

By: Representative Steverson

To: State Affairs; Ways and Means

HOUSE BILL NO. 117

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, 2024. The term of office of each member of the board
174 appointed under paragraphs (b) through (g) is four (4) years,
175 except that the initial terms of those members shall be as
176 follows: The members appointed under paragraphs (b) and (e) shall
177 serve for an initial term of one (1) year ending on July 1, 2025;
178 the members appointed under paragraphs (c) and (f) shall serve for
179 an initial term of two (2) years ending on July 1, 2026; and the
180 members appointed under paragraphs (d) and (f) shall serve for an
181 initial term of three (3) years ending on July 1, 2027. After the
182 expiration of the initial terms, all later appointments shall be
183 for terms of four (4) years from the expiration date of the
184 previous term. A member is eligible for reappointment. If there
185 is a vacancy for any reason, the appropriate appointing authority
186 shall make an appointment to become immediately effective for the
187 unexpired term.

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

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

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

195 The board, subject to its authority and fiduciary duty, shall



196 design, develop, and implement the program, and, to that end, may
197 conduct market, legal, and feasibility analyses.

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

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

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

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

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

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

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

214 (v) To promote portability of benefits; and

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

217 (c) Arrange for collective, common, and pooled
218 investment of assets of the program and trust, including
219 investments in conjunction with other funds with which these
220 assets are permitted by law to be collectively invested, with a



221 view to achieving economies of scale and other efficiencies
222 designed to minimize costs for the program and its participants;

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

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

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

240 (g) Arrange for and facilitate compliance by the
241 program or arrangements established under the program with all
242 applicable requirements for the program under the Internal Revenue
243 Code, including requirements for favorable tax treatment of the
244 IRAs, and under any other applicable federal or state law and
245 accounting requirements, including using its best efforts to



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

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



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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

364 (q) Cause monies to be held and invested and reinvested
365 under the program;

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



368 (i) Pay benefits to participants under the
369 program;

370 (ii) Pay the cost of administering the program;
371 and

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

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

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

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



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

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

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

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

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

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

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

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

414 **program.** The program developed and established by the board under
415 this act must:



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

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

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

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



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

449 (f) Provide for direct deposit of contributions into
450 investments under the program;

451 (g) Be professionally managed;

452 (h) Permit no employer contributions by covered
453 employers;

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

457 (j) When possible and practicable, use existing or new
458 employer, other private-sector, and public infrastructure and
459 common, collective, or pooled investment arrangements to the
460 extent desirable to facilitate and enhance the effectiveness and
461 efficiency of program outreach, enrollment, contributions,
462 recordkeeping, investment, distributions, compliance, and other
463 aspects of program design, administration and implementation
464 consistent with the purposes set forth in this act, including the



465 purpose of achieving economies of scale and other efficiencies
466 designed to minimize costs for the program and its participants
467 and the provisions of paragraph (l) of this section;

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

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

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

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

485 (o) Establish rules and procedures governing the
486 distribution of funds from the program, including such
487 distributions as may be permitted or required by the program and
488 any applicable provisions of tax laws, with the objectives of
489 maximizing financial security in retirement, helping to protect



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

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

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

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



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

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

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

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

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

537 (iv) In the case of a failure that is due to
538 reasonable cause and not to willful neglect, all or part of the
539 penalty may be waived to the extent that the payment of the



540 penalty would be excessive or otherwise inequitable relative to
541 the failure involved; and

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

553 **SECTION 6. Rules for the Mississippi Work and Save program.**

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

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

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



565 (c) Establish processes for phasing in enrollment of
566 eligible individuals;

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

574 (i) The benefits associated with tax-favored
575 retirement saving;

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

579 (iii) The eligibility rules for Roth IRAs and, if
580 applicable, traditional IRAs;

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

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



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

591 (vii) Instructions for implementing and for
592 changing the elections;

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

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

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

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

607 (xii) That the account owner is solely responsible
608 for investment performance, including market gains and losses, and
609 that IRA accounts and rates of return are not guaranteed by any
610 employer, the state, the board, any board member or state
611 official, or the program;



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

616 (xiv) How to obtain additional information about
617 the program.

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

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

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

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

629 (d) The program design or the benefits paid to
630 participants;

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

635 (f) Any loss, failure to realize any gain, or any other
636 adverse consequences, including without limitation any adverse tax



637 consequences or loss of favorable tax treatment, public
638 assistance, or other benefits, incurred by any person as a result
639 of participating in the program.

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

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

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

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

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

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

659 (d) Are not and shall not be liable or responsible for
660 any loss, deficiency, failure to realize any gain, or any other
661 adverse consequences, including without limitation any adverse tax



662 consequences or loss of favorable tax treatment, public assistance
663 or other benefits, incurred by any person as a result of
664 participating in the program.

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

670 **SECTION 9. Confidentiality of participant and account**

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

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

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

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

684 The board may enter into an intergovernmental agreement or
685 memorandum of understanding with the state and any agency of the
686 state to receive outreach, technical assistance, enforcement and



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

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

704 (a) Monies appropriated to or transferred into the
705 Administrative Fund by the Legislature;

706 (b) Monies transferred to the Administrative Fund from
707 the federal government, other state agencies, or local
708 governments;

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



712 (d) Any gifts, donations, or grants made to the state
713 for deposit in the Administrative Fund;

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

719 (f) Earnings on monies in the Administrative Fund.

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

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

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

735 (a) The board may borrow from the state, any unit of
736 federal, state, or local government, or any other person, firm,



737 partnership, corporation, or other entity working capital funds
738 and other funds as may be necessary for this purpose, provided
739 that such funds are borrowed in the name of the program and board
740 only and that any such borrowings shall be payable solely from the
741 revenues of the program; and

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

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

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



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

775 (2) By August 1 of each year, the board shall submit to the
776 Governor, the State Treasurer, and the appropriate committees of
777 the Senate and House an audited financial report, prepared in
778 accordance with generally accepted accounting principles,
779 detailing the activities, operations, receipts, and expenditures
780 of the program and board during the preceding calendar year. The
781 report shall also include projected activities of the program for
782 the current calendar year.

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



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

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

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

803 (a) That a portion or aspect of the program is
804 preempted by ERISA, the board shall not implement that portion or
805 aspect of the program but shall proceed to implement the remainder
806 of the program to the extent practicable; or

807 (b) That some but not all of the payroll deduction IRA
808 arrangements or other arrangements under the program are or would
809 be employee benefit plans under ERISA, the board shall proceed to



810 implement the program with respect to the other arrangements under
811 the program to the extent practicable.

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

