

By: Representative Formby

To: Judiciary A

HOUSE BILL NO. 470

1 AN ACT TO PROVIDE THAT WHENEVER A PERSON IS REQUIRED TO MAKE
 2 CHILD SUPPORT PAYMENTS TO ANOTHER PERSON, THE OBLIGOR SHALL
 3 DEPOSIT THE PAYMENTS INTO AN ACCOUNT IN A FINANCIAL INSTITUTION,
 4 AND THE OBLIGEE SHALL BE ALLOWED TO ACCESS THE PAYMENTS IN THE
 5 ACCOUNT ONLY BY THE USE OF A DEBIT CARD; TO PROVIDE THAT WHENEVER
 6 A PERSON IS REQUIRED TO MAKE CHILD SUPPORT PAYMENTS TO THE
 7 DEPARTMENT OF HUMAN SERVICES, THE DEPARTMENT SHALL ALLOW THE
 8 OBLIGEE TO ACCESS THE CHILD SUPPORT PAYMENTS ONLY BY THE USE OF A
 9 DEBIT CARD; TO AMEND SECTIONS 43-19-35, 43-19-37, 43-19-39 AND
 10 93-11-65, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
 11 PROVISIONS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) Whenever a court orders a person to make
 14 periodic payments to another person for the support of a child, or
 15 wherever a person has entered into a written stipulated agreement
 16 to make periodic payments to another person for the support of a
 17 child, the obligor for the child support payments shall deposit
 18 the payments into an account in a financial institution located in
 19 the municipality or county in which the obligee resides. The
 20 obligee shall be allowed to access the child support payments in
 21 the account only by the use of a debit card, which the obligor
 22 shall provide to the obligee.

23 (2) Whenever a person is required to make periodic payments
 24 to the State Department of Human Services for the support of a
 25 child, the department shall allow the obligee to access the child
 26 support payments only by the use of a debit card, which the
 27 department shall provide to the obligee.

28 **SECTION 2.** Section 43-19-35, Mississippi Code of 1972, is
 29 amended as follows:

30 43-19-35. (1) By accepting public assistance for and on
 31 behalf of a child or children, the recipient shall be deemed to



32 have made an assignment to the State Department of Human Services
33 of any and all rights and interests in any cause of action, past,
34 present or future, that the recipient or the children may have
35 against any parent failing to provide for the support and
36 maintenance of the minor child or children for the period of time
37 that assistance is being paid by the department. The department
38 shall be subrogated to any and all rights, title and interest the
39 recipient or the children may have against any and all property
40 belonging to the absent or nonsupporting parent in the enforcement
41 of any claim for child or spousal support, whether liquidated
42 through court order or not. The recipient shall also be deemed,
43 without the necessity of signing any document, to have appointed
44 the State Department of Human Services to act in his or her, as
45 well as the children's, name, place, and stead to perform the
46 specific act of instituting suit to establish paternity or secure
47 support, collecting any and all amounts due and owing for child or
48 spousal support as required or permitted under Title IV-D of the
49 federal Social Security Act, and endorsing any and all drafts,
50 checks, money orders or other negotiable instruments representing
51 child or spousal support payments that are received on behalf of
52 the recipient or the children, and retaining any portion thereof
53 permitted under federal and state statutes as reimbursement for
54 public assistance monies previously paid to the recipient or
55 children.

56 (2) Court orders of support for any child or children
57 receiving services through Title IV-D of the federal Social
58 Security Act shall be amended, by operation of law, and without
59 the necessity of a motion by the Child Support Unit and a hearing
60 thereon to provide that the payment of support shall be directed
61 by the absent parent to the Mississippi Department of Human
62 Services Central Receipting and Disbursement Unit as provided in
63 Section 43-19-37 and not to the recipient. The absent parent
64 shall be notified of that amendment before it takes effect.



65 Payments of support made by the absent parent to the Department of
66 Human Services as provided under this subsection shall be subject
67 to the provisions of subsection (2) of Section 1 of this act.

68 (3) Any attorney initiating legal proceedings under Sections
69 43-19-31 through 43-19-53 shall be deemed to represent the
70 interest of the State Department of Human Services exclusively.
71 No attorney-client relationship shall exist between the attorney
72 and any recipient of services under Title IV-D of the federal
73 Social Security Act for and on behalf of a child or children,
74 regardless of the name in which the legal proceedings are
75 initiated.

76 (4) The assignment to the State Department of Human Services
77 shall be free of any legal or equitable defense to the payment of
78 child support that may accrue to any person legally liable for the
79 support of any child or children receiving aid from the State
80 Department of Human Services, as a result of the conduct of the
81 person who is accepting public assistance for and on behalf of
82 the child or children.

83 **SECTION 3.** Section 43-19-37, Mississippi Code of 1972, is
84 amended as follows:

85 43-19-37. (1) Court orders of support in all cases brought
86 under the provisions of Sections 43-19-31 through 43-19-53 shall
87 specify that the payment of court costs shall be directed by the
88 absent parent to the Mississippi Department of Human Services
89 Central Receipting and Disbursement Unit for further disbursement
90 in the manner as prescribed by Title IV-D of the federal Social
91 Security Act. Payments of support made by the absent parent to
92 the Department of Human Services shall be subject to the
93 provisions of subsection (2) of Section 1 of this act. Attorney's
94 fees, if any, shall be paid directly to the Mississippi Department
95 of Human Services Central Receipting and Disbursement Unit in
96 cases instituted by the department, in a manner separate and
97 distinct from the payment of child support. Any payments made by



98 the absent parent directly to the recipient or applicant in
99 violation of the court order shall not be deemed to be a support
100 payment and shall not be credited to the court-ordered obligation
101 of the absent parent. Failure of the absent parent to comply with
102 an order of support for a period of thirty (30) days shall be
103 directed to the court having jurisdiction of the matter for
104 contempt proceedings or execution issued in the manner and form
105 prescribed by statute. If civil proceedings become ineffective in
106 producing support in any case involving a legitimate child or a
107 child in which paternity has been established by law or
108 acknowledged in writing, the case shall promptly be referred to
109 the district attorney for prosecution as a violation of Section
110 97-5-3.

111 (2) Each application, petition, order or filing made under
112 this section shall include the social security number(s) of the
113 applicant or father, mother and child(ren), as applicable, in
114 accordance with Section 93-11-64.

115 **SECTION 4.** Section 43-19-39, Mississippi Code of 1972, is
116 amended as follows:

117 43-19-39. (1) All child support payments collected by the
118 child support unit under Section 43-19-35 shall be distributed in
119 the manner as prescribed by the federal Social Security Act and
120 any amendments adopted thereto. Child support payments collected
121 by the child support unit shall be subject to the provisions of
122 subsection (2) of Section 1 of this act. Nothing contained herein
123 shall preclude the child support unit in processing a paternity or
124 support action for and on behalf of a child or children receiving
125 Temporary Assistance to Needy Families (TANF) grants in which the
126 applicant or recipient has refused cooperation. If a parent of
127 any child receiving public assistance fails or refuses to
128 cooperate with the local county department or child support unit
129 in locating and securing support from the nonsupporting
130 responsible parent, this parent may be cited to appear before the



131 judge of any court having jurisdiction over the matter and
132 compelled to disclose that information under oath. Any parent
133 who, having been cited to appear before a judge of the court
134 having jurisdiction over such matter, fails or refuses to appear
135 or fails or refuses to provide the information requested may be
136 found to be in contempt of the court and may be fined not more
137 than One Hundred Dollars (\$100.00) or imprisoned not more than six
138 (6) months or both.

139 (2) In a manner which is consistent with the federal Social
140 Security Act, any amendments thereto and its implementing
141 regulations, the child support unit is * * * authorized to
142 withhold from distribution any payment or portion thereof which it
143 may receive on behalf of a child or children for whom it is
144 providing services if reimbursement is needed for any payments
145 that may have been mistakenly or erroneously advanced on behalf of
146 that child or children. The child support unit shall adopt
147 policies that minimize any hardship that is caused by withholding
148 from distribution any current support payments to reimburse past
149 mistaken or erroneous advancements.

150 **SECTION 5.** Section 93-11-65, Mississippi Code of 1972, is
151 amended as follows:

152 93-11-65. (1) (a) In addition to the right to proceed
153 under Section 93-5-23, and in addition to the remedy of habeas
154 corpus in proper cases, and other existing remedies, the chancery
155 court of the proper county shall have jurisdiction to entertain
156 suits for the custody, care, support and maintenance of minor
157 children and to hear and determine all such matters, and shall, if
158 need be, require bond, sureties or other guarantee to secure any
159 order for periodic payments for the maintenance or support of a
160 child. If a legally responsible parent has health insurance
161 available to him or her through an employer or organization that
162 may extend benefits to the dependents of the parent, any order of
163 support issued against the parent may require him or her to



164 exercise the option of additional coverage in favor of the
165 children as he or she is legally responsible to support.
166 Proceedings may be brought by or against a resident or nonresident
167 of the State of Mississippi, whether or not having the actual
168 custody of minor children, for the purpose of judicially
169 determining the legal custody of a child. All actions * * *
170 authorized in this section may be brought in the county where the
171 child is actually residing, or in the county of the residence of
172 the party who has actual custody, or of the residence of the
173 defendant. Process shall be had upon the parties as provided by
174 law for process in person or by publication, if they are
175 nonresidents of the state or residents of another jurisdiction or
176 are not found therein after diligent search and inquiry or are
177 unknown after diligent search and inquiry. * * * The court or
178 chancellor in vacation may fix a date in termtime or in vacation
179 to which process may be returnable and shall have power to proceed
180 in termtime or vacation. * * * If the court * * * finds that both
181 parties are fit and proper persons to have custody of the
182 children, and that either party is able to adequately provide for
183 the care and maintenance of the children, and that it would be to
184 the best interest and welfare of the children, then any such child
185 who has reached his twelfth birthday shall have the privilege of
186 choosing the parent with whom he will live.

187 (b) An order of child support shall specify the sum to
188 be paid weekly or otherwise. In addition to providing for support
189 and education, the order shall also provide for the support of the
190 child before the making of the order for child support, and such
191 other expenses as the court may deem proper.

192 (c) The court may require the payment to be made to the
193 custodial parent, or to some person or corporation to be
194 designated by the court as trustee, but if the child or custodial
195 parent is receiving public assistance, the Department of Human
196 Services shall be made the trustee. If the court requires the



197 payments to be made to the custodial parent, the payments shall be
198 subject to the provisions of subsection (1) of Section 1 of this
199 act.

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

204 (2) * * * Where the proof shows that both parents have
205 separate incomes or estates, the court may require that each
206 parent contribute to the support and maintenance of the children
207 in proportion to the relative financial ability of each.

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

220 (4) When a charge of abuse or neglect of a child first
221 arises in the course of a custody or maintenance action pending in
222 the chancery court under this section, the chancery court may
223 proceed with the investigation, hearing and determination of the
224 abuse or neglect charge as a part of its hearing and determination
225 of the custody or maintenance issue as between the parents, as
226 provided in Section 43-21-151, notwithstanding the other
227 provisions of the Youth Court Law. The proceedings in chancery
228 court on the abuse or neglect charge shall be confidential in the
229 same manner as provided in youth court proceedings, and the



230 chancery court shall appoint a guardian ad litem in those cases,
231 as provided under Section 43-21-121 for youth court proceedings,
232 who shall be an attorney. Unless the chancery court's
233 jurisdiction has been terminated, all disposition orders in those
234 cases for placement with the Department of Human Services shall be
235 reviewed by the court or designated authority at least annually to
236 determine if continued placement with the department is in the
237 best interest of the child or the public.

238 (5) Each party to a paternity or child support proceeding
239 shall notify the other within five (5) days after any change of
240 address. In addition, the noncustodial and custodial parent shall
241 file and update, with the court and with the state case registry,
242 information on that party's location and identity, including
243 social security number, residential and mailing addresses,
244 telephone numbers, photograph, driver's license number, and name,
245 address and telephone number of the party's employer. This
246 information shall be required upon entry of an order or within
247 five (5) days of a change of address.

248 (6) In any case subsequently enforced by the Department of
249 Human Services under Title IV-D of the Social Security Act, the
250 court shall have continuing jurisdiction.

251 (7) In any subsequent child support enforcement action
252 between the parties, upon sufficient showing that diligent effort
253 has been made to ascertain the location of a party, due process
254 requirements for notice and service of process shall be deemed to
255 be met with respect to the party upon delivery of written notice
256 to the most recent residential or employer address filed with the
257 state case registry.

258 (8) The duty of support of a child terminates upon the
259 emancipation of the child. The court may determine that
260 emancipation has occurred and no other support obligation exists
261 when the child:

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



263 (b) Marries, or

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

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

271 (9) Upon motion of a party requesting temporary child
272 support pending a determination of parentage, temporary support
273 shall be ordered if there is clear and convincing evidence of
274 paternity on the basis of genetic tests or other evidence, unless
275 the court makes written findings of fact on the record that the
276 award of temporary support would be unjust or inappropriate in a
277 particular case.

278 **SECTION 6.** This act shall take effect and be in force from
279 and after July 1, 2003.

