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2020 MS S 3053	**Author:** Hopson **Version:** Enacted **Version Date:** 08/18/2020

MISSISSIPPI LEGISLATURE

2020 Regular Session

To: Appropriations

By: Senator(s) Hopson

Senate Bill 3053

(As Sent to Governor)

AN ACT TO AMEND SENATE BILL NO. 2772, 2020 REGULAR SESSION, TO INCLUDE FISCAL YEAR 2021 ALONG WITH FISCAL YEAR 2020 AS THE TIME PERIOD IN WHICH THE DEPARTMENT OF FINANCE AND ADMINISTRATION SHALL HAVE THE AUTHORITY TO RECEIVE, BUDGET AND ESCALATE CERTAIN FEDERAL FUNDS IN THE DFA CARES ACT COVID-19 FUND FOR DEFRAYING EXPENSES INCURRED BY ANY STATE AGENCY, DEPARTMENT OR INSTITUTION FOR THE PURPOSES PROVIDED UNDER THE CORONAVIRUS RELIEF FUND, SECTION 5001 OF THE FEDERAL CARES ACT; TO CLARIFY LEGISLATIVE FINDINGS REGARDING THE PURPOSE OF THE $2,000.00 DIRECT PAYMENT TO BUSINESSES FOR INITIAL COMPLIANCE WITH THE GOVERNOR'S STATE OF EMERGENCY COVID-19 PROCLAMATION ISSUED ON MARCH 14, 2020; TO ADD CERTAIN NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM CODES TO THE DEFINITION OF AN ELIGIBLE TAXPAYER FOR THE $2,000.00 DIRECT PAYMENT FROM THE MISSISSIPPI COVID-19 RELIEF PAYMENT FUND; TO PROVIDE THAT THE MISSISSIPPI DEVELOPMENT AUTHORITY SHALL NOT CONSIDER APPLICATIONS FILED AFTER SEPTEMBER 15, 2020, FOR THE BACK TO BUSINESS MISSISSIPPI GRANT PROGRAM; TO INCREASE THE BASE PAYMENT TO AN ELIGIBLE BUSINESS UNDER THE BACK TO BUSINESS MISSISSIPPI GRANT PROGRAM FROM $1,500.00 TO $3,500.00; TO REMOVE THE PROVISION REQUIRING THAT THE TOTAL PAYMENT UNDER THE BACK TO BUSINESS MISSISSIPPI GRANT PROGRAM SHALL BE REDUCED FOR PAYCHECK PROTECTION PROGRAM FUNDS, ECONOMIC INJURY DISASTER LOAN EMERGENCY ADVANCE FUNDS, AND BUSINESS INTERRUPTION INSURANCE PROCEEDS RECEIVED BY THE ELIGIBLE BUSINESS; TO SPECIFY THAT THE AMOUNT OF A PAYMENT UNDER THE BACK TO BUSINESS MISSISSIPPI GRANT PROGRAM SHALL NOT BE REDUCED BY $2,000.00 FOR ANY DIRECT PAYMENT RECEIVED FROM THE DEPARTMENT OF REVENUE; AND FOR RELATED PURPOSES.

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

SECTION 1. Senate Bill No. 2772, 2020 Regular Session, is amended as follows:

Section 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Capital Expense Fund out of the Budget Contingency Fund (Fund Number 6117700000)..... $ 7,599,822.00.

(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Budget Contingency Fund out of the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000)..... $ 900,000,000.00.

(3) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Mississippi COVID-19 Relief Payment Fund created by this act out of the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000)..... $ 60,000,000.00.

The Mississippi Department of Finance and Administration shall have the authority to receive, budget and escalate these federal funds for providing grants under Section 4 of this act.

(4) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Back to Business Mississippi Grant Fund created by this act out of the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000)..... $ 240,000,000.00.

The Mississippi Development Authority shall have the authority to receive, budget and escalate these federal funds for providing grants under Sections 5 through 10 of this act.

Section 2. During fiscal years 2020 and 2021, the Department of Finance and Administration shall have the authority to receive, budget and escalate federal funds in the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000) in an amount not to exceed Fifty Million Dollars ($50,000,000.00) for defraying expenses incurred by any state agency, department or institution for the purposes provided under the Coronavirus Relief Fund, Section 5001 of the federal Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136).

Section 3. The Legislature intends to provide economic support to eligible Mississippi businesses for costs incurred in connection with the Coronavirus Disease 2019 (COVID-19), including business interruption caused by forced closures or restricted operations resulting from voluntary closures instituted to promote social distancing measures, decreased customer demand, cleaning or disinfection, and provision of personal protective equipment. Eligible expenses shall not include any damage paid by business interruption insurance or disallowed by Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act or any guidance or regulation issued by the United States Department of the Treasury in conformity therewith.

In order to expedite payment to businesses in need of economic support due to required or voluntary closures related to COVID-19, while minimizing administrative costs and delays, the Legislature finds that a direct payment of Two Thousand Dollars ($2,000.00) per business is a necessary*** * *** cost, as provided for in Section 4 of this act. This payment is specifically to compensate these businesses for an initial compliance with the Governor's State of Emergency COVID-19 Proclamation issued on March 14, 2020. As such, this payment is not related to and is separate and distinct from any eligible expense that is reimbursable from the Back to Business Program. The Legislature finds further that an application process is warranted for the provision of additional compensation, whereby eligible businesses not wishing to itemize their expenses may receive, subject to approval, a base payment of*** * *** Three Thousand Five Hundred Dollars ($3,500.00) plus Five Hundred Dollars ($500.00) per full-time equivalent employee as a reasonable estimate of their costs incurred, as provided for in Sections 5 through 10 of this act.

Section 4. (1) As used in this section, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "COVID-19" means the Coronavirus Disease 2019.

(b) "Department" means the Mississippi Department of Revenue.

(c) "Eligible taxpayer" means a resident taxpayer, or a taxpayer with a permanent place of business located in the state, that:

(i) Was registered with the department before March 1, 2020, had an Employer Identification Number or Social Security Number before March 1, 2020, and/or had an active department withholding account established before March 1, 2020, which withholding account was not for the purposes of paying household employees or as a home healthcare recipient;

(ii) Had a North American Industry Classification System Code of 311811, 4421, 4422, 4481, 4482, 4483, 4511, 4512, 4531, 4532, 4533, 4539, 487210, 5121, 6116, 6244, 7111, 7112, 7113, 7131, 7139, 7223, 7224, 7225 or 8121, before March 1, 2020, and was engaged as an active business in such activity before March 1, 2020;

(iii) Was subject to any COVID-19-related state, municipal and/or county required business closure or voluntary closure;

(iv) Filed Mississippi taxes for tax year 2018 or 2019, or, for an eligible business formed on or after January 1, 2020, intends to file Mississippi taxes for tax year 2020, unless exempt under Section 27-7-29, Section 27-13-63 or other applicable provision of law;

(v) Had no more than fifty (50) full-time equivalent employees as of March 1, 2020; and

(vi) Is not a subsidiary of a business with more than fifty (50) full-time equivalent employees, is not part of a larger business enterprise with more than fifty (50) full-time equivalent employees and is not owned by a business with more than fifty (50) full-time equivalent employees.

(2) (a) There is hereby created in the State Treasury a special fund to be designated as the "Mississippi COVID-19 Relief Payment Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used for the purpose of providing payments to eligible taxpayers as provided in this section. Monies in the fund shall be administered and disbursed by the Department of Finance and Administration in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the Coronavirus Aid, Relief, and Economic Security Act. If on November 1, 2020, there are unobligated monies in the fund, the Governor shall have the discretion to transfer monies to another state agency to be used for eligible expenditures pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

(b) The department shall establish a program to provide a payment of Two Thousand Dollars ($2,000.00) to each eligible taxpayer. The department may coordinate with various professional licensing boards and other regulatory entities and agencies for the purpose of identifying eligible taxpayers as defined herein and compile a report of eligible taxpayers. The department shall certify the report to the Department of Finance and Administration, which shall disburse the payments authorized under this section to eligible taxpayers.

(c) To effectuate the purposes of this act, any office, division, board, bureau, committee, institution or agency of the state, or any political subdivision thereof, shall, at the request of the department, provide the employees, facilities, assistance, information and data needed to enable the department to carry out its duties.

Section 5. Sections 5 through 10 of this act shall be known and may be cited as the "2020 COVID-19 Mississippi Business Assistance Act."

Section 6. As used in Sections 5 through 10 of this act, the following terms shall have the meanings ascribed unless the context otherwise requires:

(a) "COVID-19" means the Coronavirus Disease 2019.

(b) "CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act.

(c) "Eligible business" means a for-profit corporation, a limited liability company, a partnership or a sole proprietorship that:

(i) Was domestic as of March 1, 2020;

(ii) Is in good standing with the Secretary of State, if applicable;

(iii) Suffered an interruption of business;

(iv) Has a controlling interest owned by one or more Mississippi residents, whether individual resident citizens or Mississippi domestic business entities;

(v) Filed Mississippi taxes for tax year 2018 or 2019, or, for an eligible business formed on or after January 1, 2020, intends to file Mississippi taxes for tax year 2020, unless exempt under Section 27-7-29, Section 27-13-63 or other applicable provision of law;

(vi) Has customers or employees coming to its physical premises, conducts business on customer premises, or has an owner who is an active participant in the day-to-day operations of the business;

(vii) Had no more than fifty (50) full-time equivalent employees as of March 1, 2020;

(viii) Is not a subsidiary of a business with more than fifty (50) full-time equivalent employees, is not part of a larger business enterprise with more than fifty (50) full-time equivalent employees and is not owned by a business with more than fifty (50) full-time equivalent employees;

(ix) Does not exist for the purpose of advancing partisan political activities, does not directly lobby federal or state officials as provided in Sections 5-8-1 through 5-8-23, and has not employed or otherwise worked with a lobbyist as defined in Section 5-8-3 in any way at any point during 2020; and

(x) Does not derive income from passive investments without active participation in business operations.

(d) "Interruption of business" means disruption of regular business operations resulting from required or voluntary closure related to COVID-19.

(e) "Public health measure" means any action reasonably taken to prevent the spread of COVID-19 in the workplace.

(f) "Eligible expense" means a cost incurred by an eligible business for public health measures or due to interruption of business. Eligible expenses due to interruption of business may consist only of mortgage interest, rent, payroll and utilities, or other COVID-19-related expenses allowed by law, each for no more than a two-month period. Eligible expenses shall not include lost profits. No cost will be considered an eligible expense if found to be ineligible under the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act.

(g) "MDA" means the Mississippi Development Authority.

(h) "Grant" means an award by the MDA to an eligible business to cover eligible expenses in accordance with Sections 5 through 10 of this act.

(i) "Program" means the Back to Business Mississippi Grant Program established in Sections 5 through 10 of this act.

(j) "Minority business enterprise" means a socially and economically disadvantaged small business concern performing a commercially useful function which is owned and controlled by one or more minorities or minority business enterprises certified by the Mississippi Development Authority, at least fifty percent (50%) of whom are resident citizens of the State of Mississippi. Except as otherwise provided, for purposes of this act, the term "socially and economically disadvantaged small business concern" shall have the meaning ascribed to such term under the Small Business Act, 15 USC Section 637(a), or women, and the term "owned and controlled" means a business in which one or more minorities or minority business enterprises certified by the Mississippi Development Authority own sixty percent (60%) or, in the case of a corporation, sixty percent (60%) of the voting stock, and control sixty percent (60%) of the management and daily business operations of the business.

Section 7. (1) The Legislature facilitates access by Mississippi small businesses to federal relief and recovery funds related to COVID-19. Accordingly, the Back to Business Mississippi Grant Program is established, to be administered by the MDA, for the purpose of making grants to eligible businesses to reimburse them for eligible expenses as defined in Sections 5 through 10 of this act.

(2) From the date of the beginning of the period for applications for grants under this section, the MDA shall for the first twenty-one (21) days of the application period only consider and review applications from eligible businesses that (i) did not receive a United States Small Business Administration-Guaranty Paycheck Protection Program loan and/or a United States Small Business Administration Economic Injury Disaster Loan Emergency Advance, (ii) did not receive and has not been awarded reimbursement under any other federal program for the expenses that will be reimbursed by a grant under this section and (iii) did not receive compensation from an

insurance company for the interruption of business. After the completion of such twenty-one-day period, the MDA shall consider and review applications from any eligible businesses. The MDA shall not consider applications filed after September 15, 2020.

(3) The MDA shall develop regulations, procedures and application forms to govern the administration of the program. The MDA may enter into a personal services contract, subject to approval by the Public Procurement Review Board, for the administrative services of the program. The contract shall be let and awarded after receiving at least two (2) bids for time and expense not to exceed Nine Hundred Thousand Dollars ($900,000.00). The MDA may retain up to Nine Hundred Thousand Dollars ($900,000.00) of monies available under Sections 5 through 10 of this act to pay reasonable expenses incurred in the administration of the program.

Section 8. (1) Any eligible business desiring to participate in the program shall make application for a grant to the MDA in a form satisfactory to the MDA. The application shall include verified documentation, signed under penalty of perjury.

(2) The MDA shall use the funds provided by Sections 5 through 10 of this act to make grants to eligible businesses pursuant to applications submitted under subsection (1) of this section, to cover their eligible expenses.

(3) The use of grants shall be subject to audit by the United States Department of the Treasury's Office of Inspector General and the Mississippi Office of the State Auditor. A business found to be fully or partially noncompliant with grant requirements shall return to the state all or a portion of the grant monies received. Applicants shall confirm their understanding of these terms.

(4) The program shall be subject to the following terms and conditions:

(a) The base payment to an eligible business shall be*** * *** Three Thousand Five Hundred Dollars ($3,500.00). An eligible business may choose to receive additional compensation by either claiming Five Hundred Dollars ($500.00) per full-time equivalent employee employed by the eligible business as of March 1, 2020, or itemizing eligible expenses on the application form.*** * *** The amount of a payment under this section shall not be reduced by Two Thousand Dollars ($2,000.00) for any direct payment received under Section 4 of this act. In no event shall the total payment to an eligible business under this section exceed Twenty-five Thousand Dollars ($25,000.00).

(b) At least Forty Million Dollars ($40,000,000.00) in grants, exclusive of administrative expenses retained by the MDA, shall be awarded to minority business enterprises for the first sixty (60) days of the application period.

(c) Grants awarded shall be protected from creditors and shall not be subject to tax; however, eligible expenses for which grants are received may not be itemized as tax deductions.

Section 9. There is created a special fund in the State Treasury, to be known as the "Back to Business Mississippi Grant Fund," from which the grants authorized by this act shall be disbursed by the MDA. All monies shall be disbursed from the fund in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. If on November 1, 2020, there are unobligated monies in the fund, the Governor shall have the discretion to transfer monies to another state agency to be used for eligible expenditures pursuant to the CARES Act.

Section 10. To effectuate the purposes of Sections 5 through 10 of this act, any office, division, board, bureau, committee, institution or agency of the state, or any political subdivision thereof, shall, at the request of the MDA, provide the employees, facilities, assistance, information and data needed to enable the MDA to carry out its duties. The MDA shall, at a minimum, work with the Department of Revenue to verify applicant tax information, and with the Department of Human Services to promote application by childcare organizations.

As soon as possible after the effective date of this act, the Secretary of State shall notify all registered businesses of the availability of grants under the program.

Section 11. Funds received under the Paycheck Protection Program (PPP) shall not be subject to tax; however, eligible expenses for which PPP funds are received may not be itemized as tax deductions.

Section 12. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

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

SECTION 2. All changes made in this act to Senate Bill No. 2772, 2020 Regular Session, shall be retroactive to May 20, 2020.

SECTION 3. This act shall take effect and be in force from and after its passage.

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