

By: Representative Fillingane

To: Judiciary A

HOUSE BILL NO. 881

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 THE IMMEDIATE
3 ARREST OF A PARTY WHO IS SIX MONTHS OR MORE IN ARREARS FOR CHILD
4 SUPPORT; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 93-5-23, Mississippi Code of 1972, is
7 amended as follows:

8 93-5-23. When a divorce shall be decreed from the bonds of
9 matrimony, the court may, in its discretion, having regard to the
10 circumstances of the parties and the nature of the case, as may
11 seem equitable and just, make all orders touching the care,
12 custody and maintenance of the children of the marriage, and also
13 touching the maintenance and alimony of the wife or the husband,
14 or any allowance to be made to her or him, and shall, if need be,
15 require bond, sureties or other guarantee for the payment of the
16 sum so allowed. 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.

43 Whenever a party that has been ordered to make periodic
44 payments for the maintenance or support of a child is found by the
45 court to be six (6) months or more in arrears, the court shall
46 order the immediate arrest of such party. The order shall contain
47 verification from the clerk of the court of such arrearage.

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

61 Code of 1972) or under the laws establishing family courts (being
62 Chapter 23 of Title 43, Mississippi Code of 1972).

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

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

80 The duty of support of a child terminates upon the
81 emancipation of the child. The court may determine that
82 emancipation has occurred and no other support obligation exists
83 when the child:

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

85 (b) Marries, or

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

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

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

95 93-11-65. (1) (a) In addition to the right to proceed
96 under Section 93-5-23, Mississippi Code of 1972, and in addition
97 to the remedy of habeas corpus in proper cases, and other existing
98 remedies, the chancery court of the proper county shall have
99 jurisdiction to entertain suits for the custody, care, support and
100 maintenance of minor children and to hear and determine all such
101 matters, and shall, if need be, require bond, sureties or other
102 guarantee to secure any order for periodic payments for the
103 maintenance or support of a child. In the event a legally
104 responsible parent has health insurance available to him or her
105 through an employer or organization that may extend benefits to
106 the dependents of such parent, any order of support issued against
107 such parent may require him or her to exercise the option of
108 additional coverage in favor of such children as he or she is
109 legally responsible to support. Proceedings may be brought by or
110 against a resident or nonresident of the State of Mississippi,
111 whether or not having the actual custody of minor children, for
112 the purpose of judicially determining the legal custody of a
113 child. All actions herein authorized may be brought in the county
114 where the child is actually residing, or in the county of the
115 residence of the party who has actual custody, or of the residence
116 of the defendant. Process shall be had upon the parties as
117 provided by law for process in person or by publication, if they
118 be nonresidents of the state or residents of another jurisdiction
119 or are not found therein after diligent search and inquiry or are
120 unknown after diligent search and inquiry; provided that the court
121 or chancellor in vacation may fix a date in termtime or in
122 vacation to which process may be returnable and shall have power
123 to proceed in termtime or vacation. Provided, however, that if
124 the court shall find that both parties are fit and proper persons
125 to have custody of the children, and that either party is able to

126 adequately provide for the care and maintenance of the children,
127 and that it would be to the best interest and welfare of the
128 children, then any such child who shall have reached his twelfth
129 birthday shall have the privilege of choosing the parent with whom
130 he shall live.

131 (b) An order of child support shall specify the sum to
132 be paid weekly or otherwise. In addition to providing for support
133 and education, the order shall also provide for the support of the
134 child prior to the making of the order for child support, and such
135 other expenses as the court may deem proper.

136 (c) The court may require the payment to be made to the
137 custodial parent, or to some person or corporation to be
138 designated by the court as trustee, but if the child or custodial
139 parent is receiving public assistance, the Department of Human
140 Services shall be made the trustee.

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

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

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

159 other civil actions, be served with process and shall be entitled
160 to a hearing in such case.

161 (b) Whenever a party that has been ordered to make
162 periodic payments for the maintenance or support of a child is
163 found by the court to be six (6) months or more in arrears, the
164 court shall order the immediate arrest of such party. The order
165 shall contain verification from the clerk of the court of such
166 arrearage.

167 (4) When a charge of abuse or neglect of a child first
168 arises in the course of a custody or maintenance action pending in
169 the chancery court pursuant to this section, the chancery court
170 may proceed with the investigation, hearing and determination of
171 such abuse or neglect charge as a part of its hearing and
172 determination of the custody or maintenance issue as between the
173 parents, as provided in Section 43-21-151, notwithstanding the
174 other provisions of the Youth Court Law. The proceedings in
175 chancery court on the abuse or neglect charge shall be
176 confidential in the same manner as provided in youth court
177 proceedings, and the chancery court shall appoint a guardian ad
178 litem in such cases, as provided under Section 43-21-121 for youth
179 court proceedings, who shall be an attorney. Unless the chancery
180 court's jurisdiction has been terminated, all disposition orders
181 in such cases for placement with the Department of Human Services
182 shall be reviewed by the court or designated authority at least
183 annually to determine if continued placement with the department
184 is in the best interest of the child or the public.

185 (5) Each party to a paternity or child support proceeding
186 shall notify the other within five (5) days after any change of
187 address. In addition, the noncustodial and custodial parent shall
188 file and update, with the court and with the state case registry,
189 information on that party's location and identity, including
190 social security number, residential and mailing addresses,
191 telephone numbers, photograph, driver's license number, and name,

192 address and telephone number of the party's employer. This
193 information shall be required upon entry of an order or within
194 five (5) days of a change of address.

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

198 (7) In any subsequent child support enforcement action
199 between the parties, upon sufficient showing that diligent effort
200 has been made to ascertain the location of a party, due process
201 requirements for notice and service of process shall be deemed to
202 be met with respect to the party upon delivery of written notice
203 to the most recent residential or employer address filed with the
204 state case registry.

205 (8) The duty of support of a child terminates upon the
206 emancipation of the child. The court may determine that
207 emancipation has occurred and no other support obligation exists
208 when the child:

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

210 (b) Marries, or

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

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

218 (9) Upon motion of a party requesting temporary child
219 support pending a determination of parentage, temporary support
220 shall be ordered if there is clear and convincing evidence of
221 paternity on the basis of genetic tests or other evidence, unless
222 the court makes written findings of fact on the record that the
223 award of temporary support would be unjust or inappropriate in a
224 particular case.

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

227 93-11-71. (1) Whenever a court orders any person to make
228 periodic payments of a sum certain for the maintenance or support
229 of a child, and whenever such payments as have become due remain
230 unpaid for a period of at least thirty (30) days, a judgment by
231 operation of law shall arise against the obligor in an amount
232 equal to all payments which are then due and owing.

233 (a) A judgment arising under this section shall have
234 the same effect and be fully enforceable as any other judgment
235 entered in this state. A judicial or administrative action to
236 enforce said judgment may be commenced at any time; and

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

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

253 (3) Notwithstanding the provisions in paragraph (2), any
254 judgment arising under the provisions of this section shall
255 subject the following assets to interception or seizure without
256 regard to the entry of the judgment on the judgment roll of the
257 situs district or jurisdiction:

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

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

264 (c) Assets held in financial institutions;

265 (d) Settlements and awards resulting from civil
266 actions; and

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

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

275 (5) Whenever a party that has been ordered to make periodic
276 payments for the maintenance or support of a child is found by the
277 court to be six (6) months or more in arrears, the court shall
278 order the immediate arrest of such party. The order shall contain
279 verification from the clerk of the court of such arrearage.

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

282 93-11-103. (1) Upon entry of any order for support by a
283 court of this state where the custodial parent is a recipient of
284 services under Title IV-D of the federal Social Security Act,
285 issued on or after October 1, 1996, the court entering such order
286 shall enter a separate order for withholding which shall take
287 effect immediately without any requirement that the obligor be
288 delinquent in payment. All such orders for support issued prior
289 to October 1, 1996, shall, by operation of law, be amended to

290 conform with the provisions contained herein. All such orders for
291 support issued shall:

292 (a) Contain a provision for monthly income withholding
293 procedures to take effect in the event the obligor becomes
294 delinquent in paying the order for support without further
295 amendment to the order or further action by the court; and

296 (b) Require that the payor withhold any additional
297 amount for delinquency specified in any order if accompanied by an
298 affidavit of accounting, a notarized record of overdue payments,
299 official payment record or an attested judgment for delinquency or
300 contempt. Any person who willfully and knowingly files a false
301 affidavit, record or judgment shall be subject to a fine of not
302 more than One Thousand Dollars (\$1,000.00). The Department of
303 Human Services shall be the designated agency to receive payments
304 made by income withholding in child support orders enforced by the
305 department. All withholding orders shall be on a form as
306 prescribed by the department.

307 (2) Upon entry of any order for support by a court of this
308 state where the custodial parent is not a recipient of services
309 under Title IV-D of the federal Social Security Act, issued or
310 modified or found to be in arrears on or after January 1, 1994,
311 the court entering such order shall enter a separate order for
312 withholding which shall take effect immediately. Such orders
313 shall not be subject to immediate income withholding under this
314 subsection: (a) if one (1) of the parties (i.e., noncustodial or
315 custodial parent) demonstrates, and the court finds, that there is
316 good cause not to require immediate income withholding, or (b) if
317 both parties agree in writing to an alternative arrangement. The
318 Department of Human Services or any other person or entity may be
319 the designated agency to receive payments made by income
320 withholding in all child support orders. Withholding orders shall
321 be on a form as prescribed by the department.

322 (3) If a child support order is issued or modified in the
323 state but is not subject to immediate income withholding, it
324 automatically becomes so if the court finds that a support payment
325 is thirty (30) days past due. If the support order was issued or
326 modified in another state but is not subject to immediate income
327 withholding, it becomes subject to immediate income withholding on
328 the date on which child support payments are at least thirty (30)
329 days in arrears, or (a) the date as of which the noncustodial
330 parent requests that withholding begin, (b) the date as of which
331 the custodial parent requests that withholding begin, or (c) an
332 earlier date chosen by the court whichever is earlier.

333 (4) The clerk of the court shall submit copies of such
334 orders to the obligor's payor, any additional or subsequent payor,
335 and to the Mississippi Department of Human Services Case Registry.
336 The clerk of the court, the obligee's attorney, or the department
337 may serve such immediate order for withholding by first class mail
338 or personal delivery on the obligor's payor, superintendent,
339 manager, agent or subsequent payor, as the case may be. In a case
340 where the obligee's attorney or the department serves such
341 immediate order, the clerk of the court shall be notified in
342 writing, which notice shall be placed in the court file. There
343 shall be no need for further notice, hearing, order, process or
344 procedure before service of said order on the payor or any
345 additional or subsequent payor. The obligor may contest, if
346 grounds exist, service of the order of withholding on additional
347 or subsequent payors, by filing an action with the issuing court.
348 Such filing shall not stay the obligor's duty to support pending
349 judicial determination of the obligor's claim. Nothing herein
350 shall be construed to restrict the authority of the courts of this
351 state from entering any order it deems appropriate to protect the
352 rights of any parties involved.

353 (5) The order for withholding shall:

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

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

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

362 (6) All orders for withholding may permit the Department of
363 Human Services to withhold through said withholding order
364 additional amounts to recover costs incurred through its efforts
365 to secure the support order, including, but not limited to, all
366 filing fees, court costs, service of process fees, mailing costs,
367 birth certificate certification fee, genetic testing fees, the
368 department's attorney's fees; and, in cases where the state or any
369 of its entities or divisions have provided medical services to the
370 child or the child's mother, all medical costs of prenatal care,
371 birthing, postnatal care and any other medical expenses incurred
372 by the child or by the mother as a consequence of her pregnancy or
373 delivery.

374 (7) At the time the order for withholding is entered, the
375 clerk of the court shall provide copies of the order for
376 withholding and the order for support to the obligor, which shall
377 be accompanied by a statement of the rights, remedies and duties
378 of the obligor under Sections 93-11-101 through 93-11-119. The
379 clerk of the court shall make copies available to the obligee and
380 to the department or its local attorney.

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

383 (9) The failure of an order for withholding to state an
384 arrearage is not conclusive of the issue of whether an arrearage
385 is owing.

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

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

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

394 (b) The information along with the required affidavit
395 of accounting, notarized record of overdue payment or attested
396 judgment of delinquency or contempt has been sent to the employer;
397 and

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

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

409 (13) Whenever a party that has been ordered to make periodic
410 payments for the maintenance or support of a child is found by the
411 court to be six (6) months or more in arrears, the court shall
412 order the immediate arrest of such party. The order shall contain
413 verification from the clerk of the court of such arrearage.

414 **SECTION 5.** This act shall take effect and be in force from
415 and after July 1, 2005.