

By: Representative Dedeaux

To: Judiciary A

HOUSE BILL NO. 89

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 REQUIRE SERVICE UPON THE
3 OBLIGOR IN CHILD SUPPORT DELINQUENCY CASES; AND FOR RELATED
4 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. Orders touching on the custody of the children of
17 the marriage shall be made in accordance with the provisions of
18 Section 93-5-24. The court may afterwards, on petition, change
19 the decree, and make from time to time such new decrees as the
20 case may require. However, where proof shows that both parents
21 have separate incomes or estates, the court may require that each
22 parent contribute to the support and maintenance of the children
23 of the marriage in proportion to the relative financial ability of
24 each. In the event a legally responsible parent has health
25 insurance available to him or her through an employer or
26 organization that may extend benefits to the dependents of such
27 parent, any order of support issued against such parent may
28 require him or her to exercise the option of additional coverage

29 in favor of such children as he or she is legally responsible to
30 support.

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

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

58 If after investigation by the Department of Human Services or
59 final disposition by the youth court or family court allegations
60 of child abuse are found to be without foundation, the chancery
61 court shall order the alleging party to pay all court costs and

62 reasonable attorney's fees incurred by the defending party in
63 responding to such allegation.

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

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

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

80 (b) Marries, or

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

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

88 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, is
89 amended as follows:

90 93-11-65. (1) (a) In addition to the right to proceed
91 under Section 93-5-23, Mississippi Code of 1972, and in addition
92 to the remedy of habeas corpus in proper cases, and other existing
93 remedies, the chancery court of the proper county shall have
94 jurisdiction to entertain suits for the custody, care, support and

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

126 (b) An order of child support shall specify the sum to
127 be paid weekly or otherwise. In addition to providing for support

128 and education, the order shall also provide for the support of the
129 child prior to the making of the order for child support, and such
130 other expenses as the court may deem proper.

131 (c) The court may require the payment to be made to the
132 custodial parent, or to some person or corporation to be
133 designated by the court as trustee, but if the child or custodial
134 parent is receiving public assistance, the Department of Human
135 Services shall be made the trustee.

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

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

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

156 (4) When a charge of abuse or neglect of a child first
157 arises in the course of a custody or maintenance action pending in
158 the chancery court pursuant to this section, the chancery court
159 may proceed with the investigation, hearing and determination of
160 such abuse or neglect charge as a part of its hearing and

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

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

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

187 (7) In any subsequent child support enforcement action
188 between the parties, upon sufficient showing that diligent effort
189 has been made to ascertain the location of a party, due process
190 requirements for notice and service of process shall be deemed to
191 be met with respect to the party upon delivery of written notice
192 to the most recent residential or employer address filed with the
193 state case registry.

194 (8) The duty of support of a child terminates upon the
195 emancipation of the child. The court may determine that
196 emancipation has occurred and no other support obligation exists
197 when the child:

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

199 (b) Marries, or

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

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

207 (9) Upon motion of a party requesting temporary child
208 support pending a determination of parentage, temporary support
209 shall be ordered if there is clear and convincing evidence of
210 paternity on the basis of genetic tests or other evidence, unless
211 the court makes written findings of fact on the record that the
212 award of temporary support would be unjust or inappropriate in a
213 particular case.

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

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

222 (a) A judgment arising under this section shall have
223 the same effect and be fully enforceable as any other judgment
224 entered in this state. A judicial or administrative action to
225 enforce said judgment may be commenced at any time after proper
226 service of process upon the obligor; and

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

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

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

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

251 (b) Winnings from lotteries and gaming winnings which
252 are received in periodic payments made over a period in excess of
253 thirty (30) days;

254 (c) Assets held in financial institutions;

255 (d) Settlements and awards resulting from civil
256 actions; and

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

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

265 **SECTION 4.** Section 93-11-103, Mississippi Code of 1972, is
266 amended as follows:

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

277 (a) Contain a provision for monthly income withholding
278 procedures to take effect in the event the obligor becomes
279 delinquent in paying the order for support without further
280 amendment to the order or further action by the court; and

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

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

307 (3) If a child support order is issued or modified in the
308 state but is not subject to immediate income withholding, it
309 automatically becomes so if the court finds that a support payment
310 is thirty (30) days past due. If the support order was issued or
311 modified in another state but is not subject to immediate income
312 withholding, it becomes subject to immediate income withholding on
313 the date on which child support payments are at least thirty (30)
314 days in arrears, or (a) the date as of which the noncustodial
315 parent requests that withholding begin, (b) the date as of which
316 the custodial parent requests that withholding begin, or (c) an
317 earlier date chosen by the court whichever is earlier.

318 (4) The clerk of the court shall submit copies of such
319 orders to the obligor's payor, any additional or subsequent payor,
320 and to the Mississippi Department of Human Services Case Registry.
321 The clerk of the court, the obligee's attorney, or the department
322 shall serve such immediate order for withholding by first class
323 mail or personal delivery on the obligor's payor, superintendent,
324 manager, agent or subsequent payor, as the case may be. In a case

325 where the obligee's attorney or the department serves such
326 immediate order, the clerk of the court shall be notified in
327 writing, which notice shall be placed in the court file. There
328 shall be no need for further notice, hearing, order, process or
329 procedure before service of said order on the payor or any
330 additional or subsequent payor. The obligor may contest, if
331 grounds exist, service of the order of withholding on additional
332 or subsequent payors, by filing an action with the issuing court.
333 Such filing shall not stay the obligor's duty to support pending
334 judicial determination of the obligor's claim. Nothing herein
335 shall be construed to restrict the authority of the courts of this
336 state from entering any order it deems appropriate to protect the
337 rights of any parties involved.

338 (5) The order for withholding shall:

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

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

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

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

357 by the child or by the mother as a consequence of her pregnancy or
358 delivery.

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

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

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

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

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

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

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

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

388 (12) An employer who complies with an income withholding
389 notice that is regular on its face and which is accompanied by the

390 required accounting affidavit, notarized record of overdue
391 payments or attested judgment of delinquency or contempt shall not
392 be subject to civil liability to any individual or agency for
393 conduct in compliance with the notice.

394 **SECTION 5.** This act shall take effect and be in force from
395 and after July 1, 2004.