

By: Senator(s) Michel, Parker

To: Finance; Government  
StructureCOMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2861

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 PROVIDE THE POWERS, AUTHORITY AND  
7 DUTIES OF THE STATE TREASURER; TO PRESCRIBE THE REQUIREMENTS FOR  
8 THE PROGRAM; TO PROVIDE THAT THE IRA TO WHICH CONTRIBUTIONS ARE  
9 MADE WILL BE A ROTH IRA AND THE STANDARD PACKAGE WILL BE A ROTH  
10 IRA WITH A TARGET DATE FUND INVESTMENT AND A SPECIFIED  
11 CONTRIBUTION PERCENTAGE; TO PROVIDE CERTAIN PROTECTION FROM  
12 LIABILITY FOR EMPLOYERS IN THE PROGRAM AND FOR THE STATE; TO  
13 PROVIDE FOR THE CONFIDENTIALITY OF PARTICIPANT AND ACCOUNT  
14 INFORMATION; TO CREATE THE MISSISSIPPI WORK AND SAVE  
15 ADMINISTRATIVE FUND AS A SPECIAL FUND IN THE STATE TREASURY; TO  
16 PROVIDE THAT MONIES IN THE FUND SHALL BE EXPENDED UPON  
17 APPROPRIATION OF THE LEGISLATURE, FOR THE PURPOSES AUTHORIZED IN  
18 THIS ACT; AND FOR RELATED PURPOSES.

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

25 WHEREAS, it is the policy of the state to assist the  
26 Mississippi private-sector workforce, including in particular



27 moderate- and lower-income working households, to voluntarily save  
28 for retirement, including by facilitating saving in individual  
29 retirement accounts (IRAs) as well as by encouraging employers to  
30 adopt retirement savings and other retirement plans for employees  
31 in the state; and

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

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



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

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

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

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

61 (a) "Covered employee" means an individual who is  
62 employed by a covered employer, who has wages or other  
63 compensation that is allocable to the state, and who is at least  
64 eighteen (18) years of age, and who voluntarily participate in the  
65 program. The term "covered employee" does not include:

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

68 (ii) Any employee on whose behalf an employer  
69 makes contributions to a Taft-Hartley multiemployer pension trust  
70 fund.

71 (iii) Any individual who is an employee of the  
72 federal government, the state or any other state, any county or  
73 municipality, or any of the state's, any other state's, or the  
74 federal government's units or instrumentalities.



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

91           (c) "ERISA" means the Employee Retirement Income  
92 Security Act of 1974, as amended (29 USC Section 1001 et seq.).

93           (d) "Internal Revenue Code" means the Internal Revenue  
94 Code of 1986, as amended (Title 26 of the United States Code).

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

98           (f) "Mississippi Work and Save Administrative Fund",  
99 "administrative fund" or "fund" is the fund established in Section



10 of this act that is established for the sole purpose of paying the administrative costs and expenses of the program.

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

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

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

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

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

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

(m) "Total fees and expenses" means all fees, costs, and expenses, including, but not limited to, administrative expenses, investment expenses, investment advice expenses, accounting costs, actuarial costs, legal costs, marketing



expenses, education expenses, trading costs, insurance annuitization costs, and other miscellaneous costs.

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

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

### **SECTION 3. Powers, authority, and duties of the State**

**Treasurer.** (1) The State Treasurer shall design, develop, and implement the program, and, to that end, may conduct market, legal, and feasibility analyses.

(2) The State Treasurer shall have the powers, authority, and duties to:

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

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

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



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

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

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

(v) To promote portability of benefits; and

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

(c) Arrange for collective, common, and pooled investment of assets of the program and trust, including investments in conjunction with other funds with which these assets are permitted by law to be collectively invested, with a view to achieving economies of scale and other efficiencies designed to minimize costs for the program and its participants;

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



171           (e) If necessary, determine the eligibility of an  
172 employer, employee, or other individual to participate in the  
173 program;

174           (f) Adopt rules and regulations it deems necessary or  
175 advisable for the implementation of this act and the  
176 administration and operation of the program consistent with the  
177 Internal Revenue Code and regulations thereunder, including to  
178 ensure that the program and arrangements established under the  
179 program satisfy all criteria for favorable federal tax treatment  
180 and complies, to the extent necessary, with any other applicable  
181 federal or state law;

182           (g) Arrange for and facilitate compliance by the  
183 program or arrangements established under the program with all  
184 applicable requirements for the program under the Internal Revenue  
185 Code, including requirements for favorable tax treatment of the  
186 IRAs, and under any other applicable federal or state law and  
187 accounting requirements, including using its best efforts to  
188 implement procedures minimizing the risk that covered employees  
189 will contribute more to an IRA than the amount they are eligible  
190 for under the Internal Revenue Code to contribute to the IRA on a  
191 tax-favored basis, and otherwise providing or arranging for  
192 assistance to covered employers and covered employees in complying  
193 with applicable law and tax-related requirements in a  
194 cost-effective manner. The State Treasurer may establish any  
195 processes that he reasonably deems to be necessary or advisable to





196 verify whether an employer is a covered employer (including  
197 reference to online data and possible use of questions in employer  
198 state tax filings);

199 (h) Employ or retain a program administrator, executive  
200 director, staff, trustee, recordkeeper, investment managers,  
201 investment advisors, other administrative, professional, expert  
202 advisors and service providers, and determine their duties and  
203 compensation. The State Treasurer may authorize the executive  
204 director and other officials to oversee requests for proposals or  
205 other public competitions and enter into contracts. The State  
206 Treasurer may authorize the executive director to enter into  
207 contracts, as described in paragraph (n) of this subsection (2),  
208 on behalf of the State Treasurer or conduct any business necessary  
209 for the efficient operation of the program;

210 (i) Establish procedures for the timely and fair  
211 resolution of participant and other disputes related to accounts  
212 or program operation;

213 (j) Develop and implement an investment policy that  
214 defines the program's investment objectives, consistent with the  
215 objectives of the program, and that provides for policies and  
216 procedures consistent with those investment objectives. The State  
217 Treasurer shall designate appropriate default investments that  
218 include a mix of asset classes, such as target date and balanced  
219 funds. The State Treasurer shall seek to minimize participant  
220 fees and expenses of investment and administration. The State



Treasurer shall strive to design and implement investment options available to holders of accounts established as part of the program and other program features that are intended to achieve maximum possible income replacement balanced with an appropriate level of risk in an IRA-based environment consistent with the investment objectives under the policy. The investment options may encompass a range of risk and return opportunities and allow for a rate of return commensurate with an appropriate level of risk in view of the investment objectives under the policy. The menu of investment options shall be determined taking into account the nature and objectives of the program, the desirability (based on behavioral research findings) of limiting investment choices under the program to a reasonable number, and the extensive investment choices available to participants if they roll over to an IRA outside the program. In accordance with paragraph (h) of this subsection (2), the State Treasurer, to the extent he deems it necessary or advisable, in his discretion, in carrying out his responsibilities and exercising his powers under this and other paragraphs and provisions of this act, shall employ or retain appropriate entities or personnel to assist or advise him or to whom to delegate the carrying out of such responsibilities and exercise of such powers;

(k) Discharge his duties as a fiduciary with respect to the program solely in the interest of the participants as follows:



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

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

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

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

(n) Make and enter into competitively procured contracts, agreements, memoranda of understanding, arrangements, partnerships, or other arrangements, to collaborate and cooperate with, and to retain, employ, and contract with or for any of the following to the extent necessary or desirable, for the effective and efficient design, implementation, and administration of the



program consistent with the purposes set forth in this act and to maximize outreach to covered employers and covered employees:

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

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

(iii) Services of other state agencies to assist the State Treasurer in the exercise of his powers and duties;

(o) Make and enter into contracts, agreements, memoranda of understanding, arrangements, partnerships, or other arrangements to collaborate, cooperate, coordinate, contract, or combine resources, investments, or administrative functions with other governmental entities, including states or their agencies or instrumentalities that maintain or are establishing retirement savings programs compatible with the program, including collective, common, or pooled investments with other funds of other states' programs with which the assets of the program and trust are permitted by law to be collectively invested, to the extent necessary or desirable for the effective and efficient design, administration, and implementation of the program consistent with the purposes set forth in this act, including the



purpose of achieving economies of scale and other efficiencies designed to minimize costs for the program and its participants and the provisions of Section 4(j) and (l) of this act.

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

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

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

(i) Pay benefits to participants under the program;

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

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

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



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

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

(v) Indemnify, including procurement of insurance if and as needed for this purpose, the State Treasurer from personal loss or liability resulting from his action or inaction;

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

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

(3) The State Treasurer and his staff shall not:



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

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

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

**SECTION 4. Requirements for the Mississippi Work and Save program.** The program developed and established under this act must:

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

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

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



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

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

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

(g) Be professionally managed;

(h) Permit no employer contributions by covered employers;





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

(j) When possible and practicable, use existing or new employer, other private-sector, and public infrastructure and common, collective, or pooled investment arrangements to the extent desirable to facilitate and enhance the effectiveness and efficiency of program outreach, enrollment, contributions, recordkeeping, investment, distributions, compliance, and other aspects of program design, administration and implementation consistent with the purposes set forth in this act, including the purpose of achieving economies of scale and other efficiencies designed to minimize costs for the program and its participants and the provisions of paragraph (l) of this section;

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

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

(m) Make provision for the participation in the program of individuals who are not employees;



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

423           (o) Establish rules and procedures governing the  
424 distribution of funds from the program, including such  
425 distributions as may be permitted or required by the program and  
426 any applicable provisions of tax laws, with the objectives of  
427 maximizing financial security in retirement, helping to protect  
428 spousal rights, and assisting participants with the challenges of  
429 decumulation of savings. The State Treasurer shall have the  
430 authority, in his discretion, to provide for one or more  
431 reasonably priced distribution options to provide a source of  
432 fixed regular retirement income, including income for life or for  
433 the participant's life expectancy (or for joint lives and life  
434 expectancies, as applicable); and

435           (p) Establish rules and procedures promoting  
436 portability of benefits, including the ability to make tax-free  
437 rollovers or transfers from IRAs under the program to other IRAs  
438 or to tax-qualified plans that accept such rollovers or transfers  
439 provided any roll-over is initiated by participants and not  
440 solicited by agents or brokers.



441           **SECTION 5.   Rules for the Mississippi Work and Save program.**

442   The State Treasurer shall adopt rules to implement the program  
443   that:

444           (a)   Establish the processes for enrollment and  
445   contributions to payroll deduction IRAs under the program,  
446   including elections by covered employees, withholding by covered  
447   employers of employee payroll deduction contributions from wages  
448   and remittance for deposit to IRAs, and voluntary enrollment and  
449   contributions by others, including self-employed individuals and  
450   independent contractors, through payroll deduction or otherwise;

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

454           (c)   Establish processes for phasing in enrollment of  
455   eligible individuals;

456           (d)   Conduct outreach to individuals, employers, other  
457   stakeholders, and the public regarding the program. Specify the  
458   contents, frequency, timing, and means of required disclosures  
459   from the program to covered employees, participants, other  
460   individuals eligible to participate in the program, covered  
461   employers, and other interested parties. These disclosures shall  
462   include, but need not be limited to:

463           (i)   The benefits associated with tax-favored  
464   retirement saving;



465                   (ii) The potential advantages and disadvantages  
466 associated with contributing to Roth IRAs and, if applicable,  
467 traditional IRAs under the program;

468                   (iii) The eligibility rules for Roth IRAs and, if  
469 applicable, traditional IRAs;

470                   (iv) That the individual (and not the employer,  
471 the state, any state official, or the program) will be solely  
472 responsible for determining whether, and, if so, how much, the  
473 individual is eligible to contribute on a tax-favored basis to an  
474 IRA;

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

477                   (vi) Instructions for enrolling, making elections  
478 to contribute or to decline to contribute, and making elections  
479 regarding contribution rates, type of IRA, and investments;

480                   (vii) Instructions for implementing and for  
481 changing the elections;

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

485                   (ix) That employees seeking tax, investment, or  
486 other financial advice should contact appropriate professional  
487 advisors, and that covered employers are not in a position to  
488 provide such advice and are not liable for decisions individuals  
489 make in relation to the program;



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

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

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

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

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

**SECTION 6.** **Protection from liability for employers.** (1) A covered employer or other employer is not and shall not be liable for or bear responsibility for:

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

(b) Participants' or the State Treasurer's investment decisions;



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

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

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

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

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

**SECTION 7. Protection from liability for the state. (1)**

The state, any state official, commission or agency, any member, officer or employee thereof, and the program:

(a) Have no responsibility for compliance by individuals with the conditions and other provisions of the Internal Revenue Code that determine which individuals are



eligible to make tax-favored contributions to IRAs, in what amount, and in what time frame and manner;

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

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

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

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

**SECTION 8. Confidentiality of participant and account information.** Individual account information relating to accounts under the program and relating to individual participants (including, but not limited to, names, addresses, telephone numbers, email addresses, personal identification information,



investments, contributions, and earnings) is confidential and must be maintained as confidential:

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

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

**SECTION 9. Intergovernmental collaboration and cooperation.**

The State Treasurer may enter into an intergovernmental agreement or memorandum of understanding with the state and any agency of the state to receive outreach, technical assistance, enforcement and compliance services, collection or dissemination of information pertinent to the program (subject to such obligations of confidentiality as may be agreed or required by law), or other services or assistance. The state and any agencies of the state that enter into such agreements or memoranda of understanding shall collaborate to provide the outreach, assistance, information, and compliance or other services or assistance to the State Treasurer. The memoranda of understanding may cover the sharing of costs incurred in gathering and disseminating information and the reimbursement of costs for any enforcement activities or assistance.

**SECTION 10. Funding of program.** (1) The Mississippi Work and Save Administrative Fund is created as a special fund in the





588 State Treasury. Monies in the Administrative Fund shall be  
589 expended by the State Treasurer, upon appropriation of the  
590 Legislature, for the purposes authorized in this act. The  
591 Administrative Fund shall consist of:

592 (a) Monies appropriated to or transferred into the  
593 Administrative Fund by the Legislature;

594 (b) Monies transferred to the Administrative Fund from  
595 the federal government, other state agencies, or local  
596 governments;

597 (c) Monies from the payment of application, account,  
598 administrative, or other fees and the payment of other monies due  
599 the State Treasurer;

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

602 (e) Monies collected for the Administrative Fund from  
603 contributions to, or investment returns or assets of, the program  
604 or other monies collected by or for the program or pursuant to  
605 arrangements established under the program to the extent permitted  
606 under federal and state law; and

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

608 (2) The State Treasurer shall accept any grants, gifts,  
609 appropriations, or other monies from the state, any unit of  
610 federal, state, or local government, or any other person, firm,  
611 partnership, corporation, or other entity solely for deposit into



the Administrative Fund, whether for investment or administrative expenses.

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

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

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

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

(5) The state may pay administrative costs associated with the creation, maintenance, operation, and management of the



637 program and trust until sufficient assets are available in the  
638 Administrative Fund for that purpose. Thereafter, all  
639 administrative costs of the Administrative Fund, including any  
640 repayment of start-up funds provided by the state, shall be repaid  
641 only out of monies on deposit in the fund. However, private funds  
642 or federal funding received in order to implement the program  
643 until the Administrative Fund is self-sustaining shall not be  
644 repaid unless those funds were offered contingent upon the promise  
645 of such repayment.

646 (6) The State Treasurer may use the monies in the  
647 Administrative Fund solely to pay the administrative costs and  
648 expenses of the program and the administrative costs and expenses  
649 the State Treasurer incurs in the performance of his duties under  
650 this act.

651 **SECTION 11. Audits and annual reports.** (1) The State  
652 Treasurer shall cause an accurate account of all of the program's,  
653 trust's, and State Treasurer's activities, operations, receipts,  
654 and expenditures to be maintained. Each year, a full audit of the  
655 books and accounts of the State Treasurer pertaining to those  
656 activities, operations, receipts and expenditures, personnel,  
657 services, or facilities shall be conducted by a certified public  
658 accountant and shall include, but not be limited to, direct and  
659 indirect costs attributable to the use of outside consultants,  
660 independent contractors, and any other persons who are not state  
661 employees for the administration of the program. For the purposes



of the audit, the auditors shall have access to the properties and records of the program and may prescribe methods of accounting and the rendering of periodic reports in relation to projects undertaken by the program.

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

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

**SECTION 12. Applicability dates.** (1) The State Treasurer shall establish the program so that individuals can begin contributing under the program not later than the first of the month following the second anniversary of the effective date of this act.

(2) The State Treasurer may, in his discretion, phase in the program so that the ability to contribute first applies on different dates for different classes of individuals, including employees of employers of different sizes or types and individuals who are not employees (self-employed, independent contractors,



etc.). However, any such staged or phased-in implementation schedule must be substantially completed not later than twenty-four (24) months after the effective date of this act.

(3) The State Treasurer shall not implement the program if and to the extent that it determines that the program is preempted by ERISA. Accordingly, if and as needed, the State Treasurer shall implement the program in a severable fashion to the extent practicable if and to the extent that the State Treasurer determines:

(a) That a portion or aspect of the program is preempted by ERISA, the State Treasurer shall not implement that portion or aspect of the program but shall proceed to implement the remainder of the program to the extent practicable; or

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

**SECTION 13.** This act shall take effect and be in force from and after its passage.

