

By: Senator(s) Dearing

To: Public Health and  
Welfare; Judiciary, Division  
A

SENATE BILL NO. 2292

1 AN ACT TO AMEND SECTION 93-9-11, MISSISSIPPI CODE OF 1972, TO  
2 ENACT A STATUTE OF LIMITATIONS ON PATERNITY ACTIONS; TO AMEND  
3 SECTION 93-9-28, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT MOTHERS  
4 BE INFORMED OF THE EXISTENCE OF THE STATUTE OF LIMITATIONS; TO  
5 AMEND SECTIONS 93-11-103 AND 93-11-119, MISSISSIPPI CODE OF 1972,  
6 TO REQUIRE THE DEPARTMENT OF HUMAN SERVICES TO SEEK AN ORDER OF  
7 VISITATION FOR THE NONCUSTODIAL PARENT CONCURRENTLY WITH THE CHILD  
8 SUPPORT PROCEEDINGS; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 93-9-11, Mississippi Code of 1972, is  
11 amended as follows:

12 93-9-11. Any action brought under this chapter to establish  
13 paternity shall be brought on or before the day the child who is  
14 the subject of the action is of the age of eighteen (18) months or  
15 be forever barred.

16 **SECTION 2.** Section 93-9-28, Mississippi Code of 1972, is  
17 amended as follows:

18 93-9-28. (1) The Mississippi Department of Health in  
19 cooperation with the Mississippi Department of Human Services  
20 shall develop a form and procedure which may be used to secure a  
21 voluntary acknowledgement of paternity from the mother and father  
22 of any child born out of wedlock in Mississippi. The form shall  
23 clearly state on its face that the execution of the  
24 acknowledgement of paternity shall result in the same legal effect  
25 as if the father and mother had been married at the time of the  
26 birth of the child. When such form has been completed according  
27 to the established procedure and the signatures of both the mother  
28 and father have been notarized, then such voluntary  
29 acknowledgement shall constitute a full determination of the legal  
30 parentage of the child. The completed voluntary acknowledgement

31 of paternity shall be filed with the Bureau of Vital Statistics of  
32 the Mississippi Department of Health. The name of the father  
33 shall be entered on the certificate of birth upon receipt of the  
34 completed voluntary acknowledgement.

35 (2) (a) A signed voluntary acknowledgment of paternity is  
36 subject to the right of any signatory to rescind the  
37 acknowledgment within the earlier of:

38 (i) Sixty (60) days; or

39 (ii) The date of a judicial proceeding relating to  
40 the child, including a proceeding to establish a support order, in  
41 which the signatory is a party.

42 (b) After the expiration of the sixty-day period  
43 specified in subsection (2)(a)(i) of this section, a signed  
44 voluntary acknowledgment of paternity may be challenged in court  
45 only on the basis of fraud, duress or material mistake of fact,  
46 with the burden of proof upon the challenger; the legal  
47 responsibilities, including child support obligations, of any  
48 signatory arising from the acknowledgment may not be suspended  
49 during the pendency of the challenge, except for good cause shown.

50 (3) The Mississippi Department of Health and the Mississippi  
51 Department of Human Services shall cooperate to establish  
52 procedures to facilitate the voluntary acknowledgement of  
53 paternity by both father and mother at the time of the birth of  
54 any child born out of wedlock. Such procedures shall establish  
55 responsibilities for each of the departments and for hospitals,  
56 birthing centers, midwives and/or other birth attendants to seek  
57 and report voluntary acknowledgements of paternity. In  
58 establishing such procedures, the departments shall provide for  
59 obtaining the social security account numbers of both the father  
60 and mother on voluntary acknowledgements.

61 (4) Upon the birth of a child out of wedlock, the hospital,  
62 birthing center, midwife or other birth attendant shall provide an  
63 opportunity for the child's mother and natural father to complete

64 an acknowledgement of paternity by giving the mother and natural  
65 father the appropriate forms and information developed through the  
66 procedures established in paragraph (3). The hospital, birthing  
67 center, midwife or other birth attendant shall be responsible for  
68 providing printed information, and audiovisual material if  
69 available, related to the acknowledgement of paternity, and shall  
70 be required to provide notary services needed for the completion  
71 of acknowledgements of paternity. The information described above  
72 shall be provided to the mother and natural father, if present and  
73 identifiable, within twenty-four (24) hours of birth or before the  
74 mother is released. Such information, including forms, brochures,  
75 pamphlets, video tapes and other media, shall be provided at no  
76 cost to the hospital, birthing center or midwife by the  
77 Mississippi State Department of Health, the Department of Human  
78 Services or other appropriate agency. The printed information and  
79 audiovisual material shall further include information as to the  
80 provisions of Section 93-9-11, and the hospital, birthing center,  
81 midwife or other birth attendant shall obtain written verification  
82 from the mother that this information has been delivered to her.

83 **SECTION 3.** Section 93-11-103, Mississippi Code of 1972, is  
84 amended as follows:

85 93-11-103. (1) Upon entry of any order for support by a  
86 court of this state where the custodial parent is a recipient of  
87 services under Title IV-D of the federal Social Security Act,  
88 issued on or after October 1, 1996, the court entering such order  
89 shall enter a separate order for withholding which shall take  
90 effect immediately without any requirement that the obligor be  
91 delinquent in payment. All such orders for support issued prior  
92 to October 1, 1996, shall, by operation of law, be amended to  
93 conform with the provisions contained herein. All such orders for  
94 support issued shall:

95 (a) Contain a provision for monthly income withholding  
96 procedures to take effect in the event the obligor becomes

97 delinquent in paying the order for support without further  
98 amendment to the order or further action by the court; and

99 (b) Require that the payor withhold any additional  
100 amount for delinquency specified in any order if accompanied by an  
101 affidavit of accounting, a notarized record of overdue payments,  
102 official payment record or an attested judgment for delinquency or  
103 contempt. Any person who willfully and knowingly files a false  
104 affidavit, record or judgment shall be subject to a fine of not  
105 more than One Thousand Dollars (\$1,000.00). The Department of  
106 Human Services shall be the designated agency to receive payments  
107 made by income withholding in child support orders enforced by the  
108 department. All withholding orders shall be on a form as  
109 prescribed by the department.

110 (2) Upon entry of any order for support by a court of this  
111 state where the custodial parent is not a recipient of services  
112 under Title IV-D of the federal Social Security Act, issued or  
113 modified or found to be in arrears on or after January 1, 1994,  
114 the court entering such order shall enter a separate order for  
115 withholding which shall take effect immediately. Such orders  
116 shall not be subject to immediate income withholding under this  
117 subsection: (a) if one (1) of the parties (i.e., noncustodial or  
118 custodial parent) demonstrates, and the court finds, that there is  
119 good cause not to require immediate income withholding, or (b) if  
120 both parties agree in writing to an alternative arrangement. The  
121 Department of Human Services or any other person or entity may be  
122 the designated agency to receive payments made by income  
123 withholding in all child support orders. Withholding orders shall  
124 be on a form as prescribed by the department.

125 (3) If a child support order is issued or modified in the  
126 state but is not subject to immediate income withholding, it  
127 automatically becomes so if the court finds that a support payment  
128 is thirty (30) days past due. If the support order was issued or  
129 modified in another state but is not subject to immediate income

130 withholding, it becomes subject to immediate income withholding on  
131 the date on which child support payments are at least thirty (30)  
132 days in arrears, or (a) the date as of which the noncustodial  
133 parent requests that withholding begin, (b) the date as of which  
134 the custodial parent requests that withholding begin, or (c) an  
135 earlier date chosen by the court whichever is earlier.

136 (4) The clerk of the court shall submit copies of such  
137 orders to the obligor's payor, any additional or subsequent payor,  
138 and to the Mississippi Department of Human Services Case Registry.  
139 The clerk of the court, the obligee's attorney, or the department  
140 may serve such immediate order for withholding by first class mail  
141 or personal delivery on the obligor's payor, superintendent,  
142 manager, agent or subsequent payor, as the case may be. In a case  
143 where the obligee's attorney or the department serves such  
144 immediate order, the clerk of the court shall be notified in  
145 writing, which notice shall be placed in the court file. There  
146 shall be no need for further notice, hearing, order, process or  
147 procedure before service of said order on the payor or any  
148 additional or subsequent payor. The obligor may contest, if  
149 grounds exist, service of the order of withholding on additional  
150 or subsequent payors, by filing an action with the issuing court.  
151 Such filing shall not stay the obligor's duty to support pending  
152 judicial determination of the obligor's claim. Nothing herein  
153 shall be construed to restrict the authority of the courts of this  
154 state from entering any order it deems appropriate to protect the  
155 rights of any parties involved.

156 (5) The order for withholding shall:

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

159 (b) Direct any payor to withhold an additional amount,  
160 not less than fifteen percent (15%) of the order for support,  
161 until payment in full of any delinquency; \* \* \*

162 (c) Direct the payor not to withhold in excess of the  
163 amounts allowed under Section 303(b) of the Consumer Credit  
164 Protection Act, being 15 USCS 1673, as amended; and

165 (d) Make appropriate provision for visitation by the  
166 noncustodial parent with the child or children for whom support is  
167 ordered.

168 (6) All orders for withholding may permit the Department of  
169 Human Services to withhold through said withholding order  
170 additional amounts to recover costs incurred through its efforts  
171 to secure the support order, including, but not limited to, all  
172 filing fees, court costs, service of process fees, mailing costs,  
173 birth certificate certification fee, genetic testing fees, the  
174 department's attorney's fees; and, in cases where the state or any  
175 of its entities or divisions have provided medical services to the  
176 child or the child's mother, all medical costs of prenatal care,  
177 birthing, postnatal care and any other medical expenses incurred  
178 by the child or by the mother as a consequence of her pregnancy or  
179 delivery.

180 (7) At the time the order for withholding is entered, the  
181 clerk of the court shall provide copies of the order for  
182 withholding and the order for support to the obligor, which shall  
183 be accompanied by a statement of the rights, remedies and duties  
184 of the obligor under Sections 93-11-101 through 93-11-119. The  
185 clerk of the court shall make copies available to the obligee and  
186 to the department or its local attorney.

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

189 (9) The failure of an order for withholding to state an  
190 arrearage is not conclusive of the issue of whether an arrearage  
191 is owing.

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

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

199 (a) The withholding on the delinquency has commenced;  
200 (b) The information along with the required affidavit  
201 of accounting, notarized record of overdue payment or attested  
202 judgment of delinquency or contempt has been sent to the employer;  
203 and

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

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

215 **SECTION 4.** Section 93-11-119, Mississippi Code of 1972, is  
216 amended as follows:

217 93-11-119. (1) The rights, remedies, duties and penalties  
218 created by Sections 93-11-101 through 93-11-119 are in addition to  
219 and not in substitution for any other rights, remedies, duties and  
220 penalties created by any other law.

221 (2) Nothing in Sections 93-11-101 through 93-11-119 shall be  
222 construed as invalidating any garnishment, attachment or  
223 assignment of wages or benefits instituted prior to July 1, 1985;  
224 provided, however, any such garnishment, attachment or assignment  
225 shall be subject to the priorities established under the  
226 provisions of subsection (3) of Section 93-11-111.

227           (3) Nothing in Sections 93-11-101 through 93-11-119 shall be  
228 construed as impairing the obligation of the Department of Human  
229 Services to seek visitation rights for noncustodial parent  
230 concurrent with the child support order proceeding.

231           **SECTION 5.** This act shall take effect and be in force from  
232 and after July 1, 2006.