

By: Representative Davis

To: Judiciary A

HOUSE BILL NO. 485

1 AN ACT TO AMEND SECTIONS 93-5-23, 93-11-65, 93-11-71 AND
2 93-11-103, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COURT TO
3 IMPOSE A SURCHARGE ON DELINQUENT CHILD SUPPORT PAYMENTS; AND FOR
4 RELATED PURPOSES.

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

6 SECTION 1. Section 93-5-23, Mississippi Code of 1972, is
7 amended as follows:

8 93-5-23. When a divorce shall be decreed from the bonds of
9 matrimony, the court may, in its discretion, having regard to the
10 circumstances of the parties and the nature of the case, as may
11 seem equitable and just, make all orders touching the care,
12 custody and maintenance of the children of the marriage, and also
13 touching the maintenance and alimony of the wife or the husband,
14 or any allowance to be made to her or him, and shall, if need be,
15 require bond, sureties or other guarantee for the payment of the
16 sum so allowed. The order may include a provision that requires
17 the obligor to pay to the recipient a surcharge of eight percent
18 (8%) of the total amount of any delinquent payment. Orders
19 touching on the custody of the children of the marriage may be
20 made in accordance with the provisions of Section 93-5-24. The
21 court may afterwards, on petition, change the decree, and make
22 from time to time such new decrees as the case may require.
23 However, where proof shows that both parents have separate incomes
24 or estates, the court may require that each parent contribute to
25 the support and maintenance of the children of the marriage in
26 proportion to the relative financial ability of each. In the
27 event a legally responsible parent has health insurance available
28 to him or her through an employer or organization that may extend

benefits to the dependents of such parent, any order of support issued against such parent may require him or her to exercise the option of additional coverage in favor of such children as he or she is legally responsible to support.

Whenever the court has ordered a party to make periodic payments for the maintenance or support of a child, but no bond, sureties or other guarantee has been required to secure such payments, and whenever such payments as have become due remain unpaid for a period of at least thirty (30) days, the court may, upon petition of the person to whom such payments are owing, or such person's legal representative, enter an order requiring that bond, sureties or other security be given by the person obligated to make such payments, the amount and sufficiency of which shall be approved by the court. The obligor shall, as in other civil actions, be served with process and shall be entitled to a hearing in such case.

Whenever in any proceeding in the chancery court concerning the custody of a child a party alleges that the child whose custody is at issue has been the victim of sexual or physical abuse by the other party, the court may, on its own motion, grant a continuance in the custody proceeding only until such allegation has been investigated by the Department of Human Services. At the time of ordering such continuance the court may direct the party, and his attorney, making such allegation of child abuse to report in writing and provide all evidence touching on the allegation of abuse to the Department of Human Services. The Department of Human Services shall investigate such allegation and take such action as it deems appropriate and as provided in such cases under the Youth Court Law (being Chapter 21 of Title 43, Mississippi Code of 1972) or under the laws establishing family courts (being Chapter 23 of Title 43, Mississippi Code of 1972).

If after investigation by the Department of Human Services or final disposition by the youth court or family court allegations of child abuse are found to be without foundation, the chancery court shall order the alleging party to pay all court costs and reasonable attorney's fees incurred by the defending party in responding to such allegation.

The court may investigate, hear and make a determination in a

67 custody action when a charge of abuse and/or neglect arises in the
68 course of a custody action as provided in Section 43-21-151, and
69 in such cases the court shall appoint a guardian ad litem for the
70 child as provided under Section 43-21-121, who shall be an
71 attorney. Unless the chancery court's jurisdiction has been
72 terminated, all disposition orders in such cases for placement
73 with the Department of Human Services shall be reviewed by the
74 court or designated authority at least annually to determine if
75 continued placement with the department is in the best interest of
76 the child or public.

77 The duty of support of a child terminates upon the
78 emancipation of the child. The court may determine that
79 emancipation has occurred and no other support obligation exists
80 when the child:

81 (a) Attains the age of twenty-one (21) years, or

82 (b) Marries, or

83 (c) Discontinues full-time enrollment in school and
84 obtains full-time employment prior to attaining the age of
85 twenty-one (21) years, or

86 (d) Voluntarily moves from the home of the custodial
87 parent or guardian and establishes independent living arrangements
88 and obtains full-time employment prior to attaining the age of
89 twenty-one (21) years.

90 SECTION 2. Section 93-11-65, Mississippi Code of 1972, is
91 amended as follows:

92 93-11-65. In addition to the right to proceed under Section
93 93-5-23, Mississippi Code of 1972, and in addition to the remedy
94 of habeas corpus in proper cases, and other existing remedies, the
95 chancery court of the proper county shall have jurisdiction to
96 entertain suits for the custody, care, support and maintenance of
97 minor children and to hear and determine all such matters, and
98 shall, if need be, require bond, sureties or other guarantee to
99 secure any order for periodic payments for the maintenance or
100 support of a child. The order may include a provision that

101 requires the obligor to pay to the recipient a surcharge of eight
102 percent (8%) of the total amount of any delinquent payment. In
103 the event a legally responsible parent has health insurance
104 available to him or her through an employer or organization that
105 may extend benefits to the dependents of such parent, any order of
106 support issued against such parent may require him or her to
107 exercise the option of additional coverage in favor of such
108 children as he or she is legally responsible to support.
109 Proceedings may be brought by or against a resident or nonresident
110 of the State of Mississippi, whether or not having the actual
111 custody of minor children, for the purpose of judicially
112 determining the legal custody of a child. All actions herein
113 authorized may be brought in the county where the child is
114 actually residing, or in the county of the residence of the party
115 who has actual custody, or of the residence of the defendant.
116 Process shall be had upon the parties as provided by law for
117 process in person or by publication, if they be nonresidents of
118 the state or residents of another jurisdiction or are not found
119 therein after diligent search and inquiry or are unknown after
120 diligent search and inquiry; provided that the court or chancellor
121 in vacation may fix a date in termtime or in vacation to which
122 process may be returnable and shall have power to proceed in
123 termtime or vacation. Provided, however, that if the court shall
124 find that both parties are fit and proper persons to have custody
125 of the children, and that either party is able to adequately
126 provide for the care and maintenance of the children, and that it
127 would be to the best interest and welfare of the children, then
128 any such child who shall have reached his twelfth birthday shall
129 have the privilege of choosing the parent with whom he shall live.

130 Provided further, that where the proof shows that both
131 parents have separate incomes or estates, the court may require
132 that each parent contribute to the support and maintenance of the
133 children in proportion to the relative financial ability of each.

134 Whenever the court has ordered a party to make periodic

135 payments for the maintenance or support of a child, but no bond,
136 sureties or other guarantee has been required to secure such
137 payments, and whenever such payments as have become due remain
138 unpaid for a period of at least thirty (30) days, the court may,
139 upon petition of the person to whom such payments are owing, or
140 such person's legal representative, enter an order requiring that
141 bond, sureties or other security be given by the person obligated
142 to make such payments, the amount and sufficiency of which shall
143 be approved by the court. The obligor shall, as in other civil
144 actions, be served with process and shall be entitled to a hearing
145 in such case.

146 When a charge of abuse or neglect of a child first arises in
147 the course of a custody or maintenance action pending in the
148 chancery court pursuant to this section, the chancery court may
149 proceed with the investigation, hearing and determination of such
150 abuse or neglect charge as a part of its hearing and determination
151 of the custody or maintenance issue as between the parents, as
152 provided in Section 43-21-151, notwithstanding the other
153 provisions of the Youth Court Law. The proceedings in chancery
154 court on the abuse or neglect charge shall be confidential in the
155 same manner as provided in youth court proceedings, and the
156 chancery court shall appoint a guardian ad litem in such cases, as
157 provided under Section 43-21-121 for youth court proceedings, who
158 shall be an attorney. Unless the chancery court's jurisdiction
159 has been terminated, all disposition orders in such cases for
160 placement with the Department of Human Services shall be reviewed
161 by the court or designated authority at least annually to
162 determine if continued placement with the department is in the
163 best interest of the child or the public.

164 The duty of support of a child terminates upon the
165 emancipation of the child. The court may determine that
166 emancipation has occurred and no other support obligation exists
167 when the child:

168 (a) Attains the age of twenty-one (21) years, or

(b) Marries, or

(c) Discontinues full-time enrollment in school and obtains full-time employment prior to attaining the age of twenty-one (21) years, or

(d) Voluntarily moves from the home of the custodial parent or guardian and establishes independent living arrangements and obtains full-time employment prior to attaining the age of twenty-one (21) years.

SECTION 3. Section 93-11-71, Mississippi Code of 1972, is amended as follows:

93-11-71. (1) Whenever a court orders any person to make periodic payments for the maintenance or support of a child, and whenever such payments as have become due remain unpaid for a period of at least thirty (30) days, the person to whom such payments are owed, or his legal representative, shall be entitled to a judgment against the obligor in such amount as is equal to all such payments which are then due and owing plus a surcharge of eight percent (8%) of any delinquent payments.

(2) Any judgment obtained under the provisions of this section shall operate as a lien upon all the property of the judgment debtor, both real and personal. Such judgment shall be entered on the judgment roll by means of sworn documentation of delinquent child support. Liens arising under the provisions of this section may be executed upon and enforced in the same manner and to the same extent as any other judgment.

(3) Any judgment obtained under the provisions of this section shall subject the following assets to interception or seizure without regard to the entry of such judgment on the judgment roll of the situs district or jurisdiction:

(a) Periodic or lump-sum payments from a federal, state or local agency, including unemployment compensation, workers' compensation and other benefits;

(b) Winnings from lotteries and gaming winnings which are received in periodic payments made over a period in excess of

203 thirty (30) days;

204 (c) Assets held in financial institutions;

205 (d) Settlements and awards resulting from civil
206 actions; and

207 (e) Public and private retirement funds, only to the
208 extent that the obligor is qualified to receive and receives a
209 lump sum or periodic distribution from the funds.

210 (4) In any case in which a child receives assistance from
211 block grants for Temporary Assistance for Needy Families (TANF),
212 and the obligor owes past-due child support, the obligor, if not
213 incapacitated, may be required by the court to participate in any
214 work programs offered by any state agency.

215 SECTION 4. Section 93-11-103, Mississippi Code of 1972, is
216 amended as follows:

217 93-11-103. (1) **Child Support Orders Enforced by Department**
218 **of Human Services.** Upon entry of any order for support by a court
219 of this state where the custodial parent is a recipient of
220 services under Title IV-D of the federal Social Security Act,
221 issued on or after October 1, 1996, the court entering such order
222 shall enter a separate order for withholding which shall take
223 effect immediately without any requirement that the obligor be
224 delinquent in payment. All such orders for support issued prior
225 to October 1, 1996, shall, by operation of law, be amended to
226 conform with the provisions contained herein. All such orders for
227 support issued shall:

228 (a) Contain a provision for monthly income withholding
229 procedures to take effect in the event the obligor becomes
230 delinquent in paying the order for support without further
231 amendment to the order or further action by the court; and

232 (b) Require that the payor withhold any additional
233 amount for delinquency specified in any order if accompanied by an
234 affidavit of accounting, a notarized record of overdue payments or
235 an attested judgment for delinquency or contempt. Any person who
236 willfully and knowingly files a false affidavit, record or

judgment shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00).

Orders that are being enforced by the Child Support Unit and which were issued or modified after November 1, 1990, shall not be subject to immediate income withholding under this subsection (a) if one of the parties (i.e. noncustodial or custodial parent) demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (b) if both parties agree in writing to an alternative arrangement.

(2) Child Support Orders Not Enforced by the Department of Human Services. Upon entry of any order for support by a court of this state where the custodial parent is not a recipient of services under Title IV-D of the federal Social Security Act, issued or modified or found to be in arrears on or after January 1, 1994, the court entering such order shall enter a separate order for withholding which shall take effect immediately. Such orders shall not be subject to immediate income withholding under this subsection (a) if one of the parties (i.e. noncustodial or custodial parent) demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (b) if both parties agree in writing to an alternative arrangement.

(3) If a child support order is issued or modified in the state but is not subject to immediate income withholding, it automatically becomes so if the court finds that a support payment is thirty (30) days past due. If the support order were issued or modified in another state but is not subject to immediate income withholding, it becomes subject to income withholding on the date on which child support payments are at least one (1) month in arrears, or if it is earlier, the earliest of (a) the date as of which the noncustodial parent requests that withholding begin, (b) the date as of which the custodial parent requests that withholding begin, or (c) an earlier date chosen by the court.

(4) The clerk of the court shall submit copies of such orders to the obligor's payor, any additional or subsequent payor,

and to the Mississippi Department of Human Services Case Registry.

The clerk of the court, the obligee's attorney, or the department's attorney may serve such immediate order for withholding by first class mail or personal delivery on the obligor's payor, superintendent, manager, agent or subsequent payor, as the case may be. In a case where the obligee's attorney or the department's attorney serves such immediate order, the attorney shall notify the clerk of the court in writing, which notice shall be placed in the court file. There shall be no need for further notice, hearing, order, process or procedure prior to service of said order on the payor or any additional or subsequent payor. The obligor may contest, if grounds exist, service of the order of withholding on additional or subsequent payors, by filing an action with the issuing court. Such filing shall not stay the obligor's duty to support pending judicial determination of the obligor's claim. Nothing herein shall be construed to restrict the authority of the courts of this state from entering any order it deems appropriate to protect the rights of any parties involved.

(5) The order for withholding shall:

(a) Direct any payor to withhold an amount equal to the order for support;

(b) Direct any payor to withhold an additional amount, not less than ten percent (10%) of the order for support plus any court ordered surcharge, until payment in full of any delinquency; and

(c) Direct the payor not to withhold in excess of the amounts allowed under Section 303(b) of the Consumer Credit Protection Act, being 15 USCA 1673, as amended.

(6) In cases initiated or enforced by the Department of Human Services pursuant to Title IV-D of the federal Social Security Act, all such orders for withholding may permit the Department of Human Services to withhold through said withholding order additional amounts to recover costs incurred through its

efforts to secure the support order, including, but not limited to, all filing fees, court costs, service of process fees, mailing costs, birth certificate certification fee, genetic testing fees, the department's attorney's fees; and, in cases where the state or any of its entities or divisions have provided medical services to the child or the child's mother, all medical costs of prenatal care, birthing, postnatal care and any other medical expenses incurred by the child or by the mother as a consequence of her pregnancy or delivery.

(7) At the time the order for withholding is entered, the clerk of the court shall provide copies of the order for withholding and the order for support to the obligor, which shall be accompanied by a statement of the rights, remedies and duties of the obligor under Sections 93-11-101 through 93-11-119. The clerk of the court shall make copies available to the obligee and to the department or its local attorney.

(8) The order for withholding shall remain in effect for as long as the order for support upon which it is based.

(9) The failure of an order for withholding to state an arrearage is not conclusive of the issue of whether an arrearage is owing.

(10) Any order for withholding entered pursuant to this section shall not be considered a garnishment.

(11) All existing orders for support shall become subject to additional withholding if arrearages occur, subject to court hearing and order. The Department of Human Services or the obligee or his agent or attorney must send to each delinquent obligor notice that:

(a) The withholding on the delinquency has commenced;

(b) The information along with the required affidavit of accounting, notarized record of overdue payment or attested judgment of delinquency or contempt has been sent to the employer; and

(c) The obligor may file an action with the issuing

339 court on the grounds of mistake of fact. Such filing must be made
340 within thirty (30) days of receipt of the notice and shall not
341 stay the obligor's duty to support pending judicial determination
342 of the obligor's claim.

343 (12) An employer who complies with an income withholding
344 notice that is regular on its face and which is accompanied by the
345 required accounting affidavit, notarized record of overdue
346 payments or attested judgment of delinquency or contempt shall not
347 be subject to civil liability to any individual or agency for
348 conduct in compliance with the notice.

349 SECTION 5. This act shall take effect and be in force from
350 and after July 1, 1999.