

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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



(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.

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

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

194 **SECTION 4. Powers, authority, and duties of the board.** (1)  
195 The board, subject to its authority and fiduciary duty, shall



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

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

200 (a) Establish, implement, and maintain the program;  
201 (b) Cause the program, trust, and arrangements and  
202 accounts established under the program to be designed,  
203 established, and operated:

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

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

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

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

214 (v) To promote portability of benefits; and

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

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

221 view to achieving economies of scale and other efficiencies  
222 designed to minimize costs for the program and its participants;  
223 (d) Develop and disseminate educational information  
224 designed to educate participants and citizens about the benefits  
225 of planning and saving for retirement and information to help them  
226 decide the level of participation and savings strategies that may  
227 be appropriate for them, including information in furtherance of  
228 financial capability and financial literacy;  
229 (e) If necessary, determine the eligibility of an  
230 employer, employee, or other individual to participate in the  
231 program;  
232 (f) Adopt rules and regulations it deems necessary or  
233 advisable for the implementation of this act and the  
234 administration and operation of the program consistent with the  
235 Internal Revenue Code and regulations thereunder, including to  
236 ensure that the program and arrangements established under the  
237 program satisfy all criteria for favorable federal tax treatment  
238 and complies, to the extent necessary, with any other applicable  
239 federal or state law;  
240 (g) Arrange for and facilitate compliance by the  
241 program or arrangements established under the program with all  
242 applicable requirements for the program under the Internal Revenue  
243 Code, including requirements for favorable tax treatment of the  
244 IRAs, and under any other applicable federal or state law and  
245 accounting requirements, including using its best efforts to

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

371 and

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

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

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

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



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

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

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

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

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

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

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

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

414        **program.** The program developed and established by the board under

415        this act must:



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

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

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

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



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

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

451 (g) Be professionally managed;

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

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

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

465 purpose of achieving economies of scale and other efficiencies  
466 designed to minimize costs for the program and its participants  
467 and the provisions of paragraph (1) of this section;

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

704               (a) Monies appropriated to or transferred into the  
705 Administrative Fund by the Legislature;  
706               (b) Monies transferred to the Administrative Fund from  
707 the federal government, other state agencies, or local  
708 governments;  
709               (c) Monies from the payment of application, account,  
710 administrative, or other fees and the payment of other monies due  
711 the board;

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

