Health, or his or her designee;

104 (d) Three (3) members of the public who, by reason of
105 his or her education and experience relating to disabilities or
106 financial planning, is qualified to serve, to be appointed by the
107 Governor one (1) of whom shall be appointed from each Supreme
108 Court District;

109 (e) The Executive Director, or his or her designee, of
110 an advocacy organization for citizens of all ages with cognitive,
111 intellectual and developmental disabilities and their families, to
112 be appointed by the Governor;



113 (f) The Executive Director, or his or her designee, of
114 an advocacy organization for citizens of all ages with cross
115 disabilities and their families, to be appointed by the Governor;
116 and

117 (g) The Executive Director, or his or her designee, of
118 an advocacy organization for citizens with mental health
119 disabilities, to be appointed by the Governor.

120 (2) (a) Of the six (6) appointed members by the Governor:
121 One (1) member shall be appointed for an initial term of one (1)
122 year; one (1) member shall be appointed for an initial term of two
123 (2) years; one (1) member shall be appointed for an initial term
124 of three (3) years; one (1) member shall be appointed for an
125 initial term of four (4) years; one (1) member shall be appointed
126 for an initial term of five (5) years; and one (1) member shall be
127 appointed for an initial term of six (6) years. On the expiration
128 of any of the terms of office, successor appointees shall be
129 appointed for terms of five (5) years in each case. Ex officio
130 members of the board may be represented at official meetings by
131 their deputy, or other designee, and such designees shall have
132 full voting privileges and shall be included in the determination
133 of a quorum for conducting board business.

134 (b) Initial members of the board shall be appointed
135 within thirty (30) days after the effective date of this act, and
136 shall meet at the state office of the Department of Rehabilitation
137 Services, at a date to be fixed by the Executive Director of the



138 Department of Rehabilitation Services, not later than thirty (30)
139 days after all appointments have been made, to organize and select
140 a chairman and vice chairman, and develop an implementation plan
141 for the Mississippi ABLE Program, which shall be completed on or
142 before October 1, 2017. The chairman shall preside over all
143 meetings.

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

150 (4) Members of the board of directors shall serve without
151 compensation, but shall be reimbursed for each day's official
152 duties of the board at the same per diem as established by Section
153 25-3-69, and actual travel and lodging expenses as established by
154 Section 25-3-41.

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

160 (6) A majority of the currently serving members of the board
161 shall constitute a quorum for the purposes of conducting business
162 and exercising its official powers and duties. Any action taken



163 by the board shall be upon the vote of a majority of the members
164 present.

165 **SECTION 5.** In addition to those powers granted to the board
166 by any other provisions of this act, the Mississippi ABLE Board
167 shall have the powers necessary to carry out the purposes and
168 provisions of this act, the purposes and objectives of ABLE
169 accounts, and the powers delegated by any other law or executive
170 order of this state, including, but not limited to, the following
171 express powers:

172 (a) To adopt such rules and regulations as are
173 necessary to implement this act, subject to applicable federal
174 laws and regulations, including rules regarding transfers of funds
175 between ABLE accounts established under the provisions of this act
176 and independent personal bank accounts;

177 (b) To impose reasonable requirements for beneficiaries
178 or account owners at the time of enrollment in the Mississippi
179 ABLE Program;

180 (c) To consult with the Executive Director of the
181 Department of Rehabilitation Services and the State Treasurer for
182 the department's employment of a Mississippi ABLE Coordinator, who
183 shall:

184 (i) Coordinate meetings of the board and keep
185 minutes of its actions;



186 (ii) Remain informed of developments in federal
187 rules and regulations affecting ABLE accounts and ensure that the
188 Mississippi ABLE Program remains in compliance;

189 (iii) Be authorized to enter into contracts, on
190 behalf of the Mississippi ABLE Board, with records administrators,
191 program managers, consultants and other qualified persons and
192 entities for administrative and technical assistance in carrying
193 out the responsibilities of the Mississippi ABLE Program; and

194 (iv) Perform such other duties as the board may
195 prescribe;

196 (d) To contract for necessary goods and services, to
197 employ necessary personnel, and to engage the services of
198 consultants and other qualified persons and entities for
199 administrative and technical assistance in carrying out the
200 responsibilities of the ABLE account funds under terms and
201 conditions that the board deems reasonable, including contract
202 terms for such consideration, and for such purposes as the board
203 deems advisable;

204 (e) To solicit and accept gifts, including bequests or
205 other testamentary gifts made by will, trust or other disposition
206 grants, loans and other aids from any personal source or to
207 participate in any other way in any federal, state or local
208 governmental programs in carrying out the purposes of this act;



209 (f) To define the terms and conditions under which
210 payments may be withdrawn for qualifying expenses established
211 under this act and to impose reasonable transaction fees;

212 (g) To serve as an information clearinghouse for the
213 gathering, compilation and dissemination of educational and
214 programmatic materials relating to the design, operation and
215 benefits provided through ABLE accounts and access to entry into
216 the program;

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

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

221 (j) To require and collect administrative fees and
222 charges in connection with any transaction and to impose
223 reasonable penalties for withdrawal of funds for nonqualified
224 expenses or for entering into a ABLE account agreement on a
225 fraudulent basis;

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

229 (l) To require that account owners of ABLE account
230 agreements verify, under sworn attestation, any requests for
231 contract conversions, substitutions, transfers, cancellations,
232 refund requests or contract changes of any nature;



233 (m) To solicit proposals and to contract for the
234 marketing of the Mississippi ABLE Program, provided that: (i) any
235 materials produced by a marketing contractor for the purpose of
236 marketing the program must be approved by the board before being
237 made available to the public; and (ii) neither the state nor the
238 board shall be liable for misrepresentation of the program by a
239 marketing contractor;

240 (n) To delegate responsibility for administration of
241 the comprehensive investment plan to a contractor or contractors
242 or a consultant or consultants that the board determines is
243 qualified;

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

248 (p) To establish other policies, procedures and
249 criteria necessary to implement and administer this act;

250 (q) To authorize the Department of Rehabilitation
251 Services with the advice of the State Treasurer, to carry out any
252 or all of the powers and duties enumerated in this section for
253 efficient and effective administration of the Mississippi ABLE
254 Program and ABLE Trust Fund;

255 (r) To develop a user-friendly website or access link
256 on the Department of Rehabilitation Services' website to serve as
257 a virtual program and access portal to information about the ABLE



258 Program and how an individual might be able to enroll, whether in
259 the State of Mississippi or in a contracting state with whom
260 Mississippi has entered into a contractual relationship either
261 bilaterally or as part of an ABLE consortium;

262 (s) To provide an ABLE assistance helpline by which
263 those having inquires can be directed to the proper entity for
264 assistance in qualifying and enrolling in an ABLE Program; and

265 (t) To develop and provide an "Account Holder's Bill of
266 Rights" to each individual, who is a Mississippi resident, and who
267 enrolls in the ABLE Program whether such account is managed inside
268 or outside of the state.

269 **SECTION 6.** (1) There is created a Mississippi Achieving a
270 Better Life Experience (ABLE) Trust Fund as an instrumentality of
271 the state to be administered by the Department of Rehabilitation
272 Services in consultation with the Treasury Department. The ABLE
273 Trust Fund shall consist of state appropriations, monies acquired
274 from other governmental or private sources and money remitted in
275 accordance with ABLE participation agreements, and shall receive
276 and hold all payments, contributions and deposits intended for it
277 as well as gifts, bequests, endowments or federal, state or local
278 grants and any other public or private source of funds and all
279 earnings on the fund until disbursed as provided under this
280 section. The amounts on deposit in the trust fund shall not
281 constitute property of the state. Amounts on deposit in the trust
282 fund may not be commingled with state funds, and the state may



283 have no claim to or interest in such funds. ABLE participation
284 agreements or any other contract entered into by or on behalf of
285 the trust do not constitute a debt or obligation of the state, and
286 no account owner is entitled to any amounts except for those
287 amounts on deposit in or accrued to their account.

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

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

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

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



307 (c) The program account, which shall receive, invest
308 and disburse amounts pursuant to participation agreements.

309 (3) Payments received by the board on behalf of account
310 owners from other payors or any other source, public or private,
311 shall be placed in the ABLE Trust Fund, or in the event ABLE
312 accounts are established in other states pursuant to an agreement
313 entered into with a contracting state or consortium state, and the
314 board shall cause there to be maintained separate records and
315 accounts for individual account owners, as may be required under
316 Section 529A of the Internal Revenue Code of 1986, as amended, and
317 any other applicable federal law.

318 (4) Account owners and any other payors or contributors
319 shall be permitted only to contribute cash or any other form of
320 payment or contribution as is permitted under Section 529A of the
321 Internal Revenue Code of 1986, as amended, and approved by the
322 board.

323 (5) The account owner retains ownership of all amounts on
324 deposit in his or her account with the Mississippi ABLE Program up
325 to the date of withdrawal of qualified disability expense
326 transactions. Earnings derived from investment of the
327 contributions shall be considered to be held in trust in the same
328 manner as contributions, except as applied for purposes of
329 maintaining and administrating the program as provided in this
330 act. Amounts on deposit in an account owner's account shall be



331 available for expenses and penalties imposed by the board for the
332 program as disclosed in the ABLE participation agreement.

333 (6) The assets of the ABLE Trust Fund shall be preserved,
334 invested and expended solely pursuant to and for the purposes of
335 this act and shall not be loaned or otherwise transferred or used
336 by the state for any other purpose.

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

340 (2) Any contributor or payor to a Mississippi ABLE Program
341 account may deduct from their Mississippi taxable income any
342 contributions or payments to an account or accounts in the ABLE
343 Trust Fund up to a maximum annual amount limit established by
344 Congress for such accounts for single, joint and other filers.
345 Contributions or payments for such tax years may be made after
346 such calendar years but before the deadline for making
347 contributions to an individual retirement account under federal
348 law for such years. The earnings portion of any withdrawals from
349 an account that are not qualified withdrawals, as well as any
350 amounts included in such nonqualified withdrawals previously
351 deducted from taxable income under this section, shall be included
352 in the gross income of the recipient of the withdrawal for
353 purposes of the Mississippi Income Tax Law in the year of such
354 withdrawal.



355 (3) Additionally, the participation of any Mississippi
356 resident in the Mississippi ABLE Program or any other qualified
357 ABLE Program, shall not preclude the resident from receiving any
358 benefit or assistance provided by the State of Mississippi for
359 which they are eligible. Funds in an individual's Mississippi
360 ABLE account or any other ABLE account shall be exempt from any
361 consideration when any agency or subdivision of the state is
362 determining an individual's eligibility for state-provided
363 assistance. Likewise, any tangible assets purchased with
364 Mississippi ABLE account funds or any other ABLE account funds
365 which are not otherwise disqualified as a countable resource of a
366 program participant shall be exempt from consideration when
367 determining such person's eligibility provided by the state, to
368 the extent allowable under federal law.

369 **SECTION 8.** (1) The board has authority to establish a
370 comprehensive investment plan for the purposes of this act, to
371 invest any funds of the ABLE Trust Fund in any instrument,
372 obligation, security or property that constitutes legal
373 investments for public funds in the state, and to name and use
374 depositories for its investments and holdings. The comprehensive
375 investment plan shall specify the investment policies to be
376 utilized by the board in its administration of the funds. The
377 board may authorize investments in any investment vehicle
378 authorized for the Mississippi Achieving a Better Life Experience
379 Program.



380 (2) All investments shall be acquired by the board at prices
381 not exceeding the prevailing market values for such securities and
382 shall be marked clearly to indicate ownership by the system and,
383 to the extent possible, shall be registered in the name of the
384 system.

385 (3) Except as otherwise provided in this section, no trustee
386 or employee of the board may have any direct or indirect interest
387 in the income, gains or profits of any investment made by the
388 board, and such person may not receive any pay or emolument for
389 his services in connection with any investment made by the board.
390 No trustee or employee of the board may become an endorser or
391 surety or in any manner an obligor for money loaned by or borrowed
392 from the system.

393 (4) Under the authority granted in Section 5, the board may
394 establish criteria for investment managers, mutual funds or other
395 such entities to act as contractors or consultants to the board.
396 The board may contract, either directly or through such
397 contractors or consultants, to provide such services as may be a
398 part of the comprehensive investment plan or as may be deemed
399 necessary or proper by the board, including, but not limited to,
400 providing consolidated billing, individual and collective record
401 keeping and accounting, and asset purchase, control and
402 safekeeping.

403 (5) No account owner, contributor or payor may directly or
404 indirectly direct the investment of any account except as may be



405 permitted under Section 529A of the Internal Revenue Code of 1986,
406 as amended.

407 **SECTION 9.** (1) On or before July 1, 2018, the Mississippi
408 ABLE Board shall establish and administer the Mississippi ABLE
409 Program or shall enter into a contractual relationship or into a
410 consortium with another state or states to provide qualifying
411 Mississippi residents access to enrollment in an operating ABLE
412 Program. Before implementing the program, the board shall obtain
413 a written opinion from counsel specializing in:

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

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

421 (2) The Mississippi ABLE account participation agreement
422 must include provisions specifying that:

423 (a) The participation agreement is only an obligation
424 of the Mississippi ABLE Program and the ABLE Trust Fund and is not
425 an obligation of the state;

426 (b) Participation in the Mississippi ABLE Program does
427 not guarantee that sufficient funds will be available to cover all
428 qualified disability expenses for any designated beneficiary and



429 does not guarantee the receipt or continuation of any product or
430 service for the designated beneficiary;

431 (c) The designated beneficiary must be a resident of
432 this state or a resident of a contracting or consortium state at
433 the time the ABLE account is established;

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

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

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

441 (g) Material misrepresentations by a party to the
442 participation agreement, other than the board in the application
443 for the participation agreement or in any communication with the
444 board regarding the Mississippi ABLE Program may result in the
445 involuntary liquidation of the ABLE account. If an account is
446 involuntarily liquidated, the designated beneficiary is entitled
447 to a refund, subject to any fees or penalties provided by the
448 participation agreement and the Internal Revenue Code.

449 (3) The participation agreement may include provisions
450 specifying:

451 (a) The requirements and applicable restrictions for
452 opening an ABLE account;



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

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

457 (d) The requirements and applicable restrictions for
458 directing the investment of the contributions or balance of the
459 ABLE account;

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

462 (f) The terms and conditions under which an ABLE
463 account or participation agreement may be modified, transferred or
464 terminated;

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

466 (h) Any other terms and conditions determined to be
467 necessary or proper to conform the participation agreement with
468 the requirements of Section 529A of the Internal Revenue Code.

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

475 (5) Notwithstanding any other provision of law, the
476 Mississippi ABLE Board, acting through the ABLE Coordinator, may
477 enter into an agreement with contracting states which either allow



478 Mississippi residents to participate under the design, operation,
479 and rules of a contracting state's qualified ABLE Program or which
480 allows residents of a participating contracting state to
481 participate under the Mississippi ABLE Program.

482 (6) The Mississippi ABLE Program shall continue in existence
483 until terminated by law. If the Mississippi ABLE Board determines
484 that the program is financially infeasible, the board shall submit
485 its recommendation, in the form of a feasibility report, to the
486 Legislature to terminate the program.

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

489 (a) The amount contributed by the account owner under
490 the participation agreement;

491 (b) The annual earnings and accumulated earnings on the
492 ABLE account; and

493 (c) Any other terms and conditions that the board deems
494 by rule is necessary or appropriate, including those necessary to
495 conform the savings trust account with the requirements of Section
496 529 of the Internal Revenue Code of 1986, as amended, or other
497 applicable federal law or regulations.

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



502 (3) (a) On or before November 1, 2018, the board shall
503 prepare a report on the status of the establishment of the
504 Mississippi ABLE Program. The report must also include, if
505 warranted, recommendations for statutory changes to enhance the
506 effectiveness and efficiency of the program. The board shall
507 submit copies of the report to the Governor, the Lieutenant
508 Governor, the Speaker of the House of Representatives, the State
509 Treasurer and to the Executive Director of the Department of
510 Rehabilitation Services.

511 (b) The board, in its discretion as to frequency, shall
512 cause to be prepared annual reports setting forth in appropriate
513 detail an accounting of the funds and a description of the
514 financial condition of the program, which shall be submitted no
515 later than ninety (90) days after the end of each fiscal year.
516 Such report shall be submitted to the Governor, the Lieutenant
517 Governor, the Speaker of the House of Representatives, the State
518 Treasurer and to the Executive Director of the Department of
519 Rehabilitation Services. The accounts of the fund shall be
520 subject to annual audits by the State Auditor or his designee.

521 **SECTION 11.** Monies paid into or expended out of the ABLE
522 Trust Fund by or on behalf of a designated beneficiary are exempt
523 from all claims of creditors of the designated beneficiary if the
524 participation agreement has not been terminated. Monies paid into
525 the Mississippi ABLE Program and benefits accrued through the
526 program may not be pledged for the purpose of securing a loan.



527 **SECTION 12.** (1) Upon the death of the designated
528 beneficiary, the appropriate health care administration agency and
529 the Division of Medicaid of another state in which the beneficiary
530 received services may file a claim with the Mississippi ABLE
531 Program for the total amount of medical assistance provided for
532 the designated beneficiary under the Medicaid program since the
533 inception of the Mississippi ABLE account, less any premiums paid
534 by or on behalf of the designated beneficiary to a Medicaid buy-in
535 program. Funds in the ABLE account of the deceased designated
536 beneficiary must first be distributed for qualified disability
537 expenses followed by distributions for the Medicaid claim
538 authorized under this paragraph. Any remaining amount shall be
539 distributed as provided in the participation agreement required
540 under Section 10 of this act.

541 (2) The Mississippi ABLE Coordinator shall assist and
542 cooperate with the appropriate health care administration agency
543 and the Division of Medicaid in other states which have provided
544 services to a Mississippi ABLE account beneficiary, by providing
545 the agency and divisions with the information needed to accomplish
546 the purpose and objective of this section.

547 **SECTION 13.** The Mississippi Department of Health, the
548 Department of Rehabilitation Services, the Division of Medicaid,
549 the Department of Child Protection Services and the State
550 Department of Education shall assist, cooperate and coordinate



551 with the Mississippi ABLE Board in the provision of public
552 information and outreach for the Mississippi ABLE Program.

553 **SECTION 14.** The provisions of this act are severable. If
554 any part of this act is declared invalid or unconstitutional, such
555 declaration shall not affect the parts of this act which remain.

556 **SECTION 15.** Section 27-7-15, Mississippi Code of 1972, is
557 amended as follows:

558 27-7-15. (1) For the purposes of this article, except as
559 otherwise provided, the term "gross income" means and includes the
560 income of a taxpayer derived from salaries, wages, fees or
561 compensation for service, of whatever kind and in whatever form
562 paid, including income from governmental agencies and subdivisions
563 thereof; or from professions, vocations, trades, businesses,
564 commerce or sales, or renting or dealing in property, or
565 reacquired property; also from annuities, interest, rents,
566 dividends, securities, insurance premiums, reinsurance premiums,
567 considerations for supplemental insurance contracts, or the
568 transaction of any business carried on for gain or profit, or
569 gains, or profits, and income derived from any source whatever and
570 in whatever form paid. The amount of all such items of income
571 shall be included in the gross income for the taxable year in
572 which received by the taxpayer. The amount by which an eligible
573 employee's salary is reduced pursuant to a salary reduction
574 agreement authorized under Section 25-17-5 shall be excluded from
575 the term "gross income" within the meaning of this article.



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

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

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

584 (i) Prior to January 1, 2001, federal rules,
585 regulations and revenue procedures shall be followed with respect
586 to installment sales except they shall be applied and administered
587 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
588 106th Congress, had not been enacted. This provision will
589 generally affect taxpayers, reporting on the accrual method of
590 accounting, entering into installment note agreements on or after
591 December 17, 1999. Any gain or profit resulting from the casual
592 sale of property will be recognized in the year of sale.

593 (ii) From and after January 1, 2001, federal
594 rules, regulations and revenue procedures shall be followed with
595 respect to installment sales except as provided in this
596 subparagraph (ii). Gain or profit from the casual sale of
597 property shall be recognized in the year of sale. When a taxpayer
598 recognizes gain on the casual sale of property in which the gain
599 is deferred for federal income tax purposes, a taxpayer may elect
600 to defer the payment of tax resulting from the gain as allowed and



601 to the extent provided under regulations prescribed by the
602 commissioner. If the payment of the tax is made on a deferred
603 basis, the tax shall be computed based on the applicable rate for
604 the income reported in the year the payment is made. Except as
605 otherwise provided in subparagraph (iii) of this paragraph (b),
606 deferring the payment of the tax shall not affect the liability
607 for the tax. If at any time the installment note is sold,
608 contributed, transferred or disposed of in any manner and for any
609 purpose by the original note holder, or the original note holder
610 is merged, liquidated, dissolved or withdrawn from this state,
611 then all deferred tax payments under this section shall
612 immediately become due and payable.

613 (iii) If the selling price of the property is
614 reduced by any alteration in the terms of an installment note,
615 including default by the purchaser, the gain to be recognized is
616 recomputed based on the adjusted selling price in the same manner
617 as for federal income tax purposes. The tax on this amount, less
618 the previously paid tax on the recognized gain, is payable over
619 the period of the remaining installments. If the tax on the
620 previously recognized gain has been paid in full to this state,
621 the return on which the payment was made may be amended for this
622 purpose only. The statute of limitations in Section 27-7-49 shall
623 not bar an amended return for this purpose.



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

627 (d) **Affiliated companies or persons.** As regards sales,
628 exchanges or payments for services from one to another of
629 affiliated companies or persons or under other circumstances where
630 the relation between the buyer and seller is such that gross
631 proceeds from the sale or the value of the exchange or the payment
632 for services are not indicative of the true value of the subject
633 matter of the sale, exchange or payment for services, the
634 commissioner shall prescribe uniform and equitable rules for
635 determining the true value of the gross income, gross sales,
636 exchanges or payment for services, or require consolidated returns
637 of affiliates.

638 (e) **Alimony and separate maintenance payments.** The
639 federal rules, regulations and revenue procedures in determining
640 the deductibility and taxability of alimony payments shall be
641 followed in this state.

642 (f) **Reimbursement for expenses of moving.** There shall
643 be included in gross income (as compensation for services) any
644 amount received or accrued, directly or indirectly, by an
645 individual as a payment for or reimbursement of expenses of moving
646 from one residence to another residence which is attributable to
647 employment or self-employment.



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

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

653 (a) The proceeds of life insurance policies and
654 contracts paid upon the death of the insured. However, the income
655 from the proceeds of such policies or contracts shall be included
656 in the gross income.

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

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

664 (d) Interest upon the obligations of the United States
665 or its possessions, or securities issued under the provisions of
666 the Federal Farm Loan Act of 1916, or bonds issued by the War
667 Finance Corporation, or obligations of the State of Mississippi or
668 political subdivisions thereof.

669 (e) The amounts received through accident or health
670 insurance as compensation for personal injuries or sickness, plus
671 the amount of any damages received for such injuries or such
672 sickness or injuries, or through the War Risk Insurance Act, or



673 any law for the benefit or relief of injured or disabled members
674 of the military or naval forces of the United States.

675 (f) Income received by any religious denomination or by
676 any institution or trust for moral or mental improvements,
677 religious, Bible, tract, charitable, benevolent, fraternal,
678 missionary, hospital, infirmary, educational, scientific,
679 literary, library, patriotic, historical or cemetery purposes or
680 for two (2) or more of such purposes, if such income be used
681 exclusively for carrying out one or more of such purposes.

682 (g) Income received by a domestic corporation which is
683 "taxable in another state" as this term is defined in this
684 article, derived from business activity conducted outside this
685 state. Domestic corporations taxable both within and without the
686 state shall determine Mississippi income on the same basis as
687 provided for foreign corporations under the provisions of this
688 article.

689 (h) In case of insurance companies, there shall be
690 excluded from gross income such portion of actual premiums
691 received from an individual policyholder as is paid back or
692 credited to or treated as an abatement of premiums of such
693 policyholder within the taxable year.

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



698 (j) Amounts paid by the United States to a person as
699 added compensation for hazardous duty pay as a member of the Armed
700 Forces of the United States in a combat zone designated by
701 Executive Order of the President of the United States.

702 (k) Amounts received as retirement allowances,
703 pensions, annuities or optional retirement allowances paid under
704 the federal Social Security Act, the Railroad Retirement Act, the
705 Federal Civil Service Retirement Act, or any other retirement
706 system of the United States government, retirement allowances paid
707 under the Mississippi Public Employees' Retirement System,
708 Mississippi Highway Safety Patrol Retirement System or any other
709 retirement system of the State of Mississippi or any political
710 subdivision thereof. The exemption allowed under this paragraph
711 (k) shall be available to the spouse or other beneficiary at the
712 death of the primary retiree.

713 (l) Amounts received as retirement allowances,
714 pensions, annuities or optional retirement allowances paid by any
715 public or governmental retirement system not designated in
716 paragraph (k) or any private retirement system or plan of which
717 the recipient was a member at any time during the period of his
718 employment. Amounts received as a distribution under a Roth
719 Individual Retirement Account shall be treated in the same manner
720 as provided under the Internal Revenue Code of 1986, as amended.
721 The exemption allowed under this paragraph (l) shall be available



722 to the spouse or other beneficiary at the death of the primary
723 retiree.

724 (m) National Guard or Reserve Forces of the United
725 States compensation not to exceed the aggregate sum of Five
726 Thousand Dollars (\$5,000.00) for any taxable year through the 2005
727 taxable year, and not to exceed the aggregate sum of Fifteen
728 Thousand Dollars (\$15,000.00) for any taxable year thereafter.

729 (n) Compensation received for active service as a
730 member below the grade of commissioned officer and so much of the
731 compensation as does not exceed the maximum enlisted amount
732 received for active service as a commissioned officer in the Armed
733 Forces of the United States for any month during any part of which
734 such members of the Armed Forces (i) served in a combat zone as
735 designated by Executive Order of the President of the United
736 States or a qualified hazardous duty area as defined by federal
737 law, or both; or (ii) was hospitalized as a result of wounds,
738 disease or injury incurred while serving in such combat zone. For
739 the purposes of this paragraph (n), the term "maximum enlisted
740 amount" means and has the same definition as that term has in 26
741 USCS 112.

742 (o) The proceeds received from federal and state
743 forestry incentive programs.

744 (p) The amount representing the difference between the
745 increase of gross income derived from sales for export outside the
746 United States as compared to the preceding tax year wherein gross



747 income from export sales was highest, and the net increase in
748 expenses attributable to such increased exports. In the absence
749 of direct accounting, the ratio of net profits to total sales may
750 be applied to the increase in export sales. This paragraph (p)
751 shall only apply to businesses located in this state engaging in
752 the international export of Mississippi goods and services. Such
753 goods or services shall have at least fifty percent (50%) of value
754 added at a location in Mississippi.

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

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

765 (s) Amounts paid by the Mississippi Soil and Water
766 Conservation Commission from the Mississippi Soil and Water
767 Cost-Share Program for the installation of water quality best
768 management practices.

769 (t) Dividends received by a holding corporation, as
770 defined in Section 27-13-1, from a subsidiary corporation, as
771 defined in Section 27-13-1.



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

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

781 (w) Income resulting from transactions with a related
782 member where the related member subject to tax under this chapter
783 was required to, and did in fact, add back the expense of such
784 transactions as required by Section 27-7-17(2). Under no
785 circumstances may the exclusion from income exceed the deduction
786 add-back of the related member, nor shall the exclusion apply to
787 any income otherwise excluded under this chapter.

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

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

795 (z) Interest, dividends, gains or income of any kind on
796 any account in a qualified tuition program and amounts received as



797 distributions under a qualified tuition program shall be treated
798 in the same manner as provided under the United States Internal
799 Revenue Code, as amended. For the purposes of this paragraph (z),
800 the term "qualified tuition program" means and has the same
801 definition as that term has in 26 USCS 529.

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

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

813 (cc) Amounts received as a "qualified Hurricane Katrina
814 distribution" as defined in the United States Internal Revenue
815 Code, as amended.

816 (dd) Amounts received by an individual which may be
817 excluded from income as foreign earned income for federal income
818 tax purposes.

819 (ee) Amounts received by a qualified individual,
820 directly or indirectly, from an employer or nonprofit housing
821 organization that are qualified housing expenses associated with



822 an employer-assisted housing program. For purposes of this
823 paragraph (ee):

824 (i) "Qualified individual" means any individual
825 whose household income does not exceed one hundred twenty percent
826 (120%) of the area median gross income (as defined by the United
827 States Department of Housing and Urban Development), adjusted for
828 household size, for the area in which the housing is located.

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

833 1. Homeownership education or counseling;
834 2. The development of affordable housing; or
835 3. The development or administration of
836 employer-assisted housing programs.

837 (iii) "Employer-assisted housing program" means a
838 separate written plan of any employer (including, without
839 limitation, tax-exempt organizations and public employers) for the
840 exclusive benefit of the employer's employees to pay qualified
841 housing expenses to assist the employer's employees in securing
842 affordable housing.

843 (iv) "Qualified housing expenses" means:

844 1. With respect to rental assistance, an
845 amount not to exceed Two Thousand Dollars (\$2,000.00) paid for the



846 purpose of assisting employees with security deposits and rental
847 subsidies; and

848 2. With respect to homeownership assistance,
849 an amount not to exceed the lesser of Ten Thousand Dollars
850 (\$10,000.00) or six percent (6%) of the purchase price of the
851 employee's principal residence that is paid for the purpose of
852 assisting employees with down payments, payment of closing costs,
853 reduced interest mortgages, mortgage guarantee programs, mortgage
854 forgiveness programs, equity contribution programs, or
855 contributions to home buyer education and/or homeownership
856 counseling of eligible employees.

857 (ff) For the 2010 taxable year and any taxable year
858 thereafter, amounts converted in accordance with the United States
859 Internal Revenue Code, as amended, from a traditional Individual
860 Retirement Account to a Roth Individual Retirement Account. The
861 exemption allowed under this paragraph (ff) shall be available to
862 the spouse or other beneficiary at the death of the primary
863 retiree.

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

866 (hh) The amount deposited in a catastrophe savings
867 account established under Sections 27-7-1001 through 27-7-1007,
868 interest income earned on the catastrophe savings account, and
869 distributions from the catastrophe savings account; however, any
870 amount withdrawn from a catastrophe savings account for purposes



871 other than paying qualified catastrophe expenses shall be included
872 in gross income, except as otherwise provided by Sections
873 27-7-1001 through 27-7-1007.

874 (ii) Interest, dividends, gains or income of any kind
875 on any account in the Mississippi Achieving a Better Life
876 Experience (ABLE) Trust Fund, as established in Sections 1 through
877 14 of this act, to the extent that such amounts remain on deposit
878 in the ABLE Trust Fund or are withdrawn pursuant to a qualified
879 withdrawal, as defined in Section 6 of this act.

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

881 (a) **Members of the Armed Forces.** Gross income does not
882 include compensation received for active service as a member of
883 the Armed Forces of the United States for any month during any
884 part of which such member is in a missing status, as defined in
885 paragraph (d) of this subsection, during the Vietnam Conflict as a
886 result of such conflict.

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

891 (c) **Period of conflict.** For the purpose of this
892 subsection, the Vietnam Conflict began February 28, 1961, and ends
893 on the date designated by the President by Executive Order as the
894 date of the termination of combatant activities in Vietnam. For
895 the purpose of this subsection, an individual is in a missing



896 status as a result of the Vietnam Conflict if immediately before
897 such status began he was performing service in Vietnam or was
898 performing service in Southeast Asia in direct support of military
899 operations in Vietnam. "Southeast Asia," as used in this
900 paragraph, is defined to include Cambodia, Laos, Thailand and
901 waters adjacent thereto.

902 (d) "Missing status" means the status of an employee or
903 member of the Armed Forces who is in active service and is
904 officially carried or determined to be absent in a status of (i)
905 missing; (ii) missing in action; (iii) interned in a foreign
906 country; (iv) captured, beleaguered or besieged by a hostile
907 force; or (v) detained in a foreign country against his will; but
908 does not include the status of an employee or member of the Armed
909 Forces for a period during which he is officially determined to be
910 absent from his post of duty without authority.

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

914 (f) "Employee" means one who is a citizen or national
915 of the United States or an alien admitted to the United States for
916 permanent residence and is a resident of the State of Mississippi
917 and is employed in or under a federal executive agency or
918 department of the Armed Forces.

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



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

923 (h) If refund or credit of any overpayment of tax for
924 any taxable year resulting from the application of this subsection
925 (5) is prevented by the operation of any law or rule of law, such
926 refund or credit of such overpayment of tax may, nevertheless, be
927 made or allowed if claim therefor is filed with the Department of
928 Revenue within three (3) years after the date of the enactment of
929 this subsection.

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

932 (6) A shareholder of an S corporation, as defined in Section
933 27-8-3(1)(g), shall take into account the income, loss, deduction
934 or credit of the S corporation only to the extent provided in
935 Section 27-8-7(2).

936 **SECTION 16.** Section 27-7-17, Mississippi Code of 1972, is
937 amended as follows:

938 27-7-17. In computing taxable income, there shall be allowed
939 as deductions:

940 (1) **Business deductions.**

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



946 employment, including a reasonable amount expended for meals and
947 lodging while away from home in the pursuit of a trade or
948 business; and rentals or other payments required to be made as a
949 condition of the continued use or possession, for purposes of the
950 trade or business of property to which the taxpayer has not taken
951 or is not taking title or in which he had no equity. Expense
952 incurred in connection with earning and distributing nontaxable
953 income is not an allowable deduction. Limitations on
954 entertainment expenses shall conform to the provisions of the
955 Internal Revenue Code of 1986.

956 (b) **Interest.** All interest paid or accrued during the
957 taxable year on business indebtedness, except interest upon the
958 indebtedness for the purchase of tax-free bonds, or any stocks,
959 the dividends from which are nontaxable under the provisions of
960 this article; provided, however, in the case of securities
961 dealers, interest payments or accruals on loans, the proceeds of
962 which are used to purchase tax-exempt securities, shall be
963 deductible if income from otherwise tax-free securities is
964 reported as income. Investment interest expense shall be limited
965 to investment income. Interest expense incurred for the purchase
966 of treasury stock, to pay dividends, or incurred as a result of an
967 undercapitalized affiliated corporation may not be deducted unless
968 an ordinary and necessary business purpose can be established to
969 the satisfaction of the commissioner. For the purposes of this
970 paragraph, the phrase "interest upon the indebtedness for the



971 purchase of tax-free bonds" applies only to the indebtedness
972 incurred for the purpose of directly purchasing tax-free bonds and
973 does not apply to any other indebtedness incurred in the regular
974 course of the taxpayer's business. Any corporation, association,
975 organization or other entity taxable under Section 27-7-23(c)
976 shall allocate interest expense as provided in Section
977 27-7-23(c) (3) (I).

978 (c) **Taxes.** Taxes paid or accrued within the taxable
979 year, except state and federal income taxes, excise taxes based on
980 or measured by net income, estate and inheritance taxes, gift
981 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
982 use taxes unless incurred as an item of expense in a trade or
983 business or in the production of taxable income. In the case of
984 an individual, taxes permitted as an itemized deduction under the
985 provisions of subsection (3) (a) of this section are to be claimed
986 thereunder.

987 (d) **Business losses.**

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

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

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



996 the conduct of the regular trade or business of the taxpayer;
997 provided, that such losses shall be allowed only when the taxpayer
998 has reported as income, on the accrual basis, the amount of such
999 debt or account.

1000 (f) **Depreciation.** A reasonable allowance for
1001 exhaustion, wear and tear of property used in the trade or
1002 business, or rental property, and depreciation upon buildings
1003 based upon their reasonable value as of March 16, 1912, if
1004 acquired prior thereto, and upon cost if acquired subsequent to
1005 that date.

1006 (g) **Depletion.** In the case of mines, oil and gas
1007 wells, other natural deposits and timber, a reasonable allowance
1008 for depletion and for depreciation of improvements, based upon
1009 cost, including cost of development, not otherwise deducted, or
1010 fair market value as of March 16, 1912, if acquired prior to that
1011 date, such allowance to be made upon regulations prescribed by the
1012 commissioner, with the approval of the Governor.

1013 (h) **Contributions or gifts.** Except as otherwise
1014 provided in paragraph (p) of this subsection or subsection (3) (a)
1015 of this section for individuals, contributions or gifts made by
1016 corporations within the taxable year to corporations,
1017 organizations, associations or institutions, including Community
1018 Chest funds, foundations and trusts created solely and exclusively
1019 for religious, charitable, scientific or educational purposes, or
1020 for the prevention of cruelty to children or animals, no part of



1021 the net earnings of which inure to the benefit of any private
1022 stockholder or individual. This deduction shall be allowed in an
1023 amount not to exceed twenty percent (20%) of the net income. Such
1024 contributions or gifts shall be allowable as deductions only if
1025 verified under rules and regulations prescribed by the
1026 commissioner, with the approval of the Governor. Contributions
1027 made in any form other than cash shall be allowed as a deduction,
1028 subject to the limitations herein provided, in an amount equal to
1029 the actual market value of the contributions at the time the
1030 contribution is actually made and consummated.

1031 (i) **Reserve funds - insurance companies.** In the case
1032 of insurance companies the net additions required by law to be
1033 made within the taxable year to reserve funds when such reserve
1034 funds are maintained for the purpose of liquidating policies at
1035 maturity.

1036 (j) **Annuity income.** The sums, other than dividends,
1037 paid within the taxpayer year on policy or annuity contracts when
1038 such income has been included in gross income.

1039 (k) **Contributions to employee pension plans.**
1040 Contributions made by an employer to a plan or a trust forming
1041 part of a pension plan, stock bonus plan, disability or
1042 death-benefit plan, or profit-sharing plan of such employer for
1043 the exclusive benefit of some or all of his, their, or its
1044 employees, or their beneficiaries, shall be deductible from his,
1045 their, or its income only to the extent that, and for the taxable



1046 year in which, the contribution is deductible for federal income
1047 tax purposes under the Internal Revenue Code of 1986 and any other
1048 provisions of similar purport in the Internal Revenue Laws of the
1049 United States, and the rules, regulations, rulings and
1050 determinations promulgated thereunder, provided that:

1051 (i) The plan or trust be irrevocable.

1052 (ii) The plan or trust constitute a part of a
1053 pension plan, stock bonus plan, disability or death-benefit plan,
1054 or profit-sharing plan for the exclusive benefit of some or all of
1055 the employer's employees and/or officers, or their beneficiaries,
1056 for the purpose of distributing the corpus and income of the plan
1057 or trust to such employees and/or officers, or their
1058 beneficiaries.

1059 (iii) No part of the corpus or income of the plan
1060 or trust can be used for purposes other than for the exclusive
1061 benefit of employees and/or officers, or their beneficiaries.

1062 Contributions to all plans or to all trusts of real or
1063 personal property (or real and personal property combined) or to
1064 insured plans created under a retirement plan for which provision
1065 has been made under the laws of the United States of America,
1066 making such contributions deductible from income for federal
1067 income tax purposes, shall be deductible only to the same extent
1068 under the Income Tax Laws of the State of Mississippi.

1069 (1) **Net operating loss carrybacks and carryovers.** A
1070 net operating loss for any taxable year ending after December 31,



1071 1993, and taxable years thereafter, shall be a net operating loss
1072 carryback to each of the three (3) taxable years preceding the
1073 taxable year of the loss. If the net operating loss for any
1074 taxable year is not exhausted by carrybacks to the three (3)
1075 taxable years preceding the taxable year of the loss, then there
1076 shall be a net operating loss carryover to each of the fifteen
1077 (15) taxable years following the taxable year of the loss
1078 beginning with any taxable year after December 31, 1991.

1079 For any taxable year ending after December 31, 1997, the
1080 period for net operating loss carrybacks and net operating loss
1081 carryovers shall be the same as those established by the Internal
1082 Revenue Code and the rules, regulations, rulings and
1083 determinations promulgated thereunder as in effect at the taxable
1084 year end or on December 31, 2000, whichever is earlier.

1085 A net operating loss for any taxable year ending after
1086 December 31, 2001, and taxable years thereafter, shall be a net
1087 operating loss carryback to each of the two (2) taxable years
1088 preceding the taxable year of the loss. If the net operating loss
1089 for any taxable year is not exhausted by carrybacks to the two (2)
1090 taxable years preceding the taxable year of the loss, then there
1091 shall be a net operating loss carryover to each of the twenty (20)
1092 taxable years following the taxable year of the loss beginning
1093 with any taxable year after the taxable year of the loss.

1094 The term "net operating loss," for the purposes of this
1095 paragraph, shall be the excess of the deductions allowed over the



1096 gross income; provided, however, the following deductions shall
1097 not be allowed in computing same:

1098 (i) No net operating loss deduction shall be
1099 allowed.

1100 (ii) No personal exemption deduction shall be
1101 allowed.

1102 (iii) Allowable deductions which are not
1103 attributable to taxpayer's trade or business shall be allowed only
1104 to the extent of the amount of gross income not derived from such
1105 trade or business.

1106 Any taxpayer entitled to a carryback period as provided by
1107 this paragraph may elect to relinquish the entire carryback period
1108 with respect to a net operating loss for any taxable year ending
1109 after December 31, 1991. The election shall be made in the manner
1110 prescribed by the Department of Revenue and shall be made by the
1111 due date, including extensions of time, for filing the taxpayer's
1112 return for the taxable year of the net operating loss for which
1113 the election is to be in effect. The election, once made for any
1114 taxable year, shall be irrevocable for that taxable year.

1115 (m) **Amortization of pollution or environmental control**
1116 **facilities.** Allowance of deduction. Every taxpayer, at his
1117 election, shall be entitled to a deduction for pollution or
1118 environmental control facilities to the same extent as that
1119 allowed under the Internal Revenue Code and the rules,
1120 regulations, rulings and determinations promulgated thereunder.



1121 (n) **Dividend distributions - real estate investment**
1122 **trusts.** "Real estate investment trust" (hereinafter referred to
1123 as REIT) shall have the meaning ascribed to such term in Section
1124 856 of the federal Internal Revenue Code of 1986, as amended. A
1125 REIT is allowed a dividend distributed deduction if the dividend
1126 distributions meet the requirements of Section 857 or are
1127 otherwise deductible under Section 858 or 860, federal Internal
1128 Revenue Code of 1986, as amended. In addition:

1129 (i) A dividend distributed deduction shall only be
1130 allowed for dividends paid by a publicly traded REIT. A qualified
1131 REIT subsidiary shall be allowed a dividend distributed deduction
1132 if its owner is a publicly traded REIT.

1133 (ii) Income generated from real estate contributed
1134 or sold to a REIT by a shareholder or related party shall not give
1135 rise to a dividend distributed deduction, unless the shareholder
1136 or related party would have received the dividend distributed
1137 deduction under this chapter.

1138 (iii) A holding corporation receiving a dividend
1139 from a REIT shall not be allowed the deduction in Section
1140 27-7-15(4) (t).

1141 (iv) Any REIT not allowed the dividend distributed
1142 deduction in the federal Internal Revenue Code of 1986, as
1143 amended, shall not be allowed a dividend distributed deduction
1144 under this chapter.



1145 The commissioner is authorized to promulgate rules and
1146 regulations consistent with the provisions in Section 269 of the
1147 federal Internal Revenue Code of 1986, as amended, so as to
1148 prevent the evasion or avoidance of state income tax.

1149 (o) **Contributions to college savings trust fund**
1150 **accounts.** Contributions or payments to a Mississippi Affordable
1151 College Savings Program account are deductible as provided under
1152 Section 37-155-113. Payments made under a prepaid tuition
1153 contract entered into under the Mississippi Prepaid Affordable
1154 College Tuition Program are deductible as provided under Section
1155 37-155-17.

1156 (p) **Contributions of human pharmaceutical products.** To
1157 the extent that a "major supplier" as defined in Section
1158 27-13-13(2) (d) contributes human pharmaceutical products in excess
1159 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as
1160 determined under Section 170 of the Internal Revenue Code, the
1161 charitable contribution limitation associated with those donations
1162 shall follow the federal limitation but cannot result in the
1163 Mississippi net income being reduced below zero.

1164 (q) **Contributions to ABLE trust fund accounts.**
1165 Contributions or payments to a Mississippi Achieving a Better Life
1166 Experience (ABLE) Program account are deductible as provided under
1167 Section 7 of this act.

1168 (2) **Restrictions on the deductibility of certain intangible**
1169 **expenses and interest expenses with a related member.**



1170 (a) As used in this subsection (2):

1171 (i) "Intangible expenses and costs" include:

1172 1. Expenses, losses and costs for, related

1173 to, or in connection directly or indirectly with the direct or

1174 indirect acquisition, use, maintenance or management, ownership,

1175 sale, exchange or any other disposition of intangible property to

1176 the extent such amounts are allowed as deductions or costs in

1177 determining taxable income under this chapter;

1178 2. Expenses or losses related to or incurred

1179 in connection directly or indirectly with factoring transactions

1180 or discounting transactions;

1181 3. Royalty, patent, technical and copyright

1182 fees;

1183 4. Licensing fees; and

1184 5. Other similar expenses and costs.

1185 (ii) "Intangible property" means patents, patent

1186 applications, trade names, trademarks, service marks, copyrights

1187 and similar types of intangible assets.

1188 (iii) "Interest expenses and cost" means amounts

1189 directly or indirectly allowed as deductions for purposes of

1190 determining taxable income under this chapter to the extent such

1191 interest expenses and costs are directly or indirectly for,

1192 related to, or in connection with the direct or indirect

1193 acquisition, maintenance, management, ownership, sale, exchange or

1194 disposition of intangible property.



1195 (iv) "Related member" means an entity or person
1196 that, with respect to the taxpayer during all or any portion of
1197 the taxable year, is a related entity, a component member as
1198 defined in the Internal Revenue Code, or is an entity or a person
1199 to or from whom there is attribution of stock ownership in
1200 accordance with Section 1563(e) of the Internal Revenue Code.

1201 (v) "Related entity" means:

1202 1. A stockholder who is an individual or a
1203 member of the stockholder's family, as defined in regulations
1204 prescribed by the commissioner, if the stockholder and the members
1205 of the stockholder's family own, directly, indirectly,
1206 beneficially or constructively, in the aggregate, at least fifty
1207 percent (50%) of the value of the taxpayer's outstanding stock;

1208 2. A stockholder, or a stockholder's
1209 partnership, limited liability company, estate, trust or
1210 corporation, if the stockholder and the stockholder's
1211 partnerships, limited liability companies, estates, trusts and
1212 corporations own, directly, indirectly, beneficially or
1213 constructively, in the aggregate, at least fifty percent (50%) of
1214 the value of the taxpayer's outstanding stock;

1215 3. A corporation, or a party related to the
1216 corporation in a manner that would require an attribution of stock
1217 from the corporation to the party or from the party to the
1218 corporation, if the taxpayer owns, directly, indirectly,
1219 beneficially or constructively, at least fifty percent (50%) of



1220 the value of the corporation's outstanding stock under regulation
1221 prescribed by the commissioner;

1222 4. Any entity or person which would be a
1223 related member under this section if the taxpayer were considered
1224 a corporation for purposes of this section.

1225 (b) In computing net income, a taxpayer shall add back
1226 otherwise deductible interest expenses and costs and intangible
1227 expenses and costs directly or indirectly paid, accrued to or
1228 incurred, in connection directly or indirectly with one or more
1229 direct or indirect transactions with one or more related members.

1230 (c) The adjustments required by this subsection shall
1231 not apply to such portion of interest expenses and costs and
1232 intangible expenses and costs that the taxpayer can establish
1233 meets one (1) of the following:

1234 (i) The related member directly or indirectly
1235 paid, accrued or incurred such portion to a person during the same
1236 income year who is not a related member; or

1237 (ii) The transaction giving rise to the interest
1238 expenses and costs or intangible expenses and costs between the
1239 taxpayer and related member was done primarily for a valid
1240 business purpose other than the avoidance of taxes, and the
1241 related member is not primarily engaged in the acquisition, use,
1242 maintenance or management, ownership, sale, exchange or any other
1243 disposition of intangible property.



1244 (d) Nothing in this subsection shall require a taxpayer
1245 to add to its net income more than once any amount of interest
1246 expenses and costs or intangible expenses and costs that the
1247 taxpayer pays, accrues or incurs to a related member.

1248 (e) The commissioner may prescribe such regulations as
1249 necessary or appropriate to carry out the purposes of this
1250 subsection, including, but not limited to, clarifying definitions
1251 of terms, rules of stock attribution, factoring and discount
1252 transactions.

1253 (3) **Individual nonbusiness deductions.**

1254 (a) The amount allowable for individual nonbusiness
1255 itemized deductions for federal income tax purposes where the
1256 individual is eligible to elect, for the taxable year, to itemize
1257 deductions on his federal return except the following:

1258 (i) The deduction for state income taxes paid or
1259 other taxes allowed for federal purposes in lieu of state income
1260 taxes paid;

1261 (ii) The deduction for gaming losses from gaming
1262 establishments;

1263 (iii) The deduction for taxes collected by
1264 licensed gaming establishments pursuant to Section 27-7-901;

1265 (iv) The deduction for taxes collected by gaming
1266 establishments pursuant to Section 27-7-903.

1267 (b) In lieu of the individual nonbusiness itemized
1268 deductions authorized in paragraph (a), for all purposes other



1269 than ordinary and necessary expenses paid or incurred during the
1270 taxable year in carrying on any trade or business, an optional
1271 standard deduction of:

1272 (i) Three Thousand Four Hundred Dollars
1273 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1274 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1275 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
1276 in the case of married individuals filing a joint or combined
1277 return;

1278 (ii) One Thousand Seven Hundred Dollars
1279 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1280 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1281 Three Hundred Dollars (\$2,300.00) for each calendar year
1282 thereafter in the case of married individuals filing separate
1283 returns;

1284 (iii) Three Thousand Four Hundred Dollars
1285 (\$3,400.00) in the case of a head of family; or

1286 (iv) Two Thousand Three Hundred Dollars
1287 (\$2,300.00) in the case of an individual who is not married.

1288 In the case of a husband and wife living together, having
1289 separate incomes, and filing combined returns, the standard
1290 deduction authorized may be divided in any manner they choose. In
1291 the case of separate returns by a husband and wife, the standard
1292 deduction shall not be allowed to either if the taxable income of



1293 one of the spouses is determined without regard to the standard
1294 deduction.

1295 (c) A nonresident individual shall be allowed the same
1296 individual nonbusiness deductions as are authorized for resident
1297 individuals in paragraph (a) or (b) of this subsection; however,
1298 the nonresident individual is entitled only to that proportion of
1299 the individual nonbusiness deductions as his net income from
1300 sources within the State of Mississippi bears to his total or
1301 entire net income from all sources.

1302 (4) Nothing in this section shall permit the same item to be
1303 deducted more than once, either in fact or in effect.

1304 **SECTION 17.** Section 27-7-18, Mississippi Code of 1972, is
1305 amended as follows:

1306 27-7-18. (1) Alimony payments. In the case of a person
1307 described in Section 27-7-15(2) (e), there shall be allowed as a
1308 deduction from gross income amounts paid as periodic payments to
1309 the extent of such amounts as are includible in the gross income
1310 of the spouse as provided in Section 27-7-15(2) (e), payment of
1311 which is made within the person's taxable year.

1312 (2) Unreimbursed moving expenses incurred after December 31,
1313 1994, are deductible as an adjustment to gross income in
1314 accordance with provisions of the United States Internal Revenue
1315 Code, and rules, regulations and revenue procedures thereunder
1316 relating to moving expenses, not in direct conflict with the
1317 provisions of the Mississippi Income Tax Law.



1318 (3) Amounts paid after December 31, 1998, by a self-employed
1319 individual for insurance which constitute medical care for the
1320 taxpayer, his spouse and dependents, are deductible as an
1321 adjustment to gross income in accordance with provisions of the
1322 United States Internal Revenue Code, and rules, regulations and
1323 revenue procedures thereunder relating to such payments, not in
1324 direct conflict with the provisions of the Mississippi Income Tax
1325 Law.

1326 (4) Contributions or payments to a Mississippi Affordable
1327 College Savings (MACS) Program account are deductible from gross
1328 income as provided in Section 37-155-113. Payments made under a
1329 prepaid tuition contract entered into under the Mississippi
1330 Prepaid Affordable College Tuition Program are deductible as
1331 provided in Section 37-155-17.

1332 (5) (a) Unreimbursed travel expenses, lodging expenses and
1333 lost wages an individual incurred as a result of, and related to,
1334 the donation, while living, of one or more of his or her organs
1335 for human organ transplantation, are deductible from gross income.
1336 The deduction from gross income authorized by this subsection may
1337 be claimed for only once and may not exceed Ten Thousand Dollars
1338 (\$10,000.00).

1339 (b) As used in this subsection, "organ" means all or
1340 part of a liver, pancreas, kidney, intestine, lung or bone marrow.

1341 (6) In the case of a self-employed individual, there shall
1342 be allowed as a deduction from gross income an amount equal to:



1343 (a) Seventeen percent (17%) of the federal
1344 self-employment taxes imposed on such individual for taxable years
1345 ending in calendar year 2017;

1346 (b) Thirty-four percent (34%) of the federal
1347 self-employment taxes imposed on such individual for taxable years
1348 ending in calendar year 2018; and

1349 (c) Fifty percent (50%) of the federal self-employment
1350 taxes imposed on such individual for taxable years ending in
1351 calendar year 2019 and thereafter.

1352 (7) Contributions or payments to a Mississippi Achieving a
1353 Better Life Experience (ABLE) Program account are deductible from
1354 gross income as provided in Section 7 of this act.

1355 **SECTION 18.** This act shall take effect and be in force from
1356 and after its passage.

