

By: Senator(s) Huggins

To: Public Health and Welfare

SENATE BILL NO. 2387

1 AN ACT TO AMEND SECTION 93-11-103, MISSISSIPPI CODE OF 1972,
2 TO PRESCRIBE CERTAIN WITHHOLDING PROCEDURES IN CHILD SUPPORT CASES
3 ENFORCED BY THE DEPARTMENT OF HUMAN SERVICES, AND TO PRESCRIBE AN
4 ADDITIONAL AMOUNT TO BE WITHHELD IN DELINQUENT CHILD SUPPORT
5 CASES; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 93-11-103, Mississippi Code of 1972, is
8 amended as follows:

9 93-11-103. (1) * * * Upon entry of any order for support by
10 a court of this state where the custodial parent is a recipient of
11 services under Title IV-D of the federal Social Security Act,
12 issued on or after October 1, 1996, the court entering such order
13 shall enter a separate order for withholding which shall take
14 effect immediately without any requirement that the obligor be
15 delinquent in payment. All such orders for support issued prior
16 to October 1, 1996, shall, by operation of law, be amended to
17 conform with the provisions contained herein. All such orders for
18 support issued shall:

19 (a) Contain a provision for monthly income withholding
20 procedures to take effect in the event the obligor becomes
21 delinquent in paying the order for support without further
22 amendment to the order or further action by the court; and

23 (b) Require that the payor withhold any additional
24 amount for delinquency specified in any order if accompanied by an
25 affidavit of accounting, a notarized record of overdue payments,
26 official payment record or an attested judgment for delinquency or
27 contempt. Any person who willfully and knowingly files a false
28 affidavit, record or judgment shall be subject to a fine of not



29 more than One Thousand Dollars (\$1,000.00). The Department of
30 Human Services shall be the designated agency to receive payments
31 made by income withholding in child support orders enforced by the
32 department. All withholding orders shall be on a form as
33 prescribed by the department.

34 (2) * * * Upon entry of any order for support by a court of
35 this state where the custodial parent is not a recipient of
36 services under Title IV-D of the federal Social Security Act,
37 issued or modified or found to be in arrears on or after January
38 1, 1994, the court entering such order shall enter a separate
39 order for withholding which shall take effect immediately. Such
40 orders shall not be subject to immediate income withholding under
41 this subsection (a) if one (1) of the parties (i.e., noncustodial
42 or custodial parent) demonstrates, and the court finds, that there
43 is good cause not to require immediate income withholding, or (b)
44 if both parties agree in writing to an alternative arrangement.
45 The Department of Human Services or any other person or entity may
46 be the designated agency to receive payments made by income
47 withholding in all child support orders. Withholding orders shall
48 be on a form as prescribed by the department.

49 (3) If a child support order is issued or modified in the
50 state but is not subject to immediate income withholding, it
51 automatically becomes so if the court finds that a support payment
52 is thirty (30) days past due. If the support order was issued or
53 modified in another state but is not subject to immediate income
54 withholding, it becomes subject to immediate income withholding on
55 the date on which child support payments are at least thirty (30)
56 days in arrears, or (a) the date as of which the noncustodial
57 parent requests that withholding begin, (b) the date as of which
58 the custodial parent requests that withholding begin, or (c) an
59 earlier date chosen by the court whichever is earlier.

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



62 and to the Mississippi Department of Human Services Case Registry.
63 The clerk of the court, the obligee's attorney, or the
64 department * * * may serve such immediate order for withholding by
65 first class mail or personal delivery on the obligor's payor,
66 superintendent, manager, agent or subsequent payor, as the case
67 may be. In a case where the obligee's attorney or the
68 department * * * serves such immediate order, * * * the clerk of
69 the court shall be notified in writing, which notice shall be
70 placed in the court file. There shall be no need for further
71 notice, hearing, order, process or procedure before service of
72 said order on the payor or any additional or subsequent payor.
73 The obligor may contest, if grounds exist, service of the order of
74 withholding on additional or subsequent payors, by filing an
75 action with the issuing court. Such filing shall not stay the
76 obligor's duty to support pending judicial determination of the
77 obligor's claim. Nothing herein shall be construed to restrict
78 the authority of the courts of this state from entering any order
79 it deems appropriate to protect the rights of any parties
80 involved.

81 (5) The order for withholding shall:

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

84 (b) Direct any payor to withhold an additional amount,
85 not less than fifteen percent (15%) of the order for support,
86 until payment in full of any delinquency; and

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

90 (6) All orders for withholding may permit the Department of
91 Human Services to withhold through said withholding order
92 additional amounts to recover costs incurred through its efforts
93 to secure the support order, including, but not limited to, all
94 filing fees, court costs, service of process fees, mailing costs,



95 birth certificate certification fee, genetic testing fees, the
96 department's attorney's fees; and, in cases where the state or any
97 of its entities or divisions have provided medical services to the
98 child or the child's mother, all medical costs of prenatal care,
99 birthing, postnatal care and any other medical expenses incurred
100 by the child or by the mother as a consequence of her pregnancy or
101 delivery.

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

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

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

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

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

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

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

126 (c) The obligor may file an action with the issuing
127 court on the grounds of mistake of fact. Such filing must be made



128 within thirty (30) days of receipt of the notice and shall not
129 stay the obligor's duty to support pending judicial determination
130 of the obligor's claim.

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

137 **SECTION 2.** This act shall take effect and be in force from
138 and after July 1, 2003.

