

By: Senator(s) Chassaniol

To: Economic and Workforce
Development; Appropriations

SENATE BILL NO. 2798

1 AN ACT TO CREATE THE MISSISSIPPI WORK AND SAVE PROGRAM, WHICH
2 IS A RETIREMENT SAVINGS PROGRAM SPONSORED BY THE STATE FOR CERTAIN
3 EMPLOYERS WHO DO NOT ALREADY OFFER A RETIREMENT PLAN THAT WILL
4 ALLOW THOSE EMPLOYERS TO OFFER ELIGIBLE EMPLOYEES THE VOLUNTARY
5 CHOICE TO CONTRIBUTE TO AN INDIVIDUAL RETIREMENT ACCOUNT (IRA)
6 THROUGH A PAYROLL DEDUCTION; TO ESTABLISH THE MISSISSIPPI WORK AND
7 SAVE BOARD IN THE OFFICE OF THE STATE TREASURER TO ADMINISTER THE
8 PROGRAM; TO PROVIDE FOR THE APPOINTMENT OF THE MEMBERS OF THE
9 BOARD; TO PROVIDE THE POWERS, AUTHORITY AND DUTIES OF THE BOARD;
10 TO PRESCRIBE THE REQUIREMENTS FOR THE PROGRAM; TO PROVIDE THAT THE
11 IRA TO WHICH CONTRIBUTIONS ARE MADE WILL BE A ROTH IRA AND THE
12 STANDARD PACKAGE WILL BE A ROTH IRA WITH A TARGET DATE FUND
13 INVESTMENT AND A SPECIFIED CONTRIBUTION PERCENTAGE; TO PROVIDE
14 CERTAIN PROTECTION FROM LIABILITY FOR EMPLOYERS IN THE PROGRAM AND
15 FOR THE STATE; TO PROVIDE FOR THE CONFIDENTIALITY OF PARTICIPANT
16 AND ACCOUNT INFORMATION; TO CREATE THE MISSISSIPPI WORK AND SAVE
17 ADMINISTRATIVE FUND AS A SPECIAL FUND IN THE STATE TREASURY; TO
18 PROVIDE THAT MONIES IN THE FUND SHALL BE EXPENDED BY THE BOARD,
19 UPON APPROPRIATION OF THE LEGISLATURE, FOR THE PURPOSES AUTHORIZED
20 IN THIS ACT; AND FOR RELATED PURPOSES.

21 WHEREAS, the Legislature finds that too many Mississippi
22 citizens have no or inadequate savings for retirement, and many
23 Mississippi working families, including employees, independent
24 contractors, and the self-employed, have no access to an
25 employer-sponsored retirement plan or program or any other easy
26 way to save at work; and



27 WHEREAS, it is the policy of the state to assist the
28 Mississippi private-sector workforce, including in particular
29 moderate- and lower-income working households, to voluntarily save
30 for retirement, including by facilitating saving in individual
31 retirement accounts (IRAs) as well as by encouraging employers to
32 adopt retirement savings and other retirement plans for employees
33 in the state; and

34 WHEREAS, more adequate, portable, low-cost, and
35 consumer-protective retirement saving by Mississippi households
36 will enhance their retirement security and ultimately reduce the
37 pressure on state public assistance programs for retirees and
38 other elderly citizens and the potential burden on Mississippi
39 taxpayers to finance such programs; and

40 WHEREAS, the Legislature intends to establish the Mississippi
41 Work and Save Program that will use the services of competent and
42 qualified private-sector entities to administer the program and
43 manage the funds on behalf of the program participants and that
44 shall, to the extent necessary or desirable, endeavor to
45 collaborate, cooperate, coordinate, contract, and combine
46 resources, investments, and administrative functions with other
47 entities, including retirement savings programs of other states
48 that are compatible with the program, through contracts,
49 agreements, memoranda of understanding, arrangements,
50 partnerships, or similar arrangements as appropriate to achieve



51 economies of scale and other efficiencies designed to minimize
52 costs for the program and its participants; and

53 WHEREAS, the Mississippi Affordable College Savings Program
54 (MACS) has demonstrated the feasibility of a public-private
55 partnership that outsources investment and administration to
56 assist private citizens of the state to save on a voluntary and
57 cost-efficient basis; NOW, THEREFORE,

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

59 **SECTION 1. Title.** This act shall be known and may be cited
60 as the Mississippi Work and Save Program.

61 **SECTION 2. Definitions.** For purposes of this act, the
62 following terms shall be defined as provided in this section:

63 (a) "Board" means the Mississippi Work and Save Board.

64 (b) "Covered employee" means an individual who is
65 employed by a covered employer, who has wages or other
66 compensation that is allocable to the state, and who is at least
67 eighteen (18) years of age. The term "covered employee" does not
68 include:

69 (i) Any employee covered under the federal Railway
70 Labor Act (45 USC Section 151).

71 (ii) Any employee on whose behalf an employer
72 makes contributions to a Taft-Hartley multiemployer pension trust
73 fund.

74 (iii) Any individual who is an employee of the
75 federal government, the state or any other state, any county or



76 municipality, or any of the state's, any other state's, or the
77 federal government's units or instrumentalities.

78 (c) "Covered employer" means a person or entity engaged
79 in a business, industry, profession, trade, or other enterprise in
80 the state, whether for profit or not for profit, excluding the
81 federal government, the state, any county, any municipal
82 corporation, or any of the state's or the federal government's
83 units or instrumentalities. The term "covered employer" does not
84 include an employer that maintains a specified tax-favored
85 retirement plan for its employees or has done so effective in form
86 and operation at any time within the current or two (2) preceding
87 calendar years. If an employer does not maintain a specified
88 tax-favored retirement plan for a portion of a calendar year
89 ending on or after the effective date of this act and adopts such
90 a plan effective for the remainder of that calendar year, the
91 employer is exempt from "covered employer" status for that
92 remainder of the year.

93 (d) "ERISA" means the Employee Retirement Income
94 Security Act of 1974, as amended (29 USC Section 1001 et seq.).

95 (e) "Internal Revenue Code" means the Internal Revenue
96 Code of 1986, as amended (Title 26 of the United States Code).

97 (f) "IRA" means a traditional or Roth individual
98 retirement account or individual retirement annuity under Section
99 408(a), 408(b) or 408A of the Internal Revenue Code.



100 (g) "Mississippi Work and Save Administrative Fund,"
101 "administrative fund" or "fund" is the fund established in Section
102 11 of this act that is established for the sole purpose of paying
103 the administrative costs and expenses of the board and the
104 program.

105 (h) "Mississippi Work and Save Program" or "program"
106 means the retirement savings program established by this act.

107 (i) "Participant" means an individual who is
108 contributing to an IRA under the program or has an IRA account
109 balance under the program.

110 (j) "Participating employer" means a covered employer
111 that provides for covered employees a payroll deduction IRA
112 provided for by this act.

113 (k) "Payroll deduction IRA arrangement" or "payroll
114 deduction IRA" means an arrangement by which an employer allows
115 employees to contribute to an IRA by means of payroll deduction.

116 (l) "Roth IRA" means a Roth individual retirement
117 account or individual retirement annuity under Section 408A of the
118 Internal Revenue Code.

119 (m) "Specified tax-favored retirement plan" means a
120 retirement plan that is tax-qualified under or is described in and
121 satisfies the requirements of Section 401(a), 401(k), 403(a),
122 403(b), 408(k) (Simplified Employee Pension), or 408(p) (SIMPLE-IRA)
123 of the Internal Revenue Code.



124 (n) "Total fees and expenses" means all fees, costs,
125 and expenses, including, but not limited to, administrative
126 expenses, investment expenses, investment advice expenses,
127 accounting costs, actuarial costs, legal costs, marketing
128 expenses, education expenses, trading costs, insurance
129 annuitization costs, and other miscellaneous costs.

130 (o) "Traditional IRA" means a traditional individual
131 retirement account or traditional individual retirement annuity
132 under Section 408(a) or (b) of the Internal Revenue Code.

133 (p) "Trust" means the trust in which the assets of the
134 program are held. Where applicable, except as may be otherwise
135 specified, references throughout this act to the program generally
136 are intended to refer also to the trust (including the assets,
137 facilities, costs and expenses, receipts, expenditures,
138 activities, operations, administration, or management).

139 **SECTION 3. Establishment of board.** (1) The Mississippi
140 Work and Save Board is established in the Office of the State
141 Treasurer to administer the Mississippi Work and Save Program.
142 The board shall consist of the following nine (9) members, with
143 the State Treasurer or the designee of the State Treasurer serving
144 as chair:

145 (a) The State Treasurer or the designee of the State
146 Treasurer.



147 (b) An individual, appointed by the Governor, who has a
148 favorable reputation for skill, knowledge, and experience in the
149 field of retirement saving and investments.

150 (c) An individual, appointed by the Governor, who has a
151 favorable reputation for skill, knowledge, and experience relating
152 to small business.

153 (d) An individual, appointed by the Governor, who is a
154 representative of an association representing employees or who has
155 a favorable reputation for skill, knowledge, and experience in the
156 interests of employees in retirement saving.

157 (e) An individual, appointed by the Lieutenant
158 Governor, who has a favorable reputation for skill, knowledge, and
159 experience in the interests of employers in retirement saving.

160 (f) A retired individual, appointed by the Lieutenant
161 Governor, to be a representative of the interests of retirees.

162 (g) An individual, appointed by the Lieutenant
163 Governor, who has a favorable reputation for skill, knowledge, and
164 experience in retirement investment products or retirement plan
165 designs.

166 (h) A member of the House of Representatives appointed
167 by the Speaker of the House of Representatives to be a nonvoting
168 advisory member of the board.

169 (i) A member of the Senate appointed by the Lieutenant
170 Governor to be a nonvoting advisory member of the board.



171 (2) The Governor and the Lieutenant Governor shall first
172 make appointments to the board for terms of office beginning on
173 July 1, 2023. The term of office of each member of the board
174 appointed under subsection (1)(b) through (g) of this section is
175 four (4) years, except that the initial terms of those members
176 shall be as follows: The members appointed under subsection
177 (1)(b) and (e) of this section shall serve for an initial term of
178 one (1) year ending on July 1, 2024; the members appointed under
179 subsection (1)(c) and (f) of this section shall serve for an
180 initial term of two (2) years ending on July 1, 2025; and the
181 members appointed under subsection (1)(d) and (f) of this section
182 shall serve for an initial term of three (3) years ending on July
183 1, 2026. After the expiration of the initial terms, all later
184 appointments shall be for terms of four (4) years from the
185 expiration date of the previous term. A member is eligible for
186 reappointment. If there is a vacancy for any reason, the
187 appropriate appointing authority shall make an appointment to
188 become immediately effective for the unexpired term.

189 (3) All members of the board shall serve without
190 compensation, and shall be reimbursed from the administrative fund
191 for necessary travel expenses incurred in carrying out their board
192 duties.

193 (4) A majority of the voting members of the board
194 constitutes a quorum for the transaction of business.



195 **SECTION 4. Powers, authority, and duties of the board.** (1)

196 The board, subject to its authority and fiduciary duty, shall
197 design, develop and implement the program, and, to that end, may
198 conduct market, legal and feasibility analyses.

199 (2) The board shall have the powers, authority, and duties
200 to:

201 (a) Establish, implement and maintain the program;

202 (b) Cause the program, trust, and arrangements and
203 accounts established under the program to be designed,
204 established, and operated:

205 (i) In accordance with best practices for
206 retirement saving vehicles;

207 (ii) To encourage participation, saving, sound
208 investment practices, and appropriate selection of investment
209 options, including any default investments;

210 (iii) To maximize simplicity and ease of
211 administration for covered employers;

212 (iv) To minimize costs, including by collective
213 investment and other measures to achieve economies of scale and
214 other efficiencies in program design and administration;

215 (v) To promote portability of benefits; and

216 (vi) To avoid preemption of the program by federal
217 law;

218 (c) Arrange for collective, common, and pooled
219 investment of assets of the program and trust, including



220 investments in conjunction with other funds with which these
221 assets are permitted by law to be collectively invested, with a
222 view to achieving economies of scale and other efficiencies
223 designed to minimize costs for the program and its participants;

224 (d) Develop and disseminate educational information
225 designed to educate participants and citizens about the benefits
226 of planning and saving for retirement and information to help them
227 decide the level of participation and savings strategies that may
228 be appropriate for them, including information in furtherance of
229 financial capability and financial literacy;

230 (e) If necessary, determine the eligibility of an
231 employer, employee, or other individual to participate in the
232 program;

233 (f) Adopt rules and regulations it deems necessary or
234 advisable for the implementation of this act and the
235 administration and operation of the program consistent with the
236 Internal Revenue Code and regulations thereunder, including to
237 ensure that the program and arrangements established under the
238 program satisfy all criteria for favorable federal tax treatment
239 and complies, to the extent necessary, with any other applicable
240 federal or state law;

241 (g) Arrange for and facilitate compliance by the
242 program or arrangements established under the program with all
243 applicable requirements for the program under the Internal Revenue
244 Code, including requirements for favorable tax treatment of the



245 IRAs, and under any other applicable federal or state law and
246 accounting requirements, including using its best efforts to
247 implement procedures minimizing the risk that covered employees
248 will contribute more to an IRA than the amount they are eligible
249 for under the Internal Revenue Code to contribute to the IRA on a
250 tax-favored basis, and otherwise providing or arranging for
251 assistance to covered employers and covered employees in complying
252 with applicable law and tax-related requirements in a
253 cost-effective manner. The board may establish any processes that
254 the board reasonably deems to be necessary or advisable to verify
255 whether an employer is a covered employer (including reference to
256 online data and possible use of questions in employer state tax
257 filings);

258 (h) Employ or retain a program administrator, executive
259 director, staff, trustee, recordkeeper, investment managers,
260 investment advisors, other administrative, professional, expert
261 advisors and service providers, none of whom shall be members of
262 the board and all of whom shall serve at the pleasure of the
263 board, and determine their duties and compensation. The board may
264 authorize the executive director and other officials to oversee
265 requests for proposals or other public competitions and enter into
266 contracts. The board may authorize the executive director to
267 enter into contracts, as described in paragraph (n) of this
268 subsection (2), on behalf of the board or conduct any business
269 necessary for the efficient operation of the board;



270 (i) Establish procedures for the timely and fair
271 resolution of participant and other disputes related to accounts
272 or program operation;

273 (j) Develop and implement an investment policy that
274 defines the program's investment objectives, consistent with the
275 objectives of the program, and that provides for policies and
276 procedures consistent with those investment objectives. The board
277 shall designate appropriate default investments that include a mix
278 of asset classes, such as target date and balanced funds. The
279 board shall seek to minimize participant fees and expenses of
280 investment and administration. The board shall strive to design
281 and implement investment options available to holders of accounts
282 established as part of the program and other program features that
283 are intended to achieve maximum possible income replacement
284 balanced with an appropriate level of risk in an IRA-based
285 environment consistent with the investment objectives under the
286 policy. The investment options may encompass a range of risk and
287 return opportunities and allow for a rate of return commensurate
288 with an appropriate level of risk in view of the investment
289 objectives under the policy. The menu of investment options shall
290 be determined taking into account the nature and objectives of the
291 program, the desirability (based on behavioral research findings)
292 of limiting investment choices under the program to a reasonable
293 number, and the extensive investment choices available to
294 participants if they roll over to an IRA outside the program. In



295 accordance with paragraph (h) of this subsection (2), the board,
296 to the extent it deems it necessary or advisable, in its
297 discretion, in carrying out its responsibilities and exercising
298 its powers under this and other paragraphs and provisions of this
299 act, shall employ or retain appropriate entities or personnel to
300 assist or advise it or to whom to delegate the carrying out of
301 such responsibilities and exercise of such powers;

302 (k) Discharge its duties and see to it that the members
303 of the board discharge their duties as fiduciaries with respect to
304 the program solely in the interest of the participants as follows:

305 (i) For the exclusive purpose of providing
306 benefits to participants and defraying reasonable expenses of
307 administering the program; and

308 (ii) With the care, skill, prudence, and diligence
309 under the circumstances then prevailing that a prudent person
310 acting in a like capacity and familiar with those matters would
311 use in the conduct of an enterprise of a like character and with
312 like aims;

313 (l) Cause expenses incurred to initiate, implement,
314 maintain, and administer the program to be paid from contributions
315 to, or investment returns or assets of, the program or other money
316 collected by or for the program or pursuant to arrangements
317 established under the program to the extent permitted under
318 federal and state law;



319 (m) Collect application, account, or administrative
320 fees and to accept any grants, gifts, legislative appropriation,
321 loans, and other monies from the state, any unit of federal,
322 state, or local government, or any other person, firm, or entity
323 to defray the costs of administering and operating the program;

324 (n) Make and enter into competitively procured
325 contracts, agreements, memoranda of understanding, arrangements,
326 partnerships, or other arrangements, to collaborate and cooperate
327 with, and to retain, employ, and contract with or for any of the
328 following to the extent necessary or desirable, for the effective
329 and efficient design, implementation, and administration of the
330 program consistent with the purposes set forth in this act and to
331 maximize outreach to covered employers and covered employees:

332 (i) Services of private and public financial
333 institutions, depositories, consultants, actuaries, counsel,
334 auditors, investment advisors, investment administrators,
335 investment management firms, other investment firms, third-party
336 administrators, other professionals and service providers, and
337 state public retirement systems;

338 (ii) Research, technical, financial,
339 administrative, and other services; and

340 (iii) Services of other state agencies to assist
341 the board in the exercise of its powers and duties;

342 (o) Make and enter into contracts, agreements,
343 memoranda of understanding, arrangements, partnerships, or other



344 arrangements to collaborate, cooperate, coordinate, contract, or
345 combine resources, investments, or administrative functions with
346 other governmental entities, including states or their agencies or
347 instrumentalities that maintain or are establishing retirement
348 savings programs compatible with the program, including
349 collective, common, or pooled investments with other funds of
350 other states' programs with which the assets of the program and
351 trust are permitted by law to be collectively invested, to the
352 extent necessary or desirable for the effective and efficient
353 design, administration, and implementation of the program
354 consistent with the purposes set forth in this act, including the
355 purpose of achieving economies of scale and other efficiencies
356 designed to minimize costs for the program and its participants
357 and the provisions of Section 5(j) of this act and subsection (l)
358 of this section.

359 (p) Develop and implement an outreach plan to gain
360 input and disseminate information regarding the program and
361 retirement savings in general, including timely information to
362 covered employers regarding the program and how it applies to
363 them, with special emphasis on their ability at any time to
364 sponsor a specified tax-favored retirement plan that would exempt
365 them from any responsibilities under the program;

366 (q) Cause monies to be held and invested and reinvested
367 under the program;



368 (r) Ensure that all contributions to IRAs under the
369 program may be used only to:

370 (i) Pay benefits to participants under the
371 program;

372 (ii) Pay the cost of administering the program;
373 and

374 (iii) Make investments for the benefit of the
375 program, and that no assets of the program or trust are
376 transferred to the State General Fund or to any other fund of the
377 state or are otherwise encumbered or used for any purpose other
378 than those specified in this subsection (2);

379 (s) Make provision for the payment of costs of
380 administration and operation of the program and trust;

381 (t) Consider whether or not procedures should be
382 promulgated to allow employers that are not covered employers
383 because they are exempt from covered employer status to
384 voluntarily participate in the program by enrolling their
385 employees in payroll deduction IRAs, taking into account, among
386 other considerations, the potential legal consequences and the
387 degree of employer demand to participate or facilitate
388 participation by employees;

389 (u) Evaluate the need for, and procure if and as
390 needed, insurance against any and all loss in connection with the
391 property, assets, or activities of the program, and evaluate the



392 need for, and procure if and as deemed necessary, pooled private
393 insurance;

394 (v) Indemnify, including procurement of insurance if
395 and as needed for this purpose, each member of the board from
396 personal loss or liability resulting from a member's action or
397 inaction as a member of the board;

398 (w) Collaborate with, and evaluate the role of,
399 financial advisors or other financial professionals, including in
400 assisting and providing guidance for covered employees; and

401 (x) Carry out its powers and duties under the program
402 pursuant to this act and exercise any and all other powers as are
403 appropriate for the effectuation of the purposes, objectives and
404 provisions of this act pertaining to the program.

405 (3) A board member, program administrator, and other staff
406 of the board shall not:

407 (a) Directly or indirectly have any interest in the
408 making of any investment under the program or in gains or profits
409 accruing from any such investment;

410 (b) Borrow any program-related funds or deposits, or
411 use any such funds or deposits in any manner, for himself or
412 herself or as an agent or partner of others; or

413 (c) Become an endorser, surety, or obligor on
414 investments made under the program.



415 **SECTION 5. Requirements for the Mississippi Work and Save**

416 **Program.** The program developed and established by the board under
417 this act must:

418 (a) Allow eligible individuals in the state to
419 voluntarily choose whether or not to contribute to an IRA under
420 the program, including allowing covered employees in the state the
421 choice to contribute to an IRA through payroll deduction under the
422 program;

423 (b) Allow each covered employer to offer its employees
424 the voluntary choice whether or not to contribute to a payroll
425 deduction IRA by permitting automatic enrollment where employees
426 may opt-out of participation;

427 (c) Provide that the IRA to which contributions are
428 made will be a Roth IRA, except that the board shall have the
429 authority at any time, to add an option for all participants to
430 affirmatively elect to contribute to a traditional IRA as an
431 alternative to the Roth IRA;

432 (d) Provide that the standard package shall be a Roth
433 IRA with a target date fund investment, and a contribution rate
434 that begins at five percent (5%) of salary or wages (unless the
435 board in regulations specifies three percent (3%), four percent
436 (4%), or six percent (6%)), provided that the covered employee can
437 choose to stop participation altogether, to use a traditional IRA
438 and a different investment from among the options available, and
439 to contribute at a higher or lower contribution rate, subject to



440 the IRA contribution dollar limits applicable under the Internal
441 Revenue Code;

442 (e) Provide on a uniform basis, if and when the board
443 so determines, in its discretion, for annual increases of each
444 participant's contribution rate, by not more than one percent (1%)
445 of salary or wages per year up to a maximum of eight percent (8%).
446 Any such increases shall apply to participants, as determined by
447 the board, by default or only if initiated by affirmative
448 participant election (including as part of the standard package),
449 in either case subject to the IRA contribution limits applicable
450 under the Internal Revenue Code;

451 (f) Provide for direct deposit of contributions into
452 investments under the program;

453 (g) Be professionally managed;

454 (h) Permit no employer contributions by covered
455 employers;

456 (i) Provide for reports on the status of each
457 participant's account to be provided to each participant at least
458 annually;

459 (j) When possible and practicable, use existing or new
460 employer, other private-sector, and public infrastructure and
461 common, collective, or pooled investment arrangements to the
462 extent desirable to facilitate and enhance the effectiveness and
463 efficiency of program outreach, enrollment, contributions,
464 recordkeeping, investment, distributions, compliance, and other



465 aspects of program design, administration and implementation
466 consistent with the purposes set forth in this act, including the
467 purpose of achieving economies of scale and other efficiencies
468 designed to minimize costs for the program and its participants
469 and the provisions of Section 6(1) of this act;

470 (k) Provide that each account holder owns the
471 contributions to or earnings on amounts contributed to his or her
472 account under the program and that the state and employers have no
473 proprietary interest in those contributions or earnings;

474 (l) Be designed and implemented in a manner consistent
475 with federal law, including favorable federal tax treatment, to
476 the extent that it applies and consistent with the program not
477 being preempted by ERISA;

478 (m) Make provision for the participation in the program
479 of individuals who are not employees, as provided in Section 6(1)
480 of this act;

481 (n) Keep total fees and expenses as low as practicable
482 and in any event each year not in excess of seventy-five
483 hundredths of one percent (0.75%) of the total assets of the
484 program, except that this limit shall not apply during a start-up
485 period of three (3) years beginning with the initial
486 implementation of the program;

487 (o) Establish rules and procedures governing the
488 distribution of funds from the program, including such
489 distributions as may be permitted or required by the program and



490 any applicable provisions of tax laws, with the objectives of
491 maximizing financial security in retirement, helping to protect
492 spousal rights, and assisting participants with the challenges of
493 decumulation of savings. The board shall have the authority, in
494 its discretion, to provide for one or more reasonably priced
495 distribution options to provide a source of fixed regular
496 retirement income, including income for life or for the
497 participant's life expectancy (or for joint lives and life
498 expectancies, as applicable);

499 (p) Establish rules and procedures promoting
500 portability of benefits, including the ability to make tax-free
501 rollovers or transfers from IRAs under the program to other IRAs
502 or to tax-qualified plans that accept such rollovers or transfers
503 provided any roll-over is initiated by participants and not
504 solicited by agents or brokers;

505 (q) (i) Provide that, if a covered employer fails
506 without reasonable cause to enroll a covered employee as required
507 under paragraph (b) of this section:

508 1. The covered employer shall be subject to a
509 penalty equal to Two Hundred Fifty Dollars (\$250.00) for each
510 covered employee for each calendar year or portion thereof during
511 which the covered employee neither was enrolled in the program nor
512 had elected out of participation in the program; and the covered
513 employee or any appropriate official of the state may bring a
514 civil action to require the covered employer to enroll the covered



515 employee and shall recover such costs and reasonable attorney's
516 fees as may be allowed by the court; and

517 2. For each calendar year beginning after the
518 date on which a penalty has been assessed with respect to a
519 covered employee, Five Hundred Dollars (\$500.00) for any portion
520 of that calendar year during which the covered employee continues
521 to be unenrolled without electing out of participation in the
522 program.

523 (ii) No penalty shall be imposed under
524 subparagraph (i) of this paragraph (q) on any failure for which it
525 is established that the covered employer subject to liability for
526 the penalty did not know that the failure existed and exercised
527 reasonable diligence to meet the requirements of paragraph (b) of
528 this section.

529 (iii) No penalty shall be imposed under
530 subparagraph (i) of this paragraph (q) on any failure if:

531 1. The covered employer subject to liability
532 for the penalty exercised reasonable diligence to meet those
533 requirements; and

534 2. The covered employer complies with those
535 requirements with respect to each covered employee by the end of
536 the ninety-day period beginning on the first date the covered
537 employer knew, or exercising reasonable diligence would have
538 known, that the failure existed.



539 (iv) In the case of a failure that is due to
540 reasonable cause and not to willful neglect, all or part of the
541 penalty may be waived to the extent that the payment of the
542 penalty would be excessive or otherwise inequitable relative to
543 the failure involved; and

544 (r) Provide that, if a covered employer fails to
545 transmit a payroll deduction contribution to the program on the
546 earliest date the amount withheld from the covered employee's
547 compensation can reasonably be segregated from the covered
548 employer's assets, but not later than the fifteenth day of the
549 month following the month in which the covered employee's
550 contribution amounts are withheld from his or her paycheck, the
551 failure to remit such contributions on a timely basis shall be
552 subject to the same sanctions as employer misappropriation of
553 employee wage withholdings and to the penalties specified in
554 paragraph (q) of this section.

555 **SECTION 6. Rules for the Mississippi Work and Save Program.**

556 The board shall adopt rules to implement the program that:

557 (a) Establish the processes for enrollment and
558 contributions to payroll deduction IRAs under the program,
559 including elections by covered employees, withholding by covered
560 employers of employee payroll deduction contributions from wages
561 and remittance for deposit to IRAs, and voluntary enrollment and
562 contributions by others, including self-employed individuals and
563 independent contractors, through payroll deduction or otherwise;



564 (b) Establish the processes for withdrawals, rollovers,
565 and direct transfers from IRAs under the program in the interest
566 of facilitating portability and maximization of benefits;

567 (c) Establish processes for phasing in enrollment of
568 eligible individuals;

569 (d) Conduct outreach to individuals, employers, other
570 stakeholders, and the public regarding the program. Specify the
571 contents, frequency, timing, and means of required disclosures
572 from the program to covered employees, participants, other
573 individuals eligible to participate in the program, covered
574 employers, and other interested parties. These disclosures shall
575 include, but need not be limited to:

576 (i) The benefits associated with tax-favored
577 retirement saving;

578 (ii) The potential advantages and disadvantages
579 associated with contributing to Roth IRAs and, if applicable,
580 traditional IRAs under the program;

581 (iii) The eligibility rules for Roth IRAs and, if
582 applicable, traditional IRAs;

583 (iv) That the individual (and not the employer,
584 the state, the board, any board member or other state official, or
585 the program) will be solely responsible for determining whether,
586 and, if so, how much, the individual is eligible to contribute on
587 a tax-favored basis to an IRA;



588 (v) The penalty for excess contributions to IRAs
589 and the method of correcting excess contributions;

590 (vi) Instructions for enrolling, making elections
591 to contribute or to decline to contribute, and making elections
592 regarding contribution rates, type of IRA, and investments;

593 (vii) Instructions for implementing and for
594 changing the elections;

595 (viii) The potential availability of a saver's tax
596 credit, including the eligibility conditions for the credit and
597 instructions on how to claim it;

598 (ix) That employees seeking tax, investment, or
599 other financial advice should contact appropriate professional
600 advisors, and that covered employers are not in a position to
601 provide such advice and are not liable for decisions individuals
602 make in relation to the program;

603 (x) That the payroll deduction IRAs are intended
604 not to be employer-sponsored retirement plans and that the program
605 is not an employer-sponsored retirement plan;

606 (xi) The potential implications of account
607 balances under the program for the application of asset limits
608 under certain public assistance programs;

609 (xii) That the account owner is solely responsible
610 for investment performance, including market gains and losses, and
611 that IRA accounts and rates of return are not guaranteed by any



612 employer, the state, the board, any board member or state
613 official, or the program;

614 (xiii) Additional information about retirement and
615 saving and other information designed to promote financial
616 literacy and capability (which may take the form of links to, or
617 explanations of how to obtain, such information); and

618 (xiv) How to obtain additional information about
619 the program.

620 **SECTION 7. Protection from liability for employers.** (1) A
621 covered employer or other employer is not and shall not be liable
622 for or bear responsibility for:

623 (a) An employee's decision to participate in or not to
624 participate in the program or a participant's specific elections
625 under the program;

626 (b) Participants' or the board's investment decisions;

627 (c) The administration, investment, investment returns,
628 or investment performance of the program, including, without
629 limitation, any interest rate or other rate of return on any
630 contribution or account balance, provided they play no role;

631 (d) The program design or the benefits paid to
632 participants;

633 (e) Individuals' awareness of or compliance with the
634 conditions and other provisions of the tax laws that determine
635 which individuals are eligible to make tax-favored contributions
636 to IRAs, in what amount, and in what time frame and manner; or



637 (f) Any loss, failure to realize any gain, or any other
638 adverse consequences, including without limitation any adverse tax
639 consequences or loss of favorable tax treatment, public
640 assistance, or other benefits, incurred by any person as a result
641 of participating in the program.

642 (2) No covered employer or other employer shall be, or shall
643 be considered to be, a fiduciary in relation to the program or
644 trust or any other arrangement under the program.

645 **SECTION 8. Protection from liability for the state.** (1)

646 The state, the board, each member of the board or other state
647 official, other state boards, commissions, or agencies, any
648 member, officer, or employee thereof, and the program:

649 (a) Have no responsibility for compliance by
650 individuals with the conditions and other provisions of the
651 Internal Revenue Code that determine which individuals are
652 eligible to make tax-favored contributions to IRAs, in what
653 amount, and in what time frame and manner;

654 (b) Have no duty, responsibility, or liability to any
655 party for the payment of any benefits under the program,
656 regardless of whether sufficient funds are available under the
657 program to pay such benefits;

658 (c) Do not and shall not guarantee any interest rate or
659 other rate of return on or investment performance of any
660 contribution or account balance; and



661 (d) Are not and shall not be liable or responsible for
662 any loss, deficiency, failure to realize any gain, or any other
663 adverse consequences, including without limitation any adverse tax
664 consequences or loss of favorable tax treatment, public assistance
665 or other benefits, incurred by any person as a result of
666 participating in the program.

667 (2) The debts, contracts, and obligations of the program or
668 the board are not the debts, contracts, and obligations of the
669 state, and neither the faith and credit nor the taxing power of
670 the state is pledged directly or indirectly to the payment of the
671 debts, contracts, and obligations of the program or the board.

672 **SECTION 9. Confidentiality of participant and account**
673 **information.** Individual account information relating to accounts
674 under the program and relating to individual participants
675 (including but not limited to names, addresses, telephone numbers,
676 email addresses, personal identification information, investments,
677 contributions, and earnings) is confidential and must be
678 maintained as confidential:

679 (a) Except to the extent necessary to administer the
680 program in a manner consistent with this act, the tax laws of this
681 state, and the Internal Revenue Code; or

682 (b) Unless the individual who provides the information
683 or is the subject of the information expressly agrees in writing
684 to the disclosure of the information.



685 **SECTION 10. Intergovernmental collaboration and cooperation.**

686 The board may enter into an intergovernmental agreement or
687 memorandum of understanding with the state and any agency of the
688 state to receive outreach, technical assistance, enforcement and
689 compliance services, collection or dissemination of information
690 pertinent to the program (subject to such obligations of
691 confidentiality as may be agreed or required by law), or other
692 services or assistance. The state and any agencies of the state
693 that enter into such agreements or memoranda of understanding
694 shall collaborate to provide the outreach, assistance,
695 information, and compliance or other services or assistance to the
696 board. The memoranda of understanding may cover the sharing of
697 costs incurred in gathering and disseminating information and the
698 reimbursement of costs for any enforcement activities or
699 assistance.

700 **SECTION 11. Funding of program.** (1) The Mississippi Work
701 and Save Administrative Fund is created as a special fund in the
702 State Treasury. Monies in the administrative fund shall be
703 expended by the board, upon appropriation of the Legislature, for
704 the purposes authorized in this act. The administrative fund
705 shall consist of:

706 (a) Monies appropriated to or transferred into the
707 administrative fund by the Legislature;



708 (b) Monies transferred to the administrative fund from
709 the federal government, other state agencies, or local
710 governments;

711 (c) Monies from the payment of application, account,
712 administrative, or other fees and the payment of other monies due
713 the board;

714 (d) Any gifts, donations or grants made to the state
715 for deposit in the administrative fund;

716 (e) Monies collected for the administrative fund from
717 contributions to, or investment returns or assets of, the program
718 or other monies collected by or for the program or pursuant to
719 arrangements established under the program to the extent permitted
720 under federal and state law; and

721 (f) Earnings on monies in the administrative fund.

722 (2) The board shall accept any grants, gifts,
723 appropriations, or other monies from the state, any unit of
724 federal, state, or local government, or any other person, firm,
725 partnership, corporation, or other entity solely for deposit into
726 the administrative fund, whether for investment or administrative
727 expenses.

728 (3) Unexpended amounts remaining in the administrative fund
729 at the end of a fiscal year shall not lapse into the State General
730 Fund, and any interest earned or investment earnings on amounts in
731 the fund shall be deposited into such fund.



732 (4) To enable or facilitate the start-up and continuing
733 operation, maintenance, administration, and management of the
734 program until the program accumulates sufficient balances and can
735 generate sufficient funding through fees assessed on program
736 accounts for the program to become financially self-sustaining:

737 (a) The board may borrow from the state, any unit of
738 federal, state, or local government, or any other person, firm,
739 partnership, corporation, or other entity working capital funds
740 and other funds as may be necessary for this purpose, provided
741 that such funds are borrowed in the name of the program and board
742 only and that any such borrowings shall be payable solely from the
743 revenues of the program; and

744 (b) The board may enter into long-term procurement
745 contracts with one or more financial providers that provide a fee
746 structure that would assist the program in avoiding or minimizing
747 the need to borrow or to rely upon general assets of the state.

748 (5) The state may pay administrative costs associated with
749 the creation, maintenance, operation, and management of the
750 program and trust until sufficient assets are available in the
751 administrative fund for that purpose. Thereafter, all
752 administrative costs of the administrative fund, including any
753 repayment of start-up funds provided by the state, shall be repaid
754 only out of monies on deposit in the fund. However, private funds
755 or federal funding received in order to implement the program
756 until the administrative fund is self-sustaining shall not be



757 repaid unless those funds were offered contingent upon the promise
758 of such repayment.

759 (6) The board may use the monies in the administrative fund
760 solely to pay the administrative costs and expenses of the program
761 and the administrative costs and expenses the board incurs in the
762 performance of its duties under this act.

763 **SECTION 12. Audits and annual reports.** (1) The board shall
764 cause an accurate account of all of the program's, trust's, and
765 board's activities, operations, receipts, and expenditures to be
766 maintained. Each year, a full audit of the books and accounts of
767 the board pertaining to those activities, operations, receipts and
768 expenditures, personnel, services, or facilities shall be
769 conducted by a certified public accountant and shall include, but
770 not be limited to, direct and indirect costs attributable to the
771 use of outside consultants, independent contractors, and any other
772 persons who are not state employees for the administration of the
773 program. For the purposes of the audit, the auditors shall have
774 access to the properties and records of the program and board and
775 may prescribe methods of accounting and the rendering of periodic
776 reports in relation to projects undertaken by the program.

777 (2) By August 1 of each year, the board shall submit to the
778 Governor, the State Treasurer, and the appropriate committees of
779 the Senate and House an audited financial report, prepared in
780 accordance with generally accepted accounting principles,
781 detailing the activities, operations, receipts, and expenditures



782 of the program and board during the preceding calendar year. The
783 report shall also include projected activities of the program for
784 the current calendar year.

785 (3) The board shall prepare an annual report on the
786 operation of the program to be available to all citizens and
787 provided to appropriate state officials.

788 **SECTION 13. Applicability dates.** (1) The board shall
789 establish the program so that individuals can begin contributing
790 under the program not later than the first of the month following
791 the second anniversary of the effective date of this act.

792 (2) The board may, in its discretion, phase in the program
793 so that the ability to contribute first applies on different dates
794 for different classes of individuals, including employees of
795 employers of different sizes or types and individuals who are not
796 employees (self-employed, independent contractors, etc.).
797 However, any such staged or phased-in implementation schedule must
798 be substantially completed not later than twenty-four (24) months
799 after the effective date of this act.

800 (3) The board shall not implement the program if and to the
801 extent that it determines that the program is preempted by ERISA.
802 Accordingly, if and as needed, the board shall implement the
803 program in a severable fashion to the extent practicable if and to
804 the extent that the board determines:

805 (a) That a portion or aspect of the program is
806 preempted by ERISA, the board shall not implement that portion or



807 aspect of the program but shall proceed to implement the remainder
808 of the program to the extent practicable; or

809 (b) That some but not all of the payroll deduction IRA
810 arrangements or other arrangements under the program are or would
811 be employee benefit plans under ERISA, the board shall proceed to
812 implement the program with respect to the other arrangements under
813 the program to the extent practicable.

814 **SECTION 14.** This act shall take effect and be in force from
815 and after its passage.

