

By: Senator(s) Michel

To: Finance; Government  
Structure

## 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 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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

(k) "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.

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

(m) "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.



(n) "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.

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

(p) "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. Establishment of board.** (1) The Mississippi Work and Save Board is established in the Office of the State Treasurer to administer the Mississippi Work and Save Program. The board shall consist of the following nine (9) members, with the State Treasurer or the designee of the State Treasurer serving as chair:

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



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

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

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

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

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



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;

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

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

(g) Arrange for and facilitate compliance by the  
program or arrangements established under the program with all  
applicable requirements for the program under the Internal Revenue  
Code, including requirements for favorable tax treatment of the  
IRAs, and under any other applicable federal or state law and  
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;



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

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



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



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 5(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:



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;





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

(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) A board member, program administrator, and other staff of the board 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 5. Requirements for the Mississippi Work and Save program.** The program developed and established by the board under 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;



(e) Provide on a uniform basis, if and when the board 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 board, 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, as provided in Section 6(1) of this act;

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

The board shall adopt rules to implement the program that:

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

(b) Establish the processes for withdrawals, rollovers, and direct transfers from IRAs under the program in the interest 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;



(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 7. 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 board'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 8. Protection from liability for the state.** (1)

The state, the board, each member of the board or other state official, other state boards, commissions, or agencies, 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 or the board 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 or the board.

**SECTION 9. 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 10. Intergovernmental collaboration and cooperation.** The board 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



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;



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

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

(f) Earnings on monies in the Administrative Fund.

(2) The board shall accept any grants, gifts, appropriations, or other monies from the state, any unit of federal, state, or local government, or any other person, firm, 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 board may borrow from the state, any unit of 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.



**SECTION 12. Audits and annual reports.**

(1) The board shall cause an accurate account of all of the program's, trust's, and board's activities, operations, receipts, and expenditures to be maintained. Each year, a full audit of the books and accounts of the board pertaining to those activities, operations, receipts and expenditures, personnel, services, or facilities shall be conducted by a certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state 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 board 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 board 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 and board during the preceding calendar year. The report shall also include projected activities of the program for the current calendar year.

(3) The board shall prepare an annual report on the operation of the program to be available to all citizens and 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.

