

By: Representative Paden

To: Appropriations

HOUSE BILL NO. 204

1 AN ACT TO ESTABLISH THE MISSISSIPPI SECURE CHOICE SAVINGS
2 PROGRAM, WHICH IS A RETIREMENT SAVINGS PROGRAM SPONSORED BY THE
3 STATE OF MISSISSIPPI FOR CERTAIN EMPLOYERS WHO DO NOT ALREADY
4 OFFER A RETIREMENT PLAN, IN THE FORM OF AN AUTOMATIC ENROLLMENT
5 PAYROLL DEDUCTION INDIVIDUAL RETIREMENT ACCOUNT (IRA), FOR THE
6 PURPOSE OF PROMOTING GREATER RETIREMENT SAVINGS FOR PRIVATE-SECTOR
7 EMPLOYEES IN A CONVENIENT, LOW-COST AND PORTABLE MANNER; TO CREATE
8 THE MISSISSIPPI SECURE CHOICE SAVINGS PROGRAM FUND, WHICH WILL
9 CONSIST OF MONIES RECEIVED FROM ENROLLEES AND PARTICIPATING
10 EMPLOYERS THROUGH AUTOMATIC PAYROLL DEDUCTIONS; TO CREATE THE
11 MISSISSIPPI SECURE CHOICE ADMINISTRATIVE FUND TO PAY FOR THE
12 ADMINISTRATIVE EXPENSES OF THE BOARD; TO CREATE THE MISSISSIPPI
13 SECURE CHOICE SAVINGS BOARD, PROVIDE FOR THE MEMBERSHIP OF THE
14 BOARD AND PRESCRIBE THE DUTIES OF THE BOARD; TO REQUIRE THE BOARD
15 TO ENGAGE INVESTMENT MANAGERS TO INVEST THE PROGRAM FUND; TO
16 REQUIRE THE BOARD TO ESTABLISH INVESTMENT OPTIONS FOR ENROLLEES;
17 TO REQUIRE THE BOARD TO DESIGN AND PROVIDE TO ALL EMPLOYERS AN
18 EMPLOYER INFORMATION PACKET AND AN EMPLOYEE INFORMATION PACKET; TO
19 PROVIDE THAT THE PROGRAM WILL BE IMPLEMENTED AND ENROLLMENT OF
20 EMPLOYEES WILL BEGIN IN 2025, AND REQUIRE THAT ALL EMPLOYEES BE
21 ENROLLED AFTER DECEMBER 31, 2027; TO PROVIDE THAT THE STATE HAS NO
22 DUTY OR LIABILITY TO ANY PARTY FOR THE PAYMENT OF ANY RETIREMENT
23 SAVINGS BENEFITS ACCRUED BY ANY INDIVIDUAL UNDER THE PROGRAM; TO
24 REQUIRE ANNUAL REPORTS BY THE BOARD AND AUDITS OF THE PROGRAM; TO
25 PROVIDE FOR PENALTIES ON EMPLOYERS WHO FAIL TO COMPLY WITH THE
26 REQUIREMENTS OF THIS ACT; TO PROVIDE THAT THE DEPARTMENT OF
27 REVENUE WILL ENFORCE THE COLLECTIONS OF THE PENALTIES; TO
28 AUTHORIZE THE BOARD TO ADOPT ANY RULES AS NECESSARY TO IMPLEMENT
29 THIS ACT; AND FOR RELATED PURPOSES.

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



31 **SECTION 1. Short title.** This act may be cited as the
32 Mississippi Secure Choice Savings Program Act.

33 **SECTION 2. Definitions.** (1) Unless the context requires a
34 different meaning or as expressly provided in this section, all
35 terms used in this act shall have the same meaning as when used in
36 a comparable context in the Internal Revenue Code.

37 (2) As used in this act, the following terms shall have the
38 meaning as defined in this section:

39 (a) "Board" means the Mississippi Secure Choice Savings
40 Board established under this act.

41 (b) "Commissioner" means the Commissioner of Revenue.

42 (c) "Department" means the Department of Revenue.

43 (d) "Employee" means any individual who is eighteen
44 (18) years of age or older, who is employed by an employer, and
45 who has wages that are allocable to Mississippi during a calendar
46 year under the provisions of the Mississippi income tax laws.

47 (e) "Employer" means a person or entity engaged in a
48 business, industry, profession, trade, or other enterprise in
49 Mississippi, whether for profit or not for profit, that (i) has at
50 no time during the previous calendar year employed fewer than
51 twenty-five (25) employees in the state, (ii) has been in business
52 at least two (2) years, and (iii) has not offered a qualified
53 retirement plan, including, but not limited to, a plan qualified
54 under Section 401(a), Section 401(k), Section 403(a), Section



55 403(b), Section 408(k), Section 408(p), or Section 457(b) of the
56 Internal Revenue Code in the preceding two (2) years.

57 (f) "Enrollee" means any employee who is enrolled in
58 the program.

59 (g) "Fund" means the Mississippi Secure Choice Savings
60 Program Fund.

61 (h) "Internal Revenue Code" means Internal Revenue
62 Code, or any successor law, in effect for the calendar year.

63 (i) "IRA" means a Roth IRA (individual retirement
64 account) under Section 408A of the Internal Revenue Code.

65 (j) "Participating employer" means an employer or small
66 employer that provides a payroll deposit retirement savings
67 arrangement as provided for by this act for its employees who are
68 enrollees in the program.

69 (k) "Payroll deposit retirement savings arrangement"
70 means an arrangement by which a participating employer allows
71 enrollees to remit payroll deduction contributions to the program.

72 (l) "Program" means the Mississippi Secure Choice
73 Savings Program.

74 (m) "Small employer" means a person or entity engaged
75 in a business, industry, profession, trade, or other enterprise in
76 Mississippi, whether for profit or not for profit, that (i)
77 employed less than twenty-five (25) employees at any one time in
78 the state throughout the previous calendar year, or (ii) has been
79 in business less than two (2) years, or both subparagraphs (i) and



80 (ii), but that notifies the board that it is interested in being a
81 participating employer.

82 (n) "Wages" means any compensation within the meaning
83 of Section 219(f)(1) of the Internal Revenue Code that is received
84 by an enrollee from a participating employer during the calendar
85 year.

86 **SECTION 3. Establishment of Mississippi Secure Choice**

87 **Savings Program.** There is established a retirement savings
88 program in the form of an automatic enrollment payroll deduction
89 IRA, known as the Mississippi Secure Choice Savings Program, which
90 shall be administered by the board created in Section 6 of this
91 act for the purpose of promoting greater retirement savings for
92 private-sector employees in a convenient, low-cost, and portable
93 manner.

94 **SECTION 4. Mississippi Secure Choice Savings Program Fund.**

95 (1) There is established the Mississippi Secure Choice Savings
96 Program Fund as a trust outside of the State Treasury, with the
97 board created in Section 6 of this act as its trustee. The fund
98 shall include the IRAs of enrollees, which shall be accounted for
99 as individual accounts. Monies in the fund shall consist of
100 monies received from enrollees and participating employers through
101 automatic payroll deductions and contributions to savings made
102 under this act. The fund shall be operated in a manner determined
103 by the board, provided that the fund is operated so that the



104 accounts of enrollees established under the program meet the
105 requirements for IRAs under the Internal Revenue Code.

106 (2) The amounts deposited in the fund shall not constitute
107 property of the state and the fund shall not be construed to be an
108 agency, department or institution of the state. Amounts on
109 deposit in the fund shall not be commingled with state funds and
110 the state shall have no claim to or against, or interest in, those
111 funds.

112 (3) The Mississippi Secure Choice Savings Program Fund is an
113 instrumentality of the state, and as such, is exempt from the
114 applicable provisions of the Mississippi Securities Act of 2010.

115 **SECTION 5. Mississippi Secure Choice Administrative Fund.**

116 (1) The Mississippi Secure Choice Administrative Fund
117 ("administrative fund") is created as a special fund in the State
118 Treasury. The monies in the administrative fund shall be expended
119 by the board upon appropriation by the Legislature.

120 (2) The board shall use monies in the administrative fund to
121 pay for administrative expenses that it incurs in the performance
122 of its duties under this act, and to cover start-up administrative
123 expenses that it incurs in the performance of its duties under
124 this act. The administrative fund may receive any grants or other
125 monies designated for administrative purposes from the state, or
126 any unit of federal or local government, or any other person,
127 firm, partnership, or corporation.



128 (3) All income from the investment of funds in the
129 administrative fund shall be credited to the fund, and any funds
130 remaining in the administrative fund at the end of a fiscal year
131 shall not lapse into the State General Fund. The State Treasurer
132 shall be the administering agency for the administrative fund on
133 behalf of the board.

134 **SECTION 6. Composition of the board.** (1) There is created
135 the Mississippi Secure Choice Savings Board. The board shall
136 consist of the following five (5) members:

137 (a) The State Treasurer, or his or her designee, who
138 shall serve as chair;

139 (b) The State Fiscal Officer, or his or her designee;

140 (c) A representative of the public with expertise in
141 retirement savings plan administration or investment, or both,
142 appointed by the Governor;

143 (d) A representative of participating employers,
144 appointed by the Governor; and

145 (e) A representative of enrollees, appointed by the
146 Governor.

147 (2) Members of the board shall serve without compensation
148 but may be reimbursed for necessary travel expenses incurred in
149 connection with their board duties from funds appropriated for
150 that purpose.

151 (3) The initial appointments for the Governor's appointees
152 shall be as follows: the representative of the public for a term



153 ending on June 30, 2026; the representative of participating
154 employers for a term ending on June 30, 2025; and the
155 representative of enrollees for a term ending on June 30, 2024.
156 After the expiration of the initial terms, all of the Governor's
157 appointees shall be appointed for terms of four (4) years from the
158 expiration date of the previous term. All appointments by the
159 Governor shall be made with the advice and consent of the Senate.

160 (4) A vacancy in the term of an appointed board member shall
161 be filled for the balance of the unexpired term in the same manner
162 as the original appointment.

163 (5) Each board member, before assuming office, shall take an
164 oath that he or she will diligently and honestly administer the
165 affairs of the board and that he or she will not knowingly violate
166 or willingly permit to be violated any of the provisions of law
167 applicable to the program.

168 **SECTION 7. Fiduciary duty.** The board, the individual
169 members of the board, the trustee appointed under paragraph (b) of
170 Section 8 of this act, any other agents appointed or engaged by
171 the board, and all persons serving as program staff shall
172 discharge their duties with respect to the program solely in the
173 interest of the program's enrollees and beneficiaries as follows:

174 (a) For the exclusive purposes of providing benefits to
175 enrollees and beneficiaries and defraying reasonable expenses of
176 administering the program;



177 (b) By investing with the care, skill, prudence, and
178 diligence under the prevailing circumstances that a prudent person
179 acting in a like capacity and familiar with those matters would
180 use in the conduct of an enterprise of a like character and with
181 like aims; and

182 (c) By using any contributions paid by employees and
183 employers into the trust exclusively for the purpose of paying
184 benefits to the enrollees of the program, for the cost of
185 administration of the program, and for investments made for the
186 benefit of the program.

187 **SECTION 8. Duties of the Board.** In addition to the other
188 duties and responsibilities stated in this act, the board shall:

189 (a) Cause the program to be designed, established and
190 operated in a manner that:

191 (i) Accords with best practices for retirement
192 savings vehicles;

193 (ii) Maximizes participation, savings, and sound
194 investment practices;

195 (iii) Maximizes simplicity, including ease of
196 administration for participating employers and enrollees;

197 (iv) Provides an efficient product to enrollees by
198 pooling investment funds;

199 (v) Ensures the portability of benefits; and



200 (vi) Provides for the deaccumulation of enrollee
201 assets in a manner that maximizes financial security in
202 retirement.

203 (b) Appoint a trustee to the IRA Fund in compliance
204 with Section 408 of the Internal Revenue Code.

205 (c) Explore and establish investment options, subject
206 to Section 11 of this act, that offer employees returns on
207 contributions and the conversion of individual retirement savings
208 account balances to secure retirement income without incurring
209 debt or liabilities to the state.

210 (d) Establish the process by which interest, investment
211 earnings, and investment losses are allocated to individual
212 program accounts on a pro rata basis and are computed at the
213 interest rate on the balance of an individual's account.

214 (e) Make and enter into contracts necessary for the
215 administration of the program and fund, including, but not limited
216 to, retaining and contracting with investment managers, private
217 financial institutions, other financial and service providers,
218 consultants, actuaries, counsel, auditors, third-party
219 administrators, and other professionals as necessary.

220 (f) Conduct a review of the performance of any
221 investment vendors every four (4) years, including, but not
222 limited to, a review of returns, fees, and customer service. A
223 copy of reviews conducted under this paragraph (f) shall be posted
224 to the board's Internet website.



225 (g) Determine the number and duties of staff members
226 needed to administer the program and assemble such a staff,
227 including, as needed, employing staff, appointing a program
228 administrator, and entering into contracts with the State
229 Treasurer to make employees of the State Treasurer's office
230 available to administer the program.

231 (h) Cause monies in the fund to be held and invested as
232 pooled investments described in Section 11 of this act, with a
233 view to achieving cost savings through efficiencies and economies
234 of scale.

235 (i) Evaluate and establish the process by which an
236 enrollee is able to contribute a portion of his or her wages to
237 the program for automatic deposit of those contributions and the
238 process by which the participating employer provides a payroll
239 deposit retirement savings arrangement to forward those
240 contributions and related information to the program, including,
241 but not limited to, contracting with financial service companies
242 and third-party administrators with the capability to receive and
243 process employee information and contributions for payroll deposit
244 retirement savings arrangements or similar arrangements.

245 (j) Design and establish the process for enrollment
246 under Section 14 of this act, including the process by which an
247 employee can opt not to participate in the program, select a
248 contribution level, select an investment option, and terminate
249 participation in the program.



250 (k) Evaluate and establish the process by which an
251 individual may voluntarily enroll in and make contributions to the
252 program.

253 (l) Accept any grants, appropriations, or other monies
254 from the state, any unit of federal, state, or local government,
255 or any other person, firm, partnership, or corporation solely for
256 deposit into the fund, whether for investment or administrative
257 purposes.

258 (m) Evaluate the need for, and procure as needed,
259 insurance against any and all loss in connection with the
260 property, assets, or activities of the program, and indemnify as
261 needed each member of the board from personal loss or liability
262 resulting from a member's action or inaction as a member of the
263 board.

264 (n) Make provisions for the payment of administrative
265 costs and expenses for the creation, management, and operation of
266 the program, including the costs associated with subsection (2) of
267 Section 6 of this act, paragraphs (e), (g), (i), and (m) of this
268 section, subsection (2) of Section 11 of this act, subsection (1)
269 of Section 18 of this act, and subsection (14) of Section 19 of
270 this act. Upon appropriation by the Legislature for that purpose,
271 the state may pay administrative costs associated with the
272 creation and management of the program until sufficient assets are
273 available in the fund for that purpose. Thereafter, all
274 administrative costs of the fund, including repayment of any



275 start-up funds provided by the state, shall be paid only out of
276 monies on deposit in the fund. However, private funds or federal
277 funding received under paragraph (l) of this section in order to
278 implement the program until the fund is self-sustaining shall not
279 be repaid unless those funds were offered contingent upon the
280 promise of such repayment. The board shall keep total annual
281 expenses as low as possible, but in no event shall they exceed
282 seventy-five one-hundredths percent (0.75%) of the total trust
283 balance.

284 (o) Allocate administrative fees to individual
285 retirement accounts in the program on a pro rata basis.

286 (p) Set minimum and maximum contribution levels in
287 accordance with limits established for IRAs by the Internal
288 Revenue Code.

289 (q) Select a default contribution rate for program
290 participants within the range of three percent (3%) to six percent
291 (6%) of an enrollee's wages.

292 (r) Facilitate education and outreach to employers and
293 employees.

294 (s) Facilitate compliance by the program with all
295 applicable requirements for the program under the Internal Revenue
296 Code, including tax qualification requirements or any other
297 applicable law and accounting requirements.

298 (t) Carry out the duties and obligations of the program
299 in an effective, efficient, and low-cost manner.



300 (u) Exercise any and all other powers reasonably
301 necessary for the effectuation of the purposes, objectives, and
302 provisions of this act pertaining to the program.

303 (v) Deposit into the Mississippi Secure Choice
304 Administrative Fund all grants, gifts, donations, fees, and
305 earnings from investments from the Mississippi Secure Choice
306 Savings Program Fund that are used to recover administrative
307 costs. All expenses of the board shall be paid from the
308 Mississippi Secure Choice Administrative Fund.

309 **SECTION 9. Risk management.** The board shall prepare and
310 adopt a written statement of investment policy that includes a
311 risk management and oversight program. This investment policy
312 shall prohibit the board, program and fund from borrowing for
313 investment purposes. The risk management and oversight program
314 shall be designed to ensure that an effective risk management
315 system is in place to monitor the risk levels of the program and
316 fund portfolio, to ensure that the risks taken are prudent and
317 properly managed, to provide an integrated process for overall
318 risk management, and to assess investment returns as well as risk
319 to determine if the risks taken are adequately compensated
320 compared to applicable performance benchmarks and standards. The
321 board shall adopt the statement of investment policy and any
322 changes in the investment policy at a public meeting of the board.
323 The investment policy and any changes to the investment policy



324 shall be published on the board's or State Treasurer's website at
325 least thirty (30) days before implementation of the policy.

326 **SECTION 10. Investment firms.** (1) The board shall engage,
327 after an open bid process, an investment manager or managers to
328 invest the fund and any other assets of the program. Monies in
329 the fund may be invested or reinvested by the State Treasurer's
330 Office or may be invested in whole or in part under contract with
331 private investment managers, or both, as selected by the board.
332 In selecting the investment manager or managers, the board shall
333 take into consideration and give weight to the investment
334 manager's fees and charges in order to reduce the program's
335 administrative expenses.

336 (2) The investment manager or managers shall comply with any
337 and all applicable federal and state laws, rules, and regulations,
338 as well as any and all rules, policies, and guidelines promulgated
339 by the board with respect to the program and the investment of the
340 fund, including, but not limited to, the investment policy.

341 (3) The investment manager or managers shall provide such
342 reports as the board deems necessary for the board to oversee each
343 investment manager's performance and the performance of the fund.

344 **SECTION 11. Investment options.** (1) The board shall
345 establish as an investment option a life-cycle fund with a target
346 date based upon the age of the enrollee. This shall be the
347 default investment option for enrollees who fail to elect an
348 investment option unless and until the board designates by rule a



349 new investment option as the default as described in subsection
350 (3) of this section.

351 (2) The board also may establish any or all of the following
352 additional investment options:

353 (a) A conservative principal protection fund;

354 (b) A growth fund;

355 (c) A secure return fund whose primary objective is the
356 preservation of the safety of principal and the provision of a
357 stable and low-risk rate of return; if the board elects to
358 establish a secure return fund, the board may procure any
359 insurance, annuity, or other product to insure the value of
360 individuals' accounts and guarantee a rate of return; the cost of
361 the funding mechanism shall be paid out of the fund; under no
362 circumstances shall the board, program, fund, the state, or any
363 participating employer assume any liability for investment or
364 actuarial risk; the board shall determine whether to establish
365 such investment options based upon an analysis of their cost, risk
366 profile, benefit level, feasibility, and ease of implementation;

367 (d) An annuity fund.

368 (3) If the board elects to establish a secure return fund,
369 the board shall then determine whether that option will replace
370 the target date or life-cycle fund as the default investment
371 option for enrollees who do not elect an investment option. In
372 making that determination, the board shall consider the cost, risk
373 profile, benefit level, and ease of enrollment in the secure



374 return fund. The board may at any time thereafter revisit this
375 question and, based upon an analysis of these criteria, establish
376 either the secure return fund or the life-cycle fund as the
377 default for enrollees who do not elect an investment option.

378 **SECTION 12. Benefits.** Interest, investment earnings, and
379 investment losses shall be allocated to individual program
380 accounts as established by the board under paragraph (d) of
381 Section 8 of this act. An individual's retirement savings benefit
382 under the program shall be an amount equal to the balance in the
383 individual's program account on the date the retirement savings
384 benefit becomes payable. The state shall have no liability for
385 the payment of any benefit to any participant in the program.

386 **SECTION 13. Employer and employee information packets and**
387 **disclosure forms.** (1) Before the opening of the program for
388 enrollment, the board shall design and disseminate to all
389 employers an employer information packet and an employee
390 information packet, which shall include background information on
391 the program, appropriate disclosures for employees, and
392 information regarding the vendor Internet website described in
393 subsection (10) of Section 14 of this act.

394 (2) The board shall provide for the contents of both the
395 employee information packet and the employer information packet.

396 (3) The employee information packet shall include a
397 disclosure form, which shall explain, but not be limited to, all
398 of the following:



399 (a) The benefits and risks associated with making
400 contributions to the program;

401 (b) The mechanics of how to make contributions to the
402 program;

403 (c) How to opt out of the program;

404 (d) How to participate in the program with a level of
405 employee contributions other than the default contribution rate;

406 (e) The process for withdrawal of retirement savings;

407 (f) How to obtain additional information about the
408 program;

409 (g) That employees seeking financial advice should
410 contact financial advisors, that participating employers are not
411 in a position to provide financial advice, and that participating
412 employers are not liable for decisions employees make under this
413 act;

414 (h) That the program is not an employer-sponsored
415 retirement plan; and

416 (i) That the program fund is not guaranteed by the
417 state.

418 (4) The employee information packet also shall include a
419 form for an employee to note his or her decision to opt out of
420 participation in the program or elect to participate with a level
421 of employee contributions other than the default contribution
422 rate.



423 (5) Participating employers shall supply the employee
424 information packet to employees upon launch of the program.
425 Participating employers shall supply the employee information
426 packet to new employees at the time of hiring, and new employees
427 may opt out of participation in the program or elect to
428 participate with a level of employee contributions other than the
429 default contribution rate at that time.

430 **SECTION 14. Program implementation and enrollment.** (1)

431 Except as otherwise provided in Section 21 of this act, the
432 program shall be implemented, and enrollment of employees shall
433 begin in 2025. The board shall establish an implementation
434 timeline under which employers will enroll their employees in the
435 program. The timeline shall include the date by which an employer
436 must begin enrollment of its employees in the program and the date
437 by which enrollment must be complete. The board shall adopt the
438 implementation timeline at a public meeting of the board and shall
439 publicize the implementation timeline. The board shall provide
440 advance notice to employers of their enrollment date and the
441 amount of time to complete enrollment. The board's implementation
442 timeline shall ensure that all employees are required to be
443 enrolled in the program by December 31, 2027. The provisions of
444 this section shall be in force after the board opens the program
445 for enrollment.

446 (2) Each employer shall establish a payroll deposit
447 retirement savings arrangement to allow each employee to



448 participate in the program within the timeline set by the board
449 after the program opens for enrollment.

450 (3) Employers shall automatically enroll in the program each
451 of their employees who has not opted out of participation in the
452 program using the form described in subsection (3) of Section 13
453 of this act and shall provide payroll deduction retirement savings
454 arrangements for those employees and deposit, on behalf of those
455 employees, these funds into the program. Small employers may, but
456 are not required to, provide payroll deduction retirement savings
457 arrangements for each employee who elects to participate in the
458 program. Small employers' use of automatic enrollment for
459 employees is subject to final rules from the United States
460 Department of Labor. Utilization of automatic enrollment by small
461 employers may be allowed only if it does not create employer
462 liability under the federal Employee Retirement Income Security
463 Act.

464 (4) Enrollees shall have the ability to select a
465 contribution level into the fund. This level may be expressed as
466 a percentage of wages or as a dollar amount up to the deductible
467 amount for the enrollee's taxable year under Section 219(b)(1)(A)
468 of the Internal Revenue Code. Enrollees may change their
469 contribution level at any time, subject to rules promulgated by
470 the board. If an enrollee fails to select a contribution level
471 using the form described in subsection (3) of Section 13 of this
472 act, then he or she shall contribute the default contribution rate



473 of his or her wages to the program, provided that those
474 contributions do not cause the enrollee's total contributions to
475 IRAs for the year to exceed the deductible amount for the
476 enrollee's taxable year under Section 219(b)(1)(A) of the Internal
477 Revenue Code.

478 (5) Enrollees may select an investment option from the
479 permitted investment options listed in Section 11 of this act.
480 Enrollees may change their investment option at any time, subject
481 to rules promulgated by the board. If an enrollee fails to select
482 an investment option, that enrollee shall be placed in the
483 investment option selected by the board as the default under
484 subsection (3) of Section 11 of this act. If the board has not
485 selected a default investment option under subsection (3) of
486 Section 11 of this act, then an enrollee who fails to select an
487 investment option shall be placed in the life-cycle fund
488 investment option.

489 (6) Following initial implementation of the program under
490 this section, at least once every year, participating employers
491 shall designate an open enrollment period during which employees
492 who previously opted out of the program may enroll in the program.

493 (7) An employee who opts out of the program who later wants
494 to participate through the participating employer's payroll
495 deposit retirement savings arrangement may only enroll during the
496 participating employer's designated open enrollment period or if
497 permitted by the participating employer at an earlier time.



498 (8) Employers shall retain the option at all times to set up
499 any type of employer-sponsored retirement plan, such as a defined
500 benefit plan or a 401(k), Simplified Employee Pension (SEP) plan,
501 or Savings Incentive Match Plan for Employees (SIMPLE) plan, or to
502 offer an automatic enrollment payroll deduction IRA, instead of
503 having a payroll deposit retirement savings arrangement to allow
504 employee participation in the program.

505 (9) An employee may terminate his or her participation in
506 the program at any time in a manner prescribed by the board.

507 (10) The board shall establish and maintain an Internet
508 website designed to assist employers in identifying private sector
509 providers of retirement arrangements that can be set up by the
510 employer rather than allowing employee participation in the
511 program under this act. However, the board shall only establish
512 and maintain an Internet website under this subsection if there is
513 sufficient interest in such an Internet website by private sector
514 providers and if the private sector providers furnish the funding
515 necessary to establish and maintain the Internet website. The
516 board must provide public notice of the availability of and the
517 process for inclusion on the Internet website before it becomes
518 publicly available. This Internet website must be available to
519 the public before the board opens the program for enrollment, and
520 the Internet website address must be included on any Internet
521 website posting or other materials regarding the program offered
522 to the public by the board.



523 **SECTION 15. Payments.** Employee contributions deducted by
524 the participating employer through payroll deduction shall be paid
525 by the participating employer to the fund using one or more
526 payroll deposit retirement savings arrangements established by the
527 board under paragraph (i) of Section 8 of this act, either:

528 (a) On or before the last day of the month following
529 the month in which the compensation otherwise would have been
530 payable to the employee in cash; or

531 (b) Before such later deadline prescribed by the board
532 for making such payments, but not later than the due date for the
533 deposit of tax required to be deducted and withheld relating to
534 collection of income tax at the source on wages or for the deposit
535 of tax required to be paid under the unemployment insurance system
536 for the payroll period to which such payments relate.

537 **SECTION 16. Duty and liability of the state.** (1) The state
538 shall have no duty or liability to any party for the payment of
539 any retirement savings benefits accrued by any individual under
540 the program. Any financial liability for the payment of
541 retirement savings benefits in excess of funds available under the
542 program shall be borne solely by the entities with whom the board
543 contracts to provide insurance to protect the value of the
544 program.

545 (2) No state board, commission, or agency, or any officer,
546 employee, or member thereof is liable for any loss or deficiency
547 resulting from particular investments selected under this act,



548 except for any liability that arises out of a breach of fiduciary
549 duty under Section 7 of this act.

550 **SECTION 17. Duty and liability of participating employers.**

551 (1) Participating employers shall not have any liability for an
552 employee's decision to participate in, or opt out of, the program
553 or for the investment decisions of the board or of any enrollee.

554 (2) A participating employer shall not be a fiduciary, or
555 considered to be a fiduciary, over the program. A participating
556 employer shall not bear responsibility for the administration,
557 investment, or investment performance of the program. A
558 participating employer shall not be liable with regard to
559 investment returns, program design, and benefits paid to program
560 participants.

561 **SECTION 18. Audit and reports.** (1) The board shall
562 annually submit an audited financial report, prepared in
563 accordance with generally accepted accounting principles, on the
564 operations of the program during each calendar year by July 1 of
565 the following year to the Governor, the State Fiscal Officer, the
566 State Treasurer, and the Legislature. The annual audit shall be
567 made by an independent certified public accountant and shall
568 include, but is not limited to, direct and indirect costs
569 attributable to the use of outside consultants, independent
570 contractors, and any other persons who are not state employees for
571 the administration of the program.



572 (2) In addition to any other statements or reports required
573 by law, the board shall provide periodic reports at least annually
574 to participating employers, reporting the names of each enrollee
575 employed by the participating employer and the amounts of
576 contributions made by the participating employer on behalf of each
577 employee during the reporting period, as well as to enrollees,
578 reporting contributions and investment income allocated to,
579 withdrawals from, and balances in their program accounts for the
580 reporting period. The reports may include any other information
581 regarding the program as the board may determine.

582 (3) The State Treasurer shall prepare a report in
583 consultation with the board that includes a summary of the
584 benefits provided by the program, including the number of
585 enrollees in the program, the percentage and amounts of investment
586 options and rates of return, and such other information that is
587 relevant to make a full, fair, and effective disclosure of the
588 operations of the program and the fund.

589 **SECTION 19. Penalties.** (1) An employer who fails without
590 reasonable cause to enroll an employee in the program within the
591 time prescribed under Section 14 of this act shall be subject to a
592 penalty equal to:

593 (a) Two Hundred Fifty Dollars (\$250.00) for each
594 employee for each calendar year or portion of a calendar year
595 during which the employee neither was enrolled in the program nor
596 had elected out of participation in the program; or



597 (b) For each calendar year beginning after the date a
598 penalty has been assessed with respect to an employee, Five
599 Hundred Dollars (\$500.00) for any portion of that calendar year
600 during which the employee continues to be unenrolled without
601 electing out of participation in the program.

602 (2) After determining that an employer is subject to penalty
603 under this section for a calendar year, the department shall issue
604 a notice of proposed assessment to the employer, stating the
605 number of employees for which the penalty is proposed under
606 paragraph (a) of subsection (1) of this section and the number of
607 employees for which the penalty is proposed under paragraph (b) of
608 subsection (1) of this section for the calendar year, and the
609 total amount of penalties proposed.

610 Upon the expiration of ninety (90) days after the date on
611 which a notice of proposed assessment was issued, the penalties
612 specified in the notice shall be deemed assessed, unless the
613 employer had filed a protest with the department under subsection
614 (3) of this section.

615 If, within ninety (90) days after the date on which it was
616 issued, a protest of a notice of proposed assessment is filed
617 under subsection (3) of this section, the penalties specified in
618 the notice shall be deemed assessed upon the date when the
619 decision of the department with respect to the protest becomes
620 final.



621 (3) A written protest against the proposed assessment shall
622 be filed with the department in such form as the department may by
623 rule prescribe, setting forth the grounds on which such protest is
624 based. If such a protest is filed within ninety (90) days after
625 the date the notice of proposed assessment is issued, the
626 department shall reconsider the proposed assessment and shall
627 grant the employer a hearing. As soon as practicable after the
628 reconsideration and hearing, the department shall issue a notice
629 of decision to the employer, setting forth the department's
630 findings of fact and the basis of decision. The decision of the
631 department shall become final:

632 (a) If no action for appeal of the decision of
633 department is filed with the Board of Review under Section 27-77-1
634 et seq., on the date on which the time for filing an appeal has
635 expired; or

636 (b) If a timely action for appeal of the decision of
637 the department is filed with the Board of Review under Section
638 27-77-1 et seq., on the date all proceedings by the Board of
639 Review, the Board of Tax Appeals and in court for the appeal of
640 the assessment have terminated or the time for the taking of those
641 appeals has expired without those proceedings being taken.

642 (4) As soon as practicable after the penalties specified in
643 a notice of proposed assessment are deemed assessed, the
644 department shall give notice to the employer liable for any unpaid
645 portion of the assessment, stating the amount due and demanding



646 payment. If an employer neglects or refuses to pay the entire
647 liability shown on the notice and demand within ten (10) days
648 after the notice and demand is issued, the unpaid amount of the
649 liability shall be a lien in favor of the State of Mississippi
650 upon all property and rights to property, whether real or
651 personal, belonging to the employer, and the provisions in the
652 Mississippi income tax laws regarding liens, levies and collection
653 actions with regard to assessed and unpaid liabilities under those
654 laws, including the periods for taking any action, shall apply.

655 (5) An employer who has overpaid a penalty assessed under
656 this section may file a claim for refund with the department. A
657 claim shall be in writing in such form as the department may by
658 rule prescribe and shall state the specific grounds upon which it
659 is founded. As soon as practicable after a claim for refund is
660 filed, the department shall examine it and either issue a refund
661 or issue a notice of denial. If such a protest is filed, the
662 department shall reconsider the denial and grant the employer a
663 hearing. As soon as practicable after such reconsideration and
664 hearing, the department shall issue a notice of decision to the
665 employer. The notice shall set forth briefly the department's
666 findings of fact and the basis of decision in each case decided in
667 whole or in part adversely to the employer. A denial of a claim
668 for refund becomes final ninety (90) days after the date of
669 issuance of the notice of the denial except for such amounts
670 denied as to which the employer has filed a protest with the



671 department. If a protest has been timely filed, the decision of
672 the department shall become final:

673 (a) If no action for appeal of the decision of the
674 department is filed with the Board of Review under Section 27-77-1
675 et seq., on the date on which the time for filing an appeal has
676 expired; or

677 (b) If a timely action for appeal of the decision of
678 the department is filed with the Board of Review under Section
679 27-77-1 et seq., on the date all proceedings by the Board of
680 Review, the Board of Tax Appeals and in court for the appeal of
681 the assessment have terminated or the time for the taking of those
682 appeals has expired without those proceedings being taken.

683 (6) No notice of proposed assessment may be issued with
684 respect to a calendar year after June 30 of the fourth subsequent
685 calendar year. No claim for refund may be filed more than one (1)
686 year after the date of payment of the amount to be refunded.

687 (7) The department may adopt any rules necessary to carry
688 out its duties under this section.

689 (8) Whenever notice is required by this section, it may be
690 given or issued by mailing it by first-class mail addressed to the
691 person concerned at his or her last known address.

692 (9) All books and records and other papers and documents
693 relevant to the determination of any penalty due under this
694 section shall, at all times during business hours of the day, be



695 subject to inspection by the department or its duly authorized
696 agents and employees.

697 (10) The department may require employers to report
698 information relevant to their compliance with this act on returns
699 otherwise due from the employers under Section 27-7-309 and
700 failure to provide the requested information on a return shall
701 cause such return to be treated as unprocessable.

702 (11) For purposes of any provision of state law allowing the
703 department or any other agency of this state to offset an amount
704 owed to a taxpayer against a tax liability of that taxpayer or
705 allowing the department to offset an overpayment of tax against
706 any liability owed to the state, a penalty assessed under this
707 section shall be deemed to be a tax liability of the employer and
708 any refund due to an employer shall be deemed to be an overpayment
709 of tax of the employer.

710 (12) Except as provided in this subsection, all information
711 received by the department from returns filed by an employer or
712 from any investigation conducted under the provisions of this act
713 shall be confidential, except for official purposes within the
714 department or pursuant to official procedures for collection of
715 penalties assessed under this act. Nothing contained in this
716 subsection shall prevent the commissioner from publishing or
717 making available to the public reasonable statistics concerning
718 the operation of this act wherein the contents of returns are
719 grouped into aggregates in such a way that the specific



720 information of any employer shall not be disclosed. Nothing
721 contained in this subsection shall prevent the commissioner from
722 divulging information to an authorized representative of the
723 employer or to any person pursuant to a request or authorization
724 made by the employer or by an authorized representative of the
725 employer.

726 (13) The department may retain three percent (3%) of the
727 amount of the penalties collected under this section to defray the
728 costs incurred by the department in the collection of the
729 penalties. The remainder of the penalties collected shall be
730 deposited into the State General Fund.

731 (14) The department may charge the board a reasonable fee
732 for its costs in performing its duties under this section to the
733 extent that those costs have not been recovered from the penalties
734 collected under this section.

735 (15) This section shall become operative nine (9) months
736 after the board notifies the commissioner that the program has
737 been implemented. Upon receipt of that notification from the
738 board, the department shall immediately post on its Internet
739 website a notice stating that this section is operative and the
740 date that it is first operative. This notice shall include a
741 statement that rather than enrolling employees in the program
742 under this act, employers may sponsor an alternative arrangement,
743 including, but not limited to, a defined benefit plan, 401(k)
744 plan, a Simplified Employee Pension (SEP) plan, a Savings



745 Incentive Match Plan for Employees (SIMPLE) plan, or an automatic
746 payroll deduction IRA offered through a private provider. The
747 board shall provide a link to the vendor Internet website
748 described in subsection (10) of Section 15 of this act.

749 **SECTION 20. Rules.** The board and the State Treasurer shall
750 adopt, in accordance with the Mississippi Administrative
751 Procedures Law, any rules that may be necessary to implement this
752 act.

753 **SECTION 21. Delayed implementation.** If the board does not
754 obtain adequate funds to implement the program within the time
755 frame set forth under Section 14 of this act, the board may delay
756 the implementation of the program.

757 **SECTION 22. Federal considerations.** The board shall request
758 in writing an opinion or ruling from the appropriate entity with
759 jurisdiction over the federal Employee Retirement Income Security
760 Act regarding the applicability of the federal Employee Retirement
761 Income Security Act to the program. The board may not implement
762 the program if the IRA arrangements offered under the program fail
763 to qualify for the favorable federal income tax treatment
764 ordinarily accorded to IRAs under the Internal Revenue Code or if
765 it is determined that the program is an employee benefit plan and
766 state or employer liability is established under the federal
767 Employee Retirement Income Security Act.

768 **SECTION 23.** This act shall take effect and be in force from
769 and after July 1, 2023.

