

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.



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

100 10 of this act that is established for the sole purpose of paying
101 the administrative costs and expenses of the program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

156 (v) To promote portability of benefits; and

157 (vi) To avoid preemption of the program by

158 law;

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

165 (d) Develop and disseminate educational information
166 designed to educate participants and citizens about the benefits
167 of planning and saving for retirement and information to help them
168 decide the level of participation and savings strategies that may
169 be appropriate for them, including information in furtherance of
170 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



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

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



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

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

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

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

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

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

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

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

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

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

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

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

309 (i) Pay benefits to participants under the
310 program;

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

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

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



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

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

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

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

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

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

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

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

SECTION 4. Requirements for the Mississippi Work and Save

353 **program.** The program developed and established under this act
354 must:

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

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

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

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

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

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

390 (g) Be professionally managed;

391 (h) Permit no employer contributions by covered
392 employers;

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

396 (j) When possible and practicable, use existing or new
397 employer, other private-sector, and public infrastructure and
398 common, collective, or pooled investment arrangements to the
399 extent desirable to facilitate and enhance the effectiveness and
400 efficiency of program outreach, enrollment, contributions,
401 recordkeeping, investment, distributions, compliance, and other
402 aspects of program design, administration and implementation
403 consistent with the purposes set forth in this act, including the
404 purpose of achieving economies of scale and other efficiencies
405 designed to minimize costs for the program and its participants
406 and the provisions of paragraph (1) of this section;

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

415 (m) Make provision for the participation in the program
416 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 a
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;

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

586 **SECTION 10. Funding of program.** (1) The Mississippi Work
587 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



612 the Administrative Fund, whether for investment or administrative
613 expenses.

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

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

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

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

635 (5) The state may pay administrative costs associated with
636 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



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

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

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

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

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



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

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

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

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

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