

By: Davis

To: Judiciary A

HOUSE BILL NO. 229

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

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

45 Whenever in any proceeding in the chancery court concerning
46 the custody of a child a party alleges that the child whose
47 custody is at issue has been the victim of sexual or physical
48 abuse by the other party, the court may, on its own motion, grant
49 a continuance in the custody proceeding only until such allegation
50 has been investigated by the Department of Human Services. At the
51 time of ordering such continuance the court may direct the party,
52 and his attorney, making such allegation of child abuse to report
53 in writing and provide all evidence touching on the allegation of

54 abuse to the Department of Human Services. The Department of
55 Human Services shall investigate such allegation and take such
56 action as it deems appropriate and as provided in such cases under
57 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
58 Code of 1972) or under the laws establishing family courts (being
59 Chapter 23 of Title 43, Mississippi Code of 1972).

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

66 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:[BD1]

92 93-11-65. (1) (a) In addition to the right to proceed
93 under Section 93-5-23, Mississippi Code of 1972, and in addition
94 to the remedy of habeas corpus in proper cases, and other existing
95 remedies, the chancery court of the proper county shall have
96 jurisdiction to entertain suits for the custody, care, support and
97 maintenance of minor children and to hear and determine all such
98 matters, and shall, if need be, require bond, sureties or other
99 guarantee to secure any order for periodic payments for the
100 maintenance or support of a child. The order may include a
101 provision that requires the obligor to pay to the recipient a
102 surchARGE of eight percent (8%) of the total of any delinquent
103 payment. In the event a legally responsible parent has health
104 insurance available to him or her through an employer or
105 organization that may extend benefits to the dependents of such
106 parent, any order of support issued against such parent may
107 require him or her to exercise the option of additional coverage
108 in favor of such children as he or she is legally responsible to
109 support. Proceedings may be brought by or against a resident or

110 nonresident of the State of Mississippi, whether or not having the
111 actual 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 (b) An order of child support shall specify the sum to
131 be paid weekly or otherwise. In addition to providing for support
132 and education, the order shall also provide for the support of the
133 child prior to the making of the order for child support, and such
134 other expenses as the court may deem proper.

135 (c) The court may require the payment to be made to the
136 custodial parent, or to some person or corporation to be
137 designated by the court as trustee, but if the child or custodial

138 parent is receiving public assistance, the Department of Human
139 Services shall be made the trustee.

140 (d) The noncustodial parent's liabilities for past
141 education and necessary support and maintenance and other expenses
142 are limited to a period of one (1) year next preceding the
143 commencement of an action.

144 (2) Provided further, that where the proof shows that both
145 parents have separate incomes or estates, the court may require
146 that each parent contribute to the support and maintenance of the
147 children in proportion to the relative financial ability of each.

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

160 (4) When a charge of abuse or neglect of a child first
161 arises in the course of a custody or maintenance action pending in
162 the chancery court pursuant to this section, the chancery court
163 may proceed with the investigation, hearing and determination of
164 such abuse or neglect charge as a part of its hearing and
165 determination of the custody or maintenance issue as between the

166 parents, as provided in Section 43-21-151, notwithstanding the
167 other provisions of the Youth Court Law. The proceedings in
168 chancery court on the abuse or neglect charge shall be
169 confidential in the same manner as provided in youth court
170 proceedings, and the chancery court shall appoint a guardian ad
171 litem in such cases, as provided under Section 43-21-121 for youth
172 court proceedings, who shall be an attorney. Unless the chancery
173 court's jurisdiction has been terminated, all disposition orders
174 in such cases for placement with the Department of Human Services
175 shall be reviewed by the court or designated authority at least
176 annually to determine if continued placement with the department
177 is in the best interest of the child or the public.

178 (5) Each party to a paternity or child support proceeding
179 shall notify the other within five (5) days after any change of
180 address. In addition, the noncustodial and custodial parent shall
181 file and update, with the court and with the state case registry,
182 information on that party's location and identity, including
183 Social Security number, residential and mailing addresses,
184 telephone numbers, photograph, driver's license number, and name,
185 address and telephone number of the party's employer. This
186 information shall be required upon entry of an order or within
187 five (5) days of a change of address.

188 (6) In any case subsequently enforced by the Department of
189 Human Services pursuant to Title IV-D of the Social Security Act,
190 the court shall have continuing jurisdiction.

191 (7) In any subsequent child support enforcement action
192 between the parties, upon sufficient showing that diligent effort
193 has been made to ascertain the location of a party, due process

194 requirements for notice and service of process shall be deemed to
195 be met with respect to the party upon delivery of written notice
196 to the most recent residential or employer address filed with the
197 state case registry.

198 (8) The duty of support of a child terminates upon the
199 emancipation of the child. The court may determine that
200 emancipation has occurred and no other support obligation exists
201 when the child:

202 (a) Attains the age of twenty-one (21) years; or

203 (b) Marries; or

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

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

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

213 93-11-71. (1) Whenever a court orders any person to make
214 periodic payments of a sum certain for the maintenance or support
215 of a child, and whenever such payments as have become due remain
216 unpaid for a period of at least thirty (30) days, a judgment by
217 operation of law shall arise against the obligor in an amount
218 equal to all payments which are then due and owing plus a
219 surcharge of eight percent (8%) of any delinquent payments.

220 (a) A judgment arising under this section shall have
221 the same effect and be fully enforceable as any other judgment

222 entered in this state. A judicial or administrative action to
223 enforce said judgment may be commenced at any time; and

224 (b) Such judgments arising in other states by operation
225 of law shall be given full faith and credit in this state.

226 (2) Any judgment arising under the provisions of this
227 section shall operate as a lien upon all the property of the
228 judgment debtor, both real and personal, which lien shall be
229 perfected as to third parties without actual notice thereof only
230 upon enrollment on the judgment roll. The department or attorney
231 representing the party to whom support is owed shall furnish an
232 abstract of the judgment for periodic payments for the maintenance
233 and support of a child, along with sworn documentation of the
234 delinquent child support, to the circuit clerk of the county where
235 the judgment is rendered, and it shall be the duty of the circuit
236 clerk to enroll the judgment on the judgment roll. Liens arising
237 under the provisions of this section may be executed upon and
238 enforced in the same manner and to the same extent as any other
239 judgment.

240 (3) Notwithstanding the provisions in paragraph (2), any
241 judgment arising under the provisions of this section shall
242 subject the following assets to interception or seizure without
243 regard to the entry of the judgment on the judgment roll of the
244 situs district or jurisdiction:

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

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

250 thirty (30) days;

251 (c) Assets held in financial institutions;

252 (d) Settlements and awards resulting from civil
253 actions; and

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

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

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

264 93-11-103. (1) **Child support orders enforced by Department**
265 **of Human Services.** Upon entry of any order for support by a court
266 of this state where the custodial parent is a recipient of
267 services under Title IV-D of the federal Social Security Act,
268 issued on or after October 1, 1996, the court entering such order
269 shall enter a separate order for withholding which shall take
270 effect immediately without any requirement that the obligor be
271 delinquent in payment. All such orders for support issued prior
272 to October 1, 1996, shall, by operation of law, be amended to
273 conform with the provisions contained herein. All such orders for
274 support issued shall:

275 (a) Contain a provision for monthly income withholding
276 procedures to take effect in the event the obligor becomes
277 delinquent in paying the order for support without further

278 amendment to the order or further action by the court; and

279 (b) Require that the payor withhold any additional
280 amount for delinquency specified in any order if accompanied by an
281 affidavit of accounting, a notarized record of overdue payments or
282 an attested judgment for delinquency or contempt. Any person who
283 willfully and knowingly files a false affidavit, record or
284 judgment shall be subject to a fine of not more than One Thousand
285 Dollars (\$1,000.00). The Department of Human Services shall be
286 the designated agency to receive payments made by income
287 withholding in child support orders enforced by the department.

288 (2) **Child support orders not enforced by the Department of**
289 **Human Services.** Upon entry of any order for support by a court of
290 this state where the custodial parent is not a recipient of
291 services under Title IV-D of the federal Social Security Act,
292 issued or modified or found to be in arrears on or after January
293 1, 1994, the court entering such order shall enter a separate
294 order for withholding which shall take effect immediately. Such
295 orders shall not be subject to immediate income withholding under
296 this subsection (a) if one (1) of the parties (i.e. noncustodial
297 or custodial parent) demonstrates, and the court finds, that there
298 is good cause not to require immediate income withholding, or (b)
299 if both parties agree in writing to an alternative arrangement.
300 The court may designate the person or entity to receive payments
301 made by income withholding.

302 (3) If a child support order is issued or modified in the
303 state but is not subject to immediate income withholding, it
304 automatically becomes so if the court finds that a support payment
305 is thirty (30) days past due. If the support order was issued or

306 modified in another state but is not subject to immediate income
307 withholding, it becomes subject to immediate income withholding on
308 the date on which child support payments are at least thirty (30)
309 days in arrears, or (a) the date as of which the noncustodial
310 parent requests that withholding begin, (b) the date as of which
311 the custodial parent requests that withholding begin, or (c) an
312 earlier date chosen by the court whichever is earlier.

313 (4) The clerk of the court shall submit copies of such
314 orders to the obligor's payor, any additional or subsequent payor,
315 and to the Mississippi Department of Human Services Case Registry.

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

334 (5) The order for withholding shall:

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

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

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

344 (6) All orders for withholding may permit the Department of
345 Human Services to withhold through said withholding order
346 additional amounts to recover costs incurred through its efforts
347 to secure the support order, including, but not limited to, all
348 filing fees, court costs, service of process fees, mailing costs,
349 birth certificate certification fee, genetic testing fees, the
350 department's attorney's fees; and, in cases where the state or any
351 of its entities or divisions have provided medical services to the
352 child or the child's mother, all medical costs of prenatal care,
353 birthing, postnatal care and any other medical expenses incurred
354 by the child or by the mother as a consequence of her pregnancy or
355 delivery.

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

362 to the department or its local attorney.

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

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

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

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

375 (a) The withholding on the delinquency has commenced;

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

380 (c) The obligor may file an action with the issuing
381 court on the grounds of mistake of fact. Such filing must be made
382 within thirty (30) days of receipt of the notice and shall not
383 stay the obligor's duty to support pending judicial determination
384 of the obligor's claim.

385 (12) An employer who complies with an income withholding
386 notice that is regular on its face and which is accompanied by the
387 required accounting affidavit, notarized record of overdue
388 payments or attested judgment of delinquency or contempt shall not
389 be subject to civil liability to any individual or agency for

390 conduct in compliance with the notice.

391 SECTION 5. This act shall take effect and be in force from
392 and after July 1, 2000.