

By: Moody

To: Judiciary A

## HOUSE BILL NO. 1512

1 AN ACT TO AMEND SECTION 43-19-46, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE NEW HIRE REPORTING FORM TO INCLUDE INFORMATION ABOUT  
3 THE EMPLOYEE'S WAGES AND THE AVAILABILITY OF DEPENDENT HEALTH CARE  
4 COVERAGE AND THE COST THEREOF, AND TO INCLUDE NONEMPLOYEES WHO  
5 RECEIVE COMPENSATION; TO AMEND SECTION 43-19-101, MISSISSIPPI CODE  
6 OF 1972, TO INCREASE THE GUIDELINES FOR AWARDED OR MODIFYING  
7 CHILD SUPPORT TO ENSURE EQUITABLE SUPPORT IS AWARDED; TO PROVIDE  
8 FOR MINIMUM WAGE IMPUTATION OF INCOME; AND TO DEFINE  
9 REASONABLENESS FOR THE COST OF MEDICAL COVERAGE; TO AMEND SECTION  
10 93-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR AUTOMATIC  
11 EMANCIPATION OF A MINOR IN CERTAIN SITUATIONS AND TO ALLOW WAGE  
12 WITHHOLDING TO CONTINUE TO BE DEDUCTED AT THE CURRENT CHILD  
13 SUPPORT RATE; TO AMEND SECTION 93-9-11, MISSISSIPPI CODE OF 1972,  
14 TO REMOVE THE ONE-YEAR STATUTE OF LIMITATION TO ALLOW RECOVERY FOR  
15 SUPPORT AND MAINTENANCE OF THE CHILD FROM THE NONCUSTODIAL PARENT  
16 FROM THE BIRTH OF THE CHILD; TO AMEND SECTION 93-9-27, MISSISSIPPI  
17 CODE OF 1972, TO CREATE A CONCLUSIVE PRESUMPTION OF PATERNITY WITH  
18 A GENETIC TEST; TO AMEND SECTION 93-11-65, MISSISSIPPI CODE OF  
19 1972, TO PROVIDE FOR AUTOMATIC EMANCIPATION OF A MINOR IN CERTAIN  
20 SITUATIONS; TO AMEND SECTION 93-11-101, MISSISSIPPI CODE OF 1972,  
21 TO CLARIFY THE DIFFERENCE BETWEEN THE TERMS "ARREARAGE" AND  
22 "DELINQUENCY"; TO AMEND SECTION 93-11-103, MISSISSIPPI CODE OF  
23 1972, TO RAISE THE AMOUNT COLLECTED FROM A NONCUSTODIAL PARENT  
24 FROM 10% TO 20%; TO AMEND SECTION 93-11-153, MISSISSIPPI CODE OF  
25 1972, TO INCLUDE COUNTIES AND MUNICIPALITIES AS ENTITIES THAT CAN  
26 SUSPEND LICENSES OR CERTIFICATIONS FOR NONPAYMENT OF CHILD  
27 SUPPORT; AND FOR RELATED PURPOSES.

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

29 SECTION 1. Section 43-19-46, Mississippi Code of 1972, is  
30 amended as follows:[CSQ1]

31 43-19-46. (1) Each employer, as defined in Section  
32 93-11-101, Mississippi Code of 1972, doing business in Mississippi  
33 shall report to the Directory of New Hires within the Mississippi  
34 Department of Human Services:

35 (a) The hiring, association or appointment of any  
36 person, including, but not limited to, an independent contractor,  
37 employee, director or business partner, who resides or works in  
38 this state to whom the employer anticipates paying wages or any

39 other compensation; and

40 (b) The hiring, association, appointment or return to  
41 work of any person, including, but not limited to, an independent  
42 contractor, employee, director or business partner, who was laid  
43 off, furloughed, separated, granted leave without pay or was  
44 terminated from employment, association or appointment.

45 (2) Employers shall report, by mailing or by other means  
46 authorized by the Department of Human Services, a copy of the  
47 employee's W-4 form or its equivalent which will result in timely  
48 reporting. Each employer shall submit reports within fifteen (15)  
49 days of the hiring, rehiring or return to work of all persons  
50 described in this section. The report shall contain:

51 (a) The person's name, address, social security number  
52 and the date of birth;

53 (b) The employer's name, address and federal and state  
54 withholding tax identification numbers; and

55 (c) The date upon which the person began or resumed  
56 employment, association or appointment or is scheduled to begin or  
57 otherwise resume employment, association or appointment.

58 (d) The person's salary, wage, income or other  
59 compensation information and whether the person will have access  
60 to dependent health care coverage and the cost of the coverage if  
61 available.

62 (3) The department shall retain the information, which shall  
63 be forwarded to the federal registry of new hires.

64 (4) The Department of Human Services may operate the  
65 program, may enter into a mutual agreement with the Mississippi  
66 Employment Security Commission or the State Tax Commission, or  
67 both, for the operation of the Directory of New Hires Program, or  
68 the Department of Human Services may contract for such service, in  
69 which case the department shall maintain administrative control of  
70 the program.

71 (5) In cases in which an employer fails to report  
72 information, as required by this section, an administratively  
73 levied civil penalty in an amount not to exceed Five Hundred  
74 Dollars (\$500.00) shall apply if the failure is the result of a  
75 conspiracy between the employer and the person to not supply the

76 required report or to supply a false or incomplete report. The  
77 penalty shall otherwise not exceed Twenty-five Dollars (\$25.00).  
78 Appeal shall be as provided in Section 43-19-58.

79 (6) An administratively levied civil penalty may be assessed  
80 which shall not exceed Twenty-five Dollars (\$25.00) per day for  
81 each person for which a report was not submitted within the  
82 fifteen-day reporting period.

83 (7) Appeals of penalties levied pursuant to this section  
84 shall be as provided in Section 43-19-58.

85 SECTION 2. Section 43-19-101, Mississippi Code of 1972, is  
86 amended as follows:[CSQ2]

87 43-19-101. (1) The following child support award guidelines  
88 shall be a rebuttable presumption in all judicial or  
89 administrative proceedings regarding the awarding or modifying of  
90 child support awards in this state:

91	Number Of Children	Percentage Of Adjusted Gross Income
92	Due Support	That Should Be Awarded For Support
93	1	<u>17%</u>
94	2	<u>23%</u>
95	3	<u>25%</u>
96	4	<u>27%</u>
97	5 or more	<u>29%</u>

98 (2) The guidelines provided for in subsection (1) of this  
99 section apply unless the judicial or administrative body awarding  
100 or modifying the child support award makes a written finding or  
101 specific finding on the record that the application of the  
102 guidelines would be unjust or inappropriate in a particular case  
103 as determined under the criteria specified in Section 43-19-103.

104 (3) The amount of "adjusted gross income" as that term is  
105 used in subsection (1) of this section shall be calculated as  
106 follows:

107 (a) Determine gross income from all potential sources  
108 that may reasonably be expected to be available to the absent

109 parent including, but not limited to, the following: wages and  
110 salary income; income from self-employment; income from  
111 commissions; income from investments, including dividends,  
112 interest income and income on any trust account or property;  
113 absent parent's portion of any joint income of both parents;  
114 workers' compensation, disability, unemployment, annuity and  
115 retirement benefits, including an individual retirement account  
116 (IRA); any other payments made by any person, private entity,  
117 federal or state government or any unit of local government;  
118 alimony; any income earned from an interest in or from inherited  
119 property; any other form of earned income; and gross income shall  
120 exclude any monetary benefits derived from a second household,  
121 such as income of the absent parent's current spouse.

122 (b) Subtract the following legally mandated deductions:

123 (i) Federal, state and local taxes. Contributions  
124 to the payment of taxes over and beyond the actual liability for  
125 the taxable year shall not be considered a mandatory deduction;

126 (ii) Social security contributions;

127 (iii) Retirement and disability contributions  
128 except any voluntary retirement and disability contributions.

129 (c) If the absent parent is subject to an existing  
130 court order for another child or children, subtract the amount of  
131 that court-ordered support; where multiple orders exist or are  
132 contemplated, children from different households shall not be  
133 grouped together and apportioned a single guideline amount, pro  
134 rata.

135 (d) If the absent parent is also the legal parent of  
136 another minor child or \* \* \* children residing with the absent  
137 parent, then the court may subtract the five percent (5%) per  
138 child from the adjusted gross income not to exceed fifteen percent  
139 (15%) for three (3) or more children. Children born after the  
140 initial court order shall not be considered.

141 (e) Compute the total annual amount of adjusted gross

142 income based on paragraphs (a) through (d), then divide this  
143 amount by twelve (12) to obtain the monthly amount of adjusted  
144 gross income.

145           (f) Upon conclusion of the calculation of paragraphs  
146 (a) through (e), multiply the monthly amount of adjusted gross  
147 income by the appropriate percentage designated in subsection (1)  
148 to arrive at the amount of the monthly child support award.

149           (g) Should the absent parent not appear at the hearing  
150 for the determination of child support after being properly  
151 served, or if income information is otherwise unavailable, the  
152 court may impute earning ability and may award support based on  
153 the current minimum wage for full-time employment.

154           (4) In cases in which the adjusted gross income as defined  
155 in this section is more than One Hundred Thousand Dollars  
156 (\$100,000.00) or less than Six Thousand Dollars (\$6,000.00), the  
157 court shall make a written finding in the record as to  
158 whether \* \* \* the application of the guidelines established in  
159 this section is reasonable.

160           (5) The Department of Human Services shall review the  
161 appropriateness of these guidelines beginning January 1, 1994, and  
162 at least every four (4) years thereafter and report its findings  
163 to the Legislature no later than the first day of the regular  
164 legislative session of that year. The Legislature shall  
165 thereafter amend these guidelines when it finds that amendment is  
166 necessary to ensure that equitable support is being awarded in all  
167 cases involving the support of minor children.

168           (6) For the purpose of determining the reasonableness of  
169 medical insurance, the court may find that medical insurance which  
170 costs more than fifty percent (50%) of the child support  
171 obligation is unreasonable. In the case of multiple orders, fifty  
172 percent (50%) of the highest order shall be used to determine  
173 reasonableness. The cost of medical insurance shall not be  
174 included in determining the amount of child support under these

175 guidelines.

176 SECTION 3. Section 93-5-23, Mississippi Code of 1972, is  
177 amended as follows:[CSQ3]

178 93-5-23. (1) When a divorce shall be decreed from the bonds  
179 of matrimony, the court may, in its discretion, having regard to  
180 the circumstances of the parties and the nature of the case, as  
181 may seem equitable and just, make all orders touching the care,  
182 custody and maintenance of the children of the marriage, and also  
183 touching the maintenance and alimony of the wife or the husband,  
184 or any allowance to be made to her or him, and shall, if need be,  
185 require bond, sureties or other guarantee for the payment of the  
186 sum so allowed. Orders touching on the custody of the children of  
187 the marriage may be made in accordance with the provisions of  
188 Section 93-5-24. The court may afterwards, on petition, change  
189 the decree, and make from time to time such new decrees as the  
190 case may require. However, where proof shows that both parents  
191 have separate incomes or estates, the court may require that each  
192 parent contribute to the support and maintenance of the children  
193 of the marriage in proportion to the relative financial ability of  
194 each. In the event a legally responsible parent has health  
195 insurance available to him or her through an employer or  
196 organization that may extend benefits to the dependents of such  
197 parent, any order of support issued against such parent may  
198 require him or her to exercise the option of additional coverage  
199 in favor of such children as he or she is legally responsible to  
200 support.

201 (2) Whenever the court has ordered a party to make periodic  
202 payments for the maintenance or support of a child, but no bond,  
203 sureties or other guarantee has been required to secure such  
204 payments, and whenever such payments as have become due remain  
205 unpaid for a period of at least thirty (30) days, the court may,  
206 upon petition of the person to whom such payments are owing, or  
207 such person's legal representative, enter an order requiring that

208 bond, sureties or other security be given by the person obligated  
209 to make such payments, the amount and sufficiency of which shall  
210 be approved by the court. The obligor shall, as in other civil  
211 actions, be served with process and shall be entitled to a hearing  
212 in such case.

213 (3) Whenever in any proceeding in the chancery court  
214 concerning the custody of a child a party alleges that the child  
215 whose custody is at issue has been the victim of sexual or  
216 physical abuse by the other party, the court may, on its own  
217 motion, grant a continuance in the custody proceeding only until  
218 such allegation has been investigated by the Department of Human  
219 Services. At the time of ordering such continuance the court may  
220 direct the party, and his attorney, making such allegation of  
221 child abuse to report in writing and provide all evidence touching  
222 on the allegation of abuse to the Department of Human Services.  
223 The Department of Human Services shall investigate such allegation  
224 and take such action as it deems appropriate and as provided in  
225 such cases under the Youth Court Law (being Chapter 21 of Title  
226 43, Mississippi Code of 1972) or under the laws establishing  
227 family courts (being Chapter 23 of Title 43, Mississippi Code of  
228 1972).

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

235 (5) The court may investigate, hear and make a determination  
236 in a custody action when a charge of abuse and/or neglect arises  
237 in the course of a custody action as provided in Section  
238 43-21-151, and in such cases the court shall appoint a guardian ad  
239 litem for the child as provided under Section 43-21-121, who shall  
240 be an attorney. Unless the chancery court's jurisdiction has been

241 terminated, all disposition orders in such cases for placement  
242 with the Department of Human Services shall be reviewed by the  
243 court or designated authority at least annually to determine if  
244 continued placement with the department is in the best interest of  
245 the child or public.

246 (6) (a) The duty of support of a child terminates upon the  
247 emancipation of the child. Emancipation shall be effective and  
248 no prospective support obligation exists when the child:

249 (i) Attains the age of twenty-one (21) years, or

250 (ii) Marries, or

251 (iii) Enlists in the military and enters active  
252 duty with the United States Armed Forces or Coast Guard or  
253 full-time employment with the National Guard or a United States  
254 Armed Forces Reserve component; or

255 (iv) Is convicted as an adult of a felony and  
256 sentenced to an adult correctional facility.

257 (b) However, the court may determine that emancipation  
258 has occurred and no prospective support obligation exists when the  
259 child:

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

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

267 Such a determination shall not be made retroactive but shall  
268 be prospective from the date of the hearing only.

269 (7) In child support orders being enforced by the Department  
270 of Human Services where the current child support obligation has  
271 terminated and there exists an arrearage for unpaid child support,  
272 then an amount equal to the previous child support obligation  
273 shall continue to be paid by the obligor or withheld by the



274 obligor's employer. The payments shall be applied to the child  
275 support arrearage until paid in full without further order of the  
276 court.

277 (8) In the event a previous order establishing child support  
278 is set aside by the court, any child support arrearage that may  
279 have accrued as a result of the order is vested and shall not be  
280 forgiven absent payment by the obligor named in the original  
281 order.

282 SECTION 4. Section 93-9-11, Mississippi Code of 1972, is  
283 amended as follows:[CSQ4]

284 93-9-11. Upon a finding of exigent circumstances, the court  
285 may order that the father's liabilities for a child born out of  
286 wedlock for past education and necessary support and maintenance  
287 and other expenses be calculated from the date of the child's  
288 birth. Absent a showing of exigent circumstances, the court may  
289 order past support of not less than one (1) year next preceding  
290 the commencement of an action.

291 SECTION 5. Section 93-9-27, Mississippi Code of 1972, is  
292 amended as follows:[CSQ5]

293 93-9-27. (1) If the court finds that the conclusions of all  
294 the experts, as disclosed by the evidence based upon the tests,  
295 are that the alleged father is not the father of the child, the  
296 question of paternity shall be resolved accordingly. If an expert  
297 concludes that the blood or other tests show the probability of  
298 paternity, such evidence shall be admitted.

299 (2) There shall be a conclusive determination of paternity  
300 if the court finds that the probability of paternity, as  
301 calculated by the experts qualified as examiners of genetic tests,  
302 is ninety-eight percent (98%) or greater. A party may challenge  
303 the testing procedure within thirty (30) days of the date of  
304 receipt or service of the notice. Notwithstanding the provisions  
305 of this section, all of the provisions of Section 93-9-23 are  
306 still in effect.

307 SECTION 6. Section 93-11-65, Mississippi Code of 1972, is  
308 amended as follows:[CSQ6]

309 93-11-65. (1) (a) In addition to the right to proceed  
310 under Section 93-5-23, Mississippi Code of 1972, and in addition  
311 to the remedy of habeas corpus in proper cases, and other existing  
312 remedies, the chancery court of the proper county shall have  
313 jurisdiction to entertain suits for the custody, care, support and  
314 maintenance of minor children and to hear and determine all such  
315 matters, and shall, if need be, require bond, sureties or other  
316 guarantee to secure any order for periodic payments for the  
317 maintenance or support of a child. In the event a legally  
318 responsible parent has health insurance available to him or her  
319 through an employer or organization that may extend benefits to  
320 the dependents of such parent, any order of support issued against  
321 such parent may require him or her to exercise the option of  
322 additional coverage in favor of such children as he or she is  
323 legally responsible to support. Proceedings may be brought by or  
324 against a resident or nonresident of the State of Mississippi,  
325 whether or not having the actual custody of minor children, for  
326 the purpose of judicially determining the legal custody of a  
327 child. All actions herein authorized may be brought in the county  
328 where the child is actually residing, or in the county of the  
329 residence of the party who has actual custody, or of the residence  
330 of the defendant. Process shall be had upon the parties as  
331 provided by law for process in person or by publication, if they  
332 be nonresidents of the state or residents of another jurisdiction  
333 or are not found therein after diligent search and inquiry or are  
334 unknown after diligent search and inquiry; provided that the court  
335 or chancellor in vacation may fix a date in termtime or in  
336 vacation to which process may be returnable and shall have power  
337 to proceed in termtime or vacation. Provided, however, that if  
338 the court shall find that both parties are fit and proper persons  
339 to have custody of the children, and that either party is able to

340 adequately provide for the care and maintenance of the children,  
341 and that it would be to the best interest and welfare of the  
342 children, then any such child who shall have reached his twelfth  
343 birthday shall have the privilege of choosing the parent with whom  
344 he shall live.

345 (b) An order of child support shall specify the sum to  
346 be paid weekly or otherwise. In addition to providing for support  
347 and education, the order shall also provide for the support of the  
348 child prior to the making of the order for child support, and such  
349 other expenses as the court may deem proper.

350 (c) The court may require the payment to be made to the  
351 custodial parent, or to some person or corporation to be  
352 designated by the court as trustee, but if the child or custodial  
353 parent is receiving public assistance, the Department of Human  
354 Services shall be made the trustee.

355 (d) Upon a finding of exigent circumstances, the court  
356 may order that the noncustodial parent's liabilities for past  
357 education and necessary support and maintenance and other expenses  
358 for a child be calculated from the date of the child's birth or  
359 such time as the court deems appropriate. Absent a showing of  
360 exigent circumstances, the court may order past support of not  
361 less than one (1) year next preceding the commencement of an  
362 action.

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

367 (3) Whenever the court has ordered a party to make periodic  
368 payments for the maintenance or support of a child, but no bond,  
369 sureties or other guarantee has been required to secure such  
370 payments, and whenever such payments as have become due remain  
371 unpaid for a period of at least thirty (30) days, the court may,  
372 upon petition of the person to whom such payments are owing, or

373 such person's legal representative, enter an order requiring that  
374 bond, sureties or other security be given by the person obligated  
375 to make such payments, the amount and sufficiency of which shall  
376 be approved by the court. The obligor shall, as in other civil  
377 actions, be served with process and shall be entitled to a hearing  
378 in such case.

379 (4) When a charge of abuse or neglect of a child first  
380 arises in the course of a custody or maintenance action pending in  
381 the chancery court pursuant to this section, the chancery court  
382 may proceed with the investigation, hearing and determination of  
383 such abuse or neglect charge as a part of its hearing and  
384 determination of the custody or maintenance issue as between the  
385 parents, as provided in Section 43-21-151, notwithstanding the  
386 other provisions of the Youth Court Law. The proceedings in  
387 chancery court on the abuse or neglect charge shall be  
388 confidential in the same manner as provided in youth court  
389 proceedings, and the chancery court shall appoint a guardian ad  
390 litem in such cases, as provided under Section 43-21-121 for youth  
391 court proceedings, who shall be an attorney. Unless the chancery  
392 court's jurisdiction has been terminated, all disposition orders  
393 in such cases for placement with the Department of Human Services  
394 shall be reviewed by the court or designated authority at least  
395 annually to determine if continued placement with the department  
396 is in the best interest of the child or the public.

397 (5) Each party to a paternity or child support proceeding  
398 shall notify the other within five (5) days after any change of  
399 address. In addition, the noncustodial and custodial parent shall  
400 file and update, with the court and with the state case registry,  
401 information on that party's location and identity, including  
402 social security number, residential and mailing addresses,  
403 telephone numbers, photograph, driver's license number, and name,  
404 address and telephone number of the party's employer. This  
405 information shall be required upon entry of an order or within

406 five (5) days of a change of address.

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

410 (7) In any subsequent child support enforcement action  
411 between the parties, upon sufficient showing that diligent effort  
412 has been made to ascertain the location of a party, due process  
413 requirements for notice and service of process shall be deemed to  
414 be met with respect to the party upon delivery of written notice  
415 to the most recent residential or employer address filed with the  
416 state case registry.

417 (8) (a) The duty of support of a child terminates upon the  
418 emancipation of the child. Emancipation shall be effective and no  
419 prospective support obligation shall exist when the child:

420 (i) Attains the age of twenty-one (21) years, or

421 (ii) Marries, or

422 (iii) Enlists in the military and enters active  
423 duty with the United States Armed Forces or Coast Guard or  
424 full-time employment with the National Guard or United States  
425 Armed Forces Reserve component, or

426 (iv) Is convicted as an adult of a felony and  
427 sentenced to an adult correctional facility.

428 (b) However, the court may determine that emancipation  
429 has occurred and no prospective support obligation exists when the  
430 child:

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

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

438 Such a determination shall not be made retroactive, but may

439 be prospective from the date of the hearing only.

440 (9) In child support orders being enforced by the Department  
441 of Human Services where the current child support obligation has  
442 terminated and there exists an arrearage for unpaid child support,  
443 then an amount equal to the previous child support obligation  
444 shall continue to be paid by the obligor or withheld by the  
445 obligor's employer. The payments shall be applied to the child  
446 support arrearage until paid in full without further order of the  
447 court.

448 (10) In the event a previous order establishing child  
449 support is set aside by the court, any child support arrearage  
450 that may have accrued as a result of the order is vested and shall  
451 not be forgiven absent payment by the obligor named in the  
452 original order.

453 SECTION 7. Section 93-11-101, Mississippi Code of 1972, is  
454 amended as follows:[CSQ7]

455 93-11-101. As used in Sections 93-11-101 through 93-11-119,  
456 the following words shall have the meaning ascribed to them herein  
457 unless the context clearly requires otherwise:

458 (a) "Order for support" means any order of the  
459 chancery, circuit, county or family court, which provides for  
460 periodic payment of funds for the support of a child, whether  
461 temporary or final, and includes any such order which provides  
462 for:

463 (i) Modification or resumption of, or payment of  
464 arrearage accrued under, a previously existing order; or

465 (ii) Reimbursement of support.

466 "Order for support" shall also mean:

467 (i) An order for support and maintenance of a  
468 spouse if a minor child is living with such spouse; or

469 (ii) In actions to which the Department of Human  
470 Services is a party, an order for support and maintenance of a  
471 spouse if a minor child is living with such spouse and such

472 maintenance is collected in conjunction with child support.

473 (b) "Court" means the court that enters an order for  
474 withholding pursuant to Section 93-11-103(1).

475 (c) "Clerk of the court" means the clerk of the court  
476 that enters an order for withholding pursuant to Section  
477 93-11-103(1).

478 (d) "Arrearage" means the total amount of unpaid  
479 support obligations.

480 (e) "Delinquency" means any payments that are ordered  
481 by any court to be paid by a noncustodial parent for the support  
482 of a child that have remained unpaid for at least thirty (30) days  
483 after payment is due. Delinquency shall also include payments  
484 that are ordered by any court to be paid for maintenance of a  
485 spouse in cases in which the department is collecting such support  
486 in conjunction with child support. \* \* \*

487 (f) "Department" means the Mississippi Department of  
488 Human Services.

489 (g) "Employer" means a person or entity who has control  
490 of the payment of wages, income or other compensation to any  
491 person, including but not limited to an employee, independent  
492 contractor, director or business partner.

493 (h) "Income" means any form of periodic payment to an  
494 individual, regardless of source, including, but not limited to:  
495 wages, salary, commission, compensation as an independent  
496 contractor, workers' compensation, disability, annuity and  
497 retirement benefits, and any other payments made by any person,  
498 private entity, federal or state government or any unit of local  
499 government, notwithstanding any other provisions of state or local  
500 law which limit or exempt income or the amount or percentage of  
501 income that can be withheld; provided, however, that income  
502 excludes:

503 (i) Any amounts required by law to be withheld,  
504 other than creditor claims, including, but not limited to,

505 federal, state and local taxes, social security and other  
506 retirement and disability contributions;

507 (ii) Any amounts exempted by federal law;

508 (iii) Public assistance payments; and

509 (iv) Unemployment insurance benefits except as  
510 provided by law.

511 (i) "Obligor" means the individual who owes a duty to  
512 make payments under an order for support.

513 (j) "Obligee" means:

514 (i) An individual to whom a duty of support is or  
515 is alleged to be owed or in whose favor a support order has been  
516 issued or a judgment determining parentage has been rendered;

517 (ii) A state or political subdivision to which the  
518 rights under a duty of support or support order have been assigned  
519 or which independent claims based on financial assistance provided  
520 to an individual obligee; or

521 (iii) An individual seeking a judgment determining  
522 parentage of the individual's child.

523 (k) "Payor" means any payor of income to an obligor.

524 SECTION 8. Section 93-11-103, Mississippi Code of 1972, is  
525 amended as follows:[CSQ8]

526 93-11-103. (1) **Child support orders enforced by Department**  
527 **of Human Services.** Upon entry of any order for support by a court  
528 of this state where the custodial parent is a recipient of  
529 services under Title IV-D of the federal Social Security Act,  
530 issued on or after October 1, 1996, the court entering such order  
531 shall enter a separate order for withholding which shall take  
532 effect immediately without any requirement that the obligor be  
533 delinquent in payment. All such orders for support issued prior  
534 to October 1, 1996, shall, by operation of law, be amended to  
535 conform with the provisions contained herein. All such orders for  
536 support issued shall:

537 (a) Contain a provision for monthly income withholding



538 procedures to take effect in the event the obligor becomes  
539 delinquent in paying the order for support without further  
540 amendment to the order or further action by the court; and

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

550 (2) **Child support orders not enforced by the Department of**  
551 **Human Services.** Upon entry of any order for support by a court of  
552 this state where the custodial parent is not a recipient of  
553 services under Title IV-D of the federal Social Security Act,  
554 issued or modified or found to be in arrears on or after January  
555 1, 1994, the court entering such order shall enter a separate  
556 order for withholding which shall take effect immediately. Such  
557 orders shall not be subject to immediate income withholding under  
558 this subsection (a) if one (1) of the parties (i.e. noncustodial  
559 or custodial parent) demonstrates, and the court finds, that there  
560 is good cause not to require immediate income withholding, or (b)  
561 if both parties agree in writing to an alternative arrangement.  
562 The court may designate the person or entity to receive payments  
563 made by income withholding.

564 (3) If a child support order is issued or modified in the  
565 state but is not subject to immediate income withholding, it  
566 automatically becomes so when a support payment becomes thirty  
567 (30) days past due. If the support order was issued or modified  
568 in another state but is not subject to immediate income  
569 withholding, it becomes subject to immediate income withholding on  
570 the date on which child support payments are at least thirty (30)

571 days in arrears, or (a) the date as of which the noncustodial  
572 parent requests that withholding begin, (b) the date as of which  
573 the custodial parent requests that withholding begin, or (c) an  
574 earlier date chosen by the court whichever is earlier.

575 (4) The clerk of the court shall submit copies of such  
576 orders to the obligor's payor, any additional or subsequent payor,  
577 and to the Mississippi Department of Human Services Case Registry.  
578 The clerk of the court, the obligee's attorney, or the  
579 department's attorney may serve such immediate order for  
580 withholding by first class mail or personal delivery on the  
581 obligor's payor, superintendent, manager, agent or subsequent  
582 payor, as the case may be. In a case where the obligee's attorney  
583 or the department's attorney serves such immediate order, the  
584 attorney shall notify the clerk of the court in writing, which  
585 notice shall be placed in the court file. There shall be no need  
586 for further notice, hearing, order, process or procedure before  
587 service of the order on the payor or any additional or subsequent  
588 payor. The obligor may contest, if grounds exist, service of the  
589 order of withholding on additional or subsequent payors, by filing  
590 an action with the issuing court. Such filing shall not stay the  
591 obligor's duty to support pending judicial determination of the  
592 obligor's claim. Nothing herein shall be construed to restrict  
593 the authority of the courts of this state from entering any order  
594 it deems appropriate to protect the rights of any parties  
595 involved.

596 (5) (a) The order for withholding shall:

597 (i) Direct any payor to withhold an amount equal  
598 to the order for current support;

599 (ii) Direct any payor to withhold an additional  
600 amount, not less than twenty percent (20%) of the order for  
601 support, until payment in full of any delinquency; and

602 (iii) Direct the payor not to withhold in excess  
603 of the amounts allowed under Section 303(b) of the Consumer Credit

604 Protection Act, being 15 USCS 1673, as amended.

605 (b) In all cases in which the previously entered order  
606 for withholding does not include an additional amount to be  
607 withheld towards a delinquency, the order shall be amended without  
608 further notice to the obligor to state an additional amount, not  
609 less than twenty percent (20%) of the order for support.

610 (6) All orders for withholding may permit the Department of  
611 Human Services to withhold through the withholding order  
612 additional amounts to recover costs incurred through its efforts  
613 to secure the support order, including, but not limited to, all  
614 filing fees, court costs, service of process fees, mailing costs,  
615 birth certificate certification fee, genetic testing fees, the  
616 department's attorney's fees; and, in cases where the state or any  
617 of its entities or divisions have provided medical services to the  
618 child or the child's mother, all medical costs of prenatal care,  
619 birthing, postnatal care and any other medical expenses incurred  
620 by the child or by the mother as a consequence of her pregnancy or  
621 delivery.

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

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

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

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

636 (11) All existing orders for support shall become subject to

637 additional withholding if arrearages occur, subject to court  
638 hearing and order. The Department of Human Services or the  
639 obligee or his agent or attorney must send to each delinquent  
640 obligor notice that:

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

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

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

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

657 SECTION 9. Section 93-11-153, Mississippi Code of 1972, is  
658 amended as follows:[CSQ9]

659 93-11-153. As used in Sections 93-11-151 through 93-11-163,  
660 the following words and terms shall have the meanings ascribed  
661 herein:

662 (a) "Licensing entity" or "entity" means any entity  
663 specified in Title 73, Professions and Vocations, of the  
664 Mississippi Code, and includes the Mississippi Department of  
665 Public Safety with respect to driver's licenses, the Mississippi  
666 State Tax Commission with respect to licenses for the sale of  
667 alcoholic beverages and other licenses or registration authorizing  
668 a person to engage in a business, the Mississippi Department of  
669 Wildlife, Fisheries and Parks with respect to hunting and fishing

670 licenses, and any other state agency, county or municipality that  
671 issues a license authorizing a person to engage in a business,  
672 occupation or profession. For the purposes of this article, the  
673 Supreme Court shall be considered to be the licensing entity for  
674 attorneys.

675 (b) "License" means a license, certificate, permit,  
676 credential, registration, or any other authorization issued by a  
677 licensing entity that allows a person to engage in a business,  
678 occupation or profession, to operate a motor vehicle, to sell  
679 alcoholic beverages, or to hunt and fish.

680 (c) "Licensee" means any person holding a license  
681 issued by a licensing entity.

682 (d) "Order for support" means any judgment or order  
683 that provides for payments of a sum certain for the support of a  
684 child, whether it is temporary or final, and includes, but is not  
685 limited to, an order for reimbursement for public assistance or an  
686 order for making periodic payments on a support arrearage, or a  
687 sum certain due for a support arrearage.

688 (e) "Out of compliance with an order for support" means  
689 that the obligor is at least thirty (30) days in arrears or  
690 delinquent in making payments in full for current support, or in  
691 making periodic payments on a support arrearage.

692 (f) "Department" means the Mississippi Department of  
693 Human Services.

694 (g) "Division" means the division within the department  
695 that is charged with the state administration of Title IV-D of the  
696 Social Security Act.

697 (h) "Delinquency" means any payments of a sum certain  
698 ordered by any court to be paid by a noncustodial parent for the  
699 support of a child that have remained unpaid for at least thirty  
700 (30) days after payment is due. Delinquency shall also include  
701 payments of a sum certain ordered by any court to be paid for  
702 maintenance of a spouse that have remained unpaid for at least

703 thirty (30) days.

704 SECTION 10. This act shall take effect and be in force from  
705 and after July 1, 2000.