

By: Senator(s) Tollison

To: Judiciary, Division A

SENATE BILL NO. 2179

1 AN ACT TO AMEND SECTION 85-3-1, MISSISSIPPI CODE OF 1972, TO  
 2 CLARIFY THAT CASH ON DEPOSIT MAY BE SELECTED BY A DEBTOR FOR  
 3 EXEMPTION FROM EXECUTION ON THE SAME BASIS AS CASH, SUBJECT TO THE  
 4 CUMULATIVE VALUE LIMITATION; TO AMEND SECTION 85-3-4, MISSISSIPPI  
 5 CODE OF 1972, TO PROVIDE THAT EXEMPT DISPOSABLE EARNINGS REMAIN  
 6 EXEMPT FOR 30 DAYS AFTER DEPOSIT; TO AMEND SECTION 85-3-17,  
 7 MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXISTING EXEMPTION FROM  
 8 EXECUTION OF PROCEEDS STEMMING FROM A CLAIM BASED ON PERSONAL  
 9 INJURY; TO AMEND SECTIONS 11-35-23 AND 11-35-25, MISSISSIPPI CODE  
 10 OF 1972, TO CLARIFY FUNDS EXEMPTED UNDER FEDERAL LAW; AND FOR  
 11 RELATED PURPOSES.

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

13 **SECTION 1.** Section 85-3-1, Mississippi Code of 1972, is  
 14 amended as follows:

15 85-3-1. There shall be exempt from seizure under execution  
 16 or attachment:

17 (a) Tangible or intangible personal property of the  
 18 following kinds selected by the debtor, not exceeding Ten Thousand  
 19 Dollars (\$10,000.00) in cumulative value:

20 (i) Household goods, wearing apparel, books,  
 21 animals or crops;

22 (ii) Motor vehicles;

23 (iii) Implements, professional books or tools of  
 24 the trade;

25 (iv) Cash on hand;

26 (v) Intangible property involving the right to  
 27 receive money or credit, including, but not limited to, bank and  
 28 other accounts, stocks and bonds, earned income credits, child  
 29 care credits, child credits, or tax refunds;

30 (vi) Professionally prescribed health aids;

31                    (vii) Any item of tangible personal property worth  
32 less than Two Hundred Dollars (\$200.00).

33            Household goods, as used in this paragraph (a), means  
34 clothing, furniture, appliances, one (1) radio and one (1)  
35 television, one (1) firearm, one (1) lawnmower, linens, china,  
36 crockery, kitchenware, and personal effects (including wedding  
37 rings) of the debtor and his dependents; however, works of art,  
38 electronic entertainment equipment (except one (1) television and  
39 one (1) radio), jewelry (other than wedding rings), and items  
40 acquired as antiques are not included within the scope of the term  
41 "household goods." This paragraph (a) shall not apply to distress  
42 warrants issued for collection of taxes due the state or to wages  
43 described in Section 85-3-4.

44            (b) (i) The proceeds of insurance on property, real  
45 and personal, exempt from execution or attachment, and the  
46 proceeds of the sale of such property.

47            (ii) Income from disability insurance.

48            (c) All property, real, personal and mixed, for the  
49 collection or enforcement of any order or judgment, in whole or in  
50 part, issued by any court for civil or criminal contempt of said  
51 court; expressly excepted herefrom are such orders or judgments  
52 for the payment of alimony, separate maintenance and child support  
53 actions.

54            (d) All property in this state, real, personal and  
55 mixed, for the satisfaction of a judgment or claim in favor of  
56 another state or political subdivision of another state for  
57 failure to pay that state's or that political subdivision's income  
58 tax on benefits received from a pension or other retirement plan.  
59 As used in this paragraph (d), "pension or other retirement plan"  
60 includes:

61            (i) An annuity, pension, or profit-sharing or  
62 stock bonus or similar plan established to provide retirement

63 benefits for an officer or employee of a public or private  
64 employer or for a self-employed individual;

65 (ii) An annuity, pension, or military retirement  
66 pay plan or other retirement plan administered by the United  
67 States; and

68 (iii) An individual retirement account.

69 (e) One (1) mobile home, trailer, manufactured housing,  
70 or similar type dwelling owned and occupied as the primary  
71 residence by the debtor, not exceeding a value of Twenty Thousand  
72 Dollars (\$20,000.00); in determining this value, existing  
73 encumbrances on said dwelling, including taxes and all other  
74 liens, shall first be deducted from the actual value of said  
75 dwelling. A debtor is not entitled to the exemption of a mobile  
76 home as personal property who claims a homestead exemption under  
77 Section 85-3-21, and the exemption shall not apply to collection  
78 of delinquent taxes under Sections 27-41-101 through 27-41-109.

79 (f) Assets held in, or monies payable to the  
80 participant or beneficiary from, whether vested or not, (i) a  
81 pension, profit-sharing, stock bonus or similar plan or contract  
82 established to provide retirement benefits for the participant or  
83 beneficiary and qualified under Section 401(a), 403(a), or 403(b)  
84 of the Internal Revenue Code (or corresponding provisions of any  
85 successor law), including a retirement plan for self-employed  
86 individuals qualified under one of such enumerated sections, (ii)  
87 an eligible deferred compensation plan described in Section 457(b)  
88 of the Internal Revenue Code (or corresponding provisions of any  
89 successor law), or (iii) an individual retirement account or an  
90 individual retirement annuity within the meaning of Section 408 of  
91 the Internal Revenue Code (or corresponding provisions of any  
92 successor law), including a simplified employee pension plan.

93 (g) Nothing in this section shall in any way affect the  
94 rights or remedies of the holder or owner of a statutory lien or  
95 voluntary security interest.

96           **SECTION 2.** Section 85-3-4, Mississippi Code of 1972, is  
97 amended as follows:

98           85-3-4. (1) The wages, salaries or other compensation of  
99 laborers or employees, residents of this state, shall be exempt  
100 from seizure under attachment, execution or garnishment for a  
101 period of thirty (30) days from the date of service of any writ of  
102 attachment, execution or garnishment.

103           (2) After the passage of the period of thirty (30) days  
104 described in subsection (1) of this section, the maximum part of  
105 the aggregate disposable earnings (as defined by Section 1672(b)  
106 of Title 15, United States Code Annotated) of an individual that  
107 may be levied by attachment, execution or garnishment shall be:

108           (a) In the case of earnings for any workweek, the  
109 lesser amount of either,

110                   (i) Twenty-five percent (25%) of his disposable  
111 earnings for that week, or

112                   (ii) The amount by which his disposable earnings  
113 for that week exceed thirty (30) times the federal minimum hourly  
114 wage (prescribed by section 206 (a)(1) of Title 29, United States  
115 Code Annotated) in effect at the time the earnings are payable; or

116           (b) In the case of earnings for any period other than a  
117 week, the amount by which his disposable earnings exceed the  
118 following "multiple" of the federal minimum hourly wage which is  
119 equivalent in effect to that set forth in paragraph (a)(ii) of  
120 this subsection (2): The number of workweeks, or fractions  
121 thereof multiplied by thirty (30) multiplied by the applicable  
122 federal minimum wage.

123           (3) (a) The restrictions of subsections (1) and (2) of this  
124 section do not apply in the case of:

125                   (i) Any order for the support of any person issued  
126 by a court of competent jurisdiction or in accordance with an  
127 administrative procedure, which is established by state law, which

128 affords substantial due process, and which is subject to judicial  
129 review.

130 (ii) Any debt due for any state or local tax.

131 (b) Except as provided in paragraph (b)(iii) of this  
132 subsection (3), the maximum part of the aggregate disposable  
133 earnings of an individual for any workweek which is subject to  
134 garnishment to enforce any order for the support of any person  
135 shall not exceed:

136 (i) Where such individual is supporting his spouse  
137 or dependent child (other than a spouse or child with respect to  
138 whose support such order is used), fifty percent (50%) of such  
139 individual's disposable earnings for that week; and

140 (ii) Where such individual is not supporting such  
141 a spouse or dependent child described in paragraph (b)(i) of this  
142 subsection (3), sixty percent (60%) of such individual's  
143 disposable earnings for that week;

144 (iii) With respect to the disposable earnings of  
145 any individual for that workweek, the fifty percent (50%)  
146 specified in paragraph (b)(i) of this subsection (3) shall be  
147 deemed to be fifty-five percent (55%) and the sixty percent (60%)  
148 specified in paragraph (b)(ii) of this subsection (3) shall be  
149 deemed to be sixty-five percent (65%), if and to the extent that  
150 such earnings are subject to garnishment to enforce a support  
151 order with respect to a period which is prior to the period of  
152 twelve (12) weeks which ends with the beginning of such workweek.

153 (4) The exempt disposable earnings described in this section  
154 remain exempt for thirty (30) days after deposit in any financial  
155 institution.

156 **SECTION 3.** Section 85-3-17, Mississippi Code of 1972, is  
157 amended as follows:

158 85-3-17. (1) The proceeds of any judgment or settlement not  
159 exceeding Ten Thousand Dollars (\$10,000.00) recovered by any  
160 person on account of personal injuries sustained, shall inure to

161 the party or parties in whose favor such judgment may be rendered  
162 or settlement made, free from all liabilities for the debts of the  
163 person injured.

164 (2) Proceeds not exceeding Ten Thousand Dollars (\$10,000.00)  
165 attributable to any chose in action based on personal injuries  
166 sustained shall inure to the party or parties in whose favor an  
167 eventual judgment may be rendered or settlement made, free from  
168 all liabilities for the debts of the person injured.

169 **SECTION 4.** Section 11-35-23, Mississippi Code of 1972, is  
170 amended as follows:

171 11-35-23. (1) Except for wages, salary or other  
172 compensation or funds exempt from garnishment, execution or  
173 attachment by virtue of state or federal law and identifiable  
174 through the use of first-in first-out accounting, including, but  
175 not limited to, individuals' directly deposited social security  
176 and Veterans Administration payments, all property in the hands of  
177 the garnishee belonging to the defendant at the time of the  
178 service of the writ of garnishment shall be bound by and subject  
179 to the lien of the judgment, decree or attachment on which the  
180 writ shall have been issued. If the garnishee shall surrender  
181 such property to the sheriff or other officer serving the writ,  
182 the officer shall receive the same and, in case the garnishment  
183 issued on a judgment or decree, shall make sale thereof as if  
184 levied on by virtue of an execution, and return the money arising  
185 therefrom to satisfy the judgment; and if the garnishment issued  
186 on an attachment, the officer shall dispose of the property as if  
187 it were levied upon by a writ of attachment. And any indebtedness  
188 of the garnishee to the defendant, except for wages, salary or  
189 other compensation or funds exempt from garnishment, execution or  
190 attachment by virtue of state or federal law and identifiable  
191 through the use of first-in first-out accounting, including, but  
192 not limited to, individuals' directly deposited social security  
193 and Veterans Administration payments, shall be bound from the time

194 of the service of the writ of garnishment, and be appropriable to  
195 the satisfaction of the judgment or decree, or liable to be  
196 condemned in the attachment. Service of writ of garnishment as  
197 provided in Section 11-35-11 and this section shall be effective  
198 to bind nonexempt funds in the hands of the garnishee.

199 (2) The court issuing any writ of garnishment shall show  
200 thereon the amount of the claim of the plaintiff and the court  
201 costs in the proceedings and should at any time during the  
202 pendency of said proceedings in the court a judgment be rendered  
203 for a different amount, then the court shall notify the garnishee  
204 of the correct amount due by the defendant under said writ.

205 (3) (a) Except for judgments, liens, attachments, fees or  
206 charges owed to the state or its political subdivisions; wages,  
207 salary or other compensation in the hands of the garnishee  
208 belonging to the defendant at the time of the service of the writ  
209 of garnishment shall not be bound by nor subject to the lien of  
210 the judgment, decree or attachment on which the writ shall have  
211 been issued when the writ of garnishment is issued on a judgment  
212 based upon a claim or debt that is less than One Hundred Dollars  
213 (\$100.00), excluding court costs.

214 (b) If the garnishee be indebted or shall become  
215 indebted to the defendant for wages, salary or other compensation  
216 during the first thirty (30) days after service of a proper writ  
217 of garnishment, the garnishee shall pay over to the employee all  
218 of such indebtedness, and thereafter, the garnishee shall retain  
219 and the writ shall bind the nonexempt percentage of disposable  
220 earnings, as provided by Section 85-3-4, for such period of time  
221 as is necessary to accumulate a sum equal to the amount shown on  
222 the writ as due the court, even if such period of time extends  
223 beyond the return day of the writ. Unless the court otherwise  
224 authorizes the garnishee to make earlier payments or releases, the  
225 garnishee shall retain all sums collected pursuant to the writ and  
226 make only one (1) payment into court at such time as the total

227 amount shown due on the writ has been accumulated, provided that,  
228 at least one (1) payment per year shall be made to the court of  
229 the amount that has been withheld during the preceding year.  
230 Should the employment of the defendant for any reason be  
231 terminated with the garnishee, then the garnishee shall not later  
232 than fifteen (15) days after the termination of such employment,  
233 report such termination to the court and pay into the court all  
234 sums as have been withheld from the defendant's disposable  
235 earnings. If the plaintiff in garnishment contest the answer of  
236 the garnishee, as now provided by law in such cases, and proves to  
237 the court the deficiency or untruth of the garnishee's answer,  
238 then the court shall render judgment against the garnishee for  
239 such amount as would have been subject to the writ had the said  
240 sum not been released to the defendant; provided, however, any  
241 garnishee who files a timely and complete answer shall not be  
242 liable for any error made in good faith in determining or  
243 withholding the amount of wages, salary or other compensation of a  
244 defendant which are subject to the writ.

245 (4) Wages, salaries or other compensation as used in this  
246 section shall mean wages, salaries, commissions, bonuses or other  
247 compensation paid for employment purposes only.

248 (5) The circuit clerk may, in his or her discretion, spread  
249 on the minutes of the county or circuit court, as the case may be,  
250 an instruction that all garnishment defendants shall send all  
251 garnishment monies to the attorney of record or in the case where  
252 there is more than one (1) attorney of record, then to the  
253 first-named attorney of record, and not to the clerk. The payment  
254 schedule shall be the same as subsection (3)(b) of this section.

255 (6) All payments made pursuant to a garnishment issued out  
256 of the justice court shall be made directly to the plaintiff or to  
257 the plaintiff's attorney as indicated by the plaintiff in his or  
258 her suggestion for writ of garnishment. The employer shall notify  
259 the court and the plaintiff or the plaintiff's attorney when a

260 judgment is satisfied or when the employee is no longer employed  
261 by the employer.

262 **SECTION 5.** Section 11-35-25, Mississippi Code of 1972, is  
263 amended as follows:

264 11-35-25. (1) Every person duly summoned as a garnishee  
265 shall answer on oath as to the following particulars, viz.:

266 (a) Whether he be indebted to the defendant or were so  
267 indebted at the time of the service of the writ on him, or have at  
268 any time since been so indebted; and, if so indebted, in what sum,  
269 whether due or not, and when due or to become due, and how the  
270 debt is evidenced, and what interest it bears;

271 (b) What nonexempt effects of the defendant he has or  
272 had at the time of the service of the writ on him, or has had  
273 since, in his possession or under his control;

274 (c) Whether he knows or believes that any other person  
275 is indebted to the defendant; and, if so, whom, and in what  
276 amount, and where he resides; and

277 (d) Whether he knows or believes that any other person  
278 has effects of the defendant in his possession or under his  
279 control; and, if so, whom, and where he resides.

280 (2) In addition to answering as to the particulars in  
281 subsection (1) of this section, each person duly summoned as a  
282 garnishee in any case in which he be indebted to the defendant for  
283 wages, salary or other compensation shall answer on oath as to  
284 whether the defendant is an employee of the garnishee and, if so,  
285 the time interval between pay periods of the defendant including  
286 any specific day of a week or month on which such defendant is  
287 regularly paid.

288 **SECTION 6.** This act shall take effect and be in force from  
289 and after July 1, 2006.